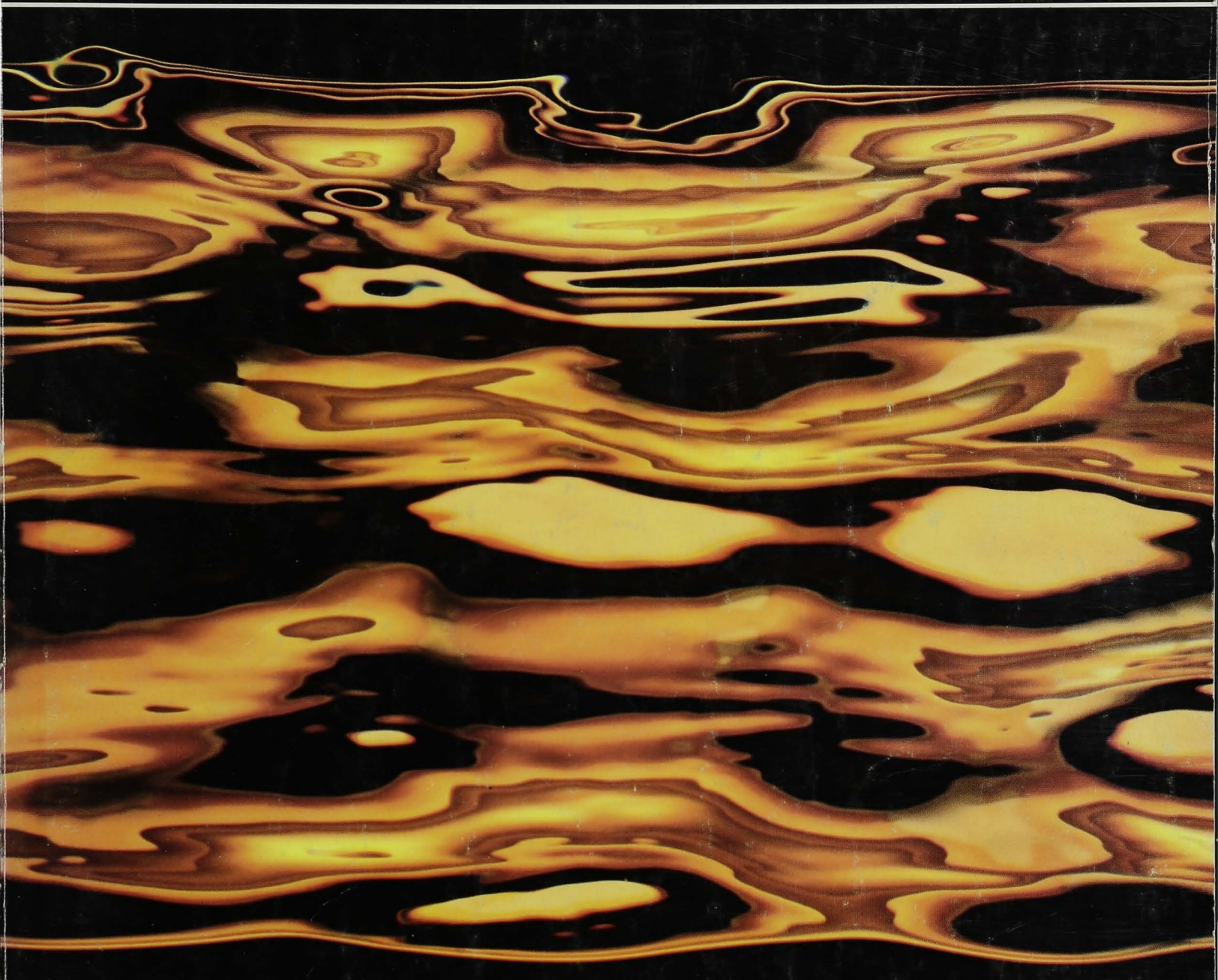
The Administrator's Annual Report



Ship-Source Oil Pollution Fund

Canada

2002-2003

CANADA

SHIP-SOURCE OIL POLLUTION FUND

The Administrator's Annual Report

2002 - 2003

Canada

Published by the Administrator
Ship-source Oil Pollution Fund
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CANADA

Ship-source Oil Pollution Fund

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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, 2003, in accordance with Section 100 of the *Marine Liability Act*.

Yours sincerely,

K.A. MacInnis, Q.C.
Administrator

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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
GT	Gross Tonnage
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, 2003, was approximately $2.02254. 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

We are pleased to submit this Annual Report and welcome the opportunity for reflection – to recall how far we have come 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.

The Canadian Compensation Regime

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, caused by the discharge of oil from a ship.

The SOPF is intended to pay claims regarding oil spills from ships of all classes – it is not limited to sea-going tankers.

The type of oil covered by the SOPF is also greater than under the *Civil Liability* and *Fund Conventions*. It is not limited to persistent oil and includes petroleum, fuel oil, sludge, oil refuse and oil mixed with wastes.

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

During the fiscal year commencing April 1, 2003, the maximum liability of the SOPF is approximately $140 million for all claims from one oil spill.

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, preventive measures and monitoring; and
- claims for oil pollution damage and clean-up costs where the cause of the oil pollution damage is unknown and the Administrator of the SOPF has been unable to establish that the occurrence that gave rise to the damage was not caused by a ship.

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 Rule of Law

The Administrator must act in accordance with the laws governing the operation of the SOPF. He must not act arbitrarily or in accordance with policies contrary to Canadian Law.

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

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

A Successful Year

This Annual Report evidences a busy, significant and successful year.

We addressed some problems referred to last year (sections 4.8 and 4.9).

Particularly, 18 Canadian claims totaling $1.2 million were settled and paid for some $1 million plus interest (section 3).

Significantly, another two Canadian claims totaling some $433,000.00 in aggregate before interest were disallowed completely. These two claims raised important issues of principle for the administration of the SOPF (sections 3.2, 3.29 and 4.2.2).

The SOPF continues to pay considerable contributions to the International Fund: $3.2 million this year, and a total of some $33.3 million since 1989.

With the 50 percent rise in compensation levels effective November 2003, the potential liability of the SOPF to the International Fund shall increase (see "Revision" under Figure 1, Appendix D).

Future Actions

2004 should witness action on a number of fronts important for ship-source oil spill liability and compensation, including:

- Illegal discharge of oily waste at sea
- Aerial surveillance
- Port reception facilities for oily waste
- Places of refuge for oil tankers
- Arctic Response Strategy
- Environmental damage assessment
- P&I Club initiatives on sub-standard ships
- Increase in shipowners' limited liability

Toward Sustainable Transportation

In recent stakeholder consultations on Transport Canada's Third Sustainable Development Strategy, 2004-2006, "Toward Sustainable Transportation," we commented:

> *"From our view in the marine field some points for your consideration include:*
>
> 1. *Improvements in the number of prosecutions for violations of oil pollution laws – and seeking significant increases in the amount of the fines or penalties awarded by the courts across the country.*
> 2. *Adequate reception facilities in Canadian ports for ship oily waste.*
> 3. *Designating potential ports of refuge for oil tankers and other ships in need in situations where there is a risk of serious oil pollution.*
>
> *We note that 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.*
>
> *We note and are encouraged by Transport Canada's recent successes in Nova Scotia Provincial Court in increased fines for marine oil pollution offences."*

Merit Award

We are particularly pleased to note our appreciation for the fine initiative of CCG Maritimes Region in recognizing the positive results from co-operation between CCG and the Administrator. Maritimes Region senior officials recently acknowledged the valuable work of the emergency response team by granting a Public Service merit award to one of its member's. The citation refers to the member's "excellent work and outstanding achievement in oil pollution response and cost recovery".

Our Thanks

In closing, we are grateful for the support received, the challenges, successes and also the problems experienced this year which had to be addressed.

We welcome any suggestions on how we can improve SOPF services.

Summary

This annual report covers the fiscal year ended March 31, 2003.

The report describes Canada's domestic compensation regime. First, the SOPF 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 totaling approximately $1,190,732.49 before interest were settled and paid in the aggregate amount of $1,011,185.02 plus interest of $77,258.41. The Administrator recovered, from third parties liable, approximately $54,000.00 respecting payments made out of the SOPF to some claimants. This year the Administrator paid an amount of $3,219,969.17 out of the SOPF to the 1992 IOPC Fund for incidents outside of Canada. As at March 31, 2003, the balance in the SOPF was $325,963,269.85.

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. Commencing April 1, 2003, the maximum liability of the SOPF for all claims from one oil spill is $139,960,707.80.

During the new fiscal year, the Minister of Transport has the statutory power to impose a levy for the SOPF of 41.97 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.

Since 1989, the 1971 and 1992 IOPC Funds have received approximately $33.3 million out of the SOPF. The SOPF has potential significant future liabilities for international incidents.

The report outlines the status of oil pollution incidents brought to the attention of the Administrator. The incident reports herein indicate claims that have been settled, including the claims that are in various stages of advancement. Included also is the current status of recovery actions by the Administrator against shipowners.

The Administrator responded to all enquires 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.

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".

Highlighted is the work being done by Environment Canada officials to establish a national framework for implementing an environmental damage assessment process. Since Treasury Board approved the Environmental Damages Fund, personnel in Environment Canada have organized and hosted seminars and workshops to develop a nationally consistent approach to handle environmental issues. The Administrator is frequently invited and participates in these discussions.

The report outlines how compensation for environmental damages is handled differently under the MLA, the 1992 CLC, the 1992 IOPC Fund Convention, and the US OPA 90.

Updates are provided on the issues surrounding the illegal discharge at sea of ship-generated oily waste, and the need for additional marine waste reception facilities in Canadian ports. The Administrator closely follows the progress on these issues, because of the problem of mystery oil spills and the resulting chronic problem of oiled seabirds, particularly in eastern Canada.

Ship-source Oil Pollution Fund

The report contains comprehensive coverage of the *Prestige* incident that occurred off Spain in November 2002. The single-hull tanker was carrying a cargo of 77,000 tonnes of heavy fuel oil when it broke in two and sank off the coast of Galicia. It was the largest oil spill during the year.

As a consequence of this major oil spill, the European Commission has made various proposals for legislative changes within the European Union. The European initiatives are summarized in the body of this report. For example, the European Parliament has adopted a legislative resolution for double-hull or equivalent design requirements for oil tankers. These proposals for amendments to Regulation 13G of Annex 1 of MARPOL 73/78 include further acceleration of the phase-out of single-hull tankers carrying heavy grades of oil in the European Union. Also, it includes an immediate ban on all single-hull oil tankers of *Erika* and *Prestige* type aged more than 23 years, and for the Condition Assessment Scheme to be applied to tankers of 15 years age and above. The EU has decided to put its proposals before the IMO. The action taken within the European Union bodies has galvanized the IMO and IOPC regimes into rapid reaction to improve the regulation of ship safety and the liability and compensation regimes internationally.

An update is provided on the issue of places of refuge for damaged oil tankers. The IMO has commenced an international review of places of refuge for disabled ships. It is recognized that contingency measures to identify places of refuge in coastal waters for damaged ships are overdue. The international maritime associations are pressing the European Union to deliver on the issue of providing shelter for ships in peril. Meanwhile, a number of countries are dealing with the matter unilaterally.

In Norway, a single authority has been given the responsibility for handling such emergencies. It is reported that Norway has implemented most of the measures currently being discussed at IMO. It has also conducted a through survey of the country's coastline to identify suitable places where distressed ships may find shelter from the prevailing weather. The environmental sensitivity of the coastline is also taken into account.

In the United Kingdom, damaged ships are directed to shelter where it is appropriate to do so, without having to transit miles of exposed coastline. The ship is taken to the most sensible place, and avoids special environmental sensitive areas. The Secretary of State's Representative has virtual paramount authority. This system avoids indecision or confused responsibilities during marine emergency situations. The United Kingdom's approach is widely seen as the way forward.

The European Union has been working on the issue of places of refuge. Directive 2002/59/EC, as adopted by the European Parliament and the Council, aims at establishing a Community vessel traffic monitoring and information system. The system will make it possible to keep closer track of shipping and allow better detection of situations posing a treat to the environment, and permit more effective intervention in the event of accidents at sea. The EC is working in consultation with the European Maritime Safety Agency.

It is noted that on July 1, 2002, the second phase of the ISM Code implementation for the safe operation of ships and pollution prevention became mandatory for all ships covered by the SOLAS Convention that trade internationally. The ISM Code implementation has not escaped criticism. There are those who suggest that the effectiveness of the ISM Code requires an urgent review.

The role of classification societies is critical in ensuring safe ships and environmental protection. It is suggested, however, that to help combat substandard shipping the control of new shipbuilding standards should be removed from classification societies and handed over to an independent body. This proposal has created controversy among countries that are members of the IMO and the European Union.

On November 1, 2003, the 1992 IOPC regime will increase its compensation limitation amount by approximately 50 per cent to C$410 million of IOPC primary coverage. This increase is unrelated to any amount of compensation available under the "optional" Supplementary Fund, which was adopted by the Diplomatic Conference convened by IMO in London during the week of May 12, 2003. Important elements of the new Protocol are outlined in the body of the report. The aggregate maximum amount of compensation available will be 750 million SDR per incident, consisting of the 1992 CLC; the 1992 Fund Convention and the Supplementary Fund. This amount represents about C$1.5 billion as compared to the current amount of C$410 million (effective November 2003). The new Protocol will be open for signature by Member States of the 1992 IOPC Fund from July 31, 2003 to July 30, 2004.

Whether Canada should become a Contracting State to any IOPC "optional" third tier (the Supplementary Fund) is for cabinet to decide.

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

- Attending meetings with senior representatives of Fisheries and Oceans and Environment Canada in the Atlantic, Central and Arctic, and Pacific Regions.
- Participating in the National Environmental damages Fund workshop held in Gatineau, Quebec.
- Attending the Canadian Marine Advisory Council's national conference held in Ottawa during November.
- Participating, with representatives from government agencies and the marine industry, in an On-Scene Commander Course (Canadian Coast Guard College, Cape Breton) for effective response to a significant oil spill incident.
- Participating in the CANUSLANT Oil Pollution exercise held in St. Andrews, New Brunswick, and in the CANUSLAK salvage exercise held in Sarnia, Ontario.
- Visiting the offices of the ECRC Response Organization in Corunna, Ontario.
- Participating in the Transport Canada Marine Safety Investigators Course in Halifax, Nova Scotia. (The Administrator made a presentation on the civil liability evidence requirements for the SOPF).
- Attending the Canadian Maritime Law Association executive committee meetings in Montreal and Vancouver.
- Holding discussions with organizations in the UK including ITOPF, OCIMF, and P&I Clubs.

During the year the Administrator, as a member 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. Excerpts from his reports on these proceedings are contained in Appendices B and C.

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;
- offers compensation to claimants for whatever portion of the claim the Administrator finds to be established and, where a claimant accepts an offer, the Administrator directs payment to the claimant out of the SOPF;
- 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, 2003, the Minister of Transport has the statutory power to impose a levy of 41.97 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, 2003, the maximum liability of the SOPF is $139,960,707.80 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.

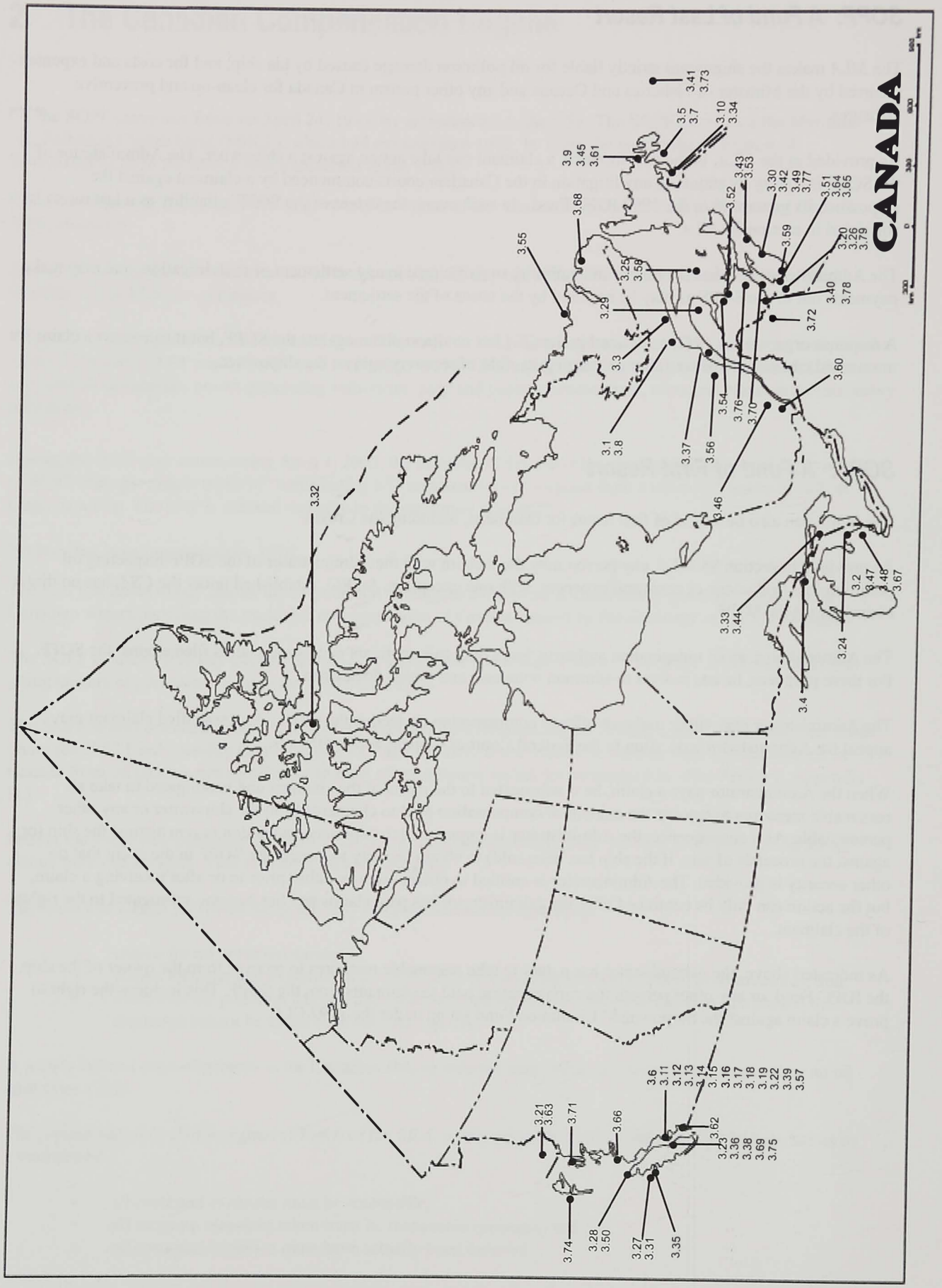
As provided in section 85 *MLA*, any person may file a claim with the Administrator of the SOPF respecting oil pollution loss or damage or costs and expenses, with one exception. An RO, established under the *CSA*, has no direct claim against the SOPF.

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 *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.

During the current year the SOPF handled 101 active incident files. Of these, 79 are reported on in this section because they involved either claims to the SOPF or were of specific interest because of the circumstances surrounding them.

Locations of incidents are indicated on map opposite.

3.1 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 were "very similar". To further assess the probability of the *Haralambos*, while off Port Cartier, being the origin of the oil, a hindcast trajectory study was carried out on behalf of the SOPF by the Institut Maurice-Lamontagne of Mont-Joli, Quebec. Dated August 23, 1999, in summary the hindcast report found:

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

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

On December 19, 2001, the Administrator was required to attend an Examination for Discovery by the defendant's counsel.

Offers and counter-offers have been made between counsels for both parties, but by year-end, an out of-court settlement had not yet been achieved. The recovery action continues.

3.2 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 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. The Administrator continued to investigate the likely origin of the spill.

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 and a detailed review of all the evidence was undertaken. Following completion of this the Administrator wrote to the Crown on March 31, 2003 stating that this incident was not caused by a ship and therefore the claim would be disallowed. Early in the new fiscal year, May 30, 2003, the Crown advised that they accepted this ruling and the Administrator has closed his file. (See also incidents 3.47 and 3.67 of this report.)

3.3 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 Harve-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 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 an action 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.

The IOPC Fund has been removed as a defendant in the action. The SOPF is now a party to the action. A pre-trial conference is scheduled for August 6, 2003.

3.4 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 *CSA* section 677(10)(b) 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 subsequently paid the cost involved, $1,792.00 plus interest of $443.16 on November 22, 2002. The shipowner reimbursed these amounts to the SOPF on December 19, 2002. The Administrator closed his file.

3.5 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 then considered 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 3.7 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 of June 18, 2003.

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. The SOPF Affidavit of Documents was sworn on October 31, 2002 and it is understood that the Defence was still working on their Affidavit of Documents at year-end.

3.6 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.

A Statement of Claim was filed in the Federal Court on May 10, 2002 against the three owners in the amount of $40,436.15. Following discussion between counsel, the Administrator accepted a settlement of $24,261.69 from the vessel owners and closed his file.

3.7 Sam Won Ho (2000)

Referring to an incident listed above at 3.5, 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. (See also section 4.9).

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 townspeople 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:

- *CSA* section 678 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 (3.5).

The Administrator has closed this claim file.

3.8 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 was assessed, however, an offer of settlement was 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. These legal expenses were rejected.

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 was 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.

Following a lengthy investigation by the SOPF, CCG, TCMS and Environment Quebec, the Administrator was not satisfied that the occurrence was not caused by a ship.

Accordingly, settlements were made with CMQC in the amount of $242,427.45 together with interest of $42,335.13 and CCG in the amount of $3,776.05 together with interest of $638.82. Both payments were made.

The Administrator is considering recovery action.

3.9 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) 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 1,000 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. No claims have been received following this incident and the Administrator has closed his file.

3.10 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.

No claim has been received following this incident and the Administrator has closed his file.

3.11 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.

The VPA submitted a claim to the SOPF for its response to the above incident, 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 CCG Claim Status Report dated December 31, 2001, noted that the Crown presented a claim totaling $87,521.98 to the shipowner on August 20, 2001.

The shipowner's P&I Club declined to accept the claim of both the VPA and CCG. Accordingly both these entities made a claim to the SOPF as noted hereunder:

VPA: The Authority, by letter of July 17, 2002, reinstated its claim on the SOPF.

The Administrator replied to VPA on August 2, 2002 advising that he had assessed the claim and offered $10,809.93 plus interest as settlement. This offer was accepted by VPA on August 20, 2002 and on August 26, 2002, the Administrator confirmed the offer in the amount of $10,809.93 plus interest of $1,502.82 for a total payment of $12,312.75. The VPA provided an executed Release and Subrogation Agreement in favour of the Administrator and payment was made on September 17, 2002.

CCG: A claim from CCG in the amount of $74,525.79 was received by the SOPF on July 2, 2002.

The Administrator wrote to CCG on October 9, 2002 advising of his preliminary assessment and findings and invited CCG to comment on these prior to a final offer of settlement being made. The CCG replied on October 30, 2002, with more information and again on February 21, 2003, with additional comments.

On February 27, 2003, the Administrator made an offer of settlement to the CCG in the amount of $55,804.25 plus interest which was accepted that same day.

On March 6, 2003, the Administrator authorized payment by Interdepartmental Settlement Notification in the amount of $55,804.25 plus interest of $7,914.82 for a total of $63,719.07.

During the spill response oil samples were taken from various locations including the ship. These were analyzed by Environment Canada for CCG and TCMS to possibly identify the pollution and for prosecution purposes.

The cost of these analyses, $2,335.35, was included in the CCG claim but was disallowed because under the *MLA* it was not a direct component of the clean-up activity.

The Administrator did however agree to pay this amount separately on the grounds that access to the samples and analyses would be of importance in subsequent cost recovery action for all the monies paid out of the Fund as a result of the incident. Payment of $2,335.35 was therefore made to the CCG on March 7, 2003.

At year-end the Administrator continues to pursue his efforts on cost recovery.

Vancouver Harbour Incidents

Following the oil found off the Seaboard Terminal, North Vancouver, August 3, 2000, 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. While individual claim files have been closed as appropriate, the Administrator continues efforts on recovery of compensation paid on these files in conjunction with the incident reported at 3.11 above. These incidents are reported as 3.12 to 3.19 inclusive, following.

3.12 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.

Written confirmation of the claim in the amount of $331.22 was received on November 27, 2002.

This was assessed upon receipt and an offer of compensation in the claim amount plus interest was made on November 28, 2002 subject to the claimant executing a Release and Subrogation Agreement. This was received and payment was authorized in the amount of $331.22 plus interest of $50.19, for a total payment of $381.41, on December 2, 2002. The Administrator has closed the file but continues to assess recovery action options.

3.13 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. A further letter was sent to the claimant on May 28, 2002 reiterating the need for the requested information. On June 10, 2002 the claimant replied and advised that he did not have any specific receipts. At year-end the Administrator is still investigating the circumstances of the claim and attempting to obtain substantiating evidence.

3.14 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 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. In April 2001 the Administrator paid the claim in full, together with interest of $16.01, but continues to assess his recovery action options.

The Administrator closed this claim file.

3.15 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 *CSA* section 710 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 has closed this claim file.

3.16 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 and a further letter was sent to them on May 28, 2002 since no reply had been received in regard to the SOPF letter of November 30, 2000. A letter from the owners dated July 30, 2002 was received confirming their claim and enclosing various documents in support of it. The Administrator then began his investigation and assessment of the claim and advised the claimants of his initial findings on October 8, 2002 and requested their comments. A reply was received on November 28, 2002 and the following day the Administrator wrote the claimants with his offer of settlement. This offer was accepted and an executed Release and Subrogation Agreement was received on December 5, 2002.

The Administrator authorized payment of $3,486.83 plus interest of $529.29 on December 6, 2002.

The Administrator has closed his file on the claim aspect.

3.17 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. On May 28, 2002 and again on January 8, 2003 the Administrator sent a letter to the claimant asking his intentions and included a copy of the November 30, 2000 letter addressed to him.

In a telephone call to the SOPF on January 15, 2003 the claimant advised that he did not have copies of his original correspondence with the CCG. The SOPF sent copies of the documentation to him that same day by facsimile. On February 19, 2003 a letter was received from the claimant enclosing some receipts that had been requested and advising that his claim was in the amount of $8,585.16.

Some aspects of the claim caused concern and the Administrator, through his Vancouver counsel, engaged a marine surveyor to conduct an investigation on certain aspects of the claim.

At year-end the SOPF investigation into the circumstances and substance of the claim continue.

3.18 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 has closed this claim file.

3.19 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 the 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.

3.20 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.

The CCG incurred costs of $5,804.35 in responding to this incident which was paid directly by the shipowner. There being no further claim made following this incident the Administrator has closed his file.

3.21 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 Section 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 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 but did not receive a reply.

The CCG then made a claim on the SOPF in the revised amount of $9,433.02 by letter dated August 23, 2002.

Following an investigation by the SOPF, an offer of settlement in the amount of $9,331.69 together with interest of $1,035.94 was made to the CCG on November 18, 2002, which was accepted and paid.

The Administrator has closed his file.

3.22 Destiny 1 (2001)

A CCG Status Report advised the Administrator that on April 10, 2001, the 196 gross ton Canadian charter passenger vessel *Destiny 1* 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 1* 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 was no pollution reported. On April 12, 2001, the *Destiny 1* 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, but to no avail. The CCG then made a claim to the SOPF on December 20, 2002. The Administrator sent the claim to the shipowner for direct payment to the Crown. It is understood that, at year-end, settlement discussions continued between the shipowner's insurer and the Crown and that an agreed amount was paid to CCG on May 20, 2003.

The Administrator has closed his file.

3.23 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.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 attempted to recover its costs from the owner without success and accordingly submitted a claim to the SOPF by letter dated May 10, 2002 in the amount of $5,075.02.

