



Ship–Source Oil Pollution Fund



The Administrator's Annual Report
2005 – 2006

Canada 

Photo courtesy of
Canadian Coast Guard ER
Showing derelict and abandoned fishing vessels
Vancouver Island, British Columbia
November 2005
See sections 3, 5.2, 5.3 and 5.5

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

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



Ship–Source Oil Pollution Fund

The Administrator's Annual Report

2005 – 2006

Canada

The Honourable Lawrence Cannon, P.C., M.P.
Minister of Transport
Ottawa, Ontario
K1A 0N5

Dear Mr. Cannon :

It is an honour to submit the Annual Report for the Ship-source Oil Pollution Fund for the fiscal year ending March 31, 2006, 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

Table of Contents

Administrator’s Communiqué	i
Summary	v
1. Responsibilities and Duties of the Administrator	1
2. The Canadian Compensation Regime	3
3. Canadian Oil Spill Incidents	7
3.1 <i>Gordon C. Leitch (1999)</i>	7
3.2 <i>Sam Won Ho (1999)</i>	8
3.3 <i>Mystery Oil Spill-Port Cartier, Québec (2000)</i>	9
3.4 <i>Lavallee II (2002)</i>	10
3.5 <i>Northern Light V (2003)</i>	11
3.6 <i>Sandpiper (2003)</i>	12
3.7 <i>Beaufort Spirit (2003)</i>	12
3.8 <i>Pender Lady (2003)</i>	13
3.9 <i>Mystery Spill, Glenville Channel, British Columbia (2003)</i>	14
3.10 <i>Mary Todd (2003)</i>	15
3.11 <i>Black Dragon (Heung Ryong) (2003)</i>	15
3.12 <i>Sekme & Treimani (2003)</i>	16
3.13 <i>Anscomb (2004)</i>	17
3.14 <i>Anna M (2004)</i>	17
3.15 <i>Sea Shepherd II (2004)</i>	18
3.16 <i>Alicia Dawn (2004)</i>	18
3.17 <i>P.H. Phippen (2004)</i>	19
3.18 <i>Mystery Spill, Placentia and St.Mary’s Bays, Newfoundland (2004)</i>	19
3.19 <i>Mary Mackin (2005)</i>	20
3.20 <i>Tor (2005)</i>	20
3.21 <i>Sonny Boy (2004)</i>	21
3.22 <i>Mystery Oil Spill, Wheatley Harbour, Ontario (2004)</i>	21
3.23 <i>Abandoned Vessel, Vancouver Harbour, British Columbia (2004)</i>	22
3.24 <i>Bleuvet (2004)</i>	22
3.25 <i>Sea Sprite (2005)</i>	23
3.26 <i>Santa Emma (2005)</i>	23
3.27 <i>Malaspina Castle (2005)</i>	24
3.28 <i>Elvera II (2005)</i>	24
3.29 <i>Joseph & Clara Smallwood (2005)</i>	24
3.30 <i>Rover No.1 (2005)</i>	24
3.31 <i>Joan W I (2005)</i>	25
3.32 <i>Queen of Oak Bay (2005)</i>	25
3.33 <i>Project Europa (2003-2005)</i>	25
3.34 <i>Sonny Boy (2005)</i>	25
3.35 <i>Queen Elizabeth II (2005)</i>	26
3.36 <i>Terra Nova FPSO (2005)</i>	26
3.37 <i>Canadian Leader (2005)</i>	26
3.38 <i>Mystery Spills, Port of Montreal (2005)</i>	26
3.39 <i>FV Gagtugwaw (2005)</i>	27
3.40 <i>Front Fighter (2004-2005)</i>	27
3.41 <i>Mystery Spill, Victoria, British Columbia (2004)</i>	27
3.42 <i>Mystery Spill, Victoria, British Columbia (2005)</i>	28

3.43	<i>FV Skipjack (2005)</i>	28
3.44	<i>FV Western Mariner (2005)</i>	28
3.45	<i>Abandoned Vessel, Brentwood Bay, British Columbia (2006)</i>	29
3.46	<i>Rowan Gorilla VI (2006)</i>	29
3.47	<i>Queen of the North (2006)</i>	29
4.	Challenges and Opportunities	31
4.1	Changes to the 1992 International Regime – Impact on SOPF	31
4.1.1	Revision of the Civil Liability and Fund Conventions – “not to be”	31
4.1.2	Establishment of an Informal Working Group to address Substandard Shipping	33
4.1.3	Developments within the European Union – Maritime Safety Package III.....	35
4.2	Potentially Polluting Wrecks	36
4.3	Oil tanker Incidents Decreasing.....	37
4.4	Overview of the HNS Convention.....	38
4.5	Places of Refuge for Damaged Ships	40
4.6	Port Reception Facilities for Oily Waste	41
4.7	The Polluter Pays	44
5.	Outreach Initiatives	47
5.1	General.....	47
5.2	Canadian Coast Guard – Pacific Region.....	47
5.3	Canadian Coast Guard- Management Board	50
5.4	Environment Canada-Pacific and Yukon Region.....	51
5.5	Regional Advisory Council on Oil Spill Response.....	53
5.6	Response Organizations.....	54
5.7	Canadian Marine Advisory Council	55
5.8	Canadian Maritime Law Association.....	57
5.9	On-Scene Commander Course	57
5.10	CANUSLANT 2005-Atlantic Coast.....	58
6.	SOPF Liabilities to the International Funds	63
7.	Financial Summary	65
Appendix A:	The International Compensation Regime	67
Appendix B:	IOPC Fund 1971 – Administrative Council and Assembly Sessions	71
Appendix C:	IOPC Fund 1992 – Executive Committee and Assembly Sessions	75
Appendix D:	Changes Continuing under 1992 Protocols	91
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 10 February 2006	93
Appendix F:	IOPC Supplementary Fund – Assembly	95
Appendix G:	Contracting States to the Supplementary Fund Protocol as at 10 February 2006	99

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	Canadian Environmental Protection Act
CLC	Civil Liability Convention
CMAC	Canadian Marine Advisory Council
CMI	Comité Maritime Law International
CMLA	Canadian Maritime Law Association
COPE	Compensation for Oil Pollution in European Waters
CPA	Canada Port Authority
CSA	Canadian Shipping Act
CSO	Combined Sewer Outfalls
CWS	Canadian Wildlife Service
DFO	Department of Fisheries and Oceans
DNV	Det Norske Veritas
DWT	Deadweight Tonnage
EC	European Commission
ECAREG	Eastern Canada Vessel Traffic Services Regulations
ECRC	Eastern Canada Response Corporation
EEZ	Exclusive Economic Zone
ER	Emergency Response
EPA	Environmental Protection Agency
EU	European Union
FPSO	Floating Production, Storage and Offloading Units
FSU	Floating Storage Units
GT	Gross Tonnage
HELCON	Helsinki Convention
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
I-STOP	Integrated Satellite Tracking of Polluters
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	Marine Liability Act
MOU	Memorandum of Understanding
MPCF	Maritime Pollution Claims Fund
MSC	Maritime Safety Committee
MT	Motor Tanker
MV	Motor Vessel
NASP	National Aerial Surveillance Program

NEIA	Newfoundland Labrador Environmental Industries Association
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	Oil Pollution Act
OPA 90	Oil Pollution Act 1990 (US)
OSRL	Oil Spill Response Ltd
P&I Club	Protection and Indemnity (Marine Insurance) Association
PPM	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
STOPIA	Small Tankers Oil Pollution Indemnification Agreement
TC	Transport Canada
TCMS	Transport Canada Maine Safety
TOPIA	Tanker Oil Pollution Indemnification Agreement
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, 2006, was approximately \$1.68519. This actual value is reflected in Figure 1 in Appendix D.

Administrator's Communiqué

Balance in the Fund

I am pleased to report that the Ship-source Oil Pollution Fund (SOPF) grew to some \$ 351 million by March 31, 2006 from some \$ 280.5 million on March 31, 1999. This rise of \$70 million 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.

A Successful Year

During the current year we handled some 61 active incidents files. Particularly, nine Canadian claims totalling some \$650,000.00 were settled with payments that included a total of some \$104,000.00 from the SOPF including interest (section 3).

The Compensation Regime

Canada has shown considerable foresight over the years in fashioning a unique well-functioning domestic compensation regime.¹

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.

Government Exposure

The SOPF has paid considerable contributions to the International Fund: A total of some \$41.6 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).

It is noteworthy that calls for contributions to the International Fund are not based on fixed premiums.

The SOPF is a special purpose account in the accounts of Canada. As the Government of Canada has borrowed the entire capital of the SOPF, it is required to provide the necessary funds to meet the liabilities of the SOPF as they arise.²

1 See MacInnis QC, K.A. (2005) The Canadian SSOP Fund and environmental damage assessment (EDA) in Canada, in: Maes, F. (ed.) *Marine resource damage assessment, liability and compensation for environmental damage*, Springer Publishers, Dordrecht, 67-84.

2 See also SOPF Administrator's Annual Report 2004-2005 at pages iii-iv and sections 4.6.1 and 4.6.2.

International Developments

Some positive developments internationally that will benefit the SOPF are referred to in section 4:

STOPIA 2006 increases the amount of compensation payable by owners of small tankers (29,548 Gt or less). This lessens the burden on the international 1992 Fund and consequently the SOPF.³

The decision by the 1992 Fund Assembly to establish an informal working group (strongly supported by shipowners, cargo interests and insurers) to consider non-technical measures to promote quality shipping for the carriage of oil, is a welcomed step forward that may ultimately benefit the SOPF.⁴

The Commission of the European Communities recently delivered its Maritime Safety Package III.⁵ The EC has come a long way since the vigorous protests of French citizens to the handling of the *Erika* incident (December 12, 1999) that saw the Brittany (France) coastline polluted with heavy emulsified oil that came ashore on Christmas Day.⁶

It is encouraging to see reports that the numbers of oil tanker incidents and the volumes of oil being spilled are continuing to decrease.⁷ Efforts by shipowners, charterers, IMO, EC, Canada, USA, other states, and non-governmental organizations have contributed to this result.

Environmental Damage Assessment

As reported in our Annual Report 2003-2004, at section 5.9, a conference was held in June 2003 at Ghent University, Belgium, on the topic of Marine Resource Damage Assessment and Compensation for Environmental Damage (MARE-DASM). The conference was multi-disciplinary in nature. Contributions from the conference have now been published in an important book entitled *Marine Resource Damage Assessment, Liability and Compensation for Environmental Damage*, edited by Frank Maes, by Springer Publishers, Dordrecht, The Netherlands.⁸

Challenges and Opportunities in Canada

In Canada, some derelict and abandoned vessels – particularly on the west coast - pose threats to the environment and human safety. The issue requires attention by authorities. Sections 3, 4 and 5 refer.

3 See section 4.1.1 herein

4 See section 4.1.2 herein. See also SOPF Administrator's Annual Reports : 2000-2001, sections 4.2.2 and 4.2.3; 2001-2002, section 4.3.3; 2002-2003, sections 4.3.3, 4.3.4, 4.3.5 and 4.3.6.

5 See section 4.1.3 herein

6 See SOPF Administrator's Annual Reports: 1999-2000 at p.37; 2000-2001 at p.p. ii-iii and section 4.5; 2002-2003 at section 4.5. See also, Gonsaeles, G. (2005) The impact of EC decision-making on the international regime for oil pollution damage, in: Maes, F. (ed) *Marine resource damage assessment, liability and compensation for environmental damage*, Springer Publishers, Dordrecht, 85-131.

7 See section 4.3 herein.

8 Website: www.springeronline.com

Port reception facilities for oily waste may be an integral part of an effective Canadian package of measures designed to promote the prevention of illegal dumping of oil at sea.

Many migratory seabirds die each year as a result of ships deliberately dumping a mix of water and oil waste from engine room bilges. The ability of ships to comply with regulatory discharge requirements when in port depends largely upon the availability of adequate port reception facilities. The lack of reception facilities in many ports worldwide may contribute to pollution of the marine environment.

At the international level, IMO Member States that are party to MARPOL 73/78 are required to ensure the provision of adequate reception facilities in its ports for the reception of oily waste from oil tankers and other ships using its ports without causing undue delay. A recent IMO Marine Environment Protection Committee (MEPC) report states: “Port States failing to provide adequate reception facilities will make it harder to deal with the enforcement of ships’ illegal discharge at sea.” Canada is a signatory to MARPOL 73/78.

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.

Transport Canada says it is considering this issue. Sections 4 and 5 refer.

The Canadian Fund

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, 2006, the maximum liability of the SOPF is approximately \$147 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.

Ship-source Oil Pollution Fund

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.

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 sections 4 and 5.

Our Thanks

We acknowledge the assistance received from persons in both the private and public sectors as well as the International Fund and its longtime Director, Måns Jacobsson, who leaves the Fund at the end of December, 2006. Mr. Jacobsson showed exceptional leadership. We are also pleased with the cooperation of Canadian shipowners, the oil industry, and the Canadian Maritime Law Association.

We take this opportunity to extend our congratulations and best wishes to the next Director of the International Funds, Mr. Willem Oosterveen of The Netherlands.

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, 2006. 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.

Financial Status

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 \$ 649,734.46 before interest were settled and paid in the aggregate amount of \$ 101,507.03 plus interest of \$ 2,958.83. The Administrator recovered from third parties liable \$ 6,800.00 respecting payments made out of the SOPF to some claimants. As at March 31, 2006, the balance in the SOPF was \$ 350,842,718.28.

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, 2006, the maximum liability of the SOPF for all claims from one oil spill is \$ 147,357,402.80.

During the new fiscal year, the Minister of Transport has the statutory power to impose a levy for the SOPF of 44.19 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 \$ 41.6 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.

Oil Spill Incidents

This report outlines the status of pollution incidents (Section 3) 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.

Outreach Initiatives

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 (Section 5) included:

- Participating in meetings with senior representatives of Fisheries and Oceans, Transport Canada, Environment Canada and the Canadian Coast Guard;
- Attending sessions of the Canadian Marine Advisory Council's National Conferences held in Ottawa;
- Participating in the Regional Advisory Council public meeting on Oil Spill Response held in Dartmouth, Nova Scotia;
- Participating in a client information and a spill response training session at the Eastern Canada Response Corporation (ECRC) depot in Corunna, Ontario, and also visiting the ECRC depot in Dartmouth, Nova Scotia;
- Attending the Canadian Maritime Law Association Executive Committee meetings held in Ottawa;
- Participating with representatives from government agencies and the marine industry – including USCG and ITOPF – in an On-Scene Commander Course for effective response to a significant oil spill incident held at the Canadian Coast Guard College;
- Participating, as a facilitator, in the CANUSLANT 2005 Exercise – including USCG, CCG, TCMS and EC - held at the College of the Atlantic in Bar Harbor, Maine; and
- Holding discussions with representatives of Organizations in the United Kingdom, including ITOPF, OCIMF and P&I Clubs.

Challenges and Opportunities

The section on Challenges and Opportunities (Section 4) focuses on changes to the 1992 International Oil Pollution Compensation regime and the potential impact on the SOPF. Section 4 addresses the Small Tanker Oil Pollution Indemnification Agreement (STOPIA 2006) and a new Tanker Oil Pollution Indemnification Agreement (TOPIA 2006). Under STOPIA 2006 the limitations amount applicable to small tankers would, on a voluntary basis, be increased to 20 million SDR (approximately \$ 33.7 million) for tankers of 29, 548 gross tonnage or less for pollution damage in all 1992 Fund Contracting States. TOPIA 2006 would result in the shipowner indemnifying, on a voluntary basis, the Supplementary Fund for 50 per cent of the compensative amounts paid by it under the Supplementary Fund Protocol.

Furthermore, information is provided on the mandate of the Informal Working Group recently established by the 1992 IOPC Assembly to address the issue of sub-standard shipping. The Working Group shall explore non-technical measures to promote quality shipping for carriage of oil by sea, and make recommendations to the Assembly upon completion of its work.

Section 4 also includes an overview of the status of the International Convention on Liability and Compensation for damage in connection with the carriage of Hazardous and Noxious Substance by sea (HNS Convention). The HNS Convention establishes a “two tier” compensation regime. The first tier is provided by the shipowner and insurer and the second tier by the HNS Fund which is contributed to by receivers of HNS. The 1992 IOPC Fund has compiled a “Guide to the Implementation of the HNS Convention” available at www.hns.convention.org.

Also included under challenges and opportunities is information on the European Commission’s proposed legislative measures (Maritime Safety Package III) designed to improve safety at sea following on from the ERIKA I and ERIKA II packages of 2000.

The body of the report addresses the need for adequate port reception facilities for the collection of oily waste. It is generally acknowledged internationally that the lack of reception facilities in many ports worldwide may contribute to pollution of the marine environment. The Administrator is following the progress being made by Transport Canada Marine Safety on this matter, particularly in light of ongoing reports of chronic mystery marine spills in Atlantic Canada.

Other items in section 4 include an article on “Places of Refuge” for damage ships; review of the trends indicating that oil tanker incidents are decreasing worldwide; observations that the costs and expenses incurred in dealing with potentially polluting wrecks may not always qualify for compensation; and a reminder that under the Canadian statutory claims regime of Part 6 of the MLA the polluter should pay for oil pollution damage caused by his ship and for costs and expenses incurred for clean-up and preventive measures.

Appendices

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 the Appendices.

Ship-source Oil Pollution Fund

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.

Ship-source Oil Pollution Fund

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, 2006, the Minister of Transport has the statutory power to impose a levy of 44.19 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, 2006, the maximum liability of the SOPF is \$147,357,402.80 for all claims from one oil spill. This amount is indexed annually.

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

- Claims for oil pollution damage;
- Claims for costs and expenses of oil spill clean-up including the cost of 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.

Ship-source Oil Pollution Fund

The present statutory claims regime of Part 6 of the *MLA*, on the principle that the polluter should pay, 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 actually been incurred; and
4. All claims must be investigated by an independent authority (the Administrator).

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

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

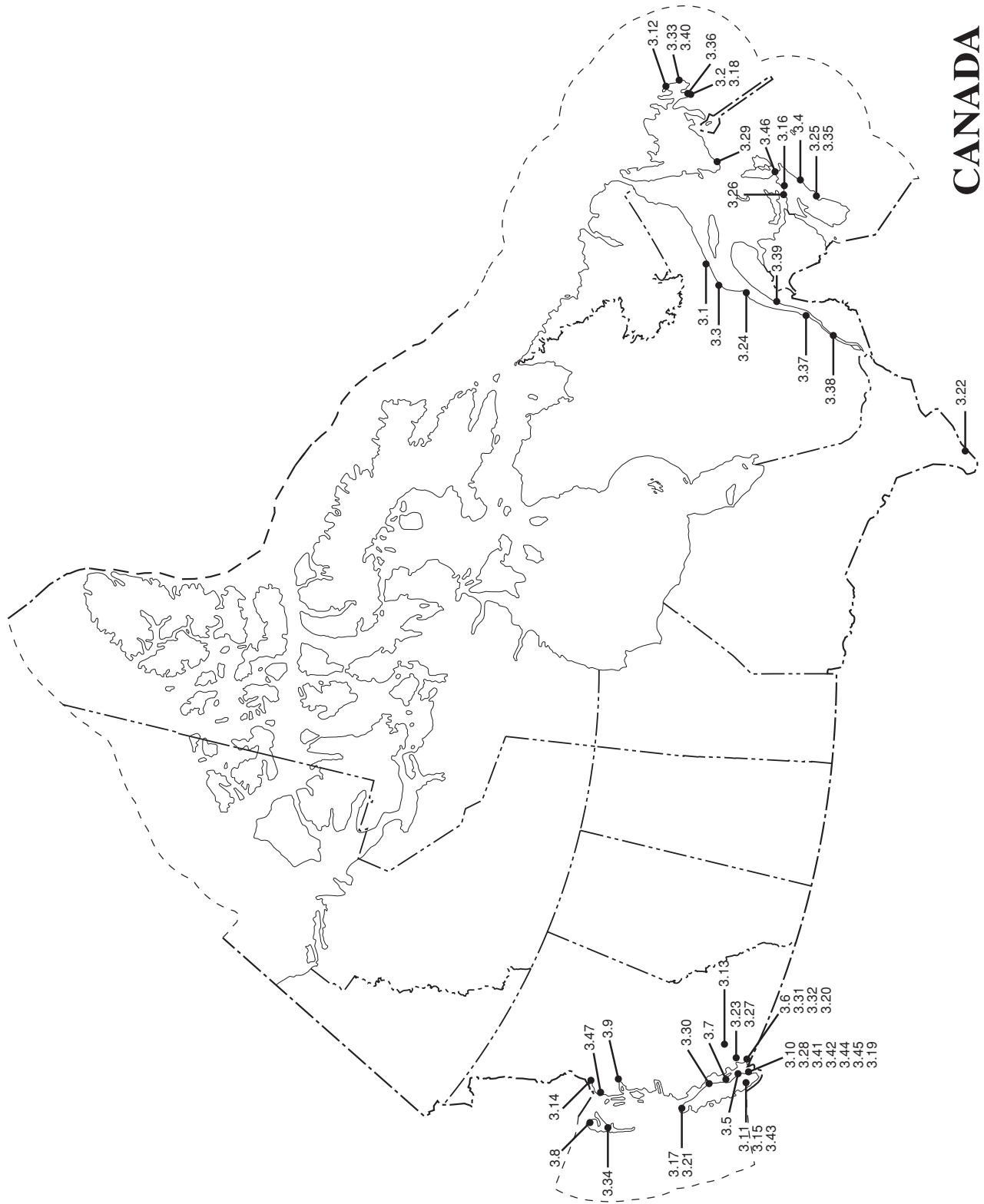
The SOPF can also be a fund of first resort for claimants, including the Crown.

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 61 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 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 was removed as a defendant in the action and the SOPF became 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 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.

Settlement negotiations between the plaintiffs and the shipowner continued. By December 2005, an overall settlement had been agreed with contribution from the shipowner and its insurers and \$10,000.00 from the SOPF. A full and final release was received in favour of the Administrator and proceedings were discontinued without costs. In light of the provisions of MLA section 89(1)(a), as well as section 90(1)(b) – 90(2), the Administrator was of the view that in the circumstances of the contested issues the SOPF

contribution to this settlement was appropriate for the proper administration of the Fund.

The Administrator has closed this file.

3.2 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.

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*.

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.

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. The Administrator had 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, the Court reserved judgment until June 4, 2004.

In the meantime, counsel for the Administrator filed a Statement of Claim in the Federal Court of Canada on April 8, 2002, claiming the recovery of \$117,384.47, plus interest. The SOPF Affidavit of Documents was sworn on October 31, 2002.

In a decision dated October 15, 2004, the Provincial Court of Newfoundland and Labrador found that a limited company was in control of the vessel at the time of the sinking, such that it was convicted for permitting the deposit of a deleterious substance into a fish habitat contrary to section 36(3) of the Fisheries Act. The decision does not reach any clear conclusions on the ownership of the vessel at the time of the sinking.

By April 2005, counsel for the Administrator was pursuing the possibility of settlement of the Administrator's action with counsel for the company, after having agreed with the latter to request the Federal Court extend the deadline for completion of discovery examinations, as a result of which that Court ordered discoveries be completed by June 30, 2005.

In August 2005, counsel for the Administrator was advised that the company had filed a notice of Appeal in the Supreme Court of Newfoundland, Trial Division, against the decision of the Provincial Court referred to above.

The Administrator's civil action in the Federal Court under case management order, was about to enter into a costly phase of the litigation. Thus, with poor prospects for settlement and recovery, the Administrator accepted \$1,000.00 in full and final settlement of his recovery action without further expense to the Fund. In the Administrator's view, the discontinuance of this Federal Court action without costs was appropriate for the proper administration of the Fund.

The Administrator has closed his file.

3.3 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 litres.

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

On January 31, 2001, the Administrator received a claim from the Crown on behalf of the CCG to recover their costs and expenses, stated to amount to \$4,076.08. The claim was 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 and his investigation of ship-source spill probabilities, the Administrator commenced a cost recovery action against the shipowner in the Federal Court. Since April 2004, there has been discovery of documents between the parties. On February 1, 2005, counsel for the shipowners carried out an examination for oral discovery of the Administrator, in order to seek evidence to contradict the Administrator's allegations on liability and quantum.

Subsequently, counsel for shipowners made a motion to the Court pursuant to Rules 237(1) and (3) asking that the Administrator of the Fund put forward as oral discovery representatives persons from CMQC and CCG. The motion, heard on May 30, 2005, was dismissed by order of Prothonotary Morneau dated June 7, 2005.

On June 9, 2005, counsel for shipowners provided written discovery answers to questions which had been posed by the Administrator's counsel.

