



OFFER LETTER

Ottawa, 11 August 2022
SOPF File: 120-897-C1-C
CCG File:

BY EMAIL

Manager, Response Services and Planning
Canadian Coast Guard
200 Kent Street (5N167)
Ottawa, Ontario K1A 0E6

RE: FV *Western Breeze* — Steveston Harbour, British Columbia
Incident date: 2019-07-10

SUMMARY AND OFFER

[1] This letter responds to a submission from the Canadian Coast Guard (the “CCG”) with respect to the fishing vessel *Western Breeze*, which sank on 10 July 2019 at Steveston Harbour, British Columbia (the “Incident”).

[2] On 6 July 2021, the office of the Administrator of the Ship-source Oil Pollution Fund (the “Fund”) received a submission from the CCG on behalf of the Administrator. The submission advanced claims under sections 101 and 103 of the *Marine Liability Act*, SC 2001, c 6 (the “MLA”) totalling \$147,492.93 for costs and expenses arising from measures taken by the CCG to respond to the Incident.

[3] The submission has been reviewed and a determination with respect to its claims has been made. This letter advances an offer of compensation to the CCG pursuant to sections 105 and 106 of the MLA.

[4] The amount of \$92,091.89 (the “Offer”), plus statutory interest to be calculated at the time the Offer is paid, in accordance with section 116 of the MLA, is offered with respect to this claim.

[5] The reasons for the Offer are set forth below, along with a description of the submission and the investigation thereof.

THE SUBMISSION RECEIVED

[6] The submission includes an undated narrative that describes events relating to the Incident. It also includes a summary of the costs and expenses for which the CCG seeks compensation, and corroborating documents. To the extent that the narrative and corroborating documents are relevant to the determination, they are reviewed below.

Narrative and photographs

[7] According to the narrative, on 10 July 2019, the CCG Environmental Response (“ER”) Regional Operations Centre received reports from the Steveston Harbour Authority (the “SHA”) that the *Western Breeze*, an ex-fishing vessel, was sinking at Paramount Pond Marina. As the *Western Breeze* was tied to another vessel at the time and that other vessel was beginning to list, the *Western Breeze* was cut free and secured alongside another dock. Later, it sank completely. Oil pollution was reportedly welling up around the site of the sinking.

[8] A representative of the corporate owners of the *Western Breeze*, arrived on scene and hired Mountain Premier Contracting & Demolition Ltd. (“Mountain”) to mitigate any pollution and raise the vessel. The representative reported to the CCG that 250 gallons of hydraulic and motor oil were on board, along with 40 gallons of diesel.

[9] The CCG contacted Mountain for details on its pollution mitigation plan, which the CCG deemed inadequate. It was decided that CCG ER personnel based in Richmond would mobilize, providing both containment and sorbent boom and assisting with the deployment thereof.

[10] When they arrived on scene, the ER personnel met with Mountain and the representative of the corporate owners. ER personnel observed a minor, non-recoverable sheen within the boomed off area. It was agreed that Mountain would provide the CCG with a salvage plan detailing steps to mitigate oil pollution, remove the vessel from the marina, and conduct an assessment to determine the cause of the sinking.

[11] When two ER personnel returned to the scene later the same day, they “observed that recoverable sheen was seen outside of the containment boom, and that the contractors did not do an adequate job of mitigating pollution risk.” The CCG notified Mountain and the SHA that more containment boom would be needed and requested that any saturated sorbent materials be changed. ER personnel departed and then returned to the scene with additional response equipment. After assisting Mountain and confirming that it would remain on scene in a monitoring capacity through the night, the ER personnel departed at 16:50.

Figures 1 and 2 – Screen captures of uncaptioned, undated photographs from the submission

[12] On 11 July 2019, two ER personnel were again dispatched to the site of the sinking, where they arrived at 07:41 [sic]:

At this time [ER personnel] noted that [*Western Breeze*] was half out of the water; the orientation of the vessel was showing it laying on its side

cabin facing away from the dock. Containment boom was still in place, and some of the adsorbent boom was fully saturated. Bright rainbow sheen was present within the containment boom.

[...]

Conference call took place at 1030, with [Transport Canada], CCG-ER, SHA, and [the National Environmental Emergencies Centre]. Salvage Plan provided to the group by [Mountain] was denied by Transport Canada and CCGER due to the sensitivities in the area. All parties agreed that the current plan sent to them on July 10, 2019, was not appropriate and therefore was denied. [The] CCG-ER Deputy Superintendent [...] agreed to contact [the owners and Mountain] stating why their salvage plan was denied and issued them a timeline to produce a new plan [...] by 1500 on July 11, 2019.

Another conference call with CCG-ER, TC, NEEC, and SHA to take place at 1615 on July 11, 2019.

[Mountain contacted the CCG] at 1115 and stated [it] was unhappy with the salvage plan being denied and new one needed to be presented.

[The CCG] contacted another contractor Mercury Transport [...] to get another quote in the event that Mountain [...] could not provide an appropriate salvage plan by the deadline. Due to the sensitivities in the area and the risk to pollute it was deemed appropriate for CCG-ER to get a quote from another company [...]. [The CCG] sent Mercury Transport photos, and information requested to be able to provide a salvage plan quote. The salvage plan was to include mitigation to pollute, lifting the vessel out of the water as well as removing water from inside, towing the vessel, and removing it onto the hard top at Shelter Island. [...] Mercury Transport stated they could provide the quote by end of day.

At 1348 SHA contacted [the CCG] to inform [...] that the tag lines from the anchors that were deployed on July 10, 2019 were floating and blocking the public boat launch access and marina lift; and that a fishing vessel [was] expected to be pulling in shortly.

[The CCG] called [Mountain] at 1407 to have the contractors shorten the tag lines on the anchor packs so that they were no longer blocking use of the boat launch and the marina entrance.

Mountain [...] did not provide CCG-ER with a new salvage plan before the 1500 deadline.

Mercury Transport was able to provide CCG-ER with a salvage quote, and at 1449 was awarded the contract. Their salvage plan outlined how they would mitigate the risk to further pollute, conduct a vessel and pollution assessment using divers, as well as how they would remove the vessel from the marine environment onto the hard top at Shelter Island, Richmond B.C.

[13] The CCG informed the SHA of the change in contractor. The SHA agreed to monitor the situation and maintain the boom overnight. The CCG also informed Mountain of the change, but it was unable to reach the owners of the *Western Breeze*.

[14] A National Aerial Surveillance Program (“NASP”) aircraft conducted an overflight at 16:05 and reported a sheen of 0.6 litres within the boomed off area.

[15] The narrative continues [*sic*]:

[...] Mercury Transport [Inc.] called [the CCG] to inform [...] that they will be on scene on Saturday morning, July 13, 2019 [and] asked if CCG-ER would have pollution mitigation equipment ready to be deployed during salvage operations in case something happened during the operations.

CCG-ER Richmond had two crew arrive on scene at 0730 on July 12, 2019. [They] did a walk around of the dock and noted that the containment was still effective and a small amount of non-recoverable sheen inside of the containment. The adsorbent boom did not appear to be fully saturated and did not need to be replaced at that time.

CCG-ER Richmond two crew members departed scene for Sea Island at 0800.

Conference call took place at 0830 with TC, [Environment and Climate Change Canada], SHA, [the Regional Operations Centre] and CCG-ER. [The CCG] gave a briefing on the situation, and what had happened on scene yesterday as well as the new contractor being Mercury Transport.

Mercury Transport divers were in the water to start the initial assessment that morning. [The CCG] requested that the divers do a complete pollution risk assessment as well.

[...]

[At] 1347 [the CCG] contacted [Mercury Transport, which] confirmed everything went well and they would be able to sling the vessel. As well as the barge and crane should be on scene for July 13, 2019, around 0630. From there they would start the rigging process and begin lifting by 0800.

[The CCG] contacted SHA to inform them of the plan and timeline that [Mercury Transport] had given. As well as inform them that the barge will most likely block the channel and the public boat launch is going to be closed till the operations are completed due to safety concerns.

[The CCG] contacted [the Regional Operations Centre] at 1413 to contact [Marine Traffic and Communications Services] to issue a note for ships that the channel at Steveston Harbour informing that there would be no access to the marina or public boat launch on July 13, 2019, during operations due to safety concerns.

