

Ship-source Oil Pollution Fund



The Administrator's Annual Report
2009 – 2010

Canada

Photo courtesy of
Alan Betton, Marine Surveyor
Total Boat Marine Surveyors Ltd.
Sidney, British Columbia, Canada

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

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

<http://www.ssopfund.gc.ca>

Ship-source Oil Pollution Fund

The Administrator's Annual Report

2009 – 2010

Canada

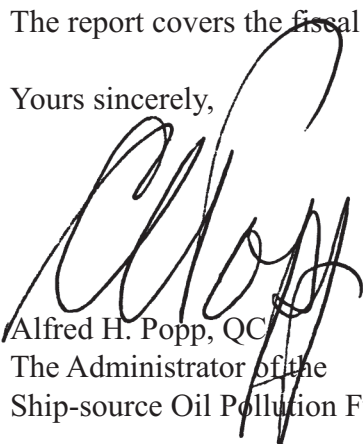
The Honourable John Baird, P.C., M.P.
Minister of Transport, Infrastructure and Communities
Ottawa, Ontario
K1A 0N5

Dear Mr. Baird:

Pursuant to Section 121 of the *Marine Liability Act* (MLA), I have the honour of presenting to you the Annual Report for the Ship-source Oil Pollution Fund to be laid before each House of Parliament.

The report covers the fiscal year ending March 31, 2010.

Yours sincerely,



Alfred H. Popp, QC
The Administrator of the
Ship-source Oil Pollution Fund

Contents

Abbreviations	i
Summary	iii
1. The Canadian Compensation Regime	1
SOPF: A Fund of Last Resort	2
SOPF: A Fund of First Resort	3
Amendments to the Canadian Compensation Regime	3
Impact of the Amendments to the MLA on the Governance of the SOPF	4
Figure 1: Current Limits of Liability and Compensation for Oil Tankers Spills in Canada	5
Figure 2: Canadian Contributions to the International Funds	6
2. Canadian Oil Spill Incidents	9
2.1 Mystery Oil Spill, Port Cartier (2000)	9
2.2 Lavallee II (2002)	10
2.3 Anscomb (2004)	11
2.4 Sea Shepherd II (2004)	12
2.5 Sea Sprite (2005)	13
2.6 Extasia 1 (2005)	14
2.7 Saxony (2006)	14
2.8 SCL Bern (2006)	15
2.9 Wishing Star (2006)	15
2.10 Robertson II (2007)	16
2.11 Robson Bight (2007)	17
2.12 Robson Bight (2007)	18
2.13 Ambassador (2007)	18
2.14 Grande Baie Remorqueur (2007)	19
2.15 Stephanie & Darrel (2007)	19
2.16 Royal Hamilton Yacht Club Oil Spill (2008)	20
2.17 Tug Winamac (2008)	21
2.18 MLJet (2008)	21
2.19 Gala Babe II (2008)	22
2.20 Farley Mowat (2008)	22
2.21 King Darwin (2008)	23
2.22 Columbia (2008)	24
2.23 Mystery Oil Spill, Thunder Bay (2008)	25
2.24 Mystery Oil Spill, Thunder Bay (2008)	26
2.25 Delta I (2008)	26
2.26 Ganges I (2008)	27
2.27 May's Landing (2008)	28
2.28 Patricia Louise (2008)	29
2.29 Saxon Viking (2008)	29
2.30 La Lumiere (2008)	30
2.31 Steveston II (2008)	31
2.32 Island Ranger (2008)	31
2.33 Sailboat, Toronto Harbour (2009)	32
2.34 Mystery Oil Spill, Burrard Inlet (2009)	32
2.35 Sea Wing II (2009)	33
2.36 Meota (2009)	34
2.37 Just Magic (2009)	34

2.38	Hey Dad (2009)	35
2.39	Camino Real (2009)	35
2.40	Mystery Oil Spill, Parry Sound (2009)	36
2.41	Mystery Oil Spill, Hamilton Harbour (2010)	36
3.	Challenges and Opportunities	37
4.	Outreach Initiatives	39
4.1	Annual Conference of the Shipping Federation of Canada	39
4.2	McGill Lectures	39
4.3	Canadian Maritime Law Association	39
4.4	Canadian Marine Advisory Council (National)	39
4.5	Canadian Marine Advisory Council (Northern)	42
4.6	Arctic Marine Oil Spill Program	43
4.7	Canadian Coast Guard Equipment Facilities	44
4.8	Canada-U.S. Oil Spill Finance Workshop	44
4.9	Derelict and Abandoned Vessels	45
4.10	Visit to China	45
4.11	Visit of the Delegation from the China Academy of Transportation Science and Institutes of the Ministry of Transportation	46
4.12	Regional Environmental Emergency Team Conference	46
4.13	On-Scene Commander Course	47
4.14	Meeting with the Commissioner of the Canadian Coast Guard	47
5.	SOPF Involvement in the International Compensation Regime	49
5.1	1992 IOPC Fund Meetings	49
5.2	Meetings held in London – June 15 to 18, 2009	49
5.3	Meetings held in London – October 12 to 16, 2009	50
6.	Financial Statements	53

Abbreviations

ATIP	Access to Information Act
CCG	Canadian Coast Guard
CLC	Civil Liability Convention
CMAC	Canadian Marine Advisory Council
CMQC	Compagnie minière Québec Cartier
CMLA	Canadian Maritime Law Association
CPA	Canada Port Authority
CSA	Canada Shipping Act
CWS	Canadian Wildlife Service
DFO	Department of Fisheries and Oceans
EC	European Commission
ECRC	Eastern Canada Response Corporation
ER	Emergency Response
EPA	Environmental Protection Agency
EU	European Union
FV	Fishing Vessel
GT	Gross Tonnage
HNS	Hazardous and Noxious Substances
IMO	International Maritime Organization
IOPC	International Oil Pollution Compensation Fund
ITOPF	International Tanker Owners Pollution Federation
LOU	Letter of Undertaking
MARPOL	Marine Pollution
MCTS	Marine Communication Traffic Services
MLA	Marine Liability Act
MOU	Memorandum of Understanding
MPCF	Maritime Pollution Claims Fund
MT	Motor Tanker
MV	Motor Vessel
NASP	National Aerial Surveillance Program
NLEA	Newfoundland and Labrador Environmental Association
NTCL	Northern Transportation Company Limited
PC	Pleasure Craft
P&I Club	Protection and Indemnity (Marine Insurance) Association
REET	Regional Environmental Emergency Team
RO	Response Organization
SDR	Special Drawing Rights*
SITREP	Situation Report
SIMEC	Société d'Intervention Maritime, Est du Canada
SOPF	Ship-source Oil Pollution Fund
STOPIA	Small Tanker Oil Pollution Indemnification Agreement
TC	Transport Canada
TCMS	Transport Canada Marine Safety
TSB	Transportation Safety Board
WCMRC	Western Canada Marine Response Corporation

* The value of the SDR at April 1, 2010, was \$1.53115. This actual value is reflected in Figure 1.

Summary

The Canadian Compensation Regime

This Annual Report on the operations of the Ship-source Oil Pollution Fund (SOPF) covers the fiscal year ending March 31, 2010. Section 1 describes the Canadian compensation regime, which since January 2, 2010, is governed by Chapter 21 of the Statutes of Canada, 2009- the amended *Marine Liability Act*. Canada's national fund covers all classes of ships that discharge persistent and non-persistent oil, including oil from unknown sources commonly referred to as "mystery spills". Canada is also a contracting state to the International Oil Pollution Compensation Funds (1992 IOPC Fund) and the 2003 Supplementary Fund. These funds mutualize the risk of persistent oil discharged from sea-going tankers. The current limits of liability and compensation available in Canada, including the territorial sea and the exclusive economic zone, under the 1992 Civil Liability Convention (CLC), the 1992 IOPC Fund and the 2003 Supplementary Fund Protocol are illustrated in Figure 1.

On January 29, 2009, the Minister of Transport tabled a bill in the House of Commons containing amendments to the *Marine Liability Act*. On June 23, 2009, Bill C-7 received Royal Assent and has become Chapter 21 of the Statutes of Canada, 2009. The provisions of Chapter 21 entered into force on January 2, 2010. In addition to containing important provisions governing the operations of the SOPF, these provisions implement two international instruments, which have been ratified by Canada as of October 2, 2009. These two instruments are the International Convention on Civil Liability for Bunker Oil Pollution Damage (2001 Bunker Convention) and the Protocol of 2003 to the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage (2003 Supplementary Fund Protocol). As mentioned above, Section 1 of this Annual Report refers.

Financial Section

The financial statements of the SOPF for the fiscal year were examined by independent auditors – section 6 refers. During the year, twelve Canadian claims were settled and paid for a total amount of \$197,392.66 including interest. The Administrator recovered \$157,597.73 from third parties liable respecting payments made out of the SOPF. No contributions were made to the 1992 IOPC Fund for incidents outside of Canada in this fiscal year.

During the fiscal year commencing April 1, 2010, the maximum liability of the Fund is \$155,318,424 for all claims from one oil spill. As of April 1, 2010, the Minister of Transport has the statutory power to impose a levy of 46.57 cents per metric ton of "contributing oil" imported by ship into or shipped from a place in Canada in bulk as cargo. The levy is indexed to the consumer price index annually. No levy has been imposed since 1976.

As at March 31, 2010, the accumulated surplus in the SOPF was \$386,238,190.

Canadian Oil Spill Incidents

The Administrator received reports of oil pollution incidents from different sources such as the Canadian Coast Guard, the Department of the Environment and the Transportation Safety Board Agency. Moreover, enquiries were occasionally made by representatives from provincial and municipal governments, as well as private citizens about whether they are entitled to compensation under the *Marine Liability Act* for oil pollution damage and the resulting clean-up costs and expenses.

Many of the incidents that are reported to the Administrator did not result in claims against the SOPF. These occurrences were usually dealt with satisfactorily at the local level, including acceptance of financial responsibility by the shipowner's insurers. In those cases there was no need for an investigation by the SOPF.

The oil spill incidents described in section 2 indicate the status of oil pollution claims that were assessed and settled during the fiscal year. This section includes claims that are in various stages of advancement. The Administrator dealt with 56 active incident files during the year. Of these, 41 are reported. The current status of recovery action by the Administrator against shipowners is also noted in the oil spill incident section. During the fiscal year, 12 new claims were received in the aggregate amount of \$3,127,832.40. Investigations are underway, but not all of them were completed by March 31, 2010.

Challenges and Opportunities

During the year the Administrator dealt with a number of new administrative challenges resulting from government policies to promote greater transparency. These administrative requirements have significantly increased the workload of the Ship-source Oil Pollution Fund. This increased workload had to be accomplished in addition to the core work of the SOPF of investigation and settlement of claims. Section 3 addresses several of these challenges such as:

- Planning the move of SOPF offices to 180 Kent Street with the assistance of Public Works and Government Services Canada and Transport Canada;
- Negotiating with Transport Canada for the acquisition of a common government application that will systematically monitor SOPF file retirement and retention periods, and manage time limitation periods for the processing of claims;
- Adopting new human resources practices at the SOPF to address the growing need for stability at the administrative support level and safeguard business continuity of the Fund;
- Working with Transport Canada on a Memorandum of Understanding to clarify the role and responsibilities of the SOPF and the department, and officially include all the services that Transport Canada extends to the SOPF;
- Exploring venues on exchange of information and mutual cooperation with various networks of small federal agencies and departments;
- Performing of an in-depth study of the SOPF's history on contributors and contributing oil reporting and;
- Reorganizing the operations of the SOPF to reflect the new changes to the *Marine Liability Act*.

Outreach Initiatives

The Administrator continues with outreach initiatives aimed at raising awareness of the existence of the Ship-source Oil Pollution Fund and its availability to provide compensation for oil pollution caused by ships. This outreach provides an opportunity for the Administrator to further his personal understanding of the perspectives of individual claimants, shipowners, clean-up contractors and other stakeholders who respond to an oil spill incident and, as a result, file a claim for compensation from the Fund. In the fiscal year covered by this report, it is noteworthy that the outreach initiatives have included a number of international visits. There is growing interest in the operation of the Canadian domestic fund, notable in the Republic of Korea, China, Japan and, lately, in the Russian Federation. Outreach initiatives are addressed in section 4 and include:

- Attendance of both the Administrator and a marine consultant working for the SOPF at sessions of the Canadian Marine Advisory Council's semi-annual national conferences in Ottawa;

- Participation in meetings of the Canadian Maritime Law Association and government officials held in Ottawa;
- The Administrator's participation in discussions with the Commissioner of the Canadian Coast Guard and senior staff about the handling of claims filed by Coast Guard;
- Representation of a marine consultant, on behalf of the SOPF, at the Marine Advisory Council, Northern CMAC, meetings held in Quebec City and in Yellowknife, Northwest Territories;
- The Administrator's attendance to the Annual Conference of the Shipping Federation of Canada in Montreal;
- Guest lectures from the Administrator to law students of McGill University Law School on the operations of the Ship-source Oil Pollution Fund;
- Representation of a marine consultant on behalf of the SOPF at the 36th Atlantic Regional Environmental Emergency Team conference held in Moncton, New Brunswick;
- Participation of the Administrator in an On-Scene Commander Course at the Canadian Coast Guard College for information on the response to a significant oil spill incident;
- Attendance from a SOPF-engaged marine consultant at the Canadian Coast Guard's marine environment equipment storage depot in Richmond, British Columbia;
- Attendance of the Administrator, along with representatives of the U.S. Oil Spill Liability Trust Fund and members of the United States Coast Guard and the Canadian Coast Guard, to the Canada-United States Oil Spill Finance Workshop held in Seattle, Washington;
- The Administrator's attendance at a meeting in Beijing with the China Academy of Transportation Sciences for the purpose of explaining the operations of the SOPF;
- Presentation of a paper from the Administrator on the operations of the Fund at the Shanghai International Maritime Forum and;
- The Administrator and Transport Canada co-hosting a Chinese delegation from the China Academy of Transportation Sciences visiting Canada to study Canada's domestic fund.

The International Compensation Regime

Section 5 of this Annual Report focuses on the Administrator's involvement during the year in the International Compensation Regime. The Administrator participated, as a member of the Canadian delegation, in a number of meetings of the governing bodies and working groups of the 1992 IOPC Fund, the 1971 IOPC Fund and the Supplementary Fund, including:

- The Administrative Council and Executive Committee meetings held in London from June 15 to 18, 2009, and;
- The Fund Assembly, the Executive Committee and Administrative Council meetings held in London from October 12 to 16, 2009.

Section 5 of this Annual Report highlights some of the agenda items discussed at the IOPC Fund meetings. The Administrator is interested in different aspects of the IOPC Funds, namely, claims handling and budget. Furthermore, the Administrator deems it desirable to keep a close eye on claim policies of the IOPC Fund. Active participation at the meetings ensures that the SOPF claim policies and practices are as closely aligned as possible with those of the IOPC Fund.

1. The Canadian Compensation Regime

The SOPF was established under amendments to the former *Canada Shipping Act (CSA)* that came into force on April 24, 1989. 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, which superseded the above mentioned amendment to the CSA. As noted in the last Annual Report, on January 29, 2009, the Minister of Transport tabled a bill in the House of Commons containing amendments to the MLA (Bill C-7). On June 23, 2009, the Bill received Royal Assent and has become Chapter 21 of the Statutes of Canada, 2009. The amendments contain a rewrite of Part 6 of the MLA and will be dealt with in greater detail below.

The SOPF is a special account established in the accounts of Canada upon which interest is credited monthly by the Minister of Finance. Pursuant to the pertinent provisions of the MLA, the Minister of Transport has the statutory power to impose a levy on each metric ton of contributing oil imported into or shipped from Canada in bulk as cargo on a ship. The levy is indexed annually to the consumer price index, most recently to the amount of 46.57 cents per metric ton. A levy of 15 cents was imposed from February 15, 1972, to 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. No levy has been imposed since it was suspended in 1976.

The provisions contained in Chapter 21, mentioned above, entered into force on January 2, 2010. In addition to containing important provisions governing the operation of the SOPF, the provisions implement two international instruments, which have been ratified by Canada as of October 2, 2009, namely, the International Convention on Civil Liability for Bunker Oil Pollution Damage, 2001 (Bunkers Convention) and the Protocol of 2003 to the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 2003, (Supplementary Fund Protocol). The Bunkers Convention, as the name suggests, provides international rules governing bunkers spills. While Canada has had a statutory bunkers regime since the early 1970s, implementation of the international rules in Canada bring with them the additional advantage of the requirement that all ships having a gross tonnage greater than 1,000 must maintain insurance or other financial security that allows claimants for oil pollution caused by such ships to go directly against the insurer or other person providing financial security. This feature could be of significant benefit to the SOPF in recourse actions, since most of the claims handled by the Fund are in respect of non-tanker spills.

The Supplementary Fund Protocol sets up the International Oil Pollution Compensation Supplementary Fund (Supplementary Fund), which provides compensation for tanker spills on top of what is currently provided by the 1992 IOPC Fund. Canadian participation in the Supplementary Fund provides additional protection for the SOPF in case of tanker spills that cause pollution damage in Canada or in waters under Canadian jurisdiction.

Subject to the terms and conditions of the governing legislation, the SOPF is available 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 pays established claims regarding oil spills from all classes of ships. It is not limited for purposes of compensation, to spills from sea-going tankers or persistent oil, as is the 1992 IOPC Fund.

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

Ship-source Oil Pollution Fund

During the fiscal year commencing April 1, 2010, the maximum liability of the SOPF is \$155,318,424 for all claims from one oil spill. This amount is indexed annually. The classes of claims for which the SOPF may be available 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, known as mystery spills.

A widely defined class of persons in the Canadian fishing industry may claim for loss of income caused by an oil spill from a ship. The present statutory claims regime of Part 6 of the MLA, is based on the principle that the polluter should pay. It has as its four cornerstones the following elements:

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 submitted to the SOPF must be investigated by an independent authority (the Administrator).

The SOPF is both a fund of last resort, i.e., it pays claims to the extent claimants have been unable to obtain full payment of their claims from the shipowner or any other party, and a fund of first resort, i.e., claimants may file their claims directly with the SOPF who take over the task of recovering compensation from the polluter or other responsible party.

SOPF: A Fund of Last Resort

The Canadian compensation regime is based on the fundamental principle that the shipowner is primarily liable for oil pollution caused by the ship. Accordingly, the MLA makes the shipowner strictly liable for oil pollution damage caused by the 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. In the case of tanker spills, the strict liability regime is governed by the 1992 Civil Liability Convention (CLC), given the force of law in Canada by section 48 of the MLA. In the case of bunker oil spills, the liability regime is governed by the Bunkers Convention, given the force of law in Canada by section 69 of the MLA. Oil spills not covered by either of these conventions are governed by the liability regime set out in section 76 of the MLA.

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 Canadian courts commenced by a claimant against a shipowner, its guarantor, or the IOPC Funds (see section 109 of the MLA). In such event, the extent of the SOPF's liability as a last resort is stipulated in section 101 of the 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 103 of the 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. As previously stated, an RO, established under the CSA, has no direct claim against the SOPF.

The Administrator, as an independent authority, has the duty to investigate and assess claims filed with the SOPF. For these purposes, the Administrator has the powers of a commissioner under Part I of the *Inquiries Act*, which includes the power to summon witnesses, to require them to give evidence under oath and to obtain documents.

The Administrator may either make an offer of compensation or decline the claim to the extent that it has not been established. The only recourse of an unsatisfied claimant against a final determination of the Administrator is by way of appeal to the Federal Court of Canada, which must be made within 60 days after notification of the Administrator's decision.

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 *in rem* can only be continued after the Administrator has paid the claim and has become subrogated to the rights of the claimant (see section 102 of the MLA).

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

It is worth noting that all claims that arise under the MLA must be made within the established time limits. Those time limits are prescribed either by the international convention that governs the claim or by the time limits set out in the Act (see subsection 77(6)). Particularly important to note is that shorter time limits are prescribed by the Act in those instances where the claimant elects to file the claim with the Administrator (first resort)(see subsection 103(2)). The purpose of shorter time limits is to enable the Administrator to pursue the claim within the required time limits where the claim has been established and has been paid out of the SOPF.

Impact of the Amendments to the MLA on Claims Handling

It is not anticipated that the amendments to the MLA, contained in Chapter 21 of the Statutes of Canada, 2009, will have any significant impact on the claims handling procedures that have been developed by the SOPF over the years. Both the last and first resort functions of the Fund have been preserved under the amendments, as well as the power of arrest of ships and the powers of the Administrator, in the investigation of claims, to exercise the powers of a commissioner under Part I of the *Inquiries Act*. However, the actual assessment of claims will be done, where appropriate, on the basis of the terms of the relevant conventions to which Canada subscribes. Those conventions have been added to the Act by means of schedules. The assessment of claims by direct reference to the pertinent conventions will benefit international uniformity in the application of those conventions and avoid ambiguities that might arise where claims assessment is based on statutory provisions paraphrasing those conventions rather than the terms of the conventions themselves.