Shipowner's appeal from Prothonotary Morneau's order was dismissed by Justice Pinard in a judgment rendered on July 7, 2005. The grounds for the judgment included the following:

- CMQC and CCG are not parties to the litigation;
- Rule 237(3) is not engaged, it only provides for substitution of representatives of the same party and in the circumstance where the first witness is unable to adequately and effectively answer the questions asked;
- the Fund has the prerogative to sue in its own name, which gives rise to rights and obligations in relation to discovery principles set out in the Rules, which cannot be modified on the basis of the fact that the Fund could have elected to proceed otherwise;
- Rule 238 is the appropriate provision in the present case, subject to its prerequisites being fulfilled;
- the order sought by Appellants would cause great prejudice to the Fund as it has no control over CMQC and CCG;

At year end, the Administrator was instructing counsel in responding to an appeal filed for the shipowners from Justice Pinard's judgment in the Federal Court – Trial Division, with the Federal Court of Appeal. On June 7, 2006, the Court of Appeal dismissed the shipowners' appeal with costs (docket A-335-05).

The Administrator continues his recovery action against the ship.

3.4 Lavallee II (2002)

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

The CCG employed contractors who removed the some 10,000 litres of diesel from fuel tank inside the vessel. The hull was holed. A private surveyor, employed by the CCG, concluded that the vessel had no value. It was proposed that the most economic solution to the alleged continuing potential for oil pollution was to break-up the vessel on site. The question of breaking up the vessel raised the issue of toxicity of the paint aboard, some of which was found to exceed provincial limits for disposal in landfill sites. This matter was resolved as a result of further testing.

By early April of 2002, draft contract specifications had been made for removal of the still contaminated vessel. Comments were invited

on the document by all interested parties at the Federal and Provincial level and also the SOPF. The final specification was issued in late May, and on June 5, 2002, potential contractors were invited to the site in order to assess the work. These quotes were received on the bid closing date of June 18 and the successful bidder was awarded the contract on June 19, 2002.

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

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

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

In his letter of offer the Administrator noted:

“N.B.:

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

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

The Administrator commenced a recovery action in the Supreme Court of Nova Scotia at Halifax on February 11, 2005, pursuant to MLA subsection 87(3).

On March 1, 2005, the statement of claim in the Administrator’s recovery action was amended. Defences having been filed, the next step in the proceedings is the discovery of documents.

3.5 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.

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 considered possible recovery under subsection 87(3) of the *MLA*.

He concluded that further measures were not justified. He has closed his file.

3.6 Sandpiper (2003)

This vessel is an old dredge and was berthed at the disused Pacific Cannery Dock in Steveston Harbour, British Columbia.

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 CCG took over the cleanup on April 25, 2003 with a Response Order dated that day.

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.

The SHA submitted a claim to the SOPF on July 9, 2003 in the amount of \$1,587.53 for their response activities which was investigated and assessed by the Administrator. An offer of set-

tlement was made to SHA which was accepted and payment of \$1,517.93 plus interest of \$524.25 was authorized on July 16, 2003. Given the totality of information provided by the SHA with their claim the task of investigation and assessment was made straight forward.

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. 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 considered possible recovery measures pursuant to MLA subsection 87(3). Having been advised that there is little if any value in the sunken vessel even before incurring the costs of raising and towing it, the Administrator concluded that such measures were not justified. He has closed his file.

3.7 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.

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.

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.

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

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.

After receiving several bids, the CCG selected a contractor to demolish/break up the vessel and resolve the remaining pollution problem. By March 28, 2004, the vessel had been broken up and disposed of.

On July 11, 2004, the CCG submitted a claim on the SOPF for \$132,775.12 respecting its

costs and expenses in this matter. On September 29, 2004, the Administrator requested further information from the CCG respecting its claim. By letter dated November 19, 2004, the CCG provided some of the information requested but refused to provide copies of tender documents respecting the contract for the break up of the vessel.

On December 10, 2004, the Administrator wrote to the CCG reminding them of his powers of investigation under Part I of the *Inquiries Act*, pursuant to subsection 86(2) of the *Marine Liability Act* (MLA) and, on the evidence available, offered compensation in the amount of \$109,220.00 plus interest, in settlement of the CCG claim.

By letter dated January 14, 2005, the CCG requested a “clarification” of the SOPF position with respect to the use of the “firm price” contracting approach used in this case by the CCG for the break up of the vessel.

The Administrator replied to the CCG on February 15, 2005, noting the provisions of sections 85 and 86 of the MLA and Part I of the *Inquiries Act*. He reminded the CCG that: (1) All costs and expenses must be reasonable; (2) All measures taken must be reasonable measures; (3) All costs and expenses must have been actually incurred; (4) All claims on the SOPF must be investigated and assessed by an independent authority (the Administrator) who then offers compensation for whatever portion of the claim he finds to be established.

3.8 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

The Administrator noted that whilst a 1993 amendment to the CSA gave Canada the right to claim directly on the SOPF for the first time, it conferred no special status for claims filed by Canada as compared to claims filed by others. In particular, in order for the Administrator to find a claim, or portion thereof, to be established, under section 86 of the MLA, it is essential that the measures taken and the costs and expenses claimed are demonstrably reasonable.

Regarding the “fixed price” contracting approach used by the CCG in this case, the Administrator wrote: “Whilst the Administrator cannot dictate the measures and other actions (including cost control) a claimant takes in any given situation, one must not forget that a contract, “fixed price” or otherwise, by and of itself, does not relieve any claimant from the above requirements. We note in the *Sea Shepherd II* claim, for example, that other types of contracts may be employed, i.e. “ceiling price” or “cap”. We trust that DFO/CCG considers and then informs PWGSC of the recovery process [claiming from the SOPF] referred to above, if such is contemplated, before deciding on the appropriate instrument to employ in a given situation.”

On February 22, 2005, the CCG accepted the Administrator’s offer of compensation. On February 23, 2005, the Administrator directed that \$113,971.50 be transferred from the SOPF to the credit of DFO/CCG including \$4,751.50 in interest.

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.

It was noted by 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.

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.

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.

3.9 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 *Tanu* 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.

The CCG continues to monitor the situation, responding to oil leakage as necessary and working on a plan to remove all oil from the wreck.

The Administrator awaits developments.

3.10 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.

On June 28, 2004, a claim on the SOPF was received from the CCG in the amount of \$18,336.77 for its costs and expenses in this incident. On July 15, 2004, the Administrator directed payment to DFO/CCG in the amount of \$18,336.77 plus \$691.05 interest.

3.11 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* was subsequently sold by Crown Assets.

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. Several federal and provincial agencies are said to have voiced concern on the overall situation, but the vessel remained.

On October 26, 2003 the vessel sank in about 120 feet of water and was boomed off by the CCG *Bamfield* lifeboat crew. The CCG 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.

On January 5, 2005, the Administrator received notice of a claim on the SOPF from the Toquaht First Nation, Ucluelet, British Columbia, for oil pollution damage from the *Black Dragon*. It is alleged that damage to clams occurred as a result of the *Black Dragon* being towed, partially submerged, to the mouth of Pipestem Inlet, Toquaht Bay, Barkley Sound, after its raising and prior to its tow to Ladysmith.

On January 13 & 18, 2005, the Administrator requested further information from the Toquaht First Nation respecting the claim. On February 3, 2005, counsel for the Administrator wrote to the CCG advising of the claim and requesting documents and information regarding the incident and related operations. The CCG has provided some of the information asked for.

Since last reported, in his continuing investigation of the Toquaht Nation's claim, the Administrator has obtained further information from the DOE, DFO, and the Toquaht Nation. A marine surveyor and experts in the aquaculture and fisheries sectors have also been consulted by the Administrator. By year-end what appears to be significant evidence had been uncovered. The Administrator's investigation continues.

3.12 Sekme & Treimani (2003)

The Lithuanian registered fishing vessels *Sekme* and *Treimani* were moored at the Department of Fisheries (DFO) wharf on the north side of Bay Roberts harbour in Conception Bay, Newfoundland, in late 2001/early 2002 and remain there to this time.

These vessels had been arrested, while at Bay Roberts, in December 2001. Subsequently, it appeared the vessels had been abandoned by owners, although the crews stayed on. In October/November 2002 both crews were repatriated leaving the vessels completely abandoned. On June 16, 2003, a Minister of the Newfoundland and Labrador Government wrote to the Federal Environment Minister expressing concerns about the vessels' presence in Bay Roberts.

On July 29/30, 2003, CCG Emergency Response in St. John's, Newfoundland, commenced acting to secure the vessels and identify potential threats, including oil pollution from the vessels. Subsequently, CCG completed, *inter alia*, removal of a considerable quantity of oil, oily water, and oily residue from the vessels to minimize the risk of oil pollution.

On July 27, 2005, CCG filed a claim with the Administrator for costs and expenses in the amount of \$ 72,732.02 pursuant to Part 6 of the *Marine Liability Act* (MLA). On October 7, 2005, the Administrator requested further particulars, The CCG responded with some particulars on January 24, 2006.

The two fishing vessels are sister ships, the former being built in 1974 and the latter in 1977. They are 54.80 metre overall length and have a gross tonnage of approximately 750.

The CCG ER, St. John's says it visited the vessel in Bay Roberts on numerous occasions and undertook work to ensure that the vessels remained safely moored at the DFO wharf, determine and minimize the risk of oil pollution should the vessels break adrift, and determine and minimize the risk of hazardous materials pollution should the vessels break adrift.

The work of ensuring the vessels remained securely moored included replacing and increasing the number of mooring lines and replacing the bollards on the wharf. Frequent visits were also paid to the site by CCG personnel to monitor the situation. Minimizing the risk of oil pollution involved the removal and disposal of oil, oily water and oily residue from the vessels. Minimizing the risk of hazardous materials pollution included assessing and considering the removal and disposal of hazardous materials.

Following the removal of oils the vessels' oil pollution threat was significantly reduced, and the main problems remaining were hazardous materials, the unsightly appearance of the vessels and their damage potential to third parties.

After investigation and assessment, the Administrator concluded that the claim included costs and expenses that may fairly be attributable to non-oil pollution risks associated with the custody of the vessels, hazardous materials other than oil, and federal responsibilities other than oil pollution. In the circumstances, he agreed to accept a portion of the claim as established and thus, on March 30, 2006, pursuant to MLA section 86, offered DFO/CCG the global amount of \$ 15,000.00 plus interest under MLA section 101 in full and final settlement of its claim.

3.13 Anscomb (2004)

This vessel had served as a provincially owned ferry on Kootenay Lake, British Columbia until April 2003 when she was sold.

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. 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.

3.14 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.

The hole in the vessel's bow was too big to patch where she lay and the vessel could not be "pumped" afloat. Another obstacle to refloating was the 17 tons of herring in the vessel's hold. As the herring was thought to be contaminated

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.

On September 28, 2004, pursuant to MLA subsection 87(3), counsel for the Administrator filed a statement of claim in the Federal Court in Vancouver to commence a recovery action against the *Anscomb*. Consequently, the ship *DPW No.590* was arrested on October 4, 2005, as a sistership of the *Anscomb*. The arrest took place on Kootenay Lake, near the city of Nelson, British Columbia.

On February 17, 2005, the Federal Court ordered default judgement against the *Anscomb* and the *DPW No. 590* for an amount of liability to be determined. On March 10, 2005, counsel for the *Anscomb* served the Administrator's counsel with a notice of a motion to have the default judgment and the arrest of the *DPW No.590* set aside, and for leave to file a defence.

Counsel for the parties postponed hearing of the motion to, *inter alia*, discuss possible settlement. At year-end, \$4,000.00 had been paid and credited to the SOPF. Discussions between the parties continue.

no mobile packers were willing to assist in pumping off the cargo.

The CCG took over the operation and arranged to have the vessel lifted between two barges on slings and towed to a contractor's yard. There the herring cargo and pollutants were removed to prevent the threat of further pollution. The vessel was refloated with the aid of several pumps running full time. It was then temporarily patched to stop it from sinking and returned to the contractor's yard. The vessel was a constructive total loss.

On November 23, 2004, the CCG filed a claim on the SOPF for their costs and expenses totalling \$67,496.15. On January 31, 2005, the Administrator directed payment to DFO/CCG for \$58,243.47 plus \$2,070.62 in full and final settlement of this claim.

By year-end, the Administrator had considered his recovery options pursuant to MLA subsection 87(3). On investigation, he concluded that further measures were not justified. The Administrator has closed his file.

3.15 Sea Shepherd II (2004)

Having received a number of reports in April 2004 that the *MV Sea Shepherd II*, located in Robbers Pass, Tzartus Island, British Columbia, was in a derelict state and in danger of sinking, the CCG, TCMS, and Provincial authorities, attended on scene to investigate. It having been concluded that the vessel's condition made it a threat to the marine environment, a Response Order under CSA section 678 was issued on April 26, 2004.

The Administrator engaged local legal counsel and a marine surveyor. The latter attended on the vessel.

On May 10, 2004, CCG contractors began pumping operations on site. By May 11, 2004, some 188 tons of a mixture of waste oil and diesel was pumped off the *Sea Shepherd II*. But, some 16 gallons per hour of seawater was leaking back into the vessel. On May 26, 2004, the vessel was taken in tow, arriving at the Esquimalt graving dock the next day for break up. By June 17, 2004, seven large waste bins of oiled debris had been removed from the vessel. By July 30, 2004, the break up of the vessel had been completed.

On November 22, 2004, the Administrator received the CCG's claim on the SOPF for its costs and expenses totalling \$515,333.70. On December 13 & 14, 2004, the Administrator sought further information and materials from

the CCG. On February 23, 2005, the CCG provided the Administrator with some of that requested.

On March 3, 2005, the Administrator advised the CCG that whilst at that point he found only \$331,892.31 of the claim established - and offered compensation in that amount - he would consider further evidence in support of other parts of the CCG claim when provided to him. He noted that he had been unable to assess some parts of the CCG claim, pursuant to MLA section 86, due to lack of supporting evidence.

On March 3, 2005, the CCG on behalf of the Minister of Fisheries and Oceans (DFO/CCG) accepted the Administrator's offer of \$331,892.31 plus interest. On March 3, 2005, the Administrator directed payment to DFO/CCG of \$331,892.31 plus \$9,810.24 interest.

Note (1): The lack of supporting evidence for parts of this claim raises similar concerns to those expressed respecting the *Beaufort Spirit* claim reported herein at 3.7. A claimant to be successful must be able to prove its claim.

(2) This incident is also another example of the many derelict or abandoned vessels in British Columbia. This is a serious problem for the Fund that ought to be addressed by the government authorities and others, as noted herein at sections 3.8 and 5.2.

3.16 Alicia Dawn (2004)

On the morning of September 8, 2004, the fishing vessel *Alicia Dawn* 94 with a severe list, was towed into Caribou Harbour, Nova Scotia. The vessel had some 1200 litres of diesel and other engine and lube oils onboard. CCG ER Charlottetown, Prince Edward Island, responded, arriving in Caribou that forenoon at 0930.

A diver had been hired to plug the vents, release the fish tubs, and take measures designed to bring the vessel to an upright position. Oil was escaping from the vessel. CCG ER recovered spilled oil, and ordered that pumping be stopped.

The vessel departed Caribou bound for Murray Harbour, PEI, at 1315 September 8, 2004.

On February 4, 2005, the CCG filed a claim on the SOPF for its costs and expenses totaling \$2,625.42. The Administrator's offer of com-

pensation in the amount of \$2,543.01 plus interest was accepted by the DFO/CCG on February 9, 2005. On February 11, 2005, the Administrator directed payment to the DFO/CCG in the amount of \$2,595.99 including interest.

3.17 P.H. Phippen (2004)

On November 3, 2004, it was reported that the *P.H. Phippen* had sunk at the dock at Fisherman's wharf in Port Hardy, British Columbia. The Harbour Master boomed the vessel to contain leaking fuel.

The vessel, for sale at the time and also known as *Underwater Sunshine*, was an ex tug converted to a live aboard type vessel. It had not been moved in several years, but was regularly pumped.

CCG ER was advised that the vessel was laying on its side with fuel leaking from one tank containing some 30-40 gallons of diesel. The second tank containing some 100 gallons of diesel was said to be not leaking.

On November 5, 2004, CCG ER was advised that divers had been successful in plugging the vents. With CCG ER on scene, on November 12-13, 2004, contractors, with a barge and excavators, commenced lift operations. An airbag was inflated on the stern of the vessel and a forward sling was put in place for the lift. On November 14, 2004, the vessel was lifted to the surface and pumped out. Some unrecoverable diesel was spilled during the recovery operation. The vessel was stabilized and was considered to be no longer a pollution threat.

On January 31, 2005, the CCG filed a claim on the SOPF for its costs and expenses in this incident totaling \$2,113.91. On February 7, 2005, the Administrator directed payment of compensation to DFO/CCG of \$2,141.95 including interest, in full and final settlement.

3.18 Mystery Spill, Placentia and St. Mary's Bays, Newfoundland (2004)

On January 6, 2005, the Administrator received a telephone call from Newfoundland respecting alleged losses and/or costs and expenses incurred respecting oiled birds said to be from an oil spill off the coast.

Subsequently, with the correct address then available, the Administrator confirmed in writing to the caller details on the working of the SOPF along with information explaining the claims process including, presentation of claims, information required under various heads of claims, mystery spills and special loss of income claims under MLA section 88.

On January 11, 2005, the Newfoundland and Labrador Environmental Association (NLEA) filed a claim on the SOPF for \$8,320.00 for expenses related to "monitoring and clean-up of recent ship-source oil pollution mystery spill

in Placentia and St. Mary's Bays, Newfoundland." Particularly, the claim refers to seabirds impacted by the mystery spill in the said areas between November 26 and December 28, 2004. The expenses claimed appeared to relate to the capture, cleaning, rehabilitation and release of oiled seabirds. The claimant said that the NLEA is the only entity capable of responding to and dealing with seabirds contaminated by ship-source oil in Newfoundland and Labrador.

By correspondence dated January 21, 2005, the Administrator acknowledged receipt of the claim and requested further particulars in its support. On March 11, 2005, the Administrator received some of the additional information requested. Further information is expected presently.

The Administrator's investigation continues.

3.19 Mary Mackin (2005)

On January 23, 2005, a report was received of an oil spill from the *Mary Mackin* in Patricia Bay, Vancouver Island, British Columbia. The *Mary Mackin* was an old world war II-era 125 foot twin-screw wooden tug that had been beached near the Institute of Ocean Sciences by the Receiver of Wrecks on October 31, 1998. A TC Environmental screening report of January 6, 2005, did not indicate the presence of significant oil volumes in the vessel.

In January, 2005, prior to the reported spill, a contractor had been engaged by the Receiver of Wrecks for the demolition and disposal of the vessel on the beach for some \$ 60,000.00. During demolition, they discovered considerable oil onboard and a spill resulted. Substantial oil was found within the vessel, including, 1,000 litres of engine oil and a large quantity of oil soaked mud. On January 24, 2005, the contractor for the Receiver of Wrecks advised CCG ER that they had removed most of the internal components that could contain oil. On site demolition and disposal of the vessel was completed by mid-February 2005.

On August 2, 2005, the Administrator received a claim from Transport Canada, Pacific Region – Marine Safety, Navigable Waters Protection Division for its costs and expenses in the cleanup and disposal of the tug *Mary Mackin* in the amount of \$223,543.88.

After investigation and assessment, the Administrator, on finding the claim had resulted partially from the negligence of the claimant, found the claim to be established at \$20,000.00, and on March 21, 2006, pursuant to MLA section 86, offered that sum plus interest to TC in full and final settlement of its claim. On April 24, 2006, in response to a request from TC, the Administrator offered to review any new or material information which TC might wish to provide, in order for him to determine whether it would be appropriate to re-open his investigation. In the meantime on May 25, 2006, the Administrator received from the Crown a Notice of Appeal to the Federal Court concerning the adequacy of his offer of compensation, pursuant to MLA section 87(2).

3.20 Tor (2005)

On January 16, 2005, a report was received that the converted fishing vessel *Tor* sank alongside the dock at the small craft harbour in Mission, British Columbia. Some diesel was seen seeping under the ice in the harbour. Sorbent boom and pads were deployed by the master harbour. On January 22, 2005 CCG ER was advised that fuel was still onboard the vessel. CCG ER took over the management of the response and requested quotes from contractors for the raising of the vessel and removal of pollutants.

On January 28, 2005 the contract to raise the vessel was awarded. The contractor raised the vessel and the harbour master kept it afloat over the weekend with pumps. On January 31, 2005 – due to the continuing ingress of water, the vessel was towed to Shelter Island Marina and placed on land. The CCG surveyor had advised that the cost to repair the vessel would well exceed the vessel's market value. It was then decided that the vessel be destroyed. CCG ER requested bids from contractors for the destruction of the

vessel and the removal of pollutants.

On February 9, 2005 the contract to remove and dispose all pollutants and destroy the vessel was awarded. On March 2, 2005, the contractor reported that the removal and disposal of pollutants and destruction of the vessel has been completed.

On July 27, 2005, the Administrator received a claim from DFO/CCG in the amount of \$22,196.25 for its costs and expenses in the response to this incident. On September 28, 2005, the Administrator requested some further particulars which were provided by the claimant on October 5, 2005.

On October 6, 2005, the Administrator, pursuant to MLA section 86, offered DFO/CCG \$21,436.76 plus interest in full and final settlement of its claim. This was accepted and on October 13, 2005, payment of \$22,054.71 including interest was authorized.

3.21 Sonny Boy (2004)

On September 26, 2004, CCG ER, Victoria, received a report from MCTS that the fishing vessel *Sonny Boy* had sunk at the Fisherman's Wharf in Port Hardy, British Columbia, with an unconfirmed amount of pollutants on board. The vessel was boomed off with absorbent boom and pads applied by the Harbour Manager. Further inquiries revealed that the *Sonny Boy* was tied to another vessel and it was suggested that if immediate action was not taken there would be two sunken vessels. CCG ER then decided to hire a local salvage/dive company to deal with the situation.

Using air bags and pumps, contractors refloated the vessel at 2230 on September 26, 2004, and secured it to the wharf. All suspected pollutants on board had apparently dissipated and the contractor could not find any reason for why the vessel had sunk.

On January 31, 2005, CCG filed a claim on the SOPF for its costs and expenses totaling \$7,902.37. After investigation of the incident and assessment of the claim, the Administrator, on February 10, 2005, directed payment to DFO/CCG of \$7,902.37 plus \$122.80 interest.

3.22 Mystery oil spill, Wheatley Harbour, Ontario (2004)

The first the Administrator learned of this October 12, 2004 incident was on January 31, 2005 when he received the CCG claim for its costs and expenses of \$7,944.19. Wheatley Harbour, Ontario, is situated some 30 miles southwest of Pointe aux Pins and some nine miles north-northeast of Point Pelee, on Lake Erie, one of the Great Lakes. The Village of Wheatley is located about one mile north of the harbour.

The CCG claim referred to the incident as a mystery spill, but also noted that a fishing vessel was the suspected source. CCG ER and its contractor ECRC responded. Equipment deployed by ECRC included a vacuum truck. By 2200, October 12, 2004, 7200 litres of water/oil and oiled debris had been recovered, and CCG ER and ECRC departed the site. The CCG claim made no mention of any oil samples having been taken.

On February 7, 2005, the Administrator wrote to CCG requesting missing information, including the field notes and logs of officials attending the site from CCG ER and ECRC.

In the meantime, the Administrator investigated the incident. He was advised that on the morning of October 12, 2004, a man walking his dog near the harbour had noticed a strong smell of diesel oil, and telephoned the Harbour Master of the Wheatley Harbour Authority Corporation (WHAC). On attending at the scene the Harbour

Master noted sludge in the harbour. Ontario Provincial authorities were then notified. Officials from the Ontario Ministry of Natural Resources (MNR), the WHAC, and other local persons tried to contain the spill. Concerned that the spill would drift out of the harbour into Lake Erie, the MNR officer called the CCG at Amherstburg, at 1230, October 12, 2004.

The MNR officer informed the Administrator that he had taken a number of oil samples from and around a suspected fishing vessel and had recorded details of his observations in writing. He said that he had informed CCG that he had oil samples and was advised that if they (CCG) needed the samples they would contact him. Having had heard nothing from CCG he advised the Administrator that the samples had since been "thrown out". They had not been sent out for analysis. The spill was located in an area where commercial fishing vessels secure.

Both the WHAC and MNR officials who attended the site provided their written notes on the incident to the Administrator. Subsequently, on February 14, 2005, CCG provided additional information in response to the Administrator's request of February 7, 2005.

On February 16, 2005, the Administrator directed payment of compensation to DFO/CCG of \$7,502.88 plus \$89.71 interest.

Note: In his letter of offer to DFO/CCG for this Ontario incident, the Administrator reminded the CCG of the transcending importance of the Administrator having timely access to oil samples where available, as part of the evidence package he needs in order to make the polluter pay. The Administra-

tor recalled the statutory scheme in Part 6 of the MLA – under which both federal agencies operate in this respect – and particularly the Administrator’s statutory obligation, under section 87(3)(d), to take measures to recover the amount of the payment (to CCG) from the owner of the ship.

3.23 Abandoned vessel, Vancouver Harbour, British Columbia (2004)

During the evening of October 8, 2004, the CCG crew at Kitsalano SAR station received a report that a semi-submerged vessel was drifting past a deep sea vessel at anchorage #4, in English Bay, Vancouver Harbour, British Columbia.

