

Ship-source Oil Pollution Fund

Annual Report 1999-2000



Canada

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**SHIP-SOURCE
OIL POLLUTION
FUND**



CANADA

**CAISSE D'INDEMNISATION
DES DOMMAGES DUS À
LA POLLUTION PAR LES
HYDROCARBURES CAUSÉE
PAR LES NAVIRES**

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

Dear Mr. Collenette:

It is an honour to submit the Annual Report on the operations of the Ship-source Oil Pollution Fund (SOPF) for the fiscal year beginning on April 1, 1999, and ending on March 31, 2000, in accordance with subsection 722(1) of the Canada Shipping Act.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Kenneth A. MacInnis'.

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

Abbreviations of Proper Names used in this Report

ALERT	Atlantic Emergency Response Team
CCG	Canadian Coast Guard
CLC	Civil Liability Convention
CMAC	Canadian Marine Advisory Council
CSA	<i>Canada Shipping Act</i>
CWS	Canadian Wildlife Service
DFO	Department of Fisheries and Oceans
EC	European Commission
ECRC	Eastern Canada Response Corporation
EPA	Environmental Protection Agency
EU	European Union
FPZO	Floating production, storage and offloading units
FSU	Floating storage units
IMO	International Maritime Organization
IOPC	International Oil Pollution Compensation
ITOPF	International Tanker Owners Pollution Federation Limited
LOU	Letter of Undertaking
MEPC	Marine Environment Protection Committee
MPCF	Maritime Pollution Claims Fund
NOAA	National Oceanic and Atmospheric Administration
NRDA	Natural Resource Damage Assessment
OBO	Ore/bulk/oil
OPA	<i>Oil Pollution Act</i>
OPA 90	<i>Oil Pollution Act 1990 (US)</i>
OSRL	Oil Spill Response Ltd.
P&I Club	Protection and Indemnity (Marine Insurance) Association
PTMS	Point Tupper Marine Services Limited
REET	Regional Environmental Emergency Team
RO	Response Organization
SDR	Special Drawing Rights*
SIMEC	Société d'Intervention Maritime
SOPF	Ship-source Oil Pollution Fund
TCMS	Transport Canada Marine Safety
TSB	Transportation Safety Board
UK	United Kingdom
US	United States
USCG	United States Coast Guard
VPC	Vancouver Port Corporation
WCMRC	Western Canada Marine Response Corporation

* The value of the SDR at April 1, 2000, was approximately \$1.957. This actual value is reflected in Figure 1 in Appendix D. Elsewhere in the report, for convenience, calculations are based on the SDR having a nominal value of \$2.

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Executive Summary

This annual report of the Ship-source Oil Pollution Fund (SOPF) covers the fiscal year ending March 31, 2000.

Financial status

The year-end financial status of the SOPF is reported, including the cost of claim settlements in Canada and the amount of payments by the SOPF to the international Funds. Canadian claims were settled for the approximate amount of \$573,000.00. As at March 31, 2000, the balance in the Fund was \$295,522,358.23.

Status of Canadian claims

The report describes the Canadian compensation regime, and includes the current status of active Canadian ship-source oil spill claims. During the year the Crown concluded some long-standing court actions and the Administrator resolved a number of older and more difficult claims. This work has resulted in a substantial reduction in carry-over cases.

Issues & challenges

Arctic Response Strategy

The report highlights the Canadian Coast Guard's (CCG) "Arctic Response Strategy" intended for use by the CCG, the northern Territories, and other government agencies, when called upon to respond to a ship-source oil spill in the Canadian Arctic. There are logistical/transportation difficulties and issues of cost-effectiveness that must be overcome in this immense geographical area, and continuing strong support from all stakeholders is essential.

National review

On March 31, 2000, the Minister of Fisheries and Oceans announced the implementation of changes to the response regime. It was stated that the Administrator will be invited to be a member of the new National Advisory Council to review national issues of preparedness and response, and to ensure Canada is prepared to respond to a major oil spill.

Increased liability

It is reported that, under changes effective May 29, 1999, the new limit of liability of an owner of a ship under 300 gross tons, other than an oil tanker, including privately owned pleasure craft, is increased substantially, to \$500,000.00. Based on SOPF past experience, many ships under 300 gross tons operating in Canada might not hold adequate, or any, insurance coverage.

Fiscal challenges

Canada is a Contracting State in an international compensation regime, which mutualizes the risk of oil pollution from sea-going oil tankers. There are new potential fiscal challenges for the SOPF arising out of the international regime:

Higher maximum

- After May 29, 1999, the SOPF is required to pay contributions for international incidents to the higher maximum level provided under the 1992 IOPC Fund. This is already a reality. Compensation payments in the *Erika* incident (France, December 1999) will probably reach the 1992 IOPC Fund maximum limit. The SOPF's share might be \$10.5 million approximately – for this one incident alone.

Further increases

- Adoption of a post-*Erika* initiative might increase the maximum limitation and compensation amounts in the 1992 international Conventions, by about 50 per cent.

- On the call of France, very significant changes in the international oil pollution compensation regime are being considered by a working group of the 1992 IOPC Fund: French authorities have asked for changes, including assigning some liability to operators and oil companies, and raising the international regime liability ceiling to 1 billion euros (i.e. from approximately \$270 million to \$1.4 billion).

Raising international regime liability

It is noted that the IOPC Fund and the international regime have been exposed to severe criticism in France, both in the media and elsewhere. Since the *Erika* incident, there has been a flurry of activity in the European Commission (EC) and the European Union (EU). The EC recently released a "*White Paper on Environmental Liability*." EU legislative initiatives on other aspects of environmental liability are promised for the end of the year 2000.

EC/EU activity

A Canadian Government Interdepartmental Committee has been struck to review the issues that might affect Canada in any prospective changes to the international Conventions.

Canadian committee

The Administrator continued with SOPF outreach initiatives commenced last year, by:

Outreach initiatives

- Attending an oil spill seminar in Vancouver organized by the response organization (RO) Burrard Clean;
- Meeting with personnel of the CCG and Transport Canada's Marine Safety Branch (TCMS) in Quebec and Nova Scotia;
- Participating, with representatives from government agencies and the marine industry, in an On-Scene Commander Course at the CCG College that included oil spill simulation exercises; and
- Participating in meetings in the US and in the UK with representatives from the International Tanker Owners Pollution Federation Limited (ITOPF), the International Group of P&I Clubs, the US National Oceanic and Atmospheric Administration (NOAA), the US National Pollution Funds Center, the US Coast Guard (USCG) and the US Environmental Protection Agency (EPA).

The SOPF might have significant future liabilities to the international Fund. Since 1989 the SOPF has paid the 1971 IOPC Fund approximately \$20.5 million. Since May 29, 1999, Canada has been a Contracting State to the 1992 international Conventions. The maximum compensation available under the 1971 IOPC Fund (including the 1969 CLC) is approximately \$120 million per incident, while the maximum compensation level under the 1992 international Conventions is approximately \$270 million.

Obligations to IOPC Funds

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

IOPC sessions

"The SOPF came into force on April 24, 1989, by amendments to the CSA."

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

2. The Canadian Compensation Regime

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

Special account

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

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

Levy

During the fiscal year commencing April 1, 2000, the Minister of Transport has the statutory power to impose a levy of 39.48 cents per metric tonne of "contributing oil" imported into or shipped from a place in Canada in bulk as cargo on a ship. The levy is indexed annually to the consumer price index.

No levy has been imposed since 1976.

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

“The SOPF is intended to pay claims regarding oil spills from all classes of ships.”

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

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

During the fiscal year commencing April 1, 2000, the maximum liability of the SOPF is \$131,634,422.80 for all claims from one oil spill. This amount is indexed annually.

Maximum liability

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

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

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

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

Polluter should pay

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

SOPF: A Fund of Last Resort

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

Shipowner liable

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

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

Power and authority

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

SOPF: A Fund of First Resort

“The Administrator, as an independent authority, has a duty to investigate and assess claims filed against the SOPF.”

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

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

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

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

Appeal period

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

Reasonable measures

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



3. Canadian Oil Spill Incidents

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

Locations of incidents are indicated on map opposite.

3.1 *Irving Whale (1970)*

This protracted, involved and, above all, time consuming case was finally resolved this year with respect to the SOPF.

This Canadian oil barge sank in the Gulf of St. Lawrence, on September 7, 1970, while under tow carrying a cargo of 4,200 tonnes of Bunker C oil. The barge and the remaining oil cargo were raised on July 30, 1996, and the barge taken to Halifax, Nova Scotia. The annual reports every year since 1991-92 have described the progress of the claims and counter claims, surrounding this occurrence.

Motions for Summary Judgment were made to the Federal Court of Canada 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 before Mr. Justice James K. Hugessen on December 9-10, 1998, in Montreal.

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, 1970. 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 the 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.*

The Crown did not appeal the decision in respect of any of the defendants. 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.

Following negotiations with the Crown:

- a) On August 4, 1999, the Administrator received, for credit to the SOPF, payment from the Crown amounting to \$10,000.00, in respect to the SOPF's legal costs.
- b) On September 28, 1999, the Administrator received, for credit to the SOPF, payment from the Crown amounting to \$90,000.00, in respect to the SOPF's allowable disbursements.

The Administrator closed his file.

3.2 Liberty Bell Venture (1987)

As it transpired there was no direct involvement of the SOPF in this case, other than the Administrator being named a party in the proceedings, but there was always the possibility that he would have to intervene. The Administrator was, therefore, pleased that the case was settled this year.

There was a spill of Bunker C oil during this 31,331 gross ton 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 Canadian Coast Guard (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 litres of oil were spilled.

On March 28, 1989, the Crown commenced an action in the Federal Court of Canada 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 owners' contributory negligence constituted an absolute defense. 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 of Canada. An official of the CCG advised, on November 8, 1999, that the case had been settled. An Agreement of Settlement and Release had been signed by the Crown. On February 22, 2000, the Administrator signed the Notice of Discontinuance. The SOPF file was closed.

3.3 South Angela (1988)

This is another incident for which the Administrator has maintained a file for a number of years. It involved litigation that was concluded this year.

The 59,353 gross ton 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, 1987. 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.

This ship accepted responsibility for the first spill but no resolution could be achieved for the second spill and on February 22, 1991, the Crown commenced an action in the Federal Court of Canada to recover the CCG costs and expenses, amounting to \$234,336.58 naming the Administrator a party by statute. The refinery also commenced 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* was relevant to this litigation.

CCG reported that, as at March 31, 1999, the Court had assigned liability equally to the shipowner and the refinery. Discussions on quantum took place between

the Crown's agent and legal counsels for the shipowner and the refinery. An offer was received from the shipowner.

An out-of-court settlement was reached. The parties, including the Administrator, executed a consent to the filing of a Notice of Discontinuance. The Administrator considers the case terminated and closed his file.

3.4 *New Zealand Caribbean (1989)*

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

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

alleged deficiencies in the design of the wharf and other matters.

During 1997 an out-of-court settlement was agreed between the parties. The ship made a payment of \$51,000.00 and VPC agreed a dismissal order be filed naming the ship and owners, concluding the case against those parties. Counsel for the shipyard had agreed to a payment of \$25,000.00 from payments due the shipyard, which was now in bankruptcy. 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 VPC advising that he reserved all his rights in the case. The latest information from VPC is that there has been no material change in the situation.

3.5 *Eastern Shell (1991)*

The Administrator is pleased to report that this matter was resolved this year.

This Canadian single hull tanker of 4,008 gross tons was engaged on a voyage carrying diesel oil and gasoline from Sarnia to Parry Sound, Ontario, when, on May 10, 1991, it 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 litres of gasoline and 62,000 litres 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 1971 IOPC Fund was not involved because 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:

Owners (Soconav)	\$ 326,546.08
Charterers (Shell Oil Co.)	\$ 310,000.00
CCG	\$ 356,143.48
Total	\$ 992,689.56
- <i>Eastern Shell's</i> 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, and
- expressing the view that some of the above-mentioned costs were incurred in salvage of the vessel, and repair to enable it 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 commenced 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.

3.6 Princess No. 1 (1994)

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

The tug arrived at the base late in the afternoon of February 11, 1994, where it was met by a TCMS surveyor. Because the tug was effectively without heat, two of the three remaining crew left for their homes. The third crew member, the chief engineer, also left to obtain a hot meal ashore. When the chief engineer returned, he found the tug in the process of sinking. Emergency action was taken by the local fire brigade

Statements of Defense 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. Since 1996, a number of discussions took place with the Administrator regarding the Crown's claim, culminating on May 6, 1999, when an agreement for settlement was reached. The Crown accepted the Administrator's offer of \$235,000.00, all inclusive of interest, costs, etc., in full and final settlement.

On July 20, 1999, the Administrator directed the payment of \$235,000.00 to the Crown. A Release, signed on behalf of the Crown on June 28, 1999, was delivered to the SOPF. The Administrator closed his file on this case.

with pumps, but it was too late and the tug sank at the berth. As a result of the sinking, a quantity of oils were released. The CCG responded and used CCG vessels and crews, which were in the area, to contain and clean up the pollution, some of which was contaminated ice. Subsequently, the owner raised the tug with his own resources and put it ashore. It was found that the tug had developed a number of leaks in its hull, which were presumed to have been caused by operations in the ice.