Impact of the Amendments to the MLA on Governance of the SOPF

The amendments to the MLA in Chapter 21 contain a number of provisions which will improve the governance of the SOPF. Although the Fund over the years has established, with the assistance of Transport Canada, proper accounting practices and procedures, this was a matter of practice rather than a matter of statutory obligation. Under the amendments this practice now becomes a statutory requirement (see section 120 of the Act). Further, while it has been the practice of the SOPF over the last two years to include in its Annual Report financial statements of the Fund and an auditor's report, this requirement has now become a matter of law (see section 121 of the Act). Last but not least, in keeping with government wide practices under the *Financial Administration Act*, the Administrator will be required, at least once every five years, to cause a special examination to be carried out in respect of the control and information systems and management practices maintained by the SOPF.

It is the Administrator's view that these obligations, as well as the obligations flowing from the government's decision a few years ago to make the SOPF subject to the *Access to Information Act* and the *Privacy Act*, give rise to the questions whether the current staffing practices of the Fund are appropriate. Presently, the Administrator relies on his authority under the Act to obtain whatever professional, technical and other advice that he considers necessary to perform his duties (see sections 81 of the Act before amendment, section 100 of the Act after amendment). The question is whether this is an adequate tool for staffing the Fund, given its transformation and the need for continuity. The Administrator hopes to explore this matter further with officials of Transport Canada.

Notes:

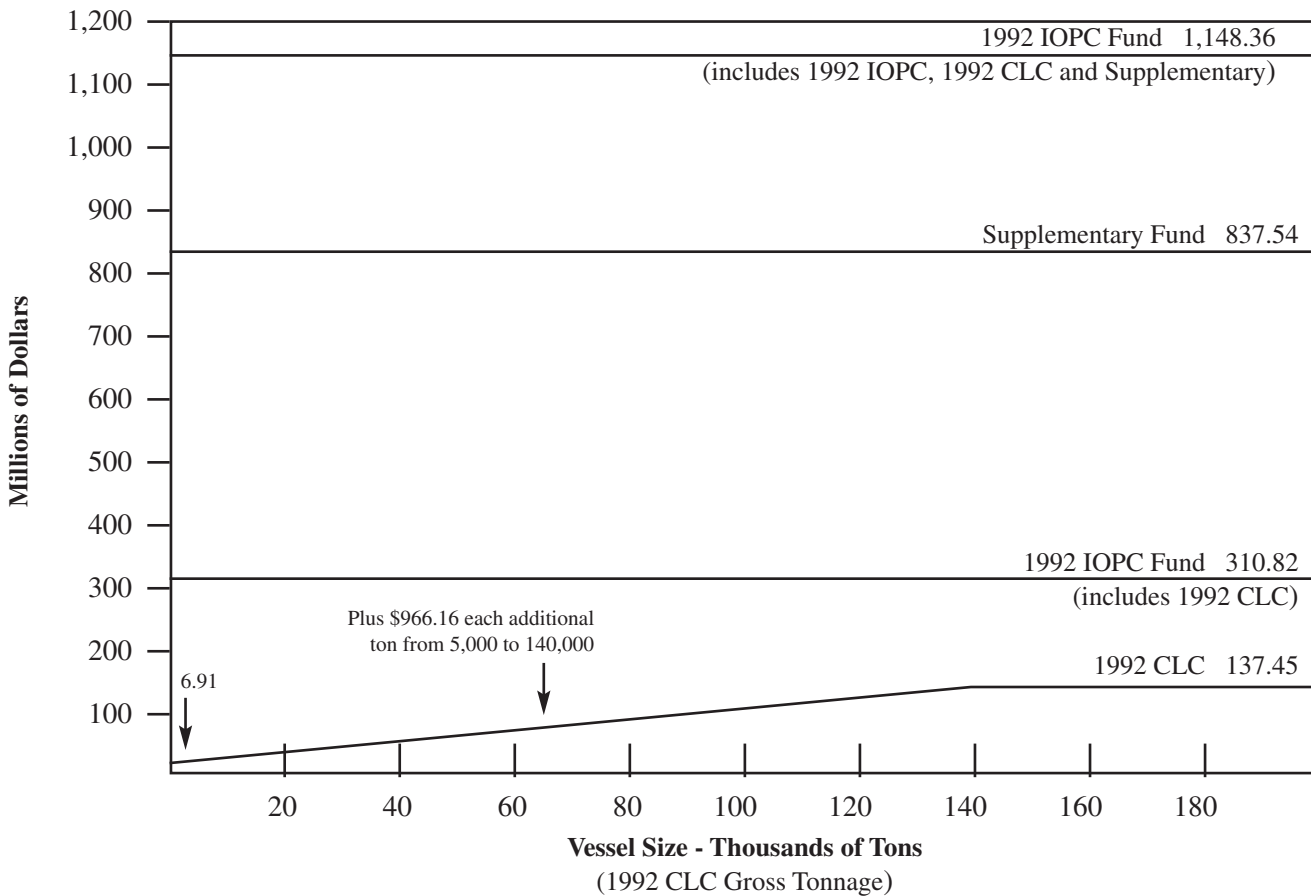
- (1) For information on Canada's and the SOPF's involvement in the International Funds, and the voluntary agreements STOPIA and TOPIA, see section 5 herein and the Administrator's Annual Report 2006-2007 at Appendix A.
- (2) Figure 1 illustrates the current limits of liability and compensation for oil tanker spills in Canada.
- (3) Figure 2 shows the Canadian contributions to the International Funds since 1989.

Figure 1

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

Based on the value of the SDR ⁽¹⁾ at April 1, 2010

International Fund (IOPC)	\$1,148,362,500
Total Domestic Fund (SOPF)	\$155,318,424
Total Available to Canada	\$1,303,680,924



(1) The value of the SDR at April 1, 2010, was approximately \$1.53115. This actual value is reflected in Figure 1 above.

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. – 1703 October 2003. Canada has extra cover over and above that available under the international conventions, because of the SOPF.

N.B. The above aggregate amount available under the 1992 CLC, the 1992 IOPC Fund and the Supplementary Fund is \$1,148.36 million effective November 1, 2003. The SOPF amount of some \$155.32 million on top of that results in \$1,303.68 million being available now for a tanker spill in Canada.

Figure 2

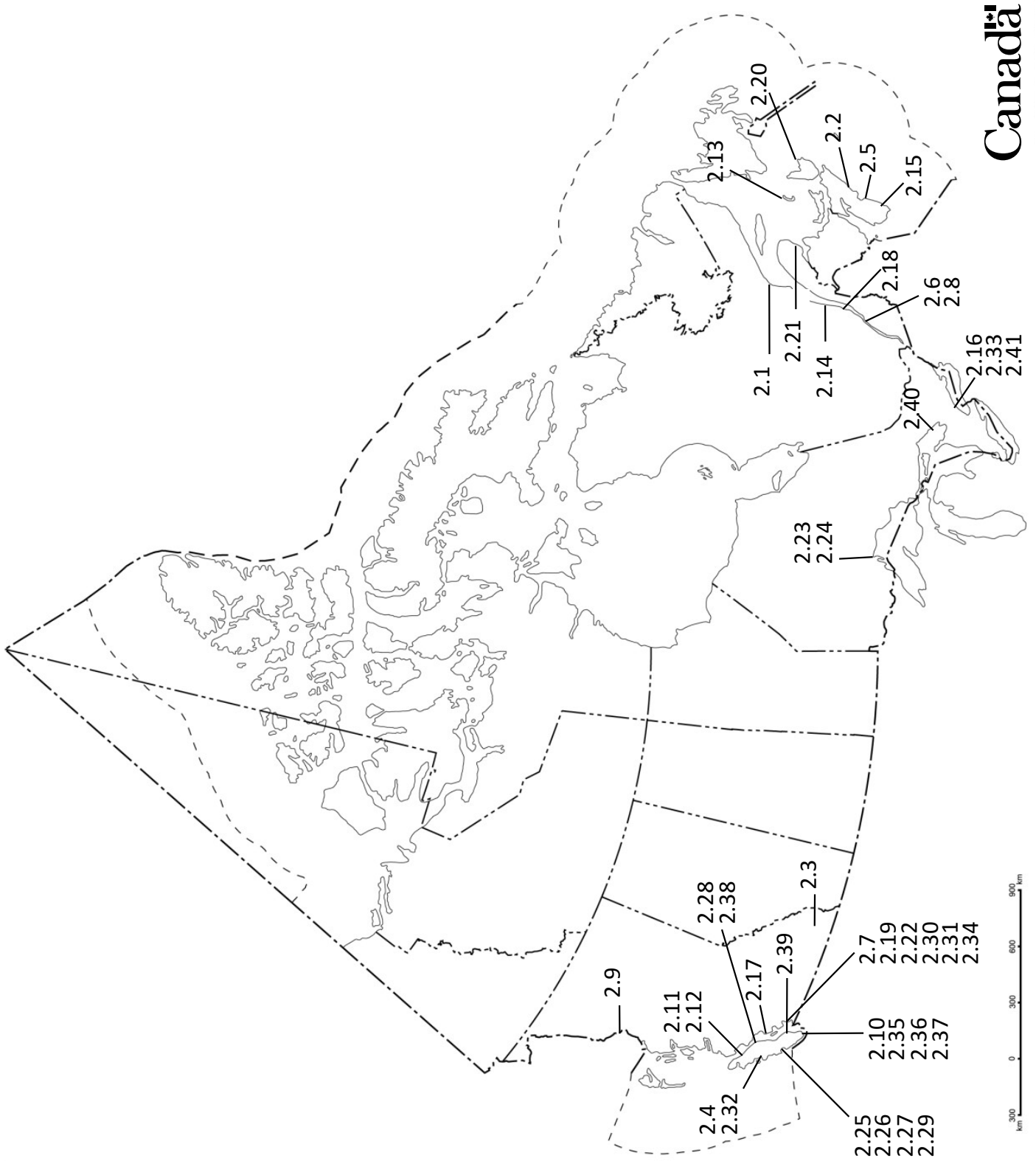
**Canadian Contributions to
the International Funds**

Since 1989, the SOPF has paid the IOPC Funds approximately \$47 million, as listed in the table below.

This listing illustrates 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	-
2006/07	360,233.37
2007/08	106,305.06
2008/09	5,161,013.63
2009/10	-
Total	47,260,878.26

Note: There was no call for Canadian contributions to the International Funds during the fiscal years 2005-2006 and 2009-2010.



Canada

2. Canadian Oil Spill Incidents

The Administrator receives many reports of oil pollution incidents from a variety of sources. These include individuals who wish to be advised if they are entitled to compensation under the *Marine Liability Act*, for costs and expenses incurred in the clean-up of oil pollution. The Administrator responds to all enquiries about compensation entitlement and investigates all claims resulting from oil pollution that are submitted to him. The Administrator is aware that many more oil pollution incidents are reported nationally, but most of them are minor oil sheens. Others involve greater quantities of oil but are not brought to the attention of the Administrator because they have been satisfactorily dealt with at the local level. A large number of ship-source oil pollution incidents are dealt with by the shipowner through contract arrangements with the applicable Canadian response organization.

During the current fiscal year, the Administrator handled 56 incident files. Of these, 41 are reported on in this section. They involve either claims filed with the Fund, or those for which some action may have been initiated to ensure that the SOPF's interests are properly protected. Some 12 new claims were received during the fiscal year in the aggregate amount of \$3,127,832.40. Investigations are underway but all of them were not completed by the end of the fiscal year.

Location of incidents is indicated on the map opposite.

2.1 Mystery Oil Spill, Port Cartier (2000)

On May 12, 2000, the Canadian Coast Guard (CCG) issued a situation report advising that oil pollution was found on the water between the Greek flag 81,120 gross ton bulk carrier *Anangel Splendour*, and the wharf at Port Cartier, Quebec.

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. Transport Canada Marine Safety (TCMS) took oil samples. The oil resembled fuel oil and the quantity spilled was estimated at approximately 900 litres.

CMQC obtained a Letter of Undertaking (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 management of *Anangel Splendour* denied that the ship was the source of the oil spill. The ship sailed on May 15, 2000.

On January 31, 2001, the Administrator received a claim in the amount of \$4,076.08 from the CCG to recover on-site monitoring costs and expenses.

On April 30, 2001, the Administrator received a claim in the amount of \$249,137.31 from counsel for CMQC, which was submitted on behalf of the port company for costs and expenses incurred by them when cleaning-up the oil spill. 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.

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 a ship did not cause the occurrence.

Accordingly, settlements were made with CMQC in the amount of \$242,427.45 together with in-

Ship-source Oil Pollution Fund

terest 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.

At the close of the last fiscal year, the Administrator was continuing recovery action against the ship *Anangel Splendour* and its owners. A trial date was set for November 2, 2009, in Montreal. Active preparations were undertaken to prepare the Fund's case against the shipowner. However, before the trial date, the parties arrived at a settlement agreement. As a result, the claim was amicably settled for \$150,000 without admission of liability on the part of the defendant shipowners. In the Administrator's judgement, the settlement amount was reasonable, taking into account the costs of trial and the inherent risk of litigation. On October 1, 2009, a cheque in the amount of \$150,000 was received payable to the Receiver General for Canada and credited to the Ship-source Oil Pollution Fund. Accordingly, on October 1, 2009, the Administrator closed the file.

Note: Details of the action are included in the Administrator's Annual Report 2006-2007 at section 3.1.

2.2 Lavallee II (2002)

The *Lavallee II* was built in 1942 as an American wooden minesweeper, but was later equipped as a fishing vessel. At the time of the incident, it was on a beach at Ecum Secum, Nova Scotia, where it had been for the previous 18 months. On March 8, 2002, it was reported that oil was being released from the vessel into the harbour. The Canadian Coast Guard (CCG) responded on the same day and absorbent boom was deployed. It was found that the engineless engine room was flooded. The harbour, in season, houses live lobster in cages and supports a rockweed harvest.

The CCG employed contractors to remove the 10,000 litres of diesel from a fuel tank inside the vessel. A surveyor, employed by the CCG, concluded that the vessel had no value. It was proposed that the most economic solution to the 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. All interested parties at the federal and provincial level, and the SOPF, were invited to comment on the document. 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. Quotes were received on the bid by the 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 technical 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.

On January 28, 2003, the Administrator received a claim from the CCG for their costs and expenses in the amount of \$213,053.94.

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.

The Administrator commenced a recovery action in the Supreme Court of Nova Scotia on February 11, 2005, pursuant to *Marine Liability Act* subsection 87(3).

Recovery action resulted in negotiated settlements with the two defendants. The first defendant agreed to pay \$1,000.00 and the second \$7,500.00. The Administrator received payment of \$1,000.00 on January 3, 2007, from the first defendant. A final Release and Indemnity Agreement was executed between the Administrator and the first defendant. The second defendant failed to make the required payment of \$7,500.00 by the due date of June 30, 2007, and also failed to sign the settlement agreement.

On April 8, 2008, the Administrator received a cheque from the second defendant, payable to the Receiver General of Canada, in the amount of \$3,100.00 representing the first installment of the \$7,500.00 settlement. The balance of \$4,400.00 was to be paid no later than May 1, 2008, failing which the Administrator would be in a position to enter judgment against the defendant.

On May 23, 2008, pursuant to the Administrator's instructions, counsel registered a Certificate of Judgment against the defendant in both the Land Registry and Personal Security Registry in Nova Scotia. The registration of judgment will expire on September 15, 2013.

Meanwhile, the file remains open and will be brought forward closer to the expiry date of the registration of the judgement.

2.3 Anscomb (2004)

The vessel *Anscomb* served as a provincially owned ferry on Kootenay Lake, British Columbia, until April 2003, when it was sold to a private operator.

On January 11, 2004, the vessel sank in 120 to 170 feet of water with resulting oil pollution. The Provincial Ministry of Water, Air and Land Protection (WLAP) assumed lead agency status, provided the initial clean-up procedures and hired a contractor. Work was done on cleaning up oil surfacing from the sunken vessel, and recovering contaminated debris including shoreline clean-up.

On January 23, 2004, the Canadian Coast Guard (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. 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, 2004, because there was no recoverable oil at the site.

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

On March 25, 2004, the Provincial WLAP made a claim of \$23,024.54 for costs and expenses associated with the initial incident response. This was assessed and an offer of settlement was made and accepted on April 26, 2004. Payment of \$22,524.54 plus interest of \$250.09 was authorized.

On September 28, 2004, pursuant to *Marine Liability Act* 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, 2004, as a sister ship of the *Anscomb*. The arrest took place on Kootenay Lake, near the city of Nelson, British Columbia.

Ship-source Oil Pollution Fund

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 discuss possible settlement.

The total amount paid by the Fund for both claims was approximately \$47,000.00. On December 7, 2005, a settlement agreement was reached with the shipowner for the amount of \$40,000.00. Under the terms of the agreement an initial sum of \$3,500.00 was to be paid and the balance by way of monthly payments of \$500.00. Subsequently, payments were made at irregular intervals for a total amount of \$6,500.00. The last payment received was on November 21, 2007.

On December 21, 2009, the Administrator instructed counsel to investigate whether reasonable measure could be taken to collect the amount outstanding on the December 7, 2005, settlement agreement. Counsel engaged the services of CPA International Investigations Inc. On the basis of the investigations and advice of counsel it is the Administrator's opinion that all reasonable measures have been taken to recover the outstanding amount from the owner of the ship but with no reasonable prospect of success. Accordingly, on March 10, 2010, the Administrator closed the file.

2.4 Sea Shepherd II (2004)

In April 2004, the Canadian Coast Guard (CCG) received a number of reports 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, Transport Canada Marine Safety (TCMS), and provincial authorities attended on-scene to investigate. It was concluded that the vessel's condition made it a threat to the marine environment. The ownership of the vessel could not be determined, so no assistance was forthcoming from that quarter. A Response Order under the *Canada Shipping Act* section 678 was issued on April 26, 2004, by the Commissioner of the CCG.

The Administrator engaged local legal counsel and a marine surveyor. The surveyor attended on-board 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 fuel were pumped off the *Sea Shepherd II*, but some 16 gallons per hour of seawater were 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. On July 30, 2004, the break-up of the vessel was completed.

On November 22, 2004, the Administrator received the CCG's claim filed with the SOPF for its costs and expenses totalling \$515,333.70. On December 13 and 14, 2004, the Administrator sought further information and materials from the CCG. On February 23, 2005, the CCG provided the Administrator with some of the information requested.

On March 3, 2005, the Administrator advised the CCG that he found only \$331,892.31 of the claim established and offered compensation in that amount plus interest. He explained that 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 *Marine Liability Act* section 86, due to lack of specific receipts and other supporting evidence.

On March 3, 2005, the CCG accepted the Administrator's offer of \$331,892.31 plus interest and the Administrator then directed payment to Department of Fisheries and Oceans/CCG of \$331,892.31 plus \$9,810.24 interest.

On February 13, 2008, CCG advised that additional information to support the remaining parts of the claim would be provided to the Administrator in the near future.

On August 13, 2008, the Administrator reminded CCG that the documentation requested earlier had not yet been forthcoming. The CCG was advised that it had 30 days to provide further evidence for the portion of the claim not established, that is, the amount of \$170,000.00 indicated in the fixed-price contract dated May 20, 2004 for contracted services. The Administrator explained that, because of the limitation period specified in the MLA he was anxious to commence proceedings toward cost recovery action against a party that may be responsible for the costs and expenses that were incurred in the incident.

On September 9, 2008, CCG advised that, in order to respond to the Administrator's request for additional documentation, it had made repeated requests to the contractor for invoices and more detail about the work actually completed. With its letter, the CCG enclosed a copy of a response it had received from the contractor dated March 21, 2005. The Administrator assessed this new material and considered that the limited information, which was given to CCG by the contractor some two and a half years before, did not fully substantiate or prove that all of the expenses in question under the fixed-price contract were actually incurred. Consequently, the Administrator considered that the limited amount of new documentary evidence provided did not fully establish that all the measures taken, or that all of the expenses claimed were fair and reasonable in the circumstances prevailing. The Administrator did, however, accept that some reasonable measures had been taken under the fixed-price contract to prevent a discharge of oil from the ship. Therefore, on September 30, 2008, the Administrator informed CCG that, as result of his ongoing assessment, he was prepared to make a final global offer in the amount of \$100,000.00 inclusive of interest to settle the claim.