The SAR crew responded and found an abandoned vessel adrift and the smell of fuel oil. As it posed a navigational hazard adrift in the dark, the crew made the decision to tow the vessel and beach it beside the SAR station and then boom it off to prevent further pollution. This was successfully completed that night.

At daylight on October 9, the crew observed pockets of oil and oily debris both inside and outside the boom. At this point CCG ER was notified of the incident.

On site that morning, CCG ER with the assistance of the SAR crew, plugged the vent, recovered the free oil from the water with pads and boom and removed the oiled debris. No indication of ownership or identification of vessel was found at the scene. The vessel had been stripped and it appeared that someone had attempted to sink it out in the bay, as slabs of concrete were

found inside and holes had been cut in the hull. Because of the amount of debris inside the vessel the fuel tanks could not be accessed to determine the amount of fuel remaining onboard. It was decided that it would be necessary to remove the vessel from the water, deconstruct it to access the tanks and dispose of the contaminated waste. The incident site was maintained by CCG ER and the SAR crew over the remainder of the Thanksgiving long weekend.

On October 12, 2004, a contractor working in the area was engaged to do the removal, thus minimizing the mobilization/demobilization charges. On October 13, 2004, the contractor brought in a barge and crane, removed the vessel and took it to its yard for deconstruction and disposal.

On February 4, 2005, the CCG filed a claim on the SOPF for its costs and expenses totaling \$7,493.10. After requesting and receiving further information from CCG, the Administrator on February 11, 2005, directed payment of compensation to DFO/CCG of \$7,236.73 plus \$62.28 interest.

3.24 Bleuvet (2004)

On or about September 5, 2004, CCG ER Quebec was informed of a diesel fuel spill in the water at a marina in Tadoussac, Quebec. It is reported that when refueling diesel was accidentally pumped into the bottom of the boat and the bilge pump then discharged the diesel into the

water. The *NGCC Isle Rouge* responded with sorbent rolls and pads. On April 21, 2006, the Administrator received a claim from DFO/CCG in the amount of \$3,335.02 for their costs and expenses for this incident.

3.25 Sea Sprite (2005)

On April 19, 2005, the PC *Sea Sprite* was reported in danger of sinking at Wright's Cove, Dartmouth, Nova Scotia. CCG ER Dartmouth responded to have the vessel pumped out. On April 25, 2005, the vessel burned to the waterline and sank.

On November 10, 2005, DFO/CCG filed a claim with the Administrator in the amount

of \$7,481.28 for its costs and expenses. On December 6, 2005, the Administrator requested further particulars. These were received.

On December 23, 2005, the DFO/CCG accepted the Administrator's offer of \$7,151.04 plus interest in full and final settlement. On January 5, 2006, payment of \$7,381.52 including interest was authorized.

3.26 Santa Emma (2005)

In early January 2004, the *Santa Emma* arrived at Cape Tormentine, New Brunswick from Piraeus, Greece. The vessel, reportedly of Panamanian registry, was a twin screw Ro/Ro cargo vessel. On January 7, 2004, she was detained by Transport Canada Marine Safety for a number of deficiencies. On June 24, 2004, the vessel was arrested at Cape Tormentine. Concerns had been expressed by some authorities for the safety and security of the *Santa Emma* at the Cape Tormentine Wharf and the potential for an oil pollution incident involving the vessel.

It was reported that in the early morning of April 29, 2005, high winds caused the *Santa Emma* to part several of her lines and blew her off the wharf. The vessel was driven aground by the wind and collided with an adjacent wharf, resulting in a hole in her starboard quarter approximately one metre above the waterline. At first light, it was observed that the *Santa Emma* had a 12 degree list, a damaged hull and an engine room and cargo hold flooded with hundreds of tonnes of fuel oil/water mixture. Several hundred tonnes of heavy fuel oil was also believed to be on board in double bottom tanks. Authorities were of the view that the vessel was at imminent risk of sinking and causing a serious marine pollution incident. There are scallop and lobster fisheries in the area and a wildlife refuge.

The vessel was still under a Transport Canada detention order. CCG ER deployed personnel and equipment to the site and engaged contractors in order to stabilize the vessel and conduct a pollution response, which included seven members of the USCG Gulf Strike Force from Mobil, Alabama, with equipment, along with TCMS, EC and REET. The Administrator had retained a surveyor to monitor the operations.

By May 27, 2005, some 1000 tonnes of a mixture containing diesel fuel, lube oil, heavy fuel oil and water had been removed from the vessel. An estimated 50 tonnes of heavy oil remained in the *Santa Emma* distributed through several tanks. On May 30, 2005, all the ER personnel and equipment left the site.

On September 16, 2005, the *Santa Emma* left Cape Tormentine under tow destined for demolition in India. On October 7, 2005, the Marine Rescue Centre in Ponta Delgada (Azores) reported that the *Santa Emma* went down as a result of bad weather approximately 135 nautical miles southwest of the Azores at position 36-53.3N 28-14.4W.

By letter dated February 14, 2006, a claim was filed on the SOPF for the costs and expenses of CCG and EC totaling \$717,845.21. The Administrator is investigating.

3.27 Malaspina Castle (2005)

In Vancouver, on May 5, 2005, the Administrator was made aware of an oil spill incident that had taken place on April 9, 2005, at Howe Sound Pulp and Paper Mill deep sea dock in Port Mellon, British Columbia, while the MV *Malaspina Castle* was alongside the dock.

On June 23, 2005, the Administrator received a notice of claim from the solicitors for the owners of the MV *Malaspina Castle* for costs and expenses in cleaning up the spill. The Administrator was advised that TCMS had returned the letter of undertaking security it had obtained

from the shipowners under the CSA Pollution Prevention Regulations. It is said that an analysis of the oil samples taken at the spill site and from the vessel did not show a match.

On July 28, 2005, the shipowner's claim on the SOPF was received in the amount of \$75,468.52. The Administrator retained local counsel. An extensive investigation into the source of the spill has been conducted by the Administrator. At year-end, the Administrator was still awaiting receipt of a particular piece of information from the owners of the vessel.

3.28 Elvera II (2005)

On April 4, 2005, the FV *Elvera II* was reported high and dry on the breakwater at the North Saanich Marine, near Sydney, British Columbia. CCG ER Victoria viewed the situation and noted that the hull of the vessel appeared to be intact with only a bent, rudder stock. An inspection on April 5, 2005, with the vessel still aground, showed fuel spilled in the hold. There was a fuel tank in the hold and a full portable fuel tank on deck. A contractor took the vessel off the breakwater and took it to Ladysmith. CCG sold the vessel for \$1,498.00 including tax.

By letter dated November 10, 2005, the DFO/CCG filed a claim on the SOPF for its response costs and expenses in the amount of \$4,319.93. After deducting the amount CCG received for the sale, the Administrator paid CCG the amount of \$2,821.93 plus interest of \$79.01 in full and final settlement of its claim.

3.29 Joseph & Clara Smallwood (2005)

MCTS at Port aux Basques, Newfoundland, Labrador, reported a spill on May 2, 2005, from the Marine Atlantic ferry MV *Joseph & Clara Smallwood* of some 1000 gallons of diesel fuel. TCMS issued a stop sail order on the vessel. CCG ER was advised by Marine Atlantic that

a containment boom had been deployed and a clean-up crew was on site. TCMS released the vessel. CCG ER said they would continue to monitor the incident. No claim on the SOPF having been received, the Administrator has closed his file.

3.30 Rover no. 1 (2005)

It was reported that this 74 foot ex tug went aground and sank in Genoa Bay, British Columbia on May 8, 2005. On July 20, 2005, CCG engaged a contractor. The vessel was raised and towed to Nanaimo Shipyards. By September

9, 2005, destruction of the vessel had been completed. Nanaimo Shipyards reported 4500 litres of oil was removed from the vessel. The Administrator awaits developments.

3.31 Joan W1 (2005)

This fishing vessel was reported sunk at Lynwood Marina, North Vancouver, British Columbia, on June 10, 2005. Marina staff had boomed off the area and were responding to the resulting oil pollution from the vessel. CCG engaged a contractor who raised the vessel and towed it to Ladysmith, BC. By August 4, 2005, the vessel had been destroyed and was in the process of being disposed of.

On November 30, 2005, the Administrator received a claim from DFO/CCG for its costs and expenses in the amount of \$29,821.43. The Administrator sought further particulars from CCG, which were finally received by February 6, 2006.

On February 7, 2006, the Administrator offered DFO/CCG \$28,510.38 plus interest. This was accepted and payment of \$29,389.72 including interest was authorized on February 8, 2006.

3.32 Queen of Oak Bay (2005)

On June 30, 2005, the British Columbia ferry, *Queen of Oak Bay* lost power and came into the Sewell Marina at Horse Shoe Bay, BC, running over a number of vessels moored there. CCG SAR vessels went to the scene. Six vessels had sank and the marina was surrounded with

booms. CCG ER Richmond and The RO Burrard Clean were in attendance helping with the cleanup. Very little sheening was reported. With no claim having been received, the Administrator has closed his file.

3.33 Project Europa (2003-2005)

It has been reported that a guilty plea was entered for this vessel on August 26, 2005, to a charge of illegal discharge on August 23, 2003, approximately 65 miles south of Cape Race, Newfoundland, contrary to the Oil Pollution Prevention Regulations of the Canada Shipping Act. A marine pollution surveillance flight had detected a slick behind the MV *Project Europa*, a cargo ship registered in the Netherlands. The ship was boarded by TCMS at Trois-Rivières,

Québec, on August 25, 2003. The investigation continued on the vessel's arrival in Montreal, August 26 and 27, 2003. Apparently, the vessel's engineers had been working on the oily water separator at the time of the sighting, and some water with oil was discharged overboard. It was estimated that the resulting slick contained some 40 litres of an oily substance. The Newfoundland and Labrador Provincial Court ordered the payment of \$70,000.00 penalty.

3.34 Sonny Boy (2005)

The FV *Sonny Boy* was reported sinking at the dock in Port Hardy, British Columbia, on August 28, 2005. Port Hardy CCG lifeboat was dispatched to assist with the pumping. The vessel was refloated but was still taking on water. The vessel was left in care of the Harbour Master. The CCG has been called on to attend this vessel before – see 3.21 herein.

On August 31, 2005, the CCG determined that the vessel was in extremely poor condition with approximately 400 to 500 litres of fuel onboard. By September 20, 2005, the oil products (fuel,

engine oil and hydraulics) were still onboard and the vessel would have sunk were it not for continuous pumping by the Harbour Master.

On September 27, 2005, CCG ER Victoria, attended on the vessel and, with help from a local contractor, removed some 140 gallons of contaminated oil from the tanks. On September 29, 2005, the remaining oil in the bilge was recovered with sorbents and all material was taken away for disposal. CCG ER personnel left the vessel in the care of the Harbour Authority.

On December 6, 2005, the Administrator received a DFO/CCG claim for its costs and expenses in the amount of \$3,278.06. The Administrator requested further particulars, which were provided. The Administrator's

January 5, 2006 offer of \$3,155.86 plus interest was accepted. Payment of \$3,200.38 including interest was made on January 6, 2006, in full and final settlement of this claim.

3.35 Queen Elizabeth II (2005)

It was reported by CCG ER Dartmouth, Nova Scotia, that the cruise ship *Queen Elizabeth II* had discharged a pollutant in a quantity of approximately three cubic metres within Canadian waters some 12 nautical miles from the

nearest land. It was noted that with the vessel in speed of approximately 25 kts and the incident having occurring at sea, the product would disappear quickly. There was no pollution response. The Administrator has closed his file.

3.36 Terra Nova FPSO (2005)

A release of 50-100 litres of oil from the *Terra Nova FPSO* was reported to St. John's, Newfoundland, MCTS. This report was received by CCG ER St. John's on September 10, 2005. A CCG ER officer on scene reported a light sheen and residual oil in the general area. The oil sheen was reported to have passed under and over a 1150 foot long 36" solid flotation boom that had been deployed to capture any oil that may be present during a hull cleaning operation.

Petro Canada says it is undertaking a hull cleaning operation on the *Terra Nova FPSO*. It is said to believe that residual oil from the November 21, 2004 spill may be trapped in the undergrowth attached to the vessel. A report on the 2004 spill can be found in the Administrator's Annual Report 2004-2005 at section 3.29.

3.37 Canadian Leader (2005)

On September 26, 2005, it was reported that the bulk carrier *Canadian Leader* had run aground near buoy D38 at Deschaillons, Québec, carrying 256 tonnes of heavy fuel oil and 10 tonnes of diesel, enroute to Hamilton, Ontario. CCG ER Québec contacted owners to determine their intentions for the refloating of the vessel and protection of the marine environment. Water was discovered in some cargo tanks. On

September 28, 2005, the vessel was refloated with three tugs. CCG ER monitored the salvage operation, where no oil pollution occurred. On September 29, 2005, the vessel arrived in the Port of Québec under escort to unload its cargo and be inspected. TCMS was to conduct a structural integrity assessment of the vessel. The Administrator has closed his file.

3.38 Mystery Spill, Port de Montréal (2005)

A claim totaling \$6,488.90 for clean up costs and expenses from an incident at the Port of Montreal (Vieux Port) : on September 6, 2005, Bassin Jacques Cartier, Quai King Edward was filed with Administrator on February 9, 2006, by Société du Vieux-Port de Montréal Inc. The claimant says the source of the spill is

not known – mystery spill. The Administrator is investigating. At year-end, he was awaiting a reply to his correspondence of February 22, 2006, requesting further particulars from the claimant.

3.39 FV *Gagtugwaw* (2005)

The FV *Gagtugwaw* was reported sunk and leaking oil at the wharf in Matane, Québec, on October 16, 2005. CCG ER, Québec attended on site of the recovery operation from October 17 to October 21, 2005, inclusive. It was estimated that there may have been as much as 3000 gallons of diesel and 114 gallons of hydraulic oil on the vessel. Insurers for owners engaged cleanup contractors. Divers plugged the vents and, with difficulty, the vessel was removed

from the water. A considerable amount of oil was released, a vacuum truck was engaged and booms had been deployed to prevent it from spreading. The vessel was in very poor structural condition.

On March 31, 2006, DFO/CCG filed a claim on the SOPF for costs and expenses in the incident in the amount of \$8,060.43.

3.40 *Front Fighter* (2004-2005)

On June 22, 2004, a Transport Canada marine pollution surveillance flight detected three slicks in the wake of the crude oil tanker *Front Fighter* (79, 669 Gt, built 1998, registered in Norway) as she was approximately 85 miles southwest of Cape St. Mary's, Newfoundland. The ship was traveling from Yorktown, Virginia towards Whiffen Head, Newfoundland and Labrador.

Upon the ship's arrival at Whiffen Head, she was boarded by TCMS pollution prevention officers and an investigation was carried out. The officers confirmed that the oil, estimated

to be approximately 64 litres had originated from machinery on board the *Front Fighter*. On June 30, 2004, the vessel was charged for illegally discharging a pollutant, contrary to the Pollution Prevention Regulations of the Canada Shipping Act. On October 17, 2005, the ship's agent pleaded guilty and the ship was fined \$70,000.00 by the Newfoundland and Labrador Provincial Court in St. John's, Newfoundland.

At the time of the incident the vessel was named *Front Fighter*. The vessel has since been sold to new owners and renamed *Nordic Fighter*.

3.41 *Mystery Spill, Victoria, British Columbia* (2004)

On December 30, 2004, there was an oil spill at the Fisherman's Wharf Facility of the Greater Victoria Harbour Authority (GVHA), Victoria Harbour, British Columbia. The GVHA and volunteers mounted the initial clean-up operations the night of December 30 and through the early morning hours of December 31, 2004. The GVHA engaged a contractor to complete the clean-up. The GVHA says the incident is a mystery spill in that its source is unknown.

On December 14, 2005, the Administrator received a claim of \$16,012.02 from the GVHA for costs and expenses in its response and cleanup in the incident. Further particulars of the incident were requested by the Administrator. These were provided on February 20, 2006, by the GVHA. The claim was investigated and assessed by the Administrator. The Administrator's offer of \$10,443.50 plus interest of \$621.35, for a total of \$11,064.85 was accepted by the GVHA. On April 18, 2006, payment for that amount was authorized (and included in the SOPF fiscal year ending March 31, 2006).

3.42 Mystery Spill, Victoria, British Columbia (2005)

On March 28, 2005, there was an oil spill at the Ship Point Facility of the Greater Victoria Harbour Authority (GVHA), Victoria Harbour, British Columbia. The GVHA hired a contractor for the clean-up response on March 28, 2005. The GVHA says the incident is a mystery spill-its source being unknown.

On December 14, 2005, the GVHA filed a claim on the SOPF in the amount of \$8,521.16 for its costs and expenses in the incident clean-up

response. On January 16, 2006, the Administrator requested further particulars surrounding the incident. These were provided by the GVHA on February 20, 2006. The Administrator continued his investigation and assessment of the claim. The GVHA accepted the Administrator's offer of \$6,847.42 plus interest. On April 18, 2006, payment of \$7,170.31 including interest was authorized (and included in the SOPF fiscal year ending March 31, 2006).

3.43 FV Skipjack (2005)

On November 3, 2005, the Tofino Coast Guard Station reported the FV *Skipjack* had sunk at Opitsat, Vancouver Island, British Columbia, and was leaking oil. A slick about 10 acres in size was reported. The vessel was beached and fully awash with the high storm tides. There was a thick layer of diesel throughout the vessel.

The CCG Tofino lifeboat was dispatched to begin the cleanup. There was a considerable amount of fuel on board the *Skipjack*.

On November 5, 2005, CCG ER Victoria arrived on scene. An estimated 110 gallons of oil was removed from the vessel that day. On November 6, 2005, three drums of oil and oiled

pads were recovered. On November 7, 2005, an estimated 100 gallons of oil and oiled pads were recovered. The operation was completed on November 8, 2005. The vessel was left at its position on the beach.

On February 20, 2006, the CCG filed a claim on the SOPF for its costs and expenses in the incident in the amount of \$15,269.18. The Administrator requested and received further particulars on the claim for the CCG. On March 23, 2006, the CCG accepted the Administrator's offer of \$11,140.14 plus interest in full and final settlement of its claim. On March 24, 2006, payment to DFO/CCG of \$11,303.43 including interest was authorized.

3.44 FV Western Mariner (2005)

On November 11, 2005, it was reported that a vessel had sunk at Cove Yachts in Maple Bay, British Columbia. This turned out to be the FV *Western Mariner*, with a suspected 5000 litres of diesel onboard. The Yacht Club deployed boom around the sunken vessel to contain possible pollution. The section of the dock where the vessel had been secured was significantly damaged by the vessel, and had separated from the rest of the dock. A contractor and divers were engaged to deploy booms to contain possible pollution, plug the vessel's vents and do

an underwater survey of the hull. Oil continued to escape through the deckheads and other area – an estimated 800 litres came to surface and was contained in the booms. A T Disk skimmer was deployed. By November 14, 2005, most of the surface oil had been removed. By that day, some 2800 litres of oil had been recovered. On November 16, 2005, the contractor lifted the vessel from the water. The fish hold and accommodation space were pumped out. On November 17, 2005, crews were continuing to clean up oil on and around the vessel.

3.45 Abandoned vessel, Brentwood Bay, British Columbia (2006)

On January 14, 2006, an overturned vessel at a mooring buoy in Brentwood Bay, British Columbia, was reported. No oil appeared to be coming from the vessel. CCG engaged a contractor who refloated the vessel on January 20, 2006. The vessel turned out to be a fiberglass hull pleasure craft with twin gasoline engines and inboard fuel tanks. The starboard engine had been removed. The contractor removed

the partially filled fuel tanks and oil from the engine. The hatches were replaced, a drain cock closed and the vessel re-secured to the mooring buoy.

On April 21, 2006, the Administrator received a claim from CCG for its costs and expenses in the incident at \$7,150.60.

3.46 Rowan Gorilla VI (2006)

It was reported that the offshore oil rig *Rowan Gorilla VI*, at Mulgrave, Nova Scotia, for repairs, witnessed a spill of diesel fuel into the Strait of Canso. The incident occurred on March

20, 2006, and was being investigated by TCMS under the Oil Pollution Prevention Regulations of the Canada Shipping Act.

3.47 Queen of the North (2006)

On March 22, 2006, a report was received from MCTS that the British Columbia Ferry, *Queen of the North*, while enroute from Prince Rupert to Port Hardy, had run aground at the north end of Gil Island, Grenville Channel, British Columbia.

The *Queen of the North* (Ex *Stena Danica*), 8,889 Gt, built in Germany in 1969, with a capacity of 700 people and 115 automobiles, had on board some 100 passengers and crew, for the 450 kilometre overnight trip along BC's so called Inside Passage, when the incident occurred approximately 135 kilometres from Prince Rupert. It is reported that she may have had more than 225,000 litres of fuel on board at the time.

Passengers and crew left the vessel in lifeboats and life rafts. The vessel sank. CCG ER Prince Rupert was notified. Various CCG vessels and others were tasked. BC Ferries took on management of the response, and activate its arrangement with the pollution response organization (RO) Burrard Clean Operations. CCG ER assumed the role of Federal Monitoring Officer (FMO).

On March 23, 2006, a steady stream of oil was surfacing from the wreck site. The resulting slick was seen moving around the top of Gil

Island and then dissipating to the west side of the island. On March 24, 2006, an overflight showed only sheens of oil near the shoreline. No concentrations of wildlife were observed. Mechanical recovery efforts were not being successful.

On March 26, 2006, BC Ferries announced that the ferry was located in some 1400 feet of water and was sitting upright buried in mud up to its rubbing strip. On March 27, 2006, BC Ferries was working with local First Nations to develop a long term monitoring plan, to be activated if necessary. A CCG overflight on March 29, 2006, reported a small amount of oil upwelling from the incident site, producing a silver sheen that dissipated down current in less than two miles.

At year-end, 5600 feet of protective boom remained in place, with an additional 1000 feet held in reserve in Hartley Bay. By April 3, 2006, on water recovery equipment was being demobilized. The CCG ER vessel stood down and returned to the Prince Rupert base.

CCG ER has established a communication plan with the First Nations to respond to any changes in the situation. BC Ferries intend to continue aerial surveillance every second day. CCG helicopters will monitor the site when other operational activities have them in the same vicinity.

Ship-source Oil Pollution Fund

4. Challenges and Opportunities

4.1 Changes to the 1992 International Regime - Impact on SOPF

4.1.1 Revision to the Civil Liability and Fund Conventions “not to be”

It was decided at the 1992 IOPC Assembly’s October 2005 session not to re-open the two Conventions in order to adjust the shipowners’ limit of liability. The third Intersessional Working Group was, therefore, disbanded and the revision of the Conventions was removed from the Assembly’s agenda. Alternatively, at their February/March 2006 sessions the Assemblies of the 1992 Fund and the Supplementary Fund, in effect, accepted the proposals of the International Group of P&I Clubs for a STOPIA 2006 and TOPIA 2006.

STOPIA and TOPIA⁹

Summary

In February, 2006, the International Group of P&I Clubs had submitted to the Director of the International Fund (the Director) a revised Small Tanker Oil Pollution Indemnification Agreement (STOPIA) 2006 and a new Tanker Oil Pollution Indemnification Agreement (TOPIA) 2006.

Under the revised STOPIA 2006, the limitation amount applicable to small tankers would, on a voluntary basis, be increased to 20 million SDR (£16.6 million) for tankers of 29 548 gross tonnage or less for pollution damage in all 1992 Fund Member States. TOPIA 2006 would result in the shipowner indemnifying, on a voluntary basis, the Supplementary Fund for 50% of the compensation amounts paid by it under the Supplementary Fund Protocol.

The Director was informed that ICS, INTERTANKO and OCIMF support the texts of STOPIA 2006 and TOPIA 2006 as presented.

Overview of STOPIA 2006 and TOPIA 2006

STOPIA 2006

STOPIA 2006, which will apply to pollution damage in States for which the 1992 Fund Convention is in force, is a contract between owners of small tankers to increase, in a voluntary basis, the limitation amount applicable to the tanker under the 1992 Civil

Liability Convention. The contract would apply to all small tankers entered on one of the P&I Clubs which are members of the International Group and reinsured through the pooling arrangements of the International Group. Ships insured by an International Group Club but not covered by the pooling arrangement may agree with the Club concerned to be covered by STOPIA 2006.

⁹ 92FUND/A/ES.10/13

Ship-source Oil Pollution Fund

Certain Japanese coastal tankers have already agreed to be bound in this way. The effect of STOPIA 2006 would be that the maximum amount of compensation payable by owners of all ships of 29 548 gross tonnage or less would be 20 million SDR (£16.6 million). The 1992 Fund would not be party to the agreement, but the agreement would confer legally enforceable rights on the 1992 Fund of indemnification from the shipowner involved.