[16] The salvage operation began on 13 July 2019. CCG ER personnel arrived on scene with a response truck and equipment, as well as a Pollution Response Vessel, Class II

(“PRV II”). Mercury Transport Inc. (“Mercury Transport”) dispatched two of its barges to the scene, but a third-party spud barge was blocking access to the *Western Breeze*, so the CCG contacted the SHA to arrange for it to be moved.

[17] The salvage operation began at 08:50, with divers tending to the *Western Breeze*. Meanwhile, ER personnel aboard the PRV II used sorbent material to recover some of the sheen inside the boomed off area. The salvage operation then began to get underway [*sic*]:

1055 the crane barge was all rigged accordingly and ready to start the lift, however they needed to adjust the containment for the lift. Once these adjustments were made [Mercury Transport] began lifting operations.

1136 *Western Breeze* was lifted and 3 pumps were getting set up to be used to remove any water from inside the vessel. The pumps were operated by the contractor [Mercury Transport] and their crew.

1230 CCG-ER 709 PRV II and Mercury Transport [...] tug started to push the spud barge out of the way with the owner of the spud barge present.

1330 [Mercury Transport] set *Western Breeze* down to re-rig the slings to do the final lift. There were complications and the vessel *Western Breeze* had re-sunk. The pumps were not able to keep up with the ingress of water during the re-rigging of the sling, resulting in the vessel re-sinking.

CCG-ER 709 PRV II was used at 1400 to gather the recoverable product seen on the water after the vessel had re-sank.

1515 divers were back in the water to hook the slings up around the vessel for crane operations.

1555 all connections were hooked up, and [Mercury Transport] was ready to begin lifting again.

1632 CCG-ER continued to collect the adsorbent pads and boom on scene.

NASP did [an] overflight of the containment area and noted 6.4 liters inside the containment, and patches of unrecoverable sheen outside and downstream of the containment area.

1745 [Mercury Transport] had issues lifting the vessel, the crane was having issues lifting the weight of the vessel with the added water inside. Contracting crew worked on a different plan to lift the vessel.

1815 since the crane was unable to lift the vessel up and onto the other barge for transport, the new plan was to rig the vessel in place in front of the barge with it in the cradle and attach the crane. From there the vessel would be towed up to Shelter Island, Richmond B.C. Once at Shelter Island the vessel would be lifted out and placed onto the hard top.

1940 The barge and crane were under tow and on route to Shelter Island, Richmond B.C. CCG-ER crew remained on scene to recover all adsorbent boom, pads, containment boom, anchors and lines.

2100 CCG-EER crew had recovered 60 small yellow hazardous bags, and 2 large yellow hazardous bags of pads, boom and oiled small wooden debris. All of these items were then placed into 2 UN bags with liners at the top of the ramp in the parking lot of Paramount Pond, Richmond B.C.

CCG-ER 709 PRV II remained tied up at the dock at Paramount Pond in case of complications. 2140 CCG-ER crew standing down for the evening, and headed back to Sea Island base.

On July 14, 2019 CCG-ER crew of 3 arrived at Sea Island and transited to Paramount Pond in 19-808, 5-ton freightliner truck. With the goal to load the 2 UN bags onto the flat deck of the truck.

1200 [the CCG] received a call from [...] Mercury [Transport...] stating that everything went well last night, and the vessel was towed up to Shelter Island and lifted onto the hard top there. The cost to have the vessel on the hard top at Shelter Island was part of the initial salvage plan by [Mercury Transport].

Once there was no longer a threat to pollute by the vessel being out of the marine environment [the CCG] sent out [an] update of the pollution report with no further ER intentions. All CCG-ER Richmond pollution response equipment was removed from Paramount Pond and brought back to Sea Island. No further action required.

Figure 3 – Screen capture of an uncaptioned, undated photograph from the submission

Cost summary

[18] The CCG submission summarizes its claimed costs as follows:

		<u>SCH</u>
MATERIALS AND SUPPLIES	-	1
CONTRACT SERVICES	136,852.20	2
TRAVEL	285.79	3
SALARIES - FULL TIME PERSONNEL	321.86	4
OVERTIME - FULL TIME PERSONNEL	5,280.30	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)	3,048.96	11
VEHICLES	1,686.70	12
ADMINISTRATION	17.12	13
	<hr/>	
TOTAL CCG COST OF INCIDENT	<u>\$ 147,492.93</u>	

Figure 4 – Screen capture of the cost summary

CCG internal documentation

[19] Claimed regular salary costs include a 20% markup on base rates, representing employee benefits. Overtime was paid at either a multiple of 1.5 or 2.0 times each employee’s base rate (less benefits):

Name, Group, Level	Rates	Hours Claimed by Date (July 2019)						Total Hours	Claimed Cost
		10 Wed	11 Thurs	12 Fri	13 Sat	14 Sun	30 Tues		
GS	Reg: \$51.61	-	-	-	-	-	-	0.00	\$0.00
GT-05	1.5x: \$64.52	-	-	-	-	-	0.50	0.50	\$32.26
	2.0x: \$86.02	-	-	-	-	9.00	-	9.00	\$774.18
JL	Reg: 45.98	-	-	-	-	-	-	0.00	\$0.00
GT-04	1.5x: \$57.48	-	-	-	7.50	-	-	7.50	\$431.10
	2.0x: \$76.64	-	-	-	10.00	-	-	10.00	\$766.40
JT	Reg: \$45.98	6.00	-	-	-	-	-	6.00	\$275.88
GT-04	1.5x: \$57.48	2.50	1.00	1.00	7.50	7.00	-	19.00	\$1,092.12
	2.0x: \$76.64	-	-	-	10.50	-	-	10.50	\$804.72
DH	Reg: \$45.98	1.00	-	-	-	-	-	1.00	\$45.98
GT-04	1.5x: \$57.48	2.50	-	-	7.50	-	-	10.00	\$574.80
	2.0x: \$76.64	-	-	-	10.50	-	-	10.50	\$804.72
Totals								84.00	\$5,602.16

Table 1 – Claimed salary and overtime by date (full names of CCG personnel replaced with initials)

[20] Travel costs comprising meals costs and a private vehicle use allowance are claimed in the amount of \$285.79. Only internal financial coding documentation is provided in support of these costs, which are summarized as follows:


TRAVEL		Amount	GST	Total	REFERENCE
	GS	19.14	0	19.14	14-Jul
	JL	86.9	0	86.90	13-Jul
	JT	176.24	3.51	179.75	07/13/14

Figure 5 – Screen capture of claimed travel costs (full names of CCG personnel replaced with initials)

[21] The CCG claims \$3,048.96 for pollution counter-measures equipment:

Description	Unit/ft	TIME (days)	RATE (per ft)	RATE (daily)	COST	REFERENCE
PRVII CGE 709		2.00		1194.23	2,388.46	Ref Equip Log
24" CONTAINMENT BOOM	100	4.00	0.67		268.00	Ref Equip Log
UN BAG PLUS LINER	2			160.00	320.00	Ref Equip Log
YELLOW WASTE BAGS (bale)	1			72.50	72.50	Ref Equip Log

Figure 6 – Screen capture of claimed pollution counter-measures equipment costs summary

[22] Claimed vehicle costs total \$1,686.70:

UNIT #	MILEAGE (Kms)	RATE	TIME (days)	RATE	COST	REFERENCE
Nissan Rouge			1.00	65.57	65.57	10-Jul
Dodge 3500			1.00	65.57	65.57	13-Jul
5 TON Truck			2.00	777.78	1,555.56	13, 14 Jul
					-	
					-	
*mileage not claimed as vehicle logs not obtained						-

Figure 7 – Screen capture of claimed vehicle costs summary

[23] Finally, the submission includes three “Personnel & Equipment Daily Logs”, dated 10, 13, and 14 July 2019. Generally, these logs align with the narrative and other documentation.