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

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

On February 10, 1997, the Administrator filed a Statement of Claim in the Federal Court against the *Princess No. 1*, and its owner, to recover the amount of

\$105,000.00 plus interest. On October 7, 1998, a default judgment in favour of the SOPF and against the owners and operators of the tug was obtained.

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

2000, the Administrator wrote to the owners and, this time, received a telephone reply. Following contact, the Administrator is considering proposals by the owners to settle this longstanding matter. SOPF legal counsel have been engaged and with this help the Administrator is hopeful that settlement can be achieved.

3.7 *Haltren No. 1* (1995)

The case was concluded this year.

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

On October 25, 1995, the 1,178 gross ton Canadian registered barge sailed light ship from Grande Vallée, Quebec, 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 its 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 and 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 litres 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 litres of an oily mixture in the holds and a further 5,600 litres 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, 1995, 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 were 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 two kilometres 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 Environment Canada 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 CCG 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, \$200,000.00 in full and final settlement of the CCG claim, including interest. A condition of the settlement was that the Crown signed a receipt and release holding the SOPF harmless against any potential future pollution claims that 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 of Canada 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 Defense 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 Defense and Counterclaim was filed in court on January 15, 1999.

Further investigation uncovered facts regarding the financial situations of the Defendants that make it very doubtful if any favourable judgment would be paid. It would also be costly to pursue this recovery action. The Administrator concluded that the likelihood of recovery from the shipowner was small, and therefore decided that further efforts in this respect were not justified.

On this basis a Discontinuance was filed in the Federal Court of Canada on September 30, 1999, discontinuing the action against the owner of the *Haltren No. 1*, without cost to either party. The Administrator closed his file on this case.

3.8 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 pen) in Little Harbour, Lunenburg County, Nova Scotia. 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. No reply has been received, and the claim has not been pursued.

On this basis, the Administrator has closed the file on this incident.

3.9 Northwind (1996)

This was another case that was successfully settled by the CCG this year without reference to the SOPF.

On September 6, 1996, the Administrator was informed that the 163 gross ton 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 litres of diesel oil remained in the floating upturned hull. The owner contracted salvors, who arrived on scene with CCG and Department of Fisheries and Oceans (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 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. Subsequently, the CCG advised that interest to the amount of \$276.30

had been paid to the Crown on April 20, 1999, on behalf of the shipowner.

The Administrator closed his file.

3.10 Motor Yacht 42E 6903 (1996)

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

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

\$209.92 accrued interest payable under section 723 CSA.

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

Since there was no response from the owner, a Statement of Claim was filed in Federal Court of Canada against the owner by the Administrator on September 20, 1999. No payment was forthcoming at the end of this fiscal year.

3.11 Haralambos (1996)

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

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

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

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

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

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

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

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

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

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

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

3.12 Mystery Oil Spill – Placentia Bay, Newfoundland (1997)

On January 20, 1997, an official of the Canadian Wildlife Service (CWS) reported large patches of oil had been sighted off the wharf at St. Bride's, Placentia Bay. Aerial and ground 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 rehabilitation 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 that, 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) *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 directed the transfer of funds amounting to \$71,506.48 plus \$9,762.72 in interest, by way of an interim payment to the Crown. The Administrator offered to investigate and assess any outstanding amounts on receipt of better particulars.

On March 1, 2000, the Administrator received the Crown's explanation supporting various charges; others were withdrawn. Accordingly, on March 28, 2000, the Administrator arranged to transfer the balance of the established claim, namely \$28,500.00, plus interest of \$5,956.63. This enabled him to close his file on the incident.

3.13 *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 gross ton Panamanian flag multi-purpose cargo

ship *Nita 1* and the quay at the port of Gros Cacouna, Quebec, 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 one barrel of oily debris was recovered. Samples of the oil were taken by a TCMS 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 (LOU) in favour of the CCG to the amount of \$5,000.00.

On February 26, 1998, the Administrator submitted the CCG claim to the *Nita 1*'s legal representatives, with the request that settlement be made directly 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. The hearing resumed on June 7, 1999. The ship was found guilty and fined \$8,000.00.

Negotiations continued between counsels for the ship and the Crown. An all-inclusive settlement of \$3,000.00 was agreed and paid to the Crown on March 2, 2000. The Administrator was not involved. A formal Receipt, Release and Discharge document was signed on behalf of the Crown on March 23, 2000, in favour of the ship, and the Administrator closed his file.

3.14 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 TCMS 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 held in escrow pending signing of Release and Subrogation documents. On May 20, 1999, a copy of that document, duly signed on behalf of the refinery, was received by the Administrator and he closed his case file.

3.15 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 gross ton 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 five litres 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, 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 did not respond.

On July 14, 1999, the Administrator again wrote to the owner. This time the owner replied by letter stating that, because of other vessel repair costs and small fishing revenue, he was unable to pay. Other information was forthcoming that, at the time of the incident, the owner was in poor health, and it was confirmed that he had little income. The Administrator

decided that further recovery efforts were not justified and accepted a compromise and settlement.

On August 23, 1999, a cheque in the amount of \$850.00 was received. After the cheque was cleared for payment into the account of the SOPF, the Administrator closed his file.

3.16 *Jade Star* (1997)

The Transportation Safety Board's (TSB) daily occurrence report advised that on July 29, 1997, this 6,262 gross ton Canadian registered and operated Manx owned tanker was involved in a spill of an estimated 2,200 litres of diesel oil. Apparently, the tanker was moored in the George River, Ungava Bay,

Quebec, 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 and, as the time-bar for any such claim would normally have been July 30, 1999, the Administrator has closed his file.

3.17 *Ossian* (1997)

A status report issued by the CCG indicated 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 and 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 litres of diesel had been aboard the boat and that pollution clean-up was required.

\$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.

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.

Regarding limitation of liability it should be noted that section 709 *CSA* indicates the SOPF is liable where the claim exceeds the ship owner's maximum liability under the *CSA*.

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

The questions raised by the Administrator were fully answered in the Crown's reply letter of April 28, 1999. On June 28, 1999, the Administrator was pleased to direct the transfer to the Crown of the full claim amount, namely the principal of \$13,823.11, together with interest of \$1,768.35. The Administrator then closed his file.

3.18 *Rhea* (1997)

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

and was unable to pay for the oil pollution containment and clean-up.

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

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

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

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

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

- a) diligently pursuing collection from the boat owner;

- b) pursuing the Harbour Commission's insurers (who had declined liability); and
- c) that any recovery of monies by the Harbour Commission would be returned to the SOPF.

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

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

3.19 Rani Padmini (1997)

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

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

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

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

On January 5, 2000, the shipowner commenced an action in the Federal Court of Canada against the Crown in the amount of US \$800,000.00, for costs incurred as a result of damage to the vessel. On January 14, 2000, the Crown withdrew its claim to the SOPF under section 710 *CSA*. It is understood that the Crown intends to file a defence and counterclaim in the action. In any such action the SOPF becomes a party pursuant to section 713 *CSA*. In this event, the SOPF's liability to the crown is stipulated in section 709 *CSA*.

3.20 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 southwest promontory of Newfoundland, overlooking Cabot Strait. Local people reported that from 100 to 200 oiled birds were found near the Cape over a three- to four-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. The Administrator has closed his file.

3.21 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 on the ground and by air. The CWS 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 that were also found on the beaches were cleaned up.

No claim was received at the SOPF and the Administrator closed his file.

3.22 Koyo Maru #16 (1997)

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

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

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

On October 18, 1999, the Administrator received a claim from the Crown for reimbursement of the CCG's costs and expenses in this incident, stated to be

\$7,631.82. The Administrator investigated and assessed the claim, which action raised a number of questions regarding the spill itself and the quantum of the claim. These were responded to by the CCG.

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

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

3.23 Flare (1998)

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

effective aerial search but on January 23, 1998, it was concluded that the bow section had also sunk.

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

The March 31, 2000, CCG claims summary indicates that the Crown made a claim on the shipowner amounting to \$1,037,363.69 on June 21, 1999, and

that discussions were underway with the shipowner's legal counsel.

3.24 *Saraband* (1998)

The *Saraband* is a 66,942 gross ton Liberian flag tanker loaded with a cargo of caustic soda for discharge at La Baie, Quebec on the Saguenay River. The tanker's draught was too deep for La Baie and a partial 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 four litres 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 32 kilometres 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 1,000 litres, the CCG estimated a $\frac{3}{4}$ tonne and Environment Canada 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.

There was concern 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 100 kilometre 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 LOU 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, amounting to \$60,661.23, to the shipowner's representative on August 11, 1998, following which the CCG discussed quantum. No claim has been presented to the SOPF in connection with this incident. The December 31, 1999, CCG claims summary indicated:

Settlement amount	\$42,000.00
Settlement date	May 14, 1999
Payment received in full and final settlement.	

The Administrator closed his file.

3.25 *Enerchem Refiner* (1998)

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

Assisted by tugs, the ship was freed on April 5, 1998, and proceeded to a nearby anchorage for a full inspection of the hull. There was no release of oil.

On March 31, 1999, the Administrator received the Crown's claim, amounting to \$10,826.05, to recover the CCG's stated costs and expenses in the incident.

The Administrator wrote to the tanker's owner, Enerchem Transport Inc. of Montreal, on April 12, 1999, forwarding the claim and requesting direct settlement by the owner with the Crown. The SOPF was advised that Enerchem Transport had been sold to another Canadian shipping company, Algoma Tankers Inc. The *Enerchem Refiner* was sold to foreign owners on April 29, 1999, and, under a new registry, sailed from Sorel, Quebec, May 9, 1999, bound for Panama. On July 15, 1999, the Enerchem company's office in Montreal ceased to operate. Enerchem's representative

explained that the company considered the Crown claim to be late in being presented. Their insurers had settled all other claims connected with the occurrence some months previously and they, and Enerchem, had closed their files, complicated by the fact that Enerchem had ceased to exist.

The Administrator followed up with telephone calls and sent a number of letters, but settlement was not

achieved. On November 1, 1999, the Administrator wrote to the President of Algoma Tankers.

On January 10, 2000, Algoma wrote agreeing to pay the claim. The Crown received payment of the principal amount from Algoma on March 3, 2000. At the end of the fiscal year the question of interest had not been resolved between Algoma and the Crown.

3.26 Mystery Oil Spill – Vancouver Harbour, British Columbia (1998)

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

On March 31, 1999, the Administrator received a claim from the Crown, on behalf of the CCG, for their

costs and expenses in the incident. The claim amounted to \$23,662.82.

The Administrator wrote to the Crown on June 29, 1999, outlining the established and non-established items of the claim. On August 5, 1999, the Crown advised that, at that time, it was not prepared to provide further documentation. On September 16, 1999, the Administrator directed that the amount of \$20,318.62 plus interest of \$2,116.33 be paid to the Crown. No further substantiation documentation had been received at year end.

3.27 Mystery Oil Spill – St. Bride's, Newfoundland (1998)

A local resident reported to the St. John's Vessel Traffic Services Centre, on April 27, 1998, that a small number of oiled birds had been observed at St. Bride's Bay. The CCG and the CWS 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 left in the world.

No claim connected with the incident has been received at the SOPF. The Administrator concludes that the possibility of a claim is small and has closed his file.

3.28 Agawa Canyon (1998)

This 16,290 gross ton 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 litres 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.

The CCG costs and expenses were minimal and below the threshold for recovery action. It is understood the shipowner accepted responsibility for the clean-up costs and expenses. No claim related to this incident has been received at the SOPF. The Administrator has closed his file.

3.29 Filomena Lembo (1998)

This incident involved a number of peculiar circumstances. The *Filomena Lembo* is an Italian flag 29,498 gross ton tanker that had been converted from a cargo vessel and, therefore, was of an unusual design to carry oil cargoes. The tanker arrived at a berth in Quebec City, on May 26, 1998, to deliver a part cargo of No. 6 bunker oil to a local pulp mill owned by

Daishowa Inc. Daishowa decided to employ their oil spill contractors in a simulated oil spill exercise and these contractors commenced placing a boom around the tanker on her arrival. Shortly after, with the boom largely in place, oil was seen within the boom. The oil spill continued to increase within the boom to a final quantity estimated at some 200 to 400 litres, and

Daishowa employed the contracting company already on site to clean up the pollution. The tanker discharged her cargo and, over a similar timeframe, loaded bunkers.

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

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

On October 29, 1998, counsel for the SOPF received a claim from Daishowa Inc. amounting to \$35,179.11, for their stated costs and expenses in responding to this spill. The Administrator extensively investigated the circumstances of the spill, including employing divers

to search the seabed off the berth in question. On October 22, 1998, in very poor visibility, the divers found diverse material in the harbour bed off the berth. The material consisted mainly of concrete and construction framing, but that also included a cylindrical object, possibly a tank, buried in the mud. The object was buoyed. A follow-up dive was carried-out on November 23, 1998, when the buoy was found to be missing. In trying to relocate the cylindrical object, an object was found that, in the diver's opinion, was the framework of an auto or a small airplane. The divers brought a small piece of the object to the surface and concluded that the object in the mud could not have caused the pollution.

