Ship-source Oil Pollution Fund Annual Report 1993-1994

Canada

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The Honourable Douglas Young, P.C., M.P.
Minister of Transport
Ottawa, Ontario
K1A 0N5

Dear Mr. Young,

1. Introduction

Pursuant to section 722 of the *Canada Shipping Act* (C.S.A.) I have the honour to submit to you my Annual Report on my operations as Administrator of the Ship-source Oil Pollution Fund (S.O.P.F.) commencing on April 1, 1993 and ending on March 31, 1994.

By Order in Council P.C. 1993-2003 dated December 6, 1993, the undersigned was reappointed Administrator of the S.O.P.F. for a term of five years with effect from November 18, 1993.

2. The Canadian Compensation Regime

My report for the fiscal year April 1, 1992 to March 31, 1993 examined in detail the components of the Canadian Regime that provides compensation for oil pollution damage caused by ships in Canadian Waters. The three components are:

1. The Ship-source Oil Pollution Fund;

2. The International Convention on Civil Liability for Oil Pollution Damage 1969 (CLC); and

3. The 1971 International Convention on the Establishment of an International Fund for Oil Pollution Damage (Fund Convention).

The enabling legislation for the Canadian Regime is contained in the amendments to the *Canada Shipping Act* (S.C. 1987, C.7) proclaimed on April 24, 1989.[1]

For information purposes, Figure 1 shows the amount of compensation as at April 1, 1994 that can be made available under the three components of the regime.

3. Changes in the Regime During the Fiscal Year

On 23rd June 1993, Royal Assent was given to *An Act to amend the Canada Shipping Act* (S.C. 1993, C. 36) The amendments that concern the S.O.P.F. came into force on Friday, December 31, 1993 by Order-in-Council 1993-2138.

The amendments provide that, with one exception as described below, the Ship-source Oil Pollution Fund (S.O.P.F.) is a Fund of first resort for all claims for oil pollution damage and for costs and expenses resulting from a discharge of oil from a ship. Previously, a Public Authority (i.e., the Minister of Transport) had to seek recourse from the shipowner, its underwriters, and, in the case of a laden tanker, from the International Oil Pollution Compensation Fund (IOPC Fund) before it could present a claim to the S.O.P.F.

The exception is that a response organization, as defined in the above amendments to the C.S.A., has no direct claim against the S.O.P.F., but may have a claim for unsatisfied costs and expenses after exhausting its right of recovery against the shipowner, the insurer or the IOPC Fund, as the case may be. It is understood that the amendments relating to response organizations are not planned to come into force until 1995.

It should be noted that any claimant (including the Canadian Coast Guard (CCG)) has the option to recover its damages, costs and expenses from the shipowner, but it appears to be a safe assumption that most, if not all, claims will be filed with the Administrator under section 710 unless the claimant wishes to take advantage of the longer limitation periods provided for under the C.S.A.[2]

The intent of the amendments is to impose on the Administrator the obligation to take

[1] Superseded by R.S.C. 1985, C. 6 (3rd Supp.) on May 1, 1989.

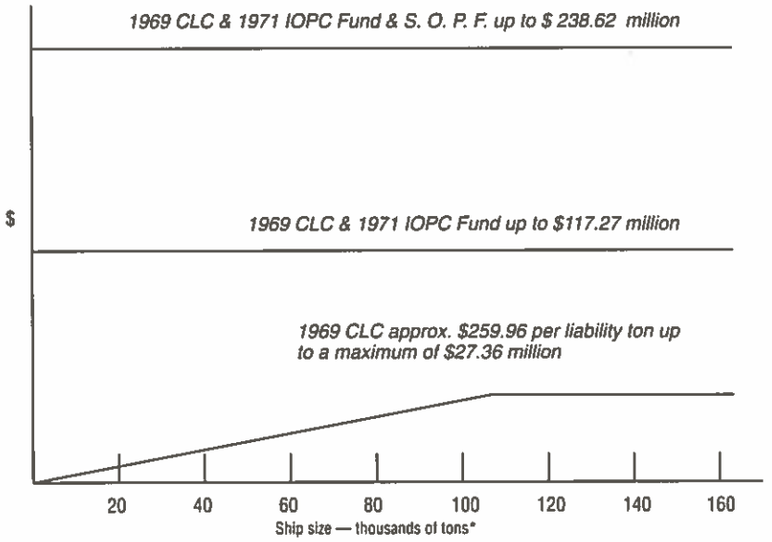
[2] The S.O.P.F. is only available to claimants for oil pollution damage in Canada and in waters under Canadian jurisdiction.

reasonable measures to recover the compensation paid to the claimant from the S.O.P.F., from the owner of the ship, the IOPC Fund or any other person liable, including the right to prove a claim against the shipowner's limitation fund. 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 S.O.P.F. in the event that no other security is provided. It should be noted that the Administrator is entitled to obtain security prior to the filing of any claims being made against the S.O.P.F. but that action can only be continued after the Administrator has paid claims under section 711 (3).

The amendments also provide that the S.O.P.F. now applies to oil spills from any ship in Arctic waters. Previously, the S.O.P.F. was only liable for claims in respect of laden oil tankers covered by the 1969 CLC and the 1971 Fund Convention in these waters.

Figure 2 shows a diagram of how the new arrangements will work. For further information on the operation of the Canadian regime please refer to section 2 of the 1992-1993 Annual Report.

Figure 1 **Canada Shipping Act Part XVI — Compensation for Oil Pollution Damage in respect of any one incident involving a laden tanker**
(Based on the value of the SDR at April 1, 1994)



1. 1969 Civil Liability Convention (CLC) provides compensation of up to approximately $27.36 million and represents the shipowner's share of compensation payable.

2. The International Oil Pollution Compensation Fund (IOPC Fund) and the CLC provide aggregate compensation of up to $117.27 million. Funds paid by the IOPC Fund represent the cargo interests share of compensation payable.

3. The Ship-source Oil Pollution Fund, CLC and IOPC Fund provide a combined amount of up to $238.62 million. The S.O.P.F. is also available for compensation for oil spills from ships other than laden tankers.

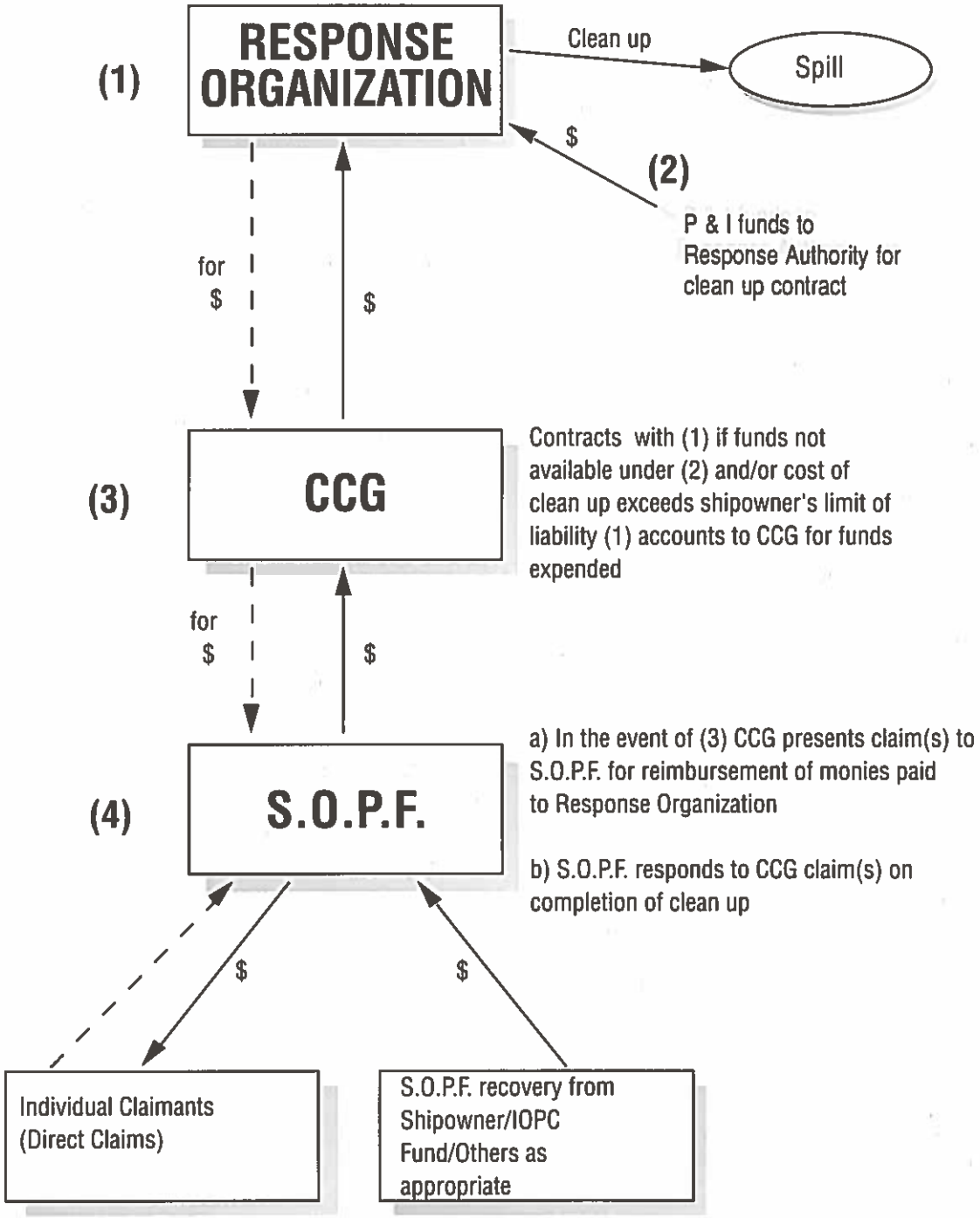
4. Additionally, the S.O.P.F. is available to pay compensation for oil pollution damage where the identity of the ship is unknown, i.e., mystery spills. In such cases, claimants are entitled to the benefit of the reverse onus provided in the C.S.A. and need not prove that the oil came from a ship. The Administrator must, however, dismiss a claim if he is satisfied on the evidence the oil spill was not caused by a ship.