The Administrator assessed the claim and made an offer of settlement to the CCG on May 27, 2002. A letter of acceptance of the offer was received on June 6, 2002 and the Administrator authorized payment of $4,904.36 plus interest of $313.00 on June 10, 2002.

The Administrator wrote to the shipowner requesting cost recovery action but to no avail. The Administrator closed his claim file.

3.24 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 downbound at the time and just to the west of Goderidge Harbour, Lake Huron, when she left the prescribed channel. No pollution was reported and in the absence of any claim the Administrator has closed his file.

3.25 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 and in the absence of any claim the Administrator has closed his file.

3.26 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, CCG Emergency Response in the Maritimes was not made aware of the incident. No oil pollution was reported and in the absence of any claim the Administrator has closed his file.

3.27 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 and in the absence of any claim the Administrator has closed his file.

3.28 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.

Subsequently, the CCG engaged a contractor to raise the vessel and remove the fuel onboard. This was accomplished by August 9, 2001.

The CCG submitted a claim for its costs and expenses in the amount of $9,966.35 on June 4, 2002. The amount of $9,904.39 plus interest of $623.02 totaling $10,527.41, following assessment, was paid on September 25, 2002.

The Administrator has closed this claim file.

3.29 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. On November 15, 2002, however, Crown counsel advised the Administrator that it was intended to submit a claim to the SOPF for the costs and expenses incurred for the removal of oil from the wreck. A claim totaling some $320,000.00 was subsequently received on March 17, 2003 and was disallowed by the Administrator (being time-barred per the *Irving Whale* decision of the Federal Court – [1999]2.F.C.346) on March 31, 2003.

The Administrator closed his file.

3.30 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 litres of oil into the harbour. On December 18, 2001, the rig was found guilty of pollution and fined $20,000. No claims have been received in relation to this incident and the Administrator has closed his file.

3.31 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 and in the absence of any claim the Administrator has closed his file.

3.32 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. Approximately 1,500 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, however the incident does not appear in the December 31, 2002 report and is presumed to have been paid. The Administrator has closed his file.

3.33 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 Peninsular. 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 but no such claim has been received. The incident has been removed from the CCG Claim Status Report of December 31, 2002 and the Administrator has therefore closed his file.

3.34 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 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 sorbent 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". The shipowner paid CCG costs and expenses. No other claim has been received and the Administrator has closed his file.

3.35 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 and was paid. The CCG subsequently made a claim to the SOPF by letter dated December 13, 2002, which was paid on January 17, 2003 in the amount of $9,024.72 plus interest of $344.68.

The Administrator has closed his file.

3.36 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 submitted a claim to the SOPF for its costs and expenses of $101,531.26 by letter dated November 7, 2002. Following assessment, an offer of settlement was made on February 27, 2003, which was accepted. Payment was made on March 6, 2003 in the amount of $101,367.75 plus interest of $6,436.87.

N.B.: In his letter of offer the Administrator noted:

> *"...the Administrator has carried out further investigation to determine if the facts of the case supported [the] analysis of the necessity of incurring the expenses relating to the loading out of remaining wood waste and or the disposal of clean wood waste totaling the sum of $14,412.00.*
>
> *Having completed his investigation, the Administrator is satisfied that, in this case these expenses were reasonably incurred as part of the measures necessary to repair, remedy, minimize or prevent pollution damage from the BCP #17.*
>
> *Accordingly, the Administrator found that these two items are established.*
>
> *The Administrator wishes to stress however that such conclusion was arrived at based on the special circumstances of the case. The present determination should not be taken as an acknowledgement that, in the future, any expenses associated with the removal or destruction of a ship will automatically be accepted as a valid claim."*

The Administrator closed this claim file.

3.37 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 by the consignee.

The SOPF appointed a surveyor. It was decided that government agencies had to act because of, 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.

In July 2002, legal action was commenced by the Crown (Transport Canada) against the shipowner and the ship in the Federal Court. The vessel was arrested and the Crown obtained a court order for appraisement and sale of the vessel. The Administrator filed a caveat against the proceeds of sale. On October 28, 2002, the Court ordered payment to the SOPF of the sum of $16,704.66 including interest plus costs of $440.00 for a total of $17,144.66 which was deposited to the credit of the SOPF. The Administrator has closed his file.

3.38 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.

This incident began on October 12, 2001 when the CCG was advised that the vessel had broken adrift from her moorings at Maple Bay Marina, British Columbia. She was recovered and moored at a non-operating fish farm installation in Sansum Narrows.

On November 6, 2001, the CCG was advised by the RCMP that an oily sheen could be seen around the vessel. The CCG Response Officer and the Victoria Harbour Master went to the site and found the vessel in a derelict condition and leaking oil into the environment.

The vessel was towed to a more secure berth at Pat Bay, British Columbia. The shipowner had been found by this time but proved unable to accept responsibility, and the CCG contracted for the removal of oil from her tanks to minimize the pollution threat.

The Administrator had engaged his own surveyor through counsel since it was likely that a claim would be forthcoming and it was necessary to monitor any future actions regarding the vessel.

On February 7, 2002, the CCG contractors advised that they had removed 23,154 litres diesel, 11,889 litres waste oil and 9,100 litres of oily water from the vessel.

The removal of the oil in her tanks did not remove the threat of further pollution since there was oil in the main engine and piping, which necessitated further work.

Concurrently, the CCG made arrangements to have the vessel ownership transferred to the Nanaimo Dive Association to be eventually sunk as an underwater artificial reef.

For this to occur, it was necessary to meet EC standards for ocean dumping and to have the oil contamination and other debris removed. Following transfer of ownership, the vessel was sunk in early May, 2002.

On October 10, 2002, the Administrator received a claim from the CCG in the amount of $105,543.95.

During his assessment, the Administrator became concerned that some of the costs claimed were not related to measures necessary to deal with oil pollution damage, but rather to meet the EC standards for ocean dumping.

After extensive investigation, the Administrator, on March 10, 2003, advised the CCG of items that were compensable.

In his letter of offer, the Administrator noted with respect to the removal and disposal of oil aspect:

> *"N.B. The application of the proceeds from the sale or other disposal of a ship and its contents is important in all incidents in light of the express provisions in subsection 678(2) CSA. Complete transparency by the claimant and its contractor(s) in their respective contractual arrangements is essential, particularly for the assessment of claims."*

On March 31, 2003, authorized payment of $92,541.54 plus interest of $3,966.59 for a total of $96,508.13.

On March 31, 2003, the CCG requested the Administrator to reconsider certain items of claim that had been disallowed. On March 31, 2003, the Administrator in reply advised CCG that he would review any new or material information which it might wish to provide to him, in order to determine whether it is appropriate to re-open his investigation and/or reconsider his assessment of these items of claim. He also advised:

> *"In the meantime, I consider that I have taken final action on March 10, 2003, under paragraph 86(1)(b) concerning all of the CCG claim save for Schedule 13. Therefore and for the sake of clarity, I wish to underline that, unless and until I indicate to you that I am prepared to re-open my investigation my notification of disallowance of these items of claim is final. Accordingly, the time within which to appeal the disallowance to the Admiralty Court as per s.87(2) MLA began to run on March 10, 2003 and is not interrupted."*

On May 8, 2003, the Administrator received a letter from CCG Counsel said to provide the Administrator with particulars of new or material information for his review with the hope that he would re-open his investigation and reconsider his assessment of certain disallowed items of claim.

The Administrator reviewed the contents of the May 8, 2003 correspondence. On June 10, 2003, the Administrator advised the CCG that he had decided not to reopen his investigation.

The Administrator has closed this claim file.

3.39 Reed Point Marina (2001)

3.6 in this Annual Report gives details of a fire which broke out on October 16, 1999, and destroyed a 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. It is understood that the cost of spill response was paid by the two insurance companies involved. The Administrator has closed his file.

3.40 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, at 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 $1,000.00.

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 Administrator received a claim from the CCG on March 27, 2003 in the amount of $3,283.06 for their costs and expenses in responding to this incident.

On March 28, 2003, the Administrator advised the CCG that he had completed his assessment of the claim and made an offer of settlement which was accepted by the CCG on March 31, 2003. Payment of the assessed amount of $2,390.22 plus interest of $153.92 for a total of $2,544.14 was authorized that same day.

The Administrator has closed his file.

3.41 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 40 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. Nothing more has been reported on this case and the Administrator has closed his file.

3.42 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 in the amount of $100,000.00, which included the SOPF as a named beneficiary.

On February 19, 2003, the CCG wrote to the P&I Club counsel advising that they were still prepared to negotiate a settlement in spite of the passage of time since the incident and lack of action. Negotiations ensued and on April 3, 2003, the ship's P&I Club paid $80,000.00 in full and final settlement.

The Administrator has closed his file.

(On June 23, 2003, the vessel pleaded guilty in Nova Scotia Provincial Court to charges related to the illegal discharge of waste and failure to notify authorities. The vessel was fined $100,000.00. Transport Canada said that this was the largest fine for a spill that occurred in a port.)

3.43 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 and 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.

This matter was resolved as a result of further testing. By early April of 2002, draft contract specifications had been made for removal of the still contaminated vessel. Comments were invited on the document by all interested parties at the Federal and Provincial level and also the SOPF. The final specification was issued in late May, and on June 5, 2002, potential contractors were invited to the site in order to assess the work. These quotes were received on the bid closing date of June 18 and the successful bidder was awarded the contract on June 19, 2002.

During all this time, repeated attempts to contact the shipowner were made, but without success.

Work to remove the vessel commenced on July 10, 2002, under the supervision of the CCG. The Administrator's surveyor was also in attendance during the operation. By July 26, 2002, the vessel and associated debris had been removed from the site and disposed of and the area was restored to an acceptable condition with no sign of any residual oil contamination.

A claim from the CCG for their costs and expenses in the amount of $213,053.94 was received by the Administrator on January 28, 2003.

Because the SOPF had been privy to all aspects of the situation, there were only a few items to resolve and an offer of settlement was made to the CCG on February 27, 2003. The Administrator received acceptance of the offer on March 4, 2003 and payment of the assessed cost of $212,126.10 plus interest of $7,404.98 to the CCG was authorized on March 6, 2003.

In his letter of offer the Administrator noted:

> *"N.B.:*
>
> *1. The Administrator wishes to stress that the conclusion arrived at is based on the special circumstances of this case. The present determination should not be taken as an acknowledgement that, in the future, any expenses associated with the removal or destruction of a ship will automatically be accepted as a valid claim.*
>
> *2. The application of the proceeds from the sale or other disposal of a ship and its contents is important in all incidents in light of the express provisions in subsection 678(2) CSA. Complete transparency by the claimant and its contractor(s) in their respective contractual arrangements is essential, particularly for the assessment of claims."*

The Administrator is pleased to note the cooperation that was extended to him by the CCG Maritimes Region throughout the incident and which very much assisted his investigation and assessment of the claim.

The Administrator has closed this claim file.

3.44 Miles and Sea (2002)

Details of the vessel and locality will be found in the 2001-2002 Annual Report at Section 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 CCG submitted a claim for their costs and expenses to the Administrator on March 27, 2003 in the amount of $33,113.06.

On March 31, 2003, the Administrator advised the CCG that further documentation would be required for some of the items claimed so that a full and proper assessment of the claim could be made.

The Administrator awaits developments.

3.45 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, legal counsel advised the owners 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 Conception Bay and then in Trinity 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 CCG incurred costs of $86,614.41 were submitted to the shipowner on February 10, 2003.

The Administrator awaits developments.

3.46 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 $10,000.00 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.

It is understood that settlement was made between the CCG and the shipowner and the LOU was returned on April 5, 2002.

The Administrator has closed his file.

3.47 Rouge River, Michigan (2002)

Although clearly of a US land-based origin from the outset, the Administrator has included this oil spill incident to illustrate his concern for: (a) the potential impact of an oil spill on the marine environment from a sewer source; (b) the importance of the source of such a spill being identified; and, (c) the desirability to ensure that Canadian and US law (*MLA/OPA* 90) is correctly reflected in any agreements (Great Lakes Water Quality Agreement, CCG/USCG Joint Contingency Plans and MOUs regarding cross-border spills on the East and West Coasts and the Great Lakes) and that the extent of the liability of the SOPF in each case is understood.

The so-designated Rouge River incident first came to the Administrator's attention from media reports. The details were subsequently confirmed in CCG Status Reports. On April 2, 2002, a person fishing in the Detroit River reported finding globs of oil on the river, contaminating the hull of his boat. Patches of oil were reported in Canadian waters in the Fighting Island area, and various other locations in the river. The CCG and USCG responded. It was determined that an estimated 68,000 litres (15,000 imperial gallons) had been released. It was determined to be used motor oil that had come out of the storm sewers of Dearborn, Michigan and entered the Rouge River. The oil had crossed the Detroit River and impacted approximately 8 km of the Canadian shore.

In order to monitor the SOPF's local interest, the Administrator contacted a surveyor. The CCG appointed contractors to effect the necessary clean-up, with the understanding that the costs would be invoiced to the USCG for presentation to the USCG National Pollution Funds Centre. A small number of oiled birds, stated to be 4, were reported.

The last information on the SOPF file is that the CCG was reimbursed $1.14 million approximately by the USCG and, that in July 2002, the local District Attorney in Michigan was presenting evidence to a US Grand Jury to determine if there was sufficient evidence to lay charges.

The Administrator has closed his file. (See also incidents 3.2 and 3.67 of this report).

3.48 Captain Ralph Tucker (2002)

The TSB reported that this 7,085 GT Canadian tanker ran aground off Bois Blanc Island in the lower Detroit River, Amherstburg Channel, on May 7, 2002. The tanker was holed but refloated 10 hours later with no reported pollution.

The Administrator has no further information on this incident and concludes that the SOPF is unlikely to be involved. He has closed his file.

3.49 CCGS Louis St. Laurent (2002)

On November 27, 2002, the Chief Mate of the vessel advised the Regional Operations Centre that there was a large oil sheen around the stern of the vessel, located at berths 6 and 7 of the CCG base in Dartmouth, Nova Scotia.

Upon investigation, it was determined that the vessel's starboard heeling tank contained fuel oil and passing through the tank was the starboard-side domestic discharge line for grey water. This pipeline had flange gaskets as part of its make-up and the fuel oil caused these to break down and allow fuel to enter the line so that it was discharged overboard.

It is understood that the costs of responding to the spill, $19,062.37, were settled internally by Journal Voucher.

The Administrator has closed his file.

3.50 Karma (2002)

This incident first came to the Administrator's attention from a CCG Marine Pollution Report. The *Karma* is a licensed 14 GT fishing vessel that, on May 9, 2002, had a fire and explosion and then grounded to the west of Strange Island. Strange Island is in a remote part of the central Pacific Coast of Vancouver Island, with Tahis the nearest main town. The RCMP safely rescued the 2 people on board the vessel.

The *Karma* was reported to have some 2,700 litres of diesel on board, before the fire. Minor pollution was reported which was of concern because of the extensive oyster beds nearby. The CCG monitored the situation and arranged for their pollution flight aircraft to over fly the wreck. The aircraft confirmed that minor pollution was being released.

At first the owner's insurers refused to act. One of the problems being the remote area where there were few companies to take remedial action. The CCG continued their negotiations with the insurers who, in the end, together with the owner removed the burnt out hull and disposed of it by, about, May 29, 2002.

It was stated that the oyster beds were unaffected. There was no further SOPF involvement and the Administrator closed his file.

3.51 Fundy Royal 1 (2002)

This is a 31 GT Canadian fibreglass fishing vessel which suddenly took on water, on May 20, 2002, and sank. The four crew members were safely taken off by another fishing vessel. The *Fundy Royal 1* sank off the port of Digby, on the Nova Scotia shore of the Bay of Fundy and settled on the bottom with her mast top showing above the water. The insurers responded, along with others, including the CCG and EC. The vessel leaked oil, of which some 5,500 litres of diesel were aboard.

On May 24, 2002, the vessel was successfully raised and towed to a wharf in Digby. Some additional oil was released during the raising. It was hoped to be able to save the full load of scallops which were aboard.

The insurers cooperated fully with the CCG throughout the incident. It transpired that there was no SOPF involvement, other than initial monitoring, and the Administrator closed his file.

3.52 Saunier (2002)

A local independent nautical surveyor who, from time to time, works for the SOPF, brought this incident to the attention of the Administrator. The *Saunier* is a 16,522 GT Canadian bulk carrier and, on May 29, 2002, it was reported that she was alongside in Pugwash, Nova Scotia having completed loading salt, when one of the hydraulic hoses burst on the cargo door. About 180 litres of hydraulic oil spilled into the harbour. The ship contracted with the local response corporation for the containment and clean-up. The harbour has a wharf-side lobster pound, which was immediately protected.

Monitored by the CCG, the contractors completed their clean-up.

There was no further SOPF involvement and the Administrator closed his file.

3.53 Mersey Venture (2002)

The *Mersey Venture* is a large (2,337 GT) steel Canadian fishing vessel. On June 7, 2002, the vessel went aground at the entrance to Country Harbour, which is a long inlet on the Atlantic Coast of Eastern Nova Scotia, with extensive aquaculture sites. The vessel grounded on rock and was holed, including an empty fuel tank which contained some residual fuel. There was some oil leakage around the vessel. The owners and the CCG responded to the incident and the vessel was refloated on June 7, 2002. The vessel then went to anchor and aerial surveillance showed no further oil leakage and the ship was permitted to enter Country Harbour where she was boomed off.

The vessel then sailed to Halifax where she was dry docked for repairs.

The CCG costs and expenses for their response were paid by the shipowner.

The Administrator has closed his file.

3.54 F.N. Fisheries (2002)

There was an oil spill reported in the harbour of Shippegan, New Brunswick, on June 7, 2002 to which the CCG responded as a mystery spill.

Investigation of the incident confirmed that the spill was from a land-based source, the fish plant of F.N. Fisheries. The company subsequently agreed to make payment to the CCG of $19,600.00 in settlement of CCG costs and expenses in responding to the spill.

The Administrator has closed his file.

3.55 Mystery Spill, Hopedale, Newfoundland and Labrador (2002)

On July 9, 2002, it was reported that 6 fishing vessels berthed at the wharf in Hopedale had experienced oil pollution that was coming from the seabed. An RCMP officer investigated the spill and it was reported that there was a 45 gallon drum on the bottom in about 10-15 feet of water and some 10-15 feet from the edge of the wharf. It appeared that the drum was releasing what looked like a thick black oil.

The CCG and EC responded to the incident and the drum was recovered from the water and samples of its contents taken on July 13, 2002.

The Administrator concurred that the recovered drum should be transported in an over pack drum by coastal ship to St. John's for further investigation.

In the meantime, information was passed to the affected fishermen on making a claim to the SOPF, should this be required.

In a report dated August 21, 2002, it was stated that analysis of the oil showed it to be a mixture of diesel and bunker fuel

The Administrator engaged local counsel and a marine surveyor in regard to the ongoing investigation as to the drum's origin.

In this case it appears that the liability of the SOPF depends on whether the cause of the oil pollution damage is unknown and if the Administrator is unable to establish that the occurrence that gave rise to the damage was not caused by a ship.

At year-end there have been no claims made to the SOPF by either the CCG or third parties.

The Administrator awaits further developments.

3.56 Kung Fu (2002)

This 38 foot length pleasure craft sank at her berth at the fisherman's wharf in Les Escoumins, Quebec during the early morning hours of July 16, 2002. The vessel had some 1,500 litres of diesel oil fuel on board and some of this was released into the harbour.

Later that morning, daylight, the CCG placed a containment boom around the vessel and engaged a contractor to clean-up the spill.

Refloating of the vessel and clean-up was completed by evening and the following day, July 17, 2002, the *Kung Fu* was towed to Rivière-du-Loup for repairs.

The CCG Claim Status Report dated December 31, 2002, notes that the Crown presented a claim totaling $2,782.08 to the shipowner on August 27, 2002.

The Administrator awaits developments.

3.57 Jolie Vie (2002)

This 34 foot cabin cruiser ran aground in Bedwell Bay, British Columbia during the early hours of August 10, 2002. The four persons on board, including two children, were rescued by the CCG Deep Cove lifeboat.

The vessel sustained underwater damage to her bow and was partially submerged by the stern. She had on board an unknown quantity of diesel fuel.

The owner had contracted a pleasure craft salvage company to refloat the vessel. The TCMS duty officer responded to the incident and arranged to have the West Coast Response Organization mobilize and rig a containment boom around the vessel. The shipowner was advised that he would be liable for the incurred costs.

By late afternoon the vessel had been refloated and towed to a local marina where it was lifted from the water and placed ashore.

Efforts by TCMS to recover the costs of the Response Organization from the shipowner were of no avail and on February 20, 2003, the Administrator received a claim from the TCMS in the amount of $5,551.22.

Following a preliminary investigation into the facts, the Administrator, through his Vancouver counsel, attempted to have the shipowner meet his obligations under the *MLA* and make direct payment to TCMS.

This was unsuccessful and therefore the Administrator made the necessary applications to the Federal Court of Canada on May 5, 2003 and arrested the vessel.

The shipowner was fully informed as to the proceedings and the potential implications of this action.

The Administrator awaits further developments.

3.58 Mystery Spill, Rivière-au-Renard, Quebec (2002)

On September 18, 2002, CCG was advised by Environment Quebec that there was oil in the port of Rivière-au-Renard at the fisherman's wharf. The presence of oil was confirmed by a local TCMS inspector who advised that clean-up was required.

The CCG engaged a local contractor to conduct the clean-up and this was completed by the evening of September 19, 2002.

TCMS inspected 15 fishing vessels in the harbour but was unable to identify the polluter.

On March 21, 2003, the CCG made a claim to the SOPF in the amount of $2,914.55 for the costs and expenses incurred in responding to the incident.

The Administrator investigated and assessed the claim and on March 25, 2003 made an offer of settlement to the CCG.

This offer was accepted on March 31, 2003 and payment was authorized by the Administrator in the amount of the established amount of $2,252.44 plus interest of $31.60 for a total payment of $2,284.04.

The Administrator has closed his file.

3.59 Miss Western Way (2002)

This fishing vessel sank alongside the government wharf at Bush Islands, Lunenburg Harbour, Nova Scotia sometime during the night of September 24, 2002 and the incident was reported to CCG the following morning.

Some oil onboard was released into the harbour but local information given to the CCG was that it could be handled at a lower level of urgency. Both the CCG and the RCMP tried repeatedly to contact the registered owner but without success. On September 26, 2002, CCG was on-site and decided to initiate its own response.

A contractor was engaged and arrived on site mid-morning of September 27, 2002 to begin raising the vessel. Shortly thereafter, the vessel owner arrived to attempt to take action himself and the CCG and its contractor stepped aside. One hour later, the owner advised that the situation was beyond his capability. The CCG then proceeded with its planned operation and the vessel was raised and pumped out by mid-afternoon.

The vessel owner was advised by CCG that he was liable for the costs incurred and should take the necessary action to keep the vessel afloat.

Over the weekend it was apparent that little or any such action had been taken and the CCG arranged for a local resident to keep the vessel from re-sinking.

Attempts by the CCG to re-establish contact with the owner were initially unsuccessful but he was located eventually and signed a transfer of ownership document to the local resident mentioned above who had agreed to take the vessel and break her up for scrap value at no cost to CCG.

As a result of the incident, the CCG made a claim to the SOPF in the amount of $9,395.61 which was received on January 29, 2003. This was revised to $9,554.73 on February 18, 2003.

The claim was investigated and assessed and the Administrator made an offer of settlement to the CCG on February 24, 2003 and acceptance of the offer was received on March 6, 2003. Payment of the established amount of $9,011.13 plus interest of $225.24 was authorized that same day.

The Administrator has closed his file.

3.60 Stellanova/Canadian Prospector (2002)

The *Canadian Prospector*, a Great Lakes bulk carrier was in collision with the Dutch flag *Stellanova* in the St. Lawrence Seaway off Lachine, Quebec on October 12, 2002. Both ships suffered bow damage in the collision but there was no oil pollution at the time.

Subsequently, the stern of the *Stellanova* swung and came into contact with the Seaway board and damaged her rudder system which released hydraulic oil into the water. The ship's crew deployed the ship's on-board containment boom to minimize the spread of oil and called upon its contracted response organization for clean-up. The Kahnawake Fire Department also responded. Clean-up was effected by the morning of October 13, 2002 and both ships were able to proceed to port.

A Letter of Undertaking naming the SOPF was obtained to cover the incurred costs of clean-up.

The Administrator awaits developments.

3.61 Freija (2002)

This Latvian fishing vessel of 1,895 GT caught fire while alongside the wharf at Harbour Grace, Newfoundland on October 18, 2002.

The volunteer fire brigade and the CCG responded to the incident not only to put out the fire but also to prevent and/or minimize any oil pollution. The vessel had refueled the previous day and had some 40,000 litres of diesel on-board as well as quantities of other types of oil. Once the fire was out, the water used, which had become oil contaminated, was pumped ashore to tanker trucks for disposal.

To protect the interests of the SOPF, a Letter of Undertaking was obtained from the shipowner's P&I Club to cover any subsequent claims in regard to the incident.

The Administrator has been informed that the costs and expenses of the response has been paid by the shipowner and therefore has closed his file.

3.62 Lord Jim (2002)

The converted fishing vessel *Lord Jim* sank in Mill Bay, Saumire Inlet, British Columbia on October 20, 2002. There was a small oil slick/sheen around the site and it was reported that she had very little fuel aboard.

No clean-up was required and the CCG advised that they did not intend any future action.

No claims have been made to the SOPF and the Administrator has closed his file.

3.63 Inlet Spirit (2002)

The TSB reported that this fishing vessel capsized in the rapids at Kincolith, British Columbia on November 6, 2002. The CCG was advised by a local resident some five days later complaining of pollution. The CCG investigated but it was too late to effect any clean-up as the oil had been dispersed by the strong currents.

It is understood that the shipowner arranged to have the vessel salved by a contractor. The CCG have advised that they have no costs and therefore the Administrator has closed his file.

3.64 Shamrock III (2002)

This small 29 GT passenger tour vessel began to sink off Digby, Nova Scotia on November 15, 2002 and was eventually broken up by wave action. The crew was rescued.

As a result there was a release of diesel fuel in the area of the sinking. The slick was broken up and dispersed by sea action.

No claims have been received for this incident and the Administrator has closed his file.

3.65 Forrest Glen (2002)

The vessel was a 164 GT ex-fishing vessel that was altered to a pleasure craft and the CCG was advised that the vessel had sank during the evening of November 16, 2002, while berthed at the Long Wharf dock in Digby, Nova Scotia in inclement weather.

The following morning, the CCG arranged to have the area boomed off by the Digby Fire Department and divers were engaged to plug the fuel tank vents.

Following this, the CCG engaged a contractor to remove the oil from the tanks underwater and over the next two days some 1700 gallons of oil were recovered together with fourteen barrels of oily waste.

The shipowner had been contacted by the CCG but he had stated he was unable to do anything to remedy the situation as his company was insolvent.

The vessel still posed a pollution threat and the CCG then developed options in dealing with it. At this time, the Administrator engaged his own marine surveyor who worked alongside and with full cooperation from the CCG.

It was decided that removal and disposal of the vessel was the only viable solution and bids were solicited. Three were received by the CCG and a contract awarded on December 17, 2002.

Following preparatory work, recovery began on January 2, 2003 as planned. The vessel was raised on January 8, 2003 and the following day placed ashore for break-up and disposal.

All work of disposing of contaminated material was completed on January 23, 2003 and the site had been cleared of all contaminated debris.

The Administrator received a claim from the CCG on March 10, 2003 in the amount of $272,159.26.

Because of the outstanding cooperation received from the CCG Maritimes Region during the incident, it was possible for the Administrator to quickly assess the claim and an offer of settlement was made to the CCG on March 21, 2003.

This offer was accepted by the CCG and payment was authorized by the Administrator of $239,902.95 plus interest of $3,308.34 for a total of $243,211.29 on March 25, 2003.

