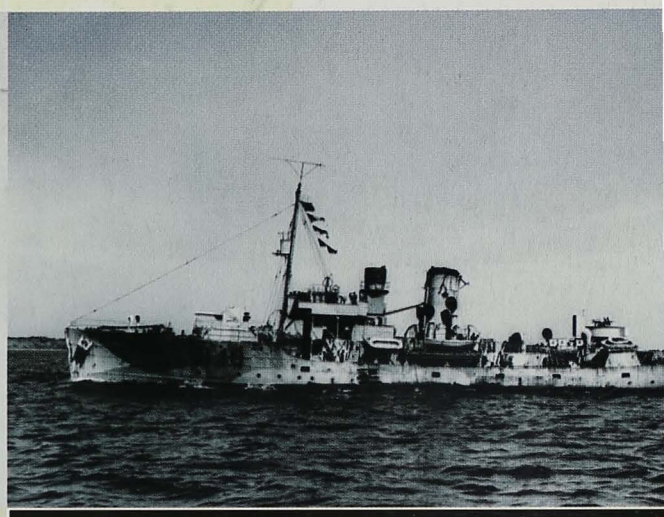
SHIP-SOURCE OIL POLLUTION FUND



THE ADMINISTRATOR'S ANNUAL REPORT

2001-2002

Canada

CANADA

SHIP-SOURCE OIL POLLUTION FUND

The Administrator's Annual Report

2001 - 2002

Canada

DEDICATION

In memory of the men and women of Canada's Naval Forces 1939-1945

Cover: Corvette HMCS *AMHERST*, in Nova Scotia waters, probably near Halifax, August 1943
Corvette HMCS *KAMSACK* personnel, Molville, Ireland, ca. 1942

The following is reproduced from "The Ships of Canada's Naval Forces 1910-2002", Third Edition, by Ken Macpherson and Ron Barrie, courtesy the authors and Vanwell Publishing Limited, St. Catherine's, Ontario, ISBN 1-55125-072-1.

> *AMHERST- Commissioned at Saint John, New Brunswick on 5 August 1941, she arrived at Halifax on 22 August and after working up, joined Newfoundland Command in October. She was steadily employed as an ocean escort for the succeeding three years, during which time she was involved in two particularly hard-fought convoy battles: ON.127 (August 1942) and SC.107 (October 1942). She had joined EG C-4 in August 1942. Her only real respite was between May and November 1943 when she underwent a major refit at Charlottetown, including, the extension of her fo'c's'le. After workups at Pictou, Nova Scotia, she returned to the North Atlantic until September 1944 when she began another long refit, this time at Liverpool, Nova Scotia. Following workups in Bermuda in January 1945 she joined Halifax Force, but in March was loaned to EG C-7 for one round trip to UK. She was paid off 11 July 1945 at Sydney, and placed in reserve at Sorel. Sold in 1945, she was wrecked in the Gulf of St. Lawrence en route to become the Venezuelan Navy's CARABOBO.*

A/LCDR L.C. Audette, RCNVR (as he then was) commanded *AMHERST* from 20/9/42 to 24/5/44. Mr. Audette was a former Administrator of the Fund.

See *CARABOBO* at Section 3.72, herein.

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

Tel: (613) 990-5807
(613) 991-1726
Fax: (613) 990-5423

CANADA

Ship-source Oil Pollution Fund

90 Elgin Street - 8th Floor
Ottawa, Canada K1A 0N5

Caisse d'indemnisation des dommages dus á la pollution par les hydrocarbures causée par les navires

90, rue Elgin – 8ième étage
Ottawa, Canada K1A 0N5

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 for the Ship-source Oil Pollution Fund for the fiscal year ending March 31, 2002, in accordance with Section 100 of the *Marine Liability Act*.

Yours sincerely,

Kenneth A. MacInnis, Q.C.
Administrator

Telephone: (613 990-5807 / Facsimile: (613) 990-5423

Canada

Téléphone: (613) 990-5807 / Télécopier: (613) 990-5423

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Abbreviations of Proper Names used in this Report

ABS	American Bureau of Shipping
ALERT	Atlantic Emergency Response Team
AMOP	Arctic Marine Oilspill Program
CCG	Canadian Coast Guard
CEDRE	Centre of Documentation, Research and Experimentation on Accidental Water Pollution
CEPA	*Canadian Environmental Protection Act*
CLC	Civil Liability Convention
CMAC	Canadian Marine Advisory Council
CMI	Comité Maritime Law International
CMLA	Canadian Maritime Law Association
COPE	Compensation for Oil Pollution in European Waters
CPA	Canada Port Authority
CSA	*Canada Shipping Act*
CSO	Combined Sewer Outfalls
CWS	Canadian Wildlife Service
DFO	Department of Fisheries and Oceans
DNV	Det Norske Veritas
dwt	Deadweight Tonnage
EC	European Commission
ECA REG	Eastern Canada Vessel Traffic Services Regulations
ECRC	Eastern Canada Response Corporation
EEZ	Exclusive Economic Zone
ER	Emergency Response
EPA	Environmental Protection Agency
EU	European Union
FPSO	Floating Production, Storage and Offloading Units
FSU	Floating Storage Units
HNS	Hazardous and Noxious Substances
ICONS	International Commission on Shipping
ICS	International Chamber of Shipping
IMO	International Maritime Organization
IOPC	International Oil Pollution Compensation Fund
ISM	International Safety Management Code
ITOPF	International Tanker Owners Pollution Federation Limited
LLMC	Limiation of Liability for Maritime Claim
LOU	Letter of Undertaking
MARPOL	Marine Pollution
MCTS	Marine Communication Traffic Services
MEPC	Marine Environment Protection Committee
MLA	*Marine Liability Act*
MOU	Memorandum of Understanding

MPCF	Maritime Pollution Claims Fund
MSC	Maritime Safety Committee
MT	Motor Tanker
MV	Motor Vessel
NASP	National Aerial Surveillance Program
NOAA	National Oceanic and Atmospheric Administration
NRDA	Natural Resource Damage Assessment
NTCL	Northern Transportation Company Limited
OBO	Ore/Bulk/Oil
OCIMF	Oil Companies International Marine Forum
OPA	*Oil Pollution Act*
OPA 90	*Oil Pollution Act 1990 (US)*
OSRL	Oil Spill Response Ltd.
P&I Club	Protection and Indemnity (Marine Insurance) Association
ppm	Parts per Million
PTMS	Point Tupper Marine Services Limited
REET	Regional Environmental Emergency Team
RINA	The Italian Classification Society
RO	Response Organization
SAR	Search and Rescue
SDR	Special Drawing Rights*
SITREP	Situation Report
SIMEC	Société d'Intervention Maritime, Est du Canada
SOLAS	International Convention for the Safety of Life at Sea
SOPF	Ship-source Oil Pollution Fund
TC	Transport Canada
TCMS	Transport Canada Marine Safety
TSB	Transportation Safety Board
UK	United Kingdom
US	United States
USCG	United States Coast Guard
VPA	Vancouver Port Authority
VPC	Vancouver Port Corporation
WCMRC	Western Canada Marine Response Corporation

* The value of the SDR at April 1, 2002, was approximately $2.00165. 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.

Administrator's Communiqué

Introduction

As Administrator of the Ship-source Oil Pollution Fund (SOPF), I am pleased to submit this Annual Report for the fiscal year 2001-2002. We welcome this opportunity for reflection – to recall how far we have come, to value what we have now, to appraise our current and prospective obligations and, hopefully, to offer constructive insights for consideration in future actions.

Canada has shown considerable foresight over the years in fashioning a unique well-functioning domestic compensation regime.

A Universal Problem

At the "Insight Conference" on Emergency Response Planning for Marine Industries held in Vancouver in January 2002, I discussed the development of the Canadian regime. A few decades ago in most countries the legal options for seeking compensation for marine oil pollution damage and the recovery of costs and expenses for clean-up and monitoring were limited. In Canada in order to establish the liability of a responsible party there was generally a requirement to prove negligence, nuisance, etc. Even then issues such as judgement proofing, bankruptcy, insolvency, jurisdiction and one-ship companies presented difficult to insurmountable recovery challenges. Such issues cried out for statutory solutions.

A Canadian Solution

The catalyst for a made in Canada solution occurred in 1970 when the tanker *Arrow* grounded on Cerberus Rock in Chedabucto Bay, Nova Scotia. After the *Arrow* incident, major amendments were made to the *Canada Shipping Act* (*CSA*). The new oil spill legislation in Part XX of the *CSA* became part of Canadian Law on June 30, 1971. Predating the entry into force of the international 1969 Civil Liability Convention by more than four years, and the international 1971 IOPC Fund Convention by more than seven years, the new Part XX was one of the first national comprehensive regimes for oil spill liability in the western world.

The principal elements of Part XX were:

- establishing the strict liability of shipowners to be responsible for costs and damages for a discharge of oil;
- allowing the shipowner, in certain circumstances, to limit his liability to an amount linked to the ship's tonnage;
- creating a new fund, the Maritime Pollution Claims Fund (MPCF), to be available for claims in excess of the shipowner's limit of liability; and,
- giving the Minister of Transport the power to move or dispose of any ship and its cargo discharging or likely to discharge oil.

This regime was in place between 1971 and 1989, thus Canadian authorities were ready when the British tanker *Kurdistan* broke in two in the Cabot Strait in 1979 en route from Nova Scotia to Quebec with a heated cargo of Bunker C oil. See précis at pages x and 47.

In 1989 Canada decided to increase its oil tanker spill cover by becoming a Contracting State in the international regime, while modifying and continuing its domestic regime. The SOPF came into force on April 24, 1989, by amendments to the *CSA* and succeeded the MPCF.

The SOPF is intended to pay claims regarding oil spills from all classes of ships at any place in Canada, or in Canadian waters including the exclusive economic zone. Thus, the SOPF is not limited to oil tankers or to persistent oil, as is the International Fund.

The current statutory claims regime is found in the *Marine Liability Act* (*MLA*) S.C. 2001, c.6. This Act, which came into force on August 8, 2001, continues the regime that was previously found in the *CSA*.

The Rule of Law

The Administrator is the Canadian official who directs payments of domestic claims and authorizes and monitors payments of all Canadian contributions to the International Fund from the SOPF.

The Administrator is wholly accountable to Parliament for all payments out of the SOPF.

The Administrator holds office during good behaviour for a fixed term and, on the same principle as for the judiciary, is subject to removal by the Governor in Council for cause.

Parliament has stipulated that the Administrator shall not hold any office or employment inconsistent with his duties as Administrator. He is a statutory authority that must be independent of the Crown, the shipping/insurance industry, etc.

The shipowner is deemed to be strictly liable (even without being negligent) for oil pollution damage from the ship and for costs and expenses incurred for certain measures taken in this regard, to the extent that both the measures taken and the costs and expenses are reasonable, by virtue of subsection 51(1) of the *MLA*.

The extent of the SOPF's potential liabilities for claims for the matters referred to in subsection 51(1) is set out in section 84 of the Act.

In addition, a person may file a claim with the Administrator under section 85, for loss, damage, or incurred costs and expenses referred to in subsection 51(1).

On receipt of a claim the Administrator shall investigate and assess the claim; and make an offer of compensation for whatever portion of the claim he finds to be established.

The Administrator shall dismiss a claim if satisfied on the evidence that the occurrence was not caused by a ship.

The Administrator must take all reasonable measures to recover the amount of the payment from the shipowner, the International Fund, or any other person liable. Shipowners will normally repay the Administrator only to the extent of their legal liability obligations.

Thus, particularly in the investigation, assessment and payment of claims, the Administrator must act in accordance with the laws governing the operation of the SOPF. He has no choice. He must not act arbitrarily or in accordance with policies contrary to Canadian Law.

A Pragmatic Approach

I continue to receive excellent assistance from persons in both the private and public sectors as well as from the International Fund's Director and members of its Secretariat. I am particularly pleased with the cooperation of Canadian shipowners, the oil industry, and the Canadian Maritime Law Association. I make a point of meeting and speaking with members of these groups as often as possible. I would like to note in particular some satisfying developments in the matter of Crown claims on the SOPF.

On taking up the office of Administrator I was made aware that the CCG had issued a paper discussing the governance options for its funding of response and monitoring costs pending their recovery from the shipowner, the International Fund, and/or the SOPF (see Annual Report 1998-1999).

As invited, along with industry, I responded to the CCG discussion paper. We were mindful that the Administrator must make an offer of compensation for oil pollution damage, when all or a portion of the claim is clearly established by the evidence. To this end, while our response had to restate some fundamental statutory principles, we nevertheless also sought to be positive and practical. We offered ways to improve the presentation and handling of CCG claims.

First we recalled that the present statutory claims regime, on the principle that **the polluter pays**, has as its "four cornerstones":

1. All costs and expenses must be reasonable.
2. All clean-up measures taken must be reasonable measures.
3. All costs and expenses must have been actually incurred.
4. All claims must be investigated and assessed by an independent authority (the Administrator).

We noted that a fundamental principle of the Canadian regime is that all claimants must be treated equally. This is a requirement of the Act. Although the 1993 amendments to the *CSA* gave the Crown direct access to the SOPF for the first time, it conferred no special status on claims filed by the Crown as compared to claims from other claimants.

We further noted to CCG that suggestions that the SOPF should accept without question, as reasonable any response action directed or approved on-scene by the CCG or other on-scene commander or any charges made by a Certified Response Organization, are incompatible with the statutory requirement for the Administrator to independently determine reasonableness and to deal in fairness and equality towards all claimants on the SOPF.

Finally, with a view to proposing a practical and immediate way forward to CCG's timely recovery of costs and expenses, we noted to them that:

> *Experience shows that the investigation and assessment of claims is expedited when claimants provide convincing evidence and written explanations. This includes various justifications by the On-Scene Commander (OSC) and proof of payment, etc. Detailed logs and notes by the OSC and others are invaluable in facilitating the settlement and payment of claims. It is essential that the measures taken and the costs and expenses incurred are demonstrably reasonable. The claim should be presented in a timely manner.*

At that time the submission of CCG claim documentation to the SOPF took an average of about 11 months from the date of the incident, which in itself negatively impacted on any possible settlement within the fiscal year in question.

Our letter concluded by offering to discuss with CCG officials further practical measures that can be taken by the CCG and the SOPF with a view to improving the presentation and handling of claims in a manner consistent with sound business practices, and in accordance with the laws governing the operation of the SOPF.

Outreach

Immediately after my appointment, we undertook initiatives to deepen our understanding of the perspectives of various stakeholders in the Canadian regime. We also met with officials in various government departments. Because the CCG makes claims on the SOPF, we particularly arranged to meet with the Commissioner and the then Deputy Commissioner of the CCG with a view to establishing a positive relationship. I believe we all were encouraged by our discussions, and our mutual commitment to resolve issues openly.

Early on we worked, with the cooperation of senior CCG officials, in settling and concluding a number of outstanding and more difficult Canadian claims, including, for example, *Irving Whale* and *Eastern Shell*. Our outreach efforts continued as we met with government officials from Transport Canada (TC), Environment Canada (EC), and DFO/CCG. We made particular efforts to meet CCG senior officials, emergency response officers and others in the regions, at workshops, response exercises and elsewhere. From this view the CCG and SOPF Administrator, both federal agencies but with differences in mandate and reporting relationship, took and continue to take steps towards interacting in a positive and constructive manner.

Also, we continue to receive valuable assistance and support from TC and EC officials. The SOPF's legal recovery action in the *Haralambos* incident (section 3.2) is an example. The testimony of TCMS officials regarding the cause of the spill, and the work of CCG and EC officials in providing justifications towards supporting the reasonableness of their emergency response and clean-up activities, can fairly be described as both excellent and highly professional. We sincerely thank them for their hard work and prompt response to the many questions arising in the course of oral discoveries in this Federal Court proceeding.

Co-operation brings results

As a result of joint efforts by CCG and SOPF, the presentation of CCG claims has improved significantly. This has helped to reduce the time required for the Administrator to investigate and assess the respective claims after their receipt by the SOPF.

There are cases where it appears that the occurrence that gave rise to the damage was not caused by a ship, and the SOPF would not be liable. In most cases the determination of cause can be concluded in relatively short order but in some, the investigation of cause can be very difficult and time-consuming.

There are outstanding issues. For example, the matter of justifying under the *MLA*, the current methodology used by CCG to calculate its Administrative costs in claims. Such costs must also be demonstrably actually incurred and reasonable.

Overall, at this point we are greatly encouraged by the considerable progress being made on many fronts.

I am also pleased to note the continuing and constructive dialogue we have with the Department of Justice legal team at DFO/CCG Headquarters on matters arising during the investigation of claims. CCG Regions officials are continuing to extend full co-operation during the SOPF's investigation of claims. In the presentation of CCG claims, there is a continuing improvement in the timeliness, quality and extent of the documentation submitted to the SOPF.

A review of past years' claims indicates that on average CCG claims were received as follows: For incidents that occurred in 1997-1998 the average time from the incident to the submission of the claim to the SOPF was 39 weeks. The subsequent investigation and assessment by the SOPF took approximately 29 weeks. For incidents that occurred in the year 2000-2001 the corresponding figures were 42 weeks and 6 weeks, respectively. For incidents that occurred in the year 2001-2002, the figures were 32 weeks and 3 weeks, respectively. Of particular note was the *Ocean Venture* incident (section 3.81) in Rimouski, Quebec, where the CCG claim was submitted 54 days after the incident and investigated and assessed by the SOPF in 19 days. The reductions in SOPF investigation and assessment times can be partly attributed to improved supporting documentation from CCG and in some cases, reports to the Administrator by SOPF appointed surveyors and CCG officers on site during the incident response.

Further, in considering the foregoing paragraph it should be appreciated that in some cases the Crown attempted to recover its costs directly from the shipowner before coming to the SOPF. Such actions by the Crown are commendable and in accord with the principle of "polluter pays". It should be noted that such actions can lead to an increase in the length of time between the incident and submission of the Crown claim to the SOPF. See section 4.5.

A review of recent incidents clearly illustrates the positive results and the outstanding efforts being made by CCG Regional officials. The following are some examples – there are others:

1. ***Sam Won Ho*** (see section 3.24). The CCG (Newfoundland Region) presented a claim for cost and expenses. I consider the presentation and support documentation of this claim, as compiled by the officials in the Region, to be exemplary. This facilitated a full assessment, settlement and payment of the claim within the fiscal year.

2. ***Anne Jolene*** (see section 3.79). The CCG (Maritime Region) contracted to remove the vessel as a pollution prevention measure. The completeness of the documentation and the manner in which the incident was presented by the region was impressive. My on-site surveyor received complete cooperation from CCG officials throughout. The openness of the officials directly involved was business-like and helpful. Consequently, the claim could be assessed and paid within the fiscal year.

3. **Mystery Oil Spill – Port-Cartier, Quebec** (see section 3.25). Excellent documentation was submitted by the CCG (Quebec Region) including log books, notes taken on site and those notes recorded at CCG Regional Headquarters. The package included various justifications by the On-Scene Commander (OSC)and proof of payment, as applicable. This claim was assessed within three weeks of receipt but could not be paid, because a land-based spill had not yet been ruled out. The claim documentation also facilitated the Administrator's continuing investigation of the cause of this incident.

4. ***Miles and Sea*** (see section 3.93). The CCG (Central and Arctic Region) contracted for the containment and clean-up of the oil. Preliminary reports suggest that CCG/DFO officials undertook subsequent wreck removal and/or salvage pursuant to the *Fishing and Recreational Harbour Act*, as opposed to section 678 *CSA*. See also *Sam Won Ho* (section 3.24).

5. ***Duke*** (see section 3.84). I was immediately contacted by the CCG officials in Prince Rupert and was able to ensure that the SOPF rights were protected. The handling of this incident illustrates the importance of timely communication by CCG ER officials with the Administrator and CCG legal counsel respecting the receipt of financial security before the release of a vessel involved in an incident. We are encouraged by the continuing consultation and cooperation of CCG officials in Vancouver, Victoria and Prince Rupert.

International "Optional" Third Tier (Supplementary Fund)

I am pleased with the positive developments currently taking place on the international front in respect of the establishment of an IOPC "optional" third tier (Supplementary Fund) to cover liability for major ship-source oil pollution incidents. The current Canadian position, which includes that of the Administrator of the SOPF, is supportive of the initiative to establish an "optional" Supplementary Fund under the international regime. However, we understand that support for the initiative does not imply a Canadian decision to join the Supplementary Fund should it be established and come into force. Any decision on Canada's interests would be made by Cabinet. We are advised that any recommendation to cabinet would be preceded by full and healthy discussions involving both government agencies and non-government stakeholders with interest in the Canadian and international ship-source oil pollution regimes.

The purpose and reason for having this "option" is nicely put in the ITOPF Review 2002:

> *"... the International Supplementary Fund, ... would be available for ratification on an optional basis by States that are party to the 1992 CLC and Fund Convention. This Supplementary Fund was designed to meet the concerns of those States that continue to consider that the 50% increase in the CLC and Fund limits agreed by the IMO in October 2000 (effective 1st November 2003) might still be insufficient to meet all valid claims arising out of a major incident. It was also reasoned that this international Supplementary Fund would render unnecessary the European COPE Fund proposed by the European Commission in December 2000."*

There may be those who need no convincing. For others, the need for Canada to join an "optional" Supplementary Fund may not be apparent. Apart from Canada's ultimate interests, there are here arguably legitimate issues of value and costs, including potential impact on the viability of the SOPF's current mode of funding by income from interest only.

For example, on the one hand, there is an increase, both current and prospective, in off-shore oil exploitation. On the other hand, in North America oil tanker incidents appear to have fallen off dramatically. The United States Coast Guard (USCG) 1999 records show that 94 percent of oil spill incidents and 70 percent of volume are from vessels other than tank ships and tank barges. In Canada, a survey of Canadian oil spill incidents reported by the SOPF Administrator from 1993 to 2000 shows 12 percent were from tankers, 62 percent were from other vessels and 26 percent were mystery spills. In other words, 88 percent of these Canadian oil spill incidents were not covered by the international IOPC Funds. It is said that enforcement of ship safety regulations and oil pollution regulations, as well as positive efforts by shipowners, may be credited with the drop in tanker incidents in North America.

There is also a recent P&I Club study showing that with the exception of *Erika* and *Nakhodka*, all non-USA spills, 1990-1999, inflated to 1999 values, would have been compensated under the increased 1992 CLC and IOPC Fund limits effective in 2003 ($405 million per incident). The same study indicated that the costs of all USA tanker and oil barge spills (actual and inflated values) since the enactment of *OPA* 90 and up to the end of 1999 would have fallen within the existing 1992 CLC and IOPC Fund limits ($270 million per incident). See page 80.

We understand that it is considered desirable to ensure that Canadian stakeholders and government agencies are provided the opportunity and information to enable them to participate in meaningful consultations on the issue. See section 4.6.2 within, as well as sections 4.5 and 4.6 in the 2000-2001 Annual Report. A copy of the draft protocol to establish an "optional" international Supplementary Fund is available on request to the SOPF office.

Appropriation of IOPC Fund money for HNS matters

The granting by the 1992 IOPC Fund Assembly of an appropriation of IOPC Fund contributors' money for HNS matters is reported in section 4.4.4.

In this case, a special appropriation for the development of a computerized system to assist the implementation of the HNS Convention was approved by the Assembly.

I am currently considering issues raised by these actions of the Assembly.

Bunker Convention

The new Bunker Convention (see section 4.4.3) remains open for signature and subsequent ratification. The real difficulties that must be overcome in order to bring this Convention into force presents another opportunity to illustrate the foresight of Canadian legislators in establishing the MPCF in 1971 and the SOPF in 1989.

On March 23, 2001, the IMO adopted a new International Convention on Civil Liability for Bunker Oil Pollution Damage to establish a liability and compensation regime for spills of oil carried as fuel in ships' bunkers. To come into force the Convention requires ratification by 18 States including five each with not less than one million gross tons of registered ships, once these criteria have been met the Convention will come into force 12 months later. This could take some time. Further, to bring the Convention into force in Canada, the appropriate legislation would have to be introduced in Parliament with changes to Canadian law. In the meantime, in Canada – unlike most other countries – the SOPF, as directed by the Administrator, can continue to be used to pay claims for oil spills from all classes of ships and includes oil from ships' bunkers.

Environmental Damages

Compensation for environmental damage is handled differently under the *MLA*, the 1992 CLC, 1992 International IOPC Fund Convention and the US *OPA* 90. See section 4.1.2.

For those who wish to know more about some current thinking on this subject see section 4.1.3. The documents referred to are available on request to the SOPF office.

Positive Developments

There are very positive things happening in Canada with industry and government agencies that are achieving credible results towards ensuring an effective and efficient response to marine oil spills. Some of the strategies under development and programs currently established for the protection of the environment, as discussed in this report, include the following:

- The DFO/CCG Aerial Surveillance Program – section 4.2.3
- The DFO/CCG Oiled Wildlife Project – section 4.2.4
- The Environment Canada Sensitivity Mapping Program – section 5.8
- The Certified Response Organizations – section 5.4
- The Environment Canada Damage Fund – section 4.1.1
- The Regional Environmental Emergency Team (REET) – section 4.2.1
- The CCG On-Scene Commander Course – section 5.6
- Oil Spill Seminars – section 5.9
- Legislative Developments – section 4.4

These Canadian initiatives for the prevention, preparedness, response and environmental restoration should be seen as good news for all Canadians, as well as shipowners, insurers, and the oil industry. We at the SOPF are encouraged by these positive initiatives.

In closing, we are grateful for the support received, the challenges, successes and also the problems experienced this year which had to be addressed. I welcome suggestions on how we can improve SOPF services.

Summary

This Annual Report of the Ship-source Oil Pollution Fund (SOPF) covers the fiscal year ended March 31, 2002.

The report describes Canada's domestic compensation regime. First there is the SOPF which covers all classes of ships as well as persistent and non-persistent oil and mystery spills. In addition, Canada is a Contracting State in an international compensation regime that mutualizes the risk of pollution (persistent oil) from sea-going tankers.

The financial status of the SOPF is reported, including claim settlements in Canada and the amount of payments by the SOPF to the international Funds. Canadian claims totalling approximately $134,000 before interest were settled and paid in the approximate aggregate amount of $104,000 ($111,000 including interest). This year the Administrator paid an amount of approximately $2.9 million out of the SOPF to the 1992 IOPC Fund for incidents outside of Canada. As at March 31, 2002, the balance in the SOPF was $316,491,470.73.

During the fiscal year commencing April 1, 2002, the maximum liability of the SOPF is $136,281,117.60 for all claims for one oil spill. This amount is indexed annually.

During the fiscal year, the Minister of Transport has the statutory power to impose a levy for the SOPF of 40.87 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 such levy (MPCF/SOPF) 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 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).

There is also an important statutory provision for a widely defined class of persons in the Canadian fishing industry that may claim against the SOPF for loss of income caused by an oil spill from a ship.

The report outlines the status of oil pollution incidents brought to the attention of the Administrator. The Administrator responded to all enquiries about compensation entitlement, and investigated all claims resulting from oil pollution. The length of time taken to process the respective claims regarding identified ships depends on the completeness of the supporting documentation. The incident narratives indicate claims that have been settled and, also, the claims that are in various stages of advancement. Also included is the current status of recovery actions by the Administrator against shipowners.

In the case of mystery spills considerable investigation is sometimes required, because the SOPF is not liable for non ship-source spills. However, the SOPF is liable "if the cause of the oil pollution damage is unknown and the Administrator has been unable to establish that the occurrence that gave rise to the damage was not caused by a ship".

Protection of the marine environment from oil pollution is the central theme addressed in the section on Issues and Challenges.

Canada's special purpose account – the Environmental Damage Fund – was established in 1995 to manage compensation for damages to the environment resulting from pollution incidents. As a custodian of the Fund, Environment Canada continues to actively pursue and enhance its framework for implementing an environmental damage assessment and restoration process.

The third intersessional working group of the 1992 IOPC Fund has been discussing issues of environmental damage under the 1992 Conventions. The working group is considering whether or not to modify the 1992 Fund's position in respect of the admissibility of claims for the costs of reinstatement of the environment, and of claims for the cost of environmental impact studies. Proposals were submitted to the working group by a number of States and

organizations. The International Tanker Owners Federation Limited drew attention to the Canadian Environmental Damages Fund, suggesting that it might be a model to follow.

Compensation for environmental damage is handled differently under the *MLA*, the 1992 CLC, the 1992 IOPC Fund Convention, and the US *OPA* 90.

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 *MLA* 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."

In the US, *OPA* 90 provides for payment of natural resource damage claims from the Oil Spill Liability Trust Fund.

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.

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

An update is provided on the issue of places of refuge for damaged ships at sea. The IMO continues to examine conditions under which littoral states should provide a safe place of refuge in sheltered areas for ships in immediate danger. There is a broad consensus internationally for the need to address the issue of shelter for ships in peril.

It is said that there is a "tradition" of ports offering refuge to endangered ships. Today, a damaged tanker loaded with oil is often considered an unwelcome guest by the littoral state, because of potential oil pollution damage. In some cases the coming into a place of refuge could reduce the threat of pollution.

The Comité Maritime International (CMI) has developed, in consultation with the IMO Secretariat, a questionnaire with a view to collecting as much information as possible concerning the laws applicable in the countries of CMI member associations on the access of a distressed vessel to a place of refuge where necessary work can be undertaken to stabilize her condition and, if appropriate, to transship her cargo. The Canadian Maritime Law Association (CMLA) is working on a response to this questionnaire.

The international management code (IMO Code) for the safe operation of ships addresses the responsibilities of people who manage and operate ships. This code provides an international standard for safe shipboard operations and for pollution prevention. The ISM Code came into force on July 1, 1998, for certain types of ships, including oil tankers, other types must comply by July 1, 2002. Every ship will then require a safety management certificate and a document of compliance issued by its flag state, or a recognized organization. Recent casualties in Europe highlight concerns about the effectiveness of the ISM Code. The secretary-general of IMO, Mr. William O'Neil, initiated an assessment of the effectiveness and impact of the ISM Code so far. A report was submitted to the IMO Maritime Safety Committee in mid-May, 2002.

The IMO's timetable for the accelerated phasing out of the single-hull oil tankers is also noted.

On March 23, 2001, the IMO adopted a new International Convention on Civil Liability for Bunker Oil Pollution Damage to establish a liability and compensation regime for spills of oil carried as fuel in ships' bunkers. To come into force the Convention requires ratification by 18 States including five each with not less than one million gross tons of registered ships, once these criteria have been met the Convention will come into force 12 months later. This could take some time. Further, to bring the Convention into force in Canada, the appropriate legislation would have to be introduced in Parliament with changes to Canadian law. In the meantime, fortunately in Canada – unlike most countries – the SOPF, as directed by the Administrator, can continue to be used to pay claims for oil spills from all classes of ships, including oil from ships' bunkers.

Since 1989, the international funds have received approximately $30.1 million out of the SOPF. The report notes that the SOPF has potential significant future liabilities for international incidents.

The 1971 IOPC Fund Convention ceases to be in force on May 24, 2002. Canada is now a contracting state to the 1992 IOPC Fund Convention. Nevertheless, the SOPF has contingent liabilities to the 1971 IOPC Fund but only for incidents prior to May 29, 1999.

The report notes prospective changes in the 1992 IOPC regime, including the increases in current compensation limits due in November 2003, and the draft Protocol for an "optional" third tier of compensation (Supplementary Fund). The draft Protocol shall be considered at an IMO Diplomatic Conference scheduled for May 12 to 16, 2003.

Canada's primary IOPC coverage alone has gone from $120 million in 1989 to $270 million in 1999. On November 1, 2003, primary IOPC cover will increase by 50% to $405 million per incident. In Canada an additional $136 million is available from the SOPF. In result there will be $541 million of cover per incident for any tank ship spill in Canada – without Canada being a Contracting State to an IOPC "optional" third tier (Supplementary Fund).

The Canadian IOPC Fund delegation continues to support the development of an "optional" third tier (Supplementary Fund). However, the question of whether Canada should become a Contracting State to any IOPC "optional" third tier (Supplementary Fund) is for Cabinet to decide.

Some of the issues associated with shipowners' liability are addressed in the report. Debate on the issue of shipowners' liability in the IOPC "optional" third tier (Supplementary Fund) and/or whether amendments should be made to the provisions in the 1992 CLC regarding shipowners' liability took place during meetings held by the 1992 IOPC Fund third intersessional working group. The working group has received submissions by, *inter alia*, the International Group of P&I Clubs and OCIMF. There remains a divergence of opinion regarding shipowners' liability.

The Canadian interdepartmental committee continues to review the issues that may affect Canada in any prospective changes to the international Conventions.

The Administrator continues his outreach initiatives by participating in conferences, seminars and workshops. During the year he met with management personnel in federal departments, government agencies, and organizations of the marine industry. These activities included:

- Attending meetings with senior representatives of Fisheries and Oceans and Environment Canada in both the Atlantic and Pacific Regions.
- Participating, with representations from government agencies and the marine industry, in an On-Scene Commander Course at the CCG College designed for effective response to a significant oil spill incident.
- Presenting a paper on the Canadian compensation regime at the freshwater spills symposium in Cleveland, Ohio, sponsored by the US Environmental Protection Agency.
- Visiting the facilities of the ECRC response organization in Nova Scotia.
- Addressing the opening plenary session of the Canadian Marine Advisory Council Conference held in Ottawa during May.
- Participating in the "Insight" conference on emergency response planning for marine industries held in Vancouver. The Administrator presented a paper on Canada's Ship-source Oil Pollution Fund.
- Attending the Maritime Conference held in Toronto. The sessions featured papers on the Marine Liability Act, changes to the Canada Shipping Act 2001, the Shipping Conferences Exemption Act, and others.
- Discussions were held with organizations in the US and UK including: ITOPF, OCIMF, P&I Clubs, and the US National Pollution Funds Centre.

During the year the Administrator, as head of the Canadian delegation, attended and reported on the Executive Committee and the Assembly sessions of the international Funds, held at IMO Headquarters in London. Extracts of his delegation reports on these proceedings are contained in Appendices B and C.

The Administrator

The Administrator continues to receive excellent co-operation and assistance from persons in both the public and private sectors as well as from the international Fund's Director and members of its Secretariat.

In 1979 (then a private lawyer) he was retained as counsel on the legal team for the CCG/TCMS in the events immediately following the catastrophic break-up of the British registered oil tanker *Kurdistan* in the Cabot Strait. In this major incident, the CCG/TCMS and EC demonstrated their oil spill response readiness in the salvage of the stern section and its cargo, the towage of the bow section with cargo to the edge of the continental shelf – where it was sunk by naval gunfire, the clean-up of oil pollution damage in Newfoundland and Nova Scotia and the expedited settlement of claims from individuals. REET's advice to the on-scene commander was critical to the success of the operation. This positive performance by the Crown, including the rescue of the crew, prompted highly favourable editorials in the national media.