On October 21, 2008, the CCG, on behalf of the Minister of Fisheries and Oceans, accepted the offer of \$100,000.00 inclusive of interest. The Administrator instructed counsel to investigate whether there were reasonable measures that could be taken to recover the amount paid to DFO/CCG pursuant to the MLA subsection 87(3). On November 18, 2008, a Statement of Claim was served on the defendant who filed a statement of defence which essentially says he was the owner of the vessel for a short period of time in 1992 and then sold the vessel to an individual who sold it to someone else prior to the incident.

On the basis of the investigation and recommendation of counsel, the Administrator concluded that all reasonable measures to recover the costs and expenses have been taken and that there were no reasonable prospects of success. The Administrator has, therefore, closed the file.

2.5 Sea Sprite (2005)

On April 19, 2005, the pleasure craft *Sea Sprite* was reported in danger of sinking at Wright's Cove, Dartmouth, Nova Scotia. Canadian Coast Guard (CCG) Emergency Response *Dartmouth* responded to have the vessel pumped out. On April 25, 2005, the vessel burned to the waterline and sank.

On November 10, 2005, Department of Fisheries and Oceans (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.

The Administrator instructed counsel to review the feasibility of undertaking cost recovery action pursuant to *Marine Liability Act* subsection 87(3). Counsel advised that it was impossible to locate the owner. Given the amount involved, the Administrator considered the cost of further investigations not reasonable and decided to close the file.

2.6 Extasia I (2005)

In the early morning of August 28, 2005, at Ste-Anne de Bellevue, Quebec, the community firefighters reported to Environment Canada that the pleasure craft *Extasia I* had pumped diesel oil into the water near the Sainte-Anne lock. The oil slick extended over an area of approximately 20 feet by 3 feet. It spread throughout aquatic plants and under the public wharf. The firefighters attempted to discuss clean-up action with the owner, but the owner did not want to be disturbed and indicated non-responsibility for the spill.

An Environment Canada employee arrived on-scene and then notified the Canadian Coast Guard (CCG) of the incident. CCG engaged a commercial contractor in Montreal, Urgence Marine Inc., to respond and clean-up the spill. Arrangements were also made for a Transport Canada Marine Safety Inspector to talk to the owner and take oil samples. By noon the Urgence Marine Inc. finished the clean-up operation. Three 45-gallon drums of oily waste were collected and later disposed of by the contractor.

On June 30, 2006, the Administrator received a claim from Department of Fisheries and Oceans (DFO)/CCG in the amount of \$7,597.73 for costs and expenses incurred with respect to the incident. The Administrator investigated and assessed the claim. The claim was established at \$7,153.87. On August 31, 2006, payment of \$7,530.77 including interest was authorized.

The Administrator reviewed the feasibility of undertaking cost recovery action pursuant to MLA, subsection 87(3). As of the end of the fiscal year 2008-2009, there were ongoing discussions with the yacht owner's insurer aimed at recovering the cost. On June 9, 2009, counsel obtained a settlement offer in the amount of \$7,597.73. A Release and Subrogation Agreement was executed with respect to the *Extasia I* incident. On July 10, 2009, a cheque in the amount of \$7,597.73 payable to the Receiver General of Canada was received. The Administrator directed that the cheque be credited to the Ship-source Oil Pollution Fund. Accordingly, on July 13, 2009, the Administrator closed the file.

2.7 Saxony (2006)

The *Saxony* was a pleasure craft, built in 1911, that sank at its mooring buoy in Mannion Bay, approximately ten miles north of Vancouver. On December 11, 2006, the Canadian Coast Guard (CCG) received reports of the sighting of a large oil sheen where the vessel sank. Upon investigation there was minimal oil pollution at the time of the occurrence, and it was determined that the sheen was unrecoverable. The owner was unknown at the time of the incident. He was later identified but attempts to contact him directly were unsuccessful.

On December 16, the CCG engaged a salvage company to raise the vessel and tow it to a location to be determined.

On December 21 and 22 salvage operations were undertaken. The CCG monitored the salvage operations throughout and stood-by to control any release of pollutants. During this period, a marine surveyor representing the owner's insurance company arrived on scene. He had been in contact with the owner and advised CCG to continue as planned. On the December 23, the *Saxony* was raised and towed to Arrow Shipyard, where it was placed on blocks ashore.

On February 9, 2008, Department of Fisheries and Oceans (DFO)/CCG filed a claim with the Administrator of the SOPF for costs and expenses in the amount of \$6,802.99, pursuant to Part 6 of the *Marine Liability Act*.

On April 8, 2008, the Administrator wrote to CCG requesting further general information and additional

documentation in support of the claim. On November 10, 2008, the CCG provided the information and material requested to advance investigation and assessment of the claim.

On January 29, 2009, the Administrator made an offer of compensation in the amount of \$6,089.96 plus interest. The offer was accepted by DFO/CCG and on February 12, 2009, the Administrator directed payment in the amount of \$6,909.60 including interest.

The Administrator reviewed the feasibility of undertaking cost recovery action pursuant to *Marine Liability Act* subsection 87(3). However, the owner cannot be found. Consequently, it is the Administrator's opinion that additional expenditure of public funds in attempts to recover the amount would not be reasonable. Accordingly, on September 3, 2009, the Administrator closed the file.

2.8 SCL Bern (2006)

On December 16, 2006, the Administrator was advised of an oil spill incident involving the dry cargo ship *SCL Bern* and the Shell Canada bunkering barge *Arca* in the Pointe-aux-Trembles anchorage, Port of Montreal. A spill of heavy fuel oil occurred during refuelling/bunkering operations. Approximately 1,000 litres of oil were released.

The response organization ECRC/SIMEC was contracted by Shell Canada, owners of the barge *Arca*, to respond to the incident. Approximately 4 to 5 kilometres of shoreline at Varennes were impacted. By December 18, some 1,500 feet of shoreline were cleaned. Further clean-up assessment of the shoreline was conducted by Environment Canada, the Quebec Ministry of the Environment and Canadian Coast Guard (CCG) Emergency Response.

A Letter of Undertaking naming the SOPF was obtained from the P&I Club, Gard, to cover any potential claim for costs and expenses incurred in the clean-up incident.

On December 15, 2008, Department of Fisheries and Oceans/CCG filed a claim with the SOPF for costs and expenses incurred during the incident in the amount of \$16,991.50.

On January 26, 2009, the Administrator requested that CCG provide additional information and documentation so that the claim assessment could be advanced.

On January 11, 2010, counsel received confirmation that the CCG had reached a settlement with the shipowner and, therefore, was withdrawing its claim filed with the Ship-source Oil Pollution Fund. As a consequence, counsel retrieved and returned the Letter of Undertaking to the P & I Club. Accordingly, on January 12, 2010, the Administrator closed the file.

2.9 Wishing Star (2006)

On July 26, 2006, the Marine Communication Traffic Service in Prince Rupert was informed that the charter fishing vessel *Wishing Star* grounded and sank in Hudson Bay Passage on the east side of nearby Dundas Island, British Columbia. The passengers and crew were rescued by the Canadian Coast Guard (CCG) cutter *Point Henry*. There were 2,000 litres of diesel oil in the vessel, but only a small amount of oil was released causing a sheen on the water.

CCG reports that, due to the owner's inaction, it assumed the role of On-Scene Commander for the incident. A commercial company, Wainwright Marine, was contracted. Its tug, *Ingenika*, arrived on scene. The tug boomed the area of the sunken vessel and deployed absorbent pads. Divers plugged the vents and rigged the vessel for lifting. On July 31, the *Wishing Star* was raised and towed to Wainwright Marine yard in Prince Rupert. Work crews continued to remove the residual and bilge oil.

Ship-source Oil Pollution Fund

The Administrator instructed counsel to engage a marine surveyor in Prince Rupert to attend the vessel at Wainwright Marine's yard and, also, to meet with the CCG response officer. On August 3, 2006, the marine surveyor submitted an interim report of his initial findings. It was indicated that the vessel was a wreck and had no salvage value.

On December 15, 2006, Department of Fisheries and Oceans (DFO)/CCG awarded a fixed-price contract to Wainwright Marine Services for deconstruction and disposal of the fishing vessel and all the contaminants onboard.

The Administrator considered whether measures to deconstruct the vessel were in fact wreck removal and could no longer be characterized as pollution prevention measures. After due investigation, the Administrator concluded that break-up of the vessel was the most effective method to remove any further threat of oil pollution from residual oil that might still be onboard.

On February 14, 2007, the Administrator received a claim from DFO/CCG for costs and expenses in the amount of \$112,629.51. Subsequently, the CCG was requested to provide additional information and documentation, so that the assessment of the claim could be advanced.

On November 1, 2007, CCG provided the information requested. As a result of the investigation of circumstances surrounding the incident (including the specific issue whether the deconstruction and disposal of the vessel could properly be characterized as an oil pollution threat removal, as opposed to wreck removal) the Administrator concluded that the total amount was a legitimate claim on the SOPF. As a result of this assessment, DFO/CCG was offered the full amount of \$112,945.77 plus interest in full and final settlement of the claim, pursuant to sections 86 and 101 of the *Marine Liability Act* (MLA). On November 8, 2007, DFO/CCG accepted the offer and transfer of funds were authorized in the amount of \$121,566.79 including interest.

The Administrator instructed counsel to initiate cost recovery action pursuant to MLA subsection 87(3). Various searches had indicated that there may be some prospects of a recovery; therefore, the Administrator commenced action against the shipowner.

On February 10, 2008, a Statement of Claim was served on the owner of the *Wishing Star*. No Statement of Defence was filed by the defendant by the closing date of March 11, 2008.

On April 2, 2008, an Order was filed in Federal Court, Vancouver, granting judgment by default against the defendant in the amount of \$123,772.20, plus interest from April 8, 2008, to the date of payment of the judgment. The Administrator is investigating, with the assistance of counsel, what assets of the debtor can be identified to satisfy the outstanding default judgment obtained on April 8, 2008.

On October 28, 2009, counsel advised that, on the basis of the investigation, there seems to be no purpose in conducting examination in aid of execution. Moreover, payment of the judgement appears not to be recoverable at this time. Accordingly, on November 12, 2009, the Administrator decided to hold the file in abeyance for two years, at which time it will be revisited.

2.10 Robertson II (2007)

The Administrator was informed of this incident by the Canadian Coast Guard (CCG). On July 1, 2007, a 40-metre sailing vessel, *Robertson II*, grounded on Minx Reef, in the Gulf Islands off Vancouver Island. It was reported that the vessel was leaking traces of diesel fuel. The CCG cutter *Cape Calvest* arrived on scene to assess the situation. The CCG hovercraft from the Richmond Environmental Response base also deployed 240 feet of sorbent boom, but reported minimal fuel in the water. However, some oil escaped the containment boom around the *Robertson II* due to the high volume of vessel traffic causing wave action.

On July 2, the CCG contracted local salvage operators to board the vessel and remove the remaining fuel from the tanks. Furthermore, CCG contracted a marine surveyor to conduct a full survey of the vessel and determine its condition, value and any further oil pollution threat. On February 9, 2008, CCG filed a claim with the SOPF for costs and expenses in the amount of \$20,748.53.

On April 17, 2008, the Administrator requested additional information and documentation in order to advance the investigation and assessment of this claim. On August 7, 2008, CCG advised that it was endeavouring to complete the Administrator's request for further information.

On December 17, 2009, the Administrator instructed counsel to investigate the status of the registered owner of the vessel, Atlantic and Pacific Seafoods, in order to explore what prospects the SOPF might have to recover any compensation it pays to CCG.

On January 19, 2010, the Administrator received a letter from CCG in response to the request of April 17, 2008. As a result, the Administrator continues his investigation and assessment of the claim. Meanwhile, the file remains open.

2.11 Robson Bight (2007)

Note: This claim (2.11) from the British Columbia Ministry of Environment, and the subsequent claim (2.12) from the Canadian Coast Guard arose out of the same incident.

On August 20, 2007, a barge owned by Ted Leroy Trucking, while under tow, tipped and most of the equipment it was carrying fell into the sea. The incident took place within the boundaries of the Robson Bight Ecological Reserve, variously described in the claim documentation as a highly sensitive area, frequented from time to time by orca whales and other wildlife. Some of the equipment that fell into the water contained oil. A substantial sheen of oil, some 14 kilometres long and 500 metres wide, was observed on the water soon after the equipment slipped off the barge. The sheen was observed for up to three days after the incident. Ted Leroy Trucking engaged the response organization, Burrard Clean Operations, to take the necessary measures to contain the oil that had been released. Since most of the oil carried in the equipment, notably a tank truck, was light diesel oil, it dispersed relatively quickly.

On August 22, Transport Canada aerial surveillance indicated that 95 percent of the oil slick seen the previous day on the shoreline had dissipated. The remaining diesel fuel was expected to evaporate and dissipate naturally. The Canadian Wildlife Services advised that no oiled birds had been found.

Canadian Coast Guard's independent technical analysis of the tanker truck was carried out soon after the incident by BMT Fleet Technologies in Ottawa, which indicated that a very high probability exists that the diesel tank would have been crushed well before the truck reached the bottom. They subsequently revised their opinion.

In November and December 2007, the Province of British Columbia and the federal government, on a shared cost basis, conducted a series of dives by a diver operated vehicle. The dive discovered the tanker truck sitting upright at a depth of 339 metres with its aft cargo tank apparently intact and stable, but with the forward tank's locking device not secured. The dive also produced some video footage. The equipment, notably the tank truck, appeared to be in good condition.

In May 2009, it was decided to go ahead with the salvage of the tank truck and cube. This operation was successfully completed without any further spillage of oil. The tank truck was found to contain roughly 3,000 litres of diesel fuel and the cube contained 1,800 litres of hazardous materials.

Ship-source Oil Pollution Fund

The Administrator engaged counsel and a technical marine surveyor to monitor developments and advise on the various aspects concerning the salvage plan being developed by the British Columbia Ministry of Environment.

On August 13, 2009, the Province of British Columbia filed a claim with the SOPF in the amount of \$2,707,477.14 pursuant to Part 6 of the *Marine Liability Act*. The provincial claim package is organized into three distinct sections:

- Initial Spill Response Activities (August and September 2007)- claim amount \$47,590.13
- Diving Operations (November to December 2007)- claim amount \$150,713.11
- Salvage Operations (May 2009)- claim amount \$2,509,173.90

The Administrator has commenced his investigation and assessment of this claim, which has not been completed by the end of the fiscal year. The file remains open.

2.12 Robson Bight (2007)

On August 19, 2009, the Canadian Coast Guard (CCG) filed a claim with the SOPF in the amount of \$92,836.24 for costs and expense incurred in connection with monitoring the salvage operation of the tank truck and cube. Also, for costs associated with prepared readiness for an appropriate response in the event of a discharge of oil during the salvage operation. Additionally, costs were incurred during the diving operations to locate the equipment.

The Administrator obtained additional information and documentation from CCG in order to advance investigations and assessment of this claim. At the close of the fiscal year, the Administrator continues his investigation and assessment of this claim. The file remains open.

2.13 Ambassador (2007)

On September 27, 2007, Department of Fisheries and Oceans (DFO)/Canadian Coast Guard (CCG) in Quebec informed the Administrator that the Vanuatu – registered bulk cargo ship *Ambassador* had spilled 300 litres of residual oil on the wharf at Selene Mines, Iles de la Madeleine. It was estimated that 50 litres entered the water in a very sensitive area in Iles de la Madeleine. A fishing area used by commercial and recreational interest was closed for preventive measure by the DFO. CCG indicated that it expected claims from DFO and local fishermen.

A Letter of Undertaking was obtained by counsel from the Standard Club in the amount of \$500,000.00 to cover any potential claims arising out of this incident that may be filed with the SOPF.

When the incident occurred, the CCG cutter *Cap aux Meules* was deployed to the scene and oil containment operations were conducted. Shoreline and aquaculture assessment operations were also conducted by DFO and Quebec provincial environment personnel. Local aquaculture sites were closed by DFO as a precautionary measure.

As of January 7, 2010, no claim in connection with the incident has been filed with the Fund. In subsequent discussion with counsel about the applicable provisions of the *Marine Liability Act* on time limitations, the Administrator concluded that it would appear that any claims for which the Fund could be subrogated against the shipowner were time-barred (as per subsection 5.85(2) of the Act).

In view of this interpretation, counsel was instructed to return the Letter of Undertaking to the shipowner's attorneys. Accordingly, the Administrator closed the file.

2.14 Grande Baie Remorqueur (2007)

It was brought to the Administrator's attention that on December 31, 2007, the Alcan harbour tug *Grande Baie* had sunk at the wharf in Port Alfred, Quebec. It was reported that the tug had 100 tons of diesel fuel onboard, as well as other oil pollutants. Oil was observed around the vessel; however, the harbour ice contained the oil and prevented it from spreading. The shipowner assumed overall management and response to the incident. The response organization (ECRC-SIMEC) was contracted to conduct response operations. Canadian Coast Guard (CCG) assumed the role of Federal Monitoring Officer. On January 1, 2008, approximately 3,000 litres of product were recovered. Divers were hired to conduct an inspection of the tug and prepare it for salvage operations.

On January 3, clean-up operations continued. Another tug, *Alexis Simard*, was also impacted by the spill and its hull was contaminated. On January 4, operations focussed on recovering the oil-covered ice. On scene were personnel from DFO/CCG, Quebec Ministry of the Environment, and representatives from Fisheries and Oceans Habitat.

On January 9, the shipowner presented its salvage plan to CCG Emergency Response personnel. A Regional Environmental Emergency Team meeting was held to discuss the salvage plan. On January 16, the first salvage attempt on the tug *Grande Baie* was conducted unsuccessfully. All operations ceased. The contractor advised they were working on a revised plan and that Transport Canada was assisting. Consequently, the tug *Grande Baie* was raised on January 18. By January 25, 2008, all clean-up operations were completed.

On December 29, 2009, the Administrator received a claim from DFO/CCG in the amount of \$42,949.15. The claim was for costs and expenses incurred during the 24 days that CCG monitored the recovery operation of the Eastern Canada Response Corporation, which was contracted on behalf of the shipowner. The claim was received two days before the expiry of the limitation period for filing this type of claim with the Administrator.

On January 6, 2010, the Administrator acknowledged receipt of the claim and requested confirmation that his understanding was correct that CCG had also submitted the claim to the tug owners. If the claim had been submitted to the shipowner it would have a bearing on the way to proceed in the investigation of this claim. On March 17, 2010, the Administrator received confirmation that the claim was referred to the shipowner on January 20, 2010, requesting payment within 30 days. The Administrator continues to monitor developments. The file remains open.

2.15 Stephanie & Darrel (2007)

On April 11, 2007, the Port Manager of the Shelburne Marine Terminal informed the Canadian Coast Guard (CCG) that a 45-foot fishing vessel secured to its wharf had been abandoned. It contained approximately 3,500 litres of fuel plus hydraulic oils. The vessel had been pumped out several times to prevent sinking alongside the terminal. Consequently, on April 17, CCG representatives met with Environment Canada and Transport Canada personnel at the terminal to determine what action should be taken. All parties agreed that the pollutants should be removed. No response had been received from the owner indicating that he would take responsibility for the vessel and the pollution threat that it posed.

On June 1, 2007, a contract was awarded to RMI Marine Limited to remove all the oil contaminants found onboard the abandoned fishing vessel. The contract included disposal of the waste oil. The contractor's rates were as per a standing offer agreement between the company and CCG. On June 8 the clean-up operation was completed. Transport Canada and CCG personnel inspected the vessel and advised the Port Manager and Environment Canada that the vessel was as clean from pollutants as could be expected.

Ship-source Oil Pollution Fund

On February 9, 2008, the Administrator received a claim from Department of Fisheries and Oceans (DFO)/CCG for costs and expenses in the amount of \$13,627.73, pursuant to Part 6 of the *Marine Liability Act* (MLA).

On May 13, 2008, the Administrator, having completed an investigation and assessment of the claim, made an offer to DFO/CCG in the amount of \$13,627.73 plus interest in full and final settlement pursuant to the MLA sections 86 and 101. The offer was accepted and the Administrator directed payment in the amount of \$14,505.11 inclusive of interest.

The Administrator commenced a recovery action in the Supreme Court of Nova Scotia in Halifax on December 10, 2008. A Certificate of Judgment was registered on December 23, 2008, in both the Land Registry and Personal Property Security Registry in Nova Scotia. These registrations result in the judgment representing an encumbrance against any property the owner of the vessel may have or acquire. The registration of the judgment under the *Land Legislation Act* will expire on December 23, 2013, and the registration in the Personal Property Registry will expire on January 5, 2014. These files will therefore be brought forward for review close to those dates. Meanwhile, the file remains open.

