Ship-source Oil Pollution Fund

The Administrator's Annual Report
2011 – 2012

Canada

Cover Image: On September 20, 2011, the Miner drifted unto the rocks at Scatarie Island after parting its towing bridle while under tow off the east coast of Cape Breton, Nova Scotia.
Section 2.45 of this report refers.

Photo courtesy of
Michael E. Earle, Canadian Coast Guard
Dartmouth, Nova Scotia, Canada

Published by the Administrator of the
Ship-source Oil Pollution Fund
Suite 830, 180 Kent
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

2011-2012

Canada

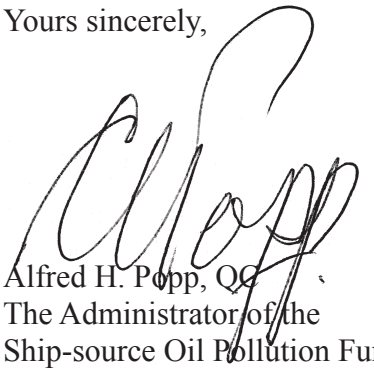
The Honourable Denis Lebel, P.C., M.P.
Minister of Transport, Infrastructure and Communities
Ottawa, Ontario
K1A ON5

Dear Mr. Lebel:

Pursuant to Section 121 of the *Marine Liability Act*, 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, 2012.

Yours sincerely,



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

Contents

Abbreviations

AMOP	Arctic and Marine Oil Spill Program
ATIP	Access to Information and Privacy
BIO	Bedford Institute of Oceanography
CCG	Canadian Coast Guard
CLC	Civil Liability Convention
CMAC	Canadian Marine Advisory Council
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
ESTD	Emergencies Science and Technology Division
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
IT	Information Technology
ITOPF	International Tanker Owners Pollution Federation
LOU	Letter of Undertaking
MCTS	Marine Communication Traffic Services
MLA	Marine Liability Act
MOU	Memorandum of Understanding
MPCF	Maritime Pollution Claims Fund
MV	Motor Vessel
NASP	National Aerial Surveillance Program
NLEA	Newfoundland and Labrador Environmental Association
NTCL	Northern Transportation Company Limited
P&I Club	Protection and Indemnity (Marine Insurance) Association
REET	Regional Environmental Emergency Team
RIM	Records and Information Management
RO	Response Organization
SDR	Special Drawing Rights*
SITREP	Situation Report
SOPF	Ship-source Oil Pollution Fund
STOPIA	Small Tanker Oil Pollution Indemnification Agreement
TC	Transport Canada
TCMS	Transport Canada Marine Safety
WCMRC	Western Canada Marine Response Corporation

* The value of the SDR at April 1, 2012, was $1.53568 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, 2012. Section 1 describes the Canadian compensation regime, which since January 2, 2010, is governed by Chapter 21 of the Statutes of Canada, 2009 the amended *Marine Liability Act*. Canada's national fund covers all classes of ships that discharge persistent and non-persistent oil, including oil from unknown sources commonly referred to as "mystery spills". Canada is also a contracting state to the International Oil Pollution Compensation Funds 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, 24 Canadian claims were settled and paid for a total amount of $652,634.58 including interest. Furthermore, the SOPF paid 1992 IOPC Fund contributions in the amount of $1,394,815.32 for incidents that occurred outside of Canada – Table 1 refers.

During the fiscal year commencing April 1, 2012, the maximum liability of the SOPF is $159,854,965 for all claims from one oil spill. As of April 1, 2012, the Minister of Transport has the statutory power to impose a levy of 47.94 cents per metric ton of oil, as defined in the Act, 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, 2012, the accumulated surplus in the SOPF was $395,748,612.

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.

Some of the incidents that are 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 shipowners' insurers. In cases where the claims were settled by the shipowner there was no need for an investigation by the SOPF.

When the Administrator pays a claim he has a statutory obligation to take all reasonable measures to recover the amount of payment from the owner of the ship or any other person liable. For that purpose, the Administrator may commence legal proceedings. (Section 1: Funds of first and last resort refers). In

claims where the responsible shipowner is clearly known, the services of legal counsel may be obtained for recourse action. In some situations involving abandoned and derelict vessels, the name of the shipowner is not always readily available. In these instances, when it is necessary to trace the name and location of the registered owner and identify assets that may be available for recovery purposes, the Administrator obtains the services of a professional locator firm.

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 progress. The Administrator dealt with 46 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, 13 new claims were received in the aggregate amount of $631,158.27. Investigations are underway, but not all of them were completed by March 31, 2012.

Challenges and Opportunities

During the year the Administrator dealt with a number of new administrative challenges related to modernizing the operations of the SOPF and complying with federal legislation and directives. These opportunities for improvement and compliance requirements are a perpetual challenge to a small agency such as the Ship-source Oil Pollution Fund. The increased workload has to be accomplished in addition to the growing core work of the SOPF of investigation and settlement of claims.

In general, the handling of claims has improved as evident from the fact that there has been a significant increase in the number of claims investigated and assessed by the Fund. In the fiscal year ending March 31, 2010, a total of 12 claims were settled for $197,392. In the year ending March 31, 2011, some 18 claims were settled for the total amount of $435,236. During the fiscal year covered in this report, 24 claims were settled for a total amount of $652,634.

These and other 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.

The Administrator participated in a number of Canadian outreach initiatives in the fiscal year. For example, at the request of Environment Canada's coordinator of the *34th* Arctic Marine Oil Spill Program (AMOP) seminar held in Banff, Alberta, on October 3, 2011, the Administrator of the Ship-source Oil Pollution Fund and Mr. Matthew Sommerville, Technical Advisor of the International Oil Pollution Compensation Funds, jointly convened a day-long workshop prior to the international technical seminar. The presentations and discussions addressed the application of both the Canadian and International Oil Pollution regimes as they relate to liability and compensation for ship-source pollution. Outreach initiatives are covered in section 4.

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 of the 1992 IOPC Fund, the 1971 IOPC Fund and the Supplementary Fund, in July and October 2011, in London, United Kingdom.

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 47.94 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 some benefit to the SOPF in recourse actions, since many 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 Funds. 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 carrying persistent oil, as are IOPC Funds.

The SOPF is also available to provide additional compensation (a fourth layer) in the event that compensation from the shipowner under the 1992 Civil Liability Convention and the IOPC Funds with

respect to spills in Canada from oil tankers is insufficient to cover all established claims arising from such spills (see *Figure 1*).

During the fiscal year commencing April 1, 2012, the maximum liability of the SOPF is $159,854,965 for all claims from one oil spill. This amount is indexed annually. The classes of claims for which the SOPF may be available include the following:

- Claims for oil pollution;
- 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.

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 the Administrator finds the claim to be established.

As noted elsewhere in this report, Canada is a contracting state to both the 1992 Civil Liability Convention and the 1992 Fund Convention. In addition, Canada is a contracting state to the Supplementary Fund Protocol and therefore is a member of both the 1992 Fund and the Supplementary Fund.

These international funds are financed by levies on certain types of oil carried by sea. In most States the levies are paid by entities which receive oil after sea transport. Annual contributions are levied by the 1992 Fund to meet the anticipated payments of compensation and administrative expenses during the coming year. In Canada, the Administrator of the SOPF is responsible for reporting to the IOPC Funds annually the amount of contributing oil received in Canada by sea. Contributing oil means crude oil and fuel oil. Under the Act, it is mandatory for a person who receives oil, if the total quantity of oil received by the person or associated persons during the calendar year exceeds 150,000 metric tons, to report quantities of "contributing oil" imported by sea into Canada in each calendar year. The Administrator consolidates the national figure and reports it to the IOPC Funds Secretariat. It is on this basis that the amount of the Canadian contribution is determined. The obligation to pay contributions to the IOPC Funds on behalf of the Canadian oil receivers is fulfilled by the Ship-source Oil Pollution Fund. The amount of the levy varies from year to year.

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

As previously noted, the Canadian compensation regime is based on the fundamental principle that the shipowner is primarily liable for oil pollution caused by the ship up to its statutory limits of liability. 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 and following 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 originating from a spill from a ship, with the 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 the claimant 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 Funds, 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 2009-2010 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. This assessment of the situation has been confirmed by the claims handling in the fiscal year ending March 31, 2012. 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.

As noted in the last Annual Report, 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 cleanup 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 ($1.53568) on April 1, 2012

International Funds (IOPC)	$1,151,760,000
Total Domestic Fund (SOPF)	$ 159,854,965
Total Available to Canada	**$1,311,614,965**

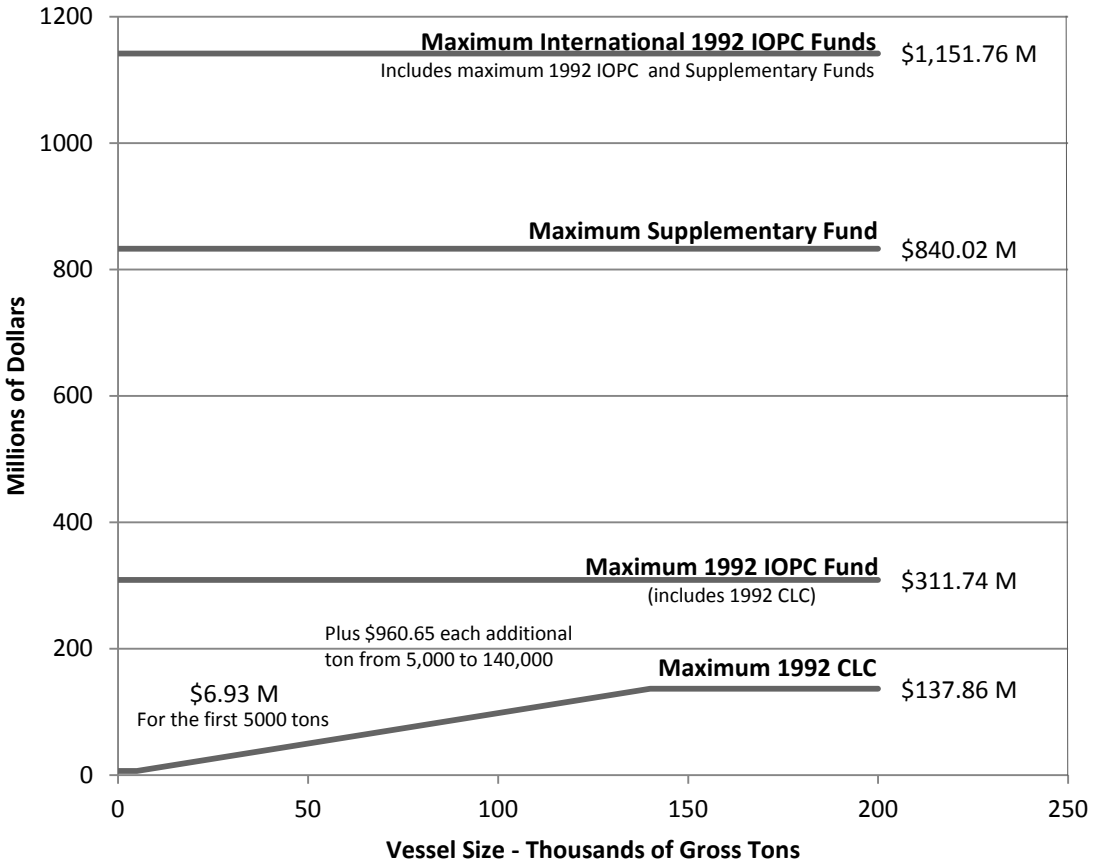


Figure 1 shows the limits of liability and compensation available under the 1992 CLC, the 1992 IOPC Fund Convention and the Supplementary Fund.

The aggregate amount available under the 1992 CLC, the 1992 IOPC Fund and the Supplementary Fund is $1,151.76 million. The SOPF amount of some $159.855 million in addition to the International Funds results in approximately $1.312 billion being available for a tanker spill in Canadian waters, including the territorial sea and the exclusive economic zone.

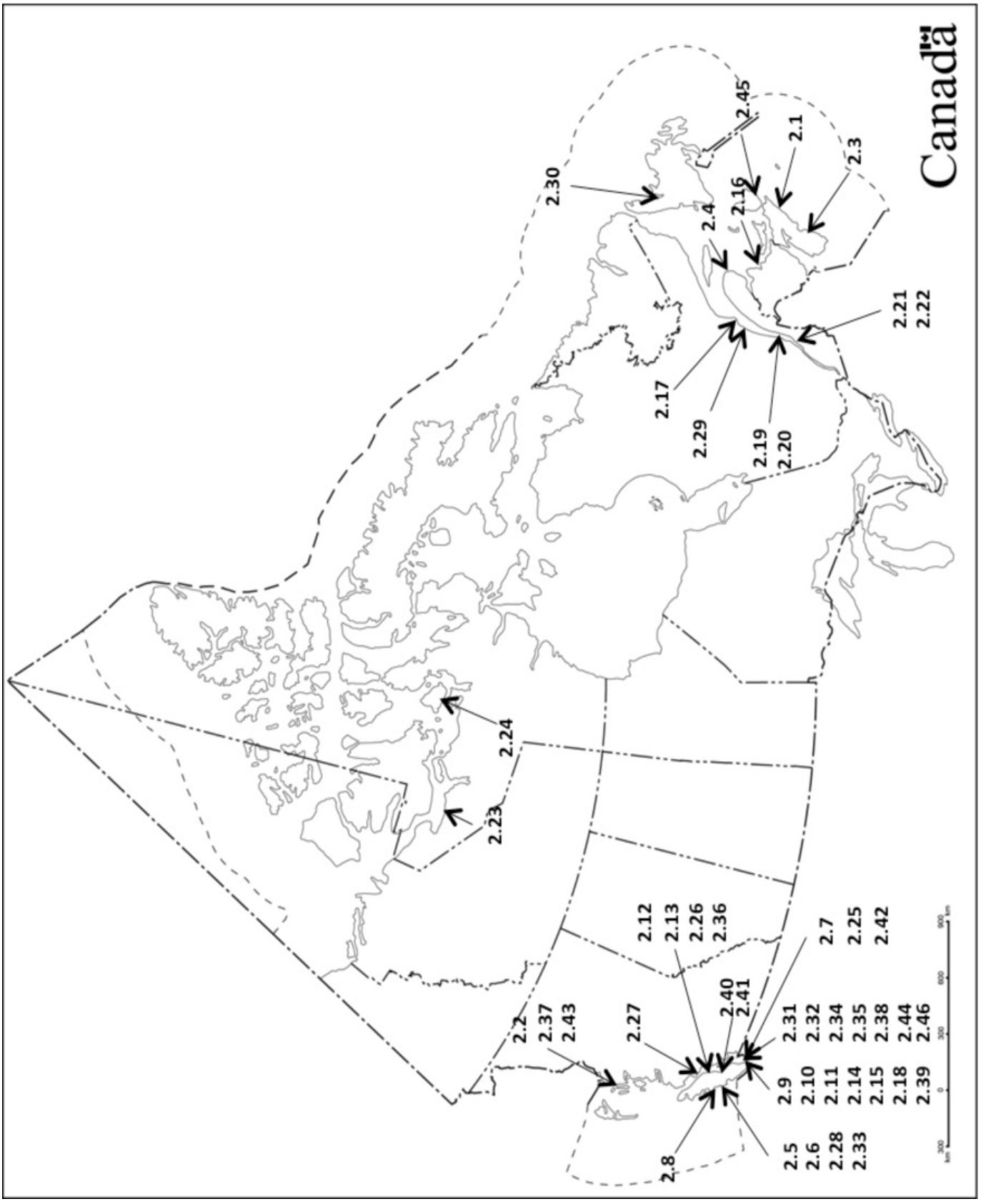
Table 1

Canadian Contributions to the International Funds

Since 1989, the SOPF has paid the IOPC Funds more than $52 million, as listed in the table below. This listing illustrates the "call" nature of the IOPC Funds (not fixed premiums):