See *Kurdistan* at page 47.

A Dalhousie Law School graduate, he was called to the Bars of British Columbia and Nova Scotia. He also attended University College London, England – receiving a Master of Laws in merchant shipping law and international law of the sea.

In private practice he represented shipowners, insurers, salvors and government departments in casualties, oil pollution damage, and salvage, as well as environmentalists and fishing interests. These experiences have proven invaluable in performing his duties and responsibilities as Administrator.

He served in the RCNR.

1. Responsibilities and Duties of the Administrator

The Administrator, appointed by the Governor-in-Council:

- 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 *Marine Liability Act (MLA)* 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
- participates in the Canadian Interdepartmental Committee and joins 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.

Effective August 8, 2001, the SOPF is governed by Part 6 of the *Marine Liability Act (MLA)* Statutes of Canada, 2001, chapter 6.

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.

During the fiscal year commencing April 1, 2002, the Minister of Transport has the statutory power to impose a levy of 40.87 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 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, 2002, the maximum liability of the SOPF is $136,281,117.60 for all claims from one oil spill. This amount is indexed annually.

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 6 of the *MLA*, on the principle that the **polluter should pay**, has as its cornerstones:

- 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 *MLA* 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.

As provided in the *MLA*, 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 84 *MLA*.

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.

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

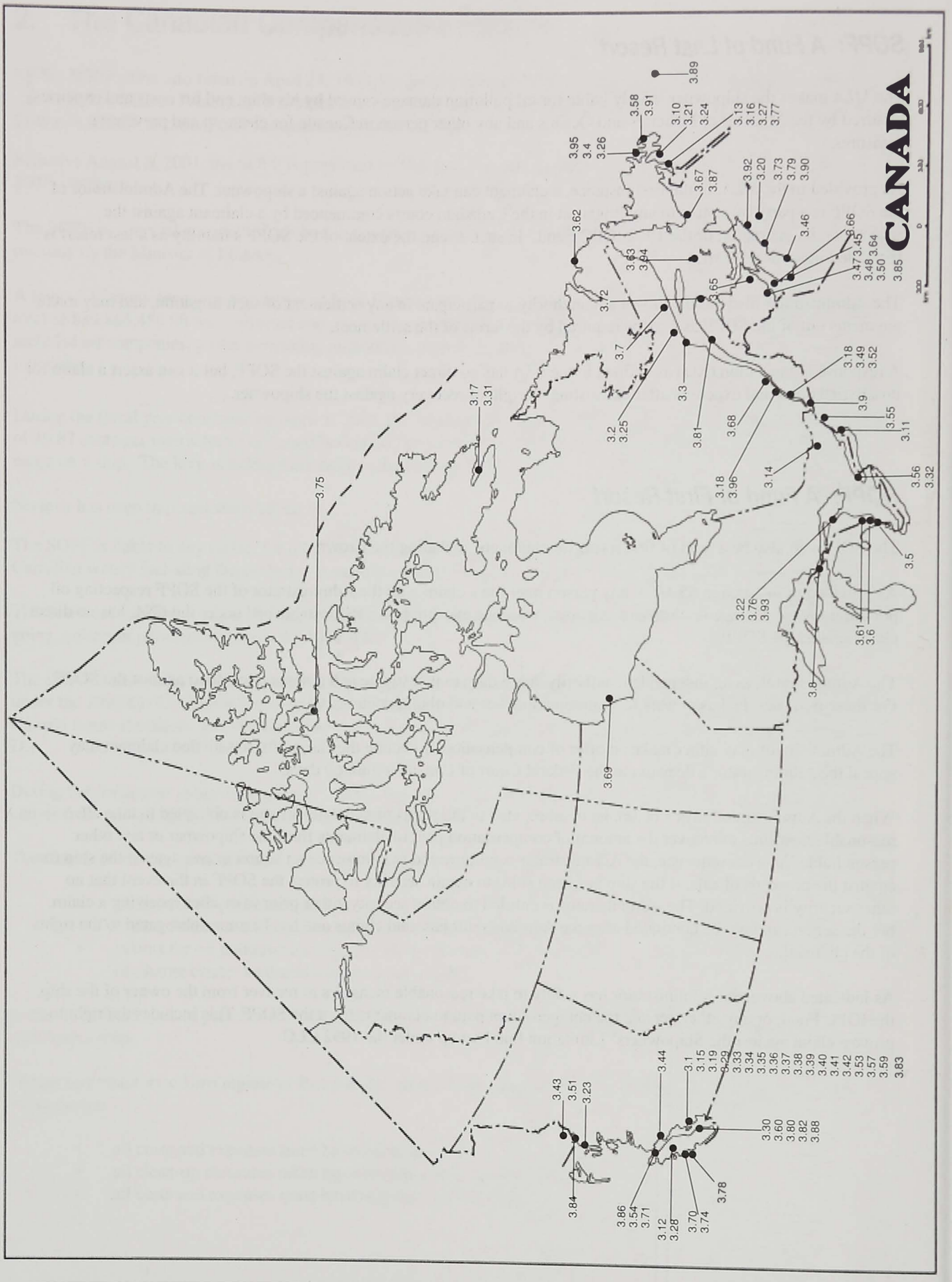
As provided in the section 85 *MLA*, any person may file a claim with the Administrator of the SOPF respecting oil pollution loss or damage or costs and expenses, with one exception. An RO, established under the *CSA*, has no direct claim against the SOPF.

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.

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.

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.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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/MLA*, to be considered as potential claimants as a result of oil pollution damage they have suffered. Many of the incidents have not yet, or will not be, the subject of a claim. Such incidents are not investigated by the Administrator. The information herein is that provided to him. 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 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.

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.

On January 11, 2002, at the request of the plaintiffs the case was dismissed, thus removing the SOPF from possible involvement. The Administrator closed his file.

3.2 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'* contaminated wing tank. Dated February 23, 1999, the analysis concluded that these samples are 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. The Crown having submitted correct tax calculations to the amount of $3,374.70, the Administrator on May 9, 2000 directed the payment of this amount to the Crown plus interest of $773.05.

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.

The *Haralambos* returned to Canada in May 2000. The Administrator obtained a Letter of Undertaking (LOU) for $125,000.00.

Subsequently, the Administrator commenced an action against the ship in the Federal Court, to which a defense was filed.

In the meantime, on November 3, 2000, it was reported that the *Haralambos* had been purchased by Chinese principals for breaking-up.

Offers and counter-offers have been made between counsels for both parties, but an out of-court settlement has not been achieved. On December 19, 2001, the Administrator was required to attend an Examination for Discovery by the defendant's counsel. The recovery action continues.

3.3 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*.

The Crown filed a Statement of Defense and Counter-claim on August 11, 2000. To date no documents have been served on the Administrator making him a party to the proceedings pursuant to section 713 *CSA*. On March 30, 2001, the Administrator contacted Crown counsel and asked them to advise their intentions. The Administrator has concluded that no claim will be made on the SOPF and has closed his file.

3.4 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 sea truck 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 issue further.

The CCG advised on September 26, 2000, that they had accepted the above payment as final settlement.

Counsel for the shipowner had correctly noted that the invoice presented by the CCG referred only to the clean-up in the areas where samples did not prove a match (Piers 19 - 21). In fact, the response and clean-up in question took place in the harbour covering Piers 19 - 24.

The issue of the clean-up area, incorrectly described in the invoice, was clarified by the Administrator in his letter to counsel for the vessel dated November 2, 2000. His letter also claimed reimbursement for payment of the Crown claim in the amount of $5,118.41, which payment included applicable interest. Further correspondence and discussions ensued with counsel for the *Koyo Maru #16*. It appeared that agents for the vessel could get no direction from the Japanese shipowner.

On December 20, 2000, the Administrator filed an action in the Federal Court naming the *Koyo Maru #16* and others as defendants, to recover the monies paid out to the Crown. On February 5, 2001, it was stated that the local ship's agency, Blue Peter Steamships Ltd., issuer of an LOU to CCG, is no longer in business. There is now a new company called Blue Peter Marine Agencies Ltd. Under an LOU the guarantor makes definite undertakings in order to preclude the vessel being detained. The prospect of this LOU not being honoured arose. This would present a unique problem to the Administrator. LOU's are normally obtained from a ship's P&I Club – not the ship's agent. It has been the SOPF's experience that those who issue LOU's are prepared to immediately act in accordance with the LOU issued on their behalf. On March 8, 2001, the Federal Court extended the time to serve the Statement of Claim by 180 days.

The ship had left after the LOU was provided to CCG and before the Administrator became involved. In this context, it should be noted that the Administrator, in particular, could, by section 677(11) *CSA* obtain security (LOU, bank guarantee, etc.) even before receiving a claim:

> *"Where there is an occurrence that gives rise to liability of an owner of a ship under subsection (1), the Administrator may, either before or after receiving a claim pursuant to section 710, commence an action in rem against the ship that is the subject of the claim, or against any proceeds of sale thereof that have been paid into court, and in any such action the Administrator is, subject to subsection (13), entitled to claim security in an amount not less than the owner's maximum aggregate liability under section 679 or 679.1."*

On July 30, 2001, the Administrator made a settlement offer to the counsel who had represented the ship's agent. On August 22, 2001, that counsel replied which, in brief, stated:

- they had no authority to accept service of the SOPF's claim;
- that the new agency [Blue Peter Marine Agencies Ltd.] had not been able to make contact with the owners (of the Koyo Maru #16);
- that they were closing their file.

The Administrator conducted research into the names and particulars of all vessels owned by the owners of the *Koyo Maru #16*. It was found that there were a number of vessels, several of which were known to come into Canadian ports. Counsel was appointed to act on the Administrator's behalf and on December 5, 2001, this counsel faxed to the owners in Japan, offering

settlement; the alternative being the arrest of one of the company's vessels on arrival in Canada. The owner's faxed their new agents in St. John's, Newfoundland, on December 9, 2001, authorizing payment of the compromise settlement.

On January 15, 2002, the Administrator received a cheque on behalf of the owner to the amount of $2,793.84, which was credited to the SOPF account. The Administrator closed his file.

3.5 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. These latter, more detailed, analyses still did not identify the source. However, they served to support the previous sample comparisons in certain respects. Throughout the morning of May 31, 1998, the wind had been westerly, sometimes very strong.

Additional information was requested, in particular from the Cities of Detroit, Ecorse, and River Rouge, and the Michigan Department of Environmental Quality. The bulk of this material was received at the SOPF in mid-February, 2001. The material greatly assisted the Administrator in his investigation, but did raise some further questions, resulting in further information being requested. Additional information was received towards the end of the financial year, in particular from the City of River Rouge (Michigan) and the City of Windsor (Ontario). The factors in the spill were now better understood. Following the receipt of advice on the issues, the Administrator will make his decision on this complex, and unusual, claim.

3.6 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.

The CCG advised that they received payment (in January, 2002) of the negotiated settlement. The Administrator closed his file.

3.7 Gordon C. Leitch (1999)

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. When moving the vessel she was caught by the strong wind and hit a dolphin, cracking the hull and

releasing an estimated 49 tonnes of heavy fuel oil. The owners directed the clean-up with contractors, under CCG guidance and making use of CCG materials and equipment. The CCG reported that their costs and expenses of $233,065.00 were paid by the owners. Armed with this knowledge of settlement the Administrator's last Annual Report (2000 – 2001) noted that he had closed his case file on the incident.

On March 22, 2002, counsel for the Counseil des Innus de Ekuanitshit et tous les members de la Band Indienne de Ekuansitshit, filed a claim in the Federal Court of Canada against the owners of the *Gordon C Leitch*, and others and the IOPC Fund. The action claimed the sum of $539,558.72 for stated damages for the local Indian Band due to the *Gordon C Leitch* incident.

3.8 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.

The Administrator received from the Crown, on April 4, 2000, a claim to recover the stated CCG costs and expenses in attending the refloating of this vessel, amounting to $20,154.12. On May 2, 2000, the Administrator forwarded the claim to the owners, Algoma Central Corporation, with the suggestion that they settle the claim directly with the Crown. At the same time, the Administrator pointed out to the owners that interest was accruing.

On May 26, 2000, Algoma replied to counsel for the Crown, in essence noting these factors:

- the CCG services were not requested;
- Algoma employed the necessary contractors and equipment at the site;
- there was no release of oil.

and by providing comment on the individual costing schedules presented.

Algoma denied the CCG claim, and noted that thirteen months had passed between the incident and the presentation of the claim.

It should be noted that section 677(10)(b) *CSA* provides that *"...no action...lies* [against the owner of a ship] *unless it is commenced... where no pollution damage occurred, within six years after the occurrence."*

The Crown replied to the points raised by Algoma in a letter to the Administrator dated June 29, 2000. The main points made by the Crown were:

- CCG actions were taken in anticipation of a discharge of oil, as provided by section 677 *CSA;*
- the CCG does not require the shipowners request to respond to an anticipated discharge of oil.

The Administrator investigated and assessed the claim.

The assessment was made more complicated because some of the CCG response costs had been billed to the contractors, in turn paid-for by the owners, and other CCG costs claimed against the SOPF. A number of minor errors were found in the CCG claim and the Administrator was unable to accept the charges for the use of the CCG helicopter which was in the area at the time for other work. Additionally payment of the Crown's Administration overhead cost was deferred pending justification of the amount ($1,741.23).

Following correspondence, particularly regarding the use of the helicopter, on January 4, 2002, the Administrator arranged to transfer to the Crown $13,767.49 for established costs, plus $2,839.40 interest. On January 8, 2002, the Administrator wrote to the shipowner requesting payment of the amounts totalling $16,606.89. Payment of this latter amount was received from the shipowner on February 7, 2002, and passed the same day for credit to the SOPF. At the same time the Administrator reopened his investigation into the use of the CCG helicopter and now awaits replies to his questions to CCG regarding same.

3.9 Paterson (1999)

This is a bulk carrier of 20,370 gross tons, which was carrying a cargo of grain when she grounded in Lac Saint-François, located between Montréal and Cornwall, Ontario, 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 refloating. This was successfully carried out on April 9, 1999, with no pollution occurring. TCMS and CCG were in attendance.

On April 4, 2000, the Crown presented a claim to the Administrator, amounting to $10,350.57 to recover the CCG's stated costs and expenses in the incident. On May 2, 2000, the Administrator wrote to the owners concerned, N.M. Paterson and Sons Ltd., suggesting that they settle the claim directly with the Crown. A reply was received from Paterson's, dated May 4, 2000, in essence advising:

- the shipowner did not request CCG assistance;
- the ship was aground amidships where there were no tanks containing oil;
- the hull was not breached in any area of the ship; and,
- that, according to TCMS, "damage was of little concern".

On this basis, Paterson's rejected responsibility for the claim.

The Crown replied to the points raised by Paterson in a letter to the Administrator dated June 6, 2000. The main points made by the Crown were:

- CCG actions were taken in anticipation of a discharge of oil, as provided by section 677 *CSA*; and,
- the CCG does not require the shipowner's request to respond to an anticipated discharge of oil.

The Administrator investigated and assessed the claim and found the amount of $3,625.50 to be established. This amount plus interest of $431.02 was offered in full and final settlement and paid to the Crown on or after November 3, 2000.

On June 8, 2001, the Administrator wrote to N.M. Paterson & Sons Ltd., requesting reimbursement of the principal amount of $3,625.50, plus interest which had now risen to $588.50. These amounts were paid by the shipowner on or about July 30, 2001 and credited to the SOPF. The Administrator closed his file.

3.10 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.

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

It appears that two individuals were associated with ownership of the craft, together with a limited company. All three parties have denied liability. On January 5, 2001, EC had laid charges against all three parties involving the release of oil pollution, connected with this incident, pursuant to section 36(3) of the *Federal Fisheries Act*.

There was further pollution from this wreck on April 24, 2000, as reported at 3.24 following.

The Administrator arranged for the SOPF to have an observer at the prosecution of the three parties for the alleged infringement of the *Fisheries Act*. The trial started on August 23, 2001, and continued at various dates, with a resumption date in April 2002.

The Administrator intends to continue following the prosecution. Counsel for the SOPF filed a Statement of Claim in the Federal Court of Canada on April 8, 2002, against the three parties claiming the recovery of $117,384.47, plus interest. Service of the Statement of Claim upon the Defendants shall follow.

3.11 Sunny Blossom (1999)

This vessel is an 11,598 gross ton Bahamian flag double hull chemical tanker that was involved in at least four incidents, which came to the Administrator's attention. 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.

A second incident, a grounding, was reported in the Annual Report 1999-2000 at 3.56. The third incident was on July 26, 1999 when the vessel struck an arrester wire in Iroquois Lock, Ontario. The fourth incident happened on May 18, 2000, when the vessel grounded in the seaway system while transiting Lac Saint-François.

On April 20, 2000, the Crown presented a claim to the Administrator, amounting to $9,526.57, to recover the CCG's stated costs and expenses in the April 24, 1999, incident. The claim involves a ship aground in U.S. waters. The Administrator and counsel for the SOPF reviewed the circumstances of the claim. On September 27, 2000, counsel for the SOPF wrote to Crown counsel involved raising these issues:

1. Does the Department consider that this incident is subject to the terms of the Great Lakes Water Quality Agreement and Joint [Canada-United States] Marine Pollution Contingency Plan?

2. If so, has the Department sought to recover the costs outlined in its claim from the responsible United States authorities? If so, does the Department intend to pursue its claim with such authorities?

3. If not, would you provide an explanation as to why the Department does not consider that this incident is subject to the provisions of both the Agreement and Plan?

In the meantime, CCG reported that they submitted a claim to the USCG.

The CCG Claims Status Report dated June 30, 2001, no longer mentioned submitting a claim to the USCG but, instead, stated a claim had been submitted to the shipowner. By letter of September 26, 2001, the Crown counsel advised that the CCG had been successful in obtaining payment of their claim from the shipowner.

Answers to the questions posed above were not forthcoming because, presumably the need for Crown counsel to answer question 1 was precluded by the CCG's successful recovery of its claim from the shipowner.

The Administrator closed his file.

3.12 Rivers Inlet (1999)

This was a Canadian registered 24 gross ton wooden fishing vessel, built in 1926, which sank at her berth in Deep Bay, British Columbia, on June 16, 1999. It was stated that she was no longer engaged in fishing but in transporting wooden shake blocks for cutting. The owner was aware that the vessel had an ingress of water and had arranged for pumping. On sinking, the *Rivers Inlet* released oils, of which an estimated 330 litres were aboard.

The local Harbour Master reported the sinking. The CCG responded. The sinking was in a Small Craft Harbour. It was reported that the vessel was interfering with operations in the harbour. There are clam and oyster harvesting areas in Deep Bay. On June 25, 1999, the owner signed an agreement authorizing the Crown to remove and dispose of the vessel, indemnifying for all costs, expenses and liabilities incurred by the Crown. On June 28, 1999, a CCG contractor raised the vessel. It was later broken-up and disposed-of.

On March 1, 2000, the owner stated he had no money to meet his obligations regarding the sinking. The Administrator received, on June 15, 2000, a claim from the Crown, amounting to $15,777.43 to recover the CCG's stated costs and expenses in this incident. The claim was investigated and assessed. The Administrator wrote to the Crown on December 12, 2000, offering to settle the claim for $10,819.91, plus the appropriate interest of $1,248.38, which amounts, in his view, to that portion of the claim relating to oil pollution response. On the same date, he arranged to transfer these latter sums to the Crown.

This case again raises the matters of oil pollution response, salvage and wreck removal, in the context of cost recovery by CCG. The Administrator advised the Crown of his willingness to discuss these issues.

On October 23, 2001, the Administrator received the shipowner's written acknowledgement of a debt to the SOPF in the amount of $12,068.29 and agreement to extend the time by which the SOPF can bring a recovery action up to December 31, 2006.

In the meantime, the Administrator shall evaluate his recovery options. Subject to possible recovery action, which does not appear promising, the Administrator closed his file.

3.13 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.

The Administrator has closed his file.

3.14 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.

The Administrator has closed his file.

3.15 Reed 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.

The Crown presented a claim to the Administrator dated September 11, 2000, amounting to $39,366.81, to recover the stated CCG costs and expenses incurred in responding to this incident.

The Administrator employed counsel to act on SOPF's behalf. This counsel, on October 12, 2000, sent letters to three of the vessel owners involved, notifying them of the Administrator's intention to recover any payments made in settlement of claims against the SOPF, and advising them to preserve their insurance cover. Information was requested by the Administrator from the Crown in the investigation and assessment of the claim.

On March 30, 2001, the Administrator found $36,247.58 of the Crown's claim to be established, and arranged transfer of this sum, plus interest of $4,188.57.

The fire was investigated by the Office of the Fire Commissioner of BC. Through the SOPF's locally appointed counsel it was learned that proceedings had already been commenced in the Supreme Court of British Columbia against the owner of one of the three craft burnt and sunk – the owner of *Crime Pays*. Later it was found that the case was dismissed/discontinued with "no money exchanging hands". The issues are complicated, with three craft and the boathouses being involved.

At the end of the fiscal year, the Administrator was arranging with counsel for the commencement of legal action for recovery of the amounts paid out from the SOPF.

3.16 Kopu (1999)

This is a 1,531 gross ton fishing vessel, registered in Estonia and owned by an Icelandic company. TCMS reports that, on June 5, 2000, the *Kopu* was fined $6,500.00 for discharging oil, which occurred in Argentia, Placentia Bay, Newfoundland on October 19, 1999. Previous reports indicate that the incident took place during refueling from a tanker truck.

No claim has been made against the SOPF. The Administrator considers that a claim on the SOPF unlikely and closed his file.

3.17 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.

No claim has been made against the SOPF. The Administrator considers that a claim on the SOPF unlikely and closed his file.

3.18 Mystery Oil Spill - Quebec City and Sorel (Amarantos) (1999)

On July 10, 2000, the Administrator received a claim from counsel acting for the ship *Amarantos* amounting to $23,653.68 for two incidents of oil spill clean-up response. The *Amarantos* is a 36,650 gross ton bulk carrier registered in the port of Valetta, Malta.

The claim stated that, on November 10, 1999, the vessel moored ahead of the MV *Amarantos* reported that they could see traces of oil in the water in the vicinity of the *Amarantos* at Section 52, Quebec City. TCMS placed a temporary detention order on the *Amarantos*, pending inspection. The master of the ship contracted for the response to the oil spill. It proved impractical to attempt recovery of the estimated 200 metre long patch of oil alongside the ship, which patch had floated downstream with the current. SIMEC attended and booms were deployed.

The detention order was lifted on November 11, 1999, and the *Amarantos* moved upriver to Sorel. On November 20, 1999, an EC official reported that there had been an escape of oil from the ship at section 21. The ship was the *Amarantos*. Again, the captain requested contractors to provide the necessary response.

In forwarding the claim for the two incidents, counsel for the ship stated that the *Amarantos* was not the source of the spills and requested reimbursement to the owners for the costs and expenses incurred.

The Administrator commenced extensive nautical and legal investigations into the circumstances of the spills. Following a review of the evidence on November 7, 2001, he wrote to counsel for the ship rejecting the claims. In his decision letter he noted:

- oil was observed coming up alongside the *Amarantos* in Quebec City;
- a small quantity of oil was observed leaking from the ship's shaft in Sorel; and,
- the surveyor for the P&I Club suggested the source of the pollution may not have been a discharge from a ship.

However, for the claim to be receivable, it must relate to "pollution damage" as defined in the *Act* (i.e. damage caused by pollutant discharge from a ship), or measure preventing "discharge of oil from a ship" (section 51

MLA), otherwise, Part 6 does not apply and the SOPF should not concern itself with the claim.

If as suggested by the surveyor from the P&I Club, the source of the pollution is not a discharge from a ship, then the SOPF is not liable. If however the pollution comes from a ship, then one must conclude that it came from the *Amarantos*.

There was no appeal against the Administrator's decision within the statutory 60 day period prescribed under section 87 *MLA* and the Administrator closed his file.

3.19 Cape Benat (1999)

This ship is a 21,165 gross ton chemical/oil tanker, flying the Liberian flag and operated by a Cyprus based company.

On November 24, 1999, the CCG was advised that there was a discrepancy of approximately 200 tonnes of canola oil between that stated to have been delivered by a shore facility and the amount loaded by the *Cape Benat* in Burrard Inlet, Vancouver harbour, that day. The CCG pollution patrol aircraft overflew the area on November 25, 1999, and sighted two large slicks of oil off Point Atkinson and another large slick off Point Grey. A subsequent assessment put the amount spilled as 226 tonnes.

The shore facility announced that they had carried out a thorough inspection of their plant and determined that the spill did not originate from them. EC was unable to confirm that the spill came from the facility. The facility stood down clean-up contractors they had forewarned. The *Cape Benat*, through their agents, refused to accept responsibility for the clean-up of the spill and, at the time, TC was unable to confirm that the oil came from the ship. The CCG assumed the lead agency for the response and employed contractors.

The area has many sea birds and, at one stage, in the bird rescue operation it was reported that 13 birds had died and another 204 were being rehabilitated, as a result of the spill.

On November 26, 2001, the Administrator received a Statement of Claim filed on behalf of the Crown in the Federal Court. The claim was against the owners, and others, interested in the *Cape Benat*, and named the SOPF a party by statute. The Crown claim sought payment totaling $141,300.89, for oil pollution damage, recovery of the CCG costs and expenses in the clean-up of the oil, and other general associated costs.

The receipt of this claim raised a fundamental issue for the Administrator: Does the definition of oil include those that are vegetable or animal? SOPF Administrators have considered the definition of oil under *CSA* part XVI and *MLA* part 6 does not cover such oils. This interpretation was maintained most recently in the mystery oil spill in Bassin Lanctôt, Sorel, Quebec, July 3, 1997, (as reported in the annual report for the years 1998-1999). In this latter case, the Crown decided not to pursue the claim, which involved a vegetable-based oil.

The Administrator engaged counsel and representations were made to the Crown to remove the SOPF as a party to the instant action based on the fact that the oil was vegetable-based. This position was accepted by the Crown and, on March 6, 2002, the Crown discontinued its action against the Administrator.

The latest information is that the Crown's action against the *Cape Benat* and the owners continues.

The Administrator closed his file.

3.20 Baltic Confidence (1999)

On February 26, 2002, national media reported that a Halifax court had, on the previous day, levied the highest fine ever imposed by a court on a ship polluting along the Atlantic coast of Canada. The fine was $125,000.

The fine was imposed on a 10,763 gross ton Filipino registered bulk carrier that, on December 22, 1999, was observed by a CCG helicopter and a private plane, illegally discharging an oily substance in Canadian waters of the Atlantic. The ship was approximately 85 nautical miles south-east of Halifax at the time. The slick was estimated to be some 20 nautical miles long, and to comprise a minimum of 850 litres of an oily substance.

The TCMS commenced an extensive investigation which involved cooperation with the USCG, Russian, Dutch, Finnish authorities and visits to the ship when she came back into Canada. The strong evidentiary package presented by the TCMS to the court led to a guilty plea by the shipping company.

The Administrator notes the potential serious consequences of such discharges. For example, at the time of the above court hearing it was also reported that biologists were examining some of more than 150 oiled birds washed up on the Canadian Atlantic shore in another marine oil dumping incident unrelated to the *Baltic Confidence*.

The Administrator closed his file.

3.21 Leonis (2000)

A local Newfoundland CCG ER report advised the Administrator of this incident. The *Leonis* is an Italian flag tanker and was engaged on February 23, 2000, in loading a cargo of crude oil at the Hibernia trans-shipment terminal of Whiffen Head in Come-By-Chance Bay, Newfoundland. It was reported that a tank air relief valve became stuck, causing the tank to become overpressurized and the loading hose to rupture. Some 18 barrels of oil were spilled but 17 of those were contained on the deck of the tanker.

The Response Organisation was employed to clean-up the oil in the bay and that ashore.

A subsequent TCMS report advised that the ship had been prosecuted for the spill and, on March 28, 2001, was fined $10,000.

The Administrator has closed his file.

3.22 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.

The Administrator has closed his file.

It should be noted that there was another similar incident, but rather more serious, involving this vessel the following year (as noted in 3.93). In this case, the name of this unregistered fishing vessel was recorded as *Miles and Sea.*

3.23 Ronald H Brown (2000)

A TSB Occurrence Report listed this 3,180 gross ton US flag oceanographic survey vessel as striking Hewitt Rock, Hiekish Narrows, in one of British Columbia's northern inside coastal passages, on April 23, 2000. Damage was reported as considerable and that a port side fuel tank was ruptured. The hole in the tank was, reportedly, plugged and the remaining fuel transferred. The vessel was able to proceed under her own power, escorted by a CCG cutter. It was stated that there was minimal pollution.

The CCG advised that, as Hiekish Narrows is an area of fast tidal streams and the amount of diesel spilled was minimal, it was impractical to mount any form of oil recovery action. The oil was allowed to dissipate naturally.

The Administrator has closed his file.

3.24 Sam Won Ho (2000)

Referring to an incident listed above at 3.10, a further escape of oil from this wreck, requiring the response of the CCG, took place on April 24, 2000. The CCG responded and, on December 6, 2000, the Crown presented a claim to the Administrator in order to recover their costs and expenses, stated to be $45,809.19. This was the second claim involving this wreck presented to the SOPF by CCG. In accordance with his responsibilities, the Administrator investigated and assessed the claim. The Administrator had concerns, mainly, on the questions of equipment charge-out rates and administrative charges. On this basis, he wrote to Crown counsel on February 8, 2001, finding $36,084.47 established and, at the same time, arranging to pay this amount, plus the appropriate interest of $2,343.53 noting that the CCG administrative charges were not established, and asking if CCG can justify this claimed cost. Subsequently, in February 2001, the Administrator agreed to meet with CCG officials to review how CCG arrives at administrative costs in schedule 13 of CCG claims.

On a separate, but related, issue, on July 14, 2000, the Administrator received a letter from the Mayor of the Town of Long Harbour and Mount Arlington Heights, the municipality covering the wharf at Long Harbour, the site of the wreck of the *Sam Won Ho.* The Mayor's letter explained the difficulties the town and towns-people faced due to the wreck. In essence, the Mayor requested the Administrator to examine if SOPF funds could be made available to remove the wreck. A similar letter was received by the Administrator on July 18, 2000, from the Long Harbour Development Corporation, based in Long Harbour, and a third letter was received on the same date from the Harbour Authority of Mount Arlington Heights. The Administrator reviewed the history of the wreck and legislation applicable to the issue. On August 16, 2000, the Administrator wrote to the Mayor, with copies to the other two authorities stating - in summary:

- section 710 *CSA* gives the Minister power to remove or destroy a ship where there is a pollution threat. If a claim were made on the SOPF for such actions, the Administrator would consider whether or not the measures taken and the costs and expenses are reasonable.
- wreck removal is governed by two Federal Acts, namely the *Navigable Waters Protection Act* and the *Fishing and Recreational Harbours Act.* Wreck removal and/or salvage are not concerns of the SOPF. The powers given in these two Acts may not be dependent on the questions of whether or not there is a pollution threat, and what are the measures necessary to counter it.

With respect to recovery action against the shipowner, the latest information on establishing ownership of this vessel is given in the resume on the previous incident (3.10). Justification by the Crown of its (CCG) administration costs (Schedule 13) in this claim and resolution of this issue in general remains outstanding.

3.25 Mystery Oil Spill - Port Cartier, Quebec (2000)

The CCG issued a Sitrep advising that oil pollution was found in the water between the Greek flag 81,120 gross ton bulk carrier *Anangel Splendour*, and the quay, alongside at Port Cartier, Quebec, on May 12, 2000, and extending some 200 metres ahead. There were two other vessel movements within the harbour over a similar period as the discovery of the oil spill.

Port Cartier is a private harbour of the Compagne Minière Québec Cartier (CMQC). The port authorities took charge of the clean up, in the presence of the CCG. The TCMS took oil samples. The oil resembled fuel oil and the quantity spilled was estimated at approximately 900 litres.

CMQC obtained a LOU from counsel for the *Anangel Splendour* to cover the costs and expenses of the clean up. It was stated that TCMS also required a LOU from the ship to cover any possible fine. The *Anangel Splendour* denied that she was the origin of the oil and sailed on May 15, 2000.

On January 31, 2001, the Administrator received a claim from the Crown on behalf of the CCG to recover their costs and expenses, stated to amount to $4,076.08. The claim has been assessed. However, an offer of settlement is being withheld pending results of the investigation into the origin of the spill.

In the meantime, counsel for CMQC submitted a claim on behalf of that port company, amounting to $249,137.31, stated to have been incurred by them cleaning-up the oil pollution in this incident. The claim was received by the Administrator on April 30, 2001. On July 27, 2001, a further claim was received from counsel for CMQC amounting to an additional $10,878.08, stated to be for the recovery of their legal fees in connection with this incident.

The Administrator wrote to CMQC's counsel on November 28, 2001, with a list of questions which had arisen in his investigation and assessment of the claims. Replies to these questions were received on March 22, 2002, and at the same time corrected a stated error in one of the invoices submitted in the claim, increasing the claim by a further $1,746.63.

A key issue in this case is whether or not the oil came from a shore-based operation. It was reported that over a similar time frame to the incident, Environment Quebec was investigating a source of contamination coming from ashore in Port Cartier.

It is noted that the Administrator may be liable for ship-source and marine mystery oil spills. However, there is no liability where the Administrator has been able to establish that the occurrence that gave rise to the damage was not caused by a ship.

The Administrator's investigation continues.

3.26 Tahkuna (2000)

There was a diesel oil spill from this 846 gross ton Estonian flag fishing vessel during refueling from a road tanker while the vessel was alongside at Harbour Grace, Newfoundland, on June 7, 2000. Weather was poor at the time with steady rain and wind gusting to 30 knots. The ship's agent contracted with the Eastern Canada Response Corporation (ECRC) and the ECRC responded with labour and materials. The CCG was in attendance. After sounding the tanks involved, both on the vessel and the road tanker, it was concluded that about 1000 litres had been spilled.

TC advised that charges were laid against the *Tahkuna* for infractions of the Oil Pollution Regulations and, on April 27, 2001, the vessel was found guilty with a fine of $20,000 being imposed.

3.27 Taurus (2000)

The CCG advised that this 1,020 gross ton Estonian fishing vessel had been involved in an oil spill when alongside at Argentia, Newfoundland. The incident took place during the morning of June 8, 2000, when refueling from a road tanker. The vessel did not have an arrangement for clean up with a response organization. The ship's agent signed a letter for the CCG to respond.

The CCG provided labour and materials and cleaned-up the spill, which quantity was stated to be about 200 litres.