2.16 Royal Hamilton Yacht Club Oil Spill (2008)

On August 10, 2008, an oil spill occurred at the Royal Hamilton Yacht Club. The security office of the Port Authority traced the source of the oil to a 20-foot pleasure craft. The Port Authority was initially unable to contact the boat owner. The provincial Ministry of the Environment's Spills Action Centre, the Hamilton/Halton Marine Police Services and the Canadian Coast Guard (CCG) were notified of the occurrence.

The Assistant Harbour Master engaged Team-Hazco Environmental Services to deploy a containment boom around the boat and clean-up the spill. On arrival the response team determined that the flooring of the boat was saturated with fuel oil, and that there was a substantial amount of oil in the bilge. The boat was partially submerged causing oil to escape. The clean-up operation was completed to the satisfaction of the authorities.

During August and September, the Harbour Authority was unable to recover the costs of the clean-up from the owner of the pleasure-craft. Nevertheless, the Hamilton Port Authority paid the invoice it received from Team-Hazco Environmental Services in the amount of \$2,730.00.

On October 9, 2008, the Administrator received a claim from Hamilton Port Authority for costs and expenses in the amount of \$2,730.00, pursuant to Part 6 of the *Marine Liability Act*.

As a result of the investigation of the circumstances surrounding the incident and the assessment of the claim, the Administrator made an offer of \$2,730.00, plus interest, as full and final settlement. This amount was accepted and, upon receipt of a duly executed Release and Subrogation Agreement, payment was authorized in the amount of \$2,768.36.

The Administrator instructed counsel to investigate the feasibility of effective cost recovery of \$2,768.36 paid in response to the claim. As a result of counsel's investigations, the Administrator concluded that there was no viable prospect of a successful recovery in this instance. Accordingly on November 25, 2009, the Administrator closed the file.

2.17 Tug Winamac (2008)

On November 27, 2007, the Vancouver Marine Communications & Traffic Services Centre was informed that the ex-tug *Winamac* sank off the Saltery Bay government wharf, at Powell River, British Columbia. Oil was being released from the sunken vessel causing an oil sheen on the surface of the water. The Canadian Coast Guard's (CCG) attempts to determine the owner of the vessel were unsuccessful. Consequently, CCG deployed personnel and equipment to the site from its Emergency Response depot in Richmond. Containment booms were placed around the oil sheen and absorbent materials were used inside the boom to recover upwelling oil.

On November 30, 2007, the upwelling of oil ceased and the situation appeared stable. It was considered that divers should be engaged to try and determine whether any oil remained in the vessel's fuel tanks. On December 1, 2007, divers were deployed to survey the wreck. They reported no visible fuel leakage and that no fuel was trapped within the vessel. As a result of this information, the CCG Environmental Response personnel demobilized and returned to Richmond.

On September 10, 2008, the Administrator received a claim from Department of Fisheries and Oceans (DFO)/CCG for costs and expenses in the amount of \$6,971.58 pursuant to Part 6 of the *Marine Liability Act* (MLA).

As a result of his investigation and assessment of the information and documentation submitted with the claim, the Administrator concluded that the amount of \$6,971.58 was established. Consequently, DFO/CCG was offered the full amount plus interest as settlement, pursuant to sections 86 and 101 of the Act. DFO/CCG accepted the offer of \$6,971.58 plus interest and on November 3, 2008, payment of \$7,343.52 was authorized.

The Administrator instructed counsel to investigate whether there were reasonable measures that could be taken to recover the amount paid to DFO/CCG pursuant to the MLA subsection 87(3). Based on counsel's investigations, it is the Administrator's opinion that there is no reasonable prospect of recovering the costs related to the incident. Accordingly on March 24, 2010, the Administrator closed the file.

2.18 MLJet (2008)

On May 30 and 31, 2008, two separate minor oil spill incidents occurred in the Port of Montreal. The source of the first spill was unknown, so the Montreal Port Authority dealt with the occurrence. It was determined that the source of the second spill was oil that had leaked from the generator cooling system of the Maltese-registered ship, *MLJet*. The ship assumed full responsibility for the cleaning of the second spill. The CCG estimated the costs associated with the *MLJet* occurrence to be in the region of \$25,000.00.

To secure possible third-party claims resulting from the oil spill incident, the Administrator instructed counsel to obtain a Letter of Undertaking (LOU), in the amount of \$40,000.00, from the shipowner's P&I Club to cover any subsequent claims. The LOU was obtained on June 6, 2008, and it reflects the limitation period as provided for in subsection 51(6) of the *Marine Liability Act* (MLA).

As of the end of the fiscal year, no claim had been received, however, since it is still within the limitation period for filing a claim with the SOPF, counsel has been instructed to keep the Letter of Undertaking until the expiration of the limitation period provided under the MLA.

The Administrator's file remains open.

2.19 Gala Babe II (2008)

On December 29, 2008, Coast Guard was informed that the fishing vessel *Gala Babe II* sank at the wharf in Ladner Harbour, British Columbia. Diesel fuel oil was leaking from the vessel causing an oil slick on the surface. The Canadian Coast Guard (CCG) Environmental Response personnel from Richmond investigated and assessed the situation. Subsequently, on December 31, 2008, the owner was informed by letter of his liability for pollution damage. He was advised verbally that raising the vessel may be the simplest measure to control the oil pollution.

By January 7, 2009, the amount of oil on the surface was increasing. The owner was not taking any corrective action to prevent the pollution, or raise the vessel. Consequently, on January 8 CCG contracted a local salvage operator, Fraser River Pile and Dredge, to raise the vessel and transport it to Shelter Island Marina. The salvaged vessel was assessed for fair market value by Active Marine Services. The firm's surveyor provided CCG with a report noting that the vessel had been submerged for three or four days in brackish water. It had been poorly maintained and had sustained damage. Further, it was not economically salvageable and only represented scrap value, or possible salvage value of the hull and machinery. In the surveyor's opinion the actual cash value of the *Gala Babe II* was \$20,000 to \$25,000.

On January 9, CCG informed the Administrator about the incident and indicated that its costs and expenses may reach \$100,000.00. The Administrator, in anticipation of a claim and litigation, instructed counsel to engage a marine surveyor to conduct a survey of the vessel at the Marina and determine the fair market value. On February 2, a marine surveyor from Oceantec Marine Services Ltd., engaged on behalf of the Fund, provided his report estimating the fair market value at \$15,000 to \$20,000. The vessel was eventually sold by CCG for the amount of \$11,715.90 and this amount is accounted for in this claim.

On August 20, 2009, Department of Fisheries and Oceans (DFO)/CCG filed a claim with the Administrator for costs and expenses in the amount of \$21,314.03, pursuant to Part 6 of the *Marine Liability Act* (MLA).

On January 7, 2010, after investigation and assessment of the claim, the Administrator made an offer to DFO/CCG for the established amount of \$21,314.03, plus interest, in full and final settlement, pursuant to MLA sections 86 and 101. The offer was accepted and the Administrator directed the payment in the amount of \$21,941.78, inclusive of interest.

The Administrator instructed counsel to review the feasibility of undertaking cost recovery action pursuant to MLA subsection 87(3). As of the close of the fiscal year, the file remains open.

2.20 Farley Mowat (2008)

On April 12, 2008, the M/V *Farley Mowat* was arrested in connection with alleged illegal activities during the seal hunt in the Gulf of St. Lawrence. The vessel was towed to Cape Breton, Nova Scotia, where it was secured at the Sydney Harbour Sydport wharf. It was placed under custody by the Department of Fisheries and Oceans (DFO). The following day, DFO enforcement officials contracted a marine surveyor to conduct a condition survey and determine its condition and seaworthiness. The inspection found the vessel had no external leaks, but there were diesel fuel, engine lube oil and hydraulic fluids onboard. Also, there were internal leaks in the engine room. There were 15 barrels of drummed oil on the deck aft. Based on the recommendations of the Marine Survey, DFO enforcement officials requested that Canadian Coast Guard (CCG) boom the vessel until such time it was returned to the owners; the necessary repairs completed and/or the petroleum products were removed.

On April 25, CCG placed a pollution counter-measures boom around the vessel. The boom was maintained and remained in place until November 25, when it was removed due to marine growth and possible failure of the boom and its support equipment in the event that leakage of oil from the vessel may occur. There is no evidence in the claim documentation that oil leaked from the vessel at any time.

On December 11, CCG issued a Direction Order to the owner of the *Farley Mowat* to remove all petroleum products from the vessel. There was no response from the shipowner indicating responsibility for the vessel and the oil pollution threat it posed. On December 17 the CCG Environmental Response officer held a meeting at the Sydport wharf with representatives of DFO Fisheries Enforcement and the prime contractor to discuss the situation. All parties agreed that the pollutants should be removed. Consequently, CCG engaged RMI Marine Services for the oil removal operations. Removal of all the accessible oil was completed on December 23, 2008.

On March 23, 2009, the Administration received a claim from the Canadian Coast Guard in the amount of \$50,260.46 for costs and expenses incurred, pursuant the sections 51(1), 84 and 85 of the *Marine Liability Act* (MLA).

On March 24, 2010, after investigation and assessment of the claim, the Administrator made an offer to DFO/CCG for the established amount of \$45,862.29, plus interest, as full and final settlement pursuant to the MLA. The offer was accepted and the Administrator directed payment in the amount of \$48,594.20, inclusive of interest.

Prior to finalization of the Administrator's investigation of the claim, he was made aware of an application in the Federal Court of Canada for a judicial sale of *Farley Mowat* on behalf of Her Majesty the Queen (as represented by the Minister of Fisheries and Oceans). To safeguard any rights that he might acquire by subrogation, on payment of the CCG claim, the Administrator instructed counsel to start a protective action in the Federal Court. The aim was to ensure that the Administrator might be reimbursed from the proceeds of the sale of the vessel.

The vessel was eventually sold for \$5,000.00, all of which was paid to the Sheriff to cover his costs and fees for conducting the sale. Since the vessel became free and clear of all pre-existing claims, including the Administrator's claim for compensation that might be paid to the CCG, the Administrator concluded that there was no reasonable prospect of recovery *in rem* against the vessel itself. The Administrator also investigated whether there were any reasonable prospects of recovering any compensation in a personal action against the shipowner. On the advice of counsel, the Administrator concluded that there was no reasonable prospect for further proceedings against the shipowner. Accordingly, the Administrator has closed his file.

2.21 King Darwin (2008)

On September 27, 2008, the Canadian Coast Guard (CCG) reported that the German oil tanker *King Darwin* released approximately 64 tonnes of bunker C fuel oil into the waters of the Restigouche River when discharging at Dalhousie, New Brunswick. The incident occurred while pumping into the main line alongside the west wharf. The pumping had just commenced when a flange blew resulting in the discharge upon the dock and shoreline facilities. The Eastern Canada Response Corporation was engaged by the ship to conduct clean-up operations.

On October 7, 2008, a Letter of Undertaking was obtained from the shipowner's P&I club –The Steamship Mutual Underwriting Association (Bermuda) Limited. An amount not exceeding \$250,000.00 was indicated as security to cover any potential claim for costs and expenses incurred.

The Administrator received a copy of the Letter of Undertaking from legal counsel engaged by the

CCG, Nova Scotia. The Fund has not received a claim in this incident.

In September 2009, the Administrator was contacted by counsel for a dredging company, Beaver Marine Limited, which had equipment operating in the Port of Dalhousie, alleging that the equipment was fouled by the spill and could not be used for a period of time. Accordingly, counsel was of the view that there might be a claim against the owner of the *King Darwin*, the International Oil Pollution Compensation Fund and the SOPF. Subsequently, the SOPF was served with a statement of claim, filed in the Federal Court, on behalf of Beaver Marine. As a result of negotiations between counsel, however, the action against the SOPF has been discontinued in November, 2008. Since the litigation is on going between other parties to the action, the Administrator has not closed his file and will be following developments in this matter.

2.22 Columbia (2008)

On August 25, 2008, an American-owned 65-foot fishing vessel, *Columbia*, sank at the mooring float in Steveston Harbour, British Columbia. The Steveston Harbour Authority boomed off the old wooden vessel. It commenced clean-up of the leaking oil in order to minimize pollution from entering the marine environment. On August 28, the Harbour Authority contacted the owner who was fishing in Alaska. The owner appeared to accept responsibility for the costs of clean-up and salvage, but indicated that there was no insurance on the old vessel. No follow-up action was taken by the owner. The fishing vessel was effectively abandoned. On August 30, the Harbour Authority contracted a salvage company. The *Columbia* was raised and transported to Shelter Island Marina, where it was lifted ashore. It was then discovered that the vessel's fuel tanks were partially full.

On October 10, the Harbour Authority engaged Chris Small Marine Surveyors Ltd. to offer an opinion as to the vessel's condition. The surveyors inspected the *Columbia* and reported it to be derelict beyond any practical or feasible repair with no remaining salvage value. Consequently, the Harbour Authority arranged for the demolition and disposal, effectively ending the environmental risk.

On December 8, the Steveston Harbour Authority filed a claim with the SOPF in the amount of \$81,470.88 for costs and expenses incurred. On December 18, the Administrator acknowledged receipt of the submission and informed the Steveston Harbour Authority that the claim was being investigated to determine the appropriate offer of compensation that should be made. In the meantime, the Administrator engaged legal counsel and a technical marine surveyor to investigate the circumstance surrounding the incident.

As a result of his investigation and assessment of the claim, the Administrator made an offer to the Steveston Harbour Authority for the established amount of \$68,760.33, plus interest, in full and final settlement pursuant to the *Marine Liability Act* (MLA) sections 86 and 101. The claimant accepted the Administrator's offer for the portion of the claim found to be established.

The appropriate Release and Subrogation Agreement was executed by a duly authorized officer of the Harbour Authority. On July 9, 2009, a cheque in the sum of \$69,874.09, inclusive of interest, was forwarded to the Steveston Harbour Authority in settlement of this claim.

The Administrator instructed counsel to review the feasibility of undertaking cost recovery action pursuant to MLA subsection 87(3). As a result of subsequent investigations and the opinions of counsel, the Administrator concluded that it was unlikely that the Fund would obtain any recovery against the owner. Therefore, no further expenses should be incurred on the matter. Consequently, the Administrator closed the file.

2.23 Mystery Oil Spill, Thunder Bay (2008)

Note: This claim and the subsequent claim (2.24) arose out of the same incident, but relate to clean-up costs in respect of oil at two different locations.

On May 13, 2008, the managing company of the Canadian-registered ship *John D Leitch*, Seaway Marine Transport, was involved in an oil spill clean-up operation in the Port of Thunder Bay. The ship had been in drydock at the shipyard of Lakehead Marine & Industrial Inc. for a five-year general survey and maintenance to the shaft and propeller assembly. The ship departed the drydock on May 10 and conducted a series of alongside main engine trials. It was secured to the fitting-out berth near the entrance to the drydock, when oil was discovered on the surface of the water near the stern of the ship.

Initially, the ship's officers were of the opinion that the oil in the water at the stern of the ship had leaked from the ship's stern tube seals. An underwater inspection conducted by a contracted diving company did not find evidence of leakage from the propeller shaft. Investigation inside the engine room by the ship's chief engineer and the manufacturer's representative who installed the new stern seals, including the assistance provided by the local Transport Canada Marine Safety Inspector, determined that the stern tube and/or the stern seals were not the source of the spill. Furthermore, the investigation found no evidence of other activities in the engine room that would have allowed a lubricant to escape the confines of the engine room and get into the water surrounding the ship.

In the meantime, the Master of the *John D Leitch* activated the ship's arrangement with Eastern Canada Response Corporation (ECRC). ECRC mobilized a local contractor, Potter Environmental, on May 13, to conduct an on-site assessment and undertake clean-up and disposal of the oily waste. The clean-up operation was completed the following day.

On October 22, 2008, the Administrator received a claim from Seaway Marine Transport for costs and expenses incurred during the clean-up in the amount of \$31,968.52, pursuant to Part 6 of the *Marine Liability Act* (MLA).

Upon receiving the claim, the Administrator instructed legal counsel and a marine consultant to proceed to Thunder Bay and conduct investigations with the parties involved. As a result of the extensive on-site investigations at the shipyard, and a review of other possible land-based sources in the area, including discussion with the Thunder Bay Harbour Master and with the Transport Manager of Marine Safety, the SOPF investigation concluded that the source of the oil found on the surface of the water remains unknown.

The Administrator was provided the additional information and documentation that had been requested from the claimant for his investigation and assessment of the claim. It was also determined that the area in which the incident occurred are waters to which Part 6 of the MLA apply. The Administrator accepted that this is a legitimate claim on the Fund.

On March 11, 2009, the Administrator made an offer in the amount of \$29,362.94 plus interest as full and final settlement. On March 18, the claimant accepted the Administrator's offer for the portion of the claim found to be established. As a result, the Administrator requisitioned a cheque for compensation payment in the amount of \$30,628.51 inclusive of interest. Seaway Marine Transport was subsequently provided with a release and subrogation agreement for execution by a duly authorized officer.

On April 14, 2009, having received the executed Release and Subrogation agreement, a cheque in the sum of \$30,628.51, inclusive of interest, was forwarded to Seaway Marine Transport.

The Administrator accepted the claim as a mystery spill. After the extensive on-site investigations,

it proved impossible to ascertain the source of the oil pollution. However, the Administrator was not able to rule out that the spill was not caused by a ship. As a mystery spill, the SOPF is unable to take any recourse action. Therefore, the Administrator has closed the file.

2.24 Mystery Oil Spill, Thunder Bay (2008)

On May 13, 2008, oil was discovered on the water around the drydock area of Lakehead Marine & Industrial Inc. in the port of Thunder Bay. Originally, it was considered that the ship involved in the incident was the Great Lakes Bulk Carrier *John D Leitch*. The ship had been in the shipyard's drydock undergoing maintenance and repairs. On May 13 the ship was floated out of the dock and tied up at an adjoining pier. The ship had been conducting engine trials alongside in preparation for departure. At the end of these trials, oil was discovered on the water near the ship's stern. Upon further investigation, oil was also found in the drydock itself and around the entrance to the drydock of Lakehead Marine & Industrial Inc. Immediately, the drydock gate was closed and a containment boom was put in place. Clean-up procedures were started by employees of Lakehead Marine & Industrial Inc. The shipyard also hired the services of Potter Environmental to pump out the drydock and to clean-up the oil pollution from the walls of the drydock and from within the pump room.

On August 15, 2008, the Administrator received a claim from Lakehead Marine & Industrial Inc. for costs and expenses incurred during the clean-up in the amount of \$32,291.12, pursuant to Part 6 of the *Marine Liability Act*.

Upon receiving the claim, the Administrator instructed legal counsel and a marine consultant to proceed to Thunder Bay and conduct investigations with the parties involved. As a result of the extensive on-site investigations at the shipyard, and a review of other possible land-base sources in the area, including discussion with the Thunder Bay Harbour Master and the Transport Manager of Marine Safety, the SOPF investigation concluded that the source of the oil found on the surface of the water remains unknown.

On March 11, 2009, the Administrator completed the investigation and assessment of the claim and made an offer of \$27,328.40 plus interest in the amount of \$1,200.34 as full and final settlement. On March 24, 2009, the Administrator received the claimant's acceptance of the offer for the portion of the claim found to be established. As a result, on March 31 the Administrator requisitioned a cheque for compensation payment in the amount of \$28,528.74 inclusive of interest. On that date Lakehead Marine & Industrial Inc. was provided with a release and subrogation agreement for execution by a duly authorized officer.

On April 16, 2009, having received the executed Release and Subrogation agreement, a cheque in the sum of \$28,528.74, inclusive of interest, was forwarded to Lakehead Marine & Industrial Inc. to settle the claim in respect to this incident.

The Administrator accepted the claim as a mystery spill, because the extensive onsite investigations have proven it impossible to ascertain from where the oil originated. However, the Administrator was not able to rule out that the spill was not caused by a ship. As a mystery spill, the SOPF is unable to take any recourse action. Therefore, the Administrator has closed the file.

2.25 Delta I (2008)

On January 3, 2008, the Canadian Coast Guard (CCG) received a report that over the holidays the barge *Delta I* loaded with scrap steel had overturned in Toquart Bay on the west side of Vancouver Island. During the subsequent investigation the owner advised that the only unit of equipment containing oil was a backhoe. By January 10 the barge had submerged completely. CCG had not considered

the incident a pollution risk until it was discovered later that additional equipment contained oil. This other equipment included a pickup truck and some pails of oil. Further, it was revealed that the backhoe was actually a full-size excavator.

On January 30, CCG informed the owner of his legal responsibilities to take measures to prevent a discharge of pollutants, and to advise CCG of his intentions. On February 5 the barge owner stated that his insurance would not pay for the removal of the oil related items. He would, however, remove what he could. By February 12 the owner reported that everything that might cause pollution had been removed except the pickup truck and excavator.

