

# Ship-source Oil Pollution Fund



The Administrator's Annual Report  
2010 – 2011

Canada

Cover image: A team of Canadian Rangers, Department of National Defence's reservists of the North, put their newly acquired skills to the test during an oil spill clean-up exercise led by the Canadian Coast Guard in Resolute, Nunavut on August 25, 2010. No actual oil was used in the scenario. Section 4.10 of this report refers.

Photo courtesy of  
Carol Lauderville  
Canadian Coast Guard, Central and Arctic Region  
Canada

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180 Kent, Suite 830  
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

**2010 – 2011**

**Canada**



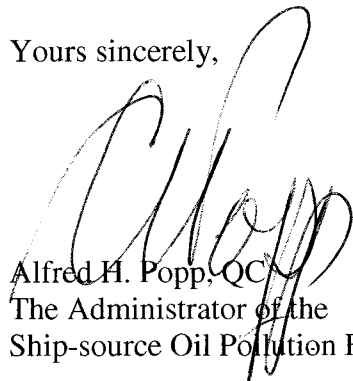
The Honourable Denis Lebel, P.C., M.P.  
Minister of Transport, Infrastructure and Communities  
Ottawa, Ontario  
K1A 0N5

Dear Mr. Lebel:

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, 2011.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'A. Popp', is written over the typed name and title of the signatory.

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



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## Abbreviations

ATIP	Access to Information and Privacy
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	Environment Canada
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 Fund	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, 2011, was \$1.52243 CAD. 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, 2011. 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* (MLA). 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 consisting of the 1992 Fund (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.

### Financial Section

The financial statements of the SOPF for the fiscal year were examined by independent auditors – section 6 refers. During the year, 18 Canadian claims were settled and paid for a total amount of \$435,236.21 including interest. Furthermore, the SOPF paid 1992 IOPC Fund contributions in the amount of \$3,895,877.19 for incidents that occurred outside of Canada – section 5.3 refers.

During the fiscal year commencing April 1, 2011, the maximum liability of the SOPF is \$157,803,519 for all claims from one oil spill. As of April 1, 2011, the Minister of Transport has the statutory power to impose a levy of 47.32 cents per metric ton of oil, as defined in the MLA, imported by ship into or shipped from a place in Canada in bulk as cargo of a ship. The levy is indexed to the consumer price index annually. No levy has been imposed since 1976.

As at March 31, 2011, the accumulated surplus in the SOPF was \$392,257,686.

### Canadian Oil Spill Incidents

The Administrator received reports of oil pollution incidents from different sources, notably, 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 were reported to the Administrator by the Canadian Coast Guard 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 cases where the claims were settled by the shipowner 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 also includes claims that are in various stages of advancement. The Administrator dealt with 50 active incident files during the year. The current status of recovery action by the Administrator against shipowners is also noted in the oil spill incident section. During the fiscal year, 21 new claims were received in the aggregate amount of \$521,158.65. Investigations are underway, but not all of them were completed by March 31, 2011.

## **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 growing core work of the SOPF of investigation and settlement of claims. These challenges are addressed in detail in Section 3.

## **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 oil spill incidents and file claims for compensation with 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, and Japan. Outreach initiatives are addressed in section 4.

In addition to the above events and activities, the Administrator participated in a number of international outreach initiatives. In Vancouver the Administrator attended an event on the Challenges for International Shipping in the Year of the Seafarer. The Administrator also gave a presentation addressing the application of both the Canadian and international pollution regimes as they relate to liability and compensation for ship-source oil pollution. Additionally, the Administrator was invited by the organizers of the 4th Seoul International Maritime Forum held in Seoul, Republic of Korea, to give a presentation for the purpose of explaining the Ship-source Oil Pollution Fund.

## **The International Compensation Regime**

Section 5 of this 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.

Section 5 highlights some of the agenda items discussed at the IOPC Fund meetings. The Administrator is interested in different aspects of the IOPC Funds, namely matters relating to incidents and budgetary allocations. Furthermore, the Administrator deems it desirable to keep a close eye on claim policies of the IOPC Fund. Active participation at the international 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 Ship-source Oil Pollution Fund (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. Formerly the SOPF was governed by Part 6 of the *Marine Liability Act* (MLA), which superseded the above mentioned amendments to the CSA. As of January 2, 2010, the Fund is governed by Part 7 of the Act, contained in amendments included in Chapter 21 of the Statutes of Canada, 2009.

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 47.32 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.

In addition to containing important provisions governing the operation of the SOPF, the provisions contained in Chapter 21, referred to above, also implement two international instruments, which have been ratified by Canada as of October 2, 2009. These instruments are 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. 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. This security allows claimants for oil pollution caused by such ships to go directly against the insurer or other person providing financial security. It is anticipated that this feature could be of 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).

During the fiscal year commencing April 1, 2011, the maximum liability of the SOPF is \$157,803,519 for all claims from one oil spill. This amount is indexed annually. The classes of claims for which

## *Ship-source Oil Pollution Fund*

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 set out in Part 6 and 7 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 filed with the SOPF must be investigated by the Administrator as an independent authority.

The SOPF is a fund of last resort, that is, it pays claims to the extent claimants have been unable to obtain full payment of their claims from the shipowner or any other party. It is also a fund of first resort, that is, claimants may file their claims directly with the SOPF which takes over the task of recovering compensation from the polluter or other responsible party to the extent that it finds the claim to be established.

Notes:

- (1) Figure 1 illustrates the current limits of liability and compensation for oil tanker spills in Canada.
- (2) Table 1 shows the Canadian contributions to the International Funds since 1989.

### **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, a 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 out of the SOPF, the Administrator 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 by way of recourse action 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**

As mentioned in the last Annual Report, 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 1 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 on the terms of the conventions themselves.

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It is noteworthy that, based on the claims experience of the SOPF, most claims dealt with by the Fund are governed by the rules in the purely domestic regime set out in section 76 and following of the Act. A large number of those claims continue to be related to expenses for clean up and preventive measures incurred in respect of derelict and abandoned vessels, a subject that the Administrator has commented upon on a regular basis in previous annual reports.



**Figure 1**

**Limits of Liability and Compensation  
Per Incident for Oil Tanker Spills in Canada**

Based on the value of the SDR (\$1.52243 CAD) on April 1, 2011

International Funds (IOPC)	\$1,141,822,500
Total Domestic Fund (SOPF)	\$ 157,803,519
Total Available to Canada	\$1,299,626,019

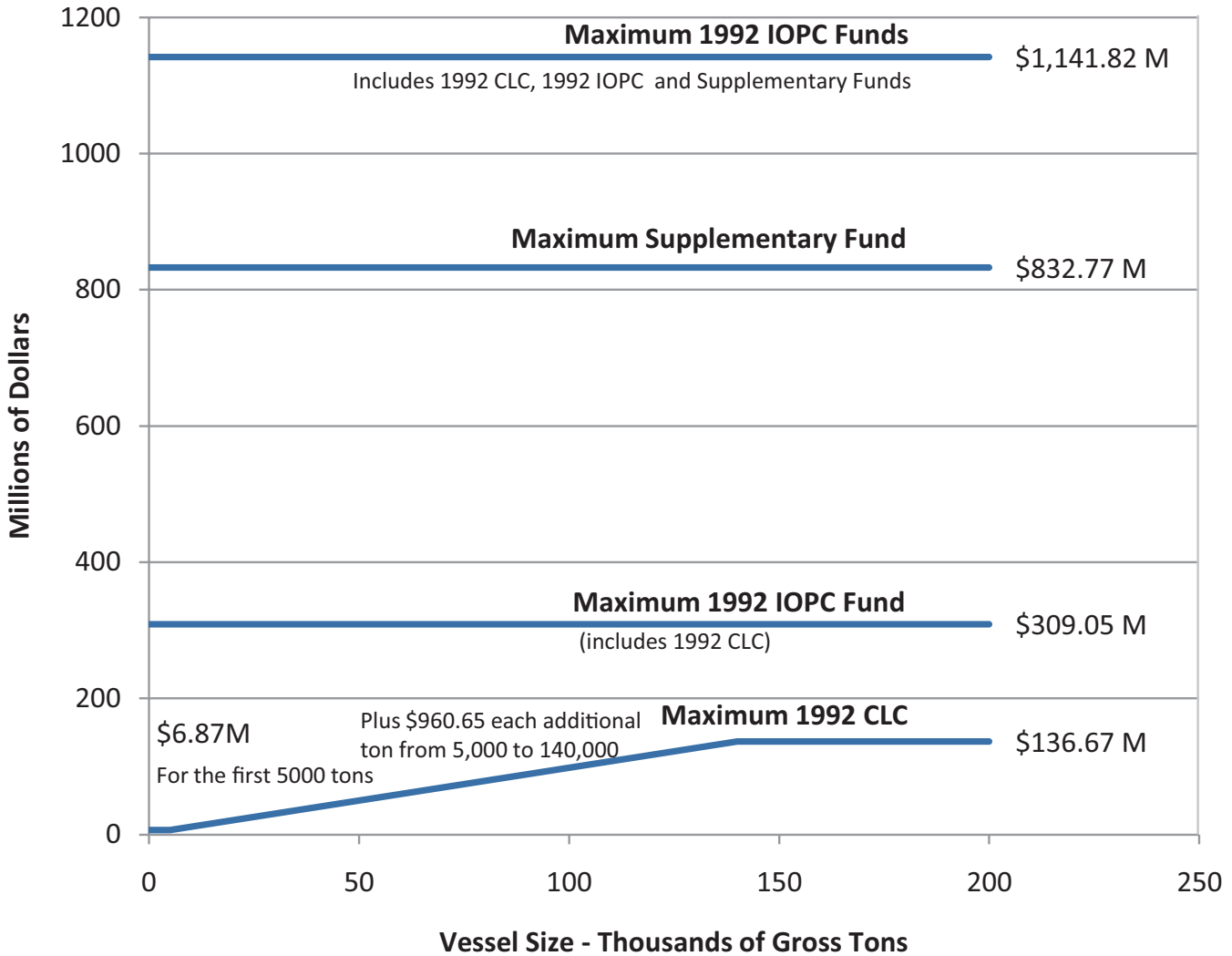


Figure 1 shows the limits of liability and compensation available under the 1992 CLC, the 1992 IOPC Fund Convention and the Supplementary Fund.

The aggregate amount available under the 1992 CLC, the 1992 IOPC Fund and the Supplementary Fund is \$1,141.82 million. The SOPF amount of some \$157.803 million on top of the International Funds results in approximately \$1.300 billion being available for a tanker spill in Canadian waters, including the territorial sea and the exclusive economic zone.

**Table 1**

**Canadian Contributions to the International Funds**

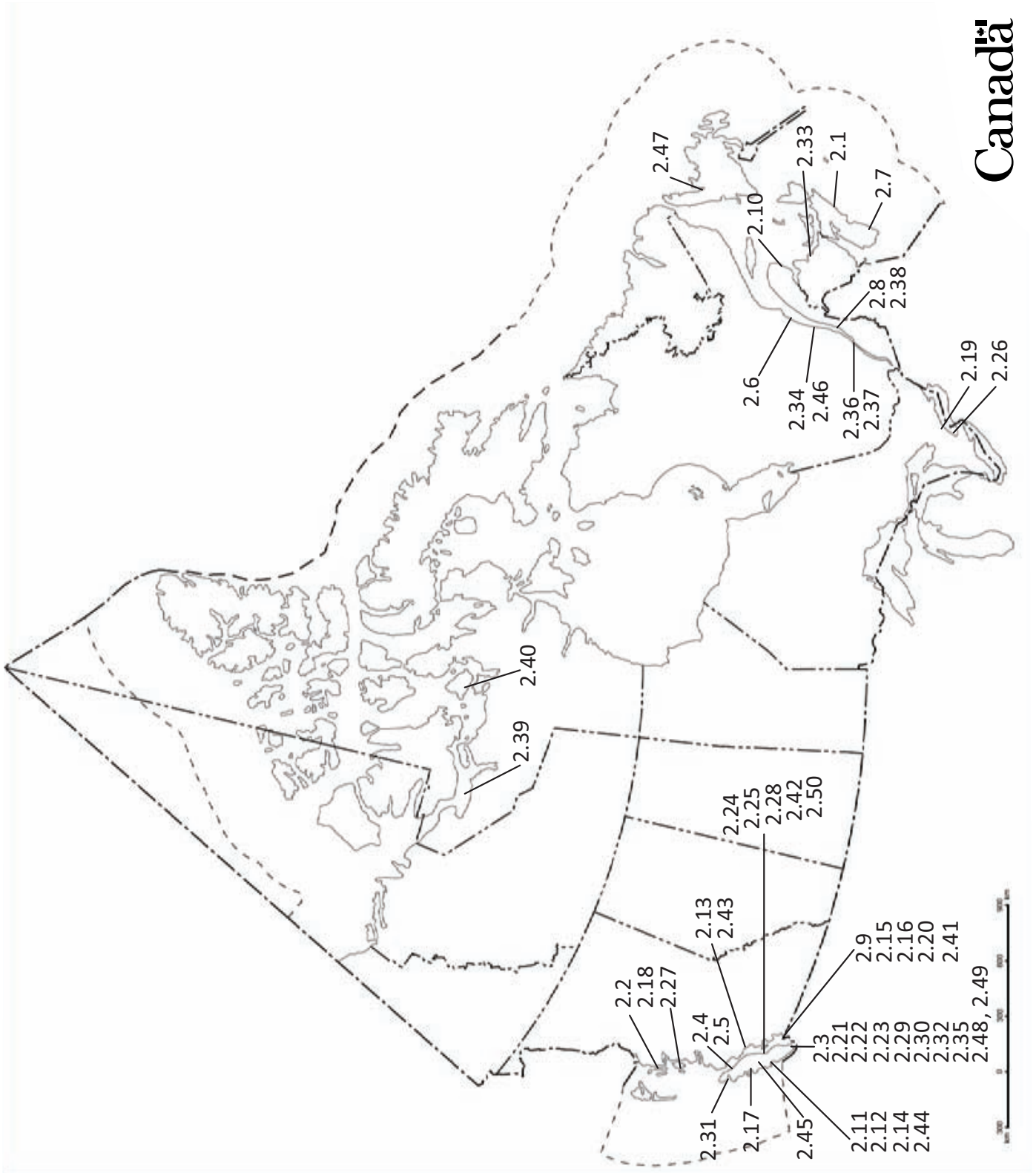
Since 1989, the SOPF has paid the IOPC Funds approximately \$51 million, as listed in the table below.

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

<b>Fiscal Year</b>	<b>Paid from the SOPF (\$)</b>
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	-
2010/11	3,895,877.19
Total	51,156,755.45

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





## 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.

This section summarizes the 50 active incident files which were handled by the Administrator during the fiscal year beginning April 1, 2010, and ending March 31, 2011. They involve either claims filed with the SOPF, or those for which some action may have been initiated to ensure that the SOPF's interests are properly protected. Some 21 new claims were received during the fiscal year in the aggregate amount of \$521,158.65. Investigations are ongoing but were not all completed by the end of the year. During the year, 18 claims were settled and paid in the total amount of \$435,236.21 including interest.

Location of incidents is indicated on the map opposite.

### 2.1 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 and it was decided to proceed with the demolition.

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, including the SOPF, were invited to comment on the document. The final specifications were 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 its costs and expenses in the amount of \$213,053.94.

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The SOPF had been privy to all aspects of the situation, and therefore there were only a few items to resolve. 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*.

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 instalment of the \$7,500.00 settlement. The balance of \$4,400.00 was to be paid no later than May 1, 2008, failing to do so would leave the Administrator 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.

## **2.2 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 Services' yard in Prince Rupert. Work crews continued to remove the residual and bilge oil.

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, the 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. 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 initiated various searches, which indicated that there may be some prospects of recovery. Accordingly the Administrator instructed counsel to commence a recourse action against the ship-owner.

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.

### **2.3 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 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 paid to CCG.

On January 19, 2010, the Administrator received a letter from CCG in response to the request of April 17, 2008.

On July 21, 2010, after investigation and final assessment of the claim, the Administrator made an offer to the Department of Fisheries and Oceans/CCG for the established amount of \$19,084.85, plus interest, as full and final settlement pursuant to the *Marine Liability Act*. The offer was accepted and the Administrator directed payment in the amount of \$21,759.59 inclusive of interest. The Administrator closed the file.

## **2.4 Robson Bight (2007)**

*Note: This claim (2.4) from the British Columbia Ministry of Environment, and the subsequent claim (2.5) from the Canadian Coast Guard arose out of the same incident.*

On August 20, 2007, a barge, *Crown Forest 84-12*, owned by Ted Leroy Trucking, while under tow by a tug, *M/V Kathy L*, owned by Gowlland Towing Ltd., listed and most of the equipment it was carrying fell into the sea. The barge cargo included a diesel tanker truck, containing 10,000 litres of diesel fuel, and a products container cube containing 1,400 litres of lubricant oil and hydraulic fluids. The incident took place near the northeastern end of Vancouver Island within the boundaries of the Robson Bight Ecological Reserve, described in the documentation as a highly sensitive area frequented by various species of wildlife, including from time to time, orca whales.

