



SHIP-SOURCE OIL POLLUTION FUND



**The Administrator's
Annual Report**

2003-2004

Canada



Photo courtesy of Environment Canada
See section 3.24.

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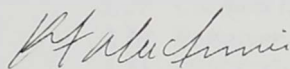
Canada

The Honourable Jean Lapierre, P.C., M.P.
Minister of Transport
Ottawa, Ontario
K1A 0N5

Dear Mr. Lapierre:

It is an honour to submit the Annual Report for the Ship-source Oil Pollution Fund for the fiscal year ending March 31, 2004, to be laid before each House of Parliament, in accordance with Section 100 of the *Marine Liability Act*.

Yours sincerely,



Kenneth A. MacInnis, QC
The Administrator of the
Ship-source Oil Pollution Fund

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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 Oil spill Program
CCG	Canadian Coast Guard
CEDRE	Centre of Documentation, Research and Experimentation on Accidental Water Pollution
CEPA	<i>Canadian Environmental Protection Act</i>
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	<i>Canadian Shipping Act</i>
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
FTPSTO	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
LLMC	Limitation of Liability for Maritime Claim
LOU	Letter of Undertaking
MARPOL	Marine Pollution
MCTS	Marine Communication Traffic Services
MEPC	Marine Environment Protection Committee
MLA	<i>Marine Liability Act</i>
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 Atmosphere Administration
NRDA	Natural Resource Damage Assessment
NTCL	Northern Transportation Company Limited
OBO	Ore/Bulk/Oil
OCIMF	Oil Companies International Marine Forum
OPA	<i>Oil Pollution Act</i>
OPA 90	<i>Oil Pollution Act 1990 (US)</i>
OSRL	Oil Spill Response Ltd
P&I Club	Protection and Indemnity (Marine Insurance) Association
PPM	Part 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 Maine 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, 2004, was approximately \$1.94812. 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

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

I am pleased to report that the Ship-source Oil Pollution Fund (SOPF) grew to some \$ 330.7 million in March 31, 2004 from some \$ 280.5 million on March 31, 1999. This was achieved after paying out of the Fund all operating costs and expenses, all private and Government claims for Canadian incidents and all Canadian contributions to the International Fund.

The Canadian Compensation Regime

Canada's national Fund, 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.

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 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 International 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, 2004, the maximum liability of the SOPF is approximately \$144 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 current statutory claims regime, on the principle that the **polluter pays** (subject to limitation of liability) has as its “four cornerstones”:

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

The Rule of Law

The Administrator must act in accordance with the laws governing the operation of the SOPF - not arbitrarily nor in deference to external 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.

During the current year we handled 57 active incidents files. Particularly, 15 Canadian claims totaling some \$3.4 million were settled for some \$2.7 million plus interest (section 3).

The SOPF continues to pay considerable contributions to the International Fund: \$4.8 million this year, and a total of some \$38.2 million since 1989.

With the 50 percent rise in compensation levels effective November 2003, the potential liability of the SOPF to the International Fund has increased significantly (See Figure 1, Appendix D).

Derelict Vessels

The *Pender Lady* pollution incident, at section 3.27 herein, also raises the spectre of serious personal injury and loss of life caused by the capsizing or sinking of such vessels.

Derelict vessels come to our attention at various places, especially on the west coast of Canada.

From the Administrator's view, while there are mandated obligations on government to ensure the safety of vessels and the people in them, it is essential that these rules and regulations be strictly applied in all cases to preclude unnecessary dangers to both the environment and persons.

We are advised that the CCG and Transport Canada, as a first step, have initiated the development of a formalized "standard operating procedure" (SOP) for incidents involving derelict vessels.

Environmental Loss

Environmental damage law in Canada is developing.

On May 6, 2004, the Canadian Minister of Environment tabled new legislation (Bill C-34) to amend the *Migratory Birds Convention Act (1994)* and the *Canadian Environmental Protection Act (1999)*.

In June, 2004, the Supreme Court of Canada issued a decision on natural resource damage evaluation which touched on the notion of compensation for non-pecuniary loss (sections 4 and 5 have more on this topic) in the matter of *British Columbia v Canadian Forest Products Ltd.*, 2004 SCC 38, file number 29266. The link following provides access to this decision:

<http://www.lexum.umontreal.ca/csc-scc/en/rec/html/2004scc038.wpd.html>

Illegal Discharge of Oily Waste at Sea

Section 4 – Challenges and Opportunities - starts off with Bill C-34 introduced in Parliament on May 6, 2004. Some legal experts say that Canadian law and practice may profoundly change if and when the bill passes, particularly relating to pollution from a ship in transit in Canada's exclusive economic zone.

Outreach

We continue to deepen our understanding of the perspectives of various stakeholders in the Canadian regime, national and international. Some insights are highlighted in section 5.

Our Thanks

We acknowledge the assistance received from persons in both the private and public sectors as well as the International Fund. We are particularly pleased with the cooperation of Canadian shipowners, the oil industry, and the Canadian Maritime Law Association.

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, 2004. It describes Canada's domestic compensation regime. First, Canada's national Fund, the SOPF, covers ships of all classes, 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. During the year, Canadian claims totaling approximately \$ 3,378,395.26 before interest were settled and paid in the aggregate amount of \$ 2,693,401.01 plus interest of \$ 89,149.58. In addition, various outstanding claims made by the CCG since April 2000 for administrative costs, referred to in section 4.9 of the *Administrator's 2002-2003 Annual Report*, were settled and paid in the aggregate amount of \$ 5,370.81. The Administrator recovered, from third parties liable, approximately \$ 86,531.82 respecting payments made out of the SOPF to some claimants. This year the Administrator paid the amount of \$ 4,836,108.49 out of the SOPF to the 1992 IOPC Fund for incidents outside of Canada. As at March 31, 2004, the balance in the SOPF was \$ 330,734,143.74.

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, 2004, the maximum liability of the SOPF for all claims from one oil spill is \$143,599,686.20.

During the new fiscal year, the Minister of Transport has the statutory power to impose a levy for the SOPF of 43.06 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 to the consumer price index annually. No such levy (MPCF/SOPF) has been imposed since 1976.

Since 1989, the international IOPC Funds have received approximately \$38.2 million out of the SOPF. Canada is currently a Contracting State to the 1992 international oil pollution compensation regime. As such, our national Fund, the SOPF, continues to have potential significant future liabilities to the IOPC Funds for foreign incidents.

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

During the fiscal year, the Administrator responded to all enquiries about compensation entitlement and investigated all claims resulting from oil pollution. The length of time taken to process the respective claims regarding identified ships depended on the completeness of the supporting documentation.

The Administrator continues his outreach initiatives by actively participating in conferences, seminars and workshops. He met with management personnel in federal departments, government agencies, and organizations of the marine industry.

These outreach initiatives included:

- Attending meetings with senior representatives of Fisheries and Ocean and Environment Canada.
- Attending sessions of the Canadian Marine Advisory Council's national conferences held in Ottawa.
- Attending the Canadian Marine Advisory Council (Northern CMAC) held in Quebec, Quebec.
- Visiting the facilities of the ECRC Response Organization in St. John's, Newfoundland.
- Participating in the Atlantic Regional Environmental Emergency Team meetings held in Halifax, Nova Scotia.
- Participating in an oil spill waste management workshop hosted by the Newfoundland and Labrador Environmental Industry Association held in St. John's, Newfoundland.
- Participating in the Regional Advisory Council on Oil Spill Response held in St. John's, Newfoundland.
- Visiting the Canadian Coast Guard's environment response equipment facility in St. John's, Newfoundland.
- Participating at the second symposium of Emergency Response in the Marine Environment in Quebec, Quebec.
- Attending a special consultative meeting of the IMO Legal Committee Hazardous and Noxious Substances Correspondence Group held in Ottawa.
- Attending an International Oil Spill Conference held in Vancouver, British Columbia.
- Participating in the Transport Canada Marine Safety Course in Ottawa. (The Administrator made a presentation on the civil liability evidence requirements for the SOPF).
- Attending the Canadian Maritime Law Association executive committee meetings in Ottawa.
- Attending a conference on recent developments in relation to marine oil pollution hosted by the Faculty of Law, McGill University, Montreal.
- Participating in the International MARE-DASM Conference hosted by the Maritime Institute and Faculty of Law at Ghent University, Belgium.

The central theme of section 4 - Issues and Challenges – is the protection of the marine environment. This section highlights proposed changes to the Canadian marine pollution laws.

On May 6, 2004, the government introduced legislation (Bill C-34) to amend the *Migratory Birds Convention Act, 1994*, and the *Canadian Environmental Protection Act, 1999*. These amendments would expand the application of both of these *Acts* and facilitate their availability to support prosecutions in addition to, and perhaps in lieu of, the more traditional *Canada Shipping Act* regime. The amendments introduced by Bill C-34 are summarized in section 4. When the proposed amendments are made to the *Migratory Birds Convention Act, 1994*, the Act will contain, *inter alia*, a prohibition against any ship, or person, discharging any substance harmful to migratory birds in waters frequented by migratory birds. Maximum fines on conviction will be increased to \$300,000 on summary conviction or \$1 million on indictment.

Hansard (May 7, 2004) records that when the Honourable David Anderson, Minister of the Environment, tabled Bill C-34 he made the following observation during his speech to the House of Commons:

“There are probably none among us here who do not remember the Exxon Valdez disaster in the northeast Pacific and the horrifying pictures of dead fish, birds, seals and other marine life that had no chance against this thick oil on top of the water.

“What many here may not know is that more marine birds are killed every year by the oil discharged from ships on our east and west coasts than were killed by the entire Exxon Valdez disaster. These seabirds are killed by the chronic oil pollution in the ocean that comes from the discharge of oily waste from the bilges or ballast tanks of ships. And no, these ships are not supposed to dump this waste into the oceans. It is already against the law. But they do it and the impact is huge”.

Note: As a result of the dissolution of Parliament on May 23, 2004, the proposed legislation “died on the order paper”. It is expected that Bill-34 will be re-introduced in the next session of Parliament.

Included in the text of this report are updates on various issues surrounding the illegal discharge at sea of ship-generated oily waste. The question of marine waste- reception facilities in Canadian ports is also addressed. 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.

The ongoing work by Environment Canada officials to establish a national framework for implementing an environmental damage assessment protocol is highlighted. Since Treasury Board approved the Environmental Damage Fund, personnel in Environment Canada have organized and hosted seminars and workshops to develop a nationally consistent approach to handle environmental issues.

The report also 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.

Changes to the 1992 international compensation regime and the impact on the SOPF are explained. On November 1, 2003, the 1992 IOPC regime increased its liability and compensation limitation amount by 50.37 per cent for each oil tanker spill incident. Currently, under the 1992 Civil Liability and the 1992 IOPC Fund Conventions there is approximately \$395 million of coverage. Consequently, in Canada, the aggregate amount of funds available to cover an oil tanker spill is now approximately \$539 million, including the SOPF.

There is a report on the “optional” third tier of compensation now available to 1992 IOPC Fund Contracting States – which was adopted in May 2003. From the Canadian perspective the “optional” third tier raises particular issues and challenges. Some say there is no demonstrable need in Canada for compensation levels beyond the current 1992 IOPC regime limits already available with the recent increases effective November 1, 2003. Currently all required contributions to IOPC Funds, respecting qualified oil receipts in Canada by Canadian companies, are paid from Canada’s national Fund, the SOPF - an account in the accounts of Canada. It is noted that whether or not Canada becomes a Contracting State to this “optional” third tier - in addition to being a 1992 IOPC Fund Contracting State - is for Cabinet to decide. We are advised

Ship-source Oil Pollution Fund

that prior to any such proposal going to Cabinet there would be broad consultations with the public and private sectors, particularly Canadian marine interests.

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 report 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 1 of the *Inquiries Act*;
- May take recourse action against third parties to recover the amount paid from 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, 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, 2004, the Minister of Transport has the statutory power to impose a levy of 43.06 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, 2004, the maximum liability of the SOPF is \$143,599,686.20 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 preventative measures; and
- Claims for oil pollution damage and clean-up costs where the identity of the ship that caused the discharge cannot be established (mystery spills).

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 a 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 the 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 Shipowner's Limitations Fund set up under the 1992 CLC.



3. Canadian Oil Spill Incidents

During any particular year the SOPF receives many reports of oil pollution incidents from a variety of sources, including individuals who wish to be advised if they are entitled under the *CSA/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 57 active incident files. Of these, 47 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 hind cast 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 hind cast 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 ship-owner 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 ship-owner, 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 and the Administrator instructed his counsel to proceed to trial.

3.2 Gordon C. Leitch (1999)

The Gordon C. Leitch is a 19,160 gross ton Canadian Great Lake vessel and, on March 23, 1999, she was berthed at an iron ore facility in Havre-Saint-Pierre, Quebec, on the lower north shore of the St. Lawrence River. When moving the vessel she was caught by the strong wind and hit a dolphin, cracking the hull and releasing an estimated 49 tonnes of heavy fuel oil. The owners directed the clean up with contractors, under CCG guidance and making use of CCG materials and equipment.

The CCG reported that their costs and expenses of \$233,065.00 were paid by the owners. Armed with this knowledge of settlement the Administrator's Annual Report (2000 – 2001) noted that he had closed his case file on the incident.

On March 22, 2002, counsel for the Conseil des Innus de Ekuanitshit et tous les membres 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 and the SOPF is now a party by statute to the action.

A pretrial teleconference between the various parties and Mr. Justice Hugesson was held on October 15, 2003 at which future actions and target dates were set.

A further teleconference was held on November 27, 2003 at which deadlines were set for the production of written representations with a hearing to be held on January 14, 2004.

This hearing took place as scheduled before Mr. Justice Hugesson who made it clear that liability of the SOPF under Section 84 of the MLA, could not be contemplated now because the conditions precedent had not yet been satisfied. He also indicated that a claim under Section 88 could exist against the SOPF, but even there, the claim would be proscribed since no claim was filed within the three years from the mishap.

It is understood that settlement negotiations between the plaintiff and the shipowner are continuing at year-end.

3.3 Sam Won Ho (1999)

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

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

CCG advised that the claim had been revised to \$96,856.92.

The claim was investigated by the Administrator to verify the established and non-established items. An all-inclusive offer of settlement was made in the amount of \$80,000.00, which was accepted by the CCG. Payment was directed on March 3, 2000.

The Administrator is considering what reasonable options exist regarding cost recovery of the monies paid.

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

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

There was further pollution from this wreck on April 24, 2000 and a claim from the Crown on behalf of the CCG in the amount of \$45,809.19 was received on December 6, 2000. This claim was assessed and the established amount of \$36,084.47 plus interest of \$2,343.53 was paid on February 7, 2001.

The Administrator arranged for the SOPF to have an observer at the trial for the alleged infringement of the *Fisheries Act*. The trial started on August 23, 2001, and continued at various dates, the latest being held on March 18, 2004 at which closing arguments by the Crown and Defense were heard. With these concluded, Mr. Justice Williams reserved judgment until June 4, 2004 at which time he will give a written decision in the matter.

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.

At year end the Administrator awaits the outcome of the above quasi-criminal trial and the determination of ownership there so that he may proceed with his civil action for cost recovery.

3.4 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 meters 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 Compagnie 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 liters.

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 being 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.

Following further analysis of the oil samples the Administrator is proceeding with a cost recovery action against the ship-owner. A Statement of Claim has been prepared and the ship-owner's lawyer has advised that he is authorized to accept service.

The Administrator awaits further developments.

3.5 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. The 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 on August 4, 2000, which was received on March 14, 2001, amounting to \$13,007.72.

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

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

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

The 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 analysis 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.

A statement of claim was filed against the ship-owner in July 2003, for recovery of compensation paid, including as well claims reported at 3.12 – 3.19 in the Administrator's Annual Report 2002 -2003. This was amended and re-filed on September 3, 2003. A Statement of Defense on behalf of the ship-owner was filed on September 4, 2003.

Settlement discussions were then occurring and on March 5, 2004 the ship-owner made an offer of settlement in the amount of \$76,031.82 which was accepted by the Administrator. A cheque dated March 26, 2004 for this amount was received by SOPF Counsel and subsequently forwarded to the Administrator.

It is noted that the claim reported at 3.17 of the 2002 -2003 Annual report, *Silver Bullit*, was rejected as not proven and the Administrator has closed his files on this incident.

3.6 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 liters of lube oil and 3,500 liters 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 particular further documentation would be required for some of the items claimed so that a full and proper assessment of the claim could be made.

Some of the requested documentation was forwarded on June 11, 2003. The Administrator was advised that he could review the entire CCG file at the Regional Office in Sarnia, Ontario.

The Administrator wrote back to CCG. He reminded CCG that although the 1993 amendments to Part XVI of the CSA gave the Crown, (for the first time), the right to make a claim on the SOPF as a first resort, it conferred no special status on the claims filed by the Crown as compared to those from other claimants. The Crown, like all claimants must provide evidence substantiating its claims. His letter made reference to paragraph 86(1)(b) and sub-section 86(2) of the MLA and his powers under the *Inquiries Act* in investigating and assessing claims.

On October 6, 2003 CCG forwarded the balance of the documentation requested.

The claim was then assessed and an offer of settlement was made to CCG on October 24, 2003 in the amount of \$30,973.67. CCG's acceptance of this offer was received on November 18, 2003. Payment of \$30,973.67 plus interest of \$2,724.40 was authorized by the Administrator.

The Administrator has closed his file.

3.7 Katsheshuk (2002)

This was a further serious casualty reported during the year 2002. The vessel was a 2,674 gross ton Canadian trawler, engaged in shrimp fishing. 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 liters of diesel fuel on board.

On March 25, 2002, legal counsel for the Crown 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 has followed developments in the case and was advised on March 24, 2004 that the ship-owner had agreed to reimburse the CCG.

The Administrator has closed his file.

3.8 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. Johns 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.

A claim in the amount of \$21,698.16 was made by the CCG on July 7, 2003 for their costs and expenses in responding to this incident.

Investigations to date indicate that there was a United States Air Force base and DEW Line Station at Hopedale from 1951 to 1968 and archived photographs show oil drums both on the harbour ice to mark an aircraft runway and also stacked on the wharf.