Fiscal Year	Paid from the SOPF ($)
1989/90	207,207.99
1990/91	49,161.28
1991/92	1,785,478.65
1992/93	714,180.48
1993/94	4,927,555.76
1994/95	2,903,695.55
1995/96	2,527,058.41
1996/97	1,111,828.20
1997/98	5,141,693.01
1998/99	902,488.15
1999/00	273,807.10
2000/01	6,687,696.71
2001/02	2,897,244.45
2002/03	3,219,969.17
2003/04	4,836,108.49
2004/05	3,448,152.80
2005/06	-
2006/07	360,233.37
2007/08	106,305.06
2008/09	5,161,013.63
2009/10	-
2010/11	3,895,877.19
2011/12	1,394,815.32
Total	**52,551,570.77**

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


Canada
2.45
2.1
2.3
2.30
2.16
2.4
2.21
2.22
2.17
2.29
2.19
2.20
2.24
2.23
2.12
2.13
2.26
2.36
2.7
2.25
2.42
2.40
2.41
2.2
2.37
2.43
2.27
2.31
2.32
2.34
2.35
2.38
2.44
2.46
2.9
2.10
2.11
2.14
2.15
2.18
2.39
2.5
2.6
2.28
2.33
2.8

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 46 active incident files which were handled by the Administrator during the fiscal year beginning April 1, 2011, and ending March 31, 2012. 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 13 new claims were received during the fiscal year in the aggregate amount of $631,158.27. Investigations are ongoing but were not all completed by the end of the year. During the year, 24 claims were settled and paid in the total amount of $652,634.58 including interest.

Location of incidents is indicated on the map opposite.

When the Administrator pays a claim he has a statutory obligation to recover the amount of payment from the owner of the ship or any other person liable. For that purpose, the Administrator may commence legal proceedings. (Section 1: Funds of first and last resort refers). In claims where the responsible shipowner is clearly known, the services of legal counsel are obtained for recourse action. In some situations involving abandoned and derelict vessels, the name of the shipowner is not always readily available. In these instances, when it is necessary to try and trace the name and location of the registered owner and identify assets that may be available for recovery purposes, the Administrator obtains the services of a professional locator firm.

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 economical 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, and 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.

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 the *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 installment 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.

On June 2, 2011, counsel informed the Administrator that a lawyer representing the debtor wished to pay out the judgment. The lawyer was advised that the principal sum of $4,400.00 plus post-judgment interest of $665.50 amounted to $5,065.50. Later the Administrator received a cheque from his solicitor in the amount of $5,065.50 payable to the Receiver General of Canada. The Administrator directed that the cheque be credited to the Ship-source Oil Pollution Fund. Accordingly, on August 3, 2011, the Administrator closed the file.

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 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 $112,945.77. 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 shipowner.

On February 10, 2008, a Statement of Claim was served on the owner of the *Wishing Star*. No Statement of Defense 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 judgment 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 would be revisited.

At the close of the two-year period, the Administrator decided that additional expenditures of public funds in any further attempt to recover the amount would not be reasonable. Consequently, on November 30, 2011, the Administrator closed the file.

2.3 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.

2.4 King Darwin (2008)

On September 27, 2008, the Canadian Coast Guard (CCG) reported that the German registered oil tanker *King Darwin* released approximately 64 tons 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 owner 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 may 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 counsels, 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.

2.5 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 scrap 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 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. The offer was accepted and on May 25, 2011, the Administrator directed payment of $100,000.00 as global payment in accordance with the *Marine Liability Act*.

The Administrator instructed counsel to commence legal proceedings against Swail Developments Ltd., the owners and all others interested in the barge *Delta I*.

As a result of a dispute resolution conference in the Federal Court on November 17, 2011, the claim was settled for $25,000 without admission of liability. In the Administrator's judgment, the settlement amount was reasonable, taking into account the costs of pursuing the litigation and the inherent risk of an unfavorable outcome. The amount of the settlement was paid to the Receiver General for Canada and credited to the Ship-source Oil Pollution Fund. Accordingly, on March 31, 2012, the Administrator closed his file.

2.6 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. Slinging 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 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, after extensive investigation and assessment of the claims involving independent surveyors and counsel, the Administrator made a global offer to DFO/CCG of 60% of the established amount of the claim, namely $28,740.00, including interest, in full and final settlement. The offer was

accepted by DFO/CCG. Accordingly, on April 28, 2011, the Administrator directed payment of $28,740.00 in accordance with the *Marine Liability Act*.

The Administrator instructed counsel to investigate whether it was reasonable to take further measures for recovery from the registered vessel owner of the amount of compensation paid to DFO/CCG. On June 15, a letter was sent to the owner in an effort to recover the costs. The following day the owner responded by e-mail and explained that he was only able to make a lump sum payment of $5,000.00. On the advice of counsel, the Administrator decided to accept the settlement offer of $5,000.00 all inclusive. The appropriate release document was executed on June 28. On July 26, a cheque in the amount of $5,000.00 payable to the Receiver General of Canada was received. The Administrator directed that the cheque be credited to the Ship-source Oil Pollution Fund. Accordingly, on August 16, 2011, the Administrator closed the file.

2.7 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 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 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*. On April 1, the offer was accepted by DFO/CCG. In accordance with the MLA, the Administrator directed payment of $93,210.63, inclusive of interest, to be made.

The Administrator instructed counsel to commence recourse action against the Province of British Columbia—the *de facto* owner of the vessel on the date of sinking. Prior to June 23, 2006, the registered and beneficial owner of the vessel was the Maritime Society of Vancouver. The Society ceased operating

and on June 23, 2006, was dissolved. Pursuant to the *Society Act of British Columbia*, the assets of the Society were surrendered to Her Majesty the Queen in right of British Columbia. Consequently, on April 21, 2011, counsel demanded that the Province of British Columbia pay the Administrator the amount of $85,641.19, plus interest, in respect of the oil pollution remediation costs. The province denied that it was the owner of the vessel and refused to pay the costs. On May 3, 2011, counsel commenced legal proceedings against the Province of British Columbia and the litigation is ongoing. Meanwhile, the file remains open.

2.8 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 shipowners 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. Since the period of prescription for bringing an action against the owners of the barge was due to expire November 30, 2011, the Administrator started a protective action in the Federal Court against the owners of the barge, November 7, 2011. Meanwhile, the file remains open.

2.9 Sea Wing II (2009)

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

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

The deconstruction work was accomplished over a 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, fiberglass, 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 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 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. On April 1, DFO/CCG accepted the offer. Accordingly, on April 13, the Administrator directed payment of $31,856.72, inclusive of interest, in accordance with the MLA.

Currently, the Administrator is conducting background research to ascertain the location of the vessel owner and identify any possible assets for cost recovery purposes. These investigations are still ongoing and accordingly, the Administrator's file remains open.

2.10 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. 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 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. On April 1, DFO/CCG accepted the offer. Accordingly, on April 13, the Administrator directed payment of $26,611.25, inclusive of interest, from the Fund in accordance with the *MLA*.

On May 18, the Administrator sent a letter to the owner of the vessel *Meota* requesting payment of the costs incurred during the incident. The owner was informed of his responsibility for these costs under section 51 of the *Marine Liability Act*. The owner was requested to respond to the request by June 20, 2011, failing which the Administrator may commence proceeding to recover the above amount. No reply has been received.

The Administrator is currently conducting background investigations in order to identify assets of the owner for cost recovery purposes. Meanwhile, the file remains open.

2.11 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 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 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 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. On April 1, DFO/CCG accepted the offer. Accordingly, on April 13, the Administrator directed payment of $12,906.82, inclusive of interest in accordance with the *Marine Liability Act*.

On May 18, the Administrator sent a letter by registered mail to the known owner of the *Just Magic* requesting payment of the compensation paid to DFO/CCG. The vessel owner was informed of his responsibility for these costs under section 51 of the *Marine Liability Act*. The owner was requested to respond by June 20, failing which the Administrator may commence proceeding for the above amount. On May 31 the Administrator's letter to the vessel owner was returned to his office. The "return to sender" stamp indicated that the addressee had moved.

The Administrator is currently continuing his investigation with the aim of locating the owner and identifying assets. Meanwhile, the file remains open.

2.12 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 who advised CCG that the vessel had no value and should be deconstructed to safely remove all pollutants. On June 30, the vessel was dismantled and the materials with all oily waste were disposed of so that no further threat of pollution into the marine environment existed.

On December 15, 2009, the Administrator received a claim from the Department of Fisheries and Oceans 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 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. On April 1, DFO/CCG accepted the offer. Accordingly, on April 12, the Administrator directed transfer of $33,730.24, including interest, from the Ship-source Oil Pollution Fund to the credit of DFO/CCG in payment of the claim.

On May 18, the Administrator sent a letter by registered mail to the owner of *Hey Dad* requesting payment of the costs incurred in respect of the measures taken by the Canadian Coast Guard during the incident. The owner was informed about his responsibilities under section 51 of the *Marine Liability Act*. The owner was requested to respond by June 20, failing which the Administrator may commence proceedings for the above amount. On June 15, the Administrator's letter was returned by Purolator courier as being unclaimed.

After conducting further investigations, the Administrator concluded that it would not be reasonable to expend further funds to collect from the owner the amount paid out for this claim. Accordingly, on December 20, 2011, the Administrator closed the file.

2.13 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 fiberglass 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, British Columbia. The vessel was later demolished and the debris and wood waste were disposed of by the contractor.

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 to investigate whether all the expenses could be reasonably characterized as pollution prevention, or whether some of them were, in essence, as 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 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.

Subsequently, the Administrator conducted further investigations to locate the owner of the vessel and identify any possible assets for cost recovery purposes. Those investigations revealed the identity of the owner, but no significant assets were located in the vessel owner's name. In light of these investigations, the Administrator concluded that it would not be reasonable to take further measures to recover the amount paid to CCG. Accordingly, on February 7, 2012, the Administrator closed the file.

2.14 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 Environmental 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.

On May 4, 2011, the Administrator mailed a letter to the vessel owner informing him of his responsibilities for the costs incurred in respect of measures taken to prevent pollution in this incident. The owner was asked to respond to this request by June 1, 2011, failing which the Administrator may commence proceedings for the amount of $9,300.22. The letter was delivered by Purolator courier, but no reply has been received.

Subsequent investigations did not reveal that the owner had any significant assets. After consideration of the amount of the claim and the expenditures to date, the Administrator decided not to pursue further attempts for costs recovery. Accordingly, on December 14, 2011, the Administrator closed the file.

2.15 Saida (2009)

On September 17, 2009, the Canadian Coast Guard (CCG) received a report of two sunken vessels 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 Lipsett 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. On April 1, DFO/CCG accepted the offer. Accordingly, on April 12, the Administrator directed transfer of $89,147.34, including interest, from the Ship-source Oil Pollution Fund to the credit of DFO/CCG in payment of the claim.

On May 18, the Administrator sent a registered letter to the owner of the vessel *Saida* requesting payment of the costs incurred in respect of the measures taken by the Canadian Coast Guard during response to the incident. The owner was informed about his responsibilities under section 51 of the *Marine Liability Act*. The owner was requested to respond by June 20, failing which the Administrator may commence proceedings for the above amount. On June 9, the Administrator's letter was returned by Canada Post as being unclaimed.

In the meantime, the Administrator caused further background investigations to be conducted with the aim of locating the owner and identifying assets for cost recovery purposes. Those investigations proved negative. The Administrator concluded that further investigations would not be warranted and, accordingly, on January 30, 2012, he closed his file.

2.16 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 onboard, 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. On April 1, DFO/CCG accepted the offer. Accordingly, on April 28, the Administrator directed transfer of $3,526.29, including interest, from the Ship-source Oil Pollution Fund to the credit of DFO/CCG in payment of the claim.

On May 4, the Administrator mailed a letter to the owner of the vessel at an address in Las Vegas, Nevada, that was provided by the Canadian Coast Guard. The letter advised the ex-tug owner of his obligations and responsibilities under section 51 of the *Marine Liability Act*. The letter explained that under the Act the owner is responsible for the costs of $3,385.20 in preventing oil pollution damage, including the measures taken in anticipation of a discharge of oil during the vessel's winter lay-up in Charlottetown. The Administrator requested payment of compensation paid to CCG in the noted amount. The owner was asked to respond by June 1, 2011, failing which the Administrator may commence proceedings for

recovery. No reply was received. Given the amount of the claim and the fact that the owner resides in a foreign jurisdiction, the Administrator concluded that further legal expense for recourse action would not be reasonable. Accordingly, on July 28, 2011, the Administrator closed the file.

2.17 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 staffs 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 Administrator was later advised by CCG that the shipowner had settled the claim of CCG in the amount of $15,000.00 for monitoring and response operations. Accordingly, on January 24, 2012, the Administrator closed the file.

2.18 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.

On May 13, 2011, the Administrator sent a letter to the vessel owner requesting payment of the compensation paid to the Canadian Coast Guard. The owner was informed of his responsibility for the costs and expenses incurred by CCG in respect of the measures taken during the incident on January 18, 2010. It was explained that, as the owner of the *Jessie Island XI*, he is responsible for those costs under section 77 of the *Marine Liability Act*. A response and payment were requested by June 12, 2011, failing which the Administrator may commence proceedings to recover the costs.

On May 20, an e-mail was received from the vessel owner in which he claimed not to have any money. Consequently, further investigations are ongoing to identify possible assets for recovery purposes. Meanwhile, the file remains open.

2.19 Richelieu (2010)

Note: Two Claims (2.19) and (2.20) 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 Eastern Canada Response Corporation (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.

This claim from Boralex is related to the loss of revenue due to the stoppage of electricity production for a period during which they were instructed by the Seaway Authority, in consultation with Fisheries and Oceans Canada, to close their water intake. This action was taken to prevent oily water from contaminating Boralex's plant and from it being discharged below the Saint-Lambert lock.

The Administrator acknowledged receipt of the claim and the following day instructed counsel to investigate and advise as appropriate. Counsel requested that Boralex Inc. provide additional supporting evidence with respect to its claim for loss of revenues. Furthermore, counsel contacted the legal advisor for the owners of the *Richelieu*, given that the shipowner remains the primary responsible party for this sort of claim. As of the first of December 2011, Counsel for both parties are in discussion with a view of securing an amicable resolution of the matter of the recovery for pure economic loss. Meanwhile, the file remains open.

