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VIA REGISTERED MAIL & EMAIL

Senior Director, Incident Management
Canadian Coast Guard
200 Kent Street (6S049)
Ottawa, Ontario K1A 0E6

RE: F/V SEVERN MIST — Alert Bay, British Columbia
Incident date: 2018-02-11

OFFER OF COMPENSATION

This letter responds to a submission from the Canadian Coast Guard (the “CCG”) with respect to the fishing vessel SEVERN MIST, which was found to be in danger of sinking and polluting at Alert Bay, British Columbia on 11 February 2018 (the “Incident”).

On 5 February 2020, the Office of the Administrator of the Ship-source Oil Pollution Fund (the “Fund”) received the CCG’s submission in this matter on behalf of the Administrator. The submission advanced a claim in the amount of \$28,226.69¹ for costs and expenses related to the Incident. The submission has been reviewed and determinations with respect to the amount sought have been made. This letter advances an offer of compensation to the CCG pursuant to sections 105 and 106 of the *Marine Liability Act* (the “MLA”). Also provided in this letter are a description of the CCG’s submissions, and an explanation of the findings and the ultimate determinations that flow from them.

It has been determined that the CCG’s claim should be allowed, in part. The amount of \$703.28 is offered (the “Offer”) with respect to the claim. Should the Offer be accepted, interest accrued under section 116 of the MLA will be calculated to the date on which payment is directed.

¹ Due to a presumed rounding error, this figure is \$0.01 lower than the total of claimed amounts across all schedules. The total claimed amount has therefore been adjusted upwards to \$28,226.70.

THE CLAIM SUBMISSION

The CCG claim submission is comprised of the following:

- Covering letter from the CCG's Western Region Environmental Response Superintendent;
- Narrative describing events relating to the Incident and the CCG response;
- Cost summary;
- Documentation from three contractors;
- Marine survey report;
- Various logs, receipts, and summaries relating to personnel and equipment costs;
- Regional Operations Centre Pollution Report with three subsequent updates; and
- 11 full-page photographs.

To the extent that the above documentation is relevant to the assessment of the submission, its contents are described below.

The narrative

According to the narrative, three ER personnel (the "Task Force") departed Victoria on 10 February 2018 as part of a "bulk oil pollution removal operation". The Task Force was dispatched in response to numerous oil pollution reports that had been received out of the Alert Bay vicinity over a two-year period. Several particular vessels in the area were known to have discharged oils.

The Task Force travelled in two vehicles, one of which towed a Pollution Response Vessel, Class II ("PRV II"). ER personnel arrived at Port McNeil and checked into a hotel there.

On 11 February, the Task Force transited to Alert Bay in the PRV II. One of the CCG vehicles was also brought to Alert Bay, where it was staged for the remainder of the operation.

Once on scene, the Task Force assessed two local marinas. At the Namgis Marina dock, the Task Force observed several vessels sitting low in the water. The SEVERN MIST, an approximately 35-foot gillnetter, was deemed particularly problematic. ER personnel noted that it had taken on five feet of water, which they proceeded to pump off. It was further noted that unknown quantities of diesel were in the vessel's fuel tanks. Other miscellaneous oils were also on board.

The Task Force was unable to identify an owner of the SEVERN MIST. The local First Nations band council was contacted but stated that it was not aware of the vessel's current owner.

The Task Force removed all oils held in drums or containers on the SEVERN MIST, but was unable to pump off the diesel fuel due to the configuration of the intakes. The CCG had contracted a pumper truck for the broader operation, and this truck was used to dispose of the oils that were removed from the vessel.

For the remainder of the day on 11 February 2018, the Task Force attended to other unspecified vessels of concern.

The Task Force returned to the SEVERN MIST on the morning of 12 February 2018, finding it severely listing and at risk of sinking. Water ingress was again pumped out and a report was made to the Regional Operations Centre (the “ROC”). After a discussion with the ER Superintendent, it was resolved to remove the vessel from the water, as it was deemed a pollution threat. To this end, the CCG entered a verbal contract with D.C. of Port Hardy. Meanwhile, the PRV II was used to tow the SEVERN MIST to Port McNeil Marina to allow for closer monitoring.

Through the night of 12 February 2018, the Task Force tended to the SEVERN MIST, pumping out water ingress every two hours.

On 13 February 2018, the Task Force reassessed the SEVERN MIST. D.C. arrived on scene and conducted his own assessment. The Task Force then demobilized, assigning a Port Hardy-based ER Specialist to observe and oversee subsequent operations.

On 14 February 2018, the SEVERN MIST was removed from the water and brought to D.C.’s yard in Port Hardy. The Task Force returned to Victoria.

The CCG made additional unsuccessful attempts to identify the owner of the SEVERN MIST after it was removed from the water. Ultimately, with the CCG “taking into consideration the state of the vessel, the known and unknown oil pollution aboard and the oily bilge area itself, the decision was made to destruct the vessel treating it as oily waste. This was carried out at [D.C.’s] yard utilizing an excavator and a disposal bin.”