The Administrator's investigation continues.

3.9 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

1500 liters 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.

Re-floating 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 ship-owner on August 27, 2002.

The ship-owner did not respond to the CCG and accordingly a claim was made to the SOPF on October 1, 2003 in the amount of

\$3,899.75. The CCG explained that there had been an error in the previous claim total because direct CCG personnel costs were inadvertently omitted.

The Administrator investigated and assessed the claim and made an offer of settlement of \$3,899.75 plus appropriate interest.

Acceptance of this offer by the CCG was received on November 5, 2003 and payment of \$3,899.75 plus interest of \$262.91 was authorized that same day.

The Administrator is investigating the possibility of cost recovery from the shipowner but has closed his incident file.

3.10 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 mobilized and rig a containment boom around the vessel. The ship-owner 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 ship-owner 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 ship-owner 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 ship-owner was fully informed as to the proceedings and the potential implications of this action.

The TCMS claim was investigated and assessed by the Administrator and an offer of settlement was made on July 9, 2003 in the amount of \$3,479.53. This was accepted and payment of this sum and \$86.37 in interest was authorized on July 30, 2003.

With the vessel still under arrest SOPF Counsel conducted extensive communications with the ship-owner by way of correspondence and telephone with a view to recovering the monies paid out to TCMS. Agreement was reached in early September 2003 that the ship-owner would repay the amount of \$2250.00 by

means of monthly cheques. The first of these in the amount of \$500.00 was received and deposited to the credit of the SOPF on September 22, 2003.

No further payments have been received and the vessel is still stored ashore and under arrest.

The Administrator awaits further developments.

3.11 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.

No claims have been received in respect of this incident and it is understood that the matter was settled by the ship-owner.

The Administrator has closed his file.

3.12 FV 1995-05 (2002)

This vessel was being maneuvered 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 was to

salvage the vessel in May 2003 when the broken ice cover is gone.

No further reports or claims have been received in respect of this incident.

The Administrator has closed his file.

3.13 First Lady (2002)

This 9 m. pleasure craft dragged its anchor during a storm and ran aground in Boat Harbour, south of Nanaimo, 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 on January 7, 2004 the SOPF received a claim from the CCG in the amount of \$2,539.15. This was for the balance of their costs that had now been recovered by the sale of the vessel.

The Administrator investigated and assessed the claim and on March 2, 2004 made an offer of settlement to the CCG in the amount of \$2,316.38. This offer was increased to \$2,390.51 to take into account further representations by the CCG which was accepted. Payment of this amount together with interest of \$83.15 was authorized on March 17, 2004.

The Administrator has closed his file.

3.14 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 ship-owner was attempting to salvage the vessel. The area is home to a fish hatchery and fish pens.

The ship-owner 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 re-floated 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 Auxiliary Unit 64 deployed a containment boom and removed the absorbent boom.

CCG efforts to have the ship-owner cover the response costs were unsuccessful.

On February 17, 2003 the Administrator engaged counsel to contact the insurers to obtain a letter of undertaking (LOU) in favour of the SOPF and the Crown.

A Statement of Claim by the Crown in the amount of \$103,458.84 was filed in the Federal Court on November 27, 2003 naming the ship-

owner and all others interested in the ship as defendants. The Administrator was also named as a Party by Statute and filed his Statement of Defence on December 17, 2003.

At year end the Administrator awaits further developments.

3.15 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.

The SOPF received a claim from the CCG on January 16, 2004 in the amount of \$257,387.65 to cover the costs and expenses involved in responding to the incident.

The Administrator investigated and assessed the claim and on March 9, 2004 made an offer of settlement for the whole amount of the claim which was accepted by the CCG on March 11, 2004.

On March 16, 2004 the Administrator authorized payment of \$257,387.65 together with interest of \$12,534.14.

The Administrator has closed his file.

3.16 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 advice regarding compensation for loss of income as a result of the closure either by the ship-owner or the SOPF.

There being no claim made to the SOPF regarding this incident, the Administrator has

closed his file.

3.17 CCGS Hudson (2003)

While berthed at Halifax, Nova Scotia on March 16, 2003, there was work being done on one of the ship's hydraulic cranes. As a result of a valve problem approximately 10 liters of hydraulic oil was spilt into the harbour.

CCG Emergency Response personnel who recovered some contaminated pads that had been carried away from the ship by the tide.

The ship's crew commenced the clean-up using absorbent pads and was later assisted by

There being no claims resulting from this incident, the Administrator has closed his file.

3.18 Maersk Gabarus (2003)

The tug *Maersk Gabarus* was refueling at the Imperoil dock in Halifax Harbour on April 9, 2003 when the Master noticed oil bubbling up alongside. Re-fueling was immediately stopped and a boom placed around the vessel. Small boats were used to break up the slick and a diver was engaged to inspect the hull. It was reported that there was a fracture in the

hull and the contents of the affected tanks were transferred to prevent further loss. The vessel was later moved to another berth for repair work to be done.

There were no claims made for this incident and the Administrator has closed his file.

3.19 Caribou (2003)

This Marine Atlantic Ferry had a spill of hydraulic oil from a loading ramp on April 16, 2003 while berthed at the Sydney, Nova Scotia terminal. The spill was immediately cleaned up by ferry personnel.

A similar small spill occurred on June 13, 2003 which was again cleaned up quickly.

There being no claims arising from these occurrences, the Administrator has closed his file.

3.20 Retreiver (2003)

This Panamanian Flag Vessel was taking fuel from a tank truck while berthed at Pier 28 in Halifax, Nova Scotia on April 17, 2003.

The area was boomed off and a contractor was engaged by the ship to carry out a clean-up to the satisfaction of the CCG and EC. TCMS also investigated the circumstances of the spill.

The vessel's fuel tank overflowed from a vent pipe on deck and thence into the harbour. Some 300 liters of diesel oil were spilt.

There being no claims received, the Administrator has closed his file.

3.21 CCGC Cumella (2003)

This Coast Guard cutter was berthed at the Saint John, New Brunswick CCG Base on April 20, 2003 when there was a minor spill of diesel oil during a re-fueling operation. The

spill was immediately cleaned up with absorbent pads by the crew.

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

3.22 Sandpiper (2003)

This vessel is an old dredge and was berthed at the disused Pacific Cannery Dock in Steveston Harbour, British Columbia. The ship and its equipment had been arrested in December 2001 and were the subject of an action in the Federal Court for matters other than pollution.

their response activities which was investigated and assessed by the Administrator.

During the night of April 17, 2003, the *Sandpiper* sank at her berth and oil was released into the water. The Steveston Harbour Authority (SHA), was notified and the following morning clean up commenced with the assistance of the CCG. The ship-owner had been notified of the occurrence by the SHA but showed reluctance to become actively involved in the clean-up at this time.

An offer of settlement was made to SHA which was accepted and payment of \$1,517.93 plus interest of \$524.25 was authorized on July 16, 2003.

The CCG took over the cleanup on April 25, 2003 viz a Response Order dated that day. Efforts by the CCG to get the ship-owner involved were to no practical avail at this point.

Given the totality of information provided by the SHA with their claim the task of investigation and assessment was made straight forward.

On May 7, 2003 the ship-owner and a salvage crew were on site and preparing to raise the dredge. This was accomplished on May 12, 2003.

On January 29, 2004 a claim was received from CCG in the amount of \$20,151.97 for their costs and expenses in responding to the incident. Efforts to recover these monies from the ship-owner had elicited no response.

The SHA submitted a claim to the SOPF on July 9, 2003 in the amount of \$1,587.53 for

The Administrator investigated and assessed the claim and made an offer of settlement on March 4, 2004.

Payment of \$20,151.97 plus interest of \$831.38 was authorized on March 16, 2004.

The Administrator has closed his file.

3.23 Vandalism Incident, Shippegan, New Brunswick (2003)

In 2003 changes were made by DFO to the allowable catches in the crab fishery, the quotas were reduced and at the same time, more individual licenses to fish were granted. This caused unrest among the local fishermen

and native bands and resulted in the outbreak of violence on May 2, 2003 when some 100 crab traps were set on fire on the wharf.

The next day three fishing vessels and the local DFO office were set on fire during a demonstration on the waterfront. Another vessel belonging to the Big Cove native band was also burned as well as a privately owned fish plant and warehouse; the fishing vessel subsequently sank and released oil into the water.

Police, Firefighters and CCG personnel were on scene but were unable to fully respond because of the tense situation.

Some oil pollution occurred from the sunken vessel and from the wharf area but no cleanup was possible at that time. It was later determined that there was no further pollution threat from the sunken vessel and that the fire and natural dispersion had cleansed the area.

No claims were received in regard to this incident but it did raise considerations in

relation to the application of the *Marine Liability Act*.

Sub-section 51(1) of the Act holds the ship-owner strictly liable for oil pollution damage caused by his vessel but paragraph 51(3)(b) provides the ship-owner with a defence against this liability where the pollution "was wholly caused by an act or omission of a third party with intent to cause damage".

This provision may have applied to this incident to relieve the ship-owner from statutory liability under subsection 51(1) had there been any significant oil pollution that required cleanup. Nevertheless the application of paragraph (b) of section 84 would have made the SOPF potentially liable for the payment of costs and expenses incurred in remedying the situation.

The Administrator has closed his file.

3.24 Shinei Maru #85 (2003)

This 379 gross ton Japanese flag fishing vessel had sailed from Halifax, NS Harbour during the evening of May 3, 2002 and at 2300 hours local time ran aground on the rocks at Portuguese Cove. She sustained damage to her fore-peak tank and an estimated 35 tonnes of diesel fuel were lost.

The CCG, TCMS and ship-owner's Response Organization responded and the vessel was boomed off. The remainder of the oil on board was lightered off as a precautionary measure and the vessel was then pulled off the rocks by

2 tugs and taken to a berth in Halifax for further inspection and repair.

A Letter of Undertaking in favour of the CCG and the SOPF was issued by the P&I Club counsel on May 12, 2003 to cover the response costs. It is understood that the CCG costs and expenses totaled some \$18,000.00 and at year end a settlement had been agreed between the ship-owner and CCG.

No other claim being made to the SOPF, the Administrator has closed his file.

3.25 Safari Spirit (2003)

This 231 gross ton cruise yacht was on a voyage to Alaska when, on May 8, 2003, she grounded in Kisameet Bay, British Columbia and subsequently sank with the loss of some diesel fuel. The 10 passengers and 6 crew were safely taken off the vessel before she sank.

The CCG and the ship's Response Organization responded to the incident; the fuel tank vents were plugged to prevent further loss and the area was boomed off.

Personnel from the Response Organization cleaned up the oil in the containment boom and preparations for salvage began. On May

15, 2003 the vessel was raised and subsequently towed to Shearwater for necessary repairs.

The ship owner reimbursed the CCG for its response costs and, there being no other claims, the Administrator has closed his file.

3.26 Beaufort Spirit (2003)

It was reported to the CCG that this vessel was leaking oil into the waters of the Nanoose First Nations Marina at Lantzville, Nanoose Bay, British Columbia on May 11, 2003. The next day the CCG and TCMS met with the owner to inspect the vessel which was an old riveted construction steel tug built in about the late 1940s and in poor condition.

Administrator engaged a surveyor to advise him on the condition of the vessel. His inspection on January 28, 2004 revealed that the vessel was a non-operable floating derelict and that there was a considerable risk of oil pollution, particularly if she sank at her moorings. The tug had meantime been surrounded by an oil containment boom.

The owner was advised to plug the leak which he did with a metal plate and rubber gasket and was also instructed by the CCG to do further work on the vessel's tanks and bilges to ensure that there was no future threat of pollution.

By February 6, 2004 all the oil drums, cans and propane tanks had been removed from the vessel by the CCG contractor who had also pumped oily water from the hull.

On January 20, 2004 the CCG received a further report that the vessel was in a state of disrepair and at risk of leaking oil into the marine environment. The next day the vessel was towed to Ladysmith and inspected by CCG who discovered on board a container/tank with 1000 gallons of oil and some 25 pails that were leaking oil onto the deck of the vessel. The vessel was also beginning to list.

CCG efforts to obtain a Letter of Undertaking from the ship owner, or for him to take action on his own to resolve the situation during this period were to no avail.

After receiving several bids, the CCG selected a contractor to demolish/break up the vessel and resolve the remaining pollution problem.

On January 22, 2004 the CCG took over the incident viz a Response Order and the

By year end the vessel had been broken up and disposed of and the Administrator awaits further developments.

3.27 Pender Lady (2003)

The CCG received a report on June 23, 2003 that this vessel was sinking and listing to port. It was determined that the *Pender Lady* was an old British Columbia Ferry, built in 1923, and together with another old ferry named *Samson IV*, was moored at Naden Harbour on the north end of the Queen Charlotte Islands, British Columbia and used as a fishing lodge with paying guests. These guests were safely taken ashore by the CCGC *Arrow Post* and transported to Masset.

The next day, June 24, 2003, CCG response personnel were on scene and the vessels were boomed off. The stern of the *Pender Lady* had sunk in the early morning hours and later that day had completely sunk and released oil into the water.

The owner had pointed out to the CCG that the vessel had, at some time in the past, been stuffed full of foam plastic blocks below decks, presumably to add buoyancy and

maintain the vessel afloat. Pumps, including those of the *Arrow Post*, had been unable to reduce the flooding which indicated a non-watertight hull condition.

It is noted that the vessel was, at the time of the incident, still on the Canadian Ship Registry but had not apparently been subjected to TCMS inspection and safety surveys for a considerable time.

It was ascertained by the CCG that the owner did not have insurance and was apparently financially incapable of responding to the incident. The CCG took over the incident and engaged a contractor. The Administrator engaged his own marine surveyor to advise him on the operation. It was discovered that the *Samson IV* was in the same condition as the *Pender Lady*, even down to the foam blocks for buoyancy.

It was decided that the only way to rectify the pollution problem was to totally demolish both vessels and dispose of them as recoverable scrap or by burning onshore and this was done. At the same time, work crews were recovering oil from the water as it was released and also cleaning up the shoreline as necessary.

It is appreciated that the work on the vessels involved considerable hazard to the response workers because of the condition of the vessels. All work was completed by the end of August 2003.

The CCG submitted a claim to the SOPF dated February 11, 2004 for their costs and expenses in responding to the incident, in the amount of \$2,101,017.72.

The Administrator investigated and assessed the claim and on March 31, 2004 made an offer of settlement which was accepted by the CCG that same day. On April 1, 2004, payment of \$1,659,663.06, which included interest was authorized.

The Administrator has closed his case file but is reviewing the possibility of cost recovery from the ship-owner.

Note: This case shows the threat to the environment and the economic losses caused by derelict vessels. In this year and the previous year payments from the SOPF respecting such vessels exceeded some \$2.8 million dollars.

In this case the derelict vessel also had paying guests aboard. In such cases it may only be a matter of time before there is serious personal injury or loss of life caused by the capsizing or sinking of such vessels.

The Administrator is of the view that, while there are mandated obligations of government to ensure the safety of vessels and the people on board them, it is essential that these rules and regulations be strictly applied in all cases to prevent unnecessary dangers to both the environment and persons.

3.28 Mac Asphalt 401 (2003)

On June 20, 2003 at 0130 hours this 3366 gross ton barge was loading asphalt at the Sun Oil dock near Sarnia, Ontario, when there was an overflow from the barge's tanks. Sunoco and the barge crew took immediate action and the area was boomed off to prevent spreading of the asphalt, however much of it sank to the bottom.

The ship-owners' Response Organization was called in and recovery operations using vacuum trucks and divers commenced at 0500 hours. The CCG was also in attendance to monitor the operation and conduct a shoreline assessment.

By June 25, 2003 all pollution had been cleaned up and a video of the river bottom

confirmed that no visible deposits of asphalt remained.

No claims have been received in respect of this incident and the Administrator has closed his file.

3.29 Silent Provider (2003)

This 73 gross ton fishing vessel was off Petit de Grat harbour, Nova Scotia on June 25, 2003 when there was a fire on board, likely from a propane tank explosion. The two crew members aboard were rescued after having abandoned the vessel in a life raft. The vessel burnt to the waterline and eventually grounded on Heath Head.

dispersed naturally. Both of the fuel tanks were recovered after the grounding and brought to Petit de Grat.

The ship-owner and his P&I Club had responded to the incident and were also arranging to remove as much of the vessel and machinery as possible from the grounding site.

There were two diesel fuel tanks on board, and most, if not all, the oil was consumed in the fire. Traces of oil sheen on the water were

No claims have been received by the SOPF and the Administrator has closed his file.

3.30 Silver Seas (2003)

This fishing vessel was being refueled at L'Archeveque Harbour, Nova Scotia on July 17, 2003 when the tank truck driver put the fuel hose into the wrong pipe. As a result some 800 liters of fuel went directly into the vessel's bilge and the automatic bilge pump cut in and pumped some 80 to 100 liters of oil into the harbour before it was noticed.

The fuel company accepted responsibility of the incident and engaged a contractor to deploy containment booms and clean-up the spill.

The area was satisfactorily cleaned up by the afternoon of July 18, 2003.

No claims having been received, the Administrator has closed his file.

3.31 Gillking (2003)

On August 12, 2003 this 1942 built wooden tug sank at the wharf at Bamfield, British Columbia with a resultant release of diesel oil in the water. The CCG Bamfield lifeboat responded to the incident, boomed off the area and commenced using absorbent pads to clean up the released oil.

to remove and dispose of the vessel and a contract was let to the successful bidder on August 27, 2003.

The vessel was raised on September 4, 2003 and prepared for towing to Ladysmith. This occurred on September 8, 2003 and the *Gillking* was at the contractor's yard the next day when work started on the disposal of the vessel.

The ship-owner was contacted by CCG but proved unable or unwilling to accept responsibility. Accordingly, a Response Order was obtained and CCG engaged a local contractor on a daily basis to effect clean up. Divers were also hired to plug the fuel tank vents. In the meantime the CCG obtained bids

The remaining oil and oily machinery was removed from the tug and by October 30, 2003 the vessel had been broken up and disposed of in a landfill site.

