CANADA

SHIP-SOURCE OIL POLLUTION FUND

THE ADMINISTRATOR'S ANNUAL REPORT

2000-2001

Canada

The Administrator acknowledges with thanks the assistance of K. Joseph Spears of Spears and Company, for the cover photo of the *Texada* aground in Dolomite Narrows near the southern end of the Queen Charlotte Islands, British Columbia (see section 3.57 of the Annual Report for description of the incident). The assistance of Bill Mackie of Morgan Marshall in providing his expertise and the video frame grab is also appreciated.

Cover photograph was taken by aerial photographer, Russ Heinl, using a Canon XL-1 video camera from a helicopter.

Published by the Administrator
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Ship-source Oil Pollution Fund

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CANADA

Caisse d'indemnisation des dommages dus á la pollution par les hydrocarbures causée par les navires

90, rue Elgin – 8ième étage
Ottawa, Canada
K1A 0N5

The Honourable David Collenette, P.C., M.P.
Minister of Transport
Ottawa, Ontario
K1A 0N5

Dear Mr. Collenette:

It is an honour to submit the Annual Report for the Ship-source Oil Pollution Fund for the fiscal year beginning April 1, 2000 and ending March 31, 2001, in accordance with subsection 722(1) of the *Canada Shipping Act*.

Yours sincerely,

Kenneth A. MacInnis, Q.C.
Administrator

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Abbreviations of Proper Names used in this Report

ABS	American Bureau of Shipping
ALERT	Atlantic Emergency Response Team
AMOP	Arctic Marine Oilspill Program
CCG	Canadian Coast Guard
CEDRE	Centre of Documentation, Research and Experimentation on Accidental Water Pollution
CLC	Civil Liability Convention
CMAC	Canadian Marine Advisory Council
COPE	Compensation for Oil Pollution in European Waters
CPA	Canada Port Authority
CSA	*Canada Shipping Act*
CWS	Canadian Wildlife Service
DFO	Department of Fisheries and Oceans
DNV	Det Norske Veritas
EC	European Commission
ECA REG	Eastern Canada Vessel Traffic Services Regulations
ECRC	Eastern Canada Response Corporation
EEZ	Exclusive Economic Zone
ER	Emergency Response
EPA	Environmental Protection Agency
EU	European Union
FPSO	Floating Production, Storage and Offloading Units
FSU	Floating Storage Units
ICONS	International Commission on Shipping
IMO	International Maritime Organization
IOPC	International Oil Pollution Compensation Fund
ISM	International Safety Management Code
ITOPF	International Tanker Owners Pollution Federation Limited
LOU	Letter of Undertaking
MCTS	Marine Communication Traffic Services
MEPC	Marine Environment Protection Committee
MOU	Memorandum of Understanding
MPCF	Maritime Pollution Claims Fund
MT	Motor Tanker
MV	Motor Vessel
NOAA	National Oceanic and Atmospheric Administration
NRDA	Natural Resource Damage Assessment
NTCL	Northern Transportation Company Limited
OBO	Ore/Bulk/Oil
OCIMF	Oil Companies International Marine Forum
OPA	*Oil Pollution Act*
OPA 90	*Oil Pollution Act 1990 (US)*
OSRL	Oil Spill Response Ltd.

P&I Club	Protection and Indemnity (Marine Insurance) Association
PTMS	Point Tupper Marine Services Limited
REET	Regional Environmental Emergency Team
RINA	The Italian Classification Society
RO	Response Organization
SAR	Search and Rescue
SDR	Special Drawing Rights*
SITREP	Situation Report
SIMEC	Société d'Intervention Maritime, Est du Canada
SOLAS	International Convention for the Safety of Life at Sea
SOPF	Ship-source Oil Pollution Fund
TCMS	Transport Canada Marine Safety
TSB	Transportation Safety Board
UK	United Kingdom
US	United States
USCG	United States Coast Guard
VPA	Vancouver Port Authority
VPC	Vancouver Port Corporation
WCMRC	Western Canada Marine Response Corporation

* The value of the SDR at April 1, 2001, was approximately $1.988. This actual value is reflected in Figure 1 in Appendix D. Elsewhere in the report, for convenience, calculations are based on the SDR having a nominal value of $2.

Administrator's Message

Introduction

As Administrator of the Ship-source Oil Pollution Fund (SOPF), I am pleased to submit the Annual Report for the fiscal year 2000/2001. This report provides an opportunity for reflection – to appraise where we are today and to think about our future obligations.

It is now more than two years since I was asked to take on the duties of Administrator. It is an honour to have been appointed by Cabinet to carry-out the responsibilities of the office. The Administrator also assumes the role as head of the Canadian delegation to meetings of the Executive Committee and Assembly of the International Oil Pollution Compensation (IOPC) Funds in London. Working with dedicated public servants and other stakeholders, and meeting the challenges of day-to-day activities in both capacities, is most enjoyable. This commitment to the service of my country is most fulfilling.

This report explains the Canadian compensation regime. Uniquely, Canada has the SOPF. Canada is also a Contracting State to the International Conventions which mutualize the risk of oil pollution from sea-going tankers. The IOPC Conventions are one part of Canada's overall compensation system. In Canada, the SOPF can be used to pay claims regarding spills of persistent oil and non-persistent oil from all classes of ships. The IOPC Funds are limited to sea-going tankers and persistent (heavy) oil.

In addition to investigating, assessing and paying Canadian claims the Administrator is required to direct payment out of the SOPF for all Canadian contributions to the IOPC Funds, based on IOPC levies. The Administrator also reports annually to the Director IOPC Funds the amount of "contributing oil" receipts in Canada, which are provided annually by some oil companies and power generating authorities. As a result, the Administrator has a unique perspective on oil pollution compensation issues, both domestic and international, that touch Canadians.

Canadian Claims

We have resolved a number of older and more difficult Canadian claims. Also, the Crown has concluded some long-standing court actions. During the past two years this work has resulted in a substantial reduction in carry-over cases.

Recent experience shows that the investigation and assessment of claims is expedited when claimants provide convincing evidence and written explanations. It is essential that the measures taken and the costs and expenses incurred are demonstrably reasonable. The claim should be presented in a timely manner, and be fully documented in writing. This includes various justifications by the On-Scene Commander (OSC) and proof of payment, as applicable. Detailed logs and notes by the OSC and others are invaluable in facilitating the payment of claims.

It is my duty, as Administrator, to make an offer of compensation for oil pollution damage, when all or a portion of the claim is clearly established by the evidence. I am pleased when I can do so expeditiously. Further, the Administrator must take reasonable measures to recover the amount of any such payment from the shipowner or other person liable.

This leads to a critical point. The intent of Part XVI *CSA* is that: **the polluter should pay**. It is, therefore, important that government departments instruct officials to act in a timely manner to identify the source of oil pollution damage, particularly by taking oil samples. This evidence is normally only available at the time of the incident. Such evidence can be critical for the Administrator to recover payments made out of the SOPF from the responsible party, in accordance with the statutory scheme. Otherwise, the incident becomes

a mystery spill – by default – and the Administrator cannot recover from the polluter payments made out of the SOPF. The Administrator has had oil samples analyzed in a number of cases.

Claimants, including the Crown, have a clear responsibility to present reasonable claims with full supporting documentation. Also, it is important that proper claims are presented to the shipowner in a timely fashion, particularly when the shipowners have to deal with their P&I Club or other insurers.

I would like to continue to discuss practical measures that can be taken by the Canadian Coast Guard and the Administrator with a view to improving the presentation and handling of claims in a manner consistent with sound business practices and in accordance with the laws governing the administration of the SOPF.

North American Experience

While Canada and USA oil tanker incidents appear to have fallen off dramatically, there has been an increase in tanker incidents in Europe recently.

The United States Coast Guard (USCG) 1999 records show that 94 per cent of oil spill incidents and 70 per cent of volume are from vessels other than tank ships and tank barges.

In Canada, preliminary work on a survey of Canadian oil spill incidents reported by the SOPF Administrator from 1993 to 2000 shows 12 per cent were from tankers, 62 per cent from other vessels and 26 per cent were mystery spills. It is noteworthy that, while all of these incidents would be covered by the SOPF, 88 per cent of these Canadian oil spill incidents were not covered by the international IOPC Funds. The IOPC Funds only cover spills of persistent (heavy) oil from tankers. The SOPF covers persistent and non-persistent oil spills from all classes of ships, as well as mystery spills.

It is instructive for Canadians to note that US *OPA 90* rules and strict enforcement of ship safety regulations by USCG have been credited with a significant drop in oil spill incidents. The USCG is promoting a "safety culture" by shipping, we are told.

Studies, presented during my attendance at the 2001 International Oil Spill Conference in Tampa, have shown that the "safety culture" protects the environment and is "good business" – as opposed to the "evasion culture" and "compliance culture." "Sustainable shipping" means that high quality safety management yields cost savings annually for industry of between US$500 million and US$1 billion, or an average for individual companies of US$200,000.

Moreover, if a ship gets caught polluting in the US it can suffer financially. The incentive is there to operate safely. "Enforcement" has been characterized as the key to the protection, prevention, preparedness and response continuum for environmental protection.

The investigation and successful prosecutions of violations of the Canadian oil pollution regulations by Transport Canada Marine Safety (TCMS) this year is noted.

European Experience

Since the *Erika* incident off Brittany in December 1999, there have been a number of high profile tanker incidents in European waters: *Levoli Sun* (France 2000), *Kristal* (Spain 2001), *Castor* (Mediterranean 2001), *Balu* (Bay of Biscay 2001), and the *Baltic Carrier* (Denmark 2001).

It is little wonder that the Europeans want something done. Initially there appeared to be a turf war between IMO and the European Commission (EC). Logically, it is primarily a "ship safety" rather than a compensation matter, the argument being that the IOPC Fund has already increased compensation to adequate levels – in the view of many. Nevertheless, compensation levels are perceived to be an issue for the 1992 IOPC Fund.

It was the oil pollution caused by the *Erika* incident off Brittany in December 1999 that resulted in calls for change in ship-source oil pollution prevention and compensation – particularly by France and the EC.

In France, this took on a sense of urgency, triggered in part by vigorous protests of French citizens that targeted both the French government's handling of the *Erika* incident and shipping regulations in general.

Brittany is situated adjacent to major shipping lanes, and it is reported that five major tanker spills have occurred off its coast since 1976.

The French government was also criticized for not moving swiftly enough on payments to those affected by the spill.

In reaction, French authorities initially promoted, *inter alia*, the raising of the 1992 IOPC Fund liability ceiling to 1 billion euros ($1.4 billion).

European Developments

The Administrator was advised in January 2001 - one year after *Erika* - that the EC had proposed the establishment of a fund for Compensation for Oil Pollution in European waters (COPE).

Under the proposed COPE Fund, the amount of compensation available would be 1 billion euros. This would include the amount currently payable under the 1992 Civil Liability Convention (CLC) and the 1992 IOPC Fund Convention – that is, 135 million SDR ($270 million or 188 million euros).

The COPE Fund would only be activated when a spill occurred in European Union waters when the total claim exceeded, or threatened to exceed, the maximum amount of compensation available from the 1992 IOPC regime. The COPE Fund would be financed by European oil receivers according to procedures similar to those of contributors to the 1992 IOPC Fund. See Appendix G.

Urgent proposals for changes in the international oil pollution compensation and ship safety regimes have continued to come from Europe. As a direct result, the total compensation available in the 1992 IOPC regime was increased by 50 per cent – from $270 million to $405 million – effective 2003. See Figure 1, Appendix D. Now the 1992 IOPC Fund Third Intersessional Working Group is discussing additional changes to the 1992 IOPC regime, particularly, an "optional" third tier of compensation, on top of the $405 million.

In light of all this IOPC Fund activity reacting to European developments, we note a recent P&I Clubs' study showing that with the exception of *Erika* and *Nakhodka*, all non-USA spills, 1990-1999, inflated to 1999 values, would have been compensated under the increased IOPC limits effective in 2003 ($405 million). The same study indicated that the costs of all USA tanker and barge spills (actual and inflated values) since the enactment of *OPA 90* and up to the end of 1999 would have fallen within the existing 1992 CLC and Fund limits ($270 million).

Issues of Direct Interest

Given that the SOPF is potentially liable for significant Canadian contributions to the IOPC Funds, issues of direct interest to the Administrator include: (1) the level of the shipowner's limit of liability in the 1992 CLC; (2) worthwhile recourse action being available to the 1992 IOPC Fund; (3) an "optional" third tier on top of the 1992 CLC and the 1992 IOPC Fund; and, (4) the high level of IOPC Fund claims.

From my view, addressing some aspects of issues (1), (2), and (4) could make a big difference in the amount of money Canada pays for international incidents and may promote quality shipping. Such action should seek the fine balance between shipowner and cargo interests, in what is otherwise a relatively well-functioning international system for compensating oil tanker spills. Item 3 is important to Europeans in particular. It is contended that, given the mood in Europe, an IOPC "optional" third tier is needed to preclude a European regional (COPE) fund, and thereby preserve the international convention system. The Canadian delegation to the 1992 IOPC Fund continues to support the development of this option.

Whether there is a need for Canada to join any IOPC "optional" third tier – if ever proposed – would be for Cabinet to decide.

SOPF

Fortunately the Administrator has always been able to pay IOPC levies out of SOPF earned interest revenue – to date.

Now there is potential for a significant increase in Canada's contributions to the International Fund.

While Canada was a Contracting State to the 1971 IOPC Fund the maximum compensation available for any one incident was about $120 million. When Canada became a Contracting State to the 1992 Protocols on May 29, 1999, the maximum amount payable by the 1992 IOPC Fund (including the amount paid under the 1992 CLC) for any one incident increased to approximately $270 million. In 2003 the 1992 IOPC regime will increase by 50 per cent to $405 million. Now that the EC has suggested a compensation level of $1.4 billion for its proposed COPE Fund, it will be interesting to see the reaction by the IOPC regime *vis a vis* the proposed IOPC "optional" third tier.

In terms of the potential effect of these IOPC increases on the SOPF, it seems that the size of oil pollution damage claims tend to rise in proportion to the compensation limit available. It is also worthy of note that the Canadian oil receipts are rising significantly. The impact of domestic off-shore oil exploitation is being felt. This latter development alone could signal a rise in the level of IOPC payments that must be made by the Administrator out of the SOPF.

In closing, this has been a busy, successful and interesting year. I welcome suggestions on how we can improve any aspect of SOPF services.

Summary

This annual report of the Ship-source Oil Pollution Fund (SOPF) covers the fiscal year ended March 31, 2001.

The year-end financial status of the SOPF is reported, including the cost of claim settlements in Canada and the amount of payments by the SOPF to the international Funds.

Canadian claims were settled and paid in the approximate aggregate amount of $132,000. This year a record-breaking amount of approximately $6.7 million was paid out of the SOPF by the Administrator to the 1992 IOPC Fund for incidents outside of Canada. As at March 31, 2001, the balance in the SOPF was $304,809,154.46.

The report describes the Canadian compensation regime.

The classes of claims for which the SOPF may be liable include the following:

- claims for oil pollution damage;
- claims for costs and expenses of oil spill clean-up including the cost of preventive measures; and,
- claims for oil pollution damage and clean-up costs where the identity of the ship that caused the discharge cannot be established (mystery spills).

A widely defined class of persons in the Canadian fishing industry may claim against the SOPF for loss of income caused by an oil spill from a ship.

Annually there are a number of oil pollution incidents settled directly with claimants (public and private) by shipowners. For example, during the year the CCG had ten claims with an aggregate "claims" amount in excess of $1 million, which were compromised and settled directly with the respective shipowners. In several direct settlement cases (public and private) the Administrator's intervention helped to achieve a final resolution between the parties, thus precluding any call on the SOPF.

The report outlines the status of oil pollution incidents brought to the attention of the Administrator. The Administrator responded to all enquiries about compensation entitlement, and investigated all claims resulting from oil pollution. The length of time taken to process the respective claims regarding identified ships, and mystery spills, depended on the completeness of the supporting documentation. The incidents narrative indicates claims that have been settled and also the particular claims that are in various stages of advancement. Also included is the current status of recovery actions by the Administrator against shipowners.

The CCG is starting to implement an Arctic Response Strategy. This is an important step towards an effective response capability for marine pollution incidents in the Canadian Arctic. The Response Organization (RO) system is not in effect north of 60° north latitude.

Highlighted is the issue of ports of refuge for damaged ships at sea. The threat of oil pollution off the coast of Canada came into sharp focus and generated considerable media coverage in December 2000, when the damaged oil tanker *Eastern Power*, en route to Newfoundland, was denied entry into Canadian waters by TCMS. It is said that there is a "tradition" of ports offering refuge to damaged ships. Today, a damaged tanker loaded with oil is often considered an unwelcome guest by the littoral state, because of potential oil pollution damage. However, in some cases the coming into a port of refuge could reduce the threat of pollution.

There appears to be a broad consensus internationally for the need to address the issue of shelter for ships in peril. In Canada a particular factor may have to be considered. Canada Port Authorities (CPA), pursuant to

the *Canada Marine Act*, operate on a commercial basis and could have concern with the liability for costs and expenses resulting from damages to facilities or oil pollution. The power of a CPA, for example, to refuse entry for such a ship could become an issue.

The Administrator is particularly interested in the continuing challenge for classification societies, shipowners, regulators, and others in the marine industry to ensure the construction, staffing, and management of well-founded ships, so that they can be operated safely to preclude environmental damage.

Recent casualties in Europe highlight concern about the effectiveness of the international safety management principles and guidelines for the safe operation of ships and pollution prevention, commonly known as the ISM Code. The ISM Code came into force on July 1, 1998, for certain classes of ships, including oil tankers, other types of ships must comply by July 1, 2002.

The IMO Secretary-General has announced plans for an assessment of the effectiveness and impact of the ISM Code so far.

The recently adopted IMO Bunker Convention to establish a liability and compensation regime for spills of oil carried as fuel is addressed in the report. It is generally expected that, because of the high number of states required to ratify the Convention it may not be enforced in the near future. Fortunately, in Canada – unlike most countries – the SOPF as directed by the Administrator can be used to pay claims for oil spills from all classes of ships, including oil from ships' bunkers.

The IMO's timetable for the accelerated phasing out of single-hull oil tankers is noted.

Shipowners who adopt the concept of a "safety culture" help to protect the environment; it is good business. Money spent up front saves mega dollars later.

The role of classification societies is critical in ensuring safe ships and environmental protection. Recently, the International Commission on Shipping reported that unless classification societies re-establish their professionalism by strictly and consistently applying technical standards to all ships, they will face increasing regulation and commercial isolation.

The report explains how compensation for environmental damage is handled differently under the *CSA*, the IOPC regime and the *US OPA*. Noted also is Canada's special purpose account – the Environmental Damages Fund.

The Canadian compensation regime (SOPF) covers all classes of ships as well as persistent and non-persistent oil and mystery spills. In addition, Canada is a Contracting State in an international compensation regime, which mutualizes the risk of pollution (persistent oil) from sea-going oil tankers. There are new potential fiscal challenges for the SOPF arising out of the international regime.

After May 29, 1999, the Administrator is required to pay contributions out of the SOPF for international incidents to the higher maximum level per incident of approximately $270 million under the 1992 IOPC regime. This level of compensation will increase by 50 per cent in 2003 to approximately $405 million per incident. The 50 per cent increase was a direct response to calls for the EU to take unilateral action and, possibly, follow the example of the US, which enacted its own *Oil Pollution Act* (*OPA*) in 1990. But this action by the international regime, to increase its compensation level by 50 per cent, did not satisfy the EC.

Consequently, in January 2001, the EC proposed a regulation to establish a regional fund for the Compensation for Oil Pollution in European waters (COPE). The amount of compensation available would raise the liability ceiling up to 1 billion euros ($1.4 billion), which would include the amount payable under the 1992 CLC and the 1992 IOPC Fund Convention. The COPE Fund would be financed by European oil receivers, and only activated when the total claim of a spill exceeded, or threatened to exceed, the maximum amount available from the 1992 IOPC regime.

In reaction to the European proposal the 1992 IOPC Fund has been working on an "optional" third-tier protocol to obviate the need for the COPE Fund proposed by the EC. A number of European states will probably opt-in. It appears, however, that most other Contracting States will not adopt the third tier. Most states are expected to continue with the current regime only – the 1992 CLC and the 1992 IOPC Fund Convention – which shall soon have increased compensation limits – by approximately 50 per cent in 2003.

A Canadian interdepartmental committee continues to review the issues that might affect Canada in any prospective changes to the international conventions.

It appears that the 1971 IOPC Fund Convention shall cease to be in force on May 24, 2002. Canada is now a Contracting State to the 1992 IOPC Fund Convention. Nevertheless, the SOPF has contingent liabilities to the 1971 IOPC Fund but only for incidents prior to May 29, 1999.

Since 1989 the 1971 and 1992 IOPC Funds have received approximately $27.2 million out of the SOPF. The report notes that the SOPF has potential significant future liabilities to the 1992 IOPC Fund for international incidents.

An extract from the EC proposal for a regulation on the establishment of a fund to provide supplementary compensation up to a maximum of I billion euros for oil spills in Member States of the EU is contained in the appendices.

The Administrator continues his outreach initiatives, including:

- At the Northern Canadian Marine Advisory Council (CMAC) meetings held in Iqaluit on Baffin Island, the Administrator held discussions with representatives of the Northwest Territories and the new Territory of Nunavut.
- The Administrator met in London with representatives from ITOPF. He also made a site visit to the *Erika* claims handling office in Lorient, Morbihan, France. These discussions continue to assist the Administrator, as head of the Canadian delegation to the 1992 IOPC Fund, particularly on issues related to the admissibility of claims and the determination of the appropriate levels of compensa tion payments in this significant incident.
- The "2001 International Oil Spill Conference" in Tampa, Florida, had as its central theme, "global strategies for prevention, preparedness, response and restoration." The Administrator attended.
- He participated with representatives from government agencies and the marine industry in an On-Scene Commander Course at the CCG College in Cape Breton.
- Attended also were the semi-annual national CMAC conferences in Ottawa, the AMOP technical seminar in Vancouver, and RO equipment facilities in Vancouver and St. John's.

During the year the Administrator, as head of the Canadian delegation, attended and reported on the Executive Committee and the Assembly sessions of the international Funds, held at IMO Headquarters in London. Extracts from his delegation reports on these proceedings are contained in the appendices.

The Administrator

In 1979 the Administrator, Mr. K.A. MacInnis, Q.C. (then a private lawyer) was retained as legal counsel for the Canadian Coast Guard (CCG) in the events immediately following the catastrophic break-up of the British registered oil tanker *Kurdistan* in the Cabot Strait. In this major incident, the CCG demonstrated its oil spill response readiness in the salvage of the stern section and its cargo, the towage of the bow section with cargo to the edge of the continental shelf – where it was sunk by naval gunfire, and the clean-up of oil pollution damage in Newfoundland and Nova Scotia. The CCG's positive performance, including the rescue of the crew, prompted highly favourable editorials in the national media.

Mr. MacInnis advised CCG throughout, including expediting the settlement of individual claims and attended at the subsequent lengthy inquiry in London into the cause of the break-up. The *Kurdistan* incident concluded with the successful settlement and payment of the CCG's considerable cost recovery claim against the shipowners and Canada's Maritime Pollution Claims Fund (MPCF), in the Federal Court of Canada. The MPCF was the predecessor to the SOPF.

Called to the Bars of British Columbia and Nova Scotia, he also attended University College London – receiving a Master of Laws in merchant shipping law and international law of the sea.

His experiences representing shipowners, insurers, salvors and government departments in casualties, oil pollution damage, and salvage, as well as environmentalists and fishing interests, has proved invaluable in performing the duties and responsibilities of the office of the Administrator.

The Administrator continues to receive excellent co-operation and assistance from persons in both the public and private sectors as well as from the international fund's Director and members of its Secretariat.

He served in the RCNR.

1. Responsibilities and Duties of the Administrator

The Administrator, appointed by the Governor-in-Council:

- holds office during good behaviour and, as an independent authority, must investigate and assess all claims filed against the Ship-source Oil Pollution Fund (SOPF), subject to appeal to the Federal Court of Canada;
- prepares an annual report on the operations of the SOPF, which is laid before Parliament by the Minister of Transport;
- has the powers of a Commissioner under Part 1 of the *Inquiries Act*;
- may take recourse action against third parties to recover the amount paid out of the SOPF to a claimant and may also take action to obtain security, either prior to or after receiving a claim;
- becomes a party by statute to any proceedings commenced by a claimant against the owner of a ship, its insurer, or the International Oil Pollution Compensation (IOPC) Funds, as the case may be;
- has the responsibility under the *Canada Shipping Act (CSA)* to direct payments out of the SOPF for all Canadian contributions to the IOPC Funds (such contributions are based on oil receipts in Canada reported by the Administrator to the Director of the IOPC Funds); and
- leads the Canadian delegation to meetings of the Executive Committee and the Assembly of the IOPC Funds.

2. The Canadian Compensation Regime

The SOPF came into force on April 24, 1989, by amendments to the *CSA*. The SOPF succeeded the Maritime Pollution Claims Fund (MPCF), which had existed since 1973. In 1989, the accumulated amount of $149,618,850.24 in the MPCF was transferred to the SOPF.

The SOPF is a special account established in the accounts of Canada upon which interest is presently credited monthly by the Minister of Finance.

A levy of 15 cents per tonne was imposed from February 15, 1972, until September 1, 1976, and during that period a total of $34,866,459.88 was collected and credited to the MPCF from 65 contributors. Payers into the MPCF included oil companies, power generating authorities, pulp and paper manufacturers, chemical plants and other heavy industries.

During the fiscal year commencing April 1, 2001, the Minister of Transport has the statutory power to impose a levy of 40.07 cents per metric tonne of "contributing oil" imported into or shipped from a place in Canada in bulk as cargo on a ship. The levy is indexed annually to the consumer price index.

No levy has been imposed since 1976.

The SOPF is liable to pay claims for oil pollution damage or anticipated damage at any place in Canada, or in Canadian waters including the exclusive economic zone of Canada, caused by the discharge of oil from a ship.

The SOPF is intended to pay claims regarding oil spills from all classes of ships. The SOPF is not limited to sea-going tankers or persistent oil, as is the 1992 IOPC Fund.

The SOPF is also intended to be available to provide additional compensation (a third layer) in the event that funds under the 1992 Civil Liability Convention (CLC) and the 1992 IOPC Fund Convention, with respect to spills in Canada from oil tankers, are insufficient to meet all established claims for compensation. (See Figure 1, Appendix D.)

During the fiscal year commencing April 1, 2001, the maximum liability of the SOPF is $133,608,938.80 for all claims from one oil spill. This amount is indexed annually.

The classes of claims for which the SOPF may be liable include the following:

- claims for oil pollution damage;
- claims for costs and expenses of oil spill clean-up including the cost of preventive measures; and
- claims for oil pollution damage and clean-up costs where the identity of the ship that caused the discharge cannot be established (mystery spills).

A widely defined class of persons in the Canadian fishing industry may claim for loss of income caused by an oil spill from a ship.

The present statutory claims regime of Part XVI of the *CSA*, on the principle that the **polluter should pay**, has as its cornerstones:

- all costs and expenses must be reasonable;
- all clean-up measures taken must be reasonable measures; and
- all costs and expenses must have actually been incurred.

SOPF: A Fund of Last Resort

The *CSA* makes the shipowner strictly liable for oil pollution damage caused by his ship, and for costs and expenses incurred by the Minister of Fisheries and Oceans and any other person in Canada for clean-up and preventive measures.

As provided in the *CSA*, in the first instance, a claimant can take action against a shipowner. The Administrator of the SOPF is a party by statute to any litigation in the Canadian courts commenced by a claimant against the shipowner, its guarantor, or the 1992 IOPC Fund. In such event, the extent of the SOPF's liability as a last resort is stipulated in Section 709 *CSA*.

The Administrator also has the power and authority to participate in any settlement of such litigation, and may make payments out of the SOPF as may be required by the terms of the settlement.

A response organization (RO) as defined in the *CSA* has no direct claim against the SOPF, but it can assert a claim for unsatisfied costs and expenses after exhausting its right of recovery against the shipowner.

SOPF: A Fund of First Resort

The SOPF can also be a fund of first resort for claimants, including the Crown.

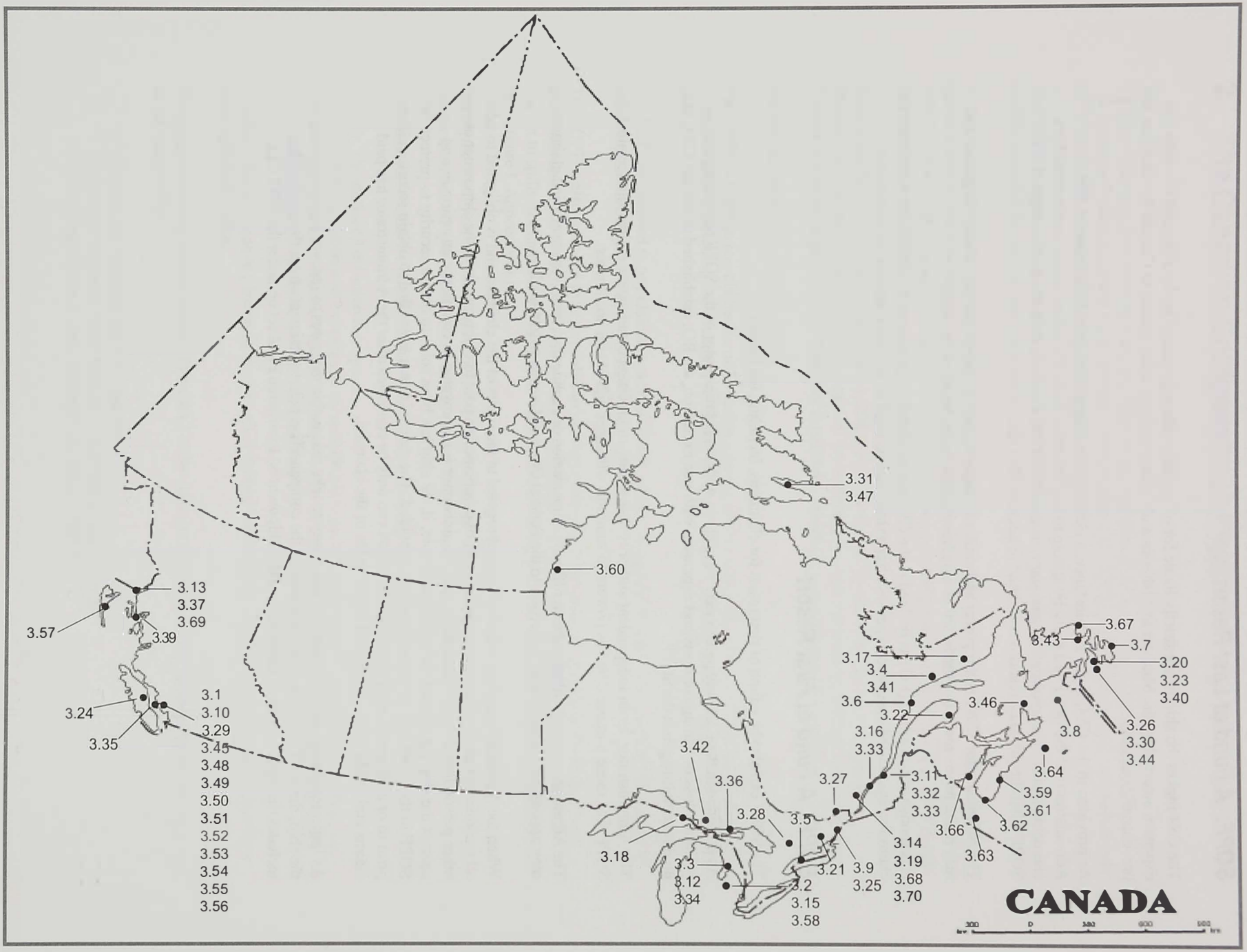
As provided in the *CSA*, any person may file a claim with the Administrator of the SOPF respecting oil pollution loss or damage or costs and expenses, with one exception. An RO, established under the *CSA*, has no direct claim against the SOPF.

The Administrator, as an independent authority, has a duty to investigate and assess claims filed against the SOPF. For these purposes, he has powers to summon witnesses and obtain documents.

The Administrator may either make an offer of compensation or decline the claim. An unsatisfied claimant may appeal the Administrator's decision to the Federal Court of Canada within 60 days.

When the Administrator pays a claim, he is subrogated to the rights of the claimant and is obligated to take all reasonable measures to recover the amount of compensation paid to claimants from the shipowner or any other person liable. As a consequence, the Administrator is empowered to commence an action *in rem* against the ship (or against the proceeds of sale, if the ship has been sold) to obtain security to protect the SOPF in the event that no other security is provided. The Administrator is entitled to obtain security either prior to or after receiving a claim, but the action can only be continued after the Administrator has paid claims and has become subrogated to the rights of the claimant.

As indicated above, the Administrator has a duty to take reasonable measures to recover from the owner of the ship, the IOPC Fund, or any other person, the compensation paid to claimants from the SOPF. This includes the right to prove a claim against the Shipowners' Limitation Fund set up under the 1992 CLC.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CANADA

3. Canadian Oil Spill Incidents

During any particular year the SOPF receives many reports of oil pollution incidents from a variety of sources, including individuals who wish to be advised if they are entitled, under the *CSA*, to be considered as potential claimants as a result of oil pollution damage they have suffered. Such reports and inquiries are investigated by the SOPF. Those that fell within its purview are noted herein. The Administrator is aware that many more oil pollution incidents are reported nationally. Many of those reported are very minor (sheens). Others involved greater quantities of oil but are not brought to the attention of the Administrator because they were satisfactorily dealt with at the local level, including acceptance of financial responsibility by the polluter.

Locations of incidents are indicated on map opposite.

