

Ship-source Oil Pollution Fund Annual Report 1995-1996



Canada

Cover: The Liberian tanker SEA EMPRESS hard aground in the approaches to Milford Haven, Southwest Wales, United Kingdom. This incident occurred on 15 February, 1996. The IOPC Fund is handling the claims for oil pollution damage.

Photograph by: Brace Harvatt Associates
Haverfordwest, Southwest Wales

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*Ship-source
Oil Pollution Fund
Annual Report
1995-1996*



Ship-source
Oil Pollution Fund
Annual Report
1992-1993

Shipping Lines of
the World
1992-1993

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.85	10.86	10.87	10.88	10.89	10.90	10.91	10.92	10.93	10.94	10.95	10.96	10.97	10.98	10.99	11.00	11.01	11.02	11.03	11.04	11.05	11.06	11.07	11.08	11.09	11.10	11.11	11.12	11.13	11.14	11.15	11.16	11.17	11.18	11.19	11.20	11.21	11.22	11.23	11.24	11.25	11.26	11.27	11.28	11.29	11.30	11.31	11.32	11.33	11.34	11.35	11.36	11.37	11.38	11.39	11.40	11.41	11.42	11.43	11.44	11.45	11.46	11.47	11.48	11.49	11.50	11.51	11.52	11.53	11.54	11.55	11.56	11.57	11.58	11.59	11.60	11.61	11.62	11.63	11.64	11.65	11.66	11.67	11.68	11.69	11.70	11.71	11.72	11.73	11.74	11.75	11.76	11.77	11.78	11.79	11.80	11.81	11.82	11.83	11.84	11.85	11.86	11.87	11.88	11.89	11.90	11.91	11.92	11.93	11.94	11.95	11.96	11.97	11.98	11.99	12.00	12.01	12.02	12.03	12.04	12.05	12.06	12.07	12.08	12.09	12.10	12.11	12.12	12.13	12.14	12.15	12.16	12.17	12.18	12.19	12.20	12.21	12.22	12.23	12.24	12.25	12.26	12.27	12.28	12.29	12.30	12.31	12.32	12.33	12.34	12.35	12.36	12.37	12.38	12.39	12.40	12.41	12.42	12.43	12.44	12.45	12.46	12.47	12.48	12.49	12.50	12.51	12.52	12.53	12.54	12.55	12.56	12.57	12.58	12.59	12.60	12.61	12.62	12.63	12.64	12.65	12.66	12.67	12.68	12.69	12.70	12.71	12.72	12.73	12.74	12.75	12.76	12.77	12.78	12.79	12.80	12.81	12.82	12.83	12.84	12.85	12.86	12.87	12.88	12.89	12.90	12.91	12.92	12.93	12.94	12.95	12.96	12.97	12.98	12.99	13.00	13.01	13.02	13.03	13.04	13.05	13.06	13.07	13.08	13.09	13.10	13.11	13.12	13.13	13.14	13.15	13.16	13.17	13.18	13.19	13.20	13.21	13.22	13.23	13.24	13.25	13.26	13.27	13.28	13.29	13.30	13.31	13.32	13.33	13.34	13.35	13.36	13.37	13.38	13.39	13.40	13.41	13.42	13.43	13.44	13.45	13.46	13.47	13.48	13.49	13.50	13.51	13.52	13.53	13.54	13.55	13.56	13.57	13.58	13.59	13.60	13.61	13.62	13.63	13.64	13.65	13.66	13.67	13.68	13.69	13.70	13.71	13.72	13.73	13.74	13.75	13.76	13.77	13.78	13.79	13.80	13.81	13.82	13.83	13.84	13.85	13.86	13.87	13.88	13.89	13.90	13.91	13.92	13.93	13.94	13.95	13.96	13.97	13.98	13.99	14.00	14.01	14.02	14.03



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

Dear Mr. Anderson,

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, 1995 and ending on March 31 1996.

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.

2. The Canadian Compensation Regime

The three components of the Canadian Regime providing compensation for oil pollution damage caused by ships in Canadian waters are:

1. The Ship-source Oil Pollution Fund, (SOPF)¹;
2. The International Convention on Civil Liability for Oil Pollution Damage 1969 (CLC); and
3. The International Oil Pollution Compensation Fund (IOPC Fund) established in 1978 by 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 into force on April 24, 1989², and further amended in 1993 (S.C. 1993, C.36)

Figure 1, with explanatory notes, shows as at 1 April 1996, the amount of compensation

that is available and demonstrates the pivotal role played by the SOPF in the operation of the regime.

With one exception³, the SOPF is a Fund of first resort for all claimants, including the Canadian Coast Guard, for oil pollution damage, for costs and expenses resulting from a discharge of oil from a ship and also for the costs of preventive measures taken in anticipation of an oil spill.

The CSA imposes on the Administrator the obligation to take reasonable measures to recover the compensation paid to the claimant from the SOPF, 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 SOPF in the event that no other security is provided. In such circumstances, the Administrator is entitled to obtain security prior to the filing of any claims against the SOPF, but that action can only be continued after the Administrator has paid claims under section 711(3).

Since 1993, the SOPF also applies to oil spills from any ship in Arctic Waters.

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

Balance:

At March 31, 1996 the balance in the SOPF was \$247,333,080.44.

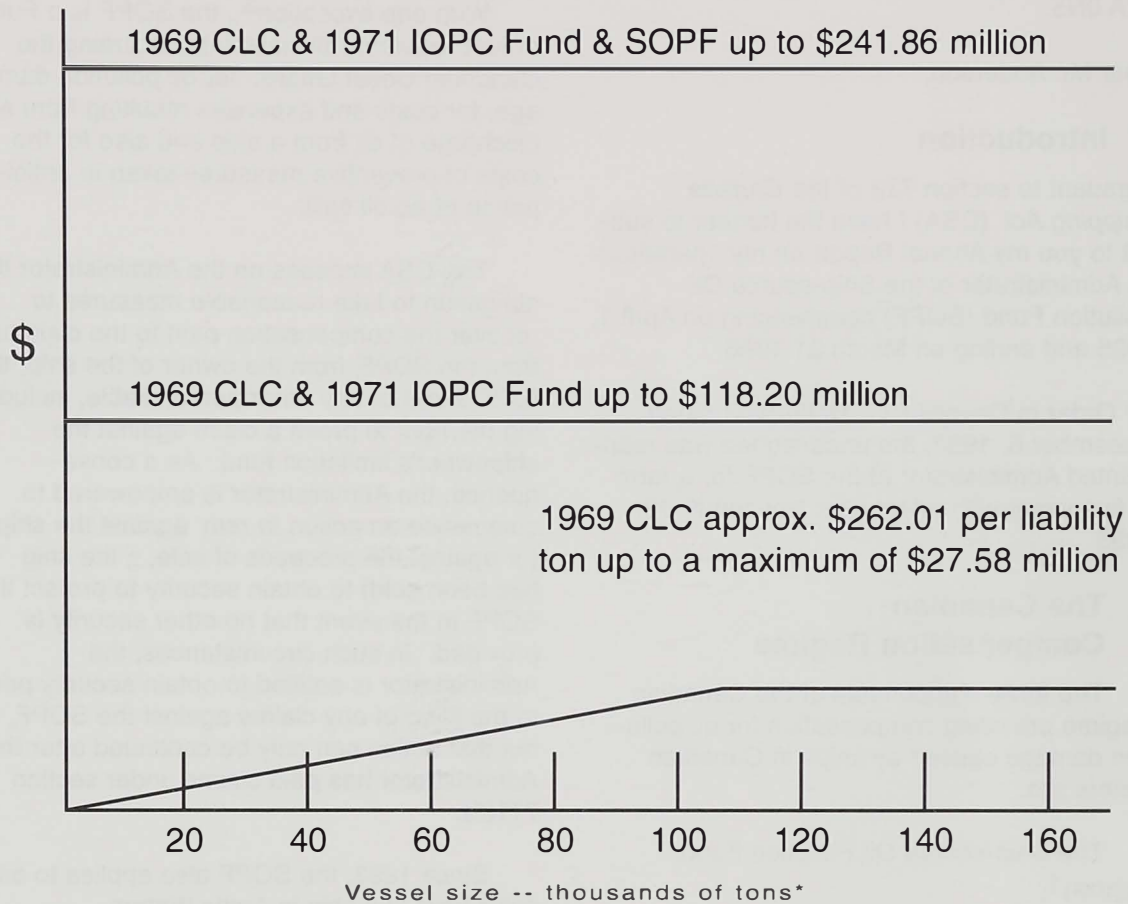
¹ The SOPF is available to claimants for oil pollution damage in Canada and in waters under Canadian jurisdiction.

² Superseded by R.S.C. 1985 C.6(3rd Supp.) on May 1, 1989, and amended by S.C. 1993 C.36.

³ The exception is that a response organization established under the CSA has no direct claim against the SOPF, but may have a claim for unsatisfied costs and expenses after exhausting the right of recovery against the shipowner, the insurer or the IOPC Fund as the case may be.

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, 1996)**



1. The Ship-source Oil Pollution Fund, CLC and IOPC Fund provide a combined aggregate amount of up to \$241.86 million in the case of any one oil-pollution incident involving a laden oil tanker.

2. 1969 Civil Liability Convention (CLC) provides compensation of up to approximately \$27.58 million and represents the shipowners share of compensation payable.

3. The International Oil Pollution Fund (IOPC Fund) and the CLC provide aggregate compensation of up to \$118.20 million. Funds paid by the IOPC Fund represent the cargo interests' share of compensation payable.

4. The SOPF is also available for compensation for oil spills from other ships other than laden tankers.

5. The SOPF applies in all Canadian Waters, in the fishing zones of Canada and also in the Arctic Waters. The maximum amount of compensation available is adjusted annually for inflation (see section 4).

6. Additionally, the SOPF is available to pay compensation for oil pollution damage where the identity of the ship is unknown ie: mystery spills. In such cases, claimants are entitled to the benefits 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.

7. 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.

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

Interest:

During the fiscal year the SOPF was credited with a total of \$17,075,248.36 as interest by the Minister of Finance, calculated on a monthly basis, giving an average rate of about 7% during 1995-1996.

Limit of Liability:

During the fiscal year commencing April 1, 1996 the maximum liability of the SOPF is \$123,660,534.00 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, after consulting with the Ministers of the Environment and of Fisheries and Oceans, 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, 1996 the levy would be 37.10 cents per tonne. The levy is indexed annually to the consumer price index.

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.

4. IOPC Fund, the Assembly and the Executive Committee

The 18th session of the Assembly and the 42nd, 43rd, 44th, 45th, 46th and 47th 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 17-

20th, 1995. It was attended by 38 contracting states, observers from 12 non-contracting states and observers from 7 inter-governmental and non-governmental organizations.

The major subject of discussion was the preparations for the coming into force of the 1992 Protocols to the 1969 Civil Liability Convention and the 1971 Fund Convention on May 30, 1996 and the first Assembly of the 1992 Fund during the week of June 24, 1996. It is estimated that the requirements of "compulsory denunciation" of the existing 1969 and 1971 Conventions will be met in the fall of 1996 and by late in the spring of 1998 members of the 1992 Fund would cease to be members of the 1971 Fund. For countries like Canada, who have still to ratify the 1992 Protocols, it is clear that the much reduced membership of the 1971 Fund would result in them having to carry the load. It can be predicted with reasonable certainty that Canada's contributions would increase dramatically. Consequently, it is important that Canadian legislation to implement the 1992 Protocols and denunciation of the existing Conventions should come into force late in the spring of 1998 when the members of the 1992 Fund will cease to be members of the 1971 Fund⁴.

During the lengthy discussions on the many potential questions that could arise, extensively treated in a series of secretarial papers, the Assembly endorsed the Director's proposals on most issues that could arise. With respect to the contentious provision on the "capping of contributions" in the 1992 Fund Protocol, it is likely that the impact of the capping system would cease before the Protocols come into force for Canada.

On the thorny issue of creating a new body to replace the existing Executive Committee, which will no longer exist in the 1992 Fund, the Assembly's view was that there would be a need for a new claims subsidiary body.

The Assembly took the view that the

⁴ Legislation to implement accession to the 1992 Protocols was introduced in Parliament on September 19, 1996.

Director of the 1992 Fund should be the same person as the Director of the 1971 Fund, (Mr. Måns Jacobsson).

The other focus of this session was the financial consequences of the number of recent major incidents in both Korea and Japan creating a need for further Major Claims Funds and a resulting increase in the levy for 1995 Annual Contributions.

The Assembly approved the operating budget for 1996 and decided that while the Working Capital would remain at £15,000,000, contributions by Member States in the amount of £43,000,000 were necessary, payable not later than February 1, 1996 with respect to:

- a) General Fund - £6,000,000
- b) BRAER Major Claims Fund - £14,000,000
- c) SEA PRINCE/YEO MYUNG/YUIL NO. 1 Major Claims Funds - £20,000,000
- d) SENYO MARU Major Claims Fund - £3,000,000

Canada's share of the total contributions levied in 1995 was £1,217,448.77 (\$2,527,058.41) and paid in full by the Administrator out of the SOPF on January 25, 1996.