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 Burrard Clean Operations, a well known response organization on the West Coast, to take the necessary measures to contain the oil that had been released. In accordance with advice from the Regional Environmental Emergency Team, protection booms were placed around some beaches within the boundaries of the ecological reserve.

On the second day of the incident, August 21, the provincial government established an incident command post at Port McNeil to manage the on-scene provincial spill response, and to provide Ted Leroy Trucking with tactical information on other sensitive areas to be protected. Since most of the oil carried in the equipment, notably the 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. There was no noticeable impact on wildlife or the shoreline as a result of this spill. Within a few days the protection booms were removed by Burrard Clean Operations on the instructions of Ted Leroy Trucking. The provincial incident command post was demobilized during the late evening of August 23.

In November and December 2007 a series of dives were conducted to locate the equipment and assess its condition using a diver operated vehicle, which produces video footage showing the submerged equipment. The equipment, notably the tank truck, was located and appeared to be in good condition. It was observed that the latch on the forward compartment of the truck was partially open.

On April 18, 2008, the provincial Environment Minister and the federal Minister of Fisheries and Oceans announced plans to salvage the Robson Bight wreckage. As a result of this announcement, 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.



In May 2009, it was decided to go ahead with the salvage of the tanker truck and container cube. This operation was successfully completed on May 19 without further spillage of oil. The tanker truck was found to contain roughly 3,000 litres of diesel fuel and the cube contained 1,800 litres of hazardous materials.

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 the *Marine Liability Act* (MLA). The provincial claim was divided into three segments:

1. The costs and expenses, in the amount of \$47,590.13, incurred in respect of the initial response to the incident;
2. The costs and expenses, in the amount of \$150,713.11, incurred in respect of the diving operation to locate the equipment and assess its condition; and
3. The costs and expenses, in the amount of \$2,509,173.90, incurred to salvage two pieces of equipment, namely the tanker truck and the cube.

The Administrator engaged counsel and technical marine consultants to assist with a thorough investigation and assessment of each segment of the claim. Consequently, the findings were as follows:

#### **Costs and Expenses for Initial Response**

The Administrator found this section of the claim to be established, except for the fee in the amount of \$3,049.12 for modelling services obtained from Environment Canada to predict the effects of potential oil released from the submerged equipment during the salvage operation. Accordingly, this segment of the claim was reduced by \$3,049.12 and as a result \$44,541.01 was offered for costs and expenses for the initial response.

#### **Costs and Expenses for Diving Operations**

The Administrator accepted that those responsible for dealing with consequences of the incident had to know the location and condition of the equipment that slid off the barge in order to determine what further measures, if any, would be necessary. As a result, the Administrator allowed the costs and expenses for the diving operation, except for \$4,000.00. Accordingly, this segment of the claim was approved at \$146,713.11 for costs and expenses incurred.

#### **Costs and Expenses for Salvage Operations**

Based on the documentation that was filed with the claim and subsequently in response to request for further particulars, the Administrator concluded that the salvage of the tank truck and cube was not a reasonable measure. In the Administrator's view, the measures taken were out of proportion to the threat posed. Consequently, the Administrator disallowed the claim in the amount of \$2,509,173.09 for costs and expenses in respect of the actual salvage operation.

On July 23, 2010, the Administrator sent a letter of offer to the British Columbia Ministry of Environment. The offer, as full and final settlement of the claim, was in the amount of \$191,254.12, plus interest, made pursuant to the terms of the MLA. The offer was not accepted within the time limits prescribed by the legislation. Accordingly, no payments were made and the Administrator closed the file.

## **2.5 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 expenses incurred in connection with monitoring the salvage operation of the Robson Bight incident.

The CCG claim was divided into two segments:

1. The costs and expenses, in the amount of \$9,780.84, incurred in respect of the diving operation to locate the equipment and assess its condition; and
2. The costs and expenses, in the amount of \$83,055.40, incurred in connection with the operation to salvage two pieces of equipment, namely, the tanker truck and the cube.

#### **Costs and Expenses for Diving Operations**

On the basis of the documentation submitted, the Administrator found the first segment of the claim to be fully established and offered \$9,780.84, plus interest, in full and final settlement of this portion of the claim.

#### **Costs and Expenses for the Salvage Operations**

With respect to this second segment of the claim, the Administrator requested and obtained additional information and documentation from CCG in order to advance the investigation and assessment of the CCG monitoring costs for the salvage operation. Since it was concluded that the salvage operation, which CCG agreed to fund jointly with the B.C. Ministry of Environment, was out of proportion to the actual threat, the Administrator regarded the salvage segment as an unreasonable measure. Accordingly, the claim in the amount of \$83,055.40, for monitoring the salvage operation was disallowed.

On July 23, 2010, the Administrator offered the Department of Fisheries and Oceans/CCG \$9,780.84, plus interest, calculated in accordance with the terms of the *Marine Liability Act* in full and final settlement of its claim. The offer was not accepted within the time limit prescribed by the legislation. Accordingly, no payment was made and the Administrator closed the file.

## **2.6 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 (including representatives from Oceans, Habitat and Enforcement Branch) and the Quebec Ministry of the Environment.

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 Coast Guard reports that the claim was settled by the shipowner for the full amount. Consequently, the Administrator closed the file.

## **2.7 Stephanie & Darrel (2007)**

On April 11, 2007, the Port Manager of the Shelburne Marine Terminal, in Nova Scotia, 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.

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

## **2.8 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 later 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.

## *Ship-source Oil Pollution Fund*

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 the *Marine Liability Act*.

The two year time limitation for claimants to file a claim with the Ship-source Oil Pollution Fund expired on April 1, 2010. Consequently, counsel was instructed to return the Letter of Undertaking to the shipowner's assurance management. The Administrator has closed the file.

### **2.9 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 Oceatec 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, the 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 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 the MLA. 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 the MLA. Counsel investigated whether there was any possibility of recovery of the costs from Jay Sea Fisheries Ltd., the registered owner of the *Gala Babe II*. A demand letter was sent via registered mail to Jay Sea Fisheries Ltd. Counsel found that as the vessel had been sold by CCG and the fishing license went into the buy back program there were no other assets of the company. Counsel also arranged for an updated company search of Jay Sea Fisheries Ltd. The Land Registry Office and Personal Property Security searches revealed no real or personal property in the name of the shipowner. Based on these investigations, the Administrator concluded that it would not be reasonable to take further measures to recover payment. Accordingly, the Administrator closed the file.

## 2.10 King Darwin (2008)

On September 27, 2008, the Canadian Coast Guard (CCG) reported that the German registered 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.

The Fund did not receive a claim in this incident. However, DFO/CCG advises that on April 16, 2009, it reached a settlement with the shipowner for costs and expenses incurred during its response to the 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 was discontinued in November, 2008. Since the litigation is ongoing between other parties to the action, the Administrator has not closed his file and will be following developments in this matter.

## 2.11 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 engaged Saltair Marine Services Ltd. to conduct a dive survey of the area. The surveyor 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 scrape 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. The operation was completed during the first week of May.

The following year, on March 23, 2009, the CCG filed a claim with the SOPF in the amount of \$142,604.26 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.

On December 21, 2010, after having conducted an investigation in accordance with the *Marine Liability Act*, the Administrator informed the CCG that he planned to make an offer of compensation, but that he was contemplating a substantial reduction from the full amount of the claim. The CCG was provided, however, with additional time – until January 31, 2011 – to make further representations in respect of the concerns raised. On January 31 a written response was received from CCG.

As the claim against the barge owner, Swail Developments Ltd., would have become time barred on or about December 31, 2010, the Administrator instructed counsel to commence proceedings against Swail Developments Ltd. to protect the interests of the SOPF, pending finalization of the claim.

On March 7, 2011, the Administrator informed the CCG that, as a result of his thorough investigation and assessment, he was making a global offer in the amount of \$100,000.00, inclusive of interest, in full and final settlement of the claim. As of the end of the fiscal year, the Administrator has not received acceptance of the offer. Meanwhile, the file remains open.

## **2.12 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 crossover 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 the 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 the Department of Fisheries and Oceans/CCG for costs and expenses in the amount of \$47,895.49, pursuant to 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.

To complete the investigation and assessment of this claim, the Administrator instructed counsel to engage a marine surveyor to review and further investigate the documentation referring to the services provided by the contractor, Saltair Marine Services Ltd. The surveyor was requested to talk directly with the principals involved in the operation. The purpose of the investigation was to assess whether the measures taken were reasonable and, if so, were the charges fair and reasonable for the services provided.

On December 21, 2010, the Administrator informed CCG that he was planning to make an offer of compensation, but that he was contemplating a substantial reduction from the full amount of the claim. CCG was provided an opportunity to make further representations in writing in respect to the matters raised in the Administrator's letter. On February 11, 2011, a response was received.

On March 7, 2011, the Administrator informed CCG that, as a result of his investigation and assessment, he was making an offer in the amount of \$28,740.00, inclusive of interest, in full and final settlement of the claim. As of the end of the fiscal year, the Administrator has not received acceptance of the offer. Meanwhile, the file remains open.

### **2.13 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 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 \$36,377.82, inclusive of interest, be transferred from the SOPF to the credit of DFO/CCG in payment of this claim.

The Administrator instructed counsel to investigate whether there was any party against whom a recourse action could be started. As a result, counsel conducted appropriate searches for land and registered vessels in the name of the registered owner. It was found that the owner had no fixed address and no apparent eligible assets. The Administrator concluded that no further recovery efforts were justified. Accordingly, the Administrator closed the file.

## **2.14 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.

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, 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 \$9,999.32, pursuant to the *Marine Liability Act*.

On July 7, 2009 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, the Administrator directed transfer of the amount of \$10,249.60, inclusive of interest, from the SOPF in payment of this claim.

On July 30, 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. As a result of these further investigations, the Administrator concluded that further measures would not be justified and, accordingly, he has closed the file.

## **2.15 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, 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 May 7, 2010, just days short of being time-barred, the Department of Fisheries and Oceans (DFO)/CCG filed a claim in the amount of \$127,149.07, pursuant to the *Marine Liability Act* (MLA). Receipt of the claim was acknowledged on May 14.

On February 1, 2011, after investigation and assessment of the claim, the Administrator made a final offer to DFO/CCG for the established amount of \$85,641.19, plus interest, in accordance with the MLA. As of the end of the fiscal year, the Administrator has not received acceptance of the offer. Meanwhile, the file remains open.

## **2.16 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 Department of Fisheries and Oceans (DFO)/CCG for costs and expenses incurred in the amount of \$68,929.72, pursuant to the *Marine Liability Act* (MLA). 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.

On May 26, 2010, after investigation and assessment of the claim, the Administrator made an offer to DFO/CCG for the established amount of \$68,929.70 plus interest, as full and final settlement pursuant to the MLA. The offer was accepted and on June 8, 2010, the Administrator directed payment in the amount of \$71,888.97, inclusive of interest.

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. On October 15, 2010, a letter was sent by registered mail to the vessel owner in effort to recover the costs. The letter was returned marked "not at address anymore". As a result of further investigations the Administrator concluded that there was no reasonable prospect for obtaining recovery from the vessel owner. Consequently, the Administrator closed the file.

## **2.17 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 ship-owner's clean-up and salvage operations.

On January 26, 2009, 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.

On June 16, 2009, the Administrator received 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 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 would seem that the shipowner is suing the CCG on the grounds that a navigation buoy was out of place causing the *Island Ranger* to hit the rock and sink.

On June 24, 2010, the Administrator advised CCG that, in view of the fact that litigation is underway between the shipowner and the CCG, there would be no offer of compensation until the litigation is resolved. The Administrator also suggested that it may be helpful if CCG would keep the SOPF informed about the progress of the litigation.

At the close of the fiscal year, the Administrator, with assistance of counsel, continues to keep this file under observation pending the outcome of the litigation in progress. Meanwhile, the file remains open.

## **2.18 Rivers Inlet (2008)**

On October 6, 2008, Burrard Clean Operations (BCO), the Western Canada Response Corporation, responded to a request for assistance from the owner of the Rivers Inlet Inc. resort near Prince Rupert, British Columbia. An oil spill had occurred in the Inlet off the dock of the resort facilities. BCO personnel arranged for a local contractor, Shearwater Marine Group, to proceed to the site and clean-up the oil from the surface of the water. By utilizing a containment boom, absorbent pads and other consumables, the clean-up operation was completed on the following day.

On April 21, 2010, BCO filed a claim with the SOPF in the amount of \$9,660.76 pursuant to the *Marine Liability Act*. In its submission BCO noted that they had only received a total payment of \$1,000.00 from the responsible party, who advised of an inability to pay further due to financial difficulties.

On June 22, the Administrator requested additional information and documentation in respect to the operational details of the incident in order to advance his investigation and assessment. In response, on July 12, BCO advised that in discussion with its spill response manager it had learned that, "the spill was a result of the valve being left open on a diesel tank, and the diesel flowed into the Inlet". Consequently, on July 14, 2010, the Administrator informed the claimant that the SOPF is unable to offer compensation for clean-up of oil spills that originate from land sources. Accordingly, the Administrator closed the file.

## **2.19 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.

On January 10, 2011, the limitation period for filing a claim with the SOPF for this incident expired. No claim was received; therefore, the Administrator closed the file.

## **2.20 Oceanic (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 craft. 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 SOPF for compensation purposes. The Administrator advised about the process and supporting documentation required for filing a claim with the SOPF.

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 Marine Safety personnel, inspected the vessel for evidence that it was responsible for the pollution but to 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 of the *Oceanic*'s fuel tanks and from the water surface for Marine Safety personnel. CCG considered this a mystery spill unless the ongoing investigation, including the sample analysis, proved the source to be the *Oceanic*. In the meantime, the suspect vessel, *Oceanic*, was allowed to depart and leave the jurisdiction.

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.

Subsequently, three separate claims in the total amount of \$3,102.88 were filed with the SOPF by members of the marina for costs and expenses to clean oil from their affected pleasure crafts. The marine surveyor engaged on behalf of the SOPF investigated. He determined the oil that entered the marina was consistent with heavy or intermediate grade fuel oil utilized by large commercial ships. The surveyor also found that there are no heavy oil pipelines or shore-based sources of heavy oil near the Canada Place cruise ship terminal. The surveyor offered an opinion that the most probable source of the spilled oil was the M.V. *Oceanic*.

As a result of the investigation of the three claims, the Administrator concluded that the full aggregate amount of \$3,102.88 was established. Each of the three claimants accepted the Administrator's individual offers. On January 20, 2011, the applicable release and subrogation agreements were executed by each claimant and, therefore, compensation was paid out in the amount of \$3,256.20, inclusive of interest, pursuant to the terms of the *Marine Liability Act*.

The Administrator found that there was no viable prospect of cost recovery in this instance. Accordingly, upon payment the file was closed.

## 2.21 SeaWing 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 nine-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 the contractor. 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 the *Marine Liability Act* (MLA).

On February 11, 2010, the Administrator instructed counsel to engage a technical marine surveyor, from Oceatec Marine Services Limited, to investigate whether all the expenses could be reasonably characterized as pollution prevention, or whether some of them were, in essence, wreck removal. Subsequently, the surveyor reported that as a result of his investigation, he concurred with the comments of CCG’s independent marine surveyor from Lipsett Marine Consultants Ltd. that the *Sea Wing II* presented a real potential source of hydrocarbon pollution. Further, in the SOPF’s technical surveyor’s opinion, the only practical method to prevent the continuation of oil pollution emanating from the vessel was to have it hauled ashore out of the marine environment. It was also the view of the technical surveyor that complete removal of hydrocarbons, which had been absorbed into the wooden components of the derelict, required deconstruction of the vessel’s hull.

As a result of the assessment and investigation of the circumstances surrounding the incident, the administrator found the amount of \$30,268.68, to be established. Therefore, effective February 1, 2011, pursuant to the MLA he made an offer in the amount of \$30,268.68, plus interest, as compensation in full and final settlement. As of the end of the fiscal year, the Administrator has not received acceptance of the offer. Meanwhile, the file remains open.

## 2.22 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 the *Marine Liability Act* (MLA).

On February 11, 2010, the Administrator instructed counsel to engage a technical marine surveyor, from Oceatec Marine Services Limited, to investigate whether all the expenses could be reasonably characterized as pollution prevention, or whether some of them were, in essence, wreck removal. Subsequently, the surveyor reported that, as a result of his investigation, he concurred with the view of the CCG's independent technical surveyor to haul the *Meota* ashore and have it dismantled. As a result of the investigation and assessment of the incident, the Administrator concluded that the amount of \$25,290.45 was established. Therefore, effective February 1, 2011, pursuant to the MLA, he made an offer in the amount of \$25,290.45, plus interest, as compensation in full and final settlement. As of the end of the fiscal year, the Administrator has not received acceptance of the offer. Meanwhile, the file remains open.

## **2.23 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 sinking completely. It lay in that 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 the *Marine Liability Act* (MLA).

