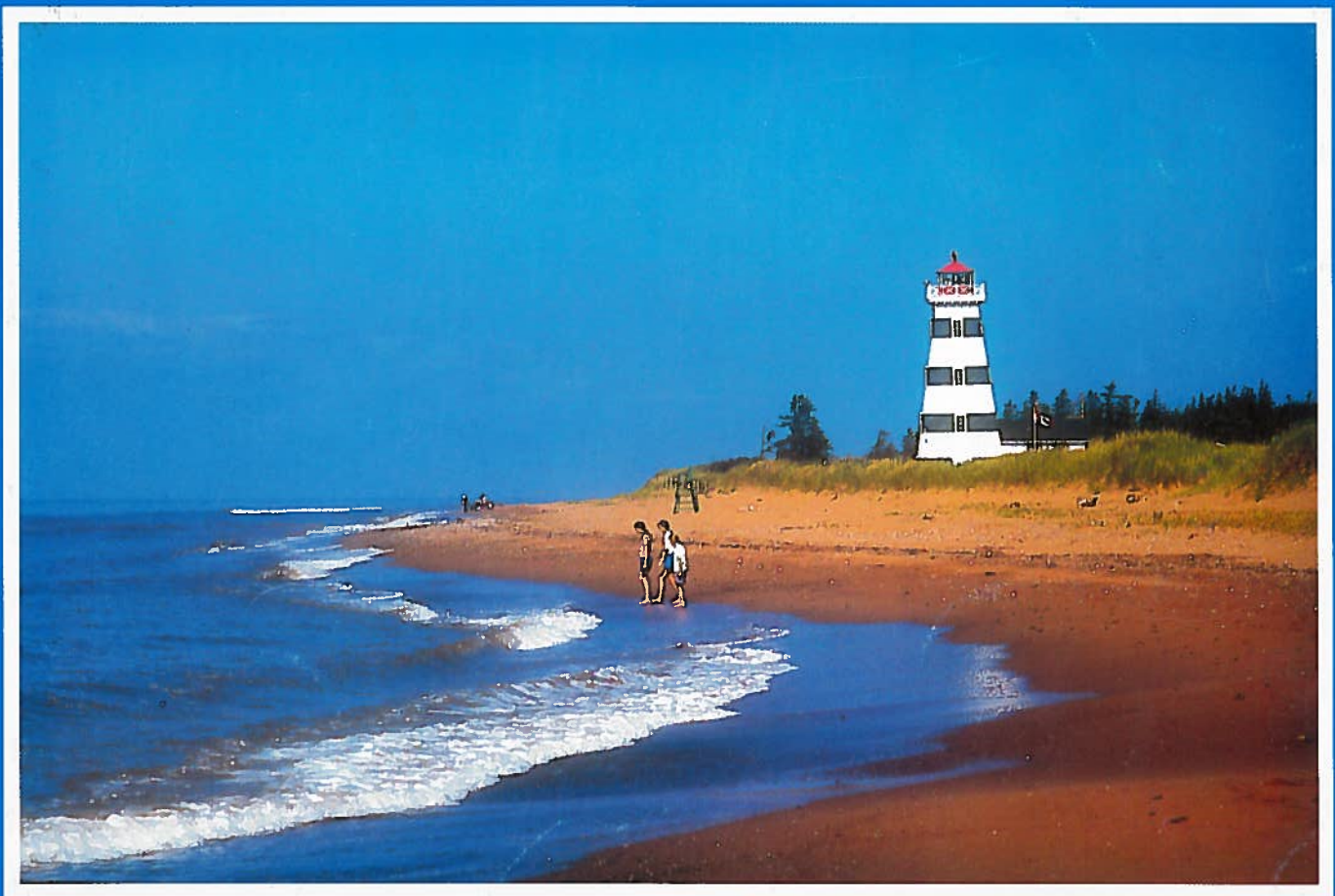


***Ship-source  
Oil Pollution Fund  
Annual Report  
1998-1999***



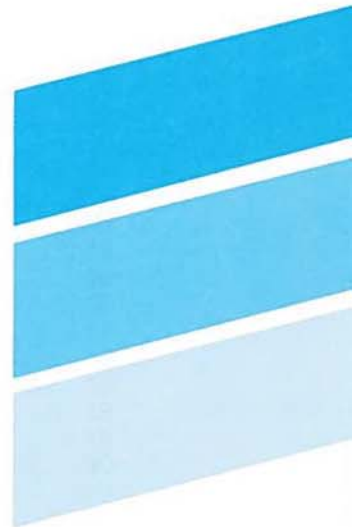
Canada

Cover: Pristine beach at West Point,  
Prince Edward Island, Canada.

Photograph courtesy: Tourism Prince Edward Island  
Lionel Stevenson, Camera Art, Charlottetown, PEI.

Published by the Administrator  
Ship-source Oil Pollution Fund  
90 Elgin Street, 8th Floor  
Ottawa, Canada K1A 0N5

***Ship-source  
Oil Pollution Fund  
Annual Report  
1998-1999***





## Table of Contents

1.	Introduction .....	1
2.	Responsibilities and Duties of the Administrator .....	1
3.	SOPF - Changing the Watch .....	1
4.	Operation of and Impending Changes to the Canadian Compensation Regime .....	2
	Figure 1 .....	4
5.	Current Status of the Ship-source Oil Pollution Fund .....	3
6.	SOPF - Outreach .....	5
7.	DFO Discussion Paper - December 1998 .....	5
8.	International Oil Spill Conference .....	7
9.	1992 Protocols to the 1969 Civil Liability Convention and the 1971 Fund Convention .....	7
10.	Canada's Obligations to the International Funds .....	8
11.	1971 and 1992 Fund Assemblies and the Executive Committees .....	8
	Figure 2 .....	14
12.	Oil Spill Incidents in Canada .....	15
12.1	IRVING WHALE (1970) .....	15
12.2	LIBERTY BELL VENTURE (1987) .....	16
12.3	SOUTH ANGELA (1988) .....	16
12.4	DUKE OF CONNAUGHT (1988) .....	16
12.5	NEW ZEALAND CARIBBEAN (1989) .....	17
12.6	EASTERN SHELL (1991) .....	17
12.7	Oil Barrel - Sorel Harbour, Québec (1993) .....	18
12.8	GENERAL TIRONA (1993) .....	18
12.9	CALYPSO IV (1994) .....	19
12.10	PRINCESS No. 1 (1994) .....	20
12.11	PIERRE CHAUVIN (1994) .....	20
12.12	MARWOOD (1994) .....	21
12.13	STEVE C (1994) .....	21
12.14	Mystery Oil Spill - Sainte Félicité, Québec (1995) .....	22
12.15	GRETE STAR (1995) .....	22
12.16	HALTREN No. 1 (1995) .....	23
12.17	APJ SHALIN (1995) .....	24
12.18	KOLOMNA (1996) .....	24
12.19	KATHY K (1996) .....	25
12.20	Mystery Oil Spill - Little Harbour, Nova Scotia (1996) .....	26
12.21	AIVIK (1996) .....	26
12.22	NORTHWIND (1996) .....	27
12.23	Motor Yacht 42E 6903 (1996) .....	27
12.24	HARALAMBOS (1996) .....	27
12.25	JADE STAR (1996) .....	28
12.26	Mystery Oil Spill - Placentia Bay, Newfoundland (1997) .....	28
12.27	NITA 1 (1997) .....	29
12.28	Mystery Oil Spill - Come By Chance, Newfoundland (1997) .....	29
12.29	LE BARACHOIS (1997) .....	30
12.30	Mystery Oil Spill - La Baie, Québec (1997) .....	30
12.31	Mystery Oil Spill - Sorel Harbour, Québec (1997) .....	30
12.32	JADE STAR (1997) .....	31
12.33	ETHEL K (1997) .....	31
12.34	NAVIMAR V (1997) .....	31
12.35	Mystery Oil Spill - La Baie, Québec (1997) .....	31
12.36	OSSIAN (1997) .....	32
12.37	Mystery Oil Spill - Sept-Îles, Québec (1997) .....	32
12.38	RHEA (1997) .....	32
12.39	RANI PADMINI (1997) .....	33
12.40	Mystery Oil Spill - Cape Ray, Newfoundland (1997) .....	33
12.41	LINDA MAXINE (1997) .....	33
12.42	Mystery Oil Spill - Placentia Bay, Newfoundland (1997) .....	34
12.43	PINE ISLANDS (1997) .....	34
12.44	KETA V (1997) .....	34
12.45	KOYO MARU #16 (1997) .....	35
12.46	FLARE (1998) .....	35
12.47	SARABAND (1998) .....	35
12.48	Mystery Oil Spill - Martinique Beach, Nova Scotia (and others)(1998) .....	36
12.49	ENERCHEM REFINER (1998) .....	36
12.50	Mystery Oil Spill - Vancouver Harbour, British Columbia (1998) .....	36





12.51	Mystery Oil Spill - St. Brides, Newfoundland (1998).....	36
12.52	AGAWA CANYON (1998).....	37
12.53	Mystery Oil Spill - Ste. Anne de Sorel, Québec (1998) .....	37
12.54	FILOMENA LEMBO (1998).....	37
12.55	Mystery Oil Spill - Fighting Island, Ontario (1998).....	38
12.56	Mystery Oil Spill - Lawn Beach, Newfoundland (1998) .....	38
12.57	Mystery Oil Spill - L'Île des Barques, Québec (1998) .....	38
12.58	Mystery Oil Spill - Sydport, Nova Scotia (1998) .....	38
12.59	Masson Ferry - Masson, Québec (1998).....	38
12.60	Mystery Oil Spill - Rimouski, Québec (1998).....	39
12.61	MISS BABS (1998) .....	39
12.62	MORUY (1998) .....	39
12.63	SALTY DOG 1 (1998) .....	39
12.64	Mystery Oil Spill - Montréal Harbour, Québec (1998).....	40
12.65	CANMAR VALOUR (1998).....	40
12.66	Mystery Oil Spill - Montréal Harbour, Québec (1998).....	40
12.67	Mystery Oil Spill - Cape Shore, Newfoundland (1998) .....	40
12.68	Mystery Oil Spill - Montréal Harbour, Québec (1998).....	41
12.69	ELTON HOYT 2nd (1998) .....	41
12.70	WALPOLE ISLANDER (1999) .....	41
12.71	Mystery Oil Spill - Cape Breton, Nova Scotia (1999) .....	41
12.72	SOLOON OF ATHENS (1999).....	41
12.73	GORDON C LEITCH (1999).....	41

13.	Financial Summary.....	42
-----	------------------------	----



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

Dear Mr. Collenette,

## 1. Introduction

It is an honour to submit the Annual Report on the operations of the Ship-source Oil Pollution Fund (SOPF) for the fiscal year beginning on 1st April 1998 and ending on 31st March 1999. Section 722 of the Canada Shipping Act (CSA) refers.

By Order in Council P.C. 1993-2003 dated 6th December 1993, Mr. P.M. Troop, Q.C., was reappointed Administrator of the SOPF for a term of 5 years, effective from 18th November 1993; consequently, his term of office came to an end on 17th November 1998.

By Order in Council P.C. 1998-1962 dated 3rd November, 1998, Mr. K.A. MacInnis, Q.C., was appointed Administrator of the SOPF for a term of five years, effective 18th November 1998.

## 2. Responsibilities and Duties of the Administrator

The Administrator:

- holds office during good behaviour, and as an independent authority, must investigate and assess all claims filed against the SOPF, subject to appeal to the Federal Court of Canada
- prepares an annual report on the operations of the SOPF which is laid before Parliament by the Minister of Transport
- has the powers of a Commissioner under Part 1 of the *Inquiries Act*

- may take recourse action against third parties to recover the amount paid out of the SOPF to a claimant and may also take action to obtain security, either prior to or after receiving a claim

- becomes a Party by Statute in any proceedings commenced by a claimant against the owner of a ship, its insurer, or the International Fund, as the case may be

- has the responsibility under the CSA to direct payments out of the SOPF of Canada's contributions to the International Fund, (such contributions are based on oil receipts in Canada reported by the Administrator to the Director of the International Fund)

- leads the Canadian Delegation to meetings of the Executive Committee and the Assembly of the International Fund

## 3. SOPF - Changing the Watch


The Administrator wishes to acknowledge the contributions of his predecessor, P.M. Troop, Q.C., to Canada's ship-source oil spill response and compensation regime over the past ten years, and thank him for his assistance in the transition.

On his appointment, effective 18th November 1998, the Administrator, K.A. MacInnis, Q.C., of Bedford, Nova Scotia, brings to service over twenty-five years of experience in maritime, environmental, and administrative law.

Prior to appointment, he was legal counsel to the SOPF, and actively headed a law firm in Halifax.

He has represented shipowners, salvors and government departments in casualties, oil pollution damage, and salvage, as well as environmentalists and fishing interests.





He acted for the Canadian Coast Guard in the events following the catastrophic break-up of the British registered oil tanker KURDISTAN in the Cabot Strait in 1979<sup>1</sup>.

Called to the Bars of British Columbia and Nova Scotia in 1970, Mr. MacInnis attended Saint Dunstan's College, Dalhousie Law School, and the University of London - receiving a Master of Laws in maritime law and international law of the sea.

He served in the Royal Canadian Naval Reserve.

#### 4. Operation of and Impending Changes to the Canadian Compensation Regime

The regime in place during the 1998/1999 fiscal year has been in effect since April 24, 1989, when major amendments to the CSA entered into force<sup>2</sup>, followed by subsequent amendments<sup>3</sup>.

It presently consists of three components that provide compensation to the victims of oil pollution damage caused by ships in Canadian Waters<sup>4</sup>:

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

The SOPF is part of a unique statutory scheme established by Canada in 1971, and built on since that time. Its purpose is to deal with oil spills from **all classes of ships**, including spills (bunkers, bilges, etc.) from non tankers.

<sup>1</sup> In this incident, the CCG demonstrated its oil spill response readiness in the salvage of the stern section and its cargo, the towage of the bow section with cargo to the edge of the continental shelf - where it was sunk by naval gunfire, the clean-up of oil pollution damage in Newfoundland and Nova Scotia, and expediting the settlement of individual claims. The CCG participated most effectively in the subsequent major inquiry into the cause of the breakup. The KURDISTAN incident concluded with the successful settlement of the CCG's cost recovery claim against the shipowners and Canada's Maritime Pollution Claims Fund (MPCF), in the Federal Court of Canada.

As part of the statutory scheme, the CSA imposes on the shipowner strict liability for oil spills. The Act provides the Administrator with the power to obtain security from the shipowner for costs and expenses incurred to prevent, remedy or minimize oil pollution damage from the ship.

A particular feature of the SOPF is that it is available to provide additional compensation in the event that the funds available under the two International Conventions, in respect of spills from **oil tankers**, are insufficient to meet all established claims for compensation. Similarly, in the case of ships other than laden tankers, the SOPF is available. It is also available for certain classes of fishing claims and for mystery oil spills. The limit of liability of the SOPF for any one spill and the levy are dealt with in section 5 of this report.

The CSA provides that, in the first instance, a claimant can take action against the shipowner and join the SOPF as a party to the proceedings. In such cases, funding from the SOPF is available as a **last resort**, or pursuant to a settlement where the Administrator considers it appropriate. In addition, the SOPF, with one exception<sup>5</sup>, can be a fund of **first resort** for all persons, including the Crown.

When a claim is made against the SOPF as a first resort, the Administrator is required, under the CSA, to take reasonable measures to recover any compensation paid to claimants out of the SOPF, from the owner of the ship, or any other person liable, the 1971 Fund, and from a shipowner's limitation fund.

On 12 May 1998, legislation amending the CSA to permit implementation of the 1992 Protocols to the 1969 CLC and the 1971 Fund Convention was assented to (S.C. 1998 C.6).

On 29 May 1998, instruments by Canada of denunciation of the 1969 CLC and the 1971 Fund Convention and accession to the 1992 Protocols

<sup>2</sup> S.C. 1987 C.7 superseded by R.S.C. 1985 C.6(3rd Supp.) on May 1, 1989

<sup>3</sup> S.C. 1993 C.36 and S.C. 1996 C.31

<sup>4</sup> Except that the 1969 and 1971 Conventions do not apply in the Exclusive Economic Zone (EEZ, formerly the Fishing Zones of Canada).

<sup>5</sup> 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 1971 Fund as the case may be.



were deposited with the Secretary-General of the International Maritime Organization, (IMO). Consequently, on 29 May 1999, Canada will cease to be a member of the 1969 CLC and the 1971 Fund Convention and will become a contracting state to the 1992 Protocols. The implementing legislation, S.C. 1998 C.6, will enter into force on the same date.