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

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

At the end of the fiscal year negotiations were in progress to discontinue the Court action.

3.30 Mystery Oil Spill – Fighting Island, Ontario (1998)

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

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

On June 1, 1999, the Crown presented a claim to the SOPF on behalf of the CCG in respect to this incident,

amounting to \$112,504.65. The Administrator commenced an investigation. In this process a number of factors were revealed, including:

- The Ontario Ministry of the Environment was also involved on the Canadian shore but their report was unable to identify the origin of the spill.
- The Michigan Department of Environmental Quality was also involved. An official indicated that he did not believe that it was ship related.
- The USCG provided a complete copy of their laboratory analysis of pollution samples, together with the laboratory covering report. This analysis did not positively identify the origin of the spill.
- Instead of the site samples oil content being "of a heavy type," as initially stated in a Canadian laboratory analysis for the CCG, the samples were

found to contain "a severely evaporatively weathered light fuel oil mixed with...lubricating oil," in a subsequent more detailed analysis.

- The samples taken by the CCG and passed to a private laboratory for analysis were subsequently destroyed by the laboratory in accordance with their advised practices. Other samples, kept by the CCG, were not refrigerated. Samples taken from the Fighting Island site (only) and provided to the

SOPF were retained under refrigeration and were available.

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

3.31 Mystery Oil Spill – Little 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 ground survey it was discovered that about one kilometre 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 Crown presented their claim for this incident, to recover the stated costs and expenses of the CCG, with

the claim being received at the SOPF on June 21, 1999. The claim, amounting to \$12,246.21, was investigated and assessed by the Administrator. On July 26, 1999, the Administrator authorized an interim payment of \$10,889.13, plus interest in the amount of \$742.21, interest being required in accordance with section 723 CSA.

Following upon consideration of additional information, a further payment was made on March 28, 2000, in the amount of \$435.00 and interest of \$49.89, in full and final settlement of the claim.

3.32 Joanne (1998)

The small Canadian dredging craft *Joanne* sank alongside its berth in the harbour of St-Thomas-de-Kent, New Brunswick, during a storm on August 12, 1998. The CCG in Saint John was informed and liaised with the dredger's owner by telephone. As a result, the

owner arranged for all vents and other hull openings to be closed, the limited oil pollution to be cleaned-up and the craft to be raised. The SOPF was informed that no claims would be forthcoming to the Fund and the Administrator closed his file.

3.33 Mystery Oil Spill – L'Île des Barques, Quebec (1998)

On August 8, 1998, a CCG patrol vessel reported to the CCG Response Branch the presence of oil in the channel to the southwest 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, leaching 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.

The Crown submitted the claim, on behalf of the CCG, to the Administrator and it was received by him on March 26, 1999. The claim amounted to \$22,152.81 – approximately half of which was to recover the stated costs for the use of the CCG craft and booms. The other main charge in the claim was for the attendance of contractors who monitored the booms.

The SOPF investigated the source of the oil, together with a previous investigation by the CCG. Neither investigation could establish how the oil came to be held, below normal water level, within the stonework of the barrage.

In the Administrator's opinion some of the charges were not established, particularly the costs of the oil contaminated waste disposal, and others were not reasonable, especially those related to the use of the CCG craft. Accordingly, on November 8, 1999, the

Administrator arranged for an interim payment of \$16,988.27, plus interest of \$1,520.66, to be made to the CCG.

The March 31, 2000, CCG claims summary indicated that the CCG will not pursue the remainder. The Administrator closed his file.

3.34 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.

On August 18, 1999, the CCG advised that their costs and expenses in this incident were minimal and they would not be instituting recovery action. With little likelihood of a claim from any other source, the Administrator closed his file on the incident.

3.35 Masson Ferry, Quebec (1998)

A CCG Sitrep reported that, on August 17, 1998, a local fire department reported to Environment Canada that there was an oil slick on the Ottawa River, which in due course came ashore at Masson, Quebec. 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 metres of shoreline and three float planes were affected and Environment Quebec contracted for the clean-up. Environment Ontario was unable to find any sources of the oil along the Ontario shoreline. TCMS investigated, including taking oil samples from the ferries.

The samples were analyzed and a match was found between the oil on the Quebec side of the river and one of the ferries.

TCMS, in consultation with the Department of Justice (DOJ), decided not to proceed with prosecution of the ferry owners.

The CCG advise that they do not expect to make a claim on the SOPF for their minimal costs in this incident. There are no indications that any other third parties shall make a claim against the SOPF. Accordingly, the Administrator has closed his file.

3.36 Miss Babs (1998)

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

Subsequently the CCG wrote to the owner requesting his intentions on

- a) the pollution aspects; and
- b) the hazard to navigation that the sunken vessel posed to other vessels.

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

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

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

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

The Administrator investigated and assessed the claim, which claim also covered the raising of the wreck,

stated by the CCG to be necessary as part of the oil pollution prevention.

On November 22, 1999, the Administrator arranged payment of \$23,836.70, plus \$2,079.86 in interest, to be made to DFO, with the proviso that any further

evidence and representations would be considered. At year end, no such documentation had been received.

Efforts are being made to find out the whereabouts of the vessel's owner, with a view to assessing the prospects for recovery of the monies paid to the Crown.

3.37 *Moruy* (1998)

The *Moruy* is a 34,422 gross ton Venezuelan tanker. On September 29, 1998, the ship grounded in the St. Lawrence River, off Champlain, Quebec, 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 the Canadian authorities, and booms were rigged. A local RO 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 stated that TCMS took the prime role in responding to this incident. The CCG advised that their costs and expenses were below the threshold for recovery action, and that no claim from the CCG would be forthcoming for this incident. The Administrator then closed his file.

3.38 **Mystery Oil Spill – Montreal Harbour, Quebec (1998)**

On October 13, 1998, the Norwegian flag 9,975 gross ton cruise vessel *Seabourn Pride* was berthed at Section M5 in Montreal and during that day she refueled and offloaded waste oil. Early morning on October 14, 1998, she sailed for Quebec City. Four hours afterwards, oil was reported in Montreal 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 the cruise vessel's arrival at Quebec City, arrangements were made for an LOU, made out in the names of the CCG and SOPF, to the amount of \$60,000. TCMS 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 Montreal 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.

In accordance with his responsibilities, the Administrator assessed the claim. One of the costs in the claim, that for the manager of the RO, had not been paid by the CCG on the grounds that the individual had

not been on site and was too remote from the clean-up. The Administrator supported this position. The amount involved was \$1,360.00. In effect, this reduced the CCG claim to \$21,737.36. The Administrator had concerns regarding a number of other individual charges in the claim, primarily related to the lack of substantiating invoices from subcontractors, and contractors adding an automatic mark-up of 10 per cent for handing subcontractors invoices, without providing justification.

On November 3, 1999, the Administrator made a payment covering the established items of \$20,263.15, plus interest of \$1,319.65.

The oil spill itself was investigated by the SOPF. It appeared that one of two ships was involved; either the cruise vessel itself, or the small craft that was employed to offload the used oil. Both ships denied responsibility. It proved impossible to show which vessel was the origin of the spill and the Administrator, agreeing with the CCG original designation, classified it as a mystery spill.

The March 31, 2000, CCG claims summary noted that the CCG will not pursue the remainder of their claim. The Administrator closed his file.

3.39 *Canmar Valour* (1998)

This is a 15,584 gross ton containership that was berthed at Section 79, Montreal 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 litres of oil were retained on the deck of the vessel with another 1,000 litres 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 an LOU for the amount of \$200,000 on behalf of both themselves and the SOPF. TCMS investigated and also obtained an LOU for \$100,000.00 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. Normally this would

have ended this incident, but as will be seen in the next incident report, oil from the *Canmar Valour* had escaped downstream causing further pollution.

The Administrator did not release the LOU, because of the further claim. On September 13, 1999, the Administrator negotiated the release of the monies due to the CCG, but still retaining the validity of the LOU.

On September 28, 1999, the *Canmar Valour* pleaded guilty to the oil spill at Section 79 and was fined \$20,000. The September 30, 1999, CCG claims summary noted that its claim had been settled by the shipowner.

The Administrator closed his file on the incident, but retained the LOU obtained in the case, because of the claim noted in the following incident.

3.40 *Canmar Valour* (1998)

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

Produits Shell Canada Limitée had floating booms permanently installed off its facility at Section 103 in Montreal Harbour at the time of this incident. It was reported that booms were opened on November 14, 1998, to permit two vessels to berth at the facility and oil floated in with the current. Shell employed contractors to clean up the oil, including that which fouled the hulls of the two ships required to berth there. The oil was of the heavy variety and the quantity estimated to be about 100 litres.

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

On April 6, 1999, the Administrator received a claim from Shell amounting to \$15,456.00 to recover their stated direct costs and expenses responding to this incident. The Administrator required better substantiation for some of the charges and this information was provided by Shell. Shell further

advised that they might submit an additional claim for demurrage costs they incurred in the delay of the vessel because of the oil-contaminated hull. The hull had to be cleaned before it was cleared for sailing.

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

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

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

Throughout, the Administrator has intervened with Shell and counsel for the *Canmar Valour*, towards achieving a direct settlement of the Shell claim. As of March 31, 2000, no settlement had been agreed.

3.41 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 centred 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, 10 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.

The SOPF has received no further information concerning this incident. The Administrator has closed his file.

3.42 Mystery Oil Spill – Montreal Harbour, Quebec (1998)

The CCG reported a spill of oil had been found between Sections 45 and 62, Montreal 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.

The Port of Montreal subsequently confirmed that they had accepted the CCG's costs and expenses in this regard and the Administrator closed his file.

3.43 Elton Hoyt 2nd (1998)

The Ontario Ministry of the Environment reported that this 10,969 gross ton American Great Lakes self-unloading vessel had, on December 30, 1998, spilled an estimated 1,000 litres of diesel fuel into the St. Clair River, while refueling alongside at Corunna, Ontario. The ship contracted with the RO 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.

On November 30, 1999, the CCG obtained confirmation that the ship had paid the RO for the clean-up. The CCG costs and expenses for monitoring this incident were stated to be minimal and below the threshold for recovery action. The Administrator then closed his file on the incident.

3.44 Walpole Islander (1999)

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

environmental concerns was the extensive wetlands nearby.

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

3.45 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 Environment Canada biologists and TCMS were investigating.

Subsequently, the CCG stated their costs and expenses for this incident were minimal and below the threshold for recovery action; consequently they will make no claim against the SOPF. In the absence of further developments, the Administrator has closed his file on the incident.

3.46 Catalina Venture (1999)

A TSB Occurrence Report was received advising that, on March 1, 1999, this 70 gross ton Canadian fishing vessel sank alongside at her berth in Port Saunders, Newfoundland; the port being ice covered at the time. Port Saunders is situated on the northwest coast, just south of the Strait of Belle Isle. The sinking was reported to the CCG. The CCG liaised with the owner by telephone to ensure the appropriate action was

taken to contain and clean up oil released by the sinking, which costs were paid by the owner.

The CCG advise that they do not know of any claims that may be presented to the SOPF as a result of this incident. In the circumstances, the Administrator has closed his file.

3.47 Solon of Athens (1999)

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

Crown sent a reminder letter to the ship's local representatives. The local representatives replied on January 19, 2000, that they had not received the claim from the SOPF, but advised that the P&I Club were dealing with the pollution incident through local counsel.

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

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

The Administrator received the Crown's claim on June 17, 1999, to recover their costs and expenses in the incident that were stated to amount to \$4,717.24. The Administrator reviewed the claim and, on June 28, 1999, sent a copy to the *Solon of Athens* local representatives in Montreal with the request that direct settlement be made with the Crown. As no reply had been received, on January 14, 2000, counsel for the

At the end of the current fiscal year the Administrator was engaged in efforts to achieve settlement of his recovery claim, and the LOU was extended by the P&I Club in light of same.

3.48 Gordon C. Leitch (1999)

This was one of the more serious incidents reported recently in that the clean-up measures taken and costs incurred were considerable. The *Gordon C. Leitch* is a 19,160 gross ton Canadian Great Lake vessel and, on March 23, 1999, she was berthed at an iron-ore facility in Havre-Saint-Pierre, Quebec, on the lower north shore of the St. Lawrence River. It was necessary to

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

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

CCG guidance. It was stated that the costs and expenses for this work would approach \$5 million.

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

3.49 *Algontario (1999)*

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

made with a contractor to remove oil from the ship to a lightering vessel to prepare for the refloating operation. The CCG and TCMS were in attendance.

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

3.50 *Paterson (1999)*

This is a general cargo vessel of 8,618 gross tons, which was carrying a cargo of grain when it grounded in Lac Sainte Francis, St. Lawrence River, on April 5, 1999. There was no pollution as a result of the grounding, but the shipowner gave notice to his RO to

be in readiness. Arrangements were also made to lighten the vessel of some of its cargo, in preparation for towing the ship off. This was successfully carried out on April 9, 1999, with no pollution occurring. TCMS and CCG were in attendance.