3.1 New Zealand Caribbean (1989)

The first the Administrator was aware of this oil pollution incident was when, on August 21, 1990, he was served by the Vancouver Port Corporation (VPC) with a copy of a Statement of Claim, pursuant to Section 713 *CSA*. This document named the Administrator a party by statute. The Statement of Claim alleged that the Vanuatu flag 19,613 gross ton general cargo/container ship *New Zealand Caribbean* had caused oil pollution when coming alongside a shipyard berth in North Vancouver on January 30, 1989. It was stated that a bollard on the quay holed a shipside fuel oil tank. By the time that VPC had filed the claim the ship had changed name, flag, owners and operating company. It was agreed that, unless the SOPF interest was at stake, the SOPF need not instruct counsel.

Later VPC further alleged that the incurred cost to them of the necessary clean-up was $76,272.26. It appeared that the ship did not pay the claim because of alleged deficiencies in the design of the wharf and other matters.

During 1997 an out-of-court settlement was agreed between the parties. The ship made a payment of $51,000.00 and VPC agreed a dismissal order be filed naming the ship and owners, concluding the case against those parties. Counsel for the shipyard had agreed to a payment of $25,000.00 from payments due the shipyard, which was now in bankruptcy. The court action against the shipyard continues.

The Administrator had not been party to this settlement and on April 20, 1998, he wrote to VPC advising that he reserved all his rights in the case. The latest information from VPC is that there has been no material change in the situation.

3.2 Princess No. 1 (1994)

This 87 gross ton Canadian tug sailed from Erieau, Ontario, on February 9, 1994, bound for the Thames River, Ontario, to break the ice cover in the river. The tug had previously been requested to consult with the CCG Ice Officer prior to departure, but this did not happen. On February 10, 1994, the tug became beset in heavy ice in Lake Erie and listed to some 55°. A US Coast Guard (USCG) icebreaker responded to the urgent situation and broke the ice around the tug, relieving the pressure. The *Princess No. 1* was ordered to port by Transport Canada Marine Safety Branch (TCMS) because it was considered that the tug was not correctly certificated for the voyage being undertaken. The master of the tug was removed by a USCG helicopter as a precautionary measure because of the danger to the crew and as he was incapacitated by injuries received previously in an unrelated accident ashore. A CCG icebreaker then escorted the tug through the ice-infested channels to the CCG base at Amherstburg, Ontario.

The tug arrived at the base late in the afternoon of February 11, 1994, where it was met by a TCMS surveyor. Because the tug was effectively without heat, two of the three remaining crew left for their homes. The third crew member, the chief engineer, also left to obtain a hot meal ashore. When the chief engineer returned, he found the tug in the process of sinking. Emergency action was taken by the local fire brigade with pumps, but it was too late and the tug sank at the berth. As a result of the sinking, a quantity of oils were released. The CCG responded and used CCG vessels and crews, which were in the area, to contain and clean up the pollution, some of which was contaminated ice. Subsequently, the owner raised the tug with his own resources and put it ashore. It was found that the tug had developed a number of leaks in its hull, which were presumed to have been caused by operations in the ice.

The owner alleged that the tug was not insured and that he had no funds to pay the clean-up costs. The 91-year-old tug, in its raised condition, had limited value. Thus, on December 30, 1994, the Crown presented a claim amounting to $250,742.38 to the Administrator, for reimbursement of the CCG's costs and expenses.

The Administrator had a number of concerns regarding the quantum of the claim, in particular the costing of the CCG vessels and crews. Following a number of

meetings a settlement of $105,000.00 including interest, was agreed and on November 26, 1996, arrangements were made to transfer this amount to the Crown.

On February 10, 1997, the Administrator filed a Statement of Claim in the Federal Court against the *Princess No. 1,* and its owner, to recover the amount of $105,000.00 plus interest. On October 7, 1998, a default judgment in favour of the SOPF and against the owners and operators of the tug was obtained.

It had been difficult to contact the owners of the tug. The Administrator arranged for periodic checks to be made on the *Princess No. 1* and a smaller tug, also owned by a member of the same family, both craft being laid-up in Windsor, Ontario. On February 22, 2000, the Administrator wrote to the owners and, this time, received a telephone reply.

Three family members are involved with the tug. The Administrator had several telephone discussions with two of the family members over the intervening months. These discussions culminated in SOPF counsel preparing an agreement of settlement for the outstanding claim. Minutes of settlement were presented to the family member currently registered as the owner of the *Princess No. 1* on June 21, 2000. It calls for regular payments, guaranteed by two family members on behalf of the third. The third member was the registered owner of the tug at the time of the sinking. On professional advice that the tug was of little to no value, and it being very doubtful, on evidence, that the owner could, or would, satisfy the judgment, settlement was agreed in March, 2001, at $50,000.00, to be paid in full no later than December 1, 2004, by scheduled post-dated cheques. The first payment of $10,000.00 was credited to the SOPF for this fiscal year. The Administrator shall monitor the period payments, but considers the incident closed.

3.3 Motor Yacht 42E 6903 (1996)

This was a privately owned 11 metre Canadian licensed wooden motor yacht that was moored in a creek off the St. Clair River, a few kilometres north of Sombra, Ontario. During heavy rain conditions on September 21, 1996, the craft sank releasing diesel fuel and residual oils. The CCG sent their own personnel to the site and used their own equipment to contain and clean up the pollution. The owner was contacted who, subsequently, raised the craft. The hull of the craft was found to be rotten and it is reported that the craft was then broken up.

The owner stated that he had no insurance cover for the craft and, on October 10, 1997, the Crown presented a claim to the Administrator amounting to $2,560.18 to recover the CCG costs and expenses. The Administrator investigated and assessed the claim and, on January 26, 1998, the claim was paid in full, plus $209.92 accrued interest payable under Section 723 *CSA*.

Throughout, it was difficult to contact the owner. On March 31, 1998, the Administrator forwarded a claim to the owner, at an address the Administrator had been given, for recovery of the amount paid out to the Crown. No settlement was received. A further copy of the claim was sent to the owner by the Administrator on September 13, 1999, together with an updated interest calculation. The receipt by the licensed owner was evidenced.

Since there was no response from the owner, a Statement of Claim was filed in the Federal Court of Canada against the owner by the Administrator on September 20, 1999.

The Statement of Claim was served on the licensed owner at an address in Corunna, Ontario on November 19, 1999. No Statement of Defense was made. Judgment for $3,770.10 including costs was rendered in the Federal Court on May 16, 2000, in favour of the Administrator

Various attempts have been made to find the owner, without success. Family members have stated that they do not know his current whereabouts. In the circumstances, and in light of the amount involved, the Administrator is of the view that reasonable recovery efforts have been taken. If the owner is subsequently located the Administrator will consider his options at that time. In the meantime, the Administrator has closed his file.

3.4 Haralambos (1996)

On February 27, 1997, the Administrator received a claim from the Crown to recover the CCG costs and expenses, stated to amount to $73,483.00, incurred in the clean-up of oil found on the beaches of the lower St. Lawrence River, south-west of Port Cartier, Quebec. The claim was presented as a mystery spill.

The oil had been found coming ashore on the beaches on December 3, 1996, by residents of the small community of Rivière Pentecôte, who informed the authorities. Officials arrived and confirmed the pollution. Contractors were engaged and commenced work on December 5, 1996; the task was completed to the satisfaction of the authorities on December 9, 1996. It is reported that 103 barrels of oil and oily material were collected for disposal.

The Administrator investigated the circumstances of the oil and found that TCMS had thoroughly investigated two oil spills within Port Cartier Harbour that had occurred on November 19 and November 25, 1996, respectively. These spills had involved the 63,078 gross ton Cypriot flag bulk carrier *Haralambos*. The ship had come into the harbour on November 18, and the next day there was an oil spill. The ship had then gone out to anchor off Port Cartier awaiting cargo, and

had come back in again on November 25, when the second spill of oil occurred. It was found that one of the topside water ballast tanks had a corrosion hole through to a fuel tank, which accounted for the loss of oil. The shipowner undertook to pay for the cost of the clean-ups within the harbour. On November 30, 1996, the *Haralambos* sailed for Iran.

In the course of his investigation the TCMS surveyor took oil samples, and also compared the results with the analysis of the oil subsequently found on the beaches at Rivière Pentecôte. It was found that oil from the harbour matched the oil from the beaches.

Accordingly, on December 4, 1997, the Administrator forwarded the claim to representatives of the ship's P&I Club in Canada for direct payment to the Crown.

On May 22, 1998, counsel for the P&I Club replied to the Administrator denying liability of the *M.V. Haralambos* for the claim, stating that without more concrete evidence, they cannot recommend that the ship accept responsibility for this pollution.

On November 17, 1998, the Administrator authorized an interim payment to the Crown of 75 per cent of its claim, amounting to $55,112.25, plus interest of $6,874.94. The Administrator continued his investigation to obtain further evidence regarding the claim.

A further analysis of oil samples was made, this time a direct comparison of a sample taken from the beach at Rivière Pentecôte with samples from the *Haralambos's* contaminated wing tank. Dated February 23, 1999, the analysis concluded that these samples were "very similar." To further assess the probability of the *Haralambos,* while off Port Cartier, being the origin of the oil, a hindcast trajectory study was carried out on behalf of the SOPF by the Institut Maurice-Lamontagne of Mont-Joli, Quebec. Dated August 23, 1999, in summary the hindcast report found:

- that if a ship off Port Cartier released oil on November 19, 1996, the oil would have passed out into the Gulf
- on the other hand, if a ship off Port Cartier released oil on November 25, 1996, the conditions were such that oil could have traveled to the general area of the beaches involved in the incident

An agreement on quantum had been reached with the Crown, which reduced their claim by $1,975.89. On March 28, 2000, the Administrator arranged to pay the outstanding balance of the Crown's claim, less taxes, a further $7,396.09, plus interest of $1,611.41. On the question of taxes, these had been incorrectly calculated in the Crown's original claim and the Administrator agreed to consider this final outstanding amount on being presented with the correct calculation. The Crown having submitted correct tax calculations to the amount of $3,374.70, the Administrator on May 9, 2000 directed the payment of this amount to the Crown plus interest of $773.05.

Representatives of the shipowner have raised questions regarding the most recent oil analysis and the trajectory study results. However, they did agree to an extension of time for commencing a court action. Discussions continue between the Administrator, counsels for the parties, and principals representing the shipowner, in the hope of concluding this oil pollution compensation recovery claim.

The *Haralambos* returned to Canada in May 2000. The Administrator obtained a Letter of Undertaking (LOU) for $125,000.00

Subsequently, the Administrator commenced an action against the ship in the Federal Court, to which a defense was filed.

In the meantime, on November 3, 2000, it was reported that the *Haralambos* had been purchased by Chinese principals for breaking-up.

Offers and counter-offers have been made between counsels for both parties. This recovery action continues.

3.5 Rhea (1997)

The *Rhea* was a 41 metre former US Navy mine sweeper and had been purchased approximately 10 years ago for use as a houseboat in Oshawa, Ontario. On October 4, 1997, while no one was aboard, the ship sank, coming to rest in seven metres of water with only her superstructure showing. It was reported that the ship had some 1,600 litres of heating oil, 4,500 litres of diesel and 450 litres of lubricating oils aboard that, on sinking, immediately began to seep out. The local marine rescue association responded and boomed the sunken ship. The owner stated that he had no insurance and was unable to pay for the oil pollution containment and clean-up.

The *Rhea* was subsequently raised and removed from Oshawa harbour. The Oshawa Harbour Commission, on August 26, 1998, submitted a claim to the SOPF in the amount of $99,054.21 for the portion of the response activity pertaining to the oil spill clean-up.

The claim included items in contention for which the Harbour Commission had not paid, totaling $10,040.71.

In the process of investigating and assessing the claim, the Administrator concluded that a number of the individual charges in the claim were not reasonable, within the meaning of the *CSA*. The clean-up contractors had used solidifiers (polymers).

On March 29, 1999, the Administrator outlined his proposal for settlement in telephone discussions with the Harbour Commission's Chief Executive Officer. In this discussion, the Administrator outlined a number of individual amounts within the claim that he felt should be reduced or disallowed as not being reasonable.

On April 21, 1999, an all inclusive settlement of $60,211.24, including interest, was agreed between the Administrator and the Oshawa Harbour Commission. Part of the agreement, as required by the Administrator to settle the claim, included the Harbour Commission taking the following action:

- diligently pursuing collection from the boat owner;
- pursuing the Harbour Commission's insurers (who had declined liability); and
- that any recovery of monies by the Harbour commission would be returned to the SOPF.

On this basis a release and subrogation agreement, signed on behalf of the Harbour Commission on May 12, 1999, was received by the Administrator. The agreed settlement amount of $60,211.24 was sent by the SOPF to the Harbour Commission on June 7, 1999.

It is said that the boat owner has few assets. The Harbour Commission had instituted legal action against the owner on March 25, 1999, and tried to trace his whereabouts; it being said that he now might reside in British Columbia.

A default judgment was obtained against the owner in the Ontario Superior Court by the Harbour Commission on April 18, 2000, in the amount of $146,630.55 including interest and costs. The Harbour Commission requested a Writ of Seizure and Sale with the Sheriff's office in the Regional Municipality of Durham, Ontario on May 3, 2000. On August 23, 2000, it was stated by a Harbour Commission official that, not having located the owner, they considered the case closed.

The Administrator made his own efforts to trace the owner during 2000 without success. Following legal advice, the Administrator instructed counsel to obtain a partial assignment of the Harbour Commission judgment. This was done. If the owner is subsequently located, the Administrator will then consider his options. In the meantime, based on the agreement with the Harbour Commission and the partial assignment of judgment, the Administrator has closed his file.

3.6 Rani Padmini (1997)

This ship is a 42,151 gross ton Indian flag bulk carrier which, on October 9, 1997, developed a crack in a fuel tank and released oil while coming alongside the public wharf at Baie Comeau, Quebec. The ship had an arrangement with an RO but refused to invoke it. This situation required the CCG to appoint contractors to contain and clean up the oil. Approximately 12.5 tonnes of #6 fuel oil, 12 tonnes of an oily water mix, 15 cubic metres of soiled sorbent materials and 15 cubic metres of soiled vegetation were recovered.

Before the ship was allowed to sail, the P&I Club provided an LOU in the amount of $375,000.00.

It is understood that the CCG submitted its claim, amounting to approximately $335,000.00, for reimbursement of their costs and expenses incurred to the counsel for the owners/P&I Club on January 27, 1998, and that further correspondence ensued.

Payment by the shipowner was not forthcoming. On May 21, 1998, the Crown presented a claim to the Administrator to the amount of $337,189.41, pursuant to Section 710 *CSA*. The Administrator investigated and then learned that the shipowner is alleging the damage to the hull was caused by a projection on the Federal public wharf in Baie Comeau.

On January 5, 2000, the shipowner commenced an action in the Federal Court of Canada against the Crown in the amount of US$800,000.00, for costs incurred as a result of damage to the vessel. On January 14, 2000, the Crown withdrew its claim to the SOPF under Section 710 *CSA*.

The Crown filed a Statement of Defense and Counterclaim on August 11, 2000. To date no documents have been served on the Administrator making him a party to the proceedings pursuant to Section 713 *CSA*. On March 30, 2001, the Administrator contacted Crown counsel and asked them to advise their intentions. The Administrator awaits developments.

3.7 Koyo Maru #16 (1997)

This incident involved a 409 gross ton Japanese flag fishing vessel. During the evening of December 21, 1997, the vessel bunkered 215,000 litres of diesel oil alongside a refueling dock in St. John's, Newfoundland. The refueling was completed at 2230 local time that evening. At 0830 the next morning, December 22, 1997, the Port Police reported an oil spill extending along the south side of the harbour, the same side as the refueling facility. The CCG responded and, using their own personnel and equipment, cleaned up the oil, completing the task on December 24, 1997.

On the morning of the discovery of the spill TCMS conducted an investigation and evidence of a fuel oil spill was found on the deck of the *Koyo Maru #16*. There was no evidence that the scuppers had been plugged. A sample from the trawler and one from a part of the harbour proved a match. TCMS laid charges for oil pollution. On June 25, 1998, the *Koyo Maru #16* pleaded guilty to the charge, and was fined $5,000.00.

Other oil samples taken from the harbour at the same time as the original samples did not prove a match to those taken from the fishing vessel. Relying on this fact, the vessel refused to accept responsibility for CCG clean-up costs.

On October 18, 1999, the Administrator received a claim from the Crown for reimbursement of the CCG's costs and expenses in this incident, stated to be $7,631.82. The Administrator investigated and assessed the claim, which action raised a number of questions regarding the spill itself and the quantum of the claim. These were responded to by the CCG.

The Administrator wrote to the vessel's agent on January 25, 2000, requesting that the *Koyo Maru #16* pay the amount claimed directly to the Crown. Counsel for the vessel replied, refusing to pay the claim and explaining their reasoning. In essence counsel claimed that, whereas the vessel was alongside at Pier 24 when there was a spill, the clean-up took place at Pier 19-21 and that the samples from that area did not match those from the vessel.

Following discussions with the Administrator, on March 2, 2000, the Crown revised their total claim to $6,817.71. Following his assessment, on March 3, 2000, the Administrator directed the transfer to the Crown of the amount he found established, namely $4,425.31, plus interest in the amount of $693.10. Issues of concern were the charge-out rate for the sea truck and those claimed for the sorbent booms. He invited the Crown to provide additional evidence to support the claimed amounts, on receipt of which he would consider the issue further.

The CCG advised on September 26, 2000, that they had accepted the above payment as final settlement.

Counsel for the shipowner had correctly noted that the invoice presented by the CCG referred only to the clean up in the areas where samples did not prove a match (Piers 19 - 21). In fact, the response and clean up in question took place in the harbour covering Piers 19 - 24.

The issue of the clean-up area, incorrectly described in the invoice, was clarified by the Administrator in his letter to counsel for the vessel dated November 2, 2000. His letter also claimed reimbursement for payment of the Crown claim in the amount of $5,118.41, which payment included applicable interest. Further correspondence and discussions ensued with counsel for the *Koyo Maru #16*. It appeared that agents for the vessel could get no direction from the Japanese shipowner.

On December 20, 2000, the Administrator filed an action in the Federal Court naming the *Koyo Maru #16* and others as defendants, to recover the monies paid out to the Crown. On February 5, 2001, it was stated that the local ship's agency, Blue Peter Steamships Ltd., issuer of an LOU to CCG, is no longer in business. There is now a new company called Blue Peter Marine Agencies Ltd. Under an LOU the guarantor makes definite undertakings in order to preclude the vessel being detained. The prospect of this LOU not being honoured arises. This would present a unique problem to the Administrator. LOU's are normally obtained from a ship's P&I Club – not the ship's agent. It has been the SOPF's experience that those who issue LOU's are prepared to immediately act in accordance with the LOU issued on their behalf. On March 8, 2001, the Federal Court extended the time to serve the Statement of Claim by 180 days. In the meantime, the Administrator continues discussion with the original counsel for the ship and the issuer of the LOU.

The ship had left after the LOU was provided to CCG and before the Administrator became involved. In this context it should be noted that the Administrator, in particular, can, by Section 677(11) *CSA* obtain security (LOU, bank guarantee, etc.) even before receiving a claim:

> *"Where there is an occurrence that gives rise to liability of an owner of a ship under subsection (1), the Administrator may, either before or after receiving a claim pursuant to section 710, commence an action in rem against the ship that is the subject of the claim, or against any proceeds of sale thereof that have been paid into court, and in any such action the Administrator is, subject to subsection (13), entitled to claim security in an amount not less than the owner's maximum aggregate liability under section 679 or 679.1."*

3.8 Flare (1998)

On January 16, 1998, a distress message was received at CCG East Coast rescue coordination centres indicating that this 16,389 gross ton Cypriot registered bulk carrier was sinking. It was later found that the *Flare* was in ballast at the time, inbound for Montreal, when in a position southwest of St. Pierre and Miquelon she broke in two. Only four men of a crew of 25 were saved. The stern section sank quickly, but the bow continued to float and drifted off into the Atlantic. Weather continued to be adverse for an effective aerial search but on January 23, 1998, it was concluded that the bow section had also sunk.

Attempts were made to minimize the oil pollution coming from the stern section, but a report on February 6, 1998, stated that the stern part of the wreck continued to occasionally release oil. The search continued for the bow section and it was the CCG's intention to establish a program to monitor the sites where the two sections sank.

The March 31, 2000, CCG claims summary indicates that the Crown made a claim on the shipowner amounting to $1,037.363.69 on June 21, 1999, and that discussions were underway with the shipowner's legal counsel.

On March 9, 2001, the Crown accepted the shipowner's offer of settlement. The Administrator closed his file.

3.9 Enerchem Refiner (1998)

A CCG Sitrep advised the Administrator that on April 2, 1998, this Canadian 4,982 gross ton tanker, loaded with approximately 7,800 tonnes of Bunker C, had gone aground in the Canadian section of the St. Lawrence Seaway, just below Cornwall, Ontario. There was no pollution on grounding but the ship contracted with a RO to stand-by, fully prepared to act, during the offloading and refloating operation. During this period the CCG stood by and monitored the operations.

Assisted by tugs, the ship was freed on April 5, 1998, and proceeded to a nearby anchorage for a full inspection of the hull. There was no release of oil. On March 31, 1999, the Administrator received the Crown's claim, amounting to $10,826.05, to recover the CCG's stated costs and expenses in the incident.

The Administrator wrote to the tanker's owner, Enerchem Transport Inc. of Montreal, on April 12, 1999, forwarding the claim and requesting direct settlement by the owner with the Crown. The SOPF was advised that Enerchem Transport had been sold to another Canadian shipping company, Algoma Tankers Inc. The *Enerchem Refiner* was sold to foreign owners on April 29, 1999, and, under a new registry, sailed from Sorel, Quebec, May 9, 1999, bound for Panama. On July 15, 1999, the Enerchem company's office in Montreal ceased to operate. Enerchem's representative explained that the company considered the Crown claim to be late in being presented. Their insurers had settled all other claims connected with the occurrence some months previously and they, and Enerchem, had closed their files, complicated by the fact that Enerchem had ceased to exist.

The Administrator followed up with telephone calls and sent a number of letters, but settlement was not achieved. On November 1, 1999, the Administrator wrote to the President of Algoma Tankers.

On January 10, 2000, Algoma wrote agreeing to pay the claim. The Crown received payment of the principal amount from Algoma on March 3, 2000.

Under Section 723 of the *CSA* interest is payable. On March 28, 2000, counsel for the Crown wrote the owners requesting payment of the amount stated as $1,349.05.

The CCG advised on November 23, 2000, that they had reconsidered the circumstances and decided not to pursue their claim for interest. The Administrator closed his file.

3.10 Mystery Oil Spill - Vancouver Harbour, British Columbia (1998)

A CCG Sitrep advised that on April 5, 1998, oil was reported on the shoreline on the north side of Stanley Park, Vancouver Harbour, British Columbia. It was estimated that about 180 litres of oil was involved. The CCG contracted for the clean-up of the spill. Environment Canada and TCMS were involved in the investigation to attempt to find the origin of the spill, without success.

On March 31, 1999, the Administrator received a claim from the Crown, on behalf of the CCG, for their costs and expenses in the incident. The claim amounted to $23,662.82.

The Administrator wrote to the Crown on June 29, 1999, outlining the established and non-established items of the claim. On August 5, 1999, the Crown advised that, at that time, it would not be providing further documentation. On September 16, 1999, the Administrator directed that the amount of $20,318.62 plus interest of $2,116.33 be paid to the Crown.

As no further substantiation had been received from the Crown, on December 15, 2000, the Administrator wrote their legal counsel stating that, as no further information had been provided, he confirmed that, as far as the SOPF was concerned, the amount paid was in "full and final settlement". Nevertheless, for the benefit of CCG, on December 19, 2000, the Administrator wrote a letter to CCG giving further particulars of his previously expressed concerns regarding certain items billed by the contractors. The Administrator has closed his file.

3.11 Filomena Lembo (1998)

This incident involved a number of peculiar circumstances. The *Filomena Lembo* is an Italian flag 29,498 gross ton tanker that had been converted from a cargo vessel and, therefore, was of an unusual design to carry oil cargoes. The tanker arrived at a berth in Quebec City, on May 26, 1998, to deliver a part cargo of No. 6 bunker oil to a local pulp mill owned by Daishowa Inc. Daishowa decided to employ their oil spill contractors in a simulated oil spill exercise and these contractors commenced placing a boom around the tanker on her arrival. Shortly after, with the boom largely in place, oil was seen within the boom. The oil spill continued to increase within the boom to a final quantity estimated at some 200 to 400 litres, and Daishowa employed the contracting company already on site to clean up the pollution. The tanker discharged her cargo and, over a similar timeframe, loaded bunkers.

TCMS conducted an investigation and the spill was found to have the consistency of old, dirty, lubricating or hydraulic oil. TCMS was unable to find a match between this oil and other oil samples taken from the

tanker. However, this same agency found a number of deficiencies in the oil transfer system aboard compared to international requirements. A large oil tank farm is located close inland of the berth in question. No source for the origin of the oil could be found from shore drainage systems. The berth used by the *Filomena Lembo* is accessible to the public and is often used to load scrap metal. The incident happened as the tide was falling and over the period of low water. There was little bottom clearance for the tanker at low water.

The tanker sailed on May 28, 1998, and on that day the SOPF commenced an action in Federal Court of Canada against the *Filomena Lembo*, the owners and all others interested in the ship. On arrival at the next port, Sept-Îles, the SOPF arranged for the tanker to be arrested, pending the issuance of an LOU. An LOU for the agreed sum of $85,000 was issued by the P&I Club on May 29, 1998, and the tanker released.

On October 29, 1998, counsel for the SOPF received a claim from Daishowa Inc. amounting to $35,179.11, for their stated costs and expenses in responding to this spill. The Administrator extensively investigated the circumstances of the spill, including employing divers to search the seabed off the berth in question. On October 22, 1998, in very poor visibility, the divers found diverse material in the harbour bed off the berth. The material consisted mainly of concrete and construction framing, but that also included a cylindrical object, possibly a tank, buried in the mud. The object was buoyed. A follow-up dive was carried-out on November 23, 1998, when the buoy was found to be missing. In trying to relocate the cylindrical object, an object was found that, in the diver's opinion, was the framework of an auto or a small airplane. The divers brought a small piece of the object to the surface and concluded that the object in the mud could not have caused the pollution.

No evidence could be found for the origin of the oil. The incident was deemed a mystery spill, for which the SOPF is liable.

The Daishowa Inc. claim was assessed for quantum. The Administrator had a number of concerns, principally the hourly rate charged for their employees, demurrage for the delay of the *Filomena Lembo*, and for the Daishowa legal costs. Following negotiations between counsel, the Administrator reached a settlement with Daishowa Inc. On January 25, 2000, he sent counsel, for payment to the company, the amount of $17,966.31, plus interest of $2,003.42. At the same time he sent a further payment of $2,172.39 for Daishowa Inc., in respect of sharing information of the oil sample analysis results.

The question arose as to the disposal of the LOU issued on behalf of the ship. Although this letter was no longer required by the SOPF it was possible that Daishowa and, or, the Port of Quebec would wish to take action. Following the agreed settlement, on February 1, 2000, a release in favour of the SOPF was signed on behalf of Daishowa Inc. On July 13, 2000, SOPF counsel advised that both Daishowa and the Port of Quebec had waived their interest in the LOU. SOPF counsel was instructed to return the LOU to ship's counsel. The Administrator's action against the ship was discontinued by consent, with each party bearing its own costs. The Administrator closed his file.

3.12 Mystery Oil Spill - Fighting Island, Ontario (1998)

On May 31, 1998, a floating foul smelling substance was found coming ashore, and drifting just off the shore, on the northwest corner of Fighting Island, a Canadian island in the Detroit River, downstream from Detroit. An analysis of a portion of the substance found that it was approximately 35 per cent heavy oil and the rest a type of sewage. The CCG contracted for the clean-up. Samples of the oil and the other matter were taken by the USCG and the CCG, and compared to other samples taken from ships anchored in the vicinity and shore sources, without success at identifying the origin of the spill.

In the meantime, the SOPF has ascertained that during May 31, 1998, a heavy rainfall was reported throughout the local area.

On June 1, 1999, the Crown presented a claim to the SOPF on behalf of the CCG in respect to this incident, amounting to $112,504.65. The Administrator commenced an investigation. In this process a number of factors were revealed, including:

- The Ontario Ministry of the Environment was also involved on the Canadian shore but their report was unable to identify the origin of the spill.
- The Michigan Department of Environmental Quality was also involved. An official indicated that he did not believe that it was ship related.
- The USCG provided a complete copy of their laboratory analysis of pollution samples, together with the laboratory covering report. This analysis did not positively identify the origin of the spill.
- Instead of the site samples oil content being "of a heavy type," as initially stated in a Canadian laboratory analysis for the CCG, the samples were found to contain "a severely evaporatively weathered light fuel oil mixed with...lubricating oil," in a subsequent more detailed analysis.
- The samples taken by the CCG and passed to a private laboratory for analysis were subsequently destroyed by the laboratory in accordance with their advised practices. Other samples, kept by the CCG, were not refrigerated. Samples taken from the Fighting Island site (only) and provided to the SOPF were retained under refrigeration and were available.

In view of the inconclusive results in previous analyses, in January 2000, the Administrator contracted for a more detailed analysis of some of the samples previously held by the USCG laboratory, and those held by the SOPF.

These latter, more detailed, analyses still did not identify the source. However, they served to support the previous sample comparisons in certain respects. Throughout the morning of May 31, 1998, the wind had been westerly, sometimes very strong. The Administrator continues to investigate the likely origin of the spill.

Additional information was requested, in particular from the Cities of Detroit, Ecorse, and River Rouge, and the Michigan Department of Environmental Quality. The bulk of this material was received at the SOPF in mid-February, 2001. The material greatly assisted the Administrator in his investigation, but did raise some further questions, resulting in further information being requested. When this further information is received, the Administrator is hopeful of reaching a conclusion on the matter.

3.13 Miss Babs (1998)

The *Miss Babs* is a 36 gross ton Canadian fishing vessel that sank in Miller Bay, a remote inlet some 15 kilometres south of Prince Rupert, British Columbia. It is not clear when the vessel sank but she was observed sunk on September 16, 1998, and at that time oil pollution was reported. The CCG responded and the owner arrived on scene on September 18, 1998. The SOPF appointed local counsel and employed a surveyor to determine the extent of the oil pollution. Subsequently the CCG wrote to the owner requesting his intentions on

a) the pollution aspects; and

b) the hazard to navigation that the sunken vessel posed to other vessels.

No reply was received. Contractors employed by the CCG raised the *Miss Babs* and took her to a safe berth.

On October 6, 1999, the Administrator received a numbered invoice from DFO amounting to $31,542.17, for the clean-up costs and expenses incurred by the CCG, a Branch of DFO, in respect to the *Miss Babs* incident. The Administrator rejected the invoice. DFO arranged cancellation of same.

The Administrator noted that an invoice implies a debt owing. Section 710 *CSA*, however, stipulates that when a claim is filed with the Administrator, he shall investigate and assess the claim and offer compensation to the claimant for whatever portion of the claim the Administrator considers to be established.

On October 8, 1999, the Administrator received a claim presented in the normal manner from DFO for the same amount.

The Administrator investigated and assessed the claim, which claim also covered the raising of the wreck, stated by the CCG to be necessary as part of the oil pollution prevention.

It was noted that on October 13, 1998, the Crown sold the *Miss Babs*, "as is, where is" for $6,000.00, all-inclusive.

On November 22, 1999, the Administrator arranged payment of $23,836.70, plus $2,079.86 in interest, to be made to CCG.

In assessing the claim, costs incurred by CCG after *Miss Babs* no longer posed a threat of oil pollution were disallowed by the Administrator.

On December 18, 2000, the Crown confirmed they accepted the payment made by the Administrator on November 22, 1999, as a full and final settlement.

Efforts were made to trace the vessel's owner without success. Investigations failed to indicate any property in the name of the owner.

After receipt of legal advice the Administrator concluded that further recovery action under Section 711(3)(c) *CSA* would not be reasonable. The case file on the *Miss Babs* was then closed.

This incident and several others raise the issues of salvage, wreck removal and, oil pollution prevention measures, in the context of the potential liability of the SOPF. See also the *Sam Won Ho* incident reported herein.

The Administrator must deal with each such case on its own merits. However, in his letter of reply to the Crown on December 19, 2000, he indicated his willingness to discuss these matters with CCG.

3.14 Canmar Valour (1998)

In previous years, this incident had been reported as a mystery oil spill, with the ship *Canmar Valour* as the suspect ship involved. The Administrator now has evidence that the oil in this case came from the *Canmar Valour*.

Produits Shell Canada Limitée had floating booms permanently installed off its facility at Section 103 in Montreal Harbour at the time of this incident. It was reported that booms were opened on November 14, 1998, to permit two vessels to berth at the facility and oil floated in with the current. Shell employed contractors to clean up the oil, including that which fouled the hulls of the two ships required to berth

there. The oil was of the heavy variety and the quantity estimated to be about 100 litres.

TCMS further investigated this later oil pollution and obtained a match between oil samples found at Section 103 and the previous spill involving the *Canmar Valour* at Section 79.

On April 6, 1999, the Administrator received a claim from Shell amounting to $15,456.00 to recover their stated direct costs and expenses responding to this incident. The Administrator required better substantiation for some of the charges and this information was provided by Shell. Shell further advised that they might submit an additional claim for demurrage costs they incurred in the delay of the vessel because of the oil-contaminated hull. The hull had to be cleaned before it was cleared for sailing.

Proof became available to the Administrator of the *Canmar Valour*'s involvement with this spill. The *CSA* contemplates that the polluter pay. Accordingly, on August 4, 1999, the Administrator requested that counsel for the ship negotiate a settlement directly with Shell.

On September 17, 1999, Shell presented an additional claim of US$14,375.83 for the demurrage that, on September 28, 1999, was amended to C$9,739.17. In turn, this further addition to the claim was passed to the representatives of the *Canmar Valour*. The Shell claim now totaled $25,245.17.

On March 20, 2000, counsel for the ship offered Shell a compromise and settlement without prejudice.

Throughout, the Administrator intervened with Shell and counsel for the *Canmar Valour*, towards achieving a direct settlement of the Shell claim by the shipowner.

