

**Ship-source
Oil Pollution Fund
Annual Report
1994-1995**





Louis Audette 1907 - 1995

Louis de la Chesnaye Audette, O.C., Q.C., BA, L.P.H., LL.B, D.Sc. Mil(hon), died at Ottawa on 2nd April 1995. He was the first Administrator of the Maritime Pollution Claims Fund from 1973 until 1978 and again from 1983 until 1988.

Louis Audette had a distinguished career. Called to the bar in 1931, he practised law until the outbreak of war in 1939 when he joined the Royal Canadian Navy, commanding various ships in the North Atlantic and Mediterranean.

After the war he held senior positions in the public service, and also headed several government boards and commissions, including the Canadian Maritime Commission. Louis Audette was also Chairman of the Preparatory Committee for the Convention of the then International Maritime Consultative Organization, and President of the 1st Assembly of that organization at London in 1959.



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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 (CSA)*, I have the honour to submit to you my Annual Report on my operations as Administrator of the Ship-source Oil Pollution Fund (SOPF), commencing on April 1, 1994 and ending on March 31, 1995.

By Order in Council P.C. 1993-2003 dated December 6, 1993, the undersigned was reappointed Administrator of the SOPF for a term of five years with effect from November 18, 1993, having previously held the appointment as Administrator since 1988.¹

2. The Canadian Compensation Regime

My report for last year showed that the three components providing compensation to claimants for oil pollution damage caused by ships in Canadian Waters are:

1. The Ship-source Oil Pollution Fund;
2. The International Convention on Civil Liability for Oil Pollution Damage 1969 (CLC);² and
3. The 1971 International Convention on the Establishment of an International Fund for Oil Pollution Damage (Fund Convention).²

Figure 1 shows the amounts of compensation as at April 1, 1995 that can be made available under the three components of this regime. It should be noted that no changes were made to the regime during the fiscal year.

The 1976 Protocol to the Fund Convention replacing the gold franc by Special Drawing Rights (SDRs) of the International Monetary Fund for the purpose of calculating compensation payable by the IOPC Fund entered into force for Canada on 22nd May 1995.

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

Balance

At March 31, 1995, the balance in the SOPF was \$233,261,036.39.

Interest

During the fiscal year the SOPF was credited with a total of \$18,793,680.68 as interest by the Minister of Finance, calculated on a monthly basis, giving an average rate of about 7% during 1994-1995.

Limit of Liability

During the fiscal year commencing April 1, 1995 the maximum liability of the SOPF is \$121,474,002 for all claims in respect of any one oil spill. This amount is indexed annually to the consumer price index.

Levy

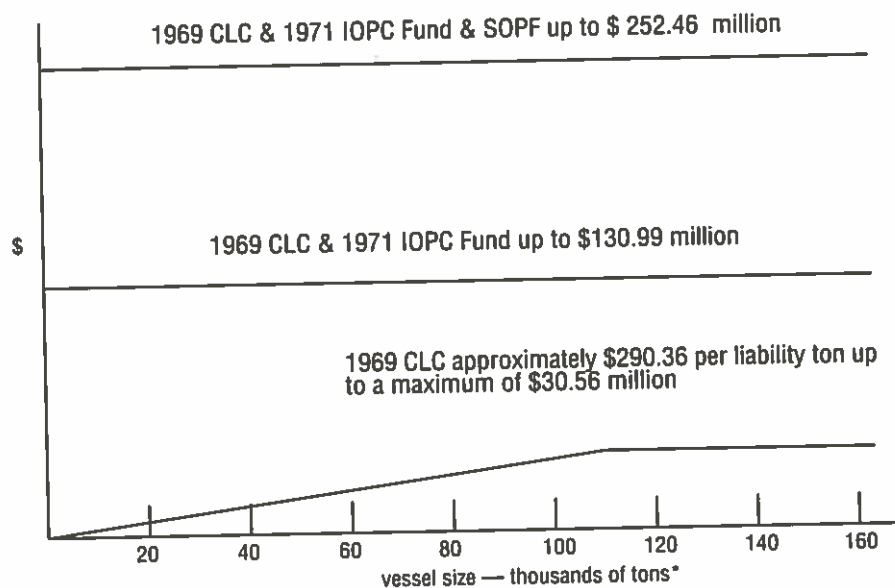
The Minister of Transport has statutory authority to impose a levy for the SOPF on oil imported into or shipped from a place in Canada in bulk as cargo on a ship. No levy has been imposed or collected since 1976. If imposed during the fiscal year commencing April 1, 1995, the levy would be 36.44 cents per tonne. It is also indexed annually to the consumer price index.³

¹ Appointed as Administrator of the Maritime Pollution Claims Fund (MPCF) by Order in Council P.C. 1988-247. By operation of section 89 of *An Act to amend the Canada Shipping Act* (SC 1987, c. 7 — superseded on May 1, 1989 by RSC 1985, c. 6 (3rd Supp.)) — the Administrator of the MPCF continued in office as Administrator of the SOPF until November 17, 1993.

² The existing CLC and Fund Convention apply only to oil pollution damage caused by laden oil tankers in Canada and its territorial sea including Arctic Waters but not in the fishing zones of Canada.

³ On April 24, 1989, the Maritime Pollution Claims Fund (MPCF) was replaced by the SOPF. All monies in the MPCF (\$149,618,850.24) were transferred to the account of the SOPF 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 MPCF.

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, 1995)



1. 1969 Civil Liability Convention (CLC) provides compensation of up to approximately \$30.56 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 \$130.99 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 \$252.46 million. The SOPF is also available for compensation for oil spills from ships other than laden tankers.
4. The SOPF applies in all Canadian Waters, in the fishing zones of Canada and also in Arctic Waters. The maximum amount of compensation available is adjusted annually for inflation (see section 3).
5. Additionally, the SOPF 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 CSA 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.
6. The SOPF 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 or use.
7. Canadian contributions to the IOPC Fund are also paid from the SOPF by the Administrator annually in accordance with section 701 of the CSA in order to comply with the Fund Convention.

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

4. Response Organizations

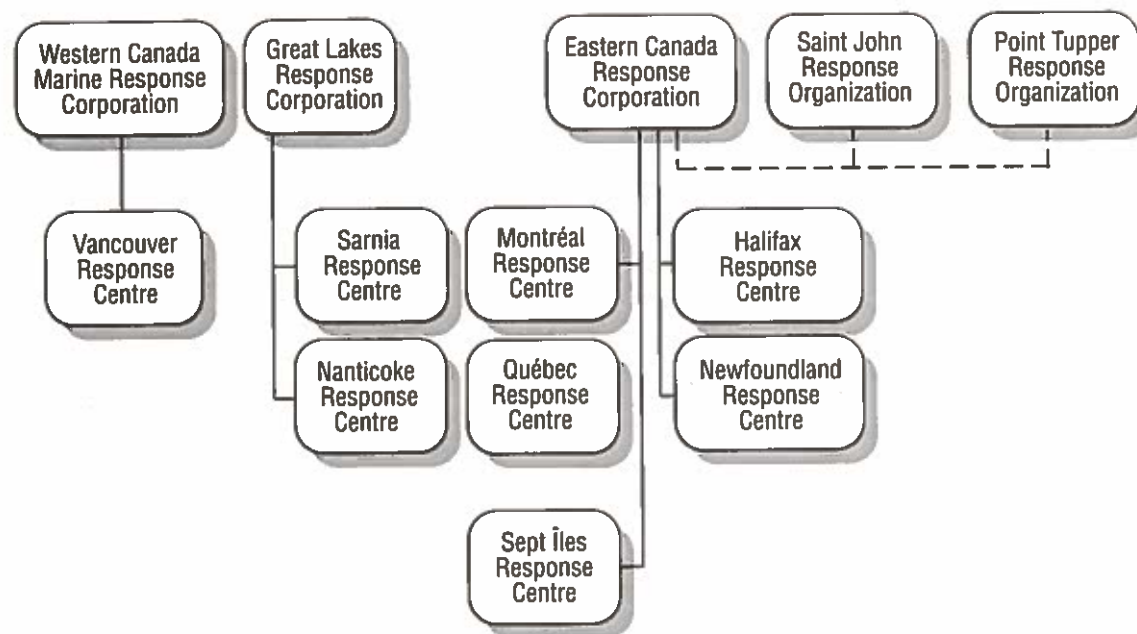
It is expected that regulations respecting standards for response organizations and oil handling facilities will come into force on August 15, 1995, thus paving the way for the full implementation of the provisions of the *Canada Shipping Act* relating to such organizations and handling facilities, and providing a marine spill response regime.

The new regulations⁴ outline the requirements for response organizations and set out the

procedures, equipment and resources that a prospective response organization must have in place to qualify for a certificate of designation from the Minister of Transport. The Regulations will outline similar requirements to be met by an operator of an oil-handling facility designated as such by the Minister of Transport.

Regulations⁵ also to come into force on August 15, 1995 will prescribe how public standards will be incorporated by reference in the regulations respecting response organizations and oil handling facilities.

Figure 2 **Canada Shipping Act, SC 1993, c. 36**
Response Organizations and Response Centres



1. Western Canada, Great Lakes and Eastern Canada Response Corporations will each have the capability for responding to an oil spill of up to 10,000 tonnes.
2. Saint John and Point Tupper Response Organizations each will have the capability of responding to an oil spill of up to 2,500 tonnes, but plan to have a mutual aid agreement with the Eastern Canada Response Corporation to enable them to deal with a spill of 10,000 tonnes if required.
3. It is planned that equipment of the three Response Corporations will be distributed between the Response Centres shown on the above diagram.
4. It should be noted that the proposed *Oceans Act* (Bill C-98) would transfer responsibility for c. 36 from the Minister of Transport to the Minister of Fisheries and Oceans.

Implementation of the legislation in the CSA establishing response organizations results from Canada's accession to the provisions of the International Convention on Oil Pollution Preparedness, Response and Cooperation, 1990 (OPRC).⁶ This Convention generally calls for the establishment of a national system of response to marine spills; extends contingency planning requirements to include oil-handling facilities; and seeks cooperation among nations in operational and technical matters, as well as in research and development activities.