On January 27, 2004 a claim was received from the CCG in the amount of \$144,344.47 for their costs and expenses in responding to the incident.

The Administrator requested further information from the CCG on March 5, 2004, to assist him in the investigation and assessment of the claim.

On March 9, 2004 an offer of settlement by the Administrator was accepted by the CCG. Payment of \$132,406.27 plus interest of \$3,003.46 was authorized on March 17, 2004.

The Administrator has closed his case file but at year end was investigating the likelihood of successful cost recovery action against the ship owner.

3.32 Mystery Spill, Grenville Channel, British Columbia (2003)

On September 20, 2003, the United States Coast Guard Cutter "*Maple*" was transiting Grenville Channel, BC and reported that they had seen an oil slick off Lowe Inlet. The incident was investigated by the CCGS *Tamu* and samples of the oil were obtained on September 23, 2003. It was reported that these samples were similar to crude oil in odor and consistency but that there was no apparent source and clean up was not required.

In early October, a commercial airline pilot reported that he had seen further pollution in the area that was "quite thick".

CCG responded and sent personnel to the site which was in a very remote area and not easily accessible. The presence of the slick was confirmed and some 3 miles of shoreline had been impacted. Again, no source was found and the CCG suspected that the oil could be surfacing from an old wreck.

Arrangements were made by the CCG to have the area surveyed by a remote control underwater vehicle and on October 30, 2003 an old wreck was located with oil escaping from cracks in the hull. At the same time, clean up crews were working to remedy the shoreline contamination. By the middle of November, divers had plugged areas of the wreck's hull that were breached to stop the escape of oil.

Investigations by the CCG indicate that the source may be that of the *Brigadier General M.G. Zalinski*, a United States Army Transportation Corps vessel that was wrecked on September 20, 1946.

At year-end the CCG is still working on positively identifying the wreck, responding to oil leakage as necessary and working on a plan to remove all oil from the wreck.

The Administrator awaits developments.

3.33 Mary Todd (2003)

This seine fishing vessel sank off the Fisherman's Wharf in Tsehum Harbour, British Columbia on October 5, 2003 with resulting oil pollution. The CCG responded and ascertained that the owner was unable to respond to the incident. The vessel was boomed off by the CCG and was raised by a CCG Contractor on October 6, 2003.

The *Mary Todd* was taken to the shipyard at Mitchell Island and lifted from the water thereby eliminating the threat of future oil pollution. It is understood that the CCG has submitted a bill for its costs and expenses to the ship owner and is also in discussions with the insurance company of Small Craft Harbours.

The administrator awaits developments.

3.34 Submerged Drums, Goose Bay, Newfoundland and Labrador (2003)

The CCG was informed on August 27, 2003 that a recreational diver had reported that he had observed 6 drums on the harbour bottom at the Government Wharf which were emitting small amounts of oil.

The CCG responded and solicited bids from a local diving contractor to remove the drums from the seabed. A contract was awarded and diving operations commenced on September 17, 2003. Three drums were located partially covered in silt and they fell apart as the diver handled them. There was no oil released. A

transformer housing was found in the same condition.

The next day another steel drum was located and it too fell apart with no pollution. The divers then located a large pile of sunken creosoted logs which, when probed released a sheen of oil to the surface. This was the only source of oil located and CCG have indicated that there will be no claim submitted to the SOPF in view of the source.

The Administrator has closed his file.

3.35 Black Dragon, (Heung Ryong) (2003)

This was an old Chinese flag fishing vessel of some 120 feet in length involved in the smuggling of illegal immigrants to the West Coast at the end of 1999 and had been seized by the authorities and tied up at Port Alberni, British Columbia. The *Black Dragon* had been sold by Crown Assets to a Reef Society for eventual recreational diving activities but was later resold by the Society to a private owner.

Over the ensuing years the vessel had been moored at several locations and was in a dilapidated condition. She eventually ended up moored to a DND Navy buoy in Mayne Bay and several federal and provincial agencies had voiced concern on the overall situation.

On October 26, 2003 the vessel sank in about 120 feet of water and was boomed off by the CCG Bamfield lifeboat crew. Efforts by the CCG to get the owner to respond to the incident and the resultant oil pollution were to no avail.

The CCG then engaged a contractor to raise the vessel and work commenced on November 7, 2003. The Administrator had engaged his own marine surveyor to attend on site. Initial

efforts over the next two days to conduct the lift were unsuccessful and it was apparent that the 200 ton capacity lifting derrick was not sufficient. Also the vessel was firmly stuck in the very soft mud bottom.

Heavier equipment was on site November 28, 2003 and salvage preparations began. The vessel was raised with great difficulty on December 5, 2003 and over the next two days water and mud was pumped out of the vessel and some hull repairs made in preparation for the tow to Ladysmith for disposal.

On December 9, 2003 while under tow and in a position off Johnstone Reef the vessel sank again. It is understood that the CCG will not undertake further action regarding this sinking.

On February 3, 2004 a claim was received from the CCG in the amount of \$728,797.28 to cover the costs and expenses incurred for their response to the incident.

The circumstances of this occurrence involved considerable investigation and assessment by the Administrator and on March 30, 2004 he made an offer of settlement which was

accepted by the CCG that same day. Payment of \$568,749.63 plus interest of \$8,897.00 was also authorized on that date in full and final settlement.

The Administrator has closed his claim file but is considering the possibility of cost recovery from the ship-owner.

3.36 Transporter No.5 (2003)

On October 27, 2003 in the early morning hours, the North Fraser River, British Columbia Harbour Patrol reported that the rock barge *Transporter No.5* had overturned onto the derrick tied up at McDonald Slough incurring heavy damage to both and resulting in oil pollution.

The barge owner, Vancouver Pile Driving, was contacted and contracted with the local response organization to rectify the situation

with the CCG in a monitoring role. Spill cleanup and salvage operations continued over the next few days. The barge was removed on November 3, 2003 and the cleanup of oil contaminated areas was completed on November 5, 2003.

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

3.37 Bedford Basin, Nova Scotia (2003)

On October 25, 2003 a private citizen reported to the CCG that oil was leaking from a sunken pleasure cruiser at the head of Bedford Basin, Nova Scotia adjacent to DeWolfe Park. The caller indicated that the vessel had sunk during Hurricane Juan on September 29, 2003.

The CCG and EC responded and ascertained that the oil in question was diesel fuel and that

the owner's insurance company was involved and had engaged a salvage contractor. By November 5, 2003 the boat had been recovered and placed ashore for disposal. All pollution had been cleaned up.

There being no claims, the Administrator has closed his file.

3.38 John Boy (2003)

On November 25, 2003 this fishing vessel, secured adjacent to the slipway at the north end of Lockeport Harbour, Nova Scotia, tipped over and was awash causing oil pollution.

The CCG attempted to contact the owner but it became apparent that he could not provide a response due to his absence from Lockeport and that he had no insurance.

There were lobster cars in the area so that it was necessary for the CCG to take action. A

contractor was engaged and remedial work undertaken such that the vessel was righted and the source of pollution removed on November 26, 2003. Cleanup of the area was completed by noon of that day.

The CCG made a claim to the SOPF which was received on January 30, 2004 in the amount of \$24,133.30 to cover its costs and expenses.

Additional documentation was requested from the CCG and Administrator completed his assessment of the claim and made an offer of settlement on March 2, 2004.

The CCG made further representations on March 5, 2004 in respect to their claim and a revised offer was made on March 9, 2004 which was accepted.

Payment of \$22,018.74 plus interest of \$293.28 was authorized on March 17, 2004.

The Administrator has closed his incident file but is considering the prospects of effecting cost recovery.

3.39 Leota B (2003)

On December 2, 2003 this fishing vessel was tied up at Head Harbour, Campobello Island, New Brunswick, when because of bad weather, she was blown under the wharf, suffered damage and sank. She had on board about 160 gallons of diesel fuel, some of which escaped.

The ship-owner notified the CCG/DFO and also other local lobster fishermen of the occurrence. The CCG also notified the USCG

because of the proximity of the Canada/US border. The owner made arrangements to lift the vessel and this was completed on December 5, 2003.

The oil that was lost was pushed out to sea by the tide and dispersed naturally.

No claims arose from this incident and the Administrator has closed his file.

3.40 Mystery Spill, Bassin Louise, Port of Quebec (2003)

On May 14, 2003 the CCG was advised of an oil slick in Bassin Louise, Port of Quebec of unknown origin. Following investigation a contractor was engaged and the oil was cleaned up that same day.

The CCG and the Quebec Port Authority could find no land-based source for the spill.

On February 3, 2004 the CCG made a claim of \$1,685.83 for the costs and expenses involved

which the Administrator investigated and assessed as a mystery spill under the MLA.

An offer of settlement was made on March 4, 2004 and accepted on March 11, 2004. Payment of \$1,685.83 plus interest of \$67.72 was authorized on March 16, 2004.

The Administrator has closed his file.

3.41 Mystery Spill, Trois- Rivières, Québec (2003)

An oil slick was discovered at the tug basin, Section 15, in the Port of Trois-Rivières, on August 5, 2003. No source could be found for the slick.

The CCG engaged a contractor and the oil was cleaned up by the early hours of the next day using vacuum trucks.

The CCG made a claim to the SOPF on February 3, 2004 in the amount of \$12,364.77 for the cleanup costs.

The claim was assessed by the Administrator as a mystery spill and an offer of settlement was made on March 4, 2004. This was accepted on March 11, 2004 and payment of

\$12,364.77 plus interest of \$382.85 was made on March 17, 2004.

The Administrator has closed his file.

3.42 Kaien (2003)

This 50 foot long ex-fish packing vessel was moored to the pilings at Slack Point, Ladysmith Harbour, British Columbia when, on January 7, 2004 she partially sank, lying on her side and leaking oil. She was righted by the owner with the unsolicited aid of neighbors and a local marine contractor.

Sometime during the night of January 13/14, 2004 the vessel sank completely. There was some oil pollution and the area around the vessel was boomed off.

The Administrator engaged a Marine Surveyor to report back to him on the various aspects of the incident and the proposed response.

The ship-owner was contacted by the CCG as to his intentions but he advised that he had no money to deal with the situation and turned the vessel over to the CCG. A contractor was

engaged and the vessel was raised on January 15, 2004 and taken to the contactor's yard for decontamination and disposal. This work commenced on the following Monday and was completed on January 26, 2004.

A claim dated February 13, 2004 was made by the CCG to the SOPF in the amount of \$12,067.88 for their incurred costs and expense for the incident.

The Administrator investigated and assessed the claim and made an offer of settlement on March 5, 2004 which was revised following further information submitted by CCG four days later. This revised offer was accepted and on March 16, 2004 payment of \$12,067.88 plus interest of \$99.67 was authorized.

The Administrator has closed his file.

3.43 Anscomb (2004)

This vessel served as a provincially owned ferry on Kootenay Lake, British Columbia until April 2003 when she was sold to a private owner who had intentions of using her for a variety of endeavors, one of which was an off-shore casino/restaurant.

On January 11, 2004 the vessel sank in deep water with resulting oil pollution.

The Provincial Ministry of Water, Air and Land Protection (WLAP) assumed lead agency status and provided the initial cleanup procedures and hired a contractor since the owner did not indicate any action to provide a response. Work was done on cleaning up oil surfacing from the sunken vessel, recovering contaminated debris and shoreline cleanup.

On January 23, 2004 the CCG took over the lead agency status from WLAP. With the bulk of the work completed the contractor was stood down on January 28, 2004 and the work of incinerating contaminated debris, oiled absorbent pads and boom maintenance was conducted by CCG personnel. It had been determined that salvage of the sunken vessel was not feasible. Work was terminated on February 2, 2003, there being no recoverable oil at the site.

On March 11, 2003 the CCG submitted a claim in the amount of \$29,753.68 for their costs and expenses. This was assessed by the Administrator and an offer of settlement made on March 24, 2004 which was accepted. Payment of \$24,316.40 plus interest of \$195.23 as authorized on March 25, 2004.

On March 25, 2004 a claim of \$23,024.54 was made by the Provincial WLAP for their costs and expenses associated with the initial incident response. This was assessed and an offer of settlement made and accepted on

March 26, 2004. Payment of \$22,524.54 plus interest of \$250.09 was authorized.

The Administrator has closed his file but is considering the likelihood of effecting cost recovery from the owner.

3.44 Oiled Birds – Placentia Bay, Newfoundland and Labrador (2004)

On March 22, 2004 a private citizen reported to the CCG Traffic Centre that there were oiled birds in the area of St. Brides. Response personnel were immediately sent to the area by CCG.

The next day further reports were received and the CCG conducted surveys of Placentia Bay, St. Mary's Bay and to a lesser extent Trepassy Bay. Dead birds and live oiled birds were recovered over the next few days as a result of continuing beach surveys and aerial surveillance by CCG helicopter.

Federal Environment Minister David Anderson also participated in a surveillance flight on March 5, 2004 to assess the situation.

At the culmination of the incident on March 16, 2004 no source had been found for the oil and the recovered bird count was 82 dead and 55 live oiled birds which had been taken to the rehabilitation centre at Ship Cove for the necessary cleaning and treatment prior to their release.

Note: Incidents such as this continually emphasize the problem of ships dumping oily bilge water and tank washings into the offshore and the importance of aerial surveillance by means of aircraft and satellite to catch offenders, as well as the matter of on-shore based waste oil reception facilities.

It is noted that early in the spring of 2004 Minister Anderson introduced amendments to the *Migratory Birds Convention Act*, (1994) and the *Canadian Environmental Act*, (1999) in the House of Commons which, when passed, will greatly enhance the rigorous prosecution of offenders. See also section 4.1 of this report.

The work of the Working Group on Oil Pollution of the East Coast of Canada continues on the Prevention of Oiled Wildlife (POW) project that was detailed in section 5.2 of the Administrator's 2002-2003 Annual report and in section 4.8.3 of this report.

3.45 Anna M (2004)

On March 26, 2004 the CCG was advised that this fishing vessel had struck a rock and sunk at the inner side of Venn Pass, Prince Rupert, British Columbia.

The CCG responded and boomed off the vessel. Divers plugged off the vents in the

vessel and the owner hired a contractor to salvage the vessel.

At year end the Administrator awaits developments.

3.46 Other Incidents (2003-2004)

Incidents occurred during the year that had no direct impact, nor did they place any liability, upon the SOPF but are of sufficient interest

and highlight ongoing problems that they are reported as under noted.

Irving Whale

Following the sinking of this oil barge in 1970 there was extensive oil pollution on the shores bordering the Gulf of St. Lawrence and in particular those of the Isles de la Madeleine. Full details of the incident are contained in the Administrators Annual Reports from 1991-1992 until 1999-2000.

In respect of the cleanup on the Isles de la Madeleine, contaminated beach material was placed in large heavy duty plastic bags and these were then buried in the back-shore sand dunes that make up much of the islands topography. Over the years wind erosion and shifting of the dunes has on many occasions uncovered these dumps exposing the contaminated material and necessitating the CCG to take action and prevent further contamination.

The latest such occurrences were on June 25 and November 28, 2003 when the CCG recovered a total of 647 bags of contaminated material and transported them to the Quebec mainland for disposal by incineration.

It is understood that a site restoration plan is to be implemented during the summer of 2004.

Note: This type of post incident remedial action, in this case of an ongoing nature, years after the initial cleanup emphasizes the need for proper and correct disposal of recovered contaminated material following an oil spill and that the methodology used be selected to take into account all of the factors involved both at the time and in the future.

The work undertaken by the Newfoundland and Labrador Environmental Industry Association (NEIA), CCG Regional Advisory Councils and CMAC will help in resolving the problem. The Administrator attended sessions of these bodies during the year (see section 5.3)

Proper disposal is attainable and it is noted that many thousands of tons of oil contaminated material were buried at specially prepared and constructed landfill sites in Nova Scotia following the breakup and sinking of the oil tanker *Arrow* in 1970 and that there have been no reports of any subsequent leaching problems.

Rouge River – Sewer outfalls, Detroit, USA

The Administrator's 2002-2003 Annual Report, section 4.2.2, outlined the problem of spills occurring from storm water and combined sewage outfalls, particularly when there are heavy rains or run off in the spring.

The incidence of such spills is epitomized by the history of those originating from the outfalls situated in the Rouge River that

migrate to the Detroit River and thus pose a threat to the Canadian shore.

As noted in the above citation there was, in August of 1994 a spill of fat from a rendering plant in Dearborn, Michigan, that impacted the shoreline at Amherstburg, ON, the CCG cleaned up the spill. Cost recovery could not be claimed from the SOPF because the spill was not oil nor was it from a ship source but recovery of \$346,000.00 was obtained from the United States fund.

On May 31, 1998 there was a spill of primarily sewage with some oil content which impacted the Canadian shore at Fighting Island, Ontario. The CCG expended some \$112,500.00 for the necessary clean up and once more no recovery could be obtained from the SOPF for the reasons outlined above. See sections 3.2 and 4.2.2 of the Administrator's 2002-2003 Annual Report.

There was a spill of oil from the outfalls on April 2, 2002 that again necessitated clean up of the Ontario shoreline by the CCG. In this instance the clean up costs of some \$1.14 million were recovered from the USCG.

See also reference to the Canada/United States Joint Contingency Plan at section 3.47 of the Administrator's 2002-2003 Annual Report.

The latest spill in this area occurred on April 2, 2004 but was contained in the Rouge River and did not cross into Canadian waters and impact the shoreline.

4. Challenges and Opportunities

4.1 Quasi-Criminal Liability for Environmental Offences in Canada –Proposed Changes

On May 6, 2004, the Honourable David Anderson, Minister of the Environment, tabled new legislation (Bill C-34) to amend the *Migratory Birds Convention Act (1994)* and the *Canadian Environmental Protection Act (1999)*.