5. The S.O.P.F. is also available to a widely defined class of persons involved in the Canadian fishing industry to pay claims for loss of income and future income caused by an oil spill from a ship. Claimants must be Canadian citizens or residents and have the appropriate licences to fish, or be persons who fish or hunt for food or skins for their own consumption and use.

6. Canada's contributions to the IOPC Fund are also paid from the S.O.P.F. by the Administrator annually in accordance with section 701 of the C.S.A. in order to comply with the Fund Convention.

* As defined in Article V of the 1969 Civil Liability Convention

Figure 2 **Amendments to the Canada Shipping Act — Financial Arrangements with Response Organizations**



4. Current Status of the Ship-source Oil Pollution Fund

Balance: At March 31, 1994 the balance in the S.O.P.F. was $217,885,170.98.

Interest: During the fiscal year the S.O.P.F. was credited with a total of $13,366,113.3 for interest by the Minister of Finance, calculated on a monthly basis, giving an average rate of about 6.23% during 1993-1994.

Limit of Liability: During the fiscal year commencing April 1, 1994 the maximum liability of the S.O.P.F. is $121,352,649.30 for all claims in respect of any one oil spill. This amount is indexed annually to the consumer price index.

The Minister of Transport has statutory authority to impose a levy for the S.O.P.F. on oil imported into or shipped from a place in Canada in bulk as cargo on a ship. No levy has been imposed or collected since 1976. If imposed during the fiscal year commencing April 1, 1994 the levy would be 36.40 cents per tonne. It is also indexed annually to the consumer price index.[3]

5. IOPC Fund, the Assembly and the Executive Committee

The 16th session of the Assembly and the 36th, 37th and 38th sessions of the Executive Committee took place at London during the year. The Canadian Delegation to these meetings was headed by the Administrator.

The Assembly

This session was held from October 5-8, 1993. It was attended by 35 contracting states, observers from 12 non-contracting states and observers from 8 inter-governmental and non-governmental organizations.

The session was dominated by the recent major oil spill incidents and the consequences, both from a financial and structural point of view, as well as the sharp increase in the membership in the IOPC Fund. Two new incidents (KEUMDONG 5 and the PACIFIC DIAMOND) occurred during the week preceding the week of the Assembly.

On the financial side, the Assembly approved the operating budget for 1994 and decided that that Working Capital for 1994 would be increased from £6,000,000 to £11,000,000 and the following annual contributions would be levied in 1993, payable not later than February 1, 1994 with respect to:

(a) General Fund — £8,000,000

(b) AEGEAN SEA Major Claims Fund — £20,000,000

(c) BRAER Major Claims Fund — £35,000,000

(d) TAIKO MARU Major Claims Fund — £10,000,000

(e) KEUMDONG 5 Major Claims Fund — £5,000,000

Canada's share of the total amount levied of £78,000,000 = £2,509,705.49 or $4,927,555.76 or 3.22% was paid in full by the Administrator on February 1, 1994.

Directly related were the Assembly decisions on Investment Policy and the proposal to establish an Investment Advisory Body to advise the Director on investments. The Director was instructed to look at the composition of and mandate for a body of experts and to make a feasibility study for the 17th Assembly in October 1994. This development reflects the reality that the IOPC Fund investment portfolio will probably exceed £50,000,000 - £60,000,000 in 1994. The Assembly reaffirmed the policy of merging all funds (other than the Provident Fund) to obtain the best return. The Financial Regulations were revised to authorize this practice.

Subject to clarification of some legal questions, the Provident Fund (which provides

[3] On April 24, 1989 the Maritime Pollution Claims Fund (M.P.C.F.) was replaced by the S.O.P.F. All monies in the M.P.C.F. ($149,618,850.24) were transferred to the account of the S.O.P.F. on that date. Between February 15, 1972 and September 1, 1976 a levy of 15 cents per ton was paid and collected on oil imported into Canada by ship in bulk and shipped in bulk from any place in Canada. Total levy receipts of $34,866,459.88 were credited to the M.P.C.F.

pensions and other benefits for IOPC Fund staff) will be set up as an independent trust under English law and invested separately from the other monies administered by the Fund.

Another issue having a major economic impact is the IOPC Fund's policy for admissibility of claims. A recent session of the Executive Committee demonstrated a lack of consensus on the classes of claims which the Fund should accept. Having gone far beyond the corresponding national laws of most member states, there is no doubt that the present ad hoc decisions on claims for "pure economic loss" and preventive measures lack predictability and clarity for financial and budgetary planning. There has been no general review of the claims policy since 1980. There was general agreement that the subject should be studied by a Working Group on an urgent basis.

It was decided that the Working Group would meet during the week commencing February 7, 1994 (mentioned at section 5) and hold a second meeting in the week commencing May 2, 1994 and submit its report to the 17th Assembly to be held in London between the 17th and 21st of October 1994.

The Assembly also decided that:

(a) The IOPC Fund is not liable to pay compensation for "mystery spills" unless the claimant can prove that there is "strong likelihood" that the oil pollution damage was caused by a laden tanker.

(b) There was no majority in favour of the proposal by the Government of Egypt that oil passing through the SUMED pipeline should be considered as a "ship to ship" transfer and not as oil "received" in Egypt. The Assembly agreed to re-examine the issue if a new compromise proposal was advanced.

(c) At the request of Canada for clarification, the Assembly decided that the Cohasset-Panuke crude produced by Lasmo Oil Limited off Nova Scotia fell outside the definition of "contributing oil" in the 1971 Fund Convention.

Canada was elected to the Executive Committee for a second term.

The Executive Committee

The 36th session of the Committee was held on the 4th and 5th of October 1993. Once again the agenda focussed on the HAVEN, AEGEAN SEA, and BRAER incidents. With regard to the HAVEN, it appears that there is little prospect of any resolution of the seemingly intractable legal issues for several years, notwithstanding that some claimants have been waiting for nearly three years for any offer of compensation either from the shipowner or from the IOPC Fund.

It is expected that claims in the AEGEAN SEA incident will exceed, after assessment, the combined shipowner and IOPC Fund's limit of liability. Consequently, it may be necessary to prorate claims by paying initially only 35% of established new claims.

The Committee deliberated at some length on new claims in the BRAER incident. As claimants have until January 5, 1996 to present claims, consequently there may not be sufficient funds to pay all claims, especially as the claims policy expands at each session of the Committee.

The 37th session of the Committee was held on 8th October 1993 at which a new Chairman and new Vice Chairman were elected for the next year. The Committee also dealt with claims respecting the BRAER incident, and on the question of possible conflict of interest the Committee agreed to the following practice to ensure a balanced discussion. The delegation of any member state, which has a direct interest in an incident would be allowed to make only one intervention. However, if any questions are put to the delegation it would be allowed to respond.

The 38th session of the Committee was held from 9th-11th February 1994 and focussed on two important issues:

(a) The increasing number of major oil spills and the multiplication of claims; and

(b) The consequential importance and need to take recourse action against the shipowner and its insurers where the shipowner cannot establish the "right" to limit liability under the 1969 Civil Liability Convention.

6. The Seventh Intersessional Working Group of the IOPC Fund

In accordance with the decision of the Assembly at its 16th session, the Working Group met in London from the 7th to the 9th of February 1994.

The Canadian Delegation was led by A.H.E. Popp, Q.C., Senior General Counsel, Admiralty and Maritime Law. The Administrator of the S.O.P.F. was the Advisor to the Delegation. Twenty-four member states attended and eight other states were represented as observers. Nine inter-governmental or international non-governmental organizations were also represented.

The four elements of the mandate of the Working Group were:

(a) to examine the general criteria for the admissibility of claims for compensation for "pollution damage" and "preventive measures" within the scope of the 1969 Civil Liability Convention and the 1971 Fund Convention and the 1992 Protocols thereto;

(b) to study in particular problems relating to claims in respect of so-called "pure economic loss" and "preventive measures" taken to prevent or minimize pure economic loss;

(c) to consider problems relating to the admissibility of claims for environmental damage within the scope of the definition of "pollution damage" referred to above; and

(d) to study the procedures to be applied by the IOPC Fund in the assessment and settlement of claims.

This well attended meeting reflected the concerns of member states over the increasing scope and magnitude of costs associated with oil spills and the need for uniformity in determining what are admissible claims.

The Canadian Delegation took the position that the starting point for discussion should be the 1992 Protocols and the definitions therein.

There were wide ranging discussions relating to claims respecting: property damage; clean up operations; measures to prevent physical damage; fixed costs, i.e., claims submitted by public carrying out clean up operations or preventive measures; and consequential loss and pure economic loss.

It should be noted that the Working Group endorsed the policy presently followed by the IOPC Fund that a claimant has to substantiate its loss. However, the view was taken that the requirements as to supporting documentation required further study.

There was also considerable discussion on environmental damage and in this regard it should be noted that the IOPC Fund accepts claims which relate to "quantifiable" elements of damage to the marine environment such as:

(i) reasonable costs of reinstatement of the damaged environment; and

(ii) loss of profit (income, revenue) resulting from damage to the marine environment suffered by persons who depend directly on earnings from coastal or sea-related activities, e.g., loss of earnings suffered by fishermen or by hoteliers and restauranteurs at seaside resorts.

It was agreed that compensation for environmental damage would be further discussed at the second meeting in May 1994 when the Working Group will continue its deliberations and also focus on the admissibility of claims relating to employment issues, the procedures to be applied by the IOPC Fund in the assessment and settlement of claims and issues relating to the contamination of farmed fish and shellfish.