Cost summary

The claim submission includes the following summary of costs and expenses claimed by the CCG:

		SCH
MATERIALS AND SUPPLIES	-	1
CONTRACT SERVICES	9,842.70	2
TRAVEL	2,828.99	3
SALARIES - FULL TIME PERSONNEL	2,941.88	4
OVERTIME - FULL TIME PERSONNEL	7,787.32	5
OTHER ALLOWANCES	-	6
SALARIES - CASUAL PERSONNEL	-	7
SHIPS' COSTS (EXCL. FUEL & O/T)	-	8
SHIPS PROPULSION FUEL	-	9
AIRCRAFT	-	10
POLLUTION COUNTER-MEASURES EQUIPMENT (PCME)	3,622.69	11
VEHICLES	1,069.52	12
ADMINISTRATION	133.60	13
TOTAL CCG COST OF INCIDENT	\$ 28,226.69	

Figure 1: Screen capture of cost summary

Documentation in support of contract services expenditures

Claimed costs for contract services are supported by three invoices and various other documents, described below. The CCG also submitted a summary breakdown of this portion of its claim:

CONTRACT SERVICES	AMOUNT	GST	TOTAL	REFERENCE
[REDACTED]	7,791.25	389.56	8,180.81	INV 0000084 Paid Dec 20/18
PROGRESSIVE DIESEL	1132.75	56.64	1,189.39	INV 61218 Paid by MC
[REDACTED]	450	22.5	472.50	INV 180305 Paid Mar 12/18

Figure 2: Screen capture of contract services costs summary

The D.C. [first blanked out above] expenditure is supported by an invoice dated 21 September 2018, which contains the following description:

Description	Rate	Qty	Line Total
Delivery Pick up "Severn Mist" in Port McNeil 2/15/18 and deliver to Port Hardy	\$500.00 +GST	1	\$500.00
Delivery Pick up "Severn Mist" from Port Hardy 9/20/18 and deliver to 7 Mile landfill	\$500.00 +GST	1	\$500.00
Service Remove all hardware, tanks, engine, electrical, oil hoses etc. Drain and mop up all oil, fuel and contaminates from hull, hoses, tanks etc. Brian (see worksheet) 65.5 hrs. Dan 21 hrs.	\$55.00 +GST	86.5	\$4,757.50
Service Hi ab time to remove tanks, engines, gear etc. from boat.	\$150.00 +GST	6.5	\$975.00
General 7 miles landfill charges (Invoice enclosed) 8470 kgs	\$1,058.75 +GST	1	\$1,058.75

Figure 3: Screen capture from D.C. invoice

Also included in support of the D.C. expenditure is a four-page daily breakdown of deconstruction work completed by an employee or subcontractor. This document indicates that dismantlement began on 25 August 2018 and concluded on 19 September 2018. It references the draining of residual fuel and other fluids but offers no detail on volumes.

Finally, the disposal charges indicated on the D.C. invoice are supported by a weight ticket indicating 8,470 kilograms for disposal and an invoice totalling \$1,058.75 from the Regional District of Mount Waddington. The invoice is dated 20 September 2018.

The Progressive Diesel Ltd. ("Progressive") expenditure is supported by an invoice dated 19 February 2018, totalling \$1,268.68. A second invoice from Progressive, dated 16 April 2018, indicates that a refund \$79.29 was issued to the CCG, apparently covering the PST charge on the first invoice.

The first Progressive invoice contains the following breakdown:

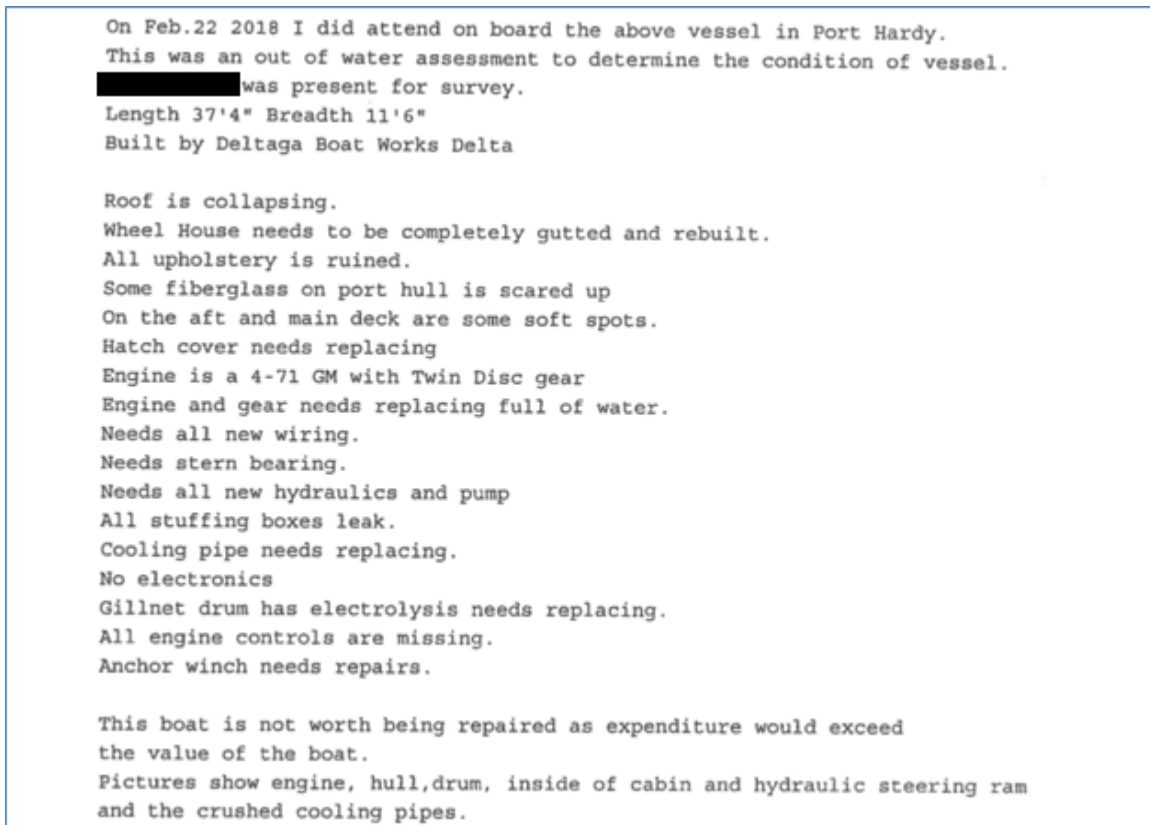
Part Number	Description	Ordered	Shipped	List	Price	Total	Tax	Units
	SEVERN MIST HAUL BOAT OUT AND BLOCK JOB ORDERED BY PIPER HARRIS							
LAB-IR1	STRAIGHTTIME	2.00	2.00	125.00	119.50	239.00	PO	EA
	FEB 14 : - DOWN TO WATER FRONT - DROP MAST AND RIGGING WITH HIAB ASSIST							
BHO CON-O-LIFT	BOATHAUL, LOAD AND HAUL OUT OF WATER/ BLOCK IN A.M.	1.00	1.00	500.00	500.00	500.00	PO	EA
SUBLET	HIAB TO DROP MAST/ RIGGING AT BOAT RAMP	1.00	1.00	143.75	143.75	143.75	PO	EA
BHO CON-O-LIFT	BOATHAUL, 2ND LIFT FOR DAN CARTER TO FIT ON TRAILER	1.00	1.00	250.00	250.00	250.00	PO	EA
SHOP SUPP	SHOP SUPPLIES	1.00	1.00	19.12	0.00	0.00	PO	EA

Figure 4: Screen capture from Progressive invoice dated 19 February 2018

Finally, the D.K. expenditure [second blanked out entry in Figure 2] is supported by an invoice dated 5 March 2018. The invoice contains only the following description: “Assessment of Vessel: Severnmist [*sic*] in Port Hardy”.

Marine survey report

The D.K. survey report is dated 22 February 2018. It consists of a single page and reads as follows:



On Feb.22 2018 I did attend on board the above vessel in Port Hardy.
This was an out of water assessment to determine the condition of vessel.
[REDACTED] was present for survey.
Length 37'4" Breadth 11'6"
Built by Deltaga Boat Works Delta

Roof is collapsing.
Wheel House needs to be completely gutted and rebuilt.
All upholstery is ruined.
Some fiberglass on port hull is scared up
On the aft and main deck are some soft spots.
Hatch cover needs replacing
Engine is a 4-71 GM with Twin Disc gear
Engine and gear needs replacing full of water.
Needs all new wiring.
Needs stern bearing.
Needs all new hydraulics and pump
All stuffing boxes leak.
Cooling pipe needs replacing.
No electronics
Gillnet drum has electrolysis needs replacing.
All engine controls are missing.
Anchor winch needs repairs.

This boat is not worth being repaired as expenditure would exceed
the value of the boat.
Pictures show engine, hull,drum, inside of cabin and hydraulic steering ram
and the crushed cooling pipes.

Figure 5: Screen capture from SEVERN MIST survey report

Personnel and equipment costs

The travel portion of the CCG claim submission is supported by three hotel receipts, indicating that three ER personnel stayed four nights in a hotel at Port McNeil, checking in on 10 February 2018 and checking out on 14 February 2018. Also included are expense report statements for each of the ER specialists, setting out various claimed totals but offering no breakdown or description:

Expense Type	Date		Foreign Amount	Tax Amount	Amount	
16) Commercial Accommodation	11/02/2018	T515 - W9A21 - E20 - 120 - 00000 - 6 - - - W100		CA*G ... 18.75	468.85	
		3390 - 6563F - 524 - 899 - 00000 - 6 - - - 0600			487.60	
Other						
2) Allowance: Meals, Incidentals & Private Accommodation	14/02/2018	T515 - W9A21 - E20 - 120 - 00000 - 6 - - - W100		CA#G ... 16.26	325.14	
		3390 - 6563F - 524 - 899 - 00000 - 6 - - - 0600			341.40	
	14/02/2018	T515 - W9A21 - E20 - 120 - 00000 - 6 - - - W100		CA#G ... 3.30	65.90	
		3390 - 6563F - 524 - 899 - 00000 - 6 - - - 0600			69.20	
3) Allowance: Private Motor Vehicle	14/02/2018	T515 - W9A21 - E20 - 120 - 00000 - 6 - - - W100		CA#G ... 0.76	15.20	
		3390 - 6563F - 524 - 899 - 00000 - 6 - - - 0600			15.96	
Total reimbursable expenses (CAD)					914.16	
Tax Coding Summary						
					Total Amount	
GST						
3390 - 6563F - 524 - 899 - 00000 - 6 - - - 0600					35.11 / 38.07	
Financial Coding Summary						
Financial Coding					Total Excl. Tax	Total Incl. Tax
T515 - W9A21 - E20 - 120 - 00000 - 6 - - - W100					875.09	914.16

Figure 6: Screen capture from sample expense report statement

A BC Ferries receipt totalling \$126.90, dated 11 February 2018 at 07:56, is also included. The receipt covers the fare for an oversize vehicle with driver on the Port McNeil to Alert Bay sailing.

Claimed salary costs for three ER personnel are supported by five Personnel & Equipment Daily Logs (the “Daily Logs”) and summarized as follows:

	Group & Level	Time (Hours)	Rate	COST	REFERENCE
	GT 05	22.5	43.23	972.68	20-Feb
	GT 04	22.5	43.76	984.60	20-Feb
	GT 04	22.5	43.76	984.60	20-Feb

Figure 7: Screen capture from salary costs summary (names of three ER personnel redacted)

Claimed overtime costs for three ER personnel are supported by logs, indicating, *inter alia*, that all hours worked on 11 February 2018, a Sunday, were paid at double time. The overtime claim is summarized as follows:

	Group & Level	1.5 x	2.0 X	Overtime Hours	Rate	COST	REFERENCE
	GT 05	19.50	12.00	53.25	40.94	2,180.06	Ref EDR
	GT 04	31.00	17.00	80.50	36.47	2,935.84	Ref EDR
	GT 04	27.50	16.00	73.25	36.47	2,671.43	Ref EDR

Figure 8: Screen capture from overtime costs summary (names of three ER personnel redacted)

The Daily Logs provide a basic breakdown of hours worked and equipment deployed during the Task Force operation, but few specific details on tasking are included. Notably, the entries for 11 and 12 February 2018 indicate the use of a 2-inch watering pump.

The pollution counter-measures equipment portion of the claim submission references the Daily Logs as support and is summarized as follows:

Description	Unit/ft	TIME (days)	RATE (per ft)	RATE (daily)	COST	REFERENCE
Pollution Response Vessel II		3.00	b	1194.23	3,582.69	Ref Equip Log
2" Centrifugal Pump		2.00		20.00	40.00	Ref Equip Log

Figure 9: Screen capture from pollution counter-measures equipment costs summary

The claim for vehicle costs is supported by two mileage logs that appear to be for CCG vehicles. The claimed amounts are summarized as follows:

UNIT #	MILEAGE (Kms)	RATE	TIME (days)	RATE	COST	REFERENCE
16-824	939	0.22	5.00	65.57	534.43	Ref Veh Log
06-818	942	0.22	5.00	65.57	535.09	Ref Veh Log

Figure 10: Screen capture from vehicle costs summary

Finally, the claim for administration costs is supported by a summary breakdown and appears to result from a rate of 2.53% applied against claimed travel costs and 83.33% of salary costs, which excludes employee benefits plan costs.

Regional Operations Centre Pollution Report with three subsequent updates

The submission includes an ROC Pollution Report dated 12 February 2018 at 10:37. The report contains the following entry (context and later updates suggest that “SILVER MIST” is in fact a misnomer for the SEVERN MIST), offering no detail on pollutants:

ORIGIN:	SILVER LUCK – 35FT GILLNETTER/SILVER MIST 35' GILLNETTER
WEATHER CONDITIONS:	
ADDITIONAL INFORMATION:	NAMGIS DOCK, SILVER MIST AND SILVER LUCK, BOTH 35FT GILLNETTERS IN ROUGH SHAPE, NON FUNCTIONING. PUMPED 5' OF WATER OUT OF ENGINE. BOTH ARE BEING REMOVED AT HIGH TIDE TODAY.

Figure 11: Screen capture of extract of the ROC Pollution Report

An update from 13:07 the same day states: “Both the Severn mist and Silver Luck have been dewatered. All accessible pollutants [...] pumped off utilizing a pump truck or removed by hand. The vessels will be brought to the Namgis boat launch for removal and Deconstruction.”

A second update, dated 13 February 2018 at 18:11, reads as follows: “The Silver luck has been removed from the marine and the deconstruction process is underway. The Severn mist has been towed to Port Mcneil [sic]. Due to the low tide, the vessel could not be removed from the marine tonight. Attempts to remove the vessel will be made tomorrow morning at higher tide.”

