

# *Ship-source Oil Pollution Fund*



The Administrator's Annual Report  
2014 - 2015

Canada 

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# **Ship-source Oil Pollution Fund**

The Administrator's Annual Report

**2014-2015**

**Canada**



The Honourable Lisa Raitt, P.C., M.P.  
Minister of Transport  
Ottawa, Ontario  
K1A 0N5

Dear Minister:

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

The report covers the fiscal year ending March 31, 2015.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'A. Popp', with a stylized flourish at the end.

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



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## Abbreviations

AMOP	Arctic and Marine Oilspill 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	<i>Canada Shipping Act</i>
CWS	Canadian Wildlife Service
DFO	Department of Fisheries and Oceans
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
ICS	Incident Command System
IMO	International Maritime Organization
IOPC	International Oil Pollution Compensation Fund
IT	Information Technology
ITOPF	International Tanker Owners Pollution Federation
LOU	Letter of Undertaking
MCTS	Marine Communications and Traffic Services
MLA	<i>Marine Liability Act</i>
MOU	Memorandum of Understanding
MPCF	Maritime Pollution Claims Fund
MV	Motor Vessel
NASP	National Aerial Surveillance Program
NTCL	Northern Transportation Company Limited
P&I Club	Protection and Indemnity (Marine Insurance) Association
RIM	Records and Information Management
RO	Response Organization
SDR	Special Drawing Rights*
SITREP	Situation Report
SOPF	Ship-source Oil Pollution Fund
TC	Transport Canada
TCMS	Transport Canada Marine Safety
WCMRC	Western Canada Marine Response Corporation

\* The value of the SDR at April 1, 2015, was \$1.74961 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, 2015. 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 compensation regime is based on the fundamental principle that the shipowner is primarily liable for oil pollution damage caused by the ship up to its statutory limits of liability – that is, the polluter pay principle. Canada’s national SOPF covers all classes of ships that discharge persistent and non-persistent oil, including oil spills from unknown sources which are commonly referred to as “mystery spills”. The SOPF is available to pay compensation for reasonable claims for oil pollution response costs, or preventive measures taken to minimize damage caused by the discharge of oil from any class of ship in Canadian waters. Any occurrence caused by an oil tanker carrying persistent oil as cargo would be covered under the international regime.

Canada is currently a Member State of the 1992 International Oil Pollution Compensation Fund (1992 IOPC Fund), and the 1992 Civil Liability Convention (1992 CLC). In 2003, the international regime was expanded to include a Supplementary Fund Protocol. These funds mutualise the risk of persistent oil discharged from sea-going tankers. On October 2, 2009, Canada acceded to the International Convention on Civil Liability for Bunker Oil Pollution Damage, known as the 2001 Bunkers Convention. The Convention provides international rules governing compensation for spills of bunker oil carried onboard to fuel ships.

The total limits of liability and compensation available in Canadian waters, including the internal waters, the territorial sea and the exclusive economic zone of Canada, are illustrated in Figure 1 – Section 1 refers.

### **Canadian Oil Spill Incidents**

The Administrator receives reports of oil pollution incidents from different sources, notably: the Canadian Coast Guard, the Department of Environment and the Transportation Safety Board Agency. Some of the incidents that were reported to the Administrator by the Canadian Coast Guard did not result in claims against the SOPF. These occurrences were usually dealt with satisfactorily at the local level, including acceptance of financial responsibility by the shipowners’ insurers. In most cases where the claims were settled by the shipowner there was no need for an investigation by the Administrator.

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 may obtain 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. As described in Section 2, the Administrator dealt with 44 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 \$719,976.77. Investigations are underway but not all of the assessments of the claims received during the year were completed by March 31, 2015.

## **Challenges and Opportunities**

During recent years the Administrator had dealt with a number of administrative challenges related to modernizing the day-to-day 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 in order to conduct the investigation, assessment and settlement of claims. Some of the 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 affords 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 with the Fund for compensation. He personally participated in a number of outreach initiatives during the year. For example, he attended the Annual General Meeting of the Canadian Maritime Law Association. The meetings of the Association provide the Administrator with opportunities to cultivate contacts in the maritime community, as well as to keep abreast with the developments in maritime law both nationally and internationally.

The Administrator participated in discussions with the Commissioner of the Canadian Coast Guard and senior staff about the handling of claims filed by Coast Guard. Furthermore, the Administrator was represented by a marine consultant engaged by the SOPF to attend sessions of the Canadian Marine Advisory Council semi-annual national conferences held in Ottawa. Also, the Administrator was represented at the Arctic and Marine Oilspill Program (AMOP) seminar held in Canmore, Alberta. (Section 4 refers to these outreach initiatives.)

## **The International Compensation Regime**

During the fiscal year the Administrator attended meetings of the governing bodies of the International Oil Pollution Compensation Funds in London, United Kingdom, as an advisor to the Canadian delegation. The Administrator also served as chairman of the Consultation Group established in October 2013 by the 1971 Administrative Council to consider options and make recommendations for the early winding up of the 1971 Fund. As of December 31, 2014, the winding up of the 1971 Fund has been completed in accordance with Resolution 18.

This Annual Report also 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 close attention on the claim policies of the IOPC Funds. Active participation at the international meetings ensure that the Canadian Ship-source Oil Pollution Fund claim policies and practices are as closely aligned as possible with those of the 1992 IOPC Fund. (Section 5 refers).

## **Financial Statements**

The financial statements of the SOPF for the fiscal year were examined by independent auditors – Section 6 refers. During the year, nine Canadian claims were settled and paid for in the amount of \$129,756.40 including interest. Furthermore, the SOPF paid to the 1992 IOPC Fund a contribution in the amount of \$246,094.95 for incidents that occurred outside of Canada – Table 1 refers.

During the fiscal year commencing April 1, 2015, the maximum liability of the SOPF is \$165,837,463 for all claims from one oil spill. As of April 1, the Minister of Transport has statutory power to impose a levy of 49.74 cents per metric tonne of oil, as defined in the *Marine Liability Act*, imported by ship into or shipped from a place in Canada in bulk as cargo. The levy is indexed to the consumer price index annually. However, no levy has been imposed since 1976.

As of March 31, 2015, the accumulated surplus in the SOPF was \$408,650,294.



## **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 to 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 tonne 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 49.74 cents per metric tonne. 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 in addition to 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, 2015, the maximum liability of the SOPF is \$165,837,463 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 Parts 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 *Marine Liability 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 tonnes, 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.

## **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 against the Fund for unsatisfied costs and expenses to the extent it has taken all reasonable measures to satisfy its claim from 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 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.

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.

**Figure 1**

**Limits of Liability and Compensation  
Per Incident for Oil Tanker Spills in Canada**  
Based on the value of the SDR (\$1.74961) on April 1, 2015

International Conventions and Funds	\$1,312,207,500
Total Domestic Fund (SOPF)	\$165,837,463
<b>Total Available to Canada</b>	<b>\$1,478,044,963</b>

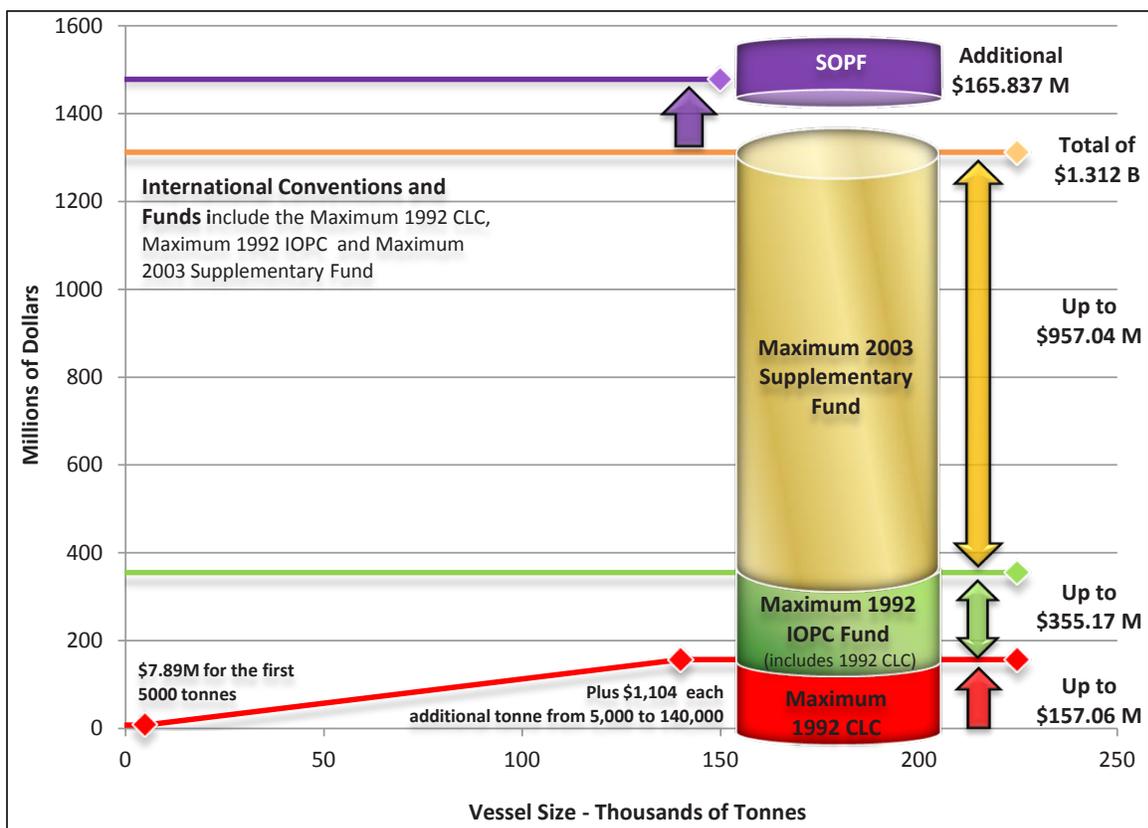


Figure 1 shows the limits of liability and compensation available under the 1992 CLC and the 1992 IOPC Fund Convention. The Supplementary Fund provides \$957.04 million beyond the amount available under the CLC and IOPC Funds.

The aggregate amount available under the 1992 CLC, the 1992 IOPC Fund and the Supplementary Fund is \$1.312 billion. The SOPF amount of \$165.837 million, on top of the International Conventions, results in approximately \$1.478 billion being available for a tanker spill in Canadian domestic waters, including the territorial sea and the exclusive economic zone.