The underlying principles of the 1969 CLC and the 1971 Fund Convention remain. The principal **changes introduced by the 1992 Protocols** are:

- A special limit of liability for owners of small vessels and a substantial increase of the limitation amounts. The limit is \$6.11 million for a ship not exceeding 5,000 units of gross tonnage, increasing on a linear scale to \$112.89 million for ships of 120,000 units of tonnage or over.
- An increase in the maximum compensation payable by the IOPC Fund to \$275.13 million, including the compensation payable by the shipowner up to its limit of liability.
- A simplified procedure for increasing the limitation amounts in the two Conventions by majority decision taken by the states parties to the Conventions.
- An extended geographical scope of application of the Conventions to include the EEZ established under the United Nations Convention on the Law of the Sea.
- Pollution damage caused by spills of bunker oil and by cargo residues from unladen tankers on any voyage after carrying a cargo are covered.
- Expenses incurred for preventive measures are recoverable even when no spill of oil occurs, provided that there was a grave and imminent danger of pollution damage.
- A new definition of pollution damage retaining the basic wording of the present definition with the addition of a phrase to clarify that, for environmental damage, only costs incurred for reasonable measures actually undertaken to restore the contaminated environment are included in the concept of pollution damage.
- Under the 1969 CLC, the shipowner cannot limit liability if the incident occurred as a result of the owner's actual fault or privity. Under the 1992

Convention, however, the shipowner is deprived of this right only if it is proven that the pollution damage resulted from the shipowner's personal act or omission, committed with the intent to cause such damage, or recklessly and with knowledge that such damage would probably result.

- Claims for pollution damage under the Liability Conventions can be made only against the registered owner of the ship concerned. This does not preclude victims from claiming compensation outside the Conventions from persons other than the owner. However, the 1969 CLC prohibits claims against the servants or agents of the owner. The 1992 Liability Convention does the same, but also prohibits claims against the pilot, the charterer (including a bareboat charterer), manager or operator of the ship, or any person carrying out salvage operations or taking preventive measures.

**Figure 1** - shows a comparison of Current (1969/1971 Regime) and Revised (1992 Protocols) Limits of Liability and Compensation.

There are also **changes in S.C. 1998 C.6** to the limitation of liability levels **for ships other than oil tankers**. As noted above, the SOPF is also available to deal with spills (bunkers, bilges, etc.) from such non-tankers. When S.C. 1998 C.6 enters into force on 29th May 1999, the limits of liability in the Convention on Limitation of Maritime Claims 1976 (LLMC), as amended by the Protocol of 1996, will apply in future to non-tankers.

Under the existing Part XVI of the CSA, the same limits apply to oil spills from all classes of ships: the limits of liability of the 1969 CLC. These limits apply until 29th May 1999.

## 5. Current Status of the Ship-source Oil Pollution Fund

### Balance:

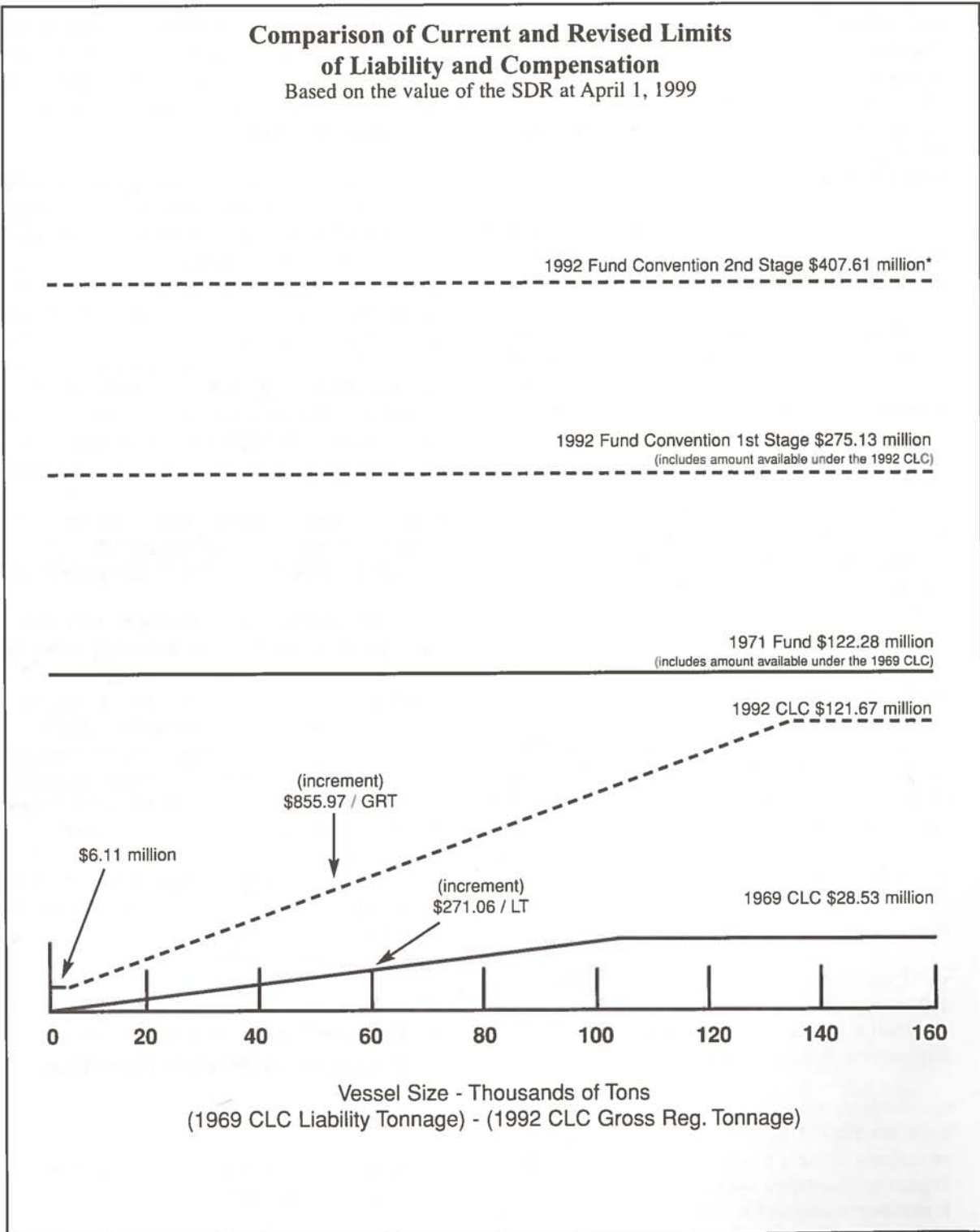
At March 31, 1999 there was a credit in the SOPF of \$280,466,053.69<sup>6</sup>.

<sup>6</sup> The SOPF is a special purpose account in the accounts of Canada established for the purposes set out in Part XVI of the CSA. As the Government of Canada has borrowed the entire capital of the SOPF, it is required to provide the necessary funds to meet the liabilities of the Fund as they arise.

Figure 1

### Comparison of Current and Revised Limits of Liability and Compensation

Based on the value of the SDR at April 1, 1999



\* It is unlikely that the 2nd stage will come into effect without the participation of the United States of America which has had its own regime of liability and compensation since 1990.



### Interest:

During the fiscal year the SOPF was credited with a total of \$13,588,035.15 as interest by the Minister of Finance, calculated on a monthly basis, giving an average rate of about 5% during 1998-1999.

### Maximum Liability:

During the fiscal year commencing 1st April 1999 the maximum aggregate liability of the SOPF is \$129,689,086.50 for all claims in respect of any one oil spill. This amount is indexed annually to the consumer price index.

### Levy:

The Minister of Transport has statutory authority to impose a levy for the SOPF on oil imported into or shipped from a place in Canada in bulk as cargo on a ship. No levy has been imposed or collected since 1976. If imposed during the fiscal year commencing 1st April, 1999 the levy would be 38.90 cents per tonne. The levy is indexed annually to the consumer price index<sup>7</sup>.

## 6. SOPF - Outreach

As part of a deliberate effort by the Administrator to inform himself of the perspectives of claimants, government agencies, clean-up contractors, shipowners, insurers, cargo interests, and others, he continues to take every opportunity to appreciate the needs and responsibilities of these stakeholders in Canada's ship-source oil pollution response and compensation scheme. To this end, the Administrator has met with certified Response Organizations in British Columbia and Eastern Canada, Canadian Coast Guard (CCG) and the Marine Safety Branch (MSB) in British Columbia, insurers in London, England, and Federal

<sup>7</sup> On April 25, 1989, the Maritime Pollution Claims Fund (MPCF), was replaced by the SOPF, a special purpose account in the accounts of Canada. 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.

Government Departments. He also attended the annual meeting of the Canadian Maritime Law Association. It is planned to continue these activities.

## 7. DFO Discussion Paper - December 1998

The Department of Fisheries and Oceans, (CCG), issued a Discussion Paper, dated December 1998, on "governance" issues associated with Canada's oil spill preparedness and response regime.

The CCG raised as an issue, having to fund response costs pending their recovery from the shipowner, the IOPC Fund and/or from the SOPF.

The Discussion Paper then proposed, what it termed, "administrative solutions" to "this financial exposure of the Crown" -- with a basic thrust of requiring the SOPF to pay Crown clean-up costs regardless of:

- a) whether the measures taken are in fact reasonable or not;
- b) whether the costs and expenses are in fact reasonable or not.

Interested parties, in the public, industry and government sectors, were invited to respond.

The Administrator responded by letter dated February 25, 1999, and stated:-

*"The present statutory claims regime of Part XVI of the Canada Shipping Act, on the principle that **the polluter pays**, has as its **four** cornerstones:*

1. All costs and expenses must be reasonable.
2. All clean-up measures taken must be reasonable measures.
3. All costs and expenses must have been actually incurred.
4. All claims must be investigated and



*assessed by an independent authority, (the Administrator), subject to appeal to the Federal Court of Canada."*

The Administrator's letter, in brief, made the following points:-

1. In the Discussion Paper, it had been assumed, incorrectly, that there is no public funds required for the SOPF to make a payment. [As noted in section 5 above, the SOPF is a special purpose account in the accounts of Canada established for the purposes set out in Part XVI of the CSA. As the Government of Canada has borrowed the entire capital of the SOPF, it is required to provide the necessary funds to meet the liabilities of the Fund as they arise.]
2. A fundamental principle of the Canadian regime is that all claimants must be treated equally. Not only is this a requirement of Part XVI of the Act, but it is also a requirement of the IOPC Fund Conventions. Although the 1993 amendments to Part XVI gave the Crown direct access to the SOPF for the first time, it conferred no special status on claims filed by the Crown as compared to claims from other claimants.
3. In particular, as a claimant under Part XVI, the Crown would be subject to *pro rata* reduction of claims by the Federal Court under section 715, to the same extent as all other claimants in any one incident where there is not sufficient monies available to pay all claimants in full. To purport to exempt the Crown from the powers of the Court under section 715 would be a fundamental breach of the principles of equality in Part XVI and the IOPC Fund Conventions.
4. The particular principles proposed in the Discussion Paper: that the SOPF should accept without question, as reasonable any response action directed or approved on scene by the CCG or any charges made by a Certified Response Organization, are incompatible with the statutory requirement for the Administrator to independently determine reasonableness and to deal in fairness and equality towards all claimants on the SOPF.
5. The Discussion Paper suggests that the Crown has historically experienced delays, generally, in the recovery of costs and expenses. From the SOPF perspective, this does not have to be.

Before the Administrator makes an offer of compensation to a claimant, he must be satisfied that all or a portion of the claim is established. Therefore, it is in the claimant's interest to provide the Administrator with convincing evidence and explanations at the outset. If the measures taken and the costs and expenses incurred are demonstrably reasonable, and if the claim, presented in a timely manner, is fully documented in writing, including various justifications by the On-Scene-Commander, and proof of payment, as applicable, the investigation and assessment of the claim by the Administrator would be expedited.

6. The intent of Part XVI CSA is: **the polluter should pay**. It is, therefore, important that government departments instruct officials to act in a timely manner to obtain satisfactory evidence to identify the source of a spill. This evidence is only available at the time of the incident. Such evidence is essential for the Administrator to recover payments made out of the Fund from the responsible party, in accordance with the statutory scheme. Otherwise, the incident becomes a mystery spill - by default - and the SOPF cannot recover from the polluter payments out of the SOPF.

In his concluding comments, the Administrator indicated his full appreciation of the difficulties that the CCG may have. He offered to discuss practical measures that can be taken by the CCG and the SOPF with a view to improving the presentation and handling of claims in a manner consistent with sound business practices and in accordance with the laws governing the operation of the SOPF.

It is understood that other respondents expressed similar reservations to this part of the Discussion Paper.

The Administrator is advised that the "Discussion Paper, Proposed Adjustments To The Governance of Canada's Marine Oil Spill Preparedness and Response Regime - December 1998", and the responses thereto, are available to the public.



## 8. International Oil Spill Conference

The Administrator attended the 1999 International Oil Spill Conference in Seattle, Washington from March 8-11, 1999. There were 1,438 participants from 50 countries at the conference.

More than 250 exhibits of materials, equipment and services from American and foreign companies, institutions and government agencies, including those from Canada, were on display.

Conference Chairman, Mr. Steve Marshall, Chief of Staff of BP-Amoco PLC, welcomed participants noting:

*"The scenic beauty of the Pacific Northwest, a spirit of environmental sensitivity and global technology leadership, make Seattle a fitting location for the sixteenth biennial International Oil Spill Conference.*

*The theme of the 1999 Conference, "Beyond 2000 - Balancing Perspectives", reflects on the milestones and achievements in the last years of this millennium while stressing the importance of balancing perspectives of all stakeholders as we look beyond the year 2000."*

The following topics were addressed:

- Spill Management: Who or what controls a response?
- Prevention: Have measures been effective?
- Response: How much is enough?
- Planning: When do plans work well?
- Expectations: Are they in balance with reality?
- Human Health Effects: Myths and realities.
- Technology: Are we using it to its best advantage?
- Environment: Can it recover?
- Public Policy: Is it effective?
- Partnering: Where do we go from here?
- Costs: Who is liable?

The Administrator took advantage of this opportunity to establish contact with delegates from various international oil spill response contractors, International Oil Pollution Compensation Funds,

U.S. Coast Guard, National Energy Board of Canada, U.S. National Oceanic and Atmospheric Administration, U.S. National Pollution Funds Center, International Tanker Owners Pollution Federation and others.

## 9. 1992 Protocols to the 1969 Civil Liability Convention and the 1971 Fund Convention

On 29th May 1998, instruments by Canada of denunciation of the 1969 CLC and the 1971 Fund Convention and accession to the 1992 Protocols were deposited with the Secretary-General of the International Maritime Organization. On 29th May 1999, the above denunciations come into effect and Canada becomes a contracting state to the 1992 Protocols.

The following are the 32 contracting states to the Protocols on 29th May 1999.

Australia	Liberia
Bahamas	Marshall Islands
Bahrain	Mexico
Canada	Monaco
Croatia	Netherlands
Cyprus	Norway
Denmark	Oman
Finland	Philippines
France	Republic of Korea
Germany	Singapore
Greece	Spain
Grenada	Sweden
Ireland	Tunisia
Jamaica	United Arab Emirates
Japan	United Kingdom
Latvia	Uruguay

The undernoted 11 States will become contracting states to the Protocols during the 1999-2000 fiscal year on the dates indicated and will also cease to be members of the 1969/71 regime.

Algeria	11 June 1999
New Zealand	25 June 1999
Barbados	7 July 1999
Venezuela	22 July 1999
Belgium	6 October 1999
Iceland	13 November 1999
Belize	27 November 1999

China	
(Hong Kong Special Administrative Region)	5 January 2000
Sri Lanka	22 January 2000
Vanuatu	18 February 2000
Panama	18 March 2000

## 10. Canada's Obligations to the International Funds

On 24th May 1989, Canada acceded to the 1969 CLC and the 1971 Fund Convention and as already mentioned, denunciation of those two Conventions is effective on 29th May 1999, the date on which the 1992 Liability Convention and the 1992 Fund Convention enter into force for Canada.

Pursuant to section 701 of the CSA, all contributions to the 1971 Fund are paid out of the SOPF, as will future contributions to the 1992 Fund.

Contributions since 24th April 1989, the date on which Canada became a Member State of the 1971 Fund, are listed in the table below<sup>a</sup>. They show the call nature of the 1971 Fund and that contribution levies are driven by claims, and how they are assessed. This will also be the case for the 1992 Fund.

Consequently, it is the Administrator's responsibility to take a direct role in all deliberations of the International Funds. It is particularly important for the Administrator to continue to take a vigilant interest in the interpretation of the Conventions, claims against the International Funds, and all other matters that impact on the liability of the SOPF.

1971 Fund	
Fiscal Year	Canada's Contributions
1989/90	\$207,207.99
1990/91	\$49,161.28
1991/92	\$1,785,478.65
1992/93	\$714,180.48
1993/94	\$4,927,555.76
1994/95	\$2,903,695.55
1995/96	\$2,527,058.41
1996/97	\$1,111,828.20
1997/98	\$5,141,693.01
1998/99	\$902,488.15

It should be noted that Canada will continue to have an obligation to the 1971 Fund, but only for contributions respecting oil spill incidents prior to 29th May 1999, and it will have no responsibility for any administrative costs after that date.

Similarly, Canada will have no responsibility to the 1992 Fund for any incidents or administrative costs prior to 29th May 1999.

## 11. 1971 and 1992 Fund Assemblies and Executive Committees

The following sessions of the 1971 Fund took place at IMO Headquarters in London during the year. The Delegation to these meetings was headed by the Administrator.

The 4th extraordinary session of the 1971 Assembly, the 59th session of the Executive Committee, acting on behalf of the 21st Assembly and the 58th, 59th and 60th regular sessions of the 1971 Fund Executive Committee.