Photographs

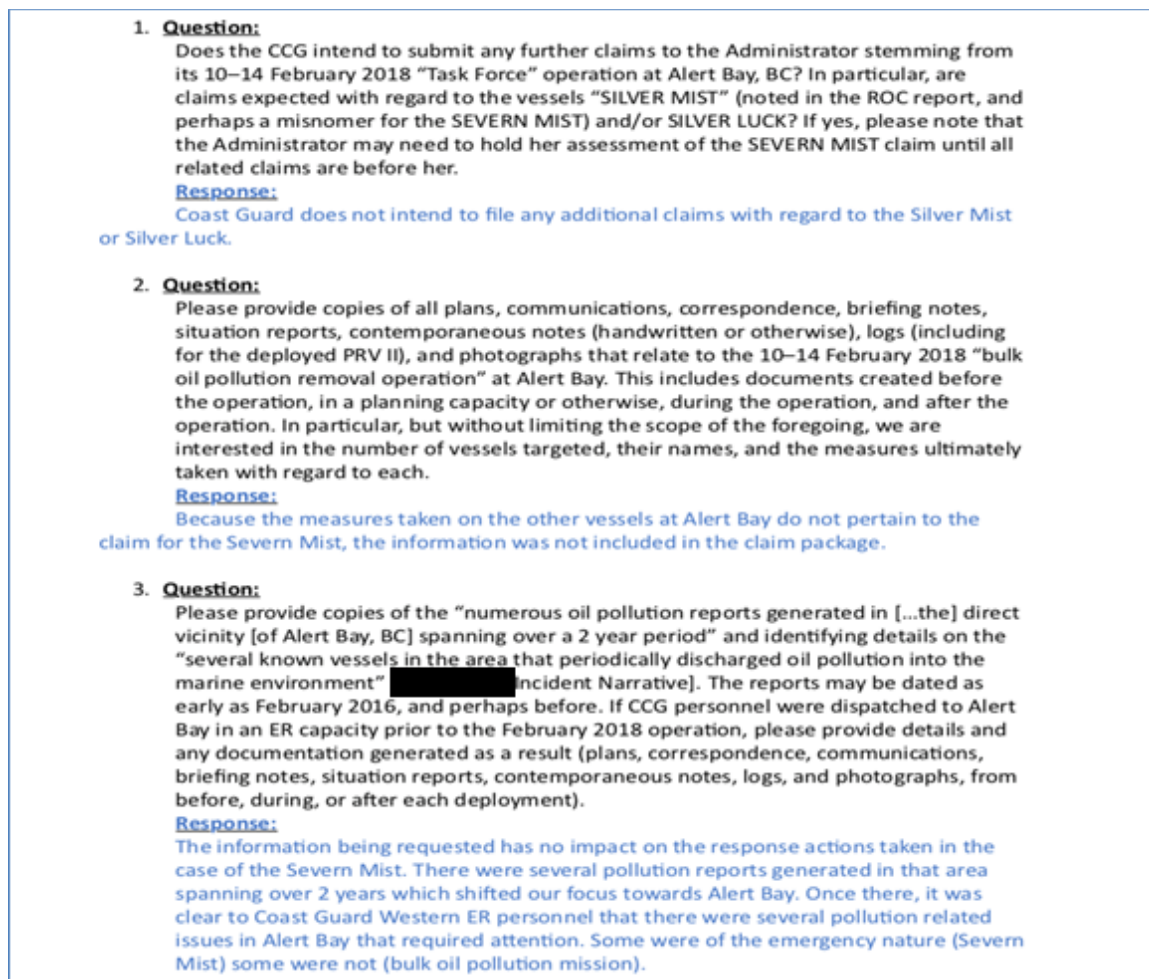
The claim submission includes 11 full-page photographs of a vessel appearing to match the description of the SEVERN MIST. The first two photographs show the vessel in the water, dockside, while the remainder depict the vessel on land. The photographs are not captioned, dated, or timestamped. They do not appear to depict the oils on the vessel.

CORRESPONDENCE WITH THE CLAIMANT

Requests for further documentation and clarification

During the investigation and assessment process, there were two email exchanges in which the Fund requested further documentation or clarification from the CCG.

The first such request was made on 21 February 2020. The following is a selection the questions put to the CCG that are relevant to this assessment, and the replies, received on 19 March 2020:



1. **Question:**
Does the CCG intend to submit any further claims to the Administrator stemming from its 10–14 February 2018 “Task Force” operation at Alert Bay, BC? In particular, are claims expected with regard to the vessels “SILVER MIST” (noted in the ROC report, and perhaps a misnomer for the SEVERN MIST) and/or SILVER LUCK? If yes, please note that the Administrator may need to hold her assessment of the SEVERN MIST claim until all related claims are before her.
Response:
Coast Guard does not intend to file any additional claims with regard to the Silver Mist or Silver Luck.

2. **Question:**
Please provide copies of all plans, communications, correspondence, briefing notes, situation reports, contemporaneous notes (handwritten or otherwise), logs (including for the deployed PRV II), and photographs that relate to the 10–14 February 2018 “bulk oil pollution removal operation” at Alert Bay. This includes documents created before the operation, in a planning capacity or otherwise, during the operation, and after the operation. In particular, but without limiting the scope of the foregoing, we are interested in the number of vessels targeted, their names, and the measures ultimately taken with regard to each.
Response:
Because the measures taken on the other vessels at Alert Bay do not pertain to the claim for the Severn Mist, the information was not included in the claim package.