**Table 1****Canadian Contributions to the International Funds**

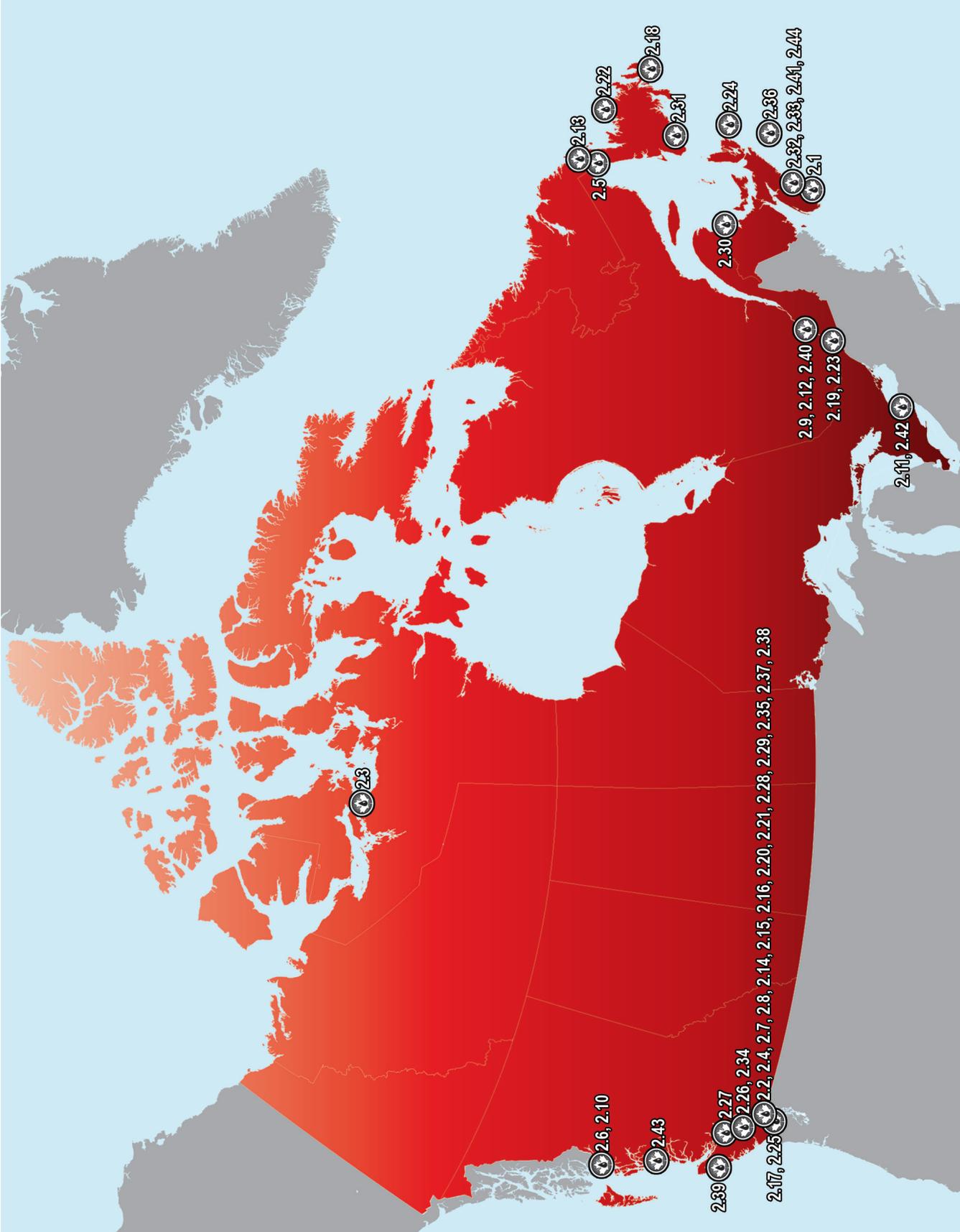
The amount of over \$54 million that is listed below reflects the contributions Canada has paid to the IOPC Funds since 1989.

<b>Fiscal Year</b>	<b>Paid from the SOPF (\$)</b>
1989/90	207,207.99
1990/91	49,161.28
1991/92	1,785,478.65
1992/93	714,180.48
1993/94	4,927,555.76
1994/95	2,903,695.55
1995/96	2,527,058.41
1996/97	1,111,828.20
1997/98	5,141,693.01
1998/99	902,488.15
1999/00	273,807.10
2000/01	6,687,696.71
2001/02	2,897,244.45
2002/03	3,219,969.17
2003/04	4,836,108.49
2004/05	3,448,152.80
2005/06	-
2006/07	360,233.37
2007/08	106,305.06
2008/09	5,161,013.63
2009/10	-
2010/11	3,895,877.19
2011/12	1,394,815.32
2012/13	318,156.19
2013/14	1,028,982.01
2014/15	246,094.95
<b>Total</b>	<b>54,145,803.92</b>

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







## **2. Canadian Oil Spill Incidents**

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

This section summarizes each of the 44 incident files – that is, actual claims and reports, which were handled by the Administrator during the fiscal year beginning April 1, 2014, and ending March 31, 2015. 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 \$719,976.77. Investigations are ongoing with regard to the outstanding claims filed with the Fund, but not all of the assessments of the claims were completed by the end of the fiscal year. During the fiscal year, nine claims were settled and paid in the total amount of \$129,756.46 including interest.

Note: The location of incidents is indicated on the illustrated maps.

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 known, the services of legal counsel may be obtained to commence recourse action where appropriate. In some situations involving abandoned and derelict vessels, the name of the shipowner is not always readily available. In these instances, the Administrator may engage a professional locator service to trace the name and location of the registered owner and identify assets that may be available for recovery purposes.

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

*Case number: 120-530*

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, 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 resulted 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 Registration Act* expired on December 23, 2013, and the registration in the Personal Property Registry expired on January 5, 2014. The Administrator renewed the registration for five years. It will be brought forward in November 2018. Meanwhile, the file remains open.

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

*Case number: 120-576*

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 windstorm. 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 of 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 a 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 the wreck. 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 deconstructed 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, 2010, CCG mailed a claim to the owner of the *Jessie Island XI* in the amount of \$34,281.31 for payment of costs and expenses incurred. There was no response. On April 19, 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, 2010, 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. 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.

The Administrator instructed counsel to conduct further research into the ownership of the *Jessie Island XI* in order to identify any possible assets for recovery purposes. During counsel's investigation, it was ascertained that the Registry of Shipping shows that the actual registered owner of the vessel was not the person that the Canadian Coast Guard responders met at the time of the incident. The alleged owner, who had lived aboard the vessel and was present when it sank, had advised the Coast Guard that he did not have the resources to raise the vessel and prevent ongoing pollution. The research further disclosed that the registered owner had sold the *Jessie Island XI* in August 2008 and had received a Bill of Sale with the understanding that the buyer would register the vessel. However, no Bill of Sale was ever filed with the Registrar of Shipping, thus leaving the name of the registered owner unchanged.

On January 20, 2013, counsel commenced legal proceedings and filed a Statement of Claim against the owner, and also the presumed owner, for the costs and expenses incurred. In response, a Statement of Defence was filed on February 25, by the actual registered owner. The alleged owner did not file a Statement of Defence. Consequently, on August 9, the Administrator filed with the Federal Court, in Vancouver, a Notice of Motion for judgment by default against both parties.

On September 30, 2013, the Prothonotary granted default judgment against the presumed owner of the vessel. Therefore, on October 2, counsel wrote to the defendant (the person who purchased the vessel in 2008) and informed him that the Administrator had obtained a default judgment against him for \$41,164.89 as shown in the order, which was enclosed with the letter. The defendant was advised that unless arrangements were made to pay the judgment by October 31, 2013, the Administrator will have no alternative but to seize his property to justify the judgment.

In the course of the following months, counsel for the SOPF and the shipowner communicated with a view to securing a settlement. As a result of their negotiation, on September 2, 2014, the shipowner offered to settle the matter for the sum of \$7,000.00, all inclusive, in return for a release of all claims and a Consent Dismissal Order with respect to the action against him.

In agreement with the recommendation of counsel, the Administrator considered that the settlement amount offered was reasonable taking into account the costs of pursuing litigation. Therefore, the appropriate release document was executed on September 25, 2014. The Motion record for dismissal of the action against the shipowner and the executed Release was mailed to the solicitor for the owner.

On October 28, counsel forwarded a trust cheque payable to the Receiver General for Canada in the amount of \$7,000.00 representing the full settlement. The Administrator directed that the cheque be credited to the Ship-source Oil Pollution Fund. Accordingly, on November 4, 2014, the Administrator closed the file.

## **2.3 Clipper Adventurer (2010)**

*Case number: 120-580*

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 Wilfrid Laurier* as a 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 refloat 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 made from November 11, 2010, to December 31, 2010.

On October 17, 2011, the Administrator received a claim in the amount of \$468,801.72 from the Department of Fisheries and Ocean (DFO/CCG) to cover the monitoring costs and expenses incurred by CCG in respect of the incident pursuant to the *Marine Liability Act* (MLA). In the meantime, the Administrator became aware of an action by the owners of the ship against the Crown alleging negligence on the part of the Crown (CCG and the Canadian Hydrographic Service) in failing to properly notify shipowners of the shoal on which the *Clipper Adventurer* had grounded. The amount claimed in the action is some \$15 million in damages. About a year after the initial action was launched on behalf of the shipowner, the Crown launched its own action against the shipowner in the amount of \$468,801.72 for its costs and expenses arising out of the incident. The Crown contended that the existence of the shoal had been properly publicized to mariners in a Notice to Shipping.

The Administrator was made a party to both actions, having been served with the proceedings as required by the MLA. The two actions have been joined and are now proceeding as one action under case management by the Federal Court. So far the Administrator has declined to assess the Crown's

(DFO/CCG) claim pending the outcome of the litigation. He has, however, instructed counsel to monitor the proceedings. Extensive discoveries have been conducted. While the parties have been encouraged by the case management judge to consider settlement, so far the Crown has been reluctant to do so until certain discoveries have been completed. A date for the trial has not been set but it has been estimated that if a trial takes place it will not be before the second half of 2016. Accordingly, as of the end of the current fiscal year the file remains open.

## **2.4 Dominion I (2010)**

*Case number: 120-605*

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 intake 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 even 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 continued 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 conducted background research of the owner of the *Dominion I* to try and identify any possible assets for cost recovery purposes. On April 18, 2012, counsel wrote to the owner, via registered mail, and informed him that, pursuant to the *Marine Liability Act*, the Administrator is subrogated to (acquires) the rights of CCG/DFO and is required to recover the amount of \$16,589.81, paid in respect of the alleviation of oil pollution problems. The owner was asked to advise, prior to May 2, what arrangement he could offer to repay the Fund, failing which the Administrator would take action to compel payment of that debt. Subsequently, it was found that the registered owner of the vessel has a new address in Oregon, United States. On April 25, 2012, counsel sent, via registered mail, a demand letter to the new mailing address in Oregon. No replies were forthcoming.

Counsel eventually located the registered owner of the *Dominion I* in Idaho, U.S. and served him with a copy of the Federal Court Statement of Claim on December 14, 2013. The owner advised that he is elderly and in ill health with no income other than social security. He also stated that he sold the vessel to others who were responsible for it at the time of the incident. He provided documents in respect of that sale; however, the documents show that while he may have passed possession of the vessel he still retained the title. Consequently, the Administrator concluded, after consultation with counsel, that it was futile to proceed further against the registered owner, because it would incur legal costs with no substantial likelihood of recovery. Therefore, on April 28, 2014, Counsel actioned a Notice of Discontinuance in respect of the matter without costs to any party.

On September 23, 2014, the Administrator concluded that there was no probability of any cost recovery from the registered owner and, accordingly, he closed the file.

Note: Refer to Section 2.25 with respect to the current status of the *Dominion I*.

## **2.5 Connie James (2011)**

*Case number: 120-637*

The incident occurred during the night of August 31, 2011, when the wooden-hull 54 tonne fishing vessel *Connie James*, built in 1968, caught fire and sank alongside the dock at Savage Cove, on the northwest coast of Newfoundland. The local fire department responded and pumped approximately 4,000 gallons of water onto the wheelhouse structure where the fire was most intense. While fighting the fire, the firemen moved the burning vessel about 25 feet away from the wharf to prevent it from burning as well. Eventually the fire was extinguished but the vessel was now partially submerged. A sorbent boom was streamed around the wreck to contain the upwelling fuel oil. The fire department informed the Canadian Coast Guard and handed the incident over to the RCMP.

The Coast Guard contacted the vessel owner who indicated that he was trying to reach his insurance company with respect to how best to proceed. As a result, in the morning of September 1, 2011, a commercial marine company, Sea Force Diving, based in St. John's was engaged by the owner to proceed to the scene – a highway distance of more than 800 kilometres – and remove the fuel oil and other onboard pollutants. On September 2, two Coast Guard emergency response personnel arrived at

the site and assisted the owner in deploying additional sorbent boom. They also helped remove debris and oiled materials from the boomed area in order to allow the commercial divers to plug the fuel tank vents and prevent further pollution. A vacuum truck removed the oil sheen from the surface of the water. The contractor used an excavator to refloat the wreck and lift it from the water. On September 7, the wreck of the *Connie James* was removed from the water, and with the fuel tanks dismantled there was no further release of oil into the marine environment.