On February 11, 2010, the Administrator instructed counsel to engage a technical marine surveyor, from Oceatec Marine Services Limited, to investigate whether all the expenses can be reasonably characterized as pollution prevention, or whether some of them were, in essence, wreck removal. Subsequently, the surveyor reported that, as a result of his investigation, he concurred with the view of CCG's independent technical surveyor to deconstruct the *Just Magic* and remove the oil pollutants.

As a result of the investigation and assessment, the Administrator concluded that the amount of \$12,266.64 was established. Therefore, effective February 1, 2011, pursuant to the MLA he made an offer in the amount of \$12,266.64 plus interest as compensation in full and final settlement. As of the end of the fiscal year, the Administrator has not received acceptance of the offer. Meanwhile, the file remains open.

## **2.24 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 refloat 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 and he 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 \$32,960.91 pursuant to the *Marine Liability Act* (MLA).

On February 11, 2010, the Administrator instructed counsel to engage a technical marine surveyor, from Oceatec Marine Services Limited, to investigate whether all the expenses could be reasonably characterized as pollution prevention, or whether some of them were, in essence, wreck removal. Subsequently, the surveyor reported that, as a result of his investigation, he concurred with the view of CCG's independent technical surveyor that the vessel had no value and should be deconstructed to safely remove all pollutants, so that no further threat of oil pollution into the marine environment would exist.

As a result of the investigation and assessment, the Administrator concluded that the amount of \$32,069.53 was established. Therefore, effective February 1, 2011, pursuant to the MLA he made an offer in the amount of \$32,069.53 plus interest as compensation in full and final settlement. As of the end of the fiscal year, the Administrator has not received acceptance of the offer. Meanwhile, the file remains open.

## **2.25 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.

## *Ship-source Oil Pollution Fund*

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

On February 11, 2010, the Administrator instructed counsel to engage a technical marine surveyor, from Oceatec Marine Services Limited, to investigate whether all the expenses could be reasonably characterized as pollution prevention, or whether some of them were, in essence, wreck removal.

In contrast to similar incidents, an independent survey of the *Camino Real's* condition was not carried out prior to the decision to deconstruct the vessel. In the absence of an independent survey, CCG was requested to advise on what basis the decision was taken to deconstruct the vessel. On November 9, 2010, CCG responded that the CCG Environmental Response personnel on site observed the vessel, constructed of wood with a fiber glass shell over the exterior, was submerged during low tide and the keel was exposed. The wood was extremely rotten and sea water was entering through deteriorated planks. After taking temporary measures to reduce ingress of water, the *Camino Real* was towed to Ladysmith, where on July 15 it was removed from the water and deconstructed. In total 51 litres of oil were removed during the process.

On December 17, 2010, after investigation and assessment of the claim, the Administrator made an offer to DFO/CCG for the established amount of \$19,440.49, plus interest. This offer was accepted on February 7, 2011. Accordingly, on February 8, the Administrator directed payment in the amount of \$20,346.91 inclusive of interest.

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

### **2.26 Mystery Oil Spill, Hamilton Harbour (2009)**

On December 14, 2009, the Hamilton Port Authority received a report from a representative of Vopak terminals about an oil sheen on the surface of the water along the length of Pier 11 on the south side of the harbour. The provincial Ministry of Environment's Spills Action Centre was notified about the occurrence, and an investigator from the Spills Action Centre attended on scene. A Hamilton Port patrol officer also arrived on scene to investigate. The patrol officer met representatives from two of the marine facilities that share the pier, namely, Vopak Terminals of Canada and IKO Industries.

The Ministry of the Environment (MOE) inspector conducted an investigation of the incident. As a result, no land-based source of the pollutant was found. A pipe in the dock wall seemed to be emitting a pollutant into the water. It was determined that wave action caused the oily mixture to surge into and out of the old dock wall pipeline that is no longer a functioning outlet. The MOE investigation included a search ashore, but did not find any facility that could be the source of the pollutant. The harbour master also attended on site but could not detect a land or water-base source. There were no vessels in the general location and the only marine traffic in the general area was a tug that had departed in the morning.

The Hamilton Port Authority engaged a local contractor, Team-Hazco Environmental Services, to clean-up and dispose of the oil on the water. The oil sheen covered an area of approximately 800 to 1000 square feet of surface.

On April 12, 2010, the Administrator received a claim from the Hamilton Port Authority in the amount of \$10,959.95, pursuant to the *Marine Liability Act*. On the 14th, the Administrator acknowledged receipt of the claim and supporting documentation.

In order to conduct an investigation the Administrator engaged counsel to visit the Port of Hamilton to try and determine how, and from where, the oil got into the water at Pier 11. Counsel attended on



site and interviewed the appropriate officials. Counsel advised that he was unable to establish that the occurrence was not caused by a ship.

In his overall assessment of the claim, the Administrator concluded that there was adequate documentation with the submission of evidence that the costs and expenses were actually incurred. Also, the documentation substantiated that reasonable measures were taken to clean-up the spill and dispose of the oil waste. Therefore, on June 23, 2010, the Administrator made an offer to the Hamilton Port Authority in the full amount of \$10,959.95 plus interest in compensation for the claim. The Administrator's offer was accepted. When the appropriate Release and Subrogation Agreement was executed by a duly authorized official and returned, the Administrator, on July 22, 2010, directed payment in the amount of \$11,106.78, inclusive of interest.

The Administrator accepted the claim as a mystery spill and, as a result, no recourse action could be undertaken. Therefore, the Administrator closed the file.

## **2.27 Rain Dancer (2009)**

On August 20, 2009, the Canadian Coast Guard (CCG) received a report that an ex-fishing boat, *Rain Dancer*, converted to a pleasure craft, had sunk and was leaking oil in the marina at Bella Coola, British Columbia. CCG response personnel were dispatched from the Richmond base with response equipment to assess the situation. On scene, the investigation found that the vessel sank a few weeks earlier, but had only recently began to pollute. The harbour master had deployed sorbent boom but was unable to contact the owner. On August 29, CCG deployed additional boom around the vessel. The CCG engaged commercial contractors, Shearwater Marine Group, to raise the vessel and have it deconstructed for disposal. The commercial contractors placed slings under the hull and raised it to the surface. A marine surveyor was hired by CCG to conduct a condition survey and assess the value of the vessel. The surveyor inspected the vessel when it was lifted and suspended by a large crane and two slings. The surveyor's inspection report indicated that, because the vessel was under water from July 28 to August 29, the condition of the hull planking, machinery and instruments were beyond reasonable repair or salvage value. Also, the surveyor found that there was a thick layer of oily silt throughout the entire vessel. The surveyor advised CCG that the 39-foot craft, built from wood in 1921, was suitable for demolition only.

CCG confirms that the surface on all decks and the inside of the vessel were covered with oil, and that the wooden hull structure was saturated with oil. Consequently, the *Rain Dancer* was deconstructed on site and oily debris was trucked to the local waste and recycling centre for disposal in compliance with provincial directives and regulations. CCG reports that approximately 400 litres of diesel fuel and other engine oils were removed from within the tanks.

On April 6, 2010, the Administrator received a claim from the Department of Fisheries and Oceans (DFO)/CCG for costs and expenses incurred in the amount of \$60,988.93, pursuant to the *Marine Liability Act* (MLA).

The Administrator conducted an investigation and assessment of the claim and made an offer to DFO/CCG for the established amount of \$60,988.93, plus interest as final settlement pursuant to the MLA. The offer was accepted by DFO/CCG, and on November 30, 2010, the Administrator directed payment in the amount of \$63,365.00, inclusive of interest.

The Administrator instructed counsel to investigate whether there was any party against whom a recourse action could be undertaken. Counsel's search of the Transport Canada vessel registration query system found that the *Rain Dancer* was suspended from registry in Canada on March 10, 2008. Also, there are no other registered vessels owned by the owner of *Rain Dancer*. Furthermore, a search of the personal property registry (PPR) indicated that the owner does not appear to own any real property, and there are no chattels shown in the PPR search. Consequently, the Adminis-

trator concluded that no further reasonable measures could be taken by way of recourse. Accordingly, the Administrator closed the file.

## **2.28 Norqueen (2009)**

The incident occurred on June 3, 2009, when the ex-fishing vessel *Norqueen* was found to be leaking oil while it was secured to the fishermen's wharf in Comox, British Columbia. The Harbour Authority cleaned up the initial oil spill that seemed to be coming from the vessel's day tank. On June 6, Canadian Coast Guard (CCG) personnel boarded the vessel and found the day tank with only 1.5 inches of fuel, but still leaking to the deck. Furthermore, the hydraulic tank was full and there was lubricating oil in the engines. There was also a slow ingress of sea water through a bulkhead from the shaft tunnel. The owner indicated he would take measures to control further leakage of oil and the gradual ingress of water.

On June 23, the Harbour Authority reported that the vessel was not being maintained as previously agreed to between CCG and the owner. The Harbour Authority had pumped the vessel four times in the past weeks. On that date CCG gave a Letter of Notice to the owner that the *Norqueen* was continuing to take on water and would sink if not frequently pumped out. The pollutants onboard would be discharged if the vessel sank. The owner's intentions for corrective measures were requested. Consequently, from July to September the vessel was maintained by the owner.

On October 28, CCG learned that the owner had declared bankruptcy. CCG then hired a surveyor from Lipsett Marine Consultants Ltd. to determine the condition of the *Norqueen*. The surveyor reported that the vessel's hull was built in 1941 of oak frames and planking with steel bracing between the frames. The two fuel tanks had extensive rust and considerable dismantling would be required to remove and replace them. The *Norqueen* was kept afloat only by the automatic bilge pumps. The report contains a series of photographs clearly showing the general deterioration of the hull and corrosion of the machinery. The CCG's surveyor concluded that the net value of the vessel was nil. The surveyor advised that the vessel would sink in a short time if not tended to regularly. The Harbour Authority informed CCG that the shore electric power supply to the vessel's automatic bilge pump would not be reliable during the fall and winter seasons. During a power failure the vessel would likely sink.

On November 2, a new Letter of Notice was sent to the trustee who informed CCG that they had no resources to look after the vessel and would not attempt to do so. As a result, CCG engaged Saltair Marine Services Ltd. to move the vessel to Ladysmith and arrange for a pump watch. On November 6, approximately 300 gallons of bulk fuels were removed and by November 19th the *Norqueen* was partially deconstructed with the engines and oil tanks removed. The hull was then moved to a shore side facility where it was dismantled and disposed of.

On April 6, 2010, the Administrator received a claim from the Department of Fisheries and Oceans (DFO)/CCG for costs and expenses incurred in the amount of \$96,716.06, pursuant to the *Marine Liability Act* (MLA).

Based on the claim documentation the Administrator had some concern that a portion of the costs and expenses incurred really related to wreck removal, particularly the deconstruction and disposal of debris after the fuel tanks and machinery had been removed. As a result, the Administrator engaged a technical marine surveyor of Oceatec Marine Services Ltd. to review the CCG's surveyor's report and contact the disposal contractor Saltair Marine Services Ltd. The surveyor was instructed to provide an opinion as to whether the services rendered to dispose of the *Norqueen* constituted pollution prevention expenses, or should be considered wreck removal. On December 14, 2010, the surveyor from Oceatec Marine Services Ltd., offered an opinion that, based on the documentation provided and information obtained from Saltair Marine Services, all the services rendered were, in fact, pollution prevention expenses.

On January 4, 2011, after completing an investigation of the claim, the Administrator made an offer of compensation to DFO/CCG for the established amount of \$92,378.57, plus interest, as full and final settlement pursuant to the MLA. The offer was accepted and on February 8, 2011, the Administrator directed payment of \$97,131.63, inclusive of interest, in accordance with the Act.

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. Consequently, on February 17, 2011, the Administrator concluded that no further steps were available, given the bankruptcy of the shipowner. Accordingly, the Administrator closed the file.

## **2.29 Sion (2009)**

On August 12, 2009, the 36-foot wooden ex-fishing vessel *Sion* sank and leaked oil at the Centennial Dock, Ganges Harbour, British Columbia. Initially, response was carried out by the crew of the Canadian Coast Guard (CCG) lifeboat at Ganges who deployed containment booms and sorbent pads to contain and recover the upwelling oil. CCG Environmental Response personnel from Victoria arrived later with additional equipment. They met with the owner who stated he did not have resources to deal with the situation.

CCG engaged a local contractor, Island Marine Construction Services, to raise the vessel, which was completed that day. A marine surveyor from Lipsett Marine Consultants, was engaged by CCG to carry out a condition survey of the *Sion* and to assess its value. The surveyor reported the *Sion* to be in poor condition and not seaworthy, having been retired from the fishery some years earlier and fallen into disrepair. The engine and ancillary components had been completely immersed in salt water and rendered useless. The surveyor estimated the *Sion*'s value was nil. The surveyor also reported the vessel was discharging fuel, engine and gear oil into the water, representing a serious pollution hazard. He recommended the *Sion* be hauled ashore, dismantled and disposed of. CCG directed the contractor to deconstruct the vessel in order to remove the oil. This work was carried out on August 13 and required four truck loads of debris to be taken away for disposal.

On November 4, 2009, CCG wrote to the owner requesting payment for costs and expenses incurred during its response to the incident. The owner replied on November 23 that he was not able to financially cover the costs and expenses.

On April 6, 2010, the Administrator received a claim from the Department of Fisheries and Oceans (DFO)/CCG for costs and expenses incurred in the amount of \$23,456.08 pursuant to the *Marine Liability Act* (MLA). The Administrator acknowledged receipt of the claim on April 7 and requested additional information about the claim submission. A response was received on October 5. Having completed the investigation and assessment of the claim, the amount of \$20,167.12 was found to be established. Therefore, on December 22, 2010, pursuant to the MLA, the Administrator made an offer to DFO/CCG in the established amount of \$20,167.12, plus interest, as full and final settlement pursuant to the MLA. The offer was accepted and on February 4, 2011, payment was made in the amount of \$21,000.06 inclusive of interest.

The Administrator instructed counsel to investigate whether there was any party against whom a recourse action may be started. Counsel made appropriate enquiries and advised that both the *de facto* owner of the *Sion*, who had possession and use of the boat when it sank, and the registered owner were both financially incapable of meeting the owner's legal obligations under the MLA. The Administrator concluded that it would not be reasonable to pursue the matter any further. Accordingly, the Administrator closed the file.

## **2.30 Beverly K (2009)**

On September 24, 2009, the Canadian Coast Guard (CCG) received a report of two vessels aground and partially sunk in Tsehum Harbour, British Columbia. On arrival on scene that day, CCG Envi-

ronmental Response personnel found the bow of the wooden fishing vessel *Beverly K* aground on a rock with the stern underwater. The second vessel, a cabin cruiser, had been removed. Sorbent booms were deployed around the vessel. The owner stated he had no resources to deal with the situation. He was unsure how much fuel was aboard and confirmed that vents to the fuel tanks were not plugged. The owner was informed that CCG would arrange for the vessel to be raised at the owner's expense. CCG contracted Island Marine Construction Services Ltd. (IMC) to raise the vessel and remove the threat of oil pollution, but later that day the owner advised that he now had the resources and had decided to hire his own contractor. He was informed he remained liable for costs already incurred by CCG. IMC was stood down and the owner's contractor raised and removed the vessel on September 26. No further risk of oil pollution existed.

On November 12, 2009, CCG wrote to the owner requesting payment of \$8,931.71 as costs incurred by the Minister of Fisheries and Oceans. There was no response by the owner. Consequently, on March 31, 2010, the Administrator received a claim from the Department of Fisheries and Oceans (DFO)/CCG for costs and expenses incurred in the amount of \$9,010.66, pursuant to the *Marine Liability Act* (MLA).

On October 6, 2010, after assessment and investigation of the claim, the Administrator made an offer to DFO/CCG for the amount of \$9,010.66, plus interest, as full and final settlement pursuant to the MLA. The offer was accepted and the Administrator directed payment in the amount of \$9,300.22 inclusive of interest. As of the close of the fiscal year, the Administrator has instructed counsel to investigate the possibility of a recourse action. Meanwhile, the file remains open.

### **2.31 Westville (2009)**

On December 5, 2009, the RCMP reported to the Rescue Co-ordination Centre that a 40-foot wooden fishing vessel, *Westville*, had partially submerged while moored offshore in Port Alice, British Columbia. The next day the Canadian Coast Guard (CCG) Environmental Response personnel were informed that the vessel was polluting. On December 7, the CCG ship *John P Tully*, deployed a sorbent boom around the wreck, which had been reported to contain up to 2,000 litres of diesel fuel. On December 8, a Letter of Notice was served on the vessel owner by the RCMP on behalf of CCG. The Letter of Notice informed the owner of his legal responsibilities to take measures to prevent further discharge of oil pollution. The owner responded that he had no ability to deal with the incident.

CCG engaged a nearby contractor, North Island Diving Commercial, to raise the fishing vessel and stabilize it, so that the Environmental Response personnel could remove the fuel oil. On December 10, the vessel was raised and approximately 400 litres of diesel fuel were removed. The vessel was returned to the care of the owner. On January 14, 2010, CCG wrote to the owner requesting payment of \$21,731.88, as costs and expenses incurred. There is no indication of a response by the owner.

