

Ottawa, 25 April 2019  
SOPF File: 120-805-C1  
CCG File:

**VIA REGISTERED MAIL**

Director, Operational Business  
Canadian Coast Guard  
200 Kent Street (5N177)  
Ottawa, Ontario K1A 0E6

**RE: *Lady M. II* – Dunsmuir Island, BC – DOI: 13 March 2017**

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We have completed our investigation and assessment of the claim for \$32,388.76 (“Claim”) that the Canadian Coast Guard (“CCG”) submitted for costs and expenses incurred in relation to an oil pollution incident involving the vessel *Lady M. II* (“Vessel”). We find the Claim to be established, in part, in the amount of **\$31,590.05**. Accordingly, we hereby make an Offer of Compensation (“Offer”) in that amount, plus accrued interest of \$2,301.78 pursuant to sections 105, 106, and 116 of the *Marine Liability Act* (“MLA”). The amount of the Offer plus interest comes to \$33,891.83.

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**Applicable Statutory Scheme**

This Claim is subject to the substantive provisions of the *Canada Shipping Act, 2001* (“CSA”) and the *MLA* as they were at the time of the incident. All references to these statutes refer to them as they were before the changes introduced in Bill C-86 came into force.

**Overview of the Decision**

We are satisfied on the evidence that CCG had the power under paragraph 180(1)(a) *CSA* to raise and remove the Vessel, which was apparently abandoned, partially submerged, and upwelling pollutants at the time of the initial response. Furthermore, we are satisfied based on the findings of the survey conducted by Building Sea Marine Ltd (“BSM”) that the aging wooden Vessel’s interior was oil-saturated to the extent that it would remain a continuing pollution threat if returned to the marine environment. CCG thus had the power to deconstruct the Vessel. This, coupled with the demonstrated unseaworthiness of the Vessel and the absence of a responsible owner supports our finding that the raising, removal, and ultimate deconstruction of the Vessel were all reasonable preventive measures as contemplated by subparagraph 77(1)(c)(i) *MLA*.

Furthermore, we find the bulk of the claimed costs associated with the measures taken to be reasonable. To this end, the majority of claimed amounts are established in full, the sole exception being the amount claimed under Schedule 2. Reasons for this reduction are set out below.

## Assessment

### Schedule 2 – Contract Services

CCG claimed \$29,733.77 for the services of two contractors. BSM conducted a survey on 30 March 2017, producing a report dated 2 April, at a total cost of **\$2,302.65**. As discussed above, the BSM report has evidentiary value and appears to have informed the ultimate CCG decision to proceed with the deconstruction of the Vessel. For these reasons, we find the claimed amount for the BSM survey and report to be established in full.

In addition, CCG claimed \$27,431.12 for the work done by Saltair Marine Services Ltd (“Saltair”), including the initial response, booming operation, raising, haul-out, storage, deconstruction, and disposal of the Vessel. Of these measures, we find only the storage component to be unsupported on the evidence. It is unclear to the Administrator of the Ship-source Oil Pollution Fund (“Administrator”) why the Vessel remained on blocks at the Saltair facility for over two weeks prior to the BSM survey. The Claim documentation offers no compelling reason for this delay, which generated a cost of \$764.16, including applicable taxes. Accordingly, we find that the associated cost is not reasonable and thus rejected. Additionally, the Saltair invoice contains a minor error in the calculation of applicable GST, indicating that CCG overpaid by \$34.55. As a result, we find the Saltair contracted services to be established in the amount of **\$26,632.41**.

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We look forward to receiving notification of your acceptance so that payment can be made without delay. In considering this Offer, kindly note that you have 60 days upon receipt to notify the undersigned whether you accept it. Alternatively, you have 60 days upon receiving this Offer to appeal its adequacy in the Federal Court. The *MLA* provides that if no notification is received at the end of the 60-day period, you will be deemed to have refused the Offer.

If you accept this Offer, the *MLA* provides that the Administrator benefits from a statutory release and subrogation to the extent of the payment made to you in relation to the subject incident.

Yours sincerely,

Mark A.M. Gauthier, B.A., LL.B  
Deputy Administrator, Ship-source Oil Pollution Fund

c.c.: Superintendent, Environmental Response, Western  
Acting Superintendent, Environmental Response, Western

**Appendix: Summary Assessment Table**

<b>Schedule</b>	<b>Claimed</b>	<b>Established</b>
2 – Contract Services	\$29,733.77	\$28,935.06
3 – Travel	\$49.41	\$49.41
4 – Salaries – Full Time Personnel	\$1,012.35	\$1,012.35
5 – Overtime – Full Time Personnel	\$212.26	\$212.26
11 – Pollution Counter-measures Equipment	\$1,194.29	\$1,194.29
12 – Vehicles	\$164.09	\$164.09
13 – Administration	\$22.59	\$22.59
<b>Total in Principal</b>	\$32,388.76	<b>\$31,590.05</b>
<b>Interest</b>		<b>\$2,301.78</b>
<b>Grand Total</b>		<b>\$33,891.83</b>