TCMS advise that on April 6, 2001, fines were imposed in a Newfoundland Court: For the spill - $9,000.00 and, for not having an arrangement with a response organization - $3,000.00.

3.28 Ermelina (2000)

This is a 39 gross ton Canadian fish packing/transfer vessel. The TSB advised that on June 18, 2000, she reported taking on water in the engine room when off Oyster River, on the east coast of Vancouver Island, British Columbia. CCG vessels responded and transferred pumps to the vessel to enable the crew to control the water intake. It was reported that in the pumping process "not more than 15 litres of oil had been lost overboard".

As part of a SAR response, one of the CCG vessel towed the *Ermelina* to the safety of Campbell River harbour the same day. The Administrator closed his file.

3.29 Mystery Oil Spill - Vancouver Harbour, British Columbia (2000)

On September 12, 2000, the Vancouver Port Authority (VPA) wrote to the CCG requesting assistance in order to present a claim for oil pollution clean up to the SOPF. Accordingly, on November 20, 2000, the SOPF received the CCG's letter passing on the VPA's letter. On November 24 and 30, 2000, and January 17, 2001, the Administrator wrote to the VPA requesting the submission of a formal claim, and providing a list of typical information necessary to consider such a claim.

The claim on the SOPF from VPA was received by the Administrator on January 23, 2001, and amounted to $20,375.80. The claim covered the clean up of oil found on the water at Seaboard Terminal, North Vancouver, British Columbia, on June 20, 2000. It was termed a mystery spill.

The Administrator in investigating and assessing this claim, requested information from VPA on February 13, 2001, to which the VPA responded on March 12, 2001. On March 30, 2001, the Administrator requested additional information and documentation, to which a reply was received from VPA, their letter dated July 23, 2001.

Following an investigation, the Administrator made an assessment of the claim and found, principally, that some of the handling charges for payments of subcontractors' invoices were not established. On this basis, on October 4, 2001, he made a settlement offer to VPA of $17,953.31, plus the appropriate interest of $1,883.15. This offer was accepted by VPA on October 9, 2001. A Release and Subrogation document was signed on behalf of VPA on October 23, 2001, and a cheque for the total amount of $19,836.46 was sent by the Administrator to VPA on October 25, 2001.

In spite of a detailed investigation into the oil spill, it proved impossible to determine its origin. It was therefore accepted as a mystery spill. The Administrator closed his file.

3.30 Un-named vessel - Fanny Bay, British Columbia (2000)

The SOPF was advised by the CCG Claim Status Report dated December 31, 2000, that a claim would be submitted by the Crown to the Administrator seeking recovery of the CCG costs and expenses connected with this incident.

The vessel, apparently un-registered, un-licensed and un-named, is a wooden planked pleasure craft made by Chris-Craft of approximately nine metre in length. On July 13, 2000, the owner of an oyster farm in Fanny Bay (just south of Comox, east coast of Vancouver Island) telephoned DFO in Comox and advised that the craft, tied to a mooring buoy, had sunk and was leaking diesel. The CCG vessel *Kestrel 1* and an ER crew responded. On July 14, 2000, absorbent booms and pads were deployed as an initial measure. Commercial divers were used later to close off fuel valves and plug leaking oil pipes and vents. After patching a hole in the hull, the craft was refloated. On a return visit by ER personnel the day following refloating, the craft was found to have disappeared.

The Crown submitted a claim, amounting to $2,882.15, to the Administrator and received by him July 9, 2001. The Administrator found $2,569.59 of the claim established and offered to pay this amount, plus interest of $226.28. The settlement was accepted and arrangements made to transfer the amount of $2,795.87 on August 23, 2001.

After consideration of the circumstances of the ownership and the craft herself, the Administrator decided that it would not be reasonable (within the meaning of section 87 *MLA* (3) (d)) to take recovery action, unless the situation changed.

The Administrator closed his file.

3.31 Radium 604 (2000)

This incident refers to the same tug and barge train (*Radium Yellowknife* and tow) referred to in incident number 3.17 above.

As indicated in 3.17 above, it was reported that the tug and barge train were previously refused permission by TCMS to continue transit of the Arctic, because it was too late in the season. The barges were beached until more favorable conditions could be expected.

A CCG Sitrep of July 17, 2000 advised that on July 15, 2000, this 320 gross ton Canadian barge beached in Iqaluit, Nunavut, was found to be leaking diesel fuel.

It was reported that the barge leaked an estimated 10 litres of diesel from a crack in the underside of the hull. Then it was reported that the leak increased to approximately 100 litres per hour, onto the beach. The leak was temporarily plugged. The CCG contracted to have the remaining 46,000 litres of diesel in the *Radium 604* transferred to secondary storage.

The CCG emergency response officers (ER) were expected on site on July 17, 2000, to assume the role of Federal monitoring officer. The Iqaluit beach master was on scene for CCG until ER personnel arrived on site.

The owner of the barge is stated to have accepted responsibility for the spill and sent representatives to the site.

The Administrator believes it unlikely that a claim will now result to the SOPF as a result of this incident. The Administrator has closed his file.

3.32 Hiawatha (2000)

The TSB reported that, on July 26, 2000, this 46 gross ton Canadian ferry sank at the Parliament slip, Toronto harbour, causing minor diesel oil pollution. It was suspected that vandalism was the cause.

The Administrator has received no further information on the incident and has closed his file.

3.33 Skaubryn (2000)

The SOPF received a report that there was an oil spill at Seaboard Terminal, North Vancouver, British Columbia, the spill being found late evening August 3, 2000. Two ships were berthed at the terminal, the *Skaugran* and the *Skaubryn*.

Early on August 4, 2000, the VPA responded to the spill and tasked local contractors for clean up. Later that forenoon the VPA determined the spill was sufficiently large to transfer overall responsibility for the clean-up to the CCG. TCMS, CCG and EC investigated the circumstances of the origin of the spill. Samples from the spill and ships in the vicinity were taken.

The CCG Claim Status Report dated December 31, 2001, notes that the Crown presented a claim totaling $87,521.98 to the shipowner on August 20, 2001.

The Administrator awaits development.

Vancouver Harbour Incidents

Following the oil found off the Seaboard Terminal, North Vancouver, August 3, 2000, the VPA presented a claim to the SOPF for its response. A number of vessels in the harbour also reported oil contamination. The cause of these incidents and their connection, if any, with the Seaboard Terminal incident, is under investigation by the Administrator. These incidents are reported as 3.34 to 3.42 inclusive, following.

3.34 Vancouver Port Authority (2000)

The VPA submitted a claim to the SOPF for its response to the above incident on August 4, 2000, which was received on March 14, 2001, amounting to $13,007.72.

On July 20, 2001, VPA counsel wrote to the Administrator:

- advising that the VPA was submitting its claim, together with that of the CCG, directly to the shipowner (*Skaubryn*);
- requesting that, in the meantime, the Administrator hold the VPA claim against the SOPF for this incident, in abeyance.

On August 2, 2001, the Administrator replied to VPA, agreeing to hold the claim in abeyance but noting that he reserved all his rights. The Administrator awaits developments.

3.35 Trophy 13K112086 (2000)

The 13K112086 is a 3 metre, open, fiberglass pleasure craft of the model name "Trophy". A company with the name of Ocean Fisheries of Vancouver, on October 5, 2000, wrote to the TC/CCG in Richmond, British Columbia, enclosing photographs of the boat soiled with oil, which soiling was stated to have taken place in "July, 2000". Also enclosed were two original invoices dated August 24 and September 6, 2000, respectively, totaling $331.22 for removal of the oil stains from the hull of the craft and for the supply of replacement mooring lines and fenders. It was stated that the boat is owned by an employee and moored at the company dock at Commissioner Street, Vancouver, at the time of the soiling. The company advised that some of their commercial boats were also soiled but, being steel, they were able to be cleaned by the company. Although not stated, the letter of October 5, 2000, would appear to seek recompense.

The Ocean Fisheries letter was forwarded by the CCG to the Administrator and received by him on July 12, 2001. The Administrator wrote to Ocean Fisheries on July 30, 2001, requesting that, if the person who had suffered the pollution damage wished the letter and invoices to be a claim against the SOPF, then to confirm his claim in writing. At the same time the Administrator enquired if the company had any samples of the oil involved.

No written reply was received from Ocean Fisheries but, on August 15, 2001, the Administrator had a telephone conversation with the person responsible for Fleet Operations of the company. In the conversation it was stated that a company employee did have a sample of the offending oil and that it could be provided. The Administrator reiterated that he awaited a claim and that he would then make arrangements regarding the oil sample.

At the end of the fiscal year no further communication from Ocean Fisheries had been received. In the meantime, the Administrator sent a reminder to Ocean Fisheries Ltd., requesting that its employee confirm whether or not he wishes to make a claim.

3.36 17' speedboat (2000)

An individual submitted a claim to the CCG, on August 29, 2000, amounting to $500.00, for cleaning his boat of oil. The claim was passed to the Administrator and received on November 21, 2000. The Administrator wrote to the individual on November 24, 2000, requesting confirmation that he wished to make a claim against the SOPF. The individual replied on December 4, 2000, in effect, confirming his claim against the SOPF. The Administrator commenced his investigation and assessment of the claim. On March 30, 2001, the Administrator wrote to the owner requesting substantiation for the individual amounts making up the claim.

3.37 Leedon (2000)

This is a private, small, motor yacht. The yacht was moored in a marina on the south side of Vancouver Harbour, in a downtown location when, on August 9, 2000, the owner contacted the CCG with respect to the craft having been found to be oiled. The exact time and date of the oiling was not stated. On October 8, 2000, the owner submitted a claim to the CCG for $298.65, which claim covered hauling-out, power washing and repainting the affected part of the hull. The claim was passed to the Administrator by CCG and received by him on November 21, 2000. The Administrator wrote to the owner on November 24, 2000. He provided the owner with information to assist with the presentation of a formal claim to the SOPF. The owner submitted a formal claim to the SOPF with supporting documentation and information. It was received on January 11, 2001.

The Administrator investigated and assessed the claim. Shortly after the fiscal year end the Administrator paid the claim in full, together with interest of $16.01, but continues to assess his recovery action options.

3.38 Burrard Clean #17 (2000)

This is a 447 gross ton Canadian registered barge owned and used by the local response organization Western Canada Marine Response Organization (WCMRC). On August 15, 2000, the owner submitted an invoice to the CCG for $2,542.35 to recover their

stated costs due to the oiling of the off-duty, moored, barge in Vancouver Harbour. The CCG passed the invoice to the Administrator, which was received by him on November 21, 2000. The Administrator sent an acknowledgement to the WCMRC on November 24, 2000, and information to assist in submitting a claim to the SOPF was sent by him on November 30, 2000. The claim was received from the WCMRC on December 27, 2000, and duly investigated and assessed. Further information was obtained from WCMRC and third party sources respecting aspects of the claim. The Administrator found a number of individual items were not established within the meaning of the *CSA* and, on February 27, 2001, he offered $1,333.93, plus the appropriate interest, in settlement. WCMRC disputed some of the Administrator's assessments, but on March 20, 2001 they accepted the offer and provided a duly signed release and subrogation document. On March 22, 2001, the Administrator arranged to pay the amount of $1,333.93, plus $70.27 interest, in full and final settlement.

The Administrator notes that in this case the claim under section 710 *CSA* was made by WCMRC *qua* shipowner and not as a response organization (RO) under the *CSA*. Generally, an RO as defined in the *CSA* has no direct claim against the SOPF under section 710 but it can assert a claim for unsatisfied costs and expenses after exhausting its right of recovery against the shipowner, pursuant to section 709.

The Administrator continues to assess his recovery action options.

3.39 Island Provider (2000)

Another claim involving oil pollution in Vancouver Harbour was made by the owner of this 35 gross ton Canadian wooden fishing vessel. The owner stated that the vessel was delivering salmon to a company located in downtown Vancouver when, during the early hours of August 5, 2000, the hull, mooring ropes and floats became coated with oil. The owner presented a claim to the CCG for the amount of $4,415.89, on October 6, 2000, to recover its stated, costs and expenses in the incident. In turn this was passed to the Administrator on November 21, 2000. The Administrator acknowledged the correspondence on November 24, 2000 and provided information to the owner on November 30, 2000, to assist in making a claim on the SOPF. Telephone discussions with the owners followed. The Administrator investigated the circumstances of the claim and the alleged oiling. To date no claim on the SOPF has been received from the owner.

3.40 Silver Bullit (2000)

This vessel is a family owned and operated 7 metre aluminum workboat engaged in boom repair, water taxi engagements and other tasks. The boat was working by the B.C. Sugar Company dock on the south side of Vancouver Harbour on August 4 and 5, 2000, when the hull and engine cooling system were stated to have become oil contaminated. The owner wrote the CCG on August 10, 2000, indicating a wish "to register a claim for damages against the deep-sea vessels" causing the oil contamination, at that time estimated at $8,500.00. This correspondence was passed by the CCG to the Administrator on November 21, 2000. The Administrator acknowledged receiving the correspondence on November 24, 2000. The Administrator wrote again on November 30, 2000, asking the owner for written confirmation that he wished to make a claim on the SOPF and, at the same time, providing information as to how to make such a claim. The owner telephoned the Administrator on December 6, 2000, indicating that he intended to make a claim.

A follow-up telephone call was made by the SOPF to the owner on February 7, 2001, but, to date, no claim and supporting documentation has been received by the Administrator.

3.41 Georgie Girl (2000)

The *Georgie Girl* is a 8 metre fiberglass pleasure motor yacht and was moored at a marina on the south side of Vancouver Harbour, when the hull and fenders became oil coated at a date and time, which is not exactly identified. The owner contacted CCG on August 9, 2000, regarding the incident. The owner filed a claim with the CCG on September 18, 2000, amounting to $217.86 to cover the cleaning and replacement costs involved. The correspondence was passed to the Administrator by the CCG on November 21, 2000. The Administrator acknowledged the correspondence from the owner on November 24, 2000. Information as to how to file a claim against the SOPF was sent to the owner on November 30, 2000. The owner submitted a claim to the Administrator in the amount of $217.86, which was received on January 9, 2001. At the fiscal year's end the Administrator made arrangements to pay the claim in full, together with $12.20 interest, thus closing this claim file. A Release and Subrogation Agreement in favour of the Administrator was executed and delivered by the owner on April 10, 2001.

The Administrator continues to assess his recovery options.

3.42 Prosperity (2000)

This is a 96 gross ton Canadian registered aluminum fishing vessel. On September 13, 2000, the Administrator received a claim, amounting to $54,794.29, from the owner, stated to be the costs incurred by the vessel in dealing with the oil pollution encountered during the morning of August 4, 2000. At the time of the incident the vessel was at a dock in downtown Vancouver unloading sardines, when the hull became oil contaminated. The owner cautioned that further costs could be incurred in removing the oil impregnated into the aluminum hull, which oil could not initially be removed by normal cleaning.

The Administrator investigated and assessed the claim, in the process of which he employed local counsel. The claim raised a number of concerns with the Administrator including the charges stated to have been incurred by the shipyard, fishing time lost, crew wages, fuel costs, owners charges and other, lesser, items. Another issue was the question of the owner's legal fees. The legal expenses claimed were rejected.

Following a number of negotiations with the owner on the contentious items, on February 14, 2001, SOPF counsel confirmed to the owner a full and final settlement offer by the Administrator of $27,172.88, plus $1,239.34 interest. On February 22, 2001, SOPF counsel advised that the owner had signed the release and subrogation document. On the same day, February 22, 2001, a cheque in the amount of $26,924.22 was passed to the owner. On receiving the necessary evidence of payment to the crew, the final cheque of $1,488.00 was made available to owner after the end of the fiscal year. This payment completed the settlement of this particular claim and the Administrator closed his file on the claim aspect.

The shipowner had provided a sample of the oil that damaged the vessel. The Administrator sent the sample for analysis and comparison with samples taken from the spill at Seaboard Terminal reported at 3.33 above. The Administrator continues his investigation into the origin of the oil, for the purpose of possible recovery action.

3.43 Margie (2000)

The TSB reported that, on August 22, 2000, this small Canadian gillnetter was abandoned by her crew when in Porpoise Harbour, off Port Edward, Prince Rupert, northern British Columbia. The *Margie* sank and leaked diesel of which, it was stated, there was a minimal amount aboard.

Hearing no more concerning this incident, the Administrator has closed his file.

3.44 Bivalve Harvester (2000)

Another minor pollution incident brought to the attention of the Administrator by the TSB, was the sinking on September 25, 2000, of this small Canadian barge *Bivalve Harvester*. It was reported that the barge capsized while loading in Trevenen Bay. This is an area on the mainland of the west coast of British Columbia which is reported to have many marine farm facilities.

It was reported that two people on the barge were able to step ashore as it capsized and a third fell into the water but was quickly recovered. The barge leaked a small amount of fuel.

The Administrator has heard no more concerning this incident and has closed his file.

3.45 Flying Swan VI (2000)

This was a 63 gross ton wooden Canadian fishing vessel. The CCG issued a Status Report advising that the *Flying Swan VI* was found capsized on October 1, 2000, by two other fishing vessels. The position was some 30 nautical miles SW of Yarmouth, Nova Scotia, south of the entrance to the Bay of Fundy. About 1 metre of the hull was showing above the sea and, with the agreement of those concerned, it was decided that the best option was to sink the wreck. By October 2, 2000, the upturned vessel had drifted to a suitable site for disposal and was sunk by a CCG vessel. Minor pollution was released, there being an estimated 4,500 to 9,000 litres of diesel oil remaining on board at the time of sinking.

Later the TSB issued a report stating that a power block jammed while hauling a seine net aboard with a catch of fish, contributing to the capsize. Six crew were rescued and one died.

3.46 Keta V (2000)

Keta V was a 236 gross ton Canadian registered tug used in support of dredging operations. Overnight October 3/4, 2000, the *Keta V* when on passage grounded on rocks in Liverpool Harbour, Nova Scotia. The tug refloated and went to anchor, where she sank. All seven crew members abandoned into a life raft and were rescued. It was stated that there was approximately 27,000 litres of diesel fuel aboard. There is a large salmon fish farm about one-half mile from the wreck position. The CCG and EC, among others, were dispatched to the scene. During October 4, 2000, divers were employed to plug the fuel tank vents and a containment boom was deployed. The nearby fish farm was boomed. Efforts were made to recover oil from the wreck. Weather conditions remained adverse and the wreck received more damage as it pounded the bottom. The CCG ordered the owners to remove the wreck. On October 23-24, 2000, salvors attempted to raise the wreck using a crane and lift bags, but were unsuccessful. After additional preparations, the contractor could not raise the vessel on November 11, 2000. By this time, the wreck was so badly damaged that there were not enough watertight compartments to assist provision of positive buoyancy. Severe adverse weather continued, and it was necessary to revise the original plan to raise the *Keta V*. On January 15, 2001, to a new, agreed plan contractors commenced removing all components, which may be contaminated with oil. This removal task was completed on January 19, 2001, and, approved by the authorities. Further work ceased. It was intended that an underwater survey of the remains of the wreck would be made in the Spring of 2001 to ensure no other threat of pollution existed.

The December 31, 2001, CCG Claims Status Report noted that the CCG costs and expenses for this incident were $29,808.89 and that this claim amount was submitted to, and paid in full on November 30, 2001, by the shipowner. The Administrator closed his file.

3.47 Atlantic Birch (2000)

A CCG report advised that this 827 gross ton Canadian tug spilled diesel while refueling at Courtney Bay Berth No. 1 in Saint John, New Brunswick, on October 20, 2000. The owners responded to contain and clean-up the spill. The TCMS reported that the tug was fined $10,000 on May 2, 2001, for infractions of the Pollution Regulations.

It was stated that the cause of the spill was the high rate of filling when a tank was almost full and deck scupper plugs, designed to prevent a spill on deck going into the water, leaked. Some 55 litres of diesel was reported to have been spilled.

The Administrator has heard no more concerning this incident and considers that any claims against the SOPF are unlikely and has closed his file.

3.48 Kent Express (2001)

Again a CCG report advised the Administrator of another spill in Saint John harbour. The incident involved this13,020 gross ton Barbados flag container ship that, on January 13, 2001, was stated to have pumped 15 litres of sludge oil overboard. The TCMS subsequently advised that the ship was fined $10,000 for the offence.

The Administrator was informed that any claim from the CCG in this incident is unlikely. He considers that any other claims against the SOPF are unlikely and has closed his file.

3.49 Cicero (2001)

This is a 10,919 gross ton Canadian registered, British owned, ro-ro ferry operating between Montreal, Quebec and St. John's, Newfoundland.

The CCG reported that, on February 5, 2001, there was a bunker oil spill from the vessel when she was alongside at Section 66, Montreal harbour. A crack was found in the hull. Local contractors were employed on behalf of the ship to effect the clean-up, monitored by the CCG.

The CCG stated that their costs and expenses would be billed to the operators of the ship.

The Administrator has heard no more concerning this incident and, as he does not consider it likely that claims will be forthcoming to the SOPF, he has closed his file.

3.50 Marsha Dawn II (2001)

This is a 14 gross ton Canadian fiberglass fishing vessel of typical open after cockpit construction. On February 7, 2001, the vessel was found sunk at her moorings in St. Andrews Harbour, New Brunswick. It was stated that a small amount of diesel had been spilled. CCG ER personnel attended the site to ascertain the pollution situation. Subsequently, the CCG stated that expenses in this connection were minimal and there would be no cost recovery action from that organization.

The Administrator has heard no more of the incident and as he considers it unlikely that the SOPF will receive a claim, he has closed his file.

3.51 Sandy S (2001)

The issuance by the CCG of a Sitrep advised the Administrator of this incident and, thus, the potential for a claim against the SOPF.

On February 9, 2001, the 13 gross ton Canadian wooden fishing vessel, built in 1947, sank alongside in Prince Rupert Harbour, British Columbia. The local DFO Small Craft Harbour personnel provided initial response to the sinking. The sinking resulted in the release of some of the approximately 900 litres of diesel fuel aboard. The owner stated he would obtain help from friends to raise the vessel. This did not happen, forcing the CCG to act. On February 13, 2001, the CCG sent a letter to the owner advising him that, pursuant to the *CSA*, they held the owner responsible for all costs and expenses incurred by the Canadian government in the sinking of the *Sandy S.* The owner stated he had no funds available to salvage the vessel. The owner signed a letter undertaking to be responsible for all costs and expenses incurred by the Canadian authorities under sections 677 and 678 *CSA*. On February 13, 2001, under contract to the CCG, salvors raised the vessel and removed the remaining oils aboard. The vessel was then towed to the Osborne Burn Site where it was to be temporarily beached.

This concluded the CCG ER's involvement with the *Sandy S.* The Administrator notes from the CCG Claims Status report dated December 31, 2001, that the Crown has submitted to the owner on October 26, 2001, a claim amounting to $9,677.30, to recover the CCG's costs and expenses in the incident.

3.52 Cartierdoc (2001)

During the afternoon of February 27, 2001, the chief engineer of this 18,531 gross ton Canadian Great Lakes bulk carrier advised the local office of TCMS that this vessel had been involved in an oil spill. The *Cartierdoc* was laid-up for the winter at berth M2, in Montreal Harbour. TCMS, CCG, EC, the Port Authority and the master, responded. The owners contracted for the clean-up. During the winter lay-up, as routine, the engine room bilges were pumped on a regular basis. It was reported that as well as the bilge water, an estimated 1,100 litres of diesel and lubricating oils had been pumped overboard. The thick ice, fast around the vessel, and in a current free berth, had held the oil. Holes were drilled in the ice and most of the oil was recovered. It was stated that an oily water separator aboard the *Cartierdoc* had malfunctioned.

The clean-up operation was monitored by the CCG. The CCG Claims Status Report of September 30, 2001, notes that the Crown's claim amount of $5,527.97 was settled in full by the shipowner on September 26, 2001.

TCMS laid charges against the ship for infraction of the Oil Pollution Regulations on April 4, 2002. The case was first heard on April 18, 2002, at which the owner has pleaded "not guilty". The case was adjourned until June, 2002.

The Administrator considers it unlikely that he will receive a claim as a result of this incident and has closed his file.

3.53 Vancouver Sunset (2001)

The TSB reported that, on March 4, 2001, this Canadian 36 GT yacht sank at the Plaza of Nations mooring facility, False Creek, Vancouver, British Columbia. It was stated that there was no pollution and that the vessel was refloated, although with extensive water damage.

The Administrator has closed his file.

3.54 VT No. 30 (2001)

Another incident, reported to the SOPF by the TSB was the sinking of this barge. The VT No. 30 was reported to have sunk, on March 10, 2001, at the Government dock in Alert Bay, British Columbia. At the time the 355 GT Canadian barge had a crane on deck which slid off and sat vertically on the bottom. The barge and the crane were recovered without oil pollution. The diesel engine driven crane had been specially fitted with anti-theft caps on the fuel access pipes, which prevented leakage.

The Administrator has closed his file.

3.55 Daviken (2001)

This is a 23,306 gross ton Bahamian flag ore carrier. On April 1, 2001, after exiting Eisenhower Lock, US Seaway, upbound a small quantity of oil was found in the lock. The ship was informed and arrangements made for her to be inspected at the next lock, Iroquois, in the Canadian Seaway. In the meantime the ship had taken action in removing oily water from the rudder post compartment and tightened the rudder post gland. On inspection by TCMS in Iroquois no oil leakage was found and the ship was allowed to proceed.

There was no SOPF involvement in this incident and the Administrator has closed his file.

3.56 Utviken/Provmar Terminal (2001)

A report was received at the SOPF that there had been a collision in Hamilton harbour, Ontario, with potential for oil pollution. On inquiry it was found that, on April 1, 2001, the 17,191 gross ton Bahamian flag ore carrier *Utviken* had struck the 982 gross ton Canadian refueling vessel *Hamilton Energy* and continued on hitting and holing the 4,710 gross ton Canadian fuel storage barge *Provmar Terminal* in the engine room. It was reported that the *Hamilton Energy* suffered damage to her rudder and propeller. The *Provmar Terminal's* stern sank in some 12 meters of water but it was reported there was no oil pollution, as the loose oil in the sunken ex-tanker had been contained in the flooded engine room. The *Utviken* had suffered holing to her bulbous bow; it was reported that she had experienced engine problems while manoeuvering. The *Provmar Terminal* was raised on April 3, 2001. Pollution throughout was minor and all contained within the booms.

Jurisdiction in the harbour was under the Hamilton Harbour Commission (since, Hamilton Port Authority). Neither the CCG nor SOPF was directly involved.

The Administrator considers it unlikely that he will receive a claim as a result of this incident and has closed his file.

3.57 Destiny 1 (2001)

A CCG Status Report advised the Administrator that on April 10, 2001, the 196 gross ton Canadian charter passenger vessel *Destiny I* caught fire while moored at Granville Island, Vancouver. The vessel was used for dinner cruises. A CCG craft and the Vancouver fireboat responded. Later the decision was made to tow the damaged hull to a mooring buoy at Kitsilano, Vancouver. CCG put contractors on stand-by in case of need. The vessel was stated to have had 1,300 litres of diesel fuel aboard and CCG ER personnel took the opportunity to plug the two fuel tanks to help minimize the risk of pollution.

Later the following day, April 11, 2001, the *Destiny I* sank at the Kitsilano mooring buoy. A representative of the insurers arrived on scene and declared the vessel a total loss. The CCG advised the owner of his responsibilities under the CSA, to remove the pollutants and the vessel.

The CCG instructed their SAR vessel crews to check the wreck periodically. There has been no pollution reported. On April 12, 2001, the *Destiny I* was raised and moved ashore. Precautions were taken to ensure that no pollution was caused during the dewatering of the hull.

The CCG advised that their claim to recover their costs and expenses has been submitted directly to the shipowner.

The Administrator awaits developments.

3.58 Scarab (2001)

A CBC TV station in St. John's, Newfoundland, reported that, on April 19, 2001, a cargo ship left that port trailing oil. It subsequently transpired that the ship was the 3,136 gross ton Cayman Island flag multi-purpose cargo ship *Scarab;* and, in fact, had sailed from Botwood, Newfoundland. It was reported that she was carrying paper at the time. The oil was spotted coming from the ship at sea about 65 nautical miles SE of St. John's by a DFO surveillance plane. The slick was noted to be approximately 2 kms long by 100 meters wide. The *Scarab* was en route to Alexandria, Egypt, at the time.

The TCMS reported the occurrence to the Egyptian authorities in accordance with agreed Port State Control procedures, with the request that they board the ship on her arrival.

The Administrator has closed his file.

3.59 Joe's Salmon Lodge (2001)

This is an unregistered 300 gross ton accommodation barge which, on April 24, 2001, sat on a log at low tide and, holed, the barge sank. The barge was moored at Mitchell Island, in the North Arm of the Fraser River, British Columbia, at the time.

The TSB, who reported the incident, stated that there was no pollution but that the barge was extensively damaged.

The Administrator has closed his file.

3.60 Egret Plume II (2001)

A CCG Status Report advised the Administrator that this 25 gross ton Canadian wooden craft, registered as a yacht, sank in the Small Craft Harbour at Ladysmith, British Columbia, on April 26, 2001. Ladysmith is on the east coast of Vancouver Island, about 20 miles south of Nanaimo. The craft had been built in 1931.

It was reported that the *Egret Plume II* had recently refueled and had an estimated 660 to 1,100 litres of diesel aboard. A contractor deployed booms and absorbent pads. The next day, April 27, 2001, the CCG ER personnel arrived on scene and assumed the OSC role.

The owner, residing in Victoria, stated he had no money and did not take an active role in responding to the situation. The craft received a damaged bow in the sinking and was considered to have little or no value.

On April 28, 2001, the CCG contracted to have the craft removed from the water and placed on a trailer in the Small Craft Harbour's property. No further pollution was released in this operation.

The CCG Status Report of December 31, 2001, notes "claim to be submitted to shipowner". The Administrator awaits developments.

3.61 Canadian Transfer (2001)

The TSB reported that on May 14, 2001, this 16,353 GT Canadian Great Laker, loaded with salt, struck bottom with considerable damage. The vessel was down-bound at the time and just to the west of Goderidge Harbour, Lake Huron, when she left the prescribed channel. No pollution was reported.

3.62 Mokami (2001)

This vessel is a 3,015 gross ton Canadian tanker. The MCTS reported to CCG ER that, on May 17, 2001, there had been a spill of diesel in St. Lewis harbour, Labrador, involving the *Mokami* while the tanker was transferring fuel to a shore tank. It was estimated that 200 litres had been spilled. The *Mokami* sailed.

The same day, the mayor of St. Lewis complained to the CCG that the spill was not being cleaned-up. The CCG explained to the mayor that if the pollution was ship related, then the ship was responsible for the response, with the CCG in a monitoring role. In the afternoon the shipowner informed the CCG that they were on site and mounting a response. In calm sunny conditions a surveillance flight was made over the area later the same day, May 17, 2001, and observed a slick of oil 15 miles by 100 meters.

The mayor of St. Lewis informed EC that the fuel had leaked from a pipeline to shore oil storage tanks. The mayor confirmed, on May 18, 2001, that the clean-up was progressing satisfactorily with most of the oil removed from the water surface and that booms with absorbents were in place at the wharf.

CCG and EC, together with provincial officials, planned a follow-up to the incident to assess damage, and timeliness and effectiveness of the clean-up.

No further reports on the incident have been received by the Administrator and as the cause of the spill does not appear to be ship source, he has closed his file.

3.63 Purple Rain (2001)

The TSB reported that on May 31, 2001, the 10 GT Canadian fishing vessel sank when arriving under escort into Cap-aux-Meules harbour, les Îles-de-la-Madeleine, Quebec. The vessel was declared a constructive total loss after being salvaged. There was no report of oil pollution.

3.64 Scotia Prince (2001)

The TSB reported that this 5,005 GT Canadian passenger ferry , on June 17, 2001, struck bottom while departing Yarmouth, Nova Scotia, and breached a double bottom fuel tank. At the time the CCG Response Organisation in the Maritimes was not made aware of the incident. No oil pollution was reported.

3.65 St. Martins Wharf (2001)

St. Martins is a small community on the north shore of the Bay of Fundy about 45 kms east of Saint John. The TSB reported that, on June 19, 2001, two Canadian fishing vessels were afire at the town wharf; the 13 gross ton *Tanya Jane I* and the 14 gross ton *Miss Denette*. The wharf was also fire damaged. The CCG ER sent a representative to the scene to ensure any pollution was contained.

The Administrator has heard no further information on the incident. He considers it unlikely that the SOPF will receive a claim and has closed his file.

3.66 Joggins Wharf (2001)

Joggins is a village of approximately 570 inhabitants and, again, is situated on the Bay of Fundy but, in this case, is in Nova Scotia, towards the eastern head of Chignacto Bay. Joggins was served by a timber constructed government wharf, five kilometers from Joggins, at a place called Two Rivers but commonly know as Joggins Wharf.

On July 3, 2001, a truck on the wharf and three lobster boats at the wharf caught fire and were destroyed. The boats were of the standard fiberglass open aft cockpit design, approximately 13 meters in length.

The CCG ER responded by providing monitoring and advice on the pollution threat.

The wrecks of the three boats were pulled higher up on the shore, then broken up and disposed-of in a landfill site. It was later stated that a barge was being used to replace the wharf and that the police concluded that the fire had originated in one of the lost boats. Total damages were estimated to be in excess of half million dollars.

The Administrator does not expect to receive a claim on the SOPF for this incident and has closed his file.

3.67 Mellisa Desgagnes (2001)

Another incident, which came to the Administrator's attention from one of the TSB Daily Occurrence Reports, involved the 4,488 GT Canadian bulk carrier *Messila Desgagnes*. It was stated that, on July 14, 2001, while departing Port aux Basques, Newfoundland, the vessel struck bottom sustaining damage to the propeller. The vessel returned to the dock and divers detected a small leak An oil boom was deployed. Most propeller shafts are oil lubricated. The CCG ER in Newfoundland was not made aware of the incident at the time.

The Administrator considers it unlikely that he will receive a claim as a result of this minor oil pollution incident and has closed his file.

3.68 Tadoussac Marina (2001)

On December 7, 2001, the Administrator received a claim from the Municipalité de Tadoussac, Tadoussac, Quebec, for $2,195,00 covering the costs of the local fire brigade responding to a spill of gasoline from a boat in a local marina on July 16, 2001.

The Administrator commenced an investigation and found that the incident involved a 9 gross ton Canadian pleasure motor yacht *L'Ance L'Eau*. The marina fuel depot attendant, with the boat owner on site, commenced refueling into a fuel filling deck fitting no longer connected to a fuel tank. An estimated 67 litres of gasoline went directly into the engine room of the yacht and some gasoline automatically pumped into the harbour. Parks Canada requested the local fire brigade to respond to the incident because of the danger caused by the spill.