The 1992 Fund would, in respect of ships covered by STOPIA 2006, continue to be liable to compensate claimants if and to the extent that the total amount of admissible claims exceeds the limitation amount applicable to the ship in question under the 1992 Civil Liability Convention. If the incident involves a ship to which STOPIA applies, the 1992 Fund would be entitled to indemnification by the shipowner of the difference between the shipowner's liability under the 1992 Civil Liability Convention and 20 million SDR.

The main substantive difference between the original STOPIA and STOPIA 2006 is that, whereas the original STOPIA only applied to pollution damage in Supplementary Fund Member States, STOPIA 2006 would apply also to pollution damage in all other 1992 Fund Member States.

TOPIA 2006

TOPIA 2006 applies to all tankers entered in one of the P&I Clubs which are members of the International Group and reinsured through the pooling arrangements of the International Group. Under TOPIA 2006, the owner of the ship involved in the incident would indemnify the Supplementary Fund for 50% of the compensation it pays under the Supplementary Fund Protocol for oil pollution in Supplementary Fund Member States.

The Supplementary Fund would, in respect of incidents covered by TOPIA 2006, continue to be liable to compensate claimants as provided in the Supplementary Fund Protocol. If the incident involves a ship to which TOPIA 2006 applied, the Supplementary Fund would be entitled to indemnification by the shipowner of 50% of the compensation payment it had made to claimants.

Review

STOPIA 2006 and TOPIA 2006 provide that a review shall be carried out in 2016 of the experience of pollution damage claims during the period 2006 – 2016, and thereafter at five-yearly intervals, in consultation with representatives of oil receivers and the 1992 Fund and the Supplementary Fund, to establish the approximate proportions in which the overall cost of oil pollution claims under the international compensation system has been borne respectively by shipowners and by oil receivers since 20 February 2006 and consider efficiency, operation and performance of the agreements. The agreements also provide that, if the review reveals that either shipowners or oil receivers have borne a proportion exceeding 60% of the overall costs of such claims, measures shall be taken for the purpose of maintaining an approximately equal apportionment. Examples of such measures are given in the agreements.

Entry into force

STOPIA 2006 and TOPIA 2006 will apply to incidents occurring after noon GMT on 20 February 2006. The agreements are to continue until the current international compensation system is materially and significantly changed. There are also provisions for the termination of the agreements in certain circumstances which may be expected to make them no longer workable.

Director's assessment

It should be noted that STOPIA 2006 and TOPIA 2006 are not contracts between the 1992 Fund/ the Supplementary Fund and shipowners, but unilateral offers by shipowners which confer on the respective Fund the right of enforcement.

After careful examination of STOPIA 2006 and TOPIA 2006, and having taken legal advice, the Director considers that the texts of the agreements are satisfactory from the respective Fund's point of view.

Implementation of the Undertakings in STOPIA 2006 and TOPIA 2006

The necessary agreement between the Funds and the International Group in order to implement the undertakings given by shipowners to 1992 Fund and the Supplementary Fund under STOPIA 2006 and TOPIA 2006 are referred to in documents 92Fund/A/ES.10/14 and SUPPFUND/A/ES.2/8.

Consideration in February-March, 2006

The 1992 Assembly, at its tenth Extraordinary Session held from February 27 to March 2, 2006, took note of these developments. The 1992 Fund Assembly focused its attention on STOPIA 2006 since TOPIA 2006 was primarily a matter for the Supplementary Fund Assembly to consider. The Supplementary Fund Assembly, at its Second Extraordinary session held on March 1 and 2, 2006 took note of these developments and expressed its appreciation to the International Group of P&I Clubs and to the other industries involved for the work undertaken to bring the work to a positive conclusion.

Note: For additional background information on STOPIA and TOPIA see the SOPF Administrator's Annual Report 2004-2005 at section 4.6.3.

4.1.2 Establishment of an Informal Working Group to address Substandard Shipping

At the March 2005 session of the 1992 Fund's third Intersessional Working Group, the International Group of P&I Clubs submitted a proposal for steps to be taken by the Clubs in the International Group with regard to improved practical measures to discourage substandard shipping.

In its proposal, the International Group of P&I Clubs challenged the position put forward by the Intersessional Working Group to address the problem by particular revisions to the liability and compensation regime. The Group of P&I Clubs argued that the proposals of the International Working Group are misplaced in the context of the Civil Liability and Fund Conventions, because they will be ineffective. The group did emphasize, however, that the issue of substandard shipping is of crucial importance and has to be addressed seriously. The International Group explained that its position is supported by the study carried out by the Maritime Transport Committee of the Organization for Economic Co-operation and Development (OECD) on the removal of insurance cover for substandard shipping. The OECD report dated June 2004 was published at <http://www.oecd.org/dataoecd/58/15/32144381.pdf>.

Ship-source Oil Pollution Fund

During the Tenth Extraordinary Session of the 1992 IOPC Fund held from February 27 to March 2, 2006, the Assembly decided to establish a Working Group on non-technical measures to promote quality shipping for carriage of oil by sea with the following mandate:

- (a) to develop proposals in respect of non-technical measures and guidelines for Contracting States and the industry to promote quality shipping by ensuring that effective checks and procedures are in place to establish that ships insured and certificated are suitable for the carriage of oil by sea covered under the CLC/Fund regime;
- (b) to make a proposal to the Assembly's October 2006 session on a time frame for its work;
- (c) to report on the progress of its work at each regular session of the Assembly;
- (d) to identify related issues, other than those contained in (a) to (f) following, as it may deem helpful to complete its task within the current Conventions and make the appropriate recommendations to the Assembly; and
- (e) to make recommendations to the Assembly upon the completion of its work.

The Assembly decided that, in conducting its work, the Working Group should focus on the following:

- (a) consider and make proposals on the development of common criteria to be uniformly applied by Contracting States to ensure that fully effective insurance is in place before States issue CLC Certificates;
- (b) identify factors that prevent the sharing of information between marine insurers and seek to develop a common policy or other measures that would facilitate such sharing of information;
- (c) identify practical measures to achieve better and more transparent co-ordination between insurers, shipowners and cargo interests that would promote quality shipping;
- (d) consider possible measures for the denial or withdrawal of insurance cover in order to improve the safer transportation of oil;
- (e) consider the feasibility and impact of differentiated insurance rates and premiums that would encourage quality shipping; and
- (f) examine ways of encouraging and strengthening the participation of classification societies in the promotion of quality shipping.

The Assembly decided that the Working Group should work intersessionally and be open to all governments, inter-governmental and non-governmental organizations, which had the right to participate in the 1992 Fund Assembly. It was also decided that both State representatives and representatives from the industry, e.g. representatives from shipowners, oil importers, insurance companies and classification societies should be encouraged to participate in the work. The Assembly emphasized that in particular IMO should be encouraged to participate.

The Working Group was instructed to consider non-technical measures and guidelines that may not only be the responsibility of Contracting States but that may also address industry procedures and practices.

The Assembly emphasized that the Working Group should not stray into the areas of competence of the IMO and that the Working Group not duplicate work which had been undertaken by that Organization. The Assembly stated that the Working Group should bear in mind the work done on quality shipping in other fora, such as the study on insurance carried out within the Organization for Economic Cooperation and Development (OECD).

The Assembly also emphasized that the Working Group should not consider issues that would require any reopening of discussions regarding a revision of the 1992 Conventions.

Note: For additional information about perspectives on substandard ships and the proposed revisions of the Civil Liability and IOPC Fund Conventions, see the Administrator's Annual Reports 2002-2003, 2003-2004 and 2004-2005 at sections 4 and Appendix C, respectively.

4.1.3 Developments within the European Union – Maritime Safety Package III

In the aftermath of the *Erika* and *Prestige* incidents the Commission of the European Communities reacted swiftly with measures designed to substantially reinforce tanker safety off Europe's coastlines. The European Parliament and the Council agreed in March 2000 on the first package of measures covering port state control, ship inspections, and the phasing out of single-hull oil tankers.

The second legislative proposal, published in December 2000, was another set of measures by the Commission of the European Communities to deal with maritime safety and compensation. This package comprised proposals for a Directive to establish a European Commission for the monitoring, control and an information system for maritime traffic. It contained a Directive for the establishment of a fund for the compensation of Oil Pollution in European Waters (COPE Fund) should the then proposed new International Supplementary Fund Protocol prove inadequate.

In November 2005, the Commission of the European Communities proposed a third package of legislative measures (Maritime Safety Package III) designed to improve safety at sea following on from the *Erika I* and *Erika II* packages of 2000.

In particular, proposals are made for a Directive on the civil liability and financial guarantees of shipowners, and a Directive on traffic monitoring which deals, *inter alia*, with places of refuge for ships in distress, namely:

Liability and Compensation

The Commission intends to work for improvements to the 1992 Civil Liability Convention, such as removing the ceiling on civil liability. It is considered that the international regime for civil liability and compensation, in the event of pollution, must be improved in order to guarantee that the operators in the maritime transport chain ensure oil is only transported on board tankers of the highest standard. The Directive would incorporate the 1996 Protocol to the 1976 Convention on Limitation of Liability of Maritime Claims (1996 Convention) in Community law. It would be compulsory for all shipowners to cover their civil liability for an amount no less than double the limitation amounts laid down in the 1996 Convention. The Commission will also seek a mandate for negotiating within the IMO a revision of the 1996 Convention for the purpose of reviewing the test for shipowners losing the right to limitation of liability.

Vessel Traffic Monitoring and Information System (Directive 2002/59/EC)

The existing Directive (2002/59/EC) contains provisions for establishing a community vessel traffic monitoring and information system. Under the proposed Directive (amending Directive 2002/59/EC) the European Union Member States shall designate places of refuge and have proper emergency plans to handle ships in distress in waters under their jurisdiction. These new contingency plans shall take into account the relevant IMO guidelines, including:

- the identity of the authorities in charge of receiving and handling alerts;
- the identity of the authority responsible for assessing the situation, selecting a suitable place of refuge and taking a decision on accommodating a ship in distress in the place of refuge selected;
- the inventory of potential places of refuge including relevant factors for decision-making;
- the resources and installations suitable for assistance, rescue and combating pollution; and
- the financial guarantee and liability procedures in place for ships accommodated in a place of refuge

Other Proposals

In addition, the Maritime safety Package III includes the following:

- Proposal for a Directive on Compliance with Flag State requirements;
- Proposal for a Directive on Classification societies;
- Proposal for a Directive establishing fundamental principles governing the investigation of accidents in the maritime sector; and
- Proposal for a Directive on Port State Control.

Note: For a comprehensive review of the measures proposed by the European Commission in the ERIKA I and II packages, see the Administrator's Annual Report 2002-2003 at section 4.5.

4.2 Potentially Polluting Wrecks

During a meeting with Canadian Coast Guard officials held in Vancouver on May 4, 2005, the Administrator discussed costs and expenses incurred in dealing with potentially polluting wrecks, see section 5.2 herein. The issue is also addressed herein in Appendix C, which includes a summary of the 30th Executive Committee's discussion on the Prestige situation.

Notwithstanding that costs and expenses incurred in dealing with potentially polluting wrecks may sometimes not qualify for compensation from SOPF, government authorities may decide for various reasons to salvage oil from such a sunken vessel. In this respect, it is worth noting discussion in the Executive Committee of the 1992 IOPC Fund at its 30th Session held on October 17 to 21,

2005, regarding costs of removing oil from the wreck of the *Prestige* which sank off the northwest coast of Spain on November 19, 2002.

The Committee took note of the findings of a recent study of potentially polluting wrecks in the marine environment commissioned by the sponsors of the 2005 International Oil Spill Conference in the United States¹⁰. It was noted that in the report it was stated that the decision to salvage oil from a sunken vessel had to be based upon a sound risk assessment and a well-developed cost-benefit analysis because any salvage effort was usually expensive, time-consuming, and risky and that cost-benefit analysis had to assess the potential environmental and biological impacts of any pollution from the wreck as well as the socio-economic implications of any spill and remediation costs. It was also noted that in the report it was suggested that, based on past experience, two considerations should be at the forefront of any decision to carry out remedial activities, whether they be to off-load or salvage the remaining oil cargo from any sunken vessel or removal of the wreck, namely whether the potential environment impact and risks posed by the oil contained within the sunken vessel outweighed the cost of the mitigation action and whether the potential combination of environmental impact/risk, economic damage and social unrest that could be caused by repetitive spills of oil contained in the sunken vessel outweighed the cost of mitigation action.

The claim by the Spanish Government for costs of the operation to remove oil from the wreck of the *Prestige* gave rise to a question of principle as regard admissibility in accordance with the 1992 Fund's criteria. In the view of the IOPC Fund Director the Spanish Government's claim did not fulfill the Fund's criteria for admissibility, namely that the operation should be reasonable from an objective, technical point of view. See Appendix C herein, the 30th Executive Committee (*Prestige*).

4.3 Oil Tanker Incidents Decreasing

In North America oil tanker incidents appear to have fallen off dramatically. In Canada, a survey of Canadian oil spill incidents reported by the SOPF Administrator from March 31, 1993, to March 31, 2006, shows that 7.5 per cent were from tankers, 75.5 per cent were from other vessels and 17 per cent were mystery spills.

In its October 2005 Newsletter, the International Tanker Owners Pollution Federation Ltd.¹¹ (ITOPF) reports on trends in oil spills from tankers. Since 1974, ITOPF has maintained a database of oil spills from tankers, combined carriers and barges, which includes all reported accidental spillages except those resulting from acts of war. The amount of oil spill in an incident represents all the oil lost to the environment, including that which is burnt or remains in a sunken vessel. Spills are generally categorized by size (< 7 tonnes, 7-700 tonnes, and > 700 tonnes). The majority of accidental spills on ITOPF's database fall into the smallest category, i.e., <7 tonnes (84%).

It is apparent from the ITOPF database that the number of accidental oil spills in the 7-700 tonnes and the > 700 tonnes categories has decreased significantly during the last thirty years. The average number of large spills per year during the 1990s was less than a third of that witnessed during the 1970s. The 5-year averages show that this reducing trend is continuing with 35% less spills of 7 tonnes and above occurring in the last 5 years compared with the previous 5 years.

¹⁰ Potentially Polluting Wrecks in Marine Waters – Proceedings of the International Oil Spill Conference, May 15-19, 2005, Miami, Florida, USA; report prepared by J. Michal *et al.*

¹¹ Website: www.ITOPF.com

The survey reported that 232 tanker incidents resulting in spills of 7 tonnes or more in the last 10 years were distributed over 60 countries.

With the exception of the Republic of Korea, all countries experienced a decline in the reported number of spills in the last 10 years compared with the two previous 10 years periods. Large spills in the Republic of Korea during the 1990s were due mainly to groundings and collisions in the coastal zone during poor weather conditions. In response, the Korean government has taken steps to move large vessels further offshore and away from congested shipping lanes in coastal archipelagos. This appears to have contributed to a significant reduction in accidents.

The highest reported volume of oil spilled from tankers in any one year between 1995-2004 was experienced by the United Kingdom, almost entirely due the *Sea Empress* spill (72, 360 tonnes). The second highest was Spain, the majority of which was due to the *Prestige* (63, 000 tonnes).

The United States experienced the highest reported frequency, with 55 incidents (24%) of the total number for the period 1995-2004. This figure of 55 incidents is, however, only half the number of spill incidents of 7 tonnes or more for the preceding 10 year period (1985-1994). The relatively high frequency of spills occurring in the U.S. in any given period is partly attributable to the scale of U.S. oil imports, and partly to a more reliable reporting of oil spill incidents.

IТОPF concludes that the decrease in the number and size of spills in incidents from tanker ships continues despite a steady increase in seaborne oil trade since the mid 1980s. The causes for this trend lie chiefly in improved ship management coupled with the adoption and application of effective international instruments for pollution prevention developed by the International Maritime Organization. In the case of the United States, a downturn in oil spills coincides with the introduction of the Oil Pollution Act (1990), as well as positive efforts by shipowners.

Historically, there has been a higher frequency of crude oil spills than any other oil type for all spill size groups. However, in recent years, a shift in the balance is becoming apparent, as relatively higher incidents of fuel cargo spills are being observed. This is likely to continue with increasing exports of fuel cargo out of northern Europe.

4.4 Overview of the HNS Convention

The International Convention on Liability and Compensation for damage in connection with the carriage of Hazardous and Noxious Substance by sea (HNS Convention) was adopted by a Diplomatic Conference held in May 1996 under the auspices of the International Maritime Organization. The Convention aims to ensure adequate, prompt and effective compensation for damage to persons and property, costs of clean-up and reinstatement measures and economic losses by the maritime transport of hazardous and noxious substances.

HNS includes bulk solids, liquids including oils, liquefied natural gases and liquefied petroleum gases, and packaged substances. Some bulk solids such as coal and iron ore are excluded because of the low hazards they present. Loss or damage caused by non-persistent oil is covered as is non-pollution damage caused by persistent oil. Pollution damage caused by persistent oil is excluded since such damage is already covered by the existing regime on liability and compensation for oil pollution from tankers, i.e., the 1992 Civil Liability Convention, the 1992 Fund Convention and the Supplementary Fund Protocol. Loss or damage caused by radioactive materials is also excluded.

The HNS Convention establishes a “two tier” compensation regime. The first tier is provided by the individual shipowner and his insurer and the second tier by the International Hazardous and Noxious Substances Fund (HNS Fund), contributed to by receivers of HNS after sea transport in all States Parties to the Convention. The shipowner is liable up to the following limits: 10 million SDR (US\$15 millions)¹² for ships up to 2 000 units of gross tonnage (GT), rising to 100 million SDR (US\$150 million) for ships of 100 000 GT or over. The HNS Fund will provide additional compensation up to a maximum of 250 million SDR (US\$370 million), including the amount paid by the shipowner and his insurer.

In 1999, the Legal Committee of IMO set-up a Correspondence Group to monitor the implementation of the HNS Convention, with the United Kingdom as the coordinator of the Group. The Group held a special consultative meeting in Ottawa in June 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 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>

The Secretariat of the 1992 IOPC Fund compiled a “Guide to the Implementation of the HNS Convention”. This Guide is available on a website dedicated to the implementation of the HNS Convention at (www.hnsconvention.org). The guide concentrates on a number of specific issues which a State would have to consider when deciding whether or not to ratify the HNS Convention and, if so, how to approach these issues. It therefore does not deal in detail with issues such as the liability of the shipowner, his insurer and/or the HNS Fund under the Convention, the types of damage covered, the handling of claims for compensation, jurisdiction in respect of legal actions or the internal workings of the HNS Fund.

The HNS Convention will enter into force 18 months after ratification by at least 12 States, subject to the following conditions: in the previous calendar year a total of at least 40 million tonnes of cargo consisting of bulk solids and other HNS liable for contributions to the general account was received in States which have ratified the Convention; and four of these States each have ships with a total tonnage of at least 2 million GT. As at 1 September 2005, eight States (Angola, Cyprus, Morocco, the Russian Federation, Saint Kitts and Nevis, Samoa and Tonga) had ratified the Convention.

¹² As at September 1, 2005, 1 SDR=US \$ 1.473

The Director of the IOPC Funds has convened a workshop in London on the HNS Convention for May 25 and 26, 2006, focusing on more practical aspects of the implementation of the HNS Convention. The Administrator shall attend the workshop.

4.5 Places of Refuge for Damaged Ships

The CANUSLANT 2005 Joint U.S./Canada Response Exercise conducted in Bar Harbour, Maine, focused on Places of Refuge and several keynote speakers presented the current position of different States, including the United Kingdom, the United States and Canada. They also discussed the IMO guidelines on Places of Refuge for ships in need of assistance.

United Kingdom

In the United Kingdom's approach to assigning Places of Refuge, the Marine Safety Act 2003 provides powers of intervention and direction to the Secretary of the State's Representative of Maritime Salvage and Intervention (SOSREP), working with the Maritime and Coast Guard Agency's (MCA) Counter Pollution and Response Branch. SOSREP oversees all incidents in United Kingdom waters where there is significant risk of pollution, and the SOSREP or the MCA directs vessels to places of refuge when it is judged appropriate. Anywhere around the United Kingdom's coasts could be a place of refuge. Because each incident has its own unique, transient and varied nature, it is considered that there can be no preconceived list or ranking of places of refuge.

This information is assembled and kept up to date by the MCA. The MCA website is: http://www.mcga.gov.uk/c4mca/mcga-environmental/mcga-dops_cp-environmental-counte

United States

In the United States it is the U.S. Coast Guard that will make the decision on selecting a place of refuge. The U.S. Coast Guard has authority to represent and protect federal government interests for incidents within federal waters, which includes all Navigable Waters of the United States (33 CFR 2.05-25). Under 33 CFR 6.04, the U.S. Coast Guard Captain of the Port (COTP) has authority to order ships into and out of ports, harbors and U.S. territorial waters in order to protect the public, the environment and maritime commerce. The COTP is the designated Federal On-Scene Coordinator for the U.S. coastal zone per the National Contingency Plan (40 CFR 300) (a)(1). In maritime homeland security situations the COTP is also the Federal Maritime Security Coordinator, which may also impact on the final disposition of a vessel requesting a Place of Refuge.

Canada

In Canada there are three federal departments which would be involved in Places of Refuge issues:

- Transport Canada has the lead responsibility;
- The Department of Fisheries and Oceans through the Canadian Coast Guard has the Maritime Assistant Services responsibility through the appropriate Marine Communications and Traffic Services Centre;
- Environment Canada would provide scientific support services.

Pursuant to paragraph 662(1)(f) of the *Canada Shipping Act (CSA)*, a Pollution Prevention Officer (PPO) has the power to direct a ship that is within or a ship that is about to enter waters under Canadian jurisdiction to proceed to a place in those waters and remain at such a place. Likewise, a PPO may direct a ship to proceed out of those waters. The PPO has to be satisfied on a variety of matters set out in the provision before giving the appropriate direction. Additionally, the *Canada Marine Act* gives the ports in Canada considerable autonomy. In particular, sections 56, 58 and 62 – which include provisions allowing the ports to control traffic and give clearance – may be applicable. In effect, there would have to be considerable coordination between PPOs and port authorities if the place of refuge is to be a Canadian port. It should be noted, however, that some ports remain under the direct control of Transport Canada; thereby giving the Minister decision-making power with regard to the selection of a place of refuge.

IMO Guidelines on Places of Refuge

The International Maritime Organization (IMO) adopted Resolution A.949(23), Guidelines on Places of Refuge for Ships In Need of Assistance, at their 23rd Session in December of 2003. The stated purpose of the Guidelines is “to provide Member Governments, shipmasters, companies, and salvors with a framework enabling them to respond effectively and in such a way that, in any given situation, the efforts of the shipmaster and shipping company concerned and the efforts of the government authorities involved are complementary. In particular, an attempt has been made to arrive at a common framework for assessing the situation of ships in need of assistance”. Emphasis in the Guidelines is on the authority of the coastal state to make the final decision, considering all necessary information and expert guidance. Liability for the costs of dealing with the vessel and any environmental damage is not addressed in the Guidelines and was referred to the IMO Legal Committee.

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

Note: For additional information on the approaches taken by the European Union and the IMO Maritime Safety Committee on the issue of Places of Refuge see SOPF Administrator’s Annual Report 2002-2003 at section 4.3.1.

4.6 Port Reception Facilities for Oily Waste

Many migratory seabirds die each year as a result of ships deliberately dumping a mix of water and oil waste from engine room bilges. The ability of ships to comply with regulatory discharge requirements when in port depends largely upon the availability of adequate port reception facilities. The lack of reception facilities in many ports worldwide may contribute to pollution of the marine environment.

MARPOL Convention

At the international level, IMO Member States that are party to MARPOL 73/78 are required to ensure the provision of adequate reception facilities in its ports for the reception of oily waste from oil tankers and other ships using its ports without causing undue delay. Furthermore, all parties to the MARPOL Convention are required to communicate to IMO a list of reception facilities in their ports in accordance with the Convention. With the aim of promoting the effective implementation of the Convention, since 1983 the IMO has been collecting and disseminating information on the availability of reception facilities through the Marine Environment Protection Committee (MEPC)

Ship-source Oil Pollution Fund

circulars. A recent report of MEPC states: “Port States failing to provide adequate reception facilities will make it harder to deal with the enforcement of ships’ illegal discharge at sea.” Canada is a signatory to MARPOL 73/78.

Note: The list of oily waste reception facilities can be accessed at: <http://www.imo.org>

The IMO has prepared guidelines for ensuring the adequacy of port waste reception facilities. In summary, these guidelines provide information relating to the ongoing management of existing facilities, as well as for the planning and establishment of new facilities. The guidelines are also intended to encourage the better and more active use of port waste facilities. The ultimate aim is to help achieve the complete elimination of intentional pollution of the marine environment by oil and other harmful substances. One of the main objectives of the guidelines is to assist States Parties to MARPOL 73/78 in planning and providing adequate port waste reception facilities. Most States have delegated this duty to their ports’ industry, port authorities, or to other public or private bodies, but States retain the ultimate responsibility for ensuring that their undertaking is fulfilled.