The 3rd extraordinary session of the 1992 Assembly and the 3rd regular session of the 1992 Assembly and the 1st and 2nd sessions of the 1992 Executive Committee also took place during the year. Canada attended as an observer at these sessions.

### The Assemblies

#### **The 4th extraordinary session of the 1971 Fund Assembly and the 3rd extraordinary session of the 1992 Fund Assembly, 29th April - 1st May 1998**

The 1971 Fund Assembly was attended by 43 contracting states, observers from 13 non-contracting states and observers from 10 inter-governmental and non-governmental organizations.

The 1992 Fund Assembly was attended by the contracting states, observers from 41 non-

<sup>a</sup>During this period, the IOPC Fund paid out a total amount of \$11,791,848.00, for costs and expenses incurred respecting the RIO ORINOCO, which grounded on Anticosti Island in the Gulf of St. Lawrence on 16th October 1990.



contracting states, including Canada, and observers from 11 intergovernmental and non-governmental organizations.

Both Assemblies were chaired by Mr. Charles Coppolani of France.

This was a pivotal session for the 1971 Fund, as it took place shortly before the departure from the 1971 Fund on 15th May 1998, of those 25 contracting states already members of the 1992 Fund. Included were most of the major contributors to the 1971 Fund.

With the departure of the 25 states, the quantity of contributing oil, for the purposes of the levy to pay claims, will fall. Canada's contributions will rise from approximately 3% to 14% in the case of new spills happening after 15th May 1998 and before 29th May 1999.

The agendas for both Assemblies were, generally, similar.

The Assemblies noted that the transfer of the Secretariat to the 1992 Fund would take place on 16th May 1998. All staff members had agreed to be employed by the 1992 Fund. Consequently, the Secretariat function for the 1971 Fund would be provided on a shared cost basis.

It was agreed that there should be a major reorganization of the Secretariat, on the lines advised by the outside consultants, to be better able in the future to meet the demands of claimants in the diverse legal systems and cultures of the various contracting states. Further proof of the emerging world-wide diversity of the Fund's operation is the adoption of the Spanish language as the third working language of the 1992 Fund.

Both Assemblies agreed to a revised budget of \$2,042,920 for administrative expenses in 1998; 60% to be paid by the 1971 Fund and 40% by the 1992 Fund.

In view of the possibility of there not being sufficient member states present for a quorum at an Assembly in the future, the 1971 Fund Assembly discussed at some length the operation of the Fund after 15th May 1998, the date on

which 25 member states would leave the Fund for good. Consequently, the Assembly decided in the event that, from the first session of the Assembly at which it was unable to achieve a quorum, the functions of the Assembly would be performed by the Executive Committee, pursuant to Article 21(c) of the 1971 Fund Convention, thus enabling the business of the Fund to continue.

This allocation of functions may work for about a year. With the withdrawal of Canada and others, it is anticipated that even the Executive Committee may not achieve its quorum and would become paralyzed.

To deal with this situation, it was agreed to establish an "Administrative Council", composed of the remaining 1971 Fund contracting states. 1992 Fund contracting states would also be invited to attend and would be given voting rights on those cases in which their contributors still have an interest.

With the departure of 7 members of the 1971 Fund Executive Committee on 15th May 1998, Canada was elected to the Committee.

The 1971 Assembly elected Mr. Jerzy Vonau of Poland as Chairman as from the end of its present session until its next regular session.

The 1992 Fund Assembly also considered the applicability of the 1992 Liability Convention and the 1992 Fund Convention to floating storage units (FSUs) and floating production, storage and offloading units (FPSOs). This agenda item generated considerable discussion and it was decided to set up a Working Group, led by the United Kingdom, to study the matter further.

Canada became a member of the Working Group, as the subject is of particular interest in that an FPSO will be used for production on the Terra Nova field in the Newfoundland-Labrador offshore zone early in the year 2000.



### **The 21st Assembly of the 1971 Fund and 3rd Assembly of the 1992 Fund, 26th - 30th October 1998**

As predicted, there were insufficient contracting states present to form a quorum for the 21st Assembly of the 1971 Fund. Consequently, the 1971 Fund Executive Committee, under the chairmanship of Mr. A. Popp, Q.C., of Canada, acted on behalf of the Assembly with the powers delegated to it for this eventuality by the Assembly in April 1998.

Major issues discussed at this session were:

The winding up of the 1971 Fund, and in this respect, consideration was given to requesting the International Maritime Organization (IMO), to convene a diplomatic conference to amend the 1971 Fund Convention and that such an amendment could immediately be applied provisionally, pursuant to Article 25 of the Vienna Convention on the Law of Treaties. The Director was requested to study the matter further in consultation with IMO, the depository of the Convention.

There was a general review of the investment policy in the context of the current financial crisis worldwide. It was agreed that any investment in discount houses should be cancelled. Also, that there should be no change in the policy of all assets being held in pounds sterling, unless it is necessary to have foreign currency on hand to pay claims.

As at 30th June 1998, the 1971 Fund had total investments of £135,750,000. Contingent liabilities of the 1971 Fund, as at 31st December 1997, estimated at £390,555,000 for incidents that occurred prior to 15th May 1998, were reported. Those liabilities which mature will be met from contributions levied on existing and former members of the 1971 Fund.

Once again the non-submission of oil reports was discussed, but no new procedures or remedies to force contracting states to submit oil reports were proposed. The concern being that invoices cannot be issued for contributions by the contributors in the non-reporting states.

Relocation of the Funds office was discussed at some length by the Assembly, as there is no more space available at IMO Headquarters for the increased Secretariat, but it is intended that the Funds would continue to use that organization's conference facilities.

Regarding the 1998 annual contributions, it was decided that the following amounts should be levied for payment by 1st February 1999: £1.7 million to the General Fund and £7.5 million to the NAKHODKA Major Claims Fund. Canada's share, £357,265.42, was paid by the Administrator out of the SOPF and credited to the 1971 Fund on 27th January 1999. A maximum deferred levy of £17,500,000 was also agreed.

A budget for 1999 with total administrative costs for the joint Secretariat of £2,792,360 was adopted.

With respect to the 1992 Fund, the Director reported on the new structure of the 1992 Secretariat, the new working methods adopted and the strengthening of the Fund's activities. The most important development to date was the new appointment of the Head of the Claims Department. The 1992 Assembly also elected members to its Executive Committee.

### **The 1971 Fund Executive Committee**

#### **The 58th Session of the 1971 Fund Executive Committee, 27th - 29th April 1998**

Respecting the HAVEN incident, the Committee noted that the Director was to report to the Assembly on the global settlement which still had to be approved by the Chamber of Deputies of the Italian Parliament.

The basic elements of the settlement being agreed by all parties, including an agreed amount of £2.5 million for the indemnification of the shipowner, a guarantee or indemnity by the P&I Club against any further claims and any judgment given by the Italian Court in the outstanding "stato passivo" proceedings. On this basis, the liability will be limited to 60,000,000 SDRs (about £37 million) plus the above £2.5 million payable under Article 5 of the 1971 Fund Convention.



The Committee noted that there appeared to be some progress to achieve an overall settlement of the AEGEAN SEA incident. To help the Director, a consultation group was struck, as was done in the case of HAVEN. Whether it is possible to arrive at a global settlement remains to be seen.

With regard to the SEA PRINCE incident, the largest incident in Korean waters to date, the Committee noted that there was sufficient compensation available to pay all fishing and tourism claims in full and that other claims would fall below the maximum liability of the 1971 Fund.

The major issue dealt with at this session was whether, in respect of the SEA EMPRESS incident, the 1971 Fund would contest the shipowners claim to limit liability to about £4,500,000, as compared to the liability of the Fund at £45,000,000. After considerable discussion, the Committee decided that the 1971 Fund should not challenge the shipowner's right to limit liability and further decided there were no grounds on which the 1971 Fund could oppose the shipowner's right to indemnification under Article 5 of the 1971 Fund Convention. In the debate, Canada took the position that the shipowner's right to limit liability should be contested.

The Committee also reviewed the NAKHODKA incident and it was now clear that there will not be sufficient compensation in the 1971 Fund and the 1992 Fund to pay all provable claims in full. Consequently, prorating at 60% should continue. The Director was requested to estimate the total amount of the claims to enable the Committee to deal with this issue at its next session.

The Committee also considered the NISSOS AMORGOS incident. Many issues complicate this incident. The claims of the Republic of Venezuela, the fishermen's trade union and fish processors, far exceed the compensation available by a factor of 4 to 1. It is possible that the shipowner may be able to show that the cause of the incident was the fault of the Canal Authority, with the result that there could be an increased burden on the 1971 Fund.

### **The 59th Session of the 1971 Fund Executive Committee, 27th - 30th October 1998**

Respecting the HAVEN incident, the Committee was informed that the global settlement agreement had not yet been signed.

The Committee again considered the AEGEAN SEA incident; it was noted that there was no obvious solution to move this incident forward. The basic issue of proof of claims remains. As confirmed by the Spanish Court, each claimant must be able to substantiate the actual amount suffered by that claimant. The general impact of the incident on the fishing industry as a whole was not adequate proof.

After reviewing the BRAER incident, the Committee continued its previous decision not to pay any further claims until the overall claims picture was more precisely known. The Committee requested the Secretariat to maintain the on-going dialogue with claimants and their solicitors in the hope that more claims would be approved in principle, even if not paid. It was noted that the total amount claimed in the Scottish Court had been reduced to about £44 million.

Concerning the SEA EMPRESS incident, the Committee noted that it was likely that more claims would be filed given the approaching time bar date of 15th February 1999. Also, the possibility of recourse action against the Milford Haven Port Authority and the Harbour Master could depend on the outcome of the criminal proceedings in the Cardiff Crown Court in January 1999.

In dealing with the NAKHODKA incident, the Committee noted that it was the most costly oil spill within the jurisdiction of the International Funds. Claims, so far received, amount to over £170,000,000, with total payments to claimants so far amounting to only £24,800,000. The Committee decided to continue prorating payments at 60%.

The issue of possible recourse action was discussed. The failure of the shipowner and its P&I Club to provide relevant documents is a concern.



## The 60th Session of the 1971 Fund Executive Committee, 1st - 5th February 1999

Several complex issues relating to a number of incidents were discussed at this session.

Respecting the KEUMDONG No. 5 incident, a Korean court had recently awarded compensation to a number of unlicensed fishing claimants. The court had also granted compensation to a group of claimants for "pain and suffering". Additionally, the court held that the burden was on the 1971 Fund to prove that Ark shells on the seabed would not be affected by oil on the surface.

The Director was requested to appeal on all three points. Payment of compensation to unlicensed fishermen is not consistent with the Fund's policy. "Pain and suffering" does not fall within the definition of 'pollution damage' in the Conventions.

The Committee decided to defer to its next session consideration of issues concerning the SEA PRINCE, also a Korean incident, particularly whether certain claims filed in the limitation proceedings were time-barred.

The Committee decided to reject a number of claims allegedly suffered due to the closure of the Port of Milford Haven and restrictions on ship movements resulting from the SEA EMPRESS incident. The Committee decided to reject these claims as they were not caused by either contamination or preventive measures, but were a result of a decision by the Port Authority for the safety of navigation.

It was noted that the Milford Haven Port Authority on 12th January 1999, pleaded guilty to a charge under the Water Resources Act 1991. As a result of this plea, no evidence was tendered in court. It was also noted that the 1971 Fund did not conduct its own investigation of the incident. The Director was requested on an urgent basis to consider whether the 1971 Fund should take recourse action against third parties to recover amounts paid by it as compensation in the SEA EMPRESS incident.

Respecting the NISSOS AMORGOS incident, as payments of compensation are currently limited to 25% of the accepted amounts, an oil company requested payment of the balance of the assessed amount of its claim for clean-up costs against a bank guarantee. The Committee rejected the request on the grounds that making payments against bank guarantees could be seen as giving preferential treatment to those claimants with sufficient financial resources to obtain bank guarantees, and also since practical difficulties could arise if large numbers of claimants requested full compensation against such guarantees in cases where payments were prorated.

The NAKHODKA incident was also reviewed by the Committee.

After two years from the date of this incident, the 453 claims so far presented to the Funds amount to £185,000,000, while the claims paid to date only amount to £24,000,000. Since the time bar for new claims falls in early January 2000, prorating of payments at 60% must be maintained, as claims filed to date already exceed the maximum aggregate amount payable from both Funds.

The Committee again reviewed the HAVEN incident but, at the time of this session, the proposed global settlement document had not been signed. Subsequently, the settlement document on all outstanding issues arising from this incident, which occurred in April 1991, was signed at Rome on 4th March 1999.

Particulars of the agreement, as advised by the Secretariat of the Funds, are reproduced below.

### ***Tri-partite settlement agreement***

*In July 1998 the Italian Parliament adopted an Act authorising the Italian Government to conclude an agreement with the 1971 Fund, the shipowner and his insurer on a global settlement of all issues arising out of the Haven incident. A tri-partite agreement between the parties was then elaborated. This agreement was signed in Rome on 4 March 1999.*

*Under the agreement, the parties undertake to withdraw all legal actions in the Italian courts. As regards the 1971 Fund the agreement is based on a maximum amount available under the 1969 Civil Liability Convention and the 1971 Fund Convention of 60 million SDR. The amount to be paid by the 1971 Fund does not relate to environmental damage. The agreement provides for a payment by the shipowner/UK Club to the Italian State on an ex gratia basis and without admission as to the liability of any party, to the extent that the payment exceeds the limitation amount under the 1969 Civil Liability Convention. In addition, the shipowner/UK Club undertake to defend further claims which were submitted during 1998 in the limitation proceedings from certain fishery interests and to resolve these claims at their own expense.*

*As a result of the agreement, the 1971 Fund will pay some Lit 70 000 million (£24.7 million) to the Italian State. The total amount to be received by the Italian State from both the 1971 Fund and the UK Club, including an ex gratia payment by the Club, will be Lit 117 600 million (£42.9 million).*

*The tri-partite agreement will now be submitted to the Court of Accounts (Corte dei Conti) for approval and registration.*

### **1992 Fund Executive Committee**

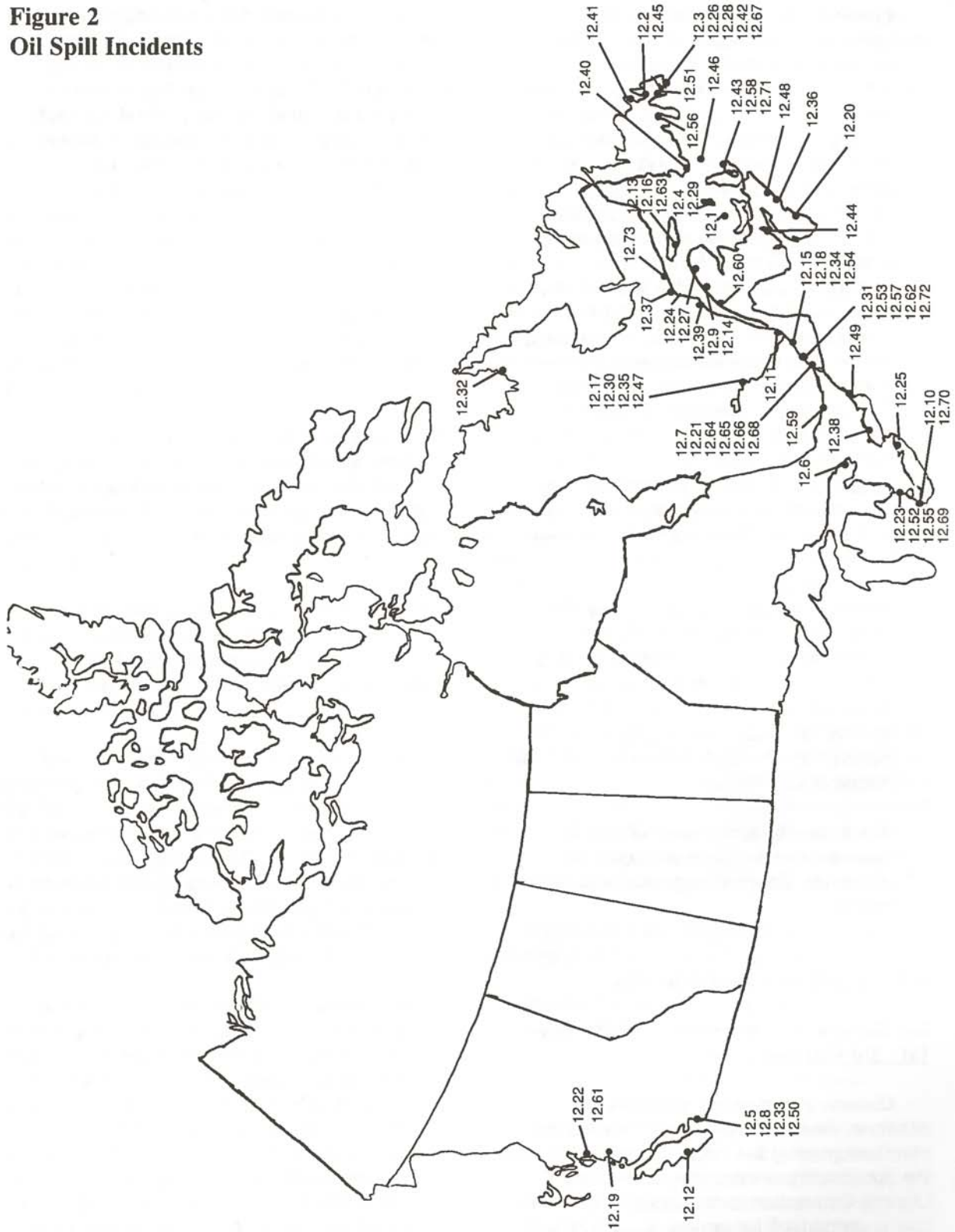
#### **2nd Session of the Executive Committee, 1st - 3rd February 1999**

Canada attended this session as an observer. Items discussed were level of payments respecting the NAKHODKA incident and the applicability or otherwise of the 1992 Liability Convention to that incident, compensation to unlicensed fishermen, apportionment of compensation payments between P&I Clubs and the 1992 Fund and organizational changes within the Secretariat.