Contract services documentation

[24] Claimed contractor costs are summarized as follows:

CONTRACT SERVICES	AMOUNT	GST	TOTAL	REFERENCE
MERCURY TRANSPORT	125,947.43	6,297.37	132,244.80	INV 20191877
CHRIS SMALL MARINE SURVEYORS	1,934.00	96.70	2,030.70	INV 10473
GFL ENVIRONMENTAL	2,454.00	122.7	2,576.70	INV LQ00132122
				Paid by GAC

Figure 8 – Screen capture of contractor costs summary

Mercury Transport

[25] The Mercury Transport expenditure is supported by one primary invoice, five invoices from subcontractors, and various receipts for food, taxis, and parking. The primary Mercury Transport invoice, which is dated 31 July 2019, contains the following breakdown of costs:

		TOTAL DUE		132,244.80		
GST/HST No.: 848552691RT0001		Qty	Unit	Tax	Price	Amount
PST Exempt Number 1000-5001						
RE. SALVAGE OF WESTERN BREEZE						
Jul 12 - Rogers St to Steveston, inspect sunken vessel Western Breeze with divers		3.00	hrs	G	440.00	1,320.00
Jul 12 - Pick up pumps from Dynamic Rentals		2.00	hrs	G	100.00	200.00
Jul 12 - Mob to Steveston with boat and barge		6.00	hrs	G	400.00	2,400.00
Jul 13 - At Steveston, salvage sunken vessel Western Breeze		21.00	hrs	G	400.00	8,400.00
2 extra crew at 16hrs each		32.00	hrs	G	120.00	3,840.00
Jul 15 - Demob from Steveston with boat and barge		6.00	hrs	G	400.00	2,400.00
Jul 15 - Clean up pumps and return to Dynamic Rentals		4.00	hrs	G	100.00	400.00
Reference to Subway Sandwiches & Salads						
Jul 12 - Meal				G	15.17	15.17
15% markup		0.15	fee	G	15.17	2.28
Richmond Taxi						
Jul 13 - Taxi to Steveston				G	52.24	52.24
15% markup		0.15	fee	G	52.24	7.84
Royal City Taxi						
Jul 13 - Taxi to Steveston				G	55.24	55.24
15% markup		0.15	fee	G	55.24	8.29
Reference to Diamond Parking HK857B						
Jul 13 - Parking at Steveston				G	14.29	14.29
15% markup		0.15	fee	G	14.29	2.14
Reference to Diamond Parking BH651B						
Jul 13 - Parking at Steveston				G	14.29	14.29
15% markup		0.15	fee	G	14.29	2.14
Reference to Pierside Deli						
Jul 13 - Meal				G	16.90	16.90
15% markup		0.15	fee	G	16.90	2.54
Reference to Richmond Pizza						
Jul 13 - Meal				G	192.00	192.00
15% markup		0.15	fee	G	192.00	28.80

Reference to July 15 - Hydra Marine Invoice# 0002133			G	13,420.00	13,420.00
15% markup	0.15	fee	G	13,420.00	2,013.00
Reference to July 15 - Dynamic Equipment Rental Invoice# 156308-1			G	790.22	790.22
15% markup	0.15	fee	G	790.22	118.53
Reference to July 16 - Mercury Launch & Tug Ltd Inv# 201911390			G	19,000.00	19,000.00
15% markup	0.15	fee	G	19,000.00	2,850.00
Reference to July 25 - Vancouver Pile and Dredge Invoice# VS19154			G	54,840.77	54,840.77
15% markup	0.15	fee	G	54,840.77	8,226.12
Reference to August 2 - Shelter Island Marina and Boatyard Account# 5874			G	4,621.42	4,621.42
15% markup	0.15	fee	G	4,621.42	693.21
Subtotal:					125,047.43
G - GST @ 5 %					
GST					6,297.37

Figures 9 and 10 – Screen captures of the primary invoice from Mercury Transport

[26] The relevant details of the five subcontractor invoices are summarized below.

[27] The Hydra Marine Services Inc. (“Hydra”) invoice is broken down below. An attached log shows that three Hydra personnel worked from 07:00 on 13 July 2019 through to 03:00 on 14 July 2019. A \$30.00 charge for third party boat launch fees is not shown.

July 12 - Survey sunken boat "Western Breeze" at Steveston					
Labor	1 Diver	4 hrs	@	\$117.50	\$470.00
	1 StBy Diver	4 hrs	@	\$97.00	\$388.00
	1 Tender	4 hrs	@	\$84.00	\$336.00
Equipment	1 Dive Gear	1	@	\$300.00	\$300.00
	1 Dive Boat	1	@	\$350.00	\$350.00
	1 Crew Truck	1	@	\$75.00	\$75.00
					\$1,919.00
July 13 - Saturday - Assist in salvage of sunken boat " Western Breeze".					
Labor	1 Diver	8 hrsOTx1.5	@	\$176.25	\$1,410.00
	1 StBy Diver	8 hrsOTx1.5	@	\$145.50	\$1,164.00
	1 Tender	8 hrsOTx1.5	@	\$126.00	\$1,008.00
	1 Diver	12 hrsOTx 2	@	\$235.00	\$2,820.00
	1 StBy Diver	12 hrsOTx 2	@	\$194.00	\$2,328.00
	1 Tender	12 hrsOTx 2	@	\$168.00	\$2,016.00
Equipment	1 Dive Gear	1	@	\$300.00	\$300.00
	1 Dive Boat	1	@	\$350.00	\$350.00
	1 Crew Truck	1	@	\$75.00	\$75.00
					\$11,471.00

Figure 11 – Screen capture of the Hydra invoice

[28] The Dynamic Equipment Rentals Ltd. (“Dynamic”) invoice covers rental and fuel costs for various pumps and hoses used between 12 and 15 July 2019.

[29] The Mercury Launch & Tug Ltd. (“Mercury L&T”, which is distinct from Mercury Transport) reads as follows:

	Qty	Unit	Price	Amount
Jul 12 - Ocean Monarch - To New West Quay, tow ZB198 off #8. Tow #8 to GTU	4	hrs	475.00	1,900.00
Jul 13 - Ocean Gayle - To GTU, tow #8 to Steveston tend rig while seiner lifted. Tow #8 to Shelter Island, lift seiner. Return to dock	24	hrs	475.00	11,400.00
Jul 13 - Ocean Warlock -To Ocean Gayle and #8 with sunken fishboat in tow. Assist into Shelter Island Travel Lift. Return #8 to Brownsville	8	hrs	475.00	3,800.00
Jul 15 - Ocean Warlock -To Brownsville, tow #8 to New West Quay. Spud down. Tow ZB198 from Front Street back to #8	4	hrs	475.00	1,900.00
G - GST @ 5%				19,000.00
GST				950.00

Figure 12 – Screen capture of the Mercury L&T invoice

[30] The Vancouver Pile Driving Ltd. (“Vancouver Pile Driving”) invoice contains the following breakdown of costs:

Description		Hours					Extension	Total
Labour		S.T.	Rate	OT@1.5x	Rate	OT@2x	Rate	
Site Work								
13-Jul-19								
Operator	OP	1	\$ 100.40	10	\$ 150.60	15.5	\$ 200.80	\$ 4,718.80
Deck Engineer	DE	1	\$ 87.10	10	\$ 130.65	12	\$ 174.20	\$ 3,484.00
Foreman	FM-FA	1	\$ 99.40	9	\$ 149.10	12	\$ 198.80	\$ 3,826.90
Bridgeman	BM	3	\$ 88.80	30	\$ 133.20	29.5	\$ 177.60	\$ 9,501.60
Meals						12	\$ 28.75	\$ 345.00
Parking						4	\$ 12.40	\$ 49.60
Project Manager			\$ 150.00	8	\$ 225.00	5	\$ 300.00	\$ 3,300.00
Administrator		2	\$ 66.00		\$ 99.00		\$ 132.00	\$ 132.00
PM - Meal		1	\$14.35					\$ 14.35
Subtotal		9		67		90		\$ 25,372.26
VDDL Equipment								
			Unit	Hrs	Rate	Hrs	Standby	Extension
No. 8 Darnck			1408M	21	\$970.00			\$20,370.00
Pick up Truck			4013M	13	\$30.00			\$390.00
Subtotal								\$20,760.00
Materials and Outside Services						Quantity	Rate	Extension
Gray Endless Poly Round Sling - 40'						1	1,431.24	\$1,431.24
Endless Poly Web Sling - 10" x 30'						2	2,656.95	\$5,313.90
2 Spools of 3/4" Poly Rope						1	59.90	\$59.90
1 Spool of 1/2" Poly Rope						1	29.95	\$29.95
2 Bags Spill Kit Oil Diapers						1	117.68	\$117.68
2 Wre Rope Rigging - 1.25" x 40'						1	422.00	\$422.00
4 Fibre Metal Hard Hats						1	197.96	\$197.96
Subtotal								\$7,572.63
							Markup @ 15%	\$1,135.88
Subtotal								\$8,708.52
Grand Total								\$54,840.77