Another important issue discussed by the Assembly was the serious consequences of not settling the HAVEN incident, underlined by Canada and many other delegations. The Assembly took the view that the offer of a global settlement had not been accepted by the Italian Government and that any further action must be taken by the claimants. It was agreed however that the HAVEN Major Claims Fund would remain, but no more contributions would be levied. It was made clear that any further action on the HAVEN settlement, should claimants come forward with proposals, would have to be taken by the Assembly which is not expected to meet until June 1996.

In October 1995 Canada again became eligible and was duly elected to the Executive Committee.

The Executive Committee

42nd Session of the Committee - 10th & 11th April 1995

The agenda focused on the RIO ORINOCO (1990); HAVEN (1991), AEGEAN SEA (1992), BRAER (1993) and SEKI (1994) incidents. The Committee reviewed the progress being made to finalize and settle these incidents. With regard to the RIO ORINOCO, it was decided that as the incident was caused solely by non-compliance with the Safety of Life at Sea Convention 1974/78, there was no obligation on the IOPC Fund to pay indemnification. In the case of the HAVEN, the Director was requested to enter into negotiations with all parties for the purpose of arriving at a global solution of outstanding claims and issues. With respect to the AEGEAN SEA, it became apparent to the Committee that many fishing claimants are unable to prove their claims in accordance with the established IOPC Fund Claims Policy. In dealing with the BRAER the Committee approved, in principle, two major claims.

43rd Session of the Committee - June 9th 1995

Developments in the HAVEN and BRAER incidents were reviewed and discussed at some length. The Committee was informed that the 1992 Protocols to the 1969 Civil Liability Convention and the 1971 Fund Convention would enter into force on May 30th 1996. The Committee approved a number of further revisions to the new IOPC Fund Claims Manual.

44th Session of the Committee - 16th & 17th October 1995

The Committee once again focused on and reviewed the incidents dealt with at its 42nd session in April 1995. Respecting the HAVEN, it should be noted that after four-and-a-half years from the date of the incident no compensation has yet been paid to any of the 1,300 separate claimants. In the view of the Director, under relevant Articles of the 1971 Fund Convention, many of the claims against

the IOPC Fund may be time-barred. Great efforts by the Director and the Chairman of the Assembly had been made over the preceding six months to achieve a global settlement, but to no avail. The Committee noted that the Italian Court of appeal was scheduled to hear the appeal by the IOPC Fund on the Gold Franc issue on November 24th, 1995, with judgment expected in early 1996.

The importance of settling this incident cannot be over emphasized, otherwise litigation will carry on into the next century at tremendous cost to the IOPC Fund and prevent the 1971 Fund from being wound up.

In the case of the AEGEAN SEA, there is a serious lack of hard evidence to support the fishing claims. The Director has made considerable efforts to overcome the lack of supporting documentation, but a serious lack of proof of claims still exists and very few claims have been settled and paid.

The BRAER

With the approach of the time-bar on January 5, 1996 in the BRAER incident, two issues dominated the discussion in the Committee, namely: which claimants must commence court proceedings to comply with the time-bar, and whether there are sufficient funds remaining to pay 100% of all provable claims.

On the first issue, it was decided that if a claimant and the IOPC Fund had agreed to a "full settlement" of the admissible quantum of their claims, but no payment or only a partial payment had been made by January 5, 1996, if such claimants did not take legal action, the IOPC Fund would not consider their claims time-barred. Otherwise, all claimants must start legal proceedings to protect their claims against the time bar.

On the second issue, the situation was not at all clear. There are substantial claims outstanding and not settled. The total amount of claims so far paid is about £45.9 million, while the maximum amount available under the 1969 and 1971 Conventions is £57,114,000. The Committee agreed that the Fund should sus-

pend any further payments until the situation had been clarified.

With the KEUMDONG No. 5, although it now appears that some fishing claims have been agreed; in total, the fishing cooperatives have not yet agreed to make their sales records available.

As there appears to be no basis upon which to challenge the shipowner's claim to limit its liability, the IOPC Fund will bear almost the full costs of admissible claims to the maximum amount.

The SEKI is the first major oil spill in the Gulf States. This incident was causing great concern both to the authorities and to the IOPC Fund as lack of documentation was again delaying finalization of this incident. So far, the insurer concerned has paid most claims as the limit of liability of the SEKI is about £13.6 million.

The SEA PRINCE, YEO MYUNG, SENYO MARU and YUIL No. 1 are new Korean and Japanese incidents.

These 5 new incidents will produce substantial claims against the IOPC Fund and for this purpose, £20,000,000 of new major claims funds will be raised in 1996 to meet the expected claims. It is hoped that these incidents can be settled for less than the maximum liability under the Conventions.

45th session of the Committee - October 20, 1995

A new chairman, Mr. Oosterveen of the Netherlands Delegation was elected unanimously to replace Mr. Coppolani of France who became the new Chairman of the Assembly.

Except for some discussions of two new claims arising from the AEGEAN SEA incident, no decisions of substance were made.

46th session of the Committee - 11th & 12th December 1995

Issues relating to the BRAER, the HAVEN, the AEGEAN SEA and the new Korean oil spill

incidents were discussed.

With respect to the BRAER, the matter of whether the IOPC Fund should challenge the shipowner's claim to limit its liability was discussed. The Canadian Delegation took the position that there was sufficient evidence to challenge the owner's claim to limit liability. However, a majority in the Committee decided that the owner's limitation action should not be challenged as the Director had put forward an analysis that the chances of success in any recovery action was unlikely. The matter of recourse action was discussed, but as it would be a condition precedent to such action that the owner would not be able to limit its liability, the Committee agreed with the Director's view that no such action should be taken. On the issue of the owner's claim for indemnification the Committee agreed to postpone a decision until its next session. As it became clear that claims in court will greatly exceed the maximum amount available under the CLC and Fund Convention the Director was requested to maintain the suspension of payments of any agreed settlements until the next session of the Committee.

Due to the lack of progress towards an overall global settlement in the HAVEN incident the French Government has made a formal request that French and Monégasques claimants, as well as some Italian claimants whose claims were not time-barred, should receive partial payments. However, this might pose some serious problems respecting the prospects of a global settlement. Consequently, the Committee agreed to postpone any decision until its next session.

In the AEGEAN SEA incident, for legal reasons, it was very difficult to determine whether action taken by some claimants was sufficient to prevent their claims from being time-barred, which arose on December 3rd, 1995. The Committee decided to delay its decision until its next session when it was hoped that the situation would be clarified. The Director advised the Committee that it was still necessary to pro rate claims at 40% of the actual pollution damage due to the degree of uncertainty of established claims.

The Director reported on the four most recent oil tanker spills in Korean waters. As all took place in the same waters between July and November 1995, the overlapping of pollution damages in the same waters has raised new questions of principle requiring attention by the Committee.

47th Session of the Committee - 26th & 27th February 1996

With respect to the HAVEN incident, the Committee decided that as it could now be assumed that there would be no global settlement, there would now be no obstacle to the payment of these claims which were not time-barred, so long as the IOPC Fund had legal protection in the event of overpayment. Consequently, the Committee requested the Director to pay the French, Monégasques and all non time-barred claims of Italian claimants. Claims for interest and legal costs would be left in abeyance pending the outcome of legal proceedings in the Italian Courts.

The issues in the AEGEAN SEA incident were reviewed but not resolved by the Committee as the judgment of the Spanish Court was awaited. Failure or refusal of fishing claimants to produce accounts, catch records, or tax reports in order to assess claims remained a problem that had not yet been resolved.

With 250 law suits pending in the Scottish Court in respect of the BRAER incident, the Committee had no alternative but to continue the suspension of all payments notwithstanding that some claimants may suffer financial hardship as a result. It should be noted that almost all fishermen and farmers were paid in full during the early stages after the incident. There is only about £10 million left to meet outstanding pollution demands of about £80 million.

It is no longer realistic to expect that all unsettled claims can be paid in full out of the uncommitted balance in the BRAER Major Claims Fund. It may take some time before the Scottish Court decides which claims are valid and which are not. The legal conse-

quences for the IOPC Fund if there is a shortfall must also be considered.

The Committee also considered the various problems associated with estimating the level of claims prior to the expiry of the 3 year time bar raised in respect of the Korean incidents KEUMDONG No. 5, SEA PRINCE, YUIL No. 1 and HONAM SAPPHIRE.

It was noted that various attempts had been made in the KEUMDONG No. 5 incident to achieve a global settlement with the fishing cooperatives, but this had not been achieved and remained in limbo.

In respect of the YUIL No. 1 incident, the Committee agreed that for the time being claims would be pro rated at 60%.

5. A New Major International Incident - Sea Empress

On 15th February 1996, the Liberian registered tanker SEA EMPRESS, (147,000 dwt) ran hard aground in the approaches to Milford Haven Harbour in Southwest Wales, United Kingdom. The vessel was bound for a refinery at Milford Haven and had loaded a full cargo of North Sea crude oil at Hounds Point in Scotland. The tanker suffered severe structural damage to the starboard cargo and ballast tanks and spilled in all some 71,250 tonnes of crude oil. The vessel was refloated on February 21st and towed into Milford Haven for removal of the remaining oil.

The incident occurred in an environmentally sensitive area with bird and other wild life sanctuaries. The area also attracts many tourists.

The incident occurred shortly before the 47th session of the Executive Committee. Consequently, the Committee decided that in view of the uncertainty as to the total amount of claims the Director should not be authorized at this stage to make any payments. At its 48th session in April 1996, the Committee authorized the Director to settle claims up to 75% of the actual damage suffered as the total

claims might well exceed the maximum compensation payable under the Conventions.

6. Entry into Force of the 1992 Protocols to the 1969 Civil Liability Convention and the 1971 Fund Convention

As stated in last year's Annual Report, the conditions for the entry into force of the 1992 Protocols were met on May 30, 1995. Consequently, the Protocols entered into force for the following states on May 30, 1996.

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

The following states have deposited instruments of ratification, but the Protocol will not enter into force in respect of these states until later dates.

Australia
Bahrain
Finland
Greece
Liberia
Marshall Islands
Spain

7. The 1992 Protocols - Summary

The underlying principles of the Civil Liability Convention and the Fund Convention remain. The main differences introduced by the 1992 Protocols are:

- Special liability limit for owners of small vessels and substantial increase of the limitation amount. The limit is \$6 million for a ship not exceeding 5,000 units of gross tonnage, increasing on a linear scale to \$119.4 million for ships of 140,000 units of tonnage or over.
- Increase in the limit of compensation

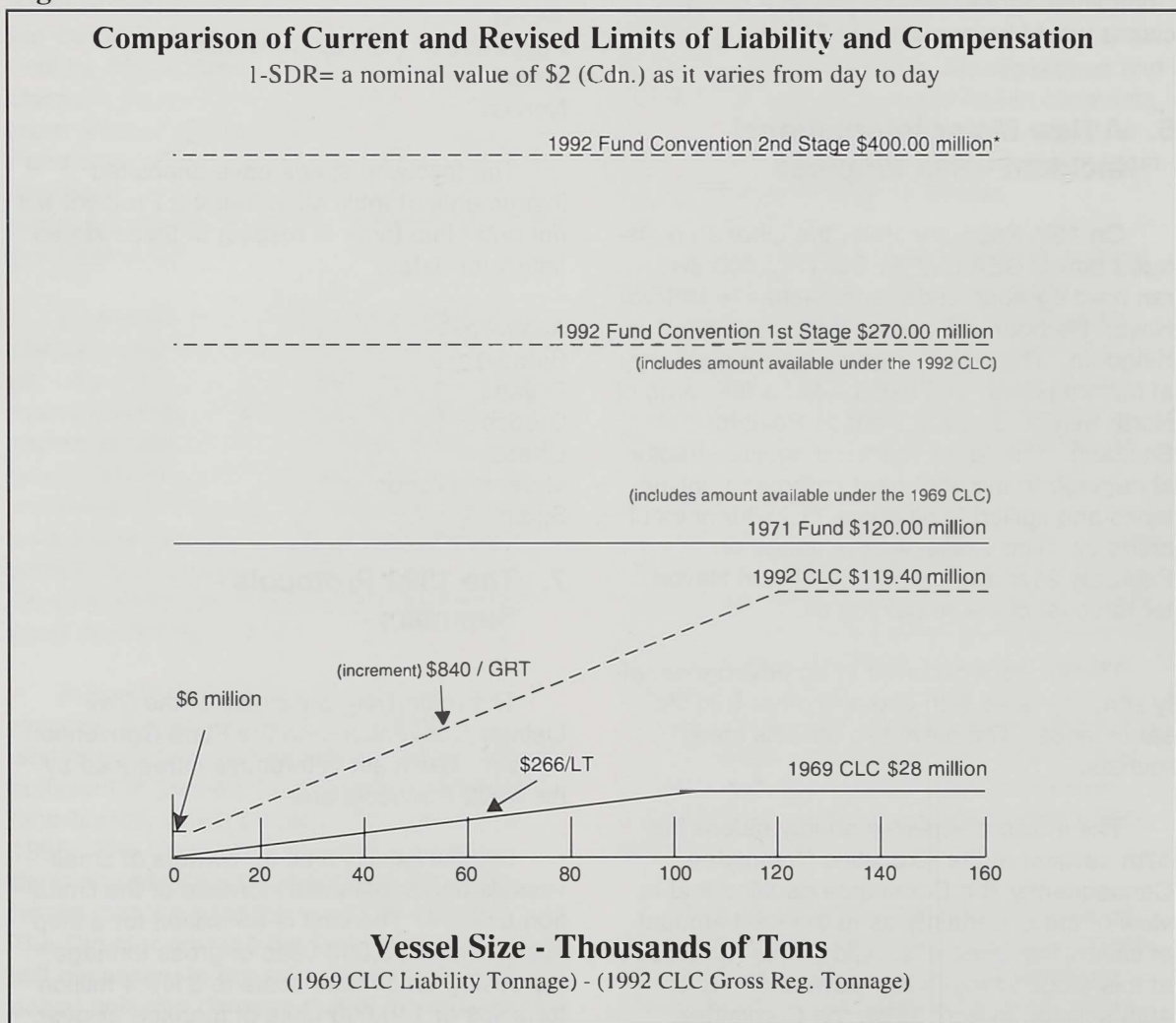
payable by the IOPC Fund to \$270 million, including the compensation payable by the shipowner under the 1992 Protocol to the Civil Liability Convention.