On April 6, 2010, the Administrator received a claim from the Department of Fisheries and Oceans (DFO)/CCG for costs and expenses incurred in the amount of \$21,714.28, pursuant to the *Marine Liability Act* (MLA).

On April 7, the Administrator requested additional information, which was provided on October 5. The Administrator completed his investigation and assessment and found the amount of \$21,453.29 was established. Therefore, pursuant to the MLA, on December 21 an offer was made to DFO/CCG in the amount of \$21,453.29, plus interest, as compensation in full and final settlement. The offer was accepted and on January 18, 2011, the Administrator directed payment of \$22,158.30 inclusive of interest.

The Administrator instructed counsel to investigate whether that there was any party against whom a recourse action could be started. As a result, counsel conducted Vessel Registry and Personal

Property searches. Furthermore, a marine surveyor from Oceatec Marine Services Limited was engaged to ascertain the present location of the vessel *Westville*. The investigation found that the registered owner and the operator at the time of the incident appear to have been two separate individuals. The marine surveyor found that the *Westville* sank again and currently lays offshore near Port Alice.

On February 14, 2011, counsel confirmed that having communicated with the vessel operator he obtained from him a letter, as well as a Notice of Bankruptcy and Statement of Affairs. Given that the operator has sworn that he has no significant assets, the Administrator concluded that it would probably not be worthwhile to file a Proof of Claim. Also, the registered owner did not respond to the demand letter. Accordingly, the Administrator concluded that further steps would not be reasonable and has closed the file.

### **2.32 Saida (2009)**

On September 17, 2009, the Canadian Coast Guard (CCG) received a report of two vessels sunken together in Ladysmith Harbour, British Columbia. Upon arriving on site, CCG personnel found the vessel *Saida*, an 87-foot wooden ex-fish packer, resting on the bottom with oil escaping from it. The second vessel, a 26-foot pleasure craft had been secured to and pulled down by the *Saida*. The pleasure craft was not a pollution threat and was subsequently refloated by the owner. CCG personnel informed the owner of his legal responsibilities and liabilities. The owner advised that the vessel contained approximately 80 gallons of fuel oil and approximately 80 gallons of other oils. He also informed CCG that he did not have the resources to raise the *Saida*. CCG then engaged a local contractor, Saltair Marine Services Limited, to deploy containment booms and sorbents to contain the oil escaping from the vessel, and to raise it to the surface.

The lifting operation proved more difficult than expected. The lifting and pumping was not completed until September 20. CCG then engaged a marine surveyor from Lipssett Marine Consultants Ltd. to conduct a condition survey, assess the vessel and advise on the removal of pollutants. The surveyor determined that the vessel was continuing to take on water and could not be left unattended. He found extensive rot and deterioration throughout the vessel's structure with oil coating and saturation, and considered it to be a source of oil contamination in the area. The marine surveyor recommended it be removed on shore, dismantled and disposed of. Following the marine surveyor's condition survey, CCG contracted Saltair Marine Services Limited to move the vessel to its nearby marine facilities to remove all the fuel, deconstruct and dispose of the debris.

On January 4, 2010, CCG wrote to the owner requesting payment of \$99,317.48 as costs incurred by the Minister of Fisheries and Oceans in respect of this incident. There was no response by the owner.

On March 31, the Administrator received a claim from CCG in the amount of \$94,567.57. On April 7, the Administrator acknowledged receipt of the claim and documentation. He requested further information from CCG. A response was received on October 5. On February 1, 2011, after investigation and assessment of the claim, the Administrator made a final offer to the Department of Fisheries and Oceans/CCG for the established amount of \$85,390.81, plus interest, as compensation in full and final settlement. As of the end of the fiscal year, the Administrator has not received acceptance of the offer. Meanwhile, the file remains open.

### **2.33 Jameson Point (2009)**

The incident occurred on December 9, 2009, when the United States registered 90-foot ex-steel tug, *Jameson Point*, built in 1944, reported dragging anchor off Point Escuminac, New Brunswick, while en route to the Miramichi River. The CCG ship *George R Pearkes* towed the vessel to Holman's Wharf Summerside, Prince Edward Island. It appeared that the tug was unable to cope with

the moderate sea state and wind conditions. Alongside at Summerside on December 10, CCG Environmental Response personnel, assisted by a Transport Canada marine safety inspector, investigated the status of the vessel to determine if there was any threat of pollution. In addition to bulk fuel and engine lubricants secured above deck, there was a 500 gallon diesel tank and a number of 45 gallon drums of unknown products. The crew was in the process of winterizing the vessel.

On December 15, the wharfinger reported that the vessel had listed 12 degrees. There was concern about possible spills from the oil tank and drums on deck and the overall stability of the vessel. Legal advice was obtained and a Notice of Detention was sent to the vessel owner. On January 6, 2010, the owner's contractor, GNL Environmental Inc., removed and disposed of the fuel oil on-board, the 500 gallon oil tank and the 45 gallon drums and, also, pumped bilges and sealed off vents to the main fuel tanks. CCG monitored the operation.

On October 20, 2010, the Administrator received a claim from the Department of Fisheries and Oceans/CCG for costs and expenses incurred in the amount of \$3,385.22, pursuant to the *Marine Liability Act* (MLA).

Upon completion of the investigation of the claim the Administrator found the full amount to be established. Therefore, on March 17, 2011, pursuant to the MLA an offer was made in the amount of \$3,385.22, plus interest, as full and final settlement of this claim. As of the end of the fiscal year, the Administrator has not received acceptance of the offer. Meanwhile, the file remains open.

### **2.34 Garganey (2010)**

On April 14, 2010, in Rivière St-Charles, Québec, the bulk carrier, *Garganey*, sustained an oil spill of approximately 1,000 litres of intermediate fuel oil during bunkering operations. The oil spill, caused by an overflow, contaminated the hull of the vessel and portions of the wharf. The shipowner engaged the response organization, Eastern Canada Response Corporation, to conduct clean-up, which included containment and recovery of the free floating oil along with cleaning of the vessel's hull and wharf. CCG staff were tasked to monitor the response to the incident.

As it appeared to be a spill within the ambit of the Bunker Convention, counsel was engaged by CCG to obtain security. Furthermore, in the event the spill is not covered by the Bunkers Convention, counsel obtained a Letter of Undertaking on behalf of the SOPF. The SOPF has not received a claim in this incident. Meanwhile, the file remains open.

### **2.35 Jessie Island XI (2010)**

On January 18, 2010, the Canadian Coast Guard (CCG) received a report of two vessels sinking together in Ladysmith Harbour, British Columbia, following a severe wind storm. One was a 30-foot sailboat and the other a 55-foot ex-fishing vessel – *Jessie Island XI*. The vessels sank in approximately 30 feet of water. The owner who owned both vessels advised CCG Environmental Response personnel that there was oil onboard the *Jessie Island XI*. CCG deployed a containment boom.

The vessel owner was given written Letter of Notice of his responsibilities and liabilities. The owner responded that he was unable to provide the resources to respond to the oil spill or to raise wrecks. Therefore, CCG contracted Saltair Marine Services Ltd. to salvage the vessels. A purchase order contract of Fisheries and Oceans Canada was issued for the operation. On January 19, the contractor raised the vessel using a barge and crane. It was then moved to the contractor's nearby facility to determine further risk of oil pollution. The vessel was still taking on water and needed to be pumped periodically.

On January 20, CCG hired a marine surveyor from Lipsett Marine Consultants Ltd. to conduct a condition survey and estimate the value of the vessel. The surveyor concluded that the oil-fouled

vessel was unseaworthy and represented a clear environmental hazard. Furthermore, the vessel should be dismantled and disposed of and that the value was nil. As a result, CCG directed Saltair Marine Services Ltd. to deconstruct the vessel to remove all the oil and dispose of the debris. By January 29, deconstruction of the wreck was completed.

On March 11, CCG mailed a claim to the owner of the *Jessie Island XI* in the amount of \$34,281.41 for payment of costs and expenses incurred. There was no response.

On April 19, 2010, the Administrator received a claim from the Department of Fisheries and Oceans (DFO)/CCG in the amount of \$34,281.31 pursuant to the *Marine Liability Act* (MLA). Upon completion of the investigation and assessment of the claim the Administrator found the full amount to be established. Therefore, on October 6, pursuant to the MLA an offer was made in the amount of \$34,281.31, plus interest, as full and final settlement of the claim. The offer was accepted on October 26, and the Administrator directed payment in the amount of \$34,971.87, inclusive of interest.

The Administrator is investigating whether reasonable measures may be taken for effective cost recovery from the owner for the amount paid to DFO/CCG. Meanwhile, the file remains open.

### **2.36 Richelieu (2010)**

*Note: Two claims (2.36) and (2.37) arose out of the same incident.*

On July 12, 2010, while proceeding upbound in the St. Lawrence Seaway, approximately one kilometre above the Côte Ste-Catherine lock, the Canadian registered bulk carrier *Richelieu* went aground and spilled diesel oil. The initial oil slick was reported to cover an area of approximately 500 metres by 500 metres. The seaway was closed in an attempt to limit the spreading of the slick. The shipowner advised the Canadian Coast Guard (CCG) that it had engaged the response organization ECRC to conduct clean-up operations. In order to monitor the response activities, CCG assumed the role of Federal Monitoring Officer. The clean-up operation took several days before the seaway was re-opened.

On November 15, 2010, the Administrator received a claim from Boralex Inc, a hydroelectric plant at Saint-Lambert, for financial loss of production during the incident. The claim is in the amount of \$40,438.90.

On November 16, the Administrator instructed counsel to investigate the claim. As of the end of the fiscal year those investigations have not been completed. Meanwhile, the file remains open.

### **2.37 J W Shelley (2010)**

At the time of the grounding of the *Richelieu* (see Section 2.36), the Canadian registered ship *J W Shelley* was following close astern and may have encountered heavy soiling of its hull. The *J W Shelley* was instructed by seaway authorities to secure at the Côte Sainte-Catherine wharf until the seaway re-opened. Transport Canada issued a marine safety notice ordering that the ship's hull must be cleaned to the satisfaction of Ship Safety Inspectors before departing. The ship finally departed on July 15 having lost over three days of operations.

On September 28, 2010, the Administrator received a claim from the ship owner in the amount of \$70,656.89 for costs and expenses incurred, which included cost to clean the hull and for loss of net profit.

On September 30, 2010, the Administrator instructed counsel to investigate the claim. As of the end of the fiscal year those investigations have not been completed. Meanwhile, the file remains open.

### **2.38 Avataq (2010)**

The Administrator was informed of this incident by the Canadian Coast Guard (CCG) on July 7, 2010. The previous day, while loading alongside the wharf at Valleyfield, Quebec, the Canadian registered vessel, *Avataq*, reported oil on the surface of the water, apparently between the loading dock and the vessel. The crew immediately implemented the vessel's action plan and deployed a floating containment boom using oil absorbent pads from onboard storage. Furthermore, a shore-based response team assembled by Transport Canada and Environment Canada commenced shore-line clean-up operations. The following morning, after the *Avataq* departed Valleyfield, a small quantity of oil was reported to still be remaining along the shoreline. Apparently, oil had been moved by the current and wind into the local recess in way of the port facilities. CCG responded and cleaned up the residue.

When informed of the incident, the Administrator instructed counsel to maintain a watching brief on the incident, in the event a claim may be filed with the SOPF. Subsequently, on March 25, 2011, the Administrator received a claim from the owners/operator of the M/V *Avataq* in the amount of \$13,707.47 for costs and expenses incurred during clean-up operations. CCG advises that it has filed a claim with the shipowner, but its claim has not been settled.

The Administrator has commenced an investigation and assessment of the claim filed by the shipowner, but as of the end of the fiscal year those investigations have not been completed. The file remains open.

### **2.39 Clipper Adventurer (2010)**

On August 27, 2010, the Bahamian registered cruise ship, *Clipper Adventurer*, ran aground in the Coronation Gulf, Canadian Arctic. The vessel reported that it was not taking on water nor was there any sign of oil pollution. After several failed attempts to refloat the vessel, the captain ordered an evacuation of all passengers and non-essential crew onboard. The CCG icebreaker *Amundsen* was deployed from the Beaufort Sea on a rescue mission to evacuate and transport 128 passengers to Kugluktuk.

The cruise ship reported sustaining considerable damage to its double bottom fuel tanks. The damage was below the waterline and, consequently, the fuel oil was forced to the top of the tank due to the ingress of sea water. As a result there was no leakage of the oil. CCG also verified that at the time of grounding there was no sign of oil pollution in the vicinity of the grounded ship. However, several days following the grounding a light sheen was visible but it dissipated quickly.

The shipowner engaged its classification society, Lloyds Register, to develop a salvage plan. A Transport Canada Marine Safety Inspector provided oversight regarding the salvage plan. The CCG deployed the *Sir Wilfred Laurier* as support and logistical centre to monitor for oil pollution. Transport Canada, Environment Canada and CCG maintained a monitoring role throughout the salvage operation to ensure an appropriate response.

The Administrator instructed counsel to investigate the ongoing response, and ascertain whether the *Clipper Adventurer* had a Bunker Convention insurance certificate. CCG advised that a request for a Letter of Undertaking, dated September 23, 2010, was transmitted to the vessel owner and also to the owner's on-scene representative.

On September 14, the *Clipper Adventurer* was successfully re-floated and towed by tug to Cambridge Bay, Nunavut, for damage assessment and preliminary repairs in preparation for removal from the Arctic. On September 23, Transport Canada and the vessel's classification society granted clearance for the vessel to transit from Cambridge Bay to Nuuk, Greenland. Under CCG icebreaker escort the cruise ship was towed to Pond Inlet for rendez-vous with an ocean tug for passage to Greenland.



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

## **2.40 Nanny (2010)**

On September 1, 2010, a report was received that the Canadian registered tanker, *Nanny*, loaded with diesel fuel, went aground on a sandbar near Gjoa Haven, Nunavut, when delivering fuel to isolated communities in the Arctic. The vessel was carrying 9,000 cubic metres of refined products and there was no structural or mechanical damage or oil pollution. The CCG ship *Henry Larsen* was in the vicinity and proceeded to the site to monitor salvage operation. The CCG and Transport Canada Marine Safety Inspectors worked with the vessel owner to provide advice and guidance with respect to the development of a salvage plan. The *Henry Larsen* served as the CCG on-scene command, support and logistical centre.

The Administrator instructed counsel to co-operate with CCG in obtaining a Letter of Undertaking as security.

Arrangements were made by the shipowner to transfer a quantity of the cargo from the *Nanny* to the tanker *Tuvaq*, a ship also owned by the same company. Consequently, the *Nanny* was refloated on September 15. The Marine Safety Inspector and the vessel's representative conducted a damage survey and cleared the vessel for re-loading and allowed it to proceed with the community fuel resupply. CCG resources were demobilized.

The Administrator has not received a claim in this incident. Pending expiration of the limitation period for filing a claim with the SOPF, the Administrator's file remains open.

## **2.41 Corregidor (2010)**

On May 20, 2010, the Canadian Coast Guard (CCG) received a report from the harbour master that the old 70-foot wooden hull fishing vessel *Corregidor*, anchored in Bedwell Bay, British Columbia, was taking on water and sinking with an unknown quantity of pollutants onboard. The harbour master requested assistance to address the risk to the environment should the vessel sink. The initial CCG response was conducted by the CCG vessel *Osprey* which reported emulsified oil in the engine room, oily water in the holds and a 5 to 10 degree list. CCG personnel were initially unable to remove oily water from the vessel given the environmental sensitivity of the area. They were concerned for the vessel's stability due to removal of a bulkhead and the free water onboard.

On May 21, CCG engaged a contractor, Fraser River Pile and Dredge Inc., to remove all hydrocarbons from the vessel at its anchorage into a vacuum tank truck and without causing further hardship to the vessel. The contractor and CCG staff were on scene on May 22, and removed approximately 8,500 litres of oily water and diesel fuel, together with numerous containers of other hydrocarbon based materials. This work was completed on May 22. Entry to the vessel's engine room was considered dangerous.

On August 16, the CCG wrote to the owner requesting payment of \$26,320.80 as costs incurred by the Department of Fisheries and Oceans in respect of this incident. There has been no response by the owner.

On October 18, 2010, the Administrator received a claim from CCG in the amount of \$26,893.95. Receipt of this claim and the supporting documents was acknowledged.

The Administrator investigated the circumstances surrounding the incident. The investigation found that, after the hydrocarbons and other pollutants were removed, the Port of Vancouver took control of the vessel and had it towed to Shelter Island Marine in the Fraser River; the vessel was

still taking on water. Shortly afterwards the Port Authority disposed of the *Corregidor*, because the owner was unable or unwilling to cover the financial expenses the Port Authority was accumulating. The claim documentation was assessed and on December 15, 2010, the Administrator made a final offer to DFO/CCG for the established amount of \$25,518.99 plus interest in full settlement. The offer was accepted and the Administrator directed payment in the amount of \$25,949.42, inclusive of interest.