The Administrator has closed his file.

3.66 Clavella (2002)

A routine CCG patrol came across this sunken pleasure craft at the dock at Clam Harbour, Port Hardy, British Columbia on November 20, 2002. Some oil had escaped and caused a sheen on the water, and initial information indicated that there was up to 700 gallons of fuel on board.

The CCG placed a boom around the vessel to contain the sheen.

On November 22, 2002, the owner advised CCG that he was enroute to the scene and would deploy his own boom. The next day the owner had placed sorbent pads and boom around the vessel. All fuel vents were plugged and pollution was reported to be minimal. The owner and his insurer made plans to salvage the vessel and this was done by the end of November.

It is understood that no claims are forthcoming on this incident and the Administrator has closed his file.

3.67 Mystery – Detroit River (Rouge River) (2002)

On November 29, 2002, the CCG pollution patrol aircraft observed an oil spill on the Detroit River near the Rouge River. Upon investigation it proved to be a land-based spill from the steel mill outfall and consisted of lubricating oil. The CCG estimated that the spill was of about 1,000 gallons.

While the spill did not migrate across the international border into Canadian waters, the incident is reported here to illustrate the ongoing problem of land-based spills in this area. (See also incidents 3.2, 3.47 and 4.2.2 of this report.)

The Administrator has closed his file.

3.68 FV 1995-05 (2002)

This vessel was being manoeuvered off the end of the slipway in Cartwright, Newfoundland on December 11, 2002 when it was holed by ice and sank in 30 feet of water. There was a slight release of oil but it was impossible to raise the vessel because of the ice. Sorbent pads were deployed at the time and the owner will salvage the vessel in May 2003 when the broken ice cover is gone.

The Administrator awaits developments.

3.69 First Lady (2002)

This 9 metre pleasure craft dragged its anchor during a storm and ran aground in Boat Harbour, south of Naniamo, British Columbia on December 25, 2002. The vessel had laid over to one side during the tide cycle and caused it to flood and spill oil. The following day, CCG arrived on scene and hired a local contractor to pull the vessel from the shore and re-set the anchor. The CCGC *Skua* pumped out the remaining water from the interior of the vessel and towed it to the Institute of Ocean Sciences (IOS) in Sidney, British Columbia. An unknown quantity of diesel oil remained on-board.

A Letter of Undertaking was requested from the owner by the CCG on December 27, 2002, with a deadline of response of January 2, 2003. The following day, an invoice was faxed to the owner by CCG to cover the costs and expenses incurred.

On December 30, 2002, the *First Lady* was secured at IOS Port Bay, lifted from the water and stored on the travel lift.

Payment had not been made by January 21, 2003 and a letter of "intent to sell" was sent via registered mail to the owner. This was returned two days later marked "moved, address unknown" and attempts to contact the owner by telephone were unsuccessful.

On January 24, 2003 CCG obtained a new address for the vessel owner but was advised by the Ladysmith

RCMP to remain off the vessel until further notified. The following day a new "letter of intent to sell" was sent to the owner by registered mail but again without success.

The CCG took over the vessel on February 5, 2003, pursuant to the *CSA,* and initiated action to sell the vessel to recover its costs. Three bids were received by February 17, 2003 and the highest bidder was notified and an agreement of sale document was prepared. On February 21, 2003, the successful bidder made payment, was provided a bill of sale and took possession of the vessel.

It is understood that the payment did not cover the full cost of the CCG involvement and that a claim will be made to the SOPF for the balance.

The Administrator awaits developments.

3.70 Pretty Knotty (2002)

This fishing vessel was found washed up on the beach at Morden, Nova Scotia on January 16, 2003. She was upside down with the wheelhouse missing and the hull breaking up. Regrettably two bodies of the crew were recovered with the third missing.

The CCG and the insurers were on scene and the vents were plugged, the fuel lines crimped, debris collected and the broken hull taken away by the insurers.

Clean-up of the limited spill of diesel oil was virtually impossible.

The Administrator has been advised that claims are unlikely to be made by the CCG or others and has closed his file.

3.71 Sea Rake (2003)

The TSB reported that this fishing vessel reported striking a rock and subsequently sunk off Moore Island, British Columbia on January 18, 2003.

The CCG later reported that the vessel had been refloated and all oil sources sealed on January 25, 2003. She was then taken to Shearwater, British Columbia for repairs and arrived safely two days later.

There were no CCG costs involved and it is unlikely that there will be a claim from any other party.

The Administrator has closed his file.

3.72 Rough Rider (2003)

This fishing vessel sank at the wharf at Beaver Harbour, New Brunswick on January 21, 2003, with very little pollution and was later raised.

The CCG have advised that they incurred no costs and claims from other parties are unlikely.

The Administrator has closed his file.

3.73 Camilla (2003)

This Finnish flag roll-on roll-off ship experienced total engine failure 230 nautical miles east of Newfoundland on January 23, 2003. The crew was safely evacuated by SAR helicopter. She had on board some 300 tons of fuel and other oils and was subsequently taken under tow to an anchorage in Conception Bay, Newfoundland where she arrived on February 2, 2003, with a list and water in her engine room and holds. The vessel was surrounded by a containment boom and a salvage crew began work on that same day together with personnel from the vessel's Response Organization.

No oil pollution was observed during the de-watering operation and the vessel was declared a non-pollution threat on February 13, 2003.

The Administrator is advised that the costs incurred by the CCG in monitoring the situation in the pollution aspect are the subject of a Letter of Undertaking from the vessel's P&I Club.

It is unlikely that any claim will be made to the SOPF and the Administrator has closed his file.

3.74 Silver Eagle (2003)

This fishing vessel had broken loose from her mooring lines on January 25, 2003 during severe weather and ran aground in Cumshewa Inlet, British Columbia. The vessel was lying on her side and there was loss of oil. The shipowner was attempting to salvage the vessel. The area is home to a fish hatchery and fish pens.

The shipowner did not respond appropriately. The CCG then took over the operation on January 30, 2003. A contracted salvage team arrived on site February 1, 2003 and by the following day had refloated the vessel, cleaned both it and the grounding area. The vessel was towed to Queen Charlotte City on February 3, 2003 and berthed at the Small Craft Harbour.

A mechanic working on the vessel's engine had pumped the bilges and caused an oil sheen in the harbour on February 6, 2003, which was contained by an absorbent boom. This was not attended to in a correct manner and the following day the CCG Auxillary Unit 64 deployed a containment boom and removed the absorbent boom.

CCG efforts to have the shipowner cover the response costs were unsuccessful. On February 17, 2003, the Administrator engaged counsel to contact the insurers to obtain a Letter of Undertaking in favour of the SOPF and the Crown.

At year-end, the Administrator was informed that settlement negotiations were being conducted between the vessel's insurers and the Crown.

The Administrator awaits developments.

3.75 Northern Light V (2003)

On February 3, 2003, it was reported that this vessel, a converted cable layer of 634 GT was abandoned and listing at anchor in Baynes Sound, British Columbia.

Two days later the vessel was inspected by CCG, TCMS and the Provincial Ministry of Aquaculture Food and Fisheries. The hull was found to be badly rusted with signs of severe wastage at the draft level with an unknown quantity of oil and other unknown chemicals onboard.

Baynes Sound is said to be a principal shellfish and fisheries habitat and of great economic importance to British Columbia.

The CCG located the owner and attempted to deliver a Removal Notice letter by registered mail which the owner refused to accept. Accordingly, the CCG began to consider the available options and a detailed inspection and survey of the vessel was carried out by the CCG and a nautical surveyor acting on behalf of the Administrator on February 14, 2003.

It was concluded that the vessel was in imminent danger of sinking because of the condition of the hull and therefore posed a considerable threat of oil pollution.

The vessel was towed to Ladysmith on February 22, 2003 and boomed off. The CCG began soliciting bids for oil removal and breaking up of the vessel since it was not possible to dump the vessel. The CCG contractor had pumped off easily accessible oil on arrival at Ladysmith.

A contract was issued on March 28, 2003, by the CCG, and work began on oil removal from the vessel and removal of oil contaminated material.

At year-end, the Administrator continues to follow the activities related to the incident and awaits developments.

3.76 Wellington Kent (2003)

This Canadian flag tanker had a loss of lubricating oil through its stern tube gland while at the Canaport Terminal, Courtenay Bay, New Brunswick on March 12, 2003.

The spill was cleaned-up by Terminal personnel on behalf of the shipowner and monitored by the CCG.

The Administrator is advised that there are no CCG costs and has closed his file.

3.77 HMCS Windsor (2003)

This RCN submarine was berthed at the Naval Dockyard, Halifax, Nova Scotia and had a release of an oil and water mixture on March 21, 2003.

The vessel had been previously boomed off and the release was contained within the boom.

DND personnel cleaned-up the spill and were monitored by CCG and EC.

The Administrator has closed his file.

3.78 Three K's (2003)

This fishing vessel sank at the dock at Pocologan Harbour, New Brunswick on March 23, 2003, with a subsequent release of oil causing a light sheen around the vessel which could not be cleaned-up. The owner made arrangements to raise the vessel. As a precautionary measure EC temporarily closed the local clam bed. On April 2, 2003, the Administrator spoke with a representative of the local clam diggers and provided advise regarding compensation for loss of income as a result of the closure, either by the shipowner or the SOPF.

The Administrator awaits developments.

3.79 Amanda Eugene (2003)

This fishing vessel caught fire while off Cape Roseway, Nova Scotia on March 29, 2003. The crew was safely rescued. The vessel burnt to the waterline and some fuel tanks floated off, two of which were recovered by the CCGS *Cape Roger*. No specific clean-up was required and it is understood that CCG costs are limited to helicopter time for a surveillance flight and will be billed to the insurance underwriters.

The Administrator has closed his file.

4. Challenges and Opportunities

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 (EDF) was established to serve as a special holding or trust account to manage funds received as compensation for environmental damage. The 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 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.

Since the Treasury Board approved the EDF, Environment Canada officials have organized and hosted seminars and workshops to discuss a national approach to handle environmental issues.

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. Also a further national workshop was held in Gatineau, Quebec, in December 2002.

These workshops brought together staff from Environment Canada and other government departments across the country to meet and discuss important considerations for national implementation of the EDF program. The objectives of the workshops were to inform the participants more about the various aspects of environmental restoration, and to help facilitate a higher level of knowledge and understanding of environmental issues nationally. The objectives also included discussion on program implementation issues and different methods to increase effectiveness in administration and environmental damage assessment.

Some of the items discussed and debated during the December 2002 seminar in Gatineau covered the need for nationally consistent approaches to assessment and restoration, and the requirement to establish an expanded regional implementation plan. An overview of the findings and conclusions resulting from these deliberations are covered in section 5.10 herein. Also included in section 5.10 are comments on the issue of getting more information on the EDF out to prosecutors, because at present judicial awareness of the role of the fund in environmental restoration effort is currently low. The Administrator's views on this matter are also noted in section 5.10 herein.

Additional information about Canada's Environmental Damages Fund, and the current framework for the general fund criteria and project requirements are described in the SOPF Administrator's Annual Report 2001-2002 at section 4.1.1. It is acknowledged that the development of a basic structure for implementing an environmental damage assessment and restoration process in Canada remains as a work in process.

4.1.2 Natural Resource Damage Assessment and Restoration

Compensation for Environmental Damage is handled differently under the MLA, the 1992 CLC, the 1992 IOPC Fund Convention, and the US OPA.

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."

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."

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 position of the 1992 CLC and the 1992 IOPC Fund on the admissibility of claims relating to damage to the marine environment has been discussed recently by the Third Intersessional Working Group of the 1992 IOPC Fund. At the seventh session of the Assembly, held from October 15 to 18, 2002, the revised text of the section of the 1992 Fund's Claims Manual regarding environmental damage was approved. A new version of the Claims Manual incorporating the amended section on environmental damage will be published. The revised text for the Claims Manual is contained in Appendix F of this report.

As well as the 1992 Fund's existing criteria, the amendments to the Claims Manual stipulate that the costs of measures of reinstatement of the environment will only be considered admissible if the following criteria are fulfilled:

- the measures should be likely to accelerate significantly the natural process of recovery;
- the measures should seek to prevent further damage as a result of the incident;
- the measures 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 damages and the benefits likely to be achieved.

Further information on the position of the Fund's policy, as laid down by the Assemblies, in respect to the admissibility of claims relating to damage of the marine environment is summarized in the SOPF Administrator's Annual Report 2001-2002 at section 4.1.3.

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.

These factors are summarized in the SOPF Administrator's Annual Report 2001-2002 at section 4.1.2.

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 basic for a claim for damage.

In February 2000, the European Commission published a White Paper on Environmental Liability. This proposed legislation did not appear intended for shipping. However, in light of the *Erika* and *Prestige* incidents, indications are that this proposed environmental regime may, in its application, conflict with the International Conventions on ship-source oil pollution. For example, the recent EC proposed Directive on environmental liability contains a definition of "environmental damage" that is wider than the 1992 IOPC Fund definition of "pollution damage" and introduces the concept of "biodiversity damage", which is not covered by the 1992 Fund.

The draft Directive excludes environmental damage in respect with which liability and compensation is already regulated under, *inter alia*, the 1992 CLC and the 1992 Fund Convention. Nevertheless, concern has been expressed that proposed amendments to extend the application of the Directive to maritime transport could be counter-productive with two liability/compensation regimes running in parallel. The complexities of implementing a different regime for environmental damages occurring in Europe are under active consideration by various bodies. OCIMF has made representations to EU authorities supporting the international system as the sole regime in this respect.

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-government, interdepartmental and agency agreements concerning the role 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 a 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.

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.

The advantages of different organizations working together are illustrated in a case study that was presented at the Freshwater Spills Symposium held in March 2002 in Cleveland. Further information about this case study and the benefits of a sound working relationship and partnership development among spill responders is contained in the SOPF Administrator's Annual Report 2001-2002 at section 4.2.1. In this particular oil spill incident, success of the operation was achieved primarily by the cooperation and sharing of information among the different responder groups.

Additional information about Canada's REET Program is contained in section 5.9 herein.

In the performances 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 Canadian/US Joint Response Teams regularly exercise the Joint Marine Pollution Contingency Plan Operational Supplements for Atlantic, Great Lakes and Pacific, respectively.

4.2.2 Oil Spills from Stormwater Drains and CSOs

The SOPF is intended to cover *inter alia* ship-source spills in Canadian waters, including the Great Lakes.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.

Sometimes the Administrator has to investigate the operation of city sewer systems. The SOPF Annual Report 2001-2002 at section 4.2.2 describes an oil spill incident that occurred on May 31, 1998, 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 conducted an investigation into the cause of the Fighting Island spill.

In this respect, the Administrator notes that the spill occurred on a day during which high rain precipitation was recorded. The administrator further notes that the possibility that under such circumstances combined sewer overflows ("CSO") occur is a well-known problem, which has been abundantly documented. In fact, the governments of Canada, Ontario, Michigan, the cities of Detroit and Windsor, and the USCG have long recognized the CSO problem.

Based on his review of several documents provided to him by the relevant authorities, the Administrator has found that, in and about the Detroit/Rouge Rivers area, older parts of cities have combined storm and sanitary sewers, which include emergency overload systems. Such a combination means that with heavy rains, which saturate the sewers, the emergency run-off can discharge untreated into the local waters through combined sewer outfalls. This releases a combination of rainwater, sewage and other liquid and solid waste into the water course, unscreened and untreated.

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 the untreated sewage into water courses. However, this would not preclude illegal oil-discharge entering Canadian and US waters from storm sewers.

The city of Detroit, for example, has undertaken a large scale Long Term Combined Sewer Overflow Program of US$1.7 billion, the details of which can be found in a brief prepared by the Detroit Water and Sewerage Department on June 26, 2002.

In the meantime, the potential for non ship-source oil spills from storm water outfalls and combined sewage outfalls remains. In fact, there is a history of oil spills in the Rouge River that have also affected Canadian waters. On August 1994, for instance, fat from a shore-based rendering plant entered the Rouge River and was washed across the Detroit River during a thunderstorm (the "Amherstburg fat spill"). On April 10, 2002 there was an oil spill from a municipal storm sewer into the Rouge River that migrated to the Detroit River resulting in considerable clean-up expense to CCG in Canada ($1,137,149.02), for which reimbursement is being claimed by the CCG from the US Coast Guard. The Administrator was told by the US Coast Guard that the alleged author of the pollution has been identified and that criminal proceedings have been commenced. CCG reports that again in November 2002 another oil spill occurred from a storm sewer into the Detroit River near the mouth of the Rouge River.

Section 3.2 herein covering Canadian oil spill incidents explains the background to the Fighting Island incident.

These incidents occur primarily in April, May and June as the result of drainage overflows during excessive rainfalls. In this regard, the Administrator has commented previously to the Canadian Coast Guard that aerial surveillance is important during the rainy season. However, it seems that from the latest statistics available to the Administrator, there has been an annual decrease in the number of patrol hours flown in the Central and Arctic Region during the past few years.

Note: For information about the National Aerial Surveillance Program see the SOPF Administrator's Annual Report 2001-2002 at section 4.2.3.

4.2.3 Arctic Response Strategy

The Administrator previously reported on the CCG's "Arctic Response Strategy", which was developed to ensure that an effective response capability is in place to respond to marine pollution incidents in the Canadian Arctic. An overview of this environmental response strategy, and CCG plans for implementation, are described in the SOPF Administrator's 1999-2000 and 2000-2001 Annual Reports at section 4 and 4.1, respectively.

The Administrator understands from attending the Northern CMAC meetings that presently the Central and Arctic Region (CCG) has lost some of the momentum for this program, since it inception in 1999. As a result of this situation, the Region's Environmental Response Branch reports that it will undertake an in-depth review of the Arctic Response Strategy and the implementation strategy early in the fiscal year 2003-2004. This review is intended to serve as an assessment of the plan's theory against the reality of implementation. It is expected that the recommendations of the review will provide new guidelines, and adjustment to the current implementation strategy.

Further information about the CCG Arctic preparedness and response capability is reported in section 5.3 herein, which covers the Administrator's attendance at the Northern CMAC meetings.

This is an important file from an SOPF perspective. It is acknowledged that in the event of a significant oil spill, it will be challenging to deliver appropriate equipment on a timely basis from depots south of 60° north latitude, in addition to dealing with the environment conditions.

4.2.4 Ship-Generated Oily Waste

The issues associated with the illegal discharge of ship-generated oily waste continue to create serious problems for regulatory authorities and the marine industry in general. The Administrator reported previously on the ongoing issues of illegal discharge of oily waste at sea, and the resulting chronic-problem of oiled seabirds. He also reported on the question of adequate reception facilities for residual oils and other ships' waste at Canadian ports. These items are addressed in the SOPF Administrator's Annual Report 1999-2000 at section 4 and in the Annual Report 2001-2002 at sections 4.2.3 and 4.2.4, respectively.

4.2.5 Illegal Discharge of Oily Waste at Sea

In September 2002, an oil spill was spotted off the south coast of Newfoundland by radar satellite. A Canadian Coast Guard surveillance aircraft later confirmed the spill. The foreign-registered bulk carrier, *Tecum Sea*, was charged for allegedly creating an oil slick; however, the Crown subsequently dropped all charges against the ship. The withdrawal of these charges was disappointing for east coast environmentalists.

The *Tecum Sea* incident is well summarized in the International Newsletter "Oil Spill Intelligence Report" (Reprinted with permission from Aspen Publishers Inc., 7/25/2003, Becker, Amy M. Oil Spill Intelligence Report, *Canada Drops Tecam Sea Pollution Charges*, Vol. XXVI, No. 17, 24 April 2003, p.1, www.aspenpublishers.com):

Canada Drops *Tecam Sea* Pollution Charges

The Canadian government dropped charges on 17 April 2003 against Tecam Sea, which was the subject of a high-profile arrest in September 2002 after a recently purchased radar satellite detection system spotted an oil slick in an ecologically sensitive area south of Newfoundland (see OSIR, 19 September 2002).

The vessel was ordered to come into port in Conception Bay, Newfoundland, after a 116-kilometer-long, 200-meter-wide slick was spotted trailing behind it. The oil was first seen by a satellite passing over the area as part of a new pilot project involving the Canadian Space Agency and several federal government departments that will track vessels they suspect of illegally spilling oil into the ocean.

According to press reports, Crown lawyers in St. John's, Newfoundland, said they did not proceed with the case because satellite photos of the Tecam Sea and the slick did not provide sufficient grounds to win a guilty verdict. Six pollution charges laid against the ship's owner, its operators, and the captain and chief engineer of the vessel were withdrawn in Newfoundland and Labrador provincial court, along with two charges against the ship that were laid under the Canadian Shipping Act.

A Justice spokesperson said he could not disclose the reasons for withdrawing the case, citing lawyer-client privilege. He assured environmentalists, who are frustrated at the outcome in the face of seemingly indisputable evidence, that the Canadian government would continue to pursue polluters and prosecute them when there is reasonable chance of conviction.

Over the past two years, prosecutions of ships such as Baltic Confidence (see OSIR, 28 February 2002) and CSL Atlas have resulted in fines as high as CD $125,000(US $86,000).

One of the world's busiest shipping routes and one of the nation's most sensitive seabird habitats converge off the southeast coast of Newfoundland and Labrador of Canada's Atlantic coast. More than 30 million seabirds and thousands of oceangoing ships pass through the area each year. The Grand Banks of Newfoundland is the most important wintering ground for seabirds in the North Atlantic. According to Environment Canada, scientific studies suggest that more than 300,000 birds such as gannets, gulls and ducks die each year as a result of ships deliberately dumping bilge waste.

As noted in the OSIR article, a successful aerial surveillance mission did occur in March 2002, when a fishery patrol aircraft spotted an oil slick about 120 kilometres southeast of Halifax. The slick was reported to be 40 kilometres long and 15 metres wide. The oil trailed directly astern of the foreign-registered bulk carrier *CSL Atlas*. Subsequently charges were laid and, after an agreement was reached between defence lawyers and federal Justice Department officials, a Nova Scotia provincial court judge, Michael Sherar, on November 25, 2002, imposed a fine of $125,000. The fine included a $50,000 assessment that will go to the Environmental Damage Fund to deal with environmental damages caused by marine pollution. The fine matches that made against the *Baltic Confidence* on February 25, 2002, in the Nova Scotia Provincial Court, Halifax.

For additional information about the *Baltic Confidence* see the SOPF Administrator's Annual Report 2001-2002 at section 4.1.1.

4.2.6 Oiled Wildlife Project

Chemical analysis indicates that approximately 90 per cent of the oil found on the feathers of dead birds originate from ship machinery spaces. Scientific studies show that thousands of birds die each year as a result of ships deliberately dumping a mix of water and oil waste from engine-room bilges. As reported in section 5.2 herein, initiatives to address the problem of oiled seabirds are under review in the Atlantic region through the "Prevention of Oiled Wildlife" (POW) project. In November 2002, the CMAC Steering Committee on the Environment endorsed the recommendations of the recently completed Phase III report of the POW project. The POW project recommendations are noted in the SOPF Administrator's Annual Report 2001-2002 at section 4.2.4.

4.2.7 Port Reception Facilities for Oily Waste

The provision of adequate and cost-effective marine waste reception facilities is necessary for ships to have an opportunity to discharge oily waste legitimately while in port.

At the international level, the IMO has regulations for the prevention of pollution by oil. Annex I of MARPOL 73/78 require, among other things, that adequate waste reception facilities be made available. Canada is a signatory to MARPOL 73/78.

Currently, Transport Canada Marine Safety (TCMS) authorities are addressing the adequacy of reception facilities. TCMS reports that a focus group studying the issue found that facilities at oil terminals were adequate. TCMS is developing a new database of facilities throughout Canada, so that all port authorities may be able to update their own information.

It is generally acknowledged that from an economic and practical standpoint, all Canadian port reception facilities have to be adequate and conveniently located to meet the needs of the ship without causing undue delay. The facilities must also be affordable for all classes of ships. There must be more incentive for the ship to retain oily bilge water and residue on board for disposal in port, rather than dumping it at sea.

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

4.3 Safe Ships and Environmental Protection

4.3.1 Places of Refuge for Damaged Ships – Threat of Pollution

The *Eastern Power* situation highlighted for Canadian authorities the issue of the potential importance to a littoral State of providing timely refuge for damaged oil tankers.

In this incident there was considerable media coverage and expressed interest by citizens, particularly in Newfoundland.

In December 2000, Transport Canada at first refused to allow the damaged oil tanker *Eastern Power* (126,993 gross tons) to enter Canadian waters until the ship could demonstrate it would not discharge oil into the marine environment. When the damage was reported, the laden tanker was approximately 150 miles east of the 200-mile exclusive economic zone. It was en route to the North Atlantic Refining Ltd. refinery at Come-by-Chance, Placentia Bay, Newfoundland. After the owners provided reports of damage and accepted a number of conditions imposed by TCMS and CCG, Transport Canada granted permission for the ship to enter Canadian waters. The Eastern Power did not, however, enter Canadian waters, because on December 12 the owners diverted the ship to a port in the Caribbean.

In Canada, the authorities have the statutory powers to direct the movement of and detain vessels within Canadian waters when it is necessary for reasons of safety and pollution prevention.

There is, however, an additional factor that may have to be considered. As a result of Canada's National Marine Policy, announced in 1995, many of the larger ports are established as Canada Port Authorities (CPA). Each CPA, as laid down in the Canada Marine Act of 1998, can exercise a number of powers including clearance for ships to enter and leave port. Because the CPAs are set up on a self-sufficient commercial basis, they could have concerns regarding the ability of a ship requiring a port of refuge to pay for normal harbour fees, or any additional costs resulting from damages to surrounding facilities or property or oil pollution.

There are those who argue that, in addition to designating sheltered areas, there is a requirement for the establishment of clear lines of command and control, where decisions can be taken quickly and solely on technical criteria. It is a fundamental principle of sound management that, when the unexpected incident occurs, those who need to make operational decisions know exactly what to do and who to contact. In this regard, a number of countries are dealing with the matter unilaterally.

In Norway, a single authority has been given the responsibility for handling such emergencies. The Norwegian Coastal Directorate's Department for Emergency Response has the necessary authority to grant a ship's request for a place of refuge, or direct it further out to sea. It is reported that Norway has implemented most of the measures currently being discussed at IMO. It has also conducted a thorough survey of the country's coastline to identify suitable places where distressed ships may find shelter from the prevailing weather. The environmental sensitivity of the coastline is also taken into account.

In the United Kingdom, it is considered unnecessary to advertise special locations as places of refuge. Damaged ships are directed to shelter where it is appropriate to do so, without having to transit miles of exposed coastline. The ship is taken to the most sensible place – that is, avoiding special environmental sensitive areas. Also, the issue of authority is of critical importance in the United Kingdom. The Secretary of State's Representative has virtual paramount authority. This system avoids indecision or confused responsibilities during marine emergency situations. The United Kingdom's approach is widely seen as the way forward.

The European Union has been working on the issue of places of refuge. Directive 2002/59/EC, as adopted by the European Parliament and the Council, aims at establishing a Community vessel traffic monitoring and information system. The system will make it possible to keep closer track of shipping, allow better detection of situations posing a threat to the environment and permit more effective intervention in the event of accidents at sea. The EC is working in consultation with the European Maritime Safety Agency. It is reported that the EC has set a deadline of July 1, 2003, for EU members to designate refuge sites along their coastlines.

After two high profile tanker incidents in Europe, the IMO Maritime Safety Committee (MSC) commenced an international review of places of refuge for disabled ships. These incidents were the *Erika* in 1999 and the *Castor* in 2000.

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 metres without, reportedly, experiencing any further deteriorating in the structural condition of *Castor*. The convoy was unable to obtain permission to enter a 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 Members 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. He suggested that IMO undertake, as a matter of priority, a global consideration of the problem of places of refuge for ships in distress. He also emphasized that the time had come to adopt any measures required to ensure that, in the interest of safety of life at sea and environmental protection, coastal states should review their contingency arrangements, so that endangered ships are provided assistance and facilities when required.