On February 25, fisheries officers reported an intermittent upwelling and sheen of oil at the site. The owner agreed to deploy booms to contain the upwelling of oil. On March 20 Environment Canada (EC) provided CCG with an environmental risk statement indicating that EC planned to recommend a shellfish closure in the area. Also, EC expected that all reasonable measures should be taken to remove the source of pollution. The shellfish closure was put into effect a short time later.

On April 1, CCG conducted a dive survey of the area and found the excavator a short distance from the barge upside down in 35 to 40 feet of water with a pickup truck and scrap steel on top of it. There was a considerable amount of scrap steel and other heavy equipment beside and under the barge. For example, there was a 40-foot cargo container/trailer under the barge along with other debris.

CCG consulted with a dealer of the same type of excavator, who suggested that the quantity of oil expected to be in the excavator would be greater than the information supplied by the barge owner. The dealer information showed hydraulic oil at 422 litres, engine oil at 38 litres and gear oil at 40 litres. The owner stated that the fuel tank contained only 113 litres of fuel. Apparently, the owner did not include the other engine oils.

On April 16, CCG learned that Saltair Marine Services Ltd. had made an arrangement with the barge owner to remove the barge and scrap steel the following week. The owner believed that the value of the scrap and barge would cover the cost. The removal of the excavator was not included in the arrangement because it would not be cost effective for them to remove it for its scrap value. During the salvage operation it became apparent that some of the scrap metal cargo contained oil and was polluting when disturbed. The contractor ceased operations when the barge was raised and there was enough steel to pay for its costs up to that point. The CCG then contracted the salvor to continue operations in order to recover all items containing oil including the excavator. During the first week of May, the operation was complete.

The following year, on March 23, 2009, the CCG filed a claim with the Fund in the amount of \$42,604.26 for costs and expenses incurred for monitoring and contract services.

On July 21, 2009, CCG was requested to provide additional information and substantiating documentation about the contract with Saltair Marine Services. At the same time, counsel was instructed to engage a local marine surveyor to interview the salvage contractor and CCG personnel, and report on the reasonableness of the work performed to raise the equipment containing oil.

On January 19, 2010, CCG replied to the Administrator's request for additional material. Meanwhile, the investigation and assessment of the claim continues. Accordingly, the file remains open.

2.26 Ganges I (2008)

On July 6, 2008, the Environmental Response officers at the Canadian Coast Guard (CCG) base in Victoria were informed that the pleasure craft *Ganges I* was aground and listing at 45 degrees in Ucluelet Harbour on the west side of Vancouver Island. The vessel was holed and diesel fuel was leaking from its tanks. The CCG buoy tender, *Provo Wallis*, was on-scene and rescued the crew. The CCG successfully plugged the fuel vents and deployed a sorbent boom around *Ganges I*.

On July 7, because of the owner's inability to handle the incident, CCG personnel at Victoria went to Ucluelet Harbour with response equipment and a 17-foot boat. Emergency response personnel were unable to safely get aboard the stranded vessel because of the sea state and wind conditions. Consequently, Saltair Marine Services Ltd. was engaged to attend the following morning with a larger boat and board the damaged vessel to make an assessment about removing the oil. The following day, Saltair Marine Services Ltd. personnel arrived by road with a small tug. Their inspection found that the vessel could be re-floated and should be relocated to an area for destruction and safe removal of the oil. Some of the necessary equipment for raising the vessel had to be brought in from Ladysmith. Slings lines were placed around the hull in preparation for the lifting operation. Meanwhile, the vessel was still leaking oil because further damage had occurred overnight.

On July 9, the subcontractor's tug and barge arrived from Tofino. Additional equipment from Ladysmith arrived by barge later in the day. As the contractors boarded to make preparations to pump out the fuel, they found the tanks empty due to a broken filler pipe on the low tank and an open cross-over valve. Approximately 12 gallons of waste oil were recovered from the engine and lube oil tank. Sorbent pads were placed throughout the engine space and inside the fuel tanks to collect pools of residual oil that remained. As a result of removing the oils the contractors were stood down. It was not necessary to deconstruct the vessel. The next day, CCG personnel returned to the site with Saltair Marine Services Ltd. and removed the pads and remaining oily waste found inside. *Ganges I* remained where it was stranded. No further action was planned.

On March 23, 2009, the Administrator received a claim from Department of Fisheries and Oceans/CCG for costs and expenses in the amount of \$47,895.49, pursuant to Part 6 of the *Marine Liability Act*.

On July 21, CCG was requested to provide additional information and documentation about its contract with the salvor. A written response was received on January 19, 2010. At the end of the fiscal year, the Administrator is continuing the investigation with the assistance of counsel who has been instructed to engage a marine surveyor on behalf of the Fund. The surveyor is investigating whether actions taken were reasonable from the intended oil recovery response and, if so, were the charges fair and reasonable for the services provided. In the meantime, the file remains open.

2.27 May's Landing (2008)

This incident claim relates to an old barge, *May's Landing* that had been used as a helicopter landing and maintenance platform for the local logging industry at Toquart Bay, Vancouver Island. On September 29, 2008, the Canadian Coast Guard (CCG) Environmental Response personnel received a call from a consultant for Toquart First Nations and Coulson Forest Products, that the barge was listing significantly and may sink. The CCG contacted the owner to have the barge stabilized by pumping out the excess water. On October 2 and again on October 21, CCG personnel visited the barge and found that the list still existed. There was no indication that the barge had been pumped-out.

On November 12, CCG personnel and a Transport Canada Marine Safety surveyor inspected the barge. They did not find any oil in the fuel tanks or elsewhere below deck. However, a number of tanks and compartments were tidal or open to rain water. On deck, there was oil stored in 45-gallon drums, in a crane truck and in plastic pails. On December 8 and 9, CCG personnel removed three drums of oil, including hydraulic fluid from the crane truck and other waste oil. The oil was taken to a contractor for disposal.

On March 20, 2009, the Department of Fisheries and Oceans (DFO)/CCG filed a claim with the Administrator of the SOPF for costs and expenses in the amount of \$3,209.82, pursuant to Part 6 of the *Marine Liability Act*.

On July 7, after investigation and assessment of the claim, the Administrator made an offer to DFO/CCG for the established amount of \$3,209.82 plus interest. The offer was accepted by

DFO/CCG on July 13, 2009, and the Administrator directed payment in the amount of \$3,290.60, inclusive of interest.

It is the Administrator's opinion that there is no reasonable prospect of recovering the costs related to the incident. Accordingly, the Administrator has closed the file.

2.28 Patricia Louise (2008)

The incident occurred on November 1, 2008, when the *Patricia Louise* sank at a Discovery Harbour Marina dock in Campbell River, British Columbia. There was an upwelling oil slick from the vessel, which was reported to contain approximately 100 gallons of diesel fuel. The Harbour Authority streamed a containment boom around the vessel. When a Canadian Coast Guard (CCG) Environmental Response officer arrived on scene, the *Patricia Louise* was being raised to the surface. On behalf of the owner, the marina officials had hired the barge and crane company, DCD Pile Driving (1990) Ltd., to lift the submerged vessel. The interior was found coated with diesel fuel oil. It was supported by the crane overnight and was awaiting the owner's instructions. DCD advised CCG that the vessel would not remain afloat if it was not supported by the crane. It was not safe to remove the oil unless the vessel was raised and moved ashore. Meanwhile, CCG personnel requested DCD Pile Driving to provide an estimate of the cost to remove all the oil from the vessel.

On November 2, the owner advised CCG that he had no ability to deal with the raising of the vessel, or any means to pay the costs of oil removal and disposal. The vessel was not insured. The CCG officer informed the owner of his responsibility and liability. CCG took over the response to the pollution incident. The CCG senior response officer met with DCD and reviewed the scope of work and the deconstruction process. The DCD Pile Driving Company advised CCG the only way to safely remove the oil from the *Patricia Louise* was to deconstruct the vessel. As a result, DCD was instructed to move the vessel ashore away from the marina and deconstruct it to remove all oil.

On November 3, the deconstruction process began. DCD subcontracted A L Woods Bulldozing to provide an excavator for demolition and the trucking for disposal of the debris. The next day, the *Patricia Louise* was fully deconstructed and the oil removed. One truck load of metal, six loads of oiled wood, ten bags of sorbent material and approximately 45 gallons of oil were removed from the site where the vessel was dismantled.

On March 23, 2009, the Department of Fisheries and Oceans (DFO)/CCG filed a claim with the Administrator of the SOPF for costs and expenses in the amount of \$36,696.95, pursuant to Part 6 of the *Marine Liability Act*.

On February 2, 2010, after investigation and assessment of the claim, the Administrator made an offer to DFO/CCG for the established amount of \$35,364.76 plus interest. The offer was accepted by DFO/CCG and on February 11, 2010, the Administrator directed that the amount of \$48,594.20, inclusive of interest, be transferred from the Fund to the credit of DFO/CCG in payment of this claim.

As of the close of the fiscal year, the Administrator is investigating with counsel whether there is any party against whom a recourse action may be started. Meanwhile, the file remains open.

2.29 Saxon Viking (2008)

This incident claim relates to a 60-foot fishing vessel, *Saxon Viking*, that slipped anchor in Ucluelet Harbour, Vancouver Island, and grounded near a seaplane base. It was taking on water with the incoming tide, but there was no oil pollution. It had approximately 500 gallons of fuel oil onboard.

Ship-source Oil Pollution Fund

On November 14, 2008, the Canadian Coast Guard (CCG) auxiliary and Royal Canadian Mounted Police attended and tried to refloat the vessel. The CCG informed the owner of his responsibilities with regard to potential oil pollution. He was advised to produce a plan of action by the following day.

On November 16, CCG checked the condition of the vessel. It had moved further up the mud flat and was grounded at high tide. In the event that it would lie over on the falling tide, CCG personnel plugged the accessible vents. On November 18, the CCG Environmental Response team from Victoria removed containers of oil. A CCG official met the owner and provided him with a letter of “notice” requesting information on the measures he intended to take to prevent discharge of oil pollutants. The owner admitted that he had no resources to deal with the pollution threat. The following day, CCG personnel pumped the fuel from the vessel’s tanks. Some 24 drums of fuel oil were removed. The waste oil was staged at the CCG base for disposal.

On January 29, 2009, CCG sent a letter to the owner with an enclosed cost summary requesting payment within 30 days in the amount of \$10,036.28 for costs and expenses. CCG did not receive a reply.

On March 20, 2009, DFO/CCG filed a claim with the Administrator of the SOPF for costs and expenses in the amount of \$9,999.32, pursuant to Part 6 of the *Marine Liability Act*.

On July 7, after investigation and assessment of the claim, the Administrator made an offer to DFO/CCG for the established amount of \$9,999.32 plus interest. The offer was accepted by DFO/CCG on July 28, 2009, the Administrator directed transfer of the amount of \$10,249.60, inclusive of interest, from the Fund in payment of this claim.

The Administrator instructed counsel to investigate whether reasonable measures could be taken for effective cost recovery from the owner for the amount paid to DFO/CCG. Meanwhile, the file remains open.

2.30 La Lumiere (2008)

On May 10, 2008, an article in the newspaper, Vancouver Sun, reported the sinking of the *La Lumiere* (ex *Seaspan Chinook*) at Britannia Beach in Howe Sound, British Columbia. There was an upwelling of diesel oil into Howe Sound. The wooden-hull *La Lumiere* was originally a Second World War heritage tug built in 1944 for the United States Navy. The Transport Canada Vessel Registration Query System shows the Maritime Heritage Society of Vancouver to be the owner.

The Administrator instructed counsel to engage a marine surveyor from Oceatec Marine Services Ltd. to attend at Britannia Beach to monitor clean-up operations and report on developments. The surveyor reported that a Canadian Coast Guard (CCG) response team had arrived on site in May and had deployed a 1,600-foot oil containment boom to encircle the position where oil was upwelling from the sunken vessel – approximately 100 metres offshore. By May 15, the upwelling of hydrocarbons had decreased markedly to several small globules per second.

The CCG engaged the services of Fraser River Pile and Dredge and Canpac Divers to use a remotely operated vehicle to locate the *La Lumiere* and determine the cause of sinking and assess the condition of the hull. On the second dive, the submerged vessel was positively identified as the *La Lumiere*. It was found resting on a slope in depths ranging from 245 to 290 feet. Video footage was obtained and the hull appeared intact.

On May 17, 2008, only a light intermittent oil sheen was sighted. CCG then engaged the response organization, Burrard Clean, to remove the oil containment boom. The incident was then moved to a monitoring only stage.

On February 10, 2009, CCG advised the Administrator that this incident is still an active file. At the end of the fiscal year no claim has been submitted to the Fund. In the meanwhile, the remains open.

2.31 Steveston II (2008)

On November 27, 2008, the Canadian Coast Guard (CCG) received a report that the ex-fishing vessel, *Steveston II*, had partially sunk at the wharf in Ladner Harbour, British Columbia. The Ladner Harbour Authority informed CCG that all its efforts to reach the registered owner were unsuccessful. The owner had not been seen or heard from in the last six months.

The derelict vessel leaked diesel oil and hydraulic fluids. CCG Environmental Response personnel proceeded to the location and deployed a containment boom around the vessel. An oil skimmer was utilized to recover the upwelling oily waste. In addition, absorbent pads and booms were used to clean-up small patches of oil in other areas of the harbour basin.

CCG personnel contracted Fraser River Pile and Dredge to raise the vessel from the seabed. On November 28, the vessel was raised and placed on a barge and transported to the salvor's shore facility for further assessment of the damaged hull. It was determined that several hull planks had let go and the vessel was saturated with pollutants.

On December 19 and 20, an environmental service company, Hazco, was hired to remove all oil from the fuel tanks and machinery. The interior of the old vessel, built in 1919, was found to be contaminated. As a result, the *Steveston II*, was completely demolished and disposed of into a landfill.

On June 16, 2009, the Administrator received a claim from the DFO/CCG for costs and expenses incurred in the amount of \$68,929.72, pursuant to sections 51(1), 84 and 85 of the *Marine Liability Act*.

The Administrator acknowledged receipt of the documentation and informed DFO/CCG that the claim was being investigated to determine the appropriate offer of compensation that could be made. At the close of the fiscal year, the investigation and assessment continues. Meanwhile, the file remains open.

2.32 Island Ranger (2008)

On November 30, 2008, the 68-foot wooden tug *Island Ranger* grounded and partially sank in Tofino Harbour, British Columbia. The vessel lay with its port side submerged across the current, approximately 70 metres off the crab dock. It was reported to contain 800 gallons of diesel fuel, 84 gallons of lubricant oil and a quantity of hydraulic fluids. The crew managed to plug the starboard vents but the port vents were inaccessible. Canadian Coast Guard (CCG) personnel assisted the owner in placing oil booms around the vessel to contain oil being released from the wheelhouse area.

On December 1, the owner engaged a contractor to respond to the situation and raise the *Island Ranger*. On December 3, the CCG booms were removed from around the vessel and redeployed to protect a nearby beach area that was identified as a local shellfish beach. On December 5, CCG personnel returned its pollution response equipment to Victoria, but continued to monitor the shipowner's clean-up and salvage operations.

On January 26, the *Island Ranger* was recovered and the remaining fuel tanks were pumped-out. The vessel was slung between two barges and moved to a remote site with less current. The owner deconstructed the vessel and disposed of the debris.

Ship-source Oil Pollution Fund

On June 16, 2009, the Administrator reviewed a claim from the Department of Fisheries and Oceans (DFO)/CCG in the amount of \$54,337.20 for costs and expenses incurred, pursuant to sections 51(1), 84 and 85 of the *Marine Liability Act*.

On June 23, the Administrator requested additional information from CCG about whether it had followed up with the shipowner, Hustler Tug & Barge Limited, with respect to its efforts to have the company pay the CCG claim. On January 29, 2010, CCG replied to the Administrator's request for information and noted that they had followed-up with the owner of the vessel. The owner had indicated that, on advice from its legal counsel, the company was not in a position to pay the claim. It seems that the shipowner may be contemplating suing the CCG on the grounds that a navigation buoy was out of place causing the *Island Ranger* to hit the rock and sink.

As of the end of the fiscal year, the Administrator is continuing the investigation and assessment of the claim with assistance from counsel. Meanwhile, the file remains open.

2.33 Sailboat, Toronto Harbour (2009)

On January 9, 2009, the Canadian Coast Guard (CCG) advised the Administrator about an ongoing incident in Toronto Harbour. On December 18, 2008, a 32-foot sailing boat sank at the Portland Street Slip in Toronto Harbour. The fire department deployed a team to contain an oil sheen on the water. Both Environment Canada and the Ontario Ministry of the Environment were informed about the oil sheen coming from the sunken vessel.

On January 12, CCG mailed a Direction Order to the owner of the sailboat informing him to take measures to remove all pollutants from the boat and secure adequate berthing before January 19, 2009. No response was received from the owner by this deadline.

In anticipation of a claim, the Administrator instructed counsel to engage a marine surveyor to assist in evaluating any plan of the CCG to remove the sailing boat.

On April 9, 2009, CCG informed the Administrator that as a result of the failure of the registered owner to prevent further oil pollution, the CCG removed the sunken sailboat. The boat was considered to be a constructive total loss with little or no scrap value, so CCG authorized the City of Toronto to dispose of the wreckage.

The Administrator has not received a claim in this incident. Pending expiration of the limitation period for filing claims against the Administrator, the file remains open.

2.34 Mystery Oil Spill, Burrard Inlet (2009)

On August 11, 2009, the Administrator was informed about this incident by a spokesperson representing a private marina located on the south shore of Burrard Inlet in Vancouver Harbour. On July 30, an oil slick had drifted into the marina causing considerable damage to fourteen pleasure crafts. The Vancouver Sun daily newspaper reported that the cause of the oil spill was the cruise ship *Oceanic* that had been secured at Canada Place cruise terminal. The spokesperson had contacted Transport Canada and the Canadian Coast Guard (CCG) and was referred to the Ship-source Oil Pollution Fund for compensation purposes. The Administrator advised about the process and supporting documentation required for filing a claim with the Fund.

On August 12, the Administrator requested that CCG provide further information about the incident. CCG replied that, on December 30, a CCG duty officer received a report of an oil sheen at Canada Place and requested the Harbour Master investigate. The Harbour Master noted that the reported oil

was only around the cruise ship *Oceanic*. He responded by engaging Burrard Clean Operations, who performed skimming operations late into the night, cleaning the sides of the cruise ship. Transport Canada (TC), also on-scene, inspected the vessel for evidence that it was responsible for the pollution but with no avail.

The Harbour Master requested CCG to take over the position of On Scene Commander. Environment Canada and Canadian Wildlife Services were contacted as a result of oiled birds being found along the shoreline. CCG continued the investigation by taking samples for TC of the *Oceanic*'s fuel and from the water surface. CCG considered this a mystery spill unless TC's ongoing investigation, including the sample analysis, proved the source to be the *Oceanic*.

On August 30, the Administrator instructed counsel to engage a marine surveyor to investigate the circumstances surrounding the incident with Burrard Clean Operations, CCG, Transport Canada Marine Safety and the representative of the marina. As of the end of the fiscal year no claim has been received for this incident. Meanwhile, the file remains open.

2.35 Sea Wing II (2009)

On May 31, 2009, the Canadian Coast Guard (CCG) received a report of a derelict fishing vessel on the beach at Chatham Islands, British Columbia. The CCG Victoria-based Environmental Response personnel investigated and found oil inside the vessel and on the water, but the structural condition of the vessel made it too dangerous to work onboard. CCG was unable to locate the owner and, therefore, made a decision to remove the vessel.

On June 21, Saltair Marine Services Ltd. was engaged to tow the wreck to its facility in nearby Ladysmith. A marine surveyor from Lipsett Marine Consultants Ltd. was hired to determine the status of the vessel. The surveyor reported that the 45-foot *Sea Wing II* was constructed in 1968 of cedar and oak. There were areas of rot and the stern was missing. All but the pilot house had been flooded with the tides. The engine room was contaminated with oil. Furthermore, there was no salvage value in the vessel. The surveyor recommended that since "this vessel requires the constant operation of pumps to remain afloat and as it has contaminants aboard, it should be hauled ashore and dismantled and disposed of." CCG contracted Saltair Marine Services Ltd. to deconstruct the vessel and remove pollutants.

The deconstruction work was accomplished over a 9-day period from June 22 to July 2. The vessel was removed from the water and placed into a concrete containment pad, so that during the process of demolition, waste oils would be contained in a catch basin. The fuel and oils were drained from the fuel tank, the engine and the piping. An excavator was utilized to dismantle and sort the debris, fibreglass, waste wood and recyclable scrap steel. Following the demolition, the crew was employed in cleaning up the concrete containment pad and sorting the barrels of soaked absorbent. When the dismantling of the wreck was completed, the absorbent pads and booms, including 175 litres of oils and oily water, were disposed of by NEWALTA Industrial Division. The debris and rubbish from the demolished fishing vessel were separately disposed of by DBL Disposal Services.