The Administrator instructed counsel to review the feasibility of undertaking cost recovery action pursuant to the *Marine Liability Act*. As of the close of the fiscal year the file remains open.

## **2.42 Bruce Dawn (2010)**

On June 8, 2010, the Canadian Coast Guard (CCG) was notified that the former fishing vessel *Bruce Dawn* had sunk overnight at the Deep Bay Marina, British Columbia. The Harbour Authority reported oil on the surface of the water and had placed sorbent boom around the vessel. CCG personnel were on scene the following day and found an oil sheen on the surface inside and outside the boom. As there was a high chance the vessel contained more oil and the site was close to an active oyster spawn operation, CCG concluded the vessel would have to be raised to eliminate the pollution threat. A contractor, Sawchuck Pile Driving, was engaged and the work started the morning of June 11. The vessel was raised and pumped that day. A thin layer of diesel fuel coated the interior. The owner stated that he had no ability to deal with the incident.

A local marine surveyor was hired by CCG to survey the vessel and assess its potential to pollute. The surveyor reported extensive rot in the hull and superstructure, with engines and other systems worthless. Examination of the vessel found the fuel tanks to be empty or to contain water. They were drained to confirm the remaining amount of oil. The engine contained only water and the steering and transmission were sealed. CCG concluded the vessel was no longer a risk to pollute and left it in the custody of the harbour master.

On October 20, 2010, the Administrator received a claim from the Department of Fisheries and Oceans (DFO)/CCG in the amount of \$12,375.87, pursuant to the *Marine Liability Act*. On November 2, the Administrator acknowledged receipt of the claim and supporting documentation.

In his overall assessment of the claim, the Administrator concluded that the measures taken were reasonable. Also, there was adequate documentation with the submission as evidence that the costs and expenses were actually incurred. Therefore, on December 15, 2010, the Administrator made a final offer to DFO/CCG for the established amount of \$10,473.07, plus interest, as compensation in full and final settlement. The offer was accepted on February 8, 2011, and the Administrator directed payment in the amount of \$10,666.63, inclusive of interest.

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

## **2.43 Seaspan Barge 156 (2010)**

On January 28, 2010, the Canadian Coast Guard (CCG) received a report that the *Seaspan Barge 156* was sinking alongside a wharf in Powell River, British Columbia. The initial CCG assessment confirmed that the barge was taking on water and that approximately 800 litres of fuel were onboard in a tank on the aft deck. Also, it was reported that below deck there was a generator fuel tank containing up to 500 litres of diesel oil. The flat-top steel barge had a large amount of water inside the interior spaces. In addition, there were large holes in the hull near the waterline. Structural accommodations were built on deck for use as a coastal floating camp for employees of the forestry industry.

CCG personnel contacted the barge owner on the day of the incident report and advised of the owner's responsibility with respect to potential oil pollution. CCG also requested a written plan from the owner to mitigate the likelihood of oil discharge. The owner arrived on January 29 and provided a plan of action to stabilize the barge and remove the diesel fuel. CCG stood down.

On March 15, CCG received information that the *Seaspan Barge 156* was still being maintained against sinking and had fuel oil onboard. The owner did not fully comply with the Letter of Notice of January 28 and the action taken by the owner was deemed to be inadequate. As a result, CCG informed the owner that it would respond and remove the fuel oil from the barge. CCG completed its inspection and removal of fuel by March 19.

On October 20, the Department of Fisheries and Oceans (DFO)/CCG filed a claim with the SOPF for costs and expenses incurred during response to the incident in the amount of \$9,848.58, pursuant to the *Marine Liability Act*.

On December 1, after investigation and assessment of the claim, the Administrator made an offer to DFO/CCG for the established amount of \$9,848.58 plus interest. The offer was accepted, and on December 20 the Administrator directed payment in the amount of \$10,115.42, inclusive of interest, as compensation in full and final settlement.

The Administrator is investigating whether reasonable measures may be taken for effective cost recovery from the barge owner for the amount paid to DFO/CCG. Meanwhile, the file remains open.

## **2.44 Lions Gate (2010)**

On February 1, 2010, the Canadian Coast Guard (CCG) received a report that the 15-metre wooden fishing vessel *Lions Gate*, built in 1938, had sunk in Lemmen's Inlet, Tofino Harbour, British Columbia. The Tofino CCG lifeboat crew investigated and found only part of the superstructure remaining above water. A sheen of oil was on the surface. CCG deployed an absorbent boom around the sunken fishing vessel. The owner was on site and advised that he would raise the vessel on the evening tide. The following day a large area of heavy sheen covered the cove where the vessel sank. Environment Canada personnel attended and in cooperation with the Canadian Food Inspection Agency and the Department of Fisheries and Oceans (DFO) placed a temporary closure of several shellfish farms close to the area.

The owner's attempts to raise the vessel the previous evening were unsuccessful. As a result, CCG engaged a local contractor, Wichito Marine Services, to install an additional 250-foot general purpose containment boom around the wreck. In addition, CCG ordered a lifting crane to be brought in from Ladysmith by Saltair Marine Services Ltd. to raise the *Lions Gate*. However, on February 3, CCG learned that it had been successfully refloated overnight by its owner, and the fuel tanks drained. The contracted crane was stood down while en route to Tofino. The owner moved the vessel to a tidal grid where the hull could be repaired. No further threat of oil pollution existed. On April 30, CCG wrote to the owner requesting payment for costs incurred in respect to the incident, but there was no response.

On October 20, the Administrator received a claim from DFO/CCG in the amount of \$8,455.79 for costs and expenses incurred in respect of the incident, pursuant to the *Marine Liability Act* (MLA).

The Administrator conducted an investigation and assessment of the claim and made an offer to DFO/CCG for the established amount of \$7,982.14, plus interest as final settlement pursuant to the MLA. The offer was accepted by DFO/CCG and on February 24, 2011, the Administrator directed payment in the amount of \$8,222.24, inclusive of interest. The Administrator instructed counsel to

investigate whether reasonable measures could be taken for effective cost recovery from the owner of the *Lions Gate* for the amount of compensation paid. Meanwhile, the file remains open.

#### **2.45 Zodiac (2010)**

On March 17, 2010, the Canadian Coast Guard (CCG) received a report that the wooden hull 41-foot ex-fishing vessel *Zodiac* was sinking at the Harbour Authority dock in Port-Alberni, British Columbia. The Harbour Authority pumped the vessel to prevent it from sinking completely before CCG could investigate the situation. The vessel had previously sustained a fire and all that remained was the hull and a partial wheelhouse. Both fuel tanks contained diesel oil and a 200-litre drum of fuel on deck. A quantity of free floating oil mixture remained in the hull. The Harbour Authority and CCG identified the owner but were unable to make contact, via registered mail or otherwise. On April 7, CCG Environmental Response personnel from Victoria removed the oil pollutants onboard. The *Zodiac* was left at the dock in care of the Harbour Authority. On May 19, CCG wrote to the owner requesting payment for costs incurred in respect to the incident, but there was no response.

On October 18, the Administrator received a claim from the Department of Fisheries and Oceans (DFO) /CCG in the amount of \$3,915.16 for costs and expenses incurred in respect of the incident pursuant to the *Marine Liability Act* (MLA). The Administrator conducted an investigation and assessment of the claim and made an offer to DFO/CCG for the established amount of \$3,915.16, plus interest, as final settlement pursuant to the MLA. The offer was accepted, and on November 9, 2010, the Administrator directed payment in the amount of \$3,997.07, inclusive of interest. It is the Administrator's opinion that additional expenditure of SOPF funds in attempts to recover the amount of \$3,997.07 would not be reasonable. Accordingly, on March 31, 2011, the Administrator closed the file.

#### **2.46 Asiaborg (2010)**

On November 2, 2010, a small incident occurred in the Port of Baie Comeau, Quebec. The Canadian Coast Guard (CCG) personnel in Quebec informed the Administrator that the foreign-registered cargo ship *Asiaborg* had sustained a hydraulic oil leak from a crane on deck of the vessel. The Administrator instructed counsel to collaborate with CCG in getting security from the shipowner. A satisfactory Letter of Undertaking in the amount of \$30,000 naming the CCG and SOPF, to cover any potential claim for costs and expenses incurred in the clean-up of the hydraulic oil, was obtained from the P&I Club, North of England.

At the end of the fiscal year, the Administrator has not received a claim in this incident. In the meantime, the file remains open.

#### **2.47 Abandoned Barge (2010)**

On April 29, 2010, the Canadian Coast Guard (CCG) received a report from local residents of an abandoned barge that was aground and leaking in Sop's Arm, White Bay, Newfoundland. CCG personnel proceeded to the site and conducted an initial survey of the steel barge some 120-feet in length and 42 feet in breadth. On May 3 and 4, CCG personnel found approximately 500 litres of diesel fuel in tanks, fuel in a vehicle on deck and a partially filled large propane tank. There was no release of oil pollution from the barge. The owner was reported to reside in Benton, Newfoundland, but could not be contacted. Removal of the oil from the barge was carried out on July 6 and 7. Approximately 800 litres of fuel oil were removed. The barge tanks were flushed out to minimize any possibility of residual oil remaining; CCG concluded that the potential threat of oil pollution had been eliminated.

On March 18, 2011, the Administrator received a claim from DFO/CCG for costs and expenses incurred in the amount of \$13,546.76, pursuant to the *Marine Liability Act*. The Administrator has commenced an investigation of the claim but, as of the end of the fiscal year, the investigation has not been completed. Meanwhile, the file remains open.

## 2.48 Rosemary G (2010)

On November 10, 2010, the 11-metre wooden fishing vessel *Rosemary G*, built in 1972, sank and released diesel fuel oil in Ladysmith Harbour, British Columbia. With aid of local volunteers, the wharfinger at Ladysmith placed containment boom around the vessel, and reported the incident to the Canadian Coast Guard (CCG). Initially, CCG was unable to contact the owner, so it hired a local contractor, Saltair Marine Services Ltd., to raise the *Rosemary G* and remove the oil. The owner arrived as the recovery operation was well underway, but was unable to provide funding to deal with the situation. When the vessel was raised, approximately 275 litres of oil were removed. The vessel was then towed to the nearby Saltair Marine Services Ltd. dock where a pump watch was maintained. On November 15, the owner was informed that CCG was finished with the *Rosemary G*, and that the owner should remove it from Saltair's Marine Services Ltd. facility unless it made other arrangements with the contractor.

On January 19, 2011, CCG submitted a claim to the vessel owner in the amount of \$13,145.60 for costs and expenses. CCG did not receive a response. On March 18, 2011, the Department of Fisheries and Oceans/CCG filed a claim with the SOPF for costs and expenses incurred during response to the incident in the amount of \$13,168.47, pursuant to the *Marine Liability Act*. The Administrator has commenced an investigation of the claim but, as of the end of the fiscal year, the investigation was not completed. Meanwhile, the file remains open.

## 2.49 Resilience (2010)

On December 7, 2010, the Canadian Coast Guard (CCG) received a report that the 40-foot wooden fishing vessel, *Resilience*, built in 1926, had partially sunk in Brentwood Bay, British Columbia. A non-recoverable oil sheen was visible around the stern of the vessel. CCG Environmental Response personnel from Victoria went to the scene to assess the situation. The owner was contacted in Alberta and informed of the incident and advised of the owner's responsibilities and liability. The owner informed CCG about his financial inability to deal with the situation, and that he no longer wanted the vessel.

CCG hired a contractor, Saltair Marine Services Ltd., to raise the wreck and remove the hydrocarbons. On December 9, the contractor raised the vessel to the surface. The ingress of seawater continued. The vessel was located directly over subsea cables and was in an unstable condition. As a result of the circumstances, CCG instructed the contractor to move the vessel to its facility in Ladysmith where it could be worked on safely. CCG contracted a technical marine surveyor from Lipsett Marine Consultants Ltd. to conduct a condition survey of the *Resilience* and to assess its value. The surveyor reported the vessel to be in a very poor condition with significant rot within the hull structure. It was fouled with leaking oil and was continuing to pollute the environment. The oil leakage was so severe that the vessel required constant supervision. The surveyor recommended that the vessel be hauled ashore, dismantled and disposed of completely. The surveyor concluded that the salvage value was far less than the costs of removing any salvageable items. It was, therefore, estimated the *Resilience's* value was nil.

Given the surveyor's report of the continuing water ingress and the owner's inability to deal with the situation, CCG instructed Saltair Marine Services Ltd. to remove the vessel from the water, and to deconstruct it for removal of all the hydrocarbons and to dispose of the debris.

On March 18, 2011, DFO/CCG filed a claim with the Administrator for costs and expenses in the amount of \$26,514.74, pursuant to the *Marine Liability Act*. The Administrator has commenced an investigation and assessment of the claim but, as of the end of the fiscal year, the investigation was not completed. Meanwhile, the file remains open.

## **2.50 Irene W (2011)**

On January 15, 2011, the Canadian Coast Guard (CCG) received a report of a 60-foot fishing vessel, *Irene W*, partially sunk at the dock in Deep Bay, British Columbia. Diesel fuel and hydraulic oil were leaking from the vessel, which was built of wood in 1941. The Harbour Authority had deployed a containment boom and sorbent pads. The vessel was located near several operating oyster aquaculture beds, although the wind and current at the time was keeping the oil away from the beds. When contacted, the vessel owner stated that he had no financial resources to raise the vessel. On January 17, CCG arranged a contract with Sawchuck Pile Diving Ltd. to raise the vessel and remove the pollutants. On January 19, the recovery operation was completed and the remaining oils were removed. The vessel was found to float with some assistance of a shore-powered bilge pump. Following completion of the oil removal, the *Irene W* was returned to the owner on site, and the sorbents and recovered oils were disposed of by the contractor.

On March 18, 2011, the Department of Fisheries and Oceans/CCG filed a claim with the Administrator for costs and expenses in the amount of \$17,369.80, pursuant to the *Marine Liability Act*. The Administrator has commenced an investigation and assessment of the claim but, as of the end of the fiscal year, the investigation was not completed. Therefore, the file remains open.

### 3. Challenges and Opportunities

In the fiscal year ending March 31, 2011, the Ship-source Oil Pollution Fund (SOPF) faced a number of challenges and opportunities. The core work of settling claims has increased steadily. Since the creation of the Ship-source Oil Pollution Fund in 1989, which succeeded the Maritime Pollution Claims Fund, the Administrator has engaged marine consultants to assist with the investigation and assessment of claims. The number of consultants required over the years has been dependent upon the number of claims filed, and the technical complexity of the clean-up response to oil spill occurrences.

Initially, after the SOPF was established, two individual consultants were normally needed part-time in the office of the SOPF, with occasional field work secondment. During the past few years, however, only one marine consultant has been engaged on contract for a maximum of three days weekly. With just one consultant available the Administrator has found it necessary periodically to engage technical marine surveyors, particularly on the Pacific Coast, to assist with on-site investigations of oil spill incidents.

To deal with increased work load resulting from larger numbers of claims filed with the SOPF, as well as to do as much of the work in house, the Administrator has found it necessary to engage an additional marine consultant at the SOPF offices. Since SOPF consultants have traditionally come from the ranks of retired mariners residing in the Ottawa area, finding suitable candidates to fill these positions has been an additional challenge. The Administrator is actively exploring options to resolve this problem.

Another challenge arises out of the obligation to mount recourse actions. When the Administrator settles a claim, he has the statutory obligation to take all reasonable measures to recover from the shipowner, or any other person liable, the amount of compensation paid to the claimant. In those instances where the claimant elects to file a claim with the Fund as a first resort, the strict time limits within which this must be done are set out in the *Marine Liability Act* (MLA). Consequently, a major challenge for the Administrator is compliance with these time limits when pursuing action against the shipowner, particularly if litigation is necessary.

The Administrator faces further challenges in those instances where a considerable time lag has elapsed between the occurrence of the incident and the filing of a claim with the Fund. To conduct a thorough investigation and make a sound assessment, the Administrator frequently has to request further particulars about the circumstances surrounding the incident before he is in a position to advance settlement. This often results in further substantial delays.

As noted in previous Annual Reports, the problem of dealing with claims resulting from abandoned and derelict vessels remains an ongoing challenge when it comes to cost recovery. This kind of oil pollution occurrences usually involves old abandoned fishing vessels where the owners cannot be traced or have no attachable assets. Recovery of compensation paid out of the Fund, consequently, becomes impossible. In the past decade nearly \$5 million has been paid in compensation for claims involving the removal and disposal of abandoned vessels primarily on the Pacific Coast.

Another challenge facing the SOPF in the course of the fiscal year covered by this report has been the rising demand for the Fund to be represented at government and marine industry conferences and seminars in Ottawa and across the country. Both the Administrator and the principal marine consultant of the SOPF, have been attending and making presentations at these conferences. The aim is to make stakeholders aware of the Canadian regime of liability and compensation for ship-source oil pollution damage. Attendance at these conferences and seminars is also beneficial to the SOPF, since they provide a good opportunity to keep abreast of technical and legal developments in the field of marine transportation. There is, however, a challenge in endeavouring to accommodate the various requests made for assistance as a presenter or panel member at workshops, given the limited work force of the SOPF.