On August 8, 2013, nearly two years after the incident, the Department of Fisheries and Oceans (DFO/CCG) filed a claim with the Administrator for costs and expenses in the amount of \$13,265.56, pursuant to the *Marine Liability Act*. The Administrator acknowledged receipt of the claim on August 13, and requested certain information regarding the coordinates of the vessel owner and his insurance company. The request for support documentation was repeated on August 28 and again on November 20, 2013. Some information was later provided.

On January 23, 2014, Coast Guard Headquarters informed the Administrator that its Atlantic Region had been actively pursuing repayment from the shipowner, and it might be possible for the Region to withdraw this claim submission shortly. Soon thereafter, however, the Coast Guard informed the Administrator that its efforts to obtain payment from the vessel owner were proving to be unsuccessful, and that it was unlikely to receive payment of its invoice. On May 20, 2014, the Administrator completed the investigation and assessment of the claim and found the amount of \$13,390.05 to be established. (A calculation error was found in the claim for administrative charges. Therefore, the claim was increased by \$124.49.) An offer was made in the amount of \$13,390.05, plus interest, as full and final settlement pursuant to the *Marine Liability Act*. The offer was accepted. On June 4, 2014, the Administrator directed payment in the amount of \$14,539.76, inclusive of interest.

Shortly after the Administrator's requisition for settlement, Coast Guard advised that the Department of Fisheries and Oceans had received three payments totalling \$5,974.43. The Department had used the Canada Revenue Agency's Refund Set-off (RSO) program to recover money owed concerning the *Connie James* incident. (The RSO program is a Canada Revenue Agency initiative under which tax refunds of debtors are applied against unrecoverable debts due to the Crown.) As a result, the original requisition was cancelled. The total of the RSO payments (\$5,974.43) was then deducted from the original offer of \$13,390.05 leaving a remaining balance due in the amount of \$7,415.62, plus interest. A new requisition was made in the amount of \$8,070.02 for transfer from the Ship-source Oil Pollution Fund to the credit of the Receiver General.

On August 5, 2014, the Administrator sent a letter, by registered mail, to the vessel owner requesting payment of the \$8,070.02 compensation paid to the Canadian Coast Guard. The owner was informed of his responsibility for the costs and expenses incurred by the CCG in respect of the measures taken during the incident. It was explained that pursuant to the *Marine Liability Act* the Administrator is required to recover any amounts paid to the claimant from the owner of the polluting vessel. The owner was requested to respond within 30 days to advise what arrangements would be made to pay the outstanding amount of the claim, failing which further legal action might be taken. The vessel owner did not respond to the demand letter. The Administrator engaged a professional locator service to investigate and identify any possible assets the vessel owner may have for cost recovery action. The background investigation revealed that no significant financial assets were registered in the owner's name in the Province of Newfoundland. After careful consideration, the Administrator decided that all reasonable recovery measures had been taken, and that expenditure of further funds on the matter was not justified. Accordingly, the file was closed in September 23, 2014.

## 2.6 Mistann (2011)

Case number: 120-608

This claim involves the 37-foot fiberglass fishing vessel *Mistann*, which sank at the Yacht Club in Prince Rupert on Friday October 14, 2011. When the CCG received a report that the *Mistann* had sunk with approximately 1200 litres of diesel fuel and a quantity of lube oil onboard, the local Environmental Response personnel attended and deployed a boom and absorbents to the upwelling of oil between individual dock fingers at the marina. The vessel owner was verbally informed of his responsibilities in regard to the sunken vessel by the attending CCG personnel. The owner replied that he did not have sufficient resources or insurance to respond as required. The owner was then advised that CCG would take command of the situation and hire a local contractor, Wainwright Marine Services, to recover the vessel.

Throughout the weekend CCG Environmental Response staff minimized the impact of the marine pollution by maintaining containment boom, replacing soiled absorbent boom and pads and monitoring boating activities during the diver operations. A review of the contractor's invoices indicates that two cranes and a winch equipped bulldozer were on the barge during the salvage operation. It was necessary to utilize two cranes in order to facilitate rigging of two lifting points on the sunken vessel from a depth of 100 feet of water. The Environment Canada weather report confirms that strong gusting winds to 30 knots were present during the recovery; the tidal tables confirm that tidal fluctuations were between 10 and 15 feet creating strong tidal currents. However, by late Monday afternoon the *Mistann* was brought to the surface but remained partially submerged and it was secured to the salvage barge. Shortly after midnight the vessel was refloated and taken to the Wainwright Marine shipyard for further assessment.

On December 9, 2011, CCG sent, by registered mail, a Notice of Intent to the vessel owner informing him of his responsibilities under the *Marine Liability Act*. The Notice advised that unless arrangements were made within 10 days for reimbursement of the Coast Guard costs and expenses, the *Mistann* would be put up for sale. The letter was returned to CCG as undeliverable. Consequently, the *Mistann* was put up for sale in Prince Rupert. The highest bid of \$1,200 was accepted by Coast Guard in January 2012. The CCG claim filed with the Fund was reduced by the equivalent amount of \$1,200.

On April 26, 2012, the Administrator received a claim from Coast Guard made pursuant to the *Marine Liability Act*. The claimed totaled \$113,787.48. The Administrator acknowledged receipt of the claim.

The Administrator commenced an investigation and assessment of the claim. On May 28, 2012, the Administrator instructed counsel to engage a technical marine surveyor to investigate whether all the expenses claimed could reasonably be characterized as pollution prevention, or whether some of them were, in essence, wreck removal. Subsequently, the surveyor reported that, diesel and lubricating oil were emanating from the fishing vessel *Mistann* up until the time it was refloated, consistent with hydrocarbons being displaced from internal machinery spaces and fuel tanks by seawater. The vessel had sunk in a recreational and commercial marina situated approximately 400 metres from a cruise ship dock. Approximately 540 litres of hydrocarbons and oily water were removed from the *Mistann* subsequent to it being refloated. The surveyor concluded that the course of action by the Canadian Coast Guard was reasonable to minimize and remedy oil pollution emanating from the sunken vessel.

In light of the overall assessment, investigation and circumstances surrounding the incident, the Administrator found the amount of \$100,462.51 to be established. Therefore on September 12, 2012, the Administrator made an offer of \$100,462.51, plus interest, as full and final settlement pursuant to the

*Marine Liability Act*. DFO/CCG accepted the offer. On September 27, 2012, the Administrator directed payment of \$103,428.74, inclusive of interest, in accordance with the MLA.

Given the amount of the claim, the Administrator instructed counsel to send a letter, on October 16, 2012, by registered mail, to the registered owner of the fishing vessel *Mistann* requesting payment of the amount paid to the Canadian Coast Guard. The vessel owner was informed that failing satisfactory arrangements being made to pay the outstanding balance owing, the Administrator may proceed with an action in the Federal Court to recover the balance owing. The letter was returned by Canada Post marked “moved/unknown” at that address.

In order to try and locate the registered owner and identify assets that may be available for recovery purposes, the Administrator obtained the services of a professional locator firm. The firm ascertained by a province wide search that the vessel owner does not own any property in the Province of British Columbia. Furthermore, the owner is not a proprietor or partner of any provincial registered sole proprietorships, limited partnership, or general partnership. Nevertheless, on September 20, 2013, a Statement of Claim was served on the vessel owner at Port Edward near Prince Rupert. No Statement of Defence was filed by the defendant by the closing date.

On January 29, 2014, a default judgment against the defendant was issued by the prothonotary of the Federal Court in Vancouver. The Court ordered that the defendant shall pay the Administrator of the Ship-source Oil Pollution Fund the amount of \$103,428.74, plus \$4,199.36 in interest incurred to January 24, 2014. Furthermore, the Defendant shall pay interest thereafter on the sum owing at a rate of \$8.50 per day.

Given the amount of the claim, the Administrator instructed counsel to engage a Prince Rupert based marine surveyor to investigate locally and offer an opinion as to the market value of two vessels apparently still owned by the owner, which are located at the Port Edward Marina. Meanwhile, the file remains open.

## **2.7 Tye Princess & YF-875 (2011)**

*Case number: 120-611 & 120-612*

During investigation of *La Lumiere* incident claim, the Canadian Coast Guard informed the Administrator that two additional vessels, *Tye Princess* and *YF-875*, were moored at Britannia Beach, Howe Sound, British Columbia. The Administrator took the position that the two vessels belong to the Province of British Columbia, since the previous owners, the Maritime Heritage Society of Vancouver, had ceased to exist and the assets of the Society were transferred to the Province. They continued to present a serious threat to cause pollution damage. Given the visual condition of these vessels, the Coast Guard hired McAllister Marine Survey and Design Ltd. to conduct a technical survey of their condition. The Administrator then instructed counsel to engage a surveyor to attend the inspection of the vessels.

On January 31, 2012, McAllister Marine Survey and Design Ltd. concluded that the old vessels pose a significant and ever increasing risk of polluting the marine environment with the fuel oil remaining onboard. Furthermore, it recommended that both vessels should be pumped out as soon as possible, drydocked and scrapped. The Administrator was provided with a copy of the technical report.

On March 30, 2012, the surveyor engaged by the SOPF was advised that the provincial Ministry of Forests, Lands and Natural Resource Operations had hired Hazco (a company specializing in disposal of

pollutants) to remove pollutants from the two vessels. During the following week Coast Guard personnel boarded the vessels to determine whether any hydrocarbons remained onboard. The inspection found that the contractor had removed loose barrels and other containers of used oils, paints and thinners. Also, they had pumped out the engine room bilges of oily water, and the rainwater accumulated in the cargo hold of the *Tyee Princess*. However, the oil had not been removed from machinery sumps, hydraulic systems or fuel tanks of the *Tyee Princess*, or from the bilges and oil filter casing in the engine room of the *YF-875*. Consequently, the overall situation remained unchanged in that oil pollution will occur if either of the vessels sinks.

As a result of its findings, Coast Guard developed a Statement of Work and Request for Proposals to remove the oils from the vessels. Subsequently, cost estimates were obtained. On October 9, 2012, the Coast Guard was informed that the Province did not intend to undertake any further remedial work on the *Tyee Princess* or the *YF-875* at this time.

Throughout, the Administrator encouraged those responsible to take measures to remove the threatened pollution, because response action in the future will undoubtedly be more expensive if the vessels sink at the wharf. On December 2, 2012, counsel enquired with Coast Guard as to whether or not the Federal Government is taking any action to prevent the inevitable pollution that would be caused by the sinking of these vessels. Coast Guard was requested to provide an up-to-date status report in respect of what is being done to remove the remaining hydrocarbons from the vessels to avoid their sinking and polluting Howe Sound.

On February 11, 2014, Coast Guard informed the Administrator that the two vessels had been moved from Britannia Beach to Mission, British Columbia, for deconstruction. Because they were time barred and since no claim has been submitted to the SOPF, on January 21, 2015, the Administrator closed the file.

## **2.8 Vicki Lyne II (2012)**

*Case number: 120-619*

On June 21, 2012, the Canadian Coast Guard (CCG) informed the Administrator about this incident. A concerned citizen had reported that an old steel-hulled fishing vessel, *Vicki Lyne II*, was abandoned in Ladysmith Harbour, British Columbia, and was likely to discharge a pollutant. The CCG conducted an initial assessment and found the vessel in a deteriorated condition with substantial amounts of oil aboard. In consequence, the CCG contracted McAllister Marine Survey & Design Ltd. to have a technical surveyor examine the vessel and offer an opinion as to whether an imminent threat of pollution exists. The Administrator instructed counsel to engage a marine surveyor to represent the Fund, and to arrange with CCG to have the surveyor attend the inspection of the vessel on behalf of the Fund.