As mentioned in my 1993-1994 Annual Report, a response organization, as defined in the CSA, has no direct claim against the SOPF, 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.

Figure 2 shows the organization of the Canadian Response Organizations and Response Centres.

5. IOPC Fund, the Assembly and the Executive Committee

The 17th Assembly and 39th, 40th and 41st sessions of the Executive Committee took place at London during the year. The Canadian Delegation to those meetings was headed by the Administrator.

⁴ Response Organizations and Oil Handling Facilities Regulations SOR/95-405.

⁵ Publication of Standards Regulations SOR/95-406.

⁶ OPRC entered into force for Canada and other contracting states on May 13, 1995.

The Assembly

The 17th Assembly was held from the 18th to the 21st of October 1994. It was attended by 36 contracting states, observers from 13 non-contracting states, and observers from 7 inter-governmental and non-governmental organizations.

At the opening of the Assembly, the Chairman, Mr. Jurgen Bredholt, Head of the Danish Delegation, informed the Assembly that he would not be available for re-election at the next session in 1995. Mr. Bredholt was first elected Chairman in 1978 at the first Assembly and has been Chairman continuously up to the present time. He has served the international community as Chairman of the Assembly with distinction.

The focus of this Assembly was the increase in the number of major incidents. To sharpen that focus, a major incident (TOYOTAKA MARU) took place in Japanese Waters 24 hours before the Assembly commenced.

The Assembly approved the budget for 1995 and decided, notwithstanding the opposing views expressed by Canada and another delegation, that the Working Capital of the IOPC Fund for 1995 be increased from £11,000,000 to £15,000,000, and the following annual contributions would be levied in 1994 payable not later than February 1, 1995, with respect to:

(a) General Fund	£6,000,000
(b) Major Claims Funds	
i) AEGEAN SEA	£15,000,000
ii) KEUMDONG No. 5	£10,000,000
iii) TOYOTAKA MARU	£9,000,000
Total	£40,000,000

Canada's share of the total amount levied was £1,291,225.75, or \$2,903,695.55 or 3.23%, which was paid in full by the Administrator on January 31, 1995. (By way of comparison, Canada's share of annual contributions for the previous year, paid on February 1, 1994 was \$4,927,555.76).

In 1993 the 16th Assembly decided that a special body should be set up to advise the Director on investment matters in view of the large amount of funds under investment. Consequently, the Director was requested to examine the feasibility of establishing an Investment Advisory Body.

At its 17th session, the Assembly considered the study made by the Director and decided that such a body should be established, composed of external "experts" with special knowledge in investment matters. Accordingly, the Assembly appointed three such experts to advise the Director in general terms on these matters.

The importance of the Advisory Body is shown by the fact that the funds under investment have more than doubled since 1991. At December 31, 1994, the amount under investment was in excess of £64.6 million. Additionally, the Assembly also decided to increase the maximum amount that the IOPC Fund may invest in any one financial institution from £4 million to £8 million.

The Assembly also decided that:

- (a) The report of the Intersessional Working Group established by the Assembly in October 1993 should be accepted. The group met on two occasions — February 7-9 and May 3-4, 1994. Canada was represented at both meetings. The group's mandate was to examine and make recommendations on the criteria for the admissibility of claims, and also to examine problems relating to claims for "pure economic loss" and "preventive measures" taken to minimize such loss. There were two matters remaining to be resolved, namely:
 - i) claims by employees who lose their employment as the result of an oil spill; and
 - ii) issues relating to payments of costs of marketing campaigns to determine the effect, if any, of pollution to industries in the area affected where such costs are paid out of funds budgeted for advertising.
- (b) The IOPC Fund's Claims Manual should be revised to contain the criteria presently

applied by the IOPC Fund on the admissibility of claims and the recommendations of the Intersessional Working Group.⁷

Having already served two consecutive terms, Canada could not be re-elected a member of the Executive Committee but will be eligible for re-election at the 18th Assembly in October 1995.

The Executive Committee

The 39th session, held May 5 and 6, 1994, directly followed the second session of the Intersessional Working Group on the criteria of the admissibility of claims for oil pollution damage. Consequently, this session of the Committee provided a valuable test of the usefulness of pre-planned rules for the admissibility of claims. It proved that, in the final analysis, every claim must be dealt with on its own merits on the basis of the 1969 CLC and the 1971 Fund Convention.

The agenda focused on the RIO ORINOCO (1990), AEGEAN SEA (1992) and BRAER (1993) incidents.

As a result of the findings of the Canadian Transportation Safety Board that the RIO ORINOCO had a number of ongoing deficiencies from which it could be concluded that the ship was unseaworthy to the knowledge of the shipowner at the time of the incident, the Director undertook to examine the possibility of recovering the \$11,791,848 paid out of the IOPC Fund.⁸ It was agreed that the bankruptcy of the shipowner was a factor that could cause any recourse action to be both onerous and expensive. It was also agreed that the liability of the classification society involved should also be examined.

More large claims in respect of the AEGEAN SEA incident are expected which will bring the claims up to almost twice the maximum amount of compensation payable by the IOPC Fund. Until the claims situation is clarified, the Director was instructed, for the time being, to pro-rate payments to claimants to 25% of the proven amount.

In the BRAER incident the Committee was informed that up to the end of April 1994, some 900 claims for compensation for a total amount

of approximately \$26.4 million had been approved wholly or in part. More claims were expected.

The 40th and 41st sessions of the Committee were held during the week of October 17-21, 1994.

The Committee deliberated at some length about whether recourse action should be taken to recover from the shipowner the monies paid out of the IOPC Fund in respect of the RIO ORINOCO incident. The report of the Flag State Inspector confirmed the findings of the Canadian Transportation Safety Board. This report stated, *inter alia*, that "it is questionable as to whether the ship should have been at sea in this state, and indeed this was the underlying reason why the voyage was not completed."

The Director advised the Committee that the only recourse, because of the bankruptcy of the shipowner, would be against the Swedish P & I Club in which the tanker was entered, but this would depend on Swedish insurance law. Consequently, the Director was requested to obtain legal advice from an independent legal expert.

It was agreed that the two issues to be dealt with at the 42nd session in April 1995 will be:

- (a) whether recourse action should be taken against the Swedish P & I Club; and
- (b) whether the Fund should indemnify the owner under Article V of the Fund Convention.⁹

In the HAVEN incident (1991), the Committee discussed the issue of whether the majority of Italian claims were now time-barred under the Fund Convention because the appropriate proceedings were not commenced prior to April 11, 1994, the third anniversary of the incident.

⁷ The revised Claims Manual was submitted to member states for comment and approved by the Executive Committee at its 43rd session held on 9th June 1995.

⁸ Paid by the IOPC Fund to the Government of Canada for preventive action, clean-up operations and removal of the ship.

⁹ At its 42nd session in April 1995, the Committee decided that:

- (a) on the basis of the legal opinion of a Swedish lawyer not to take legal action against the Swedish Club as it was clearly not the strongest case in which to challenge the "pay to be paid" rule of that Club; and
- (b) because the incident and consequent pollution was caused solely by non-compliance with SOLAS 1974/78, there was no obligation to indemnify the Swedish Club (an amount of about \$265,654).





As the legal position is far from clear, after lengthy discussions, the Committee decided to authorize the Director to negotiate, without prejudice to the time bar argument, a global settlement under tight conditions and time limits. Such a settlement is to be approved by the Committee.

So far, the IOPC Fund has received claims for some \$250,000,000 respecting the AEGEAN SEA incident. At the date of these sessions of the Committee, the Fund had paid no claims at all due mainly to the lack of any acceptable proof of loss. Claims will be prorated as the amount of claims exceeds twice the amount of the compensation payable by the IOPC Fund. Further claims are expected.

Claims paid to date by the IOPC Fund for the BRAER incident exceed \$75,000,000, but more claims are to come. It is apparent that there is a real risk that claims may exceed the amount payable by the IOPC Fund.

At the 41st session of the Committee following the 17th Assembly, the Chairman and Vice-Chairman were re-elected for the next year.

6. IOPC Fund, Implementation of the 1992 Protocols to the 1969 Civil Liability Convention and the 1971 Fund Convention

As mentioned in my 1992-1993 Annual Report, an International Conference, convened by the Secretary General of IMO and held at London, England, from the 23rd to the 27th of November 1992, adopted two Protocols — one to the 1969 CLC and the other to the 1971 Fund Convention.

The chief purpose of the Conference was to amend the entry into force provisions of the two Protocols to the Conventions done in 1984 as the *United States Oil Pollution Act of 1990* did not permit the United States to ratify the 1984 Protocols. Consequently, it was unlikely that these Protocols would come into force in their present form.

The Conference amended the entry into force provision of the 1984 Protocols and combined the other provisions of these Protocols into two new instruments, the 1992 Protocols, in order to replace the 1969 CLC and the IOPC Fund by the 1992 Liability Convention and the 1992 Fund.

Principal changes to the two Conventions, made by the 1992 Protocols are:

- on the coming into force of the 1992 Protocols, the revised Fund Convention and CLC will provide aggregate compensation of up to \$294.72 million, an increase of \$163.73 million over that available under the existing international scheme (Figure 3 shows a comparison of the Current and Revised CLC and IOPC Fund limits of compensation);
- compensation would be made available for oil pollution damage caused by empty tankers on the voyage immediately after the voyage with a cargo of persistent oil;
- costs for preventive measures taken in reasonable expectation of a spill from a tanker would be recoverable;
- the definition of pollution damage would be amended to specifically mention impairment of the environment being the costs of reasonable measures of reinstatement; and
- whereas the current regime is restricted to pollution damage on the territory including the territorial sea, the protocols extend coverage to such damage in the exclusive economic zone (EEZ) or its equivalent. (In the case of Canada the fishing zone, beyond the Territorial Sea.)