After further negotiation, Shell accepted the shipowner's offer in full and final settlement of the clean-up portion of the claim. On January 17, 2001, a release and discharge document for this part of the claim was duly signed on behalf of Shell, in favour of the shipowner and the Administrator.

The Administrator wrote Produits Shell Canada Limitée on November 9, 2000, advising, *inter alia*, that the claim for demurrage would not be admissible given the fact that it would constitute a claim for pure economic loss of a kind which is not recognized as falling within one of the exceptions to the general exclusion rule prevailing in Canadian Maritime Law, nor would it fall within the categories recognized by Section 712 of the *CSA*. This issue of pure economic loss was settled by the Supreme Court of Canada in the decision of *Bow Valley Husky* v. *Saint John Shipbuilding* [1997] 3 S.C.R. 1210 at 1239 f.f.

The Administrator closed his file.

3.15 Walpole Islander (1999)

Initially this incident was reported as a mystery spill. On January 20, 1999, a slick of reddish diesel was reported at the Walpole Island Custom Ferry Dock, in the St. Clair River, Ontario. The two Walpole Island ferries were docked there, but it proved impossible to show that the oil was coming from either vessel. The CCG contracted for the containment and clean-up. The spilling of oil continued and by January 25, 1999, approximately 270 litres of the diesel had been recovered. Eventually, it was discovered that ice had caused a small crack in a shipside fuel tank of the Canadian 72 gross ton ferry *Walpole Islander*. The owners accepted responsibility. One of the environmental concerns was the extensive wetlands nearby.

The CCG reported that their claim for recovery of their costs and expenses in this incident amounted to $80,780.53. The Administrator advised the CCG that he understood the ferry owner's insurance contract to contain a provision to the effect that any claim against the policy must be made within 12 months from the date of the occurrence. The CCG advised the Administrator that they had submitted their claim directly to the ferry owner on January 10, 2000.

The Administrator notes that the March 31, 2001, CCG Claims Status Report shows the claim as currently unpaid.

3.16 Solon of Athens (1999)

This was a 46,132 gross ton Vanuatu flag bulk carrier that, on March 9, 1999, was alongside at a Richelieu River berth in Sorel, Quebec, when she experienced a broken ballast water pipe routed through an oil tank. This breakage released an estimated 180 litres of a mixture of light oil and diesel into the river. The ship immediately contracted for the necessary containment and clean-up but it was only later that CCG and TCMS were informed. The CCG provided personnel to oversee the operation, which was completed to their satisfaction. The CCG obtained an LOU on behalf of the ship for $7,000.00 to cover their costs and expenses.

The Administrator received the Crown's claim on June 17, 1999, to recover their costs and expenses in the incident that were stated to amount to $4,717.24. The Administrator reviewed the claim and, on June 28, 1999, sent a copy to the *Solon of Athens* local representatives in Montreal with the request that direct settlement be made with the Crown. As no reply had been received, on January 14, 2000, counsel for the Crown sent a reminder letter to the ship's local representatives. The local representatives replied on January 19, 2000, that they had not received the claim from the SOPF, but advised that the P&I Club were dealing with the pollution incident through local counsel.

Information was later obtained by the SOPF that the *Solon of Athens* had been broken-up in India on June 28, 1999.

Little progress was made in obtaining payment of this claim during the remainder of 1999 from the shipowners. The Administrator assessed the Crown's claim and, on March 16, 2000, arranged to pay the claim in full, namely $4,717.24 plus the applicable interest of $350.99.

The Administrator continued his efforts to achieve settlement of the recovery claim, and the LOU was extended by the P&I Club.

Counsel for the shipowner disputed a number of individual charges in the CCG claim.

Information was provided to counsel for the ship, in response to the points raised but settlement for the full amount could not be achieved. On September 5, 2000, counsel for the ship made an offer which was rejected by the Administrator. This was followed on September 15, 2000, by an agreement between the parties to settle the claim for $4,028.24, all-inclusive. A cheque for this amount was received from shipowner's counsel and passed to the Administrator on January 22, 2001, to be credited to the account of the SOPF. The file on this case was then closed.

3.17 Gordon C. Leitch (1999)

This was one of the more serious incidents reported recently in that the clean-up measures taken and costs incurred were considerable. The *Gordon C. Leitch* is a 19,160 gross ton Canadian Great Lake vessel and, on March 23, 1999, she was berthed at an iron-ore facility in Havre-Saint-Pierre, Quebec, on the lower north shore of the St. Lawrence River. It was necessary to move the ship along the quay for the loading operation but in this process, under high wind conditions, the bow blew off the quay, allowing the stern to drift in and hit a dolphin. This striking cracked the hull at a shipside fuel tank, releasing an estimated 49 tonnes of heavy fuel oil.

The bay of Havre-Saint-Pierre is an environmentally sensitive area that includes a National Park, traditional waterbird hunting grounds and a shell fishery. The shoreline was still ice covered and, to a degree, this assisted in reducing the spread of the oil. The owners invoked their arrangement with Société d'Intervention Maritime (SIMEC) and directed the clean-up under CCG guidance. It was stated that the costs and expenses for this work would approach $5 million.

The CCG, in this operation, claimed costs and expenses totaling $233,065.00. This amount was paid by the shipowners on October 25, 1999.

The statutory time for claims to be made against the SOPF under Section 710 *CSA* expired on or about March 24, 2001. No claims were filed with the Administrator. This case file was closed.

3.18 Algontario (1999)

This 18,883 gross ton bulk carrier grounded in the Neebish Channel off Sault Ste. Marie on April 5, 1999. The vessel sustained bottom damage, but there was no pollution from the fuel tanks. The shipowners activated their arrangement with the Eastern Canada Response Corporation (ECRC), who boomed around the vessel to contain a possible oil spill. Arrangements were also made with a contractor to remove oil from the ship to a lightering vessel to prepare for the refloating operation. The CCG and TCMS were in attendance.

The ship was successfully refloated with no pollution on April 7, 1999.

The Administrator received from the Crown, on April 4, 2000, a claim to recover the stated CCG costs and expenses in attending the refloating of this vessel, amounting to $20,154.12. On May 2, 2000, the Administrator forwarded the claim to the owners, Algoma Central Corporation, with the suggestion that they settle the claim directly with the Crown. At the same time the Administrator pointed out to the owners that interest was accruing.

On May 26, 2000, Algoma replied to counsel for the Crown, in essence noting these factors:

- the CCG services were not requested
- Algoma employed the necessary contractors and equipment at the site
- there was no release of oil

and by providing comment on the individual costing schedules presented.

Algoma denied the CCG claim, and noted that thirteen months had passed between the incident and the presentation of the claim.

It should be noted that *CSA* Section 677(10)(b) provides that *"...no action.....lies* [against the owner of a ship] *unless it is commenced....where no pollution damage occurred, within six years after the occurrence."*.

The Crown replied to the points raised by Algoma in a letter to the Administrator dated June 29, 2000. The main points made by the Crown were:

- CCG actions were taken in anticipation of a discharge of oil, as provided by Section 677 *CSA*
- the CCG does not require the shipowners request to respond to an anticipated discharge of oil.

The Administrator commenced an investigation and assessment of the claim.

3.19 Paterson (1999)

This is a bulk carrier of 20,370 gross tons, which was carrying a cargo of grain when she grounded in Lac Saint-François, located between Montréal and Cornwall, Ontario, on April 5, 1999. There was no pollution as a result of the grounding, but the shipowner gave notice to his RO to be in readiness. Arrangements were also made to lighten the vessel of some of its cargo, in preparation for refloating. This was successfully carried out on April 9, 1999, with no pollution occurring. TCMS and CCG were in attendance.

On April 4, 2000, the Crown presented a claim to the Administrator, amounting to $10,350.57 to recover the CCG's stated costs and expenses in the incident. On May 2, 2000, the Administrator wrote to the owners concerned, N.M. Paterson and Sons Ltd., suggesting that they settle the claim directly with the Crown. A reply was received from Paterson's, dated May 4, 2000, in essence advising:

- the shipowner did not request CCG assistance;
- the ship was aground amidships where there were no tanks containing oil;
- the hull was not breached in any area of the ship; and,
- that, according to TCMS, "damage was of little concern".

On this basis, Paterson's rejected responsibility for the claim.

The Crown replied to the points raised by Paterson in a letter to the Administrator dated June 6, 2000. The main points made by the Crown were:

- CCG actions were taken in anticipation of a discharge of oil, as provided by Section 677 *CSA*; and,
- the CCG does not require the shipowner's request to respond to an anticipated discharge of oil.

The Administrator investigated and assessed the claim and found the amount of $3,625.50 to be established. This amount plus interest of $431.02 was offered in full and final settlement and paid to the Crown on or after November 3, 2000.

The Administrator is pursuing the recovery of the money paid to the Crown.

3.20 Sam Won Ho (1999)

This vessel was originally a South Korean freezer fishing trawler and had been sold to new owners and berthed in Long Harbour, Newfoundland, where she was being converted to a barge.

On April 12, 1999, the vessel sank at its berth with resulting oil pollution. The CCG responded to the spill and incurred stated costs and expenses in the amount of $99,878.55, which amount was claimed from the SOPF on December 29, 1999. On March 2, 2000, the CCG advised that the claim had been revised to $96,856.92.

The claim was investigated by the Administrator to verify the established and non-established items. An all-inclusive offer of settlement was made in the amount of $80,000.00, which was accepted by the CCG. Payment was directed on March 3, 2000.

The Administrator is considering what reasonable options exist regarding cost recovery of the monies paid.

It should be noted that this vessel was involved in a previous pollution incident at Long Harbour in July 1997, which resulted in a claim to the SOPF, reported in the 1997-98 Annual Report under the name of *Sin Wan Ho*.

It appears that two individuals were associated with ownership of the craft, together with a limited company. All three parties have denied liability. On January 5, 2001, EC had laid charges against all three parties involving the release of oil pollution, connected with this incident, pursuant to Section 36(3) of the Federal *Fisheries Act*.

There was further pollution from this wreck on April 24, 2000, as reported at 3.40 following.

The Administrator is following the prosecution proceedings.

3.21 Sunny Blossom (1999)

This vessel is an 11,598 gross ton Bahamian flag double hull chemical tanker that was involved in at least four incidents, which came to the Administrator's attention. The vessel was engaged in the caustic soda trade, in and out of the Great Lakes.

On April 24, 1999, she grounded off Kingston, Ontario, in US waters. The USCG responded to the grounding. The CCG attended at the site. The *Sunny Blossom* was refloated, with no release of a pollutant.

The second incident, a grounding, is reported herein following at 3.25. The third incident was on July 26, 1999 when the vessel struck an arrester wire in Iroquois Lock, Ontario. The fourth incident happened on May 18, 2000, when the vessel grounded in the seaway system while transiting Lac Saint-François.

On April 20, 2000, the Crown presented a claim to the Administrator, amounting to $9,526.57, to recover the CCG's stated costs and expenses in the April 24, 1999, incident. The claim involves a ship aground in U.S. waters. The Administrator and counsel for the SOPF reviewed the circumstances of the claim. On September

27, 2000, counsel for the SOPF wrote to Crown counsel involved raising these issues:

1. *Does the Department consider that this incident is subject to the terms of the Great Lakes Water Quality Agreement and Joint [Canada-United States] Marine Pollution Contingency Plan?*

2. *If so, has the Department sought to recover the costs outlined in its claim from the responsible United States authorities? If so, does the Department intend to pursue its claim with such authorities?*

3. *If not, would you provide an explanation as to why the Department does not consider that this incident is subject to the provisions of both the Agreement and Plan.*

The Administrator awaits the Crown's position on the matter.

In the meantime, CCG has reported that they have submitted a claim to the USCG.

3.22 Mystery Oil Spill - Pasbébiac, Quebec (1999)

On May 11, 1999, the CCG was advised by the provincial environment department that there was oil on the water of the harbour. The spill was investigated by the Harbour Master and TCMS. No source for the spill could be verified and it was classified as a mystery spill. This was also confirmed by provincial officials.

Reports were made to the CCG of this fact and arrangements were made for a local contractor to clean up the spill. This work was completed during the morning of May 14, 1999.

The CCG submitted a claim in the amount of $2,398.86 to the SOPF, which was received on February 14, 2000. The claim was investigated and assessed.

On March 17, 2000, the Administrator wrote to the CCG requesting substantiation for certain charges. This information was provided. Other issues were raised by the SOPF, including the high cost of disposal of contaminated material. On November 2, 2000, the Administrator arranged payment of the revised claim in full, namely $2,366.73, plus the appropriate interest of $265.40, thereby enabling him to close his file on this incident.

3.23 Ariel (1999)

Diesel fuel was observed leaking from the Norwegian flag 44,985 gross ton ore/bulk/oil (OBO) *Ariel*, on June 14, 1999, when she was alongside the Come By Chance refinery jetty in Placentia Bay, Newfoundland. On examination, the shipside plating was found to be cracked. Booms were immediately deployed by the refinery, and the *Ariel* invoked its arrangement with the ECRC for the necessary clean-up. The ship's crew lowered the oil in the affected tank until below sea level, thereby stopping further outflow. It was estimated that two barrels of diesel oil had been lost overboard.

The CCG and TCMS sent officers to the site, each covering their respective mandates.

The Administrator notes that this incident is not currently being reported by CCG. He, therefore, concludes that there is unlikely to be a claim against the SOPF and has closed his file.

3.24 Rivers Inlet (1999)

This was a Canadian registered 24 gross ton wooden fishing vessel, built in 1926, which sank at her berth in Deep Bay, British Columbia, on June 16, 1999. It was stated that she was no longer engaged in fishing but in transporting wooden shake blocks for cutting. The owner was aware that the vessel had an ingress of water and had arranged for pumping. On sinking the *Rivers Inlet* released oils, of which an estimated 330 litres were aboard.

The local Harbour Master reported the sinking. The CCG responded. The sinking was in a Small Craft Harbour. It was reported that the vessel was interfering with operations in the harbour. There are clam and oyster harvesting areas in Deep Bay. On June 25, 1999, the owner signed an agreement authorizing the Crown to remove and dispose of the vessel, indemnifying for all costs, expenses and liabilities incurred by the Crown. On June 28, 1999, a CCG contractor raised the vessel. It was later broken-up and disposed-of.

On March 1, 2000, the owner stated he had no money to meet his obligations regarding the sinking. The Administrator received, on June 15, 2000, a claim from the Crown, amounting to $15,777.43 to recover the CCG's stated costs and expenses in this incident. The claim was investigated and assessed. The Administrator wrote to the Crown on December 12, 2000, offering to settle the claim for $10,819.91, plus the appropriate interest of $1,248.38, which amounts, in his view, to that portion of the claim relating to oil pollution response. On the same date, he arranged to transfer these latter sums to the Crown.

This case again raises the matters of oil pollution response, salvage and wreck removal, in the context of cost recovery by CCG. The Administrator advised the Crown of his willingness to discuss these issues.

The Administrator is evaluating his options to recover the monies paid-out.

3.25 Sunny Blossom (1999)

Following on from the previously reported grounding incident, this 11,598 gross ton Bahamian flag chemical tanker grounded again in the Great Lakes system on July 16, 1999, in Canadian waters in the St. Lawrence Seaway off Cornwall Island, Ontario. The CCG responded and stood by the vessel until it refloated.

On June 6, 2000, the CCG advised that their claim to recover their costs and expenses in the incident, made direct to the shipowners, had been paid.

The Administrator closed his file on the incident.

3.26 Mystery Oil Spill - Patrick's Cove, Newfoundland (1999)

Patrick's Cove is a small community on the east side of Placentia Bay. On August 10, 1999, people swimming in the cove found themselves covered with spots of oil. The incident was reported. It also transpired that oil had been seen coming ashore two days previously. The CCG responded and found oil in scattered locations along the beaches from St. Bride's to Gooseberry Cove, a distance of some 10 nautical miles. An overflight on August 11, 1999, revealed no visual signs of pollution in the area. CCG personnel responded to the clean-up required and the media reported some 100 kilograms of oiled debris were recovered from the beaches. Oiled birds and oiled chicks were observed in the area.

The CCG continued to monitor the shoreline and requested that further overflights be made.

3.27 Mystery Oil Spill - Cumberland, Ontario (1999)

A local resident of Cumberland, a village situated on the Ottawa River some 20 kilometres east of Ottawa, reported sighting an oil spill in a creek early in the morning on September 2, 1999. Two officers from the CCG base at Prescott, Ontario, responded the following day and cleaned up an estimated half litre of an old oily mixture. TCMS arrived that same day, September 3, 1999, to investigate. It proved impossible to ascertain from where the oil originated and it was termed a mystery spill.

3.28 Holland Marina (1999)

This marina is situated in Newmarket, Ontario, in the cottage lake area north of Toronto. On October 6, 1999, a fire was reported in the marina that resulted in the sinking of 12 to 15 small craft, causing some pollution. The CCG provided the initial response to the incident. The marina was declared a crime scene by the local police.

On October 8, 1999, the marina owner prepared a three-day plan to secure the site that, with minor modification, was approved by the CCG and Environment Canada. It was estimated that some 3,300 litres of gasoline had been released. Clean-up efforts, undertaken by a contractor, began on October 9, 1999.

The CCG monitored the operation and stated that the marina's insurance company will accept their costs and expenses in this incident.

The CCG reports that on October 5, 2000, a claim was submitted directly to the marina's insurance representative in the amount of $15,653.27, and the claim was paid in full on January 17, 2001. The Administrator closed his file.

3.29 Reed Point Marina (1999)

This marina is situated near Port Moody, British Columbia, at the eastern end of Vancouver Harbour. It has many floating mooring piers, some of which are covered. Early morning on October 16, 1999, a fire broke out in one of the covered structures (boathouse) at the facility and spread to some of the boats. The local fire department and a Vancouver Port harbour craft responded and the fire was eventually extinguished. Three marine craft were reported sunk and four others damaged; four boathouses had collapsed.

Insurance companies covering two of the vessels accepted responsibility, without prejudice, for the clean-up and salvage of the sunken vessels. The work commenced on October 17, 1999. Following legal advice, the insurers stopped the work on October 19, 1999. The CCG then contracted with the local RO to continue the task. The RO completed the final "mop-up" of the boomed area on October 25, 1999. Environment Canada coordinated the disposal of approximately 80 bags of recovered contaminants.

The Crown presented a claim to the Administrator dated September 11, 2000, amounting to $39,366.81, to recover the stated CCG costs and expenses incurred in responding to this incident.

The Administrator employed counsel to act on SOPF's behalf. This counsel, on October 12, 2000, sent letters to three of the vessel owners involved, notifying them of the Administrator's intention to recover any payments made in settlement of claims against the SOPF, and advising them to preserve their insurance cover. Information was requested by the Administrator from the Crown in the investigation and assessment of the claim.

On March 30, 2001, the Administrator found $36,247.58 of the Crown's claim to be established, and arranged transfer of this sum, plus interest of $4,188.57.

The Administrator is considering the options for recovery of the amounts paid-out, pursuant to *CSA* 711(3)(c).

3.30 Kopu (1999)

This is a 1,531 gross ton fishing vessel, registered in Estonia and owned by an Icelandic company. TCMS reports that, on June 5, 2000, the *Kopu* was fined $6,500.00 for discharging oil, which occurred in Argentia, Placentia Bay, Newfoundland on October 19, 1999. Previous reports indicate that the incident took place during refueling from a tanker truck.

3.31 Radium Yellowknife (1999)

This 235 gross ton Canadian tug departed Hay River, Northwest Territories, in September, 1999, with a tow of nine barges in three stacks of three. The destination was Thunder Bay, Ontario. The convoy put into Iqaluit, Nunavut, to make repairs. By late October, freeze-up in Iqaluit was imminent. On October 28, 1999, a TCMS Pollution Prevention Officer ordered the convoy to winter at Iqaluit. The tug and barges were beached. During the first week of November, fuel and contaminated bilge water was pumped from the tug and barges to holding facilities on shore to reduce the risk of pollution. The CCG assisted in the operation.

3.32 Alcor (1999)

Following a reported steering gear problem this inbound 16,136 gross ton Maltese flag bulk carrier on November 9, 1999, ran out of the channel going hard aground in the St. Lawrence River. The grounding position was off the northern tip of Île d'Orleans, some 48 kilometres northeast of Quebec City. The ship was loaded with clinker, a cement mixing agent. The double bottom tanks contained an estimated 130 tonnes of residual bunker oil. Other oils were in engine room tanks. TCMS and the CCG attended the site together with the RO, the latter organization contracted by the ship. It was stated that approximately 3,000 Canada geese were in the area.

Attempts were made to refloat the ship that same day and again the next day, November 10, 1999. Both attempts were unsuccessful. On November 10, cracks were noted in the ship's hull and by the next day there was a large crack around the hull, in the vicinity of amidships; some of the cargo escaped into the river. The RO had boomed the ship but there was no pollution.

The Crown sent the owners a Letter of Intention, pursuant to the *CSA* and the *Navigable Waters Protection Act*. On November 13, 1999, the owner responded by preparing submissions for bids to salvage the *Alcor*. On November 22, 1999, the contract to refloat the ship was awarded to a local salvage company. This company carried out temporary repairs to the ship and offloaded some of the cargo into another ship to facilitate the refloating. The refloating successfully took place on December 5, 1999, and the *Alcor* was towed to a safe berth in Quebec City.

The Administrator, on December 20, 1999, commenced an action *in rem* against the ship. On December 27, 1999, the Maltese authorities confirmed that the ship was still registered in the name of the owners at the time of grounding, New Wind Shipping Company Limited of Malta.

On January 13, 2000, Crown counsel advised shipowner's counsel that the Crown sought to recover costs and expenses as follows:

CCG and EC	-	$40,312.98
TCMS	-	$91,317.06

The Crown's claim remained unpaid and, in the meantime, the ship was transferred to a Canadian company. The Administrator instructed counsel to refrain from serving the Statement of Claim on the ship to facilitate possible settlement between the parties.

When, in April 2001, the Administrator was advised that the ship had been sold again, equipment was being removed and the ship was to be taken to Sorel for demolition, he instructed counsel to have the ship arrested.

Counsel for shipowners and their insurers reached a settlement with the Crown and provided an undertaking to pay by June 15, 2001, conditional on the ship being released from arrest. The Crown undertook not to pursue a claim against the SOPF, in event of default of payment by the shipowners and their insurers. The ship was released from arrest and the Administrator's action *in rem* was discontinued. The Administrator closed his file.

3.33 Mystery Oil Spill - Quebec City and Sorel (Amarantos) (1999)

On July 10, 2000, the Administrator received a claim from counsel acting for the ship *Amarantos* amounting to $23,653.68 for two incidents of oil spill clean-up response. The *Amarantos* is a 36,650 gross ton bulk carrier registered in the port of Valetta, Malta.

The claim stated that, on November 10, 1999, the vessel moored ahead of the MV *Amarantos* reported that they could see traces of oil in the water in the vicinity of the *Amarantos* at Section 52, Quebec City. TCMS placed a temporary detention order on the *Amarantos*, pending inspection. The master of the ship contracted for the response to the oil spill. It proved impractical to attempt recovery of the estimated 200 metre long patch of oil alongside the ship, which patch had floated downstream with the current. SIMEC attended and booms were deployed.

The detention order was lifted on November 11, 1999, and the *Amarantos* moved upriver to Sorel. On November 20, 1999, an EC official reported that there had been an escape of oil from the ship at section 21. The ship was the *Amarantos*. Again, the captain requested contractors to provide the necessary response.

In forwarding the claim for the two incidents, counsel for the ship stated that the *Amarantos* was not the source of the spills and requested reimbursement to the owners for the costs and expenses incurred.

The Administrator continues his investigation of the two incidents, and the resulting claim.

3.34 Kaye E. Barker (1999)

While refueling during the morning of December 17, 1999, at a refinery dock in Corunna, Ontario, there was a spill of approximately 900 litres of bunker C from the 11,948 gross ton US registered ship *Kaye E. Barker*. The oil overflowed from a vent and some went into the water.

The ship employed the local RO for the necessary clean-up. The CCG were in attendance. The on-water clean-up was completed that same day.

There remained limited shoreline pollution that was cleaned-up later.

As the incident was not reported in the March 31, 2001, CCG Claim Status Report, the Administrator concludes that the likelihood of a claim being made against the SOPF for this incident is remote, and has closed his file.

3.35 Tachek (2000)

This vessel is a 789 gross ton Canadian ferry owned by the BC Ferry Corporation and was engaged on a relief voyage between the Swartz Bay terminal on Vancouver Island, British Columbia and the Outer Gulf Islands. On February 20, 2000, while disembarking a loaded gasoline tank truck at Sturdies Bay, Galiano Island, a rupture was caused to the tank and approximately 5,000 litres of gasoline spilled. Because the ferry was on a designated dangerous goods voyage, there was no other general vehicular or passenger ferry traffic on board. Most of the spilt gasoline was retained on the deck of the ferry, but an unknown quantity escaped.

Precautionary measures were taken to reduce the risk of ignition in and around the ferry. The CCG was involved and TCMS conducted an investigation into the circumstances of the accident.

The Administrator believes it unlikely that a claim will result to the SOPF as a result of this occurrence, and has closed his file.

3.36 Miles Sea (2000)

Overnight on March 18/19, 2000, the 15 metre licensed Great Lakes fish tug *Miles Sea* sank at her berth in Lions Head Harbour. Lions Head Harbour is situated on the eastern shore of the Bruce Peninsula, Georgian Bay, Ontario.

The sinking is the subject of an Ontario Provincial Police investigation. The owner stated that the fishing vessel had no insurance cover. There was some pollution, which was responded to by the CCG. The vessel was salvaged.

3.37 Bovec (2000)

On March 21, 2000, in what was described as extreme wind conditions, this 20,433 gross ton St. Vincent registered bulk carrier dragged her anchor and was driven ashore in Prince Rupert harbour, British Columbia. The vessel was light ship at the time, but had onboard 293 tonnes of bunker fuel, and 27 tonnes of diesel. The owners, the RO, TCMS, the CCG and other agencies responded.

The CCG obtained an LOU in the amount of $125,000.00 from the P&I Club. The *Bovec* was refloated on April 5, 2000, and taken under tow to a berth in Prince Rupert harbour for an initial survey, during which extensive damage was found. The complete operation was undertaken with no release of pollution. Later, the *Bovec* was towed to Vancouver for further survey and a decision as to the 26-year-old bulk carrier's future.

The Administrator's surveyor attended the ship aground and afloat in Prince Rupert. The December 31, 2000, CCG Claims Status Report notes that two claims were submitted to the shipowner by the Crown on behalf of the CCG in respect to this incident. One claim was for $62,778.53, and the other for $4,094.04. CCG reports that both claims were paid in full by the shipowner. The Administrator closed his file.

3.38 Le Sheng (2000)

The *Le Sheng* is a People's Republic of China 22,271 gross ton registered multi-purpose cargo ship. A Canadian military patrol aircraft overflew the ship on April 15, 2000, and observed an oily sheen 15 nautical miles long by some 20/35 metres wide trailing astern. It is reported that Canadian officials believe that about 100 litres of oily bilge liquid would have been discharged. At the time the ship was about 350 nautical miles southeast of Newfoundland and outside the Canadian 200 mile zone (EEZ).

The *Le Sheng* was en route to Norfolk, Virginia, USA and, the TCMS requested the USCG to board the ship on arrival in the hope of obtaining other evidence of the oil discharge. The USCG boarded the ship on

arrival but were unable to find any supporting evidence. Nevertheless, during May, 2000, details of the alleged discharge were passed to the flag state for their consideration of action.

3.39 Ronald H Brown (2000)

A TSB Occurrence Report listed this 3,180 gross ton US flag oceanographic survey vessel as striking Hewitt Rock, Hiekish Narrows, in one of British Columbia's northern inside coastal passages, on April 23, 2000. Damage was reported as considerable and that a port side fuel tank was ruptured. The hole in the tank was, reportedly, plugged and the remaining fuel transferred. The vessel was able to proceed under her own power, escorted by a CCG cutter. It was stated that there was minimal pollution.

3.40 Sam Won Ho (2000)

Referring to an incident listed above at 3.20, a further escape of oil from this wreck, requiring the response of the CCG, took place on April 24, 2000. The CCG responded and, on December 6, 2000, the Crown presented a claim to the Administrator in order to recover their costs and expenses, stated to be $45,809.19. This was the second claim involving this wreck presented to the SOPF by CCG. In accordance with his responsibilities, the Administrator investigated and assessed the claim.

The Administrator had concerns, mainly, on the questions of equipment charge-out rates and administrative charges. On this basis, he wrote to Crown counsel on February 8, 2001, finding $36,084.47 established and, at the same time, arranging to pay this amount, plus the appropriate interest of $2,343.53 noting that the CCG administrative charges were not established, and asking if CCG can justify this claimed cost. Subsequently, in February, 2001, the Administrator agreed to meet with CCG officials to review how CCG arrives at administrative costs in schedule 13 of CCG claims. The Administrator looks forward to this discussion taking place as soon as possible.

On a separate but related issue, on July 14, 2000, the Administrator received a letter from the Mayor of the Town of Long Harbour and Mount Arlington Heights, the municipality covering the wharf at Long Harbour, the site of the wreck of the *Sam Won Ho*. The Mayor's letter explained the difficulties the town and townspeople faced due to the wreck. In essence, the Mayor requested the Administrator to examine if SOPF funds could be made available to remove the wreck. A similar letter was received by the Administrator on July 18, 2000, from the Long Harbour Development Corporation, based in Long Harbour, and a third letter was received on the same date from the Harbour Authority of Mount Arlington Heights. The Administrator reviewed the history of the wreck and legislation applicable to the issue. On August 16, 2000, the Administrator wrote to the Mayor, with copies to the other two authorities stating - in summary:

- *CSA* Section 678 gives the Minister power to remove or destroy a ship where there is a pollution threat. If a claim were made on the SOPF for such actions, the Administrator would consider whether or not the measures taken and the costs and expenses are reasonable.

- Wreck removal is governed by two Federal Acts, namely the *Navigable Waters Protection Act* and the *Fishing and Recreational Harbours Act*. Wreck removal and/or salvage are not concerns of the SOPF. The powers given in these two Acts may not be dependent on the questions of whether or not there is a pollution threat, and what are the measures necessary to counter it.

3.41 Mystery Oil Spill - Port Cartier, Quebec (2000)

The CCG issued a Sitrep advising that oil pollution was found in the water between the Greek flag 81,120 gross ton bulk carrier *Anangel Splendour*, and the quay, alongside at Port Cartier, Quebec, on May 12, 2000, and extending some 200 metres ahead. There were two other vessel movements within the harbour over a similar period as the discovery of the oil spill.

Port Cartier is a private harbour of the Compagne Minière Québec Cartier (CMQC). The port authorities took charge of the clean up, in the presence of the CCG. The TCMS took oil samples. The oil resembled fuel oil and the quantity spilled was estimated at approximately 900 litres.

CMQC obtained a LOU from counsel for the *Anangel Splendour* to cover the costs and expenses of the clean up. It was stated that TCMS also required a LOU from the ship to cover any possible fine. The *Anangel Splendour* denied that she was the origin of the oil and sailed on May 15, 2000.

On January 31, 2001, the Administrator received a claim from the Crown on behalf of the CCG to recover their costs and expenses, stated to amount to $4,076.08. The claim is being investigated and assessed.

Meanwhile the Administrator's investigation into the origin of the oil continues.

3.42 Algowood (2000)

This is a 22,558 gross ton Canadian Great Lakes self-unloading vessel. She was alongside at Bruce Mines, Ontario, on June 2, 2000, loading aggregate stone when the hull structurally failed. The vessel sank at the dock. Bruce Mines is situated on the North Channel, Lake Huron, to the south east of Sault Ste. Marie.

Precautions were taken to prevent and contain any release of oil but there was no release. The *Algowood* was refloated July 10, 2000, and towed away for permanent repairs. The CCG was in attendance during the vessel's stay in Bruce Mines and, it is stated, agreed with the owners on payment of the CCG costs and expenses incurred.

It appears that there will be no claim on the SOPF. The Administrator closed his file.

3.43 Tahkuna (2000)

There was a diesel oil spill from this 846 gross ton Estonian flag fishing vessel during refueling from a road tanker while the vessel was alongside at Harbour Grace, Newfoundland, on June 7, 2000. Weather was poor at the time with steady rain and wind gusting to 30 knots. The ship's agent contracted with the Eastern Canada Response Corporation (ECRC) and the ECRC responded with labour and materials. The CCG was in attendance. After sounding the tanks involved, both on the vessel and the road tanker, it was concluded that about 1000 litres had been spilled.

3.44 Taurus (2000)

The CCG advised that this 1,020 gross ton Estonian fishing vessel had been involved in an oil spill when alongside at Argentia, Newfoundland. The incident took place during the morning of June 8, 2000, when refueling from a road tanker. The vessel did not have an arrangement for clean up with a response organization. The ship's agent signed a letter for the CCG to respond.

The CCG provided labour and materials and cleaned-up the spill, which quantity was stated to be about 200 litres.

TCMS advise that on April 6, 2001, fines were imposed in a Newfoundland Court: For the spill - $9,000.00 and, for not having an arrangement with a response organization - $3,000.00.

3.45 Mystery Oil Spill - Vancouver Harbour, British Columbia (2000)

On September 12, 2000, the Vancouver Port Authority (VPA) wrote to the CCG requesting assistance in order to present a claim for oil pollution clean up to the SOPF. Accordingly, on November 20, 2000, the SOPF received the CCG's letter passing on the VPA's letter. On November 24 and 30, 2000, and January 17, 2001, the Administrator wrote to the VPA requesting the submission of a formal claim, and providing a list of typical information necessary to consider such a claim.

The claim on the SOPF from VPA was received by the Administrator on January 23, 2001, and amounted to $20,375.80. The claim covered the clean up of oil found on the water at Seaboard Terminal, North Vancouver, British Columbia, on June 20, 2000. It was termed a mystery spill.

The Administrator in investigating and assessing this claim, requested information from VPA on February 13, 2001, to which the VPA responded on March 12, 2001. On March 30, 2001, the Administrator requested additional information and documentation. The investigation and assessment continues.