On August 31, McAllister Marine Survey and Design Ltd. presented its technical survey report. The surveyor concluded that due to the overall condition of *Vicki Lyne II*, it posed a significant, imminent and ever-increasing threat to the environment. The report recommended that the only certain way of removing the oils aboard contained in piping and machinery was to disassemble and scrap the vessel as soon as possible. The technical surveyor engaged on behalf of the Fund confirmed that McAllister's report accurately reflected the condition of the fishing vessel, and the amount of hydrocarbons onboard. However, the surveyor from the Fund had offered an opinion that the removal and cleaning of hydrocarbons from the *Vicki Lyne II*, rather than demolition would have been the least cost option to minimize the threat of hydrocarbon pollution. CCG has been informed of this independent opinion.

At the end of the last fiscal year, CCG advised that it was working with Public Works and Government Services Canada to develop contract specification for the process of tendering. On July 9, 2013, counsel for the Administrator was informed by Coast Guard that an environmental response employee had attended the vessel in late June, and there was no evidence that the owner had removed any oil, or other pollutants. Therefore, the Coast Guard was assessing available options and would welcome an opportunity to discuss with the Administrator the reasonableness of each option.

On July 30, 2013, counsel replied and reminded Coast Guard of the earlier opinion of the independent technical surveyor appointed by the Administrator – notably, that the removal of the pollutants could be done at a lesser cost than deconstruction of the vessel. The surveyor had also recommended that quotations be obtained for both alternatives. Counsel confirmed to Coast Guard that the Administrator cannot prejudge the measures taken prior to the submission of the claim.

On March 31, 2014, Coast Guard reported in its year end claims status report that the vessel has been identified as a potential hazard and that preventive measures would soon be taken, following which a claim would be submitted to the SOPF. At the end of the current fiscal year, no claim in respect of this incident has been filed with the Fund. Meanwhile this file remains open.

## **2.9 Centurion (2012)**

*Case number: 120-615*

As noted in our previous Annual Reports (2012-2013 and 2013-2014) this incident gave rise to a second claim, namely, a claim from the Eastern Canada Response Corporation (ECRC) in respect of costs and expenses incurred by them at the request of the shipowner to clean up oil being discharged from the *Centurion*. In spite of the fact that this spill appears to fall under the terms of the Bunkers Convention, the ECRC organization submitted its claim to the Administrator on March 5, 2013. Response organizations are not entitled, however, to submit their claims directly to the Administrator. They can only receive compensation out of the SOPF as a last resort if they can demonstrate that they have taken all reasonable steps to recover their costs from the shipowner.

In fact, the response organization only sent its claim to the shipowner on March 30, 2013, at which time the shipowner had already filed for restructuring under the *Companies Creditor Arrangement Act* and the ship had been sold. Moreover, the claim of the response organization was dismissed by the referee appointed by the Court to dispose of the assets of the ship owning company on the grounds that the claim did not enjoy any priority over other creditors of the owner.

From the claims documentation submitted to the Administrator, it became clear that the shipowner at the time of the incident had valid P&I insurance, but that no effort had been made by the response organization to submit the claim directly to the insurers as they were entitled to do under the terms of the previously mentioned Bunkers Convention. As a consequence of discussion between counsel for the Administrator and counsel for the insurers as to what constitutes taking reasonable steps as per paragraph 101(1)(a) of the *Marine Liability Act*, the Administrator concluded that the claim did not meet the criteria in the Act for payment out of the SOPF. The Administrator instructed counsel to inform counsel for the response organization that he declined to assess and pay this claim. Accordingly, on January 15, 2014, the Administrator closed the file.

## **2.10 Golden Dragon I (2012)**

*Case number: 120-626*

On April 10, 2012, the Canadian Coast Guard (CCG) received a report from the Harbour Authority at Prince Rupert, British Columbia, that a fishing vessel, *Golden Dragon I*, secured to the Fairview dock was discharging diesel oil. Along with the local wharfinger, CCG personnel attended the scene. They found a large oil slick encompassing the vessel and extending throughout the dock area. CCG assisted the Harbour Authority in streaming a containment boom and absorbent pads around the vessel. A Transport Canada Marine Safety inspector obtained oil samples. The vessel owner was reported to be out of the country and could not be contacted. Upon inspection of the unmanned vessel, CCG found that the bilge pump was pumping oily waste overboard that had accumulated in the bilges from a leaking fuel line. CCG effected temporary repairs and pumped the bilges of the remaining oily residue. It was estimated that 2,000 litres of diesel oil remained in the fuel tank.

On April 17, the vessel owner was contacted by CCG and was officially informed of his responsibility under the *Marine Liability Act* with respect to the oil pollution incident. Subsequently, the owner removed the remaining fuel and effected repairs.

On January 28, 2013, the Department of Fisheries and Oceans (DFO/CCG) filed a claim with the Administrator for costs and expenses in the amount of \$3,697.35, pursuant to the Act. (CCG submitted the original claim to the vessel owner who paid only the amount of \$1,000.00.)

After investigation and assessment of the claim, the Administrator made a final offer to DFO/CCG for the established amount of \$3,559.53, plus interest. The offer was accepted by DFO/CCG and on March 7, 2013, the Administrator directed payment of \$3,657.56, inclusive of interest, in accordance with the Act.

At the end of last fiscal year, the Administrator instructed counsel to write to the registered owner of the vessel and request that he make the arrangements within 14 days to pay the costs incurred, plus additional interest pursuant to the Act. The owner was informed that failing satisfactory arrangements being made to pay the outstanding balance owing, the Administrator may proceed with an action in Small Claims Court.

On April 26, 2013, the vessel owner verbally agreed to pay the balance owing, but actually failed to do so. As a result, a Notice of Claim was issued and served in the Small Claims Court in Prince Rupert. The owner did not file a Reply to the Notice of Claim. Therefore, on September 27, a default order of the Provincial Court of British Columbia was filed, granting judgment against the vessel for \$3,957.48, plus interest to the date of payment of judgment. On October 7, the owner was informed – by registered mail – that unless satisfactory arrangements were made to pay the judgment by October 31, 2013, the Administrator would take execution proceedings against his assets, including the *Golden Dragon I*. However, on December 10, 2013, the Transportation Safety Board of Canada's daily notification report noted that the crab fishing vessel *Golden Dragon I* sustained a fire while moored in Port Hardy, B.C. The vessel's superstructure burnt to the hull, but no oil pollution occurred.

On January 15, 2014, the lawyer for the vessel owner confirmed that he holds a sum of money in trust for his client pending a trial date on other matters, which was set for April 2014 in Prince Rupert. Counsel was, therefore, instructed to monitor the unfolding litigation and keep the Administrator informed. On January 14, 2015, counsel reported that the owner's lawyer advised that the judgement would be handed down shortly. Once judgement is handed down, it may be possible to ascertain whether there will be funds available to pay the Ship-source Oil Pollution Fund. On March 30, counsel advised that in light of

the legal proceedings it would appear there will not be any funds to pay the Administrator's judgement. The Administrator concluded, therefore, that all reasonable steps were taken to recover the amount paid by the Fund. Accordingly, on March 30, 2015, the Administrator closed the file.

## **2.11 Portofino 46 (2012)**

*Case number: 120-656*

On September 3, 2012, the 46-foot sports cruiser, *Portofino 46*, sank at its berth in Port Dalhousie, Ontario. After sinking, the vessel continued to leak hydrocarbons, such as diesel fuel and lubricating oil. Later the owner of the vessel confirmed that there were two 200 gallon fuel tanks onboard containing an estimated 75 gallons of fuel, plus engine lubricants. A rainbow coloured oil sheen was reported drifting towards Lake Ontario. During the afternoon the oil slick dissipated. The Canadian Coast Guard determined that their presence during the response measures, as either on-scene commander or federal monitoring officer, was not required and, therefore, Coast Guard did not attend on-site. Since the vessel owner was both unwilling and unable to take appropriate actions to remedy the pollution threat, the City of St. Catharines took responsibility to determine and carry out appropriate response measures. The City arranged for the Harbour Master and the Fire and Emergency Management Services to take charge of the response.

Initially the Niagara Regional Police Marine Unit took control of the scene, because at the beginning the site of the sinking was considered to be a crime scene; however, in the afternoon it was no longer considered a crime scene.

On September 4, the Niagara Regional Police attempted to refloat the vessel using lift bags. The plan was to float the vessel and move it to the Yacht Club, then lift it from the water. However, problems were encountered with the lift bags, so the police divers withdrew from the incident. The next day the fire department contracted a local company, Quantum Emergency Response, to stream a chemical containment boom around the wreck in order to control any chemical spill being released from the sunken vessel.

On September 7, the *Portofino 46* was removed from the water using the contracted services of a five-man commercial dive crew using surface – supplied diving equipment. The diving company, ASI Group, was assisted by two other commercial companies: Modern Crane and Andrews Trucking Ltd., who respectively provided the lift capacity and transport for the recovered vessel to a storage area.

On November 2, 2012, the Administrator received a letter of notification from counsel for the City of St. Catharines that legal action had been taken to arrest the *Portofino 46* in order to recover its incurred costs and expenses. The letter indicated that later a claim in the estimated amount of \$40,000.00 may be filed with the Fund. The Administrator acknowledged receipt of the notice of claim. At this point, the Administrator retained counsel to maintain a watching brief on the legal proceedings. On November 7, the Administrator received from counsel for the City a Statement of Claim served upon the Fund, pursuant to the Federal Court Rules. Counsel also indicated that the City was trying to reach a settlement with the owner of the *Portofino 46*. In addition, the City was preparing to submit a claim to the SOPF to seek a top-up, or payment in advance, of any settlement agreement negotiated with the vessel owner.

On July 31, 2013, counsel informed the City of St. Catharines that in the event it files a claim, the Administrator would have to be satisfied that the claim relates to costs and expenses for oil pollution abatement measures and not for wreck removal charges.

On May 8, 2014, the Administrator received a claim from counsel for the City of St. Catharines in the amount of \$37,574.59 in connection with the *Portofino 46* incident in Port Dalhousie Harbour. The following day the Administrator acknowledged receipt of the claim documentation.

During the preliminary assessment and investigation, the Administrator found that there was insufficient information to determine whether the costs and expenses were, in fact, incurred in respect of pollution prevention, or whether they were properly related to wreck removal. For example, missing from the documentation was a clear and concise narrative setting out what exactly happened, and what measures were taken and why. The Administrator was unable to distinguish between oil pollution prevention measures that may be compensable, as opposed to simple wreck removal measures that are not necessarily compensable out of the SOPF. This issue raised the question whether all the measures taken were reasonable and whether the costs and expenses incurred were reasonable.

As a result, the Administrator found it necessary to conduct an extensive investigation into the incident claim. For clarification the Administrator instructed a marine consultant from the office of the SOPF to visit St. Catharines and speak with authorities in charge of the pollution occurrence. On June 4, 2014, the consultant met with several officials to discuss the specific roles of the different responders, including the Fire Department, the Marina Manager, the Niagara Regional Police, the police diving team as well as the contractors identified in the claim documentation. On August 8, the Administrator received a letter from counsel for the City of St. Catharines. It provided further information on the claim as was requested during the meeting with the consultant from the Fund.

On September 14, counsel for the Administrator advised that through Court action the City had received payment from the vessel owner in the amount of \$16,666.67.

On October 9, 2014, the Administrator wrote to the City Solicitor and informed her that the investigation and assessment of the claim was completed. The Administrator advised that, after consideration of the facts and the law, he would reduce the claim, since some of the costs submitted were not directly associated with pollution prevention, but were more related to wreck removal and the preparation of the claim submission. Therefore, they were not reasonable costs and expenses for compensation from the Fund. Taking these reductions into account the Administrator found that the amount of \$27,494.34 to be established. On the basis of his findings, the Administrator made an offer in the amount of \$10,827.67, plus interest, as full and final settlement of any and all claims of the City of St. Catharines arising out of or in connection with the incident. This amount of \$10,827.67 takes into account the established amount of \$27,494.34 minus the \$16,666.67 settlement reached between the owner of the vessel and the City. The offer was accepted, and the appropriate Release and Subrogation Agreement was executed on behalf of the City of St. Catharines on November 19, 2014. On November 27 a cheque in the amount of \$11,560.40 was mailed to the City Solicitor as final settlement.