When enacted Bill C-34 will amend the *Migratory Birds Convention Act 1994* to:

- (a) State that the Act applies in the exclusive economic zone of Canada;
- (b) Protect migratory birds from the effects caused by deposits of harmful substances, such as oil, in the exclusive economic zone of Canada;
- (c) State that the Act applies to vessels and their owners and operators;
- (d) Subject masters, chief engineers, owners and operators of vessels and directors and officers of corporations to a duty of care to ensure compliance with the Act and regulations;
- (e) Expand the enforcement powers to include orders to direct and detain vessels found to be in contravention of that Act or its regulations;
- (f) Expand the jurisdiction of Canadian courts to include the exclusive economic zone of Canada;
- (g) Increase penalties; and
- (h) Permit courts to impose additional punishment in the form of orders covering matters such as environmental audits, community service and the creation of scholarships for students enrolled in environmental studies.

This enactment will also amend the *Canadian Environmental Protection Act, 1999* to:

- (a) Protect the marine environment from the wrongful activities of ships as well as persons;
- (b) Include prohibitions concerning the disposal and incineration of substances at sea by ships;
- (c) Include regulation-making authority to deal with disposal of substances during the normal operation of ships, aircrafts, platforms and other structures;
- (d) Expand the enforcement powers to include orders to direct ships found to be in contravention of that Act or its regulations;
- (e) Subject owners of ships and directors and officers of corporations that own ships to a duty of care to ensure that ships comply with the provisions of that Act and its regulations concerning disposal at sea and with orders and directions made under that Act; and
- (f) Expand the jurisdiction of Canadian courts to include the exclusive economic zone of Canada.

When the amendments to the *Migratory Birds Convention Act 1994*, are enacted the maximum fines on conviction of the person or ship charged with an offence will increase to \$300,000 on summary conviction or \$1 million on indictment. There will be provision for imprisonment of individuals who are convicted.

Maximum fines under present *Canadian Environmental Protection Act, 1999* are \$1 million on indictment and \$300,000 on summary conviction. There is present provision for imprisonment of individuals. These are not proposed to be amended by Bill-34.

"Amending these essential pieces of environmental legislation will complement the *Canada Shipping Act (2001)* and allow for more cooperative enforcement actions," said Mr. Anderson. "We are providing the judicial system with the tools to prosecute offenders and to enable fines that appropriately reflect the damages caused to the government".

Note: As a result of the Dissolution of Parliament on May 23, 2004, the proposed legislation "died on the order paper". It is expected that Bill-34 will be re-introduced in the next session of Parliament.

4.2 Civil Liability for Environmental Damage in Canada

Compensation for environmental damage is handled differently under the *Canadian Marine Liability Act* (MLA), the 1992 CLC, the 1992 IOPC Fund Convention, and the US OPA.

The 1992 CLC and the 1992 IOPC Fund Convention, in their definitions provide that "pollution damage" means [in part]

"(a) loss or damage caused outside the ship by contamination resulting from the escape or discharge of oil from the ship, wherever such escape or discharge may occur, provided 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 Canada the MLA (the SOPF Fund's governing statute) defines "oil pollution damage" as:

"...in relation to any ship, means loss or damage outside the ship caused by contamination resulting from the discharge of oil from the ship."

The MLA provides:

"the owner of a ship is liable for oil pollution damage from the ship."

The MLA further provides:

"If oil pollution damage from a ship results in impairment to the environment, the owner of the ship is liable for the costs of reasonable measures of reinstatement actually undertaken or to be undertaken."

In the United States, 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 the US regulations the trustee may consider a plan to restore and rehabilitate or acquire the equivalent of the damaged natural resource.

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

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

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

Note: A list of federal legislation and regulations dealing with various aspects of marine pollution in Canada is contained in section 5.2 of this report.

4.3 Environmental Damages Fund (EDF) – Environment Canada

In 1995, Environment Canada obtained the approval of the Treasury Board to create a special purpose account – Environmental Damages Fund (EDF) – to manage compensation for damages to the environment resulting from pollution incidents. The EDF was established to serve as a special holding or trust account to manage funds received as compensation for environment 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. 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.

4.4 Environmental Damages Fund (EDF) - National Workshop

In December 2002, Environment Canada held an EDF national workshop in Gatineau, Quebec. At the conference, Harry Wruck Q.C. (Senior General Counsel, Department of Justice, Vancouver) 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 EDF. 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.

At the workshop 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 direct awards to the EDF, it is essential to have well prepared cases with convincing evidence. The Administrator expressed the view 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 environment 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. The prosecution must give judges the basis to justify increased fines and awards to the EDF. This can be pursued through the development of Environmental Damage Assessments (EDA) that may increase judicial awareness of damages to the marine environment.

4.5 Fines Increase for Environmental Offenses in Canada

Between 1998 and 2001 approximately \$325,000.00 was accumulated in the EDF. A major part of that contribution is composed of proceeds obtained through charges filed under the *Canadian Environmental Protection Act* and sections 32, 35 and 36(3) of the *Fisheries Act*.

As government officials, prosecutors, judges and defence counsel become more aware of the EDF it may become more utilized. For example, on February 25, 2002, a Nova Scotia court imposed Canada's highest ever fine - \$125,000 – for pollution of coastal waters that are a haven to thousands of seabirds. In this case, the Philippine - registered ship *Baltic Confidence* was charged for dumping at least 850 liters of oil-mixed bilge water in December 1999, about 158 kilometers southwest of Halifax. In pleading guilty to the offence, lawyers for Prime Orient Maritime of Manila said the company agreed to a penalty of \$80,000 and a contribution of \$45,000 to Canada's Environmental Damages Fund. The *Baltic Confidence* incident was the first time that a shipping firm paid into the EDF.

A successful aerial surveillance mission occurred in March 2002, when a fishery patrol aircraft spotted an oil slick about 120 kilometers southeast of Halifax. The slick was reported to be 40 kilometers long and 15 meters 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 imposed a fine \$125,000 on November 25, 2002. The fine includes a \$50,000 assessment that will go to the EDF toward dealing with environmental damages caused by marine pollution.

4.6 International Recognition of Canada's EDF

The Canadian approach has obtained international recognition. At the March 2001 sessions of the Third Inter-sessional Working Group of the 1992 IOPC Fund, ITOPF presented its views on compensation for environmental damages under the international 1992 Civil Liability and Fund Conventions. In its paper (92 FUND/WGR.3/5/2) ITOPF refers to other approaches by the USA and developments in the European Commission. ITOPF also commented on the new (1995) Environmental Damages Fund (EDF) managed by Environment Canada:

"The Environmental Damages Fund serves as a special trust account to manage monies that are received as a result of court orders, awards, out-of-court settlements, voluntary payments and, so it is stated, compensation provided through international liability regimes. The Canadian Courts are apparently able to use various Federal laws to direct money to the Fund, including the Canadian Environmental Protection Act, Migratory Birds Convention Act, the Canada Wildlife Act, the Fisheries Act and the Canada Shipping Act. The Environment Damages Fund is used to remediate damages to the environment, including assessment or research and development work required to

support such restoration efforts. Whilst monies received may not always be used to restore the damaged area in respect of which they were received, it is a requirement that any projects have to be in the region/community where the incident occurred. This initiative is seen as both an effective economic disincentive for illegal activities and as a means of providing compensation for environmental damage."

4.7 Environment Damage Assessments and Restoration in Canada

Following on the EDF there are now persons in Canada who are developing natural resource valuation methodologies to quantify damages to the environment for the purpose of obtaining funding for restoration.

The enforcement of environmental laws and regulations is done primarily through a system of fines relating to the different pieces of legislation applicable in Canada. It is stated that the traditional problem associated with this technique is the lack of accepted methods to match costs with the damage that had occurred. Judges have used the deterrence criterion in sentencing for environmental offences. Environment Canada is developing a new approach – Environmental Damage Assessment or EDA – towards quantifying such costs.

The Atlantic Region of Environment Canada is currently developing a framework to guide the various activities associated with the three primary components of the EDA: assessing damage to the natural environment; valuing this damage; and initiating projects aimed at restoring the damage which has been caused.

The initial trigger for implementing assessment activities occurs when an incident is reported or observed. Once damage has been measured, there is a need to place a value on the losses or environmental impacts. The Atlantic Region is developing models and protocols for conducting this type of economic valuation. Restoring the damage caused by a spill or release is an integral component of the EDA process. The intent is to replace the damaged ecosystem components, or enhance natural recovery.

The EDF is intended to fund environmental restoration projects after completion of an EDA. At this point in the development of a framework for general fund criteria and project requirements, all project proposals submitted to Environment Canada for funding from the EDF should satisfy the following general requirements:

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

In the meantime, it is acknowledged that the framework for establishing a national plan for implementing an environmental damage assessment and restoration process remains as a work in progress.

Due to the infancy of the EDA process in Canada, it is clearly at a stage in its history where conflict emerges between the theoretical aspects developed by its creators and its use by judges. The development of the EDF by Environment Canada may be a strong influence on judges to call upon EDA for environmental offences. The impact, if any, of such developments on the statutory civil liability of the SOPF for oil pollution damage from a ship which results in impediment to the environment remains to be seen.

Additional information about Canada's Environmental Damages Fund, and the current framework for the general fund and project requirements are described in SOPF Administrator's Annual Reports 2001-2002 and 2002-2003, respectively, at section 4.1.1.

4.8 Prevention and Response Measures in Canada

4.8.1 Oiled Wildlife Issues

The Administrator first reported on the issue of oiled seabirds in his SOPF Annual Report 1998-1999. That report noted that in 1997 and 1998 several mystery oil spills had occurred in Placentia Bay, Newfoundland, resulting in claims from the Crown to recover costs and expenses for the cleaning of live oiled birds taken to a rehabilitation centre for treatment. In one incident, the Coast Guard recorded that approximately 2,700 oiled dead birds had been collected. In another case, it was discovered that some of the affected birds were Eastern Harlequin ducks, and it has been estimated that there are currently less than 300 such birds left in the world. Scientific studies show that thousands of birds die each year as a result of the illegal discharge of oily waste at sea.

In subsequent years, the Administrator reported on the issue of illegal discharge at sea of ship-generated oily waste. These discharges are often from ships' machinery bilges that accumulate oily waste. Some ships deliberately dump the mix of water and oil waste from engine-room bilges while transiting the commercial marine traffic lanes off the south coast of Newfoundland. Chemical analysis has indicated that approximately 90 per cent of the oil found on the feathers of dead birds originates from ships' machinery spaces. Most years, the Administrator reports the presence of mystery oil spills found on exposed shorelines, principally on the eastern seaboard. These spills are often a considerable expense to the public purse from clean-up claims paid by the SOPF. The SOPF cannot recover payment made for cleaning up these mystery spills – the identity of the polluter is unknown.

In March 2004, the Canadian Coast Guard informed the Administrator about a mystery oil spill that had killed birds along the south coast of Newfoundland. The CCG Marine Communications Traffic Centre received a report on March 4 that "during the day an additional 32 dead oiled birds" were turned in to the rehabilitation centre at Ship Cove, Placentia Bay. A number of live oiled birds were being cleaned and responding well to rehabilitation treatment.

4.8.2 World Wildlife Fund Canada (WWF – Canada)

In September 2002, WWF – Canada launched a report, *Seabirds and Atlantic Canada's Ship-source Oil Pollution*. The report highlights the extent of the problem in Atlantic Canada and list measures to help stop illegal dumping.

The WWF's report urges the federal government to adopt the following recommendations:

- *Stronger legal deterrence. Imposed fines, including minimum fines, must be increased to clearly reflect the full extent of the crimes under both shipping and environmental law;*
- *Improved surveillance and evidence-gathering technologies. Satellite and aircraft surveillance need to be enhanced to better detect oil dumping. Mandatory on-board transponders and oil fingerprinting of all vessels in Canadian waters would facilitate surveillance, enforcement and the prevention of pollution;*
- *Strict waste accounting. Shippers must account for all produced waste oil or face illegal dumping charges. Falsification of records should result in fraud charges;*
- *Implement a ship accreditation system. This system would be for shippers who promote and adopt best environment practices and have clean environmental records;*
- *Protect and monitor sensitive areas. The Canadian government should seek an International Maritime Organization (IMO) designation of Particularly Sensitive Sea Areas (PSSA) for offshore areas where seabirds are most vulnerable.*

In a news release on May 7, 2004, WWF – Canada commended the Federal Minister of the Environment for tabling new legislation, which will allow Canada to more forcefully protect its marine environment from pollution. The WWF – Canada has been significantly involved in supporting research, raising awareness about this important conservation issue and advocating for its resolution.

4.8.3 Prevention of Oiled Wildlife – POW Project

In the past several years, personnel in the Newfoundland Region of DFO/CCG have taken the initiative to address the chronic problem of oiled sea birds off the province's south coast and the Avalon Peninsula. Their project is called the Prevention of Oiled Wildlife (POW). The participants of the working group represent the federal and provincial governments, the offshore oil industry, oil refineries, shipowners, environmentalists and other interested groups.

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

The POW working group has been making progress reports to the Canadian Marine Advisory Council, through the Standing Committee on the Environment, at its semi-annual meetings in Ottawa. The recommendations contained in Phase III of the POW report, included:

- *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 should be increased for dedicated aerial surveillance and enforcement by respective government departments and that agreements should 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 the shipping industry and non-government partners, should work together to implement applicable recommendations of the Phase III report of the POW project.*

The Standing Committee on the Environment endorsed these recommendations, as put forward by the working group at the CMAC meeting held in November 2003.

4.8.4 Port Reception Facilities For Only 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.

4.8.5 National Aerial Surveillance Program (NASP)

Federal government departments and agencies are using available resources to combat oil pollution caused by passing ships. Until recently the Department of Fisheries and Oceans (i.e., CCG) was the principal agency responsible for the direction and the coordination of the National Aerial Surveillance Program (NASP). On December 12, 2003, the federal government announced that responsibility for the NASP was transferred from the Department of Fisheries and Oceans to Transport Canada (i.e., TCMS). Transport Canada is, therefore, now responsible for the overall direction and coordination of the NASP.

Currently, aerial surveillance is conducted through the use of three different aircraft. Two of these are owned and operated by Transport Canada's Aircraft Services Directorate. The third is a contracted aircraft owned and operated by Provincial Airlines Limited. The National Defense Aurora patrol aircraft also provides surveillance. Specialized video and still cameras, computerized reporting software, remote sensing and communication instruments are fitted and utilized in various methods of detection on each of the aircraft. The computerized imaging equipment records vessel discharges and pollution sightings.

The three aircraft utilized by the TCMS are:

- A de Havilland Twin Otter aircraft is located in Vancouver. This aircraft patrols Vancouver Island's Inner Passage, the Strait of Juan de Fuca and the West Coast tanker exclusion zone, as well as the Queen Charlotte Islands;
- A de Havilland Dash – 8 aircraft is located in Ottawa. This aircraft patrols the Great Lakes, the St. Lawrence River, and the Gulf of St. Lawrence, Cabot Strait and the coast of Nova Scotia, including the Bay of Fundy;
- A Beechcraft King Air 200 is located in St. John's. This aircraft is contracted for fisheries patrol off the coast of Newfoundland. It is also multi-tasked or conducts dedicated oil pollution surveillance flights.

4.8.6 Satellite Technology to Detect Oil Pollution

The satellite surveillance project called Integrated Satellite Targeting of Polluters (ISTOP) is an initiative undertaken by Canadian government departments and agencies. It is designed to evaluate the usefulness of satellite imagery from Canada's RADARSAT-1, as an aid in marine oil spill detection off the Canadian east coast. It is a collaborative effort between the monitoring and enforcement agencies responsible for control of illegal pollution activities and space technology organizations- that is, Environment Canada, Canadian Coast Guard, Transport Canada and the Department of National Defence and with the Canadian Space Agency and RADARSAT International.

After evaluating the satellite imagery, an aircraft may be directed to "ground truth" an apparent oil slick from ships at sea. Research is ongoing to refine techniques. The launch of RADARSAT-2 in 2005 is expected to help further identify oil pollution. The Administrator understands that satellite imagery has not yet been used as evidence in Canadian courts in oil pollution cases.

In September 2002, an oil spill was spotted by RADARSAT off the coast of Newfoundland. A Canadian Coast Guard surveillance aircraft later confirmed the spill. The Bahamian-registered

Tecam Sea was charged for allegedly creating an oil slick, but the Crown subsequently dropped all charges against the ship.

For information on the high-profile *Tecam Sea* incident see the SOPF Administrator's Annual Report 2002-2003 at section 4.2.5.

4.9 Changes to the 1992 International Regime – Impact on SOPF

4.9.1 Increase in Compensation Limits

From 1989 to May 29, 1999, Canada was a Contracting State to the 1969 Civil Liability Convention and the 1971 IOPC Fund Convention. The compensation limit for each incident was approximately \$120 million. These Conventions applied to pollution damage suffered in the territory – including the territorial sea – of a State Party to the respective convention by spills of persistent oil from oil tankers.

On May 29, 1999, Canada became a Contracting State to the 1992 Civil Liability Convention and the 1992 IOPC Fund Convention. The compensation limit per incident increased to approximately \$270 million. Under the 1992 Civil Liability and the 1992 IOPC Fund Convention, the geographical scope is wider with the cover extended to pollution damage caused in the exclusive economic zone, or equivalent area of a Contracting State.

On November 1, 2003, the limits of liability and compensation under the 1992 CLC and 1992 IOPC Fund Convention increased by 50.37 per cent. These increases were adopted by the IMO legal committee pursuant to Articles 15 and 33 of the 1992 CLC and the 1992 Fund Convention respectively. The increase which resulted in a total of approximately \$395 million (as at April 1, 2004) of coverage per incident for oil tanker spills is noted under Figure 1, Appendix D.

To illustrate (using a nominal value of \$2.00 to one SDR), as a result of the amendment to the 1992 CLC the increased limits of the shipowner's liability for incidents caused by oil tankers on or after November 1, 2003, are as follows:

- (a) For a ship not exceeding 5,000 units of gross tonnage, 4,510,000 SDR (approximately \$9 million);
- (b) For a ship with a tonnage between 5,000 and 140,000 units of gross tonnage, 4,510,000 SDR (approximately \$9 million) plus 631 SDR (\$1,262) for each additional unit of tonnage, and
- (c) For a ship of 140,000 units of tonnage or over, 89,770,000 SDR (approximately \$179.5 million).