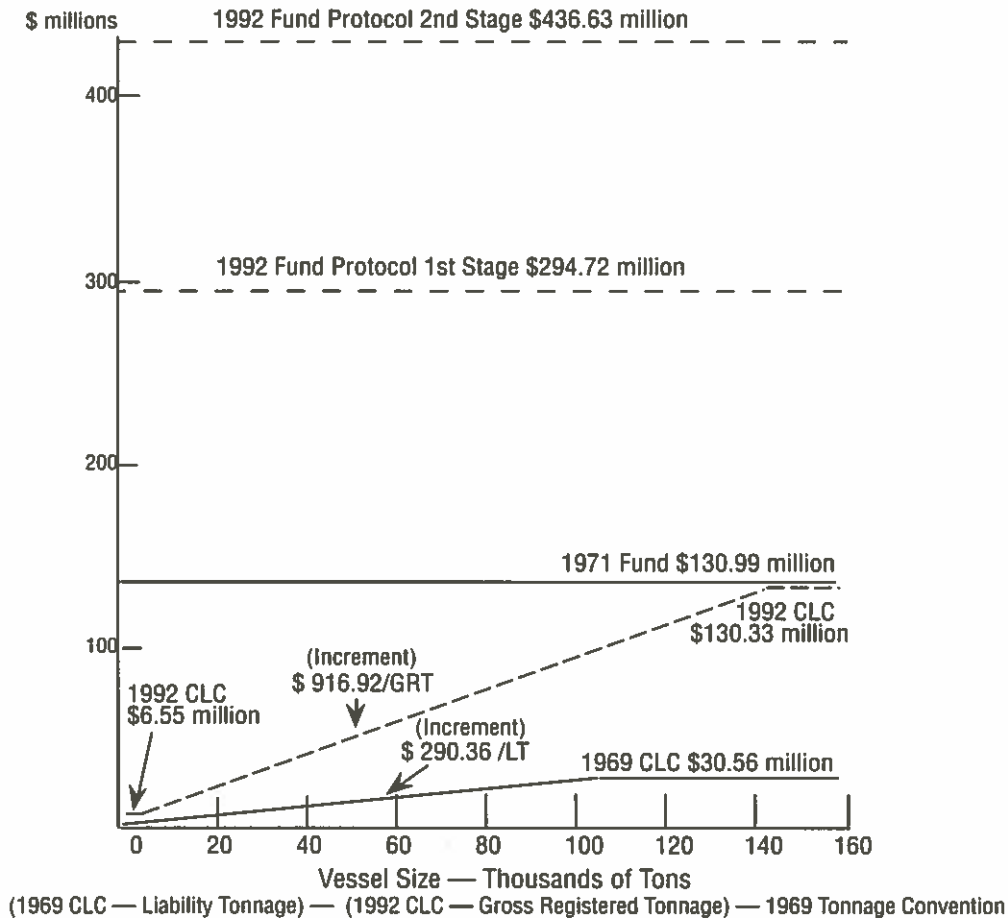
The 1992 Protocols contain a number of other modifications, such as a "capping" provision respecting the maximum contributions payable by the contributors in any one contracting state during the transitional period when both the existing international regime and the revised (1992) regime are in force. The 1992 Protocols also provide provision for their entry into force at the earliest possible date.

The conditions for the entry into force of the 1992 Protocols were met on May 30, 1995. Consequently, they will enter into force for the undernoted states on May 30, 1996, in accordance with the provisions of the Protocols.

Denmark	Oman
France	Sweden
Germany	United Kingdom
Japan	Egypt (1992 Liability Convention only)
Mexico	
Norway	

Figure 3 Comparison of Current & Revised CLC and IOPC Fund Limits of Compensation

(Based on the value of the SDR at April 1, 1995)



1. 1971 Fund and 1969 CLC provide aggregate compensation of up to \$130.99 million.
2. 1992 Protocol 1st stage and 1992 CLC provide aggregate compensation of up to \$294.72 million.
3. It is unlikely that the 1992 Fund Protocol 2nd stage will ever enter into force as this would require the participation of the United States.

It should be noted that a number of other states are presently considering accession/ratification of the 1992 Protocols.

States for whom the 1992 Fund Protocol will enter into force on 30th May 1996 will have received a total amount of contributing oil of 576,702,149 tonnes. As more states become members of the 1992 Fund and the total amount of contributing oil reaches 750,000,000 tonnes, members are obliged to denounce the existing 1969/1971 regime. This will mean that contributors in states that do not join the 1992 regime

and remain in the 1969/1971 regime could be faced with paying large contributions in the case of major spills, as there will be a smaller and smaller pool of contributors — a potentially dangerous state of affairs for these contributors.

7. International Oil Spill Conference

The 14th International Oil Spill Conference took place from February 27 to March 2, 1995 at Long Beach, California. The Conference was sponsored by the American Petroleum Institute, the U.S. Coast Guard, the U.S. Environmental

Protection Agency, and, for the first time, the International Maritime Organization and the International Petroleum Industry Environmental Conservation Association. The Conference was attended by the Director, Technical Services, of the SOPF.

The main underlying theme of this year's Conference was "Achieving and Maintaining Preparedness" as it relates to oil spill issues. Some 136 papers were presented and nearly 300 international companies and agencies exhibited products and services related to spill prevention and response.

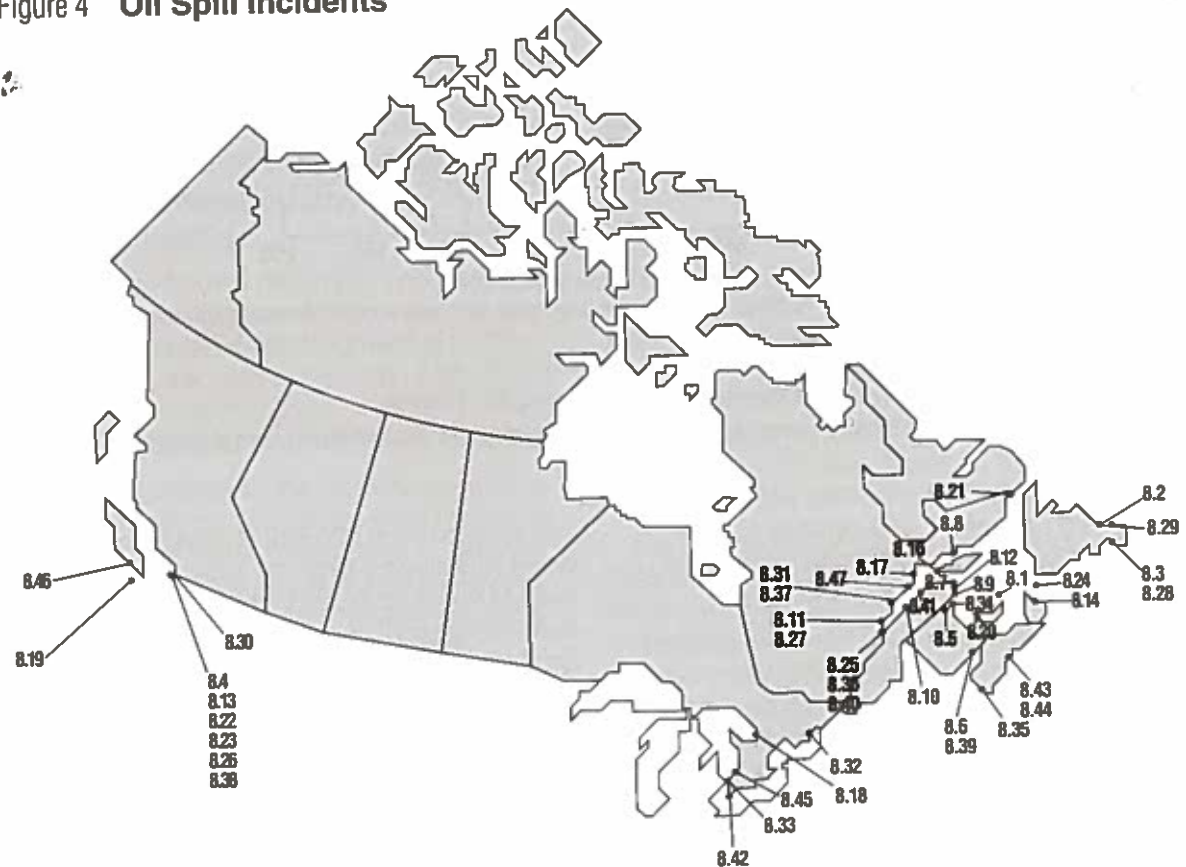
Subjects that were addressed during the Conference were grouped under the headings of Evolving Technologies, Marine Transportation, Fate and Effects in Aquatic Environments, Spill Management/Mitigation and Sustaining Global Preparedness. There were also special sessions

relating to the January 1993 "BRAER" incident in the Shetland Islands. In addition to the presentation of the formal papers, there were also a total of seven informational Poster Sessions during which 126 presentations were made.

An additional new feature this year was the pre-conference publication of three "white papers" entitled, "Implementing an Effective Response Management System," "The Use and Misuse of Science in Natural Resource Damage Assessment," and lastly, "Perspectives on Establishing and Maintaining Oil Pollution Response Capabilities." These "white papers" were subsequently discussed and debated during special sessions.

During the Conference, informal discussions were held with a number of other countries delegates and response organizations on matters of common interest and concern.

Figure 4 Oil Spill Incidents*



* Refer to Section 8 for a description of the oil spill incidents shown on this map.

8. 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 *Canada Shipping Act*, to be considered as potential claimants as a result of oil pollution damage they have incurred.

8.1 IRVING WHALE (1970)

In my 1993-1994 Annual Report, I described the proposal by the Canadian Coast Guard (CCG) to raise this sunken oil barge, which remains on the seabed in the Gulf of St. Lawrence. The barge, under tow, sailed from Dartmouth, Nova Scotia, destined for Bathurst, New Brunswick, carrying a cargo of 4,200 tonnes of Bunker C oil, and sank on September 7, 1970 in some 67 meters of water, 60 kilometers northeast of North Cape, Prince Edward Island. A recent estimate indicated that some 1,100 tonnes of oil had leaked from the wreck.