- A simplified procedure for increasing the limitation amounts in the two Conventions by majority decision taken by the states parties to the Conventions.
- Extended geographical scope of application of the Conventions to include the exclusive economic zone established under the United Nations Convention on the Law of the Sea.
- Pollution damage caused by spills of

bunker oil and cargo residues from unladen tankers on the voyage after carrying a cargo will be covered.

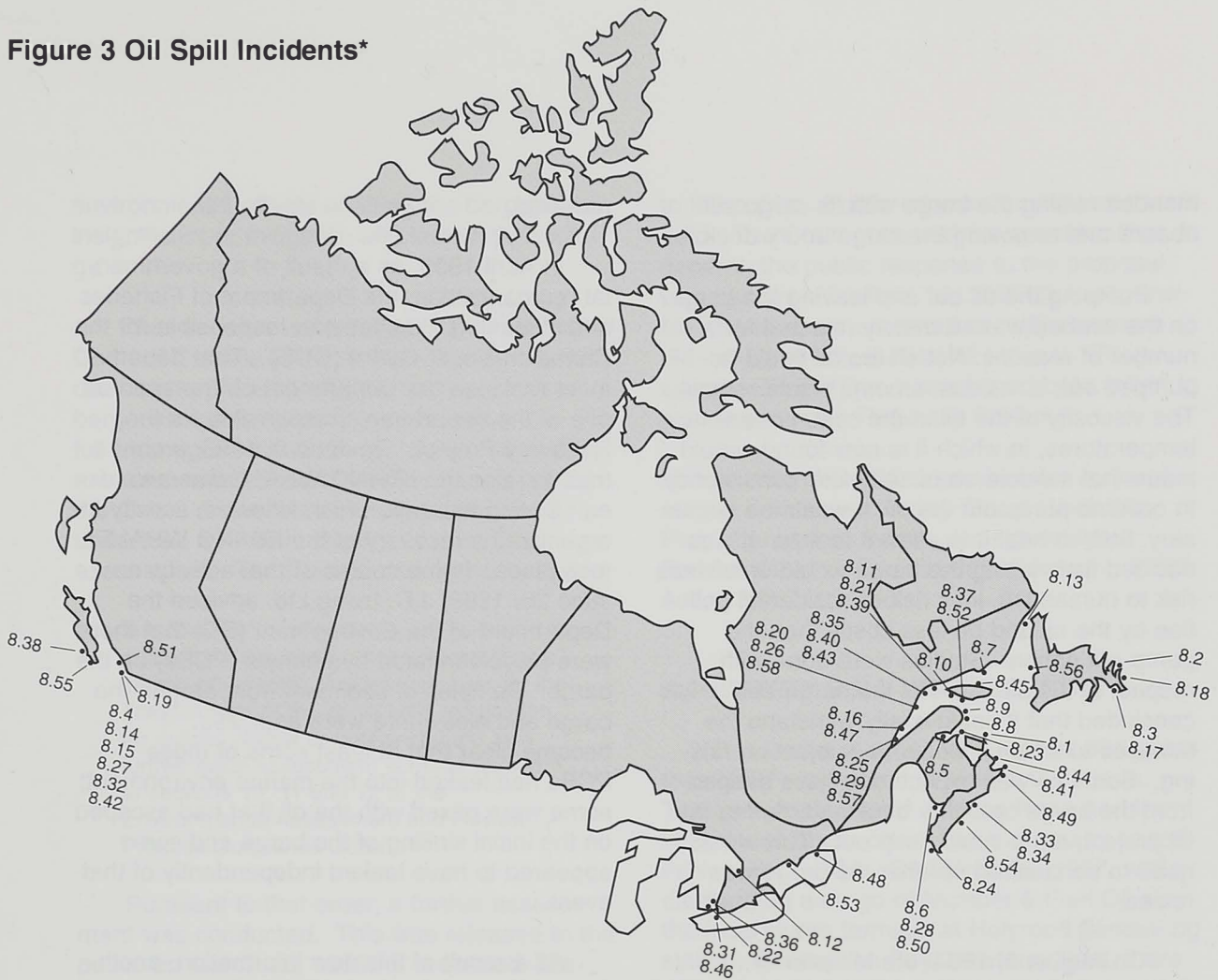
- Expenses incurred for preventative measures are recoverable even when no spill or oil occurs, provided that there was a grave and imminent danger of pollution damage.
- A new definition of pollution damage retaining the basic wording of the present definition with the addition of a phrase to clarify that, for environmental damage, only costs incurred for reasonable measures to restore the contaminated environment are included in the concept of pollution damage.

Figure 2



* It is unlikely that the 2nd stage will come into effect without the participation of the United States of America which has its own regime of liability and compensation

Figure 3 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 Ship-source Oil Pollution Fund (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 suffered. All such reports and inquiries are fully investigated by the Fund and those which fell within its purview are noted hereunder.

8.1 IRVING WHALE (1970)

On September 7, 1970 the IRVING WHALE, a combination deck-loading/oil tanker barge under tow by the tug IRVING MAPLE sank in the Gulf of St. Lawrence, about 60 kilometres from the North Cape of Prince Edward Island. The barge was carrying a cargo of 4,270 metric tonnes of heavy fuel oil (bunker C). A large amount of oil leaked from the barge at that time. It fouled the beaches of the

Magdalen Islands and some appeared on the coast of western Cape Breton. A clean-up of the spill ensued. Small quantities of oil, however, continued to leak from the sunken barge. The barge was inspected periodically. Remedial steps were taken to try to contain the leaks but these were not completely successful. It was estimated that the barge still contained about 3,113 metric tons of oil.

In 1989, following the collision of the OCEAN SERVICE and the NESTUCCA, off the coast of the state of Washington, and following the grounding of the EXXON VALDEZ in Alaska, concern about pollution caused to the marine environment by oil spills intensified. In 1991-92, options were identified for dealing with the IRVING WHALE. (1) doing nothing; (2) pumping out the oil from the barge but leaving it on the seabed; or, (3) raising the barge and removing it to dry dock where its cargo would be removed. Several reports were prepared. One, called the "Marex study", recommended pumping the oil from the barge. Another, the "Murray Fenton study", recom-

mended raising the barge with its cargo still aboard and removing the cargo in dry dock.

Pumping the oil out and leaving the barge on the seabed was ultimately rejected for a number of reasons. Not all the oil could be pumped out; a residual amount would remain. The viscosity of the oil in the cold, underwater temperatures, in which it is now found, would mean that it would be of 'taffy-like' consistency. In order to pump out the oil, it would be necessary, first, to heat it to allow it to flow. It was decided that raising the barge would entail less risk to human life, less risk of accidental pollution by the oil and be less costly than the pump-out option. Studies were done with respect to the structure of the barge and it was concluded that it could easily withstand the stresses to which it would be subject on raising. Some oil was expected to have seeped from the barge onto the deck and, during the lift project, more could seep out. This would need to be cleaned up after the barge was raised.

On August 5, 1994, the Minister of Transport and the Minister of the Environment announced the decision to proceed with the IRVING WHALE Recovery Project. The recovery would occur during the summer of 1995. It was scheduled for the summer months because adverse weather conditions at other times of the year make the activity impractical.

On December 9, 1994, a modification to the project was proposed: a change in the port of destination for the barge from Mulgrave, Nova Scotia, to Halifax. The modification involved an extra transit distance of 113 miles, which would take approximately eight additional hours of "steaming time". A supplementary environmental assessment pursuant to section 10 of the *EARP Guidelines Order* was undertaken. That assessment, entitled *Initial Environmental Assessment Report on a Proposal for Dealing with the "Irving Whale" - Modification of Plan for Destination Port*, concluded that "the potential adverse environmental effects that may be caused by this modification are insignificant or mitigable with known technology". The 30 day public comment period was provided for but no comments were

received.

In April 1995, as a result of a governmental reorganization, the Department of Fisheries and Oceans (DFO) became responsible for the Canadian Coast Guard (CCG). That department replaced the Department of Transport as one of the departments responsible for the Recovery Project. On June 9, 1995, a contract to raise the IRVING WHALE was awarded. During the days which followed, activity to organize the recovery of the IRVING WHALE took place. In the course of that activity, on June 26, 1995, J.D. Irving Ltd. advised the Department of the Environment (EC) that there were polychlorinated by phenyls (PCBs) on the barge. Samples of sediment from around the barge and elsewhere were analyzed. It became clear that at least some of those PCBs had leaked into the marine environment; some were mixed with the oil that had escaped on the initial sinking of the barge and some appeared to have leaked independently of that event.

As a result of this new information, another environmental assessment was undertaken. On July 14, 1995, that study was released. It is entitled *Initial Environmental Assessment Report of a Supplementary Element of the Proposal to Recover the IRVING WHALE and Recover its Cargo of Bunker "C" Oil Removing and Disposing of PCB Material from the Oil Cargo heating System of the Barge*. That study concluded that as long as the barge remained underwater, any attempt to determine the actual location and quantity of PCBs on the barge, or the precise origin of the PCB contamination that had already occurred, introduced the risk of releasing uncontrolled PCBs into the environment. As it was not feasible to determine the exact location and quantity of PCBs on board and given the stability of PCBs, their lack of corrosiveness and the design of the heating system, the report assumed that the bulk of the PCBs were still in the heating system or at least contained within the hull of the barge.

The report concluded with a determination pursuant to subsection 12(c) of EARP Guideline Orders, that the potentially adverse

environmental effects of lifting the barge were insignificant or mitigable with known technology.

That decision led to litigation in the Federal Court of Canada (T-1738-95). The Ministers' decision to proceed with the recovery of the barge was consequently stayed until either a full hearing on the challenge to the July 1995 environmental assessment could be heard by the Court, or the relevant federal departments undertook a more in-depth environmental assessment. The Court's order read, in part:

The Minister's decision of July 25, 1995, authorizing the raising of the "Irving Whale" be stayed pending the determination by the Trial Division of the applicant's application for judicial review or until such time as a further initial assessment is made pursuant to sections 10, 11 and 12 of the Environmental Assessment and Review Process Guidelines Order.

Pursuant to that order, a further assessment was conducted. This was released to the public on March 12, 1996. It is entitled *The Further Assessment of the Recovery of the IRVING WHALE in Light of the Presence of PCBs* ("March 1996 Assessment"). The assessment states at page 83:

DFO and EC conclude that all appropriate safety precautions have been planned for, and that the as-proposed project may proceed as planned in a safe and expeditious manner.

The alternative to the recovery and removal of the "Irving Whale" is the certainty that, over time, all the remaining PCBs and other substances on board will leak into the marine environment. Although the oil and the PCBs were initially reviewed in separate documents, much consideration has been given to the fact that at present they co-exist on the "Irving Whale". There is sufficient justification on both counts to remove this threat to the environment as expeditiously as possible. DFO and EC therefore conclude that the environmental impact of the recovery of the "Irving Whale" in light of the presence of PCBs is insignificant or mitigable with known technology.

Relevant information was made available

to the public. Public information sessions were held. The Court accepted the assertion that, in general, the public response to the proposal was positive. On April 16, 1996, the responsible Ministers announced that public concern did not warrant a section 13 referral. They announced that the decision had been taken to proceed with the Recovery Project.

N.B. The above description of this incident and the subsequent Irving Whale Recovery Project are taken from a decision of the Federal Court of Canada dated June 11, 1996 Action No. T1056-96.

8.2 LIBERTY BELL VENTURE (1987)

This vessel is an oil tanker of 32,331 gross tons (GRT) registered in Monrovia, Liberia. The operator is based in Hong Kong and the vessel was under charter to a company based in New York, USA. On March 29, 1987, while discharging a cargo of Number 6 Fuel Oil at the local Hydro terminal at Holyrood generating station, Conception Bay, Newfoundland, there was a cargo oil spill into the bay. It was estimated that some 25-50 barrels of oil (1 barrel equaling 205 litres) were spilled on deck and into the water, which seawater was covered with pack ice at the time. The CCG incurred costs and expenses of \$11,779.71 in the resulting clean-up.

The ship blamed the terminal for the spill and the terminal blamed the ship. The issue could not be resolved and on March 28, 1989, the Crown filed an action in the Federal Court of Canada to recover the CCG's claim. The Administrator was made a party to the proceedings in accordance with the CSA. There was difficulty in serving the Statement of Claim on the Defendant but eventually it was served pursuant to Rule 310(2) of the Federal Court of Canada.