Figure 13 – Screen capture of the Vancouver Pile Driving invoice

[31] Finally, the Shelter Island Marina & Boatyard (“SIMB”) invoice reads as follows:

DESCRIPTION			CHARGES	PAYMENTS	BALANCE
STARTING BALANCE					\$0.00
08-02-19 429690	Charge-220 TRAVELIFT 7/13/19	Western Breeze	\$1,476.00	\$0.00	\$1,476.00
08-02-19 429691	GST @0.05	Western Breeze	\$73.80	\$0.00	\$1,549.80
08-02-19 429692	Charge-220 TRAVELIFT Emergency Lift	Western Breeze	\$1,000.00	\$0.00	\$2,549.80
08-02-19 429693	GST @0.05	Western Breeze	\$50.00	\$0.00	\$2,599.80
08-02-19 429694	Charge-220 STORAGE 7/13/19 to 7/31/19	Western Breeze	\$2,145.42	\$0.00	\$4,745.22
08-02-19 429695	GST @0.05	Western Breeze	\$107.27	\$0.00	\$4,852.49
			<hr/> <i>1621.42</i>		

Figure 14 – Screen capture of the Shelter Island Marina & Boatyard invoice

Chris Small Marine Surveyors Ltd.

[32] The Chris Small Marine Surveyors Ltd. (“CSMS”) expenditure is supported by an invoice dated 30 July 2019. The survey report itself is six pages long, with an additional 12 pages of photographs attached. It opens with the following description:

Report of survey and inquiries made [...] on the 18th of July 2019 at the request of Fisheries and Oceans Canada on the F/V “Western Breeze” to offer our opinion as to the vessel’s current condition, valuation and environmental impact as she lay hauled out of the water at Shelter Island Marina, Richmond, BC.

[33] The report begins with a physical description of the vessel and its machinery and equipment. It notes heavily deteriorated planking and seams on both the vessel’s decks, as well as on the sides of its hull, speculating that this may have caused or contributed to the Incident. The report concludes that the vessel had reached the end of its useful life, and that any salvage value would be negligible relative to expected deconstruction and disposal costs.

[34] With respect to environmental concerns, the report notes that “the machinery spaces and lower bilge areas are heavily contaminated with leaked oil and likely some diesel fuel.” As the surveyor could not inspect certain elements of the vessels interior due to safety concerns, the report speculates that hydraulic oils, fuel, and lubricants were likely present, along with oil-soaked planks and perhaps several hundred litres of contaminated water.

GFL Environmental Inc.

[35] The GFL Environmental Inc. (“GFL”) invoice, which is dated 19 July 2019, covers the disposal of two totes of soiled sorbent materials, at a unit cost of \$975.00 each. In addition, the invoice includes a labour charge of \$270.00 for “Delivery (2 hr man)”. Finally, the invoice includes a 12% “Environmental Energy Recovery Fee” totalling \$234.00.

INVESTIGATION AND FURTHER CCG SUBMISSIONS

Identification and description of the *Western Breeze*

[36] A search of TC (Transport Canada) records was carried out to ensure that the *Western Breeze* had been correctly identified. A vessel of that name is registered in Canada under the official number 192044. It is listed as a wooden fishing vessel of 59.67 gross tons, 18.14 metres in length, 5.33 metres at the beam, and 2.26 metres in depth. It is listed as being powered by a single diesel engine of 335 brake horsepower. According to TC records, the *Western Breeze* was built in 1949. Two corporate owners are identified, each holding 32 of its 64 shares: Govorcin Fisheries Ltd. and Medanic Fisheries Ltd. Based on the alignment between the foregoing and the facts presented in this letter, it is concluded that the *Western Breeze* was correctly identified by the CCG.

The account of the President of Medanic Fisheries Ltd.

[37] On 9 September 2021, the Fund received a letter from a lawyer representing Govorcin Fisheries Ltd. In that letter, which responded to an inquiry sent by the Fund several weeks prior, the lawyer suggested that the President of Medanic Fisheries Ltd., was better placed than his client to discuss the Incident and the various responses thereto.

[38] The Fund first made contact with the President of Medanic Fisheries Ltd. on 10 September 2021. In a telephone conversation and over a series of subsequent emails, the President of Medanic Fisheries Ltd. gave his account of the Incident and the ensuing response. Broadly, that account aligns with that of the CCG. However, he made the following statements of relevance, some of which differ from or contradict the CCG's account while others provide further illumination:

- a. The *Western Breeze* had had almost all of its oils removed prior to its sinking, as it was originally slated for removal and deconstruction by its owners on 10 July 2019 (i.e., the Incident took place just before the vessel was to be deconstructed by its owners). The President of Medanic Fisheries Ltd. says that he reported to the CCG that just 50 or 60 gallons of hydraulic oils were present in one 250-gallon capacity tank on the vessel's starboard side. The remaining tanks had been drained and lubricant oils had been pumped out of the engine.
- b. The SHA believed that the *Western Breeze* represented a navigational hazard and/or impediment, and it pressured all parties involved in the response operation to quickly raise and remove the vessel. The President of Medanic Fisheries Ltd. was opposed to raising the vessel on a Saturday, which he believes drove up costs. He says the situation was stable, with the minimal oil pollution from the vessel contained by boom. He recalls that a CCG ER officer told him that "the cost for recovering the *Western Breeze* should be approximately \$45K - \$55K range. [The CCG officer] also stated that [the CCG was] going to 'negotiate' the invoice."
- c. The President of Medanic Fisheries Ltd. was present during the raising operation of 13 July 2019. According to him,

They sent divers down with wire cables to strap around the hull. I told them that she is a wooden vessel constructed in 1949 and that strapping her with wire rope is a mistake and will not work. I suggested that they use fabric [straps] instead to strap her but they didn't take my advice.

Mercury proceeded with the wire rope as straps around the wooden hull. Upon lifting her out of the water you could hear the wooden hull planks cracking as the wire rope was cutting into the hull. Then when more weight was added as she was coming out of the water a couple of hull planks popped and their ends on the starboard side about a foot forward of the bow mid ship stand due to the pressure and tension caused by the wire rope on the wooden hull. They finally realized that the water rope straps was the wrong decision and was not going to work. So they decided to let her sink back to the bottom and then decided to resend divers back down with the fabric straps to strap her around the hull.

Telephone discussion with Mountain representative

[39] On 22 September 2021, a representative of the Fund had a telephone call with a representative of Mountain. The Mountain representative stated that the CCG had initially accepted its plan but changed its position under pressure from the SHA (the Steveston Harbour Authority), which felt that it should have been consulted. The Mountain representative further expressed his view that the oil pollution threat from the *Western Breeze* was minor (he understood it was mostly empty of oils) and manageable with the materials on hand. The Mountain representative also stated that his company's raising, removal, and deconstruction plan was a common practice in situations similar to that of the Incident.

Telephone discussion representative of the SHA (Steveston Harbour Authority)

[40] On 23 September 2021, a representative of the Fund spoke with a representative of the SHA. When asked why recovery of the sunken *Western Breeze* was considered urgent enough to be carried out on a weekend, the SHA representative cited unspecified environmental concerns and noted that there were fears that another vessel might collide with it.

Correspondence with and further submissions from the CCG

[41] The Fund had two exchanges with the CCG in the course of investigation and assessment. The first of those exchanges was in response to questions put to the CCG on 3 August 2021. The CCG responded on 13 August 2021. The relevant portions of that correspondence are as follows:

Please see in purple responses to your inquiries regarding the M/V Western Breeze claim.