An environmental assessment dealing with raising the wreck was carried out in early 1994. The CCG organized public meetings at various locations in the Maritime Provinces and the Magdalen Islands in order to receive public input and discuss the proposal. On August 5, 1994, the Deputy Prime Minister and Environment Minister and the Minister of Transport announced that the Federal Government would proceed with a proposal to lift the sunken barge IRVING WHALE, transport it to Mulgrave, Nova Scotia, recover its cargo of Bunker C oil, clean the barge and then sell the vessel or dispose of it in an environmentally sound manner. On March 3, 1995, the Minister of the Environment, the Honourable Sheila Copps, announced during a speech in Prince Edward Island that the project to raise the barge would cost \$10 million and that the owner of the barge, the J.D. Irving Company Ltd., had agreed to contribute \$3 million in services towards the recovery of the barge. The Minister went on to say that the Government hoped to obtain the remaining \$7 million from the SOPF.

An "Invitation to Tender" to recover the IRVING WHALE was issued on March 1, 1995,

by Transport Canada, with a closing date of April 13, 1995.

8.2 LIBERTY BELL VENTURE (1987)

This vessel was an oil tanker registered in Liberia, with its operator based in Hong Kong. On March 29, 1987, while the tanker was discharging cargo alongside a hydro facility in Seal Cove, Newfoundland, there was an oil spill of the cargo.

The CCG organized the clean-up, incurring costs and expenses to a claimed amount of \$11,779.71. The shipowners denied liability, blaming the facility for the spill.

On March 28, 1989, the Crown instituted an action in the Trial Division of the Federal Court against the ship and shipowners to recover the amount of the CCG's claim, naming the Administrator a party to the proceedings in accordance with section 713 of the CSA. The court proceedings were delayed because the defendants refused to accept service of the statement of claim. Eventually service was effected under Rule 310(2) of the Federal Court. At that time, it was agreed that the Administrator need take no further steps in the action until informed by counsel for the Crown.

The criminal conviction against the vessel for oil pollution was quashed on appeal. At March 31, 1995, I was expecting further developments in the action in the Federal Court.

8.3 SOUTH ANGELA (1988)

This Liberian-registered tanker was discharging a cargo of crude oil at the refinery in Come by Chance, Newfoundland, on March 5, 1988, when some of the cargo was discharged into the sea. At the time it was estimated that some 72 tonnes of oil had been spilled.

Initially there was considerable concern that the spill would affect the livelihood of the many fishermen in the area; in the final result few fishermen were affected.

The CCG responded and, aided by others, cleaned up the spill. Costs and expenses amounted to a claimed \$251,629.71. The ship

was charged and subsequently found guilty of pollution and fined, but no settlement of the clean-up costs could be agreed.

On March 2, 1990, the Crown instituted an action in the Trial Division of the Federal Court of Canada to recover this claim, and the Administrator was named a party by statute. A second action was commenced by the owners of the refinery, but the two actions were consolidated by order of the Associate Chief Justice of the Federal Court.

The trial of both actions is scheduled to commence in St. John's, Newfoundland, on May 29, 1995.

8.4 NEW ZEALAND CARIBBEAN (1989)

This ship was a general cargo/container vessel flying the Vanuatu flag, with the owners registered in Liberia, and operated by a company in London, England. While berthing late in the evening on January 30, 1989, the vessel struck the corner of a pier owned by a local shipyard and one of the vessel's oil fuel service tanks was holed, releasing bunker fuel oil into the Vancouver Harbour. The Vancouver Port Corporation incurred costs and expenses in cleaning up the spill but a settlement with the shipowners could not be agreed upon.

On August 16, 1990, the Port Corporation filed a statement of claim in the Trial Division of the Federal Court of Canada against the ship, the shipowner and others to recover the Corporation's costs incurred. The Administrator was made a party to the proceedings as required by the *Canada Shipping Act*. At that time, it was agreed that it would not be necessary for the Administrator to take further steps in the action until further notice. In the meantime, I have been informed that the vessel has changed name, flag, ownership and operating company.

At the conclusion of the fiscal year under review, I was advised by the Vancouver Port Corporation that the litigation in the Federal Court was still pending.

8.5 LUCETTE C (1989)

On May 8, 1989, while at anchor in Newport Harbour, Québec, in the Bay of Chaleurs, the Canadian fishing vessel LUCETTE C sank with approximately 4,500 litres of diesel fuel oil aboard. The owner did not take any action to control the resultant pollution, which task was then undertaken by the CCG. The cost and expenses of the clean-up, including raising the vessel, were claimed to be \$136,669.32, but a settlement could not be reached with the owner.

On April 24, 1992, an action in the Trial Division of the Federal Court of Canada was commenced by the Crown to recover these costs, but this action was subsequently discontinued because of the bankruptcy of the vessel's owner. At that stage, in accordance with the statute, the CCG presented their claim to the SOPF.

At issue in this case is the question of whether raising the wreck should be considered as a separate cost from the costs of mitigating the oil pollution.

At the close of the fiscal year under review, settlement discussions between the Crown and the SOPF were under way.

8.6 CAMARGUE (1989)

On June 18, 1989, after discharging its cargo of crude oil, the French flag motor tanker CAMARGUE discharged an estimated 80 tonnes of bunker fuel oil during refueling operations from the Canadian oil barge IRVING SHARK, at the Canaport monobuoy off Saint John, New Brunswick.

The CCG incurred costs and expenses at an amount claimed to be \$1,275,048.78 for the clean-up measures. As the shipowner did not agree to the amount claimed, the Crown commenced an action against the CAMARGUE, its owners and insurers, in the Trial Division of the Federal Court of Canada on April 24, 1992. The Administrator was joined as a party by statute.

On February 24, 1993, an amended notice was filed by the defendants in the Federal Court enlarging the action to include others as third parties. The examinations for discovery are scheduled to take place in April 1995.

Counsel for the SOPF has a watching brief and is monitoring this case closely.

8.7 IRVING NORDIC (1989)

A recent CCG report drew my attention to a series of circumstances involving this Canadian flag tanker, which was involved in spillages of bunker fuel in the lower St. Lawrence River. The first spill took place in Gaspé Harbour, Québec, on August 5, 1989, and then the vessel also trailed oil en route from Gaspé to Rimouski, Québec. There was a further spill of oil from the vessel in Rimouski Harbour on August 7, 1989.

The CCG responded to the spills and incurred costs and expenses stated to be \$540,073.54. The Administrator has not been joined in the action by the Crown and any claims against the Fund are now time-barred.

8.8 SIRIUS III (1989)

This Canadian fishing vessel sank alongside the quay at Longue Point de Mingan sud, Québec, on August 26, 1989. In the course of the sinking, the vessel released a quantity of oil. The CCG responded to the spill, arranging for the clean-up and for the salvaging of the vessel, claiming to have incurred costs and expenses of \$20,010.17. The shipowner would not agree to settle this claim.

On May 12, 1992, the Crown filed a claim in the Trial Division of the Federal Court of Canada against the vessel and the owner to recover the CCG costs and expenses, naming the SOPF a party by statute. The owner then offered to settle for \$8,000, which approximates to the vessel's limitation of liability. On this basis, the Administrator has made an offer to settle the balance of the CCG claim — an offer which is being considered at the close of the 1994-95 fiscal year.

8.9 EGMONT (1989)

While tied up to the quay in Paspébiac, Québec, on September 6, 1989, this Canadian fishing vessel released an estimated 13,620 liters of an oily mixture. The master and owner of the vessel failed to take any action to control and recover the pollution and the CCG had to take the necessary measures in this respect. The CCG's claim for this operation amounted to \$12,776.60, which sum could not be recovered by direct negotiation.

On August 28, 1992, the Crown filed a claim in the Trial Division of the Federal Court of Canada to recover the CCG's expenditures. The Administrator was named a party by statute.

In its defence, the vessel owner denied discharging any oil, alleging that the only liquid which may have been discharged was residue from the fish hold.

The definition of "oil" in the *Canada Shipping Act*, applicable to the mandate of the SOPF, "means oil of any kind or in any form and, without limiting the generality of the foregoing, includes petroleum, fuel oil, sludge, oil refuse and oil mixed with wastes. . . ."

Until the dispute between the Crown and the shipowner over the nature of the substance discharged is resolved, I am unable to consider any possible settlement of the claim.

8.10 EUROSTAR (1990)

The Greek bulk carrier EUROSTAR discharged a quantity of bunker fuel while moored at Gros Cacouna, Québec, on January 10, 1990. The CCG responded to the spill, incurring costs and expenses claimed to amount to \$25,344.18.

As the shipowner did not agree to settle the CCG claim, the Crown commenced an action in the Trial Division of the Federal Court of Canada against the vessel on December 2, 1992, naming the Administrator as a party by statute. Crown counsel agreed that the Administrator need take no steps in the action until further notice.

On March 22, 1995, I was informed by counsel for the Crown that the claim has been settled without recourse to the SOPF.

8.11 CARRYBULK (1990)

At the time of the incident, the CARRYBULK was a general cargo ship registered in Panama, with owners in Hong Kong. On January 30, 1990, while moored alongside at Bécancour, Québec, the ship discharged a quantity of bunker fuel into the harbour. The CCG incurred costs and expenses claimed to amount to \$20,493.85 in the clean-up of the spill.

As a settlement could not be agreed upon with the shipowner, on December 2, 1992, the Crown commenced an action in the Trial Division of the Federal Court to recover the CCG expenditures. In accordance with the statute, the Administrator was named a party. It was agreed that I need take no further steps in the matter until notified.

On March 22, 1995, I was informed by Crown counsel that the claim had been settled without recourse to the SOPF.