## *Ship-source Oil Pollution Fund*

Of particular interest to the Administrator has been the issues surrounding the transportation of oil products to the High Arctic. As with the many conferences in the rest of Canada, it is a challenge for the SOPF to have a representative available to attend the semi-annual meetings held by the Canadian Marine Advisory Council (CMAC) in Northern communities. The participants at those CMAC meetings represent the federal and territorial governments, and a range of sealift operators from the marine shipping industry.

Fortunately, to date, no significant ship-source oil pollution has occurred in Arctic waters. The sealift managers attribute their operational success and safety record in protecting the northern marine environment to the high classification standards of the commercial ships deployed in regions of the Arctic. Moreover, the experience and training for shipboard officers and crew are contributing factors to the prevention of oil spills. The Administrator is cognizant of the fact that, in the Arctic, shipowners do not have the ability to contract with a certified Canadian response organization for preparedness and response to oil spills. There is no response organization north of 60 degrees latitude. Response in this region therefore rests entirely with the Canadian Coast Guard.

The commercial shipping activity throughout the Arctic regions is increasing substantially. Commercial transits of the Northwest Passage are becoming an annual occurrence and are expected to expand in the future. Also, adventure cruises are being conducted annually. Significant in this regard was the incident involving the Bahamian-registered cruise ships, *Clipper Adventurer*, which ran aground in late August 2010 in the Coronation Gulf. Approximately at the same time, the Canadian-registered tanker, *Nanny*, loaded with diesel fuel, went aground near Gjoa Haven. Luckily there was no oil spill in either incident –sections 2.39 and 2.40 refer.

Mention has already been made in the last Annual Report concerning amendments to the *Marine Liability Act* contained in Chapter 21 of the Statutes of Canada, 2009. Those amendments, as anticipated, have not materially affected the claims settlement procedures of the SOPF. The administrative work of the Fund, however, has continued to increase. The Fund now has three full-time employees to deal with this increased administrative burden. Some of the increases are dictated by the amendments to the *Marine Liability Act*, referred to above, aimed at promoting greater transparency in the affairs of the SOPF, for example, the statutory requirement of an annual audit, but other factors have also contributed to this aspect of the work. The following outlines some specific challenges and opportunities encountered by the SOPF in the last fiscal year:

- Completing the re-location of the SOPF offices to 180 Kent Street with the assistance of Public Works and Government Services Canada and Transport Canada;
- Negotiating health and employment benefits for employees and, subject to applicable conditions, making contributions to registered retirement savings plans;
- Concluding the Memorandum of Understanding with Transport Canada and subsequent commencement of invoicing from various departmental service providers;
- Participating at learning events for Heads of Federal Agencies and exchange of information with various networks of small federal agencies and departments; and
- Concerted effort with Transport Canada to obtain information on oil movement in Canada as part of the Administrator's in-depth review of reports of contributing oil for the purposes of the International Oil Pollution Compensation Fund (IOPC Fund).

The Administrator welcomes his periodic meetings with the Commissioner of the Canadian Coast Guard and his staff. These meetings are useful to promote mutual understanding, particularly of the claims process and the need for timely and detailed submission of claims to the SOPF.



The growth experienced in recent years, in both core administrative work, has resulted in the transformation of the SOPF. While the increased volume of claims has produced a heavier workload for the marine consultants and the Administrator, it has also had a rippling effect administratively. With this growth, it has been important to establish a more permanent and specialized staff to ensure both claims work and administrative matters are dealt with effectively and efficiently. It is foreseen that these issues will present ongoing and new challenges for the SOPF for years to come.



## 4. Outreach Initiatives

The Administrator continues with outreach initiatives aimed at raising awareness of the existence of the Ship-source Oil Pollution Fund (SOPF) 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 Funds (IOPC Funds), the Administrator maintains contact and dialogue with delegates representing international organizations and government agencies of IOPC Funds' member states.

In the fiscal year covered by this report, it is noteworthy that the outreach initiatives have included a visit to Seoul, Republic of Korea. Moreover, the Administrator attended meetings of the IOPC Funds in the United Kingdom and in Morocco as part of the Canadian delegation –section 5 refers. As stated in previous reports, there is growing interest in the operation of the Canadian domestic fund, notably in the Republic of Korea, Japan and China.

### 4.1 Meeting with Canadian Coast Guard Management Board

On April 13, 2010, at the invitation of the Commissioner of the Canadian Coast Guard (CCG), the Administrator attended a meeting of the CCG Management Board. The object was to give a presentation on the claims procedure, in particular on concerns that have arisen in connection with claims submitted by the CCG. The Administrator welcomed the opportunity of dialoguing with senior members of the CCG. He emphasized that it was the policy of the SOPF to pay claims, but that claims must be investigated and paid in accordance with the principles laid down in the governing legislation, namely, the *Marine Liability Act*. That Act is based on the principle of “the polluter pays”. It is important therefore that claims be submitted on a timely basis, that the documentation be as complete as possible so as to facilitate the investigations of the Administrator and subsequent recourse actions that he is bound to take if compensation is paid out of the SOPF. The presentation was well received. The Commissioner agreed that internal procedures should be reviewed with the aim of resolving any concerns that have arisen in connection with the presentation of some claims originating with the CCG.

### 4.2 Canadian Marine Advisory Council (National)

The Canadian Marine Advisory Council (CMAC) is Transport Canada's national consultative body for marine matters. Meetings are held twice a year, in the spring and autumn, both in Ottawa and in each Transport Canada region. The members include representatives of shipping companies, marine agencies, the fishing industry and other stakeholders that have a recognized interest in shipping, marine safety, navigation, oil pollution and response. The issues discussed at CMAC meetings cover the development and implementation of national statutes, regulations, codes and standards. Additional subjects include acceptance of International Maritime Organization's conventions, regulations and recommendations. There are seven Standing Committees that address issues relating to the stakeholders' concerns about marine services, marine safety and pollution prevention.

The CMAC held semi-annual national meetings at the Government Conference Centre in Ottawa from April 26 to 29 and from November 1 to 4, 2010. Some 425 attendees from across the country pre-registered for meetings held in November. The Administrator and a consultant engaged by the Fund, Captain George Legge, attended some of the CMAC sessions. Of particular interest to the Administrator are the deliberations of the Standing Committee on the environment. This Standing Committee and its Working Groups provide a forum for consultation and information sharing

on such matters as pollution prevention, compensation and liabilities and ship-source oil spill response.

A number of agenda items addressed at the CMAC sessions are of particular interest to the Administrator, for example:

### **Environmental Response**

At the April CMAC meeting, Transport Canada provided an update on the proposed Environmental Response Regulations that will apply to vessels, certified response organizations and oil handling facilities. A discussion paper on the proposed regulations was made available. The proposed Environmental Response Regulations provides an instrument to ensure that response organizations meet specific requirements and are certified by the Minister to offer arrangements with response organizations to vessels and oil handling facilities. This instrument also requires vessels and oil handling facilities to have an arrangement with a response organization and prescribes the procedures, equipment and resources that an oil handling facility will use when a vessel is at the facility location loading and unloading oil.

### **Response Organizations**

All prescribed vessels that trade in Canadian waters are required under the *Canada Shipping Act, 2001*, to have an oil pollution emergency plan. As well, the shipowner is required to have an arrangement with a certified response organization that can respond to an oil spill. The arrangement is also the means by which response organizations levy and collect fees to cover the preparedness costs they assume in order to meet certification requirements.

There are four certified response organizations in Canada to provide marine oil spill response services south of 60 degrees north latitude. They are industry-managed and funded by fees charged to users. The four response organizations in Canada are:

- Western Canada Marine Response Corporation (WCMRC), which in general covers British Columbia waters;
- Eastern Canada Response Corporation (ECRC), which covers the waters of the Great Lakes, Quebec (SIMEC) and the Atlantic Coast (except two small areas in New Brunswick and Nova Scotia);
- Atlantic Emergency Response Team (ALERT), which includes the New Brunswick port of Saint John and surrounding waters; and
- Point Tupper Marine Services Limited (PTMS), which covers the Nova Scotia port of Port Hawkesbury and approaches.

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

The Administrator is cognizant of the operational capabilities of the Canadian response organizations. The Administrator and marine consultants take every opportunity to visit the regional response equipment storage depots of the response organizations. These personal visits to the facilities provide an opportunity to keep abreast of industry's overall ability to respond to a significant marine oil spill incident. The Administrator is interested in continuing the ongoing co-operation and relationship with the response organizations in all regions of Canada. He fully appreciates that their respective roles and responsibilities regarding oil spill pollution prevention, preparedness and response are essential parts of Canada's national regime for protection of the marine environment.

### **Oil Spill Risk for the South Coast of Newfoundland**

Transport Canada released its report on the South Coast of Newfoundland Risk Assessment. The study objective was to assess the risks of oil pollution in Canadian waters off the south coast of Newfoundland, including Placentia Bay, due to heavy oil tanker traffic in the area.

A series of consultations were recently conducted by Transport Canada, in conjunction with Fisheries and Oceans, CCG, Environment Canada, and the provincial Department of Environment. Among the major issues raised in the series of stakeholder consultations were mystery spills and illegal bilge dumping in the general area, and the lack of infrastructure along the south coast of Newfoundland to support a large-scale oil spill clean-up. The bulk of response equipment is centrally located in St. John's.

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

Note: For additional information about the risk assessment see the SOPF Administrator's Annual Report 2009-2010 at section 4.1.

### **4.3 Canadian Maritime Law Association Meetings**

The Administrator attended two meetings of the Canadian Maritime Law Association (CMLA) in Halifax, June 3 and 4, 2010. The first meeting was a seminar organized by the CMLA to update the membership on recent developments in maritime law. The Administrator was requested to present a paper on the amendments to the *Marine Liability Act* (MLA), contained in Chapter 21 of the Statutes of Canada, 2009. In his paper, the Administrator gave a brief history of the SOPF, its evolution from a fund of last resort to a fund of first resort. He mentioned that the amendments implement two international instruments, namely, the 2001 Bunkers Convention and the 2003 Protocol to the 1992 IOPC Fund Convention. He noted that the Canadian regime is significantly enhanced by membership in these two instruments. The Administrator also made some remarks concerning claims handling of the SOPF, but expressed the preliminary view that the amendments to the MLA would not significantly change its handling of claims.

The second meeting was the Annual General Meeting (AGM) of the CMLA, which the Administrator, as member of the Association, routinely attends. The meetings serve to keep the membership abreast of matters being dealt with by the Association, as well as giving an account of its financial situation. These meetings are opportunities to maintain contacts with important stakeholders in the maritime industry in Canada. While its membership consists predominantly of lawyers, other shipping interests through its constituent membership are also represented. Based on the reports presented at the AGM, it is evident that the Association is quite active and its financial situation is in good health.

### **4.4 Arctic Marine Oil Spill Program**

The Administrator was represented by a marine consultant, Captain George Legge, at the 33rd Arctic Marine Oil Spill Program (AMOP) technical seminar held in Vancouver from June 7 to 9, 2010. 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 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.

A presentation was given by several delegates from Norway on field research in order to respond to oil spills that occur in ice-covered waters. It was explained that Norway has joint government

and industry programs on oil spill contingency for Arctic and other ice-covered waters, which was established in 2006. The Norwegian delegation also made a presentation on the use of dispersants on crude oils under various ice conditions. In order to get a more precise understanding of the potential for use of dispersants, an extensive study of the effectiveness and dispersability of different oils weathered in various spill scenarios and ice regimes was carried out. Other presentations and displays were informative and covered a range of modern oil pollution clean-up equipment and the latest applicable technologies. This sort of up-to-date information is valuable for the Administrator in the process of investigating and assessing claims filed with the Fund.

#### **4.5 Presentation to the Maritime Law Practice Group, Department of Justice**

At the invitation of the chairman of the Maritime Law Practice Group, the Administrator gave a presentation to this group, September 2, 2010, on the recent amendments to the *Marine Liability Act*. These amendments are contained in Chapter 21, Statutes of Canada, 2009. The Administrator noted that the liability provisions governing ship-source oil pollution contained in Part 6 of the Act have been rearranged. Claims for oil pollution can now be classified according to whether they fall under the international regime contained in the 1992 Civil Liability Convention, the 2001 Bunkers Convention or neither of these, in which case they will be dealt with under domestic rules. In the first two instances, the pertinent conventions have been attached to the legislation and given the force of law in Canada.

Claims for fishermen's loss of income have been retained and continue to receive separate treatment under the new Part 7, which has been added to the legislation. These claims may be brought directly to the SOPF, unless they form part of a claim available under the remedies in Part 6.

The Administrator noted that, in his opinion, the rewrite of the liability provisions will not make any material difference to the claims handling procedures of the SOPF. These procedures and the policies that apply continue to be closely aligned with those of the international regime, notably the claims policies and practices established by the IOPC Funds.

#### **4.6 4th Seoul International Maritime Forum**

The Administrator was invited by the organizers of the above mentioned forum on October 14 and 15, 2010, to give a paper on the operations of the SOPF, the Canadian national fund. As part of the Forum there was a special seminar on compensation schemes for marine oil pollution damage. In addition to the Administrator, there was a representative from the Chinese administration providing details on a Chinese national fund. While the legislation setting up this fund is in place, the Chinese fund is not yet operational. Also, on the panel of experts assembled to speak on this subject, there was a representative from the Korean administration. The notion of a national fund is being explored in Korea, but so far no official sanction has been given for the actual creation of such a fund. Korean authorities are particularly concerned about adequate means of compensation, given their experience in the *Hebei Spirit* incident, three years ago, which has produced claims well in excess of the compensation available to Korean claimants under the 1992 IOPC Fund Convention.

The Administrator in his paper on the SOPF outlined the history of the Canadian fund and its transformation from a fund of last resort into a fund of first resort. He pointed out that, nevertheless, Canadian legislation has preserved the polluter pays principle. Owners of ships that have caused oil spills remain the primary responsible party to pay compensation for damage caused by such spills. The presentation also described the interplay between the Canadian fund and the international funds set up under the 1992 IOPC Fund Convention and 2003 Protocol. The claims policy of the SOPF, he pointed out, follows very closely that of the IOPC Fund. Further, the Administrator described the unique arrangement whereby the Canadian contribution to the IOPC Fund is paid by the SOPF on behalf of Canadian receivers of contributing oil.

## 4.7 Regional Environmental Emergency Team Conference

The Administrator was represented by a marine consultant, Captain George Legge, at the 37th Atlantic Regional Environmental Emergency Team (REET) conference held in Charlottetown, Prince Edward Island, on October 27 and 28, 2010. By way of background, the REET group specializes in environmental emergencies. The members represent several federal, provincial and municipal government departments, aboriginal communities, private sector agencies and local individuals.

The REET meetings are held annually to provide a forum for the exchange of scientific and technical emergency response information. In the event of a significant oil spill incident, the REET team would convene and provide the Responsible Party and/or the On-Scene Commander of the lead government agency with environmental advice with respect to environmental impacts.

During the October meetings, several of the presentations focused on the Deepwater Horizon Oil Spill in the Gulf of Mexico. The United States Coast Guard representative advised that the incident resulted in the largest response to an oil spill in USA history.

The central theme of the various presentations was for the Atlantic Region to identify lessons learned from the Gulf spill, and to discuss how to prevent and prepare for a significant marine spill incident.

The Administrator appreciates being invited to attend and participate in the REET conference.

## 4.8 39th Annual Canadian Conference on International Law

The Administrator was invited on October 28, 2010, to sit on a panel at the above mentioned conference to make a presentation on the regime of liability and compensation in the Canadian Arctic. The presentation included a brief history of Canadian legislation applicable in the Canadian Arctic, beginning with the adoption in 1970 of the *Arctic Waters Pollution Prevention Act (AWPPA)*. The legislation was developed in the wake of the passage of the US flag tanker, the *Manhattan* the previous year.

South of the sixtieth parallel amendments to the *Canada Shipping Act (CSA)* in 1971, following the *Arrow* incident in 1970, established a liability regime modeled on (although not identical) the international regime contained in the 1969 Convention on Civil Liability for Oil Pollution Damage (CLC). Canada thus had two regimes – one north and one south of the 60th parallel. The two regimes were eventually merged with Canadian accession to various international conventions, notably the 1969 CLC and 1971 Fund Convention (1989), their 1992 Protocols (2001) and, lately, the 2003 Supplementary Fund and the 2001 Bunkers Convention (2010). Nevertheless, certain aspects of the regime in the AWPPA persist. Since 2001, the governing legislation for ship-source pollution in Canada is contained in the *Marine Liability Act (MLA)*.

The Administrator pointed to certain anomalies that arise out of the operation of two regimes. The AWPPA still contains the notion of direct cargo owner liability, a notion that no longer exists under the provisions of the MLA. Further he pointed to some confusion that might arise in the application of limits of liability. The liability regimes themselves are framed differently, the one in the AWPPA being one of *absolute* liability, whereas the one under the MLA, based on various international conventions, being a *strict* liability regime. Lastly, differences may also arise depending on whether a spill constituted a discharge of *waste*, other than oil, or a discharge of oil.