2.20 J W Shelley (2010)

At the time of the grounding of the *Richelieu* (see section 2.19), 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 shipowner 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. The claimed expenses relating to the cleaning of the ship's hull amounted to $16,389.00. The remainder of the claim, $55,276.89, related to alleged losses of revenues resulting from the detention of the ship. Through counsel the claimant was requested to provide further particulars regarding the claim. Also, arrangements were made for a joint inspection of the ship on behalf of the Administrator and the owners of the *MV Richelieu.*

In the light of the inspection and further investigations, the Administrator concluded that the claim submitted was not established and instructed counsel to inform counsel of the claimant accordingly. A letter to that effect was transmitted, June 14, 2011. Since no appeal was lodged in the Federal Court against the decision of the Administrator in disallowing the entire claim within the 60 days prescribed by the *Marine Liability Act*, the Administrator has closed his file on this claim.

2.21 Mystery Spill Valleyfield / aka Avataq (2010)

Note: Two claims, 2.21 and 2.22, arose out of the same incident.

This incident occurred on July 6, 2010, and is characterized by the claimant as a mystery spill. During the afternoon, the crew of the Canadian-registered ship *Avataq* discovered oil sheen while secured alongside the cargo terminal in the port of Valleyfield, Québec. The shipowner, Transport Nanuk Inc., reported to Coast Guard that the oil was located between the stern of the ship and the wharf. It covered an area of approximately 20 by 30 feet. The crew deployed its onboard emergency response containments booms and absorbent pads to prevent the oil sheen from floating downstream. In addition, the shipowner hired a private contractor from Montréal to deploy vacuum trucks to pump the oily residue from the surface and dispose of it. Furthermore, a shore-based response team assembled by Transport Canada, Marine Safety, and Environment Canada commenced shoreline clean-up operations. An operations officer from Environment Canada made rounds of the onshore facilities, but found no evidence that the source of oil was land-based.

A technical surveyor of Marine Safety, Transport Canada, from Montréal inspected the ship's records, engine room logs, equipment and the polluted area. The inspector did not find any evidence that the ship may have discharged oil either intentionally or by accident. Consequently, the ship was cleared to sail. The following morning, after the *Avataq* departed Valleyfield, a small quantity of oil remained along the shoreline. Apparently, oil had been moved by the current and wind into a local recess in way of the port facilities. The Canadian Coast Guard responded and cleaned-up the residue.

On March 25, 2011, the Administrator received a claim filed with the Ship-source Oil Pollution Fund by Transport Nanuk Inc. in the amount of $13,707.47 for costs and expenses incurred during clean-up of the oil sheen. On April 7, receipt of the claim was acknowledged.

The Administrator commenced an investigation and assessment of the claim. On April 20, a letter was sent to the claimant requesting further general information and additional support documentation. Based on the investigation, which included written response for information, telephone conversations with two different representatives of the shipowner, discussion with the Marine Safety inspector who attended the incident and the Coast Guard response officer, the Administrator concluded that the measures taken by the shipowner to clean-up the spill and dispose of the oily waste were reasonable.

On July 20, the Administrator made an offer to the shipowner in the amount of $13,707.47, plus interest, as compensation in full and final settlement. The Administrator's offer was accepted. When the appropriate Release and Subrogation Agreement was executed by a duly authorized official and returned, the Administrator mailed a cheque in the amount of $14,144.89, inclusive of interest, to Transport Nanuk Inc. The Administrator accepted the incident as a mystery spill and, as a result, no recourse action was available. Therefore, on September 1, 2011, the Administrator closed the file.

2.22 Mystery Spill Valleyfield / aka Avataq (2010)

This claim from the Canadian Coast Guard and the claim from Transport Nanuk Inc. (2.21) arose out of the same incident that occurred in the port of Valleyfield, Québec, on the evening of July 6, 2010. When the oil sheen was discovered it was reported by the ship *Avataq* to the Coast Guard along with notification that clean-up operations were underway. The following day Coast Guard deployed emergency response personnel from Québec City to Valleyfield to investigate and respond as necessary. Upon arrival at Valleyfield on July 7, Coast Guard found that after the *Avataq* had sailed a quantity of oil still remained. The oil was mixed with reeds and other floating debris. In addition, the wharf was soiled. To minimize further damage, a private contractor was engaged for clean-up operations. The clean-up recovery generated 6 m^3 of solid waste and 12 m^3 of oily water. On July 8, Coast Guard assessed the situation and, after consultation with Environment Canada, decided to terminate the response and demobilize the contractor.

As noted in section 2.21, no evidence was found that the source of pollution was land-based. The Coast Guard had taken oil samples from surface of the water and had them analyzed at Exova. The results of the lab analysis confirmed that the samples were hydrocarbons, but did not reveal the source.

On June 8, 2011, nearly one year later, the Administrator received a claim filed with the Ship-source Oil Pollution Fund by DFO/CCG for the costs and expenses incurred for monitoring and contract services, pursuant to sections 77(1), 101 and 103 of the *Marine Liability Act* in the amount of $24,034.57. On June 9, receipt of the claim was acknowledged.

The Administrator commenced an investigation and assessment of the claim. Based on the overall investigation, the Administrator considered that there was adequate documentation to support that the costs and expenses were reasonable and were actually incurred. Consequently, on July 12, the Administrator made an offer to DFO/CCG for the established amount of $24,034.57, plus interest, as compensation in full and final settlement, pursuant to *Marine Liability Act* sections 106 and 116. The offer was accepted, and the Administrator directed payment in the amount of $24,806.96, inclusive of interest. The Administrator accepted the incident as a mystery spill and, as a result, no recourse action was available. Consequently, on July 26, 2011, the Administrator closed the file.

2.23 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 (formerly Coppermine).

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 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 departure 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 rendezvous with an ocean tug for passage to Greenland.

The *Clipper Adventurer* departed Nuuk, Greenland, on October 28, 2010, and proceeded to the port of Gdansk, Poland, where permanent repairs were effective from November 11, 2010, to December 31, 2010.

On October 17, 2011, the Administrator received a claim from the Department of Fisheries and Oceans (DFO/CCG) to cover monitoring costs and expenses incurred in the amount of $468,801.72, pursuant to sections 71(b)(i), 101 and 103 of the *Marine Liability Act*. On October 18, the Administrator acknowledged receipt of the claim and supporting documentation. In its letter of transmittal, DFO/CCG informed the Administrator that it had previously sent the claim to the shipowner in April 2010. In the meantime, the Administrator has become aware that the shipowner is suing the Crown (Canadian Coast Guard and Canadian Hydrographic Service) in the Federal Court. The Administrator instructed counsel to monitor closely this unfolding litigation. The outcome of the litigation may well determine the validity of the Crown's claim for monitoring costs and expenses. Counsel for the Administrator is in touch with both the shipowners counsel and Crown's counsel. Meanwhile, the file remains open.

2.24 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 center.

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.

2.25 Corregidor (2010)

On May 20, 2010, the Canadian Coast Guard (CCG) received a report from the harbor 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 harbor 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 amount of 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 staffs 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 Minister 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.

On May 18, 2011, the Administrator mailed a registered letter to the owner of the fishing vessel *Corregidor* requesting payment of the costs incurred by the Minister of Fisheries and Oceans in respect of the measures taken by the Canadian Coast Guard during this incident. The owner was informed of his responsibility under section 77 of the *Marine Liability Act*. The owner was requested to respond to the request by June 20, 2011, failing which the Administrator may commence proceedings for the above amount. On May 27, the Administrator's letter to the vessel owner was returned to his office. The "return to sender" stamp indicated that the addressee had moved.

In the meantime, the Administrator is conducting further investigations to locate the owner of *Corregidor* and identify any possible assets for cost recovery purposes. At the close of the fiscal year, the file remains open.

2.26 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 harbor 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, with the assistance of counsel, conducted further investigations but concluded that further measures would not be reasonable. Accordingly, on June 1, 2011, the Administrator closed the file.

2.27 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.

On May 13, the Administrator sent a letter to the owner of the vessel *Seaspan Barge 156* requesting payment of the costs incurred in respect of the measures taken by the Canadian Coast Guard during response to the incident. The owner was informed about his responsibilities under section 77 of the *Marine Liability Act* and requested the owner to respond by June 20, 2011, failing which the Administrator may commence proceedings for the above amount. No reply has been received.

Further investigations are underway to ascertain the location of the owner and identify any possible assets for cost recovery purposes. Accordingly, the file remains open.

2.28 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 additional 250-feet of 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.

After investigation, the Administrator concluded that additional expenditure of public funds in an attempt to recover the amount paid in compensation to DFO/CCG would not be reasonable. Accordingly, on July 28, 2011, the Administrator closed the file.

2.29 Asiaborg (2010)

On November 2, 2010, a small incident occurred in the Port of Baie Comeau, Québec. The Canadian Coast Guard (CCG) personnel in Québec informed the Administrator that the foreign-registered cargo ship *Asiaborg* had sustained a hydraulic oil leak from a crane on deck. 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.

For the moment, the file remains open pending expiry of prescription periods set out in the *Marine Liability Act*.

2.30 Sop's Arm (2010)

On April 29, 2010, the Canadian Coast Guard (CCG) received a report from local residents of Sop's Arm, White Bay, Newfoundland, that an abandoned barge was aground near the community. They were concerned about the risk of oil pollution. The CCG Environmental Response personnel from the St. John's CCG depot investigated. Approximately 550 litres of diesel fuel were found in two internal tanks. Also, there was diesel fuel in a vehicle on deck, and residual fuel in a large propane tank. The barge measures approximately 120 feet by 42 feet. The deck and sides were found in good condition with the exception of three small holes in the starboard side and two punched in the port side. There was considerable water inside the barge, but the responders were unable to confirm whether there were holes in the bottom of the stranded wreck.

CCG personnel attempted to locate the owner but were unsuccessful. Consequently, on July 6 and 8, all the fuel oil and other potential pollutants were removed. A local waste management and industrial service company was engaged to assist CCG with removal of the oil, and dispose of the 80 litres of the recovered residual. The barge tanks were flushed to remove any fuel remaining. The community residents were informed that the potential threat of oil pollution was 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*.

Upon completion of his investigation and assessment of the claim, the Administrator found the full amount to be established. Therefore, on May 3, pursuant to sections 106 and 116 of the *Marine Liability Act*, an offer was made to DFO/CCG in the amount of $13,546.76, plus interest, as full and final compensation. The offer was accepted on May 5 and the Administrator directed payment in the amount of $13,976.12, inclusive of interest. The Administrator is currently conducting background research to ascertain the location of the owner and identify any possible assets for cost recovery purposes. The file remains open.

2.31 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 (DFO) /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*.

On May 3, 2011, after investigation and assessment of the claim, the Administrator made an offer to DFO/CCG for the established amount of $13,168.47, plus interest, as full and final settlement pursuant to the *MLA*. The offer was accepted, so the Administrator directed payment in the amount of $13,317.36, inclusive of interest.

On May 18, the Administrator sent a letter to the owner of the *Rosemary G* requesting payment of the costs incurred in respect of the measures taken by the Canadian Coast Guard during the incident. The owner was informed about his responsibilities under section 77 of the *Marine Liability Act*. The owner was requested to respond by June 20, 2011, failing which the Administrator may commence legal proceeding for the above amount. No reply was received.

The Administrator is currently conducting background research of the owner of the *Rosemary G* to try and determine his location and identify any possible assets for cost recovery purposes. Meanwhile, the file remains open.

2.32 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. 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. CCG personnel were informed that the owner did not have the financial means to deal with the situation and 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*.

On June 14, the Administrator informed Coast Guard that he had completed his investigation and assessment of the claim. He explained that in doing so he had taken into account the additional information provided by CCG concerning the expenses incurred for supervision of the hired contractor. As a result of the assessment, the Administrator found the amount of $26,261.20 to be established. Therefore, pursuant to the *Marine Liability Act* sections 106 and 116, the Administrator offered the amount of $26,261.20, plus interest, in full and final compensation. The offer was accepted and, on August 9, the Administrator directed payment to be made in the amount of $26,714.62, inclusive of interest.

On August 16, 2011, the Administrator sent a letter to the owner of the *Resilience* requesting payment of the costs incurred in respect of the measures taken by the Canadian Coast Guard during the incident. The owner was informed about her responsibilities under section 77 of the *Marine Liability Act*. The owner was requested to respond by August 31, 2011, failing which the Administrator may commence legal proceedings for the amount paid as compensation. The letter was returned indicating that the addressee had moved or was unknown.

The Administrator conducted further investigations with the aim of locating the owner and identifying any possible assets for cost recovery purposes.

The investigation verified the name and address of the vessel owner residing in Alberta. No assets were identified. The Administrator concluded that further measures would not be reasonable and, accordingly on January 4, 2012, the Administrator closed the file.

2.33 Zodiac (2010)

On March 13, 2010, the Harbour Master at Port Alberni, Vancouver Island, informed Canadian Coast Guard (CCG) personnel in Victoria that a 41-foot ex-fishing vessel, *Zodiac*, was gradually sinking at the dock in Port Alberni. The Harbour Authority was maintaining pumps to prevent the vessel from sinking completely. There was considerable oil floating inside the derelict vessel, which was continuing to take on water. The *Zodiac* had previously sustained a fire in the accommodation area and only the wooden hull and wheelhouse remained. Both fuel tanks contained oil and there was a 200-litre drum full of fuel on deck. The Harbour Master identified the owner but was unable to contact him. Meanwhile, the pumping continued to keep the vessel afloat and not discharge the oil until CCG could respond.

The CCG investigated and sent a letter of "Notice" to the vessel owner by registered mail informing him of his responsibilities to take measures to prevent a discharge of pollutants. He was also advised that failure to respond would result in CCG taking the necessary corrective measures. Attempts to contact the owner by phone were unsuccessful. Later the letter of "Notice" was returned by the Post Office as unclaimed.

On April 7, CCG environmental response personnel from Victoria proceeded to Port Alberni to deal with the incident. Approximately 1,000 litres of oily fluid and 12 bags of soaked absorbent pads were removed. The recovered pollutants were incinerated at the Victoria CCG base. The vessel was left at the dock in care of the Harbour Authority.

On May 19, CCG submitted a claim to the owner of the *Zodiac* requesting payment within 30 days in the amount of $3,915.96 for costs and expenses. CCG did not receive a response. Subsequently, on October 20, 2010, the Department of Fisheries and Oceans (DFO/CCG) filed a claim with the Administrator for costs and expenses in the amount of $3,915.96, pursuant to sections 77(1), 101 and 103 of the *Marine Liability Act*.

As a result of his investigation and assessment of the claim documentation, the Administrator found the full amount to be established. Therefore, he made an offer in the amount of $3,915.96, plus interest, as compensation in full and final settlement. DFO/CCG accepted the offer. Accordingly, on November 10, 2010, the Administrator directed payment of $3,997.07, inclusive of interest, in accordance with the *Marine Liability Act*.

On May 13, 2011, the Administrator sent a letter by registered mail to the owner of the vessel requesting payment of compensation paid in respect of the measures taken by the Canadian Coast Guard in response to the partial sinking of the vessel *Zodiac*. The owner was requested to respond by June 12, failing which the Administrator may commence legal proceedings. On June 11, the Administrator's letter was returned as being unclaimed. Given the amount of the claim, the Administrator concluded that it would not be reasonable to take further measures to recover the amount paid out to CCG. Accordingly, on July 28, 2011, the Administrator closed the file.