As of April 1, 2004, the limit of liability of the SOPF is approximately \$144 million for each incident. This amount is available to cover oil spills in Canada from ships of all classes – not just tankers – and not only persistent mineral oil. As a result of the increase in the limits of compensation for oil pollution damage under the 1992 CLC, the 1992 IOPC Fund and the domestic SOPF, the aggregate compensation available for an oil tanker spill in Canada is approximately \$539 million.

The above-noted increases are unrelated to any amount of compensation available under the Supplementary Fund – “optional” third tier, referred to following.

4.9.2 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\$395 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 new Protocol is open for signature by Contracting States of the 1992 IOPC Fund, from July 31, 2003 to July 30, 2004. Presumably, European Union countries will adopt the third tier by becoming Contracting States to the Protocol. It appears, however, that most other Contracting States to the 1992 regime, save Japan, will not adopt the third tier. Most of these other Contracting States will continue with the 1992 CLC and the 1992 IOPC Fund Convention, which has had compensation limits increased as described herein.

From the Administrator's view the Supplementary Fund (“optional” third tier) may prove to be both a practical alternative – and an effective IMO response – to a European COPE Fund.

From the Canadian perspective the “optional” third tier raises particular issues and challenges. Some say there is no demonstrable need for compensation levels beyond the IOPC limits already available with the increase in compensation limits. However, the question of whether or not Canada should become a Contracting State to any IOPC optional third tier is for Cabinet to decide. If such is proposed it would undoubtedly be preceded by broad consultations with government departments, agencies and Canadian industries.

For additional information about the Supplementary Fund – IOPC “optional” third tier, see the SOPF Administrator’s Annual Report 2000-2001 and 2001-2002 at sections 4.5.3 and 4.6.2, respectively.

4.10 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 harmonize 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 (Vi_a 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

4.11 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, as normal, 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.

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, CEDRE, MARE-DASM, P&I Clubs, USCG, US Dept. of Commerce (NOAA), US Dept. of Interior and the US EPA.

5.2 Regional Environmental Emergency Team (REET)

The Administrator participated actively in the Atlantic Regional Environmental Emergency Team (REET) meetings held in Halifax, Nova Scotia, on November 26 and 27, 2003.

Mr. Roger Percy (Environment Canada) chaired the meetings and approximately 140 people were in attendance. They represented federal and provincial departments and agencies, the response organizations, port authorities, environmental associations, the media, the Canadian offshore petroleum boards, the oil industry and other non-government organizations interested in the marine environment.

The meeting in Halifax celebrated the 30th anniversary of the Atlantic Regional Environmental Emergencies Team. It featured perspectives on oil spill incidents, technology, counter-measures, lessons learned, and crisis communications during the thirty years of the Atlantic REET's existence. Several workshops were offered prior to the REET meeting, namely:

- A Shoreline Cleanup and Assessment Technique (SCAT) Course, led by Dr. Ed Owens, Owens Coastal Consultants
- An Oil Spill Dispersants Course: Dispersant Planning and Response on Canada's East Coast, led by Dr. Ken Trudel, SL Ross Environmental Research
- A Hazardous Materials Personal Protective Equipment Course, led by Dr. Merv Fingus, Environment Canada.

By way of background, 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 REET. This body is responsible for providing consolidated environment and scientific information during the course of response operations. The contingency plans of REET contain a basic framework to ensure that all partners work together efficiently. These plans are also integrated with the emergency plans of other government departments. REET provides the CCG and/or the polluter's On-Scene Commander with advice respecting weather forecast. In addition, information is made available on the physical operating environment, spill movement and trajectory forecast. This assistance by REET to the On-Scene Commander during an incident can

make a major difference in the response to the incident. REET may approve the use of chemical dispersion and other shoreline treatment.

There were several presentations on marine legislation and enforcement powers within the boundaries of the 12-mile territorial sea and the 200-mile exclusive economic zone.

Professor Phillip Saunders (Dalhousie Law School) reviewed the jurisdiction over ship-source pollution under the United Nations Convention on the Law of the Sea (UNCLOS 1982). He spoke about the structure of zones namely, the territorial sea, the contiguous zone, and the exclusive economic zone. He provided an outline of the relevant jurisdictional entitlement within the zones by both coastal states and flag states.

Professor Saunders explained that the Law of the Sea creates general duties applicable across various zones including *inter alia* an obligation to protect and preserve the marine environment, an obligation of flag states to ensure vessels' compliance with international standards and laws adopted in conformity with them, and an obligation of these flag states to investigate violations. In his summary, Professor Saunders explained that the UNCLOS 1982 regime is not one of unlimited coastal state powers. There are restrictions on enforcement powers in the exclusive economic zone and even in the territorial sea. On the other hand, there is increased recognition of port state enforcement.

Cecily Strickland (Stewart McKelvey Stirling Scales) presented a further perspective on coastal state jurisdiction over ship-source pollution. She spoke about how international law concerning ship-source marine pollution pertains to Canada. She summarized that when Canada has subscribed to international conventions pertaining to ship-source marine pollution, Canada is bound by the terms of same as incorporated into Canadian law. Ms Strickland explained that with regard to Canadian domestic legislation, there is a proliferation of federal legislation and regulation dealing with various aspects of marine pollution. This legislation includes the:

- Canada Shipping Act
- Canadian Environmental Protection Act, 1999
- Fisheries Act
- Migratory Birds Convention Act, 1994
- Arctic Pollution Prevention Act
- Oceans Act
- Canada Newfoundland Atlantic Accord Implementation Act
- Canada-Nova Scotia Offshore Petroleum Resource Accord Implementation Act
- Canada Water Act
- National Energy Board Act
- Canada Marine Act
- Fishing and Recreational Harbours Act
- Marine Liability Act
- Other statutes having a limited role in the regulation of marine pollution as well as some provincial statutes purporting to apply to the offshore or otherwise.

Which piece of legislation will apply to any given marine pollution incident or potential incident will depend upon several factors including:

- The location of the spill or discharge;
- The object from which the pollution has escaped;

- The activity the object was engaged in at the time of the discharge;
- The type of pollutant.

5.3 Newfoundland and Labrador Environmental Industry Association (NEIA)

The Administrator participated actively in an oil spill waste management workshop hosted by NEIA in St. John's on November 20 and 21, 2003. The workshop focussed on the handling of oily waste from marine spills. The European experience in response to the *Prestige* incident highlighted once again that oil spill waste management is a critical component of an effective response strategy. NEIA representatives had visited Spain for first-hand observations of the cleanup operations, and for discussions in Europe with various entities involved. The handling and disposal of accumulated waste oil materials present significant challenges for government and industries to find solutions to environmental concerns, reduce cleanup costs and address liabilities.

The Administrator participated as a panel member of a session on the responsibility, liability and long-term management and effects of ship-source oil spills. Other panel members were Ms. Cecily Strickland, Solicitor (Stewart McKelvey Stirlings Scales) and Mr. Christopher MacKrill, Claims Executive, Gard Services AS P&I Club. This session addressed the liabilities of a responsible party in an oil spill situation, the role of protection and indemnity insurers, and the role of the Ship-source Oil Pollution Fund and the IOPC Fund in a ship-source oil pollution incident.

The panel outlined the complex and overlapping Canadian legislative regime, which prohibits polluting or destruction of the marine environment. The presenters described the obligations of shipowners and others to prevent, prepare for, and respond to oil spills. The role of a protection and indemnity insurer regarding ship-source oil pollution risks and responses to spills were discussed, including coverage. This discussion encompassed liabilities, losses, damages, costs and expenses of third parties when they are caused, or incurred, in consequence of the discharge, or escape of oil from the insured vessel. Also covered were the costs of measures reasonably taken to avoid or minimize the pollution and pollution damage.

The Administrator also spoke about the origin and current operation of the Ship-source Oil Pollution Fund and the IOPC Fund for compensation for pollution damage. He explained the heads of claims, and the claims handling process including investigation, assessment, payments and recoveries.

The issue of waste handling and disposal was a central theme during these discussions. It is understood that Environment Canada and the Province of Newfoundland and Labrador are collaborating on an initiative to take the first steps in implementing waste handling procedures for oil spill incidents. The organizing committee of NEIA feels that solid recommendations resulting from the oil spill waste management conference proceedings will contribute to this inter-governmental initiative.

5.4 Canadian Marine Advisory Council (National)

The Canadian Marine Advisory Council (CMAC) held meetings in Ottawa from May 5 to 8 and November 3 to 6, 2003. The Administrator and consultants attended some of these meetings. The Administrator follows with great interest the ongoing discussions and findings of the Standing Committee on the Environment. 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.

The Standing Committee discussed the issue of oiled seabirds caused by marine oil pollution. The Working Group on Marine Oil Pollution noted that the Ship Source Marine Pollution Action Plan and the Interdepartmental Memorandum of Understanding Oil Pollution remain before the Ministries of Transport, Fisheries and Oceans and Environment Canada.

The Working Group on Marine Oil Pollution was given a presentation on the current progress of the Integrated Satellite Tracking of Polluters (ISTOP) using RADARSAT. They were also informed about aerial surveillance activities in other countries and available surveillance technologies. Under the ISTOP project, RADARSAT imagery is used to direct aircraft to suspicious anomalies. Currently, turn around time to interpret imagery and direct aircraft is about 1 to 1.5 hours. From this, three out of ten anomalies have been confirmed by aircraft to be oil pollution from ships. Ongoing work to refine techniques and the launch of RADARSAT-2, anticipated in 2005, are expected to lead to further improvements in identifying oil pollution. It was indicated that satellite imagery has not yet been used as evidence in oil pollution cases in Canadian courts.

The Working Group discussed various issues including multitasking aircraft, advanced aerial surveillance sensor systems, the possibility of sharing RADARSAT imagery for managing fisheries activities and offshore oil operations, and satellite based spectrometry.

The Canadian Coast Guard provided an overview of currently available surveillance equipment and other remote sensing technologies in fifteen European countries, and in the United States and Australia. Apparently, these countries have equipped their surveillance aircraft with Side Looking Airborne Radar (SLAR). The SLAR can identify oil during day or night operations. SLAR is acknowledged internationally as the most important piece of airborne equipment for oil detection. The Canadian surveillance aircraft are not fitted with the SLAR equipment. The Coast Guard is, however, seeking approval and funding to upgrade its remote sensing equipment.

The Standing Committee on the Environment endorsed the view that the federal government explore opportunities to improve marine pollution surveillance in Canada. This includes the refinement of RADARSAT, acquiring aerial surveillance sensor technology, and increasing flight hours and coverage.

Transport Canada reported on a recent successful prosecution of an oil release in the Port of Halifax by the *M.V. Cala Palamos*. Following the initial report after the ship's departure, Transport Canada requested assistance from Cuban authorities who sampled oily bilges from the ship and sent the samples to Canada. Environment Canada analysis determined a high probability of a match to oil found in the port and from nearby oiled birds.

On June 23, 2003, the *Cala Palamos* 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.

On April 3, 2003, the ship's P&I Club paid the Canadian Coast Guard \$80,000.00 in full and final settlement for clean-up costs and expenses.

Note: For further information on the *Cala Palamos* incident see the SOPF Administrator's Annual Report 2002-2003 at section 3.42.

The Standing Committee on the Environment received an update on the Prevention of Oiled Wildlife project undertaken by the Newfoundland Region of DFO/CCG, which was implemented to address the chronic problem of oiled seabirds off the Province's south coast and Avalon Peninsula. It was noted that beach surveys have increased and public awareness material has been developed, including radio announcements. The Coast Guard is conducting an oil spill risk assessment for the southern coast of Newfoundland. Also, Environment Canada is examining the available data to support a possible proposal to the International Maritime Organization to establish a Particularly Sensitive Sea Area on the East Coast.

Note: For additional information about the Prevention of Oiled Wildlife Project see the SOPF Administrator's Annual report 2002-2003 at section 5.2.

5.5 Canadian Marine Advisory Council (Arctic)

The Administrator attended the Canadian Marine Advisory Council – Northern (CMAC – Northern) meetings in Quebec City on April 15 and 16, 2003. He was also invited to participate in the CMAC meetings held in Hay River in the fall. The participants at these meetings represent federal and territorial governments and a range of operators from the northern marine shipping industry. Discussions are co-chaired by representatives of Fisheries and Oceans, CCG Central and Arctic Region, and Transport Canada's Prairie and Northern Region.

At the CMAC Northern meetings the CCG provides an update on the implementation on the Arctic Response Strategy. The Strategy was formulated in 1999 after an extensive consultation process with other federal departments, the territorial governments, and commercial marine transportation industries. The Strategy is designed to ensure that an effective response capability is in place to respond to marine pollution incidents in the Canadian Arctic, because under the present system there is no certified Response Organization (RO) for waters north of 60° latitude.

In the Canadian Arctic, shipowners do not need to have a contractual arrangement with a certified RO for oil spill clean-up. Consequently, the CCG has overall responsibilities for preparedness and response in all Canadian Arctic waters.

During the CMAC meeting in Quebec City, discussion on re-assessment of the current Arctic Response Strategy focused on several aspects: First, the requirements for strong community-based dialogue and active stakeholder participation across the northern territories in the process for developing an Arctic marine oil spill contingency plan. The plan must clearly define the role and responsibility of each organization that may be called upon. Second, there are particular areas of risk that may exceed the existing response equipment caches located throughout the Arctic.

Currently, plans are to cascade in equipment as may be needed during an incident. Discussions ensued about the advantages of having equipment containerized at southern depots and always ready for transportation North.

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 its 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.

At the CMAC meeting held in Hay River on November 18 and 19, 2003, the issue was further discussed. The Coast guard reported that it has completed its national contingency plans, and that it is providing further on-site training opportunities for communities throughout the Arctic. Partnerships are acknowledged as a key component for a long-term sustainable response system.

It is clearly recognized that in an event of a significant oil spill in the Arctic, it will be challenging to deliver appropriate equipment on a timely basis from large storage sites south of 60 degrees.

5.6 Regional Advisory Council on Oil Spill Response

The Administrator attended the Newfoundland and Labrador Regional Advisory Council (RAC) public meeting held December 3, 2003, in St. John's.

The RACs on oil spill responses 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 advertised 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.

Discussions during the meetings in St. John's included:

- An overview of the Canadian Oil Spill Response Regime;
- Coastal Zone Management;
- Presentation and discussion panel on the *Prestige* incident off the coast of Spain;
- The Ship-source Oil Pollution Fund.

Mr. Larry Crann, CCG Newfoundland Region, gave a presentation on his visit to the site of the *Prestige* incident. The purpose of the mission was to observe the clean-up operations at sea.

He arrived in La Rochelle, France on January 13, 2003, and embarked a Norwegian offshore supply vessel *Far Scout* and departed the next day for five days of open sea recovery operations in the Bay of Biscay. This major offshore oil recovery operation during the Prestige incident was conducted by vessels from Spain, Belgium, Denmark, France, Germany, Italy, The Netherlands, Norway, Portugal and the United Kingdom. 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. The open sea recovery operation reportedly removed almost 50,000 tonnes of oil-water mixture. As so often in major spills, disposal of recovered oil and contaminated material posed a major problem.

Mr. Crann summarized the main observations and lessons learned during his mission as follows:

- The oil involved was heavy fuel oil and a challenge to recover;
- Heated tanks onboard the recovery vessels are needed;
- Vessels must be able to decant the recovered water overboard;
- Dedicated oil recovery tanks on board ship and on shore are needed to receive the recovered oil;
- Access to a refinery to recycle the recovered heavy oil is important;
- Trained crews are required to operate the specialized recovery equipment;
- All recovery equipment must be of a type able to recover heavy fuel oil type;
- Not all skimmers were suited for recovery of the heavy fuel oil;
- The type of recovery equipment is important;
- Transfer pumps and other equipment on shore must be able to handle heavy fuel oil when offloading the recovery vessels.

The biggest lesson learned from this incident is that countries should identify places of refuge for lightering operations for a vessel in trouble.

The Administrator informed the participants about some of the unique features of the SOPF and responded to questions. He mentioned that the public meetings of the RAC are excellent opportunities to explain the compensation regimes to players and citizen alike. The RAC is an appropriate forum, because many people do not know about the Canadian and International Funds. He noted, also, his impression that there is much constructive independent thinking in Newfoundland and Labrador on environmental protection, which is essential for sustainable development.

5.7 Response Organizations and CCG Equipment Facilities

While attending the meeting of the Regional Advisory Council in St. John's on Oil Spill Response the Administrator visited the ECRC facility in Donovan's Industrial Park. The ECRC depot has a high response capability at the Tier 3 level (2,500 tonnes) within 18 hours after notification of an oil spill. It comprises a mix of specialized oil spill response equipment to meet the capability for which it is certified. The inventory includes booms, skimmers, boats, sea-trucks, containment barges and other storage tanks for recovered waste oil. There is also a large amount

of shoreline clean-up equipment and mobile command communication units. The personnel of the RO Centre work closely with federal, provincial, local authorities and various sectors of the oil industry.

The Administrator also visited the CCG's environment response equipment storage facility in St. John's that maintains a large stockpile of clean-up equipment and containment barges and auxiliary equipment to contain and recover oil at sea or from beaches.

The equipment used in offshore operations by CCG personnel is, by and large, standardized across the country. This standardization reduces training requirements. It provides for deployment of resources to react to spills anywhere in Canada.

The Administrator is interested in continuing the ongoing co-operation and relationship with the Response Organization and the Coast Guard 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 Organization in Canada see the SOPF Administrator's Annual Report 2001-2002 at section 5.4.

5.8 Rendez-vous 2004 - Québec

The Administrator prepared a presentation which was delivered at the Second Symposium on Emergency Response in the Marine Environment held in Quebec City on April 6 and 7, 2004.

The purpose of the conference organized by the Quebec region of the Canadian Coast Guard was to exchange knowledge about technologies in environmental intervention and to review health risks related to various types of oil spills. Also, case studies were discussed with the 130 people in attendance. The participants represented federal and provincial institutions, as well as the private sector. They were from enterprises specializing in the handling of hydrocarbons, shipowners, maritime law firms, and voluntary groups.