The Administrator noted that while these anomalies have not, to date, been the subject of judicial scrutiny, it might be advisable to revisit them, as navigation in the Arctic opens up, to avoid costly litigation in the future.

## **4.9 Challenges for International Shipping in the Year of the Seafarer**

The Administrator attended the above mentioned event held in Vancouver on November 18, 2010, in order to give a presentation on the application of international pollution conventions in Canadian waters. In view of the time restrictions for the presentation, he limited his presentation to a discussion of international conventions relating to liability and compensation for ship-source pollution.

The presentation was divided into two parts. First, the Administrator gave a brief account of the history of Canadian legislation governing liability and compensation for ship-source pollution in waters under Canadian jurisdiction. He noted that when initial legislation was adopted in the early 1970s, as Part XX of the then *Canada Shipping Act (CSA)*, in response to the *Arrow* incident in 1970 off the coast of Nova Scotia, Canada preferred a “made in Canada” regime, which, while adopting features of the emerging international regime, remained outside the international regime until the late 1980s. In 1989 Canada modified its regime to bring it fully into line with the international regime, as set out in the 1969 Civil Liability Convention and the 1971 IOPC Fund Convention. The regime was again modified in 2001, enabling Canada to adhere to the 1992 Protocols to those conventions. As of January 2, 2010, the *Marine Liability Act (MLA)*, which took over the provisions governing liability and compensation for ship-source oil spills contained in the CSA (2001), was again amended to implement the 2003 Protocol to the 1992 IOPC Fund Convention and the 2001 Bunkers Convention, so that the Canadian regime is now fully aligned with the international regime.

In the second part of the presentation, the Administrator dealt with the key elements of the Canadian regime, noting that the owner of the ship remains the primary responsible party for ship-source oil pollution, but noting also that the SOPF may be accessed by claimants for the payment of claims (fund of first resort). In the event that claims are found to be established, the SOPF is obliged to take all reasonable measures to recover the amounts paid out by it from the owner of the ship or any other party that may be responsible for the pollution. In this way the notion of the “polluter pays” has been preserved in Canadian law. The presentation concluded by discussing briefly the notion of pure economic loss, noting that the policy of the IOPC Fund in compensating such losses may go further than what would be recognized in Canadian law.

The presentation was well received. The other speaker in this segment of the seminar was a representative of the International Tanker Owners Pollution Federation Limited (ITOPF), who spoke about industry/government co-operation in spill response, emphasizing the role of ITOPF in providing objective technical advice in spill response.

## **4.10 Canadian Marine Advisory Council (Northern)**

The Administrator was invited to attend the Regional Canadian Marine Advisory Council (CMAC-N) meetings held in Iqaluit, Nunavut, on May 5 and 6, and in Winnipeg, Manitoba on November 24 and 25, 2010. The Administrator was represented by Captain George Legge. 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 the Regional Director Marine, Transport Canada, Prairie and Northern Region and the Assistant Commissioner, CCG, Central and Arctic Region.

### **Arctic Environmental Response**

At the May meetings, the CCG reported that a joint Canadian/United States environment response exercise was conducted at Anchorage, Alaska, in March 2010. The table-top exercise brought together a number of US and Canadian agencies, which contribute to the co-ordination of a potential oil spill incident in the Beaufort Sea border areas.



At the November meetings, the participants were updated on CCG's contingency plans to respond to marine oil spills throughout the Arctic region north of 60 degrees latitude. Discussion focused on the proposal configuration of the Arctic Community Pack of clean-up equipment deployed in communities. Basically, final plans are for the establishment of 18 sites with various combinations of boom kits, shore kits and beach flush kits. Each site will have a package that represents the unique requirement of the community. In addition three sites (Tuktoyaktuk, Iqaluit and Churchill) will have community kits plus a depot containing a large cache of response equipment. It was explained that the CCG base at Hay River has a Rapid Air Transportable Kit designed to be flown into any community with a 3000-foot, or greater landing air ship. The transportable kit can also be reconfigured for landing at smaller hamlets.

It was noted that during the summer two large vessels – a cruise ship, *Clipper Adventurer* and an oil tanker, *Nanny* – grounded in Nunavut coastal waters –section 2.39 and 2.40 refer. These incidents did not result in oil pollution, but brought to light the challenges of responding to environmental oil pollution in the remote high Arctic. It raises concerns about potential environmental damage as shipping traffic increases in the sensitive northern waters.

Note: For additional information about contingency planning and crew training for Arctic Environmental Response see the SOPF Administrator's Annual Report 2009-2010 section 4.5.

### **Sealift Operations and Oil Spill Exercises**

During the CMAC Northern meetings, presentations were made by several shipping companies about their annual general cargo sealift operations, which included the delivery of fuel oil products to the various Arctic communities. The various company participants provided an overview of the Arctic oil spill exercises and crew training conducted regularly by the sealift shipping companies. For example, a representative of Petro-Nav reported precautionary measures taken for the delivery of fuel oil to communities in northern Quebec. It was explained that during the summer of 2010, an oil spill exercise was held at Povungnituk in the Nunavik region of northern Quebec. The Arctic oil spill exercises are conducted regularly by the sealift shipping companies. The exercise was held by working jointly with the community emergency response team, and Ship Safety Inspectors of Transport Canada. The primary objective is aimed at pollution prevention and improving the efficiency and effectiveness of a joint community and industry response should an oil spill occur.

In addition to the shipowner's oil spill training exercises, the CCG conducted a ship-source oil spill simulation exercise at Resolute, in the high Arctic. Furthermore, the CCG participated in Operation Nanook, which is an annual joint exercise of Canada's Maritime Command and the CCG. Foreign services also participated. For example, there were Danish and US Coast Guard vessels present. The purpose of the annual exercise is to train for disaster and sovereignty patrols in the Arctic. One segment of Operation Nanook focused on environmental containment and remediation resulting from a simulated fuel spill.

### **Regulatory Reform**

Transport Canada updated attendees at CMAC-N about progress on the *Canada Shipping Act, 2001*, regulatory reform project, stressing the importance of public consultations. The participants were reminded that specific issues that they want addressed would be brought to the attention of the appropriate Standing Committee of the national CMAC Secretariat.

At the November meeting, Transport Canada advised that a report on the issues relating to the freezing-in of fuel laden petroleum barges in ice will be completed and made available by the end of February 2011. The matter of freezing-in for the purpose of over-wintering fuel storage in large quantities, except in the case of an emergency where no reasonable alternative exists, was a major concern raised by territorial governments at the CMAC-N meetings.

### **Vessel Traffic Services**

Transport Canada advised that the new mandatory Northern Canada Vessel Traffic Services (NORDREG) Regulations came into force during July 2010. The new regulations will promote safe and efficient navigation and environmental protection. As a result of the new NORDREG reporting procedures, vessels must now obtain clearance to enter, proceed within, or depart from the Vessel Traffic Services zone.

The Administrator has a direct interest in keeping abreast of the issues surrounding the transportation by sea of oil products throughout the Arctic. Thus, the regular attendance of a representative at the northern CMAC-N meeting is considered beneficial for a general understanding of Arctic marine operations.

## **4.11 Canadian Coast Guard Environmental Response National Meeting**

In response to a request from CCG senior management, the Administrator was represented by Captain George Legge at the captioned environmental response meeting held in Halifax, Nova Scotia, from January 19 to 21, 2011. The participants were provided a brief overview of the Canadian compensation regime. The presentation focused primarily on the investigation and assessment of claims filed with the SOPF by the CCG. Discussion also ensued about some of the concerns the Administrator has in respect to the level of claim documentation. For example, when the Administrator is provided with detailed supporting evidence and written explanation, including receipts and invoices, the investigation and assessment of claims are expedited. In essence, the Administrator requires sufficient documentary evidence to enable him to mount recourse action, where appropriate, against the responsible party.

## **4.12 Atlantic Marine oil Spill Waste Management Guide**

As requested, the Administrator seconded Captain George Legge to attend Environment Canada's office in Dartmouth, Nova Scotia, on January 21, 2011. The purpose of the meeting was to provide input to the section of the captioned management guide, which refers to the SOPF. The discussions addressed the different regimes in Canada that govern liability and compensation for oil spills caused by ship. Also, included in the discussion was an overview of the documentation required for submitting a claim to the Fund.

## **4.13 Marine Oil Pollution Prevention and Combating Conference**

The Administrator was represented by Captain George Legge at the Marine Oil Pollution Prevention and Combating seminar held in Quebec City on February 2 and 3, 2011. The international conference and trade show was organized by the Maritime Institute of Quebec to bring together oil transportation professionals and oil spill response experts. The Canadian participants were joined by presenters from the United States (U.S. Coast Guard and National Oceanic and Atmospheric Administration (NOAA)), France (Centre Européen des Énergies Renouvelables (CEDER)) and Britain (International Tanker Owners Pollution Federation (ITOPF)). The trade booths from various countries such as Iceland, Belgium, the United States and Canada, also had international representatives displaying oil pollution counter-measures and clean-up equipment. The conference targeted the marine industry, shipping companies, representatives of provincial and federal government departments, environmental groups, oil spill response experts, research scientists and technology developers who are stakeholders in marine oil pollution prevention and response to oil spill incidents.

The conference program was arranged in separate sessions including Canada's technical research designed to counter the negative environmental impacts of an oil spill in ice-covered water of the Gulf of St. Lawrence, a special session on the Gulf of Mexico Deepwater Horizon oil spill, training

and preparation for emergency response to marine oil pollution and chemical tanker accidents, the Canadian and international compensatory regimes, and several case studies.

#### **4.14 Canadian Maritime Law Association Open Meeting**

The Administrator attended an open meeting organized by the CMLA, February 9, 2011. The object of the meeting was to hear a presentation by Ann Legars, Shipping Federation of Canada, on two private members' bills that are currently before Parliament. The first bill (C-469) purports to enact a Canadian Environmental Bill of Rights. The second bill (C-606) aims to amend the *Canada Shipping Act, 2001*, by designating an area of the sea adjacent to the coast of Canada as an exclusion zone for the transport of oil in oil tankers. The amendment, if it goes through, would give the Minister of Fisheries and Oceans the power to designate other exclusions zones of this kind.

A basic concern with Bill C-469 would be its impact on international treaties, especially those containing technical standards, which Canada has implemented and form the basis for many Canadian regulations. To alleviate possible violations of treaty obligations, the CMLA, in appearing before the Parliamentary Committee studying the bill, proposed an amendment, which would ensure that in the event of conflict, the international treaties will prevail. This proposal was accepted by the Committee.

The second bill, as already mentioned, seeks to establish an exclusion zone for tanker traffic. It was pointed out that the northern border of the extension zone, depicted in an annex to the bill, off the northwest coast of British Columbia, might include a maritime boundary that is still in dispute with the neighbouring United States.

There was interesting discussion and questions regarding both pieces of proposed legislation. It remains to be seen whether they will eventually pass into law. If they do then undoubtedly they will require greater study to assess their implications.

#### **4.15 McGill Lecture**

In keeping with previous practice, at the invitation of Mr. John O'Connor, a member of the teaching staff in the Faculty of Law, McGill University, the Administrator attended a lecture at the University on March 9, 2011 to give law students an account of the operations of the SOPF. His remarks were in the context of a lecture on 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 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.



## 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. A description of the international regime has been given in previous Annual Reports, in particular the Report of 2005-2006, Appendix A, at page 67. Since the Administrator is responsible for reporting annually the amount of contributing oil received in Canada by sea and paying the contributions on behalf of Canadian receivers based on those reports, he participates in all the sessions of the governing bodies of the International Oil Pollution Compensation Funds (IOPC Funds). The Administrator also follows closely the claims work of the IOPC Funds with the aim that claims handling by the Ship-source Oil Pollution Fund (SOPF) is aligned as closely as possible with that of the IOPC Funds.

In the fiscal year ending March 31, 2011, the Administrator attended meetings of the governing bodies of the IOPC Funds in June and October 2010 (London, United Kingdom) and March 2011 (Marrakech, Morocco) as part of the Canadian delegation. This latter meeting was held in Marrakech at the invitation of the Moroccan government. It should be noted that the meeting of the governing bodies was held simultaneously, as previously decided, under the able chairmanship of Mr. Jerry Rysanek (Canada). At the Marrakech meeting in March, Mr. Rysanek announced that he will be stepping down after the meeting in October 2011.

It is not proposed to give a detailed account of these meetings, since records of decisions reached are available online at [www.iopcfund.org](http://www.iopcfund.org). For the purposes of this report it is intended to refer to highlights of those meetings. These may be grouped into two categories: matters relating to incidents and budgetary matters. It is also proposed to deal with 1992 Fund Sixth International Working Group established by the governing bodies to discuss problems in respect of incidents that involve large numbers of small claims, often submitted with no or inadequate documentation to support them.

### 5.1 Incidents

On a positive note, no fresh incidents falling within the scope of the IOPC Funds were reported in the fiscal year ending March 31, 2011. All the discussions in the governing bodies, notably in the 1992 Executive Committee and in the 1971 Administrative Council, therefore related to claims matters arising out of incidents that had arisen in previous years that have not yet been closed, either because claims settlement is still underway or because of on going litigation. It may be recalled that, although the 1971 Fund Convention is no longer in force, unresolved claims remain in respect of incidents that arose before the 1971 IOPC Fund ceased to exist. The 1971 Fund Administrative Council, comprising of representatives of states, including Canada, who were members of the 1971 Fund at the time it ceased to exist, consequently meets on a regular basis to deal with outstanding claims and will continue to meet until all claims have been resolved.

Starting with the 1971 Fund Administrative Council, while steady progress is being made to resolve outstanding claims, two incidents have occupied most of the deliberations of the Council, namely, the *Nissos Amorgos* (1997) and the *Plate Princess* (1997), both in Venezuela. Both incidents reveal troublesome features mainly because the IOPC Fund takes the position that claims are time barred. In the *Plate Princess* incident, judgements have been handed down against the IOPC Fund, although there is reason to believe that the Fund was not properly notified of claims within the time limits prescribed by the Civil Liability Convention and, further, was not properly notified of the proceedings with the result that the Fund was deprived of the opportunity to mount a proper defence. In this case, court proceedings in Venezuela are now nearing their end with the prospect looming that the judgement against the IOPC Fund will no longer be subject to appeal. In accordance with the terms of the 1971 Civil Liability Convention, the judgement would then

be enforceable in any court having jurisdiction, including the courts of any other contracting state (Article X).

The outcome of the judicial proceedings in Venezuela in the case of the *Plate Princess* has been the subject of intense debate in the 1971 Administrative Council, both at its October 2010 session and at its March 2011 session. The Venezuelan delegation has been pressing the Council to instruct the Secretariat to authorize payment of claims in accordance with the judgement of the court. At its March session, the Council decided to instruct the Director not to make payment, as requested by the Venezuelan delegation, on the grounds that due process had not been observed. It remains to be seen what steps, if any, the Venezuelan government will take to enforce the final judgment of its courts. Clearly, the ultimate resolution of this case will be of crucial significance, not only for the outstanding claims in the *Nissos Amorgos* incident, but, more generally, for the functioning of the international compensation system since Article X also appears in the 1992 Civil Liability Convention.

With respect to the 1992 Fund, the discussion in the Executive Committee has been largely dominated by two cases – *Volgoneft* (November 2007) and the *Hebei Spirit* (December 2007). While steady progress has been made in the assessment of claims in the first case, no payments have been made because of issues regarding the implementation of the governing treaties in Russian law. At its latest session in March 2011, the Committee was advised that the courts have ruled that the assessment of environmental damage in accordance with a procedure known as “Methodika” was not appropriate in cases governed by the international conventions. One significant obstacle to payment of claims has thus been removed.

Further, the courts have ruled that the storm which led to the break up of the *Volgoneft* was not of an exceptional nature so as to relieve the shipowner of liability under Article III.2.(a) of the Civil Liability Convention. Accordingly, the shipowner and its insurers will have to participate in the payment of compensation in this case. Options for resolution of the “insurance gap” are under discussion between the Fund Secretariat and the Russian government. It may be recalled that the so-called insurance gap arises out of the failure of the Russian government to amend Russian law to reflect higher limitation amounts in the Civil Liability Convention agreed by resolution of the IMO Legal Committee in 2000. The result is that the shipowner was able to establish a lower limitation fund than would otherwise be available under the international regime.

While members of the Executive Committee, including Canada, at the March session, voiced the urgent need to make payment of claims as soon as possible, given the date of the incident, it was, nevertheless, decided not to authorize payment until a solution to the “insurance gap” had been found and outstanding oil reports for 2008, 2009 and 2010 had been filed. Payment of claims would also be contingent on the insurer paying claims up to the shipowner’s limit recognized by the Russian courts.