At its session in July 2001, the MSC agreed that its work should include the preparation of guidelines to cover the following:

- Action expected from coastal states for the identification, designation and provision of such suitable places of refuge 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 matter was also considered at the 83rd session of the Legal Committee of the IMO held in October 2001. Delegates to the Legal Committee decided to give a mandate to the IMO Secretariat, working in collaboration with the CMI, to make a study of the legal issues.

At its 48th session in July 2002, the MSC Safety of Navigation Sub-Committee developed a draft Assembly resolution on guidelines for ships in need of assistance. The purpose of the guidelines is to provide shipmasters, shipowners, salvors and Member Governments with a framework enabling them to respond effectively. The response should be in such a way that, in any given situation, the efforts of the master and owner of the ship and the efforts of the government authorities are complementary. These guidelines recognize that when a ship has sustained structural damage, transferring its cargo may prevent further progressive deterioration. The transfer of cargo and undertaking of temporary repairs can be effected more safely when a ship is in a sheltered area protected from strong winds, heavy seas and swell. However, to bring such a ship into a place of refuge near a coast may endanger the coastal State, both economically and from an environmental point of view. Local authorities and citizens may strongly object to the operation.

The MSC also approved another draft Assembly resolution recommending that all coastal states establish a Maritime Assistance Service. The principal purpose would be to monitor a ship's situation that is not a life threatening incident, and serve as the point of contact between those involved in a marine salvage operation. The Maritime Assistance Service should be designed to provide a common framework by which governments will be able to assess each case on its merits and make the most appropriate decisions.

The Safety of Navigation Sub-Committee, which meets in July 2003, will finalize its draft resolutions for submission to the IMO Assembly scheduled to be held in November 2003.

The Administrator notes that proponents for the use of ports of refuge argue that by bringing the ship in, the extent of shoreline impacted would be restricted to the local area instead of a long stretch of shoreline were it to stay offshore. In their view, having the ship in a place of refuge would result in any discharge from the ship being more

containable and recoverable. It would also facilitate the removal of remaining cargo in the vessel. These proponents say that, in order to counter the "not in my backyard" response in particular incidents, there needs to be supporting international/national policy in place.

Obviously, there must be consideration of the balance between the advantage for the affected ship and the environment, resulting from bringing the ship into a place of refuge, and the risk to the environment from that ship being near the coast. It seems that each situation would have to be considered on its own merits.

The *Eastern Power* was headed for Placentia Bay. There are those who suggest that Placentia Bay is one of the most likely place in Canada for a major oil spill. The North Atlantic Refinery Ltd. is located at Come-by-Chance, and the Newfoundland Trans-Shipment Ltd. oil terminal is at Whiffen Head. The volume of oil shipped through Placentia Bay to, and from, these facilities has increased substantially during the last year. The oil production at the Hibernia platform has increased significantly, and the FPSO at the Terra Nova site recently began production. Shuttle tankers transport the crude oil from these oil fields to Whiffen Head, from where it is trans-shipped by other tankers to refineries elsewhere.

From the Administrator's view, the issue of designated places of refuge is a matter of high importance to Canada with its extensive coastlines.

For additional information about the *Erika*, *Castor* and *Eastern Power* incidents see the SOPF Administrator's Annual Report 2000-2001 and 2001-2002 at sections 4.3 and 4.3.1, respectively.

4.3.2 Phasing out of Single-Hull Oil Tankers

In April 2001, the IMO introduced a global timetable for accelerating the phase-out of single-hull oil tankers. The timetable was adopted in the form of amendment to Regulation 13G of Annex 1 of MARPOL 73/78. It entered into force on September 1, 2002.

The phase-out timetable sets the year 2015 as the principal cut-off date for all single-hull tankers. Flag States may, however, allow some newer single-hull ships registered in its country, that conform to certain technical specifications, to continue operating until the 25th anniversary of delivery or until the ship's anniversary date in 2017. Acceptance of this provision is optional and any port State may deny entry of a single-hull tanker that is allowed by its flag State to operate beyond 2015.

In the aftermath of the *Prestige* incident, France and Spain acted unilaterally to ban single-hull tankers from their exclusive economic zones. It is reported that France will continue to ban older tankers from transiting within 200 miles of its coast until the IMO agrees to a wider ranging ban that covers Europe's western approaches from Scotland to the Strait of Gibraltar.

The European Commission's initial proposals to phase out single-hull tankers earlier than the timeframe provided for in MARPOL caused considerable concern about the economic and practical consequences. Communities in the Channel Islands, Scottish Islands, Madeira, the Canaries and the Greek Islands could have found their oil supplies cut off. Particularly at risk were power stations and communities with restricted harbours. Bunker suppliers were also worried by the EC proposals.

On March 27, 2003, the EU Transport Council reached agreement on the post-*Prestige* package for a further acceleration of the phase-out of single-hull tankers carrying heavy grades of oil in the European Union. The proposals now include an immediate ban on all single-hull oil tankers of *Erika* and *Prestige* type aged more than 23 years, and for the Condition Assessment Scheme to be applied to tankers of 15 years age and above.

It is reported that the measures proposed by the EU provide for:

- Category 1 tankers to be phased out by 2005 (two years earlier than under MARPOL Reg. 13G).
- Category 2 tankers to be phased out by 2010 (five years earlier).
- Category 3 tankers to be phased out by 2010 (five years earlier).

The EU proposals that were submitted to IMO shall be considered at the 49th session of the Marine Environmental Protection Committee (MEPC) in July, 2003. In the meantime, the IMO secretary-general has reactivated an informal group of experts, which were required to investigate the earlier proposals following the Erika incident. The participants include members of the International Chamber of Shipping, the Oil Companies International Marine Forum, and the tanker owners' group INTERTANKO. The research will be completed quickly so that those attending the MEPC 49 can be suitable informed.

For additional information about the phasing out of single-hull tankers and detail on the three categories of tankers under the MARPOL regulations see the SOPF Administrator's 2000-2001 and 2001-2002 Annual Reports at sections 4.2.4 and 4.3.2, respectively.

4.3.3 Safety Culture

The adoption of principles of a "safety culture" and implementation of sound management and operating practices are widely recognized in the international maritime community as productive ways to prevent shipping accidents. Research supports that proactive safety management throughout the shipping industry is good for business. For the marine industry engaged in the transport of oil, the practicing of a safety culture is a cost-effective way to prevent incidents and protect the marine environment from oil spills – particularly major incidents like those caused recently in European waters.

In the shipping industry, it is in the "professionalism" of seafarers that a safety culture must take root. The key to achieving a safety culture includes: recognizing that accidents are preventable through following correct procedures and established best practice, and constantly thinking safety and seeking continuous improvement. In this regard, it is imperative that internationally recognized safety principles and the safeguards of best industry practice have to become an integral part of shipboard operating standards.

In a paper presented to the 2001 International Oil Spill Conference held in Tampa, Florida, on the benefits of adopting a policy of "Safety culture" within a company, Barbara E. Ornitz writes:

> *"...This policy shift requires ship owners/operators to incorporate the International Safety Management Code (ISM Code) into their businesses, rely on quality management in all aspects of ship operation, infuse money into maintenance, upgrade ship systems, train qualified individuals, and employ professionals, not "cheap crew". In other words, money spent upfront saves mega dollars later."*

For additional information about this paper see the SOPF Administrator's Annual Report 2000-2001 at section 4.2.3.

4.3.4 ISM Code

The International Safety Management (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, Lloyds's Classification Society.

The ISM Code establishes safety-management objectives and requires a safety management system to be established by "the Company". The Company is then required to establish and implement a policy for achieving these objectives. This includes providing the necessary resources and shore-based support. Every company is expected to designate a person ashore having direct access to the highest level of management.

In February 2001 the IMO secretary-general, William O'Neil, announced plans for an assessment of the effectiveness and impact of the ISM Code so far. He told delegates of the IMO Sub-Committee on Flag State implementation at its 9th session that "We should not allow it to become merely a paper exercise". Mr. O'Neil explained that the IMO would continue to focus on efforts to ensure a sound approach to the maintenance and enhancement of safety and marine environmental protection. Independent flag states were requested to provide an audit as quickly as practical. Regional port state agreements were identified as a useful source of information about ISM Code deficiencies, and the number of detentions recorded for ISM and non-ISM certified ships.

On July 1, 2002, the second phase of ISM implementation for the Safe Operation of Ships and Pollution Prevention became mandatory for all ships covered by the SOLAS Convention that trade internationally. The application of the mandatory Code should support and encourage further development of an effective safety culture in shipping and help to ensure that a company has safety and environment pollution risk under control.

The ISM Code implementation has not escaped criticism. For example, it is reported that in certain shipping companies the officers have become so overburdened with ISM paperwork they resort to filling in forms and writing reports on watch at the expense of maintaining a proper lookout and attending to navigation. Also, the fear of discipline is said to deter some seafarers from reporting non-conformities.

The effectiveness of the ISM Code requires an urgent review, suggests Arne Sagen (*Lloyd's List, May 15, 2003, p.6*). He writes that after five years with the ISM Code the effects include the following:

> *"Firstly, the top 20% of companies demonstrate operational benefits and reduction of claims and injuries.*
>
> *Secondly, an average 60% of the companies managed to attain their certificates – and thereby considered the job done.*
>
> *And, thirdly, the bottom 20% of companies – where we find most of the substandard operations – do not care about compliance with statutory regulations and even use Port State Control as a substitute for its own ship inspections".*

The author also writes,

> *"...the designated person more often appears in the company Policy Document as 'responsible for the safety in the company' – which of course is nonsense as the safety responsibility is a line responsibility, headed by the managing director".*

Information about the fundamental principles of the ISM Code and some of the challenges for the IMO and the marine industry to ensure effective implementation are described in the Administrator's SOPF 2000-2001 and 2001-2002 Annual Reports at section 4.2.1 and 4.3.3, respectively.

4.3.5 Classification Societies

The classification societies are integral authorities on ship structural and engineering design. They establish construction and maintenance standards with which ships must comply.

The International Association of Classification Societies (IACS) plays an important role in implementation of the ISM Code. The IACS has consultative status with the IMO. It is the only non-governmental organization with observer status that is able to develop rules. To meet the challenges of implementation of the ISM Code, IACS took the initiative by developing procedural guidelines and unified interpretations of the ISM Code, together with related requirements for the training and qualification of compliance auditors.

The oil majors welcome the initiatives taken recently by the three largest societies (i.e., Lloyd's Register, Det Norske Veritas and the American Bureau of Shipping) to set common minimum standards (Class Rules) for building new tankers. For example, they are developing a unified set of requirements and procedures for the determination of common scantlings for double hull oil tankers, a move reported to be unprecedented in the industry. They will no longer compete over the amount of structural steel used in building new ships. Together these "Big Three" societies cover about 75 per cent of the world's order book for new tankers. However, it is still the view of others that, although significant progress has been made in the design and analysis of tankers and their fatigue strength, there remains a requirement for a set of adequate, globally agreed minimum standards.

There are those who suggest that, to help combat substandard shipping, the control of new building standards should be removed from classification societies and handed over to an independent body. In this regard, the Bahamas, backed by Greece, submitted a proposal to the Maritime Safety Committee for IMO to take the lead on ship construction standards. The proposal is that IMO should develop initial criteria to permit innovation in design but ensure ships are constructed in such a manner that, if properly maintained, they can remain safe for their economic life.

The proposal created controversy when circulated among countries that are members of the IMO and the European Union. There is fundamental debate, in some quarters, that the IMO does not have the resources to go into detailed technical regulations, or to take care of how they are maintained. It is argued that only IACS has the technical resources to develop detailed class rules.

At the 77th session of the Maritime Safety Committee held from May 28 to June 6, 2003, delegates supported the proposals from the Bahamas and Greece that the IMO should develop "goal-based" standards for each relevant area of construction and equipment.

The Maritime Safety Committee recommends that the IMO Council consider the matter.

4.3.6 Flag State and Port State Control

The flag State is the State of the flag that the ship flies. When a Government accepts an IMO Convention it agrees to make it part of its own national law and to enforce it just like any other law. The problem with flag State implementation is that some countries lack expertise, experience and resources to do this properly.

Press releases issued by the Secretariat of the Paris Memorandum of Understanding on Port State Control contain the following notes to editors:

> *Port State Control is a check on visiting foreign ships to see that they comply with international rules on safety, pollution prevention and seafarers living and working conditions. It is a means of enforcing compliance where the owner and flag State have failed in their responsibility to implement or ensure compliance. The port State can require defects to be put right, and detain the ship for this purpose, if necessary. It is therefore also a port State's defence against visiting substandard shipping.*
>
> *Regional Port State Control was initiated in 1982 when fourteen European countries agreed to co-ordinate their port State inspection effort under a voluntary agreement known as the Paris Memorandum of Understanding on Port State Control (Paris MOU). Current membership includes 13 EC countries plus Canada, Croatia, Iceland, Poland, Norway and the Russian Federation, The European Commission, although not a signatory to the Paris MOU, is also a member of the Committee.*
>
> *Under the agreement each country undertakes to inspect 25% of individual foreign flagged ships visiting their ports, to pool inspection information and harmonise procedures. The co-ordinated effort results in inspection coverage of 90% to 100% of individual ships visiting the region.*
>
> *The Paris MOU has been a blueprint for the introduction of regional regimes of port State control in the Asia Pacific Rim (Tokyo MOU), Latin America (Vina del Mar), the Mediterranean, Caribbean and other emerging regional port State control regimes. Canada and Russia are members of both the Paris and the Tokyo MOU.*

For more information about the Paris MOU on Port State Control see the Internet Website: www.parismou.org

4.3.7 Bunker Convention and Current Canadian Cover

On October 4, 2002, Transport Minister David Collenette announced that Canada had signed the new International Convention on Civil Liability for Bunker Oil Pollution Damage.

It is understood that before formally ratifying the convention and implementing it in Canadian legislation Canadian authorities shall consult industry stakeholders.

When and where the new bunker 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.

The present international conventions covering compensation for oil spills do not include bunker oil spills from ships other than oil tankers. Before the bunker convention can come into force internationally it will require ratification by eighteen Member States, including five Member States each with ships whose combined tonnage is not less then one million gross tons. The high number of States required to ratify the Convention could mean that the bunker convention is not enforced in the near future.

Fortunately in Canada, unlike most other countries, the strict liability of shipowners for bunker spills is stipulated under the *Marine Liability Act*. Further, the SOPF, as directed by the Administrator, is liable to pay compensation for bunker oil spills from ships of all classes, as well as spills of oil carried in ships as cargo. The Administrator has the power under section 53 of the MLA to obtain security (even before receiving a claim for compensation) and may commence an action *in rem* against a ship 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.

For additional information about the new Convention see the SOPF Administrator's Annual Report 2001-2002 at section 4.4.3.

4.3.8 The Polluter Pays

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 handle the claim twice, firstly with the claimant, then with the shipowner/ person liable in a recovery action.

The Administrator notes that in the cases of several incidents the claimant, primarily the CCG, has, during the 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 shipowner is not forthcoming and the claimant must resort to the SOPF.

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

N.B.: In reality, the notion that the polluter pays is subject to the important caveat that the shipowner is entitled to limit his liability. 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.

4.4 The Prestige Incident (Spain 2002)

The *Prestige* incident is well summarized in the ITOPF March 2003 Newsletter "Ocean Orbit" :

THE *PRESTIGE* IN PERSPECTIVE

2002 was on course to be one of the lowest years on record in terms of the amount of oil entering the marine environment from accidental tanker spills but then the *PRESTIGE* suffered its accident and the oil transportation industry once again found itself under the spotlight. As so often after such casualties, everybody is very quick to apportion blame, often with political or commercial motives. Quick fixes are also proposed, either by politicians or media appointed 'experts', to address perceived inadequacies, long before the true cause of the accident and other relevant facts are established.

There can be no disputing that the *PRESTIGE* is a serious spill, as explained in a later article in this newsletter. As in the case of the *NAKHODKA* off Japan in 1997 and the *ERIKA* off France in December 1999 the oil involved is heavy fuel oil. This highly viscous product does not easily break down and dissipate naturally, even when wave action is severe. Its highly persistent nature therefore means that it can travel long distances, threatening coastlines and sensitive resources many hundreds of miles from the original spill site. There are other similarities between these three incidents, including the subsequent sinking of parts of the tankers with cargo still on board, leading to concerns about potential future leakage.

The ERIKA generated a number of proposals in relation to the enhanced phasing out of single-hull tankers, improved ship inspection, the establishment of a European Maritime Safety Agency, the designation of safe havens, and changes to the international regime for liability and compensation. The PRESTIGE has added fresh impetus to the debate and resulted in additional proposals, including banning the transport of heavy oils in single-hull tankers bound for or leaving ports in the European Union. The pressure therefore remains on all those involved in the carriage of oil by sea to further improve their performance. However, all too often, insufficient credit is given for the enormous improvements that have already occurred thanks to the successful safety and prevention programmes implemented by the industry, sometimes voluntarily and sometimes because of new regulations promulgated by governments through the International Maritime Organization. The results of a study by the US National Research Council show that the incidence of major tanker spills has decreased dramatically since the 1970s and the amount of oil that reaches the world's oceans from this source is now relatively small compared with natural and other man-made inputs, particularly down rivers and from urban run-off. Other results from this study are reported on page 5.

ITOPF has similarly logged a consistent downward trend in the number of tanker spills and most of our work since the last issue of *Ocean Orbit* has involved bunker spills from nontankers and, increasingly, substances other than oil. Because of this we are gearing ourselves up to respond to requests for advice and assistance in relation to spills of hazardous and noxious substances, such as occurred in relation to the *JOLLY RUBINO*, as described on page 3.

In the early days of the *PRESTIGE* spill ITOPF had four technical staff onsite in Spain. This is unusual. Normally only a single member of the technical team attends on-site at a spill, with backup advice provided by other staff in London. Later in this issue we consider what it is like to be an ITOPF Technical Adviser, on call 365 days a year to travel anywhere in the world.

PRESTIGE - THE INCIDENT

During the afternoon of Wednesday, 13 November 2002, the tanker *PRESTIGE*, en route from Ventspils in Latvia to Singapore, suffered hull damage in heavy seas some 30 miles off Cape Finisterre, northern Spain. The precise cause of the damage, which rapidly resulted in the *PRESTIGE* developing a severe list, is not known but she drifted to within five miles of the coast before salvage vessels were able to attach lines. She was reportedly denied access to a sheltered, safe haven in either Spain or Portugal and so had to be towed out into the Atlantic Ocean to face more storms and high waves. She survived this onslaught of nature for six days, with the salvors attempting to minimise the stresses on the vessel by their direction of tow. However, on 19 November the weakened ship finally broke in two, with both parts sinking to the sea bed, some 170 miles off the Spanish coast and in water about 3,500 metres deep.

The *PRESTIGE* was carrying a cargo of some 77,000 tonnes of heavy fuel oil.

A quantity of this was lost at the time of the initial damage, with more spilling as she was subsequently towed away from the coast. When she eventually broke in two and sank it was reported that a substantial further quantity of oil was released. In all it is estimated that more than 25,000 tonnes may have been spilt. This is comparable to the quantity lost from the *ERIKA*, which suffered a major spill off the Brittany coast of France in December 1999. The specification of the heavy fuel oil cargoes carried by both vessels was similar and known to be highly persistent when spilt. It was predicted, therefore, that major concentrations of oil spilt from the *PRESTIGE* would not break up quickly, even in severe weather, and that they would consequently pose a significant threat to the coast of Spain and neighbouring countries.

Oil started to come ashore in Spain on 17 November. The heaviest contamination was between La Coruña and Cabo Toriñana, although varying degrees of contamination eventually extended from the border of Spain and Portugal to Bordeaux in France. Although oil entered Portuguese waters,none came ashore there. It is arguable that if it had been possible to allow the PRESTIGE access to a safe haven for lightering, the total spill volume would have been restricted to the initial loss, thereby limiting the extent of the coastline affected.

CLEAN-UP

Clean-up operations at sea in Spanish waters were led by the Spanish Maritime Safety and Rescue Agency (SASEMAR). Spanish vessels were joined in a major offshore oil recovery operation by vessels from Belgium, Denmark, France, Germany, Italy, The Netherlands, Norway, Portugal and the UK. The response, which was probably the biggest international effort of its kind ever mounted, was hampered by severe weather and by the inability of those vessels that lacked cargo heating capability to discharge recovered oil. Over a 1,000 fishing vessels also participated in the clean-up in sheltered coastal waters and during clement weather. As some of the oil moved into French waters, control of a reduced at sea recovery operation passed to the Préfet Maritime in Brest, France.

The open sea recovery operation reportedly removed almost 50,000 tonnes of oil-water mixture. However, this, and the extensive booming of estuaries and sensitive areas by the deployment of over 20 km of boom, failed to prevent extensive coastal contamination. The shorelines of Spain were largely cleaned manually by a workforce of over 5,000 military and local government personnel, contractors and volunteers. The process was slow, especially in rocky areas where access was difficult. A further problem was re-oiling of previously cleaned areas by re-mobilised oil. On the French Atlantic coast the beach contamination took the form of numerous tar balls which were easily removed.

As so often in major spills, disposal of recovered oil and contaminated material posed a major problem. Liquid oily waste, mainly from the at-sea operations, was stored at two MARPOL reception facilities and a power station for eventual recycling. Solid wastes generated from the shoreline clean-up in Spain were stored temporarily pending a decision on final disposal options. One problem was the lack of segregation of the different waste streams at some of the temporary storage sites, necessitating re-sorting at a later stage.

IMPACT OF THE SPILL

The contaminated coasts of Spain and France are popular holiday destinations but the sandy beaches should be cleaned well before the start of the tourist season. Environmental concerns in Spain were mainly focussed on sites of international importance for birds. Local groups assisted by international animal welfare organisations initiated a major programme for recovering and rehabilitating oiled birds, most of which were guillemots. The Galician region of Spain supports a rich and diverse fishing and aquaculture industry. Mussels, oysters, turbot and several other species are cultivated along the coast, while various natural stocks of fish and shellfish are harvested by traditional methods. The local regulatory authority imposed a ban on fishing and shellfish harvesting over an extensive area of Spanish coastal waters, although parts of the ban were lifted in February 2003. In France the oyster fishery in the region of Arcachon was subject to a short ban on harvesting while there was floating oil in the area.

THE WRECK

The two sunken parts of the *PRESTIGE* are thought still to contain a significant quantity of heavy fuel oil. A survey carried out by a French mini-submarine revealed oil escaping from a number of openings in the tanks several weeks after the sinking. The submarine was able to seal the majority of these leaks, thereby reducing the rate of loss to less than 2 tonnes per day. This is not considered to represent a major threat to the coast of Spain, France or Portugal. The ultimate fate of the remaining oil in the sunken wreck is subject to a review by a Scientific Commission established by the Spanish authorities but it is clear that any attempt to recover it will be hampered by the viscous nature of the cargo, the depth of the wreck and the exposed location in the Atlantic Ocean.

COMPENSATION ARRANGEMENTS

At the time of the incident, Spain, France and Portugal were all parties to the 1992 Civil Liability and 1992 Fund Conventions and so the total amount of compensation potentially available from the shipowner, P&I insurer and the 1992 Fund is SDR 135 million (about US$180 million or €179 million). In anticipation of a large number of claims, the P&I Club and 1992 Fund established a Joint Claims Office in La Coruña about one month after the incident.

4.5 *European Union Response to* Erika *and* Prestige *Incidents*

In terms of ship safety, liability, and compensation the *Erika* and *Prestige* incidents together may be a watershed for the international regimes respecting the carriage of oil by ship.

As reported by the Administrator in previous annual reports (Annual Report 2000-2001 at Appendix C, and Annual Report 2001-2002 at Appendix C), on December 12, 1999, the Maltese tanker *Erika* broke in two off western France. Approximately 19,800 tonnes of heavy fuel oil were released as the ship sank. The Brittany coastline was polluted requiring massive clean-up. Some 400 kilometers of coastline was affected. Large quantities of shellfish are harvested in many of the affected areas along the west coast of France. It is a beautiful vacation resort and the site of a very significant tourism industry. Claims for compensation were large and expensive.

On November 13, 2002, the Bahamas – registered tanker *Prestige,* laden with 77,000 tonnes of heavy fuel oil, ran into serious trouble off the coast of Galicia, Spain. The *Prestige* broke in two and sank on November 19th. A large quantity of oil was released and polluted long stretches of the Spanish coastline.

As a consequence of these serious environmental incidents, the European Commission made various proposals for legislative changes within the European Union. European Union government authorities are taking particular actions on maritime safety, and other initiatives are also under consideration.

After the *Erika* incident the European Commission reacted swiftly with two packages of measures designed to substantially reinforce oil tanker safety off Europe's coastlines.

In March 2000, the European Parliament and the Council agreed on the first package of measures covering port state control, ship inspections, and the phasing out of single-hull oil tankers.

The second legislative proposal, published on December 6, 2000, was another set of EC measures to deal with maritime safety and compensation. This package comprises proposals for a directive to establish an EC monitoring, control, and information system for maritime traffic. Also, it contains a directive for the establishment of a fund for the Compensation of Oil Pollution in European waters (COPE Fund), and a regulation establishing a European Maritime Safety Agency (EMSA).

It is said from the EC/EU perspectives, the *Prestige* incident confirms that the measures proposed by the EC in the *Erika* I and II packages are well founded.

The following summarizes some of the European initiatives since the *Erika* and *Prestige* marine casualties:

1. **Earlier establishment of the European Maritime Safety Agency.**

   The European Parliament and Council established the EMSA as a "powerful" instrument for monitoring the effectiveness of the Community rules on maritime safety. The first meeting of the Administrative Board was held on December 4, 2002.

2. **Closer monitoring of the performance of the classification societies.**

   The classification societies that can work on behalf of the EU Member States are only those recognized at Community level on the basis of Council Directive 94/57/EC. This Directive stipulates common rules and standards for ship inspection and survey organizations, and for relevant activities of maritime administrations. The strict quality criteria in the Directive have been further re-enforced following the *Erika* incident. In this respect, the classification societies have been put on notice.

   The Commission Services have made it clear that they will implement the new provisions of the Directive very strictly. They will not hesitate to launch procedures to suspend or even withdraw the EU recognition of those organizations that do not, in effect, give enough guarantees in terms of safety.

3. **Publication of an indicative list of substandard vessels under Directive 95/21/EC.**

   The amendments made to this Directive on Port State Control, in response to the *Erika* incident, introduced a procedure for banning vessels which have been detained repeatedly over the last two or three years and are on the "black list" of flags with an above average number of detentions.

   To send a message to the shipowners and the flag States concerned about the impact of this new measure, the EC has compiled a list of vessels that would be refused access to European ports if the latest amendments to the Directive were in force. This list is based on information available within the Paris MOU of Port State Control and the Equasis database.

4. **Establishment of a trans-European data exchange network for vessel traffic monitoring Directive 2002/59/EC.**

   This Directive, adopted by the European Parliament and the Council as part of the *Erika* II package, aims at establishing a community vessel traffic monitoring and information system. The Member States must apply the provisions laid down in the Directive by February 5, 2004, at the latest.

5. **Speeding up preparations of the plans to accommodate vessels in places of refuge.**

   In consultation with the EMSA the EC is working toward the preparation of plans to accommodate vessels in distress so that they can be adopted at the time that the Directive 2002/59/EC on vessel traffic monitoring enters into force at the latest.

The EC proposes that Member States support additional measures to supplement the action already taken in the *Erika* packages, including:

1. **Specific measures for the carriage of heavy fuel oil.**

   In order to minimise the risk of future accidents, like the *Erika* and *Prestige* incidents, the EC intends to propose a regulation banning the transport of heavy fuel oil in single-hulled tankers bound for or leaving EU ports.