3.51 *Sam Won Ho (1999)*

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

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

The claim was investigated by the Administrator to verify the established and non-established items. An

all-inclusive offer of settlement was made in the amount of \$80,000.00, which was accepted by the CCG. Payment was directed on March 3, 2000.

The Administrator is considering what reasonable options exist regarding cost recovery of the monies paid. Environment Canada is also investigating this matter.

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

3.52 *Orient Tiger (1999)*

This took place at the Come By Chance refinery, Placentia Bay, Newfoundland. The *Orient Tiger* is a 132,724 gross ton Bahamian registered tanker, owned by a Hong Kong company.

On April 13, 1999, the refinery reported that No. 6 fuel oil was escaping from the "high sea discharge

opening." The ship was immediately able to stop the out-flowing oil and it was subsequently found that an oil line passing through a water tank had fractured. It was estimated that some six to 10 barrels of oil had been contained in the booms deployed by the refinery. The ship invoked its arrangement with the ECRC, which provided personnel to effect a clean-up,

monitored by the CCG. A CCG helicopter overflight on April 14, 1999, found an oil slick some three miles from the spill site, close to Woody Island, Placentia Bay. This slick was investigated the next day and found to be comprised, mainly, of an oil sheen that was rapidly dissipating. No clean-up action was considered necessary.

The CCG obtained their own LOU to cover the costs and expenses for their attendance at the spill. TCMS instituted a prosecution of the *Orient Tiger* for the spill and, on January 10, 2000, the ship entered a plea of guilty, and was fined \$8,500.00. The March 31, 2000, CCG claims summary stated "Settlement reached with the shipowner. Payment received." The SOPF had not been involved. The Administrator closed his file.

3.53 *Sunny Blossom* (1999)

This vessel is an 11,598 gross ton Bahamian flag double hull chemical tanker that was involved in at least three incidents. It came to the attention of the SOPF when transiting the Great Lakes in 1999. The vessel was engaged in the caustic soda trade, in and out of the Great Lakes.

On April 24, 1999, she grounded off Kingston, Ontario, in US waters. The USCG responded to the

grounding. The CCG attended at the site. The *Sunny Blossom* was refloated, with no release of a pollutant.

The second incident, a grounding, is reported at 3.56 herein. The third incident was on July 26, 1999, when the vessel struck an arrester wire in Iroquois Lock, Ontario.

3.54 *Mystery Oil Spill – Paspébiac, Quebec* (1999)

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

Reports were made to the CCG of this fact and arrangements were made for a local contractor to clean

up the spill. This work was completed during the morning of May 14, 1999.

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

3.55 *Ariel* (1999)

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

level, thereby stopping further outflow. It was estimated that two barrels of diesel oil had been lost overboard.

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

3.56 *Sunny Blossom* (1999)

Following on from the previously reported grounding incident, this 11,598 gross ton Bahamian flag chemical tanker grounded again in the Great Lakes system on July 16, 1999, in Canadian waters in the St. Lawrence

Seaway off Cornwall Island, Ontario. The CCG responded and stood by the vessel until it refloated.

3.57 H. O. No. 2 (1999)

The CCG was informed on July 26, 1999, that this 169 gross ton wooden barge, built in 1910, was taking on water in Prince Rupert harbour, British Columbia, and in danger of sinking. The craft had some 9,000 litres of gasoline in various tanks, and smaller quantities of old engine and other oils aboard. On investigation it was found that the owner had, without permission, moored the barge and seven other craft associated with the enterprise at a privately owned facility in the harbour. The owner of the facility initially responded and then turned over the responsibility for the safety of the craft to the CCG. The owner of the craft could not be immediately found.

On July 27, 1999, the CCG contracted for a survey of the craft and to stabilize the leaking barge. The owner

was traced and the CCG arranged a meeting with him on August 3, 1999. The owner agreed to accept his responsibilities in the situation and confirmed that he would remove the craft by September 3, 1999.

In view of the potential expenses that could be incurred by the Crown and the unknown financial circumstances of the owner, the Administrator wrote to the CCG on August 5, 1999, expressing his concern regarding cost recovery. As it transpired, the CCG costs and expenses were considered below the threshold for recovery action. The craft, including *H. O. No. 2*, had been removed from the harbour. In view of the fact that no claim will be forthcoming from the CCG and the circumstances being such that any third-party claim is unlikely, the Administrator closed his file.

3.58 Mystery Oil Spill – Patrick's Cove, Newfoundland (1999)

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

responded to the clean-up required and the media reported some 100 kilograms of oiled debris were recovered from the beaches. Oiled birds and oiled chicks were observed in the area.

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

3.59 Mystery Oil Spill – Cumberland, Ontario (1999)

A local resident of Cumberland, a village situated on the Ottawa River some 20 kilometres east of Ottawa, reported sighting an oil spill in a creek early in the morning on September 2, 1999. Two officers from the CCG base at Prescott, Ontario, responded the

following day and cleaned up an estimated half litre of an old oily mixture. TCMS arrived that same day, September 3, 1999, to investigate. It proved impossible to ascertain from where the oil originated and it was termed a mystery spill.

3.60 Mersey Viking (1999)

The TSB reported that, on September 5, 1999, this 1,007 gross ton Canadian fishing vessel, struck bottom off Fisherman's Harbour, when outbound from Country Harbour, Nova Scotia. The vessel was holed and reportedly lost some 4,500 litres of diesel into the sea. The *Mersey Viking* made port safely for repairs.

The CCG was not called upon to respond and the diesel dissipated naturally. No claim has been received at the SOPF and it seems that any claim is unlikely. The Administrator has therefore closed his file on the case.

3.61 Mystery Oil Spill – Ungava Bay, Nunavut (1999)

On September 27, 1999, the ship *Aivik* reported to the CCG Traffic Centre at Iqaluit that it had sailed through patches of an unknown hydrocarbon near the eastern entrance to Ungava Bay. On September 29, 1999, the CCG ice reconnaissance aeroplane confirmed the existence of the oil slick.

Pursuant to the working agreement on the response of government and regulatory agencies to spills in the Northwest Territories, Indian and Northern Affairs Canada, was designated lead agency responsibility. An aircraft was chartered and overflights were carried out on October 1, 3 and 6, 1999, with no oil being sighted. It is believed that heavy seas had dissipated the slick, with no visible impact on the shoreline. There are no

potential shore facilities in the area that could have caused the occurrence and the source was therefore classified as a mystery spill.

On February 21, 2000, Indian and Northern Affairs Canada submitted a claim to the SOPF in the amount of \$15,214.92 for the costs involved in this response.

After investigation and assessment, an offer of settlement was made by the Administrator and accepted by the department in the amount of \$6,410 plus interest of \$228.05 on March 28, 2000. The Administrator closed his file.

3.62 Holland Marina (1999)

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

On October 8, 1999, the marina owner prepared a three-day plan to secure the site that, with minor modification, was approved by the CCG and Environment Canada. It was estimated that some

3,300 litres of gasoline had been released. Clean-up efforts, undertaken by a contractor, began on October 9, 1999.

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

The March 31, 2000, CCG claims summary states that a claim is being prepared.

3.63 Reid Point Marina (1999)

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

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

3.64 Radium Yellowknife (1999)

This 235 gross ton Canadian tug departed Hay River, Northwest Territories, in September, 1999, with a tow of nine barges in three stacks of three. The destination was Thunder Bay, Ontario. The convoy put into

Iqaluit, Nunavut, to make repairs. By late October, freeze-up in Iqaluit was imminent. On October 28, 1999, a TCMS Pollution Prevention Officer ordered the convoy to winter at Iqaluit. The tug and barges

were beached. During the first week of November, fuel and contaminated bilge water was pumped from the tug and barges to holding facilities on shore to reduce

the risk of pollution. The CCG assisted in the operation.

3.65 *Alcor* (1999)

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

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

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

The Crown incurred considerable costs for the attendance of the TCMS, CCG and Environment Canada during this incident. The Maltese authorities confirmed the ship was still owned by the original owners. To protect his interest, the Administrator took steps in preparation to obtain security pursuant to subsection 677(11) *CSA*, if necessary.

3.66 *Kaye E. Barker* (1999)

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

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

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

3.67 *Tachek* (2000)

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

gasoline was retained on the deck of the ferry, but an unknown quantity escaped.

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

The Administrator believes it unlikely that a claim will result to the SOPF as a result of this occurrence.

3.68 Leonis (2000)

The *Leonis* is a 52,176 gross ton Italian flag tanker, and on February 23, 2000, was loading a cargo of crude oil at the new Whiffen Head oil terminal in Placentia Bay, Newfoundland. The terminal transships oil from the Hibernia offshore oil field. During the loading process a cargo tank air vent valve failed to operate as designed and the tank over-pressurized, causing oil to be sprayed on to the deck and over the side of the ship. The loading sequence was changed and the problem corrected. The crew worked to clean the ship. The ship employed the local RO to clean up the oil in the water and on the shore.

Later that day, the *Leonis* completed loading and sailed. Seventeen drums of oiled debris were noted as being retained on the deck of the ship and arrangements were made to have the *Leonis* inspected at its next port of call, Philadelphia, PA, US, to ensure correct disposal of the debris.

It is stated that it is unlikely that a claim will be made against the SOPF as a result of this incident. The Administrator has closed his file.

3.69 Miles Sea (2000)

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

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

3.70 Bovec (2000)

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

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

“... the strategy emphasizes the pressing need for an Arctic marine spill contingency plan that clearly defines the role and responsibility of each organization...”

4. Issues and Challenges

Arctic Response Strategy

The CCG is the lead federal agency for all ship-source oil spills in Canadian waters. Under CCG leadership, the current industry-based marine oil spill preparedness and response regime was established in 1995.

Under the *CSA*, the CCG certifies a network of four private-sector owned and operated ROs. The system enables industry to respond to its own oil spills of up to 10,000 tonnes (full-scale international tier 4) in waters south of 60° north latitude. Any ship operating in these Canadian waters is required by regulation to have, in advance, a contractual arrangement with a certified RO. However, there is no certified RO for waters north of 60° north latitude. In the Arctic, ships do not need to have such contractual arrangements for oil spill clean-up. The CCG has overall responsibility for preparedness and response in all Arctic waters.

In light of this responsibility, the CCG's Central and Arctic Region developed an “Arctic Response Strategy” and produced a report in November 1999. The Strategy was formulated by an extensive consultation process with other federal departments, the territorial governments, and commercial marine transportation industries operating north of 60°. Furthermore, a series of focus-group sessions were held in 11 different communities across the Arctic territories. This direct approach allowed local dialogue, and it helped foster community-based participation.

As explained in the strategy report, the agreed course of action is to improve response capabilities and prevention.

The report recommends that CCG and TCMS develop an Arctic Pollution Prevention Plan, which will facilitate the appointment of Pollution Prevention Officers in the northern communities. Local individuals would be trained to take oil samples, obtain evidence and, if necessary, detain ships after consultation with TCMS.

In terms of preparedness, the strategy emphasizes the pressing need for an Arctic marine spill contingency plan that clearly defines the role and responsibility of each organization that may be called upon. In addition to administrative procedures, personnel training and simulation exercises, the plan would identify the primary stockpiles of equipment and other resources required to clean up assorted types of oil in different geographical areas.

To ensure an efficient response to a ship-source oil spill, the report makes 10 recommendations, including:

- establishment of an Arctic CCG Auxiliary and selection of community response officers;
- equipping response areas with a 1,000 tonne (air-transportable) response capability; and
- conducting further research into “in-situ” burning and the use of dispersants and other methods of cleaning up oil in ice.

Arctic Response Strategy

Prevention plan

Contingency plan

Recommendations

The report also notes that, in addition to stockpiling a community-based response capability of clean-up equipment, large staging sites must be established south of 60° (e.g. St. John's, Quebec and Vancouver).

There are issues of cost-effectiveness and logistics, including transportation difficulties, that must be addressed to prepare and respond effectively to marine oil spills across the immense geographical area of the Canadian Arctic. It will be a challenge during a crisis to deliver appropriate equipment on a timely basis. Pre-assembly and rapid loading and deployment seem to be essential.

This is an important file from an SOPF perspective. Strong support from all stakeholders is essential to maintain an effective national oil spill regime.

"The SOPF cannot recover payments made for cleaning up these mystery spills – the identity of the polluter is unknown."

Port Reception Facilities for Oily Waste

The question of adequate reception facilities for residual oils and other ships' waste at Canadian ports and oil refineries is under study by a committee of the Canadian Marine Advisory Council (CMAC). The committee's focus group is led by TCMS. It is consulting with representatives of Canadian shipping, petroleum industries and port authorities, as well as other stakeholders.

The Administrator intends to follow the CMAC progress closely, because of the problem of chronic mystery oil spills, particularly in eastern Canada.

The provision of adequate waste disposal facilities might improve the current situation.