It is emphasized that, as already mentioned in this report, Canada will have no responsibility to pay compensation for incidents occurring before the 1992 Fund Convention enters into force for it on 29th May 1999. Similarly, there will be no responsibility for the administrative costs of the 1992 Fund before that date.



**Figure 2**  
**Oil Spill Incidents**



## 12. Oil Spill Incidents in Canada

During any particular year the SOPF receives many reports of oil pollution incidents from a variety of sources, including individuals who wish to be advised if they are entitled, under the CSA, to be considered as potential claimants as a result of oil pollution damage they have suffered. All such reports and inquiries are investigated by the SOPF and those which fell within its purview are noted hereunder.

### 12.1 IRVING WHALE (1970)

For the earlier history of this 1970 incident, please refer to this Annual Reports for 1991-92, 1992-93, 1993-94, 1994-95, 1995-96, 1996-97 and 1997-98.

During the period April 1, 1998 - March 31, 1999, covered by this Annual Report, the following events should be recorded.

- a) On June 19, 1998, the Irving Defendants filed an Affidavit and exhibits in the Federal Court of Canada.
- b) In the period July 31, 1998 - September 30, 1998, the Crown filed Affidavits and exhibits from seven witnesses in the Federal Court.
- c) On September 3, 1998 the IOPC Fund filed an Affidavit and exhibits in the Federal Court.
- d) Cross examinations of five of the Crown witnesses were held during the period August 4, 1998 - October 16, 1998.
- e) Cross examination of the Irving Defendant's witness was held on August 18, 1998.
- f) Cross examination of the IOPC Fund witness was held on September 25, 1998.
- g) Motions for Summary Judgment were made to the Federal Court by the Irving Defendants on October 22, 1998, the IOPC Fund on October 28, 1998 and the SOPF on October 29, 1998. The Crown filed replies to these Motions on November 20, 1998 and the matter was set for Hearing by Mr. Justice James K. Hugessen on December 9-10, 1998, in Montréal.
- h) On December 21, 1998, Mr. Justice Hugessen found, inter alia, that Crown claims against the SOPF were time-barred, and made Order as follows:  
  
**[T]his Court Orders that:**
  1. *The motion for summary judgment of the defendants is allowed and the action against the defendants is dismissed insofar as it is based on Part XVI of the Canada Shipping Act; claims based on other causes of action will continue; the defendants will be entitled to their costs of the motion at the end of the day which costs are hereby assessed the amount of \$4,000.00 plus allowable disbursements.*
  2. *The claim against the defendant by Statute, the Administrator of the Ship-source Oil Pollution Fund is dismissed and the counter-claim is allowed; it is declared that the said defendant by Statute has no liability to the plaintiff arising out of the sinking of the Irving Whale on September 7, 1990. The said defendant is entitled to his costs payable forthwith and assessed in the amount of \$10,000.00 together with allowable disbursements.*
  3. *The claim against defendant by Statute, the International Oil Pollution Compensation Fund 1971, is dismissed and it is declared that the said defendant by Statute has no liability to the plaintiff arising out of the sinking of the Irving Whale, September 7, 1970; the said defendant is entitled to its costs which are assessed in the amount of \$17,500.00 together with allowable disbursements.*
- i) The Crown did not appeal the decision in respect of any of the defendants and it is understood that the Irving defendants will face claims by the Crown based on other causes of action in which there will be no involvement of either the SOPF or the IOPC Fund.  
  
Mr. Justice Hugessen's full reasons for order can be found in Federal Court of Canada Trial Division, Docket: T-1625-97, Date: 19981221.



## 12.2 LIBERTY BELL VENTURE (1987)

There was a spill of Bunker C oil during this 31,331 gross ton (GT) Liberian flag tanker's discharge of cargo at the Newfoundland Hydro plant terminal, situated in Seal Cove, Conception Bay, Newfoundland, on March 29, 1987. The CCG responded to the spill and incurred costs and expenses to a claimed amount of \$11,779.71. The ship blamed the terminal for the spill and the terminal blamed the ship. It was estimated that 4,000 to 8,000 L of oil was spilled.

On March 28, 1989, the Crown filed an Action in the Federal Court to recover its monies, naming the Administrator a party by statute. Local representatives of the owners refused to accept service of the Statement of Claim, which was eventually served pursuant to Rule 310(2) of the Federal Court Rules.

Final settlement of this Action was further delayed awaiting the decision of the Supreme Court of Canada in the *Bow Valley Husky v. Saint John Shipbuilding et al.* This case involved the fire aboard a Canadian built drill rig. The owners of the rig brought suit against the shipyard for breach of contract. There were other issues. The defendants argued that common law principles applied and that the owner's contributory negligence constituted an absolute defence. The Supreme Court, in its December 1997 ruling, held that such disputes should be settled using the principles of Canadian maritime law and that law allowed for the apportionment of liability between the parties.

As the law had been clarified, settlement of the LIBERTY BELL VENTURE case was able to be pursued between the Crown and the shipowner.

On March 25, 1999, the Administrator was advised by Crown counsel that Notice of Settlement had been filed with the Federal Court.

## 12.3 SOUTH ANGELA (1988)

The 59,353 GT Liberian tanker SOUTH ANGELA, on March 5, 1988, discharged a portion of her crude oil cargo into the water while alongside at the Come By Chance refinery in Placentia

Bay, Newfoundland. There was a further discharge of oil in a similar fashion on March 7, 1988. The amounts discharged were estimated at 15 and 500 barrels, respectively. In the absence of action by the shipowner, the CCG arranged for the clean-up, assisted by the refinery. The CCG incurred costs and expenses to a claimed amount of \$250,169.00 for the two incidents. At the time local fishermen feared that their livelihood would be affected. The refinery also claimed damages. To enable the tanker to sail, the P&I Club posted bonds for the following amounts: \$300,000.00 for the CCG, \$4 million against potential claims from the fishermen and \$6 million against refinery claims.

The ship accepted responsibility for the first spill but no resolution could be achieved for the second spill and, on February 22, 1991, the Crown filed a claim in the Federal Court to recover the CCG costs and expenses, amounting to \$234,336.58, naming the Administrator a party by statute. The refinery also filed a court Action, but both Actions were consolidated into one to avoid duplication. It was agreed with the parties, and excused by the Court, that the SOPF need not be represented at the hearing, unless it was determined that the interests of the Fund were at stake.

A pretrial conference was held in April, 1994, and the case came to trial at various times during 1995.

The decision of the Supreme Court of Canada in the *Bow Valley Husky v. Saint John Shipbuilding et al.*, may enable the parties to this Action to reach a settlement without the participation of the Administrator.

CCG reported that, as at March 31, 1999, the court has assigned liability equally to the shipowner and the refinery. Discussions on quantum were taking place between the Crown's agent and legal counsels for the shipowner and the refinery. An offer was received from the shipowner.

## 12.4 DUKE OF CONNAUGHT (1988)

This 17,963 GT dry-dock had served for many years in Montréal when in 1988 it was sold. The structure was under tow to Sydney, Nova Scotia, when, in heavy weather on November 22, 1988, it



broke adrift and grounded on les Îles de la Madeleine. Subsequently the dry-dock was declared a total loss and abandoned. In 1989, the CCG inspected the wreck and it was not considered to be a pollution threat. A local contractor worked on the wreck but there was a dispute over ownership.

On July 23, 1997, the CCG received a telephone call from a les Îles de la Madeleine journalist asking what the CCG was going to do about the pollution coming from the wrecked dry-dock. The CCG responded and with the use of a helicopter, recovered 6 barrels of Bunker C mixture, 2 barrels of an oily liquid, 1 barrel of oil contaminated asbestos and some containers of chemicals.

On July 13, 1998, the Crown presented a claim to the Administrator, amounting to \$32,056.91, in order to recover the CCG's costs and expenses in this operation. The Administrator acknowledged the claim but expressed the view that it was time-barred under Part XVI of the CSA. Following further correspondence, both parties agreed to await the decision of the litigation before the Federal Court involving the IRVING WHALE. An issue common to both cases was the interpretation of "occurrence" and, thus, the date from which the time-bar was calculated.

On December 21, 1998, Mr. Justice Hugessen issued his decision on the IRVING WHALE. On March 30, 1999, the Crown withdrew its claim in this incident agreeing it was time-barred in view of the IRVING WHALE decision. The Administrator closed his file.

## **12.5 NEW ZEALAND CARIBBEAN (1989)**

The first the Administrator was aware of this oil pollution incident was when, on August 21, 1990, he was served by the Vancouver Port Corporation (VPC) with a copy of a Statement of Claim, pursuant to Section 713 of the CSA. This document named the Administrator a Party by Statute. The Statement of Claim alleged that the Vanuatu flag 19,613 GT general cargo/container ship NEW ZEALAND CARIBBEAN had caused oil pollution when coming alongside a shipyard berth in North Vancouver on January 30, 1989. It was stated that a bollard on the quay holed a shipside fuel oil tank. By the time that VPC had filed the

claim the ship had changed name, flag, owners and operating company. It was agreed that, unless the SOPF interest was at stake, the SOPF need not instruct counsel.

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

During 1997 an out-of-court settlement was agreed between the parties. The ship made a payment of \$51,000 and the VPC agreed a Dismissal Order be filed naming the ship and owners, concluding the case against those parties. Counsel for the shipyard had agreed a payment of \$25,000 from payments due the shipyard, which was now in bankruptcy. To date the Receiver for the shipyard does not acknowledge the Direction to Pay and the Court Action against the shipyard continues.

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

## **12.6 EASTERN SHELL (1991)**

This Canadian single-hulled tanker of 4,008 GT was engaged on a voyage carrying diesel oil and gasoline from Sarnia to Parry Sound, Ontario, when, on May 10, 1991, she struck rocky bottom. It was early morning and it appears that the navigation aids were missed in the early morning blinding sun conditions. The ship was holed and it was later estimated that 100,000 L of gasoline and 62,000 L of diesel were lost into Georgian Bay.

The CCG, the owners and the charterers responded to the spill providing a containment and clean-up operation. The CCG could not obtain settlement of their costs and expenses, which were stated to be \$356,143.47. The IOPC Fund was not involved as the spilled hydrocarbons did not come within the definition of "persistent oil" in the Fund Convention. On February 2, 1993, a letter was received from counsel for the shipowners, in effect, making a claim against the SOPF for the balance of monies paid over and above the



tanker's calculated limit of liability. The owners claimed costs and expenses as follows:

- the owners (Soconav)	\$326,546.08
- the charterers (Shell Oil Co.)	\$310,000.00
- the CCG	\$356,143.48
Total	\$992,689.56
- the EASTERN SHELL's	
Stated Limit of Liability	\$728,237.33
Excess	\$264,451.23

Another relevant calculation is the amount of money the owners claimed was available to settle the CCG claim, namely:

- Stated Limit of Liability	\$728,237.33
- Owners/Charterers costs (above)	\$636,546.08
Balance remaining	\$ 91,692.25

On March 2, 1993, counsel for the SOPF replied to the owners to seek more information and making these main points:

- doubting whether the stated clean-up figure of \$992,689.56 was a valid figure for any balance of a claim against the SOPF.
- expressing the view that some of the above mentioned costs were incurred in salvage of the vessel, and repair to enable her to move to a permanent repair facility.

Discussions and negotiations took place on these issues, and others, without resolution. On January 14, 1994, the Crown filed an Action in the Federal Court against the EASTERN SHELL, her owners and others, to recover the CCG costs and expenses, naming the Administrator a Party by Statute. Statements of Defence and a Counter Claim for Limitation of Liability were filed on behalf of the shipowners on February 8, 1995. The parties exchanged documents and Examinations for Discovery were held. The Crown and the SOPF both took the position that the shipowner was not entitled to limit its liability.

On February 7, 1997, notice was received that the shipowners, Soconav, had been placed into bankruptcy, which event was deemed to have taken place on September 20, 1996. A number of discussions have taken place with the Administrator regarding the Crown's claim since 1996. The Administrator is hopeful that a resolution will soon be achieved.

## 12.7 Oil Barrel - Sorel Harbour, Québec (1993)

One of the more unusual claims presented to the Administrator was one received from the CCG, dated February 14, 1994, amounting to \$46,813.79. It concerned a drum lying on the harbour bed of Lanctôt Basin, Sorel, which was perforated by the action of a dredger working in the basin on November 30, 1993. Perforating the drum released its contents of heavy oil which floated to the surface and contaminated the basin, together with ships moored in the basin. There was light ice in parts of the basin at the time. The spill was responded to by the CCG who employed contractors to effect a clean-up.

On July 12, 1994, the Administrator rejected the claim on the material so far submitted but agreed to review any further submissions the Crown may wish to present. After that date, there was further correspondence and discussions, but no agreement reached on whether the claim, as presented, was valid under Part XVI of the Act.

The Administrator wrote to counsel acting for the Crown on November 17, 1998, and restated that he was not satisfied that this incident fell within the jurisdiction of the SOPF under Part XVI of the CSA and, therefore, the Fund could not be liable for this claim.

Subsequently, the CCG stated that the claim was withdrawn.

## 12.8 GENERAL TIRONA (1993)

Early morning December 13, 1993, it was reported to the CCG Vessel Traffic Services (VTS) that the ship GENERAL TIRONA was damaged and had released a quantity of oil while berthing at a wharf in North Vancouver. The ship is a Philippine registered bulk carrier of 19,510 GT. Later it was reported that 43 tonnes of diesel oil had been lost into Vancouver Harbour. Initially, the VPC responded to the pollution, but due to the magnitude of the spill, the Corporation requested that the CCG assume the lead agency role. A Letter of Undertaking was issued on behalf of the P&I Club on December 15, 1993, in favour of the CCG, amounting to \$100,000.00.



On February 3, 1994, the Administrator received a letter on behalf of the Burrard Yacht Club members, North Vancouver, stating that approximately 22 yachts moored at the club had been contaminated by the oil and required cleaning, estimated at \$1,000.00 per yacht. After acknowledging the potential claim, the club was referred to the local representatives of the ship's P&I Club.

The owners of the ship filed an Action in the British Columbia Supreme Court on December 12, 1994, against the VPC and a local stevedoring company. It was alleged, in effect, that the wharf fendering system was defective. The VPC filed a Statement of Defense on January 11, 1996.

On February 3, 1995, the Crown had presented the CCG claim for its costs and expenses to the shipowners but the claim was not settled and, on December 4, 1996, the Crown filed an Action in the Federal Court against the GENERAL TIRONA, owners and others, naming the Administrator as a Party by Statute, seeking to recover the amount of \$85,090.67. The defendants filed a Statement of Defence on August 6, 1997, which was followed by the Administrator filing a Statement of Defence on September 9, 1997.

Briefs by all parties were filed with the Court during the latter part of 1998. On October 15, 1998, there was a settlement conference held before a prothonotary; the SOPF was represented by counsel. On February 18, 1999, the prothonotary issued his report, one recommendation of which was that the action against the SOPF should be dismissed. The Crown agreed to the dismissal of the action against the SOPF, without costs to any party. On March 22, 1999, the formal consent documents were forwarded to the Crown for signature.

## 12.9 CALYPSO IV (1994)

This ship is a 3,010 GT bulk carrier, registered in Panama, owned by a company in Tortola, British Virgin Islands and operated by a company in the USA. On February 2, 1994, when the CALYPSO IV was under a CCG Ship Safety Branch (now the Marine Safety Branch of Transport Canada - MSB) detention order for various deficiencies and while at the Les Méchins, Québec, shipyard on the

south shore of the lower St. Lawrence River for the necessary repairs, ice around the ship was found to be polluted. It was subsequently ascertained that lubricating oil, a quantity of bilge waste and general garbage from the ship, had been deposited on the ice.

The shipyard arranged for contractors to carry out the clean-up under the supervision of the CCG and Environment Canada (EC). At the same time CCG icebreakers were engaged in clearing ice to free the approach to the shipyard's dry-dock. At first it was feared that this operation would free the polluted ice which would drift off but, after evaluation, the icebreaking was allowed to continue. In order to avoid the CALYPSO IV being further detained, on February 11, 1994, the P&I Club issued a Letter of Undertaking to the amount of \$70,000.00 addressed to various parties with potential claims related to the pollution.

The Crown submitted the CCG/EC portion of the clean-up action, amounting to a stated \$8,181.49 to the Administrator, which he received on June 16, 1995. In his acknowledgment, the Administrator confirmed his understanding that the Crown would also supply a copy of the claim directly to the shipowners representatives; this copy was never submitted. Representations were made to the shipowner's representative on or about February 11, 1997, who took the position that any claim was time-barred against the ship.