2. **Penal sanctions.**

   The EC considers that community legislation introducing penal sanctions against any person (including legal persons) who has caused a pollution incident through grossly negligent behaviour should be rapidly adopted. This measure is of a penal nature and hence not related to compensation for damage. Instead, it is intended to ensure Community-wide application of a deterrent sanction for those involved in the transport of oil by sea.

   The EC also draws attention to its proposal on the protection of the environment through criminal law. The EC will introduce a proposal for a directive on illegal discharges from ships.

This proposal relates to operational (deliberate) discharges from ships and will be coupled with provisions on gathering of evidence and the prosecution of offenders.

3. **Protecting the coastal waters of the EU.**

The EC calls for coordinated action to take measures to protect EU coastal waters from ships that pose a threat to the marine environment. The EC states that the balance between maritime and environmental interests in the United Nations Convention on the Law of the Sea – developed in the late 1970s – leans heavily in favour of maritime interests and does not reflect the attitudes of today's society, nor those of the EC.

4. **Liability and compensation.**

The EC proposes amendments to the international regime. In this regard, Member States are asked to support proposals aimed at restricting the right of shipowners to limit their financial liability if accidents are due to their actual fault, as well as proposals aimed at removing the *de facto* immunity of other key players (such as the charterer, operator, or manager of the ship) from compensation claims.

It is the EC's view, moreover, that as it stands the international regime does not provide for adequate compensation for damage to the environment. While the EC considers that Member States should ratify the recent IMO Bunkers and HNS Conventions, it notes that the focus of these two Conventions lies primarily on compensation for damage caused to goods, property and personal injury. Bearing this in mind, it is the EC's view that further measures may be necessary in relation to environmental damage.

In the above-noted initiatives, the EC proposes the establishment of the European COPE Fund should the proposed new International Supplementary Fund prove inadequate. The amount of compensation that would be available under the COPE Fund, if established, would be one billion euros.

Action taken within the European Union bodies has galvanized the IMO and IOPC regimes into rapid reaction to improve the regulation of ship safety and the liability and compensation regimes internationally. It is reasoned that such changes in the IMO and IOPC liability and compensation regimes will preclude all, or most of what otherwise would be new European regional legislation in these fields that would threaten the continued viability of the international regimes.

In particular, on November 1, 2003, there will be increases in the compensation limitation amounts of the current international regime pursuant to Articles 15 and 33 of the 1992 CLC and the 1992 Fund Convention respectively. This increase of approximately 50 per cent to $410 million of IOPC primary cover is illustrated in Figure 1, Appendix D.

In addition, a draft Protocol to establish the International Supplementary Fund shall be considered at the IMO Diplomatic Conference from May 12 to 16, 2003. 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. It is reasoned that this International Supplementary Fund would render unnecessary the European COPE Fund proposed by the European Commission.

On March 4, 2003, Mrs. Loyola de Palacio, Vice-President of the European Commission, and Mr. William O'Neil, Secretary-General of the International Maritime Organization (IMO) met in Brussels to discuss regulatory action post-*Prestige*. The subsequent communiqué strikes a balance between recognizing the IMO's role in regulating global maritime standards while accepting the EC's growing regional influence after the *Erika* and *Prestige* incidents.

The positions taken during the meeting are reflected in the following excerpts from the joint communiqué.

> *Mrs. De Palacio stated that, having regard to the obligations under the European Treaty and the role of the European Commission within the European Union and taking account of the decisions already taken by the European Parliament and EU-Council of Ministers, as soon as the EU Institutions have formulated their position in response to the Prestige accident, appropriate measures would be proposed to IMO by the EU to revise the MARPOL Convention with respect to the regulations related to the phasing-out of single hull tankers and to prohibit the carriage of dirty oils by single hull tankers. It might be expected that both the Council and the European Parliament will succeed in finalizing their position by the end of March. Mr. O'Neil welcomed this statement and outlined an expeditious way to handle the EU proposals once submitted to IMO for consideration. The desirability of a global approach to the single hull tanker issue was recognized.*

Both parties also agreed on the need for proactive action for the detection of structural weaknesses in ageing oil tankers, both single and double hulled.

In the meantime, the importance of designating new particularly sensitive sea areas and identifying places of refuge was stressed.

Both sides emphasized the need to enhance flag State performance globally through IMO.

During the discussion, the European Commission stressed the added value the EU is bringing to IMO's work and how the relationship between IMO and the EU could be strengthened. The European Commission referred to its proposal for obtaining an early EU membership at IMO, which it considers will offer it the opportunity to play an even more constructive role within the Organization.

4.6 Prospective Changes affecting 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 $410 million of IOPC primary coverage is noted under Figure 1, 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 Diplomatic Conference convened by IMO in London during the week of May 12, 2003, adopted a Protocol creating the International Oil Pollution Compensation Supplementary Fund. The most important elements of the Protocol include:

- The aggregate maximum amount of compensation available will be 750 million SDR per incident, consisting of the 1992 CLC; the 1992 Fund Convention and the Supplementary Fund. This amount represents about C$1.5 billion as compared to the current amount of C$410 million (effective November 2003).

- The minimum receipt of one million tons of contributing oil is deemed to be received in each Contracting State to the Supplementary Fund. This is a new feature designed to deal with those States that normally submit nil reports and, therefore, make no contributions.

- The amount of annual contributions payable by a single Contracting State will be capped at 20% of the aggregate amount of annual contributions. As a result, the annual contributions payable by all other Contracting States will be increased pro rata to ensure that the total amount of contributions payable by all persons liable to contribute to the Supplementary Fund, in respect of the calendar year, will reach the total amount of contributions decided by the Assembly.

- These capping provisions shall remain in effect until the total quantity of contributing oil received in all Contracting States has reached one billion tons annually, or until a period of 10 years after the date of entry into force of the Supplementary Fund has elapsed, whichever occurs earlier.

- The Protocol shall enter into force three months following the date that at least eight states have signed the Protocol without reservation or deposited instruments of ratification etc., and the total quantity of at least 450 million tons of contributing oil has been received by those states in the preceding calendar year.

- The Protocol shall cease to be in force when the number of Contracting States fall below seven or the total quantity of contributing oil received falls below 350 million tons, whichever occurs earlier.

The Diplomatic Conference also adopted three conference resolutions (co-sponsored by Canada) namely:

- Resolution #1, urges the Parties to the Protocol establishing the Supplementary Fund, when it has entered into force, to ensure that the amount paid to the International Maritime Organization, will be reimbursed by the Supplementary Fund, with interest, to the 1992 IOPC Fund. This loan was made to finance the convening of the Diplomatic Conference.

- Resolution #2, recommends the establishment of the Supplementary Fund when the Protocol has been adopted and requests the Assembly of the 1992 IOPC Fund to authorize and instruct its Director to perform the administrative and organizational measures necessary to set up the Supplementary Fund.

- Resolution #3, urges Contracting States to the 1992 CLC and the 1992 IOPC Fund Convention, to place a high priority on the ongoing work of reviewing these conventions. The purpose of this resolution is to send a strong signal to the 1992 IOPC Third Intersessional Working Group that, in light of the fact that oil receivers alone shall finance the Supplementary Fund, the balance between shipowner liability and oil receiver contributions requires a through review.

The new Protocol will be open for signature by Member States of the 1992 IOPC Fund, from July 31, 2003 to July 30, 2004.

For information about the Supplementary Fund from the Canadian perspective see the SOPF Administrator's Annual Report 2001-2002 at section 4.6.2.

4.6.3 P&I Clubs Perspective on Substandard Ships

The Swedish Club Letter (No.1 – 2003) reports about how closer cooperation between the clubs, within the framework of the International Group, might embrace the issue of withdrawal cover or refusal to offer cover to substandard ships.

The P&I Clubs are presenting ideas for a proactive strategy on the part of insurers to become more prominent in the maritime safety chain. It is a chain with many links. The Swedish Club notes:

> *Of course, the role of the Flag State and Port State in this chain is very different from that of the insurer. Insurance, while compulsory in a practical sense, has retained a profile based on commercial freedom. It is easy (and not uncommon) for the owner to change his insurer. This limits the commercial insurer's ability to exert pressure.*
>
> *On the other hand, different circumstances apply in the mutual context. Here, the principles of mutuality require the club to regard safety and loss prevention as crucial priorities. Any other policy would, in effect, subvert the principles of mutuality.*
>
> *Bearing this in mind, the clubs now have a major opportunity to forge a stronger link in the maritime safety chain. This will require, however, a vigorous programme of joint work within the International Group of P&I Clubs.*

The issue of withdrawal of cover or refusal to offer cover is obviously a delicate area, and may lead to cover-shopping.

The Swedish Club's newsletter notes:

> *There may well be scope for the clubs to build a new link in the safety chain – a link concerned with the status of vessels when cover is refused or withdrawn on grounds of poor quality.*
>
> *A substandard vessel is merely a physical manifestation of the substandard owner or operator. At present, there is nothing to prevent such parties, when they are refused cover or experience a withdrawal of cover, trawling the market until they finally find another insurer who is less concerned about quality or, possibly, is simply more gullible. A new International Group approach to this issue would make a fresh and very valuable contribution to the maritime safety chain.*

For example, one objective is to draw on the claims information database maintained by all 13 International Group members. An earlier information sharing agreement captured only those claims with a value of US $500,000 and above. This failed to generate enough information for analysis. The new agreement will reduce this threshold to US $100,000 and will include all significant claims. The aim is to develop a sharper ability to prioritise and set loss prevention goals that reduce frequent and/or costly claims.

A P&I Club bar on the availability of insurance to substandard ships would make it extremely difficult for them to trade in countries where Port State Control is properly enforced.

The Administrator is encouraged by this very significant and well-informed initiative by the P&I Clubs.

4.7 Proposed Mark-up on Claims for Fixed Costs

After attending the June 2001 meeting of the Third Intersessional Working Group of the 1992 IOPC Fund, the Administrator informed senior Transport Canada officials about a proposal by the United Kingdom and Spain for payment of a mark-up on claims for fixed costs for equipment used to control and prevent oil pollution. He noted that this item had potential significant financial implications for Canada. These relate to the potential liability of the SOPF to pay IOPC Fund claims. Given the high level of some foreign claims, the proposed 10 per cent mark-up on certain items on top of payment of fixed costs under current practice could be significant.

The current 1992 IOPC Fund practice is to accept "a reasonable proportion of fixed costs, provided that these costs correspond closely to the clean-up period in question and do not include remote overhead charges." The Administrator (SOPF) accepts reasonable fixed costs along the same lines.

The Administrator also noted that it may not be appropriate for the 1992 IOPC Fund Assembly to attempt to allow for the payment of a standard mark-up on claims by way of an amendment to the text of the Fund's Claims Manual only. He expressed the view that any such provision would have to proceed by way of amendments to the 1992 IOPC Fund Convention and the 1992 Civil Liability Convention.

At the third meeting of the Working Group in June 2001, the sponsoring delegations had expressed concern that the Fund's restrictive policy, in respect of fixed costs, could discourage States from maintaining effective pollution response capabilities. In particular, these include the response capabilities involving high capital costs and/or annual expenditure such as at-sea recovery vessels, aerial spraying capacity and emergency towing vessels.

This issue was not pursued at the October 2001 session of the 1992 IOPC Fund Assembly.

However, the issue was raised again in a paper dated January 20, 2003, to the Working Group (fifth meeting) as document 92 Fund/WGR.3/14/9.

In this regard, ITOPF has expressed agreement with the desirability of encouraging Contracting States to establish and maintain a realistic response capability commensurate with their capabilities and risk. But, ITOPF believes the solution presented will not achieve the desired results and that it will lead to more problems. ITOPF submits that any mark-up based on perceived effectiveness would cause enormous conflicts. These already arise over the interpretation of "reasonableness". To add a second judgement, particularly based on hindsight (which is avoided as far as possible in the debate over reasonableness) would simply compound the problems.

Further, it is very debatable that the approach proposed would reduce costs and claims. There would be no disincentive for mobilising unnecessary equipment or for keeping rates low. Indeed, quite the opposite might occur on the possibility of qualifying for an enhanced mark-up by using as much equipment as possible on one spill.

Similarly, ITOPF does not see how it would encourage the establishment of more or better stockpiles since the "reward" would only come if a spill occurred and it could be demonstrated that use of the resources was beneficial. Even then in most cases the mark-up would not go far towards meeting the capital costs. Thus ITOPF concludes that it would not represent an attractive financial inducement to those contemplating a new stockpile and would probably only benefit those who had already invested in stockpiles or contracts. Good planning and command and control are at least as important in determining effective response as equipment stockpiles.

ITOPF suggests, as one approach, the adjustment of operating rates to incorporate an element of standing costs (as already accepted by the Fund).

At its fifth meeting in February 2003, the Working Group gave further consideration to the proposal for the payment of a mark-up on claims for fixed cost of equipment. It noted the sponsoring delegations had argued that the inclusion of such a mark-up would provide an incentive to States to maintain specialized oil spill equipment, thereby minimising the environmental and financial impact of oil spills. The sponsoring delegations also expressed the view that their proposal related to a policy issue, which could be solved by a decision of the Assembly and did not require any amendments to the 1992 Conventions.

It was decided at the fifth meeting of the Working Group that there was insufficient support for the proposal as currently drafted, and that it could not be implemented without amendments to the Conventions. According to the Working Group, the discussion had drawn attention to possible misunderstandings over terminology and interpretation of the concept of "fixed costs". These needed to be resolved before making any amendment to the Claims Manual.

The Working Group agreed that the matter should be considered further on the basis of a revised proposal by interested delegations.

4.8 Appropriation of IOPC Fund Money for HNS Matters

Shortly after attending the 6th Session of the 1992 IOPC Fund Assembly, October 16 to 19, 2001, the Administrator reported that the Assembly had approved a special appropriation (£150,000) for the development of a computerized system to assist in the implementation of the Hazardous and Noxious Substances (HNS) Convention. The extra appropriation had been approved on the basis that the 1992 IOPC Fund would be reimbursed for the costs incurred when the HNS Convention entered into force. The Administrator advised senior Canadian government officials that he had expressed to the Assembly his concern about the legality of the Assembly granting this appropriation of oil contributors' money.

Some of the events that preceded these acts of the Assembly are outlined in the Administrator's 2001-2002 Annual Report at section 4.4.4.

In light of the SOPF's significant exposure arising from the 1992 CLC and the 1992 IOPC Fund Convention, it is helpful to recall that the Administrator in his 1998-1999 Annual Report wrote:

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

In September 2002, in preparation for the 7th Session of the 1992 IOPC Fund Assembly, scheduled for October 2002, the Administrator reviewed "The Budget for 2003 and Assessment of Contributions to the General Fund" (92 Fund/A.7/23). In the calculations for the General Fund Assessment, estimated expenditure included a sum of £50,000 in 2003 for the HNS project. This amount was included in the calculations to fix the levy of contributions to the General Fund. The levy would be invoiced to contributors (including the SOPF) in December 2002 for payment by March 1, 2003.

Prior to the 2002 Assembly Session, the Administrator discussed with Departmental officials his considered view that the decisions of the Assembly at its 6th session in October 2001, whereby it

(1) instructed the Director to develop a system to assist States and contributors to the HNS Fund, and

(2) granted an extra appropriation of £150,000 for this purpose to be paid from the General Fund,

are *ultra vires* the authority of the Assembly[1].

Additionally, referring to Article 12 of the 1992 IOPC Fund Convention, which deals with the elaboration of the annual budget and the assessment of the annual contributions due, the Administrator wrote:

[1] Quaere: Whether there exists a mechanism to review the decisions of the Assembly. In the case of the IOPC Fund, the 1992 Fund Convention contains no provisions dealing with the control of the legality of the decisions taken by the Assembly.

> *"From my view, by referring to the draft budget and the various heads of expenses relating to the administration of the IOPC Fund, one can fairly conclude that the HNS appropriation cannot be deemed to be an administrative expense and that it cannot, therefore, be the subject of a contribution levied pursuant to Article 12 of the Convention."*

To illustrate the problem apart from the question of *ultra vires*, the Administrator noted that even assuming, for the sake of discussion, that approval of the HNS loan falls within the inherent powers of the Assembly, the fact remains that, in his view, this appropriation does not fall within the type of expenditure contemplated by Article 12(2)(a) of the Convention (administrative expenses and payment of small claims). In fact, it is listed as a separate item of expenditure in the draft budget. As such, in the Administrator's view, it should be the subject of a distinct approval by the Assembly.

The Administrator also expressed his concern for the potential evolution of implied powers to the 1992 IOPC Fund Assembly – through practice – contrary to the expressed intentions of Contracting States in the Convention.

The Administrator noted that, if Canada receives an invoice from the 1992 IOPC Fund containing a charge for this item, he is not convinced that it would be appropriate for the Ship-source Oil Pollution Fund to pay that charge, in light of subsection 76(1) of the *MLA*.

He reminded officials that his concern stems from the limits of his own powers, which, by statute, are confined to matters relating solely to oil pollution damage, and that he may not be in a position to respond to a request for contribution in this respect.

The Administrator continues his full support of Canadian policy on the HNS Convention and agrees with the usefulness of the development of the HNS database in that respect.

As anticipated, on December 20, 2002, the Administrator received an invoice for some £1.3 million from the 1992 IOPC Fund for the amount levied as Canada's contribution to the General Fund. It included a portion to cover part of the sum of £50,000, as noted above, being part of an appropriation to be invested in the development of a website or CD-ROM to be used in the context of the HNS Convention.

In January 2003, the Administrator discussed with Transport Canada officials ways and means to pay the HNS portion of the invoice. It was concluded that, given Canada's commitment to the HNS Convention, Transport Canada would receive a benefit from the development of the HNS website and CD-ROM database. Consequently, Transport Canada approved payment of the HNS portion and made available the required funds.

Payment of the balance of the IOPC Fund invoice was directed by the Administrator out of the SOPF.

4.9 CCG Administration Costs in Oil Spill Claims

In his Annual Report of 2001-2002, the Administrator noted, in respect to the claim made by the CCG in responding to the *Sam Won Ho* incident which occurred in April 2000, that the administrative costs claimed were not established and had asked the CCG if they could be justified by evidence (section 3.24 of that report refers). Subsequently, 18 other claims made by the CCG have included administrative costs but without any justification or evidence that they were actually incurred. These were not paid by the Administrator pending receipt of further justification or evidence.

The background to the matter of recovering such costs arose following the breaking in two of the tanker *Kurdistan* off Nova Scotia in 1979. The Crown commenced an action against the shipowner to recover the costs and expenses of responding to the incident and resultant oil spill.

As part of its recovery action, the CCG produced various schedules which itemized specific categories of costs. Schedule 13, for Administration Costs, was produced using only a formula. All other schedules were supported by documentary evidence.

In the event, the overall cost recovery was settled out of Court. The validity of the Schedule 13 formula was not established then or since.

Early in 2001, the Administrator wrote to CCG requesting that the method of calculating these administration costs should be reviewed. No reply having been received by September 20, 2001, the Administrator spoke with CCG officials on this issue.

A meeting held with DFO Corporate Administration, Legal Services, and CCG officials in November 2001, did not resolve the issue and raised significant questions from the Administrator's view as to the validity of the formula and its application. These questions were confirmed to CCG in the Administrator's letter of November 27, 2001.

In March 2002, the CCG advised that they were trying to obtain answers to these questions.

The Administrator consulted with CCG in June and November of 2002, suggesting that to resolve the issue they conduct a study to determine the appropriateness of the current methodology used in calculating these costs.

He also confirmed to CCG in a letter dated November 20, 2002, that he was of the view that, in principle, demonstrable actual and reasonable administration costs incurred during a response should be recoverable provided that they are directly related to that response.

In February 2003, with the matter still unresolved, the Administrator advised CCG that all future claims under the *MLA* must contain evidence in support of actual and reasonable costs/expenses claimed for administration.

Subsequently, in correspondence to CCG of April 14, 2003, the Administrator noted the following:

> *"The Administrator is of the view that demonstrable actual and reasonable administration costs incurred during a pollution response should be recoverable, providing that they are related to that pollution response.*
>
> *As currently presented, Schedule 13 of CCG claims does not demonstrate such actual costs. Hence, such a claim could be dismissed for lack of proper evidence.*
>
> *Whilst the Administrator may better appreciate that some amount of administrative costs may be reasonably attributable to a CCG pollution response within the parameters stated above, the failure by CCG to assist the Administrator in providing him with appropriate evidence leaves one with little option but 'to do one's best' on the material available to properly assess such portion of administration costs allowable under the Marine Liability Act."*

In this April 14, 2003 correspondence, the Administrator made an offer of compensation to CCG in respect of its claims for administration costs in the above mentioned 19 previous claims.

These previous claims for administration costs had remained unpaid pending the resolution of the validity of the CCG schedule 13 formula, which did not materialize.

The offer represented, in the Administrator's view, a fair assessment of the actual and reasonable portion of those costs incurred during the responses.

4.10 Winding Up of the 1971 IOPC Fund

The 1971 Fund Convention ceased to be in force at midnight London time on May 24, 2002.

Claimants in remaining member States shall not be able to claim compensation from the 1971 IOPC Fund for incidents occurring after May 24, 2002.

The 1971 IOPC Fund shall continue to be administered under the joint Secretariat for the 1971 IOPC Fund and the 1992 IOPC Fund, until all outstanding claims are settled and paid.

4.11 Oil Tanker Incidents Decreasing

In North America oil tanker incidents appear to have fallen off dramatically. In Canada, a survey of Canadian oil spill incidents reported by the SOPF Administrator from 1993 to 2003 shows 9 percent were from tankers, 73 per cent were from other vessels and 18 per cent were mystery spills.

The United States Coast Guard 1999 records show that 94 per cent of oil spill incidents and 70 per cent of volume are from vessels other than tank ships and tank barges. 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.

In its March 2003 Newsletter ITOPF reports:

> *Contrary to popular belief, the number of accidental oil spills from tankers has decreased significantly since the 1970s and major spills are now relatively rare. This is despite a 90% rise in seaborne oil trade since 1985. This dramatic reduction in the incidence of spills is due to the combined efforts of the tanker industry and governments (mainly through the International Maritime Organization) to improve tanker safety and pollution prevention. The total amount of oil spilt each year varies considerably, with a few large spills being responsible for a high percentage of the total annual quantity. Even allowing for the PRESTIGE, the average volume of oil spilled from tanker incidents per year for the present decade is well below the US National Research Council figure for the 1990s.*

According to the US National Research Council 2002 report (*Oil in the Sea: Inputs, Fates, and Effects)*, approximately 85 per cent of the (1990-1999) worldwide average annual releases of oil petroleum into the marine environment stems from natural seeps (47 per cent) on the seabed, and from the consumption of petroleum products. The transportation of oil (including pipe lines and oil tankers) accounts for about 12 per cent of the hydrocarbons that reached the sea each year during the 1990s. Of this, approximately 8 per cent resulted from incidents involving tank vessels.

The category on the consumption of petroleum (38 per cent) includes industrial and other land-based run-off, such as road run-off whereby oil pollutes rivers and eventually reaches the marine environment. The SOPF has had recent experiences with this reality as noted in Section 3.2 herein covering the *Fighting Island* incident, and in Section 4.2.2 on *Oil Spills from Stormwater Drains and CSOs.*

5. Outreach Initiatives

5.1 General

The Administrator continues with outreach initiatives with a view to enhancing his understanding of the perspective 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, CMLA, the marine industry, other federal and provincial government agencies and departments, and various non-governmental organizations.

On the international scene discussions were held with representatives of various organizations, including ITOPF, OCIMF, P&I Clubs, USCG, US Dept. of Commerce (NOAA), US Dept. of Interior and the US EPA.

5.2 Canadian Marine Advisory Council (National)

The national Canadian Marine Advisory Council (CMAC) held meetings in Ottawa from April 29 to May 2 and November 4 to 7, 2002. The Administrator and consultants attended some of these meetings.

At the opening plenary session of the April/May CMAC meeting new legislative developments were discussed. These include the new *Canada Shipping Act*, 2001, (Bill C-14) which received Royal assent on November 1, 2001. The Act is not yet in force. The process of implementation of the new Act is now focused on developing the essential regulations. Two rounds of cross-country consultations have been completed and more are scheduled. A new toll free line for enquiries on the CSA 2001 and Regulatory Reform Project is available. A phone line (1-866-879-9902), located at TC, has been installed to address all CSA 2001 and Regulatory Reform enquiries. Calls that require DFO's expertise are directed to the appropriate departmental representative for response.

The Administrator follows with great interest the ongoing discussions and findings of the Standing Committee on the Environment. He is mindful of the issue of adequate reception facilities for residual oils and other ships' waste at Canadian ports and oil refineries. He follows the CMAC progress closely, because of the problem of chronic mystery spills particularly in eastern Canada. The provision of adequate waste disposal facilities may improve the current situation.

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

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

At the April/May CMAC meeting TCMS presented to the Steering Committee on the Environment a draft discussion paper on the "Adequacy of Port Waste Reception Facilities for Ship Generated Waste and Cargo Residues". The paper outlined considerations for future studies on this issue and requested further suggestions from CMAC participants. The Committee discussed the matter of reception facilities and agreed that a statement of work for possible future studies be prepared for review by the Committee. It was noted that an earlier focus group had found that waste disposal is handled adequately at Canadian oil terminals and refineries. Outstanding, however, is the question of the adequacy of waste disposal facilities generally in Canadian ports.

At the November CMAC meeting, a presentation was given on a new website database designed for waste reception facilities in Canada. The database contains up-to-date information on facilities that handle all waste as listed under MARPOL – i.e. garbage, oil, chemicals, engine room oily waste and all other ship generated marine waste. The database allows ports to enter and update their own information. The Committee expressed support for the on-line database initiative, expected to be fully operational in December 2002 for ports to start inputting data.

Of particular interest to the Administrator is the important information provided by the Standing Committee about the chronic problem of oiled wildlife caused by the illegal discharge of oily machinery waste at sea. Other items of interest are the use of satellite imagery from Radarsat to complement the National Aerial Surveillance program, and the recommendations of the Shipping Federation of Canada addressing illegal discharges.

Ship-source Oil Pollution Fund

At the November meeting, the Working Group on Oil Pollution off the East Coast of Canada reviewed the recently completed Phase III report of the Prevention of Oiled Wildlife (POW) project. The POW project had been undertaken by the Newfoundland Region of DFO/CCG to address the chronic problem of oiled seabirds off the province's south coast and Avalon Peninsula. As recorded in the minutes of the November CMAC meeting, the working group recommended that:

- *Environment Canada, Transport Canada, and Fisheries and Oceans/Canada Coast Guard cooperate regionally and nationally to enforce Canada's laws and regulations addressing illegal ship source oil pollution by concluding and implementing appropriate operational agreements as soon as possible.*

- *Environment Canada and Transport Canada determine the adequacy of* [reception] *facilities in Canada within their respective mandates.*

- *Funding be increased for dedicated aerial surveillance and enforcement by respective government departments and that agreements be encouraged among government departments to maximize efficiency of resources. The potential limits of remote sensing technology should be examined in this regard.*

- *Public awareness activities continue in partnership with the shipping industry and other relevant stakeholders.*

- *Examine, with the shipping industry and other relevant stakeholders, incentives to encourage sound practices and deterrents to illegal discharge.*

- *Responsible government departments, with shipping industry and non-governmental partners, should work together to implement applicable recommendations of the Phase III report of the POW project.*

The Standing Committee on the Environment endorsed the above recommendations by the Working Group on Oil Pollution off the East Coast.

During discussion about Transport Canada's green ship initiative, the Administrator referred to a paper on "Safety Culture" that was presented at the 2001 International Oil Spill Conference held in Tampa, Florida. This paper provides a unique and positive perspective on oil spill prevention and best response. It refers to the substantial financial benefits to shipowners that may be incurred by adopting the concept of a "safety culture" similar to the proposed green ship initiative. The Administrator informed the participants that copies of the paper that was presented at the conference in Tampa are available through his office. Subsequently, a number of people enquired about the paper on "Safety Culture" and the Administrator mailed copies to them.