On December 15, 2009, the Administrator received a claim from the Department of Fisheries and Oceans/ CCG in the amount of \$35,552.69 pursuant to Part 6 of the *Marine Liability Act*.

On February 11, 2010, the Administrator instructed counsel to engage a marine surveyor, on behalf of the Fund, to investigate whether all the expenses can be reasonably characterized as pollution prevention, or whether some of them were, in essence, wreck removal. In the meantime, the file remains open.

2.36 Meota (2009)

On June 6, 2009, the Canadian Coast Guard (CCG) received a report that a derelict vessel was sinking at anchor in Tsehum Harbour near Sydney, British Columbia. CCG Emergency Response personnel proceeded to the site and found the old wooden hull vessel, *Meota*, approximately 75 feet offshore resting on the bottom with a starboard list. An oil sheen was present around the wreck.

CCG was informed by the owner that he had no resources to pay for dealing with the situation. As a result, CCG engaged a contractor, Saltair Marine Services Ltd., to raise the vessel and transport it to its yard facility in Ladysmith. It was kept afloat at the shipyard by pumping operations, which needed constant supervision.

On June 13, a marine surveyor was hired by CCG to determine the status of the vessel. The surveyor reported that the 70 year-old, 45-foot *Meota* was constructed of cedar planking and oak frames. It was found in a derelict condition after being sunk. It had extensive areas of rot throughout the structure. The surveyor concluded that, given the condition of the vessel and the fact oil products were still onboard, the vessel should be hauled ashore and dismantled.

On June 19, the *Meota* was lifted ashore by Saltair Marine Services Ltd. and deconstructed. Approximately 60 litres of gasoline, 12 litres of lubricant oil and 280 litres of diesel fuel were removed from the vessel.

On December 15, 2009, the Administrator received a claim from the Department of Fisheries and Oceans/ CCG in the amount of \$27,564.01 pursuant to Part 6 of the *Marine Liability Act*.

On February 11, 2010, the Administrator instructed counsel to engage a marine surveyor, on behalf of the Fund, to investigate whether all the expenses can be reasonably characterized as pollution prevention, or whether some of them were, in essence, wreck removal. In the meantime, the file remains open.

2.37 Just Magic (2009)

On June 23, 2009, the Canadian Coast Guard (CCG) received a report of a sunken vessel in Tod Inlet, British Columbia. The Victoria-based CCG Environmental Response personnel investigated and determined that there was a risk of oil pollution from the partially submerged ex-fishing boat that was tied to a deteriorating barge. The owner was eventually contacted, but stated he had no financial resources to deal with the matter.

CCG engaged a Saltair Marine Services Ltd. to raise the derelict vessel and transport it to its facility in Ladysmith. Also, a marine surveyor was engaged to determine the vessel's status. The surveyor ascertained that the gill-net type fishing boat, built in 1958, sank up to the level of its deck amidship. It had retained enough buoyancy to keep from going down completely. It lay in this condition for over a year. The surveyor concluded that the boat had been damaged and deteriorated beyond repair and presented an environmental hazard. The surveyor recommended that the wreck be hauled ashore and dismantled. Following the marine surveyor's condition survey, CCG contracted Saltair Marine Services Ltd. to deconstruct the *Just Magic* and remove pollutants.

On December 15, 2009, the Administrator received a claim from the Department of Fisheries and Oceans/ CCG in the amount of \$13,659.53 pursuant to Part 6 of the *Marine Liability Act*.

On February 11, 2010, the Administrator instructed counsel to engage a marine surveyor, on behalf of the Fund, to investigate whether all the expenses can be reasonably characterized as pollution prevention, or whether some of them were, in essence, wreck removal. In the meantime, the file remains open.

2.38 Hey Dad (2009)

On June 28, 2009, the Canadian Coast Guard (CCG) was informed that a 50-foot ex-fishing vessel had sunk in Gowlland Harbour, British Columbia. The vessel was releasing oil onto the surface of the water. CCG responded and deployed absorbent boom and pads to recover the oily waste that was upwelling from the sunken vessel.

The vessel owner informed CCG that he did not have insurance and was not financially able to respond to the situation. The following day, as the upwelling of oil continued, CCG hired DCD Pile Driving contractors to lift the wreck. When it was raised to the surface, all pumping attempts to re-float the *Hey Dad* were unsuccessful. Consequently, CCG had the vessel towed, while slung by a crane, to Middle Point Barge Terminal for further assessment. A marine surveyor was engaged who advised CCG that the vessel had no value and should be deconstructed to safely remove all pollutants. On June 30, the vessel was dismantled and the materials with all oily waste were disposed of so that no further threat of pollution into the marine environment existed.

On December 15, 2009, the Administrator received a claim from the Department of Fisheries and Oceans/ CCG in the amount of \$37,960.91 pursuant to Part 6 of the *Marine Liability Act*.

On February 11, 2010, the Administrator instructed counsel to engage a marine surveyor, on behalf of the Fund, to investigate whether all the expenses can be reasonably characterized as pollution prevention, or whether some of them were, in essence, wreck removal. In the meantime, the file remains open.

2.39 Camino Real (2009)

On July 10, 2009, the Canadian Coast Guard (CCG) received a report about a sunken vessel near Union Bay close to Comox, British Columbia. The CCG investigation determined that the ex-fishing vessel had been partially submerged for several months. Upon inspection, the vessel was leaking diesel oil and there was oil in the engine and other equipment as well as fuel in its tanks. The hull of the vessel was constructed of wood with a fibreglass outer layer. A search for the owner, with the assistance of the Comox Harbour Authority, found that the vessel had been sold by the registered owner to a person who had lived onboard the previous fall.

On July 14, CCG contracted Saltair Marine Services Ltd. to raise the vessel. Temporary measures were taken to reduce water ingress so that the vessel could be towed to the company's shipyard in Ladysmith, BC. The vessel was later demolished and the debris and woodwaste were disposed of by the contractor.

On December 15, 2009, the Administrator received a claim from the Department of Fisheries and Oceans/ CCG in the amount of \$23,264.74 pursuant to Part 6 of the *Marine Liability Act*.

On February 11, 2010, the Administrator instructed counsel to engage a marine surveyor, on behalf of the Fund, to investigate whether all the expenses can be reasonably characterized as pollution prevention, or whether some of them were, in essence, wreck removal. In the meantime, the file remains open.

2.40 Mystery Oil Spill, Parry Sound (2009)

On July 17, 2009, an oil spill occurred at a marina owned by the Town of Parry Sound, and operated by the local Chamber of Commerce. The waterfront manager contacted the Spills Action Centre of the Ontario Ministry of Environment. A local firm, Adams Bros. Construction Ltd., was engaged to contain and clean-up the diesel fuel in the harbour and dock area of the Big Sound Marina.

An environmental technologist was retained in conjunction with Adams Bros. Construction Ltd. to respond. It was concluded that if no remediation measures were undertaken the fuel would have further impacted docked watercraft, neighbouring properties and surface waterways. Containment booms were placed around the outside of the spill in the harbour. Oil absorbent booms were placed along the dock to absorb the oil that had been contained in that area. Approximately 1,500 litres of oily water and fuel oil were recovered from the marina area. The containment booms were removed on July 20, and all booms and pads were disposed of as per Ontario environmental regulations.

On September 3, 2009, the Administrator received a claim filed with the Fund by the Town of Parry Sound for costs and expenses incurred during the clean-up in the amount of \$6,987.04, pursuant to Part 6 of the *Marine Liability Act*. The claimant characterized the incident as a mystery spill. Upon receiving the claim, the Administrator commenced an investigation and requested additional information. Subsequently, the additional information and documentation requested were provided. During the investigation, the Community Development Department of the Town confirmed that there are no sewer outlets in the general area of the marina. Further, the Chamber of Commerce advised that it was not aware of any commercial ships or pleasure crafts that may have been at anchor, secured or transiting the area west of the marina when the incident occurred. Also, when contacted, the Emergency Response personnel at the Coast Guard base in Parry Sound were unable to add information about the possible source of the mystery oil spill.

On December 2, 2009, the Administrator made an offer in the amount of \$6,987.04 plus interest as full and final settlement. On December 11, 2009, the Administrator received the claimant's acceptance of the offer of compensation. The Town of Parry Sound was provided with a Release and Subrogation Agreement for signature. When the Agreement was executed by a duly authorized officer and returned to the Administrator, the requisitioned cheque was mailed to the claimant as full and final payment.

The Administrator accepted the claim as a mystery spill because the investigations proved it impossible to ascertain the source of the oil pollution. As the source of oil pollution is unknown, the SOPF is unable to take any recourse action. Therefore, the Administrator closed the file.

2.41 Mystery Oil Spill, Hamilton Harbour (2010)

On February 10, 2010, the Administrator was informed by the Hamilton Port Authority that an oil spill had occurred in the harbour on December 14, 2009. The provincial Ministry of Environment was informed about the incident, but the authorities were unable to locate the source of the spill. The Port Authority had incurred expenses in the amount of \$10,959.95 to clean-up the oil pollution. The Port Authority was, at that time compiling information for a claim submission to the Fund. As of the close of the fiscal year, no claim has been received. Meanwhile, the file remains open.

3. Challenges and Opportunities

The fiscal year ending March 31, 2010, has proved to be a busy one. The core business of the SOPF, namely, the assessment and payment of claims submitted to it for pollution damage arising out of oil spills caused by ships, has proceeded at a steady pace. It remains the policy of the Fund that such claims should be dealt with on a timely basis. The aim is to facilitate the payment of claims so as to minimize the financial hardships of those who have suffered the consequences of such spills. The Administrator is also cognizant of the fact that the underlying principle of the governing legislation, the *Marine Liability Act* (MLA), is that the polluter should pay such compensation. Consequently, wherever possible, all reasonable measures must be taken to recover amounts paid out of the SOPF from the shipowner or any other party that may be responsible. The prompt investigation and payment of established claims thus remains the major challenge of the Administrator and his limited staff.

With the able assistance of the marine consultant engaged by the SOPF, as well as legal counsel across the country, these objectives have been largely met. Where delays in the payment of compensation have been experienced, it is often because inadequate or incomplete documentation has been filed in support of the claim. Also, sadly, most claims submitted directly to the SOPF, involve ships that are derelict or abandoned and the owners have either disappeared or have no attachable assets, rendering the recovery of compensation impossible. In those instances where spills have been caused by ships with responsible shipowners, backed by proper insurance, compensation has often been achieved without recourse to the SOPF. In past reports, the Administrator has routinely referred to the problem of abandoned and derelict vessels. Those vessels remain an ongoing challenge for both the SOPF and for national, provincial and local governments. The Administrator remains open to discussion on managing this problem.

In previous Annual Reports, particularly the last one, the Administrator referred to the challenge posed by the significant increase in its administrative work load resulting from efforts to comply with government legislation and policies aimed at greater transparency and accountability. With the passage of Bill C-7 and its entry into force as Chapter 21 of the Statutes of Canada, 2009, some of these requirements have become compulsory. It may be recalled that the SOPF is a very small agency, staffed entirely by non-public sector personnel. Whereas in larger government departments and agencies, compliance with these requirements is often achieved by dedicated staff, this is not possible at the SOPF, given its size, so that it must rely to a large extent on consultants to do this work. To ensure that the SOPF meets all its legal obligations, while not unduly expanding its staff, remains a significant challenge.

As many of these aforementioned problems are common to other small agencies, the Administrator is a regular attendee at meetings of the Heads of Federal Agencies Association; the objective being to learn as much as possible about how other small agencies are dealing with these matters. The Administrator has also involved his Office Business Manager in meetings organized for the benefit of these agencies with the aim of cultivating networks and contacts. The Administrator is particularly interested to learn about instances of shared services between government departments and agencies, which he believes may be an effective way to deal with ever growing administrative costs. Additionally, this would ensure that its staff requirements, and attendant costs, do not grow out of proportion to the costs associated with its core business of investigating and paying established claims.

Over the years, the SOPF has received generous support from Transport Canada, notably in accounting and financial services. However, more help is needed. The transformation of its filing system, dictated by the SOPF's compliance with the *Access to Information* (ATIP) and *Privacy Act*, has now been achieved. However, this work will remain incomplete until the SOPF also has access to the common information management database that is currently used by the federal government. This application is an essential tool to implement a file retirement policy, identify relevant files according to time limitation periods, as well as help streamline any ATIP requests that may be filed with the

Ship-source Oil Pollution Fund

Fund. Discussions are underway with Transport Canada to extend this application to the SOPF. Although the SOPF could purchase this much needed software on its own, it would prove extremely costly. Hopefully with the assistance of Transport Canada this exorbitant cost can be avoided.

In previous Annual Reports, the Administrator has referred to staffing problems resulting from the need for more staff, as well as the need for some degree of permanence in staffing arrangements. Total reliance on temp agencies to meet its staff requirements is no longer entirely satisfactory so the SOPF has been resorting to longer term contracts with key staff. This poses additional administrative burdens on the Fund in the realm of pay and benefits, which it is ill-equipped to deal with, since it lacks the necessary experience. The SOPF is too small to justify dedicated staff to deal with this aspect of its administration. In this instance, too, the Administrator is looking to Transport Canada for advice and assistance.

As mentioned above, the amendments to the MLA, contained in Chapter 21 of the Statutes of Canada, 2009, have come into force as of January 2, 2010. It is the belief of the Administrator that these amendments will not significantly alter the claims handling procedures of the SOPF. In addition, they contain provisions relating to governance of the SOPF. Much of what is stipulated in these provisions has already been implemented by the SOPF administration on a voluntary basis. They do, also, provide for a special examination to be carried out once every five years to determine that proper systems and practices are in place regarding financial accounting and control, the aim being to ensure that the assets and the resources of the Fund are properly safeguarded and efficiently managed. In anticipation of such a special examination, the Administrator, with the help of his Office Business Manager and auditors is reviewing all practices and procedures to ensure that the SOPF is run efficiently and cost effectively.

For the past two years, the Administrator has been on notice that the SOPF will have to move from its current location in the Lorne Building, 90 Elgin Street, in Ottawa. The process of finding a new location has been an arduous one. With the assistance of Public Works and Government Services and with the advice and assistance of Transport Canada, a new location has been found that meets with government guidelines and directives. The actual move, which should be completed in May, will result in a significant increase in the work load of SOPF staff. Every effort will be made to ensure that the move is accomplished with as little disruption of the core work of the Fund to investigate and pay established claims.

The Administrator, assisted by the marine consultant of the SOPF, pursues an active outreach program. The aim is to make Canadians aware of the facilities that the SOPF provides and the role that it plays in the Canadian regime of liability and compensation for ship-source oil pollution damage. In addition to attending conferences and seminars to keep abreast of technical and legal developments in the field of marine pollution, the Administrator also fosters regular contacts with government departments and agencies and major stakeholders. In line with government directives, the SOPF has developed a website which the Administrator sees as a vital outreach tool. The challenge over the coming months will be to bring the website fully up to date in light of recent amendments to the governing law, as referred to above.

Last but not least, the work on an up-to-date claims manual remains incomplete, mainly because the Administrator has not been able to tackle this work, given the limited resources at his disposal and other priorities over which he has no control. Once the move has been accomplished, however, the Administrator hopes to tackle this project. While government claimants against the SOPF are well aware of its practices and procedures with respect to the submission of claims, in recent years there have been a number of claims from non-governmental claimants, sometimes for the first time, where access to an up to date claims manual would be useful. Again, the Administrator sees the claims manual, in addition to the website, as a useful outreach tool.

4. Outreach Initiatives

The Administrator continues with outreach initiatives aimed at raising awareness of the existence of the Ship-source Oil Pollution Fund and its availability to provide compensation for oil pollution caused by ships. The interest groups include private citizens, insurers, response organizations, federal and provincial government agencies, and commercial organizations. This outreach provides an opportunity for the Administrator to further his personal understanding of the perspectives of individual claimants, shipowners, clean-up contractors and other stakeholders who respond to an oil spill incident and, as a result, file a claim for compensation. When attending meetings of the International Oil Pollution Compensation Fund (IOPC), the Administrator maintains contact and dialogue with delegates representing international organizations and government agencies of IOPC member states.

In the fiscal year covered by this report, it is noteworthy that the outreach initiatives have included a number of international visits. There is growing interest in the operation of the Canadian domestic fund, notably in the Republic of Korea, China, Japan and, lately, in the Russian Federation.

4.1 Annual Conference of the Shipping Federation of Canada

On April 1, 2009, the Administrator attended the annual conference of the Shipping Federation of Canada in Montreal. This association, as its website notes, is incorporated by Act of Parliament and aims to represent and promote the interests of ship operators and agents involved in Canada's world trade. It includes in its objectives the promotion of an environmentally sustainable and quality-oriented transportation system. Accordingly, the Administrator considers familiarity with the membership of this association to be a valuable source of contacts, especially where international shipping may be involved in ship-source oil pollution incidents.

4.2 McGill Lectures

At the invitation of Mr. John O'Connor, a member of the teaching staff in the Faculty of Law, McGill University, the Administrator attended lectures at the University on April 1, 2009 and again on March 31, 2010, to give law students an account of the operations of the SOPF. His remarks were in the context of a lecture on the operation of the national and international regime of liability and compensation for ship-source oil pollution. The talk on both occasions proved to be a most instructive, both for the students and for the Administrator, provoking a number of interesting questions from students. The Administrator hopes that this initiative will be repeated in the future as a means of raising awareness of future lawyers in this very specialized field of maritime law. Special thanks go to Mr. O'Connor for organizing this initiative.

4.3 Canadian Maritime Law Association

The Administrator continues to follow closely the activities of the Canadian Maritime Law Association. As in the past, on April 16, 2009, the Administrator attended the meeting of members of the Association and governmental officials, organized under the auspices of Transport Canada. Where appropriate, the Administrator also attends open meetings organized by the Association on current trends in Canadian maritime law. Those meetings also afford opportunities to keep in touch with the membership of the Association.

4.4 Canadian Marine Advisory Council (National)

The Canadian Marine Advisory Council (CMAC) is Transport Canada's national consultative body for marine matters. CMAC held its semi-annual meetings in Ottawa from April 27 to 30 and from

November 3 to 5, 2009. The Administrator and a marine consultant engaged by the Fund, Captain George Legge, attended some of the meetings. The Administrator follows with interest the ongoing discussion on all marine environmental issues addressed at the national CMAC sessions. He keeps abreast of the proposed regulatory framework for the prevention of oil pollution from ships of all classes. Of particular interest are the deliberations of the Standing Committee on the Environment. The Committee provides a forum for consultation and information sharing on such issues as oil pollution prevention and oil spill response. Also of interest are the discussions in the working group on marine oil pollution.

Below are a number of subjects reported on at CMAC that are of particular interest to the Administrator.

Marine Waste Disposal

During the November 2009 session Transport Canada reported to CMAC that it is continuing to develop and implement a waste management strategy for ships and shore-based facilities. Marine Safety gave a presentation on the waste survey it is currently undertaking with the Department of Public Works and Services Canada to estimate the amount of waste generated by commercial ships. Government Consulting Services has been contracted to conduct the survey. The scope of the survey will include sewage, greywater, oily bilge water and other ship-generated machinery residual oils. The study will not, however, include pleasure craft, fishing vessels and floating production storage and offloading vessels operated by the offshore oil exploration industry. The data collected will be used to inform proponents of new port development of the requirements for waste reception facilities. When consultation with the marine industry is completed, the report will be circulated to the members of the CMAC Standing Committee on the Environment. It will be available on the CMAC website.

During discussion, it was noted that Transport Canada recognizes the importance of having adequate facilities in Canadian ports to receive engine room oily waste and other residual oils generated by ships. From an economic and practical standpoint, all Canadian port reception facilities have to be conveniently located to meet the operational requirements of the ship without undue delay. The reception facilities must also be affordable for all classes of ships. In order to ensure compliance with the MARPOL oil discharge regulations, in 2006 Transport Canada completed a study of waste reception facilities in Canadian ports. The study found that the facilities provided by commercial operators were adequate, but challenges lay ahead with port expansion and new terminals in remote areas. Concerns were raised about challenges associated with future oil and gas exploration in the Arctic. It seems that there are no waste disposal facilities in the high Arctic. Marine operators are apparently using community dumps. This issue will be addressed by the waste management study.