After consultation with counsel, the Administrator concluded that recovery action could not be executed against the owner of the *Portofino 46*, because of the Court agreement previously reached between the City and the vessel owner. Accordingly, on December 2, 2014, the Administrator closed the file.

## 2.12 Tundra (2012)

Case number: 120-636

On November 28, 2012, the Cyprus - registered bulk carrier, *Tundra*, grounded in the St. Lawrence River system near Sorel, Quebec. The vessel was en route to Halifax from Montreal with a cargo of approximately 20,000 tonnes of soya beans. The *Tundra* was carrying 599 tonnes of bunker fuel, plus an estimated 50 tonnes of diesel and lube oil products. The ship's Master informed the owners about the situation. He confirmed that there was no oil pollution, and that arrangements were in-hand to refloat the vessel. The owner engaged the Eastern Canada Response Corporation (ECRC) to prepare a plan for refloating the grounded vessel. Transport Canada Marine Safety inspectors proceeded to the scene and assisted with developing a salvage plan. On December 5, the *Tundra* was successfully refloated and the risk of oil pollution was prevented. From the beginning, the Canadian Coast Guard assumed the role of "Federal Monitoring Officer". However, Coast Guard personnel were not required on-site during ECRC's response to the incident. The Coast Guard personnel were able to utilize a video camera from the Lac St. Pierre area to monitor the ECRC's operations. Furthermore, Coast Guard maintained regular communications with Transport Canada Marine Safety inspectors who were onboard the *Tundra*.

On August 2, 2013, the Department of Fisheries and Oceans (DFO/CCG) filed a claim with the Administrator for costs and expenses in the amount of \$10,738.01, pursuant to the *Marine Liability Act* (MLA).

On January 8, 2014, after investigation and assessment of the claim, the Administrator concluded that the total amount claimed was not established and made a final offer to DFO/CCG for the partially established amount of \$3,119.50, plus interest, as full and final settlement pursuant to the *Marine Liability Act*. DFO/CCG accepted the offer. On February 4, the Administrator directed payment of \$3,240.15, inclusive of interest, in accordance with the MLA.

On February 27, 2014, the Administrator mailed a letter to the shipowner's insurance agent in Jersey City, United States, requesting payment of the compensation paid to the Canadian Coast Guard. The insurance agent was informed of the shipowner's responsibility, under the terms of the *Canada Shipping Act*, the *Marine Liability Act* and the 2001 Bunkers Convention, for expenses incurred by the Canadian Coast Guard during its response to the incident. A copy of the letter was also sent to the registered shipowner in Athens, Greece.

On May 7, 2014, a representative of the Shipowner Assurance Management Limited acting in the capacity as commercial correspondent to the owners of the bulk carrier *Tundra*'s protection and indemnity underwriters, the UK Club, informed the Administrator that the Club would pay the requested compensation subject to an appropriate Receipt, Release and Discharge. The claim release was executed on May 27 and a cheque in the amount of \$3,240.15 made payable to the Receiver General for Canada was received on June 11 and credited to the Ship-source Oil Pollution Fund. Accordingly, on June 17, 2014, the Administrator closed the file.

### **2.13 Nova Star I (2012)**

*Case number: 120-648*

On June 19, 2012, the fishing vessel *Nova Star I* ran aground on a rock, in thick fog and rain, while proceeding to the wharf in Cooks Harbour on the Northern Peninsula of Newfoundland. The fuel oil on-board the vessel was off loaded into 45 gallon drums so that it could be towed from the grounded position. However, a storm arose and the fishing vessel was destroyed. The Canadian Coast Guard (CCG) deployed two Environmental Response specialists to the site in order to assess the incident.

On March 7, 2014, the Department of Fisheries and Oceans (DFO/CCG) filed a claim with the Administrator for costs and expenses in the amount of \$6,523.50, pursuant to the *Marine Liability Act*. In the letter of acknowledgement, on March 12, the Administrator requested additional support documentation to allow for a proper assessment of the claim.

The Administrator completed the assessment and found the full amount of the \$6,523.50 claim to be established. Therefore, on April 29 the Administrator made an offer to DFO/CCG for the established amount, plus interest, as compensation in full and final settlement, pursuant to the *Marine Liability Act*. The offer was accepted. On May 27, 2014, the Administrator directed payment in the amount of \$6,922.49, inclusive of interest.

Given the actions of the owner to deal with the pollution threat himself, and the total constructive loss of the *Nova Star I*, which was his means of livelihood, and the amount of the claim, the Administrator decided that the cost of further recourse actions would not be reasonable. Accordingly, on June 10, 2014, the Administrator closed the file.

### **2.14 Bertha G (2012)**

*Case number: 120-664*

The response to this incident commenced during the afternoon of November 14, 2012, when the Canadian Coast Guard Environmental Response personnel (CCG ER) received reports that an ex-fishing vessel was aground near Dunsmuir Island in Ladysmith Harbour, Vancouver Island. People in the area reported that there was oil leaking from the vessel as it rested aground and listed to port. The following morning two CCG ER personnel with a pollution response craft and other counter-measures equipment from the Victoria depot proceeded to the site in order to assess the situation. They found the vessel hard aground and flooded. It was discharging black oil onto the surface of the water. At the outset the vessel owner could not be determined, because there was no visible name or registration number. However, Coast Guard was later advised by the engaged salvage master that he believed that the vessel was the *Bertha G*, which had been acquired by a local person who had no means to respond to the discharge of pollutants. In research, it was found that the Transport Canada Vessel Registration Query System indicates that the old 80-foot fishing vessel *Bertha G*, originally registered in Prince Rupert, has been suspended from the vessel listing.

Coast Guard's Regional Superintendent of Environmental Response decided to remove the vessel from the grounded position so as to prevent and minimize further oil pollution damage. His decision was based on the inability, under the circumstances, to safely determine the volume of the potential pollutants or to remove the oil from onboard where the vessel lay aground. In addition, citizens from the local Stz'Uminus First Nation territory were expressing concern about polluting the location, which is a

traditional shellfish harvesting area. As a consequence, CCG ER engaged Public Works and Government Services Canada (PWGSC) to solicit bids for the removal of the vessel from qualified known contractors. Saltair Marine Services Ltd., located at nearby Ladysmith, was awarded the contract.

In order to take advantage of low tide and because of the adverse weather forecast (the documentation notes a forecast of winds of 35-40 knots with strong wave action) the salvage contractor expedited preparations and raised the vessel during the night of November 16. There was a hole in the hull of the wreck, which required pumping throughout the salvage operation. The wreck was towed to the contractor's facility, where Coast Guard engaged a surveyor to assess the vessel's condition. Upon arrival at the shipyard, the surveyor advised that he was unable to conduct a proper survey because the contractor had already removed a portion of the vessel's superstructure to reduce weight and raise the hull out of the water. The surveyor did, however, indicate that the vessel was contaminated with oil throughout and had no value. The vessel was removed from the water at the contractor's facility and placed onto a concrete containment pad so that, during the process of demolition, the waste oils would be contained in a catch basin. The fuel and oils were drained from the fuel tank and the piping. When the engine was removed, an excavator was utilized to dismantle and sort the debris, waste wood, and recyclable scrap steel.

On October 14, 2014, one month short of the limitation period, the Administrator received a claim from Coast Guard, on behalf of the Department of Fisheries and Oceans, for costs and expenses in the amount of \$63,789.60, pursuant to the *Marine Liability Act*.

The Administrator commenced an investigation and assessment of the claim documentation. The findings ascertained that there is adequate documentation and photographs to show that the old vessel was aground causing oil pollution. It was discharging and would have very likely continued to discharge oil pollutants as it lay partially submerged near Dunsmuir Island. The filed documentation clearly substantiated that the measures taken by the contractor were in accordance with the PWGSC contract, which contains a "Statement of Work" for the oil containment, clean-up, demolition of the vessel. The vessel was totally deconstructed to remove the pollutants as a final measure to prevent any more discharge of oil into the marine environment. The chronology of the claim material notes that the ownership of the vessel remains unclear. It is reported that the last person to have care of the *Bertha G*, is a destitute senior citizen who lives aboard another decrepit derelict vessel. The Coast Guard indicates that it has not taken any further effort to recover costs from that individual.

The Administrator instructed counsel to engage a marine technical surveyor to review the Fund's preliminary assessment. On January 23, 2015, the technical surveyor reported that if the salvage measures had not been undertaken before the storm occurred there was a high probability that the *Bertha G* would have shifted into deeper waters and broken up.

On January 29, the Administrator informed the Coast Guard that the investigation and assessment of the claim was completed. The full amount was found to be established. Therefore, on the basis of the findings, the offer was for the amount of \$63,789.60, plus interest, as full and final settlement, pursuant to the *Marine Liability Act*. The Administrator also explained that the offer was made conditional on his receiving with Coast Guard's notification of acceptance of the offer the return of the release and subrogation agreement duly executed.

On March 27, 2015, a letter of acceptance of the offer was received from the Coast Guard, but the letter of acceptance did not include the executed release and subrogation which was attached to the Administrator's offer. On March 30, the Administrator informed the Coast Guard that he will not proceed with requisitioning payment of this claim until the issue of release and subrogation agreement has been resolved. Meanwhile the file remains open.

## **2.15 Pine Isle (2013)**

*Case number: 120-628*

On January 1, 2013, the Canadian Coast Guard (CCG) received a report that the ex-fishing vessel *Pine Isle* sank at anchor in Silva Bay near Vancouver Island, and was discharging oil pollutants into the marine environment. The next day CCG environmental response personnel from Victoria attended the scene. The vessel was found partially afloat with a mixture of diesel fuel and lube oil upwelling to the surface. When disturbed by the wake of passing vessels a significant amount of fuel and small particles of lube oil spread upon the surface of the water. Therefore an absorbent containment boom was streamed by a contractor to minimize further pollution damage. When contacted, the owner confirmed he had abandoned the old vessel and was living in social assistance housing in Vancouver. He had no financial means to respond to the incident.

The Canadian Coast Guard engaged Public Works and Government Services Canada to solicit bids for a contractor to remove the *Pine Isle*. A contract was awarded to Saltair Marine Services Ltd. from nearby Ladysmith to refloat and remove the sunken derelict. The contractor deployed a tug, *Ocean Iris*, and a barge loaded with oil pollution containment and clean-up equipment including a 45-tonne crane. The contractor proceeded to the site of the incident. On January 4, the sunken vessel was raised and towed to Saltair's facility in Ladysmith, where it was hauled out of the water on the marine slipway for survey and assessment. Throughout the salvage two CCG environmental response personnel monitored the contractor's operation to ensure an appropriate response to any further discharge of oil. An independent technical marine surveyor was hired by CCG to determine the condition and provide an evaluation of the 40-foot wooden hull vessel. The surveyor found there was oil contamination throughout the entire structure. He offered an opinion that there was no salvage value remaining in the vessel. Subsequently, CCG instructed Saltair Marine Services Ltd. to remove all the hydrocarbons and deconstruct the *Pine Isle*.

On April 23, 2014, the Canadian Coast Guard, on behalf of the Department of Fisheries and Oceans, filed a claim with the Administrator for costs and expenses incurred in the amount of \$20,672.23, pursuant to the *Marine Liability Act*. Receipt of the claim was acknowledged on the day it was received. (Because the sunken vessel was a hazard to navigation, the Coast Guard contacted Transport Canada's Navigable Waters group and was successful in obtaining the amount of \$8,900.00 toward removal of the sunken vessel. As a result, Coast Guard was able to reduce the overall claim by the contributed amount.)

After investigation and assessment of the claim the Administrator made a final offer on June 26, 2014, to DFO/CCG for the established amount of \$20,336.73, plus interest, as full and final settlement pursuant to the *Marine Liability Act*. The offer was accepted and on July 9 the Administrator directed payment in the amount of \$21,325.71, inclusive of interest.