It is reported that a proposed European Union (EU) directive on port reception facilities for ship-generated waste might soon become law. This directive aims to reduce discharges at sea by insisting that each EU member port have adequate waste reception facilities in place and that visiting vessels utilize and also pay for them. Under discussion are whether fees should be payable regardless of whether a ship drops off waste, and what proportion of fees are to be paid according to the quantity of waste delivered.

Further, the nature of this global problem has recently prompted the Marine Environment Protection Committee (MEPC) of the International Maritime Organization (IMO) to revise guidelines to encourage the better and more active use of port waste reception facilities. The IMO guidelines are intended to help achieve the elimination of intentional discharge and pollution of the marine environment by ship-source oil and other harmful substances.

A recent report of MEPC states: "Port States failing to provide adequate reception facilities will make it harder to deal with the enforcement of ships' illegal discharge at sea."

Illegal Discharge of Oily Waste at Sea

Most years, the Administrator reports the presence of mystery oil spills found on exposed shorelines, principally on the eastern seaboard of Canada, often in Newfoundland. The oil is devastating to wildlife and often a considerable expense to the public purse from clean-up claims paid by the SOPF. The SOPF cannot recover payments made for cleaning up these mystery spills – the identity of the polluter is unknown.

Study underway

EU directive

Mystery spills

“Federal government departments and agencies are using available resources to combat oil pollution caused by passing ships.”

These problems are not unique to Canada. Marine pollution is indiscriminate. By its nature it is transboundary. Its effects have repercussions on a global scale. At the international level, IMO continues to tackle the issues associated with the illegal discharge of ship-generated oily waste from all classes and sizes of ships. Such discharges are often from ships' machinery space bilges, which accumulate oily waste from machinery spaces.

Federal government departments and agencies are using available resources to combat oil pollution caused by passing ships. For example, Environment Canada uses radar satellite imagery to monitor those waters where the pollution problem is most severe.

There is also a federal aerial surveillance program managed by the CCG for the detection of oil spills in the marine environment. These surveillance activities are designed as a deterrent to intentional pollution and for the identification of polluters.

Dedicated aircraft

Currently, there are three dedicated aircraft utilized by the CCG:

- a Twin-Otter located in Vancouver, which patrols Vancouver Island's Inner Passage, the Strait of Juan de Fuca and the West Coast Tanker Exclusion Zone, as well as the Queen Charlotte Islands;
- a Dash-8 located in Ottawa, which patrols the Great Lakes, the St. Lawrence River, the Gulf of St. Lawrence, Cabot Strait and the coast of Nova Scotia, including the Bay of Fundy; and
- a Beechcraft King Air located in St. John's, which is primarily contracted for fisheries patrols but also conducts dedicated pollution surveillance flights off the coast of Newfoundland when available.

The patrol aircraft are equipped with video and still cameras and other computerized imaging equipment, which record vessel discharges and other pollution sightings. Environment Canada also operates a DC 3 aircraft.

Patrol missions

The CCG advises that during the fiscal year 1998-1999 the patrol aircraft flew 6,477 hours on 1,028 patrols and overflew 127 ships. In the fiscal year 1999-2000 the number of patrol missions were reduced substantially from the previous year: the aircraft flew 4,814 hours on 846 patrols and overflew 68 ships.

Prosecution efforts

TCMS Maritimes Region has reported on the success of its prosecution efforts aimed at ships polluting off the Atlantic coast. For example, during the 1999-2000 fiscal year, prosecutions were successful against six ships for offshore oil release and one other ship was referred to its flag State. Additionally, it is noted that the TCMS proceeded with another 14 prosecutions for spills within a harbour or at an offshore oil production site.

Enforcement

The importance of enforcement is noted elsewhere in this annual report. The Director of the US Environmental Protection Agency (EPA) office of Emergency and Remedial Response characterizes enforcement as the key to the protection, prevention, preparedness, and response continuum for environmental protection.

Oil Spill Response Regime Changes

Last year's annual report addressed the Department of Fisheries and Ocean's (DFO) discussion paper, dated December 1998, on "Governance" issues associated with the Canadian oil spill preparedness and response regime.

On March 31, 2000, the Minister of Fisheries and Oceans announced the implementation of changes to the response regime. They include, *inter alia*, a newly established Response Organization User Committee, and a renewed role for the Regional CMAC. There will also be a new National Advisory Council to review national issues of preparedness and response, and to ensure Canada is prepared to respond to a major oil spill.

It was stated that the Administrator will be invited to be a member of the National Advisory Council. The Administrator is pleased to note CCG confirmation that measures are underway to improve the timeliness and consistency of CCG claims submitted to the SOPF. In a separate report on stakeholder consultation to the discussion paper, the CCG acknowledges that the SOPF turn-around time for claims has shortened significantly.

Limitation of Shipowners' Liability

Last year's annual report noted that, when the changes in S.C. 1998 C.6 enter into force, the limits of liability for ships other than oil tankers in Canadian waters will increase substantially. The changes came into force on May 29, 1999.

It is instructive to refer to the *Ossian* incident, which was governed by the previous regime. The section of this year's annual report covering oil spill incidents in Canada details a pollution claim involving this Canadian fibreglass pleasure craft of 12.5 gross tons. The yacht caught fire on August 14, 1997, and the CCG responded to the release of oil and incurred a total expenditure of \$16,986.18. The yacht had a calculated limit of liability of \$3,163.07, in accordance with the provisions of the *CSA* in force at the time. The insurers paid the CCG for its costs and expenses, but only to the owner's limit of the liability. The SOPF had to pay the CCG the amount that the claim exceeded the shipowner's limit of liability.

Now, however, under the changes effective May 29, 1999, the new limit of liability of an owner of a ship under 300 gross tons, other than an oil tanker, including privately owned pleasure craft, is \$500,000.00, irrespective of actual tonnage.

The Administrator is advised that, prior to and subsequent to the enactment of the legislation, consultations were held with various boat owner associations and the marine insurance industry. However, based on past experiences, it is a concern for the SOPF that many ships under 300 gross tons operating in Canada might not hold adequate, or any, insurance cover. In any event, the owners of such ships are now exposed to a considerable personal strict liability in the event of an oil pollution incident.

As a matter of record, the *Marine Liability Act* (Bill S-17) was introduced in the Senate of Canada on March 2, 2000. Part 3 would implement existing provisions of Part IX of the *CSA* as amended by S.C. 1998 C.6. Part 6 would implement existing provisions of Part XVI of the *CSA*.

"On March 31, 2000, the Minister of Fisheries and Oceans announced the implementation of changes to the response regime."

Increased liability

Concern

Marine Liability Act

“The oil pollution caused by the Erika incident has resulted in calls... for changes in the international oil pollution compensation regime.”

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

The loaded Maltese tanker *Erika* (19,666 gross tons) broke in two in the Bay of Biscay, France, on December 12, 1999. Both the bow and the stern sections sank in about 100 metres of water. Approximately 14,000 tonnes of heavy fuel oil was spilled. About 14,600 tonnes of oil remained in the bow and stern sections combined.

The French coastline was polluted with heavy emulsified oil that came ashore on Christmas Day. The authorities led clean-up operations involving up to 5,000 people at work along 400 kilometres of coastline. The impact of the pollution affected the following areas:

Impact

- the fishery, fish farming and shellfish cultivation industries;
- the tourism industry; and
- the natural environment (e.g. tens of thousands of seabirds, including rare and protected species, were oiled and many thousands died).

Sense of urgency

The oil pollution caused by the *Erika* incident has resulted in calls in France for changes in the international oil pollution compensation regime. The *Erika* issue appears to have taken on a sense of urgency in the European Commission (EC) and the EU, triggered in part by vigorous protests of French citizens to the handling of the incident. In addition, there are calls for the need to reconsider the ship safety regime currently in place internationally. It is reported that the 1992 IOPC Fund and the international regime have been exposed to severe criticism in France, both in the media and elsewhere.

White Paper

There has been much discussion in Europe post-*Erika*. Also, the EC recently released a “*White Paper on Environmental Liability*.”

The White Paper addresses, *inter alia*, payment for clean-up and restoration of damage to the environment (site contamination and damage to biodiversity), valuation of natural resources where restoration is not possible, “enhanced access to justice” in environmental damage cases, ensuring that the compensation paid will actually be used for effective decontamination and restoration or replacement of the environment, alleviating the traditional burden of proof for the causal link between the activity of the defendant and the damage, and whether the 1992 IOPC Fund should be complemented by EC measures. Reference is made to costs and natural resource damages under the US compensation regime.

There are calls for the EU to take unilateral action and, possibly, follow the example of the US, which enacted its own *Oil Pollution Act (OPA)* in 1990.

Suggested changes

Changes suggested include tighter control of older tankers, the phasing out of single-hull tankers, more port state ship inspectors, harmonization of ship inspection standards, pooling of information on substandard ships and the possibility of a third layer of compensation for pollution cases.

It is said that there are those who are determined that the EC’s proposed measures for improvements to tanker safety, pollution prevention and compensation must be adopted by the international community. Failing this, the spectre of regional regulation immediately arises.

It is reported that EU legislative measures on aspects of environmental liability are promised for the end of the year 2000.

Meanwhile, French authorities are now asking Contracting States to the 1992 IOPC Fund to support changes in the international Conventions by assigning liability to operators and oil companies. They want to achieve this by the following measures:

- raising the 1992 IOPC Fund liability ceiling, beyond the limits allowed under the current international Conventions – from \$270 million to \$1.4 billion, approximately;
- expanding the heads of compensation to include environmental damage;
- increasing shipowner liability; and
- introducing operator and cargo owner liability.

As a result, these and other very significant changes in the international regime are being discussed in a working group of the 1992 IOPC Fund. Such proposals would require a diplomatic conference and new protocols.

Consequently, a Canadian interdepartmental committee has been struck to review the issues that might affect Canada in any such prospective changes to the international Conventions.

The SOPF's potential liabilities to the international Fund would rise very substantially if the increase in limits proposed by France were adopted.

Notwithstanding the significance of these prospective changes, of immediate concern from the SOPF perspective is the question of the final extent of a current proposal to increase the limits of compensation laid down in the 1992 Conventions.

Shortly after the *Erika* incident, the UK IOPC Fund delegation proposed an increase to the maximum amounts permitted, in limitation amount and the compensation limits using the procedure already provided for in the 1992 CLC and the 1992 IOPC Fund Convention.

It is being suggested that the extent of the proposed increase could be up to 50 per cent – from the present IOPC regime total of \$270 million to \$405 million approximately.

In any event, with a 50 per cent increase – and given other factors in a conservative scenario – it is estimated that for an oil tanker the size of *Erika* (20,000 gross tons), the SOPF's maximum financial obligation might increase to \$13.6 million, approximately, for any single one international incident.

Increased limits are seen by some as a benefit in any prospective large spill. Others focus on the potential for higher contributions to incidents.

What does this issue mean for the SOPF? The 1992 IOPC Fund covers tanker spills. Higher per incident limits can be seen as a good thing for claimants in terms of any prospective tanker spill in Canada. It might also preclude the SOPF being called upon as a third layer of compensation in such a case.

Experience suggests there will be potential significant ongoing costs for such an increase. Increased limits mean potentially higher contributions by the SOPF for international incidents.

“The SOPF's potential liabilities to the international Fund would rise very substantially if the increase in limits proposed by France were adopted.”

Effect in Canada

Immediate concern

50 per cent increase

SOPF impact?

“...the SOPF has been able to meet its financial obligations, both domestic and international, out of its annual interest income...”

From 1989 to May 29, 1999, Canada was a Contracting State to the 1971 IOPC Fund – compensation limit \$120 million, approximately. On May 29, 1999, Canada became a Contracting State to the 1992 IOPC Fund – compensation limit \$270 million, approximately. *Erika* (France, December 1999) will be the subject of the SOPF’s first payment to the 1992 IOPC Fund. Assessed claims will probably reach the current limit of approximately \$270 million. For the *Erika* incident alone, the Administrator will likely have to pay the 1992 IOPC Fund approximately \$10.5 million out of the SOPF. This payment is in addition to ongoing contributions that will have to be paid by the SOPF to the 1992 IOPC Fund General Fund and for other 1992 IOPC Fund major incidents, as they occur. The SOPF also has contingent liabilities in the 1971 IOPC Fund for incidents prior to May 29, 1999. Two of these (*Aegean Sea* and *Nissos Amorgos*), with very large total claims, could mature soon. The SOPF’s potential maximum aggregate liability is approximately \$6.5 million for these two 1971 Fund incidents.

Mystery spills

Domestically, the SOPF is intended to be available to cover oil spills in Canada from all classes of ships – not just tankers – and not just persistent oil. The SOPF is designed to respond to claims for oil pollution damage and clean-up costs in Canada where the identity of the responsible party cannot be established (mystery spills). Further, the SOPF is meant to be a source of compensation for a widely defined class of persons in the Canadian fishing industry for loss of income caused by an oil spill from a ship. Finally, the SOPF is to be a potential third layer of cover for an oil tanker spill in Canada (after the 1992 CLC and the 1992 IOPC Fund).

In most Contracting States, IOPC contributions are paid by various receivers of “contributing oil,” in ports and terminals, who receive annually a quantity in excess of 150,000 tonnes. Uniquely, Canada has provided that contributions to the IOPC Funds are to be paid by the Administrator out of the SOPF.