8.12 MARIE PAUL (1990)

This Canadian fishing vessel sank at the berth in Grande Rivière, Québec, on March 5, 1990, when a pipe broke in the engine room. The sunken vessel released a quantity of oil and it was necessary for the CCG to organize the clean-up. The CCG costs and expenses in this connection amounted to a claimed \$25,692.13.

As settlement could not be resolved with the owner, on December 2, 1992, an action was commenced by the Crown in the Trial Division of the Federal Court of Canada to recover this claim, naming the Administrator as a party by statute. In the action, the Crown applied to the Court to permit the sale of the vessel, with the proceeds to go towards the claimed costs and expenses.

Throughout the past 12 months there have been various negotiations between the parties in an attempt to reach an out-of-court settlement and dispose of the claim. The vessel has a

limitation of liability of \$17,456, and at the beginning of this year I offered to pay the balance of the claim — that is, \$8,236.13 — in full and final settlement of any claim against the Fund. At the end of the 1994-95 fiscal year, it appeared that an agreement between the CCG and the SOPF was probable.

8.13 LOK PRATIMA (1990)

On April 11, 1990, this Indian flag bulk cargo vessel, while alongside a grain elevator in Vancouver Harbour, caused a bunker fuel spill. The spill was cleaned up by the Vancouver Port Corporation which claimed the costs and expenses from the shipowner. As no settlement could be reached, on August 16, 1990 the Corporation filed a claim against the shipowners in the Trial Division of the Federal Court of Canada, naming the SOPF as a party by statute. By agreement, it was not necessary for the Administrator to take further steps in the proceedings until advised otherwise.

I have been informed that this claim was settled on September 29, 1994, without further court action and without recourse to the SOPF.

8.14 Mystery Oil Spill, Louisbourg Harbour, Nova Scotia (1990)

It is reported that on June 9, 1990, an oil spill was found in Louisbourg Harbour, Nova Scotia, and the CCG responded. The clean-up is stated to have taken two days — June 9 and 10, 1990.

On August 31, 1990, I received a *pro forma* invoice from the CCG Maritimes Regional Office against the SOPF for \$8,848.29. At that time, counsel for the Coast Guard was advised that presenting a *pro forma* invoice, which implies a debt, is not an acceptable method of establishing a claim against the Fund.

No more information was received about this incident until November 30, 1994, when counsel for the CCG submitted a claim to the SOPF for the first time. The claim was rejected because it had become time-barred on June 10, 1993, under the relevant provisions of the CSA.

8.15 Mystery Oil Spill, Graham Pond, Prince Edward Island (1990)

On August 31, 1990, I received a *pro forma* invoice from the CCG Maritimes Regional Office amounting to \$10,225.35, and concerning a reported response by the CCG to an oil spill which had been found at Graham Pond, Prince Edward Island, on May 15, 1990. The invoice was the first advice I had received on the incident.

For the same reasons as noted in 8.14, I rejected the *pro forma* invoice. On November 30, 1994, I received a letter from the CCG legal counsel requesting that the claim be accepted. I informed counsel for the Canadian Coast Guard that the claim was time-barred as of May 16, 1993, and I had no authority to deal with a time-barred claim.

8.16 RIO ORINOCO (1990)

The loaded Cayman Island flag asphalt carrier RIO ORINOCO, en route from Curaçao, Netherlands Antilles, to Montréal, Québec, experienced main engine malfunctions which the ship's staff was unable to correct while the vessel was under way. At the time, the vessel was in the Gulf of St. Lawrence and a decision was made to anchor off Port Menier, Anticosti Island, to effect repairs. The ship anchored on October 15, 1990, on poor holding ground in an exposed position against an adverse weather forecast. Overnight the wind increased and the vessel began to drag anchor. During the early morning hours of October 16, 1990, the vessel went aground on the southwestern coast of the island. Subsequently, the vessel was declared a total loss. Although no cargo was lost, about 185 tonnes of bunker fuel was discharged from the damaged vessel and heavily polluted about 10 kilometers of shore of Anticosti Island.

In close consultation with experts acting on behalf of the International Oil Pollution Fund (IOPC Fund), the CCG, on behalf of the Minister of Transport, concluded that the ship, its cargo and the remaining fuel oil constituted a serious pollution threat. As a result, most of the remaining fuel oil was removed in December

1990. In the summer of 1991, part of the cargo of asphalt was removed and the vessel, together with the balance of her cargo, was successfully salvaged and taken to a safe harbour.

The CCG incurred substantial costs and expenses in this operation, much of which was carried out by subcontractors over a period of some eight months. Two separate claims for different aspects of the operation were submitted by the CCG to the IOPC Fund for consideration. A further claim by Environment Canada and the Department of Fisheries and Oceans was also submitted to the IOPC Fund. The total Canadian claims amounted to \$12,382,224 and were settled by the IOPC Fund for \$11,791,848.

There were two outstanding issues in the case. The first was whether the IOPC Fund should challenge the claim of the shipowner to limit its liability under the Civil Liability Convention. In its report on the incident, the Transportation Safety Board of Canada noted several ongoing deficiencies in the operation of the vessel of which the owners were or should have been aware.

At the 40th session of the Executive Committee of the IOPC Fund, based on legal advice obtained by the Director of the Fund, it was decided that it would not be meaningful to pursue legal action against the shipowner or the company managing the ship, since it was unlikely that there would be any assets against which a judgment could be enforced. In a similar manner, it was decided that proceedings against the individual directors would not be worthwhile.

Further discussions took place on the advisability of pursuing the classification society and/or the P & I Club involved. The Committee instructed the Director to obtain legal advice on this issue for its 42nd session in April 1995.

A number of delegates to the Executive Committee made the point that it was important, as a matter of policy, that the IOPC Fund should try to recover any amount paid by it in compensation if an incident was caused by the unseaworthiness of the ship involved.

The second outstanding issue for consideration by the IOPC Fund was whether and, if so, to what extent the Fund was exonerated from its obligation under Article 5.1 of the Fund Convention to indemnify the shipowner and his insurer. A decision on this issue was also postponed until the 42nd session of the Committee.

8.17 FORUM GLORY (1991)

This Greek flag vessel was alongside Berth No. 4 at the Port Cartier Mining Company dock in Port Cartier, Québec, on March 27, 1991, when oil pollution was observed in the water around her port quarter and astern of the vessel. The Port Cartier Mining Company made the arrangements to clean up the oil and incurred costs and expenses. Subsequent CCG analysis of samples of fuel oil taken from the water showed them to be similar to those taken at the same time from the FORUM GLORY.

A claim of \$32,776.41 for clean-up costs and expenses was filed with the SOPF on March 26, 1993, by the Port Cartier Mining Company which it had not been able to recover from the shipowner. On April 23, 1993, I arranged for settlement of the Port Cartier Mining Company claim to the amount of \$44,399.98 which included interest and legal fees.

On March 3, 1994, the Administrator filed a statement of claim in the Trial Division of the Federal Court of Canada against the ship, its owners and operators, to recover the amount paid to settle the claim. At the end of March 1995, it appeared that an out-of-court settlement was probable.

8.18 EASTERN SHELL (1991)

In the early morning on May 10, 1991, this Canadian owned single-skinned hull tanker loaded with approximately 1,360 tonnes of diesel oil and approximately 4,030 tonnes of gasoline struck rocks and holed when approaching Parry Sound Harbour, Georgian Bay, Ontario.

Extensive efforts were made by the vessel, the CCG, the owner and charterer to minimize pollution, but some 70 tonnes of gasoline and 52 tonnes of diesel were spilled into the

surrounding water. Clean-up was effected and efforts were made to make the tanker seaworthy and safe for her trip to a repair yard. Substantial costs and expenses were claimed to have been incurred as follows:

(a) Shell Canada	\$310,000.00
(b) Soconav Inc.	\$326,546.08
(c) Canadian Coast Guard	\$356,143.48
Total	\$992,689.56

The owner has stated that the amount of the tanker's limit of liability is \$728,238.33. On February 2, 1993, I received a letter on behalf of the owner contending that, under the CSA, the shipowner had the right to be indemnified by the SOPF for any amount they were required to pay for costs and expenses, over and above the amount of the shipowner's limited liability.

In order to recover the CCG's costs and expenses, on January 14, 1994, the Crown filed a statement of claim in the Trial Division of the Federal Court of Canada naming the Administrator as a party by statute. A defence and counterclaim was filed by the shipowner in the Federal Court on February 8, 1995. As of March 31, 1995, the outcome of ongoing discussions between the Department of Justice and the shipowner was unknown.

8.19 TENYO MARU (1991)

On July 22, 1991, the TENYO MARU, a Japanese fish factory ship, was steaming slowly in fog awaiting fish to be transferred from Canadian trawlers, when it was in collision with the Chinese cargo ship TUO HAI, which was proceeding into the Juan de Fuca Strait bound for Vancouver, British Columbia. The TENYO MARU sank quickly after the collision, with the loss of one crewmember and the release of an estimated 440 tonnes of intermediate fuel oil and 185 tonnes of diesel oil. The TUO HAI suffered damage around the bow area but did not discharge any oil.

In view of the considerable amount of oil left in the wreck of the TENYO MARU, the CCG

contracted for the oil's removal. The wreck was at a depth of 162 meters and was situated outside Canadian Territorial Waters, but inside the Canadian Fishing Zone. The removal of some accessible oil (approximately 100 tonnes), by pumping from the TENYO MARU was considered successful. In spite of these efforts, a considerable amount of oil drifted ashore on the coasts of the States of Washington and Oregon.

The Crown commenced an action in the Trial Division of the Federal Court of Canada against both ships and their respective owners on August 7, 1991, claiming oil pollution damages, costs and expenses, with the Administrator named as a party by statute. Shortly afterwards, the TUO HAI was arrested in Vancouver harbour as security for the Crown and other claims. In these actions, the SOPF was made a party by statute. The Federal Court ordered security at US\$17.2 million before the ship was released, with annual updates to cover accrued interest payable under section 723 of the CSA.