5.3 Canadian Marine Advisory Council (Arctic)

The Administrator attended the Canadian Marine Advisory Council – Northern (CMAC-Northern) meetings in Calgary on November 13 and 14, 2002. The participants represented federal and territorial governments and a range of operators from the northern marine shipping industry. Discussions were co-chaired by representatives of Fisheries and Oceans, CCG Central and Arctic Region, and Transport Canada's Prairie and Northern Region.

The Administrator informed the participants about the origin and developments of the SOPF. He explained that after the tanker *Arrow* grounded in Chedabucto Bay in 1970 major amendments were made in 1971 to the *Canada Shipping Act* (CSA). The new oil spill legislation became Part XX of the CSA and became part of the Canadian law on June 30, 1971. It was one of the first national comprehensive regimes for oil spill liability in the western world. 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 then seven years.

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 the amount linked to the ship's tonnage;

- creating a new fund, the Marine 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 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.

The Administrator discussed the role of the SOPF in respect to oil spills from all classes of ships operating in Canadian waters, including the high Arctic and the interior waterways of the Northern Territories. This discussion included an outline of the current limits of liability and compensation for oil tanker spills in Canada. Also explained was the organization and set up of the SOPF and its relationship with the international Funds. One of the unique features of the SOPF is that it 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. In response to questions from the participants, clarification was provided on such matters as coverage of offshore production platforms and the fact that the SOPF can not be used to fund measures like hydrographic charting in the North.

The CCG provided an update on the implementation of the Arctic Response Strategy. The Strategy was formulated in 1999 by an extensive consultation process with other federal departments, the territorial governments, and commercial marine transportation industries. It is designed to ensure that an effective response capability is in place to respond to marine pollution incidents in the Canadian Arctic. Under the present system there is no certified Response Organization (RO) for waters north of 60° latitude; therefore, in the Canadian Arctic, shipowners do not need to have a contractual arrangement with a certified RO for oil spill clean-up. The CCG has overall responsibility for preparedness and response in all Canadian Arctic waters.

In terms of preparedness and response capability the CCG reported:

- The CCG Central and Arctic Regional personnel are now compiling an Arctic marine spill contingency plan to define the specific roles and responsibilities of each organization that may be called upon. The five area chapters of the contingency plan have been completed and the national chapter is under review by CCG Headquarters.

- In the new fiscal year, the CCG will undertake an in-depth review of its Arctic Response Strategy. The purpose of the review is to obtain practical feedback on the ongoing implementation of the Strategy. The review will further assess administrative procedures, personnel training, simulation exercises, and identify the primary stockpile of equipment and other resources required in different geographical areas. It is expected that the study will help make the northern response strategy more effective.

- In 2002, community-based exercises were conducted in Iqaluit and Inuvik. An exercise is scheduled next season in the community of Hay River. Also, the CG icebreakers conducted training evolutions en route the Arctic and deployed shipboard oil pollution countermeasures equipment.

- The CCG has purchased eight additional International Standards Organization (ISO) containers (i.e. 20' x 8' x 8'6") to house containment booms and sorbent materials. Deployment of these containers to the western Arctic has been delayed pending funding for acquisition of the booms and the equipment.

- Basic oil spill response courses were held in Arctic communities during the year and additional courses are scheduled for 2003.

- The CCG is continuing to evaluate the existing oil handling facilities in the North.

In the event of a major oil spill, the management at the marine tank farm in the port of Churchill, Manitoba, which is located just south of the sixtieth parallel, is expected to use the response organization (ECRC) located in Quebec. There is concern that, because of the vast distance involved, the ECRC at Quebec would be challenged to deliver appropriate equipment on a timely basis. Consequently, it is important to make an arrangement with CCG even

though Churchill is south of 60°. The participants were informed that 30 million litres of diesel are handled yearly at the tank farm. The CCG representative committed to pursue the matter. Assurance was given that all the CCG pollution clean-up equipment stored in the general area would be made available should an incident occur at the Churchill tank farm.

It was noted that the commercial oil handling facilities at Nanisivik and Polaris mine sites have been closed. Mr. Robert Gunn (ADM, Public Works and Government Services, Nunavut) informed the meeting that his department is negotiating to acquire the tank farm and other facilities at Nanisivik.

5.4 Great Lakes Regional Advisory Council on Oil Spill Response

The Administrator attended the Great Lakes Regional Advisory Council (RAC) meeting held September 16, 2002, in Burlington, Ontario.

The RACs on oil spill response are established under the *Canada Shipping Act* to advise and make recommendations to the Minister of Fisheries and Oceans. Currently, there is a RAC in each of the six DFO/CCG regions. These Councils are appointed by, and report to, the Commissioner of the Canadian Coast Guard. Each is comprised of a maximum of seven members. General meetings are held semi-annually and supplemented by teleconferences as required. There is also at least one formal advertized public meeting per year. The primary role of the RAC is to provide advice on specific regional issues that affect pollution prevention and the levels of oil spill preparedness and response. The regional Council represents the communities and local interests potentially affected by an oil spill in a geographic area.

Discussion during the meeting in Burlington included the following topics:

- Training and Exercising Program
- Lake St. Clair/St. Clair River Management Plan
- The Canada-Ontario Agreement Respecting the Great Lakes Basin Ecosystem
- The Rouge River Incident April 10, 2002
- The Amherstburg Area Mystery Spill

In his remarks the Administrator felt it was important, for example, for participants to be aware of the significant potential for land-based run-offs into the Detroit/Rouge Rivers with their serious consequences. The Administrator sometimes has to investigate the operations of the city sewer systems. The potential remains for non-ship-source oil spills from storm water outfalls and combined sewer outfalls.

The Administrator mentioned that, in his view, preventative advice could include better education, warnings and enforcement of violations for illegal oil discharge through sewer systems.

Notes:

1. For a real example of such a non-ship-source spill see sections 3.2, 3.47, 3.67 and 4.2.2 herein.
2. For additional information about oil spills from stormwater drains and combined sewer outfalls see the SOPF Administrator's Annual Report 2001-2002 at sections 4.2.1 and 4.2.2.

5.5 CANUSLAK Salvage Exercise – Great Lakes

The Administrator participated in the CANUSLAK 2002 salvage exercise held in Sarnia on December 3 and 4, 2002. It was the latest in a series of activities conducted jointly by Canada and the US to exercise the Canada-US Joint Marine Pollution Contingency Plan, and the Great Lakes (CANUSLAK) Annex.

The CANUSLAK 2002 salvage exercise was the second phase of an earlier management tabletop exercise that had commenced on April 9, 2002. (However, the April exercise had to be deferred, because an actual oil spill occurred in the Rouge River on the US side of the Detroit River while the exercise was in play. Consequently, the US and Canadian Coast Guards spent the next three weeks on scene in response to the "Rouge River Mystery Spill".)

The geographic area for the CANUSLAK 2002 tabletop salvage exercise in December was limited to the St. Clair River, Lake St. Clair, the Detroit River and the Canadian and US shorelines bordering these lakes and rivers. The simulated incident consisted of a product tanker colliding with a cargo ship in a busy shipping channel of the St. Clair River. Both ships later stranded near the north end of Stag Island. The tanker sustained structural damage releasing 2,500 tonnes of fuel oil into the river. The participants were required to focus on issues specific to the ship's casualty assessment and subsequent salvage to mitigate threat of oil pollution during a simulated incident.

To enhance the overall value of the salvage exercise, the management team included representatives from Desgagnes Tanker Inc – the Responsible Party and owner of the simulated oil tanker. The shipowner had worked previously with the design team to develop the oil spill scenario.

The participants approached the issue of salvage from various aspects, including:

- How should the USCG, the Canadian federal lead agency, and the Responsible Party coordinate a salvage operation?
- The identification of the requirements for salvage.
- Given that the damaged ship was aground in Canadian waters, would the Responsible Party be able to contract a US marine salvage company?
- What marine salvage resources exist in the Great Lakes and what is their availability?

It was noted that under the guidelines of the Joint Marine Contingency Plan, an after-action report will be prepared to evaluate the observations and conclusions reached during the CANUSLAK salvage exercise.

5.6 ECRC – Great Lakes

After the oil pollution exercise in Sarnia, the Administrator visited the ECRC offices in Corunna. He met with Mr. Robert Whitsitt, Manager Great Lakes Region, and Mr. Mark Brown, Response Centre Manager, who gave an interesting and edifying presentation on the Rouge River Mystery Spill that occurred in April 2002. The visit to the ECRC 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.

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.

Note: For additional information about the Response Organizations in Canada see the SOPF Administrator's Annual Report 2001-2002 at section 5.4.

5.7 CANUSLANT Oil Pollution Exercise – Atlantic Region

The Administrator attended the CANUSLANT 2002 oil spill exercise held from June 25 to 27 in St. Andrews, New Brunswick. CANUSLANT 2002 was the latest in a series of biennial exercises conducted jointly by Canada and the United States since 1974, to exercise the revised Canada-United States Joint Marine Pollution Contingency Plan and its Atlantic Operational Supplement. The objective is to improve cross-border training, planning, response capabilities, promote education, and address recurring issues from past exercises.

The term "CANUSLANT" is the short title of the Canada-US Joint Marine Pollution Contingency Plan for the boundary waters on the Atlantic Coast. The authority for the Atlantic operational supplement stems from the *Great Lakes Water Quality Agreement* between Canada and the United States.

The CANUSLANT 2002 exercise for management was conducted for about four hours. The simulated incident focused on the occurrence of a major oil spill on the border of New Brunswick and Maine in the Bay of Fundy. A product tanker carrying 20,200 barrels of fuel and gas oil grounded and ruptured one of its tanks. Approximately 729 barrels of oil were released into the Bay of Fundy and Gulf of Maine. The exercise provided a core group of representatives from Canadian and US organizations to publicly walk through the initial hours of a response to a spill in the trans-boundary area.

The CCG on-scene-commander and the USCG on-scene-coordinator demonstrated how they collaborate with the Responsible Party and federal, tribal, provincial, state and local stakeholders to address a simulated scenario. The exercise addressed agency roles and responsibilities, as well as helping the participants to understand and manage expectations concerning response actions and capabilities. As a result of these biennial exercises, issues are identified that need to be addressed by the Canada-US Joint Response Team for the Atlantic Region.

Most importantly, the tabletop exercise was followed by a series of facilitated breakout sessions to discuss and find answers to outstanding questions previously identified. In the breakout sessions, the participants addressed some of the issues identified by the Joint Response Team as important and unresolved from previous CANUSLANT exercises. The discussion groups made numerous recommendations for improving the joint cross-border contingency planning and response capabilities. These recommendations were reviewed and prioritized by the Joint Response Team for the Atlantic Region later at a meeting in Halifax.

5.8 Joint Response Team – Halifax

The Administrator attended the Canada-US Joint Response Team (JRT) meeting held on October 30 and 31, 2002, in Halifax. The meeting was hosted by the Canadian Coast Guard and co-chaired by representatives of both the Canadian and US Coast Guards. This was a follow-up to CANUSLANT 2002 held in St. Andrews in June 2002.

The participants reviewed the CANUSLANT 2002 report and addressed the list of recommendations resulting from the exercise that required action by the JRT. One of the issues identified was the differences in the existing compensation systems between Canada and the US. The focus is on compensation for losses to the fishing, aquaculture and tourism industries. The specific recommendations are that compensation protocols, for access to available compensation funds, should be documented in the Joint Contingency Plan.

It was decided that the USCG and CCG legal offices, supported by the US Fund and the SOPF, should action this item prior to CANUSLANT 2004.

The Administrator has assured CCG senior legal counsel of his willingness to co-operate.

5.9 Regional Environmental Emergency Team (REET)

The Administrator participated in the Atlantic Regional Environmental Emergency Team (REET) meetings held in Summerside, Prince Edward Island, on May 15 and 16, 2002.

Mr. Roger Percy (Environment Canada) chaired the meetings. Approximately 80 people were in attendance. They represented federal and provincial departments and agencies, the response organizations, port authorities, environmental associations, US Coast Guard, the US Environmental Protection Agency, the Canadian offshore petroleum boards, the oil industry and other non-government organizations interested in the marine environment.

The REET organization is comprised of representatives from federal, provincial, first nations, municipal and other agencies, as necessary. Environment Canada, as the federal authority for environmental advice during a pollution incident, normally chairs the REET. This body is responsible for providing consolidated environment and scientific information during the course of response operations.

The contingency plans of the REET 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. Also, information is made available on the physical operating environment, spill movement and trajectory forecast. This assistance by the REET to the On-Scene Commander during an incident can make a major difference in the response to the incident. In addition, the REET may approve the use of chemical dispersion and other shoreline treatment techniques.

The Administrator submitted a paper on the Canadian compensation regime. His discussion addressed the principal elements of Canada's Ship-source Oil Pollution Fund. He also noted that 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 Canadian exclusive economic zone. The SOPF is not limited to sea-going tankers, or to persistent oil, as in 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 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.

The Administrator informed the participants that all claims against the SOPF should be made in writing and must be supported by appropriate documentation, such as invoices and vouchers. The Administrator may request a claimant to provide additional information and documentation. The speed with which claims are settled depends, to a large extent, on how long it takes for claimants to provide the Administrator with the required information and documentation covering proof of loss or damage.

A representative of the Canadian Association of Petroleum Producers provided an overview of initiatives for spill prevention and response by offshore operators at drilling and production facilities in Atlantic Canada. The presentation addressed how Atlantic Canadian offshore petroleum companies strive to prevent spills from oil and gas operators in the first place, and how they would respond if a spill occurred. The presenter indicated that the offshore operators have worked closely with spill specialists and authorities to develop many types of spill response strategies. In addition to their own contingency plans, a number of spill response mechanisms are available to East Coast operators. These include the ECRC Response Organization in St. John's and the Oil Spill Response Limited located in the United Kingdom, which can provide assistance within 24 hours.

The use of dispersants generated an interesting exchange of views, and various people brought their perspective to the issue. It was noted that regulatory approval is required before chemical dispersants may be used in accordance with recommended techniques. The use of spill treating agents was addressed also by other presenters. Representatives of the consultant firm S L Ross Environmental Protection Agency spoke about the use of the dispersants. These consultants spoke about the advantages and disadvantages of applying treating agents in the Atlantic Region based on experience and recent findings. Also, Environment Canada presenters spoke about the Atlantic Region approval process, the EC spill treating studies and the guidelines on the use and acceptability of oil spill dispersants.

Mr. Ambrose English, DFO/CCG Newfoundland Region, presented a case study on the sinking of the fishing vessel *Katshehuk*. This was a large Canadian trawler, engaged in shrimp fishing, which caught fire and eventually sank near Cape St. Francis, Newfoundland, on March 30, 2002. The crew was all safely rescued. There was approximately 430,000 litres of diesel fuel on board. Some of the oil leaked from the vessel, which resulted in a large oil slick in the area.

Mr. Ray Brown (Director Marine Programs, DFO/CCG Newfoundland Region) provided an update on the Prevention of Oiled Wildlife Project to address the chronic problem of the oiling and death of seabirds by oil spills of unknown sources.

Note: For information about the POW project see the SOPF Administrator's Annual Report 2001-2002 at section 4.2.4.

5.10 Environmental Damages Fund National Workshop

The Administrator participated actively in Environment Canada's workshop on the National Environmental Damages Fund (EDF) held in Gatineau, Quebec, from December 11 to 13, 2002. The primary purpose of the workshop was to discuss and agree on a national approach for implementation of the EDF program in areas of administration, environmental damage assessment and environmental restoration.

The Treasury Board guidelines for administering the EDF provide a framework for Environment Canada to manage funds deposited into the special purpose account. The Treasury Board also authorizes a financial framework to ensure transparency and accountability. It does not, however, provide specific guidelines on how the restoration and administrative process shall be established.

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

Note: For additional information about the Environmental Damages Fund see the SOPF Administrator's Annual report 2001-2002 at section 4.1.1.

Ms. Paula Caldwell-St-Onge (Director General, National Programs Directorate, Environment Canada) pledged senior management commitment for the EDF initiative. She also complimented the Atlantic Region personnel on their efforts to date, and encouraged the participants to take advantage of the Atlantic Region's experiences.

Mr. Asit Hazra (Environment Canada) reviewed the 1995 Treasury Board Guidelines for EDF program implementation. He indicated that accountability for approaching management plans and contribution agreements rests with the Regional Directors General and the Director General of the National Program Directorate. The approval framework is relatively flexible.

Mr. Sinclair Dewis (Environment Canada, Atlantic Region) spoke about the Region's experience in the administration of the EDF. His presentation included the following points:

- The Atlantic Region approach builds on the Treasury Board guidelines and the regional expertise and experience.
- The program builds on the already established REET partnerships.
- After an incident, an exercise to assess environmental damage must be completed.
- Community/non-profit groups plan and undertake the restoration project.
- Money in the EDF cannot be used to address response, cleanup or legal costs. The goal is environmental restoration and only restoration projects can be funded.
- Project proposals are subjected to an administrative review and a more comprehensive technical review by REET/EDF partners, who have specific expertise.

Mr. David Sawyer (Gardner Pinfold Consulting Economists Ltd.) discussed various restoration models. He explained the four basis approaches to environmental damage restoration planning that are commonly used, namely:

- the NRDA (USA) approach to restoration;
- restoration as part of clean-up;
- the ad hoc court-directed approach;
- the community design approach.

During breakout sessions the discussions focused on finding a national approach to administering the EDF restoration in Canada. The participants concluded that the NRDA (USA) approach was not largely applicable in Canada, because the regulations are not here to implement this approach effectively. The participants also considered that restoration as part of cleanup had disadvantages, because the approach cannot address longer-term impacts. Different skills are required in cleanup and environmental restoration. They agreed, however, that the Court-directed approach has merit.

It was decided that, with financial assistance from the EDF, the preferred approach to restoration planning is the community-based project. The community-based approach means that Environment Canada retains accountability. This approach takes advantage of local knowledge and community group contributions. In this model, the community is asked to propose a restoration plan. The EDF will support implementation of plans made in partnership with appropriate government agencies and other stakeholders. The disadvantages of this approach are that not all communities possess the technical expertise to develop sound restoration plans or prepare proposals.

The Administrative framework currently established in the Atlantic Region, which essentially incorporates a community-based approach, was viewed as the most effective and efficient to use. The discussion group also felt that judges would be more inclined to favourably view a community-based project approach and that could result in more money being directed to the fund. The consensus is that the national action plan for fund administration must allow for flexibility to facilitate regional priority setting and program implementation. For example, the individual responsibilities for administering the fund have to be decided on a regional basis.

In the meantime, the framework for establishing a national plan 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.

Mr. Harry Wruck (Senior General Counsel, Department of Justice) presented a comprehensive overview of federal legislation used in environmental cases. He remarked that the existing pieces provide the courts flexibility in sentencing. However, one of the problems is that courts and even crown counsel are not always familiar with the fund. Consequently, the Department of Justice personnel need to inform others within the legal community about the potential use of the fund. As government officials, prosecutors, judges and defense counsel become more familiar with respect to this fund it may see more use.

The Administrator expressed his view that information alone is not enough to enhance judicial awareness about the role of the EDF in environmental restoration efforts. He noted that the environmental perspective must be translated into language that is appreciated by someone with a legal background. If government authorities hope to persuade judges to order payments to the EDF, it is essential to have well prepared cases with convincing evidence.

The Administrator also suggested that Environment Canada may benefit from the secondment of a Department of Justice lawyer, or other dedicated counsel, to provide legal advice on the preparation of environmental cases. Such dedicated counsel could effectively brief attorneys of the crown when they are preparing to present a case in court for a restoration award.

5.11 World Oceans Day

The Administrator was invited to participate in the World Oceans Day National Planning Committee. These planning meetings are chaired and facilitated by Fisheries and Oceans in partnership with the Minister's Advisory Council on Oceans.

World Oceans Day was first declared in 1992 during the Earth Summit in Rio de Janeiro. More than 150 countries signed a petition to express a shared belief that action must be taken to halt the worldwide loss of animals, plant species and genetic resources. Since then, people around the globe have celebrated Ocean Day on June 8th, by getting involved in special events and activities that promote ocean health and sustainable development.

In keeping with the spirit of the *Ocean Act* and under the auspices of Canada's Ocean Strategy, the members of the National Planning Committee are working together to plan and support World Oceans Day activities across the country in 2003. The committee promotes local, regional and national venues that can be used to highlight how Canadians can be effective water stewards. The objective is to raise awareness and educate Canadians about the importance of Canada's water from a social, environmental, economic and cultured viewpoint.

5.12 Oil Companies International Marine Forum

On December 9, 2002, the Administrator participated in a meeting held in Ottawa with representatives of the Oil Companies International Marine Forum (OCIMF) and officials of Transport Canada, the Department of Justice, and the Canadian Coast Guard. Mr. Jan M. Kopernicki, Chairman of OCIMF and Vice-President Shipping for Shell International Trading and Shipping Company led the OCIMF delegation to Canada. He had requested the meeting with Canadian officials to discuss OCIMF's draft proposal for the revision of the CLC and IOPC Fund Conventions that OCIMF intended to submit to the IOPC Third Intersessional Working Group in February 2003.

From the Administrator's view, Mr. Kopernicki and his colleagues made compelling arguments and gave a persuasive presentation demonstrating the reasonableness of OCIMF's proposal to increase the shipowners' limits in the Civil Liability Convention.

Note: For coverage of OCIMF's proposal to the February meeting of the Working Group see Appendix "C" at section: Revision of the Civil Liability and IOPC Fund Conventions.

5.13 Canadian Coast Guard – Pacific Region

On January 28, 2003, the Administrator met with Mr. Terry Tebb, Acting Regional Director Coast Guard, in the CCG offices on West Hasting Street in Vancouver. The CCG Regional Headquarters has since moved to Burrard Street. The Administrator was pleased to meet with the Acting Regional Director, and respond to his personal enquiries about how the SOPF compensation regime functions.

The Administrator also met with Mr. Don Rodden, Superintendent Environmental Response, and staff at the Seal Island Coast Guard base. They discussed the presentation of the CCG claims and focused on the various aspects of a claim submission. The Administrator emphasized that good documentation including photos, videos, logbooks, notes taken on site and proof of payment, as applicable, contain essential information to facilitate assessment of a claim. He noted the recent improvements in the timeliness, quality and extent of the documentation being submitted to the SOPF by CCG personnel in the Pacific Region.

5.14 On-Scene Commander Course

On March 3 and 4, 2003, 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, ECRC, USCG, and Société pour Vaincre la Pollution (represented by a prominent environmentalist from Quebec). Notably, Mr. Keith Rusby a highly experienced Canadian salvage master presented the perspective of marine salvors. The presentations and case histories covering international oil tanker incidents were invaluable training experiences. Participants from the United States and the United Kingdom, including the ITOPF and a legal representative from the Department of Fisheries and Oceans gave the training a meaningful international perspective.

The On-Scene Commander Course is designed for CCG officers and operational managers of industry. It is essential on-site coordination and the development of clean-up strategies that are necessary to respond effectively to a major oil spill. The course, which is 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.

5.15 Transport Canada Marine Safety Investigators Course

The Administrator participated in the Transport Canada Marine Safety Investigators Course (Level II) held in Halifax from March 3 to 7, 2003. He spoke on March 5th about the civil liability evidence requirements for the SOPF, as compared to the burden of proof in prosecutions under the quasi-criminal pollution regulations made pursuant to the *Canada Shipping Act*.

5.16 Canadian Maritime Law Association

The Administrator attended the Executive Committee meetings of the Canadian Maritime Law Association (CMLA) held in Montreal on October 7, 2002, and in Vancouver on January 27, 2003. He also attended on March 20, 2003, the CMLA Executive Committee meeting held annually with government officials in Ottawa.

At the meeting in Vancouver, Mr. Sean Harrington, President of the Executive Committee expressed thanks, on behalf of the CMLA, to the Administrator for publishing the SOPF annual report. He remarked that members find that the report is a helpful reference document. It helps keep them current on the developments and challenges of the Canadian compensation regime for oil pollution.

In response, the Administrator emphasized his appreciation for the generous contributions of time and effort by members towards the continuing development of maritime law. He is particularly grateful to members for their participation and response to the questionnaire recently developed by the Comité Maritime International on places of refuge for damaged ships. The last two SOPF annual reports contained articles on the issue of places of refuge and the importance of this for Canadians.

The Administrator values his contacts with the Canadian Maritime Law Association and continues to dialogue with members.

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.

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 *MLA* (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) provided the SOPF with its first test of the 1992 IOPC regime, where compensation payable reached the 1992 IOPC limits. The SOPF payments to date to the 1992 IOPC Fund for the *Erika* incident amount to approximately $11.2 million.

The SOPF payments to the 1992 IOPC Fund for the *Prestige* incident may amount to approximately $11 million.

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

Since 1989, the SOPF has paid the IOPC Funds approximately $33 million, 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
2002/03	3,219,969.17
Total	**$33,349,064.91**

7. Financial Summary

Income

Balance forward from March 31, 2002		$316,491,470.75	
Interest credited (April 1, 2002 – March 31, 2003)		14,237,877.71	
Recoveries of settlements - *MLA* sections 87(3)			
Tug *Princess No. 1*	$10,000.00		
Reed Point Marina	24,261.69		
MV *Ocean Venture*	17,144.66		
MV *Algontario*	2,235.16		
	$53,641.51	53,641.51	
Total Income			**$330,782,989.97**

Expenditure

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

Administrator fees	$ 99,000.00		
Legal fees	83,274.62		
Professional services	126,906.77		
Secretarial services	54,499.20		
Travel and hospitality	37,083.00		
Printing	16,676.00		
Occupancy	68,868.96		
Computers	9,414.93		
Office expenses	15,584.04		
Total expenses	$511,307.52	$ 511,307.52	
Pursuant to sections 85-87 of the *MLA*, the Administrator paid Canadian claims established in the total amount of:		1,088,443.43	
Pursuant to section 76 of the *MLA*, the Administrator directed the following payments out of the SOPF to the 1992 IOPC Fund:		3,219,969.17	
Total expenditure from the SOPF			**(4,819,720.12)**
Balance in SOPF as at March 31, 2003			**$325,963,269.85**

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 Funds pay 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 the 1992 IOPC Fund.

Contracting States

Contracting States, as of April 25, 2003, to the 1992 IOPC Protocols are listed in Appendix E.

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 7th Administrative Council – April 29 to 30 and May 2 to 3, 2002

The seventh session of the Administrative Council, acting on behalf of the ninth 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 agenda items, including:

Winding up of the 1971 Fund

The Administrative Council recalled that the 1971 Fund Convention would cease to be in force at midnight London time on May 24, 2002. The remaining member states were invited to accede to the 1992 Fund Convention as quickly as possible. These remaining member states were made aware that they would not be able to claim compensation from the 1971 IOPC Fund for incidents occurring after May 24, 2002.

The Council decided that it should continue to administer the 1971 IOPC Fund under the joint secretariat for the 1971 IOPC Fund and the 1992 IOPC Fund, until all outstanding claims are settled and paid.

Insurance cover for the 1971 IOPC Fund's liability for incidents extends up to October 31, 2002.

Appointment of Deputy Director

The Administrative Council noted that the Director had appointed Mr. Joseph Nichols as Deputy Director/Technical Advisor and issued a job description for this post, with effect from January 2002. In addition, the Director had appointed Mr. José Maura as Head of the Claims Department, also with effect from January 1, 2002.

Future Sessions

The Administrative Council had decided, at its sixth session held in October 2001, that since the 1971 IOPC Fund Convention would cease to be in force on May 24, 2002, it would be unnecessary to convene the 1971 IOPC Fund Assembly after that date. As a consequence, any future business shall be dealt with directly by the Administrative Council. It was decided to hold a session during July 2002.

Incident involving the 1971 IOPC Fund

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.