- 1) A copy of the salvage plan provided to the CCG by [Mountain] on July 10/11, 2019. In addition please provide your record of the subsequent discussion with Transport Canada, the Harbour Authority and NEEC and the rationale that led to your conclusion that the plan was not acceptable.
Attached is the salvage plan from Mountain Demolition that was sent to CCGER, TC and Steveston Harbour Authority. It was determined that the plan was not the best way to salvage the vessel as the vessel was situated in a sensitivity area and down stream. The proposal from Mountain demolition would have further damaged the vessel and risked further environmental damages as all hydrocarbons would have been released as deconstruction was to proceed.
- 2) A copy of the contract that CCG awarded to Mercury Transport on July 11, 2019, complete with the costs and services agreed, including a copy of their pollution mitigation plan.
Mercury Transport was hired under Emergency Contracting therefore no official contract was issued.
- 3) A copy of the salvage plan provided to Coast Guard by Mercury Transport. The pumps used by the salvage experts were not able to deal with the water ingress and the crane capacity was not adequate for the required lift.
The salvage plan of Mercury Transport was provided verbally.
- 4) CCG used a 5 ton truck (sea island to Steveston Harbour) on two days. An explanation as to why this was required is requested, particularly considering that a contract was let to deal with pollution mitigation to Mercury Transport.
The 5 ton truck was used to bring the absorbents and response gear to the site for the salvage operations in case of a large release. CCGER used some of the absorbents to recover product on the day of the salvage. This material was collected along with other debris that were covered with hydraulic oil and diesel and loaded into two UN bags. The 5 ton was used the next day to pick up the 2 UN bags of oily debris.
- 5) The invoice from Mercury Transport in the amount of \$132,244.80 requires substantiation. Specifically, explanations and breakdowns of the cost items listed including specifics of employees involved, hours worked, tasks assigned. Given that the invoice was paid, this information is likely already on your file or in the daily notes pages of the CCG ER officer in charge.
Mercury Transport provided the breakdown on the numbers of hours on specific activities and ER was satisfied with their explanations.

Jul 12 - Rogers St to Steveston, inspect sunken vessel Western Breeze with divers	3.00	hrs	G	440.00	1,320.00
Jul 12 - Pick up pumps from Dynamic Rentals	2.00	hrs	G	100.00	200.00
Jul 12 - Mob to Steveston with boat and barge	6.00	hrs	G	400.00	2,400.00
Jul 13 - At Steveston, salvage sunken vessel Western Breeze	21.00	hrs	G	400.00	8,400.00
2 extra crew at 16hrs each	32.00	hrs	G	120.00	3,840.00
Jul 15 - Demob from Steveston with boat and barge	6.00	hrs	G	400.00	2,400.00
Jul 15 - Clean up pumps and return to Dynamic Rentals	4.00	hrs	G	100.00	400.00

Figure 15 – Screen capture of CCG responses of 13 August 2021 (in purple) to the Fund’s questions of 3 August 2021 (in black)

[42] As noted in its responses at Figure 15, the CCG also provided a copy of Mountain’s salvage operation work plan. The plan includes the following text of relevance:

We will use a 100-tonne crane [barge] and 3-yard dredge clamshell bucket for the removal. The [*Western Breeze*] will be broken into large pieces and the engine separate for disposal. All debris will be [placed on the barge] contained inside our control zone, pick poles used to capture any small items within the containment area and any hydrocarbons released contained with absorbing socks and oil absorbing diapers. All scrap will go on one of our scrap barges and be separated by excavator for recycling later. Fast water conditions are to be expected during the removal, we will attempt the removal during slack water so that debris and pollution controls are easier.

[43] Following exchanges with other involved parties, the Fund put a further set of questions to the CCG on 26 October 2021. In addition, the CCG was provided with copies of the Fund’s correspondence with the President of Medanic Fisheries Ltd., copies of the documentation provided by same, and a summary of the telephone conversation with him. Further, summaries of the conversations with Mountain and SHA representatives were also provided. The CCG was invited to comment on any of the materials presented.

[44] A response from the CCG was received on 3 December 2021. First, the CCG stated that it was never provided with proof of the volume of oils on board the *Western Breeze* at the time of the vessel’s sinking. Additional relevant portions of the CCG’s response read as follows:

By 2:30pm on July 10 2019 [CCG ER] staff had to adjust containment boom deployed by Mountain [...] because it was ineffective and entrainment of recoverable product was observed. On July 11 2019 [CCG ER] returned to the Western Breeze site and found that most of the absorbent booms that were deployed the day before were all almost fully saturated with oil, and bright rainbow sheen was present inside the containment boom.

The situation on site wasn't stable [before Mercury Transport was hired, as CCG] Richmond had to adjust containment booms to collect recoverable oil and supply absorbent booms to recover oil. Steveston Harbour Authority also had to provide absorbent booms and pads as Mountain [...] did not have adequate equipment and could not recover oil from the marine environment. It should be noted that Mountain [...] is not a Response Organization and not equipped to conduct pollution response, nor had they been hired by CCG at any time for pollution response or salvage operations in the past. At no time did CCG speak with the President of Medanic Fisheries Ltd. about negotiating a 'Lesser Amount' nor estimating costs for the removal.

[...]

While the clam shell [removal plan proposed by Mountain] had been used successfully in the past, this is only conducted when the owner/salvor can demonstrate there is absolutely no risk to the environment. As there was no proof of lightering and the continued upwelling, the salvage plan was deemed too high of a risk to pollute by all agencies involved. Including ECCC, BCMOE, FLINRO, TC and First Nations, and was rejected as a viable option. Mountain [...] was given the opportunity to provide a suitable salvage plan for review and failed to provide an alternative solution, claiming clam shelling was the only option, at which time CCG released Mountain [...].

[45] With respect to the President of Medanic Fisheries Ltd.'s statements about the Mercury Transport raising operation of 13 July 2019, the CCG stated simply, "he said many things that day and CCG has no further comment." The CCG also expressly declined to comment on the Fund's communications with the SHA representative.

DETERMINATIONS AND FINDINGS

The CCG submission presents potentially eligible claims

[46] The Incident resulted in oil pollution damage within the territorial seas or internal waters of Canada, as well as in costs and expenses to carry out measures to address that oil pollution damage and mitigate further damage. As a result, claims arising from the Incident are potentially eligible for compensation.

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

[48] The submission was received within the limitation periods set out under subsection 103(2) of the MLA.

[49] 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. Alternatively, those costs and expenses arise from “preventive measures”, as contemplated under the International Convention on Civil Liability for Bunker Oil Pollution Damage. In either case, some of the claimed costs and expenses are potentially eligible for compensation.

[50] Accordingly, the submission presents claims that are potentially eligible for compensation under section 103 of the MLA.

Findings of the investigation and assessment

The facts of the Incident as set out by the CCG are generally accepted

[51] The CCG included with its submission a narrative and other supporting documents which set out the facts of the Incident and the response thereto in some detail. The descriptions of material events contained in the CCG’s documentation are accepted as generally accurate. However, some important evidentiary gaps and discrepancies have been identified. These are detailed below.

The initial CCG response to the Incident was reasonable

[52] The CCG states that it understood that the *Western Breeze* contained approximately 300 gallons of oil at the time of the Incident; the President of Medanic Fisheries Ltd. takes the position that no more than 60 gallons of oils were on board. The reasons for this discrepancy are not clear, though it is noteworthy that the President of Medanic Fisheries Ltd. cites the total capacity of the tank that he says contained 60 gallons of hydraulic oils as being 250 gallons, or roughly the same figure that the CCG cites as the total volume of hydraulic oils that it believed to be on board. Alternatively, given unit conversion rates, it is possible that one party or the other may have mistaken litres for gallons, or *vice versa*.

[53] Ultimately, the uncertainty surrounding the precise volume of oils on board the *Western Breeze* at the time of its sinking is of little consequence. The vessel was known to contain some volume of oils, some of which were heavy oils, and oil pollution was actively upwelling throughout the response operation. All of this was taking place in a sensitive area, among dock facilities used by active fishing vessels. It is therefore accepted that the *Western Breeze* posed a continuing oil pollution threat as a result of the Incident. With this in mind, it is determined that the CCG’s conclusion that the vessel should be refloated and removed from the water was reasonable.

[54] When the CCG first arrived on scene on 10 July 2019, ER personnel observed that some oil pollution was escaping the boomed-off area. The next morning, ER personnel returned to find that some of the sorbent materials deployed were fully saturated with oils. CCG personnel assisted Mountain (the owners’ contractor) with containment and recovery of spilled oil. These measures, taken by ER personnel on the first two days of the response

operation, up to and including the 10:30 conference call on 11 July 2019, are considered reasonable, as are all associated labour and materials costs.