Financial obligations

The SOPF’s last annual report showed interest attributed to the SOPF amounting to \$13.6 million, approximately. This year interest is approximately \$16.2 million. To this point, the SOPF has been able to meet its financial obligations, both domestic and international, out of its annual interest income, with money over to be added to its principal.

No levy

No levy has been imposed for the SOPF (and its predecessor the MPCF) by the Minister of Transport, under section 718 CSA, since 1976.

Alternative approaches

It is noted that various IOPC Fund delegations have indicated that increasing limits is not the only approach available. Tanker safety and prevention of oil spills (e.g. exclusion of ships, etc.) should be pursued.

Faster payments

Some delegations, with reservations about increasing limits, have suggested that faster payments are an alternative form of making adequate compensation. Other delegations have indicated that increasing limits should not be merely a reaction following a major incident. These delegations considered it essential that a detailed objective analysis be made of the IOPC Funds’ experience of the amounts of damages arising from past incidents. A number of delegations emphasized that any increase should be clearly justifiable.

In this context, insofar as the 1992 IOPC regime (current compensation limit \$270 million per incident) might be called upon for an oil tanker spill in Canada, it is noted that the CCG, Environment Canada and ROs, together with the Canadian Regional Environmental Emergency Team (REET), *et al*, provide oil pollution incident management and response. Canada also has the additional SOPF cover of \$131.6 million, and the legal authority to control and exclude shipping.

Ultimately, changes to compensation levels using the procedure in the current Conventions is a decision for the Legal Committee of IMO. A diplomatic conference is not required. The UK initiative will likely be considered by the Legal Committee in October 2000.

Any amendments adopted by the Legal Committee will be subject to a "tacit acceptance procedure."

There are two restrictions as to the maximum increase by means of the "tacit acceptance procedure." First, the amended limits cannot be more than the original limits increased by six per cent per annum calculated on a compound basis from January 15, 1993. Second, the amended limits cannot be higher than three times the original limits.

If the Legal Committee of IMO adopts the proposed amendment to compensation limits, and decides that the effective date is October 2000, it is estimated that the maximum increase could be approximately 50 per cent. The higher limits would not come into force before October 2003.

The 1992 Protocol amending the 1969 CLC stipulates three factors that the Legal Committee shall take into account when considering an amendment proposal: the experience of incidents and in particular the amount of damage resulting therefrom, changes in the monetary values, and the effect of the proposed amendment on the cost of insurance. For a proposed amendment of the 1992 Fund Convention, the first and second of these three aspects shall be taken into account. In addition, both Conventions provide that the relationship between the limits contained in the two instruments shall be taken into account.

It is clear that in determining the extent of changes, if any, to compensation limits, the Conventions stipulate that the Legal Committee shall take into account the experience of incidents and in particular the amount of damage resulting therefrom. The objective of the Conventions appears to be that any increase shall be demonstrably justifiable.

"Ultimately, changes to compensation levels using the procedure in the current Conventions is a decision for the Legal Committee of IMO."

Restrictions

Maximum increase

Three factors

Demonstrably justifiable

Appropriate measures

Winding up the 1971 IOPC Fund

Discussed at the 1971 IOPC Fund Assembly in London during October 1999 was the future of the 1971 IOPC Fund itself. The discussions focused on appropriate measures to encourage remaining Contracting States to denounce the 1971 Convention, so that it may be terminated shortly.

In the near future, most Contracting States will have acceded to the 1992 IOPC Fund Convention and, as a result, the 1971 IOPC Fund will not be able to function properly. Several delegations are concerned about a potential situation in

“Canada is now past the critical period for current liability to the 1971 IOPC Fund.”

which a casualty occurs and the 1971 IOPC Fund has an obligation to pay compensation but, at that time, there may be insufficient money to pay claims.

Canada is now past the critical period for current liability to the 1971 IOPC Fund. On May 29, 1999, it ceased to be a member of the 1971 IOPC Fund and became a Contracting State of the 1992 IOPC Fund.

It was decided to request IMO to convene a diplomatic conference of remaining parties to the 1971 IOPC Convention, to adopt a Protocol to amend Article 43.1. The Protocol, with tacit acceptance procedures, should allow termination of the 1971 IOPC Fund Convention without waiting for Contracting States to fall below three, as currently required by Article 43.1 of the Convention. The diplomatic conference is scheduled for September 25-27, 2000, at IMO in London.

5. Outreach Initiatives

General

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

On the international scene, discussions were held during meetings both in the US and in the UK. These meetings included representatives from the ITOPIF, the International Group of P&I Clubs, the US National Oceanic and Atmospheric Administration (NOAA), the US National Pollution Funds Center, the USCG and the US EPA.

Oil Spill Response Ltd.

While in the UK to attend a session of the 1992 IOPC Fund Assembly, the Administrator visited the Southampton-based Oil Spill Response Ltd. (OSRL). OSRL is a large international oil spill response firm owned by 25 major oil companies. The facility in Southampton is said to house the largest global response resource in the world.

OSRL is set up to respond internationally as may be required. It has pre-palletized equipment in place. Oil clean-up equipment is already loaded in purpose-built aircraft pallet containers, designed to fit into several different commercial freighter aircraft. In addition, OSRL maintains under contract a dedicated Hercules aircraft on permanent standby, which is capable of carrying large amounts of spill response packages. The aircraft can rapidly load and deploy almost anywhere throughout the globe.

The visit to OSRL's training and response facility provided an excellent overview of the sort of transportation and logistic requirements that might be needed in Canada to handle a significant oil spill in the vast geographical area of the Arctic.

Stakeholders

International capabilities

Canuslant 1999

To be in a strong position to respond to an oil spill threatening the boundary waters of the Great Lakes system, the Coast Guards of both Canada and the US have developed and implemented a Joint Marine Pollution Contingency Plan. The authority for this plan stems from the *Great Lakes Water Quality Agreement* between Canada and the US.

Since the original Contingency Plan was promulgated, four additional geographical annexes have been adopted to cover the Atlantic Coast, Pacific Coast, Beaufort Sea and Dixon Entrance. The term "Canuslant" is the short title of the Canada-US Pollution Contingency Plan for the boundary waters on the Atlantic Coast.

The Administrator attended at Eastport, Maine, to observe the "Canuslant 99" exercise that simulated a major oil spill. The simulation model was tailored to represent real-time data. It was designed to test the ability of Canadian and US agencies to mobilize a single RO to mitigate a potential oil pollution catastrophe.

It is noteworthy, from an SOPF perspective, that the *Great Lakes Water Quality Agreement* of 1978, amended by Protocol in 1987, with respect to the funding arrangement in force for the Great Lakes, states:

"The costs of operations of both Parties under the Plan shall be borne by the Party in whose waters the pollution incident occurred, unless otherwise agreed."

The Contingency Plan reiterates the special arrangement for funding and states:

"In the Great Lakes, the provisions of the Great Lakes Water Quality Agreement apply, and, unless otherwise agreed, the costs of operation of both parties under the Plan shall be borne by the party in whose waters the pollution incident occurred."

In the case of a pollution incident arising from seabed activities, the cost of response operations shall be borne by the party having jurisdiction over the seabed activities involved."

In all other cases subject to this Plan, each party will bear the costs of its own response operations."

Response Organizations and CCG Equipment Facilities

There are four certified ROs in Canada to provide marine oil spill response services. They are industry-managed and funded by fees charged to the users. The four ROs in Canada are:

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

"...the Coast Guards of both Canada and the US have developed and implemented a Joint Marine Pollution Contingency Plan."

Simulation exercise

Funding arrangement

Canadian ROs

“The visit by the SOPF consultant offered an opportunity to observe the inventory of clean-up technology.”

- Point Tupper Marine Services Limited (PTMS), which covers the port of Port Hawkesbury and approaches.

The Administrator visited the SIMEC facilities at Quebec City and ECRC at Dartmouth, Nova Scotia. In both locations, he met with spill response managers and observed the operational arrangements. It was an opportunity to learn more about industry's overall functional management system, and its hands-on training for mobilizing an oil spill response operation.

The site visits also provided a chance to see the warehouses of specialized oil spill equipment used on the open sea and for shoreline clean-up and treatment (e.g. booms, pumps, boats, barges and skimmers).

The Administrator also met with officers of the CCG and TCMS in Quebec and Nova Scotia. The SOPF is interested in the continuing cooperation between these two organizations, in all regions of Canada, in their roles and responsibilities regarding oil spill pollution prevention, preparedness and response, particularly incident investigation and oil spill sampling and analysis. He also visited CCG's equipment storage depots.

An SOPF marine consultant met with ECRC at its central facilities in Corunna, Ontario. The visit by the SOPF consultant offered an opportunity to observe the inventory of clean-up technology. He was briefed on the management structure available for response on the waters of the Great Lakes System. The consultant also met with officers of the CCG and TCMS in nearby Sarnia, Ontario.

Management structure

Oil Spill Seminar

The Administrator accepted an invitation to attend a seminar on “Oil Spills – Financial Accountability Management,” held at Simon Fraser University's downtown conference centre in Vancouver. It was organized and hosted by Burrard Clean Operations, a division of the WCMRC.

A selection of knowledgeable speakers participated, including representatives of ITOPF and the Chamber of Shipping of British Columbia, and officials from both the Provincial and Federal Departments of the Environment. The central theme of the oil spill conference was to provide an insight into the management, financial aspects and overall command of a significant spill in British Columbia and the formulation of claims for the recovery of cost.

SOPF mandate

The Administrator provided information on the mandate of the SOPF regarding oil spills from all classes of ships. He clarified Canada's relationship with the international 1992 CLC and the 1992 IOPC Fund Convention that cover spills from sea-going oil tankers.

The oil spill seminar provided an opportunity to continue contact with a number of people from the Pacific Coast marine community.

Freshwater Spills Symposium

The Administrator attended the “Third Biennial Freshwater Spills Symposium” in Albuquerque, New Mexico, sponsored by the US EPA. The symposium provided an international forum for participants to discuss cooperative approaches and encourage transfer of technology regarding freshwater oil spill response and clean-up operations. During the plenary session, the Director of the EPA's Office of Emergency and Remedial Response characterized enforcement as the key to

Technology transfer

the protection, prevention, preparedness and response continuum for environmental protection.

The issues addressed encompassed a variety of the types of spill occurrences in freshwater. Of particular interest to the Administrator was oil pollution from shipping activities, primarily the Great Lakes systems.

On-Scene Commander Course

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

The On-Scene Commander Course is designed for CCG officers and operational managers of industry. It is essentially on-site coordination and the development of clean-up strategies that are essential to respond effectively to an oil spill up to the international tier 4 magnitude (i.e. 10,000 tonnes).

All of the presenters made comprehensive and insightful presentations. There were informative speakers from the CCG, Environment Canada, the Canadian marine industry and other Canadian organizations. These presentations and the case histories covering international incidents were invaluable training experiences. The representative from ITOPF, along with consultants from the UK, and the presenters from the US, gave the On-Scene Commander Course a meaningful international perspective.

The course included a simulation exercise of a grounded barge similar in general size and capacity to the *Irving Whale*. The oil spill scenario used for training was located in the Bay of Fundy near the US boundary. Throughout the day, controllers complicated matters by providing various operational and environmental inputs, and a host of problems calling for immediate resolutions.

Overall, the On-Scene Commander Course at the CCG College offers an opportunity for representatives from government agencies and the marine industry to meet and work together, and practice their skill without real oil pollution.

Natural Resource Damage Assessment Seminar

The Administrator was invited to attend an international environmental pollution seminar in London. ITOPF co-ordinated a meeting, regarding the US Natural Resource Damage Assessment (NRDA) regulations, between the International Group of P&I Clubs and the US NOAA.

The seminar was held at the offices of the London-based P&I Club, A. Bilbrough & Co. Ltd. It was convened under the chairmanship of Mr. Chris Havers from the International Group of P&I Clubs. Representatives of NOAA gave presentations on recent developments in US NRDA regulations. They reported on how NOAA currently interprets and enforces the NRDA regulations following an oil spill occurrence.

A Memorandum of Understanding between NOAA and the International Group of P&I Clubs is under consideration.

"The course included a simulation exercise of a grounded barge similar in general size and capacity to the Irving Whale."

Panel discussion

Simulation exercise

Memorandum of understanding

"Canada first became a Contracting State to the international Conventions on May 24, 1989."

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

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

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

OPA 90

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

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

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

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

6. SOPF's Liabilities to the International Funds

1969 CLC and 1971 IOPC

Contracting State

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

Major incidents

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

Since 1989, the SOPF has paid the 1971 IOPC Fund \$20,544,154.59, as listed in the table below. This shows the "call" nature of the IOPC Funds. Contributions and levies are driven by claims, and how they are assessed.

Fiscal Year	SOPF's Contributions (\$)
1989/90	207,207.99
1990/91	49,161.28
1991/92	1,785,478.65
1992/93	714,180.48
1993/94	4,927,555.76
1994/95	2,903,695.55
1995/96	2,527,058.41
1996/97	1,111,828.20
1997/98	5,141,693.01
1998/99	902,488.15
1999/00	273,807.10
Total:	20,544,154.58

"The SOPF also has contingent liabilities in the 1971 IOPC Fund for oil spill incidents prior to May 29, 1999."