3. **Question:**
Please provide copies of the “numerous oil pollution reports generated in [...the] direct vicinity [of Alert Bay, BC] spanning over a 2 year period” and identifying details on the “several known vessels in the area that periodically discharged oil pollution into the marine environment” [redacted Incident Narrative]. The reports may be dated as early as February 2016, and perhaps before. If CCG personnel were dispatched to Alert Bay in an ER capacity prior to the February 2018 operation, please provide details and any documentation generated as a result (plans, correspondence, communications, briefing notes, situation reports, contemporaneous notes, logs, and photographs, from before, during, or after each deployment).
Response:
The information being requested has no impact on the response actions taken in the case of the Severn Mist. There were several pollution reports generated in that area spanning over 2 years which shifted our focus towards Alert Bay. Once there, it was clear to Coast Guard Western ER personnel that there were several pollution related issues in Alert Bay that required attention. Some were of the emergency nature (Severn Mist) some were not (bulk oil pollution mission).

Figure 12: Screen capture of email exchange between the Fund and the CCG of 21 February and 19 March 2020 (name of CCG Senior Response Officer redacted)

The Fund sent a follow-up request to the CCG on 27 March 2020, clarifying its position and the reasons for its requests. For clarity, the second sentence of the second paragraph below was later corrected to read “If the SEVERN MIST was one of those known vessels [...]”:

The CCG has declined to provide certain documents requested by the Fund. While the CCG’s position appears to be that the documents requested are not relevant to assessing the claim, the Administrator may reach a different determination.

The claim narrative indicates that the measures taken with respect to the SEVERN MIST were undertaken by a “Task Force” sent to Alert Bay in response to reports of oil pollution from “several known vessels” over a two-year period. If the SEVERN MIST was the source of those known vessels, the current claim may be time barred.

On the flip side, if the SEVERN MIST was not in fact a source of those historic spills, and the vessel was found incidentally while the Task Force was investigating the historic reports, then many of the Task Force’s costs and expenses are not measures taken with respect to the SEVERN MIST incident. The costs and expenses should properly be distributed amongst the owners of the offending vessels, meaning that they must be claimed independently.

If the Administrator does not have the evidence to confirm that the CCG claim was submitted in accordance with the MLA, and that the costs and expenses claimed for arise from measures taken specifically with respect to the SEVERN MIST as an oil pollution threat, she may not be able to reach the findings sought by the CCG.

Please advise by 10 April whether the CCG is willing and able to provide the requested documentation, and provide a timeline for doing so, and the Administrator will hold her assessment accordingly.

Figure 13: Screen capture of email from the Fund to the CCG, 27 March 2020

On 9 April 2020, the CCG replied:

Regarding your follow-up inquiry related to the Severn Mist claim, Coast Guard will not be providing any additional documentation.

That said, the Senior Response Officer confirmed that the date reported on the narrative was the first time Coast Guard was made aware of and took any measures for the Severn Mist.

Figure 14: Screen capture of email reply from the CCG, 9 April 2020

No further exchanges between the Fund and the CCG occurred with regard to the SEVERN MIST claim submission.

FINDINGS AND DETERMINATIONS

The CCG submission is eligible as a claim under section 103 of the MLA

The Incident led to costs and expenses to carry out measures to avoid anticipated oil pollution damage within the territorial seas of Canada. As a result, claims arising from the Incident are potentially eligible for compensation.

The CCG is an eligible claimant for the purposes of section 103 of the MLA.

The CCG has refused to provide its historical pollution reports for the Alert Bay area for the two-year period prior to the Incident, though it has asserted that it was not aware of the SEVERN MIST as an oil pollution threat prior to attending to the vessel on 11 February 2018. There remains the possibility that the SEVERN MIST was in fact one of the vessels known to have historically discharged oils at Alert Bay, which event might have engaged the two-year claims submission bar under paragraph 103(2)(a). It is, however, accepted on the balance of probabilities that the CCG's claim was in fact submitted within the appropriate limitation periods under subsection 103(2).

Some of the claimed costs and expenses arise from what appear to be reasonable measures taken to "prevent, repair, remedy or minimize" oil pollution damage from a ship, as contemplated under Part 6, Division 2 of the MLA, and are therefore eligible for compensation.

For the foregoing reasons, it is determined that the submission presents claims that are potentially eligible for compensation under section 103 of the MLA.

Many of the facts presented by the CCG are accepted

In general, the basic facts and timeline put forward by the CCG with regard to its February 2018 operation at and around Alert Bay are accepted. There remain, however, a number of significant evidentiary shortcomings. These shortcomings are detailed below.