In order to try to identify assets that may be available for recovery purposes, the Administrator obtained the services of a professional locator firm. It was confirmed that the owner is an elderly person currently

living in a subsidized senior citizen's accommodation without financial means to pay the costs incurred. At this point, the Administrator decided that it would not be reasonable to pursue further attempts for cost recovery. Accordingly, on August 5, 2014, the file was closed.

## **2.16 Mikon (2013)**

*Case number: 120-629*

This claim involves a 37-foot wooden hull ex-fishing vessel, *Mikon*, that sank at its moorings and caused oil pollution in Port Browning, Pender Island, British Columbia. The Canadian Coast Guard (CCG) received a report of the incident on March 2, 2013, and deployed a crew from the Ganges lifeboat station to investigate. They found both diesel and hydraulic oils being discharged from the sunken wreck. The lifeboat crew requested the owner to advise before noon on March 3 what his plans, if any, were to take appropriate measures for control of the situation. The owner acknowledged that he did not have the financial means to raise the wreck and prevent further pollution.

On March 7, 2013, the Canadian Coast Guard engaged Public Works and Government Services Canada to solicit bids for a contractor to remove the *Mikon*. A contract was awarded to Saltair Marine Services Ltd., to refloat and stream a containment boom and sorbent material, which was supplied by the Pender Island Fire Department, as a measure to minimize the oil pollution damage caused by the upwelling of oil. The volume of diesel and other oils onboard the wreck was unknown. On March 13, the contractor deployed a tug and barge loaded with oil pollution containment and clean-up equipment, including a 45-tonne crane. Lifting lines were secured to the bow and stern and the vessel was lifted to the surface. When stabilized it was towed to the Saltair Marine facility in Ladysmith Harbour, where it was placed onto a concrete containment pad with a catch basin for any seeping oils.

An independent technical marine surveyor from the firm of Coastal Marine Surveys was hired by CCG to determine the condition and provide an evaluation of the wooden hull vessel. The surveyor reported that there was oil contamination throughout the interior which damaged all mechanical systems that were emerged under sea water. The planking at the stem had separated leaving openings in the hull. The rest of the vessel had strained with broken planking. In short, the wreck had no salvage value. Photographs were submitted with the surveyor's findings. As a result, by March 20, the vessel was deconstructed and all the debris and oil was cleaned up for disposal.

On December 16, 2014, the Administrator received a claim from Coast Guard, on behalf of the Department of Fisheries and Ocean, for costs and expenses in the amount of \$41,451.84, pursuant to the *Marine Liability Act*.

The Administrator commenced an investigation and assessment of the claim documentation. The investigation confirmed that at the time of the incident Coast Guard personnel became aware there was no insurance coverage for the vessel. Further, the legal ownership of the vessel was in question and that the possible owners had said they lacked the resources to respond. Therefore, CCG took the necessary measures to address the pollution threat in a timely manner. Upon completion of the investigation and assessment of this claim the Administrator found the amount of \$40,351.84 to be established. The contract charge of \$1,100.00 for additional insurance coverage incurred by the engaged salvage company was not accepted.

On March 25, 2015, an offer was made to DFO/CCG for the amount of \$40,351.84, plus interest, as full and final settlement pursuant to the *Marine Liability Act*. The offer was made conditional on the

Administrator receiving with Coast Guard's notification of acceptance of the offer the return of the enclosed release and subrogation agreement duly executed. Meanwhile, the file remains open.

## **2.17 Mystery Spill, Victoria, British Columbia (2013)**

*Case number: 120-630*

On March 12, 2013, the Canadian Coast Guard (CCG) informed the Administrator that it was responding to an oil spill in Victoria, British Columbia. There was a slick of black oily substance – with no source determined – between the ship *Wave Venture* and the Ogden Point jetty. The CCG Environmental Response personnel contained the waste oil and recovered it with absorbent material. The thick black substance adhered to the *Wave Venture* and the jetty, both of which would require cleaning. A Transport Canada Marine Safety Inspector investigated the incident and took oil samples in an attempt to determine the source.

At the end of the fiscal year no claim has been filed with respect to this report. Therefore, since the statutory prescription period for making a direct claim to the Ship-source Oil Pollution Fund has expired, on March 31, 2015, the Administrator closed the file.

## **2.18 Navi Wind (2013)**

*Case number: 120-643*

On December 4, 2013, the Joint Rescue Co-ordination Centre in Halifax was alerted that the cargo ship *Navi Wind* was disabled in heavy seas in the outer traffic lanes of Placentia Bay, Newfoundland. The ship had earlier taken onboard 50 tonnes of water from down flooding, but the ingress of sea water was reported to be under control. Because of the ship's steering gear and other main engine problems, Coast Guard arranged for tugs from the Newfoundland Trans-Shipment terminal at Whiffen Head to proceed and tow the ship into Argentia, Newfoundland. A local Harbour Pilot was able to board the disabled ship, but sea state conditions were initially too severe to connect a tow line for the towing operation. It was determined that there was some 40 tonnes of oily contaminated water in the engine room along with approximately 200 tonnes of bunker oil onboard. The 4,281-tonne ship had a cargo of scrap metal. There was a real risk that it would drift ashore.

Transport Canada and the Coast Guard had no confidence in the ability of the owners of the *Navi Wind* to repair the engines in a timely fashion, given the forecasted wind and sea state conditions. As a result, Coast Guard deployed its ship *Hudson* and a helicopter to monitor and assist the salvage operation. When the sea state moderated, the tug was able to connect and tow the ship into Port. With the assistance of Coast Guard crew members and CCG supplied mooring lines, the ship was secured alongside in Argentia.

When informed about the ongoing incident, the Administrator instructed counsel to maintain a watching brief and ascertain the ship's ownership and other general particulars, including whether or not there was a Bunkers Convention Certificate onboard.

The Transport Canada Marine Safety office confirmed that it had detained the Panama-registered *Navi Wind* in Argentia, Newfoundland. The Administrator was later informed that the *Navi Wind* sailed for Europe in early March 2014. Moreover the Canadian Coast Guard confirmed that the SOPF would not be receiving a claim with respect to measures taken in response to the incident. Both Transport

Canada and the Coast Guard had settled everything directly with the shipowners. Accordingly, on the recommendation of counsel, the Administrator closed the file effective April 10, 2014.

## **2.19 Katryn Spirit (2013)**

*Case number: 120-642*

On September 19, 2013, the Canadian Coast Guard (CCG) informed the Administrator about a potential oil pollution incident near Beauharnois in the St. Lawrence River. In 2011 a ship, *Katryn Spirit*, which was owned by a Mexican company went aground in the Beauharnois area of Lac St. Louis. In 2012, a private contractor attempted to tow the ship off the shoal, but was not successful. During the winter of 2012 further damage occurred and the ship has listed considerably.

In its report, CCG noted that when the ship ran aground there were approximately 100 tonnes of bunker fuel oil onboard, which could become a pollution threat in Lac St. Louis. Transport Canada Marine Safety is in contact with the owner of the ship and has informed CCG that by mid-September 2013, only 30 tonnes of oil has been pumped out of the grounded ship. As of the end of the current fiscal year, no claim has been filed with the SOPF. Therefore, the file remains open.

## **2.20 Bromada (2013)**

*Case number: 120-641*

On September 19, 2013, the Canadian Coast Guard (CCG) received a report that an old fishing vessel *Bromada* sank in Ladysmith Harbour, British Columbia, and was discharging oil. CCG Environmental Response personnel from Victoria were deployed to assess the occurrence. Upon arrival, the abandoned derelict was found to be submerged all but for the mast and rigging. Oil was upwelling to the surface forming an oil sheen (likely a mixture of diesel fuel, lube oils, and hydraulic fluid).

Information gathered from residents of neighbouring vessels indicated that the alleged owner had not been seen for several months. Coast Guard was also informed that the ex-fishing vessel had changed ownership several times prior to ending up in Ladysmith's "Dogpatch". No documentary evidence of these transactions were available. (Locals have named the cluster of decrepit derelict vessels currently in Ladysmith Harbour the "Dogpatch".) Coast Guard's further research of the Transport Canada ship registration system determined that the 50-foot wooden hull vessel, built in 1926, was removed from the ship's register years ago.

Coast Guard's Regional Superintendent of Environmental Response decided to remove the vessel from its sunken position to prevent and minimize further pollution damage. Public Works and Government Services Canada was engaged to solicit bids from qualified contractors. Saltair Marine Services Limited was awarded the contract. On September 21, the wreck was raised; placed onboard a barge and towed to the contractor's facility.

Coast Guard hired an independent marine surveyor to inspect the *Bromada* and provide a monetary value assessment. The technical surveyor concluded that the vessel had no value, as the planking was loose and caulking had fallen out of the seams. The machinery also had no value because it had been submerged under sea water for sometime. Moreover, the cost of removing any other equipment would exceed its scrap value. As a consequence, CCG instructed Saltair Marine Services to remove all the hydrocarbons then deconstruct and dispose of the *Bromada*.

On February 4, 2015, the Administrator received a claim from Coast Guard, on behalf of the Department of Fisheries and Oceans, for costs and expenses in the amount of \$34,586.25, pursuant to the *Marine Liability Act*.

The Administrator commenced an investigation and assessment of the claim. Meanwhile, the file remains open.

## **2.21 Pacific Challenge (2013)**

*Case number: 120-635*

On June 27, 2013, the Canadian Coast Guard informed the Administrator that the ex-tug *Pacific Challenge* was in danger of sinking at its anchorage off Pender Harbour, British Columbia. The owner reported that hull deterioration was the cause for the slow ingress of water, but that he was unable to respond to the incident.

The Coast Guard Environmental Response personnel investigated and found that the derelict vessel contained approximately 25,000 litres of a mixture of diesel oil and sea water in its fuel tanks. There was also some 400 litres of hydraulic oil onboard, and a quantity of oily waste in the bilges. The tug owner was unable or unwilling to respond appropriately. Therefore, at the time of the report, the Coast Guard was in the process of trying to ensure that in the event the tug sank there would be no oil pollution damage to the marine environment. As of the end of the fiscal year, no claim has been filed with the Fund; meanwhile, the file remains open.

## **2.22 Lakeview Venture (2013)**

*Case number: 120-661*

During the night of September 3, 2013, the Canadian Coast Guard (CCG) in St. John's, Newfoundland, received a report from the RCMP that fishing vessel, *Lakeview Venture*, had caught fire at the wharf in Cobb's Arm, Notre Dame Bay. The fire had been extinguished, but the 40-foot vessel was in danger of sinking and releasing diesel fuel and hydraulic oils. When contacted by telephone the next morning, the owner advised that he would continue to monitor the situation until CCG Emergency Response personnel arrived.

On September 4, two CCG personnel departed St. John's and proceeded to the scene – a highway distance of approximately 450 kilometres – to monitor the owner's measures to remove the 300 litres of diesel oil contained in the fuel tanks. The trailer that the Coast Guard towed to the location contained tools and equipment that would expedite the response should any special requirements arise. Upon arrival, the owner was on-site, but lacked any effective response capability. He had, however, contacted his insurance representative who arranged for a vacuum truck the following day to remove the fuel and oily bilge water. In the meantime, CCG personnel assisted in stabilizing the vessel and prevented it from sinking. They pumped water from the engine room and deployed a sorbent boom to contain the oil sheen that resulted from the pumping operation. On September 5, the contracted vacuum truck arrived and pumped the fuel and oily water from the wreck. Once the pollution was removed CCG employees inspected the vessel and terminated their direct operational and monitoring role. The personnel returned to St. John's on September 6 and reported that there was no further risk of pollution.

On July 3, 2014, the Department of Fisheries and Oceans (DFO/CCG) filed a claim with the Administrator for the costs and expenses in the amount of \$6,517.48, pursuant to the *Marine Liability Act*.