Transport Canada

In response to the Administrator’s enquiry, TCMS advised in 1999:

“The authority exists in paragraph 657(1)(n) of the *Canada Shipping Act* to make regulations requiring ports to provide reception facilities, to the satisfaction of the Minister of Transport, but no regulation has ever been made”. The decision not to produce regulations was based on surveys before and after Canada’s accession to MARPOL indicating that adequate facilities were being provided by the Canadian ports. The most recent survey then was completed in 1995.

TCMS also advised the Administrator in 1999 that as a result of concerns by some that Canadian ports may not be providing adequate facilities, the issue was added to the agenda of the Environment Standing Committee of the Canadian Marine Advisory Council (CMAC) in 1999. TCMS led the Committee’s focus group, which consulted with representatives of the Canadian shipping, and petroleum industries, port authorities and other stakeholders. TCMS reported to CMAC that the focus group studying the question of adequate reception facilities found that waste facilities for residual oils and other ships’ waste at Canadian oil refineries and oil terminals were adequate.

Recently, to assist with the annual submission to IMO of information on new reception facilities and to update information on the list of facilities in Canadian ports, TCMS developed a website database. All Canadian port authorities and other representatives of marine waste reception facilities are requested by TCMS to provide information to the database as it applies to their facilities.

TCMS advised in November 2004 that during its first year of operation the database achieved limited response. Consequently, TCMS intends to take a further pro-active role in this matter.

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.

Baltic Strategy

TCMS reported at the CMAC meeting in November 2004 that in 2005 Transport Canada plans to examine the feasibility of adopting an approach like the “Baltic Strategy” for reception facilities

for ship-generated waste. As part of this strategy, to facilitate offloading of ships' waste at ports of Baltic countries the costs are integrated into port fees – a “no-special-fee” system.

The Swedish Maritime Administration reports that, actions to deal with the environmental problems caused by discharges of wastes from ship have been part of international Baltic co-operation ever since the first Convention on the Protection of the Marine Environment of the Baltic Sea Area (the Helsinki Convention) was signed in 1974.

In addition, the Baltic Sea Area has also been designated a Special Area under the International Convention for the Prevention of Pollution from Ships, 1973 as amended by a protocol in 1978 (MARPOL 73/78). Such status is given to sea areas which, because of their special oceanographic or ecological characteristics, are regarded as particularly sensitive to environmental disturbances.

As a consequence, regulations concerning discharges of oil and other types of ship-generated wastes are particularly strict in the Baltic Sea Area. In principle, all wastes should be delivered to reception facilities ashore.

However, despite 20 years of international co-operation within the Helsinki Commission (HELCOM) framework as well as in IMO to control discharges of wastes from ship's, such illegal discharges remained a serious environmental problem in the Baltic Sea Area.

To address this problem, the countries around the Baltic Sea Area agreed on a comprehensive set of measures to tackle problems with ship-generated waste. The Baltic Strategy for Reception Facilities for Ship-generated Waste and Associated Issues was adopted by HELCOM in March 1996.

The main objective of the Strategy is to substantially decrease operational and to eliminate illegal disposal of ship's wastes and thus, prevent pollution of the Baltic Sea Area.

The Strategy includes all types of wastes generated onboard ships, being it a large ship, fishing vessel, working vessel or pleasure craft.

In practice, this means that:

- Over 210 port reception facilities for ship-generated wastes are available in ports around the Baltic. These facilities are easily accessible and adequately equipped;
- It is mandatory for ships to deliver all their wastes to a reception facility before leaving port, with some exceptions;
- According to the “no-special-fee” system, a fee covering the cost of reception, handling and final disposal of ship-generated wastes is levied on the ship irrespective of whether or not ship-generated wastes are actually delivered. The fee is included in the harbour fee or otherwise charged to the ship.

Currently the “no-special-fee” system should be applied in all Baltic Sea ports to oily wastes from machinery spaces. The “no-special-fee” system was expected to be extended by 2005 to cover other categories of ship-generated wastes, i.e., sewage and garbage.

Pollution from shipping, by its very nature, has transboundary implication. Actions to reduce the environmental impact of shipping are needed in a wide international context.

Thus, the application of the concepts embedded in the Baltic Strategy (e.g. the no-special fee system and mandatory delivery of all wastes ashore) to wider geographical regions would be important steps towards further reducing the effects of shipping on the marine and coastal environments.

European Union

With respect to the European Union's position on this issue, it was reported that the deadline for implementation of the European waste reception directive was to come into effect on May 1, 2004. This directive aims to reduce discharges at sea by insisting that each European Union port have disposal facilities. It has been reported, however, that Member States have different interpretations of how waste should be dealt with at the quayside. The lack of standardization and the fact that fees are not harmonized are causing problems with implementation of the directive. As a result, several governments and industry agencies continue to work on improving the port waste reception facilities and finding a "best practice" solution.

Canadian Industry

In Canada, the Canadian Petroleum Products Institute (CPPI) makes the point that lack of support (industry input) for the new TCMS database is a matter for all ports, all terminals and all waste disposal service providers. CPPI says its members' facilities constitute a very small part of the picture.

CPPI says it is more than willing to play its part in supporting the initiative and even to encourage others to do the same. CPPI is encouraging TCMS to more actively market the database to industry and to pursue Canada's international obligations in this matter.

Note: The Administrator is following progress on this matter, particularly in light of reports of chronic mystery marine oil spills in eastern Canada. The issues associated with port reception facilities in Canada for ship's waste can be sorted.

Update

See report on Canadian Marine Advisory Council meetings in section 5.7 herein.

MEPC at its 54th session, 20 to 24 March, 2006 noted that the Internet-based Port Reception Facility Database (PRFD) went live to the public on 1 March 2006, as a module of the IMO Global Integrated Shipping Information System (GISIS) <http://gisis.imo.org/Public/>. The database provides data on the available port reception facilities for the reception of ship-generated waste and is designed to allow Member States to update it via a log-in password, and to allow the public access to all the information on a view-only basis.

Meanwhile, the MEPC emphasized the importance of adequate reception facilities in the chain of implementation of the MARPOL Convention, and stated that the policy of "zero tolerance of illegal discharges from ships" could only be effectively enforced when there were adequate reception facilities in ports. Therefore the Committee urged all Parties to the MARPOL Convention, particularly port States, to fulfil their treaty obligations to provide reception facilities for wastes generated during the normal operation of ships.

4.7 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.

Ship-source Oil Pollution Fund

5. Outreach Initiatives

5.1 General

The Administrator continues with outreach initiatives to further his understanding of the perspectives of parties interested in Canada's ship-source oil pollution, prevention response, liability and compensation regime. In Canada, these include citizens, ship owners, insurers, ROs, oil receivers, REET, CPPI, CCG, TC, EC, CMAC, CMLA, other federal and provincial government agencies and non-government organizations.

On the international front organizations of interest include: ITOPF, OCIMF, CEDRE, P&I Clubs, INTERTANKO, ICS, IOPC Fund, EC, USCG, U.S. Dept. of Commerce (NOAA), U.S. Dept. of Interior and the U.S. EPA.

5.2 Canadian Coast Guard – Pacific Region

On May 4, 2005, the Administrator met in Vancouver with Mr. Terry Tebb, Assistant Commissioner, Canadian Coast Guard, Department of Fisheries and Oceans, and Ms. Susan Steele, Regional Director Maritime Services. The purpose of the meeting was to exchange information on developing oil pollution incidents and approaches to handling and assessment of incident claims.

Salvaging Potentially Polluting Wrecks

One of the incidents discussed was a spill in Granville Channel (near Prince Rupert) which was reported on September 20, 2003. The on-site investigations by Coast Guard confirmed the oil slick was surfacing from a wreck and impacting three miles of shoreline. The Coast Guard located the sunken wreck and sealed areas of the ship's hull that were breached, stopping the release of oil.

A research of records strongly suggested that the wreck may be that of the *Brigadier General M.G. Zalinski*, a United States Army Transportation Corps ship, sunk in late September 1946. The American Army Transport Ship loss in Granville Channel had a single propeller, and was 261 feet in length with a displacement of approximately 3,000 tons.

On March 16, 2004, the CCG again received reports of oil pollution coming from the wreck. A response plan was developed to try and positively identify the ship and control the release of pollution. Consequently, contracts were established for a diving crew, including tug and barge services, to temporarily patch the holes in the hull of the wreck.

During early June, the diving team stopped the release of oil, but the work performed was considered a temporary measure. The divers determined that the dimensions of the wreck, resting on a ledge in approximately 60 feet of water, are consistent with the *Brigadier General M.G. Zalinski*; however, due to corrosion and marine growth they were unable to positively identify the ship.

The CCG continues to monitor the situation. Furthermore, the United States Coast Guard has been asked to assist in obtaining drawings of the ship, so that the location of fuel tanks can be determined in order to remove the remaining oil. Also, efforts are being made through the United States Coast Guard to obtain a manifest of the cargo on board at the time of sinking.

This unusual incident is reminiscent of the *Carabobo* incident¹³, an ex Canadian Flower Class Corvette, which was lost in December 1945. This wreck located in the Baie de Gaspé, Quebec, leaked oil in 2001. Costs and expenses were incurred by CCG to seal the holes in *Carabobo* but it was initially considered, reportedly by CCG legal counsel, too late to submit a claim against the shipowner, or to the SOPF. On November 15, 2002, however, Crown counsel advised the Administrator that it was intended to submit a claim to the SOPF for the costs and expenses incurred for the removal of oil from the wreck. A claim totaling some \$ 320,000.00 was subsequently received on March 17, 2003 and was disallowed by the Administrator (being time-barred per the *Irving Whale* decision of the Federal Court – [1999]2.F.C.346) on March 31, 2003.

Response to Derelict Vessels

At the May 4, 2005 meeting, additional discussion with CCG centered on the question of claims on the SOPF for costs and expenses incurred in response to derelict vessels. From the Administrator's view action ought to be taken before a vessel becomes such a pollution threat that it leads to a significant claim against the SOPF.

For example, having learned a lesson from the ex-fishing vessel *Forrest Glen* (2002) incident in Digby, Nova Scotia, resulting in payment of \$ 243,211.29 by the SOPF, the CCG Maritime Region took pre-emptive action in its handling of the fishing vessel *Ronald M* (2004) incident in Digby resulting in payment by the SOPF of only \$ 14,080.00. The pre-emptive action included early use of the regional resources of Transport Canada, Environment Canada and the Canadian Coast Guard to determine the condition of the *Ronald M*, and remove the pollutants and oily debris before the fishing vessel sank alongside the wharf in Digby.

Note: Information on the *Forrest Glen* and *Ronald M* incidents are contained in the SOPF Administrator's Annual Reports 2002-2003 and 2004-2005 at sections 3.65 and 3.17 respectively.

On the other hand, there have been a number of incidents in the CCG Pacific Region that necessitated the removal of vessels found in a dilapidated condition, resulting in significant claims on the Fund, including: *Rivtow Lion* and *BCP Carrier 17* (2001), *Beaufort Spirit*, *Northern Light V*, *Gillking*, *Pender Lady*, *Samson IV* and *Black Dragon* (2003), *Sea Shepherd II* and *Anscomb* (2004). In the foregoing incidents the aggregate amount of some \$ 3,354,665.77 was paid out of the SOPF Fund.

Further, a review of such incidents indicates that it seems obvious 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. From the Administrator's view, while there are mandated obligations on governments to ensure the safety of vessels and 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.

It is a concern that derelict vessels continue to come to our attention in various places, especially on the west coast of Canada where there are, reportedly, numerous apparently abandoned former fishing vessels. From the Administrator's view the legislative scheme in Part 6 of the *Marine Liability Act* does not contemplate the SOPF being used to finance a strategic response to the derelict vessel *per se*. Such a response ought to be formulated by the government department concerned.

Further, this issue of abandoned or derelict vessels remains a chronic sore point with harbour authorities and municipalities as well as with commercial and recreational mariners, Environment Canada, Transport Canada, and CCG staff, as there does not appear to be any clearly-established

¹³ for information on the *Carabobo* incident see the Administrator SOPF Annual Report 2001-2002 at section 3.72.

policy, procedure, or budget for dealing with them. Nearly all of the recent successful removals have been tied to actual or anticipated oil pollution and action by CCG Environmental Response, who in turn claimed their costs and expenses from the SOPF.

Claims Handling

The discussion also focused on the general activities that the CCG On-Scene Commanders should perform during response incidents and the preparation of claims, in order to subsequently facilitate maximum recoveries of costs and expenses from the SOPF, including:

- the question of reasonableness relative to both the extent of the measures taken and the costs and expenses incurred;
- the taking of oil samples, including collection procedures, storage, chain of custody, obtaining laboratory analysis and documentation;
- the presentation of claims that should be submitted in a timely manner and fully documented in writing. It was emphasized that detailed logs and notes by the On-Scene-Commander and other oil spill responders are invaluable to facilitate the payment of claims; and
- taking photographs showing the overall condition of the polluting ship, exposed fuel tanks, any waste lubricants and the extent of the oil spill in general.

The Administrator is greatly encouraged by the positive results and efforts being made by CCG Regional officials to help facilitate a full assessment, settlement and payment of claims by the SOPF. The Assistant Commissioner expressed satisfaction with the CCG Pacific Region's percentage of recovery of its costs and expenses in pollution incidents, and the promptness with which claims are processed by the office of the Administrator.

Prevention of Illegal Discharge of Oil

The issue of oiled birds on the Pacific Coast was discussed with CCG officials. It was noted that Environment Canada officials have previously stressed that early indications are that seabird mortality on the west coast of Canada is as great or greater than that found on the East Coast. Determining seabird mortality on the West Coast is more difficult given that seabird populations are located at much greater distances from shores. On both the Atlantic and Pacific coasts many migratory seabirds die each year as a result of ships deliberately dumping a mix of water and oil waste from engine room bilges.

As a consequence of the research done, Environment Canada, Transport Canada, and Fisheries and Oceans/Canadian Coast Guard have recently formulated a Memorandum of Understanding to enhance interdepartmental co-operation and operational agreements towards better enforcement of Canada's laws and regulations addressing illegal ship-source oil pollution. Senior management in the Pacific Regional offices of Environment Canada and the Canadian Coast Guard have not, at this time, considered it essential to develop a specific regional operational agreement. They are awaiting implementation of the national program before formulating a regional chapter of the national plan. Also, there is a question of finding additional resources within the Pacific Region to conduct further enforcement actions. Meanwhile, it is considered that a sound level of interdepartmental co-operation currently exist on the West Coast.

It is recalled that, because of the extent of the chronic problem of oiled seabirds on the east coast, the Newfoundland Region of DFO/CCG took an initiative, a few years ago, and struck a working group to study and report on the situation. The participants of the Newfoundland-based working group represented federal and provincial governments, offshore oil industry, oil refineries, ship-owners, environmentalists and other interested parties. The project was called the Prevention of Oiled Wildlife (POW). The Canadian Marine Advisory Council's (CMAC) Standing Committee on the Environment endorsed the recommendations put forward by POW at the national CMAC meeting held in November 2003.

5.3 Canadian Coast Guard – Management Board

The Administrator was invited by Mr. John Adams, Commissioner, Canadian Coast Guard to attend a CCG Management Board meeting held at the Canadian Coast Guard College in Sydney, Nova Scotia, on June 1, 2005. The purpose of the invitation was to provide him with an opportunity to meet with members of the CCG Management Board, both from National Headquarters and Regional offices. At the meeting, they exchanged information and shared perspectives on the Ship-Source Oil Pollution Fund.

The Administrator spoke about the origin, in 1973, of the SOPF and the development of legislation to the current Marine Liability Act, which came into force on August 8, 2001. He also explained the SOPF claims handling process including investigation, assessment, payments, and recoveries made under the “polluter pays” principle. The “polluter pays” principle has its four cornerstones:

1. All costs and expenses must be reasonable
2. All 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)

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

The Administrator had previously noted to DFO/CCG the statutory requirement for the Administrator to independently determine reasonableness and to deal in fairness and equality towards all claimants on the SOPF.

In particular, with a view to proposing a practical and immediate way for DFO/CCG's timely recovery of costs and expenses, the Administrator recalled that experience shows that the investigation and assessment of claims is expedited when claimants provide convincing evidence and written explanations. This includes various justifications by the On Scene Commander (OSC) and proof of payment, etc. Detailed logs and notes by the OSC and others are invaluable in facilitating in settlement and payment of claims. It is essential that the measures taken and the costs and expenses incurred are demonstrably reasonable. The claim should be presented in a timely manner.

The Administrator particularly mentioned the issue of the “fixed price” contracting approach recently used by CCG Pacific in the response to the *Beaufort Spirit* incident. He explained that whilst the Administrator cannot dictate the measures and other actions (including cost control) a

claimant takes in any given environmental response, one must not forget that a contract “fixed price” or otherwise, by and of itself, does not relieve any claimant from the above requirements, when claiming for cost recovery from the SOPF. He noted in the *Sea Shepherd II* claim, for example, that other types of contracts may be employed, i.e. “ceiling price” or “cap”¹⁴.

The Administrator also raised the important matter of dealing with derelict vessels. He expressed his views that the legislative scheme in Part 6 of the *Marine Liability Act* does not contemplate the SOPF being used to finance a strategic response to the derelict vessel issue *per se*. This matter had been addressed during the previous month at the Regional level in a meeting in Vancouver. Section 5.2 herein refers.

It was decided at the Management Board meeting that it is important for CCG to inform the federal contracting Department (PWGSC) of the SOPF cost recovery process referred to above before deciding on the appropriate type of contract to employ in a given response situation. The Coast Guard shall look into the matter, and the Administrator offered to assist in a briefing to PWGSC officials, if necessary.

The Assistant Commissioners of the DFO/CCG Newfoundland, Maritimes, Quebec and Pacific Regions expressed their continued satisfaction and positive experiences in dealing with the office of the Administrator and his handling of their individual regional claims.

The Administrator expressed his appreciation from the opportunity to exchange information and continue the level of co-operation and understanding that exists between both agencies of government.

5.4 Environment Canada - Pacific and Yukon Region

On May 5, 2005, the Administrator met, in Vancouver, with Messrs. Fred Beech and Paul Ross of Environment Canada’s Pacific and Yukon Region Emergencies Section.

U.S. Pacific States/British Columbia Oil Spill Task Force

Items discussed included ongoing efforts with the U.S. Pacific States/British Columbia Oil Spill task force. The mission of the Oil Spill Task Force is to strengthen State and Provincial abilities to prevent, prepare for, and respond to oil spills. One of the primary goals of the Task Force is to coordinate communication, policy development, response capabilities, preventive and preparedness initiatives, and education in order to maximize efficiency of effort.

The Oil Spill Task Force has a good working relationship with a number of American and Canadian federal agencies. For example, representatives of the U.S. EPA, the Canadian Coast Guard, and Environment Canada meet frequently with the task force committee to share updates and seek opportunities for collaboration. The contributions of the multiple agencies were noticeable in the recent Places of Refuge project, which brought together workgroup members and alternates representing thirty agencies and organizations. In less than one year, they produced a template for planning and expediting decision-making to deal with places of refuge requests from ships in need of assistance. See www.oilspilltaskforce.org

¹⁴ For information on the *Beaufort Spirit* and *Sea Shepherd II* incidents see the SOPF Administrator’s Annual Report 2004-2005 at sections 3.11 and 3.20, respectively.

Place of Refuge

The Administrator was informed at the meeting that Environment Canada and Transport Canada were planning to hold a workshop in Vancouver on May 29, 2005, to review local concerns about identifying potential places of refuge. It is understood Transport Canada is in the process of formulating national guidelines for a Canadian response to requests for places of refuge. The Administrator explained that the SOPF has an interest in the development of such a national policy. He noted that he is readily available to actively participate in establishing all new initiatives which will help to prevent pollution of the environment.

Environmental Damages Fund

The meeting included discussion on Canada's Environmental Damages Fund (EDF), and Environment Damage Assessment and Restoration (EDA) in Canada. It was recalled that in 1995 the Treasury Board of Canada authorized the creation of a special holding account, EDF, for the purpose of allocating Court awards and settlements, as well as a voluntary payments and international funds compensation, towards environmental restoration projects. The EDF is not, however, an interest bearing account. The object of the EDF is to assist in the rehabilitation of damaged environmental or natural resources, and to ensure that proposed projects to help rehabilitate the environment are cost effective and technically feasible.

In the Maritimes and Pacific Regions of Environment Canada, there is a substantial cost incurred for management of the EDF in terms of the number of person-years identified for the program. No resources for administration were provided when the EDF was established. Consequently, getting money out of the fund is becoming a problem for responders.

Environment Damage Assessment (EDA)

With regard to EDA, it was recalled that the Atlantic Region of Environment Canada is currently at the forefront on restoration developments. EDA is important in promoting judicial awards to Environment Canada's special EDF for violations of quasi-criminal federal legislation. Such legislation includes the *Canada Shipping Act*, Pollution Prevention Regulations, the *Canadian Environmental Protection Act*, the *Fisheries Act* and *Migratory Birds Convention Act*.

The Administrator reported on the International Conference on Marine Resource Damage Assessment hosted by the Maritime Institute and Faculty of Law at Ghent University, Belgium, in June 2003, at which he had been invited to participate. The Administrator had presented a paper on the SOPF and on EDA developments in Canada. Partly as a consequence of the International Conference at Ghent University, a new book "Marine Resource Damage Assessment" has been published. The approach is multi-disciplinary, as reflected in the choice of the individual contributions. The main focus of this book is on civil liability regimes to compensate for ecological/environmental damage, the use of the environmental funds in this respect, the economic valuation of damage to the environment from a theoretical perspective and the application of the Contingent Valuation Method. A section of the book was contributed personally by the Administrator. This important book will be of interest not only to scholars of environmental laws and environmental economies, but also to policy makers and public administrations at international, regional and local levels that are concerned about accidental damage at sea and the question of its compensation. (The book: ISBN 1-4020-3369-9 is available via E-mail: orders-ny@springer.com.)

Note: Additional information about Canada's Environmental Damages Fund, and the current framework for the general fund and projects requirements are described in the SOPF Administrator's Annual Reports 2001-2002 and 2002-2003 at section 4.1.1, and the 2003-2004 and 2004-2005 Annual Reports at sections 4.3 and 4.4, respectively.

5.5 Regional Advisory Council on Oil Spill Response

The Administrator attended the Maritimes Regional Advisory Council (RAC) Public meeting held April 27, 2005, in facilities of the Eastern Canada Response Corporation (Atlantic), Dartmouth, Nova Scotia. The RACs on oil spill response are established under the *Canada Shipping Act* (Section 172) to advise and may make recommendations to the Minister of Fisheries and Oceans.

As originally established there is a RAC in each of the six DFO/CCG regions. These Councils, each comprised of a maximum of seven members, were appointed by and report to the Commissioner of the Canadian Coast Guard. Several meetings are held semi-annually and supplemented by teleconferences as required. There is also at least one formal advertised public meeting per year. (The administrative line of reporting by the Advisory Council is currently under review, due to re-assignment of federal departmental roles and program responsibilities.) The primary role of the RAC will remain unchanged. It is to provide advice on specific regional issues that affect pollution prevention and levels of oil spill preparedness and response. The Regional Council represents the communities and local interests potentially affected by an oil spill in any specific geographic area. Discussions during the meeting in Dartmouth included the following topics:

- the National Terms of Reference for RACs on Oil spill response;
- development of a code of Practices for the Advisory Council in the Atlantic Region;
- small Craft Harbours and Port Authority programs;
- satellite Tracking of Oil Pollution;
- the National Aerial Surveillance Program; and
- the Ship-source Oil Pollution Fund.

The Administrator's presentation addressed some of the unique features of the Ship-source Oil Pollution Fund, which came into force on April 24, 1989, by amendment of the CSA.

During discussions about the operations of the SOPF, the issue of dealing with derelict vessels was raised. Derelict vessels are a re-occurring problem in the Atlantic Region and the RAC is interested in helping to facilitate a solution. It was noted by participants that in some areas of the Maritimes where the fishing industry is in decline there is a potential for an increase in the number of derelict vessels, which may result in additional claims on the Fund.

The issue of derelict vessels has been brought to the attention of the Administrator from various regions, especially the west coast of Canada. In some cases the derelict vessel has people and/or guests aboard. In such cases it may be only 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 mentioned that public meetings of the RAC are excellent opportunities to explain the Canadian compensation regime to players and citizens alike. The RAC is an appropriate forum, because many people do not know about the Canadian and International Funds.

5.6 Response Organizations

ECRC-Dartmouth, Nova Scotia

On April 27, 2005, the Administrator visited the Eastern Canada Response Corporation (ECRC) depot in Dartmouth, Nova Scotia. The visit provided him with an opportunity to see first-hand the ECRC inventory of marine oil spill response equipment. The ECRC depot in Dartmouth 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, containments barges and other storage tanks for recovery of waste oil. There is also a large amount of shoreline clean-up equipment and mobile command communications units. The personnel of the Response Organization Centre work closely with federal, provincial, local authorities and various sectors of the oil industry.