This incident, is governed by the previous legislation, namely Part XX of the CSA, which was repealed on April 24, 1989.

It was agreed, with those representing the Crown, that the Administrator need not take any further action, unless and until, the Fund's

interests were at issue. The Administrator has been advised that negotiations between the parties continue.

8.3 SOUTH ANGELA (1988)

The MT SOUTH ANGELA was a steel hulled oil tanker, having a length of 258.36 metres, a breadth of 42 metres, registered at the Port of Monrovia, Liberia with a cargo of 768,320.7 tonnes of crude oil on board when this incident occurred.

There was a cargo oil spill involving this oil tanker while alongside the Come by Chance refinery in Placentia Bay, Newfoundland; on March 7, 1988. At the time, it was estimated that some 72 tonnes of crude oil had been spilled. Local fishermen in the area, fearing that their livelihood would be affected, took legal action against the vessel and a Letter of Undertaking was posted by the shipowner's Protection and Indemnity Club (P & I Club), not to exceed \$4 million.

The CCG responded to the spills and, with contractors and others, cleaned up the pollution incurring costs to a claimed amount of \$251,629.71. The ship was charged with the pollution, found guilty and fined. However, no settlement of the clean-up costs could be agreed. On March 2, 1990, the Crown commenced an action in the Federal Court of Canada to recover its costs, and the Administrator was named a Party by Statute. Another action was commenced by the owners of the refinery but the two actions were consolidated by order of the Federal Court.

The only issue in this action is who is responsible for the March 7, 1988 oil spill. the refinery takes the view that the spill was caused by the negligence of the ship's officers. The shipowner takes the position that the spill was caused by the refinery allowing a backflow from its refinery.

The Administrator has been informed that the trial continues, final arguments are scheduled in April, 1996 and the judgment is awaited.

8.4 NEW ZEALAND CARIBBEAN (1989)

On August 17, 1990, the Administrator was served notice by the Vancouver Port Corporation of an action filed in the Federal Court of Canada alleging that this vessel was involved in an oil spill in the harbour when the vessel hit a pier while berthing and ruptured a shipside fuel service tank. The incident took place on January 30, 1989, when the general cargo/container vessel was under the Vanuatu flag, owned by a company in Liberia, and managed by a company in London, England. Since the incident, the ship has changed name, owner, flag and operator. The owner of the pier was joined as a defendant and the Administrator was named a Party by Statute. The amount of the claim for the oil pollution clean-up effected by the Vancouver Port Corporation is stated to be \$76,272.26.

Recent information from the Vancouver Port Corporation is that the legal proceedings are still on-going. However, it is understood that an agreement between the third parties has been reached but the Vancouver Port Corporation still awaits settlement of its claim.

8.5 LUCETTE C (1989)

This 17 metre wooden Canadian fishing vessel sank in the bay, offshore from l'Anse de Newport, in the Gaspé, Quebec, on May 8, 1989. The vessel had approximately 4,500 litres of diesel fuel aboard, some of which escaped from airvents. The CCG arranged for the pollution to be contained and cleaned up. The wreck was abandoned by the owner and, being in only 6 meters of water, was considered a danger to navigation. The wreck was raised on May 31, 1989.

Settlement of the CCG's costs and expenses for the pollution clean-up could not be reached with the owner or his representatives and on April 24, 1992, the Crown filed claim in Federal Court against the vessel, others, and their agents, naming the Administrator a Party by Statute. The amount of the claim was \$136,669.32. In July 1992, counsel for the Crown informed the Administrator that there was a realistic prospect that the Crown would not be able to recover its claim in full.

During the latter part of 1993 the owner declared bankruptcy. One of the issues raised by the claim was that it did not differentiate between the costs of the pollution clean-up and those of removing the wreck.

Various attempts to settle this case have not been successful.

Although the matter is still open to settlement, the Federal Court action continues. Examinations for Discovery have been scheduled for April, 1996.

8.6 CAMARGUE (1989)

This occurrence involved a French tanker of 69,016 GRT which, on June 18, 1989, was involved in an oil spill while taking fuel oil from the Canadian fuel barge, the IRVING SHARK, at the Canaport monobuoy in the Bay of Fundy. Subsequent surveillance of the spill showed it to be much greater than the one the ship initially reported with an estimate by the CCG of 80 tonnes of oil. The CCG responded with clean-up measures. On or about June 19, 1989, the P & I Club acting for the ship issued a Letter of Undertaking for up to \$500,000 to cover the CCG costs involved.

A settlement of final claimed costs could not be agreed and on April 24, 1992, an action was filed by the Crown for \$1,275,048.78 stated to be incurred by the CCG in attempting to contain and recovery the pollution. The Administrator was named a Party by Statute.

On February 24, 1993, the Statement of Claim was amended in the Federal Court of Canada to include other parties including the owner and operator of the oil refueling barge. These third parties filed a Notice of Defense in the Federal Court of Canada on September 22, 1993.

The Administrator is advised that the Crown's claim has now been amended to \$1,169,440.87 and that Examinations for Discovery have been held.

8.7 SIRIUS III (1989)

This fishing vessel was an 11 metre Canadian registered fishing vessel which sank

alongside the quay at Longue Pointe de Mingan sud, Quebec, on August 26, 1989. The CCG responded to the resulting release of oil from the sunken hull and effected clean-up measures. The Crown claimed costs amounting to \$20,010.17 for this work. Settlement could not be agreed and on May 12, 1992, the Crown filed an action in the Federal Court of Canada to recover its costs and expenses.

The Administrator was named a Party by Statute.

On December 22, 1993, the Administrator was informed that the owner had offered \$8,000 in full and final settlement. After consultation with the Administrator, this offer was rejected by the Crown who then offered to settle for \$15,000. In June 1995, the Administrator made an offer of \$12,850.00; this amount being the difference between the SOPF's calculation of the owner's limit of liability and the amount of the Crown's proven costs, plus interest required by law. The offer was made in full and final settlement of the SOPF's liability to the Crown on the understanding that the Crown would recover any balance of its claim from the owner. This offer was accepted and on June 19, 1995, the necessary funds were transferred. On June 27, 1995, Notice of Discontinuance against the Administrator was filed in the Federal Court of Canada.

8.8 EGMONT (1989)

The first information received by the SOPF concerning this incident was a copy of the Crown's Declaration filed in the Federal Court of Canada on August 28, 1992 against the vessel, others, and her owner. The Administrator was named a Party by Statute. It was stated that on or about September 6, 1989, this Canadian fishing vessel of 511 GRT discharged about 13,600 litres of an oily mixture just after berthing in Paspébiac, Quebec, and the Crown was claiming the cost of the resultant pollution clean-up amounting to \$12,776.60. It was agreed that the Administrator need take no further steps in the matter until the Fund's interests required action.

On September 27, 1993, the Administrator

received a letter from the Crown forwarding the Statement of Defense and providing certain information from their records concerning the substance discharged. The Statement of Defense by the vessel's owner had been deposited with the Federal Court of Canada on July 23, 1991, and the essential element of the defense was that the substance discharged by the vessel was not an "oil".

On April 25, 1995, the Administrator received a letter from the Department of Justice (DOJ) requesting the position of the Fund on the Crown's claim, although no formal claim was presented to the Fund. On July 31, 1995, the Administrator wrote to the DOJ pointing out that in view of the shipowner's claim that the substance was not oil, it was incumbent upon the Crown to establish that the substance was in fact oil before the Fund could consider any such claim. On August 17, 1995, the Administrator was informed by the DOJ that the proceedings were to be discontinued, with each party paying their own costs.

8.9 MARIE PAULE (1990)

On December 7, 1992, the Administrator received a copy of a Statement of Claim filed by the Crown in the Federal Court of Canada on December 2, 1992, involving the Canadian fishing vessel *MARIE PAULE*, (134 GRT), which sank at its berth in the Port of Grande Rivière, Quebec, on March 5, 1990, causing pollution. The action was taken against the owner, the ship and others and stated that the CCG had incurred costs of \$25,692.13 in the clean-up. The Administrator was named a Party by Statute. Counsel for the SOPF was appointed to represent the Fund, but it proved impossible to progress the issues and the Administrator warned that the Fund would not be held responsible for the payment of any interest over this inordinate period of time. The Fund calculated the *MARIE PAULE*'s Limitation of Liability figure as \$17,456.00. The SOPF Counsel was instructed on December 22, 1994 to offer the Crown the difference between the vessel's limit of liability and the amount of the Crown's claim, which amounted to \$8,236.13. This offer was accepted by the Crown and the funds transferred on June 5, 1995. Notice of Discontinuation was

filed in the Federal Court of Canada on June 20, 1995. The Administrator has been informed that the balance of the Crown's claim was paid in full during June, 1995, and the action then discontinued.

8.10 RIO ORINOCO (1990)

In previous reports, this occurrence has been outlined fully. This was a Cayman Island flag 5999 GRT tanker, loaded with 8,245 tonnes of asphalt, which went aground off the south west coast of Anticosti Island, Quebec, on October 16, 1990, when en route to Montreal, Quebec. The primary cause of the casualty was the failure of the main engine. The ship could not be immediately refloated, suffered severe hull damage and lost about 185 tonnes of bunker fuel which heavily polluted about 10 kms. of shoreline. The *RIO ORINOCO* subsequently was declared a constructive total loss. In the summer of 1991, her cargo was partially discharged and the vessel refloated.

The CCG, EC and DFO incurred substantial costs and expenses throughout this operation and submitted claims totaling \$12,382,224.00 to the International Oil Pollution Compensation Fund (IOPC Fund) in London, U.K.; these claims were settled for \$11,791,848.00.

The Transportation Safety Board of Canada in its investigation report into the grounding found that the ship had a number of on-going deficiencies in the fuel supply system and machinery, of which the vessel's managers were aware; it could be claimed that such deficiencies rendered the vessel unseaworthy. In considering the claim, with this knowledge of the likely cause of the grounding, the Executive Committee of the IOPC Fund decided at its 40th session that it would not be meaningful to pursue legal action against the shipowner, the company managing the ship, or against individual directors.

Two other issues involving this claim were settled during 1995 at the Executive Committee's 42nd session. The first issue concerned the advisability of pursuing the P & I Club involved. The Committee decided not to

take legal action based on the opinion of Swedish legal counsel. The remaining question was whether the IOPC Fund was "exonerated" from indemnifying the shipowner, and the insurer, under Article 5 of the 1971 Fund Convention (which amount, in this incident, was approximately \$295,654.00). The Executive Committee decided that the casualty to the ship, and thus the resulting pollution, was caused solely by non-compliance with the Safety of Life at Sea (SOLAS) 1974/78 Conventions and, therefore, there was no obligation on the International Fund to indemnify the shipowner, or the P & I Club.

8.11 FORUM GLORY (1991)

The port facility at Port Cartier, Quebec, is owned and operated by Compagnie Minière Québec Cartier (CMQC). The SOPF was advised by counsel for CMQC by fax on March 26, 1993, of an oil spill in the port on March 28, 1991. The FORUM GLORY, a bulk carrier of 34,951 GRT registered in the port of Piraeus, Greece, arrived at Port Cartier on or about March 27, 1991, to load a cargo of iron ore concentrates. During this period of loading it was alleged that the vessel discharged oil into the harbour. The CMQC stated that the oil samples taken by the CCG at the time showed similarities that the origin of the spill was the vessel FORUM GLORY. In turn the FORUM GLORY denied liability of the CMQC's claim for the oil spill clean-up. The CMQC then presented their claim to the Fund for reimbursement, including interest and legal fees. After verifying the facts, on April 23, 1993, the Administrator authorized payment to CMQC of \$44,399.98, obtaining a signed Subrogation Release document, and was provided with evidence in the possession of CMQC on the spill.

On March 3, 1994, counsel for the SOPF filed an action in the Federal Court of Canada against the ship, her owner and others to recover the sum of \$44,399.98, as required by the CSA. On April 18, 1995, SOPF counsel advised that the representatives of the ship had offered to settle for \$39,399.98. The Administrator agreed to discontinue the court action on this basis and such action was terminated by Notice of Discontinuance filed on May 19, 1995. On May 30, 1995 the agreed

amount was credited to the SOPF.

8.12 EASTERN SHELL (1991)

This is a Canadian owned and Canadian flag single hulled tanker of 4,009 GRT owned and operated by Soconav Inc. of Montreal, Quebec. At 0720 local time, May 10, 1991, while approaching Parry Sound, Ontario, in conditions of bright, clear sunlight which contributed to the difficulties of visually sighting the navigational aids, the EASTERN SHELL made bottom contact with Knight Shoal, continued on over the shoal in a holed condition and then anchored just to the east of the shoal. The vessel was carrying approximately 1,360 tonnes of diesel oil and 4,030 tonnes of gasoline loaded at Sarnia, Ontario and destined for Parry Sound. It is stated that some 70 tonnes of gasoline and 52 tonnes of diesel were spilled into the surrounding waters.

The following costs were stated to have been incurred in the pollution containment, clean-up and safe removal of the EASTERN SHELL:

Shell Oil Company	\$310,000.00
Canadian Coast Guard	\$356,143.48
Soconav Inc.	<u>\$326,546.08</u>
TOTAL	\$992,689.56

The owner claimed limitation of liability in the amount of \$728,238.33.