2.34 Burnaby M. (2010)

On July 17, 2010, a 13-metre ex-fishing vessel, *Burnaby M*, built in 1927, sank at anchor and released diesel oil in Lyall Harbour, Saturna Island, British Columbia. The Canadian Coast Guard (CCG) was informed and immediately deployed its shore-based search and rescue lifeboat, *Cape Calvert*, to investigate. The lifeboat crew found slight oil sheen on the surface at the location of the sunken vessel, approximately 500 metres off Lyall Harbour's ferry landing. The oil was upwelling at a rate of one drop

every four seconds. It dissipated within a radius of 20 metres. Fire department officials advised that the owner had confirmed there was no one onboard when the vessel sank during the night. They also advised that the owner had recently taken onboard 700 litres of diesel fuel. CCG streamed a cautionary buoy to mark the location of the underwater hazard. The vessel owner confirmed to the Environmental Response personnel that he had hired a contractor to salvage the wreck. The contractor was scheduled to be on-site by the end of the week.

On July 18, the CCG hovercraft, *Siyah*, arrived on-site and utilized a diving team to plug the fuel vents of the sunken *Burnaby M*. Subsequently, on July 23, the salvage contractor successfully raised the wreck and towed it to Canoe Cove Marina near Sidney, where it was removed from the water.

On August 20, the CCG mailed a registered letter to the vessel owner requesting payment in the amount of $9,352.59 for the costs and expenses incurred in respect of the measures taken in response to the incident. CCG did not receive a reply.

On June 8, 2011, the Department of Fisheries and Oceans (DFO/CCG) filed a claim in the amount of $9,772.45 with the Administrator, pursuant to the *Marine Liability Act* (*MLA*). The claim was for costs and expenses incurred in dealing with the incident and for monitoring the salvage operations of the owner's contractor. The Administrator conducted an investigation and assessment of the claim, and made an offer to DFO/CCG for the established amount of $9,413.70, plus interest, as full and final settlement pursuant to the *MLA*. The offer was accepted and on August 9, 2011, the Administrator directed payment in the amount of $9,721.64 inclusive of interest.

On August 16, the Administrator sent a letter by registered mail to the owner of the *Burnaby M* requesting payment of the costs incurred by the Minister in respect of the measures taken by the Canadian Coast Guard during response to the incident. The owner was informed about his responsibilities under section 77 of the *Marine Liability Act*. He was requested to respond by August 31, 2011, failing which the Administrator may commence legal proceedings for the amount paid as compensation. The Canada Post tracking record indicates that the letter was delivered and signed for. Subsequently, the owner phoned the Administrator and explained that he is financially incapable of meeting his obligations. The Administrator sent another letter to the owner stating that it is necessary to receive in writing a statement of his position. A written response was received outlining the owner's financial situation. As a result, the Administrator sent a letter to the owner indicating that, under the circumstances, he decided that it would not be reasonable to take further steps to recover the monies paid out of the Fund to DFO/CCG. Therefore, on November 9, 2011, the Administrator closed the file.

2.35 Dominion I (2010)

On October 2, 2010, the Canadian Coast Guard (CCG) received a report of a 120-foot vessel listing and possibly sinking in Cowichan Bay, Vancouver Island. Environmental Response personnel from the CCG Victoria base investigated. They found the ex-fish-packing vessel *Dominion I* at anchor. It had been built in 1970 of steel construction and later converted to a pleasure craft. The vessel had a 5-degree port list and down by the stern, but in no immediate danger of sinking completely. No oil pollution was seen around the vessel.

Upon boarding, the engine room was found to be flooded some two feet above the deck plates with oil on the surface of the water. The responders pumped out approximately six feet of water from the engine room. The ingress of water was from damaged small copper cooling lines. It would seem that vandals

had been removing copper wire and other equipment from the vessel while at anchor for more than two years. Furthermore, there was little or no maintenance of the vessel. Temporary repairs of the cooling lines prevented further ingress of seawater. On deck were nine drums of various hydrocarbons. In addition, the day tank contained 750 gallons of fuel. The ship's drawings indicated 13 main fuel tanks. It was difficult to take accurate tank soundings, but CCG estimated some 5,800 gallons of diesel oil were still onboard.

CCG contacted the owner of the *Dominion I* residing in Oregon, USA, who stated that he would be on-site within 10 days to determine what could be done with the vessel. Following the discussion, a written "Notice" was sent by fax to the owner. Later, the owner was forwarded a claim in the amount of $17,653.61 for expenses incurred during the incident. The owner contacted CCG and advised that he was making arrangements to move the vessel to Victoria, where it could be placed for sale. This arrangement did not materialize.

Additional visits to the vessel were made between October and December, but no change to the vessel's condition was found. However, CCG became concerned about the vessel's anchoring arrangements—both anchors had been deployed and were clearly fouled which could cause chafing and eventual parting of the mooring cable. Although the *Dominion I* was no longer taking on water, CCG personnel considered that a risk of pollution remained. First, further vandalism could result in flooding and sinking. Second, should the anchor cable wear through, the vessel would drift into the local marinas, other vessels, or a sensitive nearby river estuary. Therefore, on December 6, CCG conducted a remote-operated submersible vehicle (ROV) dive survey and found the anchor cables fully twisted down to the seabed. The ROV was unable to locate the anchors that were buried in the sand. On January 13, 2011, CCG again attended the scene and found that the vessel was not taking on more water. CCG continues to monitor the vessel's status.

On November 9, 2011, the Department of Fisheries and Oceans (DFO/CCG) filed a claim with the Administrator for costs and expenses in the amount of $15,951.45, pursuant to the *Marine Liability Act*.

As a result of his investigation and assessment of the claim, the Administrator found the amount of $15,916.30 to be established. Therefore, on February 14, 2012, he made an offer in the amount of $15,916.30, plus interest, as compensation in full and final settlement. DFO/CCG accepted the offer. Accordingly, on February 28, 2012, the Administrator directed payment of $16,589.81, inclusive of interest, in accordance with the *Marine Liability Act*.

The Administrator is conducting background research of the owner of the *Dominion I* to try and identify any possible assets for cost recovery purposes. Meanwhile, the file remains open.

2.36 Bates Pass (2010)

The incident occurred on November 18, 2010, when the old 52-foot ex-fishing vessel *Bates Pass* sank while alongside the government wharf in Heriot Bay, Quadra Island, British Columbia. As a result, there was an oil sheen on the surface extending approximately 6 by 50 feet. The Harbour Master contacted the owner, who advised that he had no financial resources to deal with the incident. He also claimed that there was not much fuel oil onboard.

The Harbour Master informed the Canadian Coast Guard (CCG) of the situation, and advised that there was an oyster lease approximately 2,000 feet away from the sunken wreck. In response, CCG personnel deployed its search and rescue cutter *Point Race* from nearby Campbell River to stream an absorbent boom around the upwelling oil. The next day, after meeting with the owner, CCG arranged through

Public Works and Government Service Canada for a commercial contractor, D.C.D. Pile Driving Ltd. at Campbell River, to mobilize a tug and barge fitted with a crane to proceed to Heriot Bay and raise the submerged *Bates Pass*.

On November 20, the contractor raised the wreck and found it could not remain afloat without support of the lifting crane, because numerous hull planks had opened up along the starboard side and at the stem. Therefore, the contractor was instructed to move the vessel to Campbell River, where CCG hired a technical marine surveyor from Lipsett Marine Consultants Ltd. to survey the condition of the vessel. The surveyor determined that the *Bates Pass*, built in 1945 and constructed of wood, had been "subject of extreme neglect". It was leaking oil from its fuel tanks, engine base and hydraulic tank. The structural integrity was beyond salvage or repair with no monetary value. A series of photographs showing the condition of the vessel were enclosed with the surveyor's report. The surveyor recommended that *Bates Pass* be demolished and disposed of, so that no further threat of oil pollution into the marine environment would occur. Following the survey, the contractor was instructed to remove the remaining oil and deconstruct the vessel. The demolition work was completed on November 23.

On March 8, 2011, CCG mailed a registered letter to the vessel owner requesting payment in the amount of $53,848.60 for costs and expenses incurred on behalf of Minister of Fisheries and Oceans for measures taken in response to the incident. CCG did not receive a reply. Consequently, on June 8, 2011, the Department of Fisheries and Oceans (DFO/CCG) filed a claim with the Administrator for costs and expenses in the amount of $54,215.63, pursuant to sections 77(1), 101 and 103 of the *Marine Liability Act*. The Administrator acknowledged receipt of the claim and requested additional information about the costs of demolition and trucking the debris to the landfill site. The information requested was later provided to the satisfaction of the Administrator.

As result of his investigation and assessment of the incident, the Administrator found the claimed amount of $54,215.63 to be established. Therefore, effective July 19, 2011, pursuant to the *Act*, the Administrator made an offer in the amount of $54,215.63, plus interest, as compensation in full and final settlement. The offer was accepted and on August 9, 2011, the Administrator directed payment in the amount of $55,233.92, inclusive of interest.

On August 16, the Administrator sent a letter by registered mail to the owner of the *Bates Pass* requesting payment of the costs incurred by the Minister of Fisheries and Oceans in respect of the measures taken by CCG during the incident. The owner was requested to respond by August 31, failing which the Administrator may commence proceedings for the above amount. On October 25, the Administrator's letter to vessel owner was returned as being unclaimed.

The Administrator is conducting further investigations to locate the owner of *Bates Pass* and identify any possible assets for costs recovery action. Meanwhile, the file remains open.

2.37 Tempest (2010)

This claim stems from an incident when, during the early morning of December 18, 2010, an American-owned commercial fishing vessel, *Tempest*, ran aground in Grenville Channel near Prince Rupert, British Columbia. The 112-foot steel vessel sustained hull penetrations around the bow and amidship on the starboard side. There was ingress of seawater into the engine room. In response to the distress call, a pump was provided by the British Columbia ferry *Northern Adventure,* at the time transiting southbound in the Grenville Channel. In addition, the RCMP cutter *Inster* departed nearby Hartley Bay and on arrival on-site

released the ferry. Also, a Canadian Coast Guard (CCG) search and rescue vessel, *Point Henry*, responded. It towed the fishing vessel to Prince Rupert for damage assessment and temporary repairs. In the afternoon of the same day, the *Tempest* was secured alongside the Atlin terminals dock. The owner contracted divers and welders to identify and affect hull repairs. There was a slight sheen of oil on the water, and it was estimated that some 20,000 litres of diesel fuel and 2,300 litres hydraulic oil remained onboard. At CCG's request, the owner and the crew of the *Point Henry* streamed an absorbent boom around the vessel as a precautionary measure in the event of further release of fuel oil. A CCG response supervisor remained on-scene to monitor the owner's work until completion. On December 20, Transport Canada, Marine Safety, cleared the *Tempest* to proceed to Ketchikan, Alaska, for a hull survey and repair.

On March 3, 2011, the CCG, on behalf of the Minister of Fisheries and Oceans, mailed a registered letter to the owner in Oregon, USA, with an attached claim in the amount of $1,996.15 for costs and expenses with respect to the measures taken in response to the incident. There was no reply.

On June 8, the Department of Fisheries and Oceans (DFO/CCG) filed a claim with the Administrator for costs and expenses in the amount of $1,996.15, pursuant to sections 77(1), 101 and 103 of the *Marine Liability Act* (*MLA*).

On June 23, after investigation and assessment of the claim, the Administrator made an offer to DFO/CCG for the established amount of $1,996.15, plus interest, in full and final settlement. (The CCG claim schedules did not include any charges for the search and rescue operations. The claim was only for one employee engaged in the monitoring of the work of the owner's contractor.) The offer was accepted and the Administrator directed payment in the amount of $2,036.18, inclusive of interest.

In view of the amount of this claim and owner's location in a foreign jurisdiction and the additional cost of mounting an action in a foreign jurisdiction, the Administrator decided it would not be reasonable to proceed further. Accordingly, on September 20, 2011, the Administrator closed the file.

2.38 Alibi Ike (2011)

On New Year's Day 2011, the Canadian Coast Guard (CCG) was informed that a 30-foot wooden ex-fishing vessel, *Alibi Ike*, partially sank at the Anglers Anchorage marina in Brentwood Bay near Victoria, British Columbia. The flooding of the *Alibi Ike* resulted from sustained hull damage as the vessel transited Brentwood Bay through thin ice. At the outset, local CCG Auxiliary personnel secured the vessel to the public dock and supplied a pump, but they were unable to control the amount of seawater entering the hull. As the vessel sank to the level of its superstructure, a rainbow oil sheen surfaced. The owner advised that there were approximately 100 gallons of diesel fuel onboard. Consequently, CCG tasked the Ganges Harbour lifeboat, *Cape Kuper*, to attend and place a containment boom around the craft and use absorbent pads to clean up the oil sheen. The following day the owner informed CCG that he was arranging for a local contractor to raise the sunken vessel, but he was having difficulty due to the holidays.

Throughout the next two weeks, CCG personnel made several visits to the site to assess the situation. During these visits no oil was visible outside of the containment boom, and the sorbent pads were removed and replaced as required. After several delays, due in part to adverse weather conditions and an unsuccessful attempt to refloat using airbags, the *Alibi Ike* was floated enough for towing to nearby Mill Bay Marina where it was hauled out of the water. The CCG retrieved the containment boom and transported it to the Victoria base for cleaning. There was no further threat of oil pollution.

On March 10, the CCG submitted a claim, in the amount of $4,290.29, to the owner of the *Alibi Ike* for costs and expenses incurred by the Minister of Fisheries and Oceans for the measures taken during the incident. The owner was requested to ensure payment within 30 days of receipt of the claim. There was no response.

On June 8, the Department of Fisheries and Oceans (DFO/CCG) filed a claim with the Administrator for costs and expenses incurred during response to the incident. The claim for $3,700.15 was made pursuant to sections 77(1), 101 and 103 of the *Marine Liability Act*. Receipt of the claim and supporting documentation was acknowledged.

On June 30, after investigation and assessment, the Administrator made an offer to DFO/CCG for the established amount of $3,700.15, plus interest, as compensation in full and final settlement. (The different amounts of the two claim submissions—$4,290.29 vs $3,700.15—was explained by CCG as arising from an error in costing schedules for the deployment of the cutter *Cape Kuper*.) The offer was accepted and, on August 9, the Administrator directed payment in the amount of $3,770.40, inclusive of interest, in accordance with the *Act*.

On August 16, the Administrator sent a letter by registered mail to the owner of the *Alibi Ike* requesting payment of the compensation paid to DFO/CCG. The vessel owner was informed of his responsibility, under section 77 of the *Marine Liability Act*, for the costs incurred by the Minister of Fisheries and Oceans in respect of the measures taken by the Canadian Coast Guard during the incident. The owner was requested to respond by August 31, 2011, failing which the Administrator may commence proceedings for the above amount. No reply was forthcoming. In view of the amount of this claim and the further cost of taking legal action to recover the compensation paid, on September 20, 2011, the Administrator decided to close the file.