East Coast Environmental Risk Study

During the April 2009 CMAC meetings, Transport Canada presented information on the status of the ongoing study to assess the environmental risk associated with the transportation of oil along the southern coast of Newfoundland. Transport Canada, in partnership with the Department of Fisheries and Oceans and the Canadian Coast Guard, undertook this study in 2005 to assess the risk of an accidental oil spill. For the purpose of the study, federal officials worked in collaboration with the Provincial Department of the Environment and the local offshore marine industry, including other environmental groups. It was recognized that, due to the increase in offshore oil exploration and production on the east coast, tanker traffic was rising significantly, particularly in the Placentia Bay area. Some of the factors under review were, the increase in marine traffic, the size, age, and number of tankers transiting the coastal waters, the vessel traffic routing and management system, oil spill probability assessments, and the potential impact of oil spills on the marine environment.

During 2009, town hall meetings were held in communities along the coast with presentations about the study. Meetings were also held with targeted stakeholder groups, such as the oil and gas industry associations and representatives of the fishing industry, including environmental organizations. As a result of the consultation process, 25 recommendations were received from stakeholders and the general public. Transport Canada's senior management are currently reviewing the recommendation.

Regulatory Reform

During the November session of CMAC an update was provided on the status of the *Arctic Waters Pollution Prevention Act*. The membership was advised that Bill C-3, an Act to amend the *Arctic Waters Pollution Prevention Act*, received Royal Assent on June 11, 2009, and came into force on August 1, 2009. The amendments enable Canada to extend its jurisdiction in Arctic water from 100 nautical miles to 200 nautical miles from its baselines of the territorial sea.

National Aerial Surveillance Program

Transport Canada provided a presentation of this subject. Federal government departments and agencies are using available resources to combat oil pollution caused by passing ships. Transport Canada is responsible for the overall direction and coordination of the National Aerial Surveillance Program (NASP). The objectives of the NASP include enforcement of the pollution prevention regulations, deterrence, emergency response and program support for other government departments and federal agencies, such as the CCG, Environment Canada, and the Royal Canadian Mounted Police.

The Administrator is aware that the NASP is an essential component of the federal oil pollution prevention program. During the CMAC sessions in April the membership was provided with an overview of the goals and objectives of the NASP. The presentation addressed the effectiveness of the ongoing operational partnership arrangements among Transport Canada, Environment Canada, Fisheries and Oceans, Canadian Coast Guard and other government agencies.

At the November session, Transport Canada reported it has finished modernizing three maritime surveillance aircraft with state-of-the-art remote sensors to strengthen the aircrafts' overall surveillance capability. Of these three aircraft two are Dash 8s, one is located in Moncton and the other in Vancouver. One Dash 7 is based in Ottawa and provides surveillance on the Great Lakes and Arctic waters. The new Dash 7 was fully equipped with remote sensors and deployed for Arctic surveillance during the 2009 shipping season. In addition to the Dash 7 and 8 aircraft, there is a chartered Beachcraft King Air 200 located in St. John's. This aircraft is contracted for fisheries patrol off the coast of Newfoundland. It is also multi-tasked or conducts dedicated oil pollution surveillance flights as may be required.

Through the air surveillance program, Canada is striving to send a strong message that our marine environment must be protected. In all coastal areas the aircraft are a significant deterrent to would-be polluters. Transport Canada reported at the November session that a Cypriot-registered vessel was the first to be prosecuted from evidence collected by air surveillance with the new technology installed on the Dash 7 aircraft. This case resulted in a fine of \$40,000 being directed to the Environmental Damages Fund.

The Administrator appreciates being invited to participate in the deliberations of the national CMAC sessions.

4.5 Canadian Marine Advisory Council (Northern)

The Administrator was invited to attend the Regional Canadian Marine Advisory Council (Northern CMAC) meetings held in Quebec City from May 5 to 6, 2009, and in Yellowknife, Northwest Territories from October 21 to 22, 2009. Due to prior engagements, the Administrator was unable to attend personally, but was represented by a marine consultant engaged by the Fund. The CMAC-N meetings are held semi-annually and usually take place in different northern communities. The participants at these CMAC-N meetings represent federal and territorial governments including a range of operators from the northern shipping industry. Discussions are co-chaired by representatives of the Department of Fisheries and Oceans (Canadian Coast Guard Central and Arctic Regions), and Transport Canada Marine Services, Prairie and Northern Regions.

Vessel Traffic Services

During the May session, Transport Canada advised that work continues on developing the proposed Northern Canada Vessel Traffic Services (VTS) Regulations, otherwise known as the mandatory NORDREG. These new regulations, which are not yet in force, are intended to promote safe and efficient navigation and environmental protection, and support the commitment to establish mandatory vessel reporting in Canada's northern waters. When in force, the regulations will establish a traffic service zone for waters of northern Canada. They will prescribe which vessels must obtain clearance to enter, proceed within, or depart from the VTS zone.

Transport Canada recognizes that a large percentage of vessels operating in Arctic water are currently reporting into NORDREG on a voluntary basis because of the advantages that the service provides.

Arctic Environmental Response

At the October meetings a presenter provided an overview of the CCG's responsibilities and contingency plans to respond to a marine oil spill in the Arctic. The CCG is the lead federal agency for preparedness and response throughout the region north of 60 degrees latitude. In this respect, the CCG has developed individual response strategies for local communities. This includes storing of equipment as well as providing training to local people on the use of the equipment in order to respond to spill incidents.

There was discussion about the type and amount of oil pollution clean-up equipment currently stored at Churchill, Iqaluit and Tuktoyoktuk, including air transportable spill response equipment at the CCG depot in Hay River, Northwest Territories. The meeting was advised that in addition to existing caches of equipment, CCG has designed new deployable site specific Arctic Community packs of clean-up equipment, which will be deployed throughout Arctic communities during the current fiscal year. The equipment will be stored in 55 containers that will be located in different communities. For example, in total, the containers will store over 50,000 feet of oil containment boom, plus other oil pollution counter-measures equipment. Moreover, the CCG icebreakers will continue to carry first-response spill equipment and the crew members are trained in its use.

As reported in previous Annual Reports, shipowners do not have contractual arrangements with a certified response organization during operations in Arctic water. In fact, there are no response organizations for waters north of 60 degrees latitude. The Arctic sealift operators consider that there is a risk that an oil spill may occur during fuel oil transfer by floating hose from ship to shore in a number of communities. To mitigate this risk, the commercial oil tankers, which are deployed for fuel delivery during the annual sealift operations, are equipped with oil pollution counter-measures equipment. The fuel transfer hoses and other lightering equipment utilized by these ships are designed specifically for Canadian Arctic operations.

In addition to the training provided to the ship's personnel before departure from southern ports, the oil tanker operators conduct oil spill exercises and pollution prevention deployment drills upon arrival on-site in the northern communities. These training exercises are designed to provide an opportunity for the ship's crew to practice oil spill equipment deployment under real conditions when oil is pumped ashore through floating hoses, and during barge off-loading activities. Some of the pollution counter-measures equipment used during these exercises is provided by the Canadian Coast Guard from the Quebec Region. In addition, equipment is provided by La Fédération des coopératives du Nouveau-Québec. Representatives of FCNQ and the Nunavik government are on hand during the oil spill exercises as observers. Further, Transport Canada arranges for a Ship Safety Inspector to be present at the training evolutions.

Regulatory Reform

Transport Canada informed attendees at CMAC about progress on the *Canada Shipping Act, 2001*, regulatory reform project, including the importance of public consultations. Participants were reminded that specific issues that they would like addressed will be brought to the attention of the appropriate Standing Committee of the National CMAC Secretariat.

A representative of the Department of Environment and Natural Resources (ENR), Government of the Northwest Territories (GNWT) presented and read a paper that GNWT would like to have on record with respect to issues relating to the freezing-in of fuel laden petroleum barges in ice. This freezing-in is done across the Northwest Territories for the purpose of over-wintering fuel storage in large quantities. Specifically, ENR states that it does not support freezing-in fuel laden petroleum barges, except in the case of an emergency where no reasonable alternative exists. ENR proposes that wide consultation is required with communities, agencies, regulators, and other stakeholders prior to the development of guidelines or regulations for this practice.

Sealift Operations

During the meetings, both in Quebec and in Yellowknife, presentations were made by several shipping companies about the annual sealift operations, and the delivery of oil products to Arctic communities. Also, the participants provided an overview of the oil spill exercises conducted regularly by the sealift shipping companies.

The Administrator has a direct interest in becoming more aware of the issues surrounding the transportation by sea of oil products throughout the High Arctic.

4.6 Arctic Marine Oil Spill Program

The Administrator was represented by a marine consultant at the 32nd Arctic Marine Oil Spill Program (AMOP) technical seminar held in Vancouver from June 9 to 11, 2009. These technical seminars on environmental contamination and response are sponsored by the science and technology branch of Environment Canada. The objective is to improve the knowledge base and technology for combating Arctic and marine oil spills. It is an international technical forum about oil spills in any environment as well as other oil spill-related topics. There were discussions during the three-day conference about a broad range of technical development, operational approaches and contingency planning.

The presentation, *Waste Management Guidelines for Remote Arctic Regions*, emphasized that oil spill response operations in remote areas can generate large volumes of oily and operational waste materials that must be transferred and either recycled or disposed. The amount of waste generated

by shoreline treatment response operations is not directly related to the volume of spilled oil nor to the location. It is a function of methods selected by the spill management team. Arguments were presented about allowing natural recovery. The presentation summarized a study conducted by a working group of the Arctic Council to develop general guidelines and strategies for oil spill management in Arctic Regions. As a result, a Waste Management Calculator as a user's guide (computer software) was developed as a planning tool to help decision makers.

Other programs included case studies and recent oil spill experiences, such as the presentations by a representative of the International Tanker Owners Pollution Federation Ltd. One of these presentations addressed the difficulties, financial and operational, of engaging volunteers at major spills – the *Hebei Spirit* incident in Korea was mentioned as an example. Similar problems were experienced in the recent San Francisco Bay incident involving the *Cosco Busan*. Volunteers have to be provided with safety clothing at considerable cost and without training their efforts were not necessarily considered worthwhile and cost-effective.

The displays provided at the meetings were informative and they covered a range of oil pollution clean-up equipment and latest technologies. This up-to-date information is valuable for the Administrator in the process of investigating and assessing claims filed with the Fund. The seminar coordinator expressed appreciation that the Fund was again represented at the Environment Canada AMOP Conference.

4.7 Canadian Coast Guard Equipment Facilities

During the AMOP technical seminar held in Vancouver the marine consultant working for the Administrator took advantage of the opportunity to visit the CCG's marine environment equipment storage facility in Richmond. The depot maintains an inventory of clean-up equipment, containment barges and auxiliary equipment utilized in the Pacific Region to contain and recover oil at sea and from contaminated beaches. The inventory includes booms, skimmers, boats, sea-trucks, containment barges and other storage tanks for recovered waste oil. There is also a large amount of shoreline clean-up treatment equipment and mobile command communication units. The equipment used in oil spill incidents out of the Richmond base is standardized with that of other depots in the Pacific Region, such as at the CCG base in Victoria. This standardization reduces training requirements and facilitates deployment of resources to react to oil spills throughout the region.

The first-hand knowledge and information obtained during these visits are very beneficial. The Administrator is interested in visiting other Coast Guard regions and continuing the ongoing cooperation and working relationship between both agencies.

4.8 Canada-U.S. Oil Spill Finance Workshop

The Administrator was invited to present a paper on the operations of the SOPF at the above mentioned workshop in Seattle, July 22 and 23, 2009. The workshop was attended by representatives of the U.S. Oil Spill Liability Trust Fund, set up under the Oil Pollution Act of 1990 (OPA 90), members of the U.S. Coast Guard, as well as members of the Canadian Coast Guard. Although the U.S. is not a party to the international regime, a representative of the IOPC Fund was also in attendance. This was appropriate, since in the event of major trans-frontier oil spill caused by a tanker, the IOPC Fund would be available for Canadian claimants.

The workshop proved to be most instructive, highlighting the basic differences between the Canadian regime of liability and compensation, which is closely tied to the international regime, and the U.S. regime which, in its current version, was established after the *Exxon Valdez* incident of 1989. Those differences are likely to be a significant factor in the event of trans-frontier oil spills caused by ships.

One of the chief differences between the U.S. regime and the Canadian regime, at least from the perspective of the SOPF, is that the Oil Spill Liability Fund can finance response measures in advance of any claim being made. The SOPF, like the IOPC Fund, on the other hand, are essentially claims based funds. This means that in Canada the costs and expenses for response measures, for example, by the Canadian Coast Guard, must be incurred before they become eligible for submission as a claim either against the SOPF and, where appropriate, the IOPC Fund.

These and other differences, for example, in the realm of environmental damage, between the two regimes are worth some reflection with a view to finding ways and means to reduce their impact in the event of a major oil spill of which, luckily, up until this point in time there have been very few. Future workshops are planned and the Administrator, if invited, intends to participate.

4.9 Derelict and Abandoned Vessels

In past reports, the Administrator has regularly drawn attention to the problem of derelict and abandoned vessels. The problem is particularly acute in small craft harbours, which have only limited financial resources at their disposal to address the problem of vessels abandoned in their harbours. This problem has been raised with the Administrator by various parties on a number of occasions. In July the Administrator met with representatives of the Small Craft Harbours Association of British Columbia in Vancouver to discuss the issue. While no solution was identified, the Administrator did gain further insight into the problem and has offered to meet again with representatives to explore options. Many of these vessels are ticking time bombs that if not dealt with in a timely fashion will become a hazard to the environment. As the condition of these vessels deteriorates, they also raise safety issues. Failure to act in a timely fashion is therefore likely to increase the costs of eventual measures that must be taken to avoid environmental damage.

4.10 Visit to China

As already mentioned, there is a growing interest abroad in the operations of the Canadian fund. As the Administrator has learnt, serious consideration is being given in some jurisdictions for the setting up of a domestic fund. The Administrator attended the Shanghai International Maritime Forum, held from September 15 and 16, 2009. The organizers of the forum requested the attendance of the Administrator to present a paper on the operations of the SOPF. The paper covers the history of the Canadian fund, outlines the claims handling procedures of the fund and describes the interrelationship of the Canadian fund with the IOPC Fund. The paper was well received and has been included in the conference papers.

At a meeting in Beijing, prior to the Forum, with the Chinese Academy of Transportation Sciences the Administrator provided further details on the operation of the SOPF. The Administrator learnt that the Chinese government is quite far advanced in plans to set up its own domestic fund. From the documentation that was provided to the Administrator it is clear that the Chinese fund will follow closely the claims criteria established by the IOPC Fund even though there is no immediate plan for China to join the international regime. It is of interest, however, that Hong Kong Special Administrative Region is a member of the IOPC Fund.

Further details on Chinese plans for a domestic fund are provided in the next section.

4.11 Visit of the Delegation from the China Academy of Transportation Science and Institutes of the Ministry of Transportation

On October 19, 2009, a delegation consisting of 14 people visited Ottawa from the China Academy of Transportation Science, and other institutes of the Ministry of Transportation in Beijing. The delegation was hosted jointly by the Administrator and Transport Canada.

The purpose of the visit was to study first-hand Canada's domestic Ship-source Oil Pollution Fund. The Administrator was advised that the China Academy of Transportation Science was drafting regulations for the establishment of a domestic ship-source oil pollution compensation fund. It would be funded by contributions from receivers of persistent oil cargoes (or their agents) which have been transported by sea to a Chinese port. It is understood that the regulations would cover any ship-sourced pollution and any ship-related operation that causes, or may cause, pollution damage in waters under the jurisdiction of the People's Republic of China.

The delegation provided the Administrator in advance with an overview of the subjects they would like to discuss. These subjects addressed basic information, including history of the Fund, administrative regulations, organizational structure, role and responsibilities and operational management procedures. In addition, the subjects covered compensation principles and the scope and nature of compensation.

During the meeting with the delegation, the separate power-point presentations covered a general summary of the Canadian marine liability and shipping laws, and Canada's oil pollution compensation regime. Representatives from Transport Canada and the Canadian Coast Guard assisted with responses to the written questions submitted by the China Academy of Transportation Science.

The visit ended with a tour of SOPF offices where members of the Chinese delegation had further opportunity to ask questions on the general operations of the Fund. The leader of the delegation, Mr. Zhuang Changbo, Deputy Director General of the Academy of Transportation, expressed his appreciation, on behalf of the delegation, saying that all members were quite pleased with the meeting and had found it worthwhile and very informative.

4.12 Regional Environmental Emergency Team Conference

The Administrator was represented by a marine consultant at the 36th Atlantic Regional Environmental Emergency Team (REET) conference held in Moncton, New Brunswick, on October 28 and 29, 2009. The conference focused on perspectives about oil spill incidents, technology updates, counter-measures, case studies, lessons learned, crisis communication, and international contingency planning. The participants, industry and government, represented a broad scope of expertise currently available to respond during environmental emergencies, including ship-source oil spills.

By way of background, REET includes a number of federal, provincial, First Nations, municipal and other agencies which have expertise, information and responsibilities relevant to environmental emergencies and environmental protection. Private industry and industry associations also participate in REET as they have an interest in ensuring that trained and equipped personnel are available to deal with oil spills when they occur.

During an active response operation, a senior manager of Environment Canada normally chairs the REET meetings, which provide the On-Scene Commander from the Canadian Coast Guard, or the response organization, with consolidated environmental and scientific information such as spill movement, trajectory forecasts, and advice respecting weather forecast. In addition, REET may approve the use of chemical dispersion and other shoreline treatment techniques.

The Administrator appreciates being invited to participate in the REET conferences. Frequently, the Administrator will give a presentation during the meetings to explain the mandate of the Ship-source Oil Pollution Fund, and address the sort of documentation required when a claimant files a claim with the Fund.

4.13 On-Scene Commander Course

At the invitation of the Canadian Coast Guard College, the Administrator attended the On-Scene Commander (OSC) Course held in Sydney, Nova Scotia in November, 2009. The Administrator provided information on the availability of the SOPF for claims based on costs and expenses for responding to ship-source oil spills in Canada. The one-week OSC course is designed for on-scene commanders responsible for coordinating and directing the overall response to marine pollution incidents. The object is to make participants, drawn both from the Canadian Coast Guard and from industry, familiar with the types of plans, processes, organizational structures and resources required to respond to major incidents that could threaten the environment. The course focuses on anticipating and preparing on-scene commanders for the demands and pressures that arise during major or moderate spills. An obvious element of any oil spill incident is the subsequent actions to recover the costs and expenses associated with response activities.

The Administrator provided information on the history of the Canadian fund since its establishment in 1973, emphasizing its evolution from a fund essentially of last resort to its current status as a fund of first resort. The Administrator noted that the Canadian fund is set up for the benefit of claimants, not for the shipowner who bear prime responsibility for spill caused by their ships. The fundamental principle on which the Canadian regime, contained in the *Marine Liability Act*, is based remains the “polluter pays” principle. The Administrator also stressed the point that good record keeping is essential for the successful prosecution of a claim. Where the Administrator makes an offer of compensation, he is bound to take all reasonable steps to recover the amount paid out of the fund from the party (usually the shipowner) responsible for the spill. He therefore looks to the claimant for proof of the claim. Hence the importance of good record keeping, which should commence as soon as the decision is made to take response measures.

The Administrator also sat on a panel, together with representatives from the Coast Guard Emergency Response Unit, the International Tanker Owners Oil Pollution Federation and the British Coastguard Administration to respond to questions from course participants on cost recovery in Canada and worldwide. All in all, the Administrator found the course to be a useful exercise and a very good opportunity to get to know key players that would be involved in the event of a major oil spill in Canada.

4.14 Meeting with the Commissioner of the Canadian Coast Guard

In January the Administrator met with the Commissioner of the Canadian Coast Guard and his deputy to discuss a variety of subjects of mutual interest. Regular contact with senior management of the Coast Guard is considered beneficial, given that many claims handled by the SOPF originate with the Coast Guard.

5. SOPF Involvement in the International Compensation Regime

As noted in previous Annual Reports of the Administrator, Canada has been a member of the International Compensation Regime since April 24, 1989. Note: For a description of the International Regime, see the Administrator's Annual Report, 2005-2006, Appendix A, at page 67. The SOPF is responsible for reporting annually the amount of contributing oil received in Canada by sea and paying the Canadian contribution to the IOPC Fund based on those reports. Consequently, the Administrator has an ongoing interest in the management of the International Compensation Regime, including the policies applied to the settlement of claims.

5.1 1992 IOPC Fund Meetings

During the fiscal year ending March 31, 2009, the Administrator attended, as part of the Canadian delegation, a number of meetings of the governing bodies and working groups of both the 1992 IOPC Fund and 1971 IOPC Fund. Although the 1971 Fund Convention is no longer in force, as reported in previous Annual Reports, an Administrative Council for the Fund continues to meet to provide direction in respect of a number of incidents governed by that convention that have not yet been resolved. Complete Records of Decisions reached at meetings of these bodies are available from the Secretariat of the 1992 IOPC Fund at www.iopcfund.org. For the purpose of the present report it is intended to refer only to some of the highlights of these meetings.