Having carefully examined the circumstances, on April 3, 2002, the Administrator wrote to the municipality, rejecting the claim. It was considered that the measures taken were not to prevent, counter, repair or limit to the minimum the damages from contamination resulting from the spill but, rather, taken to minimize the risk of explosion or fire resulting from the gasoline spill. The Administrator suggested that the claim should be more correctly addressed to those who requested the service, or those who benefited from the service.

The Administrator closed his file.

3.69 Zodio (2001)

The TSB reported this 19,867 gross ton Maltese flag bulk carrier broke adrift from her moorings in high wind and strong current conditions in the Port of Churchill, Manitoba, early morning on July 27, 2001. The vessel ran aground and damaged three water ballast double bottom tanks. The *Zodio* was partially loaded with grain at the time having stopped loading for the night a little earlier. There was no pollution.

The TCMS carried out an investigation into the circumstances and, at the same time, a Port State Control inspection.

The CCG was not involved in this incident. The Administrator does not expect a claim to be forthcoming and has closed his file.

3.70 Solander (2001)

The TSB reported that on August 1, 2001, the 37 gross ton Canadian general cargo vessel *Solander* sank when off Opitsat, Tofino Harbour, British Columbia. All seven people aboard at the time were saved. The vessel was carrying chemical products and general cargo. Salvage was being contemplated. There was no report of oil pollution.

3.71 Twinkle (2001)

This was a 38 gross ton Canadian wooden craft, built in 1925, registered as a fishing vessel but, reportedly, no longer used in that employment. A CCG ER report advised that, on August 3, 2001, the *Twinkle* reported taking on water when off Cape Mudge in Discovery Passage, on the east side of Vancouver Island. A CCG cutter responded and the boat was escorted safely back to Yucata Dock, Cape Mudge.

During this rescue the cutter had to pump the vessel to keep it afloat. In the pumping operation, oil was discharged into the water. The oil came from the vessel's bilges and possibly some containers within the hold of vessel.

The *Twinkle* was moved to Campbell River dock and, on August 7, 2001, she sank alongside. The owner did not act. With the concurrence of the CCG ER, the Campbell River Harbour Authority responded to the threat of oil pollution and after dealing with this, raised the vessel. The CCG Status Reports since September 30, 2001, have noted that the incident will be the subject of recovery action.

3.72 Carabobo (2001)

This is one of the more unusual incidents to come to the attention of the Administrator during the recent past.

A CCG Status report advised the Administrator that during 1999 recreational divers, diving at a popular wreck site off Gros cap aux Os, in Baie de Gaspé, Quebec, noticed oil leaking from the hull. On August 21, 2001, divers from Parks Canada, under direction of the CCG, inspected the wreck. The divers reported that there was an unknown quantity of oil in the wreck, that the wreck appeared in poor condition and that some oil continued to leak out.

The wreck was that of a Canadian Flower class corvette which had been sold to the Venezuelan navy and was en route to Venezuela when she went aground and was lost in December, 1945.

The area is now considered environmentally sensitive and the CCG decided to remove as much of the existing oil in the wreck as possible. Divers were employed and four tanks were identified as containing oil, which was of the Bunker C heavy fuel type. Pumping operations were commenced and over 5,000 litres of oil was recovered. Absorbent materials were used to remove oil which could not be pumped out. Holes in the *Carabobo* were sealed and divers, equipment and the CCG left the site.

At the time it was estimated that the cost of the inspection alone would be over $50,000. It is reported that DoJ advised the CCG that it was too late to submit a claim against the owner of the *Carabobo,* or to the SOPF.

The Administrator closed his file.

3.73 Eirik Raude (2001)

In a general circulation by TCMS of information advising of their recent prosecutions in the Maritimes, it was noted by the Administrator that this drilling rig had been involved in an oil spill. On August 15, 2001, this Bahamas registered rig was under repair in Dartmouth, Nova Scotia, when there was a release of about 15 l. of oil into the harbour. On December 18, 2001, the rig was found guilty of pollution and fined $20,000.

3.74 4th Street Dock - Tofino, British Columbia (2001)

Three Canadian fishing vessels were reported afire by the TSB, at the 4th. Street Dock in Tofino, British Columbia, which fire occurred on October 1, 2001. The three vessels were: *Old Spice* – 15 gross ton, *Star* – 31 gross ton, and the *Hayden Pass* – 50 gross ton. It was stated that there was no oil pollution. The Administrator has no further information on the occurrence.

3.75 Lady Franklin (2001)

The *Lady Franklin* is a 2,125 gross ton Canadian general cargo ship. A CCG Status Report advised the Administrator that, on September 3, 2001, the vessel reported that she had suffered damage to her propeller and shaft seal in heavy ice conditions. The position of the ship at the time was 17 nautical miles SE of Resolute, Nunavut. Reportedly, approximately "800 litres of oil from the propeller and 700 litres of oil from the stern tube" were reported lost. The ship was immobilized.

Two CCG icebreakers were tasked to assist. The crew of one of the icebreakers attempted a clean-up of the oil using the ship's barge. An aerial surveillance flight revealed traces of oil but found that the ice edges were not soiled. The two icebreakers assisted each other in towing the *Lady Franklin* to Nanisivik, Nunavut, where they arrived safely on September 5, 2001.

The remainder of the lost oil was deemed unrecoverable, although the CCG continued to monitor the situation.

The CCG Claim Status reports since September 30, 2001, note that the agency intends to submit a claim to the shipowner.

3.76 Shamrock (2001)

The CCG advised the Administrator that, on September 9, 2001, an unknown (small) quantity of a diesel oil/water mixture was pumped from a pleasure craft into Port Elgin harbour, Ontario. Port Elgin is situated on Lake Huron, near the Bruce Peninsula. The pleasure craft was identified as the *Shamrock.* It was stated that six other pleasure craft had been vandalized with approximately 5 litres of lube oil missing; it being suspected that this oil had also been dumped into the harbour.

The CCG, police, fire brigade and Provincial Environment agencies all sent officials to the scene.

The CCG discussed the question of payment for their costs and expenses with the owner of the *Shamrock*. The CCG Status Reports since September 30, 2001, have noted that the Crown intends to submit a claim to the SOPF for this incident.

3.77 Amerloq (2001)

A diesel oil spill originated from this vessel during the evening of September 12, 2001, when the vessel was tied up in Argentia, Newfoundland. The vessel is a 849 gross ton Russian registered trawler owned by a Spanish company; she was in Argentia for a self-refit and was transferring fuel within the vessel at the time.

The initial response was made by the CCG ER with absorbent boom. The ship had an arrangement with a RO and employed ECRC for clean up, monitored by the CCG. TCMS took samples and carried out an investigation.

The DFO/CCG obtained a LOU issued on behalf of the P&I Club for the amount of $3,000. The amount of oil spilled was first-stated to be 200 litres but this was subsequently amended to be "unknown" but "considerable".

3.78 Linbe (2001)

The *Linbe* is a 12 gross ton Canadian wooden craft, registered as a fishing vessel. The CCG ER advised the Administrator that, on September 13, 2001, the vessel was semi-submerged and spilling diesel in Alberni Inlet, on the west coast of Vancouver Island. The owner said he had no insurance but, later, called a local tug company. The harbour master monitored the incident and the tug company recovered the derelict using a barge. The tug company required payment for the work and spoke to the CCG to ensure payment would be forthcoming. The tug company subsequently invoiced the CCG for the work.

The Administrator awaits developments.

3.79 Anne Jolene (2001)

One of the difficulties for the Administrator, and the cause of most delay in responding to claims is obtaining the necessary information for him to carry out his required investigation and assessment. Each claim being different and requiring different information. In this claim the Administrator was particularly impressed with the completeness of the documentation and the manner in which the incident was presented. He found the cooperation and openness of the government officials directly involved to be business-like and helpful.

This 72 gross ton Canadian wooden fishing scallop dragger was arrested in 1995 for illegal fishing and held at federal government wharfs in Dartmouth, Nova Scotia. All fuels and lube oils were removed from the vessel by the CCG. The Crown sold the vessel to a new owner, who took possession and refueled/reoiled the *Anne Jolene* with approximately 450 litres of oils. On September 28, 2001, it was reported that the vessel had sunk in Wrights Cove, Bedford Basin, Halifax Harbour, near the Dartmouth Yacht Club. Approximately 100 litres of oil had leaked out of the sunken vessel and the owner made an initial response by arranging with a local contractor to boom-off the area in way of the craft and commence a clean-up. An inspection revealed that the sunken craft had no apparent damage, and was lying on her starboard side, on mud, in 10 metres of water.

The CCG met with the owner and he was given until October 23, 2001, to fully respond to the incident. On October 16, 2001, the owner indicated that he was, in fact, unable to respond to the incident and the necessary action was taken over by the CCG. Bids were received for various options of dealing with the sunken hull. The SOPF appointed its own surveyor.

Contractors were appointed by CCG and arrived on site on November 6, 2001. Preparations were made to raise the vessel with the intention of taking the hull to haul-out area in Dartmouth, where the vessel would be broken-up. Numerous delays were experienced. Eventually, on November 18, 2001, the *Anne Jolene* with a number of buoyancy apparatus and a barge in place for floatation was towed to the contractor's yard but grounded off the facility. Some oil escaped from the hull during the tow but, later, was found to be dispersed.

During November 20 and 22, 2001, some upper works of the vessel were removed to lighten the hull with a view to pulling it ashore. Further delays occurred, one of which involved the problem of the composition of the paint from the environmental disposal point of view, another was the physical difficulty of hauling the cement lined hull out of the water. Breaking-up activities resumed on December 1, 2001, but then difficulties were experienced in finding approved disposal sites in the area. This latter problem was resolved on December 4, 2001, and on December 5, 2001, EC and CCG officials made a final inspection of the dismantling site and declared that all the vessel had been broken-up and removed.

On March 18, 2002, the Administrator received a claim from the Crown, amounting to $77,024.26, to recover the CCG's costs and expenses in the incident. On March 25, 2002, the Administrator found $55,899.52 of the claim established. The Administrator had concerns, principally, regarding costs for delays, for testing the lead content of paint, and for disposal costs. There was also the extra issue of the need for CCG to justify their administration costs contained in Schedule 13 of the CCG claim. On March 26, 2002, the Crown agreed settlement of the amount established above and that sum was arranged to be transferred, together with $1,707.80 interest, on March 27, 2002.

The Administrator closed his file with the knowledge that the claim for administration costs remains outstanding.

3.80 BCP Carrier #17 (2001)

The local CCG ER officer first advised the Administrator of this incident. On October 3, 2001, this 279 gross ton, Canadian registered wooden barge, built in 1943, sank in Ladysmith harbour, British Columbia. The barge had some 2,300 litres of diesel and some 1,100 litres of hydraulic oil in tanks and equipment aboard. The CCG officer outlined the options available to the CCG to deal with the situation. It was stated that the barge was in poor condition and that it may break apart if lifted.

The CCG responded, booming the site, employed divers to plug the vents, and removed the loose oil that had collected in the booms. The barge, itself, was not visible from the surface. The SOPF engaged counsel and a surveyor. The Ladysmith Town council became involved. The barge had sunk in a BC Crown water lease.

The reported owner stated he would fax an action plan to the CCG but in the meantime, as a precaution that agency obtained quotations to remove the pollution threat. On October 22, 2001, the owner advised the CCG that he was unable to handle the situation. The CCG tasked a contractor to raise and remove the wreck. The CCG continued their monitoring of the site. A local beach, with minor pollution, was cleaned-up.

Preparations for salvage began on November 1, 2001, with the barge being partially floated on November 3 and pumped dry on November 4, 2001. Pumps were used to keep the barge dewatered. The barge was confirmed as being in poor condition. The salvors removed much of the pollution threat, including taking out the fuel tanks, before moving the barge to their premises for dismantling and disposal. The barge was brought to the salvors premises in Ladysmith on November 17, 2001, and dismantling was completed by November 20, 2001.

The CCG Claim Status report of December 31, 2001, notes that the incident will be the subject of a claim by that agency.

3.81 Ocean Venture 1 (2001)

Crown counsel for the CCG advised the Administrator of this incident on October 24, 2001. This is a 5,955 gross ton cargo ship, registered in Panama. On October 5, 2001, a strong smell of diesel oil was noted in the Port of Rimouski, Quebec. Oil was found on the water near to the *Ocean Venture 1*. Contractors were employed to clean-up the spillage and some 6,060 litres of oily water, estimated to contain some 1,000 litres of oil, together with 16 barrels of debris were collected. The clean up was completed in one day, the same day as the spill was found. It was stated that, over a similar period, the vessel had changed ownership.

The Crown presented the CCG's claim to the SOPF to recover their costs and expenses in the incident, amounting to $13,237.81. The Administrator received the claim on November 28, 2001, and wrote to the registered owners in Panama on November 29, 2001, submitting a copy of the claim. He requested the owners to settle directly with the Crown. The Administrator advised the owners of their responsibilities under the *MLA* and noted that the debt would follow the ship, even if sold.

No reply was received from any entity admitting ownership of the ship. The Administrator investigated and assessed the claim, finding $13,090.65 established as at December 17, 2001, and invited further comments from Crown counsel. With winter fast approaching, the crew left the ship on December 18, 2001. The ship's agent was unable to obtain any money from the stated owners and unable to take any action. The ship, without heat or lighting appeared to be abandoned. Another problem was that the *Ocean Venture 1* was loaded with bagged coarse salt and there was a dispute over acceptance of the cargo.

The SOPF appointed a surveyor. It was decided that government agencies had to act because, among other matters, the damage which could be caused to the ship by the freezing conditions. TCMS employed contractors to supply the ship with electricity from shore and employed security guards.

Crown counsel replied to the Administrator on February 27, 2002, offering justification for the CCG costs not established by the Administrator in his first review. This rational was accepted by the Administrator, who then arranged on March 22, 2002, to transfer $13,195.01, plus $383.01 interest, to DFO (CCG's) account. The issue of Schedule 13 administration fees was agreed to remain outstanding pending further investigation by the Administrator and resolution with the Crown.

The Administrator awaits developments concerning the vessel with respect to possible recovery action pursuant to section 87 *MLA*.

3.82 Rivtow Lion (2001)

This is a 561 gross ton Canadian steel tug, built in 1940. The tug, previously part of the fleet of the well-known West Coast towing company is no longer owned by them. A CCG Status report advised the Administrator that, on November 6, 2001, an oily sheen was observed coming from the tug as she was moored in Sansum Narrows, Maple Bay. Maple Bay is situated on the SE coast of Vancouver Island, a few miles south of Crofton.

The owner authorized a contractor to board the tug to assess the costs of remedying the situation, or remove the liquids aboard. There was a considerable amount of oil in the tug. The cause of the oil spilling over the side was because the tug, generally in poor condition, had a filler pipe to a lube oil tank rusted through, such that rain entered the tank and the oily water contents, eventually, overflowed into the vessel and also into the sea.

The owner requested the contractors to take whatever action was necessary to comply with CCG requirements.

By November 9, 2001, it appeared that the owner would not take the immediate action required, including accepting financial responsibility, so the CCG was forced to act. The CCG contracted for the removal of the contents from the overflowing oil tank. At the time, the *Rivtow Lion* was moored to an abandoned fish farm structure, a mooring not considered secure. The CCG then arranged for the tug to be towed to a proper mooring buoy in Patricia Bay.

The Administrator appointed counsel and a surveyor, to act for him. The CCG obtained quotations for the removal of the potential for the oil pollution and contracted with a company in Ladysmith, British Columbia. The contractor then started the considerable task of making the tug oil-free. On February 7, 2002, the contractors advised that they had successfully emptied the tug of waste products and cleaned the hull; they stated they had removed 23,154 litres diesel, 11,889 litres waste oil and 9,100 litres of oily water. However on March 21, 2002, the SOPF was advised that not all of the oil had been removed to the satisfaction of the CCG.

On March 22, 2002, the CCG ER officer, a surveyor acting for the CCG, and the SOPF surveyor made a visit to the tug.

At the end of the fiscal year it was stated that oil was still being removed from the *Rivtow Lion,* that there was "no news" from the owner and that the CCG was considering options for disposal of the vessel.

3.83 Reed Point Marina (2001)

3.15 in this Annual Report gives details of a fire which broke out on October 16, 1999, and destroyed pleasure craft in the Reed Point Marina, Vancouver harbour, British Columbia. Another, similar, fire broke out in the marina during the early hours on November 7, 2001. In this latest incident three boat houses and three pleasure craft were involved. A fireboat from nearby Port Moody and a fire truck responded, extinguishing the fire. The VPA formally handed over the role of OSC to the CCG the same day. Contractors and CCG equipment were used to contain and recover the oil on the water.

The Administrator appointed local counsel. It was estimated that potential pollution was between 2,000 and 8,000 litres of diesel. The CCG took oil samples. The CCG Claims Status report for December 31, 2001, notes that their response will be the subject of a claim.

3.84 Duke (2001)

A CCG Status report advised the Administrator that this US registered fishing vessel ran aground on November 8, 2001, in Edye Pass, Hecate Strait, northern British Columbia. The *Duke* later sank in some 4 metres of water; the crew was rescued. The wreck was deemed a navigational hazard, as well as a threat to the environment. Diesel and hydraulic oils were released from the wreck into the Pass. The owners responded and made arrangements to lift the vessel.

Monitored by the CCG, on November 12, 2001, divers plugged the vents and the vessel was lifted and secured alongside a barge. The craft was then taken to a shipyard in Prince Rupert, northern British Columbia, and reported to be safely alongside on November 13, 2001.

The CCG made arrangements to obtain an LOU before the repaired *Duke* was allowed to leave Canadian waters. As a result of being kept fully informed by CCG ER Prince Rupert officials, the Administrator was able to intervene to ensure his rights were protected. On December 4, 2001, a LOU to the amount of $20,000 was signed on behalf of the owners by, what appeared to be, underwriting agents in Seattle. Normally a LOU is signed on behalf of the insurers or P&I Club. The Administrator appointed local counsel, who arranged for a LOU to be issued by another Vancouver based counsel on December 6, 2001. Following receipt of this latest form of the LOU, the Administrator indicated he had no objection to the *Duke* now leaving Canada, although he emphasized he could not speak on behalf of other parties. The Administrator also noted that the CCG had recent positive experience of the shipowner paying CCG costs and expenses promptly.

The CCG subsequently advised that the shipowner had paid the Crown's claim in full.

This incident illustrates the importance of timely communication by CCG ER officials with the Administrator and CCG legal counsel respecting the receipt of financial security before the release of a vessel involved in an incident. The Administrator is grateful for the prompt action by the CCG ER Prince Rupert officials in this regard.

The Administrator closed his file.

3.85 Roxanne Reanne (2001)

This was a 23 gross ton Canadian wooden fishing vessel, built in 1980. A CCG Status report advised the Administrator that, during a storm on November 20, 2001, the vessel broke her moorings and ran aground on Navy Island, near St. Andrews, New Brunswick. St. Andrews is on the north shore of the Bay of Fundy, close to the American border. The CCG responded and, on November 22, 2001, found that the vessel contained diesel and lube oils; however, to that time no pollution had occurred. The *Roxanne Reanne* was refloated and towed to St. Andrews public wharf where the CCG arranged for the, approximately, 450 litres of diesel and 40 litres of lube oil to be removed. The owner was located in Montreal but he stated he had no insurance and took no action.

At the request of the CCG a marine surveyor examined the *Roxanne Reanne* on November 29, 2001. The vessel was found to be in deteriorated condition and that the hull as is, where is, could have a maximum value of $1,000.

On December 12, 2001, the CCG moved the vessel to Bayside, New Brunswick where, on the next day, a contractor commenced demolition. On December 14, 2001, demolition was completed to the CCG's satisfaction and the debris had been transported to an approved landfill site.

The CCG Claim Status Report of December 31, 2001, notes that their costs and expenses in this incident will be the subject of recovery action.

3.86 Seaspan 112 (2001)

This is another example of a well known company, in this case Seaspan International, selling a vessel to a new owner, and the new owner retaining the original name although not associated with the original owners.

The TSB advised that this 505 gross ton Canadian steel barge took a heavy list on November 29, 2001, while alongside at Drury Inlet, near Port Hardy, northern Vancouver Island. The barge had deck cargo including a fuel truck, the fuel truck slid into the water which, the TSB stated, caused some pollution. The barge also had fuel tanks aboard.

The owners responded and restored the listing barge to upright on November 30, 2001. By December 4, 2001, through their own resourceful action, the barge owners had retrieved the truck from the water and put it ashore. Those on site reported to the CCG that there had been no pollution as a result of this incident.

The CCG and the Administrator consider the incident closed.

3.87 Pamela-Fallon 1st (2001)

The TSB reported that, on December 1, 2001, this 9 GT wooden Canadian fishing vessel sank at the public wharf in Port aux Basques, Newfoundland. The vessel was stated to have been fully submerged and that there was "minimal" oil pollution. The vessel was subsequently raised.

The Administrator considers it unlikely that there will be a claim against the SOPF for this incident and has closed his file.

3.88 Coastal Express (2001)

This incident was one of the more serious casualties reported to the Administrator for the year. The *Coastal Express* was a new 3,230 gross ton Canadian barge, purposefully constructed for a pusher tug/ RoRo (roll on – roll off) barge service between Vancouver Island and the mainland, including the carriage of dangerous goods. It was designed so that, normally, a complete road tractor and trailer would drive on at the loading terminal and off at the destination. The tug *Seaspan Challenger*, in the barge notch, left Nanaimo on December 14, 2001, bound for Tilbury Island (Fraser River). In the Strait of Georgia the vessels ran into gale conditions, with the wind stated to be gusting to 35 knots. The tug damaged her pushing connections and began to take on water. The tug came out of the notch and, using her bow, tried to hold the barge off the land without success. Later the same morning, the barge grounded on Carlos Island, a small rock island, to the east of Gabriola Island, off Nanaimo.

The owners mounted a full response but for a greater part of the time the weather continued adverse. During the lulls in the weather, the owners were able to remove the various oils from the barge, which they achieved by December 17, 2001. It was stated that the barge had 47 trailer units on board, 7 of which contained dangerous cargo and that approximately one third of the units fell into the sea. December 16, 2001, the CCG over flew the grounding site and observed a small oil sheen in the area, which oil was considered unrecoverable.

The barge was badly damaged and declared a Constructive Total Loss. The owners obtained an ocean-dumping permit and, on January 29, 2002, the refloated barge was towed the few miles to deep water in the Strait of Georgia and sunk for disposal. There was a light oil slick released on sinking which, again, was considered non-recoverable.

Armed with the knowledge of the owner's actions and the limited response necessary by the CCG, the Administrator considers the incident finished from the SOPF's perspective, and has closed his file.

3.89 Sjard (2002)

Canadians are increasingly concerned at oil spills off the Canadian coasts, primarily because of the harm to seabird population, some species of which are on the verge of extinction. It was, therefore, of concern to the Administrator when he learned of the abandonment of the *Sjard,* which casualty occurred January 27, 2002. The *Sjard* was a 5,753 gross ton Antiguan cargo vessel en route from Latvia to St. John's, Newfoundland, stated to be loaded with wire rod and coils. The vessel took on water and was abandoned in heavy weather conditions in the Atlantic in position 48 degrees 40.6 minutes North and 45 degrees 01.6 minutes West, approximately 330 nautical miles east of Newfoundland.

A Spanish trawler safely rescued the mixed nationality crew of 14. The *Sjard* was not seen again and is presumed to have sunk. The Administrator is not aware of the amount of oils aboard at the time of sinking.

3.90 Cala Palamos (2002)

A CCG Status Report advised the Administrator of this incident. On February 21, 2002, it was reported to MCTS by the pilot aboard the *Cala Palamos* that there was oil on the water between piers 34 and 35, Halifax, extending out into the harbour. The CCG responded and employed contractors to contain and clean up the oil. It was estimated that some 4,300 litres of lubricating oil was involved.

The *Cala Palamos* is a 14,366 gross ton Cypriot container vessel and, at the time of the pilot's report, she was departing Halifax for Cuba. The TCMS arranged for oil samples to be taken from the vessel on her arrival in Cuba ETA February 25, 2002. On March 25, 2002, counsel for the ship's P&I Club provided an LOU to the Crown for the amount of $100,000.00, which included the SOPF as a named beneficiary. The Administrator awaits the outcome.

3.91 Olga (2002)

This was another offshore pollution incident, which came to the attention of the Administrator through a media report. It was stated that on February 26, 2002 a CCG surveillance aircraft sighted the *Olga* with oil in her wake, about 80 nautical miles off the coast of Newfoundland. The *Olga* is a Russian fishing vessel. When *Olga* came into Long Pond, Newfoundland, on March 13, 2002 she was boarded by investigators from TCMS and EC CWS. The master and first mate were arrested by EC peace officers. The two ship's officers were charged for alleged pollution offences under federal environment legislation. The two ship's officers were released after two days and on payment of $5,000.00 bail. According to media reports, it was estimated that some 78 litres of oily waste and fuel had been discharged by the *Olga* in the observed incident. The vessel was charged by TC for illegally discharging a pollutant in waters under Canadian jurisdiction, contrary to provisions under the *CSA*. Defense counsel entered a not guilty plea on behalf of the officers and the ship's owner and a trial was scheduled for December 2, 2002. An EC official indicated in media reports that charging the officers of the vessel, in addition to or instead of the owners of the vessel, may be used as an enforcement tool in an increased manner in future cases.

The Administrator awaits the outcome of the court case with interest but in the meantime has closed his file.

3.92 Lavallee II (2002)

The *Lavallee II* was built in 1942 as an American wooden minesweeper but, latterly, had been employed as a herring seiner and then as a herring transporter. The vessel is 254 gross ton and would, if operating, require to be registered. At the time of the incident she was on a beach, unregistered, at Ecum Secum, Nova Scotia, where she remained for the last 18 months. On March 8, 2002, it was reported that oil was being released from the vessel into the harbour. The CCG responded on the same day an absorbent boom was deployed. It was found that the, engine-less, engine room was flooded. The harbour, in season, houses live lobster in cages and supports a rockweed harvest.

The CCG employed contractors who removed the some 10,000 litres of diesel from fuel tanks inside the vessel. The hull was holed. A private surveyor employed by the CCG concluded that the vessel had no value. It is being proposed that the most economic solution to the alleged continuing potential for oil pollution is to break-up the vessel on site. It appeared that the *Lavallee II* was abandoned, although the name of an owner had been provided and the CCG was attempting to trace this person. The question of breaking up the vessel raised the issue of toxicity of the paint aboard, some of which was found to exceed Provincial limits for disposal in landfill sites.

The Administrator awaits the outcome.

3.93 Miles and Sea (2002)

Details of the vessel and locality will be found in 3.22. On March 15, 2002, it was reported that this vessel had been involved in another incident, similar to the previous one on March 18, 2001. On March 15, 2002, the *Miles and Sea* was again reported to be sinking and spilling oil in Lions Head harbour. The CCG responded, found oil coming from the sunken hull and contacted the owner. The owner said he was unable to take responsibility for the response.

The CCG contracted for the containment and clean up of the oil. It was estimated that the *Miles and Sea* contained 15 to 25 litres of lube oil and 3,500 litres of diesel fuel. The vessel had sunk in a Small Craft Harbour, owned by DFO, but leased to the local municipality. The DFO was concerned about the vessel remaining sunk in Crown property.

The Administrator awaits developments.

3.94 Lake Carling (2002)

This 17,464 gross ton Marshall Islands bulk carrier reported on March 19, 2002, that she had experienced a large hull crack amidships on the port side. At the time the vessel was some 40 nautical miles north of les Îles-de-la Madeleine, in the Gulf of St. Lawrence. The vessel was loaded with iron ore, en route from Sept-Îles, Quebec, to Trinidad. The CCG developed an oil spill response plan and prepared response equipment. The *Lake Carling* began to take on water, which was controlled by pumping. There was no pollution.

A tug departed to assist the damaged vessel. In poor weather conditions the vessel anchored off les Îles-de-la Madeleine. TCMS boarded the vessel for inspection and evaluation. Poor weather continued and after putting into Baie de Gaspe, the *Lake Carling* escorted by a tug and a CCG vessel sailed for Quebec City for dry-docking and repairs.

The CCG considered this to be a SAR incident, as opposed to a potential pollution incident. A claim against the SOPF is unlikely. The Administrator has closed his file.

3.95 Katsheshuk (2002)

This was a further serious casualty reported during the year. This was a 2,674 gross ton Canadian trawler, engaged in shrimp fishing, which caught fire and eventually sank. Late evening March 17, 2002, the vessel reported that she was on fire and being abandoned by the crew, some 80 nautical miles NE of Belle Isle, off the north coast of Newfoundland. The vessel was in 90% ice at the time. The crew was all safely rescued. It was stated that there was approximately 430,000 litres of diesel fuel on board.

On March 25, 2002, the owners were advised that, under CEPA 1999, the hulk could not be sunk either within or without the EEZ without a Canadian permit. The owners contracted with tug owners to tow the hulk and the tug *Atlantic Maple* arrived on site on March 26, 2002. There was no sign of pollution. Led by a CCG icebreaker for assistance through the ice, the tow commenced the same day. Due to adverse weather forecast the tug and tow sheltered first in Trinity Bay and then in Conception Bay, Newfoundland, for March 28 and 29, 2002. On March 30, 2002, it was reported that the hulk had developed a 30-degree list, which was steadily increasing. Under tow by the *Atlantic Maple* the tug and tow proceeded eastwards. Shortly afterwards on March 30, 2002, it was reported that the *Katsheshuk* had sunk in the Atlantic some 6 miles NNW of Cape St. Francis, Newfoundland. A large oil slick was observed. There was considerable concern by authorities as it was stated that, possibly, up to 10 million seabirds could be in the area over the next month. There was also concern regarding the opening of the crab fishery locally in some two weeks time and the possible oiling of the beaches used by caplin.

The Administrator awaits developments.

3.96 Spring Breeze (2002)

A copy of a LOU, made out in favour of the CCG and the Administrator (SOPF), was received from counsel for this ship on March 25, 2002. The LOU was an undertaking to meet costs and expenses for up to $10,000 involving an alleged oil spill in the Port of Quebec on March 24, 2002. This was the first knowledge the Administrator had of the incident.

The *Spring Breeze* is a 16,829 gross ton bulk carrier, registered in Malta. It was alleged that on March 24, 2002, while alongside a quantity of oily water was released from the ship. The ship contracted for the clean up, monitored by the CCG.

In a separate incident, the Administrator noted that the *Spring Breeze* had to employ tugs to be towed alongside on March 7, 2002, in Quebec City when the vessel was reported to have run out of fuel.

The Administrator awaits developments.

4. Issues and Challenges

4.1 Environmental Damages

4.1.1 Environmental Damages Fund – Environment Canada

In 1995, Environment Canada obtained the approval of the Treasury Board to create a special purpose account – the Environmental Damages Fund – to manage compensation for damages to the environment resulting from pollution incidents. The Environmental Damages Fund was established to serve as a special holding or trust account to manage funds received as compensation for environmental damage. These funds may come in the form of court orders, awards, out-of-court settlements, voluntary payments and other awards provided by various international liability funds.

When an environmental offense is prosecuted or a settlement is being negotiated out of court, crown and defense lawyers can recommend that the penalty include a monetary award, which is used to restore environmental damage.

A number of criteria have been developed or proposed to ensure that the Fund's objectives are met efficiently, cooperatively and responsibly, so that funding allocated for environmental restorative projects is used in the best possible way. In this regard the Treasury Board authorized a financial framework to ensure transparency and accountability. It did not, however, provide specific guidelines on how the process was to be managed. Consequently, there was a requirement for Environment Canada to develop an implementation plan.

In March 1997, Environment Canada hosted a workshop in the Atlantic Region with individuals that have expertise on various aspects of environmental restoration. Representatives of provincial and federal government departments as well as industry attended the workshop.

The objectives of the workshop were:

- to promote dialogue on methods of assessing damage in the Atlantic Region
- to identify regional priorities and relevant issues of concern to all key stakeholders
- to establish partnerships in the implementation of an Environmental Damages Assessment/Restoration Process
- to develop a Plan of Action.

The framework for implementing an environmental damage assessment and restoration process remains as a work in progress. Environment Canada continues to actively pursue and enhance its implementation framework. As a custodian of the Fund, Environment Canada is committed to consulting and building on partnerships with other stakeholders in achieving common goals and objectives.

At this point in the development of a framework for the general fund criteria and project requirements, all project proposals submitted to Environment Canada for funding should satisfy the following general requirements:

- satisfy all conditions specified by the courts
- build on partnerships with stakeholders in achieving common goals/objectives regarding remediation and restoration of damages to the natural environment
- satisfy evaluation/technical review criteria
- be cost effective in achieving goals, objectives and deliverables
- recipients must possess the necessary knowledge and skills required to undertake the project
- have broad community support
- be approved by the Regional Director General.

On March 25, 2002, a Nova Scotia court imposed the country's highest ever fine - $125,000 - for pollution of coastal waters that are a haven to thousands of seabirds.

In this case, the Philippine – registered ship *Baltic Confidence* was charged for dumping at least 850 litres of oil-mixed bilge water in December 1999, about 158 kilometres southwest of Halifax.

In pleading guilty to the offense, lawyers for Prime Orient Maritime of Manila said the company agreed to a penalty of $80,000 and a contribution of $45,000 to Canada's Environmental Damages Fund. The *Baltic Confidence* incident was the first time that a shipping firm paid into the Environmental Damages Fund. It is necessary, however, for prosecutors to continue to provide judges with information concerning the Fund and potential court involvement. There is a

concern that, at least until the *Baltic Confidence* case, judicial awareness of the Fund's role in restoration efforts may be minimal.

Additional information is available through Environment Canada at:

www.ec.gc.ca/ee-ue
Tel: 1-819-997-3742

4.1.2 Natural Resource Damage Assessment and Restoration - Canada/International - USA

Compensation for environmental damage is handled differently under the *MLA*, 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 *MLA* 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."

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 damages. 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.

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

The US NRDA regulations provide a process to assess injuries to natural resources and design an appropriate restoration plan. The cost to assess injury, develop, and implement the restoration plan is the damage amount. This process is designed to result in feasible, cost-effective restoration of those natural resources and services injured by an incident.

The trustee, who is a designated federal, state, or Indian tribe official, conducts injury assessment to determine the nature and extent of injuries to natural resources and services. Once the trustee has identified a range of possible restoration actions, the identified restoration alternatives are evaluated based on a number of factors including:

- the cost to carry out the alternative;
- the extent to which each alternative is expected to meet the trustees' goals and objectives in returning the injured natural resources and services to baseline and/or compensation for interim losses;
- the likelihood of success of each alternative;
- the extent to which each alternative will prevent future injury as a result of the incident, and avoid collateral injury as a result of implementing the alternative;
- the extent to which each alternative benefits more than one natural resource and/or service; and,
- the effect of each alternative on public health and safety.