One of the main issues in the claim is the fact that the CCG's costs and expenses consisted of costs to monitor the contractor's work, under contract to the shipyard.

On March 17, 1997, the Administrator wrote to the Crown counsel involved raising the issue of monitoring and seeking his opinion. In the same letter, it was pointed out that Bill C-58 would clarify whether or not the Crown's costs and expenses in the monitoring role were recoverable, if and when the Bill was enacted into law.

Crown counsel's reply on June 18, 1997, took the view that monitoring costs were legally recoverable from the CALYPSO IV shipowner at the time in February 1994.

Bill S-4 containing the new regime of liability and compensation for oil pollution damage in Part



XVI of the CSA received Royal Assent on May 12, 1998, and will come into force on May 29, 1999. It was the Administrator's view that the passage of this Bill into law removed any doubt as to the liability of the shipowner with regard to the costs of the CCG in a monitoring role during an oil pollution incident.

On July 30, 1998, the Administrator arranged to transfer \$10,889.90, which included \$2,708.47 in interest, to the Crown, in full and final settlement of this claim.

### 12.10 PRINCESS No. 1 (1994)

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

The tug arrived at the base late in the afternoon of February 11, 1994, where she was met by a MSB Surveyor. As the tug was effectively without heat, two of the three remaining crew left for their homes. The third crew member, the chief engineer, also left to obtain a hot meal ashore. When the chief engineer returned, he found the tug in the process of sinking. Emergency action was taken by the local fire brigade with pumps, but it was too late and the tug sank at the berth. As a result of the sinking, a quantity of oils were released. The CCG responded and used CCG vessels and crews, which were in the area, to contain and clean-up the pollution, some of which was contaminated ice. Subsequently, the owner raised

the tug with his own resources and put her ashore. It was found that the tug had developed a number of leaks in her hull, which were presumed to have been caused by operations in the ice.

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

The Administrator had a number of concerns regarding the quantum of the claim, in particular the costing of the CCG vessels and crews. Following a number of meetings a settlement of \$105,000.00, including interest, was agreed and on November 26, 1996, arrangements were made to transfer this amount to the Crown.

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

### 12.11 PIERRE CHAUVIN (1994)

A local CCG vessel, on August 8, 1994, reported that there was oil pollution in Tadoussac Bay, Québec. Initially, the spill was designated a mystery spill. Many yachts and the pontoons at a marina in Tadoussac were oiled and the CCG contracted for the clean-up. Later, a member of the public advised that oil had been seen coming from the Canadian vessel PIERRE CHAUVIN, which was alongside in the harbour. The vessel is 69 GT and was normally engaged as a tourist whale watching cruise boat. An investigation ascertained that an automatic pumping arrangement, left unattended, had overflowed a tank.

The CCG Emergency Response Branch incurred claimed costs and expenses of \$22,341.27 in the clean-up, which bill, dated February 23, 1995, was presented to the owners. The then Ship Safety Branch of the CCG instigated a prosecution for the pollution and on October



13, 1995, the vessel was found guilty of an offence and fined \$4,000.

Discussions on settlement of the clean-up claim continued between the Crown and representatives of the owners. The CCG Summary of Claims, dated December 1st, 1997, noted that a figure of \$15,000 had been agreed, paid, and the claim settled. The incident had not involved the SOPF.

## 12.12 MARWOOD (1994)

This 237 GT Canadian flag fishing trawler sank while alongside the government wharf in Ucluelet, British Columbia, on August 14, 1994. The chief engineer, asleep at the time, lost his life. The Transportation Safety Board of Canada (TSB) investigated the sinking and found that the vessel's trawl doors caught under the wharf on a rising tide and contributed to the downflooding, which caused the sinking. The trawler contained approximately 36,000 L of diesel oil, 2,700 L of lubricating oil and an undetermined quantity of hydraulic oil.

The CCG responded to the oil released from the sunken vessel, using their own, and contractor's, personnel. The MARWOOD's owners arranged for the salvage of the trawler, which was effected on August 17, 1994, and the clean-up effort was ended. Through counsel, the SOPF was instrumental in the P&I Club issuing a Letter of Undertaking in the amount of \$250,000.00 in respect to the clean-up of the oil pollution, or to furnish bail in the event of litigation. It had been shown that there was limited value in the salvaged vessel but considerable value in the fishing license, and it had first proved necessary to arrest the MARWOOD before the Letter of Undertaking was received.

By letter of December 15, 1995, the Crown submitted their claim, amounting to \$178,951.65, direct to counsel acting for the owners. As no settlement could be agreed, on February 21, 1995 the Crown filed an Action in the Federal Court against the MARWOOD, her owners and others. The Administrator was named a Party by Statute.

A Statement of Defence and a Counter Claim by the Defendants were filed and on November 19, 1997, were amended, denying a number of

issues and alleging, among other matters, negligence by the Minister of Transport in the inspection of the vessel.

The Administrator retained counsel. The Court made an order on September 2, 1998, regarding the schedule for advancing the litigation and Examination for Discovery proceeded. On October 7, 1998, the Administrator was informed that the action had been settled out of court between the Plaintiff and Defendant. The formal Agreement of Settlement and Release, releasing the Administrator and others from the action, was signed on October 22, 1998, followed by the Notice of Discontinuance duly signed on November 12, 1998.

## 12.13 STEVE C (1994)

It was reported that, on August 15, 1994, this 44 GT Canadian fishing vessel went aground on the south coast of Anticosti Island. All four crew members were safely evacuated by a Search and Rescue (SAR) operation. The owner and the P&I Club arranged for the approximately 5,000 L of diesel fuel aboard to be transferred to another fishing vessel and pollution was largely avoided. The fishing boat was subsequently declared a total loss.

The SOPF has limited information on this incident and no claim has been received by the Administrator. Any claim would normally be time-barred two years after the day on which the pollution damage occurred.

The latest information from the Crown is that the costs and expenses claimed to have been incurred by the CCG responding to the threat of pollution from this vessel amounted to \$27,677.88. The owner/insurer offered to pay up to the STEVE C's limit of liability amount, but there was a dispute concerning the calculation of this sum.

The CCG calculated the limit of liability at \$11,255.75 and settled the claim for this amount. There was no reference to the SOPF in this matter.



## 12.14 Mystery Oil Spill - Sainte Félicité, Québec (1995)

This incident proved to be one of the more complex claims to assess involving, as it did, limited amounts of oil found at various locations, on shore and off shore, over some 60 km, the actions by two Federal agencies, and claimed response costs of over \$127,000.

A CCG Status Report stated that on July 27, 1995, the Québec Provincial Department of Environment and Wildlife reported to Federal agencies the presence of an oil slick in the water on the lower St. Lawrence River's south shore between Sainte Félicité and Anse à la Croix. At that time, the slick was stated to have contaminated some 9 km of shoreline. Initially it was thought that the oil originated from a land source. Under the applicable Federal/Provincial agreement both Environmental departments, and the CCG, responded. On the basis that the slick appeared to be heavy oil and considered to be of a marine origin, the CCG was made the lead agency. The MSB commenced an investigation.

Analysis of the oil showed it to be Bunker C and to have been weathered for at least two weeks before coming ashore. As a result, it was impossible to ascertain by oil sample analysis which of the numerous ships that had transited the river, during the relevant period, was responsible. The spill was then classified as a "mystery spill".

After a beach survey, oil was found at a number of places from Sainte Félicité to Cap Chat and an estimate of a total quantity of 23,000 L was given. Contractors commenced clearing up the oil on July 28, 1995, and in a number of instances as soon as a beach was cleaned it became re-oiled. It is not clear that all the oil came from the same source. By the time the contractors had completed their work on August 2, 1995, approximately 30 barrels of oil/heavily oiled material had been recovered.

On February 27, 1997, the Administrator received the Crown's claim on behalf of the CCG to recover the costs and expenses incurred. The claimed amount was \$127,177.83, including taxes on Federal Government costs, which taxes are not payable by the SOPF.

The Administrator investigated and assessed the claim. This claim raised a number of concerns which were submitted to counsel for the CCG for clarification and a reply received.

The Administrator agreed a settlement of \$114,456.61 with the Crown. This amount, plus \$23,167.46 interest, was arranged to be transferred to the Crown on May 25, 1998, thereby closing the file.

## 12.15 GRETE STAR (1995)

On August 16, 1995, a report was received that a patchy oil slick extended over sections 14 to 17 in the Port of Trois Rivières. Berthed at section 16 was the 11,318 GT Panamanian flag container ship GRETE STAR and another vessel was berthed nearby. The MSB Surveyor attended, and samples were taken. EC and the CCG responded to the pollution and the CCG contracted for the containment and clean-up, incurring costs and expenses said to amount to \$8,565.67. The MSB was satisfied that the origin of the oil was the GRETE STAR. No claim was received by the Administrator pursuant to section 710 and any such claim would normally become time-barred on or after August 17, 1997.

However, on August 14, 1998, the Administrator was served with a Statement of Claim in an action by the Crown against the GRETE STAR and owners in respect to this spill. The Administrator had been named a party pursuant to CSA section 713. The SOPF appointed counsel to act on its behalf. On January 26, 1999, the Administrator was informed that an out-of-court settlement could be reached between the Crown and the ship, without reference to the SOPF. One of the conditions of the proposed settlement was that the SOPF had to forgo any claim for costs, which were approximately \$500 in accordance with the Federal Court of Canada Tariff. The Administrator agreed to waive costs to achieve settlement. On February 26, 1999, a Receipt, Release and Discharge document was signed by all parties thereby concluding this matter.



## 12.16 HALTREN NO. 1 (1995)

This incident, which resulted in a substantial claim being made to the SOPF, involves a number of issues which makes it one of the more complex claims to be considered by the Administrator.

On October 25, 1995, the 1,178 GT Canadian registered barge sailed light ship from Grande Vallée, Québec, bound for Port Menier, Anticosti Island, under tow of the Canadian tug TECHNO ST. LAURENT. The barge had been used as a tank barge by her previous American owners, but at the time of the incident was employed as a pulp wood timber deck-loading barge in a one way trade from Anticosti Island to the mainland. With a gale warning for the Anticosti area in effect with winds reported to be gusting to 27 knots, late in the evening when off Port Menier, the barge broke its tow. It was considered too dangerous to attempt to reconnect the tow overnight. During a daylight search the next morning the barge was found to be aground on the southwest coast of Anticosti Island. The owner reported to the CCG that the barge showed no visual signs of damage, that there was no threat to the environment but there were 272 L of hydraulic fluid in drums on board. Several refloating attempts were made by the owner, without success.

On November 16, 1995, CCG personnel went to the site of the grounded barge by helicopter to inspect and report on the incident. They found that there was a slight leak of light oil from the barge and on examination they found that, in addition to the hydraulic oil reported by the owner, there was approximately 56,000 L of an oily mixture in the holds and a further 5,600 L of diesel oil in a stern compartment.

On November 21, 1995, the CCG sent a letter to the barge owner requesting the owner's action plan to prevent pollution. A response plan was received by the CCG on November 27, 1995, and accepted by the government authorities.

Following the hull insurers decision that it was not practical to refloat the barge, it was then declared a constructive total loss and the P&I Club took over responsibility for the removal of the oils. Between December 8 and December 12, the diesel oil was removed but, with the onset of

extreme cold, the oily mixture started freezing and further efforts were abandoned until the spring.


The CCG commenced negotiations with the owner's P&I Club representative at the end of April, 1996, but no steps was taken by the owner to remove the remaining oily water. On July 4, 1996, a local fisherman reported that the abandoned barge was causing oil pollution and the CCG vessel MARTHA L. BLACK responded with interim containment measures. On July 16, 1996, under CCG surveillance, contractors employed by the P&I Club commenced removing the remaining oils on board. There were numerous difficulties, including storms and the obtaining of the required permits to transfer the oil when ashore. Beach access was about 2 km away from the barge and movement along the beach was impossible either side of high water. On July 25, 1996 the P&I Club representatives stopped further work on the basis that the shipowner's limit of liability (approximately \$318,000.00) for the barge had been reached.

Beginning on August 8, 1996, work resumed to remove the remaining oil/oily sludge under contract by the CCG. Commencing with the first efforts in July, shore material had been placed in the barge to prevent movement in high water conditions. The decision was made not to remove the final oil clingage within the barge and, to complete the operation. Some of the less oil contaminated beach material was also put into the barge. The work was completed to the satisfaction of the CCG and EC on August 24, 1996, and the barge openings welded shut for safety purposes.

The Crown filed a claim amounting to \$306,706.63, with the Administrator on October 28, 1996, to recover its costs in this incident. After considerable investigation, the Administrator submitted a series of questions to the Coast Guard in August 1997.

Following receipt of the required answers concerning the clean-up operation, further meetings were held between the Administrator, officials of the CCG, and respective counsel. Settlement was agreed and on October 21, 1998, the Administrator arranged to transfer to the Crown, \$200,000 in full and final settlement of the CCG claim, including interest. A condition of the settlement was that the Crown signed a receipt Release holding the SOPF harmless against any





potential future pollution claims which could be made involving the HALTREN No. 1; this signed release was duly received.

Counsel for the SOPF, on October 23, 1998, commenced an action in the Federal Court against the Owners and other persons interested in the barge HALTREN No. 1, for the recovery of the amount paid to the Crown. On December 14, 1998, the defendants filed a Statement of Defence and Counterclaim for Limitation, stating that they had already paid \$301,432.12 for clean-up and prevention costs and expenses, and that this amount exceeded the barge's limit of liability. The SOPF's response to the Defence and Counterclaim was filed in court on January 15, 1999.

### 12.17 APJ SHALIN (1995)

The Administrator became aware of this incident on October 15, 1996, when he received a claim from Alcan Aluminum Ltd. (Alcan) amounting to \$14,454.91, resulting from an oil spill at La Baie, Québec.

On investigation, it transpired that in early morning November 17, 1995, the 41,699 GT Indian flag bulk carrier APJ SHALIN sailed from the Alcan facilities at La Baie and, as she left, a quantity of oil was found on the water between the vessel and the berth. The APJ SHALIN had bunkered overnight.

A MSB Surveyor took samples of the oil from the water and made a request to have the USCG take samples from the APJ SHALIN when she arrived at her next port of call, at New Orleans, USA. Unfortunately, this request was not passed on to the USCG.

The Administrator arranged on February 25, 1997, to pay the Alcan claim of \$14,454.91, together with the calculated interest of \$1,294.35 as required by CSA subsection 723 (1). As all the evidence, including witness statements, pointed to the APJ SHALIN being the origin of the oil, the claim was forwarded by the Administrator to Canadian representatives of the ship's P&I Club on August 1, 1997.

Following an exchange of correspondence with the P&I Club representatives, and without admitting liability, an offer of \$5,000 was made by them in full and final settlement of the claim against the APJ SHALIN. After reviewing the evidence, the Administrator accepted this offer and a cheque for this amount was received on July 13, 1998.

### 12.18 KOLOMNA (1996)

In his 1997-1998 Annual Report, the Administrator reported that this incident had presented a unique problem to the Administrator in that, for the first time in the SOPF's experience, a P&I Club had not been prepared to immediately act in accordance with a Letter of Undertaking issued on its behalf. Happily, it can be reported that the claim in this matter has since been settled.

On February 23, 1996, oil pollution was found between the 15,903 GT Roll-on Lift-off Russian Federation flag KOLOMNA and the quay at which the ship was berthed in Québec City. Initially, the master refused to accept responsibility for the spill and the CCG appointed contractors for the clean-up. The harbour was ice filled. A MSB Surveyor went aboard the ship to carry out an investigation and a detention order was issued. By late afternoon February 24, 1996, the clean-up of the estimated 1 barrel of heavy oil had been completed and by agreement between all the parties, the ship accepted responsibility for the spill. It was general knowledge that the owners of the KOLOMNA were in financial difficulties and, on February 24, 1996, an Action was commenced in the Federal Court of Canada by a leasing company against many named ships owned by the Baltic Shipping Company, seeking their arrest, including the KOLOMNA.

Just after midnight, on February 25, 1996, the Harbour Master reported that the KOLOMNA had been involved in a second spill of oil. The CCG responded with contractors for the clean-up and MSB sent a surveyor to carry out another investigation. Oil was seen to be escaping from the ship but there was no immediate explanation for the loss. A diver's inspection of the hull was ordered but no defects were found which would explain the loss of oil. By early morning on February 26,



1996, the clean-up had been completed. It was reported that a further 4,000 L of oily water had been collected.

To ensure payment of any potential fine to be levied against the ship for oil pollution, on February 23 1996, the MSB obtained a Letter of Undertaking to the amount of \$30,000 from the agents of the ship. On February 26, 1996, the CCG wrote to the ship's agent requesting a Letter of Credit to the amount of \$55,000 to cover the cost of the clean-up. On March 12, 1996, the law firm of Sproule, Castonguay, Pollack of Montréal, acting for the time charterers of the KOLOMNA, faxed a letter to the CCG pointing out the consequences if the ship did not sail. Later the same day the same law firm issued a Letter of Undertaking on behalf of the Liverpool and London Steamship P&I Club, to the amount of \$65,000 to cover the costs of the clean-ups on February 24 and 25, 1996. On the same day, March 12, 1996, the KOLOMNA was released from arrest by the Federal Court and the ship sailed.