5.2 Meeting held in London June 15-18, 2009

In June 2009, the Administrative Council, acting on behalf of the 1992 Fund Assembly, met to discuss a number of matters. The most notable matter related to a proposal by the Director to hold simultaneous meetings of the governing bodies (Administrative Council and Assemblies) of the 1971 Fund, the 1992 Fund and the Supplementary Fund. The object is to avoid duplication of documentation, discussion and decision making that has characterized meetings of those bodies in the past. It was agreed that there would be one Record of Decisions but that the record would make it clear for legal certainty that each body concurred in the decision with such modifications as might be appropriate. Budget decisions would continue to be taken separately, since each body operates under different budgets tailored to their individual needs. It was agreed that the October meeting should be conducted in this manner on a trial basis. The outcome of that meeting will be discussed in the section below, reporting on the meeting.

The Administrative Council also received a report from the IT manager of the IOPC Fund on the development of a database containing all decisions made by the governing bodies since the creation of the IOPC Fund in 1978. Once the work on the database has been completed, the intention is to put it on the IOPC Fund website for use by delegates, the general public, the IOPC Fund Secretariat and lawyers and experts working with the Funds. The Administrator welcomes this initiative, since it will contribute to closer coordination in claims handling of the two funds. It will also promote greater uniformity in claims handling world wide where the IOPC Funds are involved.

During the June meeting, the Executive Committee of the 1992 Fund held its 45th session. The Committee received reports on a number of incidents, notably in respect of the *Prestige* (November 2002), *Volgoneft 139* (November 2007) and *Hebei Spirit* (December 2007). Details of these and other incidents dealt with by the Committee may be obtained from the Annual Report of the IOPC Fund, 2008, at www.iopcfund.org. The latest developments in these incidents will be discussed in the section below, which reports on the meeting of the Executive Committee in October.

5.3 Meeting held in London October 12-16, 2009

The governing bodies of the IOPC Fund, as well as the Executive Committee, met for their traditional fall meeting in London in October. As already indicated, it had been agreed at meetings of those bodies in June that the governing bodies should hold simultaneous meetings to avoid duplication of discussion and documentation. Accordingly, the October meetings were held under these new arrangements. In essence, the meetings were conducted under the guidance of the chairman of the 1992 Assembly (Mr. Jerry Rysanek, Canada), with the other three chairmen present on the podium to ensure that all decisions reached were appropriately endorsed by each body. Under the able leadership of Mr. Rysanek, the meetings proceeded smoothly and a significant reduction in paper and discussion was achieved, making it likely that this new procedure will be used for future meetings of the governing bodies.

The report of the meeting is available from the website of the IOPC Funds at the web address included above. For the purposes of this Annual Report, it is proposed merely to highlight some of the items discussed. As noted in previous Annual Reports, the Administrator is interested in two aspects of the work of the IOPC Funds, namely, claims handling and budget. It may be recalled that under the terms of the *Marine Liability Act*, the Administrator has the responsibility to report annually the quantities of contributing oil received by sea in Canada and to pay out of the SOPF contributions to the IOPC Funds on behalf of Canadian contributors who receive annually contributing oil in excess of 150,000 tons. Contributions levied by the IOPC Fund are calculated on the basis of oil receipts in contracting states and estimates provided by the IOPC Fund Secretariat of the monies that will be required to pay claims and to meet the administrative costs of the Secretariat. Also, the Administrator deems it desirable to keep a close eye on the claims policies and practices of the IOPC Fund to ensure that the SOPF claims policies and practices are as closely aligned as possible with those of the IOPC Funds.

The Administrative Council of the 1971 Fund continues to deal with a small but significant number of unresolved claims, which prevent a final winding up of this fund. Two incidents merit specific mention. The *Nissos Amorgos* incident, dating back to February 1997 and reported on in previous Annual Reports, does not appear to be any closer to final resolution. The case raises significant concerns. The IOPC Fund takes the position that some of the claims are time barred. Moreover the Fund does not seem to have been properly notified of the claims and thus has been deprived of the opportunity to mount a proper defense. Efforts have been made to resolve outstanding issues by negotiation but, so far, without any concrete results. The IOPC Fund will face difficult decisions in the event that judgments that have so far been handed down by the Venezuelan courts become final if it should prove that these judgments are effectively in conflict with the terms of the governing conventions.

Another case, the *Plate Princess* incident (May 1997), also in Venezuela, raises similar concerns. In this case there is the additional concern that the documentation in support of some of the claims, according to the IOPC Fund's experts, was falsified. The Venezuelan delegation takes exception to such an allegation, noting that the courts have accepted the documentation. Once again, the IOPC Fund will be faced with difficult choices, should the court decisions so far rendered become final.

The 1992 Administrative Council, acting on behalf of the 1992 Assembly, took note of a number of incidents that are being currently handled by the 1992 Executive Committee. In the *Prestige* incident (November 2002), there has been some progress. Government claims in both Spain and France have been assessed and significantly reduced. Also, note was taken of a number of court decisions that have been handed down. By and large these decisions tend to support the IOPC Fund's claims criteria, thus serving to reinforce the uniform application of the international regime. Of particular interest are the court proceedings in the United States that have been commenced by the Spanish government against the American Bureau of Shipping in the Federal Court. The IOPC Fund is

not a party to those proceedings, but follows them closely since their eventual outcome may have a significant impact on any recourse action available to the IOPC Fund to obtain compensation for claims that it has paid or may be obliged to pay.

With respect to the *Volgoneft* incident (November 2007), the Administrative Council took note that progress is being made to resolve out of court some of the troubling issues that have plagued this case. Those issues, for example, include the so-called “insurance gap” and the application of the claims assessment procedure known as “methodika”. In both these instances, discussions are ongoing between the IOPC Fund and the Russian government to find acceptable solutions. Another troubling issue relates to the claim by the shipowner and its insurer that the storm that caused the incident was of an exceptional nature entitling it to complete exoneration from responsibility for the incident. At least one court seems to have decided that the storm in which the vessel came to grief was not an exceptional, with the implication that the defense in Article III.2(a) of the Civil Liability Convention, exonerating the owner from liability, may not be available.

The Administrative Council took note of the report on the *Hebei Spirit* incident (December 2007). The details of that incident and progress in dealing with the claims arising are fully reported in the record of decisions of the Council. For present purposes it is perhaps sufficient to refer to one specific issue of concern to both the Secretariat and the Fund membership, namely the large number of small claims that have been made in this case where claimants have often not been able to produce the necessary documentation to prove their claims. While the IOPC Fund’s experts are satisfied that losses have been incurred, it is difficult and sometimes impossible to produce the documentation to prove them. At the suggestion of the Director, the Council agreed to set up an intersessional working group to study the problem posed by large numbers of small claims and to make recommendations for dealing with such claims.

The working group has also been asked to study another problem. The P&I clubs have on a number of occasions drawn attention to their reluctance to make interim payments in some jurisdictions. The essence of the problem relates to a provision of the Civil Liability Convention, which requires the owner of a ship in order to avail itself of the limit of liability to constitute a limitation fund with the court or other competent authority. The fund can be constituted either by depositing the required sum into court or producing suitable bank guarantees. Such funds, however, cannot be distributed until all the claims have been filed to ensure that all claims are dealt with on equal basis. Since certainty as to the number of claims cannot be achieved until the limitation periods prescribed by the convention have expired, insurers are reluctant to make payments out of concern that any interim payments that they make might not be recognized by the courts. They therefore run the risk of paying more than the owner’s limit of liability. Consequently the working group has been requested to study the problem and make recommendations. It should be emphasized that the ability of the P&I clubs to make early, interim payments is a very important element in guaranteeing that claimants, particularly small ones, are paid as quickly as possible.

The Administrative Council also dealt with budgetary matters. It endorsed the 2010 budget for administrative expenses proposed by the Director. The good news is that this budget can be met out of existing funding so there will be no levy for contributions to the General Fund. Likewise, the budgets for administrative expenses for the 1971 Fund and the Supplementary Fund were endorsed by the membership of those funds. In both cases it was agreed that there should be no levy for administrative expenses.

The meeting also dealt with a number of Major Claims Funds. These funds are set up for major incidents giving rise to claims that cannot be met out of the General Funds, including the working capital. Major funds are subject to separate levies, as required in the light of assessment and payment of claims. Of chief concern are the Major Claims Funds in respect of the *Prestige*, *Volgoneft 139* and the *Hebei Spirit*. In all three cases it was decided to levy contributions (*Prestige*, £3 million, *Volgoneft 139*, £40 million, *Hebei Spirit*, £52 million). In the case of the *Prestige* and the *Hebei Spirit*, it was

Ship-source Oil Pollution Fund

agreed that the levy should be deferred, but that the Director is authorized to invoice all or part of the levy during the second half of 2010 if and to the extent required. In the case of the *Volgoneft 139*, the levy was also deferred but in this case invoicing will depend on the decision of the Executive Committee to make payments in respect of this incident. The condition attached to this case was thought to be necessary, given the outstanding issue outlined earlier that have not yet been resolved and which relate to the proper implementation of the international regime in Russia.

Finally, reference should be made to the report of the Audit Committee with respect to the non-payment of contributions. For some time, the Audit Body has been studying this problem at the request of the governing bodies of the IOPC Funds. This issue, closely tied to the issue of non-submission of oil reports, has plagued the IOPC Funds almost from its inception. Although it is generally accepted that most receivers of contributing oil do report and pay contributions and that the quantity of oil that escapes reporting and, consequently, payment of contributions, is small, nevertheless it is an inequity in the system that has to be borne by those who report receipts and pay contributions regularly and on time. The upshot of the discussion of the Audit Body's report, presented by Mr. Emil DiSanza of Canada, was the adoption of a resolution aimed at encouraging states with defaulting contributors to take a variety of measures. The Audit Body will monitor the effectiveness of the measures and report back next October.

6. Financial Statements

This section contains the auditor's report on the financial position of the SOPF and the results of its operations as at March 31, 2010.

Ship-source Oil Pollution Fund
Financial Statements
March 31, 2010

Auditors' Report	2
Financial Statements	
Operations and accumulated surplus	3
Balance Sheet	4
Notes to Financial Statements	5 - 8



Raymond Chabot Grant Thornton

Auditors' Report

Raymond Chabot Grant Thornton

S.E.N.C.R.L./LLP
2505 St-Laurent
Ottawa, Ontario K1H 1E4

Tel.: 613 236-2211
Fax: 613 236-6104

www.rcgt.com

To the Administrator of the
Ship-source Oil Pollution Fund

We have audited the balance sheet of the Ship-source Oil Pollution Fund as at March 31, 2010 and the statement of operations and accumulated surplus for the year then ended. These financial statements are the responsibility of the Fund's management. Our responsibility is to express an opinion on these financial statements based on our audit.

We conducted our audit in accordance with Canadian generally accepted auditing standards. Those standards require that we plan and perform an audit to obtain reasonable assurance whether the financial statements are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation.

In our opinion, these financial statements present fairly, in all material respects, the financial position of the Fund as at March 31, 2010 and the results of its operations and its cash flows for the year then ended in accordance with Canadian generally accepted accounting principles.

Chartered Accountants,
Licensed Public Accountants

Ottawa, Canada
May 11, 2010

Ship-source Oil Pollution Fund

Statement of operations and accumulated surplus

Year ended March 31, 2010

	2010	2009
	\$	\$
Revenue		
Interest	9,338,533	10,122,651
Recoveries of previously awarded settlements	157,598	33,100
	<u>9,496,131</u>	<u>10,155,751</u>
Claims		
Payments and accruals made towards Canadian claims	(2,523,772)	(565,464)
International Oil Pollution Compensation Funds contributions (Note 8)		(5,161,014)
	<u>(2,523,772)</u>	<u>(5,726,478)</u>
	<u>6,972,359</u>	<u>4,429,273</u>
Operating expenses		
Administrator and Deputy Administrator fees	99,199	105,809
Legal fees	164,439	258,981
Consulting fees	90,104	57,273
Audit fees	17,000	20,800
Administrative services, salaries and office expenses	235,348	186,978
Travel	31,666	36,584
Rent	104,520	97,552
<i>Access to Information and Privacy Act</i> expenses (Note 6)	11,977	61,529
Amortization of capital assets	5,378	3,872
	<u>759,631</u>	<u>829,378</u>
Surplus for the year	6,212,728	3,599,895
Accumulated surplus, beginning of year	380,025,462	376,425,567
Accumulated surplus, end of year	<u>386,238,190</u>	<u>380,025,462</u>

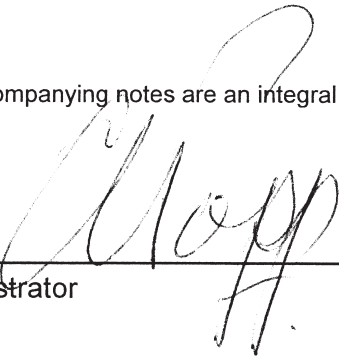
The accompanying notes are an integral part of the financial statements and Note 3 provides other information on operations.

Ship-source Oil Pollution Fund
Balance Sheet
 March 31, 2010

	<u>2010</u>	<u>2009</u>
	\$	\$
ASSETS		
Current assets		
Balance of the account with Receiver General for Canada (Note 4)	388,952,708	380,473,601
Amounts receivable		30,000
	<u>388,952,708</u>	<u>380,503,601</u>
Capital assets (Note 5)	78,204	20,156
	<u>389,030,912</u>	<u>380,523,757</u>
LIABILITIES		
Current liabilities		
Accounts payable and accrued liabilities	144,098	223,117
Provision for claims under review (Note 7)	2,648,624	275,178
	<u>2,792,722</u>	<u>498,295</u>
ACCUMULATED SURPLUS	<u>386,238,190</u>	<u>380,025,462</u>
Contingencies (Note 8)	<u>389,030,912</u>	<u>380,523,757</u>

The accompanying notes are an integral part of the financial statements.

 Administrator



Ship-source Oil Pollution Fund

Notes to Financial Statements

March 31, 2010

1 - GOVERNING STATUTES AND PURPOSE OF THE ORGANIZATION

The Ship-source Oil Pollution Fund (the Fund) was created on April 24, 1989 by amendments to the *Canada Shipping Act* and succeeded the Maritime Pollution Claims Fund. The Fund is governed by Part 6 of the *Marine Liability Act* (MLA) as modified by Statutes of Canada, 2009, Chapter 21.

2 - ACCOUNTING POLICIES

Basis of accounting

The financial statements are prepared in accordance with Treasury Board accounting policies which are consistent with Canadian generally accepted accounting principles for the public sector.

Accounting estimates

The preparation of financial statements in accordance with Treasury Board accounting policies which are consistent with Canadian generally accepted accounting principles for the public sector requires management to make estimates and assumptions that affect the amounts recorded in the financial statements and notes to financial statements. These estimates are based on management's best knowledge of current events and actions that the Fund may undertake in the future. Actual results may differ from these estimates.

Financial assets and liabilities

Due to the short-term nature, the carrying value of the financial assets and liabilities of the Fund approximate their fair value at the end of the year.

Revenue recognition

Interest income is recognized as revenue in the year it is earned. Recoveries of previously awarded settlements are recognized in the year they are received.

Foreign currency translation

Transactions involving foreign currencies are translated into Canadian dollars equivalent using rates of exchange in effect at the time of those transactions.

Capital assets

Capital assets are recorded at cost.

Capital assets are amortized over their estimated useful lives according to the straight-line method over the following periods:

	<u>Periods</u>
Computer equipment	3 years
Furniture and equipment	10 years
Leasehold improvements	10 years

Ship-source Oil Pollution Fund

Notes to Financial Statements

March 31, 2010

3 - INFORMATION INCLUDED IN OPERATIONS

	<u>2010</u>	<u>2009</u>
	\$	\$
Foreign exchange gain included in International Oil Pollution Compensation Funds contributions	-	337,837

4 - BALANCE OF THE ACCOUNT WITH RECEIVER GENERAL FOR CANADA

The cash balance of the Fund is held within the Consolidated Specified Purpose Accounts of the Government of Canada. Public Works and Government Services Canada acts as the custodian of this cash balance, and Transport Canada performs the various transactions on behalf of the Fund. Interest is credited to the Account in accordance with the provisions of the MLA at a rate based on a 5-year Government of Canada bond interest rate, calculated monthly. The interest rates varied between 1.68 percent and 2.66 percent during the year. The rate for March 2010 was 2.66 percent (1.71 percent for March 2009).

5 - CAPITAL ASSETS

	<u>2010</u>		
	Cost	Accumulated amortization	Net
	\$	\$	\$
Computer equipment	8,708	5,996	2,712
Furniture and equipment	24,757	6,265	18,492
Leasehold improvements	57,000		57,000
	<u>90,465</u>	<u>12,261</u>	<u>78,204</u>
	<u>2009</u>		
	Cost	Accumulated amortization	Net
	\$	\$	\$
Computer equipment	5,005	3,094	1,911
Furniture and equipment	22,034	3,789	18,245
	<u>27,039</u>	<u>6,883</u>	<u>20,156</u>

6 - ACCESS TO INFORMATION AND PRIVACY ACT EXPENSES

	<u>2010</u>	<u>2009</u>
	\$	\$
Administration costs	354	11,041
Consultant fees	11,387	50,213
Legal fees	236	275
	<u>11,977</u>	<u>61,529</u>

Ship-source Oil Pollution Fund

Notes to Financial Statements

March 31, 2010

6 - ACCESS TO INFORMATION AND PRIVACY ACT EXPENSES (Continued)

During the year, the Fund was required to incur additional expenses to meet the requirements of the *Access to Information and Privacy Act*. In addition to the above-mentioned operating expenses, the Fund has acquired furniture and equipment totaling \$2,723 during the year (\$6,174 in 2009), in order to maintain proper filing systems in accordance with this Act.

7 - MEASUREMENT UNCERTAINTY

Due to uncertainties inherent to the claims review process, it is possible that the provision for claims under review may be insufficient. Accordingly, a provision of \$2,648,624 for claims received prior to March 31, 2010 (\$275,178 in 2009) but not completely reviewed by that date has been calculated and recorded in the books. This provision is based on management's estimate and supported by claims payment historical data of the previous twenty-four months. All subsequent adjustments due to further investigation will be recognized in the year in which the claims are reviewed.

8 - CONTINGENCIES

The Ship-source Oil Pollution Fund is required to make an annual contribution to the International Oil Pollution Compensation Funds, for which the amount owing is determined by the International Oil Pollution Compensation Funds' governing bodies. The amounts contributed to this organization are used to clean-up oil pollution damage under the jurisdiction of the contracting states to the International Oil Pollution Compensation Funds. The size of the contribution is contingent on the number of claims received by the International Oil Pollution Compensation Funds, resulting in varying levels of contributions from year to year. Given this volatility, it has been determined that an estimate of this contribution can not be reasonably estimated. The amount of the 2010 contribution will be paid and recorded by the Ship-source Oil Pollution Fund once the contribution has been determined and requested by the International Oil Pollution Compensation Funds. During the year ended March 31, 2010, the Fund has contributed \$Nil (\$5,161,014 in 2009) to the International Oil Pollution Compensation Funds.

During the fiscal year commencing April 1, 2010, the maximum liability of the Fund is \$155,318,424 (\$154,392,072 in 2009) for all claims from one oil spill. Furthermore, as of April 1, 2010, the Minister of Transport also has the statutory power to impose a levy of 46.57 cents (46.29 cents in 2009) per metric tonne of "contributing oil" imported into or shipped from a place in Canada in bulk as cargo in a ship. Both the maximum liability and the levy is indexed annually to the consumer price index. No levy has been imposed since 1976.

9 - RELATED PARTY TRANSACTIONS

The Fund is related in terms of common ownership to all Government of Canada departments, agencies and Crown Corporations.

During the year, the Fund has paid \$104,520 (\$97,552 in 2009) to Public Works and Government Services Canada (PWGSC) for the use of the office space.

Ship-source Oil Pollution Fund

Notes to Financial Statements

March 31, 2010

9 - RELATED PARTY TRANSACTIONS (Continued)

The Fund is committed to making minimum annual lease payments to PWGSC totalling \$860,055 for the rental of new office space. The minimum lease payments for the next five years are \$172,011 from 2011 to 2015. During the year, the Fund also committed to paying \$202,054 in 2011 towards preparing this space for occupancy.

10 - STATEMENT OF CASH FLOWS

No statement of cash flows has been presented since principal operating, investing and financing activities are readily apparent from the other financial statements and presenting such a statement would provide no additional information.

11 - COMPARATIVE FIGURES

Certain comparative figures have been reclassified to conform with the presentation adopted in the current year.