7. Oil Spil Incidents

7.1 IRVING WHALE (1970)

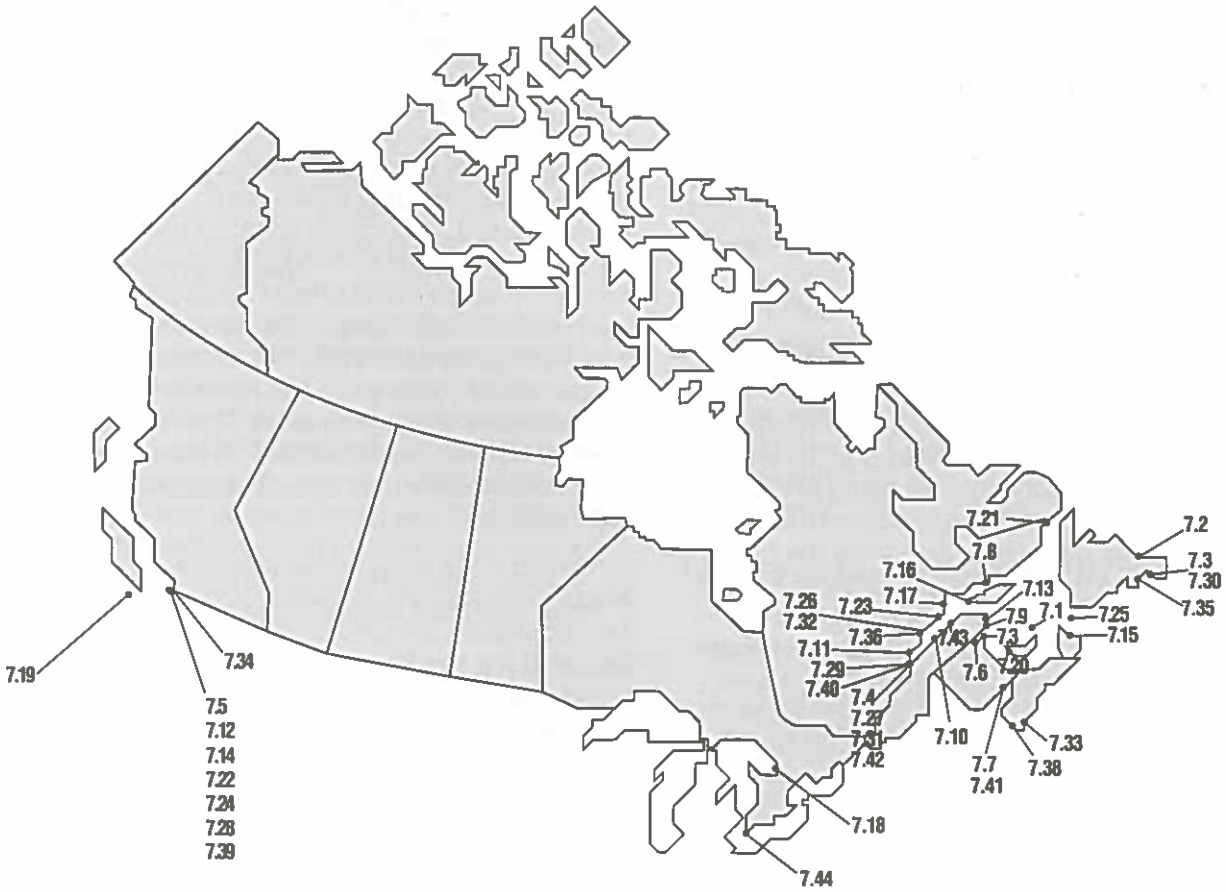
An ocean-going tank barge owned by Irving Oil, the IRVING WHALE (G.R.T. 2261) carrying a cargo of 4,200 MT of bunker C oil on a voyage from Dartmouth, Nova Scotia, to Bathurst, New Brunswick, sunk in the Gulf of St. Lawrence on September 7, 1970 in some 67 metres of water, 60 km northeast of North Point, Prince Edward Island. To date, approximately 1,100 M.T. of oil have leaked from the wreck of the IRVING WHALE.

The following extracts from the Interim Report of the preliminary inquiry into the circumstances surrounding the sinking of the oil barge IRVING WHALE, dated September 10, 1970, provide further information about this incident:

"The tug IRVING MAPLE, with the empty barge IRVING WHALE in tow, arrived in Halifax on the 3rd of September 1970. During that day and on the following day, minor repairs were carried out to the barge at the Dartmouth Marine Slips. The repairs consisted of welding a slight fracture in the shell plating some 10 feet back from the bow, and welding a fracture around the hawse pipe, together with minor repairs to one of the auxiliary engine exhaust pipes. The repairs were carried out with the vessel afloat and the last dry docking was undertaken earlier this year after the vessel was released from duties connected with the ARROW disaster.

"Following repairs, the oil barge was moved to the Imperial Oil Refinery where 1,001,131 imperial gallons or 4,297 tons of bunker C oil

Figure 3 **Oil Spill incidents***



* Refer to Section 7 for a description of the oil spill incidents shown on this map.

fuel was loaded into the vessel's four main tanks. The vessel's cargo tanks were divided longitudinally, subdividing the four main tanks into eight tanks.

"The IRVING MAPLE and tow departed Halifax at 08:45 hours on 5th September 1970. The depth of the barge upon departure was stated to be approximately 14' mean draft with the trim of some 6" by the stern. The aft free board was estimated to be some 2 1/2 feet; however, none of the foregoing figures were checked and were only approximated, based on previous experiences in loading the barge.

"Following the departure from Halifax, the tug and tow proceeded for Bathurst, New Brunswick, via Canso-canal, transit of the lock being made around noon on Sunday, 6th September. While the vessel was in the lock, the pumpman boarded the barge and went below into the engine room to re-light one of the boilers. He also entered the engine room to check that space and states that upon leaving these spaces he securely closed the two water tight doors behind him.

"Sometime shortly after 13:00 hours the IRVING MAPLE and tow were clear of Canso lock and proceeding on a course for East Point. The length of tow-line in use at this time was approximately 1,200 feet and East Point was rounded at 19:15 hours. The weather during this time was good, light seas and winds being experienced throughout. The speed of the tug and tow was estimated to be a little in excess of eight knots.

"Six hourly watches were being maintained by the master Captain Enstey and the mate Harold Baker, with the mate being in charge of the midnight to 6:00 a.m. watch on the 7th of September. Mr. Baker stated that the weather continued to be fine until about 01:15 hours when the wind began to freshen from a northeasterly direction and the vessel began experiencing a moderate heavy swell also from the northeast. As a result of changes in weather conditions, the speed of the tug was reduced and the tow-line lengthened to approximately 1,800 feet. During the remainder of Mr. Baker's watch, both the tug and tow were rolling and pitching, with the tow reportedly rolling up to 30 degrees at times. The tow was checked every 10 to 15 minutes, using high power search lights fitted to the IRVING MAPLE, and it was reported by both the captain and the mate that neither vessel was labouring unduly as a result of the weather conditions. The speed of the vessels from charted positions between 02:00 hours and 06:00 hours was 5.6 knots.

"At 06:00 hours Captain Enstey took over the bridge watch from the mate with the same weather conditions as described earlier prevailing. The wind speed was reported to be 20 to 25 knots, with occasional gusts to 30 knots from a general northeasterly direction. The swell continued from the northeast with waves some 10' high; however, the description given by witnesses would seem to indicate there was a second swell coming in from a northerly direction causing a confused sea.

"It began to get light around 06:15 hours and at the first sight of the tow in daylight everything appeared to be normal. At about 07:00 hours (logbook extract and definite times not available at time of writing), the captain noticed a vibration in the tow-line and, looking back at the tow, saw that the bow of the barge was well out of the water with the barge trimmed considerably by the stern. The captain eased back on the speed of the tug allowing the tow-line to become slack and the trim of the barge immediately increased by the stern so that it was lying in the water at an angle of 45 degrees. Within 10 minutes the barge settled by the stern and remained in a near vertical position with some 70' of the bow out of the water. From this time on the barge continued to settle until it finally disappeared from sight and sank at 10:23 hours.

"During these three hours, attempts were made to manoeuvre the barge; however, this proved virtually impossible without risk of breaking the tow-line, an action which the master was careful to avoid. The master informed his office in St. John, Atlantic Towing Ltd., of what had taken place and received instructions back to attempt to tow the barge into shallow water. This proved impossible, and the barge sank in position latitude 47 degrees — 28 minutes north, longitude 63

degrees — 18 minutes west, in approximately 40 fathoms of water.

"Around the time when the barge settled to a near vertical position, fuel was seen escaping by all three witnesses and, although the majority of the oil was described as diesel, at least two of the witnesses appeared to have seen an additional gush of bunker C.

"The IRVING MAPLE stood by the sunken barge with a tow-line attached until the CGS TUPPER arrived on the scene during the afternoon on Thursday, 8th September. The tow line was at that time handed over to the CGS TUPPER so that it could be buoyed. Before leaving the scene the IRVING MAPLE steamed over the sinking position of the barge and two slight oil streams were seen to be coming up to the surface approximately 500' apart. The IRVING MAPLE then proceeded to Charlottetown to replenish her fresh water supply."

On March 18, 1994, the Deputy Prime Minister and Minister of the Environment, and the Minister of Transport announced, on behalf of the Government of Canada, a proposal to lift the wreck of the IRVING WHALE. This proposal to lift and salvage the wreck would be subject to an environmental assessment as provided by sections 10, 12, 13 and 15 of the 1984 Environmental Assessment and Review Process Guidelines.