2.39 Ladysmith Harbour Fire (2011)

Shortly after midnight on January 5, 2011, the Canadian Coast Guard (CCG) received an initial report of a fire at the Ladysmith Maritime Society marina in Ladysmith Harbour, southeast Vancouver Island. The report indicated that there were several boathouses on fire, and vessels sinking at the marina. There was a gasoline/oil slick on the water. The local fire department and members of the Coast Guard Auxiliary, unit 29, were at the scene. Also, the nearby CCG search and rescue cutter *Cape Kuper* was *enroute* to assist with firefighting and pollution control. The Marine Society personnel streamed a containment boom. They were assisted by the Coast Guard Auxiliary. In the morning, CCG Environmental Response personnel from Victoria proceeded to Lady Smith to assess the damage and marine environmental impact. Upon arrival, the CCG responders ascertained the area was boomed off properly, and that the RCMP was conducting an investigation. The Director of the Lady Smith Society informed CCG personnel that is was actively seeking a contractor to clean-up the debris and raise four sunken pleasure crafts.

On January 13, CCG was advised that the insurance companies had been able to arrange for removal of the accumulated debris and salvage of the wrecks. The operation began on January 17 and during the next three days of clean-up activities the CCG Environmental Response supervisor from Victoria attended as Federal Monitoring Officer (FMO) to monitor the response of the contractors hired by the boat owners' insurance company. The two contractors hired, Heavy Metal Marine and Seaway Diving from Victoria and Campbell River, successfully carried out a survey of the seabed and the removal of the vessels and associated debris. On January 20, the FMO concluded that oil pollution was no longer a threat, so the CCG operational role was terminated.

On February 28, the CCG submitted a claim to the insurance companies of the four vessels for the costs and expenses incurred by the Minister of Fisheries and Oceans in respect of the measures taken during the incident, including the cost to monitor the work of the contractors hired by one insurance company. CCG did not receive a response from the insurance adjuster.

On June 8, the Administrator received a claim from the Department of Fisheries and Oceans (DFO/CCG) for costs and expenses in the amount of $2,115.85, pursuant to sections 77(1), 101 and 103 of the *Marine Liability Act* (*MLA*). The Administrator acknowledged receipt of the claim the following day and commenced an assessment of the claim documentation. On June 23, the Administrator wrote to CCG requesting information as to whether or not the claim submitted to the insurance adjuster had been rejected.

January 24, 2012, CCG received payment from one insurance company and have requested payment from the other three owners. The file remains open.

2.40 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*.

On June 14, the Administrator informed Canadian Coast Guard that he had completed an investigation and assessment of the claim filed with the Fund, and had taken into account the additional information provided by letter of June 1. As a result of the assessment, the amount of $16,754.40 was found to be established. Therefore, pursuant to the *Marine Liability Act* sections 106 and 116, the Administrator offered the amount of $16,754.40, plus interest, in full and final compensation. The offer was accepted. On August 9, the Administrator directed payment in the amount of $16,895.60, inclusive of interest.

On August 16, 2011, the Administrator sent a letter by registered mail to the owner of the *Irene W* requesting payment of the costs incurred in respect of the measures taken by the Canadian Coast Guard during the incident. The owner was informed about his responsibilities under section 77 of the *Marine Liability Act*. He was requested to respond by August 31, 2011, failing which the Administrator may commence legal proceedings for the amount paid as compensation. The letter was returned as being "unclaimed".

The Administrator has directed further investigations to be carried out to locate the vessel owner and identify any possible assets for cost recovery action. Those investigations revealed a mailing address but no assets in the Province of British Columbia. Nevertheless, given the amount of the claim, the

Administrator instructed counsel to send a letter to the vessel owner demanding payment of the amount that was paid to the Canadian Coast Guard. Counsel later advised that he had found no evidence that the owner had any exigible assets and that incurring further expenses may not be justifiable. Accordingly, on February 29, 2012, the Administrator closed the file.

2.41 Arbutus Isle (2011)

On January 24, 2011, the Canadian Coast Guard (CCG) received a report of an oil slick upwelling from a sunken vessel in Ladysmith Harbour, Vancouver Island. CCG engaged a local contractor, Saltair Marine Services Limited, to assess the situation and take measures to contain the oil escaping from the wreck.

Upon arriving on-site CCG found the *Arbutus Isle*, a 36-foot wooden fishing vessel built in 1962, tied between old concrete pilings near Slag Point. It was submerged to the top of its wheelhouse, but remaining buoyant and not yet resting on the seabed. The contractor had streamed an absorbent containment boom, collected absorbent pads as required, plugged the vents and tightened the oil tank filler caps. At first, CCG was unable to locate the registered owner of the vessel, so Saltair marine Services was hired to move the wreck to its nearby service facility. The salvage contractor secured a tug to each end of the *Arbutus Isle* and towed it to the yard, where it was raised to the surface by a shore-based crane. All the oil was then removed from two fuel tanks, day tank and the intact hydraulic tank. The fuel tanks were decanted. The salvors found that the engine had been removed previously. Consequently, on January 26, CCG decided that there was no further risk of oil pollution and, therefore, the salvaged vessel was returned to the owner's mooring location.

On January 26, the registered owner contacted CCG and stated he had sold the *Arbutus Isle* a year earlier. However, he did not know the name of the person he sold it to and could not provide any documentation showing the actual sale. CCG advised him of his responsibilities and liabilities as the registered vessel owner. On February 28, CCG mailed a registered letter to the owner requesting payment of $6,478.25 to cover the costs and expenses of the measures taken. The letter was delivered but there was no reply.

On June 8, 2011, the Administrator received a claim from the Department of Fisheries and Oceans (DFO/CCG) in the amount of $6,484.25, pursuant to sections 77(1), 101 and 103 of the *Marine Liability Act* (*MLA*).

On June 30, after investigation and assessment of the claim, the Administrator made an offer to DFO/CCG for the established amount of $6,484.25, plus interest. The offer was accepted and, on August 9, the Administrator directed payment in the amount of $6,583.21, inclusive of interest, as compensation in full and final settlement.

On August 16, the Administrator mailed a registered letter to the owner of the *Arbutus Isle* requesting payment of the costs incurred in respect of the measures taken by the Canadian Coast Guard during the incident on January 24, 2011. The owner was informed about his responsibilities under section 77 of the *Marine Liability Act*. The owner was requested to respond by August 31, 2011, failing which the Administrator may commence legal proceedings for the amount paid as compensation. The letter was returned by Canada Post because the recipient was not located at the address provided.

The Administrator directed further investigations to be carried out to locate the vessel owner and identify any possible assets that may be available to recover the amounts paid out of the Ship-source Oil Pollution Fund. Those investigations while identifying an address for the shipowner in Ladysmith, British Columbia,

did not identify any assets. Consequently, the Administrator concluded that it would not be reasonable to take further measures and decided on January 3, 2012, to close the file.

2.42 Gulf Stream II (2011)

In the first hour of February 14, 2011, the Rescue Co-ordination Centre (RCC) in Victoria, British Columbia, tasked the Canadian Coast Guard (CCG) hovercraft, *Siyay*, to proceed and assist *Gulf Stream II*, which was taking on water while secured to its berth at Sunbury on the Fraser River. The *Gulf Stream II*, a 115-foot wooden hull passenger vessel built in 1943, had a log imbedded in its hull. Due to the ingress of water and the imminent threat of sinking, the Captain was going to evacuate. The RCC classified the incident as distress. When the *Siyay* arrived, it provided de-watering pumps and other assistance to stabilize the situation. A temporary hull patch was installed and the flooding controlled. The hovercraft crew left pumps onboard for later retrieval, and returned to its Sea Island base for further search and rescue standby. The crew informed RCC that there were 500 litres of diesel fuel in the damaged passenger vessel.

In the morning, Environmental Response personnel from the Richmond CCG depot attended the *Gulf Stream II*. They determined that, on reasonable grounds, the old passenger vessel was not seaworthy. Subsequently, on February 16, a Transport Canada Ship Safety Inspector boarded and confirmed the vessel to be unseaworthy, pursuant to the *Canada Shipping Act, 2001*, section 222, and issued a detention order.

On April 11, 2011, CCG mailed a registered letter to the vessel owner requesting payment in the amount of $6,096.47 for costs and expenses incurred during response to the incident. Apparently, CCG did not receive a reply.

On November 14, 2011, the Administrator received a claim from the Department of Fisheries and Oceans (DFO/CCG) for costs and expenses in the amount of $5,646.91, pursuant to sections 77(1), 101 and 103 of the *Marine Liability Act* (*MLA*). The Administrator acknowledged receipt of the claim the same day.

On November 23, the Administrator wrote to DFO/CCG requesting that they provide documentation/amplifying information to support that this was not a search and rescue response to the incident. DFO/CCG did not provide the requested information. The Administrator concluded his assessment of the claim on January 4, 2012 and consequently found the expenses and costs incurred by the Environmental Response unit to be established in the amount of $252.47. An offer was made to DFO/CCG in the amount of $252.47, plus interest, as full and final settlement. This offer was accepted and, on February 1, 2012, the Administrator closed the file having concluded that further efforts and expenditures to recover the value of the claim would not be reasonable.

2.43 Barbydine (2011)

During the morning of April 15, 2011, the wharfinger at Port Edward harbour—near Prince Rupert, British Columbia—reported to the Canadian Coast Guard (CCG) that an old 35-foot ex-fishing vessel, *Barbydine*, was sinking at the government wharf. The CCG was informed that the Harbour Authority had used pumps to try to keep the vessel from sinking completely. Despite these efforts, the vessel sank so that only the bow remained above water. Light oil sheen emerged around the wreck and a layer of oil was visible inside the wheelhouse. An oil containment boom and absorbent pads were placed around the sunken vessel.

Emergency Response personnel from CCG at Prince Rupert attended and assumed the role of On-scene Commander. They ascertained that the vessel owner is an elderly person in hospital and neither he nor his son, who arrived on-site as the owner's representative, have the means to respond to the incident. Nevertheless, the son was handed a "Letter of Intent" with respect to the owner's responsibilities under the *Marine Liability Act* to take the necessary measures to prevent oil pollution damage.

CCG engaged three local contractors to raise the sunken vessel and remove the pollutants. The prime contractor, Wainwright Marine, supplied a tug and barge fitted with a heavy lift crane to lift the wreck to the surface for an assessment survey. A diving crew from Adams Diving and Marine Services Ltd. was hired to fit lifting harness to the *Barbydine* for the hoisting operations. On April 16, the vessel was raised and CCG engaged a local marine technical surveyor from Northern Breeze Surveyors Ltd. to assess its structural integrity. The inspection found that the wooden hull had rotted through, and in places the planking had separated. There was oil throughout the cabin and bilges. The surveyor indicated that given its deterioration there was no remaining monetary value. In the surveyor's opinion, the vessel would be declared a total constructive loss.

Consequently, CCG instructed Wainwright Marine to lift the *Barbydine* onboard the barge and tow it to its repair yard for removal of the hydrocarbons. Approximately 230 litres of diesel oil and 20 litres of hydraulic oil were recovered, but more fuel remained in the tanks, engine and fuel lines. As a result, it was necessary to deconstruct the hull and dispose of the oil-soaked debris. These demolition measures were completed within the next few days.

On November 9, 2011, the Department of Fisheries and Oceans (DFO/CCG) filed a claim with the Administrator for costs and expenses in the amount of $27,714.52, pursuant to sections 77(1), 101 and 103 of the *Marine Liability Act*. (*MLA*). Receipt of the claim was acknowledged. Upon completion of an investigation and assessment of the claim, the Administrator found the full amount to be established. Therefore, on November 26, pursuant to sections 106 and 116 of the *MLA*, an offer was made in the amount of $27,714.52, plus interest, as compensation in full and final settlement. The offer was accepted on December 2 and the Administrator directed payment in the amount of $28,101.29, inclusive of interest.

Given the amount of the claim, the Administrator instructed counsel to send a letter to the vessel owner demanding payment of the amount paid to the Canadian Coast Guard. Meanwhile, the file remains open.

2.44 Dana (2011)

On May 17, 2011, the Canadian Coast Guard (CCG) received a report that an ex-fishing vessel, *Dana*, was listing and apparently aground in Saanichton Bay on the northwest side of Haro Strait, Vancouver Island. CCG Environmental Response personnel from Victoria investigated and found the non-registered 36-foot vessel not aground but afloat in Ferguson Bay, north of the James Island ferry dock.

The following day, CCG personnel boarded the vessel to assess the potential threat of oil pollution. Meanwhile, the owner had returned and pumped out the excess water. CCG found 150 litres of diesel oil in the fuel tanks and three separate five-gallon jerry cans of fuel on the aft deck. No oil pollution was seen around the vessel, but there were small traces of oil in the bilges and an oil-water mixture in the engine room. The responders concluded that the vessel was not in danger of sinking and there was no further threat of oil pollution.

On November 14, 2011, the Department of Fisheries and Oceans (DFO/CCG) filed a claim with the Administrator for costs and expenses incurred in the amount of $755.53, pursuant to sections 77(1), 101 and 103 of the *Marine Liability Act*.

On November 24, after investigation and assessment of the claim, the Administrator made an offer to DFO/CCG for the established amount of $740.35, plus interest, as compensation in full and final settlement.

The offer was accepted and, on December 14, the Administrator directed payment in the amount of $753.36 inclusive of interest. After consideration of the circumstances, most notably that the owner could not be located and the minimal amount of the claim, the Administrator concluded that it would be unreasonable to incur any expenditure for any attempt at cost recovery. Accordingly, on January 3, 2012, the Administrator closed the file.

2.45 Miner (2011)

This incident occurred on September 20, 2011, when the *Miner* (ex-*Canadian Miner*) parted its towing bridle while under tow offs the east coast of Cape Breton, Nova Scotia, and drifted onto the rocks at Scatarie Island. The *Miner* was undertow from the port of Montréal to a scrap yard in Turkey. Built as a typical Canadian Great Lakes bulk carrier in 1965, the *Miner* had been out of service for several years. The towing vessel, *Hellas*, was an ocean-going salvage tug under the flag of St. Vincent and Grenadines. Its agent in Greece was Pella Shipping Company. The agent for the owner of the *Miner* is indicated in the documentation as Protos Shipping Limited.

Before its departure from Montréal, Transport Canada-Marine Safety inspected the tug *Hellas* and the towline arrangements. A "green passport" and a towing certificate were issued. (A green passport provides an inventory of all potentially hazardous materials used in the ship and is aimed at ensuring the safety of all workers involved in dismantling the vessel.) Marine Safety also reports that, prior to departure, all oil had been removed from the towed vessel, except approximately 13 metric tons of marine diesel fuel contained in day tanks for the emergency generator. Two days after the grounding, when the sea state and wind conditions were favorable, the Master and crew of the tug inspected the *Miner* and reported that no hull damage was sustained. The fuel tanks and ship bilges were also found free of any ingress of sea water. Furthermore, no oil pollution was apparent in the surrounding area. Unfortunately, all attempts by the tug to pull the stranded ship off the rocks at high tide were unsuccessful.