On February 2, 1993, the Administrator received a letter from the legal counsel for the shipowner, which, in essence, made a claim against the Fund to recover all of its costs, over and above its limit of liability.

As the shipowner did not agree to pay the CCG's claim for pollution clean-up and expenses, on January 14, 1994, the Crown filed an action in the Federal Court of Canada against the EASTERN SHELL, her owner and others, seeking recovery of these costs and naming the Administrator as a Party by Statute.

The current situation is that Pleadings have been filed, together with Affidavits of Documents. Various attempts to settle this

case have been, so far, unsuccessful.

8.13 OGDENSBURG (1991)

The Canadian tug MANIC was towing the Canadian deck loading barge OGDENSBURG off the Quebec lower north shore in heavy weather conditions when at 2145 local time September 26, 1991, the towline broke and the barge drifted off. The master of the tug reported the loss immediately by radio to the CCG Vessel Traffic Services (VTS).

The barge was found on September 28, 1991, sunk 17 miles west of St. Augustine, Quebec, in a bay which contained a mussel farm. On October 16, 1991, the Emergencies Branch of CCG was informed of the sinking and the resulting pollution. The barge had been carrying gravel, two payloaders and two trailers. Although it was reported that the fuel tanks of the payloaders had been drained prior to loading, an overflight confirmed oil pollution and, soon afterwards, divers confirmed the payloaders as the source. The insurers for the barge arranged for the recovery of the payloaders on October 27 and 28, respectively, in 1991. At first it was feared that the mussel farm had been contaminated by the oil, but subsequent testing found this not to be the case.

The CCG incurred costs and expenses in this pollution incident to a claimed amount of \$157,916.49. On May 7, 1993, the Crown filed a claim in the Federal Court of Canada against the owner of the OGDENSBURG and others, and the charterer of the OGDENSBURG, naming the Administrator as a Party by Statute. On April 6, 1992, the charterer of the barge had filed for bankruptcy.

The DOJ by letter dated March 26, 1993, submitted the CCG's Summary of Costs to the SOPF. The Administrator was informed that, as settlement by the other parties was unlikely, the Crown was submitting its claim to the SOPF for consideration.

On September 7, 1993, the owner of the barge filed a Statement of Defense of which the main issue was that the barge was under demise charter and that the charterers, there-

fore, had possession and use of the barge at the time in question. In view of this fact, on November 15, 1995, the Administrator agreed to the discontinuance of the Crown's action against the owner of the barge.

Negotiations on this claim continue. The Administrator has serious concerns on a number of issues, principally, an explanation as to why there was a failure to obtain a Letter of Undertaking from the insurers at the time of the incident.

8.14 TRADE GREECE (1991)

On December 22, 1993, the Vancouver Port Corporation filed an action in the Federal Court of Canada claiming that the Cypriot flag TRADE GREECE, a bulk carrier of 30,286 GRT, on or about December 30, 1991, had spilled bunker fuel oil into Vancouver Harbour. The Vancouver Port Corporation had incurred costs claimed to amount to \$62,690.34 in the necessary clean-up. The Administrator was named a Party by Statute but, it was agreed that the SOPF need take no active part in the action until advised by counsel for the Vancouver Port Corporation. On May 3, 1995, the Administrator was asked to consent to the dismissal of the action in the Federal Court of Canada. On July 17, 1995, the formal Order for Dismissal was issued.

8.15 FEDERAL OTTAWA (1992)

This case was brought to the attention of the Administrator when served a copy of the Federal Court Action commenced by the Vancouver Port Corporation on January 24, 1993, naming the Administrator as a Party by Statute. The Vancouver Port Corporation had brought an action against the ship, her owner and others, alleging that the ship, a bulk carrier of 22,734 GRT and registered in Luxembourg, had allowed several quantities of bunker fuel oil to escape on or about January 22 and 23 1992, while she was either at anchorage No. C within Vancouver Harbour.

In the action, it was stated that the costs and expenses of the clean-up incurred by the Vancouver Port Corporation were approximately \$50,000.00. At that time it was agreed that

the Administrator need take no further action in the matter until advised by the Vancouver Port Corporation's counsel to the contrary. On November 3, 1994, counsel for the Vancouver Port Corporation informed the Administrator that an out of court settlement with the shipowner had been reached, except for clean-up costs of approximately \$5,000.00 incurred around an area known as Siwash Rock, which the Vancouver Port Corporation counsel stated it was not possible to ascertain that the oil was from the FEDERAL OTTAWA. It subsequently transpired that the Vancouver Port Corporation settled the matter with the ship's interests for \$21,000.00. The Administrator was requested to sign the Consent to Dismissal form terminating the court action, which was done on November 4, 1994, on the express condition that as agreed by the port's counsel, the Vancouver Port Corporation would accept the risks of such withdrawal of court action. In turn the Administrator received a copy of the duly executed Dismissal Order, dated December 6, 1994.

On December 20, 1994, the Administrator received a claim on behalf of the Vancouver Port Corporation for \$4,358.80 purporting to be that portion of the clean-up costs around the Siwash Rock area which was now classified as a mystery spill. The Administrator carried out considerable research into the spill and agreed that it was ship related but, had difficulty accepting that it was not from the FEDERAL OTTAWA. On December 19, 1995, having effected a compromise agreement, the Administrator authorized the payment of \$2,911.50, this amount being half of the claimed sum, plus interest of \$732.50, to the Vancouver Port Corporation in full and final settlement of the matter.

8.16 IRENES SAPPHIRE (1992)

This vessel was a Greek registered bulk carrier and it was alleged that she was involved in a bunker oil spill while moored alongside in the Trois Rivières, Quebec, on or about September 22, 1992. It was stated that the CCG incurred costs and expenses to the amount of \$16,813.40 cleaning up the spill. Settlement could not be agreed with the owner and on December 7, 1993, the Crown filed an

action in the Federal Court of Canada to recover its monies. It was agreed that at that time, the Administrator need take no further action to protect the Fund's interests until so advised. On February 9, 1995, the Administrator received a letter from the Department of Justice (DOJ) advising the SOPF that the Crown had lost its separate prosecution case against the ship instituted under the Oil Pollution Regulations. This letter then went on to request that the Administrator consider that the Crown's claim was now one against the Fund. After carrying out some research into the matter, on February 21, 1995, the Administrator replied to the DOJ that as the level of proof for a civil case was less than that required for a criminal hearing, there was, in the Administrator's opinion, still sufficient evidence for the Crown's case against the shipowner to proceed. However, the Administrator agreed to examine any claim from the Crown if the situation changed. Further correspondence has been received from the Crown on the matter, but at the end of this fiscal year the SOPF was informed that the Crown was awaiting the conclusions of another expert on the results of the analysis of the oil samples.

8.17 AMERICAN FALCON (1992)

By a CCG Status Report the Administrator was advised that, on October 25, 1992, this 15,636 GRT American registered cargo vessel had struck a bollard on the quay while coming alongside in Argentia, Newfoundland, and holed a shipside fuel tank spilling approximately 3 tonnes of bunker oil into the harbour. The report went on to state that the owner's P & I Club had provided a Letter of Undertaking and that, as a further precaution, a bond covering the costs of the clean-up was being obtained. A subsequent Status Report stated that a \$500,000.00 Letter of Undertaking had been received. The CCG's claim for costs and expenses in this spill amounted to \$288,151.59 and it is the understanding of the Administrator that a payment of \$256,424.73 was received by the Crown in August, 1993. No claim was made on the Fund, and on October 26, 1994, any potential claim became time-barred.

8.18 SIR ROBERT BOND (1992)

This incident was brought to the attention of the SOPF, but no claim has been submitted against the Fund. It is understood that it was alleged that the vessel was involved in an oil spill in St. John's Harbour, Newfoundland, on October 24, 1992 but this is denied by the vessel. The vessel was charged with causing oil pollution, but on May 3, 1994, the charge was dismissed. The CCG incurred costs and expenses to a claimed amount of \$7,242.00 in the clean-up. Any potential claim in this incident against the Fund became time-barred on October 25, 1994.

8.19 TRAILER PRINCESS (1993)

On February 3, 1994, counsel acting for the Fund in Vancouver, British Columbia received a letter from the local office of the DOJ advising that this barge was involved in an oil spill in January, 1993, with a clean-up cost in the order of \$23,000.00, and that a claim against the barge owner and the SOPF may be made. At that time it was ascertained that the barge owner was in bankruptcy.

It subsequently transpired that on January 31, 1993, near the Patullo Bridge, on the Fraser River, British Columbia, an oil spill was reported and the origin traced to this barge, which was alongside a wharf for repairs. Oil samples for analysis were obtained from the barge and from the river. A prosecution was launched to which the owner pleaded guilty and was fined \$7,500.00. Notwithstanding the company's bankruptcy, it agreed to pay \$5,000.00 in full and final settlement of the pollution clean-up costs and expenses, which final claim amounted to \$23,530.27. A copy of a letter dated May 30, 1994, from the local office of the DOJ to the local office of EC, was made available to the Administrator which noted that the Crown intended to close its file on the incident. No claim was made against the Fund and any potential claim became time-barred on February 1, 1995.

8.20 VALERY IV (1993)

This vessel, a Canadian registered yacht of 65.7 GRT with a concrete hull, sank unat-

tended alongside its berth at Sabrevois, Quebec, on the Richelieu River on June 10, 1993. It proved impossible to contact the owner at that time and the CCG responded to contain and clean-up the pollution, which mainly consisted of oil originating from the engine and diesel fuel system. It proved necessary to refloat the vessel and in this operation it was discovered that two drain plugs were missing from the main engine cooling system, which had allowed the vessel to flood. The owner was contacted on June 13, 1993, who stated that there was no insurance on the vessel nor had he any money to pay the clean-up costs. By letter dated June 15, 1993, the owner stated that he would endeavour to sell the refloated vessel and that the proceeds would go into trust for the Crown, to offset the costs involved. The owner subsequently stated that he was able to sell the vessel for \$2,000.00

The Administrator received a letter on June 23, 1993, from the DOJ, in effect, making a claim on the Fund for the balance of any monies they were unable to recover. On March 31, 1995, the Administrator received the Crown's Summary of Costs, which amounted to \$14,641.68.

Negotiations are in progress at the end of the current fiscal year and it is expected that a settlement of the claim would be reached shortly.

8.21 Mystery Oil Spill, Rivière Vachon, Québec (1993)

Environment Quebec reported on July 23, 1993, to Environment Canada that a spill of light oil from an unknown source had been observed that day in the area of Rivière Vachon, near Port Cartier, Quebec. The two agencies and the CCG responded. On examination it was initially found to be several small patches of oil, but a larger patch was then found further offshore. Samples were taken for analysis and a contractor employed to clean-up the spill, starting with the river banks. The clean-up was completed on July 26, 1993, and the CCG incurred costs and expenses to a stated amount of \$13,184.64. It proved impossible to identify the source of the oil.

Although it was understood that a claim would be presented to the SOPF, to date no claim has been received.

8.22 *Wooden Boat, La Salle, Ontario (1993)*

Information came to the attention of the SOPF that this small wooden pleasure boat sank at her berth in a marina at La Salle, Ontario, on the Detroit River on October 5, 1993. It was reported that approximately 900 litres of gasoline were spilled into the river from the sunken hull and that the CCG responded with clean-up action. The costs and expenses in the clean-up were stated to be \$7,992.79. It appears that the CCG has been unable to bill the owner for the charges because actual ownership of the craft is disputed. At this date, no claim has been submitted to the Fund for consideration and any potential claim would have been time barred on October 6, 1995.

8.23 *CARAPEC No. 1 (1993)*

The CARAPEC No.1 is a Canadian registered fishing vessel of steel construction and of 418 GRT. The vessel was tied up to the New Brunswick Department of Fisheries wharf in Caraquet, New Brunswick, in an apparently derelict condition since May 1993. The situation was brought to the attention of the CCG because it was feared that the vessel would sink and cause pollution.

Following the failure to respond to the danger by the registered owner in Calgary, Alberta, on October 21, 1993 the CCG took measures to have the vessel dewatered, the oil removed, the hull leakage stopped and the vessel to be properly moored.

The Calgary based registered owner claimed to be only acting as agent and the vessel in fact belonged to principals in Hong Kong. It was alleged that the Hong Kong company then refused to accept responsibility for the vessel. The Administrator was informed that the CCG costs and expenses in making the vessel safe are stated to amount to \$25,326.44. Any potential claim in this case against the Fund would have been time barred on, or about, October 22, 1995.

8.24 *KETA V and Barge (1993)*

On November 19, 1993, a spill of diesel fuel from an unidentified source was reported to have been found in Wedgeport Harbour, Nova Scotia. The CCG responded and organized a clean-up; it was estimated that about 45 litres of oil had been spilled. Later the same day the crew of the Canadian 236 GRT tug, KETA V admitted that the vessel had been involved in a minor diesel oil spill overnight in the harbour on November 18/19, 1993. On November 20, 1993, it was reported to the CCG that there was a beached barge leaking oil in the harbour. The CCG confirmed that a beached dredging barge was leaking diesel oil through damaged bottom plating. It transpired that both craft belonged to the same owner who had obtained a dredging contract in Wedgeport harbour. Wedgeport is a major home port for lobster fishermen and many hold their catches in crates in the harbour until they are sold. The fishermen were, therefore, very concerned about potential contamination with the lobster season due to open on November 29, 1993. A ban was imposed by the DFO on the use of Wedgeport for the lobster fishery. The vessels' owner assisted the CCG in the clean-up response, which response was declared completed on November 26, 1993, with the remaining booms protecting the beaches being removed on November 28, 1993, and no further work, other than monitoring, undertaken thereafter. The DFO was able to lift the ban on the use of the harbour by the lobster fishery on the opening date.