On February 14, 2002, the 1971 IOPC Fund and Skuld Club commenced legal proceedings against the Milford Haven Port Authority to recover the amount paid in compensation by the Fund and the insurer. The Skuld Club authorized the 1971 IOPC Fund to pursue the recourse action in the Club's name.

The 8th Administrative Council – July 2 to 3, 2002

Captain R. Malik (Malaysia) chaired the eighth session of the Administrative Council. The Council reviewed the following recent developments:

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 Spanish delegation informed the Council that: (1) The Spanish Government expected to have the needed 90 per cent approval of the proposed global settlement shortly. (2) By the end of September 2002 an Act enabling the global settlement to be concluded would be put to Parliament. (3) It is the Spanish Government's intention that the claimants be compensated before the end of 2002.

Alambra (2000)

The Malta registered tanker *Alambra* (75,366 gross tons) was loading a cargo of heavy fuel oil in the Port of Muuga, Tallinn, (Estonia), when an alleged 250 tonnes of cargo escaped from a crack in the ship's bottom shell plating.

The tanker remained alongside from September 17 to 28, 2000, in order to minimise the spread of oil while clean-up operations were undertaken. Subsequently, to remove the 80,000 tonnes of cargo, the Estonian authorities detained the *Alambra*. In May 2001 the ship left Estonia for scrapping.

The Council noted that Estonia was Party to the 1969 CLC and the 1971 Fund Convention. The Council also noted that claims for clean-up costs had been submitted to the shipowner and the London Club by the Tallinn Port Authority (£250, 000) and by the Estonia State (£156,000), in addition to other claims. However, the main point of discussion at this meeting was the issue of national law in Estonia. It was reported that, while Estonia ratified in December 1992 both the 1969 CLC and the 1971 Fund Convention, it had not implemented these instruments in their national law.

Delegations that spoke, including the Canadian delegation, felt that they needed more information about Estonian constitutional law to assess the obligations of the Fund, in the light of the apparent failure of Estonian authorities to implement the conventions in national law. This case raises troublesome aspects, not the least the precedent setting nature of any decision taken by the Fund in this case. Hence, the Council decided to postpone its decision pending receipt of further information on this matter at its next meeting.

Sea Empress (1996)

The Council noted that on June 5, 2002, the Milford Haven Port Authority had submitted a defence pleading denying liability for the incident and the ensuing oil pollution.

The Council recalled that the Skuld Club had authorized the 1971 Fund to pursue the recourse action in the Club's name and, after consultation, to take all decisions relating to the conduct of the proceedings. It was also recalled that the 1971 Fund and the Skuld Club had reached an agreement as to the distribution between them of any amount recovered as a result of the recourse action.

The Council noted that in April 2002 the 1971 Fund had paid the Skuld Club the amount due to it by way of indemnification of the shipowner under Article 5.1 of the 1971 Fund Convention (£1 835 035), less a deduction in respect of the Club's share of joint costs.

The 9th Administrative Council – October 14 to 18, 2002

Captain R. Malik (Malaysia) chaired the ninth session of the Administrative Council. The Council dealt with the agenda items, including:

Financial Statements and Auditor's Report

The Administrative Council noted that the external auditor had provided an unqualified audit opinion on the 2001 financial statements. The Council approved the accounts of the 1971 IOPC Fund for the financial period January 1 to December 31, 2001.

Winding up of the 1971 Fund

The main question considered by the Council was the basis on which the remaining assets of the 1971 Fund should be distributed (General Fund and Major Claims Funds). With respect to the General Fund, the Director proposed the distribution of any surplus among the states that were parties to the 1971 Fund at the end of the transitional period, May 15, 1998, on the basis of oil reported as received in 1997. Although the Canadian delegation and others supported the proposal made by the Director, it was decided that the Director should carry out a study of the different options and report back to the council at its October 2003 session.

Incidents Involving the 1971 IOPC Fund

Aegean Sea (1992)

The Spanish delegation informed the Council that the Spanish State Council had approved the global settlement on October 4, 2002, and authorized the Minister of Finance to enter into an agreement with the shipowner, the UK Club and the 1971 Fund. The Minister of Finance was also authorized to make out of court settlements with claimants in exchange for the withdrawal of their court actions. The Spanish delegation further informed the Council that the Spanish Parliament has passed the decree approving the agreement. The Director stated that payment will be made October 31, 2002.

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

Sea Empress (1996)

The Administrative Council noted that the Director had examined, in consultation with legal advisors, the defence filed by the Milford Haven Port Authority, as well as the Port Authority's request for further particulars of the claim.

The Council also noted that in February 2002, Texaco, which operates an oil terminal in Milford Haven, had commenced legal action against the Port Authority and Milford Haven Pilotage Limited. Texaco had based its claim on similar legal grounds as those that the 1971 IOPC Fund had invoked in its action against the same defendant.

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.

In April 2000, representatives of the 1971 IOPC Fund visited Venezuela and attended meetings to explore the possibilities of a withdrawal of the two court actions presented by the Republic of Venezuela. The Council noted that the Venezuelan Government was examining the possibility of withdrawing at least one of these actions. Because no further development had taken place since then, the Council endorsed the Director's decision to maintain the level of payments at 40 per cent.

Alambra (2002)

The Council noted that the Director had pursued discussions with the London Club since the July 2002 session – where the Estonian constitutional law issues were discussed. These considerations were for the purpose of reaching out-of-court settlement in respect of at least those claims, which, in the Director's view, fell within the scope of application of the Conventions. The Council noted that no progress had been made in these discussions.

The Council also noted that in September 2002 the London Club (P&I) commenced proceedings claiming that the shipowner had intentionally failed to make the necessary repairs to the ship, thereby causing the ship to become unseaworthy. Consequently, the Club argues that under the insurance contract, as well as the Estonian Merchant Shipping Act, the Club is not liable to pay compensation for the damage resulting from the incident. To enable the 1971 IOPC Fund and the claimants to consider this position taken by the London Club, the Court postponed the proceedings until December 17, 2002. The final hearing was to be held in January 2003.

The Council noted the Director's intention to examine, with technical experts as required, any documentation or other evidence before expressing any opinion with respect to the London Club's liability. In the meantime, the Director shall take any required steps in the court proceedings to protect the 1971 Fund's interests.

The Canadian delegation supported the Director's proposal and reiterated the need for more information, including information from the Estonian courts.

The 10th Administrative Council – February 3, 4 and 7, 2003

Captain R. Malik (Malaysia) chaired the tenth session of the Administrative Council. The agenda included:

Incident involving the 1971 IOPC Fund

Alambra (2002)

With regard to the issue of the insurer's liability the Council noted that the Director had examined, together with the 1971 Fund's Estonian lawyer, the documentation submitted by the London Club. In its pleadings the 1971 Fund had maintained that the evidence presented, regarding the condition of the *Alambra,* did not established that the ship-owner was guilty of wilful misconduct, and that the insurer was therefore not exonerated from its liability for pollution damages.

The Council supported the steps taken by the Director to protect the 1971 Fund's interest. The Court's judgements are expected in May 2003.

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

The Executive Committee of the 1992 IOPC Fund held five sessions during the year. The 16th, 17th and 18th sessions were held under the chairmanship of Mr. Gaute Sivertsen (Norway). The 19th and 20th sessions were held under the chairmanship of Mr. J. Rysanek (Canada).

The 6th Extraordinary Session of the Assembly and the 7th Session of the Assembly were held under the chairmanship of Mr. W. Oosterveen (Netherlands).

The 16th Executive Committee – April 29 to 30 and May 2 to 3, 2002

Incidents involving the 1992 IOPC Fund

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.

With regard to the level of payment in this incident, the total amount available under the 1971 and 1992 Fund Conventions is £119 million. After taking unsettled claims into account, the total exposure of the IOPC Funds could be estimated at £140 million. In the Director's view, the level of payments should be maintained at 80 per cent.

The Executive Committee decided to authorize the Director to increase the level of payments from the current 80 per cent, if he was satisfied there was no risk that the IOPC Funds would face an overpayment situation.

The Canadian delegation supported the Japanese delegation's view that the shipowner was liable, that the shipowner could not limit its liability under the test in the 1969 CLC, and that the Funds, therefore, should not have to bear the payment of compensation, costs and expenses. A global settlement proposal was presented to the Committee. The Committee endorsed it and authorized the Director to conclude a settlement agreement with the various parties involved in the case. Taking all factors into account, including the uncertainties of litigation and the costs that such litigation might involve establishing the shipowner's liability, the Canadian delegation supported the global settlement. The Japanese delegation expressed its thanks for the Canadian delegation's support towards the achievement of a settlement acceptable to Japan.

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 spilled as the ship sank.

A number of delegations expressed satisfaction with the progress that had been made in the assessment of claims. The Executive Committee noted that, in order to strike a balance between paying compensation promptly and the need to avoid an over-payment situation, the level of payments should be maintained at 80 per cent.

In considering the admissibility of claims for reduction in revenue from tourism tax, the Canadian delegation referred to the CMI "Guidelines on Oil Pollution Damage". The CMI observer delegation stated that the CMI Guidelines, which were drafted in 1994, reflected the decisions of the Fund Assembly on questions of principle. That delegation stated that acceptance of claims by communes for tourism tax would not be inconsistent with the Guidelines in the particular circumstances and drew attention to paragraph 7(b)(ii) of the Guidelines which reads:

> *"Whilst the result in practice of applying the foregoing principles will always depend on the circumstances of the individual case, recovery will not normally extend to losses of taxes and similar revenue by public authorities."*

After discussion, the Executive Committee decided that, in this case, the commune claims for reduction in revenue from the traditional tourism tax (taxes de séjour) under consideration were admissible in principle. They were admissible in the light of the specific nature of that tax, the direct link between the revenue from that tax and the number of tourists visiting the area, and the dependency of the communes in question on beach tourism. Any savings resulting from the reduction in tourists would have to be considered as well.

Al Jaziah I (2000)

The tanker *Al Jaziah I* (681 gross tons) laden with fuel oil sank off Abu Dhabi (United Arab Emirates). It was estimated that approximately 100 to 200 tonnes of oil escaped from the wreck and polluted coastal areas. It was noted that the *Al Jaziah I* did not have any liability insurance. The Committee decided that if the investigations by the legal advisors of the 1992 Fund reveal that the owner had significant assets, the 1992 Fund should take recourse action. The Director was instructed to keep the Committee informed.

The 6th Extraordinary Session of the Assembly – April 30 to May 3, 2002

Audit Procedures

It was recalled that at its sixth session the Assembly decided to create a joint Audit Body for the 1992 IOPC Fund and the 1971 IOPC Fund.

The Audit Body is established to provide advice to the Director and the Assemblies in relation to financial reporting, internal control, risk management, operational procedures and audit-related matters. The Assembly emphasized that the Audit Body should neither duplicate nor control the work of the external auditor. Also, it should not engage in the day-to-day management of the organization.

Member States were advised to submit nomination of candidates for elections to the Audit Body at least six weeks before the next Assembly (October 14, 2002).

Financing of a Diplomatic Conference

As instructed by the Assembly at its sixth session in October 2001, the Director submitted a draft Protocol to the Secretary General of IMO requesting him to convene a Diplomatic Conference to consider the draft protocol to supplement the 1992 Fund Convention. The Diplomatic Conference had been provisionally scheduled from May 12 to 16, 2003.

The Assembly decided to make available to IMO the "funds" necessary to finance the Diplomatic Conference, estimated by IMO at £56,500. This was decided on the understanding that the amount paid to IMO would be reimbursed, with interest, to the 1992 IOPC Fund by the Supplementary Fund, when the Protocol establishing that Fund enters into force.

The 17th Executive Committee – July 2 to 3, 2002

Incidents involving the 1992 IOPC Fund

Nakhodka (1997)

It was noted that, at its eighth session, held on July 2 and 3, 2002, the Administrative Council of the 1971 IOPC Fund had decided that the conversion rate for the amount payable in the *Nakhodka* incident should be the rate of exchange between the SDR and Japanese Yen on February 19, 1997 – the date when the 1971 Fund Executive Council authorized the Director to make a settlement of claims.

The Canadian delegation had suggested to the 1971 Fund Administrative Council on July 2 and 3, 2002, the adoption of February 19, 1997, as the date for establishing the exchange rate. The delegation's reasoning was that the principle for the 1971 Fund using this date parallels that previously used by the 1992 Fund Assembly in October 1997 in arriving at the date it used (April 17, 1997) for the applicable rate of exchange for the conversion under the 1992 Convention.

This decision by the 1971 Fund Administrative Council was necessitated by the fact that the shipowner's limitation fund was not constituted in the *Nakhodka* case. Under the 1971 Fund Convention, normally the conversion of the SDR into national currency should be made on the basis of the rate applicable on the date when the shipowner establishes its limitation fund.

It was reported to the Executive Committee that as of July 1, 2002, it had not yet been possible to obtain the approval of the Japanese Ministries involved in the proposal settlement and that a further informal meeting before the Court was to be held on July 30, 2002.

With regard to the distribution between the 1971 and the 1992 IOPC Funds of any amount recovered on the basis of the global settlement, the Committee decided to postpone its decision regarding the distribution of any amount recovered. The Director was instructed to carry out a further study of the options available and their implications for the two Funds.

Both the 1992 and 1971 Funds have made payments in compensation in this incident. Canada's liability for contributions is in the 1971 Fund only.

Incident in Sweden (2000)

During late September and early October 2000 persistent oil landed on the shores of the two islands to the north of Gotland in the Baltic Sea and on several islands in the Stockholm archipelago. The Swedish Coast Guard, the Swedish Rescue Service Agency and local authorities undertook clean-up operations.

The investigations by the Swedish authorities indicated that the oil could have been discharged from the Maltese tanker *Alambra*. According to the Coast Guard, analysis of the oil samples from the polluted islands matched those samples taken from the *Alambra*. The shipowner and the insurer maintained that the oil had not originated from the *Alambra*. The Swedish Coast Guard imposed a fine on the shipowner. The shipowner has appealed.

The Executive Committee noted that the Swedish authorities had informed the Director that, if they are unsuccessful in receiving compensation from the shipowner, they would consider claiming against the 1992 IOPC Fund.

It was noted that in order to recover from the Fund, the claimant must prove that damage resulted from a convention "ship".

Audit Body

The Committee was reminded that elections of the Audit Body are set for October 2002. Nominations of candidates are to be submitted to the Director by September 2, 2002.

The 18th Executive Committee – October 14 to 18, 2002

Incidents involving the 1992 IOPC Fund

Nakhodka (1997)

The Executive Committee decided that the financial benefits of the global settlement – approved by the governing bodies at the April/May sessions – should be distributed in proportion to the respective liabilities of the two Funds, resulting in the 1971 Fund receiving 43.268% and the 1992 Fund 56.732% of these benefits. The Committee also decided that all costs borne by the Funds should be apportioned between the two Funds on the same basis.

By way of lessons learned in the *Nakhodka* incident, the Japanese delegation called for a review of the settlement process and the better use of surveyors and supplementing the Claims Manual with actual examples of claims assessment.

The Canadian delegation expressly supported the decision on distribution and welcomed the Japanese proposal, and expressed the view that this should be referred to the 3rd Interessional Working Group.

The Committee decided that the Director should report to the governing bodies at the October 2003 session on the points raised by the Japanese delegation. The Director was invited to submit a document to the February 2003 meeting of the 3rd Intersessional Working Group on issues that could be usefully considered by the Group

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Erika (1999)

The Executive Committee decided that, in the light of the uncertainties that remain as to the level of admissible claims arising out of the *Erika* incident, the level of payments should be maintained at 80 per cent of the amount of the damage actually sustained by the respective claimants, as assessed by the experts engaged by the 1992 Fund and Steamship Mutual. It was also decided that the level of payments should be reviewed at the Committee's 20th session, probably in February 2003.

The test in the 1992 CLC makes it practically impossible to break the shipowner's right to limit liability. Nevertheless, the Committee decided to authorize the Director to formally challenge the shipowner's right to limit his liability under the 1992 CLC and to commence recourse actions against various parties, as a protective measure, before the expiry of the three-year limitation period.

Al Jaziah I (2000)

In this case there are good prospects of obtaining a favourable judgement against the shipowner in a recourse action. However, there is uncertainty about realizing on any judgement.

Most delegations expressed the view that the question of whether or not to pursue a recourse action against the shipowner raised an important issue of principle. The Committee decided that the 1992 IOPC Fund should pursue recourse action against the shipowner, as an issue of the "polluter pays principle". The Committee recognized that the decision to pursue a recourse action, in this particular case, represented a deviation from the Funds' policy of basing their decisions in part on the prospects of recovery in the event of a favourable judgement.

Incident in the United Kingdom

The Committee noted that in September 2002 a quantity of oil stranded on a shoreline near Hythe, Kent. An analysis of the pollution samples led to the conclusion that the oil residues were most likely to have originated from a spillage of heavy Middle Eastern crude oil.

There are no refineries or pipelines in the vicinity of Hythe. Consequently, in the Director's view the oil most probably originated from an oil tanker – i.e. a "Ship" as defined in the 1992 CLC.

The Canadian delegation sought clarification of the Director's view and, to this end, suggested that a legal opinion be obtained on the interpretation of the Conventions in this regard.

The Executive Committee endorsed the interpretation that the 1992 Fund Convention applied also to spills of persistent oil even if the ship from which the oil came could not be identified. It applied provided that it was shown to the satisfaction of the 1992 Fund, or in the case of dispute to the satisfaction of a competent court, that the oil originated from a ship as defined in the 1992 Fund Convention.

The 7th Session of the Assembly – October 15 to 18, 2002

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 on its fourth meeting held in April/May 2002. The Chairman mentioned that the Working Group had focused on two issues: environmental damage and shipowners' liability.

The Assembly considered and approved the Working Group proposal for a revised text of the section of the 1992 IOPC Fund's Claims Manual regarding environmental damage. The Assembly also instructed the Director to publish a new version of the Claims Manual incorporating the amendment to the section on environmental damage.

Note: The revised text for the Claims Manual is contained in Appendix F.

With regard to the shipowners' liability and related issues, the Chairman of the Working Group mentioned that there had been a wide divergence of opinions on the question of whether amendments should be made to the provisions in the 1992 CLC regarding shipowners' liability and related issues. *See SOPF Administrator's Annual Report 2001-2002 at section 4.6.3 "Shipowner's Limitation of Liability".* He also mentioned that it had been decided by the Working Group to retain this item for further consideration.

The Assembly decided that the Working Group should re-convene in February 2003 to continue work on the remaining issues of its mandate.

Financial Statements and Auditor's Report and Opinion

The external auditor reported that a detailed review had been carried out of the recently established Claims Handling Database and Tourism Claims Assessment and Tracking Systems (TCATS). He stated that the systems had been developed and implemented in a satisfactory and effective manner, that controls were adequate to ensure that data integrity could be relied upon and that the review gave assurance over the adequacy of security and back-up procedures. He concluded that the Claims Handling Database and TCATS had clearly enhanced the Fund's ability to manage claims arising from incidents.

The external auditor provided an unqualified audit opinion on the financial statements for 2001. The Assembly approved the account.

Election of Members of the Audit Body

The 1992 IOPC Fund Assembly and the 1971 IOPC Fund Administrative Council held a joint session to consider the nominations made by Member States. The following were elected as members of the Audit Body for a period of three years:

Professor Eugenio Conte (Italy)
Mr. Charles Coppolani (France)
Mr. Maurice Jaques (Canada)
Mr. Heikki Muttilainen (Finland)
Dr. Reinhard Renger (Germany)
Professor Hisashi Tanikawa (Japan)

The 1992 Fund Assembly and the 1971 Fund Administrative Council elected Mr. Charles Coppolani (France) as Chairman of the Audit Body. Mr. Nigel MacDonald (United Kingdom) was elected, as the member of the Audit Body not related to the Organizations ("outsider").

The mandate of the Audit Body states: "The members of the Audit Body shall perform their functions independently and in the interest of the organization as a whole. The members elected from Member States shall not receive any instructions from their Governments."

The final Composition and Mandate of the IOPC Funds' Audit Body is contained in Appendix G.

Non-submission of Oil Reports

The Assembly repeated its serious concern as regard the number of Member States which had failed to fulfil their treaty obligations to submit oil reports. The Assembly also emphasized that it was crucial for the functioning of the regime of compensation established by the Fund Convention that States submitted the reports on oil receipts.

The Canadian delegation and others expressed dismay that the 1992 IOPC Fund already shows signs of this problem in the proportions experienced under the 1971 IOPC Fund. The Canadian delegation indicated its willingness to re-submit to the Working Group its earlier paper, suitably updated.

The Assembly instructed the Director to pursue his efforts to obtain the outstanding oil reports.

Status of the 1992 Fund Convention

The Assembly noted that by October 2003 the 1992 Fund Convention would have 82 Contracting States.

Organization of Meetings

On suggestion of the Canadian delegation, the Assembly agreed that time could be saved at meetings by not introducing documents in respect of which no decision was required.

With regard to the distribution of information, the Assembly decided that documents prepared by delegations to the Assembly, the Executive Committee, or Working groups should, in general, be submitted to the Secretariat at least three weeks before the meeting starts. This would allow distribution to delegations no less than two weeks before the meeting. It was also decided that documents prepared by the Secretariat should, in general, be available no less than two weeks before the start of a meeting, although a degree of flexibility in this regard should be maintained especially in respect of incident-related documents.

Election of Members of the Executive Committee

In accordance with the 1992 Fund Resolution N°5, the Assembly elected the following States as members of the Executive Committee, to hold office until the end of the next regular session of the Assembly:

Eligible under paragraph (a)	Eligible under paragraph (b)
Canada	Cameroon
France	Greece
Italy	Liberia
Republic of Korea	Marshall Islands
Singapore	Mexico
Spain	Philippines
United Kingdom	Poland
	Sweden

Sharing of Joint Administrative Costs between the 1992 Fund and the 1971 Fund

The Assembly approved the Director's proposal that the costs of running the joint Secretariat for 2003 should be distributed with 80% to be paid by the 1992 Fund and 20% by the 1971 Fund. This distribution would not apply to certain items in respect of which it was possible to make a distribution based on the actual costs incurred by each Organization, as set out in the explanatory notes to the draft budget for 2003.

It was noted that the Administrative Council of the 1971 Fund had agreed to this distribution at its 9th session.

Working Capital

The Assembly decided to maintain the working capital of the 1992 Fund at £20 million.

Budget for 2003 and Assessment of Contribution to the General Fund

The Assembly adopted a budget for 2003 for the administrative expenses for the joint Secretariat with a total of £3 012 857.

The Assembly decided to levy contributions to the General Fund for a total of £3 million, with the entire levy due for payment by March 1, 2003.

Note: Normally all Canadian contributions to the General Fund are paid from the SOPF. See section 4.8 of this report.

Assessment of Contributors to Major Claims Funds

In order to enable the 1992 Fund to make payments of claims for compensation, fees and expenses arising out of the *Erika* incident, the Assembly decided to raise 2002 contributions to the *Erika* Major Claims Fund of £28 million. The Assembly also decided that the entire levy to the *Erika* Claims Fund should be due for payment by March 1, 2003.

Note: The Canadian contributions to this £28 million, to the extent invoiced, shall be paid from the SOPF.

Quorum at Assembly Sessions – Creation of an "Administrative Council"

Based on a compromise proposed by the Director, the Assembly decided unanimously to adopt the Resolution reproduced at Annex IV. This Annex is contained in Appendix H.

The 19th Executive Committee – October 18, 2002

The Executive Committee elected Mr. J. Rysanek (Canada) as Chairman and Lieutenant Commander K, Amarantidis (Greece) as Vice-Chairman until the end of the next regular session of the Assembly, which will be held during the week of October 20, 2003.

The 20th Executive Committee – February 3, 4 and 7, 2003

Incidents involving the 1992 IOPC Fund

Kuzbass (1996)

The Committee recalled that in July 1998 the Federal Republic of Germany had brought legal actions against the owner of the Russian tanker *Kuzbass* (88,692 gross tons), suspected of having caused oil pollution in Germany in June 1996, and his insurer, the West of England P & I Club, claiming compensation for the cost of clean-up operations. It was also recalled that the shipowner and his insurer had maintained that the polluting oil did not originate from the *Kuzbass*.

It was noted that on December 12, 2002, a hearing before the Court of first instance had been held in Flensburg. It was noted that the Court had rendered a judgement on liability only in which it held that the owner of the *Kuzbass* and the West of England Club were jointly and severally liable for the pollution damage on grounds that the circumstantial evidence pointed overwhelmingly to the oil having originated from the *Kuzbass*. The Committee noted that it was likely that the owner of the *Kuzbass* and the West of England Club would appeal against the judgement.

Nakhodka (1997)

The Japanese delegation expressed its satisfaction with the global settlement.

The Committee expressed its satisfaction that this incident had been settled, that the assessed amounts of all claims had been paid in full and that both the 1971 Fund and the 1992 Fund had recovered significant portions of the amounts paid by them in compensation.

It is expected that the Director shall report to the governing bodies in October 2003 on certain points raised by the Japanese Delegation (at the 18th session) concerning the need to improve the claims handling and settlement process in light of lessons learned from the *Nakhodka* incident.

Erika (1999)

The Committee noted that claims handling office in Lorient is functioning well. As at January 23, 2003, some 6,647 claims for £121 million had been received. Overall 6,188 claims totalling £100 million had been assessed at a total of £54 million.

The Committee considered the date from which the three-year time bar period runs in respect of various types of claims. A number of claimants had not taken legal action against the shipowner, the P&I Club and the Fund or had taken legal action later than December 12, 2002.

The Committee noted the distinction as regards to the starting point between the three year time bar period which ran from the date of damage, and the six year time bar period which ran from the date of the incident, and that therefore the starting point for the three-year time bar period would be the date when the individual claimant had suffered his or her loss or damage.

As part of its intervention in support of the Director's considerations, the Canadian delegation noted that Canadian legislation, for example, recognizes in part the difference between (1) the day on which the oil pollution damage occurred, (2) the day on which costs and expenses were incurred and (3) the day on which loss or damage occurred.

The Committee decided that the three-year time bar period should be considered to start to run at the earliest from the beginning of the period of the loss suffered by the individual claimant. The Committee recognized that there may be claims of which the starting point for the time bar period may be some time after the beginning of the period of the loss, but that such claims would have to be considered in the light of the particular circumstances in each case.

In view of the remaining uncertainties, the Canadian delegation supported the Committee decision that the level of payments should be maintained at 80% of the amount of the assessed damage suffered, but that the Director should be authorized to increase the level to 100% when he considered it safe to do so.

Slops (2000)

The Greek-registered waste oil reception facility *Slops* (10,815 gross tons) sustained a fire and explosion on June 15, 2000, while at anchor in the port of Piraeus, Greece. The *Slops* was laden with 5,000 tonnes of oily water of which 1,000 to 2,000 tonnes was believed to be oil. A substantial quantity of the oil was spilled causing extensive shoreline pollution.

The Executive Committee recalled that at its 8th session, held in July 2000, the Committee had decided that, since the *Slops* was not engaged in the carriage of oil in bulk, it could not be regarded as a "ship" for the purpose of the 1992 Civil Liability Convention and the 1992 Fund Convention and, therefore, these Conventions did not apply to this incident.

The 1992 Civil Liability Convention states:

> *"Ship" means any sea-going vessel and seaborne craft of any type whatsoever constructed or adapted for the carriage of oil in bulk as cargo, provided that a ship capable of carrying oil and other cargoes shall be regarded as a ship only when it is actually carrying oil in bulk as cargo and during any voyage following such carriage unless it is proved that it has no residues of such carriage of oil in bulk aboard.*

The Committee recalled that two Greek companies had taken legal action in the Court of first instance in Piraeus, against the 1992 Fund claiming compensation for the cost of clean-up and pollution prevention. The Committee noted that in their pleadings the companies had stated that the *Slops* had been constructed exclusively to carry oil by sea (i.e. was constructed as a tanker), that it had a nationality certificate as a tanker and that it was still registered as a tanker with the Piraeus Ship's Registry. It was noted that the *Slops* did not have any liability insurance under the 1992 Civil Liability Convention.