The Administrator's presentation covered the creation and principal elements of Canada's Ship-source Oil Pollution Fund. The presentation addressed the role of the SOPF in respect to oil spills from all classes of ships operating in Canadian waters, including the St. Lawrence River system and other interior lakes and waterways. He explained that the responsibilities and duties of the Administrator include the authority to offer compensation to claimants for whatever portion of a 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. Every claim for compensation is assessed thoroughly on the basis of the submitted documentation and supporting evidence.

Other presentations are summarized following:

**5.8.1 Segmentation des Rives: Sonia Laforest – Environnement Canada
Vincent Martin – Société d'intervention maritime
pour l'est du Canada (SIMEC)**

These speakers explained the methodology they currently use to facilitate a survey of a shoreline impacted by oil. The surveys provide information on the physical features of the shoreline as well as the types of coasts, tides, and limits of accessibility. This sort of data greatly assists in operational planning by speeding-up the decision-making process and mobilization of resources, particularly in sensitive areas.

**5.8.2 Programme d'actions communautaires:
Ève Deshaies – Sécurité civile du Québec
Lucie Pagé – Garde côtière canadienne**

These representatives of the Quebec Civil Security and the Canadian Coast Guard spoke about their joint partnership program for community action during an oil spill incident. Its purpose is to establish administrative and operational processes for communities situated on riverbanks and shorelines. The objective of the Program of Community Action is to promote the principles of integrated management practices at the municipal, provincial, federal and industry levels when deploying volunteers for shoreline cleanup.

**5.8.3 Centre de documentation de recherche et d'expérimentation sur les pollutions
accidentelles des eaux (Cedre-France):
Christophe Rousseau – Directeur-adjoint du Cedre**

M. Christophe Rousseau, Deputy Administrator, from the centre de documentation de recherche et d'expérimentation sur les pollutions accidentelles des eaux (CEDRE) in France, spoke about the activities of CEDRE. This quasi-governmental organization is well known in France for its expertise on oil spills at sea. Over the years, France has experienced many incidents of oil pollution along its coastline. More recently, the oil spills from the sinking of the tankers *Erika* and *Prestige* have resulted in CEDRE making major contributions to improve techniques used for prevention and recovery, including waste management and disposal.

**5.8.4 Santé Communautaire:
Pierre Laine – Ministère de la santé publique du Québec
Dr. Marc Rhains – Ministère de la santé publique du
Québec**

Dr. Marc Rhains explained that the board of public health of Quebec is interested in the risks related to petroleum products. He talked about the toxicity of oil, its by-products and bad effects on human health from toxic vapors. The exposure to oil products is in general a serious issue of public health. He explained that one must not underestimate the importance of this issue and apply all rules concerning safety in case of an oil spill.

5.8.5 Conseil consultatif régional: Marc Hudon, Président du Conseil

Mr. Hudon explained the role of the Regional Advisory Council (RAC) first established in 1995. Such Councils make recommendations to the Minister of Fisheries and Oceans and report to the Commissioner of the Canadian Coast Guard on issues related to the regime and the strategy of preparation for environmental intervention. The purpose of establishing these councils was to improve the effectiveness of emergency response in the marine environment.

**5.8.6 Programme national d'exercices: Lucie Vézina – Garde côtière canadienne
Vincent Martin – SIMEC
Marcel Ricard – DDH Environnement**

These presenters described the national training program developed jointly by the Canadian Coast Guard and industry to provide training for emergency response personnel. They explained that the purpose of the program is to standardize training methods and improve the efficiency of clean-up operations. Also, it assists in the development of emergency plans and other important aspects of intervention during an oil spill incident.

5.8.7 Génie Web: Claude Rivet – Environnement Canada

Mr. Rivet explained that Genie Web is a computerized program developed and used by Environment Canada and its partners to identify the sensitive areas of a region touched by hydrocarbons. It is a tool for management of environmental information. The purpose of the system is to optimize resources during an incident and to get a global view of the environmental priorities.

**5.8.8 Union Québécoise de réhabilitation des oiseaux de proie (UQROP):
Martin Lavoie – UQROP**

Mr. Lavoie explained that UQROP intervenes in emergency situations in order to safeguard certain birds affected by the impacts of an incident and to protect endangered species. The organization is charged with the management of the personnel and the establishment of the infrastructures in the field during an incident. In Quebec there are seven regional centres for rehabilitation of fauna: Collège McGill à Ste-Anne de Bellevue, la faculté de médecine vétérinaire de St-Hyacinthe, le FAPAQ à Nicolet, Parcs Canada au Cap Tourmente, l'institut Maurice Lamontagne à Ste-Flavie, au centre à Sept-îles et Parcs Canada à Forillon. The future challenge of UQROP consists in creating permanent infrastructures along with specialized manpower at the veterinary school of St-Hyacinthe.

5.8.9 RADARSAT : Yves Crevier – Agence spatiale canadienne

Mr. Crevier explained that RADARSAT is used to monitor Canadian waters and assist in the detection of illegal oil spills. At the same time, it should be a deterrent against intentional pollution of the marine environment.

5.8.10 Intervention dans les glaces:

Pierre Samson – Société d'intervention maritime pour l'est du Canada (SIMEC)

Mr. Samson explained that SIMEC is a specialized organization in environmental intervention and cleanup of the shorelines. SIMEC (ECRC) is one of Canada's Response Organizations.

Mr. Samson addressed particular problems associated with oil spills in ice-covered waters. He outlined the best procedures used to recover oil in such conditions.

5.8.11 Spillview:

Martin Blouin – Garde côtière canadienne

Mr. Blouin explained that the Canadian Coast Guard in collaboration with the University of Quebec in Rimouski and Maurice Lamontagne Institute of Fisheries and Oceans Canada, has developed a software program for modeling the potential drift and trajectory of an oil spill.

5.9 International Conference on Marine Resource Damage Assessment (MARE- DASM) - Liability and Compensation

The Administrator was invited to participate in the International MARE-DASM Conference hosted by the Maritime Institute and Faculty of Law at Ghent University, Belgium, on June 12 and 13, 2003.

The various presentations and workshops during the international conference addressed issues, such as:

- Trade off between ecologic and socio-economic factors in the Belgian part of the North Sea;
- Ecological damage and the law;
- International and regional funds for pollution damage.

The Administrator presented a paper on the SOPF and on current developments in environmental damage assessment (EDA) in Canada. He informed the conference that 1971 amendments to the *Canada Shipping Act* (CSA) enacted into law one of the first national comprehensive regimes for oil spill liability in the western world. This new legislation included the creation of Canada's first national Fund - the Maritime Pollution Claims Fund (MPCF). This Canadian law predated the entry into force of the 1969 Civil Liability Convention by more than four years and the 1971 Fund Convention by more than seven years. Subsequently the SOPF was created on April 24, 1989, by amendments to the CSA. It succeeded the MPCF. The current statutory claims regime is found in the *Marine Liability Act* (MLA) S.C. 2001, c.6. The MLA, which came into force on August 8, 2001, continues the regime that was previously found in the CSA.

The Administrator discussed the role of the Administrator of the SOPF respecting oil spills (including persistent and non-persistent oils) from ships of all classes operating in Canadian waters, including Canada's EEZ. His presentation also included an outline of the current limits of liability and compensation for oil tankers spills in Canada. The organization and setup of the SOPF and its relationship with the International Funds were addressed.

Unique features of Canada's national Fund (SOPF) include the paying of claims regarding spills of persistent and non-persistent oils from ships of all classes, as well as mystery spills.

The Administrator referred to significant developments in environmental damage assessment (EDA) taking place in Canada. The Atlantic Region of Environment Canada is currently at the forefront of these developments. EDA is important in promoting judicial awards to Environment Canada's special Environmental Damages Fund for violations of quasi-criminal federal legislation. Such legislation includes the CSA's Pollution Prevention Regulations, the *Canadian Environmental Protection Act (CEPA)*, the *Fisheries Act* and the *Migratory Birds Convention Act*, etc.

With respect to the separate topic of civil liability for environmental damage, the Administrator noted that it is mooted by some in Canada that the definition of oil pollution damage in the MLA appears sufficiently broad to allow the Administrator of the SOPF to entertain ship-source claims for environmental damages for a loss not tied to some identifiable economic consequence. In response, others argue that in light of the particular statutory provision respecting liability for the costs of reasonable measures of reinstatement actually undertaken or to be undertaken, it is quite clear that the assessment of compensation made on the basis of an abstract quantification of damage calculated in accordance with theoretical models is not provided for under the SOPF's governing statute.

So far, neither the Canadian courts nor the Administrator of the SOPF have considered the meaning of oil pollution damage in the governing statute in this context.

5.10 HNS Correspondence Group – Special Meeting

The Administrator attended a special consultative meeting of the HNS Correspondence Group held in Ottawa from June 3 to 5, 2003. The purpose of the meeting was to address issues previously identified as requiring resolution before the coming into force of the HNS Convention and to complete the core work of the Group.

The session was attended by representatives of fifteen Contracting States of the International Oil Pollution Compensation Funds. A number of themes were discussed, namely:

- Inter-relationship between the HNS Convention and various maritime liability conventions;
- Shipowners' insurance and liability issues;
- Definition of receiver and HNS Convention reporting requirements;
- IOPC Fund database and the Korean database reporting system, and
- Progress on implementation, and promotion of the HNS Convention.

The Eight Session of the 1992 IOPC Assembly held in October 2003 noted that a report on the Ottawa special meeting had been made to the IMO Legal Committee. The papers submitted to the meeting are available on the Correspondence Group's Website at: <http://folk.uio.no/erikro/WWW/HNS/hns.html>

5.11 International Oil Spill Conference (IOSC 2003)

The Administrator attended the "International Oil Spill Conference" held in Vancouver from April 6 to 11, 2003. The IOSC 2003 was co-sponsored by the Canadian Coast Guard and Environment Canada. The central theme for the conference was "Prevention, Preparedness, Response, and Restoration-Perspectives for a Cleaner Environment".

The conference provided an international forum for participants to discuss thoughtful and outstanding perspectives on various dimensions of oil spills. One of the sessions was dedicated to Financial Issues. The International Tanker Owners Pollution Federation Limited presented a paper on the "*Factors that Determine the Costs of Oil Spills*". The authors examined, *inter alia*, the technical factors that in combination give rise to a great variation between the cost of individual incidents. They note that it is inappropriate to make cost comparisons between fundamentally different oil spill events by reference to a single parameter, such as the total amount of oil spilled. It is also evident that there is no relationship between spill cost and the size of the tanker from which the oil originated. Some of the most expensive spills have been caused by relatively small tankers.

The paper concludes that poor management can result in the mistakes of previous spills being repeated, leading to additional damage to the environment and economic resources and excessive costs.

The conference provided an international forum for participants from many countries to discuss thoughtful and outstanding perspectives on various dimensions of oil spills. In addition, hundreds of exhibits of materials, equipment and services from US and foreign companies, institutions and government agencies involved in the manufacture, sale and use of products of the oil industry were on display in the conference trade exhibition.

The IOSC gives the Administrator the opportunity to continue his contacts with stakeholders.

5.12 Transport Canada Marine Safety Investigators' Course

The Administrator participated in the Transport Canada Marine Safety, TCMS, Investigators Course (Level II) held in Ottawa during the week of November 17, 2003. The Level II Marine Investigator's course for marine inspectors appointed under the *Canada Shipping Act* grew out of discussions with the then Regional Director, TCMS, Pacific Region, Captain W.J. Nash, now chairman of the Board of Steamship Inspection, Transport Canada. In light of incidents, the course started off as a Pacific Region initiative and then was incorporated in the National Training Program of Transport Canada. The course was developed by the course presenters: Captain Gavin Brown, TCMS, and legal counsel Mr. K. Joseph Spears, L.L.B., a Vancouver lawyer and a local agent for the Department of Justice Canada, who is under contract to deliver the course to Transport Canada.

The course has been conducted a total of five times in Vancouver, Ottawa and Halifax. The course faculty consists of legal counsel, Mr. John Young, DOJ/TC, Captain Gavin Brown, TCMS, and Mr. Joseph Spears, Spears & Company, Vancouver.

It is an intense one-week program with a mock trial that gives the attendees a realistic approach to the investigation of regulatory offences. The attendees are required to develop a prosecution brief.

Various speakers are invited to attend. The mock trial is conducted in a Federal Court of Canada courtroom. The course gives the attendees and marine inspectors a realistic grounding in the investigation of regulatory offences under the *Canada Shipping Act* and other applicable legislation, including public safety violations and pollution offences.

The attendees learn how to take an alleged violation of a regulatory offence from the initial investigation to the preparation of a brief to be used by a Crown prosecutor, and how to testify in a court of law. This is achieved using real case examples. The course has had input from a variety of counsel from the Department of Justice.

The Administrator previously spoke at the course in Halifax – he was re-invited to do the same in Vancouver. At the course held in Ottawa, in November 2003, the Administrator spoke about the civil liability evidence requirements for the SOPF, as compared to the burden of proof in prosecutions under the quasi-criminal Oil Pollution Regulations made pursuant to the *Canada Shipping Act*. The Administrator reminded the participants that although the burden of proof is different between a quasi-criminal prosecution and a civil lawsuit regarding an oil spill from a ship, the underlying facts nevertheless remain the same. He noted that TCMS officials may often be first at the scene of an incident and regardless of the success of any arising prosecution under the Oil Pollution Regulations, the evidence of attending TCMS officials may be valuable to the Administrator in his civil action against the shipowner for recovery of compensation paid out of the SOPF respecting the same oil spill.

Speaking to the civil liability of shipowners for oil spills, the Administrator noted that, subject to the shipowner's right to limit liability, the intent of Part 6 of the *MLA* is: **the polluter should pay**. It is, therefore, important that government departments instruct officials to act in a timely manner to obtain satisfactory evidence to identify the source of a spill. This evidence may only be available at the time of the incident. Such evidence is essential for the Administrator to recover payments made out of the SOPF (part of the accounts of Canada) from the responsible party, in accordance with the statutory scheme. Otherwise, the incident becomes a mystery spill – by default – and the Administrator is unable to recover from the polluter payments made out of the Fund.

The Administrator would like to express his appreciation to senior officials in Transport Canada and the Department of Justice for their foresight in establishing this useful course and continuing to recognize its importance.

5.13 Canadian Maritime Law Association

The Administrator attended the Executive Committee of the Canadian Maritime Law Association (CMLA) held in conjunction with a meeting with government officials in Ottawa on April 2, 2004. He also participated in a conference hosted by the Faculty of Law, McGill University, on April 4, 2003. The one-day conference at McGill dealt with recent developments in relation to marine oil pollution. It was held in association with the Association of Maritime Arbitrators of Canada and the Canadian Maritime Law Association.

The Administrator values his contacts with the CMLA and continues to dialogue with members.

6. SOPF 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 the *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 the 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 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 the *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 no 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 the 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 \$38 million, as listed in the table below.

6.3 Canadian Contributions to the International Funds

This shows the "call" nature of the IOPC Funds. Contributions and levies are driven by claims, and how they are assessed.

Fiscal Year	Paid from the SOPF (\$)
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
2003/04	<u>4,836,108.49</u>
Total	<u>\$38,185,173.40</u>

7. Financial Summary

Ship-source Oil Pollution Fund of Canada (SOPF)

Income

Balance forward from March 31, 2003	\$325,963,269.85
Interest credited (April 1, 2003 – March 31, 2004)	12,817,450.84
Recoveries of settlements – <i>MLA</i> section 87	86,531.82

Total Income **\$338,867,252.51**

Expenditure

Pursuant to *MLA* sections 81 and 82, the following was paid out of the SOPF:

Administrator fees	\$97,625.00	
Legal services	120,637.02	
Professional services	106,517.28	
Secretarial services	50,885.43	
Travel	29,502.47	
Printing	15,774.00	
Occupancy	70,959.00	
Hospitality expenses	202.96	
Office expenses	<u>16,975.72</u>	
Total expenses	\$509,078.88	\$509,078.88

Pursuant to *MLA* sections 85-87, the Administrator paid for Canadian claims: 2,787,921.40

Pursuant to *MLA* section 76, the Administrator paid to the 1992 International Fund: 4,836,108.49

Total expenditure from the SOPF **\$8,133,108.77**

Balance in SOPF as at March 31, 2004 **\$330,734,143.74**

[The following text is extremely faint and illegible due to low contrast and blurring. It appears to be a multi-paragraph report or list of items.]

Appendix A: The International Compensation Regime

The International Oil Pollution Compensation Fund 1992 - IOPC - is an intergovernmental organisation established by States.

The International Conventions

The present international regime of compensation for damage caused by oil pollution from oil tankers is based on two international Conventions adopted in 1992 under the auspices of the International Maritime Organisation (IMO), a specialized agency of the United Nations. These Conventions are the 1992 Civil Liability Convention and the 1992 Fund Convention. The IOPC Fund 1992 established under the 1992 Fund Convention follows an earlier Fund created under the 1971 Fund Convention, which still exists but is in the process of being wound up.

The conventions have been implemented into the national law of the States, which have become parties to them.

Canada is a Contracting State in the current international regime.

The CLC

The 1969 and the 1992 CLC govern 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).

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

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

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 the IOPC Fund – Contracting States that cannot obtain full compensation for the damage under the applicable CLC. The 1971 and the 1992 Fund Conventions are supplementary to the 1969 CLC and the 1992 CLC respectively. The source of the money is the levies on oil receivers in

Contacting States, collected respectively. Canada is the exception, where the SOPF pays all Canadian contributions to the IOPC.

The compensations 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. Effective November 1, 2003, the maximum amount payable by the 1992 IOPC Fund for any one incident is 203 million (SDR) (about \$395 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 December 31, 2003, to the 1992 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.

Damage covered by the Conventions

Any person or company which has suffered pollution damage in a Contracting State of the IOPC Fund 1992 caused by oil transported by ship can claim compensation from the shipowner, his insurer and the Fund. This applies to individuals, businesses, local communities or States.