At a press conference shortly after the announcement, the Deputy Prime Minister stated that once the actual work had been done, there would be an application to the Ship-source Oil Pollution Fund to be reimbursed for the costs and expenses incurred. The Deputy Prime Minister also acknowledged that the Administrator had no authority to deal with any claim until the costs and expenses had been incurred and the claim had been filed with the Administrator.

In accordance with those guidelines, the initial environmental assessment report on a proposal for dealing with the IRVING WHALE made by the Department of Transport and the Department of the Environment was issued on April 7, 1994, with public meetings at various locations in the Maritime Provinces to follow during the week commencing April 25, 1994.

7.2 LIBERTY BELL VENTURE (1987)

There has been no change in the status of this litigation which I gave in my last Annual Report for 1992-1993.

The liability of the Administrator, if any, is governed by the previous legislation, namely, Part XX of the *Canada Shipping Act*, which was repealed on April 24, 1989.

There is no indication that the Administrator will be called upon to pay any of the Crown's claim arising from this incident on March 29, 1987 totalling $11,659.71.

7.3 SOUTH ANGELA (1988)

This incident involved an oil spill at Come by Chance, Placentia Bay on March 5, 1988, caused by the ship SOUTH ANGELA while discharging crude oil at the refinery owned by Newfoundland Processing Limited. The Administrator is a party by statute in an action in the Federal Court of Canada commenced by the Crown on 2nd March 1990 against the ship SOUTH ANGELA. A second action against the SOUTH ANGELA and its owners was commenced by Newfoundland Processing Limited on March 9, 1988.

On April 21, 1994, these two actions were consolidated by order of the Associate Chief Justice of the Federal Court.

7.4 CZANTORIA (1988)

On September 1, 1993, Her Majesty the Queen, by Her Deputy Attorney General for Canada, wholly discontinued the proceedings in Action No. T1210-90 in the Federal Court of Canada, dated 4th May 1990, against the Administrator.

7.5 NEW ZEALAND CARIBBEAN (1989)

In my 1992-1993 Annual Report, I reported on this incident as follows:

"On January 30, 1989, this container ship (G.R.T. 19,613) collided with the pier at the Versatile Pacific Shipyards in North Vancouver, B.C., and discharged bunker fuel oil into Vancouver harbour.

"The Administrator is a party by statute in the action in the Federal Court of Canada by the

Vancouver Port Corporation to recover its costs and expenses and damages against the shipowner. It is unlikely that this case will be settled. It is not expected, however, that the Ship-source Oil Pollution Fund will be required to pay any portion of the claim of the Vancouver Port Corporation."

The Vancouver Port Corporation has informed me that this case has not been settled at the time of writing this report.

7.6 LUCETTE C (1989)

The Canadian fishing vessel LUCETTE C, while anchored at Newport Harbour in the Bay of Chaleurs, sank on May 8, 1989, with 1,000 gallons of diesel fuel oil on board.

In the absence of any action by the owner of the fishing vessel, the Canadian Coast Guard, pursuant to Part XVI of the *Canada Shipping Act*, took measures to control the fuel oil, including raising the LUCETTE C at a total cost claimed to be $136,669.32.

The action commenced by the Crown in the Federal Court on April 24, 1992, against the owner has been suspended because Mr. Donat Bertrand is now bankrupt.

Counsel for the Crown is investigating whether the owner had oil pollution insurance cover and, if so, whether the insurers are prepared to assume the defence of the action.

At the conclusion of the fiscal year under review, no further developments had been reported to the Administrator.

7.7 CAMARGUE (1989)

This incident concerns a bunker oil spill which occurred in the Bay of Fundy on June 18, 1989, following the discharge of a cargo of crude oil at the Canaport Monobouy off Mispec Point. The French flag M.T. CAMARGUE (G.R.T. 19,016), while taking on bunker fuel from the bunkering barge, IRVING SHARK, discharged a considerable amount of fuel oil (estimated by the Crown at 80 M.T.) into the Bay of Fundy.

After incurring costs and expenses claimed to amount to $1,275,048.78, this claim of the Canadian Coast Guard became the subject matter of an action in the Trial Division of the Federal Court of Canada commenced on April 24, 1992. In an amended statement of claim filed on June 12, 1992, the name of the shipowner was changed to the Compagnie Nationale de Navigation. As required by section 713 of the *Canada Shipping Act*, the Administrator was joined as a party by statute and has kept a watching brief on the developments in these proceedings, the details of which are described at page 16 of my 1992-1993 Annual Report.

On September 2, 1993, the joint defence of the third parties, Universal Sales Limited, Atlantic Towing Ltd. and Irving Oil Terminals Limited, replied to the Crown's amended statement of claim, denying the Crown's claim on the basis that no costs, expenses, loss or damage, as described in section 677(1)(*b*) or (*c*) of the *Canada Shipping Act*, were incurred by the Crown.

At the end of the fiscal year under review, arrangements were being made to examine an officer of the Crown for discovery to commence on April 25, 1994.

7.8 SIRIUS III (1989)

In my 1992-1993 Report, I set out the details of this incident:

"On August 26, 1989, the Canadian fishing vessel SIRIUS III (G.R.T. 30) sank while tied up alongside the wharf at Longue Pointe de Mingan sud, Québec, discharged black oil and diesel fuel oil into the waters at the wharf to which Part XVI of the *Canada Shipping Act* applies.

"It was necessary for the Canadian Coast Guard to take measures to recover the oil to prevent further pollution damage and at the same time, to refloat the SIRIUS III. An independent contractor was employed to do the necessary work. When the Coast Guard was unable to recover its costs, claimed to be about $20,000, the Crown instituted legal proceedings in the Federal Court on 12 May 1992 against the owner of the SIRIUS III joining the Administrator of the Ship-source Oil Pollution Fund as a party by statute."

At the conclusion of the year under review, the Crown continues to take steps to recover its costs and expenses from the vessel owner, and for this purpose continues to pursue its action in the Federal Court.

7.9 EGMONT (1989)

The Canadian fishing vessel EGMONT (G.R.T. 54) struck the wharf at the Port of Paspébiac, Québec, on September 6, 1989 and discharged about 3,000 gallons of a substance, alleged to be oil, into that harbour.

Since the owners of the EGMONT failed to take any action to control and recover the oil, the Canadian Coast Guard hired an independent contractor to take the necessary measures, completed on the following day at a cost, as claimed by the Coast Guard to be $12,776.60.

On 28th August 1992, the Crown commenced an action in the Federal Court against the EGMONT *in rem* and against her owners, officers and crew, *in personam* joining the Administrator as a party by statute to comply with section 713 of the *Canada Shipping Act*. At that time, Crown counsel agreed that until further notice, it was not necessary for the Administrator to take any further steps in the action.

In its defence, the owners, Cantin Navigation Ltée., denied that the substance discharged by the EGMONT was oil and therefore was not liable to pay the Crown's clean up costs and expenses. If the substance discharged is not oil as defined by Part XVI of the *Canada Shipping Act*, then there is no legal basis upon which the Administrator could be liable to pay the Coast Guard's claim.

In such circumstances, the dispute between the Crown and the shipowner as to the nature of the substance discharged must be resolved before the Administrator could consider any settlement of this litigation.

7.10 EUROSTAR (1990)

The M.V. EUROSTAR, a bulk carrier registered in the Bahamas, while moored at Gros Cacouna, Québec, on January 10, 1990, discharged a quantity of bunker fuel into the waters of the port.

Under Part XVI of the *Canada Shipping Act*, the Marine Emergency section of the Canadian Coast Guard took measures to mitigate and remedy the pollution damages, claiming to have incurred costs and expenses amounting to $25,344.

On December 3, 1993, the Crown filed an amended statement of claim in the Trial Division of the Federal Court (No. T2916-92), which was served on the Administrator as a party by statute in accordance with section 713 of the *Canada Shipping Act*. It was agreed by Crown counsel that it was not necessary for the Administrator to take any further steps in the action until notified to the contrary.

No such notice had been given as of March 31, 1994.

7.11 CARRYBULK (1990)

As reported in the Annual Report for 1992-1993, this incident occurred in the Port of Bécancour, Québec, on January 30, 1990. At the time of the casualty, the M.V. CARRYBULK, a general cargo ship registered in Panama and owned in Hong Kong by Unican International SA. discharged a quantity of bunker fuel oil into the port.

Proceedings were commenced in the Federal Court both *in rem* and *in personam* on December 2, 1992, by the Crown claiming $20,493.85 for clean up costs incurred as a result of the discharge of bunker fuel oil. The Administrator was made a party by statute, but, by agreement, was not required to take any further steps until otherwise notified.

It would appear that the letter of undertaking provided by the shipowner's insurers had expired prior to the Department of Justice being instructed in this incident.

As at March 31, 1994, no claim had been advanced against the S.O.P.F.

7.12 ARCTURUS/RUBIN LOTUS (1990)

I have been informed by the Vancouver Port Corporation that the litigation in the Federal Court has been settled and the proceedings were dismissed without costs to either party. The details of the settlement are not disclosed

in the Court records, but it has been reported that the settlement included an amount for environmental damages for injury to wildfowl as a result of the oil spill. (See Harry J. Wruck, "Recovery of Environmental Damage: A Matter of Survival," *Journal of Environmental Law & Practice*, 3rd, p. 178).

The Administrator was not made a party in the action and was not a party to the settlement.

7.13 MARIE PAULE (1990)

On March 5, 1990, the MARIE PAULE, a Canadian fishing vessel (G.R.T. 134), sank at its berth in the port of Grand Rivière, Québec, discharging fuel oil into the port.

Under Part XVI of the C.S.A., the Canadian Coast Guard mobilized pollution equipment and, with the aid of a contractor, took measures to clean up the oil discharged, at a cost claimed to be $25,692.13.

On 2nd December 1992, the Crown commenced an action *in rem* and *in personam* against the MARIE PAULE, her owners, officers and crew. The Administrator was joined as a party by statute.