After investigation and assessment of the claim, the Administrator made a final offer to DFO/CCG for the established amount of \$6,296.78, plus interest, as full and final settlement pursuant to the Act. The offer was accepted. On November 13, 2014, the Administrator directed payment in the amount of \$6,541.92, inclusive of interest.

On December 10, 2014, the Administrator wrote to the owner of the *Lakeview Venture* by registered mail requesting payment of the compensation paid to the Canadian Coast Guard with respect to the measures taken in response to the incident. Canada Post confirms that the registered letter was delivered to the vessel owner on December 30, 2014. The owner was informed about his responsibilities pursuant to the *Marine Liability Act*. He was requested to respond within 30 days and advise what arrangements would be made to pay the sum of \$6,541.92, failing which may result in legal actions. The owner was also informed that the Administrator is aware that his insurance company had sent him payment in full for his claim for the loss of the vessel, including the costs claimed by the Coast Guard. Follow-up enquiries were unsuccessful. Meanwhile, the file remains open.

### **2.23 Mystery Spill – Baie St-François, QC (2013)**

*Case number: 120-650*

On November 16, 2013, a local citizen reported an oil spill at the Valleyfield Marina. The Salaberry-de-Valleyfield fire department responded and took immediate measures by deploying containment booms to prevent the oil from drifting into the old seaway channel towards the City's water supply intake. Two patrol boats were used in order to determine the extent of the oil slick and ascertain the probable source of the spill. The source could not be determined. Also, there was no evidence of a land-based spill that might have been the source.

The Canadian Coast Guard was notified about the oil spill in the marina shortly after the occurrence and concluded that the oil spill was not from a marine source. Coast Guard informed the Valleyfield officials that it would not attend the scene, nor act as the office of the prime interest, due to the small amount of pollution involved.

A representative of the Quebec Ministry of Sustainable Development, Environment, Wildlife and Parks (MDDEP) attended the scene. He instructed that the oil on the water be recovered and that any polluted shoreline be cleaned. The main reason given for the clean-up action was the close proximity of the oil to the input pipe of the municipal filtration plant, which is the source of the City's fresh water. There was a concern that the potable water supply could be impacted. The City of Salaberry took responsibility for and managed the operations of oil recovery and the contaminated shoreline clean-up. The firm of Environment North Shore was contracted to do the work. There were differences of opinion regarding the scope of the spill. The Canadian Coast Guard by using its computer program "SpillView" estimated the size of the oil spill to be 118 litres. The citizen who reported the spill had estimated the size to be 1125 litres, but he did not provide any basis for that estimate. The action plan submitted by Environment North Shore was endorsed by the representatives of MDDEP and the City of Salaberry-de-Valleyfield.

On March 24, 2014, the City of Salaberry-de-Valleyfield filed a claim with the Ship-source Oil Pollution Fund in the amount of \$104,150.88 for costs and expenses incurred in its response to the oil spill at the Valleyfield Marina.

The Administrator commenced an investigation of the claim. On March 27, he retained a marine consultant from Quebec to assist with the assessment and investigation of the circumstances surrounding the incident. During the investigation the consultant held discussions with representatives of the City's legal department, the fire department, the service contractor, and the Coast Guard environmental response personnel. As a consequence of the overall findings, the Administrator concluded that the clean-up measures adopted and the resulting costs and expenditures were not proportionate to the threat of oil pollution. This conclusion was based on the difference of opinion as to the probable quantities of oil in the water. Given the expertise of the Coast Guard in modelling a spill size, the Administrator accepted the smaller quantity. The visible signs of the oil observed and reported on scene are consistent with the smaller spill size. Therefore, the Administrator concluded that the work undertaken by the contractor – that is, large scale pumping and surface skimming, was in excess of the requirements for a small spill of 118 litres.

In view of the fact that subsequent investigation did not reveal a land-based source, and on the evidence submitted, the Administrator was not satisfied that the occurrence resulting in the spill of oil in the marina was not caused by a ship. Accordingly, the Administrator found that the claim was properly filed with the Fund.

As a result of his investigation, the Administrator found the amount of \$45,000.00 to be established. On October 1, 2014, pursuant to the *Marine Liability Act*, he made an offer in the amount of \$45,000.00, inclusive of interest, as compensation in full and final settlement. The offer was accepted by the City of Salaberry-de-Valleyfield on October 30. The appropriate Release and Subrogation Agreement was duly executed and on November 25, 2014, a cheque in the amount of \$45,000.00 was mailed to the City Authority. The Administrator had accepted the incident as a mystery spill; therefore, no recourse action was available. Accordingly, on December 2, 2014, the Administrator closed the file.

## **2.24 Maple Lea (2013)**

*Case number: 120-671*

On February 17, 2013, the general cargo vessel *Maple Lea*, registered in Antigua and Barbuda sustained mechanical problems and was adrift off the coast of Cape Breton. The vessel was threatening to drift aground and possibly discharge oil pollutants into the marine environment. The Coast Guard responded on February 21, as the vessel was undertow by commercial tugs but then stuck in ice. While conducting ice breaking operations around the *Maple Lea* the icebreaker, the *Louis S. St-Laurent* made contact with the escorted vessel resulting in hull damage to both of them.

On March 2, 2015, the Administrator received a copy of the Statement of Defence in an action in the Federal Court between the Crown – Canadian Coast Guard – and the shipowner in relation to the incident. The Fund has been served by the Department of Justice because there may have been a threat of oil pollution and the Coast Guard felt obliged to intervene.

On March 25, the Administrator instructed counsel to file an appearance with the Court without any admission or prejudice to the rights of the Ship-source Oil Pollution Fund under the *Marine Liability Act*. Meanwhile, the file remains open.

## 2.25 Dominion I (2014)

Case number: 120-613

The Administrator's Annual Report 2012-2013 (sections 2.17 and 2.42) notes that the ex-fish-packing vessel *Dominion I* was involved in two previous incidents. In 2005, the Greater Victoria Harbour Authority filed a claim for oil pollution clean-up costs and expenses. Secondly, in 2011, the Canadian Coast Guard filed a claim in response to an occurrence with the vessel while at anchor in Cowichan Bay, Vancouver Island. The Administrator assessed and settled both these claims.

On March 12, 2012, the *Dominion I* dragged anchor and came in contact with the anchored fishing vessel *Polar Prince* in Cowichan Bay. When the Coast Guard was notified of this new incident they hired tugs to place the vessel alongside the wharf at Cowichan Bay terminals. Throughout the incident the *Dominion I* did not release any pollutants. This incident involved removing the vessel from its anchorage and securing it at the Cowichan Bay docks with the assistance of a tug. On August 9, 2012, Coast Guard confirmed to the Administrator that they had removed 2,400 litres of accessible hydrocarbons from the vessel by way of a vacuum truck, but some 50,000 litres of oily waste remained onboard.

On March 10, 2014, the Administrator received a claim from the Department of Fisheries and Oceans (DFO/CCG) in the amount of \$220,937.25 for costs and expenses for measures taken in anticipation of a discharge of oil in respect of the incident of March 12, 2012.

Initially the Administrator had some concerns whether these costs and expenses really related to a fresh incident or whether they were further costs and expenses arising out of the previous incident in respect of which compensation had already been paid. The Administrator was also concerned about whether, consequently, the claim had been filed within the prescription periods specified by *Marine Liability Act*. On the advice of counsel, he concluded that the claim related to a fresh incident and that the claim, accordingly, had been filed within the prescription period for filing claims mandated by the Act.

On examination of the documentation filed in support of the claim, the Administrator noted that it was not complete and on September 25, 2014, he requested in writing further particulars. In particular he had concerns about justification for the moorage charges, some \$154,074.00, paid to Western Stevedoring for keeping the vessel alongside at Cowichan Bay wharf for over a year. Also, the documentation submitted in support of the claim did not include particulars of a clear plan to deal with the alleged threat of pollution posed by the vessel. There was also a lack of explanation as to why the vessel dragged its anchor and collided with the fishing vessel, *Polar Prince*.

On October 30, 2014, CCG responded to the request for further information. It seems that the moorage of the vessel at the Western Stevedoring wharf for such a long period of time related to lengthy negotiations with Public Works and Government Services Canada to issue a request for proposals to remove the oil and deconstruct the vessel. No serious effort was made to find alternative locations to tie up the vessel that might have been less costly. It also became clear that besides the initial measures to secure the vessel and remove some of the oil, nothing further was done to the vessel.

At the conclusion of his investigation of the documentation filed in support of the claim and taking into account the further explanations provided by CCG, the Administrator concluded that bringing the vessel alongside for an initial period to remove readily accessible hydrocarbons and re-anchor the vessel was a reasonable measure. However, the decision to leave the vessel alongside at the Cowichan Bay wharf at significant cost (\$300.00 per day), without exploring cheaper options and in the absence of any real plan to deal with the supposed threat the vessel posed was not reasonable. The Administrator noted that in the end the shipowner, residing in the United States, towed the vessel out of the jurisdiction, June 22, 2013,

with the approval of Transport Canada and with some 50,000 litres of oily waste remaining on board. At this point it must be assumed that she no longer constituted a threat and since nothing had been done to remove the remaining oily waste on board during most of the time she remained tied up, it is open to conjecture whether she remained a pollution threat once the initial securing of the vessel and removal of accessible hydrocarbons had been completed.

On March 19, 2015, the Administrator informed the Coast Guard that the investigation and assessment of the claim was completed, and on the basis of his finding the amount of \$65,000.00 was found to be established. The amount essentially reflected the initial costs and expenses incurred in the measures taken in response to the actual threat of oil pollution. The Administrator considers that 20 days of moorage alongside at Cowichan Bay would have been a reasonable period for Coast Guard to assess the situation and prepare the vessel for re-anchoring at a cheaper location. For convenience of reference, the Administrator provided Coast Guard with a schedule reflecting the amounts that were allowed, as well as a description of the reductions and disallowed amount of the claim. Accordingly, the offer of \$65,000.00, inclusive of interest, was made as full and final settlement of the claim conditional on receiving the included duly executed release and subrogation agreement.

As of the end of the fiscal year, Coast Guard has not notified the Administrator whether they accept or refuse the offer. Meanwhile the file remains open.

## **2.26 Baltic II (2014)**

*Case number: 120-647*

On January 24, 2014, the Canadian Coast Guard (CCG) received a report from the harbour authority at Deep Bay, British Columbia, that an abandoned wooden fishing vessel was at risk of sinking and discharging oil at its mooring in the harbour. The harbour manager advised that the vessel was not equipped with any bilge pumping arrangement. Upon inspection, CCG personnel found the vessel in a very derelict state. The bilges contained fuel and lubricating oils, and containers of oil were discovered in the fish cargo hold and in the engine space. Sorbent material was used to remove the oil from the bilges. Also, the fuel tanks were drained.

On January 30, a letter was mailed to the registered owner to notify him of the situation and explain his responsibility with respect to preventing a potential oil pollution of the nearby ecological and sensitive aquaculture area. The owner was instructed to describe the specific measures he planned to take to prevent the discharge of oil from his moored vessel. No reply was received from the owner. Therefore, based on the condition of the vessel, the sensitivity of the surrounding area, and the lack of response by the owner, the CCG personnel decided to remove the *Baltic II* and transport it to a facility for disposal.

On February 7, Coast Guard hired a marine surveyor of the firm Blue Seas Yacht Surveys to inspect the *Baltic II* and appraise its value. The technical surveyor found that the vessel was unfit for any service. In its condition with considerable wood contamination it would require a major rebuild. The value, which took into account the scrap value, was estimated at \$2,000.00. After receiving the surveyor's report, CCG decided to have the vessel deconstructed and disposed of at an appropriate facility.

On March 13, 2015, the Administrator received a claim made pursuant to the *Marine Liability Act* in the amount of \$9,712.57 from the Department of Fisheries and Oceans (DFO/CCG) to cover the costs and expenses incurred in response to the incident. On March 13, 2015, the Administrator acknowledged receipt of the claim and commenced an investigation and assessment. Meanwhile, the file remains open.