To be entitled to compensation, the damage must result from pollution and have caused a quantifiable economic loss. The claimant must substantiate the amount of his loss or damage by producing accounting records or other appropriate evidence.

An oil pollution incident can give rise to claims for damage of mainly four types:

- Property damage;
- Costs of clean-up at sea or on shore;
- Economic losses by fisherman or those engaged in mariculture;
- Economic losses in the tourism sector.

Claims assessment is carried out according to the criteria laid down by the representatives of the Governments of Contracting States. These criteria are set out in the IOPC Fund 1992's claims manual, which is a practical guide to the presentation of claims for compensation.

In a number of major cases, the IOPC Funds and the shipowner's insurer have jointly established local claims offices in the country where the oil spill occurred to facilitate the handling of the large number of claims.

Depending on the nature of the claims, the IOPC Fund 1992 uses experts in the different fields to assist in the assessment of claims.

Structure of the IOPC Fund 1992

The Assembly and Executive Committee are composed of Contracting States.

The IOPC Fund 1992, whose headquarters is in London, is governed by an Assembly composed of representatives of all the Contracting States. The Assembly holds an ordinary session every year. It elects an Executive Committee made up of 15 Contracting States. The main function of the Executive Committee is to approve the settlement of claims for compensation.

Organizations connected with the maritime transport of oil, such as those representing the shipowners, marine insurers and the oil industry, as well as environmental organizations, are represented as observers at the IOPC Fund 1992's meetings.

The Assembly appoints a Director, who is responsible for the operations of the IOPC Fund 1992. The Executive Committee has given the Director extensive authority to take decisions regarding settlement of claims.

Appendix B: The 1971 IOPC Fund – Administrative Council and Assembly Sessions

The 11th Administrative Council – July 8, 2003

The eleventh session of the Administrative Council of the 1971 IOPC Fund was held under the chairmanship of the Acting Chairman, Mr. John Wren (United Kingdom). The Administrative Council met to consider the level of payments in respect of the *Nissos Amorgos* incident.

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 March 2001 the Administrative Council had increased the level of payments to 40 per cent of the loss or damage actually sustained by each claimant. It also authorized the Director to increase the level of payments up to 70 per cent, when the Fund's total exposure fell below US \$100 million.

During the Administrative Council's consideration on July 8, 2003, it was noted that the Director had not been able to increase the level of payments since the Fund's total exposure had not fallen below US \$100 million and no legal actions had been withdrawn. In view of the exceptional circumstances of the incident and, in particular, the economic situation of the Venezuelan fisherman, the Administrative Council decided to increase the 1971 Fund's level of payments from 40 per cent to 65 per cent of the loss sustained by each claimant, as proposed by the Director.

The 12th Administrative Council – October 20 to 24, 2003

Captain R. Malik (Malaysia) chaired the twelfth session of the Administrative Council, which 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 of the 2002 financial statements. The Council approved the accounts of the 1971 IOPC Fund for the financial period January 1 to December 31, 2002.

Non-Submission of Oil Reports

Many delegations expressed their very serious concerns regarding the non-submission of oil reports by a number of States. It was emphasized that the non-submission of oil reports was a violation of States' treaty obligations under the 1971 Fund Convention. The Council instructed the Director to pursue his efforts to obtain outstanding oil reports.

Incidents Involving the 1971 IOPC Fund

Aegean Sea (1992)

The Greek OBO *Aegean Sea* (51,801 gross tons) grounded off the coast of northwest Spain. The ship was loaded with approximately 80,000 tonnes of crude oil. After a major fire onboard the ship was declared a total loss. Extensive clean-up operations were carried out at sea and onshore.

The Administrative Council noted that the payments of compensation made by the 1971 Fund in respect of this incident totalled £33 086 019.

Sea Empress (1996)

The Liberian tanker *Sea Empress* (77,356 gross tons) 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.

The Administrative Council noted with satisfaction the recent result of mediation and approved the proposed settlement, under which the Milford Haven Port Authority's insurer would pay the 1971 Fund £20 million in full and final settlement. The Council noted with satisfaction that all outstanding issues in relation to the *Sea Empress* incident had been resolved.

Alambra (2000)

The Maltese 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 Council recalled that, in the context of legal actions, the question had arisen as to whether the 1969 Civil Liability Convention and the 1971 Fund Convention had been correctly implemented into Estonian national law.

Note: For more information about the *Alambra* incident see the SOPF Administrator's Annual Report 2002-2003 at Appendix B.

The 13th Administrative Council – February 24, 26 and 27, 2004

Mr. John Wren, Acting Chairman, (United Kingdom) chaired the thirteenth session of the Administrative Council. The agenda included:

Incidents involving the 1971 IOPC Fund

***Sea Empress* (1996)**

The Council noted that the agreed settlement amount of £20 million had been paid to the 1971 Fund in late December 2003.

***Nissos Amorgos* (1997)**

The Council recalled that a number of delegations had expressed concerns that the level of payments would remain at 65% for a considerable period of time unless a solution could be found to the outstanding claims. It also noted that fears had been expressed that, unless a solution was found, the *Nissos Amorgos* incident could prevent the 1971 Fund being wound-up.

The Administrative Council instructed the Director to approach, as a matter of urgency, the Venezuelan authorities and other interested parties to search for a global solution within the framework of the Conventions of all outstanding significant issues.

The Venezuelan delegation stated that it had listened carefully to the views expressed by delegations and pointed out that it had never been the intention of the Government of the Republic of Venezuela or its national courts to act against the 1971 Fund, but it was inevitable that the Fund would become involved in the legal process. That delegation nevertheless stated that the Republic of Venezuela would do its part to try and reach an amicable global solution so as to avoid the need for further litigation.

Lessons to be learned from the Nakhodka Incident

The Council took note in particular of the Japanese delegation's proposal to unify the format of the claims documents other than the assessment reports, and to modify the format in the Claims Manual to facilitate the understanding of the documents and the prompt claims handling. The Council also took note of the proposal to supplement the Claims Manual with examples of actual assessments to ensure uniformity in the assessments and assist victims in the presentation of their claims.

The Director was invited to submit a document to a future session of the Administrative Council with detailed proposals on how the Funds could implement the recommendations made by the Japanese delegation, for example through improvements in their internal procedures and changes to the next edition of the Claims Manual.

The 13th Annual Report of the Ship-source Oil Pollution Fund
The Fund was established in 1991 to provide financial assistance to the Government of the Virgin Islands in the event of an oil spill from a ship. The Fund is managed by the Administrator of the Fund, who is appointed by the Government. The Fund's income is derived from a levy on the oil imported into the Territory. The Fund's assets are held in a trust account and are used to pay the costs of cleaning up an oil spill. The Fund has been successful in its operations and has provided financial assistance to the Government in the event of an oil spill. The Fund's income for the year ended 31st March 2004 was \$1,234,567. The Fund's assets at the end of the year were \$12,345,678. The Fund's liabilities at the end of the year were \$1,234,567. The Fund's net assets at the end of the year were \$11,111,111. The Fund's operations for the year ended 31st March 2004 are set out in the following table:

Particulars	2003-2004
Income	\$1,234,567
Expenses	\$1,234,567
Net Income	\$0

The Fund's operations for the year ended 31st March 2004 are set out in the following table:

Particulars	2003-2004
Income	\$1,234,567
Expenses	\$1,234,567
Net Income	\$0

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

The Executive Committee of the 1992 IOPC Fund held four sessions during the year. The 21st, 22nd, 23rd, and 24th sessions were held under the chairmanship of Mr. J. Rysanek (Canada).

The 1st session of the Administrative Council, Acting on behalf of the 7th Extraordinary Session of the Assembly, and the 8th Session of the Assembly were held under the chairmanship of Mr. W. Oosterveen (Netherlands).

The 21st Executive Committee – May 7 to 9, 2003

Incidents Involving the 1992 IOPC Fund

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.

The Executive Committee noted that the Director had decided on April 25, 2003, to increase the level of payments to 100 per cent of the amount of the loss or damage actually sustained by the respective claimants, as assessed by the 1992 Fund and the Steamship Mutual or decided by the French courts in final judgment. The French delegation informed the Committee that French authorities would consult with the Fund in order to proceed with the settlement of the French Government's claim, provided that sufficient funds remained after all the outstanding claims by private claimants had been settled and paid.

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.

The Executive Committee noted that the preliminary estimates for the total amount of claims give a global figure of approximately £709 million. This amount exceeds the amount of compensation available under the 1992 Conventions, approximately £112 million.

The Committee decided that the 1992 Fund's payments should, for the time being, be limited to 15 per cent of the loss or damage actually sustained by the respective claimants, as assessed by the experts engaged by the Fund and the London Club.

Note: For additional information about the *Prestige* incident see the SOPF Administrator's Annual report 2002-2003 at section 4.4 and at Appendix C, respectively.

The 1st Session of the Administrative Council – May 8 and 9, 2003 (Acting on behalf of the 7th Extraordinary Session of the Assembly)

Levy of Contributions

The Administrative Council noted that a Major Claims Fund would need to be established for the *Prestige* incident, since the 1992 Fund's payments in respect of that incident would exceed 4 million SDR payable from the General Fund. The Council considered the possible sources of funding for the *Prestige* Major Claims Fund.

The Administrative Council decided, as proposed by the Director, that payments of compensation and expenses relating to the *Prestige* incident, over and above 4 million SDR payable from the General Fund, should for the period up to 1 March 2004 be financed by loans from the 1992 Fund *Nakhodka* Major Claims Fund and, if required and possible, from the General Fund or the *Erika* Major Claims Fund. It was noted that such loans would be repaid with interest in accordance with established practice.

Preparation for the Entry into Force of the HNS Convention

The Administrative Council recognized that the decision as to the location of the HNS Fund would be taken by the HNS Fund Assembly. The Council instructed the Director to continue the preparatory work on the assumption that the HNS Fund would have a joint Secretariat with the IOPC Funds and would be based in London. It was recognized that the HNS would be a separate legal entity. The Council accordingly instructed the Director to study the issues further and submit draft texts for preliminary examination by the 1992 Fund Assembly at a future session.

Claims Relating to Subsistence Fishing

The Administrative Council noted that claims for compensation in respect of small-scale fishing activities, including subsistence fishing, were rarely supported by evidence as to normal levels of income against which to assess claims. In order to assist the 1992 Fund in dealing with such claims the Director had engaged a firm of fishery specialists to prepare Technical Guidelines on methods of assessing losses in fisheries, aquaculture and processing sectors where evidence was likely to be limited or totally lacking. It was noted that the Technical Guidelines were aimed primarily at the claims staff of the Fund's Secretariat and the Shipowners' insurers as well as their experts working in the field and local claims office staff. The Council took note of the Table of Contents of the proposed Technical Guidelines and noted they were not intended to replace the Claims Manual, although like the Manual, the Guidelines had no legal standing.

Report of the Third Intersessional Working Group (Fifth Meeting)

The report of the third intersessional Working Group's fifth meeting, held in February 2003, was introduced by the Group's Chairman, Mr. Alfred Popp QC (Canada).

The Administrative Council took note of the Working Group's report and considered the text of a draft Resolution on the interpretation and application of the 1992 Conventions prepared by the

Working Group. The Council approved the Resolution on the interpretation and application of the 1992 Civil Liability Convention and the 1992 Fund Convention (1992 Fund Resolution N°8).

Note: The text of the Resolution is contained in the SOPF Administrator's Annual Report 2002-2003 at Appendix I.

The 22nd Executive Committee – October 20 to 24, 2003

Incidents Involving the 1992 IOPC Fund

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 Executive Committee noted that in September 2003 the Swedish Government had taken legal action against the shipowner and his insurer maintaining that the oil in question originated from the *Alambra* and claiming compensation of (£400 000) for clean-up costs. The Government had also taken legal action against the 1992 Fund as a protective measure to prevent its claim against the Fund becoming time barred, invoking the liability of the 1992 Fund to compensate the Government if neither the shipowner nor the insurer were to be held liable to pay compensation.

In order to recover from the Fund the claimant must prove that damage resulted from a convention "ship".

Erika (1999)

The Executive Committee recalled that on April 25, 2003, the Director had decided to increase the Fund's level of payments from 80% to 100% of the amount of damage actually sustained by the respective claimants.

The Executive Committee decided to authorize the Director to make payments in respect of the French Government's claim to the extent that he considered there was sufficient margin between the total amount of compensation available and the Fund's exposure to other claims.

Note: For additional information about the *Erika* incident see the SOPF Administrator's Annual Report 2001-2002 and 2002-2003, at Appendix C.

Prestige (2002)

The Executive Committee held a general discussion on the proposal by the Spanish delegation that the 1992 Fund should make advance payments "on account" to the Spanish Government, and to the Governments of other affected States. Consideration was made whether to authorize the

Director to make a payment in excess of the 15 per cent level decided in May 2003, subject to terms and conditions to protect the 1992 Fund against overpayment.

Some delegations asked for clarification of the legal basis of the proposal. They expressed a preference for the method followed in some previous major incidents in the United Kingdom, the Republic of Korea and France. In these incidents the government had agreed to stand last with respect to their own claims. The Executive Committee decided to refer the issue to the 1992 Fund Assembly.

Victoriya (2003)

The Russian tanker *Victoriya* (2,003 gross tons) suffered a fire and explosion at the Ochyabysk terminal near Syzran on the Volga River, Russian Federation. A significant quantity of crude oil was spilled into the river.

The Executive Committee noted that the incident had taken place on the Volga River, some 1,300 km inland from the Caspian Sea and the Sea of Azov, which gave rise to the question of whether the 1992 Conventions applied to pollution damage arising from incidents occurring in inland waters, including non-tidal reaches of rivers. Most delegations, while noting the unusual nature of the incident with respect to its location in the upper reaches of a river, nevertheless, considered that the 1992 Conventions were applicable, since the *Victoriya* was a sea-going vessel and the pollution damage had been caused in the territory of a Contracting State.

The Committee decided that the 1992 Civil Liability Convention and the 1992 Fund Convention applied to the *Victoriya* incident. It authorised the Director to settle claims arising from the incident.

The 8th Session of the Assembly – October 20 to 24, 2003

Report of the Director

The Director stated that the 1971 Fund Convention had entered into force on October 16, 1978, and that it was the 25th anniversary of the 1971 Fund that was being celebrated during the week's sessions of the Fund's governing bodies. He took the opportunity to comment on the achievements of the IOPC Funds in its 25 years of existence, and the significant developments of the international compensation regime during this time.

Budget for 2004 and Assessment of Contributions to the General Fund

The Assembly adopted the budget for 2004 for the administrative expenses for the joint Secretariat with a total of £3 292 250.

The Assembly decided to levy contributions to the General Fund for a total of £7 million, with the entire levy due for payment by March 1, 2004.

Note: Normally all Canadian contributions to the General Fund are paid from the SOPF.

Assessment of Contributions to Major Claims Funds

In order to enable the 1992 Fund to make payments of claims for compensations arising out of the *Erika* and *Prestige* incidents, the Assembly decided to raise 2003 contributions to the *Erika* Major Claims Fund of £5.5 million and to the *Prestige* Major Claims Fund of £110 million. The Assembly also decided that £75 million of the levy to the *Prestige* Major Claims fund should be due for payment by 1 March 2004, and that the entire levy to the *Erika* Major Fund and the balance levy to the *Prestige* Major Claims Fund (£35 million) should be deferred.

Note: The Canadian contributions to the extent invoiced shall be paid from the SOPF.

Financial Statements and Auditor's Report on Opinion and Audit Body's Report

The Assembly noted that the External Auditors had welcomed the establishment of the Audit Body for the two Organizations and considered that it was a significant initiative in the governance and financial management of the Funds' operation.

The External Auditor provided an unqualified audit opinion of the 2002 Financial Statements. The Assembly approved the accounts of the 1992 Fund for the financial period January 1 to December 31, 2002.

Note: For information about the composition and mandate of the IOPC Fund's Audit Body see the SOPF Administrator's Annual Report 2002-2003 at Appendix C and Appendix G, respectively.

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:

<u>Eligible under paragraph (a)</u>	<u>Eligible under paragraph (b)</u>
Canada	Australia
France	Cameroon
Germany	Greece
India	Grenada
Japan	Marshall Islands
Netherlands	Poland
Singapore	Sweden
	United Arab Emirates

Report on the Establishment of a Supplementary Fund

The Assembly took note of the information regarding the International Conference on the establishment of a supplementary fund for compensation for oil pollution damage, which was held under the auspices of IMO from May 12 to 16, 2003.

It was noted that it was possible that the Protocol would enter into force during 2004 and that the first session of the Supplementary Fund Assembly might therefore have to be held during that year.

The Director was instructed to base the preparatory work on the assumption that the Supplementary Fund would have its Headquarters in London, and that the 1992 Fund and the Supplementary Fund would be administered by a joint Secretariat headed by a single Director.

Note: For information about the Supplementary Fund see section 4.9.2 of this report.

Report of the Executive Committee on its 19th – 22nd Sessions

Prestige Incident

The Chairman of the Executive Committee informed the Assembly about the debate that had occurred during its 22nd session on the submission by the Spanish Government for advance payment "on account" for claims with respect to the *Prestige* incident.

The Committee had been unable to obtain a solution to concerns raised by this proposal. Therefore, the Committee decided to defer the issue to the Assembly.

The Assembly, taking into account the exceptional circumstances of the *Prestige* incident, decided as follows:

- (a) *The Assembly authorized the Director, subject to a general assessment by the Director of the total of the admissible damage in Spain arising from the Prestige incident, to make a payment of the balance between 15% of the assessed amount of the claim submitted on 2 October 2003 and 15% of that claim as submitted (15% of €383.7 million = €57 555 000) and also subject to the Government of Spain providing a guarantee from a financial institution, not from the Spanish State, which would have the financial standing laid down in the 1992 Fund's Internal Investment Guidelines so as to protect the 1992 Fund against an overpayment situation;*
- (b) *The Assembly decided that such a guarantee should cover the difference between 15% of the assessed amount of the claim submitted on 2 October 2003 and 15% of that claim as submitted (15% of €383.7 million = €57 555 000). Further, it was decided that the terms and conditions of the guarantee should be to the satisfaction of the Director;*
- (c) *The Assembly instructed the Director to provide full information on assessments and payments under paragraph (a) and to provide explanations when required by any Member State;*

- (d) *The Assembly decided that the Executive Committee should review, at its next session, payments made under paragraph (a). It was also decided that if the payment amount was reduced by the Executive Committee, the difference should be repaid;*
- (e) *It was further decided that if any other State having suffered losses relating to the Prestige incident were to seek the same solution for payments on the same terms, such a request should be submitted to the Executive Committee.*

The Third Intersessional Working Group (Sixth Meeting)

The sixth meeting of the Working Group, to be held on October 23, 2003, was cancelled due to insufficient time being available during the October 2003 sessions of the IOPC Funds' governing bodies.