3.46 Mystery Oil Spill – Dingwall, Nova Scotia (2000)

Dingwall is a small harbour situated on the eastern shore of the northernmost peninsula of Cape Breton Island, Nova Scotia. The manager of a local cooperative fishing plant telephoned the SOPF on June 27, 2000, advising that there had been oil pollution in Dingwall Harbour on June 24, 2000, and that lobsters in cages in the harbour had been contaminated. The lobsters were removed from Dingwall and put into cages in the nearby harbour of Neil's Harbour. The manager complained that there was often oil spills in Dingwall Harbour. The manager stated he intended to make a claim for contamination of the lobsters against the SOPF. Calculating the, then, market price of the lobsters any such claim would have been in the order of $12,000.00.

The Administrator investigated the circumstances of the alleged incident. A TCMS surveyor investigating the report of pollution on June 24, 2000, in Dingwall, arrived there on June 26, 2000, but was unable to find any evidence of pollution. However witnesses indicated that there had been diesel oil pollution on June 24, 2000. The surveyor indicated that a shore oil tank might have been the origin. *CSA* Section 710(5) provides that the SOPF is not liable for claims where the occurrence was not caused by a ship.

On June 29, 2000, the Administrator wrote to the District Supervisor of the Canadian Food Inspection Agency, explaining the circumstances of the fishing cooperative complaint and requesting the results of any inspection of the alleged contaminated lobster. The manager of the cooperative was kept advised of the SOPF's action in the matter.

In reply to his letter of June 29, 2000, the Canadian Food Inspection Agency confirmed to the Administrator that they had sampled the alleged contaminated lobster in question and no trace of oil pollution or tainting could be found.

On August 3, 2000, the Administrator also wrote to the local office of EC, requesting their report on their walk-around survey of the harbour and their planned on-site

investigation to determine a possible land-based source. The Administrator awaits receipt of this information.

No claim was received from the fishery cooperative. The Administrator closed his file on the claim aspect of this incident.

3.47 Radium 604 (2000)

This incident refers to the same tug and barge train (*Radium Yellowknife* and tow) referred to in incident number 3.31 above.

As indicated in 3.31 above, it was reported that the tug and barge train were previously refused permission by TCMS to continue transit of the Arctic, because it was too late in the season. The barges were beached until more favorable conditions could be expected.

A CCG Sitrep of July 17, 2000 advised that on July 15, 2000, this 320 gross ton Canadian barge beached in Iqaluit, Nunavut, was found to be leaking diesel fuel.

It was reported that the barge leaked an estimated 10 litres of diesel from a crack in the underside of the hull. Then it was reported that the leak increased to approximately 100 litres per hour, onto the beach. The leak was temporarily plugged. The CCG contracted to have the remaining 46,000 litres of diesel in the *Radium 604* transferred to secondary storage.

The CCG emergency response officers (ER) were expected on site on July 17, 2000, to assume the role of Federal monitoring officer. The Iqaluit beach master was on scene for CCG until ER personnel arrived on site.

The owner of the barge is stated to have accepted responsibility for the spill and sent representatives to the site.

3.48 Skaubryn (2000)

The SOPF received a report that there was an oil spill at Seaboard Terminal, North Vancouver, British Columbia, the spill being found late evening August 3, 2000. Two ships were berthed at the terminal, the *Skaugran* and the *Skaubryn*.

Early on August 4, 2000, the VPA responded to the spill and tasked local contractors for clean up. Later that forenoon the VPA determined the spill was sufficiently large to transfer overall responsibility for the clean-up to the CCG. TCMS, CCG and EC investigated the circumstances of the origin of the spill. Samples from the spill and ships in the vicinity were taken.

The CCG reports that it intends to present its claim to the owner of the *Skaubryn*.

Vancouver Harbour Incidents

Following the oil found off the Seaboard Terminal, North Vancouver, August 3, 2000, the VPA presented a claim to the SOPF for its response. A number of vessels in the harbour also reported oil contamination. The cause of these incidents and their connection, if any, with the Seaboard Terminal incident, is under investigation by the Administrator. These incidents are reported as 3.49 to 3.56 inclusive, following.

3.49 Vancouver Port Authority (2000)

The VPA submitted a claim to the SOPF for its response to the above incident on August 4, 2000, which was received on March 14, 2001, amounting to $13,007.72. The Administrator awaits further information from the VPA to enable him to continue his assessment of the claim.

3.50 17' speedboat (2000)

An individual submitted a claim to the CCG on August 29, 2000, amounting to $500.00, for cleaning his boat of oil. The claim was passed to the Administrator and received on November 21, 2000. The Administrator wrote to the individual on November 24, 2000, requesting confirmation that he wished to make a claim against the SOPF. The individual replied on December 4, 2000, in effect, confirming his claim against the SOPF. The Administrator commenced his investigation and assessment of the claim. On March 30, 2001, the Administrator wrote to the owner requesting substantiation for the individual amounts making up the claim.

3.51 Leedon (2000)

This is a private, small, motor yacht. The yacht was moored in a marina on the south side of Vancouver Harbour, in a downtown location when, on August 9, 2000, the owner contacted the CCG with respect to the craft having been found to be oiled. The exact time and date of the oiling was not stated. On October 8, 2000, the owner submitted a claim to the CCG for $298.65, which claim covered hauling-out, power washing and repainting the affected part of the hull. The claim was passed to the Administrator by CCG and received by him on November 21, 2000. The Administrator wrote to the owner on November 24, 2000. He provided the owner with information to assist with the presentation of a formal claim to the SOPF. The owner submitted a formal claim to the SOPF with supporting documentation and information. It was received on January 11, 2001.

The Administrator investigated and assessed the claim. Shortly after the fiscal year end the Administrator paid the claim in full, together with interest of $16.01.

The Administrator closed this claim file.

3.52 Burrard Clean #17 (2000)

This is a 447 gross ton Canadian registered barge owned and used by the local response organization Western Canada Marine Response Organization (WCMRC). On August 15, 2000, the owner submitted an invoice to the CCG for $2,542.35 to recover their stated costs due to the oiling of the off-duty, moored, barge in Vancouver Harbour. The CCG passed the invoice to the Administrator, which was received by him on November 21, 2000. The Administrator sent an acknowledgement to the WCMRC on November 24, 2000, and information to assist in submitting a claim to the SOPF was sent by him on November 30, 2000. The claim was received from the WCMRC on December 27, 2000, and duly investigated and assessed. Further information was obtained from WCMRC and third party sources respecting aspects of the claim. The Administrator found a number of individual items were not established within the meaning of the *CSA* and, on February 27, 2001, he offered $1,333.93, plus the appropriate interest, in settlement. WCMRC disputed some of the Administrator's assessments, but on March 20, 2001 they accepted the offer and provided a duly signed release and subrogation document. On March 22, 2001, the Administrator arranged to pay the amount of $1,333.93, plus $70.27 interest, in full and final settlement.

The Administrator notes that in this case the claim under *CSA* Section 710 was made by WCMRC *qua* shipowner and not as a response organization (RO) under the *CSA*. Generally, an RO as defined in the *CSA* has no direct claim against the SOPF under Section 710 but it can assert a claim for unsatisfied costs and expenses after exhausting its right of recovery against the shipowner, pursuant to Section 709.

The Administrator closed this claim file.

3.53 Island Provider (2000)

Another claim involving oil pollution in Vancouver Harbour was made by the owner of this 35 gross ton Canadian wooden fishing vessel. The owner stated that the vessel was delivering salmon to a company located in downtown Vancouver when, during the early hours of August 5, 2000, the hull, mooring ropes and floats became coated with oil. The owner presented a claim to the CCG for the amount of $4,415.89, on October 6, 2000, to recover its stated, costs and expenses in the incident. In turn this was passed to the Administrator on November 21, 2000. The Administrator acknowledged the correspondence on November 24, 2000 and provided information to the owner on November 30, 2000, to assist in making a claim on the SOPF. Telephone discussions with the owners followed. The Administrator investigated the circumstances of the claim and the alleged oiling. To date no claim on the SOPF has been received from the owner.

3.54 Silver Bullit (2000)

This vessel is a family owned and operated 7 metre aluminum workboat engaged in boom repair, water taxi engagements and other tasks. The boat was working by the B.C. Sugar Company dock on the south side of Vancouver Harbour on August 4 and 5, 2000, when the hull and engine cooling system were stated to have become oil contaminated. The owner wrote the CCG on August 10, 2000, indicating a wish "to register a claim for damages against the deep-sea vessels" causing the oil contamination, at that time estimated at $8,500.00. This correspondence was passed by the CCG to the Administrator on November 21, 2000. The Administrator acknowledged receiving the correspondence on November 24, 2000. The Administrator wrote again on November 30, 2000, asking the owner for written confirmation that he wished to make a claim on the SOPF and, at the same time, providing information as to how to make such a claim. The owner telephoned the Administrator on December 6, 2000, indicating that he intended to make a claim.

A follow-up telephone call was made by the SOPF to the owner on February 7, 2001, but, to date, no claim and supporting documentation has been received by the Administrator.

3.55 Georgie Girl (2000)

The *Georgie Girl* is a 8 metre fiberglass pleasure motor yacht and was moored at a marina on the south side of Vancouver Harbour, when the hull and fenders became oil coated at a date and time, which is not exactly identified. The owner contacted CCG on August 9, 2000, regarding the incident. The owner filed a claim with the CCG on September 18, 2000, amounting to $217.86 to cover the cleaning and replacement costs involved. The correspondence was passed to the Administrator by the CCG on November 21, 2000. The Administrator acknowledged the correspondence from the owner on November 24, 2000. Information as to how to file a claim against the SOPF was sent to the owner on November 30, 2000. The owner submitted a claim to the Administrator in the amount of $217.86, which was received on January 9, 2001. At the fiscal year's end the Administrator made arrangements to pay the claim in full, together with $12.20 interest, thus closing this claim file. A release and subrogation agreement in favour of the Administrator was executed and delivered by the owner on April 10, 2001.

3.56 Prosperity (2000)

This is a 96 gross ton Canadian registered aluminum fishing vessel. On September 13, 2000, the Administrator received a claim, amounting to $54,794.29, from the owner, stated to be the costs

incurred by the vessel in dealing with the oil pollution encountered during the morning of August 4, 2000. At the time of the incident the vessel was at a dock in downtown Vancouver unloading sardines, when the hull became oil contaminated. The owner cautioned that further costs could be incurred in removing the oil impregnated into the aluminum hull, which oil could not initially be removed by normal cleaning.

The Administrator investigated and assessed the claim, in the process of which he employed local counsel. The claim raised a number of concerns with the Administrator including the charges stated to have been incurred by the shipyard, fishing time lost, crew wages, fuel costs, owners charges and other, lesser, items. Another issue was the question of the owner's legal fees. The legal expenses claimed were rejected.

Following a number of negotiations with the owner on the contentious items, on February 14, 2001, SOPF counsel confirmed to the owner a full and final settlement offer by the Administrator of $27,172.88, plus $1,239.34 interest. On February 22, 2001, SOPF counsel advised that the owner had signed the release and subrogation document. On the same day, February 22, 2001, a cheque in the amount of $26,924.22 was passed to the owner. On receiving the necessary evidence of payment to the crew, the final cheque of $1,488.00 was made available to owner after the end of the fiscal year. This payment completed the settlement of this particular claim and the Administrator closed his file on the claim aspect.

The shipowner had provided a sample of the oil that damaged the vessel. The Administrator sent the sample for analysis and comparison with samples taken from the spill at Seaboard Terminal reported at 3.48 above. The Administrator continues his investigation into the origin of the oil, for the purpose of possible recovery action.

3.57 Texada (2000)

The first time the Administrator was aware of this incident was on August 5, 2000, when he received a fax from counsel on behalf of a West Coast salvage company, which had been engaged to assist with the salvage (and pollution response) of the vessel called the *Texada*. The *Texada* is a 100 gross ton Canadian registered wooden fishing vessel, built in Nova Scotia in 1930. The vessel had gone heavily aground in Dolomite Narrows (locally known as Burnaby Narrows), a dangerous passage, near the southern end of the Queen Charlotte Islands, British Columbia. This grounding occurred early morning on August 4, 2000. As well as the salvors, the grounding was responded to by the CCG and Parks Canada. The area is near Gwaii Hacenas National Park Reserve – Haida Heritage Site.

By August 7, 2000, the fuel had been removed from the tanks of the vessel but other residual oils remained on board. On August 8, 2000, the *Texada* was successfully refloated and then beached nearby to effect temporary repairs. During this operation an unknown quantity of oil escaped from the vessel and the slick extended out into the inlet. It was necessary to carry out a shoreline clean-up.

On August 18, 2000, the Administrator received a copy of a letter from the salvor's counsel advising that: i) the salvor's would not present any claim to the Government of Canada for their services; ii) the owner would bear full cost of the incident from the date of the grounding; and, iii) requesting the CCG costs to date.

The CCG stated their costs would not exceed $20,000.

The Administrator employed a surveyor to assess the circumstances and condition of the vessel. The surveyor attended on site on August 19, 2000, and conducted his survey, advising on pollution aspects, condition of the vessel, proposed towing operation and suitability.

On August 28, 2000, it was reported that the *Texada* had been delivered to Mitchell Island, Fraser River, British Columbia. A CCG Claims Status Report noted that the CCG costs and expenses, amounting to $11,235.41 had been presented to the shipowner on November 9, 2000, and it had been paid in full on November 22, 2000. The Administrator closed his file.

3.58 Algoeast (2000)

The TSB reported that this vessel struck bottom in the Amherstburg Channel, off the town of Amherstburg, Ontario, on August 10, 2000, suffering considerable bottom damage and holing the forepeak, but causing no pollution. The vessel is a 7,886 gross ton Canadian registered double-hulled tanker and was upbound carrying a cargo of bunker "C" from Nanticoke, Ontario, to Sarnia, Ontario. The *Algoeast* proceeded on to a designated anchorage area, where she stopped for a full inspection. It was reported that river levels were normal at the time. The vessel was later allowed to proceed. Temporary repairs were then undertaken.

The CCG advise that they had no billable expenses in this incident. The Administrator closed his file.

3.59 Old Timer (2000)

The CCG received a telephone call during the morning of August 20, 2000, advising that a pleasure craft was sinking at Armdale Yacht Club, Northwest Arm, Halifax Harbour, Nova Scotia, and releasing oil and gasoline. The CCG responded and found the *Old Timer*, a small fiberglass cabin cruiser, sunk with the gunwales below water. The CCG was advised that the owner of the craft was out of the country and they, then, assumed the response role. Booms and absorbents were deployed

to contain and recover the oils being released. Later, the same day, contractors removed the *Old Timer* from the water and placed her in a cradle ashore at the yacht club.

The total costs and expenses incurred by the CCG in this incident were stated to be $11,154.93. CCG presented cost recovery documentation to the owner on January 2, 2001. The CCG Claim Status Report of March 31, 2001, notes that a settlement was reached on the claim. Payment was made by the owner on March 1, 2001. The Administrator closed his file.

3.60 Avataq (2000)

A CCG Sitrep advised that overnight August 24/25, 2000, the 29 gross ton Canadian fiberglass fishing vessel unofficially named *Avataq* (ex *Judith Rose III*) had taken on water 10 miles off Arviat in Hudson Bay and had sunk, with the loss of four lives. On sinking, the vessel released debris and some oil pollution. It was stated that a review of local aircraft indicated that none were suitable for tracking the debris field. The diesel oil was judged non-recoverable and dispersed quickly. In this latter context the CCG noted that there was a critical loss of time, six days, before CCG ER was aware that oil pollution was involved. It appears that the initial SAR reports did not indicate any "pollution".

The Administrator has closed his file.

3.61 Atlantic Hawk (2000)

A CCG Maritimes Region incident report advised that, on August 30, 2000, this 2,955 gross ton Canadian registered offshore supply vessel had experienced an oil spill when alongside an oil dock in Halifax Harbour, Nova Scotia. It was estimated that 45 - 70 litres of diesel oil was spilled but that the majority was contained on the deck and only 5 - 10 litres went into the water. The oil on deck was cleaned-up and the resultant light oil sheen on the water was deliberately broken up utilizing small craft, with no further action being required. It was stated that the spill was caused by heat expansion of the fuel in a tank aboard the vessel, releasing through an overflow pipe.

TCMS advise that on July 18, 2000, the ship was fined $5,000.00 in a Nova Scotia court for oil pollution.

The Administrator has closed his file.

3.62 Keta V (2000)

Keta V was a 236 gross ton Canadian registered tug used in support of dredging operations. Overnight October 3/4, 2000, the *Keta V* when on passage grounded on rocks in Liverpool Harbour, Nova Scotia. The tug refloated and went to anchor, where she sank. All seven crewmembers abandoned into a life raft and were rescued. It was stated that there was approximately 27,000 litres of diesel fuel aboard. There is a large salmon fish farm about one-half mile from the wreck position. The CCG and EC, among others, were dispatched to the scene. During October 4, 2000, divers were employed to plug the fuel tank vents and a containment boom was deployed. The nearby fish farm was boomed. Efforts were made to recover oil from the wreck. Weather conditions remained adverse and the wreck received more damage as it pounded the bottom. The CCG ordered the owners to remove the wreck. On October 23-24, 2000, salvors attempted to raise the wreck using a crane and lift bags, but were unsuccessful. After additional preparations, the contractor could not raise the vessel on November 11, 2000. By this time, the wreck was so badly damaged that there were not enough watertight compartments to assist provision of positive buoyancy. Severe adverse weather continued, and it was necessary to revise the original plan to raise the *Keta V*. On January 15, 2001, to a new, agreed, plan contractors commenced removing all components, which may be contaminated with oil. This removal task was completed on January 19, 2001, and, approved by the authorities. Further work ceased. It was intended that an underwater survey of the remains of the wreck would be made in the Spring of 2001 to ensure no other threat of pollution existed.

The March 31, 2000, CCG Claims Status Report noted that the claim to recover the CCG costs and expenses amounted to $34,117.13, and that the claim was to be submitted to the shipowner.

3.63 Sandviken (2000)

On October 10, 2000, a Canadian military aircraft on routine maritime patrol overflew the 23,271 gross ton Bahamian flag, Norwegian owned, bulk carrier *Sandviken* and observed the ship discharging oil. The ship was about 37 nautical miles off Yarmouth in the southwest coast of Nova Scotia. The oil slick trailing astern of the ship was judged to be about eight nautical miles in length and calculated to contain some 2,000 to 3,000 litres of oil. The *Sanviken* was en route from Saint John to Toronto with a cargo of steel.

TCMS surveyors boarded the ship in the St. Lawrence River and, with the additional evidence obtained, charges were laid in Nova Scotia provincial court in Halifax.

The shipowners stated the release of oil was accidental caused by a malfunction in the oily water separation unit, when pumping bilge water. The owners pleaded guilty and, on April 23, 2001, were fined $40,000.00.

The Administrator closed his file.

3.64 Endurance (2000)

This incident was noted as appearing in the December 31, 2000, CCG Claim Status Report for potential cost recovery action. It is reported that this tanker was alleged to be the origin of an oil slick some five miles long by 70 metres

wide. The slick was detected by military patrol aircraft on November 28, 2000, about 50 miles off Cape Breton, Nova Scotia.

The *Endurance* is a 22,847 gross ton Singapore registered tanker and was reported to be en route to Come by Chance, Newfoundland, at the time. Later reports stated that on December 4, 2000, TCMS officials laid charges against the owner for unlawfully discharging pollutants. The owners were scheduled to make their first court appearance in Halifax, Nova Scotia in January, 2001.

Concern was expressed by EC officials that seabirds and other aquatic animals could be impacted by the spill. Inshore fishermen, close to the spill, expressed their worries about the effect such spills can have on their livelihood.

The March 31, 2001, CCG Claim Status Report states "no costs attributed to CCG response".

The Administrator closed his file.

After the end of the fiscal year it was reported that the vessel owner was fined $35,000.00 in Halifax provincial court after pleading guilty to a pollution charge under the *CSA*.

3.65 Eastern Power (2000)

A CCG Sitrep advised that on December 6, 2000, this 126,933 gross ton Panamanian flag tanker encountered severe weather in the Atlantic, en route from Egypt to Come by Chance, Newfoundland, and developed a leak to the sea from No. 1 starboard oil cargo tank. The tanker was carrying a cargo of Basrah crude oil. Oil was transferred from the damaged tank. The ship's situation was monitored by, among others, TCMS and the CCG. TCMS denied the tanker entry into Canadian waters until such time the ship could demonstrate that there would be no discharge of oil into the marine environment.

An overflight by Canadian aircraft on December 7, 2000, could detect no further leakage in the calm sea conditions, which then existed. At that time the *Eastern Power* was in the Atlantic making one – two knots some 35 miles outside the Canadian Exclusive Economic Zone (EEZ). A further overflight took place on December 8, 2000, and detected no sign of oil leakage, in the heavy sea conditions which existed. In the meantime Government agencies assessed the ship's condition and planned for her arrival. At the same time the owners reportedly arranged for divers to survey the ship in the Atlantic. The CCG Sitrep of December 11, 2000, noted that storm force winds were forecast for the ship on December 12, 2000. On December 11, 2000, the ship agreed to conditions set by TCMS and was given clearance to enter Canadian waters and proceed to the destination of Come by Chance. On December 12, 2000, the owners advised that the *Eastern Power* had suffered storm damage to forward deck fittings and were concerned with the ship's condition and the "sensitive" passage in Placentia Bay, Newfoundland.

The Administrator actively monitored the situation throughout and took steps to protect the interests of the SOPF.

On December 12, 2000, North Atlantic Refinery Ltd. advised Canadian authorities that the *Eastern Power* was now proceeding to the Caribbean.

The Administrator closed his file.

3.66 Irving Primrose/Severn (2000)

Late in the evening of December 17, 2000, Fundy MCTS notified the 18,023 gross ton Liberian flag tanker *Severn* that she was dragging anchor in the heavy wind conditions, which existed when anchored off the port of Saint John, New Brunswick. The tanker, in ballast, acknowledged the dragging and, using the engine, attempted to manoeuver to safety. The *Severn* struck and holed the 131,239 gross ton Barbadian flag tanker *Irving Primrose*, also at anchor. The *Irving Primrose* had 285,072 tonnes of Arabian crude oil aboard but, being of double hulled construction, there was no escape of oil. The *Severn* damaged her bulbous bow.

TCMS and the owners subsequently inspected both vessels, following which the necessary temporary repairs were undertaken.

The Administrator closed his file.

3.67 Tri-Con Commander (2001)

This was a 85 gross ton Canadian wooden/fiberglassed fishing vessel. A CCG Sitrep advised that during the morning of January 1, 2001, the vessel caught fire at the community wharf in Valleyfield, Bonavista Bay, Newfoundland. The vessel burnt to the waterline and was towed from the wharf. There had been some 18,000 litres of diesel and 775 litres of hydraulic oil on board. The insurers tasked local contractors and, together with the CCG, responded. Contractors removed the remaining oils and assisted the CCG in preventing pollution.

No further pollution response was deemed necessary. The future of the grounded vessel was passed to the Navigable Waters Protection section of the CCG for evaluation as to whether it constituted danger.

The insurers indicated that they would pay the CCG costs and expenses in supporting the operation.

The Administrator closed his file.

3.68 Cicero (2001)

This is a 10,919 gross ton Canadian registered, British owned, ro-ro ferry operating between Montreal, Quebec and St. John's, Newfoundland.

The CCG reported that, on February 5, 2001, there was a bunker oil spill from the vessel when she was alongside at Section 66, Montreal harbour. A crack was found in the hull. Local contractors were employed on behalf of the ship to effect the clean-up, monitored by the CCG.

The CCG stated that their costs and expenses would be billed to the operators of the ship.

3.69 Sandy S (2001)

The issuance by the CCG of a Sitrep advised the Administrator of this incident and, thus, the potential for a claim against the SOPF.

On February 9, 2001, the 13 gross ton Canadian wooden fishing vessel, built in 1947, sank alongside in Prince Rupert Harbour, British Columbia. The local DFO Small Craft Harbour personnel provided initial response to the sinking. The sinking resulted in the release of some of the approximately 900 litres of diesel fuel aboard. The owner stated he would obtain help from friends to raise the vessel. This did not happen, forcing the CCG to act. On February 13, 2001, the CCG sent a letter to the owner advising him that, pursuant to the *CSA*, they held the owner responsible for all costs and expenses incurred by the Canadian government in the sinking of the *Sandy S.* The owner stated he had no funds available to salvage the vessel. The owner signed a letter undertaking to be responsible for all costs and expenses incurred by the Canadian authorities under Section 677 and 678 *CSA*. On February 13, 2001, under contract to the CCG, salvors raised the vessel and removed the remaining oils aboard. The vessel was then towed to the Osborne Burn Site where it was to be temporarily beached.

The CCG stated they intend to proceed with cost recovery with the claim to be submitted to the shipowner.

3.70 Cartierdoc (2001)

During the afternoon of February 27, 2001, the chief engineer of this 18,531 gross ton Canadian Great Lakes bulk carrier advised the local office of TCMS that this vessel had been involved in an oil spill. The *Cartierdoc* was laid-up for the winter at berth M2, in Montreal Harbour. TCMS, CCG, EC, the Port Authority and the master, responded. The owners contracted for the clean-up. During the winter lay-up, as routine, the engine room bilges were pumped on a regular basis. It was reported that as well as the bilge water, an estimated 1,100 litres of diesel and lubricating oils had been pumped overboard. The thick ice, fast around the vessel, and in a current free berth, had held the oil. Holes were drilled in the ice and most of the oil was recovered. It was stated that an oily water separator aboard the *Cartierdoc* had malfunctioned.

The clean-up operation was monitored by the CCG, and they stated they intend to bill the owners for their costs and expenses. It is understood that TCMS is contemplating laying charges under the *CSA*.

4. Issues and Challenges

4.1 Arctic Response Strategy

Last year's Annual Report noted that the CCG was developing an "Arctic Response Strategy" to ensure that an effective response capability is in place to respond to marine pollution incidents in the Canadian Arctic.

Since it produced its initial report in November 1999, the CCG carried out further consultations with the shipping industry and community leaders in the northern territories. As a result, the Arctic Response Strategy is now established and is being implemented. Consultations will, however, continue to ensure a government and industry partnership, because strong support from all stakeholders is essential to maintain an effective national oil spill regime.

In terms of preparedness and response capability, the CCG is developing an Arctic marine spill contingency plan to define the role and responsibility of each organization that may be called upon. In addition, during the 2001 annual sealift operations, the CCG will ship an amount of pollution countermeasure equipment to various coastal communities in the North. Community response officers are being selected and a CCG auxiliary is being established in the northern communities. Some communities will be equipped and personnel trained to respond to an oil spill up to 150 tonnes. Further, the CCG icebreakers are being equipped to respond to a spill up to 50 tonnes.

It is acknowledged that in the event of a significant oil spill, it will be challenging to deliver appropriate equipment on a timely basis from large storage sites south of 60° North, in addition to dealing with the environmental conditions.

Two-thirds of Canada's coastline is located in the Canadian Arctic.

4.2 Safe Ships and Environmental Protection

Several recent tanker incidents in Europe have captured the attention of the maritime community. These marine casualties include *Erika* (France 1999), *Levoli Sun* (France 2000), *Kristal* (Spain 2001), *Castor* (Mediterranean 2001), *Balu* (Bay of Biscay 2001) and the *Baltic Carrier* (Denmark 2001).

4.2.1 ISM Code

These incidents raise questions about the effectiveness of the ISM Code.

The international maritime media is reporting on concerns and issues being raised about the ISM Code including:

- An analysis reported by the Swedish P&I Club shows that ships complying with the ISM Code have made significant claim improvements in comparison with non-ISM Code ships.
- It is reported that a growing number of key players are writing off the industry's response to the ISM Code – meant to be a shipping blueprint for a higher quality industry – as "a flop".

In 1994, the International Convention for the Safety of Life at Sea (SOLAS) was amended to include the IMO management principles and guidelines for the Safe Operation of Ships and for Pollution Prevention, commonly known as the ISM Code.

The ISM Code came into force on July 1, 1998, for passenger ships, oil tankers, gas carriers, bulk carriers and cargo high-speed craft. Other types of ships of 500 gross tons and above, and mobile offshore drilling units must comply by July 1, 2002.

The ISM Code provides an international standard for the safe management and operation of ships, and for the protection of the marine environment from oil pollution.

The adoption of the ISM Code was considered to be a watershed in international regulation. The shipowner and/or company are responsible for ensuring that adequate resources and shore-based support are provided to enable sound management of the ship. To this end, the shipowner should establish standard procedures such as:

- emergency preparedness;
- maintenance of the ship and equipment;
- documentation;
- reports and analysis of non-conformities, accidents and hazardous occurrences; and,
- company verification, review and evaluation.

The Code employs the principle of continuous improvement through audits, reviews and corrective action. When the safety management system of a shipping company is approved, a Document of Compliance for the company and a Safety Management Certificate for the ship are issued under the provisions of SOLAS by an organization recognized by the flag state administration – for example, Lloyd's Classification Society.

In February 2001, the IMO secretary-general, William O'Neil, announced plans for an assessment of the effectiveness and impact of the ISM Code so far. He told delegates of the IMO Sub-Committee on Flag State Implementation at its 9th session that: "We should not allow it to become merely a paper exercise". Mr. O'Neil explained that the IMO would continue to focus on efforts to ensure a sound approach to the maintenance and enhancement of safety and marine environmental protection. Independent flag states were requested to provide an audit as quickly as practical. Regional port state agreements were identified as a useful source of information about ISM Code deficiencies, and the number of detentions recorded for ISM and non-ISM certified ships.

In conclusion, it is encouraging to note one man's crusade in the cause of maritime safety. It is reported that the vice-president of the London-based Nautical Institute has embarked on a research project registered at Middlesex University. This P&I expert is tackling the issue as to whether or not the ISM Code is working. He will be distributing 60,000 copies of his questionnaire around the world through officers' unions and by Missions to Seafarers. It is available on a dedicated website: www.ismcode.net.

4.2.2 Classification Societies

The role of classification societies is critical in ensuring safe ships and environmental protection.

As the Chairman of the American Bureau of Shipping (ABS), commenting on the criticism of classification societies since the *Erika* incident, has indicated: "When a vessel goes through a special survey and is issued a new certificate, the owner and the public have a right to assume the vessel has been judged safe to operate, from a structural standpoint, for an additional five years assuming all conditions and trends continue."

At the recent Intertanko conference in Sydney, Australia, a paper on new building written by an acknowledged expert in ship owning, Basil Papachristidis of Hellespont Shipping, concluded that regulation is needed through IMO for:

- Design standards;
- Construction standards;
- Post-delivery responsibilities.

It is his view that classification societies must be forced to adopt uniform construction and seaworthiness rules which should be set at the highest common denominator. Competition among classification societies should be on fees and service quality only – not standards.

In the recently released report, "Ships, Slaves and Competition", by the International Commission on Shipping (ICONS), it was noted that classification societies were the most widely criticized bodies in the course of the Commission's inquiries. The report concluded that unless classification societies re-establish their professionalism by strictly and consistently applying technical standards to all ships, they will face increasing regulation and commercial isolation. The Commission believes that at this stage independent regulatory monitoring of classification societies' performance is required.

4.2.3 Safety Culture

The theme of the 2001 International Oil Spill Conference held in Tampa, Florida, was Global Strategies for Prevention, Preparedness, Response and Restoration.

The following are excerpts from one of many excellent papers presented which, in the Administrator's view, provides a unique and positive perspective on oil spill prevention and best response.

Sustainable Shipping: The Benefits of the "Safety Culture" Far Outweigh the Costs

by: Barbara E. Ornitz
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Aspen, Colorado 81612

"An important challenge for the maritime industry is whether those involved in the transport of oil will embrace the concept that the "safety culture", which includes protection of the environment, is "good business". Ship owners/operators and others in the maritime business will adopt the safety culture when they believe in a "continuous and never-ending improvement process as a means to promote productivity and profitability". Sustainable shipping requires the prevention of costly accidents and activation of "best response", thus reducing environmental impacts if oil spills happen."

"Proactive safety management, creation of a quality system with accountability in each link, training of qualified mariners, and using the appropriate response technologies are examples of policy considerations needed to implement this culture. These policy goals should replace short-term thinking of profit maximization and crisis reaction. Safety saves dollars."

"Oil spills result in tangible, direct losses of life; injuries; and damage to the environment, cargo, and vessel. Direct costs measure only part of the total. Indirect and hidden costs are harder to quantify. They include, for example, reduced worker morale and productivity, eroding customer base, and in this litigious age, Natural Resource Damage Assessments (NRDAs), economic loss claims, increased insurance costs, fines, imprisonment of Chief Executive Officers (CEOs) and loss to the corporation for their services, public notoriety, lost opportunity, and many other similar losses. The indirect and hidden costs equate to an increase in direct costs, using a conservative multiplier of 2.7 to 1. Estimates of the total cost of all categories for all vessels involved in marine incidents annually are between $581 million and $1 billion. (Conversely, high quality safety management yields cost savings annually for industry of between $500 million and $1 billion, or an average for individual companies of $200,000.) True cost accounting (measuring all costs – external, internal, hidden) translates to a better bottom line."

"... This policy shift requires ship owners/operators to incorporate the International Safety Management Code (ISM Code) into their businesses, rely on quality management in all aspects of ship operation, infuse money into maintenance, upgrade ship systems, train qualified individuals, and employ professionals, not "cheap crew". In other words, money spent upfront saves mega dollars later."

"...Det Norske Veritas (DNV), one of the three largest classification societies worldwide, has undertaken a systematic analysis of the current industry attitude toward proactive safety and environmental concerns. DNV classifies these views into three categories (Ullring, 1996a):

- *Evasion Culture: companies that do not take recognized international standards seriously and even have a good feeling when they succeed in evading these standards*
- *Compliance Culture: companies that do what is being expected of them*
- *Safety Culture: companies that believe in a continuous improvement process as a means to promote productivity and profitability."*

"The maritime industry's goal should be to develop a safety mentality in all those engaged in shipping oil. The current, more passive, inspection culture relies on regulatory inspections to find "problems", fixes the symptoms without determining what the true root causes are, and reacts with suspicion and disbelief toward regulators. The regulators, in turn, heavily depend on the traditional system of primarily technical compliance through inspection. The safety culture requires a continuous learning process that incorporates lessons learned and addresses root causes. The indirect effect of these elements is protection of the environment (Evans, 1999)."