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

Contingent liabilities

1992 CLC and 1992 IOPC

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

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

Annual levy

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

Mandatory

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

Reporting process

“The Erika incident (France, 1999) will provide the SOPF with its first test of the 1992 IOPC regime...”

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

The SOPF's payment to the 1992 IOPC Fund for the *Erika* incident might be approximately \$10.5 million.

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

7. Financial Summary

During the fiscal year 1999-2000 the SOPF paid out, at the direction or request of the Administrator:

- a) Pursuant to sections 706 and 707 of the Act, the total sum of \$450,628.22 comprising the following costs and expenses:

Administrator Fees	\$97,900.00
Legal Fees	\$42,734.50
Professional Services	\$117,062.30
Secretarial Services	\$49,583.65
Travel & Hospitality Expenses	\$55,937.88
Printing	\$15,583.48
Occupancy	\$54,961.02
Office Expenses	\$16,865.39
	\$450,628.22

- b) Pursuant to sections 710 and 711 of the Act, the Administrator settled Canadian claims for the sum of \$572,920.72.
- c) Pursuant to paragraph 711(3)(c) of the Act, the Administrator recovered the sum of \$100,000.00 of the monies previously paid out with reference to the *Irving Whale* incident and \$850.00 of the monies previously paid out with reference to the *Le Barachois* incident.

- d) Pursuant to section 701 of the Act, the Administrator directed the payment of \$273,807.10 in contributions to the 1971 IOPC Fund out of the SOPF in accordance with Articles 10 and 12 of the 1971 Fund Convention.

The above amount paid to the IOPC Fund comprised:

<i>Osung No. 3</i> Major Claims Fund -	\$395,213.11
<i>Nakhodka</i> Major Claims Fund -	\$74,835.21
Credit – <i>Haven</i> Major Claims Fund	<u>-\$196,241.22</u>
	<u>\$273,807.10</u>

During the reporting fiscal year, interest credited to the Fund was \$16,252,810.58.

At March 31, 2000, the balance in the Fund was \$295,522,358.23.

Appendix A: The International Compensation Regime

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

The CLC

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

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

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

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

The IOPC Fund Conventions

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

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

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

Contracting States

Contracting States, as of March 24, 2000, to the 1969 CLC and the 1971 IOPC Fund Convention and the 1992 IOPC Protocols are listed in Appendix E and Appendix F.

Principal Changes

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

Appendix B: The 1971 IOPC Fund – Executive Committee and Assembly Sessions

The 61st Executive Committee – April 27 to 29, 1999

The 61st session of the Executive Committee convened under the chairmanship of Mr. Alfred Popp, Q.C., from Canada. In addition to other agenda items, the Executive Committee reviewed many outstanding incident claims, including these major occurrences:

Haven (1991)

The Cypriot tanker *Haven* (109,977 gross tons) caught fire, exploded, and sank in the Gulf of Genoa, Italy. The ship was loaded with approximately 144,000 tonnes of crude oil. A significant amount of oil drifted ashore and polluted beaches in Italy, France, and Monaco.

The main difficult areas to settle were the private claims for clean-up, damage to property and the loss of income to the fishery and tourism industries. As reported in the SOPF Annual Report 1998–1999, on

March 4, 1999, the Italian State, the Shipowner, the UK P&I Club, and the 1971 IOPC Fund signed an agreement on global settlement of outstanding issues. The Italian delegation advised the Executive Committee that the agreement was made fully binding and effective by registration in the Court of Accounts (Corte dei Conti), and that steps will be taken to make it effective shortly. The balance to be paid by the 1971 IOPC Fund to Italy is approximately £24.3 million.

Aegean Sea (1992)

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

One of the major issues is the distribution of liabilities among the Spanish State, the Shipowner, the UK P&I Club, and the 1971 IOPC Fund. Negotiations continue between the 1971 IOPC Fund and the Spanish

Government respecting substantial private and fishery related claims. To continue positive progress toward solving the outstanding issues and conclude a final agreement with Spain, the Executive Committee authorized the Director to enter into an agreement with Spain extending the period for the 1971 IOPC Fund's taking recourse action. In the meantime, the 1971 IOPC Fund continues to protect its legal rights. If this case is not settled, it is likely to perpetuate the 1971 IOPC Fund for many years.

Braer (1993)

The Liberian tanker *Braer* (44,989 gross tons) grounded south of the Shetland Islands and was subsequently declared a total loss. The ship was laden with 84,000 tonnes of North Sea crude oil. Both the cargo and bunkers spilled into the sea.

Substantial claims for compensation are before the courts. They relate to the closing of

the fishery, damage to property, farming, and tourism activities. The 1971 IOPC Fund made early payment of some claims in full without prorating. Consequently, the danger that the total amount of the outstanding assessed claims may exceed the limit of the 1971 IOPC Fund. There is no provision in the Convention to deal with that situation.

Keumdong No 5 (1993)

The Korean barge *Keumdong No 5* (481 gross tons) collided with another ship off the coast of the Republic of Korea. An estimated 1,280 tonnes of heavy fuel oil was spilled. It resulted in substantial claims from the fishery and aquaculture industries.

The Executive Committee discussed the findings of a Korean Court of First Instance.

It concluded that the Court's award of arbitrary amounts for "pain and suffering," and amounts paid to unlicensed fishermen are contrary to the 1971 IOPC Fund's policy. The Executive Committee, supported by the Canadian delegation, instructed the Director to appeal the Court findings.

Sea Prince (1995)

The Cypriot tanker *Sea Prince* (144,567 gross tons) grounded near the Republic of Korea. Some 5,000 tonnes of Arabian crude oil was spilled as a result of the grounding. Substantial claims were received for spill clean-up, tourism, fishery and salvage operations.

The prime issue before the Executive Committee was whether the claims of local fisheries associations and the UK P&I Club had become time-barred. In the debate, the

Canadian delegation suggested the time-bar issue should be referred to a Korean Court, or to binding arbitration. On the advice of the Director and the respective Korean lawyers for the 1971 IOPC Fund and the UK P&I Club, the Executive Committee decided that the claims in issue should be treated as not being time-barred. The Canadian delegation submitted a statement, to be noted in the Record of Decisions, explaining the reasons for its position on this issue.

Sea Empress (1996)

The Liberian tanker *Sea Empress* (77,356 gross tons), which was laden with 130,000 tonnes of crude oil ran aground in the approaches to Milford Haven, southwest Wales. It is estimated that 72,000 tonnes of oil were released as a result of the incident.

The Director advised the Executive Committee that he estimates that £40 million appears to be the maximum exposure. The

Director is still investigating possible recourse action.

The Executive Committee considered the question whether and, if so, to what extent the activities of emergency services (e.g. a county fire brigade) could be described as falling within the definition of "preventive measures."

Nakhodka (1997)

The Russian tanker *Nakhodka* (13,159 gross tons), carrying 19,000 tonnes of medium fuel oil, broke in two sections during a severe storm in the Sea of Japan. The incident caused massive oil pollution damage to the Japanese fishery.

The Executive Committee decided to maintain the level of payments at 60 per cent

of the amount of damages actually sustained. The Executive Committee approved payment of a claim for a publicity campaign aimed at preventing and mitigating losses in sales of fish from the area affected by the spill. The Japanese observer delegation stressed the importance for the Director to prepare for possible recourse action in the near future.

***Nissos Amorgos* (1997)**

The Greek tanker *Nissos Amorgos* (50,563 gross tons), laden with 75,000 tonnes of Venezuelan crude, grounded in the Maracaibo Channel in the Gulf of Venezuela. Some 3,600 tonnes of crude was spilled. The shipowner has reserved the right to seek exoneration from liability for the incident, because of alleged negligence of a Government or other authority responsible for navigational aids.

The Canadian delegation supported instructions to the Director to raise the defense of contributory negligence against the Venezuelan Government, if necessary to protect the 1971 IOPC Fund. The Executive Committee considered the issue of whether the 1971 IOPC Fund should pay the balance of the assessed amount of a claim, against a bank guarantee, even though payments are being prorated at less than 100 per cent of assessed claims.

The 62nd Executive Committee – October 19 to 22, 1999

The 62nd session of the Executive Committee was held under the chairmanship of Dr. Matteo Baradà from Italy. The Executive Committee reviewed recent developments regarding incidents involving the 1971 IOPC Fund, and it addressed other outstanding claims and issues that required decision, such as:

- The *Haven* case, in which all legal actions in the Italian Courts were withdrawn.
- The *Aegean Sea* casualty, where efforts are focused on examination of documentation presented by the Spanish Government with the objective of reaching global agreements to settle all remaining issues.
- The *Braer* incident, in which further payments of compensation remain suspended because the total claims exceed the maximum available.
- The *Nakhodka* incident, where both the 1971 and the 1992 Conventions apply.
- The *Sea Empress* incident, in which incident the Executive Committee decided to take recourse action against the Milford Haven Port Authority, as it appears that the standards of training and authorization of pilots at Milford Haven are inadequate.
- The *Nissos Amorgos* incident, in which the Executive Committee decided that it was premature to decide on the issues relating to the cause of the incident and contributory negligence, so further investigation will be carried out in cooperation with the Shipowner and the Gard P&I Club.

The 22nd Assembly – October 19 to 22, 1999

There were not enough Contracting States present to achieve a quorum for the 22nd Assembly. Therefore, pursuant to Resolution No. 13, the Executive Committee dealt with the Assembly's agenda. It is expected that by next autumn it will be impossible for the Executive Committee itself to form a quorum. In which event, the governing matters shall fall to the new body called the Administrative Council.

Auditor's Report for Financial Year 1998

The External Auditor's representative, Mr. Martin Sinclair, drew attention to the fact that, for the first time since 1991, the Auditor's Report was without qualifications. This was, because all claims and expenses arising out of the *Haven* incident were settled. The Auditor's representative made a strong recommendation for the Executive Committee to consider the need ultimately to appoint a liquidator for the 1971 IOPC Fund.

In the context of winding up the 1971 IOPC Fund, the Director noted, *inter alia*, that English bankruptcy law does not apply, but the Assembly could be inspired by it.

The Executive Committee approved the accounts of the 1971 IOPC Fund for the financial period January 1 to December 31, 1998.

Appointment of Director

The Executive Committee noted the decision of the 1992 IOPC Fund Assembly – made at its 4th extraordinary session – to appoint the present Director, Mr. Måns Jacobsson, as Director of the 1992 IOPC Fund for a further five-year term of office.

In addition, it was noted that the 1992 IOPC Fund Assembly had decided that the Director of the 1992 IOPC Fund should also be allowed to carry out the functions of Director of the 1971 Fund. The Executive Committee noted that, as a result of the above decisions, Mr. Måns Jacobsson would hold the post of Director of the 1971 IOPC Fund for a period of five years from January 1, 2000.

Report of Contributions

Total levies of £1.4 million and £7.5 million were made on 1998 annual contributions to the General Fund and the *Nakhodka* Major Claims Fund respectively – payable February 1, 1999.

The Executive Committee noted that over 90 per cent of the 1998 annual contributions were paid.

With respect to non-submission of oil reports, it was noted that 32 Contracting States have not submitted oil reports for 1998. The Director is pursuing efforts to obtain oil reports from these 32 States.

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

The 1992 IOPC Fund Executive Committee held four sessions during the year. The 3rd, 4th, 5th and 6th sessions were under the chairmanship of Professor Lee Sik Chai from the Republic of Korea. The 4th Assembly was held under the chairmanship of Mr. C. Coppolani from France.

The 3rd Executive Committee – April 27 to 29, 1999

For the *Nakhodka* incident, the Executive Committee of the 1992 IOPC Fund adopted the decisions reached by the 1971 IOPC Fund Executive Committee in its 61st session. These two sessions were being held concurrently.

Additional discussion centred on the proposed organizational changes within the Secretariat. For example, suitable alternative premises for the Funds are being sought. Also, the current status of the 1992 Fund Convention was addressed. Currently, 12 States have deposited instruments of accession to the 1992 Fund Convention. This will bring the number of Contracting States to 43 by April 15, 2000.

The 4th and 5th Executive Committee – October 20 to 22, 1999

The Executive Committee reviewed several cases involving the 1992 IOPC Fund. The first incident had occurred in Germany. German authorities took legal action against a shipowner whose ship is suspected of being responsible for a 1996 crude oil spill. The Executive Committee instructed the Director to follow closely the legal proceedings and to take measures to protect the Fund's interest.

Secondly, the *Nakhodka* incident remains an active case. The total payment of claims in the *Nakhodka* incident shall soon reach the maximum amount payable by the 1971 IOPC Fund. When the maximum is attained, the 1992 IOPC Fund shall commence payment. The SOPF is liable in the 1971 Fund only.

Discussion ensued about the recent incident in which the Italian tanker *Laura D'Amato* spilled approximately 250 tonnes of light crude oil, while discharging at an oil terminal in Sydney, Australia, near the Harbour Bridge and the Opera House.