The SEVERN MIST posed a pollution threat on 11 February 2018

It is accepted that ER personnel first became aware of the SEVERN MIST on 11 February 2018, and probably sometime after 08:00, based on the BC Ferries receipt. It is further accepted that at this time the vessel was observed to be in poor condition and lying low in the water, and that unknown volumes of pollutants were on board. No owner could be identified. The SEVERN MIST was at risk of sinking, which would have caused onboard pollutants to escape into the marine environment. ER personnel proceeded to pump significant quantities of water ingress overboard and remove all accessible oils from the vessel. These actions were reasonable in the circumstances. Prior to CCG intervention, the vessel posed a pollution threat, though the degree of that threat was not fully understood, not fully documented, or both.

It is noteworthy that no sorbent materials appear to have been deployed at any time during the CCG response to the SEVERN MIST, and that water ingress was simply pumped

overboard. This suggests that the water inside the vessel was either not contaminated at all or was deemed insufficiently contaminated to merit any containment or recovery measures.

The evidence does not show that CCG measures taken after 11 February 2018 were reasonable

The narrative states that after the accessible pollutants were removed from the SEVERN MIST on 11 February 2018, a quantity of diesel fuel and perhaps other residual oils remained on board. The CCG made no effort to quantify and document even approximate volumes for these residual pollutants, even after the vessel was removed from the water, surveyed, and deconstructed.

The CCG continued to take measures to keep the SEVERN MIST afloat and ultimately arranged for it to be removed from the water. It does not flow from these facts alone, however, that the vessel remained a pollution threat to the extent that the measures taken after 11 February 2018 were reasonable. In the absence of even a rough estimate of the quantity of remaining pollutants, it is not appropriate to assume the reasonableness and proportionality of the measures that followed. A few litres of potential pollutants, for example, may not be sufficient to justify an environmental response costing thousands of dollars.

When ER personnel returned to the SEVERN MIST on 12 February 2018, they observed that its stability situation had worsened. It was listing severely and considered likely to sink if left unattended. Water ingress was again pumped overboard. Again, no sorbents were deployed.

Oddly, the CCG resolved to use its PRV II to tow the stricken SEVERN MIST over ten kilometres to Port McNeil on 13 February 2018. Little detail has been presented on this tow, but the fact that it was undertaken at all casts doubt on the CCG's assertion that the vessel was in imminent danger of sinking and polluting. If this was indeed the case, such a towage operation — which must have lasted in excess of two hours — would have presented considerable risk to the PRV II and its crew, as well as to the marine environment.

A further point of confusion stems from the fact that, according to the ROC Pollution Report updates, another problematic vessel of similar size to the SEVERN MIST, the SILVER LUCK, was removed from the marine environment at Alert Bay on 12 February 2018. Based on the first ROC update, this appears to have been the initial plan for the SEVERN MIST as well. It is not clear why the CCG ultimately changed its plans.

The CCG has asserted that the SEVERN MIST posed a pollution threat and an imminent sinking risk after 11 February 2018. Little evidence has been presented in support of these assertions, and CCG actions at the time appear to contradict them.

Because of the incomplete and incongruous evidence surrounding the CCG's actions following the initial intervention of 11 February 2018, it cannot be determined whether any of these measures were reasonably taken to mitigate a legitimate oil pollution threat.

Accordingly, the CCG's claims for costs incurred with regard to the SEVERN MIST after 11 February 2018 are rejected.

The costs of the Task Force operation are not appropriately claimed

In its response to the Fund's requests, the CCG has taken the position that it was not aware of the situation with the SEVERN MIST until the vessel was noticed by ER personnel on 11 February 2018, in the course of their broader Task Force operation at Alert Bay. That operation had been planned in advance to target known vessels in the area, and the SEVERN MIST was not one of these vessels.

While the Task Force operation may have involved reasonable measures taken to mitigate the threat of oil pollution from other vessels, and while the costs of these measures may be otherwise compensable in the context of separate incidents caused by those other vessels, the costs of the broader operation cannot be compensable alongside the costs directly associated with the SEVERN MIST. The CCG had planned for the costs of the Task Force operation prior to discovering the threat posed by the SEVERN MIST. As a result, the broader Task Force costs cannot be considered as having resulted from the Incident.

Accordingly, and in the absence of a detailed breakdown of the broader Task Force operation that might have allowed for calculation of some incremental costs associated with the SEVERN MIST measures, most of the claimed amounts associated with personnel and equipment must be rejected.

OFFER BREAKDOWN

The CCG presented its claimed costs and expenses across seven schedules. Each of these schedules is briefly outlined below, along with relevant determinations not already set forth in this letter.

Schedule 2: Contract Services

This portion of the claim is comprised of three separate expenditures toward three separate service providers. The total amount claimed under this schedule is \$9,842.70.

Progressive

The Progressive expenditure of \$1,189.39 covered the removal of the SEVERN MIST from the water at Port McNeil on 14 February 2018 as well preparations for the overland tow to the D.C. facility, including partial dismantlement and lifting the vessel onto a trailer. Because the CCG has provided insufficient evidence to demonstrate that the SEVERN MIST continued to pose a pollution threat after the 11 February 2018 intervention by ER personnel, the Progressive expenditure is rejected in full.

D.C.

The D.C. expenditure of \$8,180.81 covered an overland tow of the SEVERN MIST to Port Hardy, as well as the deconstruction and disposal of the vessel and its contents. The D.C. expenditure is rejected in full for the same reasons as the Progressive expenditure.