On September 29, the Canadian Coast Guard (CCG) issued a "Letter of Notice" to the representative of the shipowner to provide a plan of action for removal of the fuel in the stranded old bulk carrier. Subsequently, the agents engaged the salvage company Mammoet to conduct a diving survey of the hull and remove the onboard fuel oil. It is reported that approximately 10 metric tons of oil were pumped out by the salvor. From the beginning CCG monitored the incident response measures.

With respect to the Ship-source Oil Pollution Fund, no claim has been filed to date. However, when CCG advised the Administrator at the outset of the incident response, the Administrator instructed counsel to keep a watching brief and to take all reasonable measures to safeguard the interests of the Fund. Meanwhile, the file remains open.

2.46 Finella (2012)

On October 11, 2011, the commercial fishing vessel *Finella* partially sank at the dock in Deep Bay, Vancouver Island, British Columbia. The vessel commenced leaking diesel fuel and heavier engine and gear oil. With the assistance of the local Canadian Coast Guard Auxiliary, the Harbour Authority deployed containment booms and oil-absorbent pads in an attempt to prevent the material from moving into the nearby commercial shellfish waters and beaches. The vessel owner was reported to be "out of the country." Consequently, the Harbour Authority hired a contractor to raise the *Finella* and move it to shallow water in order to prevent it from sinking completely and, thereby, cause environmental damage to the surrounding wetlands and commercial shellfish areas. The vessel was removed from water on December 17, 2011.

On March 22, 2012, the Administrator received a claim in the amount of $9,969.09 from the Harbour Authority of Deep Bay for costs and expenses incurred during response to the incident. Receipt of the claim was acknowledged.

The Administrator commenced an investigation of the claim, but it was not completed by the end of the fiscal year. Therefore, the file remains open.

3. Challenges and Opportunities

Since this is the fifth annual report submitted by the current Administrator, it might be appropriate in this report to reflect on the development of the SOPF over the past five years and to mention some of the challenges that the Administrator has had to face in the course of those years. Some of these challenges related to modernizing the operations of the Fund in the light of advances in information technology (IT). Other challenges arose out of the requirement of the Fund to comply with federal legislation, directives and guidelines. Those challenges were often difficult to meet, given the minimum work force that the Fund relies on to do its work.

It is fair to say that the organization of the Fund today is very different from what it was in December 2006 when the current Administrator took over the management of the Fund. While the Fund still operates with a relatively small staff, it has adjusted its work force in order to meet an increasing number of challenges. Those challenges, however, also represented opportunities to introduce improvements in the way in which the Fund conducts its business. The SOPF remains one of the smallest, if not the smallest, agency of the Government of Canada.

In December 2006, the staff of the SOPF consisted of one full time executive assistant who also doubled as office manager and filing clerk. For the first three years of his mandate, the Administrator was assisted by a Deputy Administrator in carrying out the Fund's first independent audits which also led to stronger business practices. For the last two years, the position of the Deputy Administrator has remained vacant. In the realm of claims investigation and assessment, the Administrator had a part time marine consultant to assist him. Today, the staff consists of three full time contracted employees – an office manager, an executive assistant and a financial officer.

Since the core work of the SOPF is the investigation, assessment and payment of established claims filed with the Fund, the Administrator has expended considerable effort to improve this aspect of the work. To this end, the Administrator has increased the number of part time marine consultants working for the Fund. This in itself posed and will continue to pose in the future a particular challenge, since there are relatively few available people in and around the national capital region who possess the necessary qualification and experience for this kind of work. Currently, the Fund has two part-time marine consultants.

The main source of claims filed with the SOPF is the Canadian Coast Guard (CCG). In order to expedite the processing of claims, the Administrator has met with officials of CCG to discuss improvements in the overall quality and extent of documentation filed in support of claims. The result has been a decrease in the turn-around time for the settlement of Coast Guard claims. Improvements in claims handling in general is also evident from the fact that there has been a significant increase in the number of claims assessed by the SOPF. In the fiscal year ending March 31, 2010, a total of 12 claims were settled for some $197,392. In the fiscal year ending March 31, 2011, some 18 claims were settled for the total amount $435,236. During the fiscal year ending March 31, 2012, some 24 claims were settled in the total amount of $652,634.58. In all, the SOPF has about fifty active claims files at various stages of investigation.

With the assistance of marine consultants and legal advisors, the Administrator has rewritten the SOPF Claims Manual. The Manual will provide potential claimants with pertinent information about the filing of claims. This will be a particularly useful tool for non-governmental claimants. In rewriting the Manual, the Administrator has taken into consideration the claims manual of the IOPC Funds, given that in any tanker spill covered by the international compensation regime, the SOPF would be working in close cooperation with the IOPC Funds on the investigation and assessment of claims. The Administrator is hopeful that the

new Manual can be published before the end of this fiscal year, after the necessary consultations with key stakeholders have been completed.

Another challenge in the claims work of the SOPF relates to recovery of compensation from the primary responsible party, usually the shipowner, paid out of the Fund in respect of claims. The governing legislation stipulates that the Administrator must take all reasonable measures to recover the amounts that have been paid out of the Fund for compensation. Because many of the claims are for costs and expenses incurred for pollution prevention measures in connection with abandoned and derelict vessels, the rate of recovery has not been good. With the assistance of marine consultants and a locator company, the Administrator is striving to improve the rate of return, the aim being to deliver a clear message that the SOPF has not been established for the benefit of shipowners seeking to evade their responsibilities but for the timely payment of compensation for established claims. The Administrator therefore pursues a policy of recourse action wherever this is a reasonable option.

Overall, at this point, the Administrator is encouraged by considerable progress being made to improve claims handling by the SOPF.

Aside from claims work of the SOPF, the work load has increased significantly in other areas of the administration of the Fund, due mainly to new legal requirements that apply to it, as well as the requirement to comply with various government directives and guidelines aimed at promoting greater transparency.

In previous reports, the Administrator furnished information on the reorganization of the Fund's filing system, which became necessary when, in 2006, the SOPF was made subject to the *Access to Information* and *Privacy Acts*. The urgent need for reorganization was emphasized the following year when the SOPF was served with two access to information requests. Potentially, the processing of those requests represented a monumental task for the very small staff, since the Fund's offices housed all the files that had been created since its establishment in 1973. The Fund had no file retirement policy. With the assistance of an information management consultant, the filing system has been completely revised, a file retirement policy has been established and agreements have been concluded with Archives Canada to take over files that have been retired in accordance with the new policy. This reorganization means that in future the SOPF will be able to deal expeditiously and effectively with access to information requests.

The Administrator was also advised to acquire and implement a records and information management (RIM) software for the management of its files. The software will facilitate a proper management of the filing system, particularly the application of the file retention and disposal policy, referred to above, as well as keeping track of important data such as limitation periods which apply to claims under the governing legislation. The software will also prove a useful tool in recording and tracking financial and other information. Initially, to save costs, it was hoped to acquire the necessary software through Transport Canada - this proved to be impossible for a variety of reasons, so the Fund acquired the software on its own. The work of transferring data is almost complete, so that the database set up with the new software should be up and running in the near future.

About three years ago, the Administrator was given notice that he would have to vacate his offices in the Lorne Building, at 90 Elgin Street, Ottawa. Initially the hope was that the Administrator could locate new premises on his own initiative. However, since public monies were involved, the Administrator was advised that he would have to proceed through Public Works and Government Services Canada. The relocation started in August 2010 and is now largely complete. It is a credit to the Fund's staff that this relocation could be managed without interruption in services provided by the Fund.

Over the last year it has become clear that the IT infrastructure of the SOPF was failing. The Fund largely operated with obsolete equipment installed many years ago and not renewed on a regular basis. The selection and installation of new, up to date equipment represented special challenges to the Fund administration which, on account of the small size of its operation, did not and does not have, unlike other larger government departments and agencies, in house IT expertise to guide it in the selection and installation of new IT equipment and systems. The work in this area is now largely complete and to avoid large-scale failures in the future, agreements have been concluded with service providers to ensure regular assessment, maintenance and renewal of the system.

Challenges have been faced in other areas of the Fund's operations. As in the case of office relocation and IT infrastructure renewal, those challenges were difficult to meet on account of small size of staff and lack of in house expertise. As noted in previous reports, to give the Fund's administration some stability and continuity, the Administrator has concluded indeterminate contracts with key members of staff. This gave rise to new problems in the field of payroll deductions and health care insurance. The staff of the Fund is too small to justify a personnel department and Transport Canada, for a variety of reasons, did not feel that it could provide payroll services to the Fund. It should be borne in mind that the Fund does not fall under the *Financial Administration Act* and does not employ any civil servants. To ensure that this aspect of its business is properly managed, the Administrator has engaged an independent payroll service provider. It also contributes on a regular basis to Registered Retirement Savings Plans of its employees. Also, to properly safeguard employees and others working in the offices of the Administrator, the SOPF has been registered with the Workplace Safety and Insurance Board.

The Administrator considers that this combination of measures will stabilize the work force by giving incentives to employees to remain with the SOPF.

To properly protect private information collected by the SOPF, the Administrator, with the assistance of its legal advisors, has developed a privacy breach policy to be signed by all staff and consultants working for the SOPF. The aim is to protect personal information on file with the SOPF with respect to employees and consultants, as well as commercial information collected by the Fund, for example, in connection with contributing oil brought into Canada by sea, which is the basis for calculating Canada's contribution to the International Oil Pollution Compensations Funds (IOPC Funds). The Administrator is responsible for the collection of such information under the *Marine Liability Act.*

To improve the transparency of the operations of the SOPF, as well as making the existence of the Fund and the services it provides better known to Canadians, the Administrator has renewed the content and is in the process of revamping the website of the Fund. The aim is also to ensure that the website complies with directives and guidelines of the federal government with respect to government websites.

Mention has already been made of the collection of data on contributing oil received in Canada in fulfillment of Canada's obligations to the IOPC Funds. In the course of the year, the Administrator, in collaboration with Transport Canada, has launched a study aimed at ensuring that the information on eligible receivers is accurate and complete. The Administrator is also in contact with the IOPC Fund Secretariat to compare notes, since that organization also collects information on oil receipts using various commercial sources.

The workload of the SOPF could not have been accomplished without the dedication and loyalty of its staff and consultants. By and large, the Administrator has been most fortunate in his choice of staff and consultants. While each one has made a significant contribution to the efficient management of the affairs of the Fund, two people deserve special mention.

First, the Office Manager, Ms. Monique Pronovost, has done an outstanding job of assisting the Administrator in various projects, notably, the relocation of the Administrator's offices, IT infrastructure renewal, financial management and personnel management, to mention only the most daunting tasks faced over the last five years. Ms. Pronovost has played a pivotal role in each one of these projects, while at the same time attending to the day-to-day business of running the office.

Secondly, mention should be made of Captain George Legge, marine consultant, who has provided invaluable help to the Administrator in the core work of the SOPF, namely the investigation and assessment of claims. Captain Legge has provided assistance in other work of the Fund, for example, representing the Administrator on a regular basis at various conferences across the country devoted to ship safety and marine pollution. Captain Legge has also been an invaluable source of corporate knowledge, since he has served the Fund as a consultant for the last 12 years. Lastly, over the years, he has been of great assistance to the Administrator in the production of the Annual Report, particularly the part devoted to reporting on incidents, and most recently with the re-write of the SOPF Claims Manual.

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 contactors and other stakeholders who respond to an oil spill incident and, as a result, may 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.

During the fiscal year covered by this annual report, the Administrator attended meetings of the IOPC Funds in London, England.

4.1 Meeting of Government Officials and CMLA Executive

The Administrator was invited to attend the annual meeting organized by Transport Canada, and held in Ottawa on April 14, 2011, to meet the Executive of the Canadian Maritime Law Association (CMLA). These meetings are also attended by officials from the Canadian Coast Guard (CCG) and Environment Canada. The object of these meetings is to brief the Executive on various government initiatives, mainly legislative initiatives, and to engage in dialogue. As in past years, the Administrator gave a brief address on highlights in the activities of the SOPF over the past year. The Administrator made reference to recent amendments to the *Marine Liability Act* that came into force January 2, 2010, noting that those amendments have left the claims procedures of the SOPF largely unchanged.

4.2 CMLA Seminar on Maritime Law for Judges of the Federal Courts

Every few years, the CMLA organizes a seminar on the latest developments in maritime law in Canada for the benefit of the bench of the Federal Courts. The seminars are organized jointly with the National Judicial Institute. This year's seminar covered a variety of interesting topics. The Administrator attended the seminar held in Ottawa on April 15, 2011, and sees attendance as a useful method for keeping up with developments in the field of Canadian maritime law. Since disputes over claims dealt with by the SOPF are resolved by the Federal Court, the Administrator considers that it is also necessary to keep up with the practices and procedures of that court.

4.3 Annual General Meeting of the Canadian Maritime Law Association

The Administrator attended the Annual General Meeting of the CMLA held in Québec City, June 3, 2011. These meetings are useful for cultivating contacts within the Canadian maritime legal community, as well as providing a means for keeping abreast of developments in the field of maritime law in Canada.

4.4 Shipping and Environmental Issues in 2011

The Administrator attended the above mentioned conference put on by the Company of Master Mariners of Canada in Halifax on June 7 and 8, 2011. He was invited to attend for the purpose of giving a presentation on the international rules governing liability and compensation for ship-source pollution. In his presentation, the Administrator outlined a number of international conventions dealing with this subject, some of which have been implemented in Canada in the *Marine Liability Act*, particularly for oil pollution. He also mentioned recent developments relating to liability rules for hazardous and noxious substances (HNS) that have been developed under the auspices of the International Maritime Organization (IMO).

The conference included a number of presentations focusing on navigation in the Canadian Arctic and the challenges that such navigation poses. In addition to severe weather conditions, the absence of infrastructure and the lack of charting present particular challenges to navigation in this region. As shipping increases in the Arctic, particularly shipping related to adventure tourism, the risk of ship-source spills rises. The limited means of responding to such risk in harsh conditions were noted. Both representatives from the Royal Canadian Navy and the Canadian Coast Guard made valuable contributions to the discussion.

4.5 Arctic Marine Oil Spill Program—Workshop

At the request of Environment Canada's coordinator of the *34th* Arctic Marine Oil Spill Program (AMOP) seminar held in Banff, Alberta, on October 3, 2011, the Administrator of the Ship-source Oil Pollution Fund (SOPF) and Mr. Matthew Sommerville, Technical Advisor of the International Oil Pollution Compensation Funds (IOPC Funds), jointly convened a day-long workshop prior to the international technical seminar.

At the outset, the Administrator gave a *Power Point* presentation on the Canadian Regime of Liability and Compensation for oil pollution caused by ships as contained in the *Marine Liability Act*. The Administrator noted that Canada is party to a number of relevant international conventions, which are restricted to oil spills from sea-going tankers. In contrast to the international regime, Canada's domestic fund is not restricted to providing compensation for spills from tankers laden with persistent oil. The SOPF covers all waters under Canadian jurisdiction and applies to all classes of ships and all types of oil, persistent or not, except vegetable oil. Further the Administrator spoke about the limits and scope of the liability regime. The first and last resort functions of the SOPF were addressed.

The Administrator emphasized that the scope of the international and domestic funds is somewhat different, but in the event of a major tanker spill in Canadian waters, the two funds would work together in close co-operation.