ECRC – Corunna, Ontario

The Administrator was invited by Mr. Mark Brown, Manager, Great Lakes Region, to participate from June 7 to 9, 2005, in a client information and spill response training session at the ECRC depot in Corunna, Ontario. The purpose of the session was to provide clients with information on the roles and responsibilities of the various government agencies and the ECRC during clean-up of an oil spill. The session included an overview of the techniques and equipment that may be utilized during an incident resulting from a spill at an oil terminal or from a ship.

The first day consisted of a series of information presentations. The speakers represented: the Canadian Coast Guard, Transport Canada, Environment Canada, the Ontario Ministry of the Environment, the Tri-State Bird Rescue and Research Organization, the ECRC, and the Ship-Source Oil Pollution Fund. The second and third day covered classroom oil spill response training, including field observations such as shoreline treatment, boom deployment, skimmer and other equipment demonstration by ECRC contractors.

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 oil spill incidents from ships of all classes operating in Canadian waters, including the St. Lawrence River system and other inland lakes and waterways.

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

By way of background, there are four certified Response Organizations (ROs) in Canada to provide marine oil spill response services south of 60 degrees north latitude. They are industry-managed and funded by fees charged to users. The four ROs in Canada are:

1. Western Canada Marine Response Corporation (WCMRC), which in general covers British Columbia waters;
2. Eastern Canada Response Corporation (ECRC), which covers the waters of the Great Lakes, Quebec (SIMEC) and the Atlantic Coast (except two small areas in New Brunswick and Nova Scotia);

3. Atlantic Emergency Response Team (ALERT), which basically includes the port of Saint John, New Brunswick, and surroundings waters; and
4. Point Tupper Marine Services Limited (PTMS), which covers the port of Port Hawkesbury and approaches.

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

5.7 Canadian Marine Advisory Council

The Canadian Marine Advisory Council (CMAC) held meetings in Ottawa from May 2 to 5 and from October 31 to November 3, 2005. The Administrator attended some of the meetings. He has a great interest in 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 federal government and the marine industry to address the chronic problem of oiled wildlife by the illegal discharge of oily machinery waste at sea. The primary items for discussion included: the National Aerial Surveillance Program; the Integrated Satellite Tracking of Polluters Project; the Prevention of Oiled Wildlife Project; the new legislation amending the Migratory Birds Convention Act (1994), and the Canadian Environment Protection Act (1999); and the lack of adequate reception facilities for oily waste in many Canadian ports.

CMAC – May, 2005

Integrated Satellite Tracking of Pollution Project

During the May CMAC meeting, a representative of Environment Canada, Mr. Joe Pomeroy, gave a presentation on the Integrated Satellite Tracking of Pollution Project (I-STOP). He explained that the I-STOP project utilizes RADARSAT-1 to optimize oil pollution monitoring and surveillance. When an anomaly is detected by satellite, an image analyst does an interpretation of the anomaly. If it is considered that the anomaly resembles an oil spill, notification is sent to the CCG Regional Operation Centre by Environment Canada. A surveillance aircraft may then be directed by CCG for sea surface validation of the suspected oil slick detected by the satellite imagery. The CCG will distribute the aircraft findings to the appropriate agencies for further investigation and the necessary on-site action. Mr. Pomeroy reported that the I-STOP project team plans to expand image acquisition to include Canadian waters in the Arctic, thereby creating a three-ocean program. Additionally, they are examining operational linkages between I-STOP and Environment Canada's Canadian Ice Services Program.

Prevention of Oiled Wildlife

A representative of CCG, Mr. Terry Harvey, provided an update on Phase III of the Prevention of Oiled Wildlife Project (POW)¹⁵. The Project was undertaken by the Newfoundland Region of DFO/CCG to address the chronic problem of oiled seabirds. This phase of the project is essentially the delivery of the final report of their findings. It contains eleven recommendations resulting from the POW project.

¹⁵ Information on the POW project is available at <http://www.nfl.dfo-mpo.gc.ca/CCG/ER>

Ship-source Oil Pollution Fund

A representative of Environment Canada, Mr. Asit Hazra, provided an update on the status of Bill C-15, the new legislation to amend the Migratory Birds Convention Act (1994) and the Canadian Environmental Protection Act (1999). Stakeholders from the shipping industry and seafarer's unions re-iterated concerns with regard to some of the provisions of the Bill, and the lack of adequate consultation before the Bill was introduced. Mr. Hazra explained that the bill was before the Senate and a substantial number of witnesses had already testified before the Senate Committee. (On May 19, 2005, Parliament passed the legislation. The Act was proclaimed in force as of June 28, 2005).

CMAC - November, 2005

Migratory Birds Convention

At the November CMAC meeting, Environment Canada presented an overview of the Migratory Birds Conservation Program and summarized current work to implement the recent legislative changes (Bill C-15) to the Migratory Birds Convention Act (1994) and the Canadian Environmental Protection Act (1999). The representative explained that the Government of Canada is of the view that the new legislation does not substantially change its overall policy and legal framework controlling ship's pollution. The legislation provides additional tools for the Government to act, and it is consistent with the Charter of Rights and Freedoms and Canada's international obligations. However, Industry representatives expressed their continued concerns about a number of issues.

Note: For a comprehensive overview of the changes to the Canadian marine pollution laws as per the new Act, see the SOPF Administrator's Annual Report 2004-2005 at section 4.1.

Environmental Risks Study – Placentia Bay

A representative of Transport Canada, Mr. David Yard, presented information on a current study to assess the environmental risks of transportation of oil off the southern coast of Newfoundland. Transport Canada and Fisheries and Oceans Canada are conducting this study because of the recent increase in tanker traffic along the south coast of Newfoundland, particularly in the Placentia Bay area. The purpose of this study is to assess and quantify the risk facing the south coast of Newfoundland over the next decade, due to the expansion of offshore oil exploration and production. The data obtained from the study will provide Transport Canada and Fisheries and Oceans with valuable information that can be used to assess the level of preparedness provided by Canada's Marine Oil Spill Preparedness and Response Regime.

Waste Reception Facilities in Canadian Ports

A representative of Transport Canada, Capt. Richard Rodericks, reported during the November CMAC meeting that BMT Fleet Technology was engaged to conduct a feasibility study to examine options to better address the provision of waste reception facilities in Canadian ports. The study will look at various options such as implementing the Baltic Strategy¹⁶, where no extra fees are charged to ships for waste disposal. Capt. Rodericks noted that the gathering of information from ports for the database on waste reception facilities has been included in Phase 2 of this marine waste disposal feasibility study.

¹⁶ For information on the Baltic Strategy see section 4.6 herein.

National Aerial Surveillance Program

A representative of Transport Canada, Mr. Louis Armstrong, highlighted several initiatives aimed at increasing the effectiveness of the National Aerial Surveillance Program (NASP), notably the acquisition of a new suite of remote sensing equipment for the Dash 8 pollution surveillance aircraft. The NASP utilizes three aircraft located strategically across Canada to conduct pollution surveillance. Two of these aircraft are leased from Transport Canada's Aircraft Services Directorate, and the third is under contracted from Provincial Airlines Limited. During the November meeting Transport Canada noted that over-flight statistics indicates a decline in observed oil pollution over the past few years. It was also emphasized that there has been a recent increase in aircraft patrol hours funded through the Oceans Action Plan, coupled with the acquisition of earth observation imagery to task aircraft.

5.8 Canadian Maritime Law Association

The Administrator attended both the Executive Committee meeting of the Canadian Maritime Law Association (CMLA) and the CMLA meeting with representatives of the federal government in Ottawa on April 7, 2005. He also attended the Annual General meeting of the CMLA held in Montreal on May 27, 2005. The Administrator values his contact with the CMLA and continues to dialogue with members.

5.9 On-Scene Commander Course

The Administrator participated in the On-Scene Commander Course held at the Canadian Coast Guard College in Sydney, Nova Scotia, from March 6 to 10, 2006.

The On-Scene Commander Course is designed for CCG officers and operational managers of industry. It addresses the on-site coordination and the development of clean-up strategies that are necessary to respond effectively to an oil spill up to the international tier 3 response capability (i.e. maximum quantity of oil spilled at 2,500 tonnes). Under the tier 3 criteria, the equipment and resources must be deployed to the affected operating environment within 18 hours after notification of an oil spill.

All the presenters made comprehensive and insightful presentations. There were informative speakers from: International tanker Owners Pollution Federation Ltd (ITOPF), Eastern Canada Response Corporation (ECRC) Société pour vaincre la pollution (represented by a prominent environmentalist from Quebec), Environment Canada, Department of Fisheries and Oceans, Polaris Applied Sciences Inc (USA), Wild Well Control Inc (USA), United States Coast Guard, Canadian Coast Guard, Department of Justice Canada (advising DFO/CCG), the office of the Administrator of the Ship-Source Oil Pollution Fund, and others.

Mr. Scott Powell, Vice-President, Wild Well Control Inc. of Houston Texas discussed his personal experience of over 19 years working on numerous projects dealing with firefighting, hazardous materials, and off-shore pollution control. He is an expert in the field of marine structures and vessel stability. Mr. Powell spoke on salvage issues and the relationship between the OSC, salvage master and the insurers. He presented a case study on a tanker aground in the shipping channel of a major port in Uruguay, including how the ship was lightered and successfully removed.

Ship-source Oil Pollution Fund

Mr. Powell showed - via the internet - coverage of a ROV in operation and deep compression divers working on the removal of an oil rig structure in the Gulf of Mexico. It was one of the 53 oil rigs destroyed by Hurricane Katrina that his company has been contracted to remove and stabilize the well head.

Dr. Edward Owens, Principal, Polaris Applied Sciences, Inc. presented two case histories: first, *M.V. Selendand Ayu* incident in Alaska, during which a cargo vessel was lost and, second of an oil spill incident in Tampa Bay, Florida, that impacted the beaches prior to the largest revenue generating American holiday in that area which is Labour Day weekend.

Ms. Katarina Stanzel, senior technical Advisor, ITOPF, presented three case studies of oil spill response in Australia, Oman and Brazil.

Mr. John Redican, Manager, Environmental Response Programs, CCG, provided a comprehensive presentation of the Canadian Marine Spill Preparedness and Response Regime. He spoke about the roles and responsibilities of the CCG and of shipowners in terms of legislation, preparedness and response.

The Administrator participated as a panel member and explored the interface between the office of the Administrator and the Canadian Oil Spill Response Regime. As requested, the CCG College was provided with copies of the SOPF Administrator's Annual Report for distribution to the candidates for their personal use as a reference document.

Throughout the course, the presentations and case histories covering domestic and international oil tanker incidents were valuable learning experiences. Participants from the United States, the United Kingdom, and a member from the Department of Justice Canada advising DFO/CCG gave the training course a meaningful international perspective.

The On-Scene Commander Course, held each year at the CCG College, offers an opportunity for representatives from government agencies and the marine industry to meet and work together. The Administrator very much appreciates CCG's invitation for him to participate in this valuable exercise. He would also like to recognize Mr. Richard Ward, Environmental Response Instructor, Canadian Coast Guard College for the commendable and professional work he has consistently performed over the years in the coordination and delivery of the annual On-Scene-Commander Course.

5.10 CANUSLANT 2005 – Atlantic Coast

The Administrator participated actively in the CANUSLANT exercise held at the College of the Atlantic from June 13 to 16, 2005, in Bar Harbor, Maine. It was an international exercise for responding to a simulated incident in the Gulf of Maine and Bay of Fundy. The CANUSLANT 2005 exercise was sponsored by the United States Coast Guard and the Canadian Coast Guard as part of the biennial joint exercises conducted under the Joint Marine Pollution Contingency Plan.

Canada and the United States both recognized the need for an international marine pollution contingency plan for their adjacent contiguous waters more than 30 years ago. The first such plan was the Joint Marine Pollution Contingency Plan for the Great Lakes, promulgated in 1974 under the Canada-United States Great Lakes Water Quality Agreement of 1972. In September, 1983, four geographic annexes were added to the Joint Marine Pollution Contingency Plan, covering the Atlantic Coast, Pacific Coast, Dixon Entrance, and Beaufort Sea. The plan is now called the Joint Contingency Plan.

The central theme of the CANUSLANT 2005 exercise was to educate participants and promote agreement between Canada and the United States on “Places of Refuge”. The exercise format consisted of four components: education, breakout groups, table-top exercise, and equipment deployment.

Education

The opening educational session included presentations on various aspects of Places of Refuge, case studies, and a panel discussion. The presentations made during the opening plenary session included a discussion on the importance of the Gulf of Maine as a resource to marine mammals by Dr. Sean Todd, Professor of Marine Biology and Oceanography, College of the Atlantic. Mr. Joe Cox, President, American Chamber of Shipping, made a presentation on Places of Refuge for ships in need for assistance.

Case studies included:

- 1) a ship safety presentation by Mr. Mihai Balaban, Transport Canada, Atlantic Region;
- 2) a presentation on the Pacific States/British Columbia Oil Spill Task Force Places of Refuge Project by Ms. Jean Cameron;
- 3) a U.S. case study on ATHOS, “Point of Repairs” Challenges by Cdr. Roger Laferrière, USCG, Atlantic Strike Team.

Places of Refuge

The educational session, consisted also of an extensive panel discussion on the issues surrounding the subject of places of refuge. Viewpoints were presented by U.S. representatives of Ship Management, P&I Club, ABS Marine Casualty Response, the USCG, and other National authorities.

The Canadian participants included:

- Mr. William Scott, Regional Director Transport Canada, Marine Safety, Atlantic Region;
- Mr. Rob Turner, Transport Canada, Ottawa; and
- Ms. Elpida Agathocleous, Department of Justice, Transport Canada.

The educational presentations and panel discussions included an overview of the International Maritime Organization’s guidelines on Places of Refuge for ships in need for assistance- Resolution A. 949 (23). These guidelines recognize that, when a ship has suffered an incident, the best way of preventing damage or pollution from its progressive deterioration is to transfer its cargo and bunkers, and to repair the casualty. Such an operation is best carried out in a place of refuge. However, to bring such a ship into a place of refuge near a coast may endanger the Coastal State, both economically and from the environmental point of view. Local authorities and populations may strongly object to the operation. Therefore, granting access to a place of refuge could involve a political decision, which can only be taken on case-by- case basis. In so doing, consideration would need to be given to balancing the interests of the affected ship with those of the environment.

In her presentation on the Pacific States/British Columbia Oil Spill Task Force Places of Refuge Project, Ms. Cameron explained that the task force sponsored a place of refuge roundtable in 2003. It established a workgroup to develop an Area Contingency Plan Annex for place of refuge for the U.S. West Coast to operationalize the IMO guidelines. The task force later submitted the docu-

ment to Canadian authorities for consideration in their drafting of national guidelines. The report is posted on the task force's website www.oilspilltaskforce.org

Breakout Groups

Seven facilitated pre-identified breakout groups focused on questions related to places of refuge for the purpose of identifying the top issues and making recommendations for resolution.

Breakout groups were:

- 1) Command and Control
- 2) Environment
- 3) Legal
- 4) Public Communications
- 5) Community/Public Safety
- 6) Salvage
- 7) Response

The facilitation team for the legal breakout group included:

- the Administrator SOPF as facilitator;
- Capt. Fred Kennedy, Legal Officer and Staff Judge Advocate, USCG District 1, Boston, acted as the briefer during the subsequent plenary session;
- Ms. Libby Wiswall was the group's inspired flip-chart writer.

The issues identified for discussion were: legal authority-applicable guidelines; liability issues/civil and criminal; and liability of directing a ship. Recommendations from the legal breakout group included: The question of any federal override of a Port Authority's refusal to accept a ship should be resolved; Canada should consider clarifying Transport Canada/Canadian Coast Guard roles and responsibilities; Canada and U.S. should request that IMO revisit Places of Refuge to develop some clear law regarding right of entry vs. denial of entry. Current international law forces decision makers to operate in an uncertain legal environment.

The findings and recommendations of the legal and other Breakout Group, which were present during the closing plenary, are contained in the CANUSLANT 2005 Exercise Report available on the CANUSLANT website. The result of the breakout group discussions will help to define the way ahead for the Joint Response Team and further CANUSLANT planning. The recommendations will be reviewed and prioritized by the Joint Response Team for the Atlantic Region. The priorities established will help guide cross-border contingency planning and response preparedness for the future.

Tabletop Exercise

The ensuing tabletop exercise gave players an international refuge scenario involving a damaged tanker in the Gulf of Maine. The scenario raised shipboard operational issues, environmental concerns and the need for pilotage input. Moreover, it highlighted the need for bi-national cooperation and communication between government officials in the U.S. and Canada in selecting a place of refuge that is the best environment and operational solution.

Equipment Deployment

An on-water and static display of pollution response equipment followed the table-top exercise. The demonstration included equipment of the USCG, the CCG and the Marine Industry.

Note: Copies of the CANUSLANT Educational Power Point presentations by the various speakers; general background information papers issued during the CANUSLANT 2005 Exercise are available on the website at: http://www.uscg.mil/d1/staff/m/jrt/canuslant2005_issues.html

Ship-source Oil Pollution Fund

6. SOPF Liabilities to the International Funds

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.

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 \$13 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.

Ship-source Oil Pollution Fund

Since 1989, the SOPF has paid the IOPC Funds approximately \$41.6 million, as listed in the table below.

Canadian Contributions to the International Funds

This shows the “call” nature of the IOPC Funds (not fixed premiums):

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	4,836,108.49
2004/05	3,448,152.80
2005/06	-
Total	\$41,633,326.20

7. Financial Summary

Ship-source Oil Pollution Fund of Canada (SOPF)

Income

Balance forward from March 31, 2005	\$339,108,934.22
Interest credited (April 1, 2005 – March 31, 2006)	12,308,953.29
Recoveries of settlements – MLA section 87	6,800.00
Total Income	\$351,424,687.51

Expenditure

Pursuant to <i>MLA</i> sections 81 and 82, the following was paid out of the SOPF:		
Administrator fees	101,750.00	
Legal services	111,897.89	
Professional services	69,748.51	
Administrative services	38,730.70	
Travel	42,577.13	
Printing	15,000.00	
Occupancy	76,647.96	
Website	4,815.00	
Office expenses	16,336.18	
Total expenses	\$477,503.37	\$477,503.37
Pursuant to <i>MLA</i> sections 85-87, the Administrator paid for Canadian claims:		104,465.86
Total expenditure		\$581,969.23

Balance in SOPF as at March 31, 2006 **\$350,842,718.28**

Ship-source Oil Pollution Fund

Appendix A: The International Compensation Regime

The International Oil Pollution Compensation Fund 1992 - IOPC - is an intergovernmental organization 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 (CLC) 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. On March 3, 2005, an “optional” Supplementary Fund to the 1992 Fund came into force.

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

Canada is a Contracting State to the 1992 CLC and the 1992 Fund Convention, but not the Supplementary Fund.

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 Contract-

ing 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), 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 \$342 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 February 10, 2006, 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, England, 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 organisations, are represented as observers at the 1992 IOPC Fund 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.

Ship-source Oil Pollution Fund

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

The 17th Administrative Council – October 17 to 21, 2005

The Administrative Council elected Captain R. Malik (Malaysia) as Chairman. He thanked the Council for the renewed confidence shown in him, and he informed the Council of his intention to stand down as Chairman at the end of the session. The Council dealt with the agenda items, including:

Incidents involving the 1971 IOPC Fund

The Council noted the information contained in document 71FUND/AC.17/12¹⁷, which contained a summary of the situation in respect of all 10 incidents dealt with by the 1971 Fund during the past 12 months.

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 was spilled.

The total amount of settled and outstanding claims far exceeds the amount available for compensation under the Conventions, 60 million SDR (£49 million). The largest claims were two duplicated claims by the Republic of Venezuela for £33.7 million. After the Republic of Venezuela had given an undertaking that its claims would stand last in the queue, the level of payment was increased to 100% of the proven loss or damage. As a result of this undertaking all the settled claims have been paid in full. The incident gave rise to a number of legal proceedings in Criminal and Civil Courts.

Legal actions by the Republic of Venezuela in the Civil and Criminal Courts had been brought against the shipowner and the Gard Club, but not against the 1971 Fund. Since the Republic of Venezuela had not brought legal action against the 1971 Fund within the six-year period, which had expired in February 2003, the Council endorsed the view of the Director that claims by the Republic of Venezuela were time-barred vis-à-vis the 1971 Fund.

With reference to possible recourse action, the Council noted that a time-bar period of 10 years apply and that such an action would become time-barred on February 28, 2007. Therefore, the Council noted it will have to take a decision no later than during 2006 as to whether such action should be brought.

Financial Statements and Auditor's Report

The Administrative Council noted with appreciation that the external auditor had provided an unqualified audit opinion on the 2004 financial statements. The Council approved the accounts of the IOPC Fund 1971 for the financial period January 1 to December 31, 2004.

¹⁷ The 1971 IOPC FUND documents referred to in this Appendix can be found at www.iopcfund.org

Budget for 2006

The Administrative Council adopted the budget for 2006 for the administrative expenses for the joint Secretariat, £3 601 900. The Council noted the Director's view that the surplus on the General Fund as at December 31, 2006, should be sufficient to cover payments of compensation, indemnification or other incident related expenses to be made after December 31, 2006, as well as the 1971 Fund's share of administrative expenditure of the joint Secretariat and the costs of the winding up of the 1971 Fund.

Appointment of Director

The Administrative Council noted that the 1992 Fund Assembly had, at its 10th session, elected Mr. Willem J. G. Oosterveen (Netherlands) as the next Director of the 1992 Fund from November 1, 2006. As such, he would also be *ex-officio* Director of the 1971 Fund and the Supplementary Fund.

Winding up of the 1971 Fund

The Administrative Council took note of the information in document 71FUND/AC.17/13 regarding the winding up of the 1971 Fund.

The Administrative Council noted that it was anticipated that by the end of 2006 there would only be outstanding compensation and/or indemnification claims in respect of the *Nissos Amorgos* incident and, possibly, in respect of the *Iliad*, *Pontoon 300* and *Alambra* incidents. It was also noted that the 1971 Fund might still be involved in recourse proceedings in respect of the *Pontoon 300* and *Al Jaziah 1* incidents and, possibly, the *Nissos Amorgos* incident. It was further noted that the enforcement of the judgment in the 1971 Fund's favour in respect of the *Vistabella* incident should be completed by the end of 2006. It was noted that issues relating to costs might be outstanding in respect some other incidents.

Although the 1971 Fund Convention ceased to be in force on May 24, 2002, the 1971 cannot be wound up until it has settled all claims arising from outstanding incidents.

The 18th Administrative Council – February 27 to March 2, 2006

The Administrative Council elected Mrs. Teresa Martins de Oliveira (Portugal) as chairman. The Council dealt with the agenda items, including:

Incidents involving the 1971 IOPC Fund

Plate Princess (1997)

On May 27, 1997, the Maltese tanker *Plate Princess* (30, 423 gross tons) was loading a cargo of crude oil at Puerto Miranda on Lake Maracaibo (Venezuela) when 3.2 tonnes of oil was reportedly discharged into Lake Maracaibo together with ballast water.

In October 2005 the 1971 Fund was formally notified by the Venezuelan authorities of actions for compensation brought by two fishermen's unions against the shipowner and the master of the *Plate Princess* in June 1997 for an estimated amount of £ 11.2 million.

The 1971 Fund had not been notified of the action against the shipowner until October 31, 2005, i.e., nearly eight and a half years after the damage occurred. Consequently, the Director maintains that the actions by the fishermen's unions are time-barred as regards the 1971 Fund, under the first sentence of Article 6.1 of the 1971 Fund Convention. The Director further stated that, in his view, the claims were also time-barred under the second sentence of Article 6.1 since no action had been brought against the 1971 Fund within six years from the date when the incident occurred.

The Venezuelan delegation stated that it did not share the Director's view that the claim by the fishermen was time-barred, since legal action had been taken against the shipowner within the time set out in Articles 6 and 7.6 of the 1971 Fund Convention.

The Administrative Council instructed the Director to take necessary action to defend the 1971 Fund's position on time bar before the Venezuelan Courts.

Ship-source Oil Pollution Fund

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

The Executive Committee of the 1992 IOPC Fund held six sessions during the year. The 29th session was held under the chairmanship of Mrs. Lolan Margaretha Eriksson (Finland). The 30th session was held under the chairmanship of the Vice-chairman Mr. Volker Schöfisch (Germany). The 31st and 32nd sessions were held under the chairmanship of Captain Carlos Ormaechea (Uruguay). The 10th session of the Assembly and the 10th Extraordinary Session of the Assembly were held under the Chairmanship of Mr. J. Rysanek (Canada).

The 29th Executive Committee – June 27 to 28, 2005

Incidents Involving the IOPC Fund 1992

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 Committee noted that as at May 31, 2005, some 6,694 claims for compensation had been submitted for a total of £142 million, and that 94.8 per cent of the claims had been assessed. Compensation had been made in respect of 5,587 claims for a total of £68.3 million, out of which the shipowner's insurer, Steamship Mutual, had paid £8.8 million and the 1992 IOPC Fund £59.5 million. It was also noted that 815 claims totaling £15.4 million had been rejected.