The decision to remove Mountain and contract Mercury Transport in its place was reasonable

[55] The result of the 10:30 conference call held on 11 July 2019 by the CCG and various other parties was an agreement that Mountain's removal plan for the *Western Breeze* was unsatisfactory. Other than Mountain's written plan, the CCG has provided no contemporaneous evidence in support of this conclusion. Following a request from the Fund, the CCG explained that it was concerned that breaking the vessel apart in the water would result in further discharges of oil. Presumably, there were concerns that such discharges would have been difficult to contain and recover, especially given Mountain's apparent inexperience in this realm.

[56] In light of Mountain's difficulties with containment and sorbent boom on 10 and 11 July 2019, and given local environmental sensitivities, the CCG's concerns are considered valid. Furthermore, the evidence suggests that Mountain's operations unnecessarily disrupted access to the SHA's facilities. If it held such concerns, the CCG acted reasonably in seeking to avoid causing economic damages to third parties. This would include its decision to replace Mountain. There remain, however, aspects of the CCG's conduct are difficult to understand. These must be considered before a final determination can be made.

[57] Mountain, which, along with the owners of the *Western Breeze*, was excluded from the multilateral conference call in the late morning on 11 July 2019, was given only until 15:00 that day to revise its salvage plan. It is not clear if Mountain advised the CCG that it would not be submitting a new plan, but the CCG's narrative states that it hired Mercury Transport at 14:49, before the deadline imposed on Mountain had passed. This extreme urgency from the CCG is not supported on the evidence. The vessel was surrounded by boom and under regular surveillance from multiple parties. Notwithstanding the CCG's submission on the point, it appears that the situation had largely stabilized by the time of the conference call.

[58] The CCG holds extensive discretionary powers under paragraph 180(1)(c) of the *Canada Shipping Act, 2001*, SC 2001, c 26 (the "CSA"). Under those powers, where it believes "on reasonable grounds that a vessel [...] has discharged, is discharging, or may discharge a pollutant [including oil]," the CCG may, if it considers it "necessary to do so, direct any person [...] to take measures [...] or refrain from doing so."

[59] In this case, there were legitimate concerns that further discharges of oil from the *Western Breeze* would occur and perhaps escape the boomed-off area if Mountain had been allowed to proceed with its plan. The CCG has demonstrated that it believed on reasonable grounds that removing Mountain and engaging a different contractor was necessary. That belief is sufficient to satisfy the requirements of 180(1)(c) of the CSA, and the

reasonableness of the CCG's decision in the context of the MLA must be considered in light of that provision.¹

[60] Ultimately, it is considered that the risk and uncertainty associated with a continued active response by Mountain outweighed the other factors detailed above.

The management of the Mercury Transport salvage operation resulted in unreasonable costs

[61] In removing Mountain and hiring Mercury Transport on an apparently open-ended emergency basis (see Figure 15), the CCG embraced a verbal salvage plan over a written one. In proceeding with the raising and removal operation over the weekend of 13 July 2019, the CCG favoured urgency. The evidence does not support the need for such urgency, which came at an increased financial cost and, apparently, the expense of a written plan. Though the narrative states that the CCG was provided with an initial quote from Mercury Transport, no detail on that quote has been provided to the Fund.

[62] The situation with the sunken *Western Breeze* had stabilized by the morning and afternoon of 11 July 2019. Upwelling oil pollutants were contained by two kinds of boom, and the vessel was under regular surveillance. There is no indication that the 12 July 2019 diver inspection raised any further oil pollution concerns. The vessel itself was evidently not impeding access to any SHA facilities (rather, the narrative notes that equipment deployed by Mountain had been the culprit). If there were in fact concerns that the vessel posed a navigational hazard, its location could have been marked with buoys and lights. If this was done, the evidence does not disclose it.

[63] Reasonableness does not always require that the lowest-cost solution to a problem be adopted. Rather, where a clearly less expensive option is available, the claimant should provide a compelling explanation as to why that option was not taken. This is especially important where there is no immediately obvious reason why a cheaper option should not have been taken. To put all this another way, a genuine emergency is required to justify emergency costs, and here the evidence discloses no emergency.

[64] Carrying out the raising and removal operation on a weekend increased costs to an extent that is not justified on the evidence. Accordingly, the additional costs—namely, overtime for CCG personnel, Mercury Transport personnel, and subcontractor personnel—are not accepted as reasonable.

[65] The weekend timing of the 13 July 2019 salvage operation was not its only deficiency. There was no written plan or scope of work for Mercury Transport's operation. The CCG has presented very little detail on the substance of the operation. The invoices provided in support of the associated costs, which exceeded \$100,000.00 for just one day of work, lack necessary detail. The evidence is clear on one point, however. The operation was plagued by technical issues, many of which caused delays that further inflated costs.

[66] As the raising operation was scheduled to begin at 08:00 on 13 July 2019, the necessary equipment and personnel began to arrive on scene at 06:30. The area was to be

¹ See MLA, ss 71(1)(b)(i) and 77(1)(c)(i).

closed to vessel traffic for the day. Problematically, a third-party spud barge was blocking access to the *Western Breeze*. The resulting delays could have been averted had there been an advance inspection of the site and more coordination with the SHA.

[67] Once underway, the operation to raise the *Western Breeze* was itself a troubled and drawn-out process. According to the CCG narrative, the first attempt, in the early afternoon of 13 July 2019, resulted in a second sinking of the vessel and further discharges of oil, which had to be recovered before salvage operations could continue. The narrative provides minimal detail on the reasons for this failed attempt, but it notes that the vessel had to be set back down into the water to allow for re-rigging of slings around its hull. Ultimately, this process had to be abandoned because the pumps deployed by Mercury Transport could not keep up with renewed water ingress.

[68] On this point, the more detailed account of the President of Medanic Fisheries Ltd., who was on scene that day observing salvage operations, is helpful. He reports that Mercury Transport chose to use metal cables on the vessel's hull. He says that he raised a concern that, given its deteriorated planking, metal cables would further compromise the vessel's hull. He further states that he suggested the use of fabric straps. In the absence of contrary evidence, and considering his unique familiarity with the vessel and its condition, his account is accepted.

[69] The CCG's narrative did not note that the President of Medanic Fisheries Ltd. provided a specific warning about Mercury's first salvage effort. The CCG's response to the Fund about his comment, that "the President of Medanic Fisheries Ltd. said many things that day", is dismissive. Further, there is no reason to consider that the President of Medanic Fisheries Ltd.'s warning was ill-founded, or indeed anything but an accurate assessment of the situation. The CCG's dismissal of the President of Medanic Fisheries Ltd.'s concerns, with no evidence that an effort was made to assess their validity, is unreasonable.

[70] The second attempt at raising the *Western Breeze* began around 16:00. As before, the aim was to lift the vessel out of the water with a crane barge and place it on a second barge for removal. According to the narrative, this attempt was abandoned when it became clear that the vessel was too heavy for the crane. Ultimately, the *Western Breeze* had to be left in the water and towed, with the crane still attached for support. The resulting flotilla was not underway until 19:40, and it is not clear whether the second barge was used at all.

[71] While CCG personnel stood down at around 22:00 on the night of 13 July 2019, the Mercury Transport operation appears to have continued—without explanation—until at least 03:00 on 14 July 2019, the following day, when the Hydra divers clocked out. The other subcontractors and Mountain Transport itself may have billed even later into the morning, but their precise hours cannot be ascertained from the documentation presented. Where efforts are not described in any detail, it is difficult to determine the reasonableness of associated costs.

[72] From early in the response operation—and despite the fact that they were actively engaged in their own efforts—the owners of the *Western Breeze* were excluded from multilateral conference calls held by various interested parties and authorities. Such an

exclusion, which runs afoul of environmental response best practices, is not supported on the evidentiary record. More importantly, it is determined that the overall quality of the response suffered as a result: the vessel's owners best understood its pre-Incident condition, and therefore they were able to provide valuable input on its likely behaviour under the various stresses to be expected during a salvage operation. The President of Medanic Fisheries Ltd.'s input of 13 July 2019 was of substantial value, and it appears to have been ignored. That input would have been even more valuable during the planning of the Mercury Transport operation, but the President of Medanic Fishes Ltd. was not consulted at that stage.

[73] Mercury Transport overestimated the capacity of its response equipment at least twice. Both times, substantial delays and inflated costs resulted. It is further determined that the CCG's decision not to obtain a written plan was unreasonable in the circumstances, and that this deficiency likely contributed to delays and inflation of costs.