The Administrator is informed that the total costs and expenses incurred by the CCG in the incident were \$15,486.91, which was paid by the vessel's owner in full during September 1995. No intervention by the SOPF was required.

8.25 *Mystery Spill, Sorel Harbour, Quebec (1993)*

On December 1, 1993, the CCG was informed that late the previous evening a dredge working in Bassin Lanctôt, Sorel Harbour, Quebec, had pierced an oil drum on the harbour seabed and released a quantity of "heavy oil". There was light ice over much of

the basin at that time. The CCG organized a clean-up response and incurred costs and expenses to a stated \$46,813.79, which amount was presented by letter dated February 14, 1994, to the SOPF by the Crown as a claim against the Fund.

The authority of the Administrator to pay claims is restricted to paying oil pollution damage and clean-up defined as *loss or damage outside the ship caused by contamination resulting from the discharge of oil from a ship*. In this case the cause of the oil pollution damage was known, i.e. caused by a barrel on the seabed. On February 10, 1995, the Administrator wrote to the DOJ stating the position of the Fund, that this claim was a matter of principle and for that reason, the claim had been rejected. Further negotiations followed and on September 7, 1995, the Administrator again wrote to the DOJ requesting certain technical information in order to review the position of the Fund. A reply to this letter had not been received at the conclusion of the fiscal year under review.

8.26 ISTRIAN EXPRESS (1993)

This vessel, a 11,849 GRT multi-purpose cargo ship flying the Vanuatu flag, was berthed at section 102, Quebec City, Quebec, on December 3, 1993, when an oil spill occurred. The CCG responded and arranged the clean-up operations, which responsibility was then taken over by the P & I Club in which the ship was entered. It's representative arranged for a security of \$50,000 and a bailbond of \$5,000 to be deposited. The spill clean-up was completed on December 5, 1993, for which the CCG's portion of the costs and expenses amounted to \$5,359.60.

The Administrator has been informed that settlement in full was received by the Crown in October, 1995 and no recourse to the SOPF proved necessary.

8.27 GENERAL TIRONA (1993)

While berthing at a terminal in North Vancouver, British Columbia on December 13, 1993, this Philippine registered bulk carrier struck the dock and holed a shipside oil fuel

tank, releasing an estimated 43 tonnes of oil into the water. A CCG Emergency Branch Status Report was the first information received by the Administrator on this oil spill. The CCG organized a clean-up response. The regional office of the Department of Justice was stated to be negotiating a bond for \$170,000.00 to cover potential fines, clean-up and environmental damage. On February 3, 1994, the Administrator received a letter from the Burrard Yacht Club in North Vancouver, advising that approximately 22 yachts had been contaminated with diesel oil from the GENERAL TIRONA and seeking compensation. The Administrator instructed his Vancouver counsel to handle the matter. On July 14, 1995, the Administrator received information from the SOPF Vancouver counsel that the claims had been sent to the ship's P & I Club legal representative and that at that stage no further action was required by the SOPF. The Canadian Coast Guard has stated that it incurred costs and expenses to the amount of \$79,523.99 in the clean-up. At the close of this fiscal year no claim in respect of this incident had been presented to the SOPF.

8.28 TITO TAPIAS (1994)

The TITO TAPIAS was a Panamanian registered tanker of 77,291 GRT and ultimately owned by a Spanish company. This occurrence commenced on January 11, 1994. The CCG Fundy VTS Centre was informed by this tanker that she had been involved in a spill of one to two barrels of bunker oil while refueling from the Canadian barge SHARK VII. The TITO TAPIAS was at anchor off Red Head, Saint John, New Brunswick at the time of the incident. The tanker's P & I Club arranged for a Letter of Undertaking to be issued for the amount of up to \$75,000.00 to avoid detention. A helicopter overflight on January 11, 1994, raised the estimate of the amount of oil spilled to a minimum of 10 barrels and noted that 200 m of shoreline had traces of oil and that further oil could be expected to come ashore in the next few days. The clean-up of the oil was carried out under the direction of the CCG. On February 1, 1994, another helicopter overflight confirmed reports of Bunker C type oil being washed ashore along the Digby shore from Delap Cove to Hampton, Nova Scotia, a dis-

tance of some 32 kms. By now the CCG was estimating the amount spilled as 10 to 20 tonnes. Clean-up operations were to commence in the area on February 3, 1994, but had to be delayed because of snow and wind; the clean-up operations resumed on February 14, 1994. Samples of the oil confirmed that this further oiling originated from the TITO TAPIAS. On February 28, 1994, new reports of oil pollution of the shoreline between Hillsburn and Hampton, Nova Scotia, were received, in this instance it could not be shown at the time that the oil was from the TITO TAPIAS. A meeting was held between the CCG, representatives of the tanker owners and others, and it was reaffirmed that the tankers accepted the financial responsibility for the clean-up of oil of those areas shown to be from the vessel. On May 31, 1994, further shoreline oiling was found at Hillsburn, Nova Scotia, and confirmed to have originated from the TITO TAPIAS.

On July 13, 1994, during the prosecution case against the tanker one CCG official testified that at least 17 tonnes had been spilled from the vessel and another official testified that it could have been closer to 35 tonnes spilled. The court subsequently found the tanker guilty of causing oil pollution and the vessel was fined \$75,000. The CCG issued its final Status Report on this spill on October 3, 1994, and stated that no further clean-up had been found necessary since July 15, 1994; up to that date 25,043 bags of oiled debris and 237 oiled birds had been recovered. The incident was considered closed by the CCG on September 30, 1994. On February 26, 1996 the Crown settled its claim against the vessel for \$165,000. Additional funds had been paid by the vessel to the contractor under their direct employ. Throughout the incident the interest of the SOPF were represented but, as it transpired, settlement was achieved by the Crown without recourse to the Fund.

8.29 POLYDEFKIS (1994)

This ship is a Greek registered bulk carrier. On January 12, 1994, the Harbour Master of the Port of Montreal, Quebec, reported that he suspected this ship was discharging oil. The pollution had contaminated a section of ice. EC personnel had been called to the scene to

take samples and the CCG conducted an investigation into the incident. The master denied knowledge of the release of any pollutant. The clean-up of the minimal amount of oil involved was completed by the afternoon of January 13, 1994. The shipowner, at the CCG instigation, posted a bond of \$10,000.

The Administrator has been informed that the total CCG costs and expenses for this incident amounted to \$4,377.32 and that the file had been forwarded to the DOJ for collection. As of March 31, 1996, no claim had been received by the Fund.

8.30 CALYPSO IV (1994)

The CALYPSO IV is a 3,010 GRT bulk carrier, registered in Panama, with her owner based in Tortola, British Virgin Islands. On February 3, 1994, the CCG issued a Status Report concerning this spill, which had taken place on February 2, 1994, alongside a private shipyard dock at Les Méchins, Quebec. A clean-up was commenced by the shipyard using their own contractors, monitored by the CCG and EC officials. It was stated that some 110 litres of oil were recovered, together with a barrel of an oily mixture and several barrels of contaminated ice recovered from the sea ice attached to the port side of the vessel.

During the clean-up it was necessary for icebreakers to work around the CALYPSO IV to enable the nearby dry-dock to be put into use. In order to avoid the vessel being detained, the owner arranged for a \$70,000 bailbond to be posted.

On June 16, 1995, the Administrator received a claim for \$8,181.49 from the Crown covering the CCG's costs and expenses in the clean-up. At the same time a copy of the Crown's claim was presented to the shipowner.

The Administrator is unaware of the status of any claim by the shipyard, or their contractors, who were involved in the clean-up.

8.31 PRINCESS No. 1 (1994)

On February 9, 1994, a Canadian registered tug of 87 GRT, became beset in ice in

Lake Erie when en route from Erieau, Ontario, to the Thames River, Ontario. Late on February 10, 1994, the vessel listed heavily in the ice, and at one point the list was stated as being 65°. The United States Coast Guard icebreaker NEAH BAY arrived on scene, broke the ice to relieve the pressure, and stood by the tug. The master of the tug, who had been injured in a previous accident, was taken off by a USCG helicopter because of the danger to the tug and crew. The CCG ordered the vessel into a port of refuge. The following day a CCG icebreaker, SAMUEL RISLEY relieved the NEAH BAY and escorted the tug to the CCG base at Amherstberg, Ontario, where it docked at approximately 1630, February 11, 1994.

The vessel was met on arrival by a CCG Ship Safety Surveyor. At 1730 two of the crew left the tug to go home and the remaining third crew member also went ashore. On the third crew member's return at 2050 he found the tug sinking and requested assistance. The firebrigade was called but arrived too late for their pumps to be effective and it was noted that the tug had sunk at the berth by 2140. A considerable amount of oil escaped from the sunken hull and the CCG mounted a pollution clean-up. Initially, the crew of the SAMUEL RISLEY was used but the CCG icebreaker GRIFFON and her crew then relieved them. The CCG personnel worked until February 16, 1994, containing and cleaning up the oil. On February 15, 1994, the owner raised the tug which was placed ashore for safety and inspection. It was found that the hull had developed several small leaks which accounted for the sinking.

On December 30, 1994, the Administrator received the CCG claim in respect to this incident amounted to \$250,742.38. The GRIFFON accounted for \$195,947. There have a number of meetings with counsel for the Crown at which further information was requested. At the year's end the Administrator was informed that additional technical material requested surrounding the incident was being submitted to the SOPF.

8.32 LEADER (1994)

While alongside a grain loading berth in Vancouver Harbour, B.C. this Greek registered

cargo ship reported a spill of a few litres of fuel oil on April 8, 1994. About 30 minutes later, the harbour master's launch arrived on the scene and reported a significant oil spill alongside the ship. It was subsequently determined that there had been a spill aboard the ship during a bunker oil transfer. The Vancouver Harbour Master's personnel and the CCG mounted a clean-up operation, but in spite of these efforts about 600 metres of shoreline became oiled.

In order to prevent the detention of the vessel, the P & I Club arranged for a Letter of Undertaking to be issued to a maximum amount of \$180,000 to cover the costs and expenses in the clean-up and a further Letter of Undertaking to a maximum of \$10,000 to cover any potential fine. The clean-up operation was completed on April 15, 1994, and the CCG stated that they incurred costs and expenses amounting to \$103,792.74.

To date, there has been no further information available to the SOPF on developments.

8.33 NORDIC APOLLO (1994)

On May 30, 1994, a member of the public in Halifax, Nova Scotia, informed the local EC office that there was a large spill of an unknown substance around the tanker NORDIC APOLLO, which was berthed in the port. The CCG was informed and sent a surveyor to the ship who confirmed the spill. Shortly afterwards, the operator of the vessel reported a hydraulic oil leak from the forward machinery space, and that the spill was less than 10 litres. It was subsequently found that the spill in the water surrounding the ship was Scotian crude oil, the same oil as that being carried as cargo by the laden tanker. A clean-up was mounted.

The Administrator has been informed that the vessel was subsequently charged with causing oil pollution, to which the shipowner pleaded guilty and was fined \$20,000.

No claim has been presented to the SOPF in connection with this incident and it is the understanding of the Administrator that the matter has been settled.

8.34 ZIM SAVANNAH (1994)

On May 30, 1994, the ZIM SAVANNAH was tied up to a berth in Halifax, Nova Scotia, when Bunker C fuel oil was discovered in the water around the vessel. The ZIM SAVANNAH is a 36,263 GRT container ship registered in Haifa, Israel. The owners engaged a contractor to clean-up the oil and arrangements were made by the owner for a monetary security to be posted as required by the CCG. Later that day the ZIM SAVANNAH left her berth, bound for New York. While still in Halifax Harbour, the pilot reported to VTS that the master had noticed an oil slick streaming astern from the vessel and that they would be returning to a berth in Halifax to further examine the situation. The vessel berthed and again measures were put into place to contain and clean-up the oil.

On July 29, 1994, the Administrator received a claim on behalf of the shipowner, amounting to \$99,579.58 in respect of the measures taken to prevent or minimize the oil pollution. Pursuant to the powers of the Administrator under the CSA, an investigation was commenced. It transpired that during the diver's inspection of the hull on May 30, 1994, a video was taken which showed oil seeping through one of the ship's underwater discharges. At the time oil samples had been taken from the water and the ship but, the sources of the samples from the ship were not comprehensive. As a result, analysis of the samples from the water and those taken from the ship did not prove a match. The Administrator has been informed that the CCG also incurred costs and expenses in the incident amounting to \$4,141.12.

The SOPF investigation into this incident continues.

8.35 PIERRE CHAUVIN (1994)

A CCG vessel reported an oil spill found in Tadoussac Bay, on the north shore of the entrance to the Saguenay River, Quebec, on August 8, 1994. At first it was not clear as to the source of the spill; a person then anonymously, reported seeing a local cruise vessel pumping oil overboard. It was determined that

the PIERRE CHAUVIN (70 GRT), which at the time was unmanned and tied up to the quay, was the vessel involved. The vessel had an automatic oil transfer system which malfunctioned and pumped a considerable quantity of oil overboard. A local marina, its facilities and some 37 boats required cleaning. The CCG organized the clean-up of the spill, which was stated to have costs \$22,341.77. On October 13, 1995, the vessel was found guilty of the charge of causing oil pollution and was fined \$4,000.