D.K.

Finally, the D.K. expenditure of \$472.50 covered the survey of the SEVERN MIST on 22 February 2018 and the production of a single-page survey report. For the same reasons as the other two claimed contract services, and because the basic survey report provided fails to address pollutants at all, the D.K. expenditure is rejected in full.

Schedule 3: Travel

This portion of the claim totals \$2,828.99. Because the Task Force operation at Alert Bay targeted vessels other than the SEVERN MIST and was planned before the issues with that vessel were known the CCG, none of the travel costs associated with the broader operation are compensable as part of the SEVERN MIST claim. The amounts claimed under this schedule are rejected in full.

It is further noted that in any case, the costs set out in the three expense report statements for meals, incidentals, private vehicle use, “tax amounts”, and GST lack sufficient explanation and supporting documentation to allow for full and proper assessment.

Schedule 4: Salaries – Full Time Personnel

The CCG claimed \$2,941.88 under this schedule. Because no regular salaried hours were worked on 11 February 2018, this portion of the claim is rejected in full.

Schedule 5: Overtime – Full Time Personnel

The CCG claimed \$7,787.32 under this schedule. Because it appears that only overtime hours at double time were worked on 11 February 2018, the accepted amounts for ER personnel labour directed at the SEVERN MIST fall under this schedule.

The CCG’s claim documentation offers no detailed breakdown of tasking during the Task Force operation as a whole, and the CCG has explicitly declined to provide such detail despite a specific request from the Fund. It is therefore determined, based on the measures taken with regard to the SEVERN MIST on 11 February 2018, that a total of nine overtime hours — three hours for each of the ER personnel on scene — were devoted to the vessel on that day. As mentioned, these hours were paid at double time.

Accordingly, and with reference to the overtime rates depicted in Figure 8, the accepted amount under this schedule is fixed at \$683.28.

Schedule 11: Pollution Counter-measures Equipment

The claimed costs under this schedule total \$3,622.69. This amount is comprised of three days' use of a PRV II, totalling \$3,582.69 and two days' use of a 2-inch pump, totalling \$40.00.

Because there is no evidence that the PRV II was a necessary component of the 11 February 2018 SEVERN MIST measures, and because any costs associated with the use of the PRV II would in any case have been incurred as part of the pre-planned Task Force operation, this portion of the claim is rejected in full.

Given the lack of evidence that the SEVERN MIST continued to pose a pollution threat after the initial CCG intervention of 11 February 2018, only the pump costs associated with that date, or \$20.00, are accepted under this schedule.

Schedule 12: Vehicles

The CCG claimed a total of \$1,069.52 for vehicle usage costs. Because all of these costs would have been incurred as part of the pre-planned Task Force operation, the claimed costs under this schedule are rejected in full.

Schedule 13: Administration

This portion of the CCG's claim totals \$133.60. Because the CCG has calculated its administration costs based only on the amounts claimed under Schedules 3 and 4, both of which have been rejected in full, the claimed amount for administration costs is also rejected in full.

OFFER SUMMARY

Schedule	Claim	Offer
2 – Contract Services	\$9,842.70	\$0.00
3 – Travel	\$2,828.99	\$0.00
4 – Salaries – Full Time Personnel	\$2,941.88	\$0.00
5 – Overtime – Full Time Personnel	\$7,787.32	\$683.28
11 – Pollution Counter-measures Equipment	\$3,622.69	\$20.00
12 – Vehicles	\$1,069.52	\$0.00
13 – Administration	\$133.60	\$0.00
Totals:	\$28,226.70	\$703.28

Table 1: Summary of claimed amounts and the Offer

In considering this Offer, please observe the following options and time limits that arise from section 106 of the MLA.

You have 60 days upon receipt of this Offer to notify the undersigned whether you accept it. You may tender your acceptance by any means of communication by 16:30 Eastern Time on the final day allowed. If you accept this Offer, payment will be directed to you without delay, together with interest accrued pursuant to section 116 of the MLA.

Alternatively, you have 60 days upon receipt of this Offer to appeal its adequacy to the Federal Court. If you wish to appeal the adequacy of the Offer, pursuant to Rules 335(c), 337, and 338 of the *Federal Courts Rules*, SOR/98-106 you may do so by filing a Notice of Appeal in Form 337. You must serve it upon the Administrator of the Ship-source Oil Pollution Fund, who shall be the named Respondent. Pursuant to Rules 317 and 350 of the *Federal Courts Rules*, you may request a copy of the Certified Tribunal Record.

The MLA provides that if no notification is received by the end of the 60-day period, you will be deemed to have refused the Offer. No further offer will issue.

Finally, where a claimant accepts an offer of compensation, the Administrator becomes subrogated to the claimant's rights with respect to the subject matter of the claim. The claimant must thereafter cease any effort to recover for its claim, and further it must cooperate with the Fund in its efforts to pursue subrogation.

Yours sincerely,

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

cc: Superintendent, Environmental Response, Western Region (CCG)
Manager, Operational Service Delivery (CCG)