The Committee recalled that legal actions against the shipowner, Steamship Mutual, and the 1992 IOPC Fund had been taken by 795 claimants. It was noted that by May 31, 2005, out-of-court settlements had been reached by 412 of these claimants.

In summing up the situation with regard to legal proceedings, the Director stated that there had been a total of 30 judgments involving claims against the 1992 Fund in various Courts, the majority of which had related to issues of admissibility. He stated that the judgments were in general very favorable for the Fund, since the Courts had in most cases, where the Fund had rejected claims as not admissible, concurred with the Fund's position. He mentioned that in some cases the Courts applied the Fund's admissibility criteria, in other cases the Courts had not applied them but had taken them into account. In some cases the Courts had stated that the Fund's criteria were not binding and that the admissibility should be decided by the application of French law, but had reached the same results as the Fund on its rejection of the claims by applying the requirement that there must be a link of causation between the event and the damage.

Note: For additional information about the *Erika* incident and its significant impact on the international regime see the SOPF Administrator's Annual Reports 1999-2000, 2000-2001, 2001-2002, 2002-2003, 2003-2004 and 2004-2005.

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.

Claims

As of June 27, 2005, claims totaling £571 million have been received by the Claims Office in Spain, and £65 million have been received by the Claims Office in France. Also, the Portuguese Government had submitted a claim for £2.3 million in respect of a clean-up and preventive measures. Based on the figures presented by the Governments of the three States affected by the incident, the potential claims might be as high as £720 million.

The total amount of the accepted claims arising from the *Prestige* incident will significantly exceed the total amount of compensation available. The maximum amount of compensation available under the 1992 Conventions, in respect to this incident, is 135 SDR, which corresponds to approximately £118 million including the limitation amount applicable to the *Prestige* under the 1992 Civil Liability Convention – that is, approximately £16 million.

Level of Payments

The Executive Committee had previously decided, on the basis of the figures presented by the three Governments concerned and in view of the remaining uncertainties as to the level of admissible claims, to maintain the level of payments at 15 per cent of the loss or damage sustained by the respective claimants. However, in an effort to enable the IOPC Fund to increase the level of payments and speed up payments of compensation to victims, the Director had invited the French, Portuguese and Spanish delegations to a meeting in London on June 1, 2005. As a result of this meeting, the Executive Committee considered a proposal by the Director, which was developed with the Spanish, French and Portuguese delegates, namely:

- make a refined provisional estimate of the total amount of the admissible claims arising from the incident for pollution damage in each of the three States concerned;
- assess provisionally the proportion of the admissible claims for damage in respect of each of these States; and
- submit a proposal to the Executive Committee on a provisional apportionment between those three States of the maximum amounts payable by the 1992 Fund.

The Director considered that, on the basis of such a refined assessment, the Executive Committee would decide whether the current level of payments could be increased and, if so, what the new level of payments should be subject to bank guarantees by the French, Portuguese and Spanish Governments protecting the 1992 IOPC Fund from the risk of over payments. There was broad support for the approach proposed by the Director. He was, therefore, instructed to make a detailed proposal for consideration at the October 2005 session of the Executive Committee.

Investigations

With reference to the investigations into the cause of the *Prestige* incident, the Bahamas Maritime Authority had carried out an investigation. The report of this investigation was published in November 2004. It concludes, *inter alia*, that it was likely the initial failure had been in the side structure of No.3 starboard wing tank, followed by a failure in No.2 starboard aft wing tank, probably in the bulkhead between the two tanks. The report is available at www.bahamasmaritime.com

The Spanish Ministry of Public Works had, through the Permanent Commission on the Investigation of Maritime Casualties (the Commission), carried out an investigation into the cause of the incident. The main report had been made available to the 1992 Fund in April 2005. The Commission had reached the conclusion that the cause of the casualty was a structural failure in the area of N°2 starboard – aft and N°3 starboard wing tanks.

The Executive Committee noted that on May 27, 2005, the Spanish Ministry of Public Works had provided the 1992 Fund with a copy of conclusions in an addendum to the report referred to above. (For further information on the main report and see document 92 FUND/EXC.29/4¹⁸ at section 13 and annex.)

The French Ministry of Transport and the Sea had carried out a preliminary investigation into the cause of the incident. Its report concluded that, on the basis of the information available, the loss of the *Prestige* appeared to be due to a series of successive factors. These factors are included in documents 92FUND/EXC.29/6 at section 3.2.89.

The Director shall continue to follow the ongoing investigations and provide information to the Executive Committee.

Note: For additional information on the *Prestige* incident see the SOPF Administrator's Annual Reports 2002-2003 at section 4.4, 2003-2004 and 2004-2005 at Appendix C, respectively.

Workshop on the implementation of the Hazardous and Noxious Substance (HNS) Convention

The Secretariat of the IOPC Funds had organized a workshop intended to facilitate States' preparations for ratification and implementation of the HNS Convention, and to address the need for the uniform interpretation and application of the Convention. The workshop was held on June 28 and 29, 2005, in conjunction with the Executive Committee session. Approximately 150 participants attended the workshop including representatives of States and industry. The activities included presentations and discussions on recent developments for the entry into force of the HNS Convention. A number of experts on the HNS Convention as well as members of the IOPC Funds Secretariat focused on the issues.

The Secretariat had compiled a "Guide to the Implementation of the HNS Convention". A revised version of the Guide shall take into account observations during the discussion of the workshop.

Note: For additional information on implementation of the HNS Convention see section 4.4 herein.

¹⁸ The 1992 IOPC Fund documents referred to in this Appendix can be found at www.iopcfund.org

The 30th Executive Committee – October 17 to 21, 2005

Incidents involving the 1992 Fund

The Executive Committee took note of document 92FUND/EXC.30/3, which contains summaries of the situation in respect of all seven incidents dealt with by the 1992 Fund since the Committee's 26th session, held in October 2004.

Erika (1999)

The claims situation had not changed appreciatively from that reported at the 29th Executive Committee meeting in June 2005.

In considering judgments in various French Courts, in respect of claims against the 1992 Fund, the Committee discussed a claim by a student who had failed to obtain expected employment, allegedly due to the *Erika* incident. The student had a claim for loss of income of £650. This claim had been rejected by the 1992 Fund. The student brought legal action in the Commercial Court in Rennes. The Court accepted the claim and ordered the shipowner and the 1992 Fund to pay the claim amount, plus legal interest and an amount of £2,000 in costs.

The Committee noted that in the Court proceedings the 1992 Fund had argued that the claim did not fulfill the Fund's criteria for admissibility. The Committee decided that the Fund's policy regarding claims for losses suffered by employees laid off temporarily, put on part-time work, or made redundant should not be changed and that the Fund should continue to reject such claims. It instructed the Director to appeal against the judgment in respect of the student that had been unable to obtain the anticipated employment at the camping site as a result of the incident. (In Canada, claims for the loss of income in the fishing industry are provided for in sections 88-89 of the *Marine Liability Act*.)

Note: For additional information about the *Erika* incident and its significant impact on the international regime see SOPF Administrator's Annual Reports 1999-2000, 2000-2001, 2001-2002, 2002-2003, 2003-2004 and 2004-2005 at section 4 and Appendix C, respectively.

Prestige (2002)

The Spanish Government had submitted a claim of £74 million for the cost of the operation of removing oil from the wreck of the *Prestige*, including the costs of preparatory work and the feasibility trials conducted in the Mediterranean and at the wreck site. The removal of the oil, which commenced in May 2004, was finalized in September 2004. Some 13,000 tonnes of oil cargo was removed from the forepart of the wreck. Approximately 700 tonnes were left in the aft section, which was treated with biological agents aimed at accelerating the degradation of the oil.

This claim, for the costs of the operation to remove oil from the wreck of the *Prestige*, gives rise to a question of principle as regards admissibility in accordance with the 1992 Fund's criteria. The Director had carried out an analysis as to whether or not the claim satisfies the 1992 Fund's admissibility criteria. Two technical opinions on the admissibility issue had been presented, one by the International Tanker Owner's Pollution Federation Limited (ITOPF), which was commissioned by the 1992 Fund, and one by a team of three experts which was commissioned by the Spanish Government. The Committee took note of the opinion presented by ITOPF as reproduced at Annex I of document 92FUND/EXC.30/9/2 and the opinion of the team of experts appointed by the Spanish Government as reproduced at Annex II of that document.

The Committee noted that in the Director's view it was important that the 1992 Fund considered the Spanish Government's claim purely against the criteria of admissibility laid down by the 1992 Fund Assembly. Note was also taken of the criteria for the admissibility of claims for the costs of preventive measures which were reflected in the Claims Manual as follows ¹⁹:

“Claims for the costs of measures to prevent or minimize pollution damage are assessed on the basis of objective criteria. The fact that a government or other public body decides to take certain measures does not in itself mean that the measures are reasonable for the purpose of compensation under the Conventions. The technical reasonableness is assessed on the basis of the facts available at the time of the decision to take the measures. However, those in charge of the operations should continually reappraise their decisions in the light of developments and technical advice”.

The Committee noted that both ITOPF and the team of experts appointed by the Spanish Government had considered that the most likely outcome of leaving the oil in situ would have been a slow escape of oil from the wreck over many years resulting in the widespread scattering of tar balls over a vast area of the Atlantic Ocean which, depending on winds and currents, could have impacted coastlines, particularly the Spanish coast of Galicia and Cantabria.

It was noted that both groups of experts agreed that it was impossible to quantify the scale of likely pollution damage in monetary terms had the oil not been removed from the wreck, but that the most likely oil release scenario would not have constituted a serious threat to marine resources.

It was noted that one of the main differences between the opinions of the two groups of experts was that the experts appointed by the Spanish Government had taken into account the possible social impact of leaving the oil in situ, whereas ITOPF had focused solely on the 1992 Fund's admissibility criteria, which did not take social, non-economic effects into account. It was noted that in his consideration of the admissibility issue the Director had also not taken such effects into account.

The Committee noted that the Director was of the view that the oil remaining in the sunken sections of the *Prestige* did not pose a significant pollution threat and that the costs of the operation to remove the oil were disproportionate to any potential economic and environmental consequences of leaving the oil in the wreck. For this reason, he considered that the Spanish Government's claim did not fulfill the criteria for admissibility laid down by the IOPC Fund's governing bodies, namely that the operation should be reasonable from an objective, technical point of view.

Some delegations stated that whilst the total costs associated with the oil removal operation seemed to be disproportionate to the likely environmental and economic consequences of leaving the oil in the wreck, it could be that some of the costs of the surveys and studies may have been reasonable up to the point when the actual cost of the oil removal operation was known.

After debate, the Executive Committee decided to defer any decision on the admissibility of the claim, but instructed the Director to collaborate with the Spanish Government to examine all the elements of the claim with a view to identifying possible admissible items and to assess the admissible quantum of those items for consideration by the Committee at a future session.

With reference to the level of payments and apportionment between the three affected States of the amount available for compensation, the Committee took note of the detailed proposal that the Director had submitted for the Committee consideration, as set out in document 92FUND/EXC.30/9/1. Consequently, the Committee agreed to an increase in the level of payments, the

¹⁹ This text is set out in the 2002 edition of the Manual (pages 18-19). The same text appears in the April 2005 edition (page 21), approved by the 1992 Fund Assembly at its 9th session, held in October 2004.

distribution of the amount payable by the 1992 Fund and the provisions of the undertakings and guarantees by the Governments of France, Portugal and Spain. As a result, the level of the 1992 Fund's payments should be increased from 15 per cent to 30 per cent of the loss of damage actually suffered by the individual claimant, as assessed by the experts appointed by the 1992 Fund and the London Club. The Committee decided that the amount £ 133 840 000 representing the total amount payable by the 1992 Fund, minus a reserve of 10 per cent, should be apportioned between the three States concerned: Spain 85.90%, Portugal 0.55% and France 13.55%.

Note: For additional information on the *Prestige* incident see the SOPF Administrator's Annual Reports 2002-2003 at section 4.4, 2003-2004, and 2004-2005 at Appendix C, respectively.

The 31st Executive Committee – October 21, 2005

The Executive Committee elected Captain Carlos Ormaechea (Uruguay) as Chairman and Rear-Admiral Giancarlo Olimbo (Italy) as Vice-Chairman to hold office until the end of the next regular session of the Assembly.

The 32nd Executive Committee – February 27 to March 2, 2006

Captain Carlos Ormaechea (Uruguay) chaired the 32nd session. The agenda included:

Incidents involving the 1992 Fund

Erika (1999)

The Committee noted that as at January 31, 2006, some 6,985 claims for compensation had been submitted for a total of £ 142 million, and that 95 per cent of the claims had been assessed. Compensation had been made in respect of 5,636 claims for a total of £ 77.4 million out of which the shipowner's insurer, Steamship Mutual, had paid £ 8.8 million and the 1992 IOPC Fund £ 68.6 million. It was also noted that 800 claims totaling £ 15.5 million had been rejected.

The Executive Committee recalled that the Director had sought a more pragmatic way of assessing the French State's claim for clean-up, which totals approximately £ 122 million. The approach followed by the Director was to carry out a broad assessment of three major components of the claim in order to establish the lowest conceivable admissible amount.

On the basis of the assessment of the three major components of the claim by the French State the minimum total admissible amount is £ 55.5 million, which is well in excess of the maximum amount that is likely to be available to the French State (£ 45 million) after all other claims arising from the incident (except Total SA) having been settled and paid.

The Committee decided that a broad assessment of the claim by the French State was an acceptable approach. The assessment would be without prejudice to the French State's position in any recourse action against third parties. The Committee recalled that at the request of a number of parties, the Commercial Court (Tribunal de Commerce) in Dunkirk had appointed experts (expertise judiciaire) to investigate the cause of the incident. It was noted that the experts, who had submitted their report in late November 2005, had concluded that the fate of the *Erika* was the inevitable consequence of the serious corrosion of the internal structures of the vessel's No 2 ballast tanks, which had resulted in their collapse as soon as the vessel had encountered sustained heavy seas. It was also noted that the experts had stated that the level of corrosion had been well beyond acceptable standards for a classification society.

The Committee noted that the court had expressed the view that it would not have been possible to detect the level of corrosion when the ship had been vetted by Total SA, nor at the time of loading the vessel in Dunkirk prior to the final voyage, and that the vetting procedures of other major oil companies or a survey by a port state would also not have revealed the problem. It was noted that in contrast, the experts had stated that this had not been the case with the registered owner, the management company which had monitored the vessel's fifth special survey in Bijela (Croatia) in 1998, and the classification society which had undertaken the surveys in Bijela and in Augusta in 1999.

The Committee endorsed the intention of the Director to study the report by the court experts with the assistance of the 1992 Fund's experts and to report to the Executive Committee at a later session in 2006.

Prestige (2002)

The Executive Committee noted that the European Commission had previously awarded the Spanish Government some £ 58 million towards the costs of the oil removal operations, including the preparatory studies and work conducted in 2003. Consequently, the Spanish Government reduced its original claim from £ 75 million for the costs of the operation to remove the oil from the wreck to £ 16.5 million.

One delegation noted with dissatisfaction that when the claim for the removal operation was discussed at the October 2005 session, neither the Executive Committee nor the IOPC Fund had been informed of the amounts previously awarded by the European Commission to Spain.

Some delegations considered that the admissibility of the claim should be assessed on the basis of the revised claim amount and not on the actual cost of the operation to remove the oil. Other delegations disagreed and expressed the view that admissibility should not be assessed on the basis of the reduced claim, since this would encourage the manipulation of claims in the future.

The Executive Committee decided, as proposed by the Director in paragraph 4.26 and 4.27 of document 92FUND/EXC.32/4/Add.1, that some of the costs incurred in 2003 in respect of sealing the oil leaking from the wreck and various surveys and studies were admissible in principle, but that the claim for costs incurred in 2004 relating to the removal of oil from the wreck was inadmissible.

The Committee instructed the Director to carry out an examination of the admissibility criteria relating to claims for costs of preventive measures. The criteria is to be reviewed particularly for the extraction of oil from the sunken vessel, with a view to enabling the 1992 Fund Assembly at its October 2006 session to discuss possible alternatives for the existing criteria for admissibility within the framework of the 1992 Conventions.

Nº 7 Kwang Min (2005)

On November 24, 2005, the Korean tanker *Nº 7 Kwang Min* (161 gross tons) collided with the Korean fishing boat *Chil Yang Nº1* (139 gross tons) in the port of Busan, Republic of Korea. A total of 64 tonnes of heavy fuel oil escaped into the sea from a damaged cargo tank.

The *Nº 7 Kwang Min* was not insured for pollution liabilities and the shipowner had very few assets. The value of the ship, built in 1977, was such that the proceeds from its sale would be insufficient to cover the claim for compensation for pollution damage arising from incident.

Ship-source Oil Pollution Fund

The Committee noted that the limitation amount applicable to the *Nº 7 Kwang Min* under the 1992 Civil Liability Convention was 4.51 million SDR (£ 3.8 million).

The Committee noted that in view of the lack of liability insurance in respect of the vessel and the limited assets of the shipowner it was unlikely that he would be financially capable of meeting his obligations under the 1992 Civil Liability Convention to pay compensation in full to persons suffering pollution damage arising out of the incident. It was noted that, although the total amount of the admissible claims would fall below the limitation amount applicable to the *Nº 7 Kwang Min*, the 1992 Fund, in the Director's view, would be liable in accordance with Article 4.1 (b) of the 1992 Fund Convention to pay compensation.

It was recalled that Regulation 7.4 of the 1992 Fund's Internal Regulations provided that where the Director was satisfied that the 1992 Fund was liable under the 1992 Fund Convention to pay compensation for pollution damage, he may, without the prior approval of the Assembly, make final settlement of any claim, if he estimated that the total cost to the 1992 Fund of satisfying all claims arising out of the relevant incident was not likely to exceed 2.5 million SDRs. It was also recalled that the Director may in any case make final settlement of claims from individuals and small businesses up to an aggregate amount of 1 million SDRs in respect of any one incident and that the relevant date for conversion should be the date of the incident in question.

The Committee endorsed the position taken by the Director as regards his authority to settle claims under Internal Regulation 7.4 and also authorized him to make final settlement of all further claims arising out of the incident.

As at February 27, 2006, some 12 claims totaling £ 1.6 million in respect of the costs of clean-up and preventive measures had been received by the 1992 Fund, four of which totaling £ 139 000 had been settled at £ 138 000. It was noted that fishery and mariculture claims totaling £ 360 000 had been received and these claims were being assessed also.

Note: Article VII (1) of the 1992 CLC requires the owner of a ship registered in a Contracting State and carrying more than 2000 tons of oil in bulk as cargo to maintain insurance or other financial security in an amount to cover his liability for pollution damage under the 1992 CLC.

The 10th Session of the Assembly – October 17 to 21, 2005

Report of the Director

The Director reported on the activities of the 1992 Fund since the Assembly's 9th session in October 2004. He made reference to the entry into force of the 2003 Protocol to the International Convention on the establishment of an International Fund for Oil Pollution Damage 1992 (Supplementary Fund Protocol) on March 3, 2005. The Protocol brought the total amount available for compensation for each incident for pollution damage in the States which become Members of the Supplementary Fund to 750 million SDR (£600 million), including the amount payable under the 1992 Civil Liability and Fund Conventions – i.e., 203 million SDR (£162 million). He drew particular attention to the fact that it had been decided that the Supplementary Fund should be administrated by the 1992 Fund Secretariat, and that the Director of the 1992 and 1971 Funds should also be the Director of the Supplementary Fund.

Status of Conventions and the Supplementary Fund Protocol

The 1992 Fund currently has 92 Member States and an additional four more States have deposited instruments of accession, which will bring the total to 96 by October 2006.

The 1971 Fund Convention ceased to be in force on May 24, 2002, and does not apply to incidents occurring after that date. The 1971 Fund itself is being wound up. (For additional information see appendix B.)

Some eleven of the 1992 Fund Member States are Members of the Supplementary Fund.

Note: For information on the Supplementary Fund see the SOPF Administrator's Annual Report 2003-2004 and 2004-2005 at sections 4.9.2 and 4.6.2 respectively.

Operation of the Secretariat

The Assembly noted that a revised version of the 1992 Fund's Claims Manual, which had been approved by the 1992 Fund Assembly at its October 2004 session, had been published in English, French and Spanish in April 2005 and that the revised Manual had been well received.

The Assembly noted that a new publication in English, French and Spanish of the texts of the 1992 Civil Liability Convention, the 1992 Fund Convention and the 2003 Supplementary Fund Protocol had been issued.

The Director also mentioned that in June 2005 the Secretariat had begun work on the expansion of the Document Server to contain all documents going back to the first session of the 1971 Fund Assembly in November 1978, a period involving more than 4 000 documents. He explained that the first stage of the project, covering some 2 400 meeting documents for the period 1996-2000, was under way, that all documents from the year 2000 had recently been uploaded to the document server and that it was expected that by the end of 2005 all documents for the period 1996-2000 would be available on the Document Server.

The Director informed the Assembly that during 2004 and 2005 consideration had been given to the establishment of a database of the decisions taken over the years by the governing bodies. He explained that he had now approved a prototype Records of Decisions Database and that work had commenced on categorizing all the decisions and other relevant information, such as court judgments, into an index. He expressed his hope that that phase of the project would be completed by the end of 2005. He explained that the second phase would involve preparing abstracts and incorporating them into the database and that the aim was to complete that phase by October 2006, by which time all the Funds' documents should have been added to the Document Server so that the database could be launched onto the Funds' website. He mentioned that at least initially the database would be set up in the English language only.

Appointment of Director

On October 20, 2005, the Assembly held a secret ballot at a private meeting at which only representatives of the 1992 Fund Member States and former 1971 Fund Member States were present. Mr. Willem J.G. Oosterveen (Netherlands) was elected as the next Director of the 1992 Fund from November 1, 2006. As such, he would be *ex-officio* Director of the 1971 Fund and the Supplementary Fund also.

In order to ensure a smooth transition from the present Director to his successor, the present Director will retain full responsibility for the Organizations up to October 31, 2006. The newly-elected Director will join the Secretariat on September 1, 2006, and take over responsibility for the Organizations on November 1, 2006. The present Director will continue to be available up to December 31, 2006.

Report of the Third Intersessional Working Group

The Chairman of the Working Group, Mr. Alfred Popp, QC (Canada) introduced the report of the Working Group on its ninth meeting held in March 2005.

The purpose of the Working Group's ninth meeting was to make the final recommendations to the Assembly on whether or not the Conventions should be revised and, if so, which items required revision.

The Working Group had considered the key question of whether to reopen the two Conventions to adjust the shipowner's limit of liability. This was considered in the light of increases effective November 2003, and the additional burden on oil receivers under the Protocol of 2003 establishing a Supplementary Fund. In the Chairman's view this issue required a clear resolution, since other proposed amendments would not justify the reopening of the two Conventions. After debate the delegations were virtually divided 50/50 on the need to reopen the Convention to adjust the shipowners' limit of liability under the current CLC. Some delegations, including Canada, were of the view there is an imbalance between the CLC and the Fund Convention and that revision embodied in a legal framework is preferable. Other delegations saw no such imbalance, and no reason for revision. Another group of delegations saw an imbalance, but accepted that voluntary industry solutions would be a better way to go, at least for the next ten years.

The Chairman stated that the Working Group continued to be evenly divided on the question of whether the Conventions should be revised and, therefore, it was not in a position to make a recommendation to the Assembly on the issue. He stressed the importance of maintaining a global and universal applicable regime, and that for a revision of the Conventions to succeed there had to be a broad support from Member States.

During the discussion that ensued, the Assembly recalled that the International Group of P&I Clubs had established the Small Tanker Oil Pollution Indemnification Agreement (STOPIA) whereby shipowners and Clubs had undertaken to indemnify the 1992 Fund in respect of all claims up to 20 million SDR where the limitation amount under the 1992 Fund Convention was lower, namely for ships of 29 548 gross tonnage or less. It was also recalled that at the March 2005 meeting of the Working Group the International Group of P&I Clubs had put forward an alternative proposal establishing the Tanker Oil Pollution Indemnification Agreement (TOPIA) whereby those Clubs would indemnify the Supplementary Fund in respect of 50% of the amounts paid in compensation by the Supplementary Fund. It was further recalled that TOPIA had been put forward as an alternative to STOPIA and that, if the TOPIA proposal were to have been accepted, the International Group of P&I Clubs would have required the simultaneous implementation of TOPIA and withdrawal of STOPIA.

In his summary, the Chairman concluded that the Working Group's mandate had been carried out, and that it was time to terminate its activities and remove the revision of the Conventions from the Assembly's agenda. He stated, also, that this left on the table the proposal by the International Group of P&I Clubs and the positive step by the Clubs to extend STOPIA to all States party to the 1992 Civil Liability Convention. The Chairman of the Working Group invited the International

Group to revise the proposal in consultation with the Fund Secretariat and with OCIMF for consideration by the Assembly.