Mr. Sommerville gave a series of comprehensive presentations and examined the role of the IOPC Funds. He focused on the actions and process undertaken by the IOPC Funds when an oil spill occurs in waters of contracting states. The participants were walked through the timeline of events on the ground in responding to an oil spill incident.

The role of advisory technical experts was explained, namely, to provide information and guidance with respect to the submission of claims. Several examples of major incidents were discussed e.g. the *Hebei*

Spirit off Korea. The presentation also covered the documentary information required for the submission of claims. The workshop also outlined the various aspects of dealing with restoration of environmental damage and economic loss. Examples of past spill studies covered by the IOPC Funds were provided.

The participants asked questions throughout the series of presentations and expressed their appreciation for the collaborated workshop. Representatives of Environment Canada also expressed a note of thanks that the compensation funds were participating in the AMOP conference.

4.6 Arctic Marine Oil Spill Program—Seminar

The Administrator was represented by a marine consultant, Captain George Legge, at the 34th Arctic Marine Oil Spill Program (AMOP) technical seminar held in Banff, Alberta, from October 4 to 6, 2011. This AMOP seminar was an international technical forum about oil spills in any environment.

Basically, these AMOP seminars are designed to improve the knowledge base and technology for cleaning up Arctic marine oil spills. However, this particular session of AMOP placed considerable coverage on the *Deepwater Horizon* incident (the largest oil spill in the United States' history) that occurred in the Gulf of Mexico in April 2010. In addition to the *Deepwater Horizon* oil spill, there were many presentations during the three days about a broad range of technical development: the detection, tracking and remote sensing of oil spills, operational approaches and contingency planning.

The AMOP technical seminars are sponsored by the Emergencies Science and Technology Section (ESTS) of Environment Canada located in Ottawa. The staff at ESTS carries out research and development on a variety of topics related to environmental emergencies caused by spilled hazardous materials. The ESTS has an ongoing national program of Research and Development (R&D) of many hazardous materials, including marine oil spills. The results of the R&D are applied to actual spill incidents, providing assistance to spill responders. Most of the ESTS projects are conducted in partnership with other government departments, agencies and industry and cover a wide spectrum of issues related to oil spills.

There were several presentations about oil spill modeling that addressed the overall risk and costs analysis surrounding the *Deepwater Horizon* spill. The "worst case" trajectory models provided the U.S. oil spill responders with a better understanding of the potential environmental consequences of the spill in various zones of the Gulf of Mexico.

Presentations were also made by several representatives of Norway about on-going field research, response technologies, and counter-measures for dealing with oil spills in ice-covered waters.

A representative of Transport Canada gave a presentation on the National Aerial Surveillance Program (NASP) operated by Transport Canada. The four Canadian surveillance aircrafts operate in the Atlantic, Great Lakes, Pacific and Arctic regions. In addition to ice reconnaissance flights conducted in partnership with Environment Canada's Canadian Ice Service, NASP is multi-tasked for oil pollution surveillance and allows both day and night surveillance across a wide range of sea state and weather conditions. Three of the aircrafts are fitted with state-of-the-art remote sensors to strengthen the overall surveillance capability. A separate presentation by the same speaker addressed Canada's surveillance efforts during the response to the *Deepwater Horizon* incident.

A Dash 8 aircraft was deployed in the Gulf of Mexico from May 1 to July 15 and conducted daily sorties as weather permitted. The modern surveillance equipment of the aircraft provided the U.S. command

centre with invaluable real-time information. On July 15, the Dash 8 was replaced by an aircraft from the Icelandic Coast Guard which is also fitted with modern electronic technology. The Canadian aircraft was required back in Canada for ice reconnaissance in support of shipping in the High Arctic.

The displays provided were informative and covered a range of oil pollution clean-up equipment and the latest technologies. This up-to-date information is valuable for the Administrator in the process of investigating and assessing claims filed with the Fund.

The seminar coordinator from Environment Canada expressed appreciation that copies of the Administrator's Annual Report were made available to participants.

4.7 Regional Environmental Emergency Team Conference

The Administrator was represented by a marine consultant, Captain George Legge, at the 38th Atlantic Regional Environmental Emergency Team (REET) workshop and annual meeting held in Halifax, Nova Scotia, on October 18, 19 and 20, 2011.

By way of background, the regional Environmental Emergencies Teams are national and regional advisory committees mandated to provide guidance in the prevention, planning and response to environmental emergencies. These teams are made up of representatives from federal and provincial governments and from private industry. Each committee is referred to as the Regional Environmental Emergencies Team or REET.

In the Atlantic Region, Environment Canada chairs the REET. The Team provides environmental advice and guidance to the government agency leading the response effort to deal with an emergency situation. REET members meet at least once a year to exchange scientific and technical information on matters such as contingency planning and spill response techniques. During this time, REET members also update and review their respective roles in any emergency response situation. The Atlantic REET has provided expertise during many environmental emergencies over the past 38 years. These incidents have ranged from large oil spills to sinking of barges and several large incidents of oiled birds.

REET focuses on providing scientific and technical advice to the lead agency and industry from a single voice on behalf of all government departments and agencies. It develops consensus on environmental protection and clean-up priorities. Advice is also provided on waste storage and disposal.

The REET workshop included a visit to the Bedford Institute of Oceanography (BIO) with a tour of the labs of the Centre for Offshore Oil and Gas Environmental Research. The research scientists are focusing, among other things, on the evaluation of effectiveness and effects of oil dispersants as an oil spill counter-measure. Discussion ensued about the non-use of dispersants in Canada, because of current legislation restricting its utilization. The legislation is under review but it will be a few years before it is amended. The extensive use of chemical oil dispersants during the recent Gulf of Mexico oil spill was also discussed. The senior research scientist, Dr. Kenneth Lee, recently led a Canadian science team to monitor oil dispersants use over a four-month period during the U.S. government's clean-up operations of the *Deepwater Horizon* incident in the Gulf of Mexico. The afternoon included a dispersant demonstration in the wave pool at the BIO facilities.

During the two days of meetings, the sessions focused on identifying collaboration efforts and approaches to prevent, prepare for, respond to and recover from environmental emergencies throughout Atlantic

Canada. The issues affecting the Gulf of St. Lawrence was a central theme of several speakers, particularly in light of the potential for oil and gas development in the central gulf area. Several of the presentations by participants from the United States covered the *Deepwater Horizon* oil spill. The objective of these various presentations was for the Atlantic Region to identify and discuss lessons learned from the Gulf of Mexico oil spill and transform the lessons learned into items for further research and action.

The Administrator appreciates being invited to attend and provide participation in the REET conferences.

4.8 Canadian Marine Advisory Council (National)

The Canadian Marine Advisory Council (CMAC) is the national consultative body that gives advice on marine regulatory amendments, and other domestic and international marine matters. The CMAC consultation meetings are usually held in Ottawa during Spring and Autumn. However, in 2011, only one meeting was convened from November 7 to 10 at the Government Conference Centre. The CMAC 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. There are seven Standing Committees and several Working Groups that address issues relating to concerns about marine services, marine safety and oil pollution prevention. These meetings are of interest to the Administrator, particularly the sessions that cover marine environmental issues. The Administrator keeps abreast of the proposed regulatory framework for the prevention of oil pollution from ships.

During the fall session of the National CMAC, the Administrator was personally unable to attend, but the Fund was represented by a marine consultant, Captain George Legge, who attended some of the sessions, namely the opening plenary and the discussions and findings of the Standing Committee on the Environment.

During the opening plenary, the Deputy Commissioner of the Canadian Coast Guard, Ms. Jody Thomas, provided updates on some Coast Guard initiatives, including the need to enhance environmental response services in the Arctic. The Deputy Commissioner explained that the Coast Guard's program is focused on preparedness and planning as well as providing input into regulations.

Increased traffic in the Arctic means the pollution response north of 60 degrees will be more challenging. The *Nuuk Declaration*, signed by the Arctic Council Ministers last May, recommended that a task force be created to develop an international instrument on Arctic marine oil pollution preparedness and response. The Coast Guard is strongly committed to working with the Arctic Council to ensure an appropriate level of preparedness and response capability for pollution incidents in the Arctic.

As the lead federal authority responsible for preparedness and response to marine pollution incidents in Canada's Arctic, the Canadian Coast Guard is pleased to serve as head of the Canadian Delegation to the Arctic Council Task Force. The results of the Task Force will be presented to Ministers in 2013.

The Coast Guard is engaging federal partners through a newly created Interdepartmental Marine Pollution Committee. This body supports federal obligations for addressing marine pollution. Coast Guard is counting on strong collaboration among departments to strengthen its prevention, preparedness, response, and recovery efforts. Steps are being taken to reinvigorate the Environmental Response Program including: drafting an integrated management action plan to respond to recent audits, reviewing the National Environmental Response Strategy to capture elements necessary to respond to ship-source spills in Canadian waters, and developing leadership competencies to identify training and learning opportunities for senior managers who may be called on during a large marine pollution incident.

It was announced at the meeting of the Standing Committee on the Environment that a new Working Group was formed to deal with environmental response. For example, a number of developments require consultation with industry in order to establish a response regime for hazardous and noxious substances. The terms of reference for the Working Group on the environmental response are available on the national CMAC website at: http://www.tc.gc.ca/eng/marinesafety/menu.htm

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

4.9 Canadian Marine Advisory Council (Northern)

The Administrator was invited to attend the Regional Canadian Marine Advisory Council (CMAC-N) meetings held in Calgary, Alberta, on November 15 and 16, 2011. The Administrator was represented by a marine consultant engaged by the Fund, Captain George Legge. The CMAC-N meetings are held semi-annually and usually take place in different northern communities.

The November meetings were co-chaired by the Regional Director of Marine, Transport Canada, Prairie & Northern Region and the Assistant Commissioner of Canadian Coast Guard, Central and Arctic Region. The participants at these meetings represent federal and territorial governments and a range of operators from the Arctic marine shipping industry. The major northern sealift operators were present, namely Nunavut Eastern Arctic Shipping Inc., Northern Transportation Company Ltd., CanArctic Shipping-Fednav, Coastal Shipping Ltd., Desgagnés TransArctic Inc. and others. In addition, presentations were made by representatives of Environment Canada, the National Research Council, Transport Canada Marine, Fisheries and Oceans Canada—Canadian Hydrographic Service, the Government of the Northwest Territories and the Government of Nunavut.

Representatives of Transport Canada provided overviews of the status of the various regulatory processes that they have in-hand. The topics included Vessel Pollution and Dangerous chemicals Regulations, Places of Refuge, Small Vessel Compliance, Marine Safety Management System Regulations, and so forth.

There was also a separate presentation on the over-wintering of barges in the North for the purpose of fuel storage. Different stakeholders in the Arctic have expressed concern about the potential environmental impacts of this practice. It was explained that, in response to the public concern, Transport Canada has undertaken a review of this matter to identify issues that need to be addressed such as double-hull construction for these barges.

Many of the current barges in use for fuel storage were built in the 1960s and 70s. Apparently, there are currently no regulations to specifically cover over-wintering of barges loaded with petroleum products. The consultative review has ascertained that up to 2.5 million litres of oil are stored in these barges, usually diesel fuel. The risk of pollution occurs primarily when the fuel is transferred from barges to trucks for transportation to project sites via winter roads.

There have been several minor spills over the past few decades. Transport Canada's investigation includes outreach to local governments, communities and aboriginal groups in the Northwest Territories and Nunavut. Transport Canada, Prairie and Northern Region plans to present a Discussion Paper covering a regulation or guidelines on the issue to Senior Management in Ottawa early in the New Year.

The spokesperson for the Department of Economic Development and Transportation, Nunavut, focused on the existing inadequate marine support infrastructure. Concerns addressed the present and future need for ports and harbor development in communities throughout Nunavut. (It was mentioned that in Nunavut no two communities are connected by road.) The speaker stressed that there is a requirement to build fixed docks, floating docks and mooring bollards throughout the North, particularly for safe re-supply of petroleum products.

With respect to the annual upgrade to aids to navigation and production of navigational charts, a representative of the Canadian Hydrographic Services provided a *Power Point* presentation. It was explained that recently new electronic navigation charts have been released covering seven major ports in the Arctic and that electronic charts for three additional ports are ongoing. Further, hydrographic surveys were conducted by Coast Guard vessels during the 2011 summer season in three important areas, namely Eureka, Resolute and Ungava Bay.

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

4.10 Meeting with Representatives of the International Group of P&I Clubs

On March 27, 2012, the Administrator met with representatives of the International Group (IG) of P&I Clubs in Transport Canada. The meeting was organized by the International Marine Policy Group in Transport Canada. The P&I Clubs were represented by Andrew Bardot, Chief Executive Officer of the International Group, and his deputy, David Baker.

The P&I representatives gave a two-hour presentation about the International Group covering its make-up, its history and the way it provides shipowners with third-party insurance in respect of their shipping activities. The P&I Clubs in the IG issue the so-called blue cards required by national authorities in order for them to issue certificates of insurance as required by 1992 Convention on Civil Liability for Oil Pollution Damage (CLC). Those certificates, required under Part 6 of the *Marine Liability Act* (MLA), are issued in Canada by the Minister of Transport and must be carried on board any tanker covered by the CLC that enters or exits waters under Canadian jurisdiction. The type of insurance required must allow claimants to present claims directly to the insurer.

95% of ocean-going tankers world-wide are covered by P&I clubs in the IG. More generally, the clubs in the IG cover 90% of world-wide ocean tonnage.

The clubs cover much more than pollution damage dealt with in the CLC and IOPC Fund Convention. They provide cover for a variety of other maritime claims, notably pollution damage under the Bunkers Convention, and salvage. In the case of pollution damage under the Bunkers Convention, coverage comes with direct action against the insurer.

The presentation described the mechanism for providing cover through pooling arrangements and reinsurance, which enables them in certain cases to provide cover up to US$3 billion. The cover for oil pollution is US$1 billion.

The IG is usually represented at meetings of the Legal Committee, IMO, and at all the meetings of the IOPC Funds. They provide useful information on insurance, for example, in claims matters being handled by the IOPC Fund, as well as providing input into the development of international maritime law conventions. In the case of major tanker spills, the club involved will usually set up a claims office locally in collaboration with the IOPC Fund to handle claims.

5. SOPF Involvement with 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 as a member of the Canadian delegation 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, 2012, the Administrator attended meetings of the governing bodies of the IOPC Fund in July and October 2011 in London, United Kingdom, as part of the Canadian delegation.

It is not proposed to give a detailed account of these meetings, since records of decisions reached are available online at 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 Intersessional 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 proof to support them.

5.1 Incidents

The Administrative Council set up to administer outstanding business of the 1971 Fund held several meetings in the fiscal year ending March 31, 2012. It may be recalled that the 1971 IOPC Fund Convention is no longer in operation. A final winding up of the Fund, however, is not possible, until all claims arising out of incidents governed by that convention have been resolved. Consequently, some states, including Canada, parties to the 1971 Fund Convention at the time of those incidents could still face liability to contribute to compensation payable for claims arising out of those incidents.

To date, there are only five incidents with unresolved claims. While three of them are evolving satisfactorily, two cases are cause for concern, namely, the *Nissos Amorgos* and *Plate Princess* Incidents.