Trustees must select the most cost-effective of two or more equally preferable alternatives. A draft restoration plan will be made available for review and comment by the public, including appropriate members of the scientific community where possible. After reviewing public comments on the draft restoration plan, trustees must develop a final restoration plan. The final restoration plan will become the basis of a claim for damage.

In February 2001, a Memorandum of Understanding (MOU) was signed between the International Group of P&I Clubs and the US National Oceanic and Atmospheric Administration (NOAA). The aim of the MOU is to promote expeditious and cost-effective restoration of injured natural resources and services resulting from ship-source oil spills in the US, as authorized by *OPA* 90 and determined by the Natural Resource Damage Assessment Regulations.

The parties to this MOU will meet every six months to facilitate a regular exchange of technical information, such as ITOPF and NOAA technical papers and publications. In the event of a ship-source oil spill in the US, early contact will be established between the relevant P&I Clubs, ITOPF, NOAA, and its co-trustees. ITOPF's role is to provide technical information and analysis.

4.1.3 Environmental Damages and Environmental Studies – 1992 IOPC Fund

The Third Intersessional Working Group of the 1992 IOPC Fund has been discussing issues of environmental damage under the 1992 Conventions. The Working Group is considering whether to modify the 1992 Fund's position in respect of the admissibility of claims for the costs of reinstatement of the environment, and of claims for the costs of environmental impact studies. It was agreed that the issue should be considered in the context of a change to Fund policy rather than as an amendment to the Convention.

The current position in respect of the admissibility of claims relating to damage to the marine environment, as laid down by the Assemblies, could be summarized as follows:

1. The IOPC Funds accept claims that relate to "quantifiable elements" of damage to marine environment, for example:

   - reasonable costs of reinstatement of the damaged environment; and,

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

2. The IOPC Funds have consistently taken the position that claims relating to unquantifiable elements of damage to the marine environment cannot be admitted.

3. The 1971 Fund Assembly has rejected claims for compensation for damage to the marine environment calculated on the basis of theoretical models.

4. Compensation can be granted only if a claimant has suffered quantifiable economic loss.

5. Damages of a punitive character, calculated on the basis of the degree of the fault of the wrongdoer and/or the profit earned by the wrongdoer, are not admissible. Criminal and civil penalties for oil pollution from ships do not constitute compensation and do not therefore fall within the scope of the Civil Liability Conventions and Fund Conventions.

During the course of its several meetings the Working Group reviewed proposals from a number of States. These include:

1. A submission by France, which contained a consultant's (Professor Piquemal) study on several aspects of the concept of environmental damage. For example, the paper included the notion of breach of a quasi-patrimonial right as legal ground for the right of compensation. Also, the proposal suggested making editorial changes to the IOPC Claims Manual in order to highlight the specific nature of environmental damage.

   It was concluded that the French proposal to amend the claim's manual could not be accepted, since it went beyond the present definition of "pollution damage".

2. The United States submitted a document of information on the natural resource damage assessment process in the US under the *Oil Pollution Act* 1990.

3. Another significant submission was co-sponsored by Australia, Canada, France, Iceland, Netherlands, New Zealand, Norway, Sweden and the United Kingdom. It contains proposals for new criteria and clarification for the admissibility of measures of reinstatement of impaired components of the environment, and post-spill studies to be adopted by the Assembly.

The sponsors of this paper noted that following a spill that might warrant post-spill environmental studies, or measures of reinstatement, the Fund should encourage the establishment – within the affected Member State– of a Committee or other mechanism to design and co-ordinate an agreed study program.

With regard to measures of reinstatement, the sponsors proposed that to be considered admissible to measures of reinstatement would have to fulfill all the 1992 Fund's existing criteria, as well as the following specific criteria:

- the measures should be likely to accelerate significantly the natural process of recovery of the damaged area;
- the measures should, as far as possible, seek to prevent further injury as a result of the incident;
- the measure should, as far as possible, not result in the degradation of other habitats or in adverse consequences for other natural or economic resources;
- the measures should be technically feasible; and,
- the costs of the measures should not be out of proportion to the extent and duration of the damage and the benefits likely to be achieved.

4. The International Tanker Owners Pollution Federation Limited's proposal focuses on the technical aspects of environmental damage resulting from oil spills in the marine environment. For example, the paper addresses the natural fluctuations that occur in the composition, abundance and distribution of populations of marine animals and plants. It covers, also, the ability of marine species to withstand and to recover from both the natural events and marine oil, and man's limited ability to speed up natural recovery.

Some delegations expressed the view that a wider definition of "pollution damage" should form part of a different Convention, or should be covered by other funds. In this regard, ITOPF drew attention to the Canadian Environmental Damages Fund, suggesting that this might be a model to follow. In conclusion, the Working Group intends to seek an amendment to the Claims Manual for consideration by the Assembly in October 2002.

4.2 Prevention/Response Measures in Canada

4.2.1 Prevention through Partnerships – REET

In Canada there are various pieces of legislation, international agreements, inter-governmental, inter-departmental and agency agreements concerning the roles and responsibilities of lead agencies and resource agencies.

Environment Canada is recognized by the Canadian Coast Guard as the federal authority for environmental advice during a pollution incident. Environment Canada normally chairs the Regional Environmental Emergency Team (REET), which is responsible for providing consolidated environment and scientific information during the course of response operations. The REET is comprised of representatives from federal, provincial, first nations, municipal and other agencies, as necessary.

The contingency plans of the REET organization contain a basic framework to ensure that all partners work together efficiently. These plans are integrated with the emergency plans of other government departments. The REET provides the CCG and/or the polluter's On-Scene Commander with advice respecting weather forecast. Information is also made available on the physical operating environment, spill movement and trajectory forecast. This assistance by the REET organization to the On-Scene Commander during an incident can make a major difference in the response to an incident. In addition, the REET may approve the use of chemical dispersion and other shoreline treatment techniques.

In the performance of his duties, the Administrator has a unique perspective on pollution issues that touch Canadians. He closely follows the evolving international and domestic regimes for the prevention, preparedness and operational response for the protection of the marine environment. The Administrator supports the continuing efforts of Canadian oil spill response managers to become more aware of environmental activities in other countries. For example, the continuing long-standing cooperation between the Canadian and US Coast Guards is commendable. The benefits of partnership development and exchange of information, for instance, were illustrated during the Administrator's attendance at a recent oil spill symposium meeting in the United States.

"Maximizing Prevention through Partnerships" was the principal theme for the first plenary session of the Freshwater Spills Symposium held from March 19 to 21, 2002 in Cleveland, Ohio. Several speakers emphasized the requirement for a unified approach by all oil spill response professionals. All separate organizations must collaborate to achieve operational objectives and implement an effective action plan. There are advantages to using one coordinated response management system. A successful response management team includes municipal, state, federal, industry, environmentalists, and private sector stakeholders working in tandem. The guest speakers explained that also full integration of the entire response organization is an important strategy for the prevention, preparedness, and for putting in place a strong response capability.

A sound working relationship among the spill responders is also essential for overall coordination at the operational level. This network approach encompasses deploying containment booms; utilizing boats, barges and skimmers; tracking oil sheens; obtaining oil samples; identifying sensitive areas at risk; dealing with mystery spills and searching for the possible sources of the spill.

To illustrate the advantages of different organizations working together, a case study was discussed by Mr. M. Gerber of the Ohio Environmental Protection Agency (EPA).

It seems that on or about August 1, 2000, Toledo, Ohio, received approximately seven inches of rain in two hours. A large oil sheen appeared on the Maumee River. Ohio EPA, USCG and the city of Toledo responded to the river spill. The source was unknown.

Shortly after Ohio EPA received an anonymous call suggesting they check on oil staining in an alley next to an abandoned industrial site. On attending the site oil staining was found on the vegetation and gravel in the alley. This land-based response involved the city of Toledo, Ohio EPA and US EPA.

The initial reaction of city officials was that any migration of oil from the site would have gone to the sewer treatment plant. Their initial view was that the site spill could not have entered the river through the combined sewer system – bypassing the sewer treatment plant – because the alarms of the emergency combined sewer outlets emptying directly into the river had not been activated.

Fortunately source oil samples were still available from Toledo Environmental Services, an agency that had regulated the industrial site when it was active some twenty years earlier. The oil in the river and the old site oil samples were found to be a match.

The investigation revealed that what had happened was that oil still remained in pools throughout the abandoned building floor and basement, with the roof of the building at the former industrial site having collapsed. The excessive rainfall caused flooding at the former industrial site and created a migration pathway for the oil in the buildings. The oil migrated over land from the buildings to the alley and into the storm sewer. It may have also migrated through the combined sewers to the combined sanitary/storm sewer outlets on the river. Either way, United States Coast Guard finger printing of the sheen on the Maumee River, linked that sheen to the abandoned industrial site approximately one mile from the river.

It was a few days later that officials determined the possibility that the oil could have found its way to the river – bypassing the treatment plant – through the combined sewer system. They concluded that water levels in the river were so high that they had prevented the end gates on the emergency combined sewer outlets emptying directly into the river from opening and triggering their alarms.

A few days later a second release to the Maumee River occurred due to another heavy rainstorm. During the next several days federal and state environmental protection agencies, the US Coast Guard, the city of Toledo, and various private contractors conducted oil clean-up at the former industrial site.

Mr. Gerber attributed the success of the operation to the cooperation and sharing of information among the different responder groups. Success through cooperation is built on consistent partnership activities, attending operational meetings, sharing knowledge and training and understanding each others' responsibilities.

The Canadian system for the prevention of a marine oil spill and for response when an incident does occur looks to cooperation between government and industry. For protection of the environment the current regime brings together essential components of industry, municipal, provincial, territorial and federal agencies.

4.2.2 Oil Spills from Stormwater Drains and CSOs

The very title "SOPF" focuses the Administrator on ships. It therefore may be a surprise for readers to learn that the Administrator sometimes has to investigate the operation of city sewer systems.

The SOPF is intended to cover *inter alia* ship-source spills in Canadian waters, including the Great Lakes, for example. However, the SOPF is also liable for reasonable costs and expenses in certain matters in relation to oil "if the cause of the oil pollution damage is unknown and the Administrator has been unable to establish that the occurrence that gave rise to the damage was not caused by a ship". Apart from "mystery spills", the SOPF is not liable for non ship-source spills.

Paragraph 3.5 in the section covering Canadian oil spill incidents explains the background to a particular case in this regard. On May 31, 1998, a mixture of sewage and oil washed up on the shores of Fighting Island, a Canadian Island in the Detroit River. This pollution was cleaned up under a CCG contract. The Crown presented a claim to the SOPF.

The Administrator commenced an investigation into the cause. The total amount of pollution was variously estimated at "between 900 and 2,300 litres". The oil was a mixture of oils but the "sludge" part, some 65% of the pollution, after analysis for three bacterial parameters (only), found:

> *Samples smelled of fecal waste or raw sewage.*
>
> *E. coli at 900,000 cells per 100 mL is indicative of the significant amount of fecal wastes in the sample. The levels of E. coli results compared to fecal streptococci indicate the waste may be of human origin. The presence of Pseudomonas aeruginosa which is a pathogen bacterium strongly suggests the fecal waste is of human origin.*
>
> *The concentration of the three bacterial parameters is consistent with a profile of human waste.*
>
> *With regards to the levels of bacteria, it is highly likely that other disease-causing bacteria such as Salmonella sp., Campylobacter sp., Yersina sp., for example, as well as viruses and parasites may be present in the discharge in the river.*
>
> *Water used for drinking and/or recreational activities will be severely compromised by this pollution occurrence.*

In the course of his investigation, he found that older parts of cities have combined storm and sanitary sewers, which include emergency overload systems. Such a combination means that after heavy rain, which saturate the sewers, the emergency run-off can discharge untreated into the local waters through Combined Sewer Outfalls – CSOs. This releases a combination of rainwater and sewage into the water course, unscreened and untreated. Some treatment plants have, in addition, emergency overload systems that bypass the plant but at least that part of the effluent can be screened and chlorinated before being discharged into local water courses. On the other hand oil in effluent that passes through the treatment plants can be skimmed off.

There has been considerable effort to improve the water quality of the Great Lakes and rivers in Canada and the US. For example, newer city developments have separate storm and sanitary sewers avoiding the sudden storm overload situation at the treatment plant. This may help solve the overflow of untreated sewage into water courses. However, this would not preclude illegal oil discharge entering Canadian and US waters from storm sewers.

Thus the potential for non-ship-source oil spills from stormwater outfalls and CSOs remains. If such did occur resulting in a claim on the SOPF the spectre arises for such spill being classified a mystery spill for which the SOPF would be liable.

Preventative action could include better education, warnings and enforcement of violations for illegal oil discharge through sewerage systems.

Mitigating action could include efforts towards early detection of oil in water courses through surveillance, for example. Also, as illustrated in the article immediately above, cooperation among various government authorities can sometimes lead to identification of any land-based cause or source of an oil spill. The clean-up or proper regulation of such a site could eliminate it as a future source of oil spills into the water.

The Administrator's investigation into the cause of the Fighting Island spill continues.

4.2.3 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. The oil is devastating to wildlife and often a considerable expense to the public purse from clean-up including claims paid by the SOPF. The Administrator cannot recover payments made for cleaning up these mystery spills – the identity of the polluter is unknown.

Federal government departments and agencies are using available resources to combat oil pollution caused by passing ships. The Canadian Coast Guard is the principal agency responsible for the direction and coordination of the National Aerial Surveillance Program (NASP). Currently, aerial surveillance is conducted through the use of three different aircraft. Two of these are owned and operated by Transport Canada's Aircraft Services Directorate. The third is a contracted aircraft owned and operated by Provincial Airlines Limited. The National Defense Aurora patrol aircraft also provides surveillance.

Specialized video and still cameras, computerized reporting software, remote sensing and communication instruments are fitted and utilized in various methods of detection on each of the aircraft. The computerized imaging equipment records vessel discharges and pollution sightings.

The three aircraft utilized by the CCG are:

- A Dehavilland Twin Otter aircraft is located in Vancouver. This aircraft 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 Dehavilland Dash – 8 aircraft is located in Ottawa. This aircraft 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;
- A Beechcraft King Air 200 is located in St. John's. This aircraft is contracted for fisheries patrols off the coast of Newfoundland. It is also multi-tasked or conducts dedicated oil pollution surveillance flights.

The recent CCG report (1997-2001) on the National Aerial Surveillance Program details statistics for the last four years, as follows:

1. In 1997/1998, a total of 1212 patrol hours were flown, over flying 7285 vessels with 149 pollution sightings. Of those 149 pollution sightings, 123 (82%) were mystery spills and 11 (7%) were reported as associated with an identified vessels and 15 (11%) were reported to originate from land-based and ship wreck sites.
2. In 1998/1999. A total of 1028 patrol hours were flown, over flying 6477 vessels with 135 pollution sightings, Of those 135 pollution sightings, 101 (75%) were mystery spills and 19 (14%) were ship source spills and 15 (11%) were reported to originate from land based and ship wreck sites.
3. In 1999/2000. A total of 858 patrol hours were flown, over flying 4670 vessels with 62 pollution sightings. Of those 62 pollution sightings, 46 (74%) were mystery spills and 10 (16%) were ship source spills and 6 (10%) were reported to originate from land based and ship wreck sites.
4. In 2000/2001, a total of 1053 patrol hours were flown, over flying 6499 vessels with 64 pollution sightings. Of those 64 pollution sightings, 56 (87.5%) were mystery spills and 8 (12.5%) were ship source spills.

The Administrator gratefully received this good report on an important CCG program and was pleased to comment, as invited, to the CCG:

> *"Although the direct deterrent effect of aerial surveillance may be difficult to measure and quantify, I suggest there is clearly a heightened awareness in the shipping industry about [Canada's] overall national surveillance strategy to detect marine pollution and obtain evidence for prosecutions. It is also apparent that the number of successful prosecutions during the past four years is relatively low in comparison to the number of pollution sightings. Nevertheless, an aggressive enforcement of the pollution regulations remains the key to environmental protection.*
>
> *I am interested in learning more from you about the level of co-operation of the CCG with municipal and provincial authorities. This interest stems from the perspective that SOPF is liable to pay claims for "mystery spills" in Canadian waters. Mystery oil spills may be the result of sewer and storm drainage overflows during excessive rainfalls. We also note that the table on page 33 indicates there has been an annual decrease in the number of patrol hours flown in the Central and Arctic Region during the past few years, which includes significant areas of high urban and industrial activity."*

The problem of illegal discharge of oily waste at sea is not unique to Canada. Marine pollution is indiscriminate. By its nature it is trans-boundary. 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.

The Director of the US Environmental Protection Agency office of Emergency and Remedial Response characterizes enforcement as the key to the protection, prevention, preparedness, and response continuum for environmental protection.

The Administrator notes Transport Canada's continuing commitment to enforcement of Canada's Oil Pollution Regulations.

4.2.4 Oiled Wildlife Project

The Newfoundland Region of DFO/CCG has taken the initiative to address the chronic problem of oiled seabirds off the province's south coast and the Avalon Peninsula. A steering committee was established. It struck a working group to study and report on the issue of the oiling and death of seabirds from offshore oil spills of unknown sources.

The participants represent the federal and provincial governments, the offshore oil industry, oil refineries, shipowners, environmentalists and other interested parties. The project is called the "Prevention of Oiled Wildlife" (P.O.W.).

The findings of the working group indicate that, based on available information and counts of the number of dead seabirds that drift ashore, a minimum of 60,000 to 100,000 are killed each winter season. These estimates are considered very conservative. Wildlife studies conducted by Environment Canada, Memorial University and the CCG during the winter of 2001 indicate a higher mortality. Birds exposed to oil in the commercial traffic lanes – up to 35 miles off the coast – could be as high as 300,000. There is evidence that the problem exists on a year round basis, but it is most severe between December and March because it is estimated that ten million birds migrate to the area during the winter.

Chemical analysis indicates that approximately 90 per cent of the oil found on the feathers of dead birds originates from ship machinery spaces.

Most oil spills found on the exposed shorelines, both domestically and internationally, are due to illegal discharge of oily waste from ships in transit. (See section 4.2.3). The study group argues that such ship source pollution in unsheltered waters is not one of necessity, but rather convenience and economics.

The recommendations of the working group include the following:

- Undertake an education and awareness campaign - including the judiciary - for the prevention of illegal oil discharge.
- Conduct additional aerial surveillance.
- Conduct research into the use of satellite imagery to identify oil spills.
- Develop an aerial deployable oil-sampling device.
- Implement a long range Automatic Identification System for ships transiting the area.

In its recent 2002 report to the Regional Directors-General of DFO, EC and TC the Steering Committee recommends that there are a number of avenues that require attention, including corrective action focusing on monitoring, education and awareness, surveillance and enforcement.

4.3 Safe Ships and Environmental Protection

4.3.1 Places of Refuge for Damaged Ships – Threat of Pollution

The importance of this issue for Canadians was highlighted in the *Eastern Power* incident. In the morning of December 6, 2000, the Panamanian tanker *Eastern Power* (126,993 gross tons) developed a crack in No 1 starboard cargo oil tank below the waterline. A leakage of oil was suspected. When the incident occurred, the ship had encountered heavy seas en route from Egypt to the North Atlantic Refining Ltd. refinery at Come-by-Chance, Newfoundland. The Captain reported to the Eastern Canada Reporting Office (ECAREG) that his ship was about 150 miles east of the 200-mile exclusive economic zone. The ship was laden with approximately 1.9 million barrels of Basrah crude oil.

Transport Canada at first refused to allow the damaged oil tanker to enter Canadian waters. Permission was granted however on December 11, but the next day the owners diverted the *Eastern Power* to a port in the Netherlands Antilles.

The IMO sub-committee on Safety of Navigation (NAV) has since developed a framework to address the issue of places of refuge for ships in need. The urgency to deal with the issue of places of refuge was highlighted internationally in the wake of the *Erika* and *Castor* incidents.

After the *Erika* incident, the international investigation by the Italian Classification Society, RINA, called upon the EU and shipping organizations to campaign for the establishment of a coastal state regime that would identify ports of refuge. RINA challenged France's investigation into the contributing factors for the loss of the ship. For example, it questioned the decision to steer the *Erika* for refuge to the River Loire port of Donges rather than Brest, which it says the ship could have reached more quickly with less stress to the hull from wave impact.

It is noted that the French Permanent Commission of Inquiry into Accidents at Sea carried out an investigation. In its report published in December 2000, the Commission found that the speed and courses followed by the ship were not decisive factors in the cause of the incident.

It was the *Castor* incident that heightened the urgency to deal with the issue of places of refuge for ships in need. In this case, a number of littoral states in the Mediterranean Sea refused refuge. The ship's flag state, Cyprus, did offer assistance but it was approximately 1000 miles away.

The situation was that on December 31, 2000, while in the region of the Strait of Gibraltar, the Greek product tanker *Castor* developed a 26-meter crack across the main deck. The ship was loaded with approximately 29,500 tonnes of gasoline. Subsequently, the Spanish search and rescue authority successfully rescued all the ship's crew. Tugs of the Tsavliris salvage company towed the *Castor* for more than a month across the western Mediterranean. They encountered extreme force 12 gales with wave heights over eight meters without, reportedly, experiencing any further deteriorating in the structural condition of *Castor*. The convoy was unable to obtain permission to enter port of refuge or seek the shelter of a headland. Eventually the weather conditions improved and allowed safe transfer of cargo to shuttle tankers in open waters.

The *Castor* incident sparked a great deal of concern among IMO Member States about the provisions of refuge for ships in distress. Consequently, the Secretary-General, William O'Neil, placed the issue of offering refuge to disabled ships on the IMO's Maritime Safety Committee (MSC) Agenda.

The MSC agreed at its meeting of May 30 to June 8, 2001, to instruct the NAV sub-committee to begin considering the issue at its 47th Session in July 2001.

Over the next two years, the NAV sub-committee is expected to work in co-operation with the Sub-Committee on Radio Communications Search and Rescue and the Sub-Committee on Ship Design and Equipment. Together they could develop guidelines to help states and shipmasters deal with a situation in which a ship in distress seeks a place of refuge. At its session on July 2 to 6, 2001, the NAV sub-committee agreed to draft terms of reference for future work. The further work should include the preparation of guidelines to cover the following aspects:

- Action expected from coastal states for the identification, designation and provision of such suitable places together with relevant facilities.
- The evaluation of risks, including the methodology involved, associated with the provision of places of refuge and relevant operations in both a general and a case-by-case basis.
- Actions masters of ships in distress should take when in need of "places of refuge", including actions on board and actions required in seeking assistance from other ships in the vicinity, salvage operations, flag state and coastal states.

The intention is to have all these issues addressed in advance of the need to take action and then to employ them in a non-mandatory fashion. The IMO guidelines will provide an important foundation for discussions between the international salvage industry and the various coastal authorities.

At its session on July 2 to 6, 2001, the MSC noted that the MEPC had already discussed the issue. It was agreed to also bring the issue to the attention of the Legal Committee for consideration of any matters relating to international law, jurisdiction, and rights of coastal States, liability, insurance and bonds.

The MSC also noted that, at a later stage and based on information by Member States, the IMO might consider preparing a "World Guide of Places of Refuge" for the use by shipmasters, salvage operators and others in case of ships in distress and in need of such places.

The IMO continues to examine conditions under which littoral states should provide a safe haven in sheltered areas for ships in serious and immediate danger. Such action should reduce the overall risk of oil pollution and, thereby, give a higher priority to the protection of the marine environment.

The matter was considered at the 83rd session of the Legal Committee of the IMO held in October 2001. Delegates to the Legal Committee decided at the 83rd session to give a mandate to the IMO Secretariat, working in collaboration with the CMI, to make a study of the legal issues.

The Comité Maritime International (CMI) has therefore developed, in consultation with the IMO Secretariat, a questionnaire with a view to collecting as much information as possible concerning the laws applicable in the countries of CMI member associations on the access of a distressed vessel to a place of refuge where necessary work can be undertaken to stabilize her condition and, if appropriate, to transship her cargo. The Canadian Maritime Law Association (CMLA) has been asked to respond to this questionnaire.

A new CMLA Committee was established in March of 2002, with a deadline for submission of a response to the CMI questionnaire by the end of June 2002.

From the Administrator's view, this is a matter of high importance to Canada with its extensive coastline. The early attention of the IMO, the CMI and the CMLA to the issue is appreciated. We look forward to the results of this work with anticipation.

Note: Prior to going to print, it was reported that the Greek salvage company Tsavliris has lost a third of its $8M award for salving the Castor last year after a Lloyd's appeal arbitrator decided the case did not warrant special compensation for preventing environmental damage.

4.3.2 Single-hull Tanker Phase-Out

The accelerated phase-out of single-hull tankers is one of a range of post-Erika measures adopted by the IMO. The revised regulation 13G of annex 1 of MARPOL, as adopted by the IMO Marine Environmental Protection Committee, enters into force on September 1, 2002.

The revised MARPOL regulation identified three categories of tankers, as follows:

> "Category 1 Oil Tanker" means oil tankers of 20,000 tons deadweight (dwt) and above carrying crude oil, fuel oil, heavy diesel oil or lubricating oil as cargo, and of 30,000 tons dwt and above carrying other oils, which do not comply with the requirements for protectively located segregated ballast tanks (commonly known as pre-MARPOL tankers).
>
> "Category 2 Oil Tanker" means oil tankers of 20,000 tons dwt and above carrying crude oil, fuel oil, heavy diesel oil or lubricating oil as cargo, and of 30,000 tons dwt and above carrying other oils, which do comply with the protectively located segregated ballast tank requirements (i.e. MARPOL tankers built after 1982).
>
> "Category 3 Oil Tankers" means an oil tanker of 5,000 tons dwt and above but less than the tonnage specified for Category 1 and 2 tankers.

Pre-MARPOL tankers (i.e. Category 1 Oil Tankers) that were not required to have segregated ballast tanks are to be phased-out by 2007.

The amendments to the regulations set a principal cut-off date of 2015 for the withdrawal of most MARPOL single-hull tankers (i.e. Category 2 Oil Tankers).

The flag State administration may allow for some newer single-hull ships registered in its country, that conform to certain technical specifications, to continue trading until the 25th anniversary of delivery or until the ship's anniversary date in 2017. However, under the regulations any port state can deny entry of those single-hull tankers that are allowed to operate until their 25th anniversary to ports or offshore terminals.

4.3.3 ISM Code

On July 1, 1998, "Phase 1" of the International Safety Management (ISM Code) became mandatory for tankers, bulk carriers and passenger ships. All other types of ships of 500 gross tons and above and mobile offshore drilling units must comply by July 1, 2002 (i.e. – Phase 2).

The ISM Code provides an international standard for the safe management and operation of ships, and for the protection of the marine environment from oil pollution. The adoption of the ISM Code was considered to be a watershed in international regulation. The shipowner is responsible for ensuring that adequate resources and shore-based support are provided to enable sound management of the ship. The Code employs the principle of continuous improvement through audits, reviews and corrective action. When the safety management system of a shipping company is approved, a Document of Compliance for the company and a Safety Management Certificate for the ship are issued under the provisions of SOLAS by an organization recognized by the flag state administration – for example, Lloyd's Classification Society.

As noted in last year's annual report, the IMO Secretary-General, Mr. William O'Neil, initiated an assessment of the effectiveness and impact of the ISM Code so far. He announced that the IMO would continue to focus on efforts to ensure a sound approach to the maintenance and enhancement of ship safety and marine environmental protection. Independent flag states were requested to provide information about code deficiencies, and the number of detentions recorded for ISM and non-ISM certified ships.

A joint IMO and industry meeting was convened in February 2000 to address the issue of multi-inspections within the context of renewed efforts to reward quality shipping. Different national inspection capabilities and the fact that many port state authorities are not geared up for the use of information technology, are perceived as major obstacles to greater transparency concerning the ISM Code's real impact.

An updated report will be submitted to the IMO Maritime Safety Committee's session that will be held from May 15 to 24, 2002. It is one of many high priority agenda items because of imminent entry into force of the ISM Code's second phase on July 1, 2002.

On October 18 and 19, 2001, the Company of Master Mariners of Canada sponsored a conference in Halifax on Safer Ships and Competent Crews. In an opening address (which was read on his behalf) the IMO Secretary-General issued a timely reminder that shipping companies need to plan and schedule their implementation activities for ISM phase 2 without delay.

The following paragraphs are excerpts from Mr. O'Neil's address:

> "The Code addresses the responsibility of management to play full and active part in building a safety culture, and the responsibilities of people within the overall management team to ensure that this is done. It brings management – and senior management at that – directly into the safety chain. Moreover, it ensures that, should something go wrong with the ship at sea, the Master and crew are not left alone to pick up the pieces.
>
> One thing that is abundantly clear from the industry's experience in the lead-up to the first implementation date is that shipowners need to begin the certification process in good time. Too many companies trying to implement the Code at the last minute will inevitably lead to a sharp increase in applications for shipboard audits close to the deadline. The backlog of work this will create for the classification societies will mean that companies will run the risk of not being able to obtain ISM certification in time, which in turn could result in the company having to stop operations and thereby lose revenue.
>
> For shipowners, the message is clear: if you haven't started your second-phase implementation yet, start now. There will be no extension of the deadline. So, do not leave it to the last minute and do not underestimate the size of the task.
>
> As with all such messages, the success of the ISM Code lies in its implementation and enforcement. If, for instance, port State Control groupings share information about defaulters and are conscientious about enforcing compliance, they can systematically cut down the options for ships that do not apply the Code properly, leaving substandard ships nowhere to ply their trade.

> But my message to shipowners is not to view ISM Code implementation as a burden, but rather as an opportunity to confirm that their management practices are effective – and effective management is good business practice. If the risk of non-compliance is a "stick", then the ISM Code also holds the promise of a "carrot". Implementing the ISM Code can create a "win-win" situation, as has been confirmed by a new study carried out by a leading P&I Club [The Swedish Club], which confirms that owners implementing the ISM Code can expect to achieve a reduction in hull claims of 30 per cent or better, together with a similar improvement in the incidence of P&I claims. But, to be truly successful, the code must be more than just a series of files gathering dust on a shelf. It must be the document that forms the basis of a culture of safety and efficiency that becomes engrained within the fabric of every shipping company."

During the same conference in Halifax, Captain Richard Day, Director, Ships and Operations Standards (as he now is), Transport Canada Marine Safety gave a presentation on the ISM Code including Port State Control from a Canadian perspective. Capt. Day's interesting paper is included in this report as Appendix I.

With regard to the ISM Survey conducted by Captain Phil Anderson, Vice-President of the London-based Nautical Institute, a final conclusion of his research will be published as a book by the Nautical Institute in 2002. Details will be published on the Nautical Institutes Website at www.nautinst.org. In the meantime, an interim report is available on a dedicated Website: www.ismcode.net

4.3.4 Oil Spill Risks – Tankers versus Non-tank Ships

It is apparent that non-tank vessels constitute significant risks of oil spills. There are more non-tank vessels making more frequent passages. The growth in non-tank vessels is projected to increase.

In North America, oil spills from tankers make up a small percentage of the total. For 1999, in the United States 94 per cent of oil spill incidents and 70 per cent of volume are from vessels other than tankers, according to the USCG. In Canada, between 1993 and 2000 some 88 per cent of incidents reported by the SOPF related to non-tank vessels and mystery spills.

It is reported that it has been estimated that, on a global basis, as much as 14 million tonnes of bunkers are being carried in non-tankers at any one time. This compared to approximately 30 million tonnes of oil cargo on the world's seas.

Some bulk carriers and containerships are known to carry more oil as bunkers than coastal tankers do as cargo.

4.4 Legislative Developments

4.4.1 From *CSA* to *MLA*

The *Marine Liability Act*, S.C. 2001, c.6 came into force on August 8, 2001. This enactment consolidates certain rules of Canadian maritime law governing the civil liability of shipowners for loss of life, personal injuries and damage to property.

Part 6 of the new Act continues the existing regime governing liability and compensation for maritime oil pollution, which was previously found in Part XVI of the *Canada Shipping Act*.

Part 3 of the *MLA* continues in force in Canada an international convention governing the limitation of liability for maritime claims. S.C. 1998, c.6 and the Convention on Limitation of Maritime Claims 1976 (LLMC), as amended by the Protocol of 1996, applying to non-tankers, refers.

4.4.2 *Nunavut Waters Act*

Bill C-33 received First Reading in the House of Commons on September 20, 2001, providing for, *inter alia*, a scheme of wildlife compensation which includes the liability of the SOPF. Royal Assent was granted on April 20, 2002. The Act may be cited as the *Nunavut Waters and Nunavut Surface Rights Tribunal Act*, Statutes of Canada 2002, c.10.

4.4.3 Bunker Convention and Current Canadian Cover

On March 23, 2001, the IMO adopted a new International Convention on Civil Liability for Bunker Oil Pollution Damage. The purpose of the Convention is to establish a liability and compensation regime for spills of oil carried as fuel in ships' bunkers.

The current international Conventions covering oil spills do not include bunker oil spills from ships other than oil tankers.

Where the new Convention is in force, it will be compulsory for the registered owners of all ships over 1,000 gross tonnage to maintain insurance or other financial security, to cover the liability for pollution damage under the applicable national or international limitations regime. Claims for compensation for pollution damage may be brought directly against an insurer.

In our annual report 2000-2001 at page 41 we noted the uncertainty remaining over the ability of European Union States to ratify the Bunkers Convention. In this respect, on February 26, 2002, the official journal of the EC published the European Union's proposal for a Council Decision authorizing Member States, with the exception of Denmark, to sign and ratify the Bunkers Convention and inform the IMO secretary-general accordingly.

During the Diplomatic Conference respecting the Bunkers Convention, held March 19 to 23, 2001, to consider the merits of applying the compulsory insurance provisions one issue was the tonnage threshold. Proposals ranged from 300 to 5,000 gross tons. The compulsory insurance or financial security was finally set for any ship having a gross tonnage greater than 1,000 gross tons.