On June 29, 1994, Counsel for the Administrator reported that the Crown and the owner were in the process of scheduling an examination for discovery to take place in Québec City.

7.14 LOK PRATIMA (1990)

This incident occurred on April 3, 1990 in the Port of Vancouver when the Indian flag carrier LOK PRATIMA (G.R.T. 15,192.2) discharged bunker fuel oil into the harbour.

Subsequently, on August 16, 1990, legal proceedings were started by the Vancouver Port Corporation against the shipowners to recover its claims for costs and expenses to clean up the oil spill. The Administrator is made a party by statute, but, by agreement, took no steps in the proceedings.

Recent developments would indicate that the matter will be shortly settled and the proceedings will be dismissed without costs to any party.

7.15 Mystery Oil Spill, North Sydney, Nova Scotia (1990)

On April 5, 1990, a report was received by the Coast Guard of a major oil spill at North Sydney Harbour, N.S. The waters polluted were waters to which Part XVI of the *Canada Shipping Act* (the "*Act*") applies.

The Coast Guard, acting on behalf of the Minister of Transport pursuant to section 677 of the *Act*, took action to clean up the oil spill claiming to have incurred costs and expenses totalling $21,407.83 by so doing.

On May 22, 1992, the Department of Justice filed a claim of $21,407.83 with the Ship-source Oil Pollution Fund for costs and expenses incurred. Further documents and information were submitted on April 28, 1993.

As the source of the oil pollution damage is unknown and I have been unable to establish that the incident which gave rise to the damage was not caused by a ship, the Coast Guard is entitled to the presumption in section 710 of the *Act* that the oil spill was discharged by a ship.

After investigation, on the basis of the information submitted I have been able to assess the actual reasonable costs and expenses of the incident incurred by the Coast Guard at not more than $16,226.62 which I offered to the Coast Guard on June 30, 1993, in full settlement. On July 29, 1993, I was informed that my offer was accepted.

In view of the delay in presenting the claim to the Administrator, the Crown made no claim for interest.

The factors engaging the Administrator's agreement to settle this claim involving payment from the S.O.P.F. of $16,226.62 are:

(a) The actual costs and expenses incurred by the Crown appear reasonably to have been incurred.

(b) Litigation would be costly and involve serious risk that the Court would award interest on the costs and expenses together with costs.

(c) The lack of evidence to prove that the oil spill was not from a ship source.

(d) This settlement was appropriate for the proper administration of the Fund.

For all the foregoing reasons and pursuant to section 709(*f*) of the *Act*, I directed that payment from the monies in the Ship-source Oil Pollution Fund of the sum of $16,226.62 made to the Receiver General of Canada as a settlement of all costs and expenses claimed by the Crown.

By Journal Voucher, the transfer of funds took place thereafter.

7.16 RIO ORINOCO (1990)

The details of this incident are set forth at pages 16-17 of my 1991-1992 Annual Report.

The long awaited report of the Transportation Safety Board of Canada was released on December 30, 1993, and was discussed in private session at the 38th meeting of the IOPC Fund Executive Committee on February 9, 1994, in London, England.

The Committee was informed by the Director that on October 15, 1993, the IOPC Fund had taken legal action in the Federal Court of Canada against the owner of the RIO ORINOCO (Rio Number One Limited), the ship manager (Horizon Management Corporation Incorporated) and the shipowners P & I insurer (The Swedish Club). In that action, the IOPC Fund claimed the sum of $12,831,892 plus interest from the defendants on the basis that the incident was due to the fault and privity of the shipowner and, as a result, argued that the shipowner was not entitled to limit its liability. The findings in the report of the Transportation Safety Board supported that argument.

The Director was instructed by the Committee to examine whether the IOPC Fund should take any other legal action including recourse action. It was expected that the Director would, with the assistance of the IOPC Fund's legal and technical experts, pursue his studies and report, in more detail, at subsequent sessions of the Executive Committee.

7.17 FORUM GLORY (1991)

As reported in the 1992-1993 Annual Report, the Administrator settled the claim of La Compagnie Minière Québec pursuant to section 710 and section 711 of the *Canada Shipping Act*.

By the terms of the settlement, the Administrator is subrogated to the rights of the claimant.

On 3rd March 1994, the Administrator filed a statement of claim in the Federal Court of Canada (Trial Division), both *in rem* and *in personam*, against the ship FORUM GLORY and her owners, Penta Navigation, Sidemar di Navigazione, S.p.A., to recover those rights in the amount of $44,399.98, together with interest and costs.

On March 22, 1994, the Counsel for the ship-owners in Montréal advised that they had authority to accept service of the statement of claim. Settlement discussions are now under way.

7.18 EASTERN SHELL (1991)

On January 14, 1994, the Deputy Attorney General of Canada, on behalf of the Crown, filed a statement of claim in the Federal Court, claiming some $356,143.48 and interest from the owners of the Canadian flag motor tanker EASTERN SHELL (G.R.T. 4,009) and the Administrator of the S.O.P.F.

For details of this casualty, please refer to the 1992-1993 Annual Report and the Marine Occurrence Report No. M91C2009 issued by the Transportation Safety Board of Canada on 8th December 1991.

It has been agreed that the Administrator had been served in order to comply with section 713 of the *Canada Shipping Act*, and no further action on the part of the Administrator was required at that time.

As of March 31, 1994, the Administrator had not been informed of any further developments which required action on his part.

7.19 TENYO MARU (1991)

This incident was caused by a collision between the Chinese flag bulk carrier TUO HAI (G.R.T. 86,959) and the Japanese flag fish factory ship TENYO MARU (G.R.T. 4,239) in the

thick fog on July 22, 1991. As a result of the collision, the TENYO MARU sank in position 48° 29'N, 125° 17'W at the entrance to the Juan de Fuca Strait 23.2 miles northwest of Cape Flattery on the Oympic Peninsula in the State of Washington, U.S.A. The collision took place within a Canadian fishing zone prescribed under the *Territorial Sea and Fishing Zones Act.*

At the time of the collision, the TENYO MARU was carrying, in many separate fuel and other tanks, some 1,000 metric tons of intermediate fuel oil, some 400 metric tons of diesel fuel oil and 30 metric tons of lubricating oil. Two tanks contained fish oil. The collision caused a considerable discharge of oil.

The TENYO MARU, lying upright at a depth of 540 feet was discharging oil. The CCG command centre, established at Ucluelet, B.C., decided to attempt to pump oil from the wreck. This was the first time that oil recovery had been attempted at such a depth. Over a period of some 20 days, more than 100 tons of oil was pumped from accommodation areas of the wreck of the TENYO MARU. This oil was from fractured tanks.

The currents in the vicinity of the wreck and the prevailing winds drove the bulk of the oil released from the TENYO MARU into United States waters, onto the coast of the State of Washington and as far south as the Oregon Coast. There were no confirmed sightings of oil on any Canadian beaches, due in part to the successful preventive measures carried out by the CCG.

On 7th August 1991, the Crown commenced an action *in rem* against the two ships, TENYO MARU and the TUO HAI, and *in personam* against their respective owners, claiming oil pollution damages, costs and expenses. Shortly thereafter, the bulk carrier was arrested by the Crown in Vancouver Harbour as security for payment of the costs and expenses incurred by the CCG. The Administrator of the S.O.P.F. was made a party by statute in the Crown action.

The Federal Court set bail of US$17.2 million for the release of the TUO HAI, which was provided by a guaranty of the Royal Bank of Canada dated 16th October 1991. On October 19, 1992, an additional bank guarantee in the amount of US$1,290,000, in accordance with the order of the Federal Court, was filed, bringing the total security to US$18.49 million.

During the fiscal year under review, the Ship-source Oil Pollution Fund obtained the following particulars of the claim of the Government of Canada as follows:

Total Claim of the Government of Canada

$5,328,185.36

Breakdown

1. Canadian Coast Guard	$5,176,996.61
2. Atmospheric Environment Service (Environment Canada)	$12,828.50
3. Conservation & Protection (Environment Canada)	$75,891.17
4. Fisheries & Oceans	$29,160.27
5. Pacific Rim National Park (Environment Canada)	$33,308.81
	$5,328,185.36

The Crown's claim was being reviewed and analyzed by the S.O.P.F. at the end of March 1994.

A pretrial conference, set for May 2, 1994, will deal with the consolidation of the various actions and set deadlines for discoveries of documents, examinations for discovery and the filing of expert evidence.

7.20 Mystery Oil Spill, Red Point Provincial Park, P.E.I. (1991)

On July 16, 1992, a claim for $4,080.32 was received by the Ship-source Oil Pollution Fund claimed to result from the clean up of Bunker C at the Red Point Provincial Park, on August 30, 1991.

The clean up appears to have occurred on August 30th and September 1st, 1991.

The Ship Safety Branch of the Coast Guard was unable to determine the source of the oil, notwithstanding that the Park Warden provided

information that a ship had passed through the Northumberland Strait during the previous night.

In order to complete the investigation of the Crown's claim, further information and documents were sought, but, as of March 31, 1994, no further information or documents had been received.

7.21 OGDENSBURG (1991)

On September 28, 1991, the Canadian flag barge OGDENSBURG, registered at the Port of Windsor, Ontario, and owned by McKeil Work Boats Limited of Hamilton, Ontario, carrying a load of gravel, two payloaders and two trailers, sank 17 miles west of St. Augustine, Québec. At the time of the incident, it is alleged that the barge was chartered to Navigation Harvey & Frères Inc.

On October 24, 1991, it was determined that the payloaders were discharging oil and the Canadian Coast Guard deployed pollution equipment to mitigate the oil pollution damage and engaged a contractor to raise the payloaders.

The Crown claims that the Canadian Coast Guard incurred costs and expenses of $157,910.49 as a result of the measures taken.