In the case of the *Nissos Amorgos*, there is an outstanding claim from the Republic of Venezuela in the sum of US $60 million. This claim has been made against the Master, the shipowner and the Protection and Indemnity Clubs (P&I Clubs). The 1971 Fund has not been directly implicated in the decisions of the courts that have been handed down, but, nevertheless, the Fund has intervened for two reasons. In the view of the Fund, the claim is time-barred under the terms of the 1971 Fund Convention. Also, the courts have deprived the shipowner of the right to limit its liability based not on the terms of the convention but on a domestic environmental law.

For the moment no action is required, although at some time in the future there may be an approach from the P&I clubs to the Fund to make contribution for the payment of the government claim. It will then be for examination, whether there is an obligation to make such contribution, given that the shipowner has been deprived of its right to limit its liability. All individual claims, mainly by fishermen, have been settled. The Secretariat continues to monitor this case but an early resolution is not anticipated.

The *Plate Princess* is of more concern, since in this instance the 1971 Fund is directly involved and judgments have been handed down finding the Fund liable. There are a number of serious concerns about the way this case has been handled by the Venezuelan courts, the most serious being that the Fund was not properly notified of the proceedings and was not given adequate opportunity to defend itself before the courts. There is also a serious concern about the authenticity of documentation that has been filed in support of claims by fishermen.

Since the last meeting of the governing bodies in October 2011, information has been received that the judgment of the Venezuelan Supreme Court is now final and no longer subject to ordinary forms of review, so that technically, in terms of the 1969 Civil Liability Convention, it is now enforceable against the 1971 Fund. When the matter was discussed in the Administrative Council in October, the Acting Director of the Fund was instructed not to make any payments pursuant to the judgment on the grounds that when the Fund was notified of the proceedings in the Venezuelan courts, the claims were time barred and, further, the Fund was not given a fair opportunity to present its case. At forthcoming meetings in the next fiscal year, the Administrative Council will have to decide whether to confirm those instructions. For the moment, therefore, this incident constitutes an obstacle to the final winding up of the 1971 Fund.

Turning to claims being handled in the 1992 Fund, the only new incident reported to the Fund in the fiscal year ending March 31, 2012, concerned the capsizing of an oil tanker, the *JS Amazing*, in the Warri River, Delta State, Nigeria. At the time of the October meetings, few details of the incident were available and no claims had been filed, although the incident dates back to June 2009. There were also reports to the effect that two weeks prior to the capsizing of the tanker, vandalized pipelines in the vicinity had resulted in oil pollution damage. While the IOPC Fund has appointed lawyers in Nigeria to gather information, it would appear that at this late stage it might be difficult to determine whether the oil that caused pollution damage originated with the ship or with the pipelines, which may in due course complicate the assessment of claims, should any be filed with the IOPC Fund.

With regard to the *Erika* incident, which dates back to December 1999, the Acting Director reported that a global settlement had been reached, involving the 1992 Fund, the P&I Club Steamship Mutual, the classification society RINA, and the oil company Total. Details of the settlement can be found in the Record of Decisions of the IOPC Funds meetings in October[1]. Some 13 actions pending in the French courts and claiming approximately €19 million will continue but it appears unlikely that any judgments handed down would result in further levies of contributions. Indeed, as noted under the Budget item, the IOPC Fund has authorized the reimbursement of some monies to contributors to the major claims fund that was established in respect of this incident.

The Executive Committee and Fund Assembly have received regular reports on other major incidents, notably the *Volgoneft* and the *Hebei Spirit*. With respect to the first incident, claims assessment is proceeding satisfactorily, but regrettably, to date no claims have been paid. While most of the key issues that presented obstacles to payment of the claims in this case have been resolved, the issue of the "insurance gap" remains unresolved. It may be recalled that this issue stems from the fact that under Russian law a shipowner is entitled to a lower limit of liability than is mandated by the 1992 Conventions, both of which have been ratified by the Russian Federation. Hopefully a solution can be found soon so that the process of paying claims may begin, given that this incident dates back to November 2007.

The Secretariat of the IOPC Fund made regular reports to the governing bodies of the IOPC Fund on the claims settlement process in respect of the *Hebei Spirit* incident. It may be recalled that this incident

[1] IOPC Fund Document IOPC/OCT11/11/1:23

represents particular challenges on account of the large number of individual claims (127,000) that have been filed with the Claims Office set up jointly by the IOPC Fund and the P&I Club in Seoul. Although it is anticipated that the amount of assessed claims will eventually fall within the amount of compensation available under the 1992 Fund Convention, the amounts claimed are significantly in excess of what is available. Consequently, the level of payment of assessed claims has been set at 35% in accordance with the prorating provisions of the convention.

The Claims Office, in dealing with the claims, is confronted with two conflicting demands. On the one hand it is being urged to speed up the claims assessment process. On the other hand, when claims are rejected, for example a block of claims (30,000) filed by fisher folk, collectively known as hand gatherers, on the grounds that no or inadequate evidence had been filed or that the required licenses for such activities had not been produced, concerns are raised in the Executive Committee as to whether such claimants have been given adequate consideration.

The Secretariat has advised that every available expert in Korea has been mobilized to assist in claims assessment. The Assembly has established a working group to study the problem of incidents where large numbers of claims are submitted and propose solutions.

There has been some discussion in the Executive Committee, based on proposals by the delegation of the Republic of Korea, for raising the level of payment of claims, but those discussions ultimately failed. The Korean government was proposing that the level of payment should be raised from the current 35% to 100% on the understanding that it would indemnify the IOPC Fund in the event that this should result in payment of compensation over the limit available from the Fund. The arrangement would have involved the provision of suitable bank guarantees. However, the cost of providing those guarantees proved to be too high, so the level of payment remains at 35%.

Under the circumstances, no early end to the claims settlement process is currently in sight.

5.2 Working Group

As noted in the last Annual Report, the governing bodies of the IOPC Funds established a working group, the Sixth Intersessional Working Group, to study problems associated with incidents with large numbers of small and often undocumented claims. The problem was particularly noticeable in the *Hebei Spirit* incident, dealt with above. The working group met in July 2011. It considered, broadly speaking, two categories of proposals – those that could be implemented by member states and those that involved changes in claims policy and process of the IOPC Funds. While it was agreed that there was a need for greater flexibility in dealing with these claims, there was also recognition that a minimum standard of proof must be maintained. The working group will hold further meetings in the next fiscal year with the aim of submitting proposals to the governing bodies at their regular sessions in October.

5.3 Budget

At the October meeting of the governing bodies, budgets were adopted in respect of the three IOPC Funds (1971 Fund, 1992 Fund, and Supplementary Fund).

In the case of the 1971 Fund, the Administrative Council agreed to a small budget (£520,400) to be covered out of existing funds accumulated in the General Fund of the 1971 Fund to cover administrative costs and

minor claims expenses. For the moment, consequently, there will not be any levy of contributions for this Fund.

In the case of the 1992 Fund, the Administrative Council of that Fund agreed to a levy of £3.5 million for payment to the General Fund to cover the administrative expenses of the 1992 Fund. The Council also authorized levies for the *Prestige* Major Claims Fund (£8.5 million) and for the *Hebei Spirit* Major Claims Fund (£31.5 million), payable by March 1, 2012. The total amount of Canada's contribution to those levies was invoiced to the SOPF in November, being approximately £887,795($1,394,815). This amount reflected a deduction resulting from the Council's decision to reimburse contributors £25 million from the *Erika* Major Claims Fund. That invoice was paid out of the monies of the SOPF on or about January 16, 2012.

The Administrative Council also included a levy in respect of the *Volgoneft* incident (£5.5 million) but its payment was deferred pending a decision by the Executive Committee to authorize the Director to commence payments in respect of this incident.

At the October meetings, the Supplementary Fund Assembly adopted a small budget to cover its administrative expenses, but since that Fund had no claims to deal with, the budget could be met out of existing funds already accumulated in the General Fund of that Fund. Accordingly there was no need to authorize a levy.

5.4 Changing of the Guard

It is appropriate to note that at the meeting of the governing bodies of the IOPC Funds in October some significant changes were made at the head of the organization. The October meetings constituted the last meetings presided over by the Canadian chairman, Mr. Jerry Rysanek, who had announced in March 2011 that he would be stepping down. There was general recognition at the final session of the Assembly in October of the outstanding contribution made by Mr. Rysanek during his six years as the chairman of the Assembly to the work of the 1992 Fund. Mr. Rysanek steered the debates of the Assembly through many difficult moments with tact, dexterity and humor. He also played a key role in streamlining the procedures of all three bodies and the simplification of their documentation.

The 1992 Assembly elected Mr. Gaute Sivertsen, Norway, as its new chairman.

As a consequence of the decision of the Director of the 1992 Fund, Mr. Willem Oosterven, not to seek a second term of office on expiry of his contract October 31, 2011, the Assembly elected Mr. Jose Maura Barandiaran, nominated by Spain, to be the Director of the Fund effective November 1, 2011.

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, 2012.

SHIP-SOURCE OIL POLLUTION FUND

FINANCIAL STATEMENTS

MARCH 31, 2012

SHIP-SOURCE OIL POLLUTION FUND

TABLE OF CONTENTS

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, 2012, 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, 2012, as well as the results of its operations and its cash flows for the year then ended in accordance with Canadian generally accepted principles.

Chartered Accountants, Licensed Public Accountants

Ottawa, Ontario
May 8, 2012

SHIP-SOURCE OIL POLLUTION FUND

STATEMENT OF OPERATIONS AND FUND BALANCE
FOR THE YEAR ENDED MARCH 31, 2012

	2012	2011
REVENUE		
Interest	**$ 6,670,900**	$ 9,389,377
Recoveries related to previously awarded settlements	**35,066**	-
	6,705,966	9,389,377
CLAIMS		
Payments made towards Canadian claims	**(652,635)**	(435,236)
Decrease (increase) of provision for claims under review	**141,371**	(250,998)
Reversal of previously accrued claim	**-**	2,240,251
International Oil Pollution Compensation Funds Contributions (Note 8)	**(1,394,815)**	(3,895,877)
	(1,906,079)	(2,341,860)
	4,799,887	7,047,517
OPERATING EXPENSES		
Administrator ‘s fees	**99,000**	99,000
Legal fees	**149,718**	102,501
Consulting fees	**130,727**	95,751
Audit fees	**15,820**	32,900
Administrative services, salaries and office	**401,826**	376,643
Travel	**34,662**	33,116
Rent	**225,717**	176,141
Access to Information and Privacy Act (Note 6)	**91,024**	5,641
Amortization of capital assets	**160,467**	106,328
	1,308,961	1,028,021
EXCESS OF REVENUE OVER EXPENSES	**3,490,926**	6,019,496
FUND BALANCE, BEGINNING OF YEAR	**392,257,686**	386,238,190
FUND BALANCE, END OF YEAR	**$ 395,748,612**	$ 392,257,686

SHIP-SOURCE OIL POLLUTION FUND

BALANCE SHEET

MARCH 31, 2012 **4**

		2012		2011
ASSETS				
CURRENT ASSETS				
Balance of the account with Receiver General for Canada (Note 4)	**$**	**395,960,119**	$	392,525,017
CAPITAL ASSETS (Note 5)		**512,848**		474,440
	$	**396,472,967**	$	392,999,457
LIABILITIES				
CURRENT LIABILITIES				
Accounts payable and accrued liabilities	**$**	**206,355**	$	82,400
Provision for claims under review (Note 7)		**518,000**		659,371
		724,355		741,771
FUND BALANCE		**395,748,612**		392,257,686
	$	**396,472,967**	$	392,999,457

_____, Administrator

1. GOVERNING STATUTES AND PURPOSE OF THE ORGANIZAT/ON

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 related to 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:

	Periods
Computer equipment	3 years
Furniture and equipment	10 years
Leasehold improvements	Remaining term of lease

Recognition of the provision for claims

Provisions for indemnification claims are recognized when a formal claim is submitted by the claimant and is duly received by the Fund.

Recognition to the International Oil Pollution Compensation Funds Contributions

The Fund recognizes its contribution to the International Oil Pollution Compensation Funds when the contribution is determined and requested by the International Oil Pollution Compensation Funds.

2. ACCOUNTING POLICIES (continued)

Foreign currency translation

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

3. INFORMATION INCLUDED IN OPERATIONS

	2012	2011
Foreign exchange gain included in International Oil Pollution Compensation Funds contributions	**$ 42,437**	$ 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 1.26% and 2.59% during the year (2011: 1.82% and 2.93%). The average interest rate for March 2012 was 1.48% (2011: 2.52%).

5. CAPITAL ASSETS

	2012		
	Cost	**Accumulated amortization**	**Net book value**
Computer equipment	**$ 129,979**	**$ 58,794**	**$ 71,185**
Furniture and equipment	**174,213**	**40,990**	**133,223**
Leasehold improvements	**487,714**	**179,274**	**308,440**
	$ 791,906	**$ 279,058**	**$ 512,848**

	2011		
	Cost	Accumulated amortization	Net book value
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

6. ACCESS TO INFORMATION AND PRIVACY ACT EXPENSES

		2012		2011
Consultant fees	**$**	**72,701**	$	4,898
Records and Information Management Database Software		**14,670**		-
Administration costs		**755**		743
Legal fees		**2,898**		-
	$	**91,024**	$	5,641

The Access to Information and Privacy Act expenses incurred in 2012 were related to the implementation of a database for managing access to information and privacy requests.

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 $518,000 for claims received prior to March 31, 2012 (2011:$659,371) 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. 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 contributions to the International Oil Pollution Compensation Funds, for which the amount owing is determined by the International Oil Pollution Compensations Funds. 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, 2012, the Fund has contributed $1,394,815 (2011: $3,895,877) to the International Oil Pollution Compensation Funds.

During the fiscal year commencing April 1, 2012, the maximum liability of the Fund is $159,854,965 (2011: $157,803,519) for all claims from one oil spill. Furthermore, as of April 1, 2012, the Minister of Transport also has the statutory power to impose a levy of 47.94 cents (2011: 47.32 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 are indexed annually to the consumer price index. No levy has been imposed since 1976.

8. CONTINGENCIES (continued)

In the normal course of its operations, the Fund may receive information about incidents that have occurred but for which no claims have been received. It is not possible for the Fund to determine the likeliness of a claim for any of these reported incidents. The Fund is also not able to assess the financial value of any such claims should they materialize. No provision related to these incidents is recognized in the financial statements. A provision will be recognized when a claim is effectively received.

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 $225,717 (2011: $176,141) 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 in the amount of $225,717 for the rental of office space. The total of the minimum annual lease payments for the next three years is $677,151for the period from 2013 to 2015. As a tenant, the Fund is also responsible to pay its share of escalation costs annually.

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 DISCLOSURE

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. SUBSEQUENT EVENTS

The Fund recognizes a provision for an indemnification claim when a formal and duly prepared claim is submitted by the claimant and is effectively received by the Fund. All claims received before March 31, 2012 were provided for in the financial statements. During the period from April 1, 2012 to May 8, 2012, the Fund has received additional claims totalling $142,300. These claims are not provided for in the financial statements.

13. COMPARATIVE FIGURES

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