During the 5th Executive Committee session, it was decided to convene a meeting in February 2000, if necessary to consider certain issues arising from the *Erika* incident, which occurred in the Bay of Biscay on December 12, 1999. This incident was a major casualty in which heavy fuel oil polluted the French coastline.

The 4th Assembly – October 18 to 22, 1999

The Assembly unanimously appointed the present Director, Mr. Måns Jacobsson, to serve as Director of the 1992 IOPC Fund for a further term of five years – his fourth consecutive term.

In addition to administrative and other agenda items (e.g. Financial Statements and Auditor's Report and Opinion), the Assembly Members discussed 10 different oil spill incidents concerning existing and potential claims against the 1992 IOPC Fund.

Definition of "Contributing Oil"

The list of Contributing Oil was reviewed. Discussion focused on bituminous emulsion, known in the oil industry as "orimulsion." It is a fuel used primarily by heat and power companies. For example, in Canada, New Brunswick Power Corporation is a consumer of orimulsion fuel. The delegates noted that there are a number of products similar to orimulsion also used for the production of heat and power. They decided those products should also be added to the list of contributing oil. As a result of the discussion, they will now be included under the generic term "bituminous emulsions and fuel oil emulsions." Moreover, it was decided that for the assessment of contributions no allowance should be made for the water content of emulsion products.

Report of the Second Intersessional Working Group

The Working Group reported on two issues relating to the definition of "ship," as laid down in the 1992 CLC and the 1992 IOPC Fund Convention. First, the Working Group discussed the circumstances under which an unladen tanker would fall under the definition of "ship." Second, it addressed the application of the 1992 IOPC Conventions to floating storage units (FSU) and floating production, storage and offloading units (FPSO).

Definition of "Ship"

The Working Group concluded that an unladen tanker falls within the definition of "ship" during any voyage after the carriage of a cargo of persistent oil. However, an unladen tanker falls outside the definition if it is proved there is no residue of such carriage on board.

After discussion, the Assembly invited the Director to carry out a further one-day study on the issue in April 2000.

Floating Storage Units (FSU) and Floating Production, Storage and Offloading Units (FPSO)

The Working Group also concluded in its report that, to be covered by the 1992 Conventions, offshore craft should only be regarded as "ships" when they carry oil as cargo on a voyage to or from a port or terminal outside the oil field where they normally operate. They fall outside the Conventions when they depart an offshore oil field for operational reasons or bad weather conditions.

The Assembly decided to endorse the conclusions of the Working Group regarding the applicability of the 1992 Conventions to offshore craft.

It is understood that the utilization of a FSU is not contemplated in Canada at this time. However, the first Canadian FPSO will be located in the Terra Nova field off Newfoundland during the year 2001.

The 6th Executive Committee – February 15, 2000

The 6th Executive Committee session of the 1992 Fund was called at the request of France. The purpose of the meeting was to deal with issues surrounding the major spill caused from the sinking of the tanker *Erika*.

Erika (1999)

The loaded Maltese tanker *Erika* (19,666 gross tons) broke in two in the Bay of Biscay, France, on December 12, 1999. Both the bow and the stern sections sank in about 100 metres of water. Approximately 14,000 tonnes of heavy fuel oil was spilled. About 14,600 tonnes of oil remained in the bow and stern sections combined.

The French coastline was polluted by heavily emulsified oil that came ashore on Christmas Day. The authorities led clean-up operations involving up to 5,000 people at work along 400 kilometres of coastline. The impact of the pollution affected the following areas:

- the fishery, fish farming and shellfish cultivation industries
- the tourism industry
- the natural environment (e.g. tens of thousands of seabirds, including rare and protected species were oiled and many thousands died)

The French Navy recovered 1,100 tonnes of oil at sea, and by mid-February 2000, some 120,000 tonnes of waste were collected from the beaches and the shoreline. Navy divers are surveying the two sections of the sunken wreck. When the surveys are finally completed the authorities will study ways and means of pumping out the remaining heavy

fuel oil. The overall objective is to remove the oil from the wreck during the summer of 2000.

The Executive Committee discussed that there is a real risk that the total amount of the claims from the incident might exceed the amount of compensation available under the Fund Conventions. The 1992 IOPC Fund limit is 135 million SDR, approximately \$270 million Canadian.

The Executive Committee was unable to make any meaningful estimate of the amounts of the established claims. Therefore, it was decided that the Director's authority to make payments should be limited temporarily to provisional payments to mitigate undue financial hardship. The total of such payments is not to exceed 6 million SDR, approximately \$12 million Canadian. The Executive Committee also agreed that only the 1992 Fund Conventions were applicable to the *Erika* incident. An extraordinary session of the 1992 IOPC Fund Assembly was set for April 3, 2000. The Assembly will then consider whether to make a special levy of contributions to an *Erika* major claims fund, payable during the second half of 2000, to enable the 1992 IOPC Fund to make prompt payments of compensation.

Revision of Maximum Compensation under the 1992 Conventions

The UK delegation formally requested that the 1992 IOPC Fund Assembly should include in the agenda for its extraordinary session, to be held in April 2000, the question of an increase of the limits of compensation laid down in the 1992 Conventions.

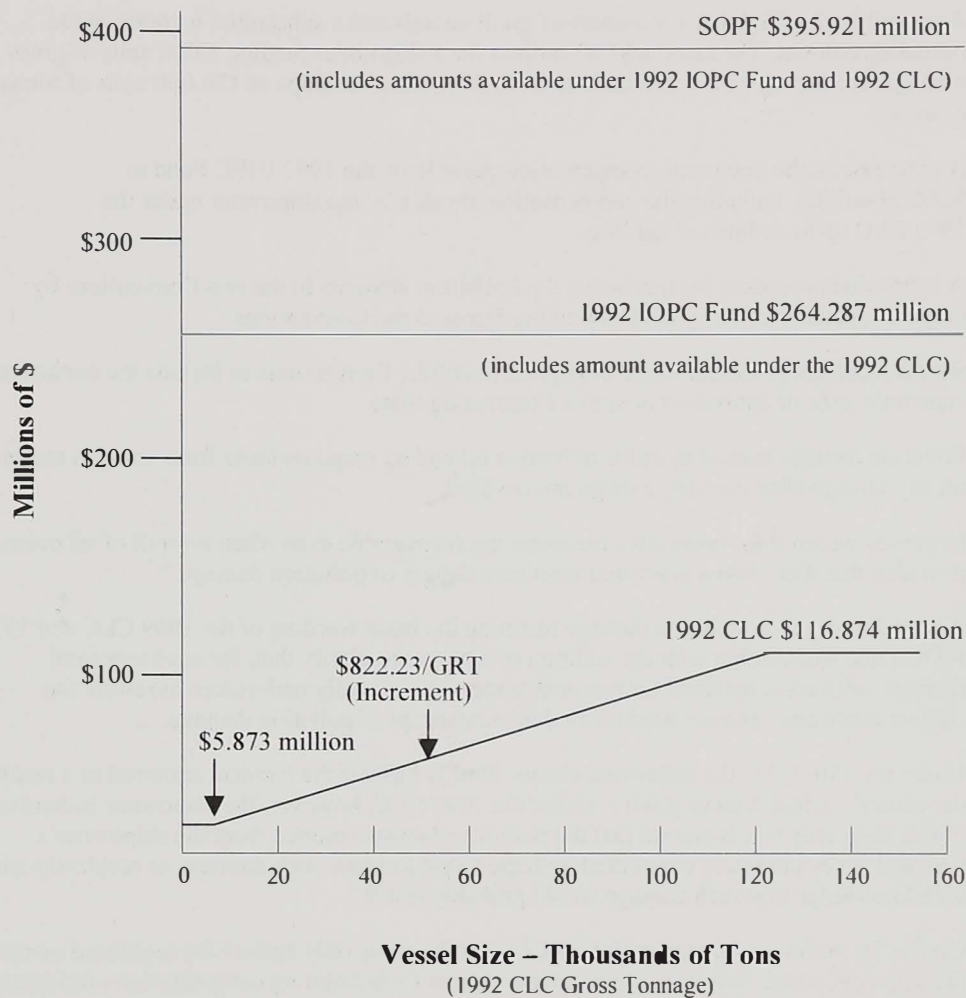
Several delegations supported the UK's proposal. They drew attention to the fact that the decision on the amendment to the limits would be taken by the Legal Committee of IMO.

Appendix D: Changes Introduced by the 1992 Protocols

- A special limit of liability for owners of small vessels and a substantial increase in the limitation amount. The limit is \$5.87 million for a ship not exceeding 5,000 units of gross tonnage, increasing on a linear scale to \$116.87 million for ships of 120,000 units of tonnage or over.
- An increase in the maximum compensation payable by the 1992 IOPC Fund to \$264.29 million, including the compensation payable by the shipowner under the 1992 CLC up to its limit of liability.
- A simplified procedure for increasing the limitation amounts in the two Conventions by majority decision taken by the Contracting States to the Conventions.
- An extended geographical scope of application of the Conventions to include the exclusive economic zone or equivalent area of a Contracting State.
- Pollution damage caused by spills of bunker oil and by cargo residues from unladen tankers on any voyage after carrying a cargo are covered.
- Expenses incurred for 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 1969 CLC and 1971 IOPC Fund Convention 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 CLC, however, the shipowner is deprived of this right only if it is proved that the pollution damage resulted from the shipowner's personal act 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 CLC can be made only against the registered owner of the ship concerned. This does not preclude victims from claiming compensation outside the CLC from persons other than the owner. However, the 1969 CLC prohibits claims against the servants or agents of the owner. The 1992 CLC does the same, but also prohibits claims against the pilot, the charterer (including a bareboat charterer), manager or operator of the ship, or any person carrying out salvage operations or taking preventive measures.

Current Limits of Liability and Compensation for Oil Tanker Spills in Canada

Based on the value of the SDR⁽¹⁾ at April 1, 2000



(1) The value of the SDR at April 1, 2000, was approximately \$1.957. This actual value is reflected in Figure 1 above and elsewhere in Appendix D. Elsewhere in the report, for convenience, calculations are based on the SDR having a nominal value of \$2.

Figure 1

Figure 1 shows the current limits of liability and compensation available under the 1992 CLC, the 1992 IOPC Fund Convention, and the SOPF for oil spills from oil tankers in Canada, including the territorial sea and the exclusive economic zone. Because of the SOPF, Canada has the extra cover over and above that available under the international Conventions.

Appendix E:

***Contracting States to Both the
1992 Protocol to the Civil Liability Convention and the
1992 Protocol to the IOPC Fund Convention
As at 24 March 2000***

43 States for Which Fund Protocol is in Force (And Therefore Contracting States of the 1992 IOPC Fund)		
Algeria	Germany	Oman
Australia	Greece	Panama
Bahamas	Grenada	Philippines
Bahrain	Iceland	Republic of Korea
Barbados	Ireland	Singapore
Belgium	Jamaica	Spain
Belize	Japan	Sri Lanka
Canada	Latvia	Sweden
China (Hong Kong Special Administrative Region)	Liberia	Tunisia
Croatia	Marshall Islands	United Arab Emirates
Cyprus	Mexico	United Kingdom
Denmark	Monaco	Uruguay
Finland	Netherlands	Vanuatu
France	New Zealand	Venezuela
	Norway	

12 States That Have Deposited Instruments of Accession, but for Which the IOPC Fund Protocol Does not Enter Into Force Until Date Indicated	
Dominican Republic	24 June 2000
Seychelles	23 July 2000
Italy	16 September 2000
Fiji	30 November 2000
Mauritius	6 December 2000
Tonga	10 December 2000
Poland	21 December 2000
Comoros	5 January 2001
Malta	6 January 2001
Kenya	2 February 2001
Trinidad & Tobago	6 March 2001
Russian Federation	20 March 2001

Appendix F:

***Contracting States to Both the 1969 Civil Liability Convention
And the 1971 IOPC Fund Convention
As at 24 March 2000
(And Therefore Contracting States of the 1971 IOPC Fund)***

33 Contracting States to the 1971 IOPC Fund Convention		
Albania	Ghana	Papua New Guinea
Antigua and Barbuda	Guyana	Portugal
Benin	India	Qatar
Brunei Darussalam	Kenya	Russian Federation
Cameroon	Kuwait	Saint Kitts and Nevis
Colombia	Malaysia	Sierra Leone
Côte d'Ivoire	Maldives	Slovenia
Djibouti	Mauritania	Syrian Arab Republic
Estonia	Morocco	Tuvalu
Gabon	Mozambique	United Arab Emirates
Gambia	Nigeria	Yugoslavia

Nine Contracting States to the 1971 IOPC Fund Convention That Have Deposited Instruments of Denunciation That Will Take Effect on Date Indicated	
Panama	11 May 2000
Seychelles	23 July 2000
Italy	8 October 2000
Fiji	30 November 2000
Mauritius	6 December 2000
Tonga	10 December 2000
Poland	21 December 2000
Malta	6 January 2001
Iceland	10 February 2001

(The following table is extremely faint and contains illegible text.)