The Administrator has been informed that the CCG claim for recovery of the clean-up costs was forwarded to the DOJ in December, 1995, for collection.

8.36 MISS STEPHANIE II (1994)

This 14 GRT Canadian fishing vessel (locally termed a *fish tug*) sank on August 11, 1994, while fishing off Kettle Point, Ontario, in Lake Huron, with the loss of two of the five people on board. It was reported that the vessel took on water and a hold bilge pump failed to operate as intended. The owner stated that there were about 900 litres of diesel oil and 23 litres of lubricating oil aboard when she sank. Oil continued to leak out of the vessel until August 13, 1994, when divers employed by the owner succeeded in closing all the valves concerned, thereby reducing the pollution. The owners raised the vessel on August 17, 1994.

No claim has been received by the SOPF.

8.37 STEVE C (1994)

The STEVE C, a Canadian 44 GRT wooden fishing vessel, on August 15, 1994 went aground on the south coast of Anticosti Island, Quebec, some 50 metres from the shore. The four crew members were rescued but the vessel was eventually declared a constructive total loss. The vessel had approximately 5,000 litres of diesel fuel on board which was successfully transferred to another fishing vessel by August 20, 1994. The owner's response was monitored by the CCG for which it claimed costs and expenses of \$27,677.88. The Administrator has been informed that the vessel had pollution insurance cover. To date, no claim has been received by the SOPF.

8.38 **MARWOOD (1994)**

The MARWOOD is a 237 GRT Canadian registered wooden hulled stern trawler. On August 14, 1994, the vessel sank alongside the government dock at Ucluelet, British Columbia, with one crew member losing his life. The vessel was stated to have contained approximately 33 tonnes of diesel oil, 2.5 tonnes of lubricating oil and a quantity of hydraulic oil. The CCG organized an immediate response to contain and clean-up the escaped oil, which operation continued until August 18, 1994.

The vessel's owner arranged for the MARWOOD to be raised and was successfully salvaged on August 17, 1994. Following negotiations, it was agreed that, jointly, the Crown and the SOPF required a Letter of Undertaking from the vessel or the insurers for a sum up to \$450,000 to cover the potential Crown costs involved. The DOJ sent a letter to the legal representatives of the shipowner on August 25, 1994, requesting such a sum on behalf of both the Crown and the SOPF. It transpired that the salvaged vessel had little value but, the SOPF was advised, that her fishing licence was worth in the order of \$300,000. Negotiations continued, but the required guarantee of funds could not be obtained and on February 21, 1995, the Crown filed an action in the Federal Court of Canada for the arrest of the vessel. Appropriate steps were taken to ensure that the MARWOOD's fishing licence was not transferred or otherwise sold. As the shipowner was anxious to make use of the licence for another vessel, the P & I Club, on August 4, 1995, provided a Letter of Undertaking to the amount of \$250,000 in respect of any claims arising from the alleged oil pollution. By that time the Crown had revised the CCG's estimate of costs and expenses involved to \$165,000. Following receipt of the Letter of Undertaking, the action in the Federal Court of Canada for the arrest of the MARWOOD was discontinued on August 4, 1995.

On December 4, 1995, the Administrator received the Crown's claim in respect of this incident amounting to \$178,951.65, including GST. A copy of the claim had also been sent to the shipowner and its insurer for settlement.

At the end of the fiscal year, the claim was still under consideration.

8.39 **POINTE SEPT-ILES (1994)**

The Administrator received advice that this Canadian 424 GRT tug was involved in a case of oil pollution on August 24, 1994, which required the response of the CCG. It transpired that the tug had discharged approximately 100 litres of lubricating oil within the harbour of Sept-Iles, Quebec. The tug owner authorized its local agent to accept reasonable costs in connection with the clean-up. The CCG incurred costs and expenses to a claimed amount of \$2,984.66. As of March 31, 1996, no claim had been submitted to the SOPF.

8.40 **STELLA (1994)**

This Greek registered cargo ship was alongside Duncan Quay at Baie des Ha! Ha!, Saguenay River, Quebec, a private wharf owned by Société d'électrolyse et de chimie Alcan Ltée (Alcan Ltd.,). On December 3, 1994, it was noted that there was oil on the water around the ship. Employees for the Alcan company investigated the matter and came to the conclusion that the STELLA was the originator of the spill. Contractors were called in to clean up the spill, which proved difficult because of the ice. Following negotiations, the P & I Club issued a Letter of Undertaking to the amount of \$25,000. It was subsequently stated that it proved impossible to prove that the spill came from the STELLA because it was not possible to obtain sufficient oil as a sample from the water for analysis because of the ice. On this basis the CCG withdrew the requirement for a Letter of Undertaking and terminated any action for an intended prosecution. The shipowner refused to pay the Alcan Ltd costs and expenses in the clean-up and on April 5, 1995, the Administrator received a claim from Alcan amounting to \$6,579.96. Upon investigating the circumstances, of the claim the Administrator found costs and expenses incurred to be reasonable. The necessary subrogation was obtained from Alcan Ltd., and on November 16, 1995, the Administrator paid the claim in the amount of \$6,837.47, including \$257.51 interest payable pursuant to subsection 723(1) of the CSA.

After careful consideration of the risks and potential costs involved in recourse action, the Administrator decided not to proceed further.

8.41 WORKBOAT No. 5 (1994)

While an old pier was being demolished in Sydney Harbour, Nova Scotia, WORKBOAT No. 5, secured to the pier, sank on December 4, 1994, and released a sheen of diesel oil. The pollution was so minimal that a clean-up response was considered not possible, nor warranted, and the sheen dispersed naturally.

A local crab fisherman telephoned the office of the SOPF on December 4, 1994, and expressed concern that the spilled oil had contaminated some of his crab catch held in crates in the harbour, which catch he would be unable to sell. Up to 12,000 crabs were held in these crates. On December 5, 1994, samples of the crab were subjected to sensory and organoleptical testing by local DFO inspectors and no evidence of hydrocarbon contamination could be found.

Following further discussion with the fisherman concerned, on March 30, 1995, the SOPF provided the fisherman with documents to assist in making a claim. To date no claim has been received.

8.42 NAHMIT (1994)

This 172 GRT Canadian registered wooden fishing vessel was laid-up in Gunderson Slough on the Fraser River, near Delta, British Columbia, when overnight, on December 28, 1994, the vessel sank. The hull released a quantity of diesel oil, estimated at 900 litres. EC and DFO responded to the spill and monitored the clean-up operation. Fortunately, no significant amount of oil escaped the slough to the river.

On December 28, 1995, counsel for the clean-up contractors, employed by the vessel's owner, filed a claim against the SOPF for their costs and expenses. It was stated that the contractors charges for this work amounted to \$78,272.39 and, although their invoice had been submitted to the shipowner promptly, it had not been paid. On further investigation, it

was explained that the owner had, in fact, deposited money in trust to meet the claim some time previously. Release of the money has been delayed because of a dispute with the vessel's insurers, which was expected to be resolved shortly.

At the end of this fiscal year, the Administrator had not been informed of any settlement.

8.43 Mystery Oil Spill, Baie des Ha! Ha!, Québec (1995)

A claim was received from Société d'électrolyse et de chimie Alcan Ltée (Alcan Ltd.,) on May 31, 1995 in the amount of \$3,191.81 in respect of a clean-up of oil pollution which had taken place at their own docks, Duncan Quay, Baie des Ha! Ha!, Saguenay River, Quebec, on April 17 and 18, 1995. It was stated that two Canadian vessels were alongside at the time, the NORTHERN PROGRESS and the CANADIAN PROVIDER. In view of the minor nature of the spill, estimated to be 2 to 3 litres, the CCG stated they were unable to obtain sufficient oil from the water to undertake analysis of samples. It, therefore proved impossible to conclusively show which of the two vessel caused the spill.

In the course of investigating the circumstances of the spill, the Administrator sent subrogation documents to Alcan Ltd., for signature when, on March 19, 1996, a letter was received from the company stating that it was withdrawing its claim against the Fund. The Administrator ceased his investigation, and the file has been closed.

8.44 Mystery Oil Spill, New Haven, Nova Scotia, (1995)

The CCG VTS Centre in Halifax, Nova Scotia, on July 13, 1995, received an anonymous call stating that a fishing vessel (the caller refused to divulge the vessel's name) had dumped about 700 litres of diesel fuel at sea about 150 metres off the shore at New Haven, Nova Scotia during the evening two days previously (July 11, 1995) and that there would be a risk to the lobster held in floating crates. The CCG then carried out a helicopter

overflight of the area, but no evidence of oil pollution could be found. On July 31, 1995, the Administrator received a letter from a fishery cooperative stating that on July 13, 1995, they had to stop their New Haven plant production line because some of the lobster being processed was found to be contaminated with diesel fuel. The weight of lobster involved was claimed to be 571.53 kgs. The letter from the Cooperative then went on to make a claim of \$6,856 being the total loss for that day's production. It was ascertained that on July 18, 1995, the DFO inspectors had confirmed the contamination and ordered the lobster destroyed.

It appears that part of the 571.53 kgs of lobster which was claimed to be contaminated had been sold to another processor. However, this part of the batch was also found to be contaminated in the production line of the other processor and was also ordered destroyed.

The original claim by the Cooperative appeared to be invalid because all of the 571.53 kgs of lobster had not been in their possession as claimed. On December 8, 1995, the SOPF Technical Director wrote to the Cooperative explaining that before the claim could be settled, the SOPF required a properly executed legal release from both the companies agreeing to a settlement before any claim could be paid. At the end of the fiscal year, the SOPF was awaiting the Cooperative's reply.

8.45 *Mystery Oil Spill, Sainte Félicité, Quebec (1995)*

On July 27, 1995, the Quebec Ministry of the Environment and Wildlife was advised that there was an oil slick sighted along the south shore of the River St. Lawrence, between Sainte Félicité and Pointé à la Croix, a distance of some 20 km. After this information was passed to the CCG who immediately launched an investigation into the ships which had recently transited the area. At the same time the CCG commenced organizing a clean-up operation. Subsequent analysis of samples of the pollution taken from the beaches showed the oil to be Bunker C oil, but that it had been weathered for about two weeks before coming ashore. The CCG concluded

that the task of attempting to identify which of the many ships could have caused the pollution, having passed inbound or outbound over an indefinite time-frame some two weeks previously to the initial report, would not be productive. The spill was therefore classified as a mystery spill. The total amount of oil which had come ashore was estimated at 23 tonnes.

The clean-up was completed on August 3, 1995, and at that time the Administrator was informed that the costs exceeded \$80,000. To date, no claim has been submitted to the SOPF.

8.46 *CHANTY (1995)*

It was reported that this 10 metre United States registered pleasure craft sank on August 11, 1995, in a marina near Port Lambton, Ontario and released gasoline and lubricating oil. The owner lived in Marine City, Michigan. The local fire brigade responded to the sunken vessel and requested the CCG for additional help in containing the pollution and clean-up. An estimate of the resulting oil sheen put the amount spilled as 270 litres of gasoline and 45 litres of lubricating oil. On August 12, 1995, the CHANTY was refloated and placed ashore. The CCG completed their clean-up operations the same day.

On August 14, 1995, the Administrator was informed that the CCG intended to make a claim against the SOPF to recover their costs. On August 15, 1995, the Administrator wrote to both the owner of the boat and the marina informing them of the Fund's responsibilities under the CSA. As of March 31, 1996, the Administrator has not been informed of any further developments.

8.47 *GRETE STAR (1995)*

The GRETE STAR is a 11,318 GRT Panamanian registered container ship. At 1041, local on August 16, 1995, it was reported that there was an oil spill at sections 14 to 17 at the Port of Trois-Rivières, Quebec. At the time, the GRETE STAR was berthed alongside section 16. Another vessel was berthed at an adjacent section. The CCG responded and

organized containment and clean-up operations which were completed on August 17, 1995.

The CCG took oil samples from both vessels and from the oil spill on the water for analysis. The P & I Club for the vessel arranged to provide two Letters of Undertaking, one for up to \$20,000 to cover any potential fine and the other for up to \$10,000 to cover the clean-up costs and expenses. The Administrator is awaiting further developments.

8.48 SIMCOE ISLANDER (1995)

At 1050 local, on September 13, 1995, this small cable ferry capsized. The vessel operates between Simcoe Island and Wolfe Island, Ontario in the Thousand Island area of the River St. Lawrence. Two people on board at the time were rescued; one was the ferry operator and the other was a gravel truck driver, the truck being on the ferry. The ferry had on board approximately 200 litres of diesel fuel and 130 litres of hydraulic oil. The gravel truck contained an undetermined quantity of diesel fuel and lubricants. The CCG responded and organized the pollution containment and clean-up. The ferry was salvaged on September 14, 1995, and the truck retrieved on September 16, 1995, thus eliminating the sources of any further pollution.

On September 27, 1995, the Administrator received a letter from the CCG advising that it intended to submit their costs and expenses in this incident to the SOPF. On November 20, 1995 the SOPF Director of Technical Services wrote to the owners of the ferry, the Township of Wolfe Island, advising them that, in accordance with the CSA, the Administrator had a duty to recover such amounts from the shipowner. The Township provided the SOPF with details of their insurance coverage in this respect.