4.2.4 Single-Hull Tanker Phase-out

The IMO Marine Environment Protection Committee has unanimously adopted amendments to Marpol Regulation 13G, accelerating the phasing out of single-hull tankers. Pre-Marpol tankers that were not required to have segregated ballast tanks are to be phased out by 2007. Most single-hull oil tankers must now be eliminated by 2015 or earlier. Marpol tankers built after 1982 are required to have segregated ballast tanks.

The amendments to the regulations, which enter into force September 1, 2002, set a final cut-off date of 2015 for the withdrawal of Marpol single-hull tankers. However, the flag state administration may allow for some newer single-hull ships registered in its country and conforming to certain technical specifications to continue trading until the 25th anniversary of delivery, or until its anniversary date in 2017. These are oil tankers of above 5,000 dwt but below 20,000 dwt (crude oil) and under 30,000 dwt (product tankers).

This is one of IMO's post-*Erika* measures.

4.3 Ports of Refuge for Damaged Ships – Threat of Pollution

The issue of ports of refuge for ships in peril has come into sharp focus. It was highlighted recently in Europe in the *Erika* and *Castor* incidents. In Canada, Transport Canada refused to allow the damaged oil tanker *Eastern Power* to enter Canadian waters.

In the morning of December 6, 2000, the Panamanian tanker *Eastern Power* (126,993 gross tons) developed a crack in No 1 starboard cargo oil tank below the waterline. A leakage of oil was suspected. When the incident occurred, the ship had encountered heavy seas enroute from Egypt to the North Atlantic Refining Ltd refinery at Come by Chance, Newfoundland.

The Captain reported to the Eastern Canada Reporting Office (ECAREG) that his ship was about 150 miles east of the 200-mile exclusive economic zone. The ship was laden with approximately 1.9 million barrels of Basrah crude oil. He had transferred 13,500 barrels of oil from No 1 to a centre cargo tank and reported that no further sign of leakage was observed once hydrostatic balance was achieved. The Captain confirmed his intention to continue the voyage to Come by Chance.

By the next day, based on the information provided to ECAREG, Transport Canada Marine Safety (TCMS) had denied the *Eastern Power* entry into Canadian waters, until such time the ship could demonstrate that it would not discharge oil into the marine environment. While TCMS was reviewing the condition of the *Eastern Power*, the ship remained waiting outside the 200-mile limit. Meanwhile, a low-pressure weather system moved over the area and intensified significantly to storm force sea state and weather conditions. At no time did the Master report to be in distress.

There was considerable media coverage and interest by citizens, particularly in Newfoundland.

On December 11, TCMS granted permission for the ship to enter Canadian waters and proceed to the North Atlantic refinery. The owners had provided reports of damage. TCMS was satisfied that the ship could transit and discharge its cargo safely. To this end, the remaining oil from No 1 starboard was transferred to other centreline tanks. The owner also accepted a number of conditions imposed by TCMS and CCG.

The *Eastern Power* did not enter Canadian waters. On December 12, the owners diverted the vessel to the Caribbean port of St. Eustatius in the Netherlands Antilles.

It is said that there is a "tradition" of ports offering refuge to damaged ships. Today, a damaged tanker loaded with oil is often considered an unwelcome guest by the littoral state, because of potential oil pollution damage. However, in some cases the coming into a port of refuge or more sheltered waters could reduce the threat of pollution.

Canadian authorities have the statutory powers to direct the movement of and detain vessels within Canadian waters when it is necessary for reasons of safety and pollution prevention.

Now there is an additional factor that may have to be considered. As a result of Canada's National Marine Policy announced in 1995, many of the larger ports are now established as Canada Port Authorities (CPA).

Each CPA, as laid out in the *Canada Marine Act* of 1998, can exercise a number of powers including clearance for ships to enter and leave the port. Because the CPAs are set up on a self-sufficient commercial basis, they could have concerns regarding the ability of a ship requiring a port of refuge to pay for normal harbour fees, or any additional costs resulting from damages to surrounding facilities or property or oil pollution.

TCMS officials advise that it intends to hold a debriefing or "lessons learned" session on the *Eastern Power* incident, to which the Administrator will be invited.

For its part, CCG advised the Administrator, *inter alia*, that "established procedures for preparing for potential spills were followed by the Coast Guard and other organizations in dealing with the situation. Coast Guard monitored developments closely along with Transport Canada and Environment Canada. A Letter of Undertaking was signed by the representative of the vessel's owner, and an arrangement activated with Eastern Canada Response Organization (ECRC). Coast Guard, in cooperation with Environment Canada and ECRC, developed contingency plans to deal with a range of possibilities and a number of concrete preparatory measures were taken before the vessel decided against entering Canadian waters."

Internationally, there appears to be a broad consensus for the need to address the issue of ports of refuge and determine how and under which conditions littoral States should give shelter.

IMO has been asked to take immediate action on ports of refuge. It is being urged on by recent incidents in Europe.

For example, in the *Castor* incident, a number of littoral States in the Mediterranean Sea refused refuge to the damaged ship. The ship's flag state, Cyprus, offered refuge but it was approximately 1000 miles away.

On December 31, 2000, while in the region of the Strait of Gibraltar the Greek product tanker *Castor* developed a 26-meter crack across the main deck. The ship was loaded with approximately 29,500 tonnes of gasoline. Subsequently, the Spanish search and rescue authority successfully rescued all the ship's crew.

Tugs of the salvage company, Tsavliris, towed the *Castor* for 39 days across the western Mediterranean. They encountered extreme force 12 gales with wave heights over eight meters without, reportedly, experiencing any further deterioration in the structural condition of *Castor*. The convoy was unable to obtain permission to enter a port of refuge or seek the shelter of a headland. Eventually, however, the weather conditions improved and allowed safe transfer of the cargo to shuttle tankers in open water.

In the *Erika* incident, the internal investigation by the Italian Classification Society, RINA, which was responsible for certifying the seaworthiness of the *Erika*, calls upon the EU and shipping organizations to campaign for the establishment of a coastal state regime that would identify ports of refuge. RINA has challenged France's investigation into the contributing factors for the loss of the ship. For example, it questions the decision to steer the *Erika* for refuge to the River Loire port of Donges rather than Brest, which it says she could have reached more quickly with less stress to the hull from wave impact. It is noted that an investigation was carried out by, the French Permanent Commission of Enquiry into Accidents at Sea. In its report published in December, 2000, the Commission found that the speed and courses followed by the ship were not decisive factors in the cause of the incident.

The *Erika* incident resulted in serious oil pollution damage in Brittany.

The secretary-general of the IMO acknowledges the need for an IMO debate on dedicated safe havens. The debate would include the Legal Committee, the Maritime Protection Committee and the Marine Safety Committee. There is no specific convention related to ports of refuge. These committees could examine conditions under which littoral States should provide a safe haven in sheltered areas for ships in serious and immediate danger. Such action could reduce the overall risk of oil pollution to littoral States.

4.4 Winding up the 1971 IOPC Fund

During recent years, the future of the 1971 IOPC Fund has given rise to serious concerns. As mentioned in last year's Annual Report, IMO was requested to convene a Diplomatic Conference of remaining parties to the 1971 IOPC Convention to adopt a Protocol to amend Article 43.1 of the 1971 IOPC Fund Convention. This action was considered essential, because in the near future most Contracting States will have acceded to the 1992 IOPC Fund Convention. As a result, the 1971 IOPC Fund will not be able to function properly.

There is concern about a potential situation in which an incident occurs and the 1971 IOPC Fund has an obligation to pay compensation but, at the same time, there may be insufficient money to pay claims.

A Diplomatic Conference was held from September 25 to 27, 2000, and it adopted the necessary Protocol, using a tacit acceptance procedure in the Convention. Under the amended text, the 1971 IOPC Fund Convention will cease to be in force on the date on which the number of Contracting States fall below twenty-five, **or** 12 months following the date on which the Assembly (or any other body acting on its behalf) notes that the total quantity of contributing oil received in the remaining Contracting States falls below 100 million tonnes, whichever is the earlier.

[Note: At the fifth session of the Administrative Council, acting on behalf of the eight extraordinary session of the Assembly of the 1971 IOPC Fund, held on June 25, 26 and 28, 2001, it was noted that on May 24, 2002, the number of Contracting States will fall below 25, and that the Convention will cease to be in force on that day. The Convention will not apply to incidents occurring after that date.]

Due to concern about the potential lack of adequate funding, the Administrative Council of the 1971 IOPC Fund, in October 2000, authorized the purchase of insurance covering any liabilities of the 1971 IOPC fund for compensation and indemnification up to 60 million SDR ($120 million) per incident. This would be minus the amount actually paid by the shipowner or his insurer under the 1969 Civil Liability Convention. It would cover as well the legal and other expert fees in respect of all incidents occurring during the period up to December 31, 2001. The Fund itself would have to cover a deductible of approximately $500,000 for each incident, and the 1971 IOPC Fund would have the option to extend the insurance coverage up to October 31, 2002.

The cover came into effect on October 25, 2000.

With respect to Administration of the 1971 Fund, it was decided that there is no need to seek the advice of liquidation experts. Once a legal cut off date is established for 1971 Fund liabilities, management can resolve outstanding claims in the ordinary course of business. Once these claims are resolved, any surplus can be distributed to contributors in an equitable manner.

Canada is now past the critical period for current liability to the 1971 IOPC Fund. On May 29, 1999, Canada ceased to be a member of the 1971 IOPC Fund and became a Contracting State to the 1992 IOPC Fund. Nevertheless, Canada will continue to have obligations to the 1971 IOPC Fund, but only for contribution respecting oil spills prior to May 29, 1999.

Concern for the financial viability of the 1971 IOPC Fund is reduced by the decision to purchase insurance.

4.5 *European Measures Post-*Erika *– IOPC Regime Changes - Impact on SOPF*

The Administrator was advised in January 2001 that the European Commission (EC) had proposed the establishment of a fund for Compensation for Oil Pollution in European waters (COPE). The amount of compensation available would be one billion Euros.

The EC proposal for a COPE Fund is reproduced in Appendix G.

As noted in last year's Annual Report, urgent proposals for changes in the international oil pollution compensation and ship safety regimes are coming from Europe. As a direct result, the 1992 IOPC Fund Third Intersessional Working Group is now discussing possible changes to the 1992 IOPC regime. See Appendix C.

Given that the SOPF is potentially liable to pay significant Canadian contributions to the IOPC Funds, issues of direct interest to the Administrator include: (1) the shipowner's limit of liability in the 1992 CLC; (2) worthwhile recourse action being available to the 1992 IOPC Fund; and, (3) an "optional" third tier on top of the 1992 CLC and the 1992 IOPC Fund.

4.5.1 Shipowner's Limitation of Liability

There remain issues associated with the shipowner's limitation of liability. The shipowner is normally entitled to limit his liability to an amount that is linked to the tonnage of his ship. The source of compensation money comes from insurance (P&I Clubs).

Under the 1969 CLC, the shipowner is deprived of the right to limit his liability if the incident occurred as a result of the owner's actual fault or privity. Jurisprudence provides reasonable prospects for breaking the shipowner's right to limit liability under this test.

Under the 1992 CLC, the shipowner is deprived of the right to limit his liability only if it is proved that the pollution damage resulted from the shipowner's personal act or omission, committed with the intent to cause such damage, or recklessly and with knowledge that such damage would probably result. This new test makes It practically impossible to break the shipowner's right to limit liability.

The introduction to a French paper, presented to the 1992 IOPC Fund in March 2001, states: "*It is noted, in respect of the current situation, that the progress represented in 1969 by recognition of the principle of a shipowner's strict liability coupled with an obligation to maintain insurance which could be made directly available to victims, has been completely undone in the Protocols of 1992 by the amendment of the conditions under which this liability applies.*"

The paper contends, *inter alia*, that the P&I Clubs' rules make it no longer worthwhile for the claimant to prove the shipowner's fault. It says that under the 1992 test – as opposed to the 1969 test – the claimant would have no guarantee of compensation beyond the shipowner's limitation amount. The French say this is so, because the insurer by its rules does not cover damage caused by the shipowner resulting from his personal act or omission, committed with intent or recklessly and with knowledge that such damage would probably result.

In other words, where the 1969 test is used, when the owner is not entitled to limit his liability for personal fault, which is neither intentional nor inexcusable, the insurer is bound to provide him cover and victims have access to cover of US$1 billion.

On the other hand, the French paper indicates that where the 1992 test is used, the only certain cover available is that established by the 1992 CLC, i.e. 59.7 million SDR (approximately $120 million) at the most. The clause of the Convention, which makes it possible to deny the owner any right to limit his liability, is the same as that which permits the P&I Club under its rules to withdraw its cover. Thus the conclusion: It is no longer worthwhile for the claimant to prove the owner's fault, because the claimants would have no guarantee of compensation.

If this is correct, there is a wide divergence between theoretical commitments (US$1 billion) and the real obligations of P&I Clubs (the amount of the limitation fund).

The French paper points out that this divergence is not understood by third parties who wish to claim under the P&I special cover for pollution damage. To that end, an increase of the amount of insurer's obligations (the limitation fund) would offer two advantages. First, it would narrow the above-mentioned gap and, secondly, it would undoubtedly influence the quality of ships given P&I cover.

Further, the French paper notes that the principle of the gradation of the amount of the owner's limitation fund, with a ceiling of 44 per cent of the maximum amount available under the Conventions, achieves an acceptable balance when large ships are involved. But it is based on a premise, which might prove to be wrong. The incidents of the *Tanio, Nakhodka* and *Erika* have shown that a calculation resting solely on tonnage does not reflect the risk that the ship might constitute. See Figure 1, Appendix D.

From the Administrator's view, the limits of liability in the 1992 CLC must be revised if there is to be an equitable balance between the obligations of shipowners and the obligation of receivers of oil. This may also contribute to safer ships carrying oil.

Obviously these issues should be addressed among the P&I Clubs, the oil industry (OCIMF) and the 1992 IOPC Fund (to which the Administrator must direct significant payments out of the SOPF).

See Appendix A for background.

4.5.2 Recourse Action

Claims for pollution damage under the CLC can be made only against the registered owner of the ship concerned. This does not preclude victims from claiming compensation outside the CLC from persons other than the owner. However, the 1969 CLC prohibits claims against the servants or agents of the owner. The 1992 CLC does the same, but also prohibits claims against the pilot, the charterer (including a bareboat charterer),

manager or operator of the ship, or any person carrying out salvage operations or taking preventive measures. These "channelling" provisions are contained in Articles III of 1969 CLC and the 1992 CLC, respectively.

The 1992 Conventions will have to be changed if the shipowner and his insurer are to be liable – in reality – above the shipowner's limit of liability, and to achieve other meaningful possibilities.

As was noted at the March 2001 meeting of the intersessional Working Group, if the 1992 test for breaking the shipowner's limit of liability is to be retained there is very little room for recourse action.

From the Administrator's view, it is important that the 1992 IOPC Fund be able to take recourse action against the persons who cause pollution damage.

In this context it has been suggested that in the "channelling" provisions of the 1992 CLC, a difference should be made between the right of victims to claim compensation from the persons referred to in the provisions and the 1992 Fund's right to take recourse action against these persons.

Further, it has been suggested that it might be possible to strengthen the Fund's position by including a provision giving explicitly the Fund the right to take recourse action, probably based on fault.

Subject to meaningful changes to the 1992 Conventions, the Administrator shares the view that the 1992 IOPC Fund should take recourse action whenever appropriate. A firm policy by the IOPC Fund on recourse action could be used against persons operating sub-standard ships. The benefits to the SOPF, other contributors, as well as littoral States, could be significant.

4.5.3 An "Optional" Third Tier to the 1992 IOPC Regime

Some European delegations to the 1992 IOPC Fund have been working hard on a draft protocol for a proposed IOPC "optional" third tier, to obviate the need for the COPE Fund proposed by the EC.

This third tier of compensation would be operative only in States that become parties to the Protocol creating the third tier, and only in cases where the established claims exceed the aggregate amount available under the 1992 CLC and 1992 IOPC Fund.

It is expected that this shall be discussed by the Working Group in June, 2001, and presented to the 1992 IOPC Fund Assembly in October, 2001. If approved by the Assembly, then a diplomatic conference would have to be convened by IMO to effect the necessary changes.

The draft Protocol now contemplates an optional third tier entirely funded by oil receivers (in those countries that opt-in). Presumably EU countries will adopt the third tier by becoming Contracting States to the Protocol.

It appears that most other Contracting States to the 1992 regime will not adopt the third tier. They will continue with the 1992 CLC and the 1992 IOPC Fund Convention , which recently had compensation limits increased by approximately 50 per cent effective 2003.

There are indications that oil companies - very significant contributors to the 1992 IOPC Fund - shall propose to the Working Group in June 2001, that the optional third tier, which would be set up on top of the existing 1992 IOPC Fund, should consist of two layers:

Layer 1 : where there are significantly higher limits of compensation paid by the shipowner
Layer 2 : a supplementary fund paid by oil interests.

That shipowner/insurance interests must have a stake in the consequences of pollution is recognized.

However, some say there is no demonstrable need for compensation levels beyond the IOPC limits already available with the 50 per cent increase effective 2003. Nevertheless, the concept of an IOPC optional third tier appears to be supported by European shipowner/insurance interests *et al.*

The Canadian IOPC Funds delegation continues to support the development of an IOPC optional third tier. Whether the proposed optional third tier comes out one layer, two layers, or otherwise, remains to be seen.

From the Administrator's view, an IOPC optional third tier could potentially be both a practical alternative – and effective IMO response – to a European COPE Fund.

However, whether or not Canada becomes a Contracting State to any IOPC optional third tier would be for future decision by Cabinet. If such was ever proposed, it would undoubtedly be preceded by broad consultations.

From the Administrator's view, in such context, some considerations may include the adequacy of the current level of coverage per incident already provided for a tanker spill in Canada. Canada's IOPC coverage has gone from $120 million in 1989 to $270 million in 1999. In 2003 IOPC coverage shall be $405 million per incident approximately.

Would Canadian claims be different from international claims? That cannot be answered precisely, but Canada has some experiences.

For example, in 1979 the British oil tanker MT *Kurdistan* broke in two in the Cabot Strait spilling 7,914 tonnes of bunker C. Fishermen suffered loss. The coasts of Nova Scotia and Newfoundland were polluted. CCG responded. The stern section and its oil (15,140 tonnes) were salvaged. The bow section with its oil (7,411 tonnes) was towed to the edge of the Continental Shelf where it was sunk by naval gunfire. The total claim (crown and fishermen) was $7,688,893 or in 2000 dollars - $18 million approximately. The claim was settled and paid at $8,500,000 including interest, or in 2000 dollars - $23 million approximately.

In *Erika* (France 1999) 14,000 tonnes of heavy fuel oil were spilled. There were remaining 10,000 tonnes in the bow section and 6,000 tonnes in the stern section. The aggregate claims exceed $270 million.

To be considered also is the amount of money that the Administrator must direct be paid out of the SOPF as contributions to the 1992 IOPC Fund for the existing $270 - $405 million per incident cover. The levels of these payments from the SOPF are determined by the extent of IOPC payments for international incidents, and by the level of oil receipts in Canada relative to the aggregate amount of oil received in Contracting States.

The likely levels of the extra contributions required in an IOPC optional third tier would be an important consideration, given that the SOPF is liable to pay all Canadian contributions to IOPC Funds. Unlike the 1992 IOPC Fund, an optional third tier would likely have a small membership and contribution levies could be high. It has been noted by OCIMF that some contributors in some Contracting States may find the cost burden too great to bear.

Of primary importance is the continuing ability of the SOPF to meet its domestic mandate. To date Canadian contributions to the IOPC Funds have been paid from interest earned on the SOPF. There has been no *CSA* levy on industry for the SOPF since 1976 (then MPCF).

The SOPF is liable to pay claims, as directed by the Administrator, for oil pollution damage or anticipated damage at any place in Canada, or in Canadian waters including the exclusive economic zone of Canada, caused by the discharge of oil from a ship.

As such the SOPF may be used to pay claims regarding oil spills from all classes of ships. The SOPF is not limited to sea-going tankers and persistent oil, as is the 1992 IOPC Fund.

The SOPF may also be available as a source of additional compensation (a third tier) in the event that funds from the 1992 CLC and the 1992 IOPC Fund Convention, with respect to spills in Canada from oil tankers, are insufficient to meet all established claims for compensation. See Figure 1, Appendix D.

Finally, the classes of claims for which the SOPF may be liable include the following:

- claims for oil pollution damage;
- claims for costs and expenses of oil spill clean-up including the cost of preventive measures; and
- claims for oil pollution damage and clean-up costs where the identity of the ship that caused the discharge cannot be established (mystery spills).

A widely defined class of persons in the Canadian fishing industry may claim for loss of income caused by an oil spill from a ship.

From the Administrator's view, the broad pressure that the EC is putting on the international system can reasonably be expected to continue. Consequently as head of the Canadian delegation, he will continue to follow closely developments in, and/or related to, the IOPC regime.

Finally, a statement, in the 1992 IOPC Fund Assembly in January 2001, by another delegation re the EC's COPE Fund proposal (see Appendix G) is worthy of note:

> *"The issue under consideration is the COPE Fund, not the IOPC Fund regime itself. This delegation understands that the COPE Fund is a regional scheme, and in nature it is totally separate from the IOPC Fund. In this sense, this delegation considers that it is appropriate for the Assembly to take the provided information at this stage.*
>
> *In the discussion of the Erika incident in the Executive Committee, the criticism of the 1992 Fund was noted. It is recognised that the IOPC Fund's policy of requiring claimants to substantiate their losses by supporting documents or other evidence has been criticised, and that it has been maintained that the criteria applied by the IOPC Fund are too strict. This is a point of concern to this delegation. If the COPE Fund is set up the question would be whether claims with insufficient supporting documents or other evidence could be approved by the IOPC Fund and with the support of the COPE Fund with its higher limit of compensation and whether the Secretariat of the IOPC Fund would have to make only a rough assessment of each claim. This delegation understands that the theoretical answers to these questions are NO, because the IOPC Fund and the COPE Fund are different and separate schemes, and the IOPC Fund is operated under an international Convention. But, in reality, is there clearly no need to worry about easy compensation or rough assessment? If the answer is Yes, that would be acceptable to this delegation. But it should be emphasised that whatever contents the COPE Fund regime may have, the IOPC Fund is subject to the Convention, and the Secretariat is expected to make a thorough examination of each claim based on the Convention and the agreed practice. This delegation will continue to watch closely the IOPC Fund activity from this point of view."*

4.6 The High Level of IOPC Funds Claims

As indicated in last year's Annual Report, and in light of the amounts paid from the SOPF to the 1992 IOPC Fund this year, the Administrator, as head of the Canadian delegation, continues to actively monitor and question the amounts of claims made against the IOPC Funds for international incidents, their assessments, and levels of payment.

In many cases the amounts claimed are very high. Therefore it is important to have independent expert advice on the technical reasonableness of clean-up measures and response. Also it is essential for the IOPC Funds to follow strict criteria in the assessment and admission of the amounts payable for a claim.

There have been objections in some countries to IOPC Funds assessment procedures and the advice tendered to the IOPC Funds by ITOPF on the technical reasonableness of clean-up measures and response.

For example, in the *Erika* incident, severe criticism has continued to be made against the 1992 IOPC Fund by French cabinet ministers other politicians and various other bodies. The main criticisms included the following observations:

- The current total amount of compensation ($270 million approximately) is unacceptably low and the Fund should take steps to ensure that more money is available.
- It is unacceptable that early claimants have their payments pro-rated, and the problem of equal treatment of early and late claimants is for the 1992 IOPC Fund to solve.
- The 1992 IOPC Fund has been described as a mutual insurance company of the oil industry and as a body protecting the oil industry.
- It has been maintained that the claims settlement is far too slow, as evidenced by the very low amount paid.
- The Fund's policy of requiring claimants to substantiate their losses by supporting documents or other evidence has also been criticised, and it is argued that the criteria applied by the 1992 IOPC Fund are too strict.

In response to the criticism, it has been explained in the media, for example, that the terms of the 1992 Conventions and the criteria for the admissibility of claims were agreed and approved by Contracting States and their representatives.

Further, the following criteria applies to all claims:

- *any expense/loss must actually have been incurred;*
- *any expense must relate to measures which are deemed reasonable and justifiable;*
- *a Claimant's expense/loss or damage is admissible only if and to the extent that it can be considered as caused by contamination;*
- *there must be a link of causation between the expense/loss or damage covered by the claim and the contamination caused by the spill;*
- *a claimant is entitled to compensation only if he has suffered a quantifiable economic loss;*
- *a claimant has to prove the amount of his loss or damage by producing appropriate documents or other evidence.*

Finally, it is the complexity of a claim and the extent to which it is properly documented, not the quantum, which determines the speed with which it is assessed and approved.

From the Administrator's view, there is no doubt that these criteria must be applied.

The IOPC Funds have used ITOPF to give on-site advice on the technical reasonableness of clean-up measures and response. ITOPF also does some post spill claims assessments for the IOPC Funds.

From the Administrator's view, ITOPF's role and non-partisan approach are important, given the high level of some claims made against the IOPC Funds. According to ITOPF, the premise adopted by government agencies in some countries is that they should receive one hundred per cent compensation irrespective of independent technical justification for their actions.

Any experts employed by the IOPC Funds should be truly independent and committed to ensuring high professional standards and adherence to the IOPC Funds' guidelines.

Otherwise, it could result in serious demands on contributors, including Canada's SOPF if, in effect, there is broadening of the IOPC Funds' own claims admissibility guidelines to include clean-up actions taken primarily for public relations reasons, for example, thereby accepting non-technical criteria and consequently far higher costs.

4.7 Natural Resource Damage Assessment and Restoration

The Third Intersessional Working Group of the 1992 IOPC Fund is considering issues of environmental damages under the 1992 Conventions and Protocols.

Compensation for environmental damage is handled differently under the *CSA*, the 1992 CLC, the 1992 IOPC Fund Convention, and the US *OPA*.

The 1992 CLC and the 1992 IOPC Fund Convention, in their definitions of "pollution damage", provide "... *that compensation for impairment of the environment other than loss of profit from such impairment shall be limited to costs of reasonable measures of reinstatement actually undertaken or to be undertaken.*"

The *CSA* provides, *"Where oil pollution damage from a ship results in impairment to the environment, the owner of the ship is liable for the cost of reasonable measures of reinstatement actually undertaken or to be undertaken."*

In the US, *OPA 90* provides for payment of natural resource damage claims from the Oil Spill Liability Trust Fund. Only designated Trustees may submit natural resource damages. Under US regulations the trustee may consider a plan to restore and rehabilitate or acquire the equivalent of the damaged natural resource.

The technically justified reasonable cost for reinstatement/restoration measures, for which compensation is available under the 1992 CLC and the 1992 IOPC Fund Convention, might equate to primary restoration under the US NRDA regulations. However, the further measure of *OPA* NRDA is:

- the diminution in value of those natural resources pending restoration; plus
- the reasonable cost of assessing those damages.

The 1992 CLC and the 1992 IOPC Fund Convention do not, by their definition of pollution damage, cover this latter sort of compensation provided by the NRDA regulations or other theoretically based assessments of environmental damage.

The US NRDA regulations provide a process to assess injuries to natural resources and design an appropriate restoration plan. The cost to assess injury, develop, and implement the restoration plan is the damage amount. This process is designed to result in feasible, cost-effective restoration of those natural resources and services injured by an incident.

The trustee, who is a designated federal, state, or Indian tribe official, conducts injury assessment to determine the nature and extent of injuries to natural resources and services. Once the trustee has identified a range of possible restoration actions, the identified restoration alternatives are evaluated based on a number of factors including:

- *the cost to carry out the alternative;*
- *the extent to which each alternative is expected to meet the trustees' goals and objectives in returning the injured natural resources and services to baseline and/or compensation for interim losses;*
- *the likelihood of success of each alternative;*
- *the extent to which each alternative will prevent future injury as a result of the incident, and avoid collateral injury as a result of implementing the alternative;*
- *the extent to which each alternative benefits more than one natural resource and/orservice; and*
- *the effect of each alternative on public health and safety.*

Trustees must select the most cost-effective of two or more equally preferable alternatives. A draft restoration plan will be made available for review and comment by the public, including appropriate members of the scientific community where possible. After reviewing public comments on the draft restoration plan, trustees must develop a final restoration plan. The final restoration plan will become the basis of a claim for damages.

In February 2001, a Memorandum of Understanding (MOU) was signed between the International Group of P&I Clubs and the US National Oceanic and Atmospheric Administration (NOAA). The aim of the MOU is to promote expeditious and cost-effective restoration of injured natural resources and services resulting from ship-source oil spill in the US, as authorized by *OPA 90* and determined by the Natural Resource Damage Assessment Regulations.

The parties to this MOU will meet every six months to facilitate a regular exchange of technical information, such as ITOPF and NOAA technical papers and publications. In the event of a ship-source oil spill in the US, early contact will be established between the relevant P&I Clubs, ITOPF, NOAA, and its co-trustees. ITOPF's role is to provide technical information and analysis.

4.8 Environmental Damages Fund – Environment Canada

Environment Canada advises that, in 1995, it obtained the approval of the Treasury Board to create a special purpose account – the Environmental Damages Fund – to manage compensation for damages to the environment resulting from pollution incidents. The Environmental Damages Fund was established to serve as a special holding or trust account to manage funds received as compensation for environmental damage. These funds may come in the form of court orders, awards, out-of-court settlements, voluntary payments and other awards provided by various international liability funds.

It is understood that when an environmental offense is prosecuted or a settlement is being negotiated out of court, crown and defense lawyers can recommend that the penalty include a monetary award, which is used to restore environmental damage.

Environment Canada notes that currently, however, judicial awareness of the Fund's role in restoration efforts is minimal. It is necessary, therefore, for prosecutors to provide information concerning the Fund and potential court involvement to judges.

Additional information is available through Environment Canada at:

www.ec.gc.ca/ee-ue
Tel: 1-819-997-3742

4.9 From CSA to MLA

The *Marine Liability Act* (Bill S-2) received Royal Assent on May 10, 2001 and came into force on August 8, 2001. This enactment consolidates certain rules of Canadian maritime law governing the civil liability of shipowners for loss of life, personal injuries and damage to property.

Part 6 of the new Act continues the existing regime governing liability and compensation for maritime oil pollution, which was previously found in Part XVI of the *Canada Shipping Act*.

Part 3 continues in force in Canada an international convention governing the limitation of liability for maritime claims.

4.10 Canada Shipping Act 2001 (Bill C-14)

Bill C-14 received first reading on March 1, 2001. This enactment overhauls and replaces the *Canada Shipping Act*, other than the portions that concern liability. Key changes to the existing legislation include, *inter alia*, improvements to provisions to ensure vessel safety and protect the environment.

The enactment clarifies the marine responsibilities between the Department of Transport and the Department of Fisheries and Oceans.

4.11 Oil Spill Risks – Tankers versus Non-tank Ships

It is apparent that non-tank vessels constitute significant risks of oil spills. There are more non-tank vessels making more frequent passages. The growth in non-tank vessels is projected to increase.

In North America, oil spills from tankers make up a small percentage of the total. For 1999, in the United States 94 per cent of oil spill incidents and 70 per cent of volume are from vessels other than tankers, according to the USCG. In Canada, between 1993 and 2000 some 88 per cent of incidents reported by the SOPF related to non-tank vessels and mystery spills.

It is reported that it has been estimated that, on a global basis, as much as 14 million tonnes of bunkers are being carried in non-tankers at any one time. This compared to approximately 30 million tonnes of oil cargo on the world's seas.

Some bulk carriers and containerships are known to carry more oil as bunkers than coastal tankers do as cargo.

4.12 Bunker (Fuel) Oil – Canadian Cover

In March 2001, the IMO adopted a new Convention on liability and compensation for bunker oil pollution damage. The purpose of the convention is to establish a liability and compensation regime for spills of oil carried as fuel (i.e., ships' bunkers).

Under the terms of the proposed convention, it will be compulsory for registered owners of vessels of 1,000 gross tons and above to maintain insurance coverage against spills from bunkers. Claims for compensation for pollution damage may be brought directly against an insurer. The convention will require no fewer than eighteen member States for ratification, including five member States each with ships whose combined tonnage is not less than one million gross tons. It is reported that uncertainty remains over the ability of European Union States to ratify the Bunker Convention, because of a European Community regulation (EC) 44/2001 on jurisdiction and judgment enforcement. The high number of states required to ratify the convention, and the possible conflict with EU regulations, could mean that the bunker convention is not enforced in the near future.

The current international conventions covering oil spills do not include bunker oil spills from ships other than oil tankers.

However, in Canada the SOPF, as directed by the Administrator, can be used to pay claims regarding oil spills from all classes of ships, including oil from ships' bunkers.

Further, the Administrator of the SOPF has the power to commence an action *in rem* against a ship and can obtain security for an oil pollution claim, pursuant to *CSA* subsection 677(11). Security is usually provided by a letter of undertaking (LOU) from the ship's P&I Club in order to preclude the ship's arrest or secure its release.

4.13 The Polluter Pays

The *CSA* Section 677 makes the shipowner strictly liable for oil pollution damage caused by his ship, and for costs and expenses incurred for clean-up and preventive measures.

As provided in the *CSA*, in the first instance, a claimant can take action against a shipowner. The Administrator of the SOPF is a party by statute to any litigation in the Canadian courts commenced by a claimant against the shipowner, its guarantor, or the 1992 IOPC Fund. In such event, the extent of the SOPF's liability as a last resort is stipulated in Section 709 *CSA*.

The SOPF can also be a fund of first resort for claimants under Section 710 *CSA*.