On May 7, 1993, the Crown filed a statement of claim in the Federal Court of Canada against:

- McKeil Work Boats Limited,
- The Barge OGDENSBURG, and
- Navigation Harvey & Frères Inc.

The Administrator was joined in the action as a party by statute.

A statement of defence of McKeil Work Boats Limited was filed in September 1993 denying all liability under Part XVI of the *Canada Shipping Act* on the basis that, at the time of the incident, the defendant Navigation Harvey & Frères Inc. had the rights of the owner of the ship as regards the possession and use of the barge.

Proceedings in bankruptcy were taken against the defendant, Navigation Harvey & Frères Inc., and on May 13, 1993, the trustee in bankruptcy suspended the proceedings in the Federal Court against that defendant under section 69 of the *Bankruptcy Act.*

As of March 31, 1994, the Administrator is awaiting further developments in this litigation.

7.22 TRADE GREECE (1991)

While berthed at Pacific Coast terminal no. 1 in Vancouver Harbour on December 30, 1991, the Greek owned Cypriot flag bulk carrier, M.V. TRADE GREECE (G.R.T. 30,286) discharged bunker fuel into the harbour.

As a result of the discharge, the Vancouver Port Corporation, a local port corporation established under the *Canada Ports Corporation Act*, R.S.C. 1985, chapter C-9, and an agent of the Crown, claimed that it incurred costs and expenses to prevent the spread of oil from the TRADE GREECE in the amount of $62,690.34 and unstated overhead costs.

On 22nd December 1993, an action *in rem* was commenced in the Trial Division of the Federal Court of Canada on behalf of the Vancouver Port Corporation against the ship TRADE GREECE, its owners and master. The Administrator was named as a party by statute. Counsel for the Vancouver Port Corporation agreed that he would not take any steps against the Administrator until further notice. No notice had been received by March 31, 1994.

7.23 Mystery Oil Spills, Port-Alfred, Québec (1991-92)

On April 23, 1993, Société d'Electrolyse et Chimie Alcan Ltée. ("Alcan"), filed a claim with the Administrator pursuant to section 710 of the *Canada Shipping Act* for oil pollution damages, costs and expenses for the amount of $10,595.53.

The claim comprised the following five oil spill incidents at Alcan port installations in Port-Alfred, P.Q.

The following particulars of the incident were supplied by the claimant:

Date	Ship	Amount
3rd May 1991	CAPTAIN DIAMANTIS	$3,027.28
28th August 1991	Unknown	$ 439.45
30th August 1991	JALATAPI	$ 268.00
19th May 1992	KRISTIANIA FJORD	$2,033.80
1st July 1992	EDEL SIF	$4,827.00
		$10,595.53

In each of these incidents, Alcan established that there was a discharge of oil, that Alcan had incurred costs and expenses totalling $10,595.53 for oil spill recovery and clean up for these five incidents, that the measures taken and the costs incurred were reasonable in the circumstances.

On the evidence disclosed, I was satisfied that the incidents were caused from a ship or ships in Port-Alfred.

Accordingly, the claim was settled in the total amount of $10,595.53 in September 1993.

7.24 FEDERAL OTTAWA (1992)

On January 11, 1993, the Administrator was served with a statement of claim filed in the Federal Court of Canada on behalf of the plaintiff, the Vancouver Port Corporation, in relation to a discharge of bunker fuel in the Port of Vancouver from M.V. FEDERAL OTTAWA, registered in the Duchy of Luxembourg, on January 22-23, 1992.

As a result of the incident, the Vancouver Port Corporation, having administration of the Port, took remedial measures to prevent the spread of the oil and to clean the harbour. In doing so, the Corporation claimed costs and expenses estimated at the time to be some $50,000.

Counsel for the Vancouver Port Corporation has informed the Administrator that the claim has been settled, in part by the shipowner's insurers, but there is a dispute as to whether the M.V. FEDERAL OTTAWA is responsible for the entire oil spill.

No claim had been received by the Administrator by March 31, 1994.

7.25 SKRIM (1992)

In the 1991-1992 Annual Report, I reported:

"While en route to Quebec to load a cargo of iron ore, the Panamanian flag bulk carrier SKRIM (G.R.T. 86,093), on March 13, 1992, reported to Halifax traffic centre that in the Port-aux-Basques, Newfoundland area, it had sustained ice damage on its port bow, causing heavy fuel oil from its portside deep tank to discharge through cracks near the ship's waterline. That tank was reported to contain 1,000 cubic meters of fuel oil. It is estimated that 100-145 cubic meters of fuel oil was discharged.

"The following day, oil and tar balls were discovered in the Port-aux-Basques area, with intermittent oiling along three miles of shoreline.

"The shipowner of the SKRIM, Blue Trans Shipping Inc. of Panama, confirmed that it accepted responsibility for the oil spill.

"The CCG released the ship after it had been cleaned at dockside in Halifax Harbour and its owner had submitted a letter of intent to clean the remaining pollution in and around Port-aux-Basques in the spring of 1992."

I am informed that the Canadian Coast Guard presented a claim of $190,603.32 to the shipowners and their insurers on September 25, 1992 and that the legal proceedings were commenced in April 1994.

At the time of preparing this Report, the Administrator has not been served in those proceedings.

7.26 Mystery Oil Spill, Ste. Anne de la Perade, Québec (1992)

On May 17, 1992, Environment Canada reported that an oil slick of approximately 5,000 litres of bunker C has been sighted in the St. Lawrence river near Sainte Anne de la Pérade.

The waters polluted were waters to which Part XVI of the *Canada Shipping Act* applies.

The Canadian Coast Guard, acting on behalf of the Minister of Transport, pursuant to section 677 of the *Act*, took measures to clean up the oil spill, claiming to have incurred costs and expenses totalling $19,170.43 by so doing.

As the Canadian Coast Guard was unable to identify the particular ship that caused the oil spill, it filed a claim with the Ship-Source Oil Pollution Fund under sections 709 and 710 of the *Act* on July 30, 1993.

As the source of the oil pollution damage is unknown and I have been unable to establish that the incident which gave rise to the damage was not caused by a ship, the Canadian Coast Guard is entitled to the presumption in section 710 of the *Act* that the oil spilled was discharged by a ship.

After investigation, on the basis of the information submitted, I have been able to assess the actual reasonable costs and expenses of the incident incurred by the Canadian Coast Guard at the amount claimed by the Canadian Coast Guard.

In accordance with section 723 of the *Act*, the Crown was also entitled to be paid interest on its claim, which was calculated at $3,058.64.

The factors engaging the Administrator's agreement to settle this claim involving payment from the S.O.P.F. of $19,170.43 are:

(a) The measures taken and the actual costs and expenses incurred by the Crown appear to be reasonable.

(b) The lack of evidence to prove that the oil spill was not from a ship source.

(c) This settlement was appropriate for the proper administration of the Fund.

For the foregoing reasons and pursuant to section 709(*f*) of the *Act*, I directed that payment in the total amount of $22,229.07 be paid in full settlement of the costs, expenses and interest claimed by the Crown as a result of this mystery spill.

7.27 BORA BORA 1 (1992)

A Greek owned general cargo ship registered in the Port of Valetta, Malta, the BORA BORA 1, while moored at section 275 in the Port of Montréal, Province of Québec, discharged a quantity of bunker fuel into the waters of the Port.

After the owners failed to respond to the oil spill, the Canadian Coast Guard deployed its pollution equipment to mitigate the damages and engaged the services of a contractor to clean up the oil spill. In doing so, the Coast Guard claims that it incurred costs and expenses in the amount of $40,243.31 after the shipowners refused to pay this claim.

On December 14, 1993 the Deputy Attorney General of Canada, on behalf of Her Majesty, commenced an action *in rem* and *in personam* in the Trial Division of the Federal Court of Canada against the shipowners, Commodore Navigation Ltd., the ship BORA BORA 1 (now named the DANCING SISTER) and others. As required by section 713 of the *Canada Shipping Act*, the Administrator was named a party by statue but it was agreed that the Administrator would not be required to take further steps in the action until further notice. No such notice had been received by March 31, 1994.

7.28 NORPAK 1 (1992)

The NORPAK 1 is a small fishing vessel/ seiner (G.R.T. 38) registered in the Port of Vancouver. At 18:00 hours on August 10, 1992, the NORPAK 1 collided with the Iranian flag bulk carrier IRAN SHARIAT anchored at anchorage no. 12 in English Bay in the Port of Vancouver. As a result of the collision, the NORPAK 1 began to sink at the bow and later beached by the tug MILLER DELTA on Spanish Banks. A quantity of oil was discharged from the NORPAK 1 into waters to which Part XVI of the *Canada Shipping Act* applies.

On August 20, 1993, Her Majesty filed a statement of claim in the Federal Court of Canada to recover the costs and expenses incurred by the Canadian Coast Guard from the owners of the NORPAK 1, and in those

proceedings joined the Administrator as a party by statute as stipulated by section 713 of the *Canada Shipping Act*.

On September 20, 1993, a statement of defence was filed in the Federal Court on behalf of the shipowners denying all liability. On March 17, 1994, counsel for the Crown informed counsel acting for the Administrator that the vessel apparently was scrapped and the fishing licence had been transferred, leaving no option but to proceed with the action in the Federal Court.

As of March 31, 1994, further steps by the Crown were awaited.

7.29 IRENES SAPPHIRE (1992)

On September 22, 1992, the Greek owned and Greek flag bulk carrier IRENES SAPPHIRE (G.R.T. 10,153) discharged a quantity of bunker fuel into waters of the Port of Trois Rivières, Québec.

As Ordeq Shipping Co. Ltd. of Piraeus, Greece, the registered owners of the bulk carrier, did not respond to the oil spill, the Marine Emergencies section of the Canadian Coast Guard responded to this oil spill incident by deploying its pollution equipment to mitigate the oil pollution damage so caused.