The security covering the claims of the Crown and the owner of the TENYO MARU, as well as the contingent liability including the SOPF, was posted by a bank guarantee.

The Government of Canada presented a claim for pollution clean-up and preventive measures amounting to some \$5.33 million. The counsel acting for the SOPF devoted the last fiscal year to actively preparing for the trial of the action originally scheduled for February 1995, including marshalling the necessary technical expertise. The Crown's claims were settled out of court, without recourse to the SOPF, and on March 31, 1995 orders discontinuing the relevant actions on consent were granted by the Federal Court.

8.20 *Mystery Oil Spill, Red Point Provincial Park, Prince Edward Island (1991)*

While patrolling the Provincial Park on August 30, 1991, a Park Warden found oil on approximately 500 meters of beach. The oil was consistent with Bunker C and samples were taken. The night before, a vessel was known

to have passed through the Northumberland Strait — the stretch of water to the south of the Park. The CCG arranged a clean-up of the oil, but was unable to determine its origin. A claim for \$4,080.32, covering costs and expenses, was filed by the CCG with the SOPF. As the source of oil was unknown and it was not possible to establish that the incident which gave rise to the spill was not caused by a ship, the claim was settled for \$3,396.13. On February 20, 1995, the funds were transferred from the Ship-source Oil Pollution Fund to the Crown.

8.21 *OGDENSBURG (1991)*

On September 28, 1991, the Canadian barge OGDENSBURG, under tow of the Canadian tug MANIC, was transporting deck-cargo of gravel, two payloaders and two trailers when the barge sank. The vessels were steaming off the Québec lower north shore at the time, in the area west of St. Augustine, Québec. The Emergencies Branch of the CCG was not informed of the sinking until October 16, 1991. On October 17, 1991, an overflight was arranged to investigate a report of oil pollution, and the leakage of oil from the vicinity of the wreck was confirmed. A mussel farm had been established along the shoreline in that area.

Using divers, salvage experts on behalf of the owners/insurers found the barge upside down and its cargo on the seabed in depths ranging from 7 to 17 meters, with the equipment scattered around. It proved impractical to seal the payloaders leaking fuel tanks and the owners/insurers recovered the vehicles on October 27th and 28th, respectively, in 1991.

The owners did not take further clean-up action and the CCG incurred costs and expenses in carrying out the necessary measures claimed to amount to \$157,916.49. Later, the Department of Fisheries and Oceans was able to confirm that there was no contamination of the mussels.

On May 7, 1993, the Crown commenced an action in the Trial Division of the Federal Court of Canada to recover its costs and expenses against:

- McKeil Work Boats Limited, owners of the barge;
- Navigation Harvey et Frères Incorporated, alleged charterer of the barge; and
- the barge OGDENSBURG.

In accordance with the CSA, the Administrator was named as a party by statute.

On April 15, 1992, the affairs of Navigation Harvey et Frères Inc. were put into the hands of a receiver. On September 3, 1993, a statement of defence was filed by McKeil Work Boats Limited alleging that:

- at the time of the incident the barge was under ownership of the charterer for the purpose of Part XVI of the Act; and
- the release of oil from the payloaders was not pollution damage as defined in the CSA.

As of March 1995, the examinations for discovery in this case were being arranged.

8.22 TRADE GREECE (1991)

This Cypriot flag bulk carrier, owned and operated by a company in the Isle of Man, released a quantity of bunker fuel oil into Vancouver Harbour on December 30, 1991, while moored alongside. The Vancouver Port Corporation responded to the spill and incurred costs and expenses claimed to amount to \$62,690.34 for the clean-up measures.

No resolution of its claim could be achieved by the Corporation, and on December 22, 1993 an action was commenced in the Trial Division of the Federal Court of Canada to recover its claim arising from this incident. The Administrator was named a party in accordance with the statute, with the agreement that the Administrator need take no steps in the action at that stage.

As of March 31, 1995, the latest information available indicates that there is a strong possibility that this case will be settled shortly without further court action and without recourse to the SOPF.

8.23 FEDERAL OTTAWA (1992)

On January 11, 1993, the Administrator was served with a statement of claim filed in the Trial Division of the Federal Court of Canada on behalf of the Vancouver Port Corporation alleging that this bulk carrier, registered in Luxembourg, discharged bunker fuel oil on or about January 22 and 23, 1992, while the ship was at Anchorage No. C in Vancouver Harbour. The Corporation arranged for the oil spill response, incurring costs and expenses. The Administrator was made a party by statute as required by the CSA. It was agreed by that he was not required to take any further steps at that stage.

On October 26, 1994, I was informed by counsel for the Corporation that this claim had been settled with the shipowner's interests, and I was requested to execute the consent order as part of the settlement. As I was not a party to the settlement, I executed the consent without prejudices to the rights of the SOPF.

On November 3, 1994, counsel for the Corporation informed me that for a certain part of the clean-up costs, involving the area off Siwash Rock in English Bay, it was not possible to ascertain that the oil recovered was from the FEDERAL OTTAWA. Clean-up costs for this portion were stated to be approximately \$5,000.

On December 20, 1994, I was informed by counsel for the Corporation that, after settlement by the shipowner's interest, there were unpaid costs and expenses of \$4,358 representing the Siwash Rock portion of the clean-up costs which the Corporation wished to recover from the SOPF.

On January 13, 1995, I wrote to the counsel for the Vancouver Port Corporation requesting certain information and proof of this portion of the claim. As of March 31, 1995, no reply had been received.

8.24 SKRIM (1992)

A Situation Report issued on March 16, 1992 by the Emergencies Branch of the CCG provided the first information about this spill. It reported that on March 13, 1992, this Panamanian flag bulk carrier, in ballast en route for the St. Lawrence River, suffered ice damage off Port aux Basques, Newfoundland. A deep tank containing heavy oil was cracked at the shipside and leaked oil. It was later estimated that between 90 and 130 tonnes of oil was discharged. Some of the oil washed ashore in the Port aux Basques area and a clean-up was undertaken by contractors engaged by the vessel's owner. The CCG also incurred costs and expenses which amounted to a claimed \$190,603.32.

On October 13, 1994, I was informed that this claim had been settled for \$140,000, without further recourse to the SOPF.

8.25 BORA BORA 1 (1992)

On April 6, 1992, while moored alongside in Montréal Harbour, Québec, this Maltese flag general cargo vessel discharged a quantity of fuel oil into the water of the port. The owners failed to immediately respond to the spill, requiring the Coast Guard to mobilize its anti-pollution team and clean up the oil spill. The costs and expenses claimed for this work amounted to \$40,243.32. The owners declined payment and the Crown, therefore, brought an action in the Trial Division of the Federal Court of Canada on December 14, 1993. The Administrator was named a party by statute but, by agreement, was not required to take any steps in the matter until notified.

I was informed by counsel for the Department of Justice that this case was settled on February 9, 1995, without any further resort to the SOPF.

8.26 NORPAK No. 1 (1992)

The Iranian cargo ship IRAN SHARIAT, while at anchor in English Bay in the Port of Vancouver, reported by radio on August 10, 1992 to the Vessel Traffic Services that she had been struck by the Canadian fishing vessel NORPAK No. 1.

The NORPAK No. 1 was severely damaged at the bow and was beached with the assistance of the MILLER DELTA in a sinking condition on the Spanish Banks. The fuel tanks of the fishing vessel containing some 700 gallons of diesel fuel oil were, however, intact; the vents were plugged. Efforts were made to absorb the minimal amount of pollution released as the vessel flooded with the tide. On August 20, 1992, the NORPAK No. 1 was salvaged and taken to a shipyard. The CCG incurred costs and expenses in containing the pollution in an amount claimed to be \$38,237.53.

As the owner of the fishing vessel did not settle the CCG claim, the Crown filed an action in the Trial Division of the Federal Court of Canada on August 26, 1993, to recover the amount involved. The Administrator was made a party in accordance with the CSA. On September 20, 1993, the owner filed a statement of defence in which it was alleged that, among other matters, the Crown's costs in the pollution containment were inflated.

Following out-of-court negotiations, the Crown agreed to settle its claim for \$25,000 without resort to the SOPF, and the case was discontinued on consent on November 4, 1994.

8.27 IRENES SAPPHIRE (1992)

The Port of Trois Rivières, Québec, experienced a bunker oil spill caused by this vessel on September 22, 1992. The vessel was a bulk carrier registered in Greece and moored alongside at the time. The CCG responded in order to clean up the spill and incurred costs and expenses to a stated amount of \$16,813.40. The owners declined to pay, and the Crown then filed a claim in the Trial Division of the Federal Court of Canada on December 7, 1993, making the Administrator a party by statute.

The Crown also instituted a prosecution under the Oil Pollution Regulations against the vessel. On February 9, 1995, I was informed that the prosecution case was unsuccessful because it could not be shown conclusively that the oil originated from the IRENES SAPPHIRE,

as oil samples for matching purposes had not been taken from another ship tied-up nearby.

The Crown then sought to make a claim against the SOPF. The Administrator took the position that there was still sufficient evidence for the Crown to establish civil liability on the part of the shipowner. On March 28, 1995, in a letter to me, the Department of Justice had concerns about proceeding with the civil action, and as of March 31, 1995, the issue remained under discussion.

8.28 AMERICAN FALCON (1992)

While berthing on October 24, 1992, this United States flag general cargo vessel struck a bollard on the dock and holed a shipside oil tank, releasing an estimated 24 tonnes of bunker oil into the harbour. A letter of undertaking was issued on behalf of the P & I Club as security to cover the cost and expenses of the response which was organized by the CCG.

The Administrator has not been directly involved in this incident. I was informed that the total CCG claim in the clean-up was \$288,151.59, and that a partial payment of \$256,424.73 had been received by the Crown during August 1993. I understand that the question of the balance of the claim is still under discussion.