On settling and paying such a Section 710 claim, the Administrator is, to the extent of the payment to the claimant, subrogated to the claimant's rights, and subsection 711(3)(c) requires that the "... *Administrator shall take all reasonable measures to recover the amount of the payment to the claimant from the owner of the ship, the International Fund or any person liable ....*"

In this process, the Administrator has to settle the claim twice, firstly with the claimant, then with the shipowner/person liable in a recovery action.

The Administrator notes that, as normal, in the cases of several incidents the claimant, primarily the CCG, has, during the past fiscal year, elected to claim directly against the responsible shipowner. The CCG reported direct settlements of ten claims, with an aggregate claim amount in excess of $1 million. The Administrator is also aware that other CCG claims have been settled at the local level, and that two commercial entities also elected to negotiate and settle with the polluters directly. In several direct settlements the Administrator intervened to achieve a compromise and finalization.

In the interest of speeding satisfactory claim and recovery settlements the Administrator encourages such direct claim action by claimants.

5. Outreach Initiatives

5.1 General

The Administrator continues with outreach initiatives with a view to enhancing his understanding of the perspectives of the various stakeholders in Canada's ship-source oil pollution response and compensation regime. In Canada, these stakeholders include ROs, the CCG, the marine industry, CMAC and other government agencies and departments.

On the international scene, discussions were held during meetings both in the US and in the UK.

5.2 Arctic and Marine Spill Technical Seminar

The Administrator's marine consultant attended the "Twenty-third Arctic and Marine Oilspill Program (AMOP) Technical Seminar" in Vancouver, which was sponsored by the Emergencies Science Division of Environment Canada. The sessions featured technical papers on cold region oil spill programs. There were discussions during the three-day conference about a broad range of technical development, operational approaches and contingency planning. Of particular interest from the Administrator's perspective was the session on the Canadian Coast Guard Arctic response strategy, and those sessions which addressed shoreline protection and clean-up. The AMOP technical seminar covered a range of oil pollution clean-up equipment and latest technologies, which included detection (tracking and remote sensing), containment and recovery, oil spill treating agents and in-situ burning.

5.3 Canadian Marine Advisory Council (National)

The Administrator attended the Canadian Marine Advisory Council (CMAC) national meetings at the Government Conference Centre in Ottawa during May 2 to 4, and November 7 to 9, 2000. Nearly 400 stakeholders from across Canada took part in these semi-annual meetings.

5.4 Canadian Marine Advisory Council (Arctic)

In April 2000, the Administrator attended the Northern Canadian Marine Advisory Council (CMAC-Northern) in Iqaluit on Baffin Island. More than fifty participants were on hand for the two-day meetings, which were held for the first time in the new Canadian territory of Nunavut. There were representatives from the federal and territorial governments, and a range of operators from the northern marine transportation industry.

The discussions were co-chaired by representatives of the Department of Fisheries and Oceans, Central and Arctic Region, and Transport Canada Prairie and Northern Region's Arctic Regulatory Services.

The Administrator participated actively during the meetings. In his presentation, he explained the organization and set up of the Ship-source Oil Pollution Fund, and its relationship with the International Funds. In addition to meeting with federal representatives from Transport Canada, the Department of Fisheries and Oceans, and Environment Canada, he had discussions with the operational managers of a number of commercial shipping companies that transport oil products and general cargo to communities in the Northwest Territories and Nunavut.

The Administrator had the pleasure of meeting the Nunavut Minister of Transportation and Community Government, the Honourable Jack Anawak.

Discussions were held with other government officials including: the Manager Operations, Petroleum Products Division, Department of Works and Services that has its head office located in the hamlet of Rankin Inlet, the head of the Nunavut Marine Council located in Cambridge Bay. The marine Council is involved, among other things, with the letting of tenders for oil and gas exploration in the Arctic offshore. The Administrator also spoke with the Director, Tourism Development and Training at his office in the Department of Sustainable Development.

Additional on-site visits were conducted. For example, a very informative tour of the Department of Fisheries and Oceans' main offices was led by the DFO Regional Manager for Nunavut. Also, the Administrator visited the facilities of the Canadian Coast Guard Marine Radio Station that is co-located with the NordReg Vessel Traffic Centre. This high Arctic marine communications station is open annually from late June to mid-December.

In addition, a tour was conducted of Iqaluit's beach-landing site and cargo marshalling yard that are utilized during sealift operations. The tour ended with a visit to the community's main fuel tank farm. The oil tanks are re-filled through a floating line from a tanker at anchor and connected to a pipeline running from the beach to the fuel tank farm. It was of interest from the SOPF perspective to learn how fuel is delivered and distributed throughout the Arctic.

The Administrator was advised at the CMAC meeting that the Northern Transportation Limited (NTCL) is currently under contract with Nunavut to supply all government fuel to the eastern Arctic. NTCL charters tankers on the international market. The chartered tankers are ice-strengthened and constructed with double hulls. Annually, three or four 18,000 to 20,000 ton tankers are deployed to the Arctic ports. A larger 60,000 ton tanker proceeds to Nuuk, Greenland, from where the smaller vessels shuttle fuel to Canada. In all ports, except Churchill, the fuel is pumped ashore via a floating hose. The chartered tankers carry a blend of persistent oil for their own fuel consumption. All fuel pumped ashore is arctic diesel and gasoline. An experienced Canadian ice navigator sails the shuttle tankers. In the western Arctic, all fuel oil is delivered by NTCL tug and tank barge, as has been the practice for decades.

Two thirds of Canada's coastline is located in the Canadian Arctic.

5.5 Response Organizations and CCG Equipment Facilities

There are four certified Response Organizations (ROs) in Canada to provide marine oil spill response services south of 60 degrees north latitude. They are industry-managed and funded by fees charged to the users. The four ROs in Canada are:

- Western Canada Marine Response Corporation (WCMRC), which in general covers British Columbia waters;
- Eastern Canada Response Corporation (ECRC), which covers the waters of the Great Lakes, Quebec (SIMEC) and the Atlantic Coast (except two small areas in New Brunswick and Nova Scotia);
- Atlantic Emergency Response Team (ALERT), which basically includes the port of Saint John and surrounding waters; and
- Point Tupper Marine Services Limited (PTMS), which covers the port of Port Hawkesbury and approaches.

During the AMOP technical seminar held in Vancouver, the Administrator's consultant took advantage of the opportunity to attend an open house and equipment fair at Burrard Clean Operations, a division of Western Canada Marine Response Corporation, in Burnaby, BC. There were special equipment demonstrations and some 22 exhibitors at the Response Organization's equipment depot.

The Administrator's marine consultant attended at the ECRC facility in Donovan's Industrial Park near St. John's, Nfld. The RO advised that the depot has a high response capability at the Tier 3 level (2,500 tonnes) within 18 hours after notification of an oil spill. The RO depot comprises a mix of specialized oil spill response equipment to meet the capability for which it is certified. The inventory includes booms, skimmers, boats, sea-trucks, containment barges and other storage tanks for recovered waste oil. There is also a large amount of shoreline clean-up treatment equipment and mobile command communication units. The personnel of the RO Centre work closely with federal, provincial, local authorities and various sectors of the oil industry.

The consultant also met with officers of the CCG in St. John's. The Coast Guard may respond to a marine oil spill incident as the lead agency, or it may provide support of monitor to another person leading the response.

The CCG's environment response equipment storage facility in St. John's maintains a large stockpile of clean-up equipment and containment barges and auxillary equipment to contain and recover oil at sea or from beaches. The equipment used in offshore operations by CCG personnel is standarized across the

country. This standardization reduces training requirements. It provides for deployment of resources to react to spills anywhere in Canada.

The Administrator is interested in the continuing cooperation between CCG and the response organizations, in all regions of Canada, and in their respective roles and responsibilities regarding oil spill pollution prevention, preparedness and response.

5.6 On-Scene Commander Course

The Administrator attended the On-Scene Commander Course at the CCG College in Cape Breton in February 2, 2001. As a presenter, he spoke about the roles and responsibilities of the Administrator of the SOPF. He also participated as a panel member in a discussion about the Canadian marine oil spill response regime.

All the presenters made comprehensive and insightful presentations. There were informative speakers from the CCG, Environment Canada, the Canadian marine industry and other relevant organizations. The presentations and the case histories covering international oil tanker incidents were invaluable training experiences. The representative from ITOPF, together with other marine consultants from the United Kingdom, and presenters from the United States Coast Guard and du Centre de Documentation de Recherche et d'Expérimentations sur les Pollutions Accidentelles des Eaux (Brest) (CEDRE), of France, gave the On-Scene Commander Course a meaningful international perspective.

The On-Scene Commander Course is designed for CCG officers and operational managers of industry. It is essentially on-site coordination and the development of clean-up strategies that are necessary to respond effectively to an oil spill up to the international tier 3 response capability (i.e. maximum quantity of oil spilled at 2,500 tonnes). Under the tier 3 criteria, the equipment and resources must be deployed to the affected operating environment within 18 hours after notification of an oil spill.

The oil spill scenario used for training was located in the Bay of Fundy near the Canada and United States boundary. It included a simulation exercise of a grounded oil barge. Throughout the day of the exercise, the controllers complicated matters by providing various operational and environmental inputs. They inserted a host of local community concerns calling for immediate resolution.

The On-Scene Commander Course which is held each year at the CCG College offers an opportunity for representatives from government agencies and the marine industry to meet and work together. The Administrator very much appreciates CCG's invitation for him to participate in this course.

5.7 International Oil Spill Conference

The Administrator attended the "2001 International Oil Spill Conference" in Tampa, Florida, sponsored by ExxonMobil and Marathon Oil Company. The central theme of the 17th biennial international conference was "Global Strategies for Prevention, Preparedness, Response and Restoration".

The conference provided an international forum for participants from 50 countries to discuss thoughtful and outstanding perspectives on various dimensions of oil spills. An entire session was dedicated to spill prevention. In addition, over two hundred exhibits of materials, equipment and services from US and foreign companies, institutions and government agencies involved in the manufacture, sale and use of products of the oil industry were on display in the conference trade exhibition.

The conference gave the Administrator the opportunity to continue his contacts with Canadian ROs, the CCG, USCG, IOPC Funds, international and industry officials and consultants.

5.8 Erika Claims Handling Office

While attending the October 23 to 27, 2000, sessions of the 1992 IOPC Fund Assembly, the Administrator took the opportunity to visit the *Erika* Claims Handling Office in Lorient, Morbihan, France.

The P&I Club, Steamship Mutual, and the 1992 IOPC Fund jointly established the Claims Handling Office in Lorient. It was opened to serve as a focal point for claimants and the technical experts engaged to examine

claims for compensation. Some 400 kilometers of coastline was affected, and the number of claims for compensation were expected to be large and expensive.

The Administrator's visit to the Claims Office and to the site of the oil pollution provided him with first-hand observation of the overall situation. It continues to assist him, as Head of the Canadian delegation, to appreciate more fully the issues related to the admissibility of claims and the determination of the initial levels of compensation payments. The *Erika* incident has resulted in the Administrator having to direct large payments out of the SOPF to the 1992 IOPC Fund this year.

At the claims handling office the Administrator was briefed by management officials on the IOPC Fund's procedures and the documentation used for claims from the various economic sectors.

Accompanied by a local IOPC Fund marine surveyor, the Administrator also attended in the vicinity of Le Croisic and Guerande, Loire Atlantique, where efforts had been taken to minimize the impact of the oil spill on the saltpans in the rich marshlands. Water intake for salt production from the saltpans must not be contaminated with oil. The area produces a high quality sea salt used in cooking, which is in great demand.

The Administrator also observed shoreline clean-up activities near La Turballe. Oil was still being cleaned from rock faces along the shore by high pressure washing. Much of the beach clean-up had been completed. But in the less accessible areas, there still remained oil pollution, for example, in areas along the rugged shore between La Baule and Le Croisic in the Department of Loire-Atlantique.

Across from Le Croisic there is an oyster cultivation location that was in the way of the oil spill.

Large quantities of shellfish are harvested in many of the affected areas along the west coast of France. It is also a beautiful vacation resort and the site of a very significant tourism industry.

The impact on those directly affected by an oil spill is hard for others to imagine.

5.9 International Tanker Owners Pollution Federation Limited

During the year the Administrator attended on ITOPF officials in London to discuss oil spill response measures, cleanup and compensation claims.

5.10 Canadian Maritime Law Association

The Administrator values his contacts with the Canadian Maritime Law Association and continues to dialogue with members.

6. SOPF's Liabilities to the International Funds

6.1 1969 CLC and 1971 IOPC

Canada first became a Contracting State to the international Conventions on May 24, 1989. These two Conventions were the 1969 International Convention on Civil Liability for Oil Pollution Damage (1969 CLC) and the 1971 International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage (1971 IOPC Fund Convention).

Some of the major incidents involving the 1971 IOPC Fund since 1989 include *Haven* (Italy, 1991), *Aegean Sea* (Spain, 1992), *Braer* (UK, 1992), *Sea Prince* (Republic of Korea, 1995), *Sea Empress* (UK, 1996), *Nakhodka* (Japan, 1997), and *Nissos Amorgos* (Venezuela, 1997).

The SOPF now has contingent liabilities in the 1971 IOPC Fund for oil spill incidents prior to May 29, 1999. The SOPF will pay these as they mature. It has no responsibility for any administrative costs after that date. Two incidents have very large total claims: *Aegean Sea* (Spain, 1992) and *Nissos Amorgos* (Venezuela, 1997). The SOPF's potential maximum aggregate liability is approximately $6.5 million for these two incidents.

6.2 1992 CLC and 1992 IOPC

On May 29, 1999, Canada acceded to the 1992 CLC and the 1992 IOPC Fund Convention. These two Conventions apply only to spills of persistent oil from sea-going tankers.

The 1992 IOPC Fund Assembly decides the total amount that should be levied each year to meet general operating expenses and anticipated compensation payments in major incidents. The required levy per tonne is calculated by the IOPC Secretariat. The SOPF receives an invoice from the 1992 IOPC Fund based on the calculated levy multiplied by the total amount of Canada's "contributing oil."

Under SOPF regulations the reporting of imported and coastal movements of "contributing oil" is mandatory by persons receiving more than 150,000 tonnes during the previous calendar year.

Reports must be received by the SOPF not later than February 28 of the year following such receipt. In early January of each year the Administrator writes to each potential respondent explaining the process and providing the necessary reporting form. All the completed forms are then processed to arrive at a consolidated national figure that is, in turn, reported to the 1992 IOPC Fund. Currently there are 10 respondents who report. They represent organizations in the oil (refining and trans-shipment operations) and power generation industries.

The *Erika* incident (France, 1999) will provide the SOPF with its first test of the 1992 IOPC regime, where compensation payable will probably reach the 1992 IOPC limits.

The SOPF's payment to the 1992 IOPC Fund for the *Erika* incident might be approximately $10.5 million. In 2000/01 the Administrator directed payment of $5,933,354.58 to the 1992 IOPC Fund for the *Erika* Major Claims Fund.

The SOPF is also liable to pay ongoing contributions to the 1992 IOPC Fund's General Fund and for other 1992 IOPC Fund major incidents happening after May 29, 1999. However, Canada will have no responsibility to the 1992 Fund for any incidents or administrative costs prior to May 29, 1999.

Since 1989, the SOPF has paid the IOPC Funds $27,231,851.29, as listed in the table below. This shows the "call" nature of the IOPC Funds. Contributions and levies are driven by claims, and how they are assessed.

1971 and 1992 IOPC Funds

Fiscal Year	SOPF's Contributions ($)
1989/90	207,207.99
1990/91	49,161.28
1991/92	1,785,478.65
1992/93	714,180.48
1993/94	4,927,555.76
1994/95	2,903,695.55
1995/96	2,527,058.41
1996/97	1,111,828.20
1997/98	5,141,693.01
1998/99	902,488.15
1999/00	273,807.10
2000/01	6,687,696.71
Total	**27,231,851.29**

7. Financial Summary

Income

Balance forward from March 31, 2000		$295,522,358.23	
Interest credited (April 1, 2000 – March 31, 2001)		16,578,929.96	
Refund of settlements (recoveries):			
Solon of Athens	$4,028.24		
Princess No. 1	10,000.00		
	$14,028.24	14,028.24	
Total Income			**$312,115,316.43**

Expenditure

Pursuant to Sections 706 and 707 of the *CSA*, the SOPF paid out at the direction or request of the Administrator the following:

Administrator fees	$ 99,000.00	
Legal fees	57,288.60	
Professional services	144,292.85	
Secretarial services	52,083.78	
Travel and hospitality	56,898.62	
Printing	9,851.03	
Occupancy	54,601.65	
Office expenses	12,863.47	
Total expenses		$ 486,880.00

Pursuant to Sections 710 and 711 of the *CSA* the Administrator paid Canadian claims established in the total amount of: 131,585.26

Pursuant to Section 701 of the *CSA* the Administrator directed the following payments out of the SOPF to the 1992 IOPC Fund:

Erika Major Claims Fund	$5,933,354.58	
General Fund	754,342.13	
Total payments to the 1992 IOPC Fund		6,687,696.71
Total expenditure from the SOPF		**(7,306,161.97)**
Balance in SOPF as at March 31, 2001		**$304,809,154.46**

Appendix A: The International Compensation Regime

Canada is a Contracting State in the current international regime to compensate claimants for pollution damage caused by spills from oil tankers based on Conventions adopted under the auspices of the IMO.

The CLC

The 1969 and 1992 CLC govern the liability of oil tanker owners for oil pollution damage. The shipowner is normally entitled to limit his liability to an amount that is linked to the tonnage of his ship. The source of compensation money comes from insurance (P & I Club).

Under the 1969 CLC, the shipowner is deprived of the right to limit his liability if the incident occurred as a result of the owner's actual fault or privity. Jurisprudence provides reasonable prospects for breaking the shipowner's right to limit liability under this test.

Under the 1992 CLC, claims for pollution damage can be made only against the registered owner of the tanker or his insurer. The shipowner is deprived of the right to limit his liability only if it is proved that the pollution damage resulted from the shipowner's personal act or omission, committed with the intent to cause such damage, or recklessly and with knowledge that such damage would probably result. This new test makes it practically impossible to break the shipowner's right to limit liability. The shipowner's limit of liability is higher in the 1992 CLC than in the 1969 CLC.

Figure 1, Appendix D, shows the limits of liability.

The IOPC Fund Conventions

Under the IOPC Fund Conventions, which mutualize the risk of oil pollution from tankers, the IOPC pays a supplementary layer of compensation to victims of oil pollution damage in IOPC Fund – Contracting States that cannot obtain full compensation for the damage under the applicable CLC. The 1971 and 1992 IOPC Fund Conventions are supplementary to the 1969 CLC and the 1992 CLC respectively. The source of money is the levies on oil receivers in Contacting States, collected retrospectively. Canada is the exception, where the SOPF pays all Canadian contributions to the IOPC Funds.

The compensation payable by the 1971 IOPC Fund for any one incident is limited to 60 million Special Drawing Rights (SDR) (about $120 million), including the sum actually paid by the shipowner or his insurer under the 1969 CLC. The maximum amount payable by the 1992 IOPC Fund for any one incident is 135 million SDR (about $270 million), including the sum actually paid by the shipowner or his insurer and any sum paid by the 1971 Fund.

Figure 1, Appendix D, shows compensation available from IOPC Fund.

Contracting States

Contracting States, as of January 24, 2001, to the 1969 CLC and the 1971 IOPC Fund Convention and the 1992 IOPC Protocols are listed in Appendix E and Appendix F.

Principal Changes

In the 1992 CLC and the 1992 IOPC Fund Convention, the underlying principles remain. The principal changes introduced by the 1992 Protocols are shown in Appendix D.

Appendix B: The 1971 IOPC Fund – Administrative Council and Assembly Sessions

The 63rd Executive Committee – April 3, 2000

The Chairman of the Executive Committee, Dr. Matteo Baradà, (Italy) attempted to open the 63rd session of the Executive Committee on April 3, but the Committee failed to achieve a quorum.

The 5th Extraordinary Assembly – April 3, 2000

The Chairman, Mr. Paul Czerwinski, (Poland) attempted to open the session to deal with the items on the agenda of the Executive Committee's 63rd session, but in view of the fact that no quorum was achieved he concluded the 5th Extraordinary Assembly meeting. The items on the agenda were referred to and dealt with by the Administrative Council during its 1st session.

The 1st Administrative Council - April 3 to 6, 2000

The items on the agenda of the Executive Committee's 63rd session were dealt with by the Administrative Council.

The Administrative Council reviewed the recent developments of outstanding incidents involving the 1971 IOPC Fund, including these major occurrences:

Aegean Sea (1992)

The Greek OBO *Aegean Sea* (57,801 gross tons) grounded off the coast of northwest Spain, the ship was loaded with approximately 80,000 tonnes of crude oil. After a major fire onboard, the ship was declared a total loss. Extensive clean-up operations were carried out at sea and onshore.

Negotiations continue between the 1971 IOPC Fund and the Spanish Government respecting substantial private and fishery related claims. This is the oldest outstanding claim in the 1971 IOPC Fund. Claims presented before the criminal and civil courts in La Coruña total approximately £143 million.

The Director was instructed to continue working with Spain towards formulating the elements of a global settlement.

Braer (1993)

The Liberian tanker *Braer* (44,989 gross tons) grounded south of the Shetland Islands and was subsequently declared a total loss. The ship was laden with 84,000 tonnes of North Sea crude oil. Both the cargo and bunkers spilled into the sea. There were substantial claims for compensation related to the closing of the fishery, damage to property, farming and tourism activities.

In 1995 the Executive Committee suspended further payments of compensation, because of the prospect that the total amount of the outstanding approved claims might exceed the limits of the 1971 IOPC Fund. Early in the incident certain claims, approved at very large amounts, were paid in full with no prorating. The suspension of full payment is still in operation.

The Convention provides for equality among claimants – not paying some claims in full and others partially.

Sea Empress (1996)

The Liberian tanker *Sea Empress* (77,356 gross tons) which was laden with 130,000 tonnes of crude oil ran aground in the approaches to Milford Haven, Southwest Wales. It is estimated that 73,000 tonnes of oil were released as a result of the incident.

Nisso Amorgos (1997)

The Greek tanker *Nisso Amorgos* (50,563 gross tons), laden with 75,000 tonnes of Venezuelan crude, grounded in the Maracaibo Channel in the Gulf of Venezuela. Some 3,600 tonnes of crude oil was spilled.

Payments by the 1971 IOPC Fund are still limited to 25 per cent of the loss or damage actually sustained by each claimant. This limitation is due to the remaining uncertainty as to the total amount of claims arising out of the incident.

The shipowner and the Gard P&I Club reserve the right to seek exoneration from liability for the incident. This is based on the alleged negligence of a government, or other authority, responsible for navigational aids.

The 1971 IOPC Fund has followed the court proceedings, because of the potential to take recourse action against Venezuela .

The 2nd Administrative Council - October 24 to 27, 2000

The 2nd session of the Administrative Council, acting on behalf of the 23rd Session of the Assembly of the 1971 IOPC Fund, was opened by Mr. V. Knyazev (Russian Federation). In addition to other Assembly agenda items, the Administrative Council reviewed the following items:

Winding up of the 1971 Fund

The Council noted that the Diplomatic Conference of September 25-26, 2000 adopted a Protocol amending Article 43.1 of the 1971 Fund Convention.

As a consequence, the 1971 Fund should cease to be in force when the number of Contracting States falls below 25 **or** one year after the total quantity of contributing oil received in the remaining Contracting States falls below 100 million tonnes.

By September 2001, the total quantity of contributing oil will have decreased to 48 million tonnes and may fall to 8 million tonnes by the end of 2001.

It is predicted, and on the basis of the Protocol above, the 1971 Fund Convention should cease to be in force by late 2001, and by the summer of 2002 at the latest.

The Director proposed buying insurance cover for the 1971 Fund's future liability until it ceases to be in force.

The Council authorized the Director to purchase insurance covering any liabilities of the 1971 Fund for compensation and indemnification up to 60 million SDR per incident.

Contingent Liabilities

There are contingent liabilities of the 1971 IOPC Fund estimated at £241 824 000 regarding 19 incidents as at December 31, 1999. All these claims may not necessarily mature.

Financial Statements and Auditor's Report

The Auditor's Report placed an unqualified opinion on the financial statements for 1999. The auditor stated that the adoption of the September 2000 Protocol, and the fact that insurance cover is being arranged for future incidents, would considerably reduce the Auditor's concerns in respect to the 1971 IOPC Fund's financial viability.

Budget for 2001 and Assessment of Contributions to the General Fund

The 1971 IOPC Fund 2001 budget for administrative costs is £1 045 833.

Assessment of Contributions to Major Claims Funds

The Administrative Council decided that a levy in the form of 2000 contributions should be made to the *Nisso Amorgos* Major Claims Funds in the amount of £25 million.

Note: the Canadian share of this £25 million is approximately $1.8 million and, to the extent invoiced, shall be paid from the SOPF.

Non-Submission of Oil Reports

The Council noted that for a number of States, the reports for several years were outstanding. The situation is very unsatisfactory.

Incidents Involving the 1971 IOPC Fund

Aegean Sea (1992)

A provisional agreement on the admissible quantum of the established claims was reached on October 2, 2000. The agreed amount was £44 million out of the claimed aggregate amount of £178 million.

There exists differences of opinion between the Spanish State and the 1971 IOPC Fund on two legal issues: (a) the distribution of liabilities between the State and the shipowner/UK Club/1971 IOPC Fund, and (b) the question of whether the actions brought by a number of claimants in the civil courts were time-barred.

The Administrative Council instructed the Director to continue the discussions with the Spanish Government.

Braer (1993)

Claims pending in court in April 2000 totalled £7.6 million and the claims approved but not paid totalled £5.8 million. In May and June 2000, the 1971 IOPC Fund resumed payments of compensation by paying 40 per cent on the claims that had been approved but not paid. There is only approximately £3.7 million available for further payment.

Keundong No. 5 (1993)

Now before the Court of Appeal (Republic of Korea) is a lower court's judgment (Yosu Fishery Co-operative) respecting, *inter alia*, the decision to allow compensation for pain and suffering, apparent arbitrary methods used to determine compensation and the decision to award compensation to non-licensed fishermen

Sea Empress (1996)

Payments have been made to 798 claimants totalling £29.5 million. The total amount of outstanding claims is approximately £12 million.

The 1971 IOPC Fund is currently finalizing the claim document in a recourse action against the Milford Haven Port Authority for negligence in relation to safe navigation within the Haven and its approaches.

Nakhodka (1997)

The Russian tanker *Nakhodka* (13,159 gross tons), carrying 19,000 tonnes of medium fuel oil, broke in two sections during a severe storm in the Sea of Japan. Some 6,200 tonnes of oil were spilled, causing heavy contamination of the shoreline.

The total compensation payments to claimants amount to £72.2 million as at October 16, 2000.

The 1971 IOPC Fund and the 1992 IOPC Fund have made payments. Since the rate of conversion into yen has not been fixed, there is the prospect of possible overpayment by the 1971 IOPC Fund.

Note: the SOPF is liable to pay contributions in the 1971 IOPC Fund only.

Nissos Amorgos (1997)

A claim had been presented by six shrimp processors and 2,000 fishermen who maintain that a downturn in catches of shrimps in 1998 was caused by the oil spill.

The Council decided that this claim was admissible in principle, but stated that in quantifying any losses attributable to the *Nissos Amorgos* incident, account should be taken of other factors as reflected in normal variations from year to year in shrimp catches.

The Council decided to maintain the level of payments at 25 per cent of the loss or damage actually sustained by each claimant, in view of the uncertainty of the total amount of claims.

Pontoon 300 (1998)

The barge *Pontoon 300* (4,233 gross tons) sank in heavy seas on January 8, 1998, off the United Arab Emirates. It is estimated that 8,000 tonnes of intermediate fuel oil was spilled. The oil spread over 40 kilometers of coastline, affecting four Emirates.

A claim for £39 million was presented by the Municipality of Umm al Quwain for, *inter alia*, environmental damages.

Some £31 million of the claim relates to alleged losses of fish stocks and other marine resources, including mangroves. The estimation of the damage appears to be based upon theoretical models.

The Council noted that the Director had pointed out to the Municipality that claims for environmental damage were not admissible.

The 3rd Administrative Council – January 29 to 30, 2001

The 3rd session of the Administrative Council, acting on behalf of the 6th Extraordinary Session of the Assembly of the 1971 IOPC Fund, was opened by Mr. V. Knyazev (Russian Federation).

Incidents Involving the 1971 IOPC Fund

Nissos Amorgos (1997)

The Administrative Council noted, with respect to a claim for £16.8 million presented by shrimp fishermen and processing companies, that a settlement agreement had been concluded on December 1, 2000, to the effect that the portion of the claim that was attributable to the *Nissos Amorgos* incident amounted to £10.8 million.

The Council expressed the hope that the claim situation before the courts would continue to improve thus allowing the Council to increase substantially the level of payments.

Sea Empress (1996)

The United Kingdom Government recently reached settlement of its claim with the 1971 IOPC Fund in respect of clean-up operations. The UK delegation stated that important lessons were learned, in particular the need for thorough record-keeping of events and the importance of following the Fund's criteria with regard to the admissibility of claims for at-sea recovery operations. Despite the ranking of the oil spill as one of the biggest on record, the total claims for pollution damage remained well within the 1971 IOPC Fund limit.

IOPC Fund's Web Site

The following is the IOPC Fund's Internet address:

www.iopcfund.org

The 4th Administrative Council – March 15, 2001

The 4th session of the Administrative Council, acting on behalf of the 7th Extraordinary Session of the Assembly of the 1971 Fund, was opened by Mr. V. Knyazev (Russian Federation).

1971 IOPC Fund Incidents

Braer (1993)

The Council was advised that the 1971 IOPC Fund continues to be successful against claimants in the law courts of Scotland.

It was noted that there is approximately £2.4 million remaining available to pay compensation. There still remains £3.7 million unpaid on certain claims previously settled. All other settled claims were paid in full. In addition, there are claims of £4.3 million pending in court.

It was noted that even if the 1971 IOPC Fund is successful in having all the pending claims in court dismissed, there is still not enough money available in the IOPC Fund to pay all remaining settled claims in full. The Convention provides that all claimants are to be treated equally.

Nissos Amorgos (1997)

In light of developments, the Council decided to increase the level of payments to 40 per cent and to authorize the Director to increase that level to 70 per cent when the 1971 Fund's total exposure in the incident fell below $100 million. The Council also authorized the Director to increase the Fund's level of payments up to a level of between 40 per cent and 70 per cent if and to the extent the actions withdrawn from the courts would allow it.

Claims were time-barred on February 28, 2000.

Sea Prince (1995)

In July 1995, the Cypriot tanker *Sea Prince* (144,567 gross tons) grounded near the Republic of Korea. Some 5,000 tonnes of Arabian crude oil was spilled as a result of the grounding.

The Council supported the Director's recommendation to make payments to the shipowner, notwithstanding that the related claims had been previously rejected by the Fund, as well as by the Korean Court in the limitation proceedings. The Director advised that he changed his mind based on recent additional information. The IOPC Fund also accepted a local expert's view contrary to the views of ITOPF.

Aegean Sea (1992)

The Director informed the Council that discussions had been held recently with the Spanish Government, that considerable progress had been made and that he hoped that a global settlement proposal could be presented at the next session of the Assembly or Administrative Council.

Appendix C: The 1992 IOPC Fund – Executive Committee and Assembly Sessions

The 1992 IOPC Fund Executive Committee held six sessions during the year. The 7th, 8th and 9th session was under the chairmanship of Professor Lee Sik Chai (Republic of Korea). The Director, Mr. Måns Jacobsson, chaired the 10th session. The 11th session was convened under the chairmanship of Capt. Luis Díaz-Monclús (Venezuela), and the 12th session was chaired by Mr. G. Sivertsen (Norway).

The 4th Extraordinary Session of the Assembly, the 5th Session of the Assembly and the 5th Extraordinary Session of the Assembly were held under the chairmanship of Mr. W. Oosterveen (Netherlands).

The 7th Executive Committee – April 3 to 6, 2000

For the *Nakhodka* incident claims, the Committee increased the level of the 1992 IOPC Fund's payment from 60 to 70 per cent of the loss or damage actually sustained by the respective claimants.

The 4th Extraordinary Session of the Assembly – April 4 to 6, 2000

Assessment of Contributions

The total amount of the claims arising out of the *Erika* incident are expected to reach the 1992 IOPC Fund's limit of 135 million SDR, approximately $270 million. Therefore, in order that sufficient funds are available to allow prompt payments of compensation, the Assembly decided to levy contributions of £40 million to the *Erika* Major Claims Fund as 1999 contributions, for payment by September 1, 2000.

European Commission's White paper on Environmental Liability

The Assembly agreed that the Director should present comments on behalf of the 1992 IOPC Fund. In his submission he should remain neutral on political issues and emphasize the positive aspects of the global regime. The European Commission should be asked to ensure that any action it proposes does not prejudice or undermine the functioning of the 1992 IOPC regime.

Note: the European Commission's White Paper on Environmental Liability was referred to in the SOPF 1999 – 2000 Annual Report, at page 37.

Establishment of the 3rd Intersessional Working Group

The Assembly decided to establish an intersessional Working Group which would meet on July 6, 2000 and report to the Assembly in October. The mandate is to: (a) exchange views, without drawing conclusions, regarding the need to change the IOPC Fund regime; and, (b) draw up a list of issues for further study.

The 2nd Meeting of the Second Intersessional Working Group – April 5, 2000

The Working Group first met in April 1999 to consider issues relating to the definition of "ship" as laid down in the 1992 CLC and the 1992 IOPC Fund Conventions. It made its first report to the 4th Assembly in October 1999. The Working Group had concluded that an unladen tanker falls within the definition of "ship" during any voyage after the carriage of a cargo of persistent oil. However, an unladen tanker falls outside the definition if it is proved there is no residue of such carriage onboard.

In the October 1999 Assembly, an additional paper (co-sponsored by Canada) arguing against the Working Group's conclusion, was submitted by the UK *et al*. Consequently, the Working Group was reconvened to meet in April 2000.