The United States submitted a document to the Diplomatic Conference that compares the oil removal cost rate of the US in pollution cases involving vessels with compulsory insurance against cases involving vessels without compulsory insurance. The following paragraphs are excerpts from the US document:

> *Under the law of the United States, the operator of any non-tank vessel of more than 300 gross tons using the waters of the United States, or using any port or place subject to the jurisdiction of the United States, is required to maintain compulsory insurance.*
>
> *Oil spill cost recovery cases closed from 1997 through 1999 show that the United States was successful in recovering 98% of costs billed in cases involving vessels required to maintain compulsory insurance (those over 300 gross tons). In pollution incidents involving vessels not so required, the United States was successful in recovering only 27% of removal costs incurred. There was greater difficulty finding the owner and identifying someone to bill in these cases involving vessels without compulsory insurance.*

In Canada currently, under the *Marine Liability Act*, Part 6, the SOPF, as directed by the Administrator, is potentially liable for bunker oil spills as well as oil carried in ships as cargo. Further, the Administrator has the power under section 53 of the *MLA* to commence an action *in rem* against all classes of ships and can obtain security and arrest the ship for that purpose if necessary. A letter of undertaking (LOU) usually provides security from the ship's P&I Club in order to preclude the ship's arrest or secure its release. Currently, the maximum liability of the SOPF per incident is $136,281,117.60.

The new Convention remains open for signature, with the aim of subsequent ratification, at the IMO headquarters until September 30, 2002. To bring the Convention into force in Canada appropriate legislation would have to be introduced in Parliament with changes to Canadian law. It is understood that any such proposed changes in the law would be proceeded by consultation with interested persons and organizations.

As a first step, on March 19, 2002, Transport Canada wrote to the marine industry, enclosing the text of the new Convention, seeking comments or enquiries concerning whether Canada should sign and later ratify the new Convention.

The Administrator in a letter to Transport Canada citing the current liability of the SOPF for bunker oil spills under Canadian law (*MLA*) and the prospective international regulation (Bunker Convention) said:

> *"Upon comparing both regimes, one notes the following:*
>
> *Subject to claims for loss of income (which I shall discuss later on), the type of damage that can be compensated, including damage to the environment appears to be similar.*
>
> *The strict liability regime is also identical, as is the limitation of liability of the shipowner.*

However, the Bunker Convention contains an extended definition of "owner" which may prove wider than the extended definition of "owner" (in the case of non-Convention ships) that one finds in the MLA.

One of the major differences is, of course, the compulsory insurance or financial security and the direct right of action against the insurer or guarantor, although it does not apply to ships carrying less than 1000 tons of bunker or, possibly, Canadian ships trading in coastal waters only.

Another distinctive feature of the Bunker Convention is the clear provision dealing with joint liability when more than two ships are involved in an incident. This resolves the potential problem under the current regime caused by the silence of Part 6 on this issue.

The Bunker Convention per se does not afford, however, the possibility for a claimant to opt out of the judicial process and to present, instead, a claim to a Canadian fund, as is currently the case under the MLA. This obligation to prosecute a claim before the courts may prove cumbersome for small non-governmental authorities, especially when the subject ship is one that does not carry a certificate of compulsory insurance. One should thus consider the possibility at the enactment stage to adopt a scheme similar to what has been set up for the Civil Liability Convention. This would also afford additional compensation in case the claims exceed the limitation of liability.

Finally, the absence of specific provisions [in the Bunker Convention] dealing with loss of income for those who derive their revenue from marine activities should constitute a further argument for a careful integration of the Bunker Convention into Part 6 of the MLA.

Bearing the last two points in mind, I would support the proposal".

4.4.4 Appropriation of IOPC Fund Money For HNS Matters

An international Conference on Hazardous and Noxious Substances and Limitation of Liability was held in London under the auspices of IMO from April 16 to May 3, 1996. The Conference, which included a delegation from Canada, passed Resolution 1 on setting up the HNS Fund. The resolution requests that the Assembly of the 1992 IOPC Fund give its Director the following assignments, on the basis that all expenses incurred would be reimbursed by the HNS Fund:

- to carry out, in addition to the tasks under the 1992 Fund Convention, the administrative tasks necessary for setting up the HNS Fund, in accordance with the provisions of the HNS Convention, on condition that this does not unduly prejudice the interests of the Parties to the 1992 Fund Convention;
- to give all necessary assistance for setting up the HNS Fund;
- to make the necessary preparations for the first session of the Assembly of the HNS Fund, which is to be convened by the Secretary-General of the International Maritime Organization, in accordance with article 44 of the HNS Convention;
- to hold negotiations with the International Maritime Organization to enable the HNS Fund to conclude agreements as soon as possible on the necessary premises and support services.

The Director prepared a document for discussion at the 1st Session of the 1992 IOPC Fund Assembly, which was held from June 24 to 28, 1996. A copy of the Resolution adopted by the HNS Conference (Resolution 1) was presented to the Assembly for its instructions to the Director.

The Assembly instructed the Director to carry out the tasks requested by the HNS Conference.

At the 80th Session of the IMO Legal Committee held in October 1999, a Correspondence Group was established to monitor the implementation of the HNS Convention. Within the Correspondence Group, Canadian representatives took on certain responsibilities. Canada would, *inter alia*, initiate work on the issue of "compliance and verification of States' responsibilities in respect of the reporting system for contributing cargo".

A special meeting of the HNS Correspondence Group was held on March 16, 2001, attended by the Director of the 1992 IOPC Fund. Officials from a number of States, including Canada, discussed the progress towards ratification and implementation of the HNS Convention. At the meeting, the Director of the 1992 IOPC Fund was asked if the 1992 IOPC Fund could undertake a project to develop a software program to identify substances covered by the HNS Convention. This would take the form of a Website and/or CD-ROM. The system would assist States and potential contributors in the identification and reporting of contributing cargo under the HNS Convention.

At this March 16, 2001 meeting with the HNS Correspondence Group, it was agreed that proposals would be prepared on this issue for the 1992 IOPC Fund Assembly in October 2001. On May 8, 2001 a note of the March 16, 2001 meeting was sent to persons on the HNS Correspondence Group distribution list and others.

In a 1992 IOPC Fund briefing document dated October 11, 2001 provided to delegates on their arrival in London for the 6th Session of the Assembly (October 16 to 19, 2001), the Director noted the above, March 16, 2001 meeting. He advised that the IOPC Funds Secretariat had developed an outline of such a system. He requested that the Assembly authorize the Director to develop the system and grant an extra appropriation of £150 000 for this purpose, provided that the costs incurred would be reimbursed to the 1992 Fund by the HNS Fund when the HNS Convention entered into force. It was noted that these costs would be paid from the 1992 IOPC Fund General Fund.

The Secretariat had identified a number of companies which might be interested in carrying out this work.

The HNS Convention will establish a regime of liability and compensation for incidents arising out of the maritime carriage of hazardous and noxious substances not covered by the present conventions on oil pollution. It is said that the development of the proposed database is essential for the implementation of the HNS Convention.

At the October 2001 meetings of the 1992 IOPC Fund Assembly some delegations questioned how the 1992 Fund could obtain guarantees that the HNS Fund would repay the proposed "loan". Attention was drawn to the possibility that the HNS Convention would not enter into force.

Some delegations questioned (1) whether the 1992 Fund could legally pay costs for the purpose of the implementation of the HNS Convention, since the HNS Fund would be a totally separate entity from the 1992 Fund and carry out activities outside the scope of the 1992 Fund Convention; and, (2) it was suggested that interested States should pay such costs on a voluntary basis.

The Administrator as Head of the Canadian Delegation, while noting its support for both an HNS Fund and the objective of the proposed Website or CD-ROM above, indicated nevertheless that duty to the integrity of the IOPC Fund led him to express concern about the legality of the Assembly granting this appropriation of oil contributors' money.

A number of delegations expressed the view that there were no legal obstacles to the 1992 Fund making loans for this purpose.

The 1992 IOPC Fund Assembly decided to renew its instruction to the Director to carry out the administrative tasks necessary for setting up the HNS Fund in accordance with the HNS Convention as requested by the IMO 1996 HNS Diplomatic Conference and approved the Director's two proposals above.

4.5 The Polluter Pays

The section 51 *MLA* makes the shipowner strictly liable for oil pollution damage caused by his ship and for costs and expenses incurred for clean-up and preventive measures.

As provided in the *MLA*, 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 84 *MLA*.

The SOPF can also be a fund of first resort for claimants under section 85 *MLA*.

On settling and paying such a section 85 claim, the Administrator is, to the extent of the payment to the claimant, subrogated to the claimant's rights, and subsection 87(3)(d) requires that the "...Administrator shall take all reasonable measures to recover the amount of payment to the claimant from the owner of the ship, the International Fund or any person liable...."

In this process, the Administrator has to settle the claim twice, firstly with the claimant, then with the shipowner/ person liable in a recovery action.

The Administrator notes that, as normal, in the cases of several incidents the claimant, primarily the CCG, has, during the past fiscal year, elected to first claim directly against the responsible shipowner. Sometimes this leads to claimants negotiating and settling their claims with the polluter's directly, with or without SOPF intervention as may be necessary. Other times the shipower is not forthcoming and the claimant must resort to the SOPF.

In the interest of speeding satisfactory claim and recovery settlements the Administrator encourages such direct claim action by claimants where appropriate.

4.6 Prospective Changes in the 1992 International Regime

4.6.1 Increase in Current Compensation Limits

On November 1, 2003, there will be increases in the compensation limitation amounts of the current regime, as adopted by the IMO legal committee pursuant to Articles 15 and 33 of the 1992 CLC and the 1992 Fund Convention respectively. This increase of approximately 50 per cent to $405 million of IOPC primary coverage is noted under Figure I, Appendix D. This increase is unrelated to any amount of compensation available under the Supplementary Fund - "optional" third tier, referred to following.

4.6.2 Supplementary Fund – "Optional" Third Tier

The 1992 Fund Assembly decided to adopt the text of the draft Protocol as set out in Annex 1 of the Record of Decision of the sixth session of the Assembly held from October 16 to 19, 2001.The Assembly instructed the Director to submit the text of the draft Protocol to the secretary-general of the IMO requesting him to convene a Diplomatic Conference to consider the draft Protocol at the earliest opportunity. An IMO Diplomatic Conference is scheduled for May 12-16, 2003.

The protocol, as drafted, provides for the Supplementary Fund to be funded by oil receivers only. Currently, this is a matter of debate between OCIMF on the one hand and the International Group of P&I Clubs and ICS on the other.

The OCIMF's position is that it is important to maintain a proper balance between the burdens imposed on the respective industries concerned. In OCIMF's view the preservation of that balance could be achieved either by an increase in the Shipowner's limitation amount in the CLC, or by the Shipowners' participation in the funding of the third tier of compensation (Supplementary Fund).

It is expected that this debate will continue and that the OCIMF will submit concrete proposals on shipowners' liability for consideration by the third intersessional working group meeting scheduled for February 3-7, 2003.

In any event, this "optional" third tier of compensation would be operative only in States that become parties to the Protocol creating the third tier, and only in cases where the established claims exceed the aggregate amount available under the 1992 CLC and 1992 IOPC Fund.

From the Canadian perspective this raises particular issues and challenges.

Presumably EU countries will adopt the third tier by becoming Contracting States to the Protocol.

It appears that most other Contracting States to the 1992 regime will not adopt the third tier. They will continue with the 1992 CLC and the 1992 Fund Convention, which recently had compensation limits increased by approximately 50 per cent effective November 1, 2003.

However, some say there is no demonstrable need for compensation levels beyond the IOPC limits already available with the 50 per cent increase effective 2003. Nevertheless, the concept of an IOPC optional third tier is supported by European shipowner/insurance interests *et al.*

The Canadian IOPC Funds delegation continues to support the development of an IOPC optional third tier. Whether the proposed optional third tier comes out of the Diplomatic Conference with or without shipowners' participation remains to be seen.

From the Administrator's point of view, an IOPC optional third tier could potentially be both a practical alternative – and effective IMO response – to a European COPE Fund. See the Administrator's Annual Report 2000-2001.

However, the question of whether or not Canada should become a Contracting State to any IOPC optional third tier is for Cabinet to decide. If such was ever proposed, it would undoubtedly be preceded by broad consultations with government departments and agencies and, *inter alia*, Canadian industries.

On the one hand, there will be the argument that Canada should have the maximum aggregate level of cover available. On the other hand, there will be the question of whether the excess cover provided by the IOPC optional third tier is necessary in light of particular Canadian circumstances, including improved government regulation, inspection, enforcement, and the current Canadian domestic regime for oil spill compensation. Such additional insurance cover comes with "costs". Some questions will be posed: What is a reasonable level of insurance that protects Canadian interests? Where is the true value?

Given that all Canadian contributions to IOPC Funds are paid from the SOPF, an account in the Consolidated Revenue Fund of Canada, some considerations in addressing that question may include the adequacy of the current level of coverage per incident already provided for a tanker spill in Canada. Canada's primary IOPC coverage alone has gone from $120 million in 1989 to $270 million in 1999. On November 1, 2003, primary IOPC cover will increase by 50% to $405 million per incident. In Canada an additional $136 million is available from the SOPF. In result there will be $541 million of cover per incident for any tank ship spill in Canada – without Canada being a Contracting State to an IOPC optional third tier.

It should be noted that in other countries contributions to IOPC Funds are paid directly by persons receiving contributing oil annually in total quantities exceeding 150 000 tonnes – not out of their national treasury, as is the case for Canada. (See Chapter 2. The Canadian Compensation Regime).

Is the excess cover available in the prospective IOPC optional third tier needed for claimants in Canada? Would Canadian claims be as high as some international claims? Canada has some experiences.

For example, in 1979 the British oil tanker MT *Kurdistan* broke in two in the Cabot Strait, spilling 7,914 tonnes of Bunker C. Fishermen suffered loss. The coasts of Nova Scotia and Newfoundland were polluted. CCG responded. The stern section and its oil (15,140 tonnes) were salvaged. The bow section with its oil (7,411 tonnes) was towed to the edge of the Continental Shelf where it was sunk by naval gunfire. The total claim (crown and fishermen) was $7,688,893 or in 2000 dollars - $18 million approximately. The claim was settled and paid at $8,500,000 including interest, or in 2000 dollars - $23 million approximately.

In *Erika* (France 1999), 14,000 tonnes of heavy fuel oil were spilled. There were remaining 10,000 tonnes in the bow section and 6,000 tonnes in the stern section. The aggregate claims exceed $270 million.

To be considered also in addressing the question is the amount of money that the Administrator must direct be paid out of the SOPF as contributions to the 1992 IOPC Fund. Canada has little or no control over these amounts. The levels of these payments from the SOPF are determined by the extent of IOPC Fund payments for international incidents, and by the level of oil receipts in Canada relative to the aggregate amount of oil received in all Contracting States.

The likely levels of the extra contributions required in an IOPC optional third tier would be a critical concern in the question, given that, uniquely, the SOPF is liable to pay all Canadian contributions to IOPC Funds (all payments are from the Consolidated Revenue Fund of Canada). Unlike the primary 1992 IOPC Fund, an optional third tier would likely have a small membership and contribution levies could be high. It has been noted by OCIMF that some contributors in some Contracting States may find the cost burden too great to bear.

For Canada, such extra costs may well challenge the viability of the SOPF's current mode of funding expenditures out of interest income only. To date all domestic claims on the SOPF as well as all Canadian contributions to the current IOPC Funds have been paid from interest earned on the capital in the SOPF. Consequently, there has been no need for a *CSA/MLA* levy on industry since 1976.

An essential consideration is the continuing ability of the SOPF to fund its domestic mandate in Canada.

Domestically, the SOPF is liable to pay claims, as directed by the Administrator, 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 any ship.

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

The SOPF may also be available as a source of additional compensation (a Canadian third tier) in the event that funds from the 1992 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.

Finally, 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 preventative 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).

Importantly, the *MLA* provides for a widely defined class of persons in the Canadian fishing industry who may claim for loss of income caused by an oil spill from a ship.

4.6.3 Shipowner's Limitation of Liability

There remain issues associated with the shipowner's limitation of liability. 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 Clubs).

Under the 1969 CLC, the shipowner is deprived of his 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 his liability under this test.

Under the 1992 CLC, 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.

Debate on the issue of whether amendments should be made to the provisions in the 1992 CLC regarding Shipowners' liability took place at the third intersessional working group's fourth meeting held on April 30 and May 1, 2002, under the chairmanship of Mr. A. Popp, Q.C. (Canada). The discussions were held on the basis of the mandate given by the Assembly at its October 2001 session.

The working group reviewed submissions by inter alia the International Group of P&I Clubs and OCIMF.

As indicated in the section above on the Supplementary Fund, there remains a divergence of opinion regarding the Shipowners' liability. The positions are illustrated in the following excerpts from the report of the working group's fourth meeting on April 30, May 1 and 2, 2002.

> *Introducing document 92FUND/WGR.3/11/1, the observer delegation of the International Group of P&I Clubs expressed the view that the issues relating to shipowners' liability should not be reopened since to do so would be detrimental to the position of victims of oil pollution. It was suggested that the 1992 Conventions were intended to create an efficient compensation regime and had not been intended to ensure the quality of shipping or to punish the guilty party. In the view of that delegation, any amendments to the provisions relating to shipowners' liability would give rise to serious treaty law problems. It was emphasized that it was of paramount importance to maintain the equitable balance between the burdens imposed on the two industries involved, i.e. those of the shipping and cargo interests. In that delegation's view, an analysis of oil spills which had occurred in the period 1990-1999 showed that the present regime had resulted in an equitable sharing of burden between these two interests. The point was made that the proposal by the shipping industry to increase on a voluntary basis the limitation amount applicable to small ships to 20 million Special Drawing Rights (£18 million) would preserve that balance. That delegation expressed the view that the matter should be re-examined in the light of experience three to five years after the entry into force of the proposed Supplementary Fund Protocol.*
>
> *The observer delegation of OCIMF introduced Document 92FUND/WGR.3/11/2 and stated that the oil industry supported the proposed Supplementary Fund Protocol funded initially entirely by oil receivers. However, that delegation emphasized the importance of maintaining a proper balance between the burdens imposed on the respective industries concerned, since this was a fundamental concept of the international compensation regime. The OCIMF delegation expressed the view that the international compensation regime should ensure that persons suffering oil pollution damage were compensated promptly but also be consistent with the general objective to improve maritime safety and reduce the number of oil spills. It was emphasized that it was the sole responsibility of the shipowner to maintain a safe and seaworthy ship. It was suggested that the latter objective might be compromised by the establishment of the Supplementary Fund, in so far as it was funded only by oil receivers. In addition, the point was made that a Supplementary Fund financed permanently by oil receivers would only distort the balance between the shipowners' and oil receivers' contributions to the regime. It was the view of that delegation that such a Supplementary Fund would also shield low quality shipowners from the consequences of their actions and would therefore not provide any incentive to improve the quality of their ships or the standards of their operations. In the view of that delegation, the preservation of that balance could be achieved either by an increase in the shipowner's limitation amount or by shipowners' participation in the funding of the third tier of compensation.*
>
> *In the conclusions of its report the Working Group noted that the delegations were not yet ready to consider the complex issues of shipowners' liability at a meeting which had been scheduled for July 2002, and decided therefore to postpone its next meeting to late 2002 or early 2003.*

The Working Group decided that consideration of any issues, including those relating to shipowners' liability, fixed costs and the contribution system, should be based on written concrete proposals, preferably in the form of draft treaty texts.

The Working Group noted that if it were to be decided to amend the provisions of the 1992 Civil Liability Convention in respect of shipowners' liability, it would be appropriate to consider amendments to provisions dealing with other issues, whereas if it were to be decided not to amend the provisions dealing with shipowners' liability, it would be necessary to consider whether the amendment of provisions dealing with other issues justified a revision of the Convention in view of the treaty law problems which would arise.

From the Administrator's point of view there remains a strong case for revision of the limits of liability in the 1992 CLC if there is to be an equitable balance between the obligations of shipowners and the obligation of the receivers of oil. From his view this may also contribute to safer ships carrying oil.

The Administrator is pleased that these issues are now being addressed by shipowners/insurers, the oil industry (OCIMF) and the 1992 IOPC Fund – to which the Administrator must direct significant payments out of the SOPF.

4.6.4 Recourse Action

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. These "channelling" provisions are contained in Articles III of the 1969 CLC and the 1992 CLC, respectively.

The 1992 Conventions will have to be changed if the shipowner and his insurer are to be liable – in reality – above the shipowner's limit of liability, and to achieve other meaningful possibilities.

As was noted at the March 2001 meeting of the third intersessional Working Group, if the 1992 test for breaking the shipowner's liability is to be retained there is very little room for recourse action.

From the Administrator's view, it is important that the 1992 IOPC Fund be able to take recourse action against the persons who cause pollution damage.

In this context it has been suggested that in the "channelling" provisions of the 1992 CLC, a difference should be made between the right of victims to claim compensation from the persons referred to in the provisions and the 1992 Fund's right to take recourse action against these persons.

Further, it has been suggested that it might be possible to strengthen the Fund's position by including a provision giving explicitly the Fund the right to take recourse action, probably based on fault.

Subject to meaningful changes to the 1992 Conventions, the Administrator shares the view that the 1992 IOPC Fund should take recourse action whenever appropriate. A firm policy by the IOPC Fund on recourse action could be used against persons operating sub-standard ships. The benefits to the SOPF, other contributors, as well as littoral States, could be significant.

4.7 Winding Up of the 1971 IOPC Fund

In September 2000, an IMO diplomatic conference adopted a Protocol under which the 1971 Fund Convention would cease to be in force. This action was considered essential, because in the near future most contracting states will have acceded to the 1992 IOPC Fund Convention.

There remained a concern, however, about a potential situation in which an incident occurs and the 1971 IOPC Fund has an obligation to pay compensation, but there may be insufficient money to cover the claims. Due to this concern, the Administrative Council of the 1971 IOPC Fund, in October 2000, authorized the purchase of insurance covering any liabilities of the 1971 IOPC Fund for compensation and indemnification up to 60 million SDR ($120 million) per incident. This would be minus the amount actually paid by the shipowner or his insurer under the 1969 Civil Liability Convention. It would cover as well the legal and other expert fees in respect of all incidents occurring during the period up to December 31, 2001. The Fund itself would have to cover a deductible of approximately $500,000 for each incident, and the 1971 IOPC Fund would have the option to extend the insurance coverage up to October 31, 2002.

The cover came into effect on October 25, 2000. Apprehension for the financial viability of the 1971 IOPC Fund is reduced by this decision to purchase insurance.

Between October 25, 2000, and December 31, 2001, two incidents occurred involving the 1971 IOPC Fund, the *Singapura Timur* and the *Zeinab* incidents, see Appendix B and C respectively.

As a result of a number of recent denunciations of the 1971 Fund Convention, the number of Contracting States will fall below 25 on May 24, 2002. Therefore, in accordance with the adopted Protocol, the Convention will cease to be in force on that day.

The Convention will not apply to incidents occurring after that date. However, the termination of the 1971 Fund Convention will not result in the liquidation of the 1971 IOPC Fund. It will still have to meet its obligations in respect of pending incidents before it can be liquidated and terminated. The situation in respect of pending incidents involving the 1971 Fund is summarized in Appendix H. The winding up will require a significant amount of work over the next few years. Now that a legal cut off date has been established for the 1971 Fund liabilities, management can resolve the outstanding claims in the ordinary course of business. Meanwhile, the IOPC Secretariat will proceed to resolve all remaining claims as soon as possible. Any surplus assets shall be distributed to contributors in an equitable manner.

Canada is now past the critical period for current liability to the 1971 IOPC Fund. On May 29, 1999, Canada ceased to be a member of the 1971 IOPC Fund and became a Contracting State to the 1992 IOPC Fund. Nevertheless, Canada will continue to have obligations to the 1971 IOPC Fund, but only for contribution respecting oil spills prior to May 29, 1999.

5. Outreach Initiatives

5.1 General

The Administrator continues with outreach initiatives with a view to enhancing his understanding of the perspectives of the parties interested in Canada's ship-source oil pollution response and compensation regime. In Canada, these include citizens, ROs, DFO/CCG, TC, EC, CMAC, the marine industry, other federal and provincial government agencies and departments, and various non-governmental organizations.

On the international scene discussions were held with organizations both in the United States and in England, including ITOPF, OCIMF, P&I Clubs, US EPA, and the US National Pollution Funds Center.

5.2 Canadian Marine Advisory Council (National)

The Administrator attended the Canadian Marine Advisory Council (CMAC) national meetings, which were held semi-annually at the Government Conference Centre in Ottawa. Nearly 400 stakeholders across Canada take part in these CMAC meetings. During the May 2001 meetings the Administrator addressed the opening plenary session. He explained that the enactment of Bill S-2 moved the regime of oil pollution liability from the *Canada Shipping Act* (*CSA*) to the *Marine Liability Act* (*MLA*) S.C. 2001, c.6. The new MLA consolidates all marine liability regimes into a single Act. Compensation for maritime oil pollution, previously found in Part XVI of the *CSA*, is now in Part 6 of the *MLA*.

The Administrator informed the participants about some of the unique features of the SOPF. For example, in Canada the SOPF can be used to pay claims regarding spills of persistent oil and non-persistent oil from all classes of ships, as well as mystery spills. The IOPC Funds are limited to sea-going tankers and persistent oil. The Administrator emphasized several items, including:

5.2.1 The High Level of IOPC Fund Claims

The CMAC members were reminded that it is important to recognize and support ITOPF in its efforts to give on-site advice on the reasonableness of clean-up measures and response. From the Administrator's view, ITOPF's role and its non-partisan approach are important, given the high level of some claims made against the IOPC Funds. The high level of claims result in serious demands on contributors, including Canada's SOPF.

5.2.2 Limitation of shipowner's liability

By virtue of S.C. 1998, c.6 since May 29, 1999, the limits of liability for ships other than oil tankers in Canadian waters have increased substantially. The new limit of liability for an owner of a ship under 300 gross tons, including privately owned pleasure craft, is $500,000, regardless of actual tonnage. For example, before May 1999 the limit of liability of the shipowner of pleasure craft of 12.5 gross tons had been $3,000. The owners of such ships are now exposed to a considerable personal strict liability in the event of an oil pollution incident - up to $500,000. The Administrator asked whether a note or flyer could be circulated in registration and licensing papers reminding small ship and pleasure craft owners about the change.

5.2.3 Canadian Claims

The Administrator is cognizant of the concerns of shipowners when assessing claims covering monitoring measures taken by the CCG during incidents responded to by the shipowner and its contracted response organization. The issue is generally about whether the extent of the measures taken by CCG and the costs and expenses incurred are reasonable. He suggested to CMAC that there should be a dialogue between the shipowners and the CCG regarding their respective roles.

The Administrator responded to questions from the participants and provided clarification on such matters as: the coverage of offshore drilling rigs, the procedure for the imposition of a levy and the length of time taken to process a claim. He emphasized that there are no plans to re-impose a levy. No levy has been imposed since 1976.

5.3 Canadian Marine Advisory Council (Arctic)

In April 2001, the Administrator's marine consultant attended the Northern Canadian Marine Advisory Council (CMAC – Northern) meeting in Iqaluit on Baffin Island. There were approximately fifty participants in attendance for the two-days of meetings. They represented the federal and territorial governments and a wide range of operators from the northern marine shipping industry.

Discussions were co-chaired by representatives of Fisheries and Oceans Canada, CCG Central and Arctic Region, and Transport Canada's Prairie and Northern Region.

A breakout focus group was formed to discuss the Coast Guard Arctic Response Strategy. The purpose of this strategy is to ensure an effective response to marine oil pollution incidents in the Canadian Arctic.

Northern Transportation Limited (NTCL) has contracted with the government of Nunavut to supply government fuel to the eastern Arctic. NTCL charters oil tankers on the international market. These tankers are ice-strengthened and constructed with double hulls. Annually, three or four 18,000 to 20,000 gross ton tankers are deployed to the Arctic ports. A larger 60,000 gross ton tanker proceeds to Nuuk, Greenland, from where the smaller vessels trans-ship fuel to Canada. In all ports, except Churchill, Manitoba, the fuel is pumped ashore via a floating hose. The tankers carry a blend of persistent oil for their own fuel consumption. All fuel pumped ashore is arctic diesel and gasoline. An experienced Canadian ice navigator sails the shuttle tankers.

Coastal Shipping Limited of Goose Bay, Labrador, has a contract with Public Works and Government Services Canada to supply fuel annually to the DEW Line sites on Baffin Island and in the Foxe Basin area. The tanker utilized for these supply voyages, from Newfoundland to the eastern Arctic, is the Canadian-registered *Mokami* (3,015 gross tons). The ship is ice-strengthened with single hull construction. In the western Arctic all fuel oil is delivered by NTCL tug and tank barge, as has been the practice for decades.

5.4 Response Organizations

There are four certified Response Organizations (ROs) in Canada to provide marine oil spill response services south of 60 degrees north latitude. They are industry-managed and funded by fees charged to 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 surroundings waters; and
- Point Tupper Marine Services Limited (PTMS), which covers the port of Port Hawkesbury and approaches.

Although each of the response organizations is an independent corporation, they are linked together through various support and mutual aid agreements to supplement the resources of each other, if required during a major marine oil spill. In eastern Canada, ALERT and PTMS have a support and mutual aid agreement with ECRC. In western Canada, WCMRC has an operational management support agreement with ECRC.

On February 28, 2002, the Administrator met with the response centre manager at the RO's central facility in Dartmouth, Nova Scotia. The visit to the facility provided an opportunity to learn more about industry's overall functional management system, and its hands-on training for mobilizing a spill response operation. It was a chance to see the warehouse of specialized oil spill equipment used on the open sea and for shoreline clean-up (e.g. booms, pumps, boats, barges and skimmers). In addition to observing the inventory of clean-up technology and its capabilities, the Administrator discussed the matter of current charge out rates and how they are determined.

The Administrator is interested in continuing the ongoing co-operation and relationship with the response organizations in all regions of Canada. He fully appreciates that their respective roles and responsibilities regarding oil spill pollution prevention, preparedness and response are essential parts of Canada's national system for protection of the marine environment.

5.5 Oil Pollution Exercise – Atlantic Region

On May 30 and 31, 2001, the ECRC held a type 4 exercise in the Atlantic Region at its response centre located in St. John's, Newfoundland. A type 4 exercise is a tabletop scenario to demonstrate that ECRC can, according to established RO planning standards, set up a spill management team and identify the necessary resources to respond to a marine spill up to 10,000 tonnes.

The basic exercise scenario was a response to an oil spill after a Hibernia shuttle tanker was struck by the docking tug at the trans-shipment terminal at Whiffen Head, Placentia Bay. The impact caused an explosion in a ballast tank between the two hulls and approximately 5,000 tonnes of Hibernia crude oil were released instantaneously, but the total volume at risk was 10,000 tonnes.

The RO conducted the exercise over a period of 36 hours of continuous activity according to a real-time schedule. The participants were from CanShip Ugland Ltd., North Atlantic Refining Limited, Newfoundland Trans-Shipment Limited, Canadian Coast Guard, Environment Canada and various response contractors. Advisors and support personnel helped to provide a realistic response oriented atmosphere. A number of organizations sent representatives to observe the exercise including the Ship-source Oil Pollution Fund, Chevron (California), Chevron (Canada), Husky Oil, Exxon Mobil, Hibernia, Terra Nova, Imperial Oil, Petro-Canada, Ultramar Canada and the Royal Newfoundland Constabulary.

During the oil pollution exercise, the SOPF consultant took advantage of an opportunity to visit the Newfoundland Trans-Shipment Ltd (NTL) oil terminal facility at Whiffen Head. This facility has an exceptional world class infrastructure. It is designed to receive crude oil from petroleum production offshore Newfoundland. The crude is later trans-shipped to major refining centres on the eastern seaboard of North America. The terminal has two large tanker berths, accommodating tankers from 60,000 to159,000 dwt. It is designed for the addition of a third berth. When the site is completed the facility will have sixteen holding tanks, each with a capacity of 500,000 barrels of crude oil. Currently, there are 6 holding tanks. The Administrator notes that a significant increase in Placentia Bay tanker traffic carries the potential for both an increase in environmental risk and financial impact on the SOPF. The NTL management has an agreement with the ECRC for spill response assistance.

The SOPF consultant also attended at the offices of CanShip Ugland Ltd. in St. John's which is the major ship management and marine project company serving the offshore and marine transportation industries. It is ISM/ISO 9002 certified. CanShip Ugland Ltd manages three purpose-built 127,000 dwt crude oil shuttle tankers serving the Hibernia and Terra Nova fields. These tankers *Mattea, Kometik* and *Vinland* – built in South Korea – are said to be the largest vessels registered in Canada. The entire crew is Canadian. The shuttle tankers are designed to load crude oil at the production platform through a specialized bow-loading system. They transport oil from the Grand Bank oil production units to the trans-shipment terminal at Whiffen Head.

5.6 On-Scene Commander Course

On March 4, 2002, the Administrator participated in the On-Scene Commander Course at the CCG College in Cape Breton. He spoke about the roles and responsibilities of the Administrator of the SOPF. As a panel member he discussed the Canadian marine oil spill response regime. This sort of interaction contributes to an increased awareness about Canada's overall statutory scheme for marine oil pollution, response and compensation.

All the presenters made comprehensive and insightful presentations. There were informative speakers from the CCG, Environment Canada, Eastern Canada Response Corporation and other relevant organizations. The presentations and case histories covering international oil tanker incidents were invaluable training experiences. Consultants from the United States and the United Kingdom, including ITOPF, and legal representation from the Department of Fisheries and Oceans Canada gave the training a meaningful international perspective.

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 necessary to respond effectively to an oil spill up to the international tier 3 response capability (i.e. maximum quantity of oil spilled at 2,500 tonnes). Under the tier 3 criteria, the equipment and resources must be deployed to the affected operating environment within 18 hours after notification of an oil spill.

The oil spill scenario used for training was located in the Bay of Fundy near the Canada and United States boundary. It included a simulation exercise of a grounded oil barge. Throughout the day of the exercise, the controllers complicated matters by providing various operational and environmental inputs. They inserted a host of local community concerns calling for immediate resolution.

The On-Scene Commander Course, held each year at the CCG College, offers an opportunity for representatives from government agencies and the marine industry to meet and work together. The Administrator very much appreciates CCG's invitation for him to participate in this course.

It was interesting to learn during the session that in the United States, the Centre for Marine Environmental Pollution and Safety at the Massachusetts Maritime Academy provides training related to Emergency and Spill-Response Management. This Centre offers a full OPA 90 based training curriculum for those in industry and government having management or oversight responsibilities for preparedness or response under the Act.

With its Oil Spill Management Simulator – unique in North America – the Centre's programs are supported by the most advance technology available. Trainees are provided with an appropriate exercise environment in which to apply their acquired knowledge to most realistic oil spill scenarios.

Additional information about the program is available at: www.MMA.MASS.edu/dce/cmeps/ and www.oil-spill-info.com.

5.7 Canadian Coast Guard – Regional Meetings

5.7.1 Vancouver

On January 29, 2002, the Administrator met in Vancouver with CCG emergency response managers and oil spill responders. Also in attendance were senior counsel of legal services and the revenue and claims officer both from CCG Headquarters in Ottawa.