On February 14, 1997, the ship was found guilty of causing oil pollution and was fined \$6,750, which fine was paid. Under their letter of February 27, 1997, the CCG presented their claim, amounting to \$52,837.26, to Sproule, Castonguay, Pollack in order to recover the CCG costs and expenses in the clean-up.

Following an initial acknowledgment, the law firm, by their letter of June 26, 1997 to the CCG, requested copies of all documentation for transmission to their client. In the absence of settlement, Crown counsel on August 13, 1997, wrote to Sproule, Castonguay, Pollack requesting payment of the CCG claim. There was further correspondence but in their letter of August 28, 1997, Sproule, Castonguay, Pollack requested that the Crown deal direct with the Liverpool and London Steamship P&I Club as they did not have the mandate to represent the owners or operators of the vessel at that time.

The Crown then presented the CCG claim by letter dated August 29, 1997, to the Liverpool and London Steamship P&I Club. That P&I Club faxed a reply on September 23, 1997, acknowledging the claim but pointing out that the KOLOMNA was entered with them for charterers only and any pol-

lution matters would be for the owners account. The P&I Club's letter went on to suggest that the Crown should present the claim to the owner's P&I Club. Further correspondence was exchanged; that from the Liverpool and London Steamship P&I Club and the Montréal law firm reiterated that the claim should be presented to the owner's P&I Club. The owner's P&I Club was subsequently ascertained as being the United Kingdom Mutual Steam Ship Assurance Association (Bermuda) Ltd., (commonly known as the U.K. Club).

By the Crown's letter dated January 19, 1998, the Crown presented the CCG claim to the Administrator.

The Crown prepared to take proceedings against the ship and others. Representations were made by the Crown and the Administrator to the P&I Clubs involved, in particular the Club which had issued the Letter of Undertaking, the Liverpool and London Steamship P&I Club. On February 16, 1999, the Crown received a transfer of funds for \$52,827.26 from this latter Club. This transfer included no interest. This amount was accepted by the Crown as final settlement. The SOPF file was closed

## 12.19 KATHY K (1996)

The KATHY K, a 28 GT, former tugboat, registered as a workboat, built of wood in 1912 and rebuilt in 1944, was moored, with no crew on board, at a public dock at Kitimat, British Columbia on April 2, 1996, when she sank at the berth. The cause of the sinking could not be positively ascertained. The workboat had on board approximately 3,100 L of diesel together with an unknown quantity of lubricating oil. Some of these oils were released when the KATHY K sank. A boom was quickly rigged to contain the pollution.

The owner was requested to accept responsibility but he replied that the KATHY K had no insurance cover, that the owning company had no funds and requested that the CCG make whatever disposition of the ship that they deemed appropriate. The CCG responded with contractors to clean-up the oil and to raise the sunken workboat and take her to a secure berth. Difficulties were experienced in raising the vessel and, on refloating, she was found to be leaking heavily.



On April 5, 1996, under tow, en route to a secure berth, the KATHY K threatened to sink again and had to be beached. Further damage was incurred by the beaching and the CCG decided to break up the vessel in that location. In lieu of charging the CCG for breaking up the KATHY K, certain individuals were allowed to retain any salvaged parts. The KATHY K was then broken up and her hull burnt.

On April 2, 1997, the Crown presented a claim amounting to \$73,495.30 to the Administrator to recover the CCG's costs and expenses in this incident. Advice was subsequently received that, on April 14, 1997, the person who had been the duly registered appointed manager of the KATHY K was placed into bankruptcy.

The Administrator investigated and assessed the claim, following which he had a number of concerns which were raised in his letter to Crown counsel dated December 10, 1997. One of the issues was the question of raising the wreck, which cost was included in the claim. The Administrator noted:

*The right of the Crown to recover the costs of wreck removal are governed by the provisions of the Navigable Waters Protection Act or by the Fishing and Recreational Harbours Act and are not the concern of the Ship-source Oil Pollution Fund.*

*The costs of oil pollution prevention measures are, of course, recoverable from the SOPF, provided that the measures taken and the costs incurred are reasonable.*

*Salvage operations may in some cases include an element of preventive measures, but only if the primary purpose is to prevent pollution damage. If the operations have another purpose, such as salvage of the hull and cargo, or wreck removal, such costs are not payable under Part XVI of the Canada Shipping Act.*

In this case the KATHY K had sunk at a Crown wharf (float) servicing a busy native fishery. It was desirable that the wreck be removed in order to resume full operations at the float.

Following a further meeting, including SOPF and CCG counsel, and the CCG On-Scene Commander, an offer of \$42,000, plus interest, was made by the Administrator and accepted by the Crown. On April 22, 1998, arrangements were made by the Administrator to transfer this amount to the Crown, together with interest of \$5,552.80, for a total of \$47,552.80.

Previously, the Administrator had notified the Trustee in bankruptcy for the Owner of the KATHY K of a SOPF claim against the owner. On July 22, 1998, the SOPF received a cheque to the amount of \$188.51 from the Trustee in bankruptcy, as the SOPF's portion of the available funds. This amount was credited to the account of the SOPF.

## 12.20 Mystery Oil Spill - Little Harbour, Nova Scotia (1996)

Counsel for the SOPF in Halifax received a telephone call on May 31, 1996, from a local Fisheries Officer advising that there had been an oil contamination of a lobster car (holding crate) in Little Harbour. On investigation by the SOPF it appeared that on May 19, 1996, there had been a spill of diesel fuel in Little Harbour from an unknown source. On July 5, 1996, a claim amounting to \$26,306.38 was received by the Administrator from a local fishing company covering the cost of replacement of a lobster car, loss of income and other miscellaneous costs. On July 19, 1996, the Administrator sent a formal reply requesting certain information about the claim, mainly related to the alleged contaminated car and the possibility of having it steam cleaned. To date no reply has been received.

## 12.21 AIVIK (1996)

The AIVIK is a 7,048 GT Canadian flag passenger cargo ship. In the early morning of August 16, 1996, while alongside in Montréal Harbour the ship reported a spill of an estimated 1,000 L of light diesel oil while refueling from road tankers. From evidence at the scene, the Harbour Master estimated the spill as being up to 25,000 L. Most of the spill was contained within a boom which had been deployed. The owners immediately responded by contracting for the clean-up. The CCG and the MSB sent officers to the scene and the CCG



conducted helicopter overflights to establish how far down the river the oil had traveled. The final clean-up was completed on August 18, 1996, and approximately 27,000 L of diesel was recovered.

On June 17, 1997, the Crown presented a claim to the Administrator amounting to \$9,200.24 to recover EC and the CCG's costs and expenses which were, mainly, helicopter expenses. On July 15, 1997, the Administrator forwarded the claim to the shipowner in Montréal for direct payment to the Crown. The Administrator was informed that the claim had been sent to the shipowner's counsel and that the SOPF should contact him. On March 19, 1998, the claim was resubmitted to the company's counsel who also represents the shipowner's P&I Club in this incident.

Following a number of further representations to counsel for the owners/P&I Club by the Administrator, the SOPF was informed on November 17, 1998, that payment had been made directly to the Crown by the shipowner and its insurers, and that this incident had been settled.

## **12.22 NORTHWIND (1996)**

On September 6, 1996, the Administrator was informed that the 163 GT American fishing vessel NORTHWIND southbound from Alaska to Seattle, had gone aground near Fancy Cove, Lama Pass, in the British Columbia coastal waters on September 2, 1996. After grounding the crew escaped but the vessel took on water and capsized. A CCG vessel arrived on scene. Little oil had escaped. It was estimated that 17,000 L of diesel oil remained in the floating upturned hull. The owner contracted salvors, who arrived on scene with CCG and DFO officers, together with a representative of the P&I Club. The creeks in the area were noted for their fish habitat. Booms were placed and, on September 7, 1996, the salvors rolled the vessel over with some discharge of oil, mainly contained within the booms. The loose oil was collected and the remaining fuel aboard the salvaged vessel was removed. The NORTHWIND was towed to Bella Bella and subsequently declared a constructive total loss.

It was reported to the Administrator that the vessel carried both hull and P&I Club coverage.

The CCG informed the P&I Club representative that a claim would be submitted and, at a later date, the Crown invoiced the CCG costs and expenses, amounting to \$30,080.24, to the American owner.

The CCG advised that payment of the claim was received in full on December 24, 1997, but that the question of payment of the interest still remained outstanding as of March 31, 1999.

## **12.23 MOTOR YACHT 42E 6903 (1996)**

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

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

Throughout, it was difficult to contact the owner. On March 31, 1998, the Administrator forwarded a claim to the owner, at an address the Administrator had been given, for recovery of the amount paid out to the Crown. No settlement has been received.

## **12.24 HARALAMBOS (1996)**

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



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

The Administrator investigated the circumstances of the oil and found that the MSB had carried out a thorough investigation of two oil spills within Port Cartier Harbour, which had occurred on November 19 and November 25, 1996, respectively. These spills had involved the 63,078 GT Cypriot flag bulk carrier HARALAMBOS. The ship had come into the harbour on November 18, and the next day there was an oil spill. The ship had then gone out to anchor off Port Cartier awaiting cargo, and had come back in again on November 25, when the second spill of oil occurred. It was found that one of the topside water ballast tanks had a corrosion hole through to a fuel tank, which accounted for the loss of oil. The shipowners undertook to pay for the cost of the clean-ups within the harbour. On November 30, 1996, the HARALAMBOS sailed for Iran.

In the course of his investigation the MSB Surveyor took oil samples, and also compared the results with the analysis of the oil subsequently found on the beaches at Rivière Pentecôte. It was found that oil from the harbour matched the oil from the beaches. Accordingly, on December 4, 1997, the Administrator forwarded the claim to representatives of the ship's P&I Club in Canada for direct payment to the Crown.

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

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

ing the claim. This was almost complete at the end of this fiscal year.

### **12.25 JADE STAR (1996)**

A 6,262 GT Canadian flag tanker, with registered owners in the Isle of Man, and operating managers in New Brunswick, the JADE STAR was alongside at Nanticoke, Ontario, on December 21, 1996, loading bunker C when, it was reported, the sole generator running aboard overloaded and shut down non-essential supplies which included the ship's manifold valves on the shore loading hose. The hose ruptured and an estimated 2,300 L of the cargo oil flowed onto the deck, with an estimated 300-400 L overflowing the deck edge into the water. The local refinery hired contractors to contain and clean-up the oil outside the ship and the ship used a private contractor and the crew to clean the deck and the ship's side. The JADE STAR sailed on December 22, 1996, with the proviso that as she went through the locks at Montréal, a check would be made on the cleanliness of the deck.

On December 17, 1997, the Administrator received a claim amounting to \$2,174.25 from the Crown to recover the costs and expenses of the CCG in attending at Nanticoke. This claim was forwarded on January 12, 1998, to the Canadian operators of the JADE STAR, with the request that settlement should be made directly to the Crown. After an exchange of correspondence, the Administrator was advised on July 17, 1998, that the Crown had received payment of \$2,174.25 and that this claim was settled.

### **12.26 Mystery Oil Spill - Placentia Bay, Newfoundland (1997)**

On January 20, 1997, an official of the Canadian Wildlife Service reported large patches of oil had been sighted off the wharf at St. Bride's, Placentia Bay. Aerial and foot surveys were carried out of adjacent areas where other patches of oil were found. A number of CCG Status Reports were issued on the incident and the final one, released on March 19, 1997, noted that approximately 2,700 oiled dead birds had been collected. Other live oiled birds had been taken to a rehabili-



tation centre for treatment. Oil samples had been taken and a combined Federal agencies task force added this incident to others for investigation. The pollution and its aftermath attracted national media coverage.

On December 1, 1997, the Administrator received a claim from the Crown, in the amount of \$119,421.70, to recover the costs and expenses which, it was stated, had been incurred by the CCG, and other government agencies, in this incident. The Administrator investigated and assessed the claim in accordance with his responsibility under subsection 710 (2) of the CSA.

The Administrator had a number of concerns regarding this claim, primarily related to establishing reasonable and fair costs for the use of fixed wing aircraft, the long hours claimed for many CCG personnel and charges for some items, the purpose of which could not be established. On March 3, 1999, the Administrator authorized the transfer of funds amounting to \$71,506.48 plus \$9,762.72 in interest, by way of interim payment to the Crown. On receipt of better particulars, the Administrator will investigate and assess any outstanding amounts.

### **12.27 NITA 1 (1997)**

The Administrator became aware of this incident on December 2, 1997, when the CCG reported that a claim submitted to the legal representatives of this ship remained unpaid and that the claim would be submitted to the SOPF. Accordingly on January 8, 1998, the Crown submitted a claim to the Administrator amounting to \$3,787.30 for reimbursement of the CCG's costs and expenses in containing and cleaning-up oil found between the 10,572 GT Panamanian flag multi-purpose cargo ship NITA 1 and the quay at the port of Gros Cacouna, Québec, on March 19, 1997. The oil was on the ice between the ship and the quay.

The ship denied responsibility and the CCG engaged contractors. The clean-up was completed on March 20, 1997, and approximately 1 barrel of oily debris was recovered. Samples of the oil were taken by a MSB Surveyor and, subsequently, charges were laid against the NITA 1 for causing oil pollution. Before the ship was allowed to sail

the P&I Club was required to provide a Letter of Undertaking in favour of the CCG to the amount of \$5,000.

On February 26, 1998, the Administrator submitted the CCG claim to the NITA 1's legal representatives with the request that settlement be made direct to the Crown. The claim was acknowledged by the legal representatives who, on behalf of the ship, denied liability.

The trial of the criminal proceedings commenced in Rivière-du-Loup on June 11, 1998, following which the judge became ill. The hearings are scheduled to continue on June 7 and 8, 1999.

The Administrator awaits the outcome.

### **12.28 Mystery Oil Spill - Come By Chance, Newfoundland (1997)**

Two vessels were berthed at the Come By Chance refinery jetty during the morning on June 4, 1997, when oil was noticed between the tanker LUCKY LADY and the jetty. The refinery response team was called out to clean-up the oil, which was found to be of a very heavy composition, and estimated to be between five and eight barrels in quantity. The LUCKY LADY was ordered to remain at the berth and a MSB surveyor arrived to conduct an investigation, following which the LUCKY LADY was allowed to sail. After reviewing the evidence, including oil sample analysis, the surveyor came to the conclusion that neither of the two vessels was the origin of the oil. On August 11, 1997, the Administrator received a claim from counsel on behalf of the refinery for their costs and expenses involved in the clean-up. The claim amounted to \$8,959.10 but had been factored by a figure of three, making it \$26,877.30.

The Administrator investigated the claim, following which he raised a number of concerns regarding the claim by letter on January 21, 1998, to counsel for the refinery. Further correspondence ensued, but complete answers were not forthcoming from the refinery. On February 26, 1999, the Administrator informed the counsel concerned that the SOPF had been able to establish \$6,431.25 as being reasonable costs and expenses within the meaning of the CSA. This settlement



was accepted by the refinery through their counsel. On March 30, 1999, the Administrator arranged to forward a cheque in this amount, plus the required interest of \$757.14, in full and final settlement. The cheque was to be held in escrow pending signing of Release and Subrogation documents.

### 12.29 LE BARACHOIS (1997)

The Administrator first became aware of this incident on receipt of a claim from the Crown, on behalf of the CCG, to recover the costs and expenses for the clean-up of an oil spill involving this 11 GT Canadian fishing vessel. On investigation it transpired that on June 22, 1997, the LE BARACHOIS was involved in a spill of diesel oil in the harbour of Etang du Nord, les Îles de la Madeleine. It was stated that one of the fuel tanks inside the unmanned vessel developed a leak and the resultant loss of fuel was pumped overboard by the automatic bilge pump. The owner did not undertake to clean-up the estimated 5 L of oil and the CCG employed local contractors. Live lobsters were caged within the harbour.

The CCG had presented their claim to the owner involved without response, hence the claim was sent to the SOPF. On October 13, 1998, the Administrator arranged to transfer \$2,386.22, plus \$200.95 interest, totalling \$2,587.17 in full and final settlement of the Crown's claim. On November 16, 1998, the Administrator wrote to the owner requesting payment of the \$2,566.55, which sum was the calculated limit of liability, plus interest, to recover the SOPF's payment. The owner has not responded.

### 12.30 Mystery Oil Spill - La Baie, Québec (1997)

The 11,261 GT bulk carrier ISLAND SKY was moored alongside the Alcan facility at La Baie, in the upper reaches of the Saguenay River, on July 2, 1997, when a film of oil was observed around the ship. The crew of the ship was painting the hull at the time but the ship denied they, or any operation aboard, were responsible. The Alcan Company organized contractors to clean-up the oil but there was so little that no samples could be

obtained. When the quickly achieved clean-up was complete, the CCG was informed of the incident. In view of the minor nature of the spill, no Federal Government officials went to the site of this incident.

On March 2, 1998, the Administrator received a claim from Alcan for recovery of their costs and expenses amounting to \$607.57. It was called a mystery spill although no other ship was involved. The Administrator had a number of concerns regarding this claim and sought further information from Alcan.