8.29 SIR ROBERT BOND (1992)

On October 24, 1992, when the ferry SIR ROBERT BOND was in St. John's Harbour, Newfoundland, it shifted berth. While maneuvering to the new berth, oil appeared in the water around the ferry. The CCG incurred costs and expenses to a claimed amount of \$7,242 in the clean-up. The ferry was charged with causing oil pollution, and on May 3, 1994 that charge was dismissed on the grounds that the Crown did not prove that the SIR ROBERT BOND was the source of the oil.

At the close of the fiscal year under review, no claim from this incident had been filed with the SOPF.

8.30 TRAILER PRINCESS (1993)

On January 31, 1993, a report of an oil spill on the Fraser River near the Patullo Bridge, British Columbia, was received by Environment Canada officials. The investigation into the source of the oil found that a pump containing a significant amount of oil was aboard the Canadian barge TRAILER PRINCESS, which was tied up to a wharf awaiting repairs. Analysis of this oil found similarities that were consistent with the analysis of oil recovered from the clean-up of the spill.

At a subsequent prosecution of the barge owner on charges under the Oil Pollution Regulations, a plea of guilty was entered and a fine of \$7,500 imposed. The costs and expenses incurred by Environment Canada for the clean-up amounted to \$23,530.27. In bankruptcy proceedings at the time, the barge owner paid the Crown \$5,000 towards the costs of the clean-up.

On February 11, 1994, I received a letter from the Department of Justice in Vancouver informing me that the Crown may be making a claim against the owner and the Administrator in respect of this incident. In view of the bankruptcy, the Crown may be required to obtain leave of the Court to proceed against the bankrupt owner in order to collect from the P & I Club underwriters.

At March 31, 1995, no claim had been presented to the SOPF.

8.31 VALERY IV (1993)

This incident involved a 17-meter concrete hulled yacht which sank alongside at Sabrevois, Québec, on the Richelieu River, on June 10, 1993. No one was aboard the yacht at the time. It was later discovered that water entered the vessel because two plugs in the engine water cooling system were missing. The Coast Guard was informed of the sinking and resultant pollution and organized a response to the pollution which was caused by oil leaking out of the vessel. The response included raising the vessel and plugging the leaks in the cooling

system. The Coast Guard thereby incurred costs and expenses claimed to amount to \$14,641.68.

After the response was completed, the Coast Guard was able to contact the owner who stated that he was willing to sell the raised vessel, and that the amount realized in the sale would be paid to the CCG as full and final settlement of the CCG claim. This proposal was accepted by the CCG, and the owner later stated that the vessel had been sold for \$2,000 with this amount being held by lawyers in trust until claimed by the CCG.

The CCG has presented a claim to the SOPF which is being investigated under section 710 of the *Canada Shipping Act*.

8.32 Mystery Oil Spill, Wolfe Island, Ontario (1993)

On August 1, 1993, officials of the CCG were informed of the existence of a discharge of Bunker C oil on the south side of Wolfe Island (Horn's Point, west of Cape Vincent Ferry Dock), Ontario.

These waters were waters to which Part XVI of the CSA applies. The CCG, 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 \$9,436.52 by so doing.

As the CCG was unable to determine the source of the oil spill or identify the particular ship that caused the oil spill, the CCG filed a claim with the SOPF under sections 709 and 710 of the CSA on October 20, 1994. As the source of the oil pollution damage is unknown and it was not possible to establish that the incident which gave rise to the claim was not caused by a ship, there was a presumption arising under section 710 of the CSA that the oil spilled was discharged by a ship.

After investigation, on the basis of the information submitted by the CCG, I assessed the actual reasonable costs and expenses of the incident incurred by the CCG at \$7,071.57

which amount was offered to and accepted by the Crown.

The Crown was also entitled to be paid interest under section 723 of the *Act*.

Pursuant to section 709(f) of the *Act*, I directed payment from the monies in the Ship-source Oil Pollution Fund in the amount of \$7,071.57, plus interest of \$841.66 totalling \$7,913.23, to the Receiver General of Canada in full settlement of all costs and expenses and the interest claimed by the Crown.

8.33 Wooden Boat, La Salle, Ontario (1993)

Information has come to my attention that on October 5, 1993, a wooden boat sank at a marina in La Salle, Windsor, Ontario, releasing approximately 200 gallons of gasoline. The CCG responded and incurred costs and expenses stated to amount to \$7,993.79 in the clean-up.

It appears that there is a dispute over the ownership of the craft at the time of the incident. No claim has yet being made to the SOPF.

8.34 CARAPEC No. 1 (1993)

This 480 GT fishing vessel was secured at the Caraquet Marine breakwater, Caraquet, New Brunswick, and, reportedly, had been abandoned there since May 1993.

During October 1993, there was increasing local concern about the safety of the vessel and the potential for pollution. On October 21, 1993, the CCG decided to act on the concerns in the absence of a response from the registered owner. They organized the removal and disposal of all pollutants aboard, dewatered and stopped leakage of the engine room, and properly secured the vessel. Their claimed costs and expenses amounted to \$25,326.44.

The vessel's ownership had been transferred to a person in Calgary, Alberta, by Bill of Sale on January 27, 1993, but the change of ownership had not been reported to the Registrar at the vessel's Port of Registry, Caraquet, New Brunswick, as required by section 40(1) of the



CSA. The person then denied ownership stating that the company for whom she had signed was only acting as agents for a Hong Kong company. The Hong Kong company then refused to take delivery of the vessel and would not pay current outstanding invoices.

The dispute over ownership remains unresolved. No claim has yet been presented to the SOPF.

8.35 KETA V (1993)

This occurrence happened in Wedgeport, Nova Scotia. It appears that it may have been two separate incidents, both involving Verreault Navigation, a dredging company then operating in Wedgeport Harbour. On November 19, 1993, a small spill of diesel oil from an unidentified source was discovered in the harbour; it was later admitted that the spill was probably from the tug KETA V. On November 20, 1993, a member of the public reported that a beached dredging barge was leaking diesel oil. It was subsequently ascertained that there was a leak in the bottom plating in the area of an oil tank on the barge.

Wedgeport Harbour is particularly environmentally sensitive because of the large quantities of lobsters that are held in storage tanks there prior to shipping. The harbour is the home port to over 60 lobster fishermen, and the above incidents occurred just before the start of the lobster season in that area. The SOPF provided assistance to the Department of Fisheries and Oceans so that the season opening was not delayed.

The vessel's owner and the CCG responded to the spills by cleaning the lobster holding tanks, the wharf pilings and other areas, and by removing as much of the contaminated top soil as practical.

The CCG incurred costs and expenses to a claimed amount of \$15,486.91. As of March 31, 1995, no claim had been presented to the SOPF.

8.36 Mystery Oil Spill, Sorel Harbour, Québec (1993)

This unusual incident has resulted in the CCG presenting a claim to the SOPF. On December 1, 1993, a dredger was working in Bassin Lanctôt, within Sorel Harbour, Québec, for and on behalf of the Government of Canada, when it was noticed that there was oil, of a heavy bunker consistency, floating to the surface of the water. At first it was thought to originate from a vessel berthed nearby, but then it was found to come from an oil barrel on the seabed which had been pierced by the action of the dredger. The CCG organized a response to clean up the oil, which was hampered to some extent by the newly-formed ice. The claim of the CCG presented to the Fund amounts to \$46,813.79.

It appears that the ownership of the barrel and the oil contained in it cannot be established. To engage the liability of the SOPF, the question to be answered is whether section 709(f) of the CSA applies to the circumstance of this incident. Section 709(f) states:

"(f) the cause of the oil pollution damage is unknown and the Administrator has been unable to establish that the occurrence that gave rise to the damage was not caused by a ship"

As yet, it has not been established that this barrel of oil found in Sorel Harbour could be ship-related. Negotiations on the matter continue with counsel acting for the CCG.

8.37 ISTRAN EXPRESS (1993)

On December 3, 1993, this Vanuatu flag general cargo vessel, while alongside in Québec Harbour, discharged a small amount of bunker oil. The CCG response costs and expenses are said to amount to \$5,359.60. It has been reported that settlement discussions are in progress with the owners. The SOPF has not been a party to those discussions.

At the end of the 1994-95 fiscal year, no claim had been received.

8.38 GENERAL TIRONA (1993)

On December 13, 1993, while the Philippine-registered bulk carrier GENERAL TIRONA was berthing at a North Vancouver, British Columbia, dock near the Second Narrows Bridge, there was a spill of an estimated 43 tonnes of marine diesel fuel oil. The vessel, under control of tugs, struck the dock and holed a shipside fuel oil tank. Most of the contents of the tank were spilled into the surrounding water.

The ship's owners posted a bond to cover the clean-up costs, the possibility of prosecution fines and environmental damages.

On February 3, 1994, I received a letter from the Burrard Yacht Club informing me that approximately 22 yachts would require cleaning because of oil contamination of their hulls. It was reported that, apart from other claims, the costs and expenses incurred by the Coast Guard in responding to the spill are claimed to amount to \$79,523.99.

At the end of the financial year under review, I was informed that the CCG was in the final stages of presenting its claim to the shipowners. As of March 31, 1995, no claims have been received by the SOPF.

8.39 TITO TAPIAS (1994)

On January 11, 1994, the Panamanian flag tanker TITO TAPIAS (GRT 77,291), owned by a company in Madrid, Spain, reported an oil spill of one to two barrels of bunker oil while engaged in accepting bunker fuel from the Canadian oil barge SHARK VII. At the time, the tanker was anchored approximately six miles off Redhead, Saint John, New Brunswick, after completing discharge of her oil cargo. An overflight on January 11, 1994, found that some 200 meters of shoreline in the area had been polluted and that further oiling of the shores could be expected. The shipowner's underwriters posted a letter of undertaking to pay claims as a result of this incident in favour of the Coast Guard and the Administrator. On January 13, 1994, the CCG issued a status report stating that approximately 1½ tonnes of Bunker C fuel had been spilled from the

tanker. The shipowner instituted clean-up operations. Samples from the area confirmed the TITO TAPIAS as the origin of the oil.