The seventh meeting of the Working Group was scheduled for the week of 23 February 2004.

The 23rd Executive Committee – October 24, 2003

The Executive Committee elected Mr. J. Rysanek (Canada) as chairman and Mr. V. Schöfisch (Germany) as Vice-Chairman to hold office until the end of the next regular session of the Assembly.

The 24th Executive Committee – February 23, 24 and 27, 2004

Incidents Involving the 1992 IOPC Fund

Erika (1999)

In December 2003, the Commercial Court in Lorient rendered judgments in respect of four claims in the tourism and fisheries sectors relating to "pure economic loss" which had been rejected by the shipowner, Steamship Mutual and the 1992 Fund.

These claims had been rejected by the 1992 Fund since, in the Fund's view, they did not fulfill the criteria for admissibility laid down by the Fund's governing bodies.

The Court stated that it was not bound by the criteria for admissibility laid down by the 1992 Fund.

In the three other judgments the Commercial Court in Lorient made the same statement as above in respect of the criteria to be applied under French law and, stating that it was not bound by the Fund's criteria.

Considering the importance of this issue for the proper functioning of the compensation regime based on the 1992 Conventions, the Executive Committee decided that the 1992 Fund should pursue the appeals against all four judgments.

By way of contrast, the Committee noted that in a judgment dated January 29, 2004, rendered by the Civil Court (Tribunal de Grande Instance) in Nantes, in respect of claims by the owners of the two hotels in Nantes for pure economic loss, that Court had rejected the claims in the light of the Fund's criteria, on the grounds that the claimants had not shown a link of causation between the alleged losses and the oil pollution caused by the *Erika* incident.

Zeinab (2001)

The Georgian-registered vessel *Zeinab*, carrying about 1,500 tonnes of fuel oil, sank off Dubai, United Arab Emirates, resulting in the loss of 400 tonnes of fuel oil and the subsequent pollution of the coastal areas.

The Committee noted that the Director had considered that it would not be meaningful for the IOPC Fund to pursue recourse action against the shipowner. Indications are that the shipowner may be living in Iraq. It was considered it would be extremely difficult to pursue recourse action for legal and practical reasons.

Note: For additional information about the *Zeinab* incident see the SOPF Administrator's Annual Report 2001-2002 at Appendix C.

Prestige (2002)

The Executive Committee noted that the contract to remove the remaining oil from the *Prestige* had been signed between the Spanish government and Repsol YPF and that the work, which was due to take place between May and October 2004, was expected to be completed for a total cost of €99.3 million.

The Committee also noted that, based on the figures given by the Spanish, French and Portuguese Governments, the total costs of the incident could be estimated in the region of £718 and £774 million.

The Committee decided to maintain the current level of payments at 15 percent of the loss or damage suffered by the respective claimants.

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 Committee took note of a judgment rendered on February 16, 2004, whereby the Court of Appeal had overturned the judgment of the Court of first instance. The Court of Appeal had held that the *Slops* did not meet the criteria required by the Conventions and, therefore, could not be considered a "ship". It was noted that as a result of this judgment the claims against the Fund had been rejected.

Note: For additional information about the *Slops*' incident see the SOPF Administrator's Annual Report 2002 – 2003 at Appendix C.

Future Sessions

The Committee decided to hold its 25th Session on May 24, 2004, and its normal autumn session during the week of October 18, 2004.

The Third Intersessional Working Group (Seventh Meeting)

The seventh meeting of the Third Intersessional Working Group was held from February 24 to 27, 2004, under the Chairmanship of Mr. Alfred Popp QC (Canada). 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:

Study of the Costs of Spills

The Working Group had requested the Director to undertake an independent study of the costs of past oil spills in relation to the past, current and future limitation amounts of the compensation Conventions. Preliminary analysis of the raw data submitted by P & I Clubs of the International Group had indicated that considerable further analysis would be required before it could be used to provide useful statistics. The Director was of the view that the study would not be completed until May 2004 at the earliest.

The Working Group decided that, while the completion of the costs study should not hinder its discussion on the revision of the 1992 Civil Liability Conventions, any decisions by the Group should be on a provisional basis pending the outcome of the study.

Shipowners' Liability and Related Issues

Level of Shipowners' Limitation Amount

With regard to the level of shipowners' limitation amount and its relationship with the compensation funded by oil receivers, the Chairman noted that the Working Group had to consider six options, which in principle were as follows:

- (1) *The traditional revision of the limits in the 1992 Civil Liability Convention by increasing the small ship minimum and the steepness of the slope of the SDR/tonnage line for larger ships (Australia et al.);*
- (2) *The sharing of the liability under the present Liability Convention between shipowners and oil receivers (Australia et al);*
- (3) *Raising the limit of liability of the shipowner under the Civil Liability Convention and the introduction of a third tier cargo liability (Italy);*

- (4) Increase in the limits under the 1992 Civil Liability Convention and the 1992 Fund Convention (OCIMF);*
- (5) Increase of the shipowners' liability to a flat amount, independent of the ship's tonnage, and/or a sharing of the contributions to the Supplementary Fund between the shipowner and the oil receivers (OCIMF);*
- (6) Adjustment of the sharing of the financial burden between shipowners and cargo interests by means of voluntary solutions (International Group of P&I Clubs).*

In summing up the debate, the Chairman noted that while there was strong support for maintaining a simple and workable international compensation regime, the Working Group was divided on whether or not to amend the provisions relating to the shipowners' liability, which was at the heart of any decision to revise the regime. He stated that he believed the debate had created sufficient momentum to keep the question of shipowners' liability under review for the next meeting of the Working Group in May 2004 when, hopefully, the results of the Director's study of the costs of oil spills would be available.

Substandard Transportation of Oil

In summing up the discussion on substandard transportation of oil and the right of the Shipowner to limit liability, the Chairman noted that some delegations had expressed a willingness to explore further the possibility of linking the issue within the legal framework of the compensation of Conventions and an interest in the outcome of the study being carried out by OECD. He noted that other delegations remain skeptical about linking compensation with safety issues and had expressed the view that the complications that this could create could undermine what was a simple and effective regime, thereby slowing down compensation payments. He referred to the problems raised by the International Group of P&I Clubs relating to the sharing of information on ship inspections and suggested that Governments might be able to give assistance in this regard. The Chairman stated that the documents presented needed reworking for the next meeting of the Working Group.

Note: For additional information about Perspectives on Substandard Ships and the Revision of the Civil Liability and IOPC Fund Conventions, see the SOPF Administrator's Annual Report 2002-2003 at Section 4.6.3 and Appendix C (Third Intersessional Working Group –fifth meeting) respectively.

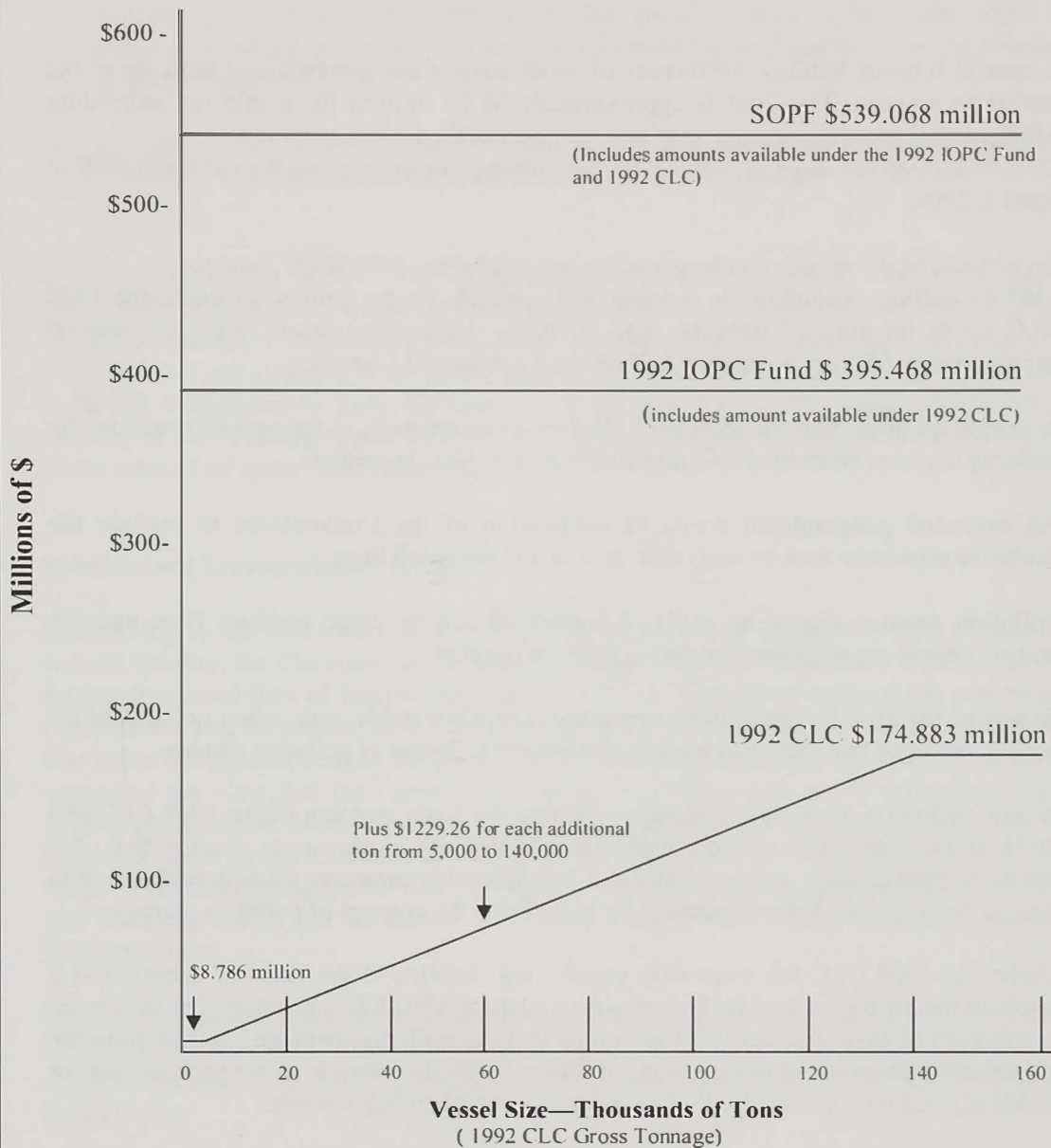
Appendix D:

Changes Introduced by the 1992 Protocols

- A special limit of liability for owners of small vessels and a substantial increase in the limitation amount. The limit is approximately \$8.79 million for a ship not exceeding 5,000 units of gross tonnage, increasing on a linear scale to approximately \$174.88 million for ships of 140,000 units of tonnage or over, using the value the SDR at April 1, 2004.
- An increase in the maximum compensation payable by the 1992 IOPC Fund to \$395.47 million, including the compensation payable by the shipowner under the 1992 CLC up to its limit of liability. This includes the compensation levels increase of approximately 50% on November 1, 2003 – see section 4.9.1 herein.
- 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 or omission, committed with the intent to cause such damage or recklessly and with knowledge that such damage would probably result.
- Claims for pollution damage under the CLC can be made only against the registered owner of the ship concerned. This does not preclude victims from claiming compensation outside the CLC from persons other than the owner. However, the 1969 CLC prohibits claims against the servants or agents of the owner. The 1992 CLC does the same, but also prohibits claims against the pilot, the charterer (including a bareboat charterer) manager or operator of the ship, or any person carrying out salvage operations or taking preventive measures.

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

Based on the value of the SDR⁽¹⁾ at April 1, 2004



(1) The value of the SDR at April 1, 2004, was approximately \$1.94812. This actual value is reflected in Figure 1 above and in Appendix D. Elsewhere in the report, for convenience, calculations may be based on the SDR having a nominal value of \$2.

Figure 1

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

N.B. The above aggregate amount available under the 1992 CLC and the 1992 IOPC Fund is \$395.468 million effective November 1, 2003. The SOPF amount of some \$143.60 million on top of that, results in \$539.07 million being available now for a tanker spill in Canada - without reference to 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 31 December 2003

84 States for which Fund Protocol is in Force (and therefore Contracting States of the 1992 IOPC Fund)		
Algeria	France	Papua New Guinea
Angola	Gabon	Philippines
Antigua and Barbuda	Georgia	Poland
Argentina	Germany	Portugal
Australia	Greece	Qatar
Bahamas	Grenada	Republic of Korea
Bahrain	Guinea	Russian Federation
Barbados	Iceland	Saint Vincent and the Grenadines
Belgium	India	Samoa
Belize	Ireland	Seychelles
Brunei Darussalam	Italy	Sierra Leone
Cambodia	Jamaica	Singapore
Cameroon	Japan	Slovenia
Canada	Kenya	Spain
China (Hong Kong Special Administrative Region)	Latvia	Sri Lanka
Columbia	Liberia	Sweden
Comoros	Lithuania	Tanzania
Congo	Madagascar	Tonga
Croatia	Malta	Trinidad and Tobago
Cyprus	Marshall Islands	Tunisia
Denmark	Mauritius	Turkey
Djibouti	Mexico	United Arab Emirates
Dominica	Monaco	United Kingdom
Dominican Republic	Morocco	Uruguay
Fiji	Mozambique	Vanuatu
Finland	Namibia	Venezuela
	Netherlands	
	New Zealand	
	Nigeria	
	Norway	
	Oman	
	Panama	

2 States that have deposited Instruments of Accession, but for which the IOPC Fund Protocol does not enter into force until date indicated	
Ghana	3 February 2004
Cape Verde	4 July 2004

Appendix B

For each of the following, indicate the number of times you have experienced the following behavior in the past 12 months.

Behavior	Frequency
1. Being late for work	1. Never
2. Being absent from work	2. Rarely
3. Being absent from work	3. Sometimes
4. Being absent from work	4. Often
5. Being absent from work	5. Always
6. Being absent from work	6. Never
7. Being absent from work	7. Rarely
8. Being absent from work	8. Sometimes
9. Being absent from work	9. Often
10. Being absent from work	10. Always
11. Being absent from work	11. Never
12. Being absent from work	12. Rarely
13. Being absent from work	13. Sometimes
14. Being absent from work	14. Often
15. Being absent from work	15. Always
16. Being absent from work	16. Never
17. Being absent from work	17. Rarely
18. Being absent from work	18. Sometimes
19. Being absent from work	19. Often
20. Being absent from work	20. Always
21. Being absent from work	21. Never
22. Being absent from work	22. Rarely
23. Being absent from work	23. Sometimes
24. Being absent from work	24. Often
25. Being absent from work	25. Always
26. Being absent from work	26. Never
27. Being absent from work	27. Rarely
28. Being absent from work	28. Sometimes
29. Being absent from work	29. Often
30. Being absent from work	30. Always
31. Being absent from work	31. Never
32. Being absent from work	32. Rarely
33. Being absent from work	33. Sometimes
34. Being absent from work	34. Often
35. Being absent from work	35. Always
36. Being absent from work	36. Never
37. Being absent from work	37. Rarely
38. Being absent from work	38. Sometimes
39. Being absent from work	39. Often
40. Being absent from work	40. Always
41. Being absent from work	41. Never
42. Being absent from work	42. Rarely
43. Being absent from work	43. Sometimes
44. Being absent from work	44. Often
45. Being absent from work	45. Always
46. Being absent from work	46. Never
47. Being absent from work	47. Rarely
48. Being absent from work	48. Sometimes
49. Being absent from work	49. Often
50. Being absent from work	50. Always
51. Being absent from work	51. Never
52. Being absent from work	52. Rarely
53. Being absent from work	53. Sometimes
54. Being absent from work	54. Often
55. Being absent from work	55. Always
56. Being absent from work	56. Never
57. Being absent from work	57. Rarely
58. Being absent from work	58. Sometimes
59. Being absent from work	59. Often
60. Being absent from work	60. Always
61. Being absent from work	61. Never
62. Being absent from work	62. Rarely
63. Being absent from work	63. Sometimes
64. Being absent from work	64. Often
65. Being absent from work	65. Always
66. Being absent from work	66. Never
67. Being absent from work	67. Rarely
68. Being absent from work	68. Sometimes
69. Being absent from work	69. Often
70. Being absent from work	70. Always
71. Being absent from work	71. Never
72. Being absent from work	72. Rarely
73. Being absent from work	73. Sometimes
74. Being absent from work	74. Often
75. Being absent from work	75. Always
76. Being absent from work	76. Never
77. Being absent from work	77. Rarely
78. Being absent from work	78. Sometimes
79. Being absent from work	79. Often
80. Being absent from work	80. Always
81. Being absent from work	81. Never
82. Being absent from work	82. Rarely
83. Being absent from work	83. Sometimes
84. Being absent from work	84. Often
85. Being absent from work	85. Always
86. Being absent from work	86. Never
87. Being absent from work	87. Rarely
88. Being absent from work	88. Sometimes
89. Being absent from work	89. Often
90. Being absent from work	90. Always
91. Being absent from work	91. Never
92. Being absent from work	92. Rarely
93. Being absent from work	93. Sometimes
94. Being absent from work	94. Often
95. Being absent from work	95. Always
96. Being absent from work	96. Never
97. Being absent from work	97. Rarely
98. Being absent from work	98. Sometimes
99. Being absent from work	99. Often
100. Being absent from work	100. Always

Instructions for the survey, including a scale from 1 to 5 and a request to indicate frequency.