Alcan did not respond. On March 18, 1999, the Administrator paid the claim, plus \$65.62 interest. In his transmittal letter to Alcan, the Administrator expressed his concern that in any future claims made on behalf of Alcan, better on-site investigation of the origin of the spill should be undertaken by the Alcan owned wharf facility. This is particularly so as La Baie is a considerable distance from the nearest CCG/MSB office, and prompt and complete investigation of such incidents is essential if the *polluter pay principle* is to be upheld.

### 12.31 Mystery Oil Spill - Sorel Harbour, Québec (1997)

The Administrator received a claim on January 8, 1998, from the Crown seeking to recover the costs and expenses incurred by the CCG in responding to an incident of oil pollution in Lanctôt Basin, Sorel, on July 3, 1997. The claim totaled \$13,581.64. The pollution was reported by a CCG ship on scene and the CCG used their own personnel and equipment to respond to the spill. It was recorded that Sorel experienced a total of 31.3 mm of rain during a 45 minute period overnight. The MSB sent a surveyor to the scene and the most likely origin of the oil at the time seemed to be a Canadian Great Lake vessel discharging grain at a nearby berth, upriver from Lanctôt Basin. The ship had save-alls under the hydraulic winches which contained quantities of oil covered rain water. Oil samples were taken but, on analysis, there was not a match and it was found that the sample taken from the water in Lanctôt Basin was vegetable oil based. The ship's hydraulic oil was mineral based.



In the Administrator's opinion, a vegetable based oil did not meet the definition of oil in Part XVI of the CSA. Following further correspondence, on October 19, 1998, the Crown agreed not to pursue their claim against the SOPF in this incident and the case was closed.

### 12.32 JADE STAR (1997)

The TSB Daily Occurrence Report advised that on July 29, 1997, this 6,262 GT Canadian registered and operated Manx owned tanker was involved in a spill of an estimated 2,200 L of diesel oil. Apparently, the tanker was moored in the George River, Ungava Bay, Québec, when she was swung by the strong current, the shore discharge hose broke and oil was released. No claim has been received by the SOPF in respect to this incident.

### 12.33 ETHEL K (1997)

The ETHEL K was a Canadian registered 8 GT wooden gillnet fishing vessel, built in 1953 and rebuilt in 1995. On July 29, 1997, the vessel, berthed at a private marina in North Vancouver, started to sink. The marina operators attempted to contact the owner without success.

The VPC boomed off the partially sunk vessel and the CCG placed absorbent pads to absorb the small amount of oil leaking from the hull. The vessel's condition continued to deteriorate and, on August 26, 1997, the CCG decided the best course of action was to pump-out the vessel and remove the pollutants.

The Crown was unable to trace the owner. On July 17, 1998, the Crown presented a claim to the SOPF to recover the CCG's costs and expenses in this incident. The claim amounted to \$5,509.61. As required by the CSA, the Administrator investigated the claim. Following correspondence, the Crown revised their claim to \$2,704.38. The amount of \$2,941.13, including interest, was transferred to the Crown on November 12, 1998, in full and final settlement.

### 12.34 NAVIMAR V (1997)

On August 7, 1997, this 12 GT pilot boat had just put a pilot onto the lowered gangway of the Philippine bulk carrier NAVIOS MINERVA in the port area of Québec City, when the gangway caught in the boat's wheelhouse structure. Both ships were underway and in an instant the boat capsized. Several local vessels were in the immediate vicinity and attempts were made to keep the upturned hull afloat but it sank with little or no pollution. The crewmember on deck of the NAVIMAR V had been able to jump into the river but the coxswain in the small wheelhouse of the upturned boat had great difficulty escaping with his life as the hull sank.

The boat sank in some 30 m of water with an estimated 250 L of diesel and 10 L of lubricating oils. The CCG required that the wreck be raised which happened on September 16, 1997, with minimal pollution. To date no claim has been submitted to the Administrator in respect to this incident and he considers the incident closed.

### 12.35 Mystery Oil Spill - La Baie, Québec (1997)

Three ships were berthed at two wharves at the Alcan facility, La Baie, on August 9, 1997 in the upper reaches of the Saguenay River, when a film of oil was noticed between the two wharves. The oil appeared to be a bunker mix and samples were taken but the Alcan personnel were unable to determine from which ship the oil originated.

Initially, Alcan personnel responded to the spill but contractors were then called in for the clean-up. The authorities were informed but did not attend the site, which is some three hours drive from the nearest CCG/MSB offices at Québec City.

On October 19, 1997, the Administrator received a claim from the Alcan Company in respect to the attendance of their personnel amounting to \$344.00 and, on November 6, 1997, received a further claim amounting to \$890.10, for the work of the contractors.



Following an investigation and assessment of the claim, on May 21, 1998, the Administrator forwarded to Alcan a payment in the amount of \$1,287.72, which included \$53.62 interest, in full and final settlement of the claim. At the same time he forwarded a Release and Subrogation document for signature and return by the company. A reminder requesting completion of the document was sent on November 16, 1998. Other than the due completion of this document, the Administrator considers the incident closed.

### 12.36 OSSIAN (1997)

A Status Report issued by the CCG stated that on the night of August 14, 1997, this Canadian pleasure craft caught fire in Ship Harbour, Nova Scotia. The local fire brigade responded but requested the assistance of the CCG. The two owners aboard at the time were rescued but had to be taken to hospital. Two small coves had been contaminated with oil and a local mussel farmer expressed his concern at the pollution. The CCG determined that approximately 300 to 500 L of diesel had been aboard the boat and that pollution clean-up was required.

The CCG negotiated for payment of their costs and expenses, but the insurers indicated they would only pay the shipowner's limit of liability, calculated at \$3,100.00.

The CCG received payment of \$3,163.07 from the shipowner's insurance company. On October 9, 1998, the Crown, presented a claim to the SOPF for \$13,823.11, which sum was stated to be the balance of the costs and expenses incurred by CCG in the clean-up. Following his investigation and assessment of the claim, on October 21, 1998, the Administrator wrote to Crown counsel asking a number of questions, including the basis on which the limitation of liability figure for the OSSIAN was calculated.

### 12.37 Mystery Oil Spill - Sept-Îles, Québec (1997)

A CCG Status Report was received at the SOPF which advised that, on August 29, 1997, an oil spill consisting of an estimated 9 - 13 L of light diesel oil had been observed in Sept-Îles harbour. The oil had stained the hull of an RCN vessel which was in port at the time. The CCG responded by employing a local contractor to contain and clean-up the oil. The incident was termed a mystery spill and, on January 8, 1998, the Administrator received a claim from the Crown seeking reimbursement of the CCG costs and expenses, amounting to \$5,242.95.

In accordance with his responsibilities under section 710 of the CSA, the Administrator investigated and assessed the claim. It transpired that an analysis of the oil showed it to be a mixture of diesel and lubricating oil. The oil was mainly in the fishing harbour of Sept-Îles but some had flowed out into the main harbour. On this basis it was considered that one of approximately 20 fishing vessels in at the time was the origin. However, no one fishing vessel was the obvious origin and as they mainly all obtain their oils from the same source, oil analysis was felt impracticable.

The Administrator wrote to the Crown stating that, on receipt of proof of payment of the contractors invoices, he would pay the claim in full. The required proof was received on April 16, 1998, and the next day the Administrator arranged to transfer to the Crown the amount of \$5,242.95, plus \$211.52 interest, in full and final settlement.

### 12.38 RHEA (1997)

The RHEA was a 41 m former US Navy mine sweeper and had been purchased approximately ten years ago for use as a houseboat in Oshawa, Ontario, harbour. On October 4, 1997, while no one was aboard, the ship sank, coming to rest in 7 m of water with only her superstructure showing. It was reported that the ship had some 1,600 L of heating oil, 4,500 L of diesel and 450 L of lubricating oils aboard which, on sinking, immediately began to seep out. The



local Marine Rescue Association responded and boomed the sunken ship. The owner stated that he had no insurance and was unable to accept responsibility for the oil pollution containment and clean-up.

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

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

In the process of investigating and assessing the claim, the Administrator concluded that a number of the individual charges in the claim were not reasonable, within the meaning of the CSA. The clean-up contractors had used solidifiers (polymers). At the end of the fiscal year the Administrator was in the process of making a proposal to the Harbour Commission for settlement of their claim.

### **12.39 RANI PADMINI (1997)**

This 42,151 GT Indian flag bulk carrier on October 9, 1997, sustained a crack in a fuel tank and released oil while coming alongside the public wharf at Baie Comeau, Québec. The ship had an arrangement with a Response Organization, but refused to invoke it. This situation required the CCG to appoint contractors to contain and clean-up the oil. Approximately 12.5 tonnes of #6 fuel oil, 12 tonnes of an oily water mix, 15 m<sup>3</sup> of soiled sorbent materials and 15 m<sup>3</sup> of soiled vegetation, were recovered.

Before the ship was allowed to sail, the P&I Club provided a Letter of Undertaking in the amount of \$375,000.

It is understood that the CCG submitted its claim, amounting to approximately \$335,000, for reimbursement of their costs and expenses incurred to the counsel for the owners/P&I Club on January 27, 1998, and that further correspondence ensued.

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

In the circumstances, this may prove to be another case where it is appropriate for the Crown to take legal action in the first instance against the shipowner to recover its costs and expenses, as contemplated by section 677 CSA. In such cases, the SOPF's liability to the Crown is stipulated in section 709 CSA.

### **12.40 Mystery Oil Spill - Cape Ray, Newfoundland (1997)**

Another mystery oil spill, adding to the concern of Newfoundlanders for their coastal environment, was reported from Cape Ray on November 2, 1997. Cape Ray is the extreme SW promontory of Newfoundland, overlooking Cabot Strait. Local people reported that from 100 to 200 oiled birds were found near the Cape over a 3 to 4 day period. High winds and sea conditions made it unsafe to conduct a proper beach survey at that time.

The CCG advises that it is unlikely any claim will be submitted to the SOPF in respect to this incident.

### **12.41 LINDA MAXINE (1997)**

This 93 GT Canadian wooden fishing vessel caught fire during the morning of November 10, 1997, when secured to the wharf at Deep Bight, Trinity Bay, Newfoundland. There was approximately 4,500 L of diesel fuel aboard. The local fire department extinguished the fire during the afternoon, but the vessel started to list and then rested on the harbour bottom. The CCG Response personnel arrived, boomed off the sunken vessel, and then commenced cleaning up the escaped oil. The LINDA MAXINE's insurers stated they would accept responsibility for the



CCG costs and expenses. On November 12, 1997, the burnt-out hull of the vessel was raised and by November 14, 1997, the CCG personnel had completed the clean-up.

The CCG advises that their claim, totalling \$19,637.75, was submitted locally to the representative of the P&I Club. It was paid in full on March 20, 1998 and the file was then closed.

### **12.42 Mystery Oil Spill - Placentia Bay, Newfoundland (1997)**

A member of the public reported on November 12, 1997, that he had found six oiled birds on Point Lance beach, Placentia Bay. CCG personnel responded and conducted surveys of the local shoreline by foot and by air. The Canadian Wildlife Services also participated. By November 15, 1997, a total of 608 oiled birds had been found in the general area; the majority of the birds were dead. The small patches of oil which were also found on the beaches were cleaned up.

The CCG advises that it is unlikely any claims will be submitted to the SOPF respecting this incident.

The Administrator is informed that this incident, and others involving mystery spills in the Maritime Provinces of Canada, are the subject of ongoing investigations by various Federal departments.

### **12.43 PINE ISLANDS (1997)**

On November 15, 1997, the Duty Officer at the CCG College located on the shore of the South Arm of Sydney Harbour, Nova Scotia, reported the presence of oil in the harbour basin. College personnel were mobilized to contain the oil in the basin. It was then found that an estimated 2,200 to 3,200 L of what appeared to be a mixture of Bunker C and diesel was trapped between the ship PINE ISLANDS and a nearby wharf. The Belize registered cargo ship was under detention by the MSB because of a number of deficiencies affecting seaworthiness. A MSB surveyor took

oil samples from the water and the PINE ISLANDS, as well as other ships in the area.

On January 21, 1998, through the SOPF counsel in Halifax, the Administrator filed a Notice of Caveat Release against the PINE ISLANDS, her owners and others; the ship being already under arrest pursuant to other proceedings in the court. It is stated that the CCG incurred costs and expenses in the order of \$18,464.81 for its part in the clean-up. On February 6, 1998, counsel for the ship issued a Letter of Undertaking to the SOPF up to the amount of \$20,000, upon receipt of which the Administrator authorized the withdrawal of the Caveat.

It has been reported that, on February 5, 1998, charges were laid against the ship for discharging a pollutant and, that, subsequently, the ship entered a plea of not guilty. The case came to trial and it was reported on August 11, 1998, that the ship had been found guilty and was fined \$12,500.00 for discharging oil into the waters of Sydney Harbour. The CCG presented its claim for the clean-up to the shipowner, which claim was settled and paid at an amount of \$13,200.00. On December 22, 1998, the SOPF returned the Letter of Undertaking to the shipowner's representative and the file was closed.

### **12.44 KETA V (1997)**

A CCG Status Report received by the Administrator reported that, on November 19, 1997, Fundy VTS was informed that the 236 GT Canadian tug KETA V lost 160 - 180 L of diesel fuel in Saint John harbour, New Brunswick. It appears that during refueling the day tank became full and overflowed. On behalf of his owners, the tug Master authorized the CCG to act on his behalf in respect to the containment and clean-up of the oil. The CCG responded, with the help of contractors, and by midnight the same day had collected an estimated 270 - 450 L of diesel. On the following day a vacuum truck had recovered another approximately 1,000 L.



No claim was presented to the SOPF. The Administrator was informed that the CCG costs and expenses were settled directly by the shipowner in the amount of \$6,513.48 on June 5, 1998.

#### **12.45 KOYO MARU #16 (1997)**

The Administrator has little information on this incident other than brief advice from the CCG that this oil spill incident took place in St. John's, Newfoundland, on December 21, 1997. It is reported that the CCG costs and expenses in the clean-up are \$7,631.83 and that the claim, presented to the shipowner on February 12, 1998, is still outstanding. It is further reported that discussions were taking place between Crown counsel and the shipowner's representatives with respect to oil sampling.

#### **12.46 FLARE (1998)**

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

The owners reported that the ship had 500 tonnes of heavy fuel oil, 130 tonnes of diesel and 13,500 L of lubricating oil aboard. Attempts were made to minimize the oil pollution coming from the stern section but a report on February 6, 1998, stated that the stern part of the wreck continued to occasionally release oil. The search continued for the bow section and it was the CCG's intention to establish a program to monitor the sites where the two sections sank.

It is reported that the CCG is preparing a claim for presentation to the shipowner.

#### **12.47 SARABAND (1998)**

The SARABAND was a 66,942 GT Liberian flag tanker loaded with a cargo of caustic soda for discharge at La Baie, Québec on the Saguenay River. The tanker's draught was too deep for La Baie and a part discharge was arranged at a nearby facility at Grande Anse. The SARABAND then moved to one of the Alcan Company wharves at La Baie to complete the discharge.

On arrival for discharge at La Baie on February 2, 1998, the departing pilots noticed that the ship was leaking heavy oil. It was then discovered that the SARABAND had a one metre crack in the forward oil fuel deep tank, leaking oil at an estimated 4 L a minute. There was heavy ice in the river at the time and a CCG icebreaker observed more oil at the Grande Anse facility some 20 miles away. The shipowners, their insurers and the International Tanker Owners Pollution Federation Limited (ITOPF), their pollution advisers, immediately arranged for the necessary clean-up. Because the oil level in the deep tank had been below the waterline it proved difficult to estimate the amount of oil lost. The shipowners estimated 1000 L, the CCG estimated a  $3/4$  tonne and EC concluded that 12 tonnes had been lost. The clean-up proved difficult in the spring ice break-up conditions and the remaining oil impregnated ice had to be allowed to disperse naturally under CCG surveillance.

After temporary repairs, the SARABAND sailed from La Baie on February 4, 1998.

The concern was that some of the oil had been swept downriver under the ice by the current which runs up to five knots. Surveys through the ice were undertaken in the area local to the La Baie facility and no recoverable quantities of oil could be found. However, it took some weeks before all the bays in the 60 mile stretch of river below La Baie/Grande Anse became ice free, following which an inspection was made and no further oil found.

Because of the possibility of claims being made against the SOPF, a \$350,000.00 Letter of Undertaking had been provided on behalf of



the P&I Club, made out in favour of the SOPF and the CCG.

The CCG presented their claim to the shipowner's representative on August 11, 1998. At the end of this fiscal year it was reported that the CCG was still discussing with the shipowner's representative the quantum for certain items in the claim. No claim has been presented to the SOPF.

#### **12.48 Mystery Oil Spill - Martinique Beach, Nova Scotia (and others) (1998)**

On March 10, 1998, a private citizen reported to the CCG the presence of large amounts of oil along Martinique Beach at Clam Bay, some 30 miles east of Halifax. Over a similar time period oil, freshly washed ashore, was discovered at Donkin, Cape Breton, on Sable Island, on the French Islands of St. Pierre and Miquelon, and several other locations. Three samples from Newfoundland and two from Sable Island were immediately analyzed and found to be from a similar source but none matched samples previously collected from known ship origins. Further oil sample analysis was undertaken, again without success in identifying the ship, or ships, involved.

The CCG employed contractors to clean-up the oil on Martinique Beach and other local areas, with the work being completed by March 15, 1998. Approximately 380 bags of contaminated material were collected.