The Committee noted that the Court had rendered its judgement on December 13, 2002. It was also noted that, as regards the actions against the 1992 Fund, the Court had held that the *Slops* fell within the definition of "ship" laid down in the 1992 Civil Liability Convention and the 1992 Fund Convention. The Committee noted the Court's opinion that any type of floating unit originally constructed as a sea-going vessel for the purpose of carrying oil was and remained a ship, although it may subsequently be converted into another type of floating unit, such as a floating oil waste receiving and processing facility, and notwithstanding that it may be stationary or that the engine may have been temporarily sealed or the propeller removed.

The Committee also noted that the claimants had argued that any sea-going vessel and any sea-borne craft constructed for the carriage of oil in bulk as cargo fell under the definition of "ship" whether or not it was on a voyage and that the proviso in the definition of "ship" requiring a ship to be actually carrying oil in bulk as cargo only applied to oil/bulk/ore carriers.

The Greek delegation took the view that the proviso in the definition of "ship" in the 1992 Civil Liability Convention did not apply to vessels constructed as tankers, but only to combination carriers, and that a different interpretation made the distinction of two categories of ship meaningless.

Noting that since the Executive Committee had, at its 8th session in July 2002, set out clearly the reasons why the *Slops* did not fall within the definition of "ship" and, as observed by the Chairman, the issue involved raised an important question of interpretation of one of the basic definitions of the 1992 Conventions, the Committee decided to appeal the Greek Court's decision of December 13, 2002.

The Canadian delegation in its intervention supporting the appeal joined others in thanking the Greek delegation for its analysis of the issue and invited that delegation to provide its remarks in writing for the benefit of the Third Intersessional Working Group. The Greek delegation agreed to supply a text to the Secretariat.

Prestige (2002)

On November 19, 2002, the Bahamas – registered tanker *Prestige* (42,820 gross tons) broke in two and sank 170 nautical miles west of Cape Finistere on the northwest coast of Spain. The tanker was loaded with approximately 77,000 tonnes of heavy fuel oil. An unknown quantity of oil was released when the ship broke in half.

Considerable stretches of the Spanish coastline were affected by the oil spill from the mouth of the Rio Mino to the French boarder, totalling 2,890 kilometres of coast. National and international resources were mustered to clean-up the pollution at sea and onshore. The cost of the clean-up operations, including the cost of participation of international resources, is being borne by Spain.

The Spanish delegation stated that authorities had predicted final clean-up costs would be a minimum of £735 million (1 million euros).

It was noted that ITOPF estimates the final total clean-up response costs in Spain and Portugal should be £110-147 million. ITOPF estimates final clean-up costs in France at £11-15million.

Experts engaged by the 1992 Fund say that if all fishery bans remain in place to the end of 2003 losses could be £146-183 million. If the majority of bans were to be lifted by the end of March 2003 losses should be in the region of £59-73 million.

It was noted that the potential impact on tourism in Spain and France is still undetermined.

The Spanish delegation announced to the Committee that the fishing ban had been lifted on the weekend over a considerable area and that there had been large landings of ground fish.

The Committee invited the Director to convene an extraordinary session of the Assembly during the week of May 6, 2003, to consider whether contributions should be levied for payment during the second half of 2003 in order to facilitate payments of compensation.

With respect to potential level of payments of compensation, the Canadian delegation intervened to question whether the countries involved intended to stand last in line for payment in respect of clean-up costs, as well as their subrogated claims. The Spanish Delegation in response advised that this matter is currently under consideration by Spanish authorities. The French delegation in response stated that the three affected States should make their positions clear to the Committee in this regard.

The London P&I Club representative drew the Committee's attention to advice from the Club's Spanish lawyers indicating that if the Club were to make payments in line with past practice (where the P&I Club pays compensation first and the Fund starts paying only when the Club has reached its CLC limitation amount) it was highly likely that these payments would not be taken into account by the Spanish courts when the shipowner set up the limitation fund with the result that the Club could end up paying twice the limitation amount.

The London Club representative stated that it appeared the Club had no alternate but to deposit the limitation fund with a competent court in Spain or France. The Canadian delegation intervened to encourage the Club and Spanish State lawyers to continue discussions in this regard.

A number of delegations, including the Canadian delegation, accepted that the 1992 Fund could not dictate to the London Club that it should make compensation payments without the Club receiving a guarantee that it would not be required to pay double the limitation amount. Those delegations were of the view that it would therefore be necessary for the Fund to make payments from the outset. It was noted that if the 1992 Fund were to do so in the circumstances, the Fund could only pay up to 135 million SDR minus the shipowner's limitation amount under the 1992 CLC.

The Committee considered that it was not possible at this stage to make any meaningful assessment of the magnitude of the total amount of the established claim arising from the *Prestige* incident. The Committee decided in view of this uncertainty the Director's authority to make payments should, for the time being, be limited to provisional payments under Internal Regulation 7.9.

It was noted that the limitation amount applicable to the *Prestige* under the 1992 CLC was approximately 18.9 million SDR or €25 million (£15.9 million).

Following the same principles as in the *Nakhodka* incident, the Executive Committee decided that in the *Prestige* incident the conversion of 135 million SDR into Euros should be made on the basis of the value of that currency vis-à-vis the SDR on the date of the adoption of the Executive Committee's Record of Decisions of its 20th session, i.e. February 7, 2003.

The Third Intersessional Working Group (Fifth Meeting)

The fifth meeting of the Third Intersessional Working Group was held from February 4 to 7, 2003. 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:

Revision of the Civil Liability and IOPC Fund Conventions

The Working Group decided to recommend that the Secretariat prepare a general statistical analysis on the costs of each incident previously covered by the CLC and IOPC Fund regimes. The objective of the study is to assist in evaluating whether the current arrangement for the sharing of costs between the shipowners and oil receivers is an equitable one. The study may provide a picture of the actual apportionment of payment between shipowners and oil receivers.

Most delegations, including the Canadian delegation, underscored their resolve to achieve an increase in shipowners' liability under the CLC.

The review of the existing financial limits of the liability and compensation regime means that, for now, the liability channelling provisions in the CLC remain unchanged. Also, the test under the 1992 CLC for breaking the shipowner's right to limit liability remains the same. There was support for taking a look at what could be done about future provisions on recourse action.

The Oil Companies International Marine Forum proposed changes to the Conventions, including: first, the limit of liability for the owners of all ships regardless of size should be 90 million SDRs under the CLC. Second, all ships that carry oil in bulk as cargo, regardless of the amount, should be required to maintain insurance or other financial security in accordance with Article VII (CLC) to cover liability for oil pollution damage.

The International Association of Independent Tanker Owners submitted its position that it is necessary to protect the channelling of the liability to the registered owner of the ship. These provisions and the right to limit liability are considered by shipowners/insurers to be the most fundamental features of the CLC. In the Association's view, proposed changes to these provisions would be detrimental to shipowners and the victims of oil spills, because it could result in claimants having to resort to litigation in order to obtain compensation.

The International Group of P&I Clubs submits that substantive change to the liability and compensation system of the current Conventions will not work to the benefit of claimants. The international Group argues that attempts to amend the Conventions in substance will destroy what they consider to be a well-functioning system of compensation.

In the meantime, the international Group of P&I Clubs has already proposed a voluntary increase in CLC limits. This would increase the limit of liability for small ships to 20 million SDR. It would apply in those States that opt for the proposed third tier of compensation. The international Group notes *"this proposal is made in the context of the 1992 Conventions. It follows therefore that if any essential element of the 1992 Convention affecting tanker owners' liabilities were to be amended, shipowners and their Clubs reserve the right to withdraw the scheme"*.

It was noted that on November 1, 2003, there would be a 50% increase in the compensation limitation amounts of the current regime. Further, an IMO diplomatic conference is scheduled for May 12 to 16, 2003, to consider establishing an "optional" third tier of compensation.

Uniform Application of the Conventions

The Working Group considered a draft resolution submitted by the Director dealing with the application of certain provisions in the 1992 Conventions. It is felt that in the past the Conventions have not been applied in a uniform manner. Difficulties have arisen in some contracting states as a result of the relationship between the Convention and national law. This includes channelling of liability, time bar, enforcement of judgements, jurisdiction and distribution of the amounts available for compensation.

The Director's proposal of a resolution on uniform interpretation of the conventions was supported. The draft resolution was amended and accepted for submission to the Fund Assembly in October 2003.

The Resolution:

Considers *that the courts of the States Parties to the 1992 Conventions should take into account the decisions by the governing bodies of the 1992 Fund and the 1971 Fund relating to the interpretation and application of these Conventions.*

It is appreciated, however, that the Resolution may be of limited value, given the sovereignty of States and the independence of national Courts.

The text of the Resolution to be submitted to the Assembly for adoption is contained in Appendix I.

Further, the Secretariat was requested to establish a database containing information on important judgements by the national Courts that have been rendered for and against the Funds. The database should also include information on decisions on principles that have been taken by the Funds' Assemblies. The Director is to bring a proposal forward to the Assembly in October, in this regard.

Definition of "Ship"

The United Kingdom had submitted a proposal for the revision of the definition of "ship" under Article I of the 1992 CLC. In the United Kingdom's view there is an inherent ambiguity in the current definition in respect of tankers, and that there is clearly scope for different interpretations and unequal treatment of claimants. In addition, the United Kingdom suggests that, when the Conventions are amended, the opportunity should also be taken to amend the Conventions to reflect the policy decisions in respect of FSUs and FPSOs.

Note: See for example the discussion under *Slops* in the report on the February 2003 session of the 1992 Fund Executive Committee, above.

Although it was recognized that the current definition may still causes problems, there was divided support for both options presented by the United Kingdom. Many delegations, including the Canadian delegation, suggested that a solution must be found when revising the Convention. The Working Group was urged to keep in mind the Bunkers' Convention when reviewing possible solutions to ensure that certain types of vessels are not overlooked.

Mark-up on Claims for Fixed-Costs for Equipment

The Working Group considered a proposal submitted by Italy, the Netherlands, Poland, Spain and the United Kingdom for the payment of a mark-up on claims for fixed costs for equipment used to control and prevent oil pollution.

Although there was widespread support for the proposal in principle, there was a consensus that discussions in the Working Group should continue. The majority of delegations, including the Canadian delegation, indicated that this policy change could not be made by amending the Claims Manual, but rather by an amendment to the Convention.

Note: For ITOPF comments on the paper on fixed costs see section 4.7 under Challenges and Opportunities.

IOPC Fund Internet address is:

www.iopcfund.org

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 $6.06 million for a ship not exceeding 5,000 units of gross tonnage, increasing on a linear scale to approximately $120.75 million for ships of 140,000 units of tonnage or over, using the value of the SDR at April 1, 2003.

- An increase in the maximum compensation payable by the 1992 IOPC Fund to $273.04 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.

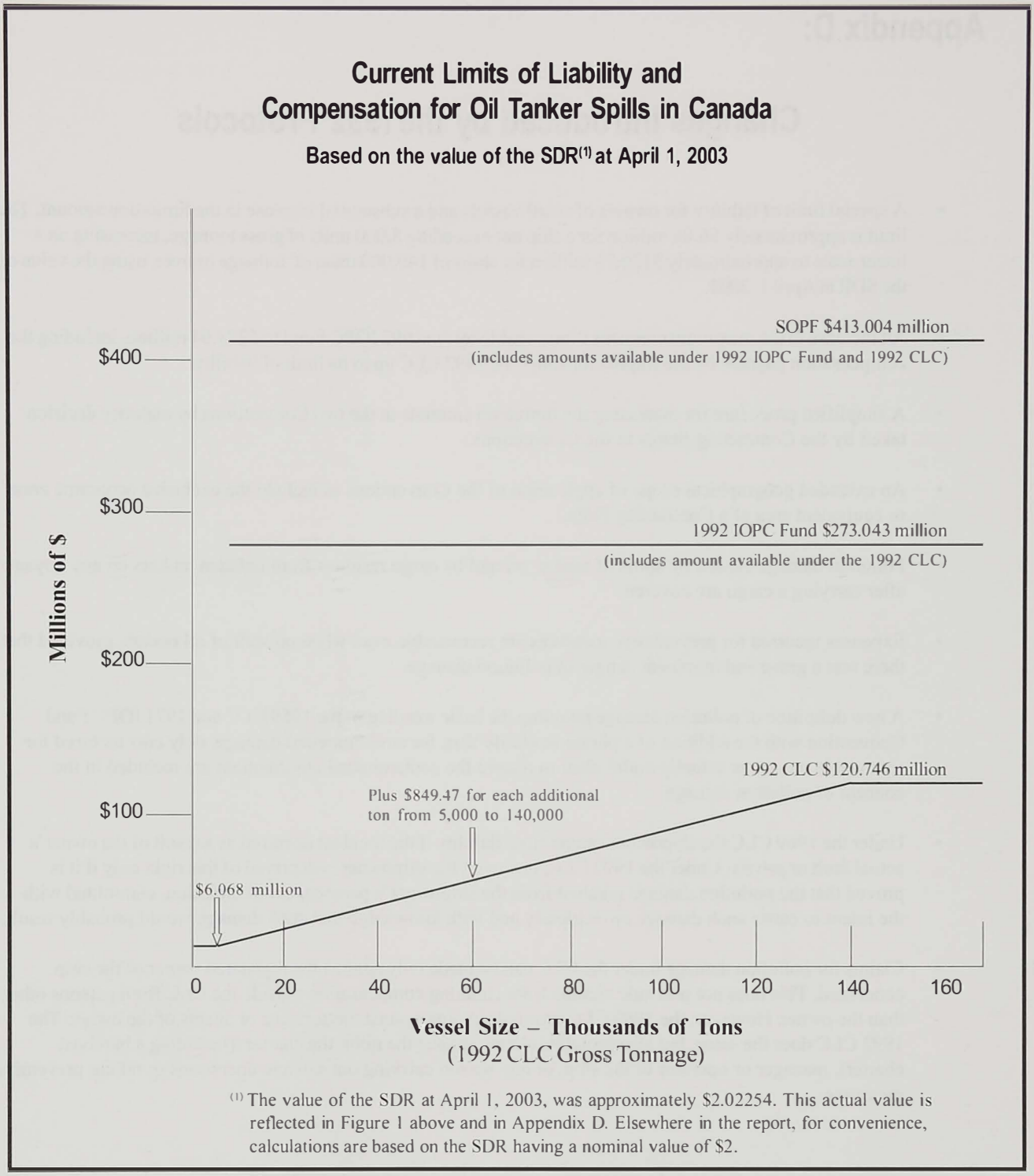

Figure 1

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 ($273.043 million) should increase by approximately 50% (to 409.56 million) effective November 1, 2003. The SOPF amount of approximately $139.96 million on top of that, would result in $549.52 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 25 April 2003

76 States for which Fund Protocol is in Force (and therefore Contracting States of the 1992 IOPC Fund)		
Algeria	France	Papua New Guinea
Angola	Georgia	Philippines
Antigua and Barbuda	Germany	Poland
Argentina	Greece	Portugal
Australia	Grenada	Qatar
Bahamas	Iceland	Republic of Korea
Bahrain	India	Russian Federation
Barbados	Ireland	Saint Vincent and the Grenadines
Belgium	Italy	Samoa
Belize	Jamaica	Seychelles
Brunei Darussalam	Japan	Sierra Leone
Cambodia	Kenya	Singapore
Cameroon	Latvia	Slovenia
Canada	Liberia	Spain
China (Hong Kong Special Administrative Region)	Lithuania	Sri Lanka
	Malta	Sweden
Columbia	Marshall Islands	Tonga
Comoros	Mauritius	Trinidad and Tobago
Croatia	Mexico	Tunisia
Cyprus	Monaco	Turkey
Denmark	Morocco	United Arab Emirates
Djibouti	Netherlands	
Dominica	New Zealand	United Kingdom
Dominican Republic	Norway	Uruguay
Fiji	Oman	Vanuatu
Finland	Panama	Venezuela

9 States that have deposited Instruments of Accession, but for which the IOPC Fund Protocol does not enter into force until date indicated	
Mozambique	26 April 2003
Madagascar	21 May 2003
Nigeria	24 May 2003
Gabon	31 May 2003
Congo	7 August 2003
Guinea	2 October 2003
Tanzania	19 November 2003
Namibia	18 December 2003
Ghana	3 February 2004

Appendix F:

Amendment to the 1992 IOPC Fund's Claims Manual

ANNEX I

The Section "Environmental damage" on pages 31 and 32 of the June 2000 edition of the Claims Manual is replaced by the following text:

Environmental damage

In most cases a major oil spill will not cause permanent damage to the environment as the marine environment has a great potential for natural recovery. Whilst there are limits to what man can do in taking measures to improve on natural processes, in some circumstances it is possible to enhance the speed of natural recovery after an oil spill through reasonable reinstatement measures. The costs of such measures will be accepted by the 1992 Fund under certain conditions.

The aim of any reasonable measures of reinstatement should be to bring the damaged site back to the same ecological state that would have existed had the oil spill not occurred, or at least as close to it as possible (that is to re-establish a biological community in which the organisms characteristic of that community at the time of the incident are present and are functioning normally). Reinstatement measures taken at some distance from, but still within the general vicinity of, the damaged area may be acceptable, so long as it can be demonstrated that they would actually enhance the recovery of the damaged components of the environment. This link between the measures and the damaged components is essential for consistency with the definition of *pollution damage* in the 1992 Civil Liability and Fund Conventions (see page 9).

In addition to satisfying the general criteria applied to the admissibility of claims for compensation under the 1992 Fund Convention (see page 19), claims for the costs of measures of reinstatement of the environment will only be considered admissible if the following criteria are fulfilled:

- the measures should be likely to accelerate significantly the natural process of recovery
- the measures should seek to prevent further damage as a result of the incident
- the measures 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
- 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.

The assessment should be made on the basis of the information available when the specific reinstatement measures are to be undertaken.

Compensation is paid only for reasonable measures of reinstatement actually undertaken or to be undertaken, and if the claimant has sustained an economic loss that can be quantified in monetary terms. The Fund will not entertain claims for environmental damage based on an abstract quantification calculated in accordance with theoretical models. It will also not pay damages of a punitive nature on the basis of the degree of fault of the wrong-doer.

Studies are sometimes required to establish the precise nature and extent of environmental damage caused by an oil spill and to determine whether or not reinstatement measures are necessary and feasible. Such studies will not be necessary after all spills and will normally be most appropriate in the case of major incidents where there is evidence of significant environmental damage.

The Fund may contribute to the cost of such studies provided that they concern damage which falls within the definition of *pollution damage* in the Conventions, including reasonable measures to reinstate a damaged environment. In order to be admissible for compensation it is essential that any such post-spill studies are likely to provide reliable and usable information. For this reason the studies must be carried out with professionalism, scientific rigour, objectivity and balance. This is most likely to be achieved if a committee or other mechanism is established within the affected Member State to design and co-ordinate any such studies, as well as reinstatement measures.

The scale of the studies should be in proportion to the extent of the contamination and the predictable effects. On the other hand, the mere fact that a post-spill study demonstrates that no significant long-term environmental damage has occurred or that no reinstatement measures are necessary, does not by itself exclude compensation for the costs of the study.

The Fund should be invited at any early stage to participate in the determination of whether or not a particular incident should be subject to a post-spill environmental study. If it is agreed that such a study is justified the Fund should then be given the opportunity of becoming involved in the planning and in establishing the terms of reference for the study. In this context the Fund can play an important role in helping to ensure any post-spill environmental study does not unnecessarily repeat what has been done elsewhere. The Fund can also assist in ensuring that appropriate techniques and experts are employed. It is essential that progress with the studies is monitored, and that the results are clearly and impartially documented. This is not only important for the particular incident but also for the compilation of relevant data by the Fund for future cases.

It is also important to emphasise that participation of the Fund in the planning of environmental studies does not necessarily mean that any measures of reinstatement later proposed or undertaken will be considered admissible.

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Appendix G:

Composition and Mandate of the IOPC Fund's Audit Body

ANNEX II

1. The Audit Body shall be composed of seven members elected by the 1992 Fund Assembly: one named Chairman nominated by Member States, five named individuals nominated by Member States and one named individual not related to the Organisations ("outsider"), with expertise and experience in audit matters nominated by the Chairman of the 1992 Fund Assembly. Nominations, accompanied by the curriculum vitae of the candidate, should be submitted to the Director at least six weeks in advance of the session at which the election will take place.

2. Members of the Audit Body shall hold office for three years, once renewable. Of the first Audit Body to be elected, the term of three of those elected from Member States shall not be renewable.

3. The members of the Audit Body shall perform their functions independently and in the interest of the Organisations as a whole. The members elected from Member States shall not receive any instructions from their Governments.

4. Travel and subsistence expenses of the six members of the Audit Body elected from Member States shall be paid by the Organisations. The member not related to the Organisations ("outsider") shall be paid travel expenses and an appropriate fee.

5. The Audit Body shall:

   (a) review the effectiveness of the Organisations regarding key issues of financial reporting, internal controls, operational procedures and risk management;

   (b) promote the understanding and effectiveness of the audit function within the Organisations, and provide a forum to discuss internal control issues, operational procedures and matters raised by the external audit;

   (c) discuss with the External Audit the nature and scope of each forthcoming audit;

   (d) review the Organisations' financial statements and reports;

   (e) consider all relevant reports by the External Auditor, including reports on the Organisations' financial statements; and

   (f) make appropriate recommendations to the Assemblies.

6. The Audit Body shall normally meet at least twice a year .The Chairman of the Audit Body and the External Auditor may request that additional meetings should be held. The meetings shall be. convened by the Director, in consultation with the Chairman of the Audit Body.

7. The External Auditor, 'the Director and the Head of the Finance and Administration Department shall normally be present at the meetings.

8. The Chairman of the Audit Body shall report on its work to each regular session of the Assemblies.

9. Every three years the functioning of the Audit Body and its mandate shall be reviewed by the Assemblies on the basis of an evaluation report from the Chairman of the Audit Body.

92FUND/A.7/29, Annex II

Appendix H:

1992 Fund Resolution No. 7

ANNEX IV

Adopted by the 1992 Fund Assembly at its 7th session. held in October 2002

THE ASSEMBLY OF THE INTERNATIONAL OIL POLLUTION COMPENSATION FUND 1992 (1992 FUND),

NOTING that there are 71 States Parties to the 1992 Fund Convention, that 11 States have deposited instruments of ratification or accession and that a number of other States are expected to become Parties within the near future,

RECOGNISING that, as a result of the great increase in the number of 1992 Fund Member States, there is a risk that the Assembly of the Organisation will in the near future no longer be able to achieve a quorum,

ACKNOWLEDGING that this would result in the 1992 Fund's being unable to operate in a normal way,

MINDFUL that the 1992 Fund's objective is to pay compensation to victims of oil pollution damage in Member States,

RECALLING that it is the task of the Assembly, under Article 18.14 of the 1992 Fund Convention, to perform such functions as are necessary for the proper operation of the 1992 Fund,

AWARE that under Article 18.9 of the 1992 Fund Convention the Assembly may establish any temporary or permanent subsidiary body it may consider necessary, to define its terms of reference and to give it the authority needed to perform its functions,

CONSCIOUS of the need to establish a structure which will permit the 1992 Fund to operate even if the Assembly does not achieve a quorum at one or more of its sessions;

RECOGNISING that it is the general responsibility of the Assembly to ensure the proper operation of the 1992 Fund and that it is therefore the duty of the Assembly to take the necessary measures to achieve this,

1. **INSTRUCTS** the Director to convene a regular session of the Assembly of the 1992 Fund once every calendar year, as provided in Article 19, paragraph 1 of the 1992 Fund Convention, and in the invitations to urge States to make every effort to be represented at the session, and to draw attention to the consequences of a quorum not being achieved.

2. **HEREBY CREATES** a body to be known as the Administrative Council, which shall have the following mandate:

   (a) to perform such functions as are allocated to the Assembly under the 1992 Fund , Convention or which are otherwise necessary for the proper operation of the 1992 Fund;

   (b) to elect members of the Executive Committee in accordance with 1992 Fund Resolution N°5;

   (c) to give instructions to the Director concerning the administration of the 1992 Fund;

   (d) to supervise the proper execution of the Convention and of its own decisions;

3. **FURTHER RESOLVES** that the Administrative Council shall assume its functions whenever the Assembly fails to achieve a quorum, on the condition that, if the Assembly were to achieve a quorum at a later session, it would resume its functions;

4. **DECIDES** that the following States and organisations shall be invited to take part in sessions of the Administrative Council:

   (a) 1992 Fund Member States;

   (b) other States which would be invited to attend sessions of the Assembly as observers; and

   (c) intergovernmental organisations and international non-governmental organisations which have observer status with the 1992 Fund; and

5. **FURTHER** DECIDES:

   (a) that decisions of the Administrative Council shall be taken by majority vote of those 1992 Fund Member States present and voting, provided that decisions which under Article 33 of the 1992 Fund Convention require two-thirds majority shall be taken by two-thirds majority of the 1992 Fund Member States present;

   (b) that at least 25 Member States shall constitute a quorum for the meetings of the Administrative Council;

   (c) that the Rules of Procedure of the Administrative Council shall be those of the Assembly, to the extent applicable;

   (d) that credentials are required for delegations in accordance with Rule 9 of the Rules of Procedure of the Assembly; and

   (e) that the sessions of the Administrative Council shall be held in public, unless the Council decides otherwise.

Appendix I:

Draft Resolution on the Interpretation and Application of the 1992 Civil Liability Convention and the 1992 Fund Convention

ANNEX

THE ASSEMBLY OF THE INTERNATIONAL OIL POLLUTION COMPENSATION FUND 1992 set up under the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1992 (1992 Fund Convention),

NOTING that the States Parties to the 1992 Fund Convention are also parties to the International Convention on Civil Liability for Oil Pollution Damage, 1992 (1992 Civil Liability Convention),

RECALLING that the 1992 Conventions were adopted in order. to create uniform international rules and procedures for determining questions of liability and providing adequate compensation in such cases,

CONSIDERING that it is crucial for the proper and equitable functioning of the regime established by these Conventions that they are implemented and applied uniformly in all States Parties,

CONVINCED of the importance that claimants for oil pollution damage are given equal treatment as regards compensation in all States Parties,

MINDFUL that, under Article 235, paragraph 3, of the United Nations Convention on the Law of the Sea 1982, States shall co-operate in the implementation of existing international law and the further development of international law relating to the liability for and assessment of damage caused by pollution of the marine environment,

RECOGNISING that, under Article 31, paragraph 3, of the Vienna Convention on the Law of Treaties 1969, for the purpose of the interpretation of treaties there shall be taken into account any subsequent agreement between the parties regarding the interpretation of the treaty or the application of its provisions and any subsequent practice in the application of the treaty which establishes the agreement of the parties regarding its interpretation,

DRAWING ATTENTION to the fact that the Assembly and the Executive Committee of the International Oil Pollution Compensation Fund 1992 (1992 Fund) and the governing bodies of its predecessor, the International Oil Pollution Compensation Fund 1971 (1971 Fund), composed of representatives of Governments of the States Parties' to the respective Conventions, have taken a number of important decisions on the interpretation of the 1992 Conventions and the preceding 1969 and 1971 Conventions and their application, which are published in the Records of Decisions of the sessions of these bodies <2>, for the purpose of ensuring equal treatment of all those who claim compensation for oil pollution damage in States Parties,

EMPHASISING that it is vital that these decisions are given due consideration when the national courts in the States Parties take decisions in the interpretation and application of the 1992 Conventions,

CONSIDERS that the courts of the States Parties to the 1992 Conventions should take into account the decisions by the governing bodies of the 1992 Fund and the 1971 Fund relating to the interpretation and application of these Conventions.

<2> IOPC Funds' website: www.iopcfund.org

92FUND/WGR.3/15 -Annex