In the *Hebei Spirit* incident, in the Republic of Korea, the IOPC Fund faces enormous challenges on account of the vast number of claims (over 125,000) that have been filed with the claims office, many of them small and insufficiently documented. It is anticipated that this will be a major problem in all significant spills in the future, so much so, that the 1992 Fund Assembly has established a working group, referred to above, to study the problem and propose solutions. While the P&I Club (Skuld) has been paying claims, assessed in accordance with IOPC Fund criteria, the IOPC Fund has not made any payments but will come under increasing pressure to do so as the shipowner reaches its limit of liability under the 1992 Civil Liability Convention.

In view of the uncertainties surrounding the claims situation in this case, including the time-consuming process of actual claims' assessments, the Executive Committee at previous meetings had set the level of payment of claims at 35% to ensure that all claims would be paid on an equal footing. At the March meeting, the Committee was advised of negotiations under way between the IOPC Fund and the Korean government aimed at raising the level of payment of established claims to 100%. The upshot of the discussion in the Committee was to authorize the Director to increase the level of payment of established claims to 100%, subject to the following safeguards:

1. an undertaking by the Korean government to pay all established claims in full, in excess of the limits of the 1992 Civil Liability and Fund Conventions;
2. an undertaking by the Korean government to hold the Fund harmless in case a Korean court were to render a judgement ordering the 1992 Fund to pay compensation in excess of the 1992 Fund's limit; and
3. the provision of a bank guarantee in the amount of KRW 130 billion provided by the Korean government.

It was decided that the 35% level will remain in force until the above safeguards are in place. It should be noted that the Korean Parliament, shortly after the incident, had enacted a Special Law which places the Korean government under the obligation to pay victims compensation in excess of the total amount available under the conventions. The manner in which the Korean government has addressed the payment of claims in this case is worthy of note, since it is likely that it will serve as a model in other jurisdictions confronted with such large scale tanker spills.

The Executive Committee has received regular reports on progress in other incidents, notably the *Erika* (1999) and the *Prestige* (2002). In the first case, most claims have been resolved, except for a few that are still before the courts. As noted in previous Annual Reports, the French courts while emphasizing that they are not bound by the IOPC Funds' claims criteria, have, with few exceptions, endorsed the IOPC Fund's assessment of claims. Discussions are now underway to try to achieve a global settlement of all outstanding claims so that, hopefully, in the near future this case, dating back some 13 years, can be finally closed.

In the *Prestige* incident steady progress is being made in the settlement of claims. However, the issue of the massive claim by the Spanish government has not yet been resolved. Of particular interest in this case are the court proceedings underway both in Spain and in the United States. The IOPC Fund, it may be recalled, is not a party to the proceedings in the Federal Court in the United States. Those proceedings concern claims by the Spanish government that the classification society, ABS, had been negligent in inspecting the tanker and granting it classification. ABS has countered by claiming that the Spanish government had contributed to the cause of the casualty by refusing to allow the stricken tanker to enter its waters to seek refuge. This refusal, they argue, led to the inevitable breakup of the vessel and caused far greater damage than would have been the case in protected waters.

These proceedings, as well as proceedings in the French courts in the *Erika* incident, involving another classification society (RINA), are being closely followed by the IOPC Fund, since they may eventually have an impact on rights of recourse that the IOPC Fund might have in respect of compensation paid by it.

As of the close of the financial year, happily, there were no incidents that involved the Supplementary Fund.

## **5.2 Budget**

At its October meeting, the Administrative Council of the 1992 IOPC Fund adopted its budget for 2011. The budget is basically divided into two parts – the budget relating to the General Fund and the budget relating to the various Major Claims Funds. The General Fund is used to finance the day to day operations of the IOPC Fund, covering such things as staff salaries, the operation of the IOPC Fund offices and the payment of claims, authorized by the Director, up to a limit of £2 million per incident. The Administrative Council also agreed to maintain the working capital of the 1992 IOPC Fund at £22 million. On the basis of this budget for the General Fund, it was agreed to levy a contribution of £3.8 million, payable by March 31, 2011. The Canadian portion of that levy, paid out of the SOPF in February, was approximately £178,327.

Since the Supplementary Fund has not had to date any incidents, the costs it incurs are mainly administrative. The Supplementary Fund Assembly consequently agreed to a modest budget for its General Fund of £69,000 to cover those expenses and to maintain a working capital of £1 million. Neither item has given rise to any levy.

In the case of the 1971 Fund, the Administrative Council of that Fund agreed to a budget of £505,400 to cover its administrative costs and to pay minor claims. Neither of those items required a levy, the balance in the General Fund of the 1971 Fund being sufficient to meet them.

It should be noted that over the years the three Funds have agreed to share the administrative costs of administration for the running of a joint Secretariat. Since the bulk of the administrative costs are incurred in respect of the 1992 Fund, the other two Funds pay a flat management fee to the 1992 Fund.

The 1992 Fund also operates a number of Major Claims Funds, notably in respect of the *Erika*, *Prestige*, *Volgoneft 139* and *Hebei Spirit* incidents. Neither the 1971 Fund nor the Supplementary Fund operates such funds at the present time. It should be noted, however, that if the 1971 Fund eventually is obliged to pay compensation in the *Plate Princess* incident, it may become necessary to establish a Major Claims Fund and to levy contributions. At its October meeting, it was agreed that no levy was required by the *Erika* Major Claims Fund, there being sufficient monies in that fund to meet outstanding claims. In the case of the *Prestige* Major Claims Fund, it was decided to make a £5 million levy to be deferred until such time as the money might be required. Likewise, in the *Volgoneft 139* Major Claims Fund it was agreed to make a levy of £40 million to be deferred, however, until such time as the Director is authorised to pay claims. Finally, in the case of the *Hebei Spirit* Major Claims Fund, it was agreed to make a levy of £50 million, payable by March 1, 2011. The Canadian portion of that levy, paid out of the SOPF in February, was approximately £2,410,516. A further levy of £20 million for this incident was decided, but deferred.

## **5.3 Working Group**

As previously noted, the governing bodies of the IOPC Funds established a working group, the Sixth Intersessional Working Group, to study the problem of large numbers of claims for relatively small amounts with particular reference to the proof of such claims. The working group was set up in the light of the vast number of claims arising out of the *Hebei Spirit* incident. In the financial year ending March 31, 2011, the working group held two meetings – in June, 2010 and in March 2011. The Administrator attended both sessions, since issues of claims handling are also of vital importance to the SOPF.



The submission of large numbers of claims gives rise to a number of challenges. In many instances, as seen in the Korean incident, the claims that have been submitted are inadequately documented. The problem is further compounded by the fact that it places enormous strains on limited, available expertise to assess claims. In assessing claims, the Secretariat, as well as the shipowner's insurer must grapple with a number of competing factors and considerations. Generally, the IOPC Funds subscribe to a policy that claims should be paid as quickly as possible. However, the claims handling process must also take into consideration that claims must be dealt with on an equal footing. This becomes particularly challenging when the estimated total value of claims exceeds the amount of compensation available under the conventions, resulting in the setting of the level of payments of claims significantly below the full amounts claimed, as well as long delays to ensure that all claims have been filed within the prescribed time limits.

The first session was largely devoted to defining the problem and identifying further lines of inquiry. The second session already worked on various suggestions that had been submitted by contracting states, including Canada, as well as observer delegations. Specifically the Canadian delegation submitted a paper to the March session suggesting the development of a memorandum of understanding (MOU) to be concluded by a member state with its national insurers with the aim of making more expertise available on short notice. After some discussion of this proposal, the working group requested the Audit Body to develop a draft MOU that might be used to mobilize specialized expertise.

The results of the discussions in the working group can be found in the reports prepared by the Secretariat in consultation with the Chairman of the working group, at the IOPC Fund ([www.iopcfund.org](http://www.iopcfund.org)) referred to above.

## **5.4 HNS Convention and 2010 Protocol**

In April 2010, the Administrator attended the diplomatic conference, held under the auspices of the International Maritime Organization (IMO) at the headquarters of the organization to adopt a protocol to the 1997 HNS Convention. The aim of the protocol, it may be recalled, was to remove obstacles to ratification that had been identified over the years. The Convention was originally adopted in 1997 but had failed over the years to achieve the conditions required to bring it into force.

Since the Administrator had chaired a working group, set up under the auspices of the IOPC Funds, to draft the protocol, he was asked to chair the Committee of the Whole at the diplomatic conference. The diplomatic conference had a successful conclusion and the resulting protocol is now open for adoption by states. Since the diplomatic conference, Transport Canada has published a discussion paper recommending the amendment of the *Marine Liability Act* to implement the convention as modified by the protocol (TP 15093E).

The Administrator has an ongoing interest in the HNS Convention and its 2010 Protocol, since the convention has an oil component. It would provide a liability and compensation regime for those oils carried by sea that are not covered by the IOPC Funds system. The SOPF already covers such carriage. Also, according to the discussion paper, referred to above, the obligation for reporting quantities of such oil and paying contributions to the HNS Fund would, as in the case of the IOPC Fund system, fall on the SOPF. The Administrator will continue to monitor closely the implementation of this convention in Canada.



## **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, 2011.



**SHIP-SOURCE OIL POLLUTION FUND**

FINANCIAL STATEMENTS

MARCH 31, 2011

## **SHIP-SOURCE OIL POLLUTION FUND**

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## INDEPENDENT AUDITOR'S REPORT

To the Administrator of  
Ship-source Oil Pollution Fund

We have audited the accompanying financial statements of the Ship-source Oil Pollution Fund, which comprise the statement of financial position as at March 31, 2011, the statements of operations and fund balance for the year then ended, as well as a summary of significant accounting policies and other explanatory information.

### *Management's Responsibility for the Financial Statements*

Management is responsible for the preparation and fair presentation of these financial statements in accordance with Canadian generally accepted accounting principles, and for such internal control as management determines is necessary to enable the preparation of financial statements that are free from material misstatement, whether due to fraud or error.

### *Auditor's Responsibility*

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 comply with ethical requirements and plan and perform the audit to obtain reasonable assurance about whether the financial statements are free from material misstatement.

An audit involves performing procedures to obtain audit evidence about the amounts and disclosures in the financial statements. The procedures selected depend on the auditor's judgment, including the assessment of the risks of material misstatement of the financial statements, whether due to fraud or error. In making those risk assessments, the auditor considers internal control relevant to the Fund's preparation and fair presentation of the financial statements in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the Fund's internal control. An audit also includes evaluating the appropriateness of accounting policies used and the reasonableness of accounting estimates made by management, as well as evaluating the overall presentation of the financial statements.

We believe that the audit evidence we have obtained is sufficient and appropriate to provide a basis for our audit opinion.

*Opinion*

In our opinion, the financial statements present fairly, in all material respects, the financial position of the Ship-source Oil Pollution Fund as at March 31, 2011, as well as the results of its operations and its cash flows for the year then ended in accordance with Canadian generally accepted principles.

*Other Matter*

The financial statements of Ship-source Oil Pollution Fund for the year ended March 31, 2010 were audited by another auditor who expressed an unqualified opinion on those statements on May 11, 2010.



Marcil Lavallée  
Chartered Accountants, Licensed Public Accountants

Ottawa, Ontario  
May 13, 2011



# SHIP-SOURCE OIL POLLUTION FUND

## STATEMENT OF OPERATIONS AND FUND BALANCE FOR THE YEAR ENDED MARCH 31, 2011

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	2011	2010
<b>REVENUE</b>		
Interest	\$ 9,389,377	\$ 9,338,533
Recoveries of previously awarded settlements	-	157,598
	<b>9,389,377</b>	<b>9,496,131</b>
<b>CLAIMS</b>		
Payments and accruals made towards Canadian claims	(686,234)	(2,523,772)
Reversal of previously accrued claims	2,240,251	-
International Oil Pollution Compensation Funds		
Contributions (note 8)	(3,895,877)	-
	<b>(2,341,860)</b>	<b>(2,523,772)</b>
	<b>7,047,517</b>	<b>6,972,359</b>
<b>OPERATING EXPENSES</b>		
Administrator and Deputy Administrator fees	99,000	99,199
Legal fees	102,501	164,439
Consulting fees	95,751	90,104
Audit fees	32,900	17,000
Administrative services, salaries and office expenses	376,643	235,348
Travel	33,116	31,666
Rent	176,141	104,520
Access to Information and Privacy Act expenses (note 6)	5,641	11,977
Amortization of capital assets	106,328	5,378
	<b>1,028,021</b>	<b>759,631</b>
<b>EXCESS OF REVENUE OVER EXPENSES</b>	<b>6,019,496</b>	<b>6,212,728</b>
<b>FUND BALANCE, BEGINNING OF YEAR</b>	<b>386,238,190</b>	<b>380,025,462</b>
<b>FUND BALANCE, END OF YEAR</b>	<b>\$ 392,257,686</b>	<b>\$ 386,238,190</b>

# SHIP-SOURCE OIL POLLUTION FUND

## BALANCE SHEET

MARCH 31, 2011

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	2011	2010
<b>ASSETS</b>		
<b>CURRENT ASSETS</b>		
Balance of the account with Receiver General for Canada (note 4)	\$ 392,525,017	\$ 388,952,708
<b>CAPITAL ASSETS</b> (note 5)	474,440	78,204
	<b>\$ 392,999,457</b>	<b>\$ 389,030,912</b>
<b>LIABILITIES</b>		
<b>CURRENT LIABILITIES</b>		
Accounts payable and accrued liabilities	\$ 82,400	\$ 144,098
Provision for claims under review (note 7)	659,371	2,648,624
	741,771	2,792,722
<b>FUND BALANCE</b>	<b>392,257,686</b>	<b>386,238,190</b>
	<b>\$ 392,999,457</b>	<b>\$ 389,030,912</b>

# SHIP-SOURCE OIL POLLUTION FUND

## NOTES TO THE FINANCIAL STATEMENTS

MARCH 31, 2011

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### 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 7 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 reported amounts of assets and liabilities and disclosure of contingent assets and liabilities at the date of the financial statements, and the reported amounts of revenue and expenses during the period. Actual amounts could differ from these estimates.

#### 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.

#### 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:

	<b>Periods</b>
Computer equipment	3 years
Furniture and equipment	10 years
Leasehold improvements	Lease term – 5 years

#### Foreign currency translation

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

# SHIP-SOURCE OIL POLLUTION FUND

## NOTES TO THE FINANCIAL STATEMENTS

MARCH 31, 2011

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### 3. INFORMATION INCLUDED IN OPERATIONS

	2011	2010
Foreign exchange gain included in International Oil Pollution Compensation Funds contributions	\$ 1,205	\$ -

### 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 1.82% and 2.93% during the year. The rate for March 2011 was 2.52% (2.66% for March 2010).

### 5. CAPITAL ASSETS

	2011		
	Cost	Accumulated amortization	Net
Computer equipment	\$ 37,693	\$ 18,561	\$ 19,132
Furniture and equipment	173,033	23,568	149,465
Leasehold improvements	382,304	76,461	305,843
	\$ 593,030	\$ 118,590	\$ 474,440

	2010		
	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
	\$ 90,465	\$ 12,261	\$ 78,204

# SHIP-SOURCE OIL POLLUTION FUND

## NOTES TO THE FINANCIAL STATEMENTS

MARCH 31, 2011

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### 6. ACCESS TO INFORMATION AND PRIVACY ACT EXPENSES

	2011	2010
Administration costs	\$ 743	\$ 354
Consultant fees	4,898	11,387
Legal fees	-	236
	\$ 5,641	\$ 11,977

There were no acquisitions of furniture and equipment during the year in addition to the above-mentioned operating expenses (2010: \$2,723).

### 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 \$659,371 for claims received prior to March 31, 2011 (\$2,648,624 in 2010) 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 may be 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 cannot be reasonably estimated from year to year. The amount of the contribution is paid and recorded by the Ship-source Oil Pollution Fund once the contribution is determined and requested by the International Oil Pollution Compensation Funds. During the year ended March 31, 2011, the Fund has contributed \$3,895,877 (2010: \$Nil) to the International Oil Pollution Compensation Funds.

During the fiscal year commencing April 1, 2011, the maximum liability of the Fund is \$157,803,519 (2010: \$155,318,424) for all claims from one oil spill. Furthermore, as of April 1, 2011, the Minister of Transport also has the statutory power to impose a levy of 47.32 cents (2010: 46.57 cents) 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.

# **SHIP-SOURCE OIL POLLUTION FUND**

## **NOTES TO THE FINANCIAL STATEMENTS**

**MARCH 31, 2011**

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### **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 \$176,141 (2010: \$104,520) to Public Works and Government Services Canada (PWGSC) for the use of office space.

The Fund is committed to making minimum annual lease payments to PWGSC totalling \$902,868 for the rental of new office space. The minimum annual lease payments for the next four years are \$225,717 from 2012 to 2015.

### **10. STATEMENT OF CASH FLOWS**

A cash flow statement has not been prepared because it would not provide any additional useful information in understanding the cash flows for the year.

### **11. CAPITAL DISCLOSURES**

The Fund's main objective with respect to capital management is to maintain a sufficient level of fund balance, thereby ensuring the continuity of the Fund and the ongoing fulfillment of its mission.

### **12. COMPARATIVE FIGURES**

Certain comparative figures have been reclassified to conform to the current year's presentation.