On November 17, 1998, the Crown presented a claim to the SOPF on behalf of the CCG, amounting to \$36,878.96, in this now, officially termed, mystery spill.

The Administrator investigated and assessed the claim which he found reasonable except for the hourly charge-out rates for the helicopters. On March 3, 1999, he arranged to transfer a total of \$34,968.29, which sum included \$2,287.18 interest. The Administrator has been advised that the Crown accepts this claim as having been settled.

#### **12.49 ENERCHEM REFINER (1998)**

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

Assisted by tugs the ship was freed on April 5, 1998, and proceeded to a nearby anchorage for a full inspection of the hull. There was no release of oil. The CCG has stated that they will make a claim against the SOPF for their monitoring costs.

#### **12.50 Mystery Oil Spill - Vancouver Harbour, British Columbia (1998)**

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

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

#### **12.51 Mystery Oil Spill - St. Brides, Newfoundland (1998)**

A local resident reported to the St. John's VTS Centre, on April 27, 1998, that a small number of oiled birds had been observed at St. Brides Bay. The Canadian Wildlife Service and the CCG responded. It was discovered that some of the affected birds were Eastern



Harlequin ducks of which, it is estimated, there are currently less than 300 individuals left in the world.

## 12.52 AGAWA CANYON (1998)

This 16,290 GT Canadian Great Lake bulk-carrier was refueling alongside at Sarnia, Ontario, on May 11, 1998, when there was a spill of an estimated 600 to 1,200 L of diesel oil. The ship, the Imperial Oil refinery spill response team and contractors, took action to contain and clean-up the oil. The CCG from the local office attended to monitor the operation.

It is understood the shipowner accepted responsibility for the clean-up costs and expenses.

## 12.53 Mystery Oil Spill - Ste. Anne de Sorel, Québec (1998)

CCG reported to the SOPF that, on May 18, 1998, a man and his dog became oil contaminated while walking on the beach at Ste. Anne de Sorel, on the St. Lawrence River, just below Sorel. The CCG responded, supervising contractors for the necessary clean-up of, what appeared to be, bunker oil. Over a similar time frame there had been a land based spill of bunker oil nearby but an investigation by Environment Canada, Environment Québec and the CCG, came to the conclusion that the two incidents were not related. The oil on the beach, by its location, appeared to come from up-channel, above Sorel, and was classified as a mystery spill.

On October 6, 1998, the Crown presented a claim to the SOPF for recovery of the CCG costs and expenses, and an amended claim was received on October 26, 1998, to include the attendance of the EC officer. The amended claim totaled \$7,368.68. The claim was investigated and assessed by the Administrator, who concluded that the costs and expenses were reasonable within the meaning of the CSA. On March 3, 1999, the Administrator authorized the transfer of funds to the Crown, in the amount of \$7,791.68, which sum included interest of

\$423.00 as required by the CSA section 723. This action closed the file on the incident.

## 12.54 FILOMENA LEMBO (1998)

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

The MSB carried-out an investigation and the spill was found to have the consistency of old, dirty, lubricating or hydraulic oil. The MSB was unable to find a match between this oil and other oil samples taken from the tanker. However, this same agency found a number of deficiencies in the oil transfer system aboard compared to international requirements. No source for the origin of the oil could be found from shore drainage systems. The berth used by the FILOMENA LEMBO is accessible to the public and is often used to load scrap metal. The incident happened as the tide was falling and over the period of low water. There was little bottom clearance for the tanker at low water.

The FILOMENA LEMBO sailed on May 28, 1998, and on arrival at the next port, Sept-Îles, the SOPF arranged for the tanker to be arrested, pending the issuance of a Letter of Undertaking. A Letter of Undertaking for the agreed sum of \$85,000 was issued by the P&I Club on May 29, 1998, and the tanker released.



On October 29, 1998, counsel for the SOPF received a claim from Daishowa Inc. amounting to \$35,179.11, for their, stated, costs and expenses in responding to this spill. The Administrator is investigating this incident.

### **12.55 Mystery Oil Spill - Fighting Island, Ontario (1998)**

On May 31, 1998, a floating foul smelling substance was found coming ashore, and drifting just off the shore, on the northwest corner of Fighting Island, a Canadian island in the Detroit River, below Detroit. An analysis of a portion of the substance found that it was 35% hydrocarbon, believed at the time to be heavy oil, and the rest a type of sewage. The CCG contracted for the clean-up and state that they intend making a claim on the SOPF in order to recover their costs and expenses. Samples of the oil and the other matter were taken by the USCG and the MSB, and compared to other samples taken from ships anchored in the vicinity and shore sources, without success at identifying the origin of the spill.

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

### **12.56 Mystery Oil Spill - Lawn Beach, Newfoundland (1998)**

Little Lawn Beach, Placentia Bay, was the scene of a discovery of small oil patches on August 3, 1998; the oil appeared to be tar like. The CCG arranged for a beach survey by helicopter but in a closer survey, by foot, it was discovered that about 1 km of beach was affected, with much of the oil being buried by wave action. The CCG arranged for the clean-up and a total of 280 bags of oil and oil debris were recovered. The Administrator awaits developments.

### **12.57 Mystery Oil Spill - L'Île des Barques, Québec (1998)**

On August 8, 1998, a CCG patrol vessel reported to the CCG Response Branch the presence of oil in the channel to the south-west of Île des Barques, just below Sorel in the St. Lawrence River. At the southern end of the channel is a stone weir and it was found that the oil had permeated the weir, leeching out according to the state of tide. The oil pollution persisted and on August 13, 1998, the CCG installed an absorbent boom below the weir which, the next day, was found to be unable to withstand the current. A standard boom was then installed to best capture the oil washing off the weir. Tended on a regular basis, the boom was finally removed on October 22, 1998. It proved impossible to ascertain the source of the oil and it was declared a mystery spill. It is understood that the CCG is preparing a claim against the SOPF.

### **12.58 Mystery Oil Spill - Sydport, Nova Scotia (1998)**

The CCG reported that, on August 17, 1998, a sheen of oil had been found around ships tied-up at the Sydport facility in Sydney Harbour. Closer investigation found a thicker concentration of oil around the finger piers at the same facility. The CCG undertook clean-up action. The Administrator awaits developments.

### **12.59 Masson Ferry-Masson, Québec (1998)**

A CCG Sitrep reported that, on August 17, 1998, a local fire department reported to EC that there was an oil slick on the Ottawa River which in due course came ashore at Masson, Québec. The pollution appeared to be of a used lubricating oil type and, due to the southerly winds, it was thought to have originated from the Ontario side of the river. A local ferry service operates across the river in that general locality but denied that they were involved. About 300 m of shoreline and three float planes were affected and Environment Québec contracted



for the clean-up. Environment Ontario was unable to find any sources of the oil along the Ontario shoreline. The MSB carried out an investigation, including taking oil samples from the ferries.

The samples were analyzed and a match was found between the oil on the Québec side of the river and one of the ferries. The CCG advise that they do not expect to make a claim.

### **12.60 Mystery Oil Spill - Rimouski, Québec (1998)**

The Administrator's first knowledge of this incident was the receipt on 18 January 1999, of a claim from the Crown, on behalf of the CCG, amounting to \$1,787.71. It was reported that on September 2, 1998, the Harbour Master of Rimouski reported to the CCG that a white coloured emulsified oil was polluting the port. The CCG contracted for the clean-up incurring the costs and expenses claimed. The MSB carried out an investigation and was unable to find the origin of the oil. A witness stated that he had seen the oil float into the harbour on the previous evening's tide. It was classified as a mystery spill.

After investigating and assessing the claim, on March 3, 1999, the Administrator arranged to transfer \$1,854.22, which sum included \$66.51 interest, to the Crown. The file was closed.

### **12.61 MISS BABS (1998)**

The MISS BABS is a 36 GT Canadian fishing vessel which sank in Miller Bay, a remote inlet some 15 km north of Prince Rupert, British Columbia. It is not clear when the vessel sank but she was observed sunk on September 16, 1998, and at that time oil pollution was reported. The CCG responded and the owner arrived on scene on September 18, 1998. The SOPF appointed local counsel and employed a surveyor to determine the extent of the oil pollution.

Subsequently the CCG wrote to the owner requesting his intentions on a) the pollution aspects and, b) the hazard to navigation that

the sunken vessel posed to other vessels. No reply was received. Contractors employed by the CCG raised the MISS BABS and took her to a safe berth.

It is reported that the CCG intends to present a claim to the SOPF. The Administrator awaits developments.

### **12.62 MORUY (1998)**

The MORUY is a 34,422 GT Venezuelan tanker. On September 29, 1998, the ship grounded in the River St. Lawrence, off Champlain, Québec, reportedly due to an electrical failure. The tanker was carrying approximately 50,000 tonnes of diesel oil. The bow embedded in the clay bottom and the forepeak tank became holed. The owners responded, together with government authorities, and booms were rigged. A local response organization implemented its pollution prevention plan previously approved by the CCG.

On October 1, 1998, the MORUY was refloated with the help of tugs and was to be taken to Trois Rivières for inspection and repairs. Throughout the whole of the incident, no pollution was reported. The CCG has stated it intends to recover its costs and expenses. The Administrator awaits developments.

### **12.63 SALTY DOG 1 (1998)**

A 4,018 GT Canadian barge, the SALTY DOG 1, parted its towline from the Canadian tug DOUG MCKEIL, on October 1, 1998, off Anticosti Island in strong wind conditions. Subsequently, the barge was found aground on the south coast of the island. It was reported that the barge contained a fuel tank on deck with diesel oil, and lubricating oil in auxiliary engines. CCG responded. As it transpired, the owner was able to refloat the barge on October 9, 1998, and the incident was ended.



## **12.64 Mystery Oil Spill - Montréal Harbour, Québec (1998)**

On October 13, 1998, the Norwegian flag 9,975 GT cruise vessel SEABOURN PRIDE was berthed at section M5 in Montréal and during that day she refueled and offloaded used oil. Early morning on October 14, 1998, she sailed for Québec City; four hours afterwards, oil was reported in Montréal Harbour, covering sections M5 and M6. There were five harbour craft at M6, including a floating crane, and all experienced oiled hulls. The oil spill comprised both light and heavy oils. On arrival at Québec City arrangements were made for a Letter of Undertaking, made out in the names of the CCG and SOPF, to the amount of \$60,000. The MSB also boarded the SEABOURN PRIDE in that city but was unable to demonstrate the oil found at M5 and M6 came from that vessel. In the meantime the CCG contracted for the oil in Montréal Harbour to be cleaned-up.

The CCG categorized the spill as being of the mystery type and, on March 4, 1999, the Crown presented a claim to the SOPF in the amount of \$23,097.36 for their stated costs and expenses in this incident. The Administrator continues his investigation of the claim.

## **12.65 CANMAR VALOUR (1998)**

This is a 15,584 GT containership and she was berthed at section 79, Montréal Harbour on November 10, 1998, when there was a heavy fuel oil spill during refueling from a shore tanker truck. It was estimated that about 250 L of oil were retained on the deck of the vessel with another 1000 L going into the harbour. The ship accepted responsibility for the spill and engaged contractors for the clean-up. The CCG monitored the operation. The CCG obtained a Letter of Undertaking for the amount of \$200,000 on behalf of both themselves and the SOPF. The MSB carried out an investigation and also obtained a Letter of Undertaking for \$100,000 to cover any potential fine.

The CCG reports that on March 23, 1999, the shipowner provided the CCG with a cheque

for \$7,010.16, the amount of the CCG claim for its monitoring costs and expenses.

## **12.66 Mystery Oil Spill - Montréal Harbour, Québec (1998)**

Produits Shell Canada Limitée had floating booms permanently installed off its facility at section 103 in Montréal Harbour at the time of this incident. It was reported that booms were opened on November 14, 1998, to permit two vessels to berth at the facility and oil floated in with the current. Shell employed contractors to clean-up the oil, including that which fouled the hulls of the two ships required to berth there. The oil was of the heavy variety and the quantity estimated to be about 100 L. The report on the previous incident involving the CANMAR VALOUR was thought at the time to be, possibly, associated, and the MSB carried out a further investigation into this later oil pollution.

The Administrator understands that Shell will present a claim to him for its costs and expenses.

## **12.67 Mystery Oil Spill - Cape Shore, Newfoundland (1998)**

Another mystery oil spill affecting wildlife on Newfoundland shores was reported on December 3, 1998. The spill had come ashore centered on Cape Shore, Placentia Bay, and, initially, it was reported that 41 dead oiled birds had been recovered. It is reportedly estimated that based on the number of dead birds actually recovered on or near-to the shore, ten times that number die at sea unrecovered. Government officials took oil samples for analysis. On December 17, 1998, the media reported that Canadian officials were arranging for the oil from 30 ships to be sampled at their arrival ports. The media also reported on December 17, 1998, that a total of 340 dead birds had been recovered on the Avalon Peninsula since December 3, 1998.



## **12.68 Mystery Oil Spill - Montréal Harbour, Québec (1998)**

The CCG reported a spill of oil had been found between Sections 45 and 62, Montréal Harbour, on December 9, 1998. Oil was also found at Section 34 surrounding a ship, but the ship was eliminated as the source. Even after the ship sailed the oil continued to surface at the berth and it was agreed between the authorities that the origin was a shore source. In the absence of action by any other body, the CCG arranged for the containment and clean-up of the oil but, it is reported, the Port of Montréal will accept the CCG's costs and expenses in this respect.

## **12.69 ELTON HOYT 2ND (1998)**

The Ontario Ministry of the Environment reported that this 10,969 GT American Great Lakes self-unloading vessel had, on December 30, 1998, spilled an estimated 1,000 L of diesel fuel into the St. Clair River, while refueling alongside at Corunna, Ontario. The ship contracted with the Great Lakes Response Organization to effect the containment and clean-up. It is reported that a fitting was left off a sounding pipe and the oil overflowed down through a washroom drain, into the water. The CCG advise that they do not anticipate that any claim will be made to the SOPF in respect to this incident.

## **12.70 WALPOLE ISLANDER (1999)**

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

responsibility. One of the environmental concerns was the extensive wetlands nearby. The CCG estimate that their costs and expenses will be in the order of \$75,000 for this incident.

## **12.71 Mystery Oil Spill - Cape Breton, Nova Scotia (1999)**

The media reported that, on the weekend commencing on February 6, 1999, local bird watchers were out along eastern beaches of Cape Breton when they found dozens of oil contaminated seabirds, both dead and alive. It was further reported that EC biologists and the MSB were investigating.

## **12.72 SOLON OF ATHENS (1999)**

This is a 46,132 GT Vanuatu flag bulk carrier which, on March 9, 1999, was alongside at a Richelieu River berth in Sorel, Québec, when she experienced a broken ballast water pipe routed through an oil tank. This breakage released an estimated 180 L of a mixture of light oil and diesel into the river. The ship immediately contracted for the necessary containment and clean-up but it was only later that CCG and MSB were informed. The CCG provided personnel to oversee the operation, which was completed to their satisfaction.

The CCG advises that they intend to present a claim to the SOPF for their costs and expenses. The Administrator awaits developments.

## **12.73 GORDON C LEITCH (1999)**

This was one of the more serious incidents reported during this fiscal year, in that the clean-up measures taken, and costs incurred, were considerable. The GORDON C LEITCH is a 19,160 GT Canadian Great Lakes vessel and, on March 23, 1999, she was berthed at an iron-ore facility in Havre-Saint-Pierre, Québec, on the lower north shore of the River St. Lawrence. It was necessary to move the ship along the quay for the loading operation but in this



process, under high wind conditions, the bow blew off the quay, allowing the stern to drift in and hit a dolphin. This striking cracked the hull at a shipside fuel tank, releasing an estimated 49 tonnes of heavy fuel oil.

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

### 13. Financial Summary

During the fiscal year 1998-1999 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 \$551,858.03 comprising the following costs and expenses:

Administrator Fees	\$78,775.00
Legal Fees	\$191,671.49
Professional Services	\$139,196.08
Secretarial Services	\$45,853.78
Travel & Hospitality Expenses	\$40,926.94
Printing	\$10,832.41
Occupancy	\$31,609.66
Office Expenses	<u>\$12,992.67</u>
	\$551,858.03

(b) Pursuant to section 701 of the Act, the Administrator directed the payment of \$902,488.15 in contributions to the IOPC Fund out of the Ship-source Oil Pollution Fund in accordance with Articles 10 and 12 of the 1971 Fund Convention:

The above amount paid to the IOPC Fund comprised:

General Fund -	\$290,862.83
NAKHODKA Major Claims Fund -	<u>\$611,625.32</u>
	\$902,488.15


(c) Pursuant to sections 710 and 711 of the Act, the Administrator settled claims for the sum of \$604,069.44.

(d) Pursuant to section 711(3)(c) of the Act, the Administrator recovered the sum of \$5,000.00 of the monies previously paid out respecting the APJ SHALIN incident and \$188.51 of the monies previously paid out respecting the KATHY K incident.

During the reporting fiscal year, interest credited to the Fund was \$13,588,035.15.

At 31st March, 1999, the balance in the Fund was \$280,466,053.69.

Yours sincerely,



Kenneth A. MacInnis, Q.C.  
Administrator  
Ship-source Oil Pollution Fund