[74] Broadly, it is concluded on the evidence that many of the cost-intensive delays of the 13 July 2019 salvage operation detailed above would have been averted with more thorough planning. Though the operation was directed at preventing and mitigating oil pollution damage, and though its goals and general components were reasonable, its weekend timing and its avoidable delays were not. Unjustifiably inflated costs resulted, and this necessitates markdowns to both the Mercury Transport invoice and to CCG labour costs. Those markdowns are detailed below.

CLAIM AND OFFER DETAILS

[75] The CCG presented its costs and expenses across seven schedules, each of which is outlined below. To the extent that reasons are not already set out in this letter, the below explains why certain portions of the CCG's claim have been allowed while others have been disallowed.

Schedule 2 – Contract Services Claimed: \$136,852.20

[76] The paragraphs that follow address the CCG's claims for contract services costs.

Mercury Transport

[77] Mercury Transport was engaged by the CCG to manage the removal of the *Western Breeze* on 11 July 2019. Its own work continued until at least 15 July 2019, though it appears to have managed the storage of the vessel, by way of a subcontractor, until the end of July.

[78] A breakdown of the Mercury Transport invoice, which indicates a subtotal of \$125,947.43,² is at Figures 9 and 10. Approximately 15% of the amount paid to Mercury Transport was for services that it rendered with its own personnel. A very small amount went toward Mercury Transport personnel expenses on food, taxis, and parking. The

² In fact, the figures on the invoice add to the slightly lower subtotal figure of \$125,944.43.

remainder of the Mercury Transport costs were spread across five subcontractors. Each of these three heads of costs is addressed below under its own heading, with claimed and allowed costs summarized in dedicated tables.

[79] As has been noted, the general aims of the Mercury Transport operation and its various components are considered reasonable, but certain portions of the response as carried out are not. The reductions made to its associated costs reflect deficiencies with its scheduling and overall duration. Where the limited invoices and logs provided allow for precise reductions to reflect unjustifiably inflated costs, the methodology used to calculate those reductions is explained in detail below. Where the evidence available is too limited to allow for precision, a blanket reduction rate of 50% has been applied to reflect costs that were unreasonably inflated by weekend operations and delays deemed to have been caused by insufficient planning.

Mercury Transport personnel costs

[80] The only available summary of Mercury Transport personnel hours and associated costs is at Figure 9. Though it was asked to do so by the Fund on 3 August 2021, the CCG provided no further detail on these costs other than to say that it was satisfied with Mercury Transport’s explanations (see Figure 15).

[81] From the invoice at Figure 9, which is summarized at Table 2, below, it is not clear how many Mercury Transport personnel were engaged on each task. It is also not clear whether those personnel were paid regular rates or overtime. Given the problems with the salvage operation that are detailed above, the lack of clear evidence presents difficulties.

[82] Because the various costs of 12 and 15 July 2019 do not appear to have been excessive in light of the reasonable aspects of the operation, they are accepted in full.

[83] With respect to costs of 13 July 2019, the scant detail of the Mercury Transport documentation makes it impossible to calculate reductions that precisely account for the deficiencies noted earlier in this letter. Accordingly, Mercury Transport personnel costs for that day have been reduced by half.

Date	Description	Quantity	Unit Cost	Claimed	Allowed
2019-07-12	Inspection of vessel with Hydra divers	3 hours	\$440.00	\$1,320.00	\$1,320.00
2019-07-12	Pick up rental pumps from Dynamic	2 hours	\$100.00	\$200.00	\$200.00
2019-07-12	Mobilize to Steveston with boat and barge	6 hours	\$400.00	\$2,400.00	\$2,400.00
2019-07-13	Salvage operation	21 hours	\$400.00	\$8,400.00	\$4,200.00
2019-07-13	Two extra crew for salvage operation	32 hours	\$120.00	\$3,840.00	\$1,920.00
2019-07-15	Demobilize boat and barge	6 hours	\$400.00	\$2,400.00	\$2,400.00
2019-07-15	Clean rental pumps and return to Dynamic	4 hours	\$100.00	\$400.00	\$400.00
2019-07-31	GST (5%)	–	–	\$948.00	\$642.00
Totals				\$19,908.00	\$13,482.00

Table 2 – Summary of claimed and allowed Mercury Transport direct costs

Mercury Transport incidental personnel costs

[84] All of Mercury Transport’s incidental personnel costs are substantiated with receipts, and all are considered reasonable. The only reduction made on this front is with respect to the 15% markup rate charged to the CCG. Generally, markup rates exceeding

10% require special explanation and justification. In the absence of such support, a rate of 10% has been accepted. The amount allowed for GST has been reduced accordingly.

Date	Item	Claimed	Allowed
2019-07-12	Subway sandwiches and salads	\$15.17	\$15.17
2019-07-13	Richmond Taxi to Steveston	\$52.24	\$52.24
2019-07-13	Royal City Taxi to Steveston	\$52.24	\$52.24
2019-07-13	Diamond Parking at Steveston	\$14.29	\$14.29
2019-07-13	Diamond Parking at Steveston	\$14.29	\$14.29
2019-07-13	Pierside Deli	\$16.90	\$16.90
2019-07-13	Richmond Pizza	\$192.00	\$192.00
2019-07-31	Markup (15%)	\$54.03	\$35.72
2019-07-31	GST (5%)	\$20.56	\$19.64
Totals		\$431.72	\$412.49

Table 3 – Summary of claimed and allowed Mercury Transport incidental personnel costs

Mercury Transport subcontractor costs

[85] The paragraphs that follow explain the allowed and rejected amounts with respect to Mercury Transport’s subcontractors. As above, where precise reductions are not possible due to limited evidence, a blanket reduction of 50% has been applied. Also as above, the claimed 15% markup rate has been reduced to a reasonable rate of 10%.

[86] The Hydra invoice is at Figure 11. Hydra personnel and equipment charges associated with the 12 July 2019 dive inspection of the *Western Breeze* are accepted as reasonable, as are all of the boat launch fees and the equipment costs associated with 13 January 2019. Because no specific tasking logs have been provided for Hydra’s labour on 13 January 2019, those amounts have been reduced by half. In the result, \$8,047.00 is allowed with respect to the Hydra invoice.

[87] It is considered that the Dynamic pump rental costs were not meaningfully inflated by the deficiencies that have been noted with respect to the broader salvage operation. Furthermore, the use of pumps in the operation was reasonable and necessary. Accordingly, the Dynamic costs of \$790.22 are accepted in full.

[88] Though specific breakdowns with respect to Mercury L&T tug costs are absent (see invoice at Figure 12), it is noteworthy that the rates charged for weekday use are no different from the weekend rates. This suggests that overtime was not a factor. Given the apparent affiliation between Mercury L&T and Mercury Transport, it is likely that the former’s tugs were crewed by personnel employed by the latter. As Mercury Transport personnel costs have already been reduced to account for unreasonable overtime and duration of deployment, these reductions have not been duplicated with respect to Mercury L&T costs. Rather, a blanket reduction of 25% has been applied to tug usage charges for 13 July 2019, accounting for the unreasonable delays that occurred on that day of the response. In the result, \$15,200.00 is allowed with respect to the Mercury L&T invoice.

[89] The Vancouver Pile Driving invoice is at Figure 13. As it lacks specific detail that would allow for more precise reductions, its personnel and equipment costs have been reduced by half. Its materials costs, which would not have been affected by the timing and

delays of the raising operation, are accepted in full. In the result, \$31,774.65 is allowed with respect to the Vancouver Pile Driving invoice.

[90] Finally, SIMB costs to haul out the *Western Breeze* and store it while the CCG awaited action from its owners were broadly reasonable in the circumstances. The only reduction thereto is made with respect to the “Emergency Lift” markup charge of \$1,000.00, which is not explained in the documentation. It is considered unlikely that such a charge would have been incurred had the raising and removal of the vessel occurred during standard weekday business hours. In the result, \$3,621.42 is allowed with respect to the SIMB invoice.

[91] Markup at a rate of 10% and GST have been accepted on top of the allowed amounts for the various subcontractors. Because of the apparent integration between Mercury L&T and Mercury Transport, which share a head office in Vancouver, it is determined that the subcontractor markup for the services of the former was not reasonable.