At the April 2000 meeting the Working Group considered a paper by the Oil Companies International Marine Forum (OCIMF), which supported the Working Group's conclusions. OCIMF agrees that the definition of "oil" should be used in a consistent manner throughout the Conventions and that the definition of "ship" and its proviso are conditional on this usage.

Many OCIMF members are significant contributors to the 1992 Fund. In the view of OCIMF, there are no uncertainties and ambiguities in the definitions. In addition, OCIMF submits that the interpretation, proposed in the UK *et al* paper, would, *inter alia*, add significant workload to administrative agencies, shipowners and the insurance industry.

There did not appear to be support for the UK *et al* position in this meeting.

The 8th Executive Committee – July 5 to 6, 2000

The 8th session of the Executive Committee was held primarily to consider the *Erika* incident.

Erika (1999)

The Maltese tanker *Erika* (19,666 gross tons) broke in two in the Bay of Biscay, France, on December 12, 1999. The tanker was carrying a cargo of 31,000 tonnes of heavy fuel oil. Approximately 19, 800 tonnes of oil was spilled as the ship sank. The sunken bow section contained about 6,400 tonnes of heavy fuel oil and the stern section a further 4,700 tonnes.

Operations to remove the oil from the wreck of the *Erika* began on July 3, 2000. Many beaches have been re-opened to the public.

The Committee took note of the findings of a French Government study on the extent of the damage caused by the *Erika* incident on the tourism industry. In the study it was estimated that the total amount of the admissible claims would fall within the range of £80 to £150 million.

The Canadian delegation noted that caution shall have to be exercised in the payment of claims, if there is a risk that the total amount might exceed the limit of compensation available (135 million SDR) - $270 million approximately. In light of Article 4.5 of the 1992 Fund Convention, it is necessary to strike a fine balance between paying compensation as promptly as possible and the need to avoid an over-payment situation. It was noted that the difficulties experienced in the *Braer* incident should be avoided. It was decided that payments should, for the time being, be limited to 50 per cent of the amount of the loss or damage actually sustained by the individual claimant, as assessed by the 1992 IOPC Fund's experts.

The *Erika* owner's limitation amount under the 1992 CLC is $18,600,000 approximately. The 1992 IOPC Fund contributors are liable to pay the balance - $251,400,000, approximately.

The French Government established a procedure with a French development bank where claimants could obtain advance payments for claims approved by the 1992 IOPC Fund. The government also introduced a scheme to provide emergency payments in the fishery sector.

Total Fina, the Charterer of the *Erika*, had decided to stand last in line to be paid regarding the removal of oil from the wreck, the collection and disposal of oily waste from the clean-up operations, its work in the beach clean-up, and the cost of a tourism publicity campaign.

The French Government also agreed to stand at the end of the line (just before any claims by Total Fina) to be paid for costs incurred by the French state.

The Third Intersessional Working Group (First Meeting)

The third intersessional working group held its first meeting under the chairmanship of Mr. Alfred Popp Q.C. (Canada) on July 6, 2000.

A full day's discussion was insufficient to deal with all the issues tabled by delegations. A list of issues for further consideration will be presented to the Assembly at its 5th Session in October 2000.

The 9th Executive Committee – October 23 to 27, 2000

The Executive Committee considered eight individual incidents that have given or may give rise to claims against the 1992 IOPC Fund since the Committee's 4th session, including the *Erika* incident.

Erika (1999)

Operations to remove the oil remaining in the *Erika* wreck were carried out from June to September 2000. No significant quantities of oil escaped during the oil removal operations.

In view of the remaining uncertainty about the total amount of the admissible claims, the Committee decided that the payments of the 1992 IOPC Fund should be limited, for the time being, to 50 per cent of the proven loss or damage actually sustained by an individual claimant.

A number of public bodies and private entities have taken legal action in France against Total Fina. Also, legal action has been taken against the *Erika's* liability insurer, the vessel's management company, and the classification society.

The classification society, RINA, has taken legal action in Italy against the 1992 IOPC Fund requesting a declaration that RINA was not liable for the incident. The 1992 IOPC Fund has taken recourse action in France against the classification society.

The 10th Executive Committee – October 27, 2000

The Director opened the session and the Committee elected Mr. G. Sivertsen (Norway) to hold office until the end of the next regular session of the Assembly. There was no other business.

The 5th Assembly – October 23 to 27, 2000

Revision of Limits in the 1992 Conventions

The Assembly was informed that the Legal Committee of the IMO took a decision on the amendment to the limits of maximum compensation, as proposed by a number of Contracting States. The legal Committee adopted two Resolutions amending the limits laid down in the 1992 Civil Liability Convention and the 1992 Fund Convention by 50.37 per cent.

As a result, the maximum aggregate amount available for compensation under the 1992 Conventions would be 203 million Special Drawing Rights (SDR) (approximately $406 million – giving the SDR a nominal value of $2.00 for convenience). These amendments shall enter into force on November 1, 2003, unless prior to May 1, 2002, a quarter or more of the Contracting States have communicated to IMO that they do not accept the amendments. The current maximum aggregate amount available for compensation is $270 million.

Election of the Executive Committee

Canada was re-elected as a member of the Executive Committee to hold office until the next regular session of the Assembly in October 2001.

Report of the Third Intersessional Working Group

The Committee considered the report of the Working Group's first meeting held July 6, 2000. The Assembly noted that issues considered to date included: (1) ranking of claims, (2) uniform application of the Conventions, (3) sanctions for failure to submit oil receipt reports, (4) dissolution and liquidation of the Fund, (5) maximum compensation levels (6) weighting of contributions according to the quality of ships used for the transport of oil, (7) environmental damage. The Assembly expressed its gratitude for the work achieved and instructed the Working Group to continue under the following revised mandate:

> *"(a) to hold an exchange of views concerning the need for and possibilities of improving the compensation regime established by the 1992 Civil LiabilityConvention and the 1992 Fund Convention.*
> *(b) to continue the consideration of issues identified by the Working Group as important for the purpose of improving the compensation regime and to make appropriate recommendations in respect of these issues; and*
> *(c) to report to the next regular session of the Assembly on the progress of its work and make recommendations as to the continuation of the work."*

The Working Group will meet during the weeks of March 12 and June 25, 2001.

Report of the Second Intersessional Working Group

This Working Group had been reconvened in April 2000 to give further consideration to the circumstances in which an unladen tanker would fall within the definition of "Ship", as laid down in the 1992 CLC and the 1992 IOPC Fund Convention. The Working Group confirmed its conclusion that an unladen tanker fell within the definition during any voyage after the carriage of a cargo of persistent oil, but fell outside the definition if it was proved that it had no residues of such carriage on board. It was generally accepted at the April 2000 meeting that the definition of "oil" in Article 1.5, which is clearly restricted to "persistent hydrocarbon mineral oil", was paramount.

It was noted in April 2000 that the final decision regarding the definition of "Ship" rested with the national courts in Contracting States. The Assembly noted the Second Intersessional Working Group had finished its work. The Assembly endorsed the Working Group's conclusions.

1999 Financial Statements and Auditors Report and Opinion

In 1999 the administrative cost of running both Funds was £1 707 052. The 1992 Fund's share was £815 304.

Canada became a Contracting State to the 1992 Fund Convention on May 29, 1999. No contributions were due to the 1992 Fund in 1999 from Canada.

Contingent Liabilities

There are contingent liabilities of the 1992 Fund estimated at £195 809 000 in respect of five incidents as at December 31, 1999. Three of these incidents took place after Canada became a Contracting State on May 29, 1999, with an aggregate contingent liability of £109 778 000.

Note: The SOPF will be liable to pay the Canadian share of this latter amount as it matures.

2001 Budget and Assessment of Contributions to General Fund

The Assembly decided to levy contributions to the General Fund for a total of £7.5 million, due for payment on March 1, 2001.

Note: The Canadian share of approximately $747 000 shall be paid by the SOPF.

Assessment of Contributions to Major Claims Funds

For the *Erika* incident, some £90 million may be payable by the 1992 Fund by March 1, 2002. The Director proposed that a levy in the form of 2000 contributions should be made to the *Erika* Major Claim Fund for £50 million. The Assembly decided that £25 million re *Erika* should be due for payment by March 1, 2001, and that the remainder of the levy (£25 million) should be deferred.

Note: The SOPF is liable to pay the Canadian share here, as it is in the General Fund.

In August, 2000, the SOPF paid the first Canadian contribution for the *Erika* incident in the amount of approximately $3.6 million. (Levied in April 2000.) In February, 2001, the SOPF made a second payment for the *Erika* incident in the amount of approximately $2.3 million.

The 11th Executive Committee – January 29 to 30, 2001

Erika (1999)

A new study was carried out within the French Ministry of Economy, Finance and Industry. The French study concludes that the total amount of the admissible claims would reach FFr 1600 million (£150 million) excluding Total Fina and the French State claims.

On the other hand, the Committee was also informed that a third party study was recently reported in the media. This study commissioned by L'association Ouest Littoral Solidaire (a group of three administrative regions: Bretagne, Pays de la Loire and Poitou-Charentes) set the amount of damage from the incident in the range of FFr 5500 – 6300 million (£527--603 million). Excluding Total and French state claims this would still leave a range of FFr 4340-5230 million. The Committee did not have a copy of this study and did not know the methods used for this assessment.

The Committee decided on estimated total admissible claims at approximately FFr 1800 million and increased the level of payments from 50 per cent to 60 per cent. This would amount to a $25 million increase, approximately. The Director informed the French media after the meeting.

It was noted that the French Ministry's study is based on the admissibility criteria of the 1992 Fund. However, the Fund's French lawyer had advised that the French courts might take a more extensive approach in their interpretation of the notion of "pollution damage", and that it is not possible to predict the consequences of such an approach.

The Committee noted that severe criticism had continued to be made against the 1992 IOPC Fund by French cabinet ministers other politicians and various other bodies.

Nakhodka (1997)

The Committee noted that the level of payments has increased to 80 per cent of the amount of the damage actually sustained by the individual claimants. It was expected that the 1992 IOPC Fund would make additional payments of £11.5 million shortly.

Note: Canada is liable for this incident in the 1971 IOPC Fund only.

SLOPS (2000)

The Greek–registered waste oil reception facility *Slops* (10,815 gross tons) sustained a fire and explosion on June 15, 2000, while at anchor in the port of Piraeus, Greece. The vessel was laden with 5,000 tonnes of oily water of which 1000 to 2000 tonnes was believed to be oil. A substantial quantity of the oil was spilled from the *Slops* causing extensive shoreline pollution.

The *Slops* was originally designed and constructed as a tanker, but converted in 1995 for exclusive use – permanently at anchor – as a waste oil storage and processing unit without propulsion machinery.

The Executive Committee had decided at its 8th session that the *Slops* should not be considered a "Ship" under the 1992 Conventions. This decision took into account an earlier Assembly decision that floating storage units (FSUs) and floating production, storage and offloading units (FPSOs) should be regarded as ships only when they carry oil as cargo on a voyage to or from a port or terminal outside the oil field in which they normally operate. Further, the Second Intersessional Working Group had also taken the view that there was no significant difference between the storage and processing of crude oil in the offshore industry and the storage and processing of waste oils derived from shipping.

The Greek clean-up contractor recently asked that the claim and the question of "Ship" be put to binding arbitration, as provided in Internal Regulation 7.3 of the Fund.

The Committee decided that, while the quantum of a claim would be appropriate to submit to arbitration, for example, it would be inappropriate to submit to arbitration the question of whether the governing bodies' interpretation of the definition was correct. If the claimant did not accept this position, he could take legal action against the 1992 IOPC Fund through the competent national court.

Note: It is understood that the utilization of a FSU is not contemplated in Canada at this time. However, the first Canadian FPSO will likely be located in the Terra Nova field off Newfoundland during the summer of 2001.

The 5th Extraordinary Session of the Assembly – January 30, 2001

At the 5th extraordinary session the Assembly was informed about the European Commission's proposal for a Regulation to set up a fund for the compensation for oil spills in European waters.

Under the proposed fund for Compensation for Oil Pollution in European waters (COPE), the amount of compensation available would be one billion Euros. This would include the amount payable under the 1992 Civil Liability Convention and the 1992 IOPC Fund Convention – that is, 135 million SDR ($270 million or 188 million Euros).

The EC considers that the 50 percent increase of existing 1992 IOPC limits providing for a total 203 million SDR (300 million Euros or some $406 million) which should come into effect on November 1, 2003, is insufficient.

The COPE Fund would only be activated when a spill occurred in European Union waters when the total claim exceeded, or threatened to exceed, the maximum amount of compensation available from the 1992 IOPC Fund. The COPE Fund would be financed by European oil receivers according to procedures similar to those of contributors to the 1992 IOPC Fund. When the total costs were known there would be a bilateral financial settlement between the 1992 IOPC Fund and the COPE Fund, according to the EC proposal.

The IOPC delegations from European Union Member States expressed the view that any action within the European Union should not be detrimental to the IOPC global regime. The proposal had not yet been examined either by the European Parliament or by the EU Council of Ministers of the Member States.

Note: Canada, unlike other IOPC Contracting States, already has a third tier. The SOPF amount of approximately $134 million on top of the revised IOPC amount of $406 million, would result in approximately $540 million being available for a tanker spill in Canada after November 1, 2003.

The 12th Executive Committee – March 15, 2001

Erika (1999)

The Committee decided to maintain the level of payments at 60 per cent.

At March 8, 2001, there were 4,087 claims for £55 million. Some 2,350 claims (£20 million) had been assessed at £13 million.

The Canadian delegation requested information on the Mazars et Guérard report on damages resulting from the incident, prepared for L'association Ouest Littoral Solidaire (a group of three administrative regions: Bretagne, Pays de la Loire and Poitou-Charentes), given its potential importance in deciding the level of payments for claims. The French delegation undertook to provide further information as it became available.

Nakhodka (1997)

The Canadian delegation urged the Director to pursue recourse action. This suggestion was supported by other delegations.

The Third Intersessional Working Group – (Second Meeting)

The second meeting of the third intersessional Working Group was held on March 12 and 13, 2001. The Working Group continued the exchange of views concerning the need for, and possibilities of, improving the compensation regime.

Some matters under consideration by the Working Group are:

Maximum Compensation Levels

A majority of delegations were of the view that tacit amendment procedures in the Conventions should be revised, so as to allow an increase of the limits of liability at more frequent intervals. This should also provide an opportunity to reset the balance between the obligations of shipowners and receivers of contributing oil, which seems inequitable in the *Erika* incident.

European delegations generally expressed support for a proposed IOPC optional third-tier to obviate the need for a European "third-tier" fund as proposed by the EC. Industry and some non-European Union delegations expressed their reservations. The Japanese delegation did not support the proposal.

Test for "Breaking" Limitation of Liability

The Working Group discussed a French paper, which contends, *inter alia*, that the P&I Clubs rules makes it no longer worth the victim's while to prove the shipowner's fault. The document indicates that under the 1992 CLC test, as opposed to the 1969 CLC test, the victim would have no guarantee of compensation beyond the shipowner's limitation amount. The French say the insurer, by its rules, does not cover damage caused by the shipowner resulting from his personal act or omission, committed with intent or recklessly and with knowledge that such damage would probably result - which is the 1992 test for breaking the shipowner's right to limit liability.

It was noted that this aspect of the test for "breaking" limitations of liability will require further discussion with the P&I Clubs.

Recourse Action

The delegation from the Republic of Korea noted that with the 1992 test for breaking the shipowner's limit of liability, there is little room for recourse action. That delegation suggested consideration be given to reducing the kind of person that can claim the immunity under the Convention.

Others suggested that as regards the channelling provisions in Article III.4 of the 1992 CLC a difference should be made between the right of victims to claim compensation from the persons referred to in the provisions (e.g. charterers) and the 1992 Fund's right to take recourse action against these persons.

It was suggested that it might be possible to strengthen the Fund's position by including a provision giving explicitly the Fund the right to take recourse action, probably based on fault. It was generally considered that the 1992 Fund should take recourse action whenever appropriate, and that a firm policy by the Fund in this regard could be used against persons operating substandard ships.

Note: Claims for pollution damage under the CLC can be made only against the registered owner of the ship concerned. This does not preclude victims from claiming compensation outside the CLC from persons other than the owner. However, the 1969 CLC prohibits claims against the servants or agents of the owner. The 1992 CLC does the same, but also prohibits claims against the pilot, the charterer (including a bareboat charterer), manager or operator of the ship, or any person carrying out salvage operations or taking preventive measures.

Promoting Use of Quality Ships

The Canadian delegation continues efforts to see a revision of the present limits of liability in the 1992 CLC/IOPC Fund regime to achieve an equitable balance between the financial obligations of shipowners and receivers of oil, for oil spill incidents.

A French paper noted that an increase in the amount of the insurer's obligations under the Conventions would undoubtedly influence the quality of ships given P&I cover.

Appendix D: Changes Introduced by the1992 Protocols

- A special limit of liability for owners of small vessels and a substantial increase in the limitation amount. The limit is $5.97 million for a ship not exceeding 5,000 units of gross tonnage, increasing on a linear scale to $118.72 million for ships of 120,000 units of tonnage or over, using the value of the SDR at April 1, 2001.

- An increase in the maximum compensation payable by the 1992 IOPC Fund to $268.45 million, including the compensation payable by the shipowner under the 1992 CLC up to its limit of liability.

- A simplified procedure for increasing the limitation amounts in the two Conventions by majority decision taken by the Contracting States to the Conventions.

- An extended geographical scope of application of the Conventions to include the exclusive economic zone or equivalent area of a Contracting State.

- Pollution damage caused by spills of bunker oil and by cargo residues from unladen tankers on any voyage after carrying a cargo are covered.

- Expenses incurred for preventative measures are recoverable even when no spill of oil occurs, provided that there was a grave and imminent danger of pollution damage.

- A new definition of pollution damage retaining the basic wording of the 1969 CLC and 1971 IOPC Fund Convention with the addition of a phrase to clarify that, for environmental damage, only cost incurred for reasonable measures actually undertaken to restore the contaminated environment are included in the concept of pollution damage.

- Under the 1969 CLC the shipowner cannot limit liability if the incident occurred as a result of the owner's actual fault or privity. Under the 1992 CLC, however, the shipowner is deprived of this right only if it is proved that the pollution damage resulted from the shipowner's personal act of omission, committed with the intent to cause such damage or recklessly and with knowledge that such damage would probably result.

- Claims for pollution damage under the CLC can be made only against the registered owner of the ship concerned. This does not preclude victims from claiming compensation outside the CLC from persons other than the owner. However, the 1969 CLC prohibits claims against the servants or agents of the owner. The 1992 CLC does the same, but also prohibits claims against the pilot, the charter (including a bareboat charter), manager or operator of the ship, or any person carrying out salvage operations or taking preventive measures.

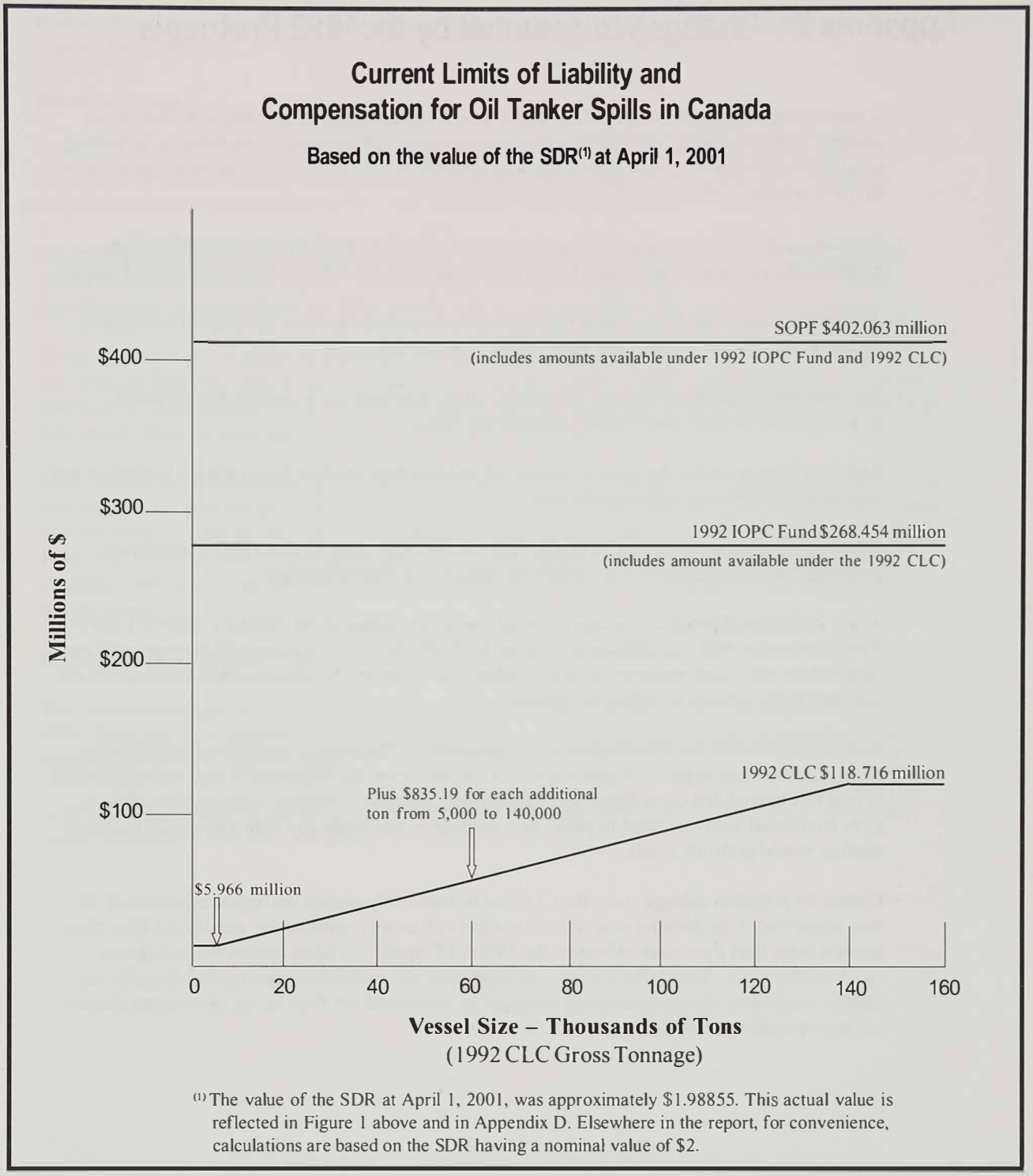

Figure 1

Figure 1 shows the current limits of liability and compensation available under the 1992 CLC, the 1992 IOPC Fund Convention, and the SOPF for oil spills from oil tankers in Canada, including the territorial sea and the exclusive economic zone. Because of the SOPF, Canada has the extra cover over and above that available under the international Conventions.

Revision

N.B.: The above aggregate amount available under the 1992 CLC and 1992 IOPC Fund ($268.454 million) should increase by approximately 50% (to 402.68 million) effective November 1, 2003. The SOPF amount of approximately $134 million on top of that, would result in $536.68 million being available for a tanker spill in Canada after November 1, 2003.

Appendix E:

Contracting States to both the 1992 Protocol to the Civil Liability Convention and the 1992 Protocol to the IOPC Fund Convention as at 24 January 2001

52 States for which Fund Protocol is in Force (and therefore Contracting States of the 1992 IOPC Fund)		
Algeria	Germany	Oman
Australia	Greece	Panama
Bahamas	Grenada	Philippines
Bahrain	Iceland	Poland
Barbardos	Ireland	Republic of Korea
Belgium	Italy	Seychelles
Belize	Jamaica	Singapore
Canada	Japan	Spain
China (Hong Kong Special Administrative Region)	Latvia	Sri Lanka
Comoros	Liberia	Sweden
Croatia	Malta	Tonga
Cyprus	Marshall Islands	Tunisia
Denmark	Mauritius	United Arab Emirates
Dominican Republic	Mexico	United Kingdom
Fiji	Monaco	Uruguay
Finland	Netherlands	Vanuatu
France	New Zeland	Venezuela
	Norway	

12 States that have deposited Instruments of Accession, but for which the IOPC Fund Protocol does not enter into force until date indicated	
Kenya	2 February 2001
Trinidad and Tobago	6 March 2001
Russian Federation	20 March 2001
Georgia	18 April 2001
Antigua and Barbuda	14 June 2001
India	21 June 2001
Lithuania	27 June 2001
Slovenia	19 July 2001
Morocco	22 August 2001
Argentina	13 October 2001
Djibouti	8 January 2002
Papua New Guinea	23 January 2002

Appendix F:

Contracting States to both the 1969 Civil Liaibility Convention and the 1971 IOPC Fund Convention as at 24 January 2001 (and therefore Contracting States to the 1971 IOPC Fund)

26 Contracting States to the 1971 IOPC Fund Convention		
Albania	Gabon	Nigeria
Benin	Gambia	Portugal
Brunei Darussalam	Ghana	Qatar
Cameroon	Guyana	Saint Kitts and Nevis
Columbia	Kuwait	Sierra Leone
Côte d'Ivoire	Malaysia	Syrian Arab Republic
Djibouti	Maldives	Tuvalu
Estonia	Mauritania	United Arab Emirates
	Mozambique	Yugoslavia

8 Contracting States to the 1971 IOPC Fund Convention that have deposited Instruments of Denunciation that will take effect on date indicated	
Iceland	10 February 2001
Russian Federation	20 March 2001
Antigua and Barbuda	14 June 2001
India	21 June 2001
Kenya	7 July 2001
Slovenia	19 July 2001
Morocco	25 October 2001
Argentina	13 October 2001
Papua New Guinea	23 January 2002

Appendix G: EC Proposal for a COPE Fund

COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 6.12.2000
COM(2000) 802 final

2000/0325 (COD)
2000/0326 (COD)
2000/0327 (COD)

COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT AND THE COUNCIL

ON A SECOND SET OF COMMUNITY MEASURES ON MARITIME SAFETY FOLLOWING THE SINKING OF THE OIL TANKER ERIKA

Proposal for a

DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

establishing a Community monitoring, control and information system for maritime traffic

Proposal for a

REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

on the establishment of a fund for the compensation of oil pollution damage in European waters and related measures

Proposal for a

REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

establishing a European Maritime Safety Agency

(presented by the Commission)

Explanatory Memorandum

GENERAL INTRODUCTION

1 Present situation and problems

The compensation of victims of an accidental oil spill caused by oil tankers forms an important aspect of the overall regulatory framework for marine oil pollution and is consequently an issue of major importance for the European Commission. As was pointed out in its Communication on the safety of seaborne oil trade of 21 March 2000 (COM(2000) 142 final), the Commission considers that the existing international liability and compensation regime, while having served its purpose relatively well over the last decades, entails a number of shortcomings. The most pressing one is the inadequacy of the current limits for liability and compensation. Some recent accidents, most notably the sinking and consequential oil spill of the *Erika* in December 1999, have clearly shown the insufficiency of the existing limits, having the consequence that victims of an oil spill may not be fully compensated and also contributing to significant delays in the payment of compensation. For this reason, the Commission has decided to act particularly quickly in order to create a mechanism for raising the limits of compensation in order to ensure that future oil spills in Europe will be adequately compensated. The other shortcomings need to be rectified as well, but it is considered that they could be addressed over a slightly longer period of time. Outside the scope of liability and compensation, the Commission also proposes to introduce a sanction of a penal nature for established grossly negligent behaviour on behalf of any person involved in the transport of oil at sea.

2 Background

The transport of oil by sea is an intrinsically hazardous activity, which entails considerable risks for the marine environment. The full scale of the environmental threats posed by the rapid growth in tanker traffic and ship size became apparent in March 1967 when the 120 000 tonne deadweight Liberian-flagged tanker *Torrey Canyon* ran aground on the Seven Stones' reef off Land's End, UK. This resulted in 119 000 tonnes of crude oil being spilled causing severe pollution along the coasts of southwest England and northern France.

This disaster prompted the international community to elaborate, through the International Maritime Organization, a number of instruments aimed at improved safety of oil tankers and increased protection of the marine environment, including two conventions laying down detailed rules of liability and compensation for pollution damage caused by oil tankers.

The 1969 International Convention on Civil Liability for Oil Pollution (CLC) and the 1971 International Convention setting up the Oil Pollution Compensation Fund (Fund Convention) entered into force in 1975 and 1978 respectively. The two conventions established a two-tier liability system, which builds upon a strict but limited liability for the registered shipowner and a Fund, financed by oil receivers, which provides supplementary compensation to victims of oil pollution damage who cannot obtain full compensation for the damage from the shipowner.

This regime has been revised in substance only once, in the early 1980's. That revision resulted in the 1984 Protocols to the two conventions which never entered into force, due to lack of sufficient ratification by oil receiving States. In the early 1990's, a new effort was made to bring the modifications into force. The resulting 1992 Protocols retained the substance of the 1984

amendments, but modified the entry into force requirements. These Protocols to the CLC and Fund Conventions entered into force in 1996. All EU Member States with a coastline are now parties to the two 1992 Protocols, except Portugal which is still in the process of finalising the ratification procedures.

The USA does not participate in this international liability and compensation regime. The *Exxon Valdez* accident in Alaska in 1989 brought discussions of a potential US accession to the system to an end. Instead, the US decided to create, within the framework of the 1990 Oil Pollution Act, a separate federal liability regime, with the possibility for individual states to introduce more stringent legislation.

3 Summary of the 1992 international liability and compensation system

The 1992 regime covers pollution damage caused by spills of persistent oil from tankers in the coastal waters (up to 200 miles from the coastline) of the participating States. The loss and damage covered by the regime includes property and, to some extent, economic losses and costs of environmental restoration as well as preventive measures, including clean-up costs.

The first liability tier, the liability of the registered shipowner, is governed by the CLC. The shipowner's liability is strict and thus not depending on fault or negligence on his part. The owner is normally allowed to limit his liability to an amount which is linked to the tonnage of the ship, presently maximum EUR 90 million for the biggest ships, in the case of the *Erika* only around EUR 13 million. The shipowner loses the right to limit his liability only if it is proved that the pollution damage "resulted from his personal act or omission, committed with the intent to cause damage, or recklessly and with knowledge that such damage would probably result". The CLC also requires shipowners to maintain liability insurance and gives claimants the right of direct action against the insurer up to the limits of the shipowner's liability. Through the 'channelling' of the liability to the registered shipowner only, many other parties, including notably the ship's manager, operator and the charterer, are explicitly protected from liability claims, unless their negligence amounts to the same as that of shipowners' loss of right to limit their liability, quoted above.

The CLC regime is supplemented by the International Oil Pollution Compensation Fund (the IOPC Fund), which was established through the Fund Convention in order to compensate victims when the shipowner's liability is insufficient to cover the damage. Recourse to the IOPC Fund may take place in three cases. The most common is where the damage exceeds the shipowner's maximum liability. The second case is where the shipowner can invoke any of the defences allowed in the CLC[10]. The last case is where the shipowner (and his insurer) are financially incapable of meeting their obligations. The maximum compensation by the IOPC Fund is around EUR 200 million. The IOPC Fund is financed by contributions from companies or other entities receiving oil carried by sea. In the event of an oil spill, thus, all oil receivers world-wide which are established in the States parties to the Fund Convention will contribute to the compensation as well as to the administrative expenses of the Fund, wherever the pollution damage has occurred. The IOPC Fund will not pay

10 According to Article III.2 of the CLC the shipowner is exempted from liability if he proves that the damage:
(a) resulted from an act of war, hostilities, civil war, insurrection or a natural phenmomenon of an exceptional, inevitable and irresistible character, or
(b) was wholly caused by an act or omission done with intent to cause damage by a third party, or
(c) was wholly caused by the negligence or other wrongful act of any Government or other authority responsible for the maintenance of lights or other navigational aids in the exercise of that function.

compensation if the pollution damage resulted from an act of war or was caused by a spill from a warship. It also has to be proved that the oil originated from a tanker.

Victims of oil spills may present their claims directly against the IOPC Fund and, to the extent claims are justified and meet the relevant criteria, the Fund will compensate the claimant directly. If the total of approved claims exceeds the maximum limit of the IOPC Fund all claims will be reduced proportionately. Claimants may also decide to pursue their claims before the courts of the State where the damage occurred. Since it was first established in 1978, the IOPC Fund has dealt with some 100 cases, most of which have been within the limits of compensation and thus fully compensated according to the Fund's own assessment as to the validity of claims.

4 Assessment of the international liability and compensation regime

4.1 Assessment criteria

In its Communication on the safety of the seaborne oil trade, the Commission established three criteria against which the adequacy of a compensation system needs to be assessed.

(1) It should provide prompt compensation to victims without having to rely on extensive and lengthy judicial procedures.

(2) The maximum compensation limit should be set at a sufficiently high level to cover claims from any foreseeable disaster occurring as a result of an oil tanker accident.

(3) The regime should contribute to discouraging tanker operators and cargo interests from transporting oil in anything other than tankers of an impeccable quality.

Following the Erika accident, the Commission was bound to examine the existing international system, provided by the CLC and Fund conventions, in the light of these criteria. The Commission's assessment is that the international system satisfies some of these concerns but not all of them.

4.2 Procedures of compensation

Regarding the promptness of compensation and the general functionality of the system, the Commission recognises that the existing international oil pollution liability and compensation system provides some important benefits, some of which are instrumental in ensuring the prompt compensation for incidents potentially involving a number of parties under different legal jurisdictions. The way the system is built, claimants generally have no difficulty in identifying the liable party nor need they prove fault or negligence on behalf of the shipowner in order to obtain compensation. Questions relating to the nationality of the ship or its owner and the owner's financial situation are similarly unconnected to the availability of compensation within the limits, thanks to the requirements of compulsory insurance and the right of direct action against the insurer. Such features contribute to a more expeditious settlement of claims and to facilitating the general administration of the system.