The Coast Guard claims that the Minister of Transport and Her Majesty incurred costs and expenses amounting to $16,813.40.

As a result of the shipowners' failure to reimburse the Coast Guard, proceedings were commenced, in the name of Her Majesty the Queen, in the Trial Division of the Federal Court of Canada on December 6, 1993.

The Administrator was made a party by statute to comply with section 713 of the *Canada Shipping Act* on the basis that it was not necessary for the Administrator to take any further steps in the proceedings until informed by Counsel for the Crown.

As of March 31, 1994, no such notice had been received.

7.30 AMERICAN FALCON (1992)

As reported in the 1992-1993 Annual Report, this incident occurred in Argentia Harbour on October 24, 1992 (local time). While docking, the M.V. AMERICAN FALCON struck the wharf, damaging the after starboard fuel tank and discharging about 20 tons of bunker fuel into the harbour.

As a result of the clean up operations, the Canadian Coast Guard, on March 22, 1993, presented a claim of $288,151.59 to the shipowner's underwriters who paid a substantial amount of the claim in August 1993. The balance of the claim (about $33,520.84) remains under dispute.

It is not clear whether any claim will be filed with the Administrator.

7.31 Mystery Oil Spill, Sorel, Ile aux Barques, Québec (1992)

On November 21, 1992, the M.V. FASTNESS reported to the Canadian Coast Guard the existence of a discharge of oil near Sorel Ile aux Barques in Lac Saint Pierre, in the Province of Québec. The waters polluted were waters to which Part XVI of the *Canada Shipping Act* applies.

The Coast Guard, acting on behalf of the Minister of Transport, pursuant to section 677 of the *Act*, took measures to monitor and to perform slick surveillance flights over the oil spill, claiming to have incurred costs and expenses totalling $25,694.93 by so doing.

As the Coast Guard was unable to identify the particular ship that caused the oil spill, it filed a claim with the Ship-source Oil Pollution Fund under sections 709 and 710 of the *Act* on July 30, 1993.

As the source of the oil pollution damage is unknown and I have been unable to establish that the incident which gave rise to damage was not caused by a ship, the Coast Guard is entitled to the presumption in section 710 of the *Act* that the oil spilled was discharged by a ship.

After investigation, on the basis of the information submitted, I have been able to assess the actual reasonable costs and expenses of the incident incurred by the Coast Guard at the amount claimed by the Coast Guard.

In accordance with section 723 of the *Act*, the Crown is entitled to interest on its claim as assessed.

The factors engaging the Administrator's agreement to settle this claim involving payment from the S.O.P.F. of $25,694.93 are:

(a) The measures taken and the actual costs and expenses incurred by the Crown appear to be reasonable.

(b) The lack of evidence to prove that the oil spill was not from a ship source.

(c) This settlement was appropriate for the proper administration of the Fund.

Pursuant to section 709(*f*) of the *Act*, I directed that payment from the monies in the Ship-source Oil Pollution Fund in the total amount of $28,623.72, including prescribed interest, be made in full settlement of the Crown's claim as a result of this mystery spill.

7.32 Mystery Oil Spill, Baie des Sables, Québec (1992)

On November 29, 1992, a message was received from the C.P.C. HOLLANDIA by the Canadian Coast Guard reporting the sighting of an apparent discharge of bunker oil off Point Michel, in the Baie des Sables, Québec. The waters polluted were waters to which Part XVI of the *Canada Shipping Act* applies.

The Canadian Coast Guard, acting on behalf of the Minister of Transport, pursuant to section 677 of the *Act*, took measures to monitor and supervise the clean up by a private contractor of the oil spill, claiming to have incurred costs and expenses totalling $48,109.32 by so doing.

As the Canadian Coast Guard was unable to identify the particular ship that caused the oil spill, it filed a claim with the Ship-source Oil Pollution Fund under sections 709 and 710 of the *Act* on July 30, 1993.

As the source of the oil pollution damage is unknown and I have been unable to establish that the incident which gave rise to the damage was not caused by a ship, the Coast Guard is entitled to the presumption in section 710 of the *Act* that the oil spilled was discharged by a ship.

After investigation, on the basis of the information submitted, I have been able to assess the actual reasonable costs and expenses of the incident incurred by the Canadian Coast Guard at the amount claimed by the Coast Guard.

In accordance with section 723 of the *Act*, the Crown is entitled to interest on its claim as assessed.

The factors engaging the Administrator's agreement to settle this claim involving payment from the S.O.P.F. of $48,109.32 are:

(a) The measures taken and the actual costs and expenses incurred by the Crown appear to be reasonable.

(b) The lack of evidence to prove that the oil spill was not from a ship source.

(c) This settlement was appropriate for the proper administration of the Fund.

Pursuant to section 709(*f*) of the *Act*, I directed that payment from the monies in the Ship-source Oil Pollution Fund in the total amount of $53,508.61, including prescribed interest, be made in full settlement of the Crown's claim as a result of this mystery spill.

7.33 Mystery Oil Spill, Lockeport, Nova Scotia (1993)

On January 7, 1993, there was a discharge of diesel oil into Lockeport Harbour. The fuel oil, so discharged, spread to several crates of live lobsters recently purchased by D. & L. Williams Fisheries Ltd.

As a direct result of this contamination, the Department of Fisheries and Oceans ordered D. & L. Williams Fisheries Ltd. to dispose of 437 lbs. of live lobsters belonging to the company. Subsequently, under the direct supervision of the Department, the contaminated lobsters were destroyed, in accordance with the *Fisheries Act*.

In the meantime, the lobsters in question had been sold to Wallace Fisheries Ltd. There was litigation in the Supreme Court of Nova Scotia between these two companies to resolve the dispute between them as to the ownership of the contaminated lobsters and resulting damages.

On April 4, 1993, D. & L. Williams Fisheries filed a claim with the Administrator pursuant to section 710 of the *Canada Shipping Act* for oil pollution damage for 437 lbs. of lobsters at $5.25 per pound for a total amount of $2,294.25.

As I am required to do, I investigated the claim and obtained evidence from D. & L. Williams Fisheries Ltd. and others to establish its loss.

I was satisfied on the evidence that the occurrence was caused by the discharge of oil from a ship or ships in Lockeport Harbour. There was no evidence that this claim resulted wholly or partially from the wrongful act or omission or from the negligence of the claimant. It was agreed by Wallace Fisheries Ltd. that the proceeds of the settlement be paid to D. & L. Williams Ltd.

On the evidence, I assessed the claim at $2,294.25 and I directed payment out of the Ship-source Oil Pollution Fund pursuant to section 711 (3)(*a*) and section 712 (5)(*a*) of the *Canada Shipping Act*. That amount was paid on November 26, 1993.

7.34 TRAILER PRINCESS (1993)

By letter dated February 3, 1994, counsel for the Department of Justice gave notice to the Administrator that the Crown would be making a claim against the Ship-source Oil Pollution Fund for an oil spill from the barge TRAILER PRINCESS which is said to have occurred in January 1993.

It was suggested to Crown counsel that leave of the court be obtained to proceed against the bankrupt owner of the barge in order to collect from the marine underwriter involved.

No claim had been received by the S.O.P.F. by March 31, 1994.

7.35 Mystery Oil Spill, Come by Chance, Newfoundland (1993)

On April 15, 1993, Llewellyn Baker and Baker Enterprises Ltd. ("the claimants") filed a claim with the Ship-source Oil Pollution Fund, pursuant to section 710 of the *Canada Shipping Act*, for costs and expenses with respect to oil pollution damage to the M.V. ROSE AU RUE on or near Come by Chance in Placentia Bay, Newfoundland.

As a result of my investigation, I found that:

(1) On January 31, 1993, when the M.V. ROSE AU RUE was moored for the winter at the community wharf at Come by Chance, the claimant discovered that the boat lines in the water were covered with thick black oil.

(2) On February 8, 1993, an oil sample was collected from one rope leading from the vessel and analyzed for possible "oil matching" with a sample submitted by Newfoundland Processing Ltd. (NPL) and a sample from the beach.

(3) The samples were analyzed and chemically compared. The profile of the sample by NPL had sufficient differences that it did not match the other samples.

(4) With the exception of the NPL refinery at Come by Chance, there would appear to be no other known sources of bunker oil in the area. The only other potential sources of bunker oil in the area would indicate that the oil originated from an inbound tanker using the shipping lanes to the south of Placentia Bay. The identity of such tanker is unknown. In such circumstances, the claimants are not required to satisfy the Administrator that the occurrence was caused by a ship.

The claimants submitted a proof of claim which established costs and expenses in the total amount of $711.44. The claimants were also entitled to interest from July 1, 1993-November 15, 1993, amounting to $26.68. On the material submitted, I was satisfied that the claim did not result in whole or in part from any negligence of the claimants. A cheque for $738.12 in full settlement of the claim was forwarded to the claimants by letter dated November 10, 1993.

7.36 VALERY IV (1993)

Constructed of concrete, this Canadian registered 52' yacht sank on June 10, 1993 with resulting pollution from on board storage tanks on the Richelieu River at Sabrevois, P.Q.

Preliminary counter measures were taken by a Canadian Coast Guard contractor. Early on the morning of June 11, 1993, the Canadian Coast Guard decided to raise the yacht in order to contain and remove the free floating oil in the vessel.

During the period during which these measures were taken, it was reported that the yacht was sold to an unknown buyer for $2,000. This amount was offered to the Canadian Coast Guard in full settlement of the owner's liability under section 677 for the costs and expenses incurred.

As the Canadian Coast Guard claim was estimated at about $18,000, and the limit of liability of the yacht owner was some $11,600, the information available to the Administrator did not support the contention that the proposed settlement of the shipowner's liability was justifiable and in the best interests of the Ship-source Oil Pollution Fund.