On May 27, 1994, the shipowner's contractor ceased work because no payment had been received for work carried out to date. On May 28-29, three reports of further oiling on the Digby Shore in the Hillsburn area of Nova Scotia required clean-up action, which was undertaken by contractors instructed by the CCG. By this time, the CCG estimated the spill to be 10 to 20 tonnes of oil. The shipowner's representatives now doubted that these later oil finds originated from the TITO TAPIAS. On June 13, 1994, the clean-up operations commenced in the Hillsburn area at the instigation of the shipowner.

No further clean-up was undertaken after July 15, 1994, by which time a total of 25,043 bags of oily debris and 237 oiled birds had been collected for treatment.

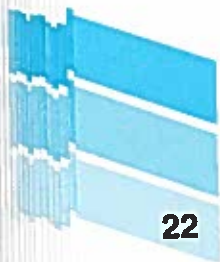
On August 4, 1994, following a prosecution under the Oil Pollution Regulations during which a witness, on behalf of the CCG, testified that the oil discharged amounted to between 17 and 34 tonnes, the Court in Saint John, New Brunswick, ordered the tanker owners, who pleaded guilty, to pay a fine of \$75,000.

In addition to the substantial costs incurred by the shipowner's direct employment of clean-up contractors, I am informed that the CCG claim to have incurred costs and expenses in the order of \$346,000 for its part of the clean-up.

No claim has been presented to the SOPF arising from this incident.

8.40 POLYDEFKIS (1994)

On January 12, 1994, the Harbour Master's office reported sighting oil on the ice alongside this Greek flag bulk carrier, moored in the Port of Montréal, Québec. Environment Canada responded and arranged for the clean-up. It was reported that a small amount of oil was involved, and at the time the shipowners denied all knowledge of the incident. A P & I Letter of Undertaking on



behalf of the shipowner was later accepted by the CCG for up to the amount of \$10,000 to cover any potential fine for prosecution and for clean-up costs, claimed to amount to \$4,377.32.

No claim from this incident has been presented to the SOPF.

8.41 CALYPSO IV (1994)

This small Greek flag bulk carrier was secured alongside a private shipyard dry dock in Les Mechins, Québec, when, on February 2, 1994, a spill of mainly lubricating oil was discharged from the ship. The shipyard responded to the spill, employing contractors for the clean-up. A team of CCG and Environment Canada personnel also attended to monitor the situation, with particular regard to the fact that CCG icebreakers were required to work very near the CALYPSO IV in order to clear ice from the entrance of the drydock so that the facility could be used by a waiting ship. It was feared that the action of clearing the ice would set free the pollution.

The oil spill was virtually all contained on the ice and in a barrel slung over the ship's side. This oily mixture, together with a quantity of garbage thrown on the ice around the ship was successfully removed. It was stated that 110 liters of oil were recovered, together with contaminated ice. The shipowner was successfully prosecuted by the CCG for the spill.

On February 11, 1994, representatives of the owner posted a \$70,000 P & I Letter of Undertaking in favour of the CCG and the SOPF against claims arising from this incident.

At the end of this fiscal year, I was informed that the CCG and Environment Canada claim amounted to \$8,181.49, and I await developments.

8.42 PRINCESS No. 1 (1994)

While en route from Erieau, Ontario, to the Thames River, Ontario, this Canadian tug became imprisoned in an ice ridge in Lake Erie. On February 10, 1994, a U.S. Coast Guard icebreaker freed the PRINCESS No. 1,

and on the following day a Coast Guard icebreaker assisted the tug to its base at Amhurstburg, Ontario. After being secured alongside, a crewmember and a CCG ship inspector briefly examined the vessel, and all appeared in order. Four hours after tying up, the vessel sank alongside.

On sinking, the tug released a significant amount of diesel oil. A containment boom was placed around the site and divers sealed the leaks in the sunken vessel's hull. Initially the CCGS SAMUEL RISLEY responded to the need for pollution containment and was then replaced by the CCGS GRIFFON. A number of sea birds had to be rescued and cleaned. On February 15, 1994, the tug was raised and placed ashore in a slipway for safety.

On December 30, 1994, a claim of \$250,742.38 for the Coast Guard costs and expenses with respect to the salvage of the tug and pollution clean-up was filed with the Administrator. The PRINCESS No. 1 has a limit of liability of \$12,618.85. Among a number of issues in the CCG claim, the charge of over \$180,000 for the use of the GRIFFON in this incident is of particular concern. This claim was being investigated and assessed under the CSA at the close of the 1994-95 fiscal year.

8.43 NORDIC APOLLO (1994)

On May 30, 1994, there was a report of a large spill of an unknown substance in the water around the NORDIC APOLLO, a Liberian flag tanker moored at Halterm Berth 34 in Halifax Harbour. The CCG investigated the report and found a quantity of oil had been spilled from the tanker. A boom was put in place and a clean-up response organized. It was subsequently found that the spill came from the tanker's cargo of Scotian crude oil condensate.

It is reported that the NORDIC APOLLO pleaded guilty to a charge under the Oil Pollution Regulations for causing pollution and was fined \$20,000.

As of March 31, 1995, I had received no official notice of this incident and await developments.

8.44 ZIM SAVANNAH (1994)

This Israeli flag container ship was alongside Berth 41 in Halifax Harbour, Nova Scotia, on May 30, 1994, when heavy oil was discovered in the water between the ship and the berth. At the outset, the precise source of the oil could not be ascertained, but oil samples were taken for analysis. After discussions with the ship's agent, the CCG arranged for clean-up of the oil and obtained security for the costs and expenses involved. In the evening of the same day, the ship left the berth bound for New York. Shortly afterwards, with the pilot still aboard, oil was noticed trailing astern and the Master decided to return to a berth in Halifax to thoroughly inspect the ship. Again, measures were taken to contain and clean up the oil apparently leaking from the ship. An inspection by various officials, including officials of the CCG, again were unable to determine the exact location of a leakage of the oil observed, but oil was found and videotaped by a diver inside underwater discharge lines on the starboard side of the ship.

On July 29, 1994, a claim on behalf of the owner of the ZIM SAVANNAH amounting to \$99,579.58, in respect of the measures taken to prevent or minimize the pollution involved in this incident was filed with the SOPF.

At the end of March 1995, the claim was under investigation.

8.45 MISS STEPHANIE (1994)

On August 8, 1994, when steaming approximately six miles north of Kettle Point, Ontario, in Lake Huron, this 16.4 meter Canadian fishing vessel sank. The wreck leaked diesel and lubricating oil until August 13, 1994, when a diver succeeded in closing the valves on the fuel tanks. Thereafter pollution was minimal. The fishing vessel was raised by crane on August 17, 1994, and taken ashore for inspection. Throughout the incident the CCG monitored the pollution containment action. To date, the SOPF has not been officially notified of any claim arising from this incident.

8.46 MARWOOD (1994)

The MARWOOD is a 115 ft wooden trawler operating under the Canadian flag. On August 14, 1994, the vessel sank alongside the government dock in Ucluelet, Vancouver Island, British Columbia. One crewmember drowned in the sinking, but two others were able to escape. The vessel contained approximately 7,000 gallons of diesel fuel, 600 gallons of lubricating oil, and an unknown quantity of hydraulic oil.

The CCG responded to the sinking to minimize pollution, and to clean up the oil which had escaped. The vessel had P & I Club pollution cover and representatives of the Club were in contact with the CCG. The salvage of the vessel was undertaken by contractors engaged by the owner and was successfully completed on August 18, 1994.

Protracted negotiations occurred between the Crown, the legal representatives of the owner and the P & I Club, to obtain security totalling \$450,000 for the costs and expenses arising as a result of the incident. The trawler was stated to have an insured value in excess of \$1 million. The hull underwriters stated the highest bid for the salvaged vessel was \$14,000. As the issue could not be resolved, the Crown arrested the trawler on February 21, 1995.

As of March 31, 1995, the Crown and the Administrator were attempting to obtain adequate security to satisfy the CCG claim.

8.47 STELLA (1994)

On December 3, 1994, the dockmaster at the Alcan private dock at Duncan, Baie des Ha! Ha!, Québec, reported oil in the water around the Greek flag cargo vessel STELLA. After consultation with the CCG, Alcan-employed contractors were able to recover approximately 80% of the oil, with the remainder being carried away on the ice cover. Samples of the oil from the vessel and from the bay were obtained for analysis. The Ship Safety Branch of the CCG placed an interdiction on the vessel leaving until a letter of undertaking to the amount of \$25,000 was provided. This letter was received

by the CCG during the evening of December 3, 1994, and the vessel was released. Subsequent analysis of the oil samples on behalf of the CCG were inconclusive and the letter of undertaking was cancelled.

I am informed that Alcan intends to present its claim for costs and expenses in the clean-up to the SOPF for consideration.

9. Financial Summary

During the fiscal year 1994-95 the Ship-source Oil Pollution Fund paid out, at the direction or request of the Administrator:

(a) Pursuant to sections 706 and 707 of the *Act*, the total sum of \$502,810.52 comprising the following costs and expenses:

Administrator Fees	\$66,850.00
Legal Fees	\$244,903.51
Professional Services	\$111,374.88
Secretarial Services	\$37,898.41
Travel Expenses	\$20,669.63
Printing	\$13,348.41
Office Expenses	\$ 7,765.68

(b) Pursuant to section 701 of the *Act*, the Administrator directed the payment of \$2,903,695.55 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	\$435,554.33
AEGEAN SEA Major Claims Fund	\$1,088,885.83
KEUMDONG No. 5 Major Claims Fund	\$725,923.89
TOYOTAKA MARU Major Claims Fund	\$653,331.50

(c) Pursuant to sections 710 and 711 of the *Act*, the Administrator settled claims for the sum of \$11,309.36.

During the reporting fiscal year, interest credited to the Fund was \$18,793,680.68.

At March 31, 1995, the balance in the Fund was \$233,261,036.39.

Yours sincerely,



Peter M. Troop
Administrator
Ship-source Oil Pollution Fund