The Fund awaits further developments.

8.49 CHILOLI (1995)

On the morning of September 13, 1995, a ship off the coast of Cape Breton, Nova Scotia reported sighting a life raft. The Canadian

SAR organization treated the report as a distress situation and commenced a search for survivors and any evidence of a vessel in difficulty. The life raft, recovered the same day by a CCG vessel, was found to contain drugs. Later that day, a second life raft was spotted at sea by a Department of National Defence marine reconnaissance aircraft and, when recovered was also found to contain drugs. The search was widened and on September 15, 1995, an offshore supply type vessel was found aground and abandoned in Capelin Cove; a remote area on the south coast of Cape Breton Island, Nova Scotia. The name CHILOLI was painted and had the Port of Registry as Panama, but there was no sign of any crew.

It was found that the vessel was the ex VIKING RUBY, of 499 GRT, previously owned and registered in the United Arab Emirates. The vessel contained an estimated 130 tonnes of diesel oil, together with other lubricating and hydraulic oils. The vessel was heavily aground in the cove and being pounded by wave action from the open sea.

The CCG immediately responded to the pollution threat and, in the absence of any owner, took charge of the vessel after the RCMP had completed their investigation of the ship. On September 22, 1995, the operation to transfer the oil out of the ship commenced, with the oil being pumped into a series of shore based tanks and bladders and, eventually, taken away by road tankers. The oil removal over the rough terrain was completed on October 1, 1995, by which time some 190 tonnes of diesel oil and 900 litres of lubricating oil had been recovered. The only pollution was an occasional minor leakage of oil from the propeller stern tube.

Taking advantage of a high tide, and using CCG vessels and contracted equipment, the CHILOLI was refloated under CCG's direction on October 9, 1995, and towed to Dartmouth, N.S. The Republic of Panama confirmed that the ship was duly registered under their flag, but stated that the change of registry was not effected until October 2, 1995, several days after the grounding. Efforts to discover the true owner were not successful.

In view of a potential claim against the SOPF, the Administrator maintained a watching brief on events throughout the operation. On December 12, 1995, the Crown launched an action in the Federal Court of Canada against the ship and its owner to recover the costs of the removal of the oil and refloating the vessel. As a Party by Statute, the Administrator was served with all the documentation pursuant to Section 713 of the CSA. By terms of a Court Order dated December 18, 1995, the CHILOLI was seized and offered for sale, with a closing date for offers of January 31, 1996. Pursuant to a Federal Court of Canada order dated February 13, 1996, the CHILOLI was sold by private contract for \$226,073.41, from which sum had to be deducted the costs involved in the sale. The Crown stated their costs and expenses in removing the oils, refloating the vessel and safely berthing her at the CCG base in Dartmouth, N.S. amounted to \$565,965.53. The amount realized from the sale of the vessel was \$213,594.74.

No claim has been presented to the SOPF. By letter dated March 7, 1996, the Administrator was informed that, subject to certain conditions (which have been met) the Crown would not be submitting any claim to the SOPF in connection with this occurrence.

8.50 BOREE (1995)

A 132,914 GRT tanker flying the French flag, the BOREE, on September 27, 1995 during an internal fuel transfer operation, was involved in an oil spill while at the Canaport monobouy, off Saint John, New Brunswick. The CCG monitored the pollution clean-up which was carried out by the local response organization. It was reported that the ship's personnel stated that about 2 barrels of oil had been spilt, but approximately 16 barrels of oil were recovered together with other debris in the clean-up.

On September 28, 1995, the vessel's P & I Club arranged for a Letter of Undertaking to pay up to the amount of \$50,000 in respect of the clean-up operation. Recent advice is that the claimed cost of the clean-up is \$74,966.40. As yet, no claim has been submitted to the SOPF and developments are awaited.

8.51 PRINCE GEORGE (1995)

A well known ferry on the West Coast of British Columbia, the PRINCE GEORGE has been laid-up for many years. Registered in Victoria, British Columbia, of 5,825 GRT, and owned by a company in Hong Kong. On October 15, 1995 the ship was being used as a movie set when a few days later, a fire broke out on board. At the time, the PRINCE GEORGE was moored alongside a small dock at Britannia Beach, Howe Sound, B.C.

At the time of the fire, it was estimated that the vessel had approximately 8 tonnes of diesel fuel and a residual amount of oil Bunker C fuel on board. The CCG, among a number of other agencies, responded to the fire and the CCG organized preventative actions to contain any potential oil pollution damage outside the vessel. On October 20, 1995, with smoke still issuing from the vessel, a DND Shipboard Fire Fighting team using special equipment determined that two fires were still burning deep inside the vessel. On November 3, 1995, the DND personnel declared all fires aboard to be extinguished. The CCG arranged for a contract to have the oily waste removed.

No claim has been received by the SOPF and developments are awaited.

8.52 HALTREN No. 1 (1995)

On October 25, 1995, during darkness and heavy weather conditions in the Gulf of St. Lawrence, the tug TECHNO ST. LAURENT parted tow with the barge which she was towing, the Canadian registered HALTREN No. 1, of 1,178 GRT. On October 26, 1995, the barge was located on the beach about 3 kms east of River La Loutre on the south coast of Anticosti Island, Quebec. The owner reported that there were twelve 272 litre drums of hydraulic fluid on board and that there was no threat to the environment. The owner made several attempts to refloat the barge without success because of the adverse weather conditions. On November 16, 1995, CCG personnel went to the scene to inspect the barge and found it to be leaking oil. It was discovered that the barge contained approximately 5,600 litres of diesel oil in a stern compartment as

well as the previously mentioned hydraulic oil and the number 3 hold contained a quantity of oily water. The barge remained firmly aground. On November 21, 1995, the CCG issued the owner with a letter requesting clean-up intentions and an action plan. The owner's action plan was received by the CCG and EC on November 27, 1995, and accepted.

The CCG and EC then became concerned at the lack of progress in removing the oil and on December 8, 1995, a Response Order was issued. By that time the barge had been declared a total loss and the P & I Club had taken over the responsibility for the oil pollution clean-up. The 5,600 litres of diesel had been removed but the oily water in the barge commenced freezing and with the onset of winter the oil removal operation was halted until the next Spring.

The Administrator awaits further developments.

8.53 JAMES NORRIS (1995)

On November 11, 1995, because of heavy weather conditions that might have damaged the ship while berthed, the decision was made to sail the JAMES NORRIS, a Canadian Great Lakes standard *straight-back* bulk carrier of 12,962 GRT with a cargo of limestone from Port Colbourne, Ontario. While departing the ship lost control in the high wind and hit dolphins at the dockside causing fractures in the hull which resulted in the ship sinking. The ship had on board 400 tonnes of Bunker C oil and 50 tonnes of diesel oil. The ship's engineers were able to secure all the oil supply valves before abandoning and no pollution was reported. Under monitoring by the CCG, the owner contracted for pollution response, should the need arise, and the salvage of the ship and cargo was commenced. Salvage operations continued and the vessel was floated on November 18, 1995.

On November 17, 1995, the CCG advised the Administrator that they intended to make a claim against the SOPF in respect to their costs and expenses not exceeding \$20,000. On November 19, 1995 the JAMES NORRIS was towed away to drydock for repairs. The

Administrator was in contact with the representatives of the ship's P & I Club and a letter was sent from the SOPF on November 20, 1995, to the P & I Club representatives requesting a Letter of Undertaking to cover the potential CCG claim, which the representatives acknowledged on December 20, 1995. To date, no such financial undertaking has been received by the Administrator.

8.54 ACADIAN PAL (1995)

On December 4, 1995, this Canadian 64 GRT wooden fishing vessel ran aground about 1/2 mile off Petit Passage in St. Mary's Bay, Nova Scotia, and broke up. All the crew members were saved. The vessel was reported to have had on board 8,900 litres of diesel oil, but it proved impossible to board the vessel to reduce any potential pollution because of the high wave conditions. In the final outcome, these conditions dispersed the spilled fuel and the pollution dissipated. The local fisheries were advised of the situation, but to date the SOPF has not received notice of any potential claim.

8.55 Mystery Oil Spill, Pacific Rim National Park, British Columbia (1996)

The lighthouse keeper at Carmanah Point lighthouse, on the west coast of Vancouver Island, British Columbia, was the first to officially report this spill after, on January 8, 1996, he reported seeing heavy patches of oil washing ashore on the local beaches. A CCG helicopter overflight on the same day could find no further evidence of oil out to sea. However, over the same time-frame authorities in the state of Washington, USA, also reported similar oil washing ashore on some of their coastline. On January 10, 1996, more patches of oil started coming ashore on Vancouver Island and response action was taken by Pacific Rim National Park personnel, monitored by the CCG.

Both Canadian and US officials took samples of the oil in the hope of tracing the vessel(s) involved, but to date the incident has been classified as a mystery spill.

On January 19, 1996, the CCG issued a

final Status Report on the incident and noted that 400 oiled birds, one oiled mammal and approximately 45 kgs of oiled debris had been recovered. On March 15, 1996, the Administrator received a consolidated claim from the Crown amounting to \$23,259.38. After the claim was investigated, on March 21, 1996, the Administrator approved payment of \$20,925.19 to settle the Crown's claim which was accepted.

Since that date, the Administrator has had correspondence from two individuals who stated that they were volunteers in the incident and wished to claim certain expenses. The work of these individuals was not authorized by any official. This raised an issue of principle, namely, can self-appointed volunteers claim reasonable expenses for their work in such an incident. After the Administrator investigated these claims, offers were sent to both claimants and the claims were subsequently settled.

8.56 *LE SAULE No. 1 (1996)*

When this Canadian 5,114 GRT tanker was at Curling, Bay of Islands, Newfoundland, on January 12, 1996, the crew noticed diesel fuel in the water within the ice adjacent to the tanker. It was then determined that the oil was coming from a leak in the No. 3 tank and the contents of the tank were transferred until the leak stopped. It was later estimated that 7 to 15 tonnes had been spilled.

In this incident, the crew performed the clean-up response under the tanker's master, monitored by the CCG and by a representative of the P & I Club.

The SOPF awaits further developments.

8.57 *MARLIN (1996)*

The MARLIN, a 9,400 GRT Maltese registered bulk carrier was berthed alongside at Bécancour, Quebec, on the River St. Lawrence just below Montreal, Quebec, when the agent of the MARLIN, while going on board on February 8, 1996, noticed oil on the ice between the ship and the dockside. The ship

immediately called for a contractor to clean-up the oil and this was undertaken and the costs and expenses were billed to the ship. The CCG monitored the operation and estimated the oil spilled as being 2 to 3 litres. On February 12, 1996, the master of the ship wrote a letter denying all responsibility for the oil spill, on the basis that it was caused by tanker trucks which had been delivering oil to the ship. On March 11, 1996, the Administrator received a claim from the ship's agents on behalf of the ship requesting reimbursement of the clean-up costs and expense amounting to \$5,758.94. The Administrator declined to accept the claim because the evidence established that the oil spill was caused during bunkering the ship by shore road tankers.

8.58 *KOLOMNA (1996)*

On February 23, 24 and 25, 1996, oil was found in the ice around the KOLOMNA, a 15,903 GRT Roll on - Lift off vessel under the Russian flag, berthed at section 102 in Quebec City, Quebec. Initially the cause of the oil spill was not immediately apparent and the master denied responsibility. The CCG organized a clean-up and on the first day it was estimated that a minimum of one barrel of heavy oil had been spilled. A Letter of Financial Undertaking on behalf of the owners was received by the CCG on March 12, 1996, and the Detention Order on the vessel lifted. The Administrator has been informed that the CCG have instituted cost recovery action.

9. Financial Summary

During the fiscal year 1995-1996 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 \$463,736.96 comprising the following costs and expenses:

Administrator Fees	\$63,000.00
Legal Fees	\$120,757.50
Professional Services	\$190,337.83
Secretarial Services	\$42,329.81
Travel Expenses	\$23,626.15
Printing	\$14,659.00
Office Expenses	<u>\$ 9,026.67</u>
	\$463,736.96

(b) Pursuant to section 701 of the Act, the Administrator directed the payment of \$2,527,058.41 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 -	\$352,524.65
BRAER Major Claims Fund -	\$822,810.21
SEA PRINCE/YEO MYUNG/YUIL No. 1 Major Claims Fund -	\$1,175,334.87
SENYO MARU Major Claims Fund -	\$176,388.68

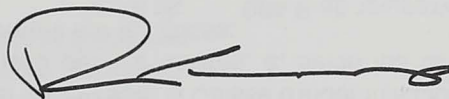
(c) Pursuant to sections 710 and 711 of the Act, the Administrator settled claims for the sum of \$51,760.29.

(d) Pursuant to sections 711(3)(c) of the Act, the Administrator recovered the sum of \$39,399.98 of the monies previously paid out with reference to the FORUM GLORY oil spill which occurred in 1991 at Port Cartier, Quebec.

During the reporting fiscal year, interest credited to the Fund was \$17,075,258.36.

At March 31, 1996, the balance in the Fund was \$247,333,139.07.

Yours sincerely,



Peter M. Troop
Administrator
Ship-source Oil Pollution Fund