As the debate concluded, the Assembly decided there was insufficient support to move forward with revision of the Convention and that the Working Group should be disbanded, and the revision of the Conventions should be removed from the Assembly's agenda.

The Director was instructed to collaborate with the International Group of P&I Clubs and OCIMF before the voluntary agreement package was submitted to the Assembly for consideration at its next session, and provide technical and administrative advice with a view to consolidating the package and ensuring that it was legally enforceable.

Note: For additional information about the issues addressed during the ninth meeting of the Third Intersessional Working Group see the Administrator's Annual Report 2004-2005 at Appendix C.

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

The External Auditor provided an unqualified audit opinion of the 2004 financial statements. The representative of the External Auditor stated that the work of the Audit Body represented a significant contribution to the Fund's good governance and management of its operation, and that the External Auditor had recommended therefore that the joint Audit Body should become a permanent part of the organizations' structure.

The representative of the External Auditor mentioned that in his Report the External Auditor had reviewed the Funds' existing arrangements to ensure transparency in financial management and had made a number of recommendations, including the establishment of registers of interest and for recording hospitality and gifts, a code of conduct for staff, annual declarations by staff to confirm compliance with the requirements of the Financial Regulations and Administrative Instructions, and the introduction of a whistle -blowing policy to ensure that staff had an appropriate mechanism for reporting misconduct and irregularity. He also mentioned that the External Auditor had recommended that the Secretariat give greater impetus to completing the process of identifying financial risks ensuring that a full and systematic risk management assessment was in place prior to the arrival of the new Director.

The Director stated that in September 2005 he had informed the External Auditor that he intended to implement, as a matter of priority, all the recommendations made by the External Auditor.

Budget for 2006 and Assessment of Contributions to the General Fund

The Assembly adopted the 2006 budget for the administrative expenses of the joint Secretariat for a total of £3 601 900. The Assembly decided not to levy contributions to the General Fund.

Loans to the Supplementary Fund

It was noted that since the 1992 Fund would not raise any levies for payment in early 2006, the Supplementary Fund Assembly had at its 1st extraordinary session considered it preferable to postpone the first levy of contributions to the Supplementary Fund until the autumn of 2006. It was also noted that the Supplementary Fund Assembly had requested the 1992 Fund Assembly to authorize the Director to make the necessary funds available to the Supplementary Fund in the form of loans. The Assembly authorized the Director to make the necessary funds available to the Supplementary Fund in the form of loans to be repaid, with interest, when the Supplementary Fund had received

the first levy of contributions decided by its Assembly, to the extent that this could be done without prejudice to the operations of the 1992 Fund.

Joint Audit Body's Review of Claims Handling Efficiency

The Joint Audit Body's report of its review of the claims handling efficiency of the Funds (document 92FUND/A.10/12) was introduced by Mr. Nigel Macdonald, the member of the Audit Body who had carried out the review. (See Record of Decisions 92 FUND/A.10/37 at Section 13.) The Assembly instructed the Director to submit a report to its next session setting out an action plan that the Secretariat had put in place in the light of Mr. Macdonald's recommendations.

Submission of oil reports

The Assembly considered the situation in respect of the non-submission of oil reports, as set out in document 92FUND/A.10/14. It was noted that, since the document had been issued, one further State (Slovenia) had submitted its outstanding oil reports and that therefore a total of 28 States still had outstanding oil reports for the year 2004 and/or previous years: 11 States in respect of the 1971 Fund and 22 States in respect of the 1992 Fund. It was further noted that a number of States had reports outstanding for several years. It was also noted that two States (Argentina and Georgia) had indicated that the Secretariat would receive their outstanding reports shortly.

The Assembly noted that the failure of a number of Member States to submit oil reports had been a very serious issue for a number of years and that, whilst the situation might be slightly better than in previous years, it was still very unsatisfactory. The Assembly expressed its very serious concern as regards the number of Member States which had not fulfilled their obligation to submit oil reports, since the submission of these reports was crucial to the functioning of the IOPC Funds.

The Assembly noted the information contained in document 92FUND/A.10/14/1, which contained recommendations as to further measures that might encourage States to fulfill their obligations to submit oil reports. The present procedures for obtaining the oil reports were noted as well as the consideration by the Audit Body of this issue. It also noted the initiatives that had been taken by the Secretariat and the Director's analysis of the factors contributing to the problem.

The Assembly also instructed the Director to continue to bring the matter of the submission of oil reports to its attention at each regular session.

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

It was recalled that at their October 2003 sessions, the governing bodies of the 1992 and 1971 Funds had decided that the distribution of the costs of running the joint Secretariat should be made by means of the 1971 Fund paying a flat management fee to the 1992 Fund. It was also recalled that at their March 2005 sessions the governing bodies of the 1992 Fund, the 1971 Fund and the Supplementary Fund had decided that the same approach should be used as regards the Supplementary Fund's contribution to the costs of running the joint Secretariat.

The Assembly agreed with the approach taken by the Director and approved the Director's proposal that for 2006 the 1971 Fund and the Supplementary Fund should pay a flat management fee of £ 275 000 and £ 70 000 respectively to the 1992 Fund.

Technical Guidelines on Methods of Assessing Losses in the Fisheries Sectors

The Assembly took note of the information contained in document 92FUND/A.10/23 on the methods of assessing losses in the fisheries sectors. It was recalled that draft Technical Guidelines on methods of assessing losses in the fisheries, mariculture and fish processing sectors, which were intended to assist the 1992 Fund's world-wide network of fishery experts in assessing claims, had been prepared by the Director.

Election of members of the Executive Committee

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

Eligible under paragraph (a)

- Canada
- France
- Italy
- Republic of Korea
- Singapore
- Spain
- United Kingdom

Eligible under paragraph (b)

- Algeria
- Cameroon
- China (Hong Kong Special Administrative Region)
- Finland
- Portugal
- Russian Federation
- Turkey
- Uruguay

Assessment of contributions to Major Claims Funds

In order to enable the 1992 Fund to make payments of claims for compensation arising out of the *Erika* and *Prestige* incidents, the Assembly decided to raise 2005 contributions to the *Erika* and *Prestige* Major Claims Funds of £2.0 million and £3.5 million respectively, the entire levies to be deferred. The Director was authorized to decide whether to invoice all or part of the deferred levies to these Major Claims Funds for payment during the second half of 2006, if and to the extent required.

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

Substandard Shipping Informal Working Group (NEW)

The Assembly considered a proposal for the establishment of a new Informal Working Group to review what measures could be taken to address the issue of substandard transportation of oil. Although a number of delegations expressed reservations about the proposal on the grounds that the issue of substandard transportation of oil was essentially a technical issue, the majority of delegations supported the idea in principle. Some delegations proposed establishing a joint 1992 Fund/IMO working group, whilst others made the point that if the Fund were to reach some agreement on economic incentives to promote quality shipping or disincentives to substandard shipping, these could be referred to the IMO Legal Committee.

The observer delegations of INTERTANKO, OCIMF and IUMI expressed their support for the proposal. The delegation of Denmark offered to facilitate the development of draft terms of reference, which are clear and precise so that the Assembly could consider these at the next session. The Danish delegation invited other international delegations to communicate with it intersessionally.

Note: For additional information about substandard shipping and the new Informal Working Group see section 4.1.2 herein.

HNS Convention

The Assembly noted the developments in respect of the ratification and implementation of the HNS Convention since the 9th session of the Assembly. It was noted that eight States (Angola, Cyprus, Morocco, the Russian Federation, Saint Kitts and Nevis, Samoa, Slovenia and Tonga) had acceded to the HNS Convention.

Note: For additional information on the HNS Convention see section 4.4 herein

The 10th Extraordinary Session of the Assembly - February 27 to March 2, 2006

Mr. Jerry Rysanek (Canada) chaired the session. The agenda included:

The Status of the 1992 Fund Convention and the Supplementary Fund Protocol

The 1992 Fund has 92 Member States and an additional six more States have deposited instruments of accession, which will bring the total to 98 by the end of 2006. The new Member States are: Saint Kitts and Nevis, the Maldives, Albania, Switzerland, Bulgaria and Luxembourg.

The Assembly noted that fourteen 1992 Fund Member States were Members of the Supplementary Fund. The Supplementary Fund Protocol will enter into force for Barbados on March 6, 2006, and for Croatia on May 17, 2006.

Substandard Transportation of Oil - Establishment of a Working Group

The Assembly considered the terms of reference submitted by the delegations of Canada, Denmark, Finland, France, Germany, Japan, the Netherlands, Norway, Portugal, United Kingdom, and the observer delegations of ICS, International Group of P&I Clubs, INTERTANKO and OCIMF. It

also considered a revised version of the draft IOPC document (92 FUND/A/ES.10/WP.2) that had been prepared on February 28, 2006, after informal consultation between Member States.

In light of the expressed serious reservations by some delegations, the Director made a number of suggestions for amending the text to address some of the outstanding concerns. These included a statement to the effect that the Working Group was only instructed to make proposals. There is a specific reference to the importance of IMO's participation in the work of the Working Group, and a clear indication that there would be no attempt to re-open a discussion on a revision of the Conventions. Following further debate, the Assembly decided to formally establish a Working Group on non-technical measures to promote quality shipping for carriage of oil by sea. This Working Group would work intersessionally and be open to all governments, inter-governmental and non-governmental organizations, which had the right to participate in the 1992 Fund Assembly. The Working Group is expected to report on the progress of its work at each regular session of the Assembly.

Note: For a summary of the mandate and focus of the Working Group, see section 4.1.2 herein.

Joint Audit Body's Review of Claims Handling

In 2005, a review of the efficiency of IOPC Fund's claims handling and settlement procedures was carried out by Mr. Nigel Macdonald, the outside expert member of the Audit Body. Although Mr. Macdonald did not identify any serious past weakness or failure by the Funds or the Secretariat, he made a number of recommendations relating to the time taken to handle claims on interim payments and on the management of claims handling. His report was considered and endorsed (with minor modifications) by the Audit Body at its June 2005 meeting. The findings and recommendations of this efficiency review are contained in documents 92 FUND/A.10/12.

The Assembly took note of the measures taken and to be taken by the Secretariat to address the recommendations of the Audit Body, as contained in document 92FUND/A/ES.10/6. A number of delegations expressed their satisfaction with the Secretariat's action plan, and were pleased to note that many of the Audit Body's recommendations had already been implemented. The Director informed the Assembly that work on a database system to monitor the claims situation for all incidents is progressing and could be completed in 2006, so that management procedures can be standardized.

Technical Guidelines on Methods of Assessing Losses in the Fisheries Sectors

At its 9th session in October 2004, the Assembly decided to establish a correspondence group to review the draft technical guidelines prepared by the Director, and report to the Assembly in due course. Currently, the Director does not feel that there is a clear consensus as to in what form the guidelines should be published, and whether more precise guidelines should be produced for claimants. The Director reported that he has set a deadline for comments by July 1, 2006, with a view to making a firm recommendation to the Assembly at its October 2006 session. Documents 92FUND/A/ES.10/12 and 92 FUND/A.10/23, paragraph 2.5 refer.

Co-operation with P&I Clubs

The Director reported (document 92 FUND/A/ES.10/14) that an agreement had been reached between the 1992 Fund/Supplementary Fund and the International Group of P&I Clubs on a revised Memorandum of Understanding concerning the co-operation between the Clubs and the Funds.

Ship-source Oil Pollution Fund

The Assembly approved the proposed text, which takes into account the voluntary agreement package under STOPIA and TOPIA 2006. The Director was authorized to agree with the International Group on minor editorial amendments to the text and sign the Memorandum on behalf of the 1992 Fund.

The Assembly noted the Director's intention to discuss with the Japan Owner's Mutual Protection and Indemnity Association (JPIA) whether there is a need to supplement the new Memorandum of Understanding with the International Group with an exchange of letters between JPIA and the 1992 Fund and Supplementary Fund Protocol. It was also noted that at its 2nd extraordinary session the Supplementary Fund Assembly had approved the Memorandum of Understanding.

Application of the 1992 Convention to Ship-to-Ship Oil Transfer Operations

At its October 2005 session, the Assembly considered the question of whether permanently anchored vessels engaged in ship-to-ship oil transfer operations fell within the definition of "ship" under the 1992 Civil Liability and Fund Conventions, and whether the persistent oil received by such vessels should be taken into accounts for the levying of contributions. (Documents 92 FUND/A.10/37 at section 37.3 and 92 FUND/A/ES.10/18 section 16 refer.)

The Assembly noted that the Director had undertaken an in-depth study of the issues involved. Det Norske Veritas Limited had been commissioned to assist the Fund with the assessment. The Director reported that in order to advance this study additional research is ongoing. He intends to submit a report on his findings to the next session of the Assembly.

STOPIA and TOPIA

The Assembly noted (document 92 FUND/A/ES.10/13) that, as a result of meetings facilitated by the Director between the International Group of P&I Clubs and OCIMF, the International Group had developed a revised STOPIA, to be referred to as Small Tanker Oil Pollution Indemnification Agreement 2006 (STOPIA 2006) and a second agreement referred to as the Tanker Oil Pollution Indemnification Agreement 2006 (TOPIA 2006). The agreement had entered into force on February 20, 2006. The Assembly focused its attention on STOPIA 2006, since TOPIA was primarily a matter for the Supplementary Fund Assembly to consider.

The Assembly noted that the 1992 Fund would, in respect of ships covered by STOPIA 2006, continue to be liable to compensate claimants if and to the extent that the total amount of admissible claims exceeded the limitation amount applicable to the ship in question under the 1992 Civil Liability Convention. It further noted that, if the incident involved a ship to which STOPIA 2006 applied, the 1992 Fund would be entitled to indemnification by the shipowner of the difference between the shipowner's liability under the 1992 Civil Liability Convention and 20 million SDR. It was also noted that, although the 1992 Fund was not a party to STOPIA 2006, the agreement conferred legally enforceable rights on the 1992 Fund for indemnification from the shipowner involved.

It was noted that the main substantive difference between the original STOPIA and STOPIA 2006 was that the former only applied to pollution damage in Supplementary Fund States, whereas the new agreement would apply also to pollution damage in all other 1992 Fund Members States.

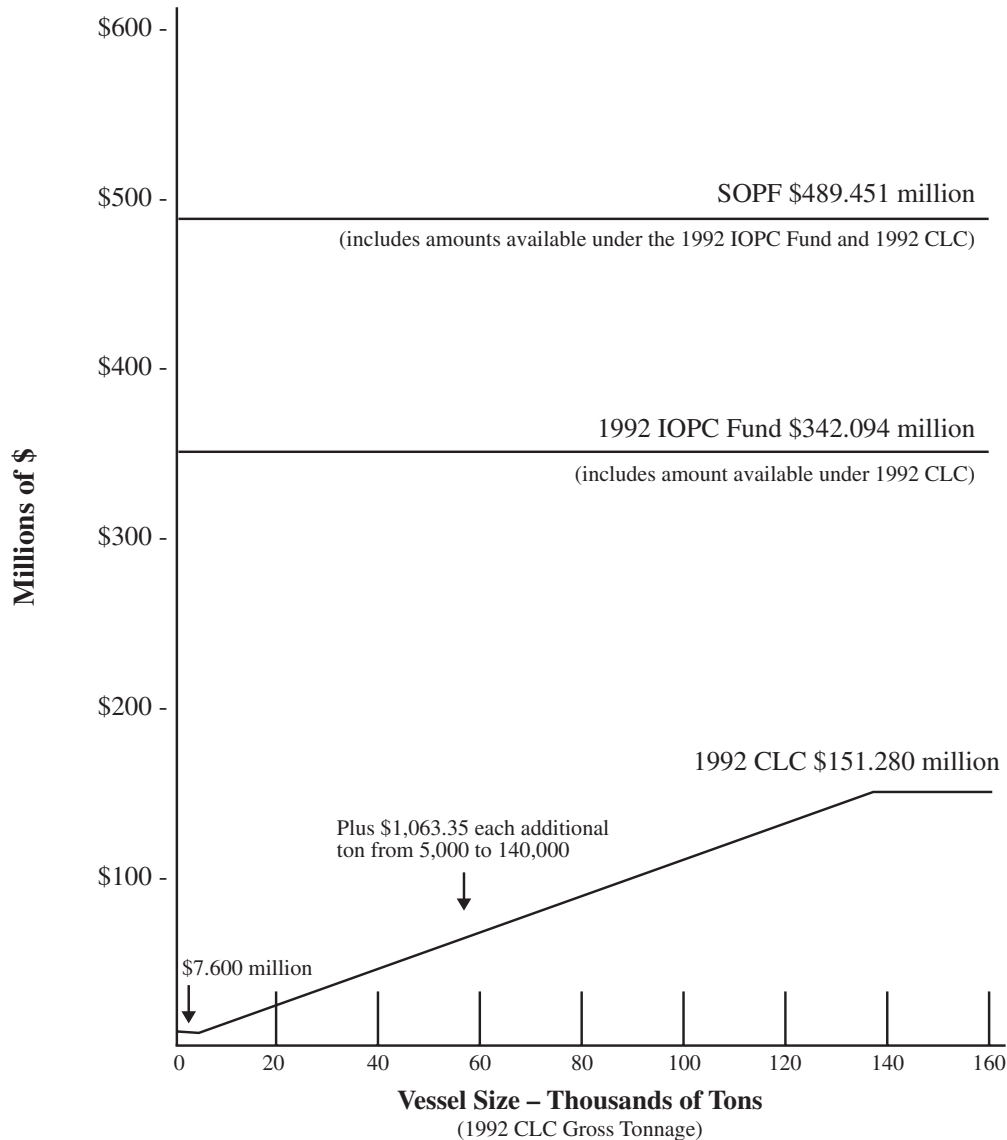
Note: For more information on STOPIA and TOPIA 2006 see section 4.1.1 herein.

Appendix D: Changes continuing under 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 \$7.60 million for a ship not exceeding 5,000 units of gross tonnage, increasing on a linear scale to approximately \$151.28 million for ships of 140,000 units of tonnage or over, using the value the SDR at April 1, 2006.
- An increase in the maximum compensation payable by the 1992 IOPC Fund to \$342.09 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.
- 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, 2006



(1) The value of the SDR at April 1, 2006, was approximately \$1.68519. This actual value is reflected in Figure 1 above and in Appendix D.

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 tankers in Canada, including the territorial sea and the exclusive economic zone. See *MLA* subsection 54(1) and Order P.C. 2003 - 1703 October 2003. Because of the SOPF, Canada has 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 \$342,094 million effective November 1, 2003. The SOPF amount of some \$147.357 million on top of that, results in \$489.45 million being available now for a tanker spill in Canada - without references to the new International "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 10 February, 2006.

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

6 States which have deposited instruments of accession but for which the Fund Protocol does not enter into force until date indicated	
Saint Kitts and Nevis	2 March 2006
Maldives	20 May 2006
Albania	30 June 2006
Switzerland	10 October 2006
Bulgaria	18 November 2006
Luxembourg	21 November 2006

Ship-source Oil Pollution Fund

Appendix F: IOPC Supplementary Fund – Assembly

First Extraordinary Session of the Assembly – October 19 to 21, 2005

Captain Esteban Pacha (Spain) chaired the 1st Extraordinary Session of the Supplementary Fund Assembly.

The agenda included:

Report of the Director

In his report on the activities of the Supplementary Fund, the Director noted that the Supplementary Fund Protocol had entered into force on March 3, 2005. This Protocol brought the total amount available for compensation for each incident for pollution damage in States which became Members of the Supplementary Fund to 750 million SDR (£600 million) including the amount payable under the 1992 Civil Liability and Fund Convention, i.e., 203 million SDR (£162 million).

Status of the Supplementary Fund Protocol

The Assembly noted that there were at present eleven Contracting States of the Supplementary Fund. One more State, Italy, had ratified the Fund Protocol on October 20, 2005, and that it would enter into force for Italy on January 20, 2006. Also, Belgium reported it would ratify the Fund Protocol by the end of October or in early November 2005.

Appointment of Director

The Assembly noted that the 1992 Fund Assembly had, at its 10th session, elected Mr. Willem J. G. Oosterveen (Netherlands) as the next Director of the 1992 Fund from November 1, 2006. As such, he would also be *ex-officio* Director of the 1971 Fund and the Supplementary Fund.

Incidents

The Assembly noted that, since the Supplementary Fund Protocol had entered into force on March 3, 2005, there had been no incidents which would or might involve the Supplementary Fund.

Budget for 2006 and Assessment of Contributions to the General Fund

The Assembly adopted the budget for 2006 for the administrative expenses of the Supplementary Fund with a total of £85 000, including the management fee of £70 000. The Assembly noted the Director's proposal that contributions of £1.3 million should be levied to the General Fund to cover:

- the administrative expenses for 2006 (including a management fee payable to the 1992 Fund);

Ship-source Oil Pollution Fund

- the reimbursement with interest of loans granted by the 1992 Fund; and
- the working capital.

Assessment of Contributions to Claims Funds

The Assembly decided that, since there had been no incidents which would or might require the Supplementary Fund to pay compensation, there was no need for contributions to be levied to any Claims Fund.

Submission of Oil Reports

The Assembly noted that all Supplementary Fund Member States had submitted their Oil Reports for 2004.

Operation of the Secretariat

The report on the operation of the Secretariat included the following:

- A revised version of the 1992 Fund's Claims Manual, approved by the 1992 Fund Assembly at its October 2004 session, had been published in English, French and Spanish in April 2005 and that the revised Manual had been well received.
- A new publication in English, French and Spanish of the texts of the 1992 Civil Liability Convention, the 1992 Fund Convention and the 2003 Supplementary Fund Protocol had been issued.
- The Secretariat set up a dedicated website for the HNS Convention (www.hnsconvention.org). The website was currently in English only but would be made available in French and Spanish in 2006 and that further development of the HNS website shall be considered.

The Director thanked those Member States who had continually showed interest and support in the ongoing developments of the IOPC Funds' website and document server.

Note: For information on the Supplementary Fund see the SOPF Administrator's Annual Report 2003-2004 and 2004-2005 at sections 4.9.2 and 4.6.2 respectively.

The 2nd Extraordinary Session of the Supplementary Fund Assembly- March 1 to 2, 2006

Captain Esteban Pacha (Spain) chaired the 2nd Extraordinary Session of the Supplementary Fund Assembly. The Agenda included:

Status of the Supplementary Fund Protocol

The Director informed the Assembly of progress being made by various States towards accession to the Supplementary Fund Protocol and the 1992 Fund Convention. In summary, some 98 States have acceded to the 1992 Fund Convention. The Supplementary Fund Protocol has been ratified by 14 States.

The observer delegation of the United Kingdom stated that the ratification of the Protocol was being considered in Parliament. It is expected that the United Kingdom will ratify the Protocol in April 2006. The observer delegation of Greece informed the Assembly that it hoped that Greece would ratify the Supplementary Fund Protocol in June 2006.

Note: Canada is not a Contracting State to the Supplementary Fund Protocol. The Canadian delegation attends the Assembly sessions of the Supplementary Fund as an observer.

Joint Audit Body's Review of Claims Handling

The Assembly took note of the measures taken and to be taken by the Secretariat to address the recommendations of the Audit Body, as contained in document SUPPFUND/A/ES.2/3.

Incidents

The Assembly noted that since the Supplementary Fund Protocol entered into force on March 3, 2005, there had, at the time of the session, been no incidents which would or might involve the Supplementary Fund.

Co-operation with P&I Clubs

The Assembly approved the proposed text of the revised Memorandum of Understanding between the 1992 Fund/Supplementary Fund and the International Group of P&I Clubs, which took into account STOPIA 2006 and TOPIA 2006. Document SUPPFUND/A/AE.2/8 at annex II refers.

STOPIA and TOPIA

The Supplementary Fund Assembly focused its attention on TOPIA 2006, since STOPIA 2006 was primarily a matter for the 1992 Fund Assembly to consider. The Assembly noted that the Supplementary Fund would, in respect of incidents covered by TOPIA 2006, continue to be liable to compensate claimants as provided in the Fund Protocol. If the incident involved a ship to which TOPIA 2006 applied, the Supplementary Fund would be entitled to indemnification by the shipowner of 50 per cent of the compensation payments it had made to claimants. The shipowner's payments of indemnification of the Supplementary Fund would be made at the same time as the Fund levied contributions in respect of incidents in question. This procedure would avoid the Supplementary Fund having to levy contributions for the full amount of compensation in excess of the 1992 Fund limit, 50 per cent of which would be repaid to the contributors many years later when the incident was closed.

Ship-source Oil Pollution Fund

Appendix G: Contracting States to the Supplementary Fund Protocol

as at 10 February 2006

13 States Parties to the 2003 Supplementary Fund Protocol		
Belgium Denmark Finland France Germany	Ireland Italy Japan Netherlands	Norway Portugal Spain Sweden
2 States which have deposited instruments of accession but for which the Protocol does not enter into force until date indicated		
Lithuania Barbados		22 February 2006 6 March 2006

Ship-source Oil Pollution Fund

Ship-source Oil Pollution Fund