The discussion focused on issues concerning oil spill incidents and clean-up action, including:

- the question of reasonableness relative to both the extent of the measures taken and the costs and expenses incurred;
- the taking of oil samples, including collection procedures, storage, chain of custody, obtaining laboratory analysis and documentation; and,
- the presentation of claims that should be submitted in a timely manner and fully documented in writing. It was emphasized that detailed logs and notes by the on-scene commander and other oil spill responders are invaluable to facilitate the payment of claims.

The meeting was productive, lengthy, well attended, and received good participation from all CCG personnel. Feedback at the closing of the session indicated that it was a pleasant change for regional managers, and oil spill responders to dialogue directly with the Administrator. "We should have had this sort of meeting a long time ago", one participant said.

The Administrator is pleased that the meeting with Coast Guard personnel was so positive. He encourages CCG personnel in the field and elsewhere to contact his office directly and discuss practical measures when dealing with the handling of claims.

5.7.2 Dartmouth

On March 1, 2002, the Administrator visited the CCG/DFO regional headquarters in Dartmouth, Nova Scotia. He met with the Regional Director-General DFO, the acting Regional Director CCG and several of their senior managers. The discussions included:

- preparation of claims; recent incidents (e.g. Calapalamos incident which occurred in Halifax Harbour on February 21, 2001);
- DFO – CCG Administration Costs, which are included as a separate schedule in CCG oil pollution incident claims;
- safe havens for damaged ships; and,
- disposal of oily waste and the adequacy of port reception facilities.

The Administrator appreciates such opportunities for frank and open discussion on issues of mutual interest. Such cooperation can further improve the presentation and assessment of claims in a manner consistent with sound business practices, and in accordance with the laws governing the operation of the SOPF.

5.8 Environment Canada - Sensitivity Mapping

The Administrator visited the regional headquarters of Environment Canada in Dartmouth, Nova Scotia. He met with the Regional Director General, the Regional Director EPB, and other senior managers of Environment Canada's Atlantic Region. The meeting focused on several departmental programs and interests including: the Environmental Damages Fund, Oil Reception Facilities, Canuslant exercises, Trajectory models, oil sampling procedures, the Regional Environmental Emergency Team (REET) and the Atlantic Sensitivity Mapping initiative.

The Administrator arranged for the EC Regional co-ordinators of the Atlantic Sensitivity Mapping initiative to visit the SOPF offices in Ottawa and give a presentation on the status of the program. During the presentation, the co-ordinators explained that other partners had contributed significantly to the development and improvement of the existing sensitivity maps. The partners included ECRC, DFO/CCG, other federal and provincial organizations, and community groups.

The sensitivity maps are now an important element in the Department's comprehensive strategy for oil spill prevention, preparedness and response. They incorporate catalogues of ecologically sensitive areas and seasonal vulnerabilities of various physical, biological and cultural resources. The maps provide oil spill responders with an important and dynamic tool to aid them in making vital decisions for the protection of Canada's coastal resources.

The co-ordinators are developing a complementary Web-mapping system, which will greatly expand the capability of the program. Currently, members of the REET organization, and the RO's have agreements with Environment Canada for full access of the system.

The Administrator has a keen interest in the partnership development of the Sensitivity Mapping Program in the Atlantic region. He is encouraged that the program will be expanded to other geographical areas of the country. Full access by the Administrator to the database will be invaluable during investigation and assessment of claims for compensation resulting from oil spill incidents. Further discussions will be held with the EC personnel about the Web-based mapping project and the other EC programs pertinent to an oil spill response.

5.9 US Environmental Protection Agency - Freshwater Spills Symposium

The Administrator attended the "Fourth Biennial Freshwater Spills Symposium" in Cleveland, Ohio, sponsored by the US Environmental Protection Agency. The symposium provided an opportunity for government agencies, industry, and international oil spill responders to focus on planning, prevention, and direct response to oil spills in freshwater environments. Further, the symposium provided an international forum for participants to discuss co-operative working relationships and encourage transfer of technology regarding the unique problems of freshwater clean-up operations.

Freshwater environments pose many unique variables requiring consideration during planning and response. Oil spills in freshwater differ from coastal or marine spills in several ways. The freshwater spills tend to be more frequent, smaller volume, and, are usually composed of refined products. They have a higher potential to endanger public health and the environment, because they frequently occur within populated areas. The spill can immediately threaten surface water and ground water supplies, which directly impact human activities. In addition, critical inland habitats – more diverse than coastal habitats - are more likely to be impacted. Despite the sort of problems that freshwater spills pose, much of the available information on spill prevention and response is directed at coastal areas or oil spills that occur on the surface of the ocean.

The Administrator submitted a paper on the Canadian compensation regime. His presentation covered the principal elements of Canada's Ship-source Oil Pollution Fund.

He also discussed the role of the SOPF in respect to oil spills from all classes of ships operating in Canadian waters, including the Great Lakes and other interior waterways. The presentation addressed the current limits of liability and compensation for oil tanker spills in Canada.

The SOPF is intended to cover *inter alia* ship-source spills in the Great Lakes for example. However, if an oil spill cannot be linked to a ship, the SOPF may still be liable for a "mystery spill". That is, the SOPF is liable for reasonable costs and expenses in certain matters in relation to oil, "if the cause of the oil pollution damage is unknown and the Administrator has been unable to establish that the occurrence that gave rise to the damage was not caused by a ship". Otherwise, the SOPF is not liable for non ship-source spills.

From a SOPF perspective, the Administrator mentioned the *Great Lakes Water Quality Agreement* of 1978, amended by Protocol in 1987, between Canada and the US. Under the terms of the agreement, the Coast Guards of both Canada and the US have developed and implemented a Joint Marine Protection Contingency Plan. The general principles of the contingency plan ensure that both agencies are in a strong position to respond to an oil spill threatening the boundary waters of the Great Lakes system.

The Administrator noted that between Canada and the US there are compensation provisions in place for the Great Lakes. However, no special funding provisions apply to waters on the East and West Coasts. With respect to the funding arrangements in force for the Great Lakes, the *Great Lakes Water Quality Agreement* 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 operation."*

5.10 Emergency Response Planning for Marine Industries – Vancouver

The Administrator participated in the conference organized by Insight Information Co. on "Emergency Response Planning for Marine Industries" held in Vancouver on January 28 and 29, 2002. Mr. Joseph Spears, Principal, Spears and Company chaired the conference.

The participants comprised representatives from the marine industry, lawyers from the Department of Justice Canada, and private law firms; representatives from Fisheries and Oceans Canada, Transport Canada, National Defense and consultants. Also present was Chief Harry F. Nyce Sr. of the Nisga's Lisims Government.

The conference focused on the current environmental issues and legislative updates affecting the marine industry and emergency response capabilities, both in Canada and internationally. The program provided an opportunity for discussion on the latest strategies for successful emergency response planning in today's marine environment. The conference sessions covered a range of material, including:

- emergency response planning;
- current state of the West Coast marine industry;
- impact of environmental issues and changes to legislation;
- the new *Marine Liability Act;*
- understanding the nature of marine claims and environmental damage;
- effective media communications during an environmental crisis; and,
- the Ship-source Oil Pollution Fund.

The Administrator presented a paper on Canada's Ship-source Oil Pollution Fund. During his presentation he discussed some of the fundamental problems most countries have had to deal with during oil spill incidents. Oil tankers, particularly crude oil tankers, carry large volumes of oil as cargo, and ships other than oil tankers carry a significant amount of oil as bunker fuel. Under Canadian law, when oil spills occurred a few decades ago, compensation for pollution damage and the recovery of costs and expenses for clean-up were limited. In order to take recourse action against the responsible party there was a requirement to prove negligence. Issues such as judgement proofing, bankruptcy, insolvency, jurisdiction and the one-ship company situation presented difficult challenges. It was important to find a statutory solution to some of these challenges.

The Administrator explained that the catalysts for the International Oil Spill Compensation Conventions and the Canadian liability and compensation legislation were two large oil spill disasters. The first was the *Torrey Canyon* grounding on the Seven Stones Rocks (England 1967). As a result, an international regime was created for compensation of pollution damage caused by oil spills from tankers. At the time of the incident there were no international rules dealing with the matter, only the applicable national law. Under the auspices of IMO, two sets of treaties were adopted: The 1969 Civil Liability Convention and the 1971 Fund Convention. This regime was amended in 1992 by two Protocols: the 1992 Civil Liability Convention and the 1992 Fund Convention.

Secondly, the Canadian incident occurred in 1970 when the tanker *Arrow* grounded on Cerberus Rock in Chedabucto Bay, Nova Scotia. After the *Arrow* incident, major amendments were made to the *Canada Shipping Act*. The new oil spill legislation became Part XX of the *CSA*, which became part of the Canadian Law on June 30, 1971. The Canadian Law predates the entry into force of the 1969 Civil Liability Convention by more than four years and the 1971 Fund Convention by more than seven years. The new Part XX of the *CSA* was one of the first national comprehensive regimes for oil spill liability in the western world.

The principal elements of Part XX were:

- establishing the liability of shipowners to be responsible for costs and damages for a discharge of oil;
- allowing the shipowner, in certain circumstances, to limit his liability to an amount linked to the ship's tonnage;
- creating a new fund, the Maritime Pollution Claims Fund, to be available for claims in excess of the shipowner's limit of liability; and,
- giving the Minister of Transport the power to move or dispose of any ship and cargo discharging or likely to discharge oil.

The SOPF came into force on April 24, 1989, by amendments to the *CSA* and it succeeded the Maritime Pollution Claims Fund. The SOPF is intended to pay claims regarding oil spills from all classes of ships at any place in Canada, or in Canadian waters including the exclusive economic zone of Canada. The SOPF is not limited to sea-going tankers or to persistent oil, as is the 1992 IOPC Fund.

The present statutory claims regime is the *Marine Liability Act* (*MLA*) S.C. 2001, c.6. The *MLA* came into force on August 8, 2001. Part 6 of the new Act continues the regime that was previously found in Part XVI of the *CSA*.

5.11 Maritime Conference 2002 – Toronto

The Administrator attended the Maritime Conference sponsored by Marsh Canada and Liberty International, held in Toronto on January 23 and 24, 2002. The sessions featured papers on the *Marine Liability Act*, changes to the *Canada Shipping Act 2001*, the Shipping Conferences Exemption Act (Bill C.14) and others. The various speakers represented regulatory authorities, the marine insurance industry, the legal profession, Transportation Safety Board, and the private sector network of oil spill Response Organizations.

A panel discussion was held on Canada's Aerial Surveillance Program. The supervisory pilot of the CCG fixed wing aircraft operations gave a very informative slide presentation on aerial oil pollution surveillance. Note: The type of aircraft used by the CCG and the number of patrols flown are indicated on pages 37 and 38.

It was explained that Canada complies with Annex 1 of MARPOL 73/78, which limits the amount of oil that can be discharged to 15 parts per million (ppm). Investigation has shown, however, that a discharge of an oily mixture with a concentration of 15 ppm can not be observed either visually or with remote sensing equipment. The lowest concentration of oil present in the discharge of an oily mixture where the first traces were visually observed from the aircraft was 50 ppm.

There is a relationship between the thickness of an oil film and the colour of the oil sheen as seen by an observer. This relationship is valid for thin films of less than 3 microns and is used to estimate quantity. The optimal height for identifying a slick as oil from an aircraft is 1000 to 1500 feet overhead. The viewing angle is critical for aerial observations of oil slicks. The ideal position is directly above looking down at 90 degrees to the surface with the sun at the observer's back. The practical implication of the viewing angle, according to the presenter, is that an observer on or close to the surface is often unable to see an oil slick that is visible to an aerial observer.

Statistics show that during the past decade an average of 241 incidents per year are observed from all the methods use by the national aerial surveillance program. The sources of the oil spills are - ship 8%, mystery spills 46.5%, others – including land-based, ship wrecks, etc. 45.5%.

5.12 Canadian Maritime Law Association

The Administrator attended the annual meeting of the Canadian Maritime Law Association in Montreal in June 2001. He values his contacts with the Canadian Maritime Law Association and continues to dialogue with members. He very much appreciates the generous contributions being made by members to the continuing development of Canadian Maritime Law.

5.13 Eastern Admiralty Law Association

The Administrator notes the valuable work done by this organization in Halifax towards new developments in Maritime Law.

6. SOPF's Liabilities to the International Funds

6.1 1969 CLC and 1971 IOPC

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).

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).

The SOPF now 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 has 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.

6.2 1992 CLC and 1992 IOPC

On May 29, 1999, Canada acceded to the 1992 CLC and the 1992 IOPC Fund Convention. These two Conventions 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."

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.

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.

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. In 2000/01 the Administrator directed payment of $5,933,354.58 to the 1992 IOPC Fund for the *Erika* Major Claims Fund. In 2001/02, the Administrator paid $2,364,162.09 for the *Erika* Major Claims Fund.

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.

Since 1989, the SOPF has paid the IOPC Funds $30,129,095.74, 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.

1971 and 1992 IOPC Funds

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
2000/01	6,687,696.71
2001/02	2,897,244.45
Total	**30,129,095.74**

7. Financial Summary

Income

Balance forward from March 31, 2001		$304,809,154.46	
Interest credited (April 1, 2001 – March 31, 2002)		15,192,225.07	
Recoveries of settlements - *CSA* and *MLA* sections 711(3) and 87(3) respectively:			
Patterson	$4,214.00		
Koyo Maru #16	2,793.84		
Algontario	16,606.89		
Princess No. 1	10,000.00		
	$33,614.73	33,614.73	
Total Income			**$320,034,994.26**

Expenditure

Pursuant to sections 706 and 707 of the *CSA* and sections 81 and 82 of the *MLA* the SOPF paid out at the direction or request of the Administrator the following:

Administrator fees	$ 98,725.00		
Legal fees	87,134.06		
Professional services	129,557.61		
Secretarial services	53,617.37		
Travel and hospitality	54,644.45		
Printing	15,890.18		
Occupancy	61,538.87		
Computers	19,385.89		
Office expenses	14,816.35		
Total expenses		$ 535,309.78	
Pursuant to sections 710 and 711 of the *CSA* and sections 85-87 of the *MLA* the Administrator paid Canadian claims established in the total amount of:		110,969.28	
Pursuant to section 701 of the *CSA* and section 76 of the *MLA* the Administrator directed the following payments out of the SOPF to the 1992 IOPC Fund:		2,897,244.45	
Total expenditure from the SOPF			**(3,543,523.51)**
Balance in SOPF as at March 31, 2002			**$316,491,470.75**

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 1969CLC.

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 that 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 Contacting 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 April 15, 2002, 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 – Administrative Council and Assembly Sessions

The 5th Administrative Council – June 25, 26 and 28, 2001

The 5th session of the Administrative Council, acting on behalf of the 8th Extraordinary Session of the Assembly of the 1971 IOPC Fund, was held under the chairmanship of Captain R. Malik (Malaysia). The Administrative Council dealt with the following:

Winding up of the 1971 Fund

The Administrative Council recalled that the IMO Diplomatic Conference of September 2000 had adopted a Protocol to amend Article 43.1 of the 1971 Fund Convention. It was noted that when the United Arab Emirates denunciation takes effect on May 24, 2002, the number of Contracting States will fall below 25 and, as per the amended Article 43.1, the 1971 Fund Convention will cease to be in force. The Convention will not apply to incidents after that date.

The Director will use the option to extend the recently purchased insurance cover for incidents up to the date when the 1971 Fund Convention ceases to exist. He will also continue his work on the technical winding up as opposed to the Convention ceasing to be in force. He will present a document on this issue at the Assembly's October 2001 session.

Incidents involving the 1971 IOPC Fund

Aegean Sea (1992)

The Greek OBO *Aegean Sea* (51,801 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.

The Administrative Council noted that a provisional agreement had been reached among the Spanish Government, the shipowner, the UK Club and the 1971 IOPC Fund as to the admissible quantum of claims for compensation. The provisional agreement indicated an agreed amount of £45 million against the claimed amount of £184 million.

The Director was authorized to conclude and sign an agreement among the parties on a global solution to all outstanding issues arising out of the incident and to make compensation payments accordingly.

Note: This is the oldest outstanding claim in the 1971 IOPC Fund.

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. There were substantial claims for compensation related to the closing of the fishery, damage to property, farming and tourism activities.

The Administrative Council instructed the Director to show some flexibility when trying to settle the issue of legal costs with claimants. It was pointed out that these claimants were not companies but were all individuals, some of whom were pensioners. The intent is to reach a final settlement of the *Braer* incident on a global basis.

Keundong No. 5 (1993)

The Korean barge *Keundong 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 were spilled. It resulted in substantial claims from the fishery and aquaculture industries.

The 1971 IOPC Fund appealed against the first instance Court's decisions in respect of a number of fishery claims. Recently the Court of Appeal accepted the 1971 IOPC Fund's position on matters of principle – that is, compensation is not granted for pain and suffering, nor for losses in respect of unlicensed and unregistered fishing activities.

The Appellate Court upheld the District Court's decision in respect of loss of earnings by claimants due to business interruption.

Note: This incident illustrates the high level of some claims: claimed amount £8.7 million; amount awarded by the District Court £864,000; amount awarded by the Appellate Court £79,000.

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. An estimated 3,600 tonnes of crude oil were spilled.

Since the 4th session of the Administrative Council there have been no further withdrawals of claims by the government of the Republic of Venezuela. Consequently, the Administrative Council decided that the level of payments remain at 40 per cent.

The Venezuelan delegation stated that the Republic of Venezuela had decided to withdraw one claim of US $60 million. When the claim is withdrawn, the level of payment will increase to between 50 and 60 per cent.

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. Some 6,200 tonnes of oil was spilled causing heavy contamination of the shoreline.

A decision was made to pursue discussions with the Japanese Government and the shipowner and his insurer on outstanding claims and issues. Also, to explore the possibilities of reaching a global settlement of all outstanding issues.

Pontoon 300 (1998)

The barge *Pontoon 300* (4,233 gross tons) sank in heavy sea off the United Arab Emirates. It is estimated that 8,000 tonnes of intermediate fuel oil were spilled. The oil spread over 40 kilometres of coastline, affecting four Emirates.

The Administrative Council noted that apart from a number of claims submitted by the Municipality of Umm al Quwain, some of which the 1971 IOPC Fund considers inadmissible, for example, environmental damages and a claim by the Ministry of Agriculture and Fisheries, all other claims had been settled. With regard to the environmental claims, the estimation of damage appears to be based on theoretical models that are not considered admissible by the Fund Convention. Some 75 per cent of the settlement amounts have been paid.

The 1971 IOPC Fund has taken recourse action against the owner of the tug *Falcon 1*, which was towing the barge *Pontoon 300* when the incident occurred. The barge was not covered by any insurance for oil pollution liability.

Singapura Timur (2001)

The Panama – registered chemical tanker *Singapura Timur* (1,369 gross tons) carrying 1,550 tons of asphalt collided on May 28, 2001, with the unladen tanker *Rowan* in the Strait of Malacca, Malaysia. Later the same day the *Singapura Timur* sank in 47 metres of water. An unknown quantity of bunker fuel and asphalt cargo escaped. The cargo owner organized clean-up operations at sea. No oil was reported to have gone ashore.

The Shipowner's limit of liability is £90,000 approximately.

Since asphalt is persistent oil, the chemical tanker was actually carrying oil in bulk as cargo and, therefore, fell within the definition of "ship" under the 1969 CLC and 1971 IOPC Fund Convention. The Administrative Council authorized the Director to settle all claims to the extent that they do not involve any outstanding questions of principle.

The 6th Administrative Council – October 15 to 19, 2001

The 6th session of the Administrative Council, acting on behalf of the 24th session of the Assembly was chaired by Captain R. Malik (Malaysia). The Administrative Council reviewed the following:

Incidents involving the 1971 IOPC Fund

Aegean Sea (1992)

The Administrative Council took note of developments since its June 2001 session in respect of the *Aegean Sea* incident. A formal offer has been made to the Spanish Government to conclude an agreement with the 1971 IOPC Fund, the Spanish State, the Shipowner and the UK Club, which is open to acceptance until November 30, 2001.

The Spanish Government accepted the conditions set out in the Agreement. The Spanish delegation advised the Council that it hoped that claimants, in respect of at least 90 per cent of the principal of the claims in court, would accept the quantum of their losses as agreed above and would withdraw their claims in court by the end of November 2001.

Braer (1993)

The United Kingdom delegation thanked the Director and the Skuld Club for reaching a final solution to the *Braer* case. As a result all established claims can now be paid in full.

It is considered that the *Braer* incident was a landmark case. It has resulted in a number of important precedents on the admissibility of claims, and has reconfirmed important obligations in the Convention to treat claimants equally.

Sea Prince (1995)

The Cypriot tanker *Sea Prince* (144,567 gross tons) grounded near the Republic of Korea. As a result 5,000 tonnes of Arabian crude oil were spilled.

In April 2001, an agreement was reached between the 1971 IOPC Fund and the shipowner's insurer on the appropriate exchange rate and the appropriate currency to be used for compensation overpayments and indemnification.

An application has been made to the court for the discontinuance of the limitation proceedings. The Administrative Council was advised that this case is near to closing.

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. An estimated 73,000 tonnes of oil were released as a result of the incident.

Compensation totalling £33 million has been paid to 800 claimants. Claims totalling £7.2 million are currently in court. In accordance with the Executive Committee's decision, the 1971 IOPC Fund is preparing for recourse action against the local harbour and Milford Haven Port Authority, respecting safe navigation within Milford Haven and approaches.

Pontoon 300 (1998)

The 1971 IOPC Fund has maintained in court that claims by the municipality of Umm al Quwain have become time-barred. The municipality is expected to respond by October 2001.

The Dubai Court rendered a judgement in which it rejected the 1971 IOPC Fund's claim against the owner of the tug *Falcon 1*. The 1971 IOPC Fund appealed against the judgement.

Nissos Amorgos (1997)

Technical experts engaged by the 1971 IOPC Fund Secretariat are examining the documentation recently submitted on the condition of the Maracaibo Channel for navigation.

The Administrative Council reiterated that its decision taken during the 5th Session on the level of payments should be maintained – that is, 40 per cent increasing up to 70 per cent depending on the withdrawal of further claims.

Singapura Timur (2001)

It was anticipated that clean-up costs would exceed the limitation amount applicable to the ship under the 1969 CLC. Claims for compensation for pollution damage arising from this incident would be covered by the insurance taken out by the 1971 IOPC Fund in October 2000, to the extent that the total established claims exceed 250,000 SDR ($500,000 approximately).

Evoikos (1997)

The Cypriot tanker *Evoikos* (80,823 gross tons) collided with the Thai tanker *Orapin Global* (138,037 gross tons) in the Strait of Singapore in 1997. The *Evoikos*, carrying 130,000 tonnes of heavy fuel oil, spilled approximately 29,000 tonnes of oil. The *Orapin Global* was in ballast and did not spill any oil.

Claims have been presented in Singapore. Malaysia and Indonesia. At the time of the incident Singapore was Party to the 1969 CLC only, whereas Malaysia and Indonesia were Parties to the 1969 CLC and the 1971 IOPC Fund Convention, but not to the 1992 Protocols thereto.

The shipowner and the UK Club have indicated that they might maintain that clean-up operations in Singapore were undertaken (in part) to minimize pollution damage in Malaysia or Indonesia, and that the costs therefore qualify for compensation under the 1971 IOPC Fund Convention.

The Director was not authorized to make any payment of claims for the time being.

Other Incidents

The Director informed the Administrative Council that the Secretariat would work hard to close the eleven other 1971 IOPC Fund incidents that remain outstanding. These are *Vistabella, Lliad, Kriti Sea, Plate Princess, Maritza Sayalero, Yeo Myung, Yuil N°1, Osung N°3, Katja, Keumdong N°5* and *N°1 Yung Jung*.

Report of the Director

The Director introduced his report on some of the main issues relating to the activities of the 1971 IOPC Fund during the last 12 months.

Looking Ahead

It was noted that the 1971 IOPC Fund Convention will cease to be in force on May 24, 2002, and will not apply to incidents occurring after that date. The Secretariat will focus its efforts on settling all pending claims before compensation, so as to make it possible to wind up the 1971 IOPC Fund within a reasonable period of time. It is a priority for the Secretariat to encourage the States that are still Members of the 1971 IOPC Fund to accede to the 1992 IOPC Fund Convention.

Winding up of the 1971 Fund

Insurance cover for the 1971 IOPC Fund's liability for incidents has been extended up to October 31, 2002. When the Assembly or Administrative Council meet in October 2002, it will be clear which incidents will involve the 1971 IOPC Fund. Meanwhile, the Council agreed to maintain a joint Secretariat for the 1971 IOPC Fund and the 1992 IOPC Fund. Also, it decided to postpone further consideration of the appointment of "an eminent person" to oversee the winding up of the 1971 IOPC Fund.

Financial Statements and Auditor's Report

The Auditor's Report placed an unqualified audit opinion on the 2000 financial statements. The auditor's previously expressed uncertainty for the financial viability of the 1971 IOPC Fund has been removed, because the Fund is now insured against future incidents with Lloyd's of London. Also, the auditor approved the new web site and welcomes the potential efficiency savings by electronically distributing documents to Fund Contracting States.

The total claim payments in 2002 amounted to £21.2 million. Cash at banks and on hand stood at £103.8 million.

There are contingent liabilities of the 1971 IOPC Fund estimated at £197,019,627 regarding 18 incidents as at December 31, 2000. All these claims may not necessarily mature.

Budget for 2002 and Assessment of Contributions to the General Fund

The Administrative Council adopted a budget for 2002 for administrative expenses for the joint Secretariat, with a total of £2,816,603 plus an additional amount of £250,000 for winding up the 1971 IOPC Fund. The Administrative Council fixed a levy of contributions for the General Fund at £3.2 million. It was decided to defer the entire levy. Working capital was maintained at £5 million.

Assessment of Contributions to Major Claims Fund

The Administrative Council decided that a levy in the form of 2001 annual contributions should be made only to the *Nissos Amorgos* Major Claims Fund in the amount of £21 million (normally due on March 1, 2002).

Note: The Canadian share of this £21 million, to the extent invoiced, shall be paid from the SOPF.

Organization of Meetings

The Administrative Council decided that, except for restricted documents, access to documents on the server should be unrestricted. Also, that documents should be accessed via the IOPC Fund's Web site and not, as at present, via a separate address.

IOPC Fund's Web Site

The IOPC Fund's Internet address is: www.iopcfund.org

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

The 1992 IOPC Fund Executive Committee held three sessions during the year. The 13th, 14th and 15th sessions were held under the chairmanship of Mr. Gaute Sivertsen (Norway).

The 6th session of the Assembly was held under the chairmanship of Mr. W. Oosterveen (Netherlands).

The 13th Executive Committee – June 25 and June 28, 2001

Incidents involving the 1992 IOPC Fund

Baltic Carrier (2001)

The Marshall Islands – registered tanker *Baltic Carrier* (23,235 gross tons) carrying 30,000 tonnes of heavy fuel oil collided with the bulk carrier Tern, on March 29, 2001, in the Baltic Sea between Denmark and Germany. The collision resulted in the spillage of 2,500 tonnes of oil, which polluted the shoreline of several Danish islands and the southwest coast of Sweden.

The Executive Committee authorised the Director to make final settlement of all claims for pollution damage in Sweden and Denmark from the *Baltic Carrier* incident, to the extent that the claims did not give rise to questions of principle which have not previously been decided.

As a result of the collision, about 230 tonnes of *Baltic Carrier* oil cargo entered the damage forepeak tank of the Tern. Subsequently, there were small oil spills from the Tern while in the ports of Rostock (Germany) and Ventspills (Latvia).

With regard to the applicability of the 1992 Conventions to pollution damage in Rostock and Ventspills, the Executive Committee noted that the Tern was a bulk carrier and was therefore not a "ship" for the purpose of the 1992 Civil liability Convention. Further, it was decided that a decision on the question of whether the Conventions apply to the spills in Rostock and Ventspills should be deferred to the next session. Meanwhile, the Director will carry out further investigation into the precise chain of events that led to the spills.

Zeinab (2001)

The Georgian–registered vessel *Zeinab*, carrying about 1,500 tonnes of fuel oil, sank off Dubai, United Arab Emirates, resulting in the loss of 400 tonnes of fuel oil and the subsequent pollution of the coastal areas.

The *Zeinab* was suspected of smuggling oil from Iraq and had been arrested by the multi-national interception forces. The ship sank while being escorted to a holding area in international waters.

Apparently, the *Zeinab* was built in 1967 as a general cargo ship and converted in 1998 to carry oil by installing tanks within the cargo holds, but maintained the outward appearance of a general cargo vessel.
Since the *Zeinab* was carrying oil in bulk as cargo, the Executive Committee considered that the ship fell within the definitions of "ship". The Committee also decided that since the United Arab Emirates is a Party to the 1969/1971 Conventions and the 1992 Conventions, both sets of Conventions apply to the incident and liabilities should be distributed on a 50:50 basis.

The Executive Committee decided that, in view of expressed reservations about the circumstance surrounding the incident, the matter should be given further consideration at the Committee's next session.

Erika (1999)

The Maltese tanker *Erika* (19,666 gross tons) broke in two in the Bay of Biscay, France, on December 12, 1999. The tanker was carrying a cargo of 31,000 tonnes of heavy fuel oil. Approximately 19,800 tonnes of oil were spilled as the ship sank.

As at June 20, 2001, there were 4,960 claims totalling £71 million. Some 3,193 claims totalling £31 million had been assessed at £19 million.

The Canadian Delegation expressed its support for setting the level of payments at 80 per cent. It stated that it was able to support 80 per cent because of the prudent approach taken by the Director in arriving at £131 million as being the established total of admissible claims. For example, in response to questions from the Delegation, the Director advised that:

- "Pure economic loss" is the issue where the French courts might adopt a more extensive approach in their interpretation of the notion of "pollution damage".
- This issue would mainly have importance in tourism and in the marketing of fish.
- Consequently, the June 2001 study's estimate of £47 million for tourism claims needs revision. The Director's estimate would be £66 million plus a general extra safety margin of another £18.8 million.

The Delegation noted that the June 2001 study "has been able to make, for the first time, a practical estimate of the likely level of tourism claims. Whereas in previous studies [by the same Ministry], the objective was to estimate a theoretical maximum level of exposure, the June 2001 report, with the benefit of real data supplied directly by tourism businesses, provides with greater confidence a practical estimate of the likely value of the tourism claims." In the Ministry's previous studies there had remained a high level of uncertainty regarding the level of possible losses in certain tourism sectors.

The Director acknowledged the Canadian Delegation's assistance in providing the 1992 IOPC Fund with a Mazars et Guérard report.

The Third Intersessional Working Group (Third Meeting)

The third meeting of the third intersessional Working Group was held from June 26 to June 29, 2001. The Working Group continued an exchange of views concerning the need to review the international compensation regime.

Some of the issues under consideration by the Working group include:

Uniform Application of the Conventions

The Working Group dealt with certain provisions in the Convention that in the past have not been applied in a uniform manner, or difficulties have arisen as a result of the relationship between the Conventions and national law, namely channeling of liability, time bar, enforcement of judgments and jurisdiction.

Maximum Compensation Levels

There was general support of the proposal by a number of delegations – including Canada – to establish a supplementary compensation fund to the present compensation regime. This third tier, as an "opt-in" measure, would be established by a Protocol to the present Conventions. The Japanese Delegation, the largest contributing State, questions the proposal.

The Oil Companies International Marine Forum (OCIMF) recognizes the possibility of a transitional optional "opt-in" third tier funded by oil receivers, but emphasizes that it is essential to maintain the principle of balancing risk between shipowners and cargo interest, which is the foundation of the current regimes. While OCIMF believes there may be scope for an interim solution, it expects the Assembly to commit to working towards a solution that would give shipowners and their insurers a significant stake in the supplementary compensation fund.

The International Group of P&I Clubs provided statistics on oil pollution claims over the last 10 years to reinforce their argument that "sharing" has worked quite well in the past, and that shipowners actually pay more than 50 per cent of the claims.

The International Group, which covers over 90 per cent of the world's tankers, supports the increase in the levels of compensation under the 1992 CLC Protocols. The new levels will come into effect in November 2003 and increase the shipowner's proportion by 50 per cent.

The International Group is also developing a proposal for a voluntary increase in the limit of liability for small ships (i.e. less than 5,000 gross tons) that would apply in those states which opt for the proposed third tier of compensation. The Club Boards have yet to approve a precise level of increase. The proposal is seen as a short to medium term arrangement, to help maintain a balance between shipowner and cargo interest. It is based on the assumption that the existing regime of liability would remain largely unchanged.

Shipowner Liability

A discussion paper on options for development of an optional third tier level of compensation co-sponsored by Canada, Australia, France and the United Kingdom was considered. These co-sponsors advocate that there is a strong case for sharing this liability between shipowners and oil receivers.

In the process of arguing that they already pay their share plus some, the P&I Clubs presented interesting statistics from its historical tanker spill cost database, including the following:

- Over 95 per cent of all non-US spills during the period 1990 to 1999 would have been fully compensated by tanker owners under the terms of the 1992 CLC.
- Approximately 96 per cent of non-US spills would have been fully compensated by tanker owners under the increased 1992 CLC limits effective in 2003.
- The costs of all US tanker and barge spills (actual and inflated values) since the enactment of *OPA* 90 and up to the end of 1999 would have fallen within the existing 1992 CLC and IOPC fund limits.

Environmental Damage

The French Delegation submitted a significant paper prepared by a consultant, Professor Piquemal, on several aspects of the concept of environmental damage. It was a proposal to introduce the concept of compensation for environmental damage as a violation of collective property whereby compensation would be available to the State on the basis of international rights under other Conventions to which it was a Party, the amount of the compensation to be based on the conclusions of environmental impact studies conducted in accordance with procedures adopted by the 1992 Fund. The Working Group also examined a proposal to change the 1992 Fund's policy as regards to environmental damage to the effect that compensation for environmental damage would no longer be limited to cases where the claimant had suffered economic loss and to allow compensation to be calculated through theoretical models.

Sweden proposes to develop a paper on environmental damage for consideration by the Assembly in October. At the suggestion of France, ITOPF may also present a paper on reasonable re-instatement measures that enhance the recovery of natural resources.

Following up on this study, the French Delegation proposed certain changes to the IOPC Fund Claims Manual highlighting the specific nature of environmental damages, and of claims for compensation for this type of damage under the Convention. First, it was proposed to delete the requirement whereby a claimant in order to succeed with a claim for environmental damage must show that they have sustained an economic loss that can be quantified in monetary terms. Secondly, it was proposed to remove passages in the Manual suggesting the assessment of environmental damage should not be based on "abstract quantification ... calculated in accordance with theoretical models". These proposed modifications to the claims manual were rejected by the Working Group.