At the end of the fiscal year under review, the Administrator was awaiting further information from the Canadian Coast Guard.

7.37 CARAPEC 1 (1993)

On 22nd October 1993, the Commissioner of the Canadian Coast Guard signed a response order authorizing the Environmental Response Unit, Maritimes Region, of the Canadian Coast Guard to transfer and remove diesel fuel oil and lube oil on board the Norwegian built and Canadian registered fishing vessel CARAPEC 1.

Since May 1993, this fishing vessel had been abandoned and secured at the marine breakwater at Caraquet, New Brunswick.

The Coast Guard found that the engine room of the CARAPEC 1 was flooded and was possibly tidal. The vessel was on inadequate moorings and exposed to the weather on the seaward side of the breakwater.

In accordance with the response order, the on-scene commander took measures to remove and dispose of some 6,000 gallons of a diesel lube oil and water mixture and to remove the vessel to a secure location.

Efforts by the Canadian Coast Guard to identify the true owner of this fishing vessel produced a bill of sale dated 27th January 1993 transferring all 64 shares to one Sandra Low in Calgary, Alberta, but there remained some doubt whether the true owner was Canadian or resided off shore.

At the end of the fiscal year under review, the issue of ownership had not been resolved and, as a consequence, the Coast Guard may not be able to recover its costs and expenses incurred.

7.38 Oil Spill, Wedgeport, Nova Scotia (1993)

On November 20, 1993, the Canadian Coast Guard was informed that light diesel fuel oil from a dredge barge owned by Verreault Navigation, Québec, was discharged in Wedgeport Harbour. The area around the dredge was contaminated with oil requiring remedial action. After discussions with the owners, the Canadian Coast Guard decided that 6,000 litres of marine diesel in the barge should be transhipped.

On 24th November 1993, the Department of Fisheries and Oceans prohibited the use of all lobster cars in the harbour of Wedgeport. A local contractor was hired by the barge owner to remove and replace the contaminated beach material with similar clean material. By agreement, it was decided to boom off the contaminated shoreline to prevent further pollution. It was also decided to remove the damaged barge from the Wedgeport breakwall. On 26th November 1993, the Department lifted the ban on the Wedgeport Harbour for the use of the lobster fishery in time for the opening of the season on the following Monday, November 29, 1993.

As of 31st March 1994, no claims had been filed with the Administrator.

7.39 GENERAL TIRONA (1993)

An oil spill of an estimated 43 metric tons of marine diesel resulting from damage to the M/V GENERAL TIRONA while berthing at Lynnterm #2 in North Vancouver, B.C., on 13th December 1993. On the same day, the Vancouver Port Corporation requested the Canadian Coast Guard to be the lead agency, and a local contractor was engaged to contain and recover the spilled diesel, which was completed on December 14, 1993. By the following day, the CCG vessel SWIFT reported no oil pollution in Burrard Inlet or Vancouver Harbour. The owners posted the following security:

(a) $150,000 bond for any civil judgments resulting from the incident; and

(b) $20,000 bond to cover possible fines resulting from criminal proceedings.

On February 3, 1994, the secretary of the Burrard Yacht Club wrote to the Administrator advising that 22 yachts moored in the Yacht Club had been contaminated by oil.

Counsel for the Administrator requested the Club to present their claims to the shipowner's marine underwriters represented in Vancouver by its solicitors, Campney Murphy, and this was done on February 10, 1994.

As of March 31, 1994, settlement of the claims was still pending.

7.40 Mystery Oil Spill, Bassin Lanctôt, Sorel, Québec (1993)

On or about 21:00 hours on November 30, 1993, a dredge working in the Bassin Lanctôt at Sorel for and on behalf of the government of Canada, struck and punctured a drum of heavy oil. The incident and the resulting pollution was only reported on the following day. By that time, the oil from the drum had spread over the basin, and several ships at anchor and the government wharf had to be cleaned.

On February 14, 1994, the Canadian Coast Guard presented a claim to the Administrator for $46,813.79 for the costs and expenses incurred. As at March 31, 1994, the claim remained under consideration.

7.41 TITO TAPIAS (1994)

During bunkering operations with the tug IRVING TEAK and the bunkering barge SHARK 7 in the Red Head area in the port of Saint John, New Brunswick on 11th January 1994, the Panamanian flag M.T. TITO TAPIAS (G.R.T. 77,291) discharged a quantity of bunker fuel into the waters of the port.

From the outset, there was a dispute between the master of the TITO TAPIAS and the Canadian Coast Guard as to the amount of fuel oil discharged. The master estimated that some two to four barrels were spilled, while the Coast Guard estimated a much larger amount of up to 35 tons. Notwithstanding this dispute, the Britannia Steam Ship Insurance Association Limited engaged the response organization Irving Alert to undertake clean up operations with the Canadian Coast Guard, and Environment Canada monitoring the situation closely.

In accordance with section 677 (11) of the *Canada Shipping Act*, as amended, the Britannia Club provided undertakings to the Ship-source Oil Pollution Fund on January 12, 1994, to handle all third party claims for oil pollution damages, costs and expenses, to the extent of the legal liability of the shipowner, and, to that extent, to hold the Administrator harmless from such claims. By way of a second P & I letter, the Britannia Club provided a further undertaking to provide up to $75,000 as security for payment of "clean up costs" to the Canadian Coast Guard and to the Administrator of the S.O.P.F.

On February 1, 1994, the S.O.P.F. was informed that over the previous week, two reports had been received of oiling on the

Digby Shore, Nova Scotia. A helicopter reconnaissance carried out on January 31, 1994, showed oil spilling on the tidal zone from Delap Cove to Hampton, a distance of some 15 miles.

On February 3, 1994, response crews were sent to the area to commence clean up operations, but due to snow and weather, these operations were not possible at that time.

At the end of the fiscal year under review, the shipowner had not yet acknowledged its responsibility for oiling on the Digby Shore.

7.42 POLYDEFKIS (1994)

On January 12, 1994, the harbour master of the Port of Montreal reported oil pollution on the ice suspected to have been discharged from the Greek flag bulk carrier M.V. POLYDEFKIS (G.R.T. 17,012) at section B-1. The master denied any knowledge of any pollution from his ship. The pollution involved contaminated ice over a length of 125 feet by a width of 5 to 15 feet.

Clean up operations were conducted by a contractor engaged by Environment Canada at a cost of up to $10,000.

The M.V. POLYDEFKIS is entered in the Newcastle P & I Club, represented by Shipowners Assurance Management Ltd. in Montréal, which on January 14, 1994, provided an executed letter of undertaking to the Canadian Coast Guard as security for any shipowners' liability.

It is not expected that any claim arising from the incident will be made against the Ship-source Oil Pollution Fund.

7.43 CALYPSO IV (1994)

While secured at the shipyard dock at Les Méchins in Rimouski, Québec, on February 2, 1994, the Panamanian flag bulk carrier M.V. CALYPSO IV (G.R.T. 3010) discharged lubricating oil and bilge waste. The shipyard hired a contractor, Sani-Mobile, to take measures to clean up the spilled oil and bilge waste.

The shipowner, Weatherford Maritime Inc. of Roadtown, Tortola, in the British Virgin Islands, has oil pollution cover in the Ocean Marine Mutual P & I Association. On February 11, 1994, the club provided a letter of undertaking in favour of the Ship-source Oil Pollution Fund, the Canadian Coast Guard and others up to $70,000 to cover the liabilities of the shipowner under the *Canada Shipping Act.*

As of March 31, 1994, no claims have been filed with the S.O.P.F. arising out of the incident.

7.44 PRINCESS No. 1

On 12th February 1994, at 02:01 UTC, security personnel at the Amherstburg Coast Guard base reported that the U.S. built, Canadian registered tug, PRINCESS No. 1 (G.R.T. 87), was sinking at the dock.

At 04:30 UTC, the commanding officer of CCGS GULF ISLE reported that the tug was discharging significant but undetermined amounts of diesel fuel oil. Containment booms were deployed around the sunken tug. Other Coast Guard ships assisted the containment and recovery operations. Divers sealed the leaks in the sunken tug and the vessel was raised and placed on the slipway in Amherstburg on February 15, 1994.

The registered owner of the PRINCESS No. 1, Colin Barry Gayton, of Harrow, Ontario, is reported to have been advised by the Canadian Coast Guard that he would be responsible for all clean up costs incurred as a result of this incident.

No claims had been received by the Administrator as of March 31, 1994.

8. Financial Summary

During the fiscal year 1993-1994, the Ship-source Oil Pollution Fund paid out, at the direction or the request of the Administrator:

(a) Pursuant to sections 706 and 707 of the *Act*, the total sum of $290,953.01 comprising the following costs and expenses:

Administrator Fees	$66,500.00
Legal Fees	$65,027.19
Professional Services	$81,188.02
Secretarial Services	$41,978.51
Travel Expenses	$13,719.38
Printing	$14,117.15
Office Expenses	$ 8,422.76

(b) Pursuant to section 701 of the *Act*, the Administrator directed the payment of $4,927,555.76 in contributions to the IOPC Fund out of the Ship-source Oil Pollution Fund in accordance with Articles 10, 11 and 12 of the 1971 Fund Convention:

The above amount paid to the IOPC Fund comprised:

General Fund	$455,412.77
AEGEAN SEA Major Claims Fund	$1,484,744.36
BRAER Major Claims Fund	$2,148,365.30
TAIKO MARU Major Claims Fund	$559,355.56
KEUMDONG 5 Major Claims Fund	$279,677.77

(c) Pursuant to sections 710 and 711 of the *Act*, the Administrator settled claims for the sum of $184,852.18

During the reporting fiscal year, interest credited to the Fund was $13,366,113.34.

At March 31, 1994, the balance in the Fund was $217,885,170.98.

Yours sincerely,

Peter M. Troop
Administrator
Ship-source Oil Pollution Fund