As regards the financing of the Fund too, a relatively straightforward mechanism for the contribution of cargo interests has been laid down. The expenses of the IOPC Fund are collectively shared between the main receivers of crude oil and/or heavy fuel oil in the participating States in a proportion

corresponding to the quantities of oil received by each receiving company. The quantities of received oil are reported by the Governments of the States parties to the IOPC Fund, which invoices the oil receivers directly, based upon an estimate of the expenses for the forthcoming year. Governments are not responsible for these payments, unless they have voluntarily accepted such responsibility. In general, this system has worked satisfactorily and it has normally been possible to collect the required means within a reasonable period of time. There is, however, still a problem with some States which fail to notify the quantities of received oil, leading to difficulties for the IOPC Fund to collect the contributions from oil receivers in those States.

Bearing in mind the considerable inventiveness involved in the development of the international liability and compensation regime for oil spills, it has, generally speaking, proved to be workable. The vast majority of some 100 cases of oil spill compensation cases which have been dealt with by the IOPC Fund have been satisfactorily resolved in the sense that the procedures of assessing and paying the claims have been relatively smooth. Claimants have normally chosen to settle their claims directly with the Fund, outside courts, which indicates that there is a considerable degree of acceptance as regards the assessment of claims made by the IOPC Fund.

By no means all cases have been swift and straightforward, however. Most, if not all, oil spills that threaten to exceed the maximum compensation limit have encountered significant delays in the payment of compensation, because of uncertainty as to the final cost of the oil spill. If it appears that the total of valid claims may exceed the maximum amount of compensation available, it will result in a 'prorating' of approved claims, that is, claimants will receive only a certain percentage of their compensation until all potential claims emanating from the incident have been submitted and assessed, which normally will take several years. In addition, major oil spills and subsequent dissatisfaction with the compensation procedures tend to increase the role of national courts in the settlement process, which often lead to further complexities and delays. Consequently, compensation procedures in major oil spills have normally been both complex and slow. A number of high-profile European oil spills in the 1990's, such as *Aegean Sea* (Spain, 1992), *Braer* (UK 1993), *Sea Empress* (UK, 1996) have encountered such problems and claimants who have suffered damage from those spills still do not know if and when they will receive full compensation. There are no indications that the *Erika* oil spill will be different in this respect.

The Commission considers that such long delays in the payment of compensation are unacceptable. It does, however, acknowledge the strong correlation between the length of proceedings and the risk of reaching the limit for the maximum available compensation amount. Given the consequences of nearing the maximum limit outlined above, the Commission takes the view that the unacceptably long delays in payment of compensation are primarily due to insufficient limits of compensation rather than deficiencies inherent in the compensation procedures as such. Some other elements in the system, which may contribute to delayed payments or otherwise complicate the compensation of victims, are currently being examined by a working group within the IOPC Fund[11]. The Commission takes part in this work and hopes that it will produce some additional measures improving the prospects of fair and prompt compensation of victims. In conclusion, therefore, the Commission considers that the existing international compensation system, notwithstanding some important exceptions, satisfies the first criterion relating to the adequacy of the procedures for compensating victims of an oil spill.

11 The items which have been taken up for discussion in this respect include the question of priority treatment of certain claims and a more general review of the procedures on submission and handling of claims.

4.3 Adequacy of limits

The inadequacy of compensation limits is, in the view of the Commission, the most important shortcoming of the international system. Inadequate limits have the consequence that victims of an expensive oil spill may not receive full compensation even if the validity of their claims has been established. This is questionable from a point of view of principle. In addition, as explained above, inadequate limits almost inevitably contribute to uncertainty and delays in the settlement of claims. In effect, therefore, insufficient limits have the consequence that a victim of a major oil spill is likely to be compensated later and less than a person having suffered similar damage from a smaller oil spill. The Commission considers this to be difficult to justify.

Out of some 100 oil spills dealt with by the IOPC Fund so far, some ten have raised more serious doubts as to the sufficiency of the limits and/or the promptness of settling claims. This may not seem much, in particular when bearing in mind that a large proportion of the world's tanker oil spills do not trigger IOPC Fund action at all, as they are settled with the shipowner under the CLC Convention if the totality of claims does not exceed the limit of the shipowner's liability. It is also true that most of the problematic cases have occurred under the 'old' regime before the entry into force of the 1992 Protocols which more than doubled the available maximum amount of compensation.

Such statistics are largely irrelevant, however, if one, like the Commission, takes the view that all oil spills shall be adequately and promptly compensated. It is not acceptable that citizens and other victims who have suffered at times dramatic consequences of a major oil spill are not fully compensated. The maximum limits should therefore cover any foreseeable disaster. The distance between that goal and the present situation is evidenced by the fact that both major oil spills (*Nakhodka*, Japan, 1997 and *Erika*, France, 1999) that have occurred since the 1992 regime took effect have cast serious doubts as to the sufficiency of the new limits, despite rather limited amounts of fuel oil released at both occasions[12]. Claims of the *Erika* accident are likely to exceed that amount considerably, meaning that its victims will have to rely on voluntary undertakings by the Government and the oil company concerned in order to obtain even the most essential compensation. The Commission finds it difficult to see how such compensation limits could meet the criteria of being satisfactory.

The insufficiency of the existing limits may not be surprising when one considers that those limits were developed in the early 1980's and thus took effect in Europe some 12-20 years later, depending on the time of ratification by the Member States. Following the *Erika* accident, the process has already started whereby the existing limits of the CLC and Fund Conventions will be increased, according to a specific simplified amendment procedure envisaged in the Conventions. The maximum increase under this procedure depends on a number of factors and will not at present facilitate an increase of more than some 50% of the current limits. The first decisions to approve this increase were taken in October 2000 and the amendments will, if finally adopted, be applicable at the earliest on 1 November 2003.

The Commission considers that a 50% increase of the existing limits, providing a total of some EUR 300 million, which will come into effect in three years' time, is insufficient to guarantee adequate

12 The *Nakhodka* incident resulted in the release of some 6,200 tonnes of medium fuel oil while the spill of the *Erika* is estimated to be around 19,000 tonnes of heavy fuel oil.

protection for victims of a potential major oil spill in Europe. As already stated, it considers that any foreseeable pollution disaster should be fully covered by the compensation system, not only for today but also for some time in the future. The proposed increase would seemingly not even cover the total claims of the *Erika* accident.

The sufficiency of the limit also needs to be evaluated in the context of the type of damage that is covered by the regime. If the range of damage to be covered is extended, the amounts will obviously have to be raised accordingly. Since, as explained below, it is the view of the Commission that compensation of environmental damage should be extended, it follows that a significant rise in the overall limits is further justified.

It is considered that an overall ceiling of EUR 1,000 million would provide the necessary safeguard of coverage for any foreseeable disaster. This limit is more consistent with the ceiling of the Oil Spill Liability Trust Fund established under federal laws in the United States and with existing insurance practices as regards shipowners' third party liability cover for oil pollution, which may come into play if the limitation under the CLC is not applicable.

To conclude, the existing maximum limits of the CLC and Fund Conventions fall well short of being adequate. In order to ensure decent compensation for European citizens following an oil spill, and greater correspondence to the compensation of the US Oil Spill Liability Trust Fund, the maximum amount should be set at EUR 1,000 million. The argument that such accidents are likely to happen rarely cannot, in the view of the Commission, provide a justification for setting limits under the costs of entirely conceivable oil pollution incidents and thereby seriously compromising the adequate compensation of victims.

4.4 Responsibilities and liabilities

4.4.1 General

For any liability and compensation system to be considered adequate, it needs not only to provide adequate compensation, but should also reflect a fair balance between the responsibilities of the players concerned and their exposure to liability. In addition, a liability system should, where possible, contribute to discouraging the stakeholders from deliberately taking risks which could be devastating for the protection of lives and the environment.

The Commission considers that the international regime for liability and compensation of oil pollution damage entails a number of shortcomings in this regard. The way the liability system is construed it produces few incentives for the players to ensure that oil is only carried on board tankers of an impeccable quality. As illustrated by the fact that ships in an appalling condition continue to be employed for transportation of oil in Europe and elsewhere, neither carriers nor cargo interests have sufficient disincentives to give up their intolerable practice of deliberately providing and using low-quality tonnage for transport of oil at sea.

More particularly, those shortcomings include the following features, all of which are at odds with more recent environmental liability developments at international and Community level:

4.4.2 The threshold for losing limitation right

The right of shipowners to limit their liability is practically unbreakable. As already indicated, the owner of a ship does not lose the right to limit, unless it is proven that the damage "resulted from his personal act or omission, committed with the intent to cause damage, or recklessly and with knowledge that such damage would probably result". Negligence or even gross negligence on behalf of the owner does not meet these criteria and it is evident that in most circumstances it would be very difficult to breach this threshold. While it is true that the quoted phrase has its equivalents in some other maritime liability conventions, the Commission fails to see the justification for copying such an unassailable test for the loss of the limitation right into the oil pollution liability regime. It considers that the extraordinary risks involved in the transport of oil by sea need to be reflected in a greater exposure of the shipowner to unlimited liability.

The problems of nearly unbreakable rights are further aggravated by the methods by which the shipowner's liability is established. It is solely calculated on the basis of the size of the ship, ignoring factors such as the nature of cargo carried and the amount of oil spilled. The owner of the *Erika*, for instance, could thus count on a right to limit his liability to some EUR 13 million, with a very limited risk of losing this right due to any potential conduct on his part, whether before or during the incident.

In many environmental liability regimes developed in the 1990's the trend has been to abolish limitations of liability. This is equally true for the evolving Community environmental liability regime, as outlined in the Commission's White Paper on Environmental Liability (COM(2000) 66 final). Normally, however, such unlimited liability rules are not coupled with compulsory insurance requirements. That may not be a problem for land-based sources of pollution, as the identification of and jurisdiction over the liable person normally will not generate difficulties. In the case of maritime pollution the situation is different, as the polluter may be of any nationality and otherwise difficult to trace. Compulsory insurance and a right of direct action against the insurer are therefore instrumental if the protection of victims is to be ensured. However, a potentially unlimited liability does not necessarily mean that the whole liability needs to be covered by insurance. It is perfectly possible to envisage a system, in which the insurance requirement is restricted to the limits of the strict liability, whereas the fault-based unlimited liability is borne by the owner himself. A case in point in this regard is the newly adopted Liability Protocol to the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal[13]. It is further worth noting that even within the international oil spill compensation system itself, a significantly lower threshold for loss of right to limitation, that of 'actual fault or privity' on behalf of the owner, was applied until 1996 through the 1969 CLC Convention. As far as is known, this wording did not cause any major complications in the international oil pollution liability regime throughout its 25 years of operation.

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13 The 1999 Basel Protocol on Liability and Compensation for Damage Resulting from Transboundary Movements of Hazardous Wastes and their disposal provides for strict liability up to certain minimum limits, which shall be covered by insurance. Article 5 of the Protocol provides that without prejudice to the strict liability "any personal shall be liable for damage caused or contributed to by his lack of compliance with the provisions implementing the Convention or by his wrongful intentional, reckless or negligent acts or omissions." Article 12(2) goes on by providing that "there shall be no financial limit on liability under Article 5".

The Commission therefore considers that the current threshold for loss of limitation rights should be lowered in order to bring it into line with other comparable regimes. At least proof of gross negligence on behalf of the shipowner should trigger unlimited liability. Such a measure would relate the exposure to liability more closely to the conduct of the shipowner and would thus produce both preventive and punitive effects.

4.4.3 Protection of other parties than the registered shipowner

The liability for oil pollution damage is channelled to the registered shipowner only. The channelling of liability to one specified person has some advantages in providing clarity as to the liable party, thus facilitating the identification of the person to whom claims for compensation should be made. Channelling of liability is also a device for avoiding multiple insurance and hence contributes to higher theoretical levels of the liability to be insured. However, the type of channelling which is provided under the CLC goes some steps further by explicitly prohibiting claims against a number of other players (including notably, operators, managers, charterers), who may well exercise as much control over the transport as the registered owner of the ship. These persons are protected from any compensation claims unless the damage "resulted from their personal act or omission, committed with the intent to cause damage, or recklessly and with knowledge that such damage would probably result" (which is the same test as that relating to the shipowner's loss of the right to limit his liability). Such protection of a number of key players implies that those persons can act within an almost assured protection from compensation claims following an oil pollution incident.

The Commission considers that such protection of key players is counterproductive with regard to its efforts of creating a sense of responsibility in all parts of the maritime industry. Therefore, it is of the opinion that the prohibition of claiming compensation from a number of key players involved in the transport of oil at sea should be removed from the CLC Convention and that, to the extent protection of certain players is considered to be necessary for the functioning of the system, the threshold should at least be lowered to the same as that advocated for the shipowner above. As to the practicalities of such a measure, it can be noted that here, too, the regime that applied until 1996, when the 1992 protocols entered into force, provided for a much less rigorous channelling by only excluding the servants or agents of the shipowner, and even for them only insofar as the damage was not due to their own fault or privity.

4.4.4 Environmental damage

The type of damage covered by the existing CLC/IOPC Fund regime is mostly centred on damage to or loss of property and economic losses. As regards environmental damage, it covers preventive measures, which includes clean-up costs, and "reasonable measures of reinstatement undertaken or to be undertaken". The loss to the environment as such is thus not subject to compensation, the principal reason being the difficulty involved in assessing and quantifying this type of damage.

The Commission acknowledges that there are problems involved in covering damage to the environment *per se* and considers that the assessment of such damage should be quantifiable, verifiable and predictable in order to avoid a wide variety of interpretations between the various parties to the regime. However, consistency with compensation of environmental damage from other sources of pollution is equally important. From a Community perspective it is not justifiable

that compensation of environmental damage varies widely depending on whether the pollutant was an oil tanker, another ship or a factory on shore[14]. In the context of the forthcoming proposal for a Directive on environmental liability, the Commission is presently undertaking a study on the evaluation of environmental damage, which could provide useful input for the assessment of damage in that Directive. Without prejudice to any future proposal to be made in the context of a general Community-wide environmental liability regime, the Commission considers that the existing coverage of reinstatement costs could be expanded to include at least costs for assessing the environmental damage of the incident as well as costs for the introduction of components of the environment equivalent to those that have been damaged, as an alternative in case reinstatement of the polluted environment is not considered feasible[15]. The Commission's position will be reconsidered in light of the forthcoming proposal concerning a Community-wide environmental liability regime.

4.5 Conclusion

The assessment above leads the Commission to conclude that the international liability and compensation regime satisfies the first assessment criterion while entailing important shortcomings as to the two others. The importance of the shortcomings is further heightened by the fact that the international regime explicitly prohibits any additional compensation claims to be made outside the convention regime. This means that it would be very difficult for the Community to impose additional individual liabilities on shipowners or any of the protected parties without being in conflict with the international conventions. In case such individual liabilities were introduced at Community level, Member States would thus have to denounce the conventions before being in a position to implement any such Community rules.

The Commission recognises that an international liability and compensation regime provides important benefits, both in terms of uniformity and straightforwardness and in terms of sharing the costs for oil spills, wherever they occur, among oil receivers world-wide. It therefore concludes that introducing measures that would necessitate the denunciation of the international regime by the Member States would be counterproductive at this stage. As outlined in its Report for the Biarritz European Council (COM (2000) 603 final), the Commission takes the view that considerable efforts need to be put in amending the conventions along the lines outlined above, while addressing the insufficiency of the existing limits as an immediate priority at Community level.

5. Proposed action

A series of measures are needed in order to improve the existing liability and compensation regime. Some of them require Community measures, while others may be addressed within the international framework.

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14 In the Commission's White Paper on environmental liability, the Commission indicated its intention to cover 'damage to biodiversity' in a future instrument. This type of damage would relate to significant damage in EC-protected natural resources in the Natura 2000 areas. In this context a system for valuing natural resources is considered necessary (paragraph 4.5.1 of COM (2000) 66 final).

15 Along these lines, Article 2.8 of the 1993 Council of Europe Convention on Civil Liability for Damage Resulting from Activities Dangerous to the Environment defines 'measures of reinstatement' in the following way: "any reasonable measures aiming to reinstate or restore damaged or destroyed components of the enviornment, or to introduce, where reasonable, the equivalent of these components into the environment. Internal law may indicate who will be entitled to take such measures."

5.1 Creating a supplementary compensation fund in Europe

> Raising the compensation limits of the existing system is the most pressing concern, as it is the one most directly concerned with the adequate compensation of victims of an oil spill. In order to remedy this, the Commission proposes to complement the existing international two-tier regime through the creation of a European supplementary 'third-tier' fund, which would compensate internationally valid claims relating to oil spills in European waters which exceed the limit of the IOPC Fund.

The Fund for Compensation for Oil Pollution in European waters (the COPE Fund) will thus 'top up' the financial means of the IOPC Fund in cases where claims that are deemed to be valid under the latter regime cannot be fully compensated due to insufficient resources. Compensation by the COPE fund would be based on the same principles and rules as the current IOPC Fund system, but subject to a ceiling which is deemed to be sufficient for any foreseeable disaster, i.e. EUR 1,000 million.

The COPE fund will be financed by European oil receivers according to procedures similar to those of contributions to the IOPC Fund. Thus, the combined financial means of the contributions by European oil receivers will be available to cover pollution damage in any Member State. The COPE Fund is intended to provide a guarantee for European citizens that they will be adequately compensated, until the levels of the international regime are set at a sufficiently high level. Apart from providing a five-fold increase of available compensation, the funds of the COPE Fund may also be used for accelerating the full compensation of victims of a European oil spill. With the help of these means claims may be compensated in full as soon as their eligibility has been confirmed, without awaiting the outcome of the time-consuming process of establishing the final costs of the accident and the resulting prorating problem in the international regime, described in section 4.2. In this way victims may receive their full compensation at an earlier stage, while the financial settlement at the end of the case, once the total costs are known, would be settled bilaterally between the IOPC Fund and the COPE Fund. By its nature the COPE Fund would only be activated once a spill that exceeds, or threatens to exceed, the international maximum limits has occurred in EU waters.

5.2 Addressing the other shortcomings in the international system through the IMO

In order to achieve a closer link between exposure to liability and the conduct of the various parties concerned, the Commission considers that a thorough overhaul of the existing regime should be undertaken in parallel.

The rectification of the shortcomings described in section 4 can, in the judgement of the Commission, be addressed within the international community and, indeed, the first steps in this direction have already been taken. The Commission considers that this work should ultimately result in amendments to the existing legal instruments introducing significantly higher limitation amounts as well as advancement regarding the shortcomings indicated in section 4.4 above, while still safeguarding the 'user-friendliness' of the system with regard to claimants seeking compensation.

The Commission therefore requests the Council to advance this matter as soon as possible with a view to achieving a thorough review of the international liability and compensation regime. More particularly, the Community shall submit a request to the International Maritime Organization or the IOPC Fund, as appropriate, with a view to achieving the following amendments to the Liability Convention:

- The liability of the shipowner shall be unlimited if it is proved that the pollution damage resulted from gross negligence on his part;
- The prohibition of compensation claims for pollution damage against the charterer, manager and operator of the ship shall be removed from Article III.4(c) of the Liability Convention;
- Compensation of damage caused to the environment should be reviewed and widened in light of comparable compensation regimes established under Community law.

Apart from the measures to improve the existing international oil pollution liability regime, an advancement regarding the regime for liability and compensation for hazardous and noxious substances is necessary. An international convention on this subject was adopted in 1996 but has not been ratified by any Member State and is not in force[16]. The sinking of the chemical tanker *Ievoli Sun* off the Channel Islands on 31 October 2000, was the latest incident to highlight the highly unsatisfactory regulatory situation regarding the liability and compensation of hazardous substances other than oil. This issue needs to be addressed as a matter of priority at international and European level.

If efforts to achieve the appropriate improvements to the international liability and compensation rules fail, the Commission will make a proposal for adopting Community legislation introducing a Europe-wide maritime pollution liability and compensation regime.

5.3 Ensuring, through the Member States legislation that grossly negligent conduct is subject to penalties

The Commission recognises that liability rules as such have limits as regards their effects on the individual responsibility of the players involved in oil pollution incidents. This is particularly so if the liabilities are insurable, which is normally the case.

To complement the measures in the area of liability and compensation described above, the Commission therefore proposes, as announced in paragraph 5.b.iv) in its Communication on the safety of the seaborne oil trade (COM(2000) 142 final), to include in this Regulation an article on financial penalties or sanctions for established grossly negligent behaviour on behalf of any person involved in the transport of oil at sea. This measure is of a penal nature and hence not related to the compensation of damage. Rather it is intended to ensure a Community-wide application of a deterrent sanction for those involved in the transport of oil by sea.

16 The following States have signed the 1996 International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea: Canada, Denmark, Finland, Germany, the Netherlands, Norway, Sweden and the United Kingdom. Only the Russian Federation has ratified it.

JUSTIFICATION FOR A REGULATION

The Treaty provides for the establishment of a common transport policy and the measures envisaged to implement such a policy include measures to improve safety and environmental protection in maritime transport. The adequate compensation of victims of maritime oil spills and the introduction of sanctions for gross negligence in the transport of oil at sea form an integral part of such measures.

While there are international conventions regulating liability and compensation of oil spills, to which all relevant Member States are parties, or will be parties in the near future, recent accidents, most notably the sinking of the *Erika* in 1999, have highlighted the insufficiency of those mechanisms to ensure that the victims are adequately compensated.

The Regulation involves the setting up of a Fund for Compensation of Oil Pollution in European waters (the COPE Fund). Only Member States which have a maritime coastline and ports will be directly concerned by the fund. Austria and Luxembourg would only be indirectly and remotely concerned by this part of the proposal.

Given that a relatively well-functioning international system for compensating oil spills already exists, the most efficient solution to raise the compensation limits is to build upon and complement the international system, thereby avoiding duplication of work and excessive administration. The COPE Fund is therefore largely based upon procedures and assessment carried out within the international system. It is inferred that a certain exchange of information between the proposed European Fund and the existing International Oil Pollution Compensation Fund, either on a more permanent or on a case by case basis, will be necessary for the effective functioning of the system.

An oil spill can cause potentially enormous damage. In accidents where the international compensation limits are exceeded, victims will not, as far as the existing international regime is concerned, be fully compensated. Community-wide action in this field will greatly improve the possibilities to fully compensate victims of a European oil spill by creating a Fund to which oil receivers in all Member States concerned contribute. The available amount of maximum compensation will be raised from the current EUR 200 million to EUR 1,000 million. In addition, the costs of oil spills in European Union waters would be spread among all EU coastal States.

The concrete added value of the proposed measure is thus a five-fold increase of the compensation amount available for compensation compared to existing amounts, a much stronger guarantee that adequate compensation actually will be available and a sharing of the risk of oil spills between all coastal Member States. Another benefit is that the additional funding can be used for expediting the compensation of victims of European oil spills in the International Oil Pollution Compensation Fund, by providing advance payments as soon as the claims have been assessed and approved by the IOPC Fund.

The creation of a compensation fund for oil spills requires a regulatory measure. The parties liable to contribute to the fund, i.e. European oil receivers, are unlikely to contribute with potentially large sums unless they are legally required to do so. In addition, requirements on contribution to, and compensation payments of, the fund are not enforceable in a unified and harmonised way unless they are identical for each Member State and each entity involved. Harmonised rules are therefore instrumental for ensuring uniform implementation of the obligations. Hence it is necessary to ensure uniform application of these provisions in the form of a Regulation.

CONTENT OF THE REGULATION

The proposed Regulation complements the existing international two-tier regime on liability and compensation for oil pollution damage by tankers, provided by the CLC and Fund Conventions, by creating a European supplementary fund, the COPE Fund, to compensate victims of oil spills in European waters. The COPE Fund will only compensate victims whose claims have been considered justified, but who still have been unable to obtain full compensation by the international regime, due to insufficient limits of compensation.

Compensation from the COPE fund would thus be based on the same principles and rules as the current international fund system, but subject to a ceiling which is deemed to be sufficient for any foreseeable disaster, i.e. EUR 1,000 million.

The COPE fund will be financed by European oil receivers. Any person in a Member State who receives more than 150.000 tonnes of crude oil and/or heavy fuel oil per year will have to pay its contribution to the COPE Fund, in a proportion which corresponds to the amounts of oil received. In this way, the oil industry, and indirectly perhaps the consumers of oil products, rather than the taxpayers, would bear the costs of expensive oil spills in Europe.

The COPE Fund will only be activated once an accident that exceeds, or threatens to exceed, the maximum limit provided by the IOPC Fund has occurred in EU waters. If no such accident occurs, the COPE Fund will not require any contributions to be made.

The Commission will represent the COPE Fund. Any major decision relating to the operation of the COPE Fund will be taken by the Commission, assisted by a COPE Fund Committee, which is a management committee under Article 4 of Council Decision 1999/468/EC.

The proposed Regulation finally includes an article introducing financial penalties for grossly negligent behaviour on behalf of any person involved in the transport of oil at sea.

SPECIAL CONSIDERATIONS

Article 1

The purpose of the Regulation is to ensure adequate compensation of pollution damage in EU waters resulting from the incidents involving oil tankers. The bulk of the Regulation consequently addresses what the Commission considers to be the most immediate concern in the current international oil pollution liability and compensation regime, i.e. the insufficiency of the compensation limits. Other shortcomings of the system will be addressed through other means, at least initially, within the international framework. A separate purpose of the Regulation is the establishment of a financial penalty for intentional or grossly negligent acts or omissions leading to oil pollution incidents, as laid down in Article 10.

Article 2

This article defines the geographical scope of application of the Regulation. It covers pollution damage in an area of up to 200 nautical miles from the coastline. The scope corresponds to that applicable in the international regime, which is essential given the very close link between the Regulation and that regime.

Article 3

Article 3 contains the definitions of the key concepts of the Regulation, which in essence duplicate the most relevant definitions of the International Convention on Civil Liability for Oil Pollution Damage, 1992 and the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1971 as amended by the 1992 Protocol thereto.

Some of these definitions are arguably unnecessary, given that the close link between the proposed measure and the international compensation system is laid down elsewhere in the Regulation. For reasons of legal clarity, however, the international definitions relating to the responsibilities of the main involved parties have been replicated in Article 3.

Article 4

Article 4 establishes the COPE Fund and sets out its main responsibilities.

Article 5

This article regulates the circumstances as to when and how the COPE Fund shall pay compensation and is thus one of the key articles of the Regulation.

In paragraph 1 and 2 the close link to the International Oil Pollution Compensation (IOPC) Fund is established. In essence this link means that compensation by the COPE Fund will only come into question once victims of a tanker spill in European waters have had their claims approved by the IOPC Fund, but have been unable to recover their full compensation because the totality of valid claims exceed the amount of compensation available under the Fund Convention.

Paragraph 3 ensures that any decision to pay compensation through the COPE Fund is approved by the Commission, assisted by the COPE Fund Committee. If the Commission is unable to approve claims, no compensation will be paid.

Normally, however, it is envisaged that claimants who meet the criteria of paragraphs 1 and 2 will be compensated by the COPE Fund. The main exception is provided by paragraph 4, which allows the Commission a certain discretion as to the extent to which expenses by those most directly involved in the accident will be compensated. This is a mechanism to ensure that a link between the actual conduct of those involved and their right to compensation is established. On the other hand, it is considered important to preserve the possibility to compensate claims by the persons most involved in the incident. Otherwise shipowners, cargo owners and other crucial parties, who normally are well placed to act immediately after an incident, would be discouraged from contributing to the mitigation of damage.

Paragraph 5 sets the maximum compensation limit of the COPE Fund at EUR 1,000 million, including the share paid through the CLC and Fund Conventions. This is deemed sufficient to cover the full compensation of any foreseeable accident involving an oil tanker and it corresponds to the current maximum level of compensation provided by the Oil Spill Liability Trust Fund in the USA.

Paragraph 6 provides that in the – highly unlikely – event that this maximum of EUR 1,000 million is exceeded, compensation shall be 'pro-rated'. In practice this would mean that each claimant would receive only a given percentage of its established claims. The percentage would be the same for all claimants.

Article 6

Article 6 deals with the income side of the COPE Fund. Contributions to the COPE Fund will only be collected following an incident in EU waters, which is so grave that it exceeds or threatens to exceed the maximum compensation limits of the IOPC Fund.

Confirming existing practices for contribution to the IOPC Fund, which have proved to be workable, the Regulation establishes a symmetry between the persons liable to contribute to the IOPC Fund and those liable to contribute to the COPE Fund. The contribution system is based on the amount of oil received by each receiver and the contribution to the COPE Funds is thus proportionate to the quantities of oil received. Contributions are paid directly by the oil receivers to the Commission.

There is a relatively short time limit as to the collection of contributions, which is justified in view of the importance to have the necessary funding available as soon as possible after the accident has occurred and the assessment of claims for that accident has been undertaken by the IOPC Fund.

In order to ensure that money is not illegitimately collected by the COPE Fund, paragraph 9 provides that any potential surplus which has been levied for a particular incident and has not been used for the compensation for damage in relation to that incident or any immediately related purpose, shall be returned to the contributors.

Paragraph 10 provides that Member States which do not fulfil their obligations as regards the COPE Fund shall be liable to compensate the COPE Fund for any loss caused thereby.

Article 7

The right of subrogation by the COPE Fund is laid down in Article 7. This provision provides for the possibility of the COPE Fund recovering at least parts of its expenses through recourse action against various parties involved in the incident, to the extent such action is not prohibited in the international conventions.

Article 8

Article 8 provides that the representation of the COPE Fund will be taken on by the Commission. It imposes a number of specific tasks for the Commission in this respect which are necessary for carrying out the functions of the Fund.

Article 9

The COPE Fund Committee will assist the Commission in operating the Fund, in the sense that the main decisions relating to the operation of the COPE Fund will be made by the Commission in accordance with established comitology procedures. The COPE Fund Committee is a management committee under Article 4 of Council Decision 1999/468/EC[17]. The article fixes the period for the Council to act to one month, given the need for urgent decisions by the COPE Fund Committee.

Article 10

Article 10 provides for financial penalties or sanctions for established grossly negligent conduct on behalf of any person involved in the transport of oil at sea. This measure is of a penal nature and hence not related to the compensation of damage. By covering any incident involving oil pollution at sea, this article, unlike the rest of the Regulation, covers oil pollution from any ship, whether or not an oil tanker. The exact nature of the sanctions to be employed for this purpose (criminal, administrative, 'punitive damages' etc.) is left unspecified in order to allow Member States to apply the type of sanctions which best fits their legal system.

Article 11

No comments.

17 Council Decision of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission, OJ L 184, 17.07.1999, p. 23.

2000/0326 (COD)

Proposal for a

REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

on the establishment of a fund for the compensation of oil pollution damage in European waters and related measures

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Articles 80(2) and 175(1) thereof,

Having regard to the proposal from the Commission[18],

Having regard to the opinion of the Economic and Social Committee[19],

Having regard to the opinion of the Committee of the Regions[20],

Acting in accordance with the procedure laid down in Article 251 of the Treaty[21],

Whereas:

(1) There is a need to ensure that adequate compensation is available to persons who suffer damage caused by pollution resulting from the escape or discharge of oil from tankers in European waters.

(2) The international regime for liability and compensation of oil pollution damage from ships, as established by the International Convention on Civil Liability for Oil Pollution Damage, 1992 and the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1971 as amended by the 1992 Protocol thereto, provide some important guarantees in this respect.

(3) The maximum compensation afforded by the international regime is deemed insufficient to fully cover the costs of foreseeable oil tanker incidents in Europe.

(4) A first step to improve the protection of victims in case of an oil spill in Europe is to considerably raise the maximum amount of compensation available for such spills. This can be done by complementing the international regime through the establishment of a European Fund which compensates claimants who have been unable to obtain full

18 OJC , , p. .
19 OJC , , p. .
20 OJC , , p. .
21 OJC , , p. .

compensation under the international compensation regime, because the totality of valid claims exceed the amount of compensation available under the Fund Convention.

(5) A European oil pollution compensation fund needs to be based on the same rules, principles and procedures as those of the IOPC Fund in order to avoid uncertainty for victims seeking compensation and in order to avoid ineffectiveness or duplication of work carried out within the IOPC Fund.

(6) In view of the principle that the polluter should pay, the costs of oil spills should be borne by the industry involved in the carriage of oil by sea.

(7) Harmonised Community measures to provide additional compensation for European oil spills will share the costs of such oil spills between all coastal Member States.

(8) A Community-wide compensation Fund (COPE Fund) which builds upon the existing international regime is the most efficient way to attain these objectives.

(9) The COPE Fund shall have the possibility to reclaim its expenses from parties involved in the oil pollution incidents, to the extent that this is permissible under international law.

(10) Since the measures necessary for the implementation of this Regulation are management measures within the meaning of Article 2 of Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission[22], they should be adopted by use of the management procedure provided for under Article 4 of that Decision.

(11) Since the adequate compensation of victims of oil spills does not necessarily provide sufficient disincentives for individual operators in the seaborne oil trade to act diligently, a separate provision is needed providing for financial penalties to be imposed on any person who has contributed to an incident by his wrongful intentional or grossly negligent acts or omissions.

(12) A Regulation of the European Parliament and the Council is, in view of the subsidiarity principle, the most appropriate legal instrument as it is binding in its entirety and directly applicable in all Member States and therefore minimises the risk of divergent application of this instrument in Member States.

(13) A revision of the existing international oil pollution liability and compensation regime should be undertaken in parallel to the measures contained in this Regulation in order to achieve a closer link between the responsibilities and actions of the players involved in the transport of oil by sea and their exposure to liability. More particularly, the liability of the shipowner should be unlimited if it is proved that the pollution damage resulted from gross negligence on his part, the liability regime should not explicitly protect a number of other key players involved in the transport of oil at sea and the compensation of damage caused to the environment as such should be reviewed and widened in light of comparable compensation regimes established under Community law.

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22 OJ L 184, 17.7.1999, p. 23.

HAVE ADOPTED THIS REGULATION:

[Persons wishing to receive a copy of the Draft Regulation Articles 1 to 11 inclusive - please contact the Administrator]

FINANCIAL STATEMENT

[Persons wishing to receive this part of the document - please contact the Administrator]

IMPACT ASSESSMENT FORM
THE IMPACT OF THE PROPOSAL ON BUSINESS WITH SPECIAL REFERENCE TO SMALL AND MEDIUM-SIZED ENTERPRISES (SMEs)

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