The 6th Session of the Assembly – October 16 to 19, 2001

Report of the Director

In summary, the Director reported that the number of 1992 IOPC Fund Contracting States has continued to increase. The failure of a number of Contracting States to submit oil reports gives rise to concern. Since the Assembly's session in October 2000 the 1992 IOPC Fund has been notified of two new oil pollution incidents: the *Baltic Carrier* (Denmark) and the *Zeinab* (United Arab Emirates). The intersessional Working Group has continued its work. The Assembly will be invited to consider a draft Protocol establishing an optional supplementary compensation fund.

The Regulation Proposed by the European Commission for the COPE Fund

On June 14, 2001, the proposed regulation was considered by the European Parliament. The Parliament proposed a number of amendments to the regulation, including:

(i) The COPE Fund should cover not only oil pollution damage (including bunker) but also damage caused by hazardous and noxious substances.
(ii) Compensation for damage caused to the environment when environmental costs are not covered by the international regime.
(iii) Higher limits of compensation to be paid by the shipowner where the cost of pollution damage exceeds the existing limits under the international regime.

(iv) Establishment of an additional layer of compensation funded by the cargo receivers of oil or hazardous and noxious substances, beyond existing IOPC Fund limits as supplemented by the shipowners contribution in (iii) above.
(v) The European Commission to submit a report to Parliament by June 2003 on the efforts to improve the international regime at IMO regarding liability, compensation and environmental damage.
(vi) The adaptation of the regulation should take into account any substantial improvement to the international regime.

If there are no substantial improvements at IMO, the European Commission is to submit to the European Parliament and the European Council a legislative proposal to establish a Europe-wide maritime pollution liability and compensation regime.

The Director was instructed to continue to provide information to the Assembly on the proposed Regulation. He was also instructed to provide factual information to the bodies of the European Union on the international compensation regime, so as to enable those bodies to ensure that EU measures would not be detrimental to the global compensation system.

Financial Statements and Auditor's Report and Opinion

The internal auditor provided an unqualified audit opinion on the financial statements for 2000. The Assembly approved the accounts.

In 2000, the administrative expenditure for running the joint Secretariat was £2,424,039. The obligations incurred were split between the 1992 IOPC Fund and the 1971 IOPC Fund.

The total expenditures for claim payment in 2000 amounted to approximately £30 million, and were largely in respect of the *Nakhodka* incident.

Note: The SOPF is liable to pay contributions respecting the *Nakhodka* in the 1971 IOPC Fund only.

Contingent Liabilities

There were contingent liabilities of the 1992 IOPC Fund estimated at £172.5 million in respect of eight incidents as at December 31, 2000. Out of these contingent liabilities a total amount of £15.9 million has been liquidated as at May 31, 2001, mainly to pay compensation in the Nakhodka incident.

Note: The SOPF will be liable to pay the Canadian share of the remaining amount when and if it matures.

Budget for 2002 and Assessment of Contributions to the General Fund

The Assembly approved the Director's proposal to increase the working capital of the 1992 Fund's administrative budget from £18 million to £20 million. The Assembly also decided to levy contributions for the General Fund at £5 million.

Note: The Canadian share shall be paid by the SOPF.

Assessment of Contributions to the Major Claims Fund

The Assembly decided that levies in the form of 2001 contributions should be made to the *Nakhodka* Major Claims Fund for £11 million and to the *Erika* Major Claims Fund for £46 million.

The Assembly decided that the entire proposed levy of £11 million to the *Nakhodka* Major Claims Fund should be due for payment by March 1, 2002. It was also decided that £25 million of the proposed levy to the *Erika* Major Claims Fund should be due for payment by March 1, 2002, but payment of the remaining £21 million should be deferred.

Note: All Canadian contributions for the *Erika* shall be paid out of the SOPF. Canada is not liable for the *Nakhodka* incident in the 1992 IOPC Fund.

Audit Procedures

The Assembly approved in principle the establishment of an audit body to advise the 1992 IOPC Fund regarding internal control, risk management and audit-related matters.

The Administrative Council did likewise for the 1971 Fund. The composition and mandate of this joint Audit Body shall be considered at the Assembly's next session. The Delegation supported this initiative as another step in transparency.

Non-submission of Oil Reports

Some 33 States have outstanding oil reports for the year 2000: 30 States in respect of the 1971 Fund and 13 States in respect of the 1992 Fund. Some have been outstanding for many years. It was noted that the situation respecting the 1992 Fund was likely to deteriorate as States with outstanding reports for the 1971 Fund became 1992 Fund members.

The Canadian Delegation expressed its concern with the fact that oil reports are outstanding in respect of three-quarters of the remaining Contracting States of the 1971 Fund and that a number of the 1992 Fund States have reports outstanding in respect of more than one year.

Working Methods and Structures of the Secretariat

The Assembly decided, *inter alia,* to approve the establishment of a network of persons in various regions and sub-regions as contact points, and the separation of roles of Technical Advisor and head of Claims. The Assembly instructed the Director to appoint one of the present staff with wide experience and skill in the field, as Deputy Director. The Delegation supported these changes.

Hazardous and Noxious Substances

Note: See Issues and Challenges (section 4.4.4).

Report of the Third Intersessional Working Group

The Chairman of the Working Group, Mr. Alfred Popp, Q.C. (Canada) introduced the report of the Working Group.

The Working Group had met in July 2000, March 2001 and June 2001. The Assembly proceeded to consider the report with a focus on key issues:

Draft Protocol Establishing a Supplementary Compensation Fund

With regard to being more precise about the time and circumstances of payments of claims the Assembly considered two options. First, the supplementary fund would only make payments when it was established that the total available for compensation under the 1992 Conventions was insufficient to meet all the established claims in full. Second, the supplementary fund should start its payments when the 1992 Fund had considered that there was a risk that the total amount of the established claims would exceed the maximum amount available in the 1992 Fund Conventions.

It was agreed that the second option was preferable, and this provision was reflected in the draft Protocol.

The Assembly adopted the draft Protocol, as set out in the Record of Decision, and instructed the Director to send it to the Secretary-General of IMO requesting him to convene a Diplomatic Conference to consider the new Protocol at the earliest opportunity.

Environmental Damage and Environmental Studies

The Assembly noted that the Working Group had examined what could be achieved within the present definition of "pollution damage", with respect to the admissibility of claims for costs of re-instatement of the environment and for claims for costs of post-spill environmental damage assessment.

A proposal to address these issues in an Assembly Resolution received considerable support. There was also support for considering the issue of environmental damage in-depth for the longer term. In the meantime, Sweden had prepared a paper dealing with the measures of re-instatement and post-spill environmental damage assessments. Some delegations felt these proposals did not go far enough, while others expressed reservations to the contrary. It was decided that the Working Group should give the issue further consideration so that the Assembly could make a decision at its next session.

Resolution relating to OPRC 1990 and OPRC (HNS) 2000

The Assembly considered a document submitted by the United Kingdom Delegation regarding the importance of marine pollution contingency planning and a proposed Resolution encouraging Contracting States to the 1992 Conventions to become parties to the International Convention on Oil Pollution Preparedness, Response and Co-operation (OPRC Convention 1990) and the Protocol on Preparedness, Response and Co-operation to Pollution Incidents by Hazardous and Noxious Substances (OPRC (HNS) Protocol 2000).

It was noted that in the document the United Kingdom Delegation expressed the view that it was imperative that effective measures were in place to deal with major incidents, since this was in the best interests of Contracting States and their contributors as well as the shipping and insurance industries. It was proposed by the United Kingdom Delegation that one way of encouraging this might be for States Parties to the 1992 Conventions to ratify the OPRC Convention 1990 and the OPRC (HNS) Protocol 2000.

It was noted that the OPRC Convention 1990 provided a framework for international co-operation for combating major oil spills and included requirements for ships, ports and oil handling facilities to have oil pollution emergency plans.

The Assembly adopted the Resolution on this subject set out in Annex II. The Resolution is contained in Appendix G.

The Future of the Working Group

The Assembly agreed that the Working Group should continue to exchange views on further improvement to the 1992 regime, such as:

- shipowner's liability;
- environmental damage;
- alternative dispute settlement procedures;
- non-submission of oil reports;
- clarification of the definition of ship;
- application of the contribution system in respect of entities providing storage services;
- uniformity of application of the Conventions;
- various issues of a treaty law nature.

The 14th Executive Committee – October 15, 16 and 19, 2001

Incidents involving the 1992 IOPC Fund

Kuzbass (1996)

In June 1996, the Russian tanker *Kuzbass* (88,692 gross tons) was suspected of discharging crude oil that polluted the German coastline close to the border with Denmark and the North Sea.

According to the German authorities, analysis of the oil samples taken from the *Kuzbass* matched the samples taken from the polluted coastline. The shipowner and the insurer denied any responsibility for the spill. Subsequently, the German authorities commenced legal action against the shipowner.

This case raises an important question of principle, since under Article 4.1 (6) of the 1992 Fund Convention claimants had to take all reasonable steps to pursue the legal remedies available to them before obtaining compensation from the 1992 IOPC Fund.

The Executive Committee agreed that the liability issues will have to be decided by the German courts.

Nakhodka (1997)

A further claim has been settled since the June 2001 sessions. Discussions are being held as to the possibility of a global solution to all outstanding issues among the parties, including those relating to recourse action. The Japanese Delegation stressed the need for openness and transparency respecting any global solutions.

Note: Canadian contributions were paid from the SOPF in the 1971 IOPC Fund only.

Erika (1999)

The Executive Committee decided to maintain the level of payments – now at 80 per cent of the assessed amount. As at October 11, 2001, approximately 73 per cent of all claims had been assessed. Payments of £15 million were made in respect of 2,857 claims.

The Committee noted reports by the Malta Maritime Authority (Flag State of the Erika) and the French Permanent Commission of Inquiry into Accidents at Sea on their respective findings reference the cause of the incident. Although the findings of the two investigations differ in some details, both bodies conclude that a contributing factor to the incident was severe corrosion of structural parts of the vessel.

In response to a query by the Canadian Delegation it was noted that the Malta Maritime Authority report did not confirm the French Commission's conclusion that the speed and courses followed by the ship had not been decisive factors in the cause of the disaster.

The Director advised that he considered it premature to draw any conclusions in view of the fact that there were both criminal and civil investigations being carried out in France into the cause of the incident.

The Delegation joined the Committee in expressing its gratitude to the Lorient, France claims office head and staff working sometimes under difficult circumstances and noted that physical security for these persons is necessary.

Baltic Carrier (2001)

The Executive Committee noted that the costs for the clean-up in Rostock were insignificant and the German authorities would not present any claim for compensation. Therefore, the question of whether the spill of Baltic Carrier oil from the Tern in Rostock was covered by the 1992 IOPC Conventions was academic.

The Director continues his investigation into the spill of *Baltic Carrier* oil from the Tern in Ventspills. The question of applicability to the 1992 Conventions in this incident may also become academic.

Zeinab (2001)

The Executive Committee was asked to consider whether the circumstances that led to the sinking - during the interception by the multinational maritime interception forces – should be considered as an act of war or hostilities.

It was noted that the Fund's technical expert had been in contact with the United States Navy Maritime Liaison Office in Bahrain. No information had been provided regarding the sequence of events leading up to the sinking of the *Zeinab*.

The Canadian Delegation expressed the view that the interception by the multi-national maritime intervention forces could not be considered as "an act of war, hostilities, civil war or insurrection", and the IOPC Funds would not be able to invoke the defense provided in Article 4.2(a). The Committee so decided.

The Delegation noted that we still don't know what caused the "destabilization" of Zeinab that led to its sinking, and all that can be said now is that the loss occurred upon the interception and detention, but not because of such interception and detention. The Delegation supported authorizing the Director to make final settlements on behalf of the 1992 Fund of all claims arising out of the Zeinab incident to the extent that the claims do not give rise to questions of principle which have not previously been decided. The Committee so decided.

Other Incidents

The Executive Committee dealt with five other incidents that took place before the 13th session, namely the *Al Jaziah 1*, *Natuna Sea*, *Slops*, *Mary Anne* and *Dolly*.

The 15th Executive Committee – October 19, 2001

The Executive Committee elected Mr. G. Sivertsen (Norway) as Chairman and Dr. J. Cowley (Vanuatu) as Vice-Chairman until the end of the next regular session of the Assembly, which will be held during the week of October 14, 2002.

Appendix D: Changes Introduced by the1992 Protocols

- A special limit of liability for owners of small vessels and a substantial increase in the limitation amount. The limit is approximately $6.00 million for a ship not exceeding 5,000 units of gross tonnage, increasing on a linear scale to approximately $119.50 million for ships of 140,000 units of tonnage or over, using the value of the SDR at April 1, 2002.

- An increase in the maximum compensation payable by the 1992 IOPC Fund to $270.22 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 preventative 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 cost 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 of 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 charter (including a bareboat charter), manager or operator of the ship, or any person carrying out salvage operations or taking preventive measures.

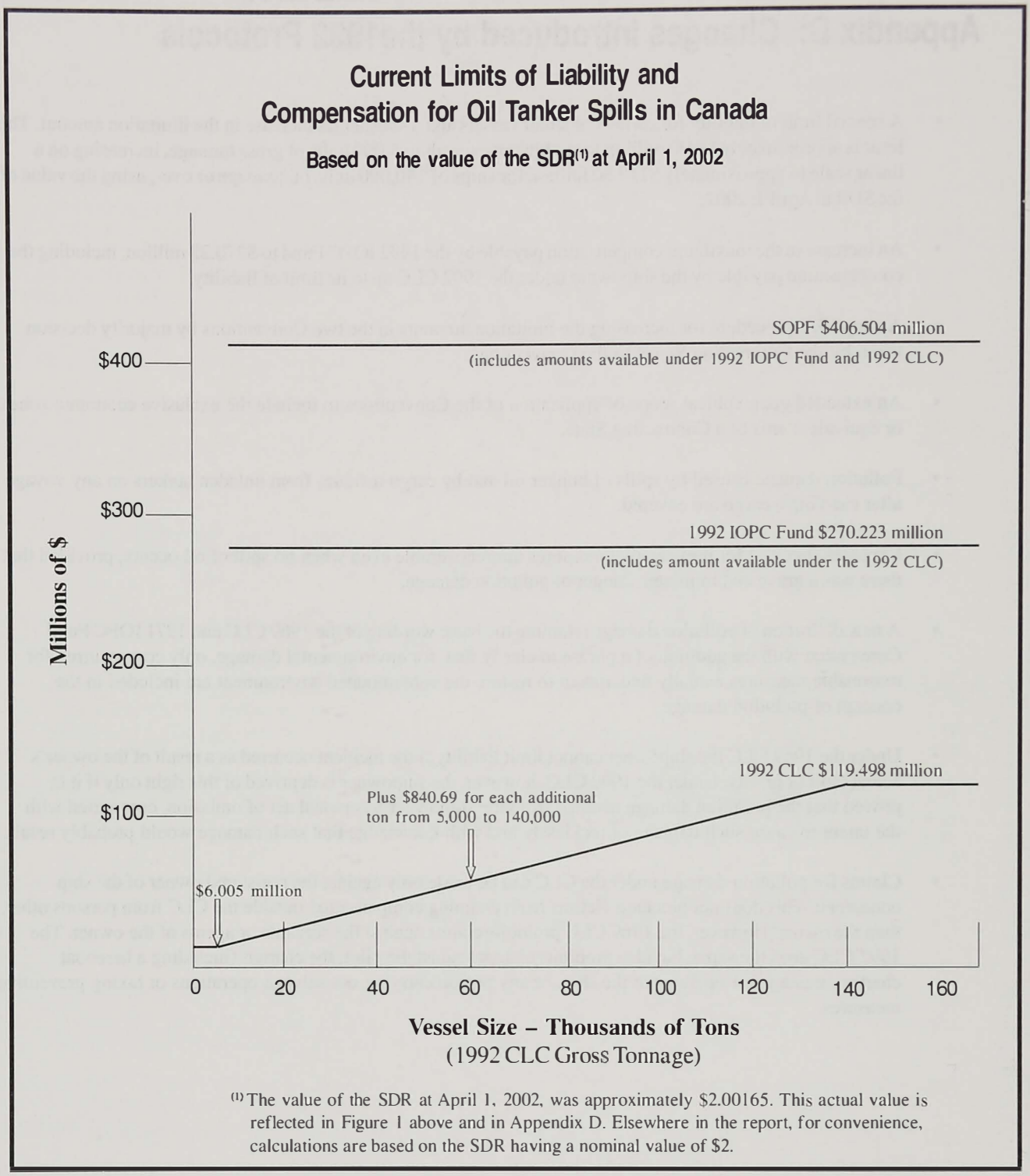

Figure 1

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.

Revision

N.B.: The above aggregate amount available under the 1992 CLC and 1992 IOPC Fund ($270.223 million) should increase by approximately 50% (to 405.33 million) effective November 1, 2003. The SOPF amount of approximately $136.28 million on top of that, would result in $541.61 million being available for a tanker spill in Canada after November 1, 2003 - without reference to the proposed IOPC "optional" Supplementary Fund.

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 15 April 2002

64 States for which Fund Protocol is in Force (and therefore Contracting States of the 1992 IOPC Fund)

Algeria	Germany	Oman
Antigua and Barbuda	Greece	Panama
Argentina	Grenada	Papua New Guinea
Australia	Iceland	Philippines
Bahamas	India	Poland
Bahrain	Ireland	Republic of Korea
Barbados	Italy	Russian Federation
Belgium	Jamaica	Seychelles
Belize	Japan	Singapore
Canada	Kenya	Slovenia
China (Hong Kong Special Administrative Region)	Latvia	Spain
	Liberia	Sri Lanka
Comoros	Lithuania	Sweden
Croatia	Malta	Tonga
Cyprus	Marshall Islands	Trinidad and Tobago
Denmark	Mauritius	Tunisia
Djibouti	Mexico	United Arab Emirates
Dominican Republic	Monaco	United Kingdom
Fiji	Morocco	Uruguay
Finland	Netherlands	Vanuatu
France	New Zealand	Venezuela
Georgia	Norway	

12 States that have deposited Instruments of Accession, but for which the IOPC Fund Protocol does not enter into force until date indicated

Sierra Leone	4 June 2002
Cambodia	8 June 2002
Turkey	17 August 2002
Dominica	31 August 2002
Angola	4 October 2002
Saint Vincent and the Grenadines	9 October 2002
Cameroon	15 October 2002
Portugal	13 November 2002
Colombia	19 November 2002
Qatar	20 November 2002
Brunei Darussalam	31 January 2003
Samoa	1 February 2003

Appendix F:

Contracting States to both the 1969 Civil Liability Convention and the 1971 IOPC Fund Convention as at 15 April 2002 (and therefore Contracting States to the 1971 IOPC Fund)

24 Contracting States to the 1971 IOPC Fund Convention		
Albania	Gambia	Nigeria
Benin	Ghana	Portugal
Brunei Darussalam	Guyana	Qatar
Cameroon	Kuwait	Saint Kitts and Nevis
Columbia	Malaysia	Sierra Leone
Côte d'Ivoire	Maldives	Syrian Arab Republic
Estonia	Mauritania	Tuvalu
Gabon	Mozambique	Yugoslavia

2 Contracting States to the 1971 Fund Convention which have deposited Instruments of Denunciation which will take effect on date indicated	
Djibouti	17 May 2002
United Arab Emirates	24 May 2002

Appendix G: 2000 OPRC (HNS) Protocol

ANNEX II

DRAFT RESOLUTION ON THE INTERNATIONAL CONVENTION ON OIL POLLUTION PREPAREDNESS, RESPONSE AND CO-OPERATION (OPRC) 1990 AND THE PROTOCOL ON PREPAREDNESS, RESPONSE AND CO-OPERATION TO POLLUTION INCIDENTS BY HAZARDOUS AND NOXIOUS SUBSTANCES, 2000 OPRC (HNS) PROTOCOL

THE ASSEMBLY OF THE INTERNATIONAL OIL POLLUTION COMPENSATION FUND 1992,

NOTING that the International Convention on Oil Pollution Preparedness, Response and Co-operation 1990 ("OPRC") came into force in 1995, and that 59 States have ratified or acceded to the Convention,

ALSO NOTING that the Protocol on Preparedness, Response and Co-operation to Pollution Incidents by Hazardous and Noxious Substances, 2000 OPRC (HNS) Protocol will not come into force until 12 months after ratification by not less than 15 States,

NOTING FURTHER that no States are yet party to the 2000 OPRC (HNS) Protocol,

RECOGNIZING the need for some States to identify existing resources that could form part of the resources needed to implement the 1990 OPRC and 2000 OPRC (HNS) Protocol,

RECOGNIZING FURTHER that some States may not have all the resources needed to effectively implement the OPRC and 2000 OPRC (HNS) Protocol,

BELIEVING it is desirable for coastal States to have in place effective measures and co-operative arrangements to deal with oil spill incidents wherever they may occur,

FURTHER BELIEVING that wider and speedy implementation of both the 1990 OPRC and the 2000 OPRC (HNS) Protocol would benefit potential victims of oil spills and the IOPC Fund in helping to minimize the environmental and financial impact of oil spills,

1. URGES all Contracting States to the 1992 Fund Protocol that have not yet done so to ratify, or to accede to, the 1990 OPRC;

2. ENCOURAGES States Parties to the OPRC to also become party to the 2000 OPRC (HNS) Protocol, with the aim of promoting speedy implementation;

3. FURTHER ENCOURAGES States not parties to the 1990 OPRC to put in place effective contingency plans for oil pollution prevention and response to the best of their abilities.

Appendix H:

ANNEX II

Pending incidents involving the 1971 Fund

1 The situation in respect of pending incidents involving the 1971 Fund is in summary as follows.

2 There are 20 incidents involving the 1971 Fund in respect of which claims for compensation and/or indemnification are pending, or recourse actions are being pursued by the 1971 Fund.

3 Of these 20 incidents, the following six have already been fully financed through contributions levied to the respective Major Claims Funds:

Aegean Sea
Braer
Keumdong N°5
Sea Prince
Yeo Myung
Yuil N°1

4 These Major Claims Funds are together expected to show a considerable surplus in the region of £35 million when all claims and expenses have been paid.

5 A further six incidents will probably not result in any payments of compensation or indemnification by the 1971 Fund or in only very limited payments:

Vistabella
Iliad
Kriti Sea
Katja
Alambra
Natuna Sea

6 As for the *Sea Empress* incident, the balance on the Major Claims Fund is sufficient to cover the payments of compensation of pending claims and indemnification of the shipowner. The recourse action taken by the 1971 Fund against the Milford Haven Port Authority will, however, take a considerable time and may result in the 1971 Fund's incurring significant costs.

7 With respect to the *Nakhodka* incident, it is difficult to assess the remaining exposure of the 1971 Fund since the maximum amount payable by that Fund (60 million SDR) under the 1971 Fund Convention (contrary to the 1992 Fund Convention) is converted into Japanese yen on the basis of the rate of exchange on the date when the shipowner establishes the limitation fund and this fund has not yet been constituted. Prior to 31 December 1999 all compensation payments were made by the 1971 Fund and thereafter all payments have been made by the 1992 Fund. On the basis of the rate of exchange on that date the 1971 Fund would have paid over its limit, whereas if the conversion were made on the basis of the rate of exchange as at March 1 2002 the 1971 Fund would have to make additional payments.

8 The remaining claims arising out of the *Nissos Amorgos* and *Pontoon 300* incidents are, in the 1971 Fund's view, for the most part inadmissible. These claims are for significant amounts. It is very difficult therefore to estimate the total payments to be made by the 1971 Fund in respect of these incidents. There are in any event deficits on these Major Claims Funds and contributions will have to be levied to these Funds.

9 The *Evoikos* incident is unlikely to give rise to any payments of compensation by the 1971 Fund. It is possible that the Fund will have to pay indemnification of the shipowner not exceeding £1.9 million. The Fund may also incur some related costs.

10 All the incidents referred to in paragraphs 3-9 except the *Alambra* incident occurred before the end of the transitional period, 15 May 1998, when the denunciation of the 1971 Fund by 24 States took effect. Apart from that incident a sufficient contribution basis exists therefore as regards these incidents, should it be necessary to levy further contributions in respect of any of them.

11 It is estimated that the *Al Jaziah* incident (24 January 2000) will give rise to payment of compensation and costs by the 1971 Fund not exceeding £2 million. Contributions may have to be levied in respect of that incident.

12 In October 2000 the 1971 Fund purchased insurance covering its liabilities in respect of incidents occurring during the period 25 October 2000 – 24 May 2002, subject to a deductible of 250 000 Special Drawing Rights (£220 000) per incident. So far the insurance will be used in respect of the *Zeinab* and *Singapura Timur* incidents (14 April 2001 and 28 may 2001 respectively) but will also cover any further incidents occurring after the issue of this document up to 24 May 2002. The maximum amount to be borne by the 1971 Fund in respect of each of these incidents is the deductible, i.e. £220 000.

Appendix I:

ISM AND PORT STATE CONTROL

Capt. Richard Day, Manager Safety and Environmental Programmes
Transport Canada Marine Safety, Ottawa

Good Morning, Master Mariners, distinguished speakers, ladies and gentlemen.

First, I would like to thank you for extending the invitation to me to make this presentation on the topic "ISM and Port State Control." It is indeed a pleasure to be among my peers here at home, and I am pleased to be able to contribute to this **Conference on Safer Ships and Competent Crews**. Halifax is a wonderful city with a long, historic link with shipping and marine matters, and, according to government surveys, its citizens are the best educated in Canada. Therefore, I think it is quite appropriate that this conference is held here.

Freedom of the seas has always been the basis of maritime law. However, we all know that with freedom always comes responsibility. Because we all want the freedom to enjoy a clean, safe marine environment, each country with a coastal region has a responsibility to ensure the safety of this resource. Canada, of course, has the longest coastline in the world – some 244,800 km. Even the UN Law of the Sea convention has recognised that all states that are lucky enough to have a coastline have a basic obligation to protect the marine environment. The Coastal state has become a custodian of the marine environment.

One of the ways in which Canada performs the role of custodian is Port State Control, or PSC. As you are aware, Port State Control is a ship inspection program whereby foreign vessels entering a sovereign state's waters are boarded and inspected to ensure compliance with various major international conventions.

In an ideal world, Port State Control would not exist. Flag States, owners, and operators would automatically ensure that their ships were safe to ply the world's waters. Canada has long exercised its sovereign right to inspect ships entering its waters. For many years, all tankers entering Canada have been inspected on their first visit and at least once a year thereafter. We have also overseen the loading of high-risk cargoes through our Port Warden programme. Transport Canada's main aim is to keep Canada's waters safe from pollution for all our residents to enjoy.

You have already heard from my boss, Bud Streeter, on the impact of the Canada Shipping Act 2001 on ship safety in Canada. This act primarily targets our Canadian vessels. Our Port State Control inspections, however, are a different kettle of fish, because they concern only foreign vessels.

Canada has had a long relationship with Port State Control. Even before the disastrous shipping accidents in the late 1970s, Canada had been concerned about the safety of persons at sea and the marine environment. Consequently, Canada became an associate member of the Paris MOU in April 1988, and was accepted as a full member in May 1994. Canada was also a driving force in the creation of the Tokyo MOU and has been a member since its inception in December 1993.

Transport Canada Marine Safety is responsible for all PSC activities within Canada, and foreign ship inspections are carried out at all major ports by ship inspectors who, following the appropriate training and experience, become Port States Control officers.

In all, we have signed memoranda which provide thirty-four other Port State Control Partners. Although different PSC MOUs may be perceived to have different criteria, Transport Canada has one standard for its inspections – which is reputed to be one of the best in the world. The major IMO instruments such as SOLAS, MarPOL, and STCW form the basis for our inspections. Our first inspection is a basic one. If there are clear grounds, we conduct a more thorough inspection. More thorough inspections may lead to detentions or deficiencies being pointed out.

Let's have a look at some of the statistics on Port State Control in Canada over the last few years.

In this graph we see that although the number of inspections conducted during the years 1995 to 2000 has shown a decrease, the number of deficiencies and detentions remained fairly constant. You will note a decrease in detentions for 2000 whereas the number of inspections has remained close to constant. Bulk carriers tend to be our largest trouble spot, and this continues to be so. The slide shows that this category of ship has the highest detention statistics, and we try to especially target these kinds of ship. Our Canadian Bulk Carrier Inspection Regime targets certain bulk carriers for a detailed structural examination. During the last year forty-seven percent of inspections were performed on bulk carriers, the largest percentage for any one kind of ship inspected in 2000.

Firefighting appliances, life saving appliances, and safety in general are three of the largest categories of deficiencies for the year 2000. I find this amazing, because these are the few things I'd really want to make sure work on any ship I'm sailing on. However, these are consistent trouble spots and each year too many deficiencies are found in these categories.

You've probably heard of the New World Order. No, I'm not speaking about economic globalisation or anything like that. The ISM Code is here and it is the New World Order for ships. Its implementation has brought about a change that can be compared to a paradigm shift. In fact, as Professor William Tetley puts it, the ISM Code may have caused the most profound changes in Maritime Law in 50 years. First of all, it has set a new standard of responsibility and changed the rules by saying that ship owners and operators are responsible for their management, not merely for defects in the ship or for the fault of the master or crew. The Code now raises the standard of management.

The ISM Code has given classification societies and Port State Control a new stratum of responsibility when inspecting a vessel. It is no longer sufficient to see that a ship is seaworthy in its class and concentrate solely on its physical condition – its management must be in order as well. In general, the Code which started being implemented in July 1998 and will be fully in effect on July 1, 2002, has brought about a change in thinking and in the shifting of blame for accidents. The ISM lifts the corporate veil on substandard ships, and our neighbours to the south (the U.S.) have criminal indictments now underway against designated person who failed to ensure compliance. The following slides show examples of clear grounds under the ISM Code: Evidence that certificates are not valid; ship's logs or documentation not on board; physical condition of the ship; crew not able to communicate with each other; serious deficiencies in safety; and improperly certified personnel on board.

Prior to ISM enforcement Phase 1, Transport Canada sent out letters to ship owners and operators to inform them of the coming changes to the regime. The change was also cited by means of a "Ship Safety Bulletin." These steps will also be taken prior to the July 1, 2002 deadline. A questionnaire was utilised by our PSCOs in order to determine a ship's and a company's compliance with ISM. Another questionnaire has been developed for the second phase. Some of the questions include: Is ISM applicable to the ship? Is proper certification on board? Does the ship have a maintenance routine and are records available?

Phase 1 was kicked off by a concentrated inspection campaign (CIC) which lasted for three months, and another is planned for July 1, 2002. The campaign targeted bulk carriers and a few other categories for ISM implementation. Results from the Canadian CIC show that the major non-compliances were in the areas of emergency preparedness and maintenance. In the three-month period July 1 to October 30, 1998, a total of 212 foreign vessels were inspected. Three were detained for ISM guidelines which were not met.

During the CIC campaign the Paris MOU members inspected three thousand six hundred and thirty-three ships, and detained eighty-one of them. This represents a percentage of five. At the same time Tokyo MOU members carried out one thousand eight hundred and twenty inspections, with sixty-three detentions recorded. The percentage in that case was three.

The graph shows detentions for ISM defects in Canada for 1999 and 2000. As noted before, the trend was that emergency preparedness was the reason for the most detentions in both 1999 and 2000, followed by maintenance of equipment and then safety and environmental concerns.

As you have already heard, Phase 1 vessels included oil tankers, gas carriers, bulk carriers, and cargo high speed craft of five hundred gross tons or more as well as passenger ships which carry more than twelve passengers. Phase 2 of ISM implementation is set to begin on July 1, 2002, when all vessels of five hundred gross tons or more and certain mobile offshore drilling units will also be included. A PSC inspection includes a check on ISM compliance. Some of the things checked for under ISM regulations include the management guidelines of what to do in an emergency, a clear chain of command, and of course, a valid Document of Compliance and Safety Management Certificate.

The information we gather is entered into the respective MOU databases – SIRENAC (for the Paris MOU) and APCIS (for the Tokyo MOU), which then goes into EQUASIS, which can be accessed publicly.

In all, Canada has been involved in Regional Port State Control for thirteen years. As a part of our commitment to eradicating substandard shipping, Canada provides training for states which are in the early stages of developing their inspection programme. In this way hope to pass on the expertise we have gained over the years, and to ensure global standardisation.

I mentioned earlier that different MOUs have differing standards for inspecting ships. I would like to see more uniformity between memoranda, as well as a more uniform application of ISM.

Port State Control is a wonderful example of regional cooperation. Together regional inspection targets are met which would be almost impossible for any one member, and the information gathered and shared with members is indispensable for preventing sub-standard ships from plying our waters. Canada sees its participation in these MOUs as the best and most efficient way of minimising the number of substandard ships entering its ports. In many ways, Canada acts as a "bridge" between the Atlantic and Pacific Oceans. It is our hope in Transport Canada Marine Safety to form the link needed to maximise the benefits of inspections in two oceans, which we hope will lead to the eventual globalisation of Port State Control. It was for this very reason that Canada initiated the First Joint Ministerial Conference of the Paris and Tokyo Memoranda of Understanding on Port State Control, which was held in Vancouver in March 1998. At the conference Ministers agreed on measures to reduce sub-standard shipping and took the first steps towards harmonisation of these two MOUs. We have recently signed a memorandum with our NAFTA partners, USA and Mexico, to further cooperation in Port State Control activities and foresee closer sharing and recognition of inspections in North America.

Now I would like to show you some photos of some flaws we noticed in ships we inspected.

Our Port State Control Annual Report contains a wealth of information and statistics on our Port State Control programme in Canada. You can pick up the booklet at our Transport Canada offices around the country or just go to our website at http://www.tc.gc.ca/MarineSafety/Port_State_Control/index.htm.

Information about the Paris and Tokyo MOUs can be found on their websites at the addresses on the screen.

Just as there should be more uniformity between MOUs, there is an equal need for all the stakeholders in shipping to work cooperatively with PSC authorities. Pilots, port authorities, classification societies, and commercial interests are just some of the industry partners who should work with us to ensure safety.

To conclude, I would like to note that shipping is an industry where public and political interest and accountability have sharply increased over the past few years. It is widely agreed that we have reached a point where more regulations and inspections will not contribute to further increases of safety at sea, but that a more efficient implementation of regimes and better coordination of inspections serve the purpose of safety best. You too as master mariners can help us rid Canada of substandard ships by ensuring that the ships you work on or the companies you work for have all the relevant certificates, and ensure that the ships are adequately manned and are in a safe physical condition.

I will now try to answer any questions you may have on Port State Control and ISM in Canada.