Date	Subcontractor / Item	Description	Claimed	Allowed
2019-07-15	Hydra	Diver survey and salvage operation assistance	\$13,420.00	\$8,047.00
2019-07-15	Dynamic	Pump rentals	\$790.22	\$790.22
2019-07-16	Mercury L&T	Tugs and towage	\$19,000.00	\$15,200.00
2019-07-25	Vancouver Pile Driving	Crane barge and vehicles	\$54,840.77	\$31,774.65
2019-08-02	SIMB	Removal of vessel and storage to 2019-07-31	\$4,621.42	\$3,621.42
2019-07-31	Markup (15%)	–	\$13,900.86	\$4,423.33
2019-07-31	GST (5%)	–	\$5,328.66	\$3,192.83
Totals			\$111,901.93	\$67,049.45

Table 4 – Summary of claimed and allowed Mercury Transport subcontractor costs

GFL Environmental

[92] The claimed costs associated with GFL Environmental (\$2,576.70), which covered the disposal of soiled sorbent materials, are accepted in full as having been reasonably incurred with respect to oil pollution.

CSMS

[93] While CSMS was tasked with assessing the environmental threat posed by the *Western Breeze*, the surveyor’s access to the internal spaces of the vessel was limited, and many of his observations were limited to speculation. It is difficult to understand why CCG personnel could not have made similar observations on their own.

[94] Further, the CCG was aware that, even before the vessel’s sinking, the *Western Breeze* was slated for deconstruction by its owners. Because the vessel’s condition could only have worsened as a result of the Incident, it ought to have been clear to the CCG that any residual value would have been negligible at best.

[95] Because they were not tied to reasonable measures taken with respect to oil pollution, the costs of the survey and subsequent report (\$2,030.70) are not accepted.

Summary of claimed and allowed contract services costs

[96] Claimed and allowed contract services costs are summarized in the table below.

Contractor	Work Description	Invoice Date	Claimed	Allowed
Mercury Transport	Deployment of sorbents, raising operation, and vessel removal	2019-07-31	\$132,244.80	\$80,943.94
GFL	Disposal of two totes soiled sorbent materials	2019-07-19	\$2,576.70	\$2,576.70
CSMS	Vessel survey, report, and photographs	2019-07-30	\$2,030.70	\$0.00
Totals			\$136,852.20	\$83,520.64

Table 5 – Summary of contract services amounts claimed and allowed

The contract services portion of the submission is allowed in the amount of \$83,520.64.

Schedule 3 – Travel

Claimed: \$285.79

[97] The CCG’s claim for travel costs is broken down at Figure 5. While the documentation provided in support of these costs is scant, the amounts claimed are reasonable and appear to be in accordance with Treasury Board rates. Travel costs were incurred only on 13 and 14 July 2019, two of the most active days of the response operation.

[98] Even if the raising and removal operation had been pushed to the week of 15 July 2019, it is likely that similar travel costs would have been incurred. Furthermore, while no justification for claimed personal vehicle costs is provided, it is likely that adding days to the response operation would have increased CCG vehicle usage, thereby driving up the costs of the response on another front. Considering the foregoing, all of the claimed travel costs are found to be reasonable.

The travel portion of the submission is allowed in full.

Schedule 4 – Salaries – Full Time Personnel

Claimed: \$321.86

[99] Claimed regular salary costs are summarized at Table 1. For the reasons set out above, claimed amounts associated with 10 through 12 July 2019 are allowed in full. The labour efforts associated with the weekend of 13 and 14 July 2019 are broadly accepted, but the allowed amounts have been adjusted to reflect what that work would have cost had it been performed on weekdays (i.e., 15 and 16 July 2019).

[100] Accepted dollar amounts and regular hours for each of the four CCG personnel involved in the response operation are as follows:

- a. \$387.08 (7.5 hours) for GS;
- b. \$344.85 (7.5 hours) for JL;

- c. \$942.59 (20.5 hours) for JT; and
- d. \$390.83 (8.5 hours) for DH.

[101] In the result, the amounts allowed with respect to regular salary costs exceed the amount claimed by the CCG. This anomaly is more than offset by the reductions made to the CCG's overtime claim.

The salaries portion of the submission is allowed in excess of the amount claimed, in the amount of \$2,065.35.

Schedule 5 – Overtime – Full Time Personnel Claimed: \$5,280.30

[102] Claimed overtime costs are summarized at Table 1. The CCG's claim for overtime costs has been treated in the same manner as its claim for regular salary costs. One hour each at GT-04 rates for monitoring on 13 and 14 July 2019 (Saturday and Sunday) has been allowed, on the basis that the same allocation of efforts was used by the CCG on 11 and 12 July 2019 (Thursday and Friday). Because the amount claimed with respect to 30 July 2019 is presented without any explanation, it is not accepted.

[103] The following parameters, based on the applicable collective agreement, have been used to calculate accepted overtime costs: (1) Weekday overtime engages after 7.5 hours of regular time, paid at multiples of 1.5 times an employee's base pay (i.e., excluding benefits) for the first 7.5 hours of overtime and 2.0 times base pay thereafter; (2) Saturday hours up to 7.5 hours worked are paid at 1.5 times base pay; and (3) All Sunday hours are paid at 2.0 times base pay.

[104] Accepted dollar amounts and overtime hours for each of the four CCG personnel involved in the response operation are as follows:

- a. \$96.78 (1.5 hours at 1.5x) for GS;
- b. \$756.82 (8.5 hours at 1.5x, 3.5 hours at 2.0x) for JL;
- c. \$919.68 (12 hours at 1.5x, 3 hours at 2.0x) for JT; and
- d. \$804.72 (10 hours at 1.5x, 3 hours at 2.0x) for DH.

The overtime portion of the submission is allowed in the amount of \$2,578.00.

Schedule 11 – Pollution Counter-measures Equipment Claimed: \$3,048.96

[105] Pollution counter-measures equipment costs are summarized at Figure 6. All such costs are found to have been reasonably incurred with respect to oil pollution mitigation.

The pollution counter-measures equipment portion of the submission is allowed in full.

[106] The CCG’s claim for vehicle costs is broken down at Figure 7. The usage of two smaller vehicles for one day each is considered reasonable, as are the corresponding claimed amounts, which align with Treasury Board rates. Accordingly, these two items are accepted in full, in the total amount of \$131.14.

[107] While the use of a 5-ton truck for two days (13 and 14 July 2019) to transport response equipment and soiled sorbent materials is accepted as reasonable, the claimed \$777.78 day rate for the use of such a vehicle is excessive and therefore not reasonable. Rental rates for this kind of vehicle generally do not exceed \$40.00 per day, plus fuel and mileage, the latter of which is charged at approximately \$1.00 per kilometre. Had the CCG simply rented such a vehicle, its associated costs would not have exceeded \$200.00 daily. Accordingly, the amount of \$400.00 is accepted with respect to this portion of its claim.

The vehicles portion of the submission is allowed in the amount of \$531.14.

[108] This portion of the CCG’s claim represents 3.09% of the claimed amounts for travel and regular salary costs, the latter exclusive of the 20% markup associated with employee benefits plan costs. This method of calculating administration costs has been generally accepted as reasonable. Because regular salary costs were accepted in excess of the amount claimed, administration costs have also been adjusted upwards accordingly.

The administration portion of the submission is allowed in excess of the amount claimed, in the amount of \$62.01.

OFFER SUMMARY AND CLOSING

[109] The following table summarizes the claimed and allowed expenses:

Schedule	Claimed	Allowed
2 – Contract Services	\$136,852.20	\$83,520.64
3 – Travel	\$285.79	\$285.79
4 – Salaries – Full Time Personnel	\$321.86	\$2,065.35
5 – Overtime – Full Time Personnel	\$5,280.30	\$2,578.00
11 – Pollution Counter-measures Equipment	\$3,048.96	\$3,048.96
12 – Vehicles	\$1,686.70	\$531.14
13 – Administration	\$17.12	\$62.01
Totals	\$147,492.93	\$92,091.89

Table 6 – Summary of amounts claimed and allowed

[110] Costs and expenses in the amount of \$92,091.89 are accepted and will be paid together with statutory interest calculated at the date of payment if the Offer is accepted.

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

[112] 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.

[113] 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, 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.

[114] 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.

[115] 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 subrogation efforts.

Yours sincerely,

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