## 2.27 Porcher G (2014)

Case number: 120-644

On January 13, 2014, the Canadian Coast Guard (CCG) informed the Administrator that the 45-foot wooden hull ex-fishing vessel *Porcher G* sank at the wharf in Campbell River, British Columbia and was discharging oil. Personnel from the Campbell River lifeboat station attended and streamed a containment boom around the sunken vessel. The owner of the vessel was located and informed of his responsibilities and liabilities with respect to taking necessary measures to minimize and prevent further pollution damage. The vessel owner responded that he did not have the means to stop the discharge of oil or recover the wreck. Therefore, the CCG Environmental Response personnel took over management of the response, and arranged for local contractors to raise the sunken vessel.

On January 14, the vessel was raised and placed onboard a barge, which was towed to the Duncan Bay barge terminal just north of Campbell River. Coast Guard hired a local marine surveyor from the firm of Strathcona Marine Surveyors to inspect the *Porcher G* and appraise its value. The technical surveyor advised that the vessel had no real value and was realistically unrepairable. The only possible value seen was in some scrap metal.

On January 15, Coast Guard decided to deconstruct the vessel in order to remove the oil and prevent further pollution. A local excavating contractor, A. Wood Bulldozing Ltd., was engaged to deconstruct the wreck. All oils were drained from the engine. The recyclable metals were segregated from oil-contaminated wood waste, which was disposed of at an appropriate facility.

On March 6, 2015, the Administrator received a claim made pursuant to the *Marine Liability Act* in the amount of \$30,585.25 from the Department of Fisheries and Oceans (DFO/CCG) to cover the costs and expenses incurred in response to the occurrence. On March 10, the Administrator acknowledged receipt of the claim and commenced an investigation and assessment. Meanwhile, the file remains open.

## 2.28 Elf (2014)

Case number: 120-646

The incident occurred on January 14, 2014, when the Canadian Coast Guard (CCG) received a report from the District of Squamish that the *Elf* sank near the government wharf in Squamish Harbour. It was reported that a significant amount of oil was upwelling from the wreck, which had sunk in an environmentally sensitive area. The Canadian Coast Guard Environmental Response (CCG ER) personnel indicates that they were aware of the vessel prior to its sinking, and had dealt with the owners in previous pollution incidents involving vessels they owned.

In light of the well-known environmental sensitivities of the geographical area, the CCG ER personnel from the Richmond depot proceeded to the area with pollution counter-measures equipment. They went to the Squamish Yacht Club, which is directly across the Mamquam Blind Channel from the site of the incident. At the Yacht Club they met with municipal officials, the RCMP, concerned citizens, and an individual who presented himself as the owner of the vessel. Because the person could not provide proof of ownership, Coast Guard requested information directly from Transport Canada Ship Safety, and found that the *Elf* was not registered. Later it was ascertained that the person who was operating the vessel was in fact the owner's representative. The owner's representative was advised about the owner's responsibility to respond, and his liability if he chose not to. He responded, basically, that the owner did not have insurance and that he was unable to contain or clean up the oil spill. The lack of response, combined with CCG previous experiences with the owner's representative, left CCG no choice but

to raise the vessel itself. As a consequence, the CCG ER personnel took immediate steps to contain the spill and upwelling from the sunken vessel. An oil containment boom and sorbent materials were deployed. At the same time, a local oil spill clean-up contractor was hired by the District Authority to boom off an area upstream where there are an endangered species of red-legged frogs.

The initial assessment of the three kilometre long Mamquam Blind Channel showed that 90 per cent of the channel was covered with a rainbow sheen and other dull coloured oil. Environment Canada was contacted by Coast Guard and requested to provide sensitivity mapping as well as a trajectory model for the spill. The Provincial Ministry of Environment advised Coast Guard that it could be used as a resource if needed. During the evening of January 14, Coast Guard convened a meeting at the Yacht Club. It was attended by representatives of the City of Squamish, Squamish First Nation, Provincial Ministry of Environment, RCMP, Environment Canada and the owner's representative. Following the meeting, CCG ER contacted Hydra Marine Services Inc., and arranged for divers to arrive the next morning and try to plug the vents, or at least reduce the amount of upwelling diesel, hydraulic and lubrication oils.

On January 15, Coast Guard continued to clean up oil around the sunken vessel by the use of absorbent pads, containment booms and a small skimmer. An emergency response contractor, Quantum Marine, was hired by Coast Guard to clean up oil that had made its way in and around the marina and docks within the channel. The divers from Hydra Marine were able to slow the leak of fuel oil, but not stop it completely. Given the situation, and the level of environmental risk, Coast Guard engaged a contractor, Vancouver Pile Driving Ltd., to raise the wreck. On January 16, the salvor arrived from Vancouver harbour with a large crane and divers and commenced work. The divers prepared lifting straps around the vessel. The *Elf* was slowly brought to the surface. Pumps were placed onboard and the vessel de-watered as much as possible. It was found that the majority of the fuel and oil had settled in various cavities of the vessel. Coast Guard was unable to quantify the amount of oil remaining onboard. Once the *Elf* came to the surface and was de-watered, Coast Guard hired a marine surveyor from the firm of Reliable Marine Surveyors to inspect the condition and seaworthiness of the vessel. The surveyor reported that there was "significant wood deterioration" to the hull and advised that the vessel should be raised so the hull below the waterline could be inspected. There remained a risk that it could sink again; therefore, CCG decided to remove the vessel from the marina to control oil leaking in the environmentally sensitive area. Arrangements were made to have the vessel towed from Squamish to English Bay and then transferred to another tug to tow it up the Fraser River to Shelter Island Marine, where it would be hauled out of the water.

When Coast Guard first responded, the Administrator was advised that the costs associated with pollution abatement resulting from the sinking of the wooden tug could be significant. The Administrator, therefore, instructed counsel to engage a marine technical surveyor to attend the scene of the incident during salvage of the sunken vessel. The surveyor spoke to the representative and boarded the *Elf* when it was refloated. He also had discussions with the CCG environmental response personnel about the measures planned for the recovery. Coast Guard invited the surveyor to attend operational meetings at the Squamish Yacht Club. As a result, the surveyor was able later to advise the Administrator that the measures taken by the contractors during the re-floating operations, and preparing the *Elf* for tow to the Fraser River for storage, were sufficient to eliminate the threat of further oil pollution, other than light unrecoverable sheening.

Finally, on January 17, the *Elf* was handed over from one tug company to a second company, Valley Towing. Shortly after the transfer the *Elf* started to sink. This second sinking occurred within only

one minute. On the day of the second sinking the Coast Guard responders returned to Squamish and continued with containment and recovery of oil pollution that lingered throughout the Mamquam Blind Channel. On January 20, Coast Guard recovered its containment boom and departed the area. The *Elf*, a 74-foot wooden hull tug built in 1902, is presently resting in approximately 120 metres of water one mile off Point Atkinson.

On August 12, 2014, the Administrator received a claim from Coast Guard, on behalf of the Department of Fisheries and Oceans, for costs and expenses in the amount of \$82,512.70, pursuant to the *Marine Liability Act*.

The Administrator commenced an investigation and assessment of the claim. In general, the Administrator found that the presentation and the support documentation of this claim, as compiled by the officials in the Pacific Region, was impressive. The manner in which the claim was submitted facilitated making a full assessment and offering recommendations for settlement and payment of the established amount. When asked for clarification on a few matters, the Regional staff replied with the requested documentation without delay. The claim documentation, along with the photographs, indicated that the *Elf* had discharged, was discharging, and was likely to continue discharging oil as it lay partially submerged at the wharf. There was adequate documentation to substantiate that it was necessary to raise the sunken vessel and remove it from the marina to prevent further oil pollution throughout the area. There is clear evidence that the invoices CCG received from the contractors have been paid.

After investigation and assessment of the claim the Administrator concluded, on the basis of his findings, that the full amount of the claim was established. Therefore, on December 18, 2014, an offer was made to DFO/CCG for the full amount of \$82,512.70, plus interest, as full and final settlement. The Administrator explained that the offer was made conditional on his receiving with Coast Guard's notification of acceptance of the offer, the return of the release and subrogation agreement duly executed.

On February 13, 2015, a letter of acceptance of the offer was received from the Coast Guard, but the letter of acceptance did not include the executed release and subrogation agreement, which was attached to the Administrator's offer. On February 17, the Administrator informed the Coast Guard that the matter has been referred to counsel. Meanwhile, pending resolution of the issues, the file remains open.

## **2.29 Elf (2014)**

*Case number: 120-646*

This claim from the District of Squamish and the above-noted claim (Section 2.28) arose out of the same incident that occurred on January 14, 2014, in the Mamquam Channel, Squamish, British Columbia.

As explained in Section 2.28, the geographical area of the sinking of the old tug boat has significant environmental sensitivities. Throughout the response to the recovery operation the representatives of the First Nation and City of Squamish were directly involved. They provided support to the Canadian Coast Guard by arranging multi-agency meetings in collaboration with the Provincial Ministry of Environment, RCMP, Environment Canada and the tug owner. At the outset, the District of Squamish activated its Emergency Operations Centre to assist in the operations and to liaise with the Squamish First Nation. The counter-measures taken, included checking a series of catch basins and drainage area for the possibility of an oil spill in the drainage system. Upon discovery of oil in the boat harbour the

staff proceeded to close the gates to the estuary and prevent further spread of the pollutants. Particular attention was paid to monitoring the flood gates at Blind Channel where there existed a greater risk of oil contamination.

On November 3, 2014, the Administrator received a claim from the General Manager of Financial Services, District of Squamish, in the amount of \$3,463.67 for costs and expenses incurred during response to the incident. (The claim indicated that the total expenditure for the measures taken was \$6,314.73; however, a claim for the difference was being submitted to the Provincial Emergency Management Agency.)

After investigation and assessment of the claim, on January 20, 2015, the Administrator made a final offer to the District of Squamish for the established amount of \$3,463.67, plus interest, as full and final settlement pursuant to the *Marine Liability Act*. A release and subrogation agreement was duly executed and returned to the Administrator. On February 16, 2015, a cheque in the amount of \$3,579.82, was mailed to the District of Squamish.

On the basis of his findings with respect to the vessel ownership, the Administrator concluded that recourse action would probably exceed \$3,579.82; therefore, further recovery expenditures would not be warranted. Accordingly, on February 24, 2015, the Administrator closed the file.

### **2.30 MacEachern's Point Wharf (2014)**

*Case number: 120-651*

On May 5, 2013, a fire occurred at the MacEachern's Point Wharf in Tabusintac, New Brunswick. The fire destroyed the upper structure of five fishing vessels and they sank alongside their mooring docks. Each vessel contained approximately 150 gallons of fuel oil, plus a quantity of lube and hydraulic oils. The sinking of the vessels caused an upwelling of oil on the surface of the water.

The Canadian Coast Guard (CCG) Environmental Response personnel based at Charlottetown, Prince Edward Island, proceeded to the site and took appropriate action to mitigate the extent of oil pollution. Upon arrival it was found that the RCMP was conducting an investigation into the cause of the fire. In addition, the Small Craft Harbour Authority was arranging to remove the sunken fishing vessels; however, they were not prepared to remove the oil products and contaminated debris. On May 6, the RCMP released the scene and CCG personnel commenced removal of the debris and pollution in conjunction with the operations of the Small Craft Harbour Authority to raise the five sunken vessels. CCG engaged a local contractor, Sutherland Excavating Ltd., to clean up the site and dispose of the contaminated materials.

On March 27, 2014, the Department of Fisheries and Oceans filed a claim with the Administrator in the amount of \$55,937.21 pursuant to the *Marine Liability Act* for costs and expenses incurred during response to the incident.

The Administrator commenced an investigation and assessment of the claim. There was significant delay in obtaining from Coast Guard the necessary substantiating documentation to assess the merits of the claim. However, on January 15, 2015, the Administrator was in a position to make an offer to DFO/CCG for the established amount of \$55,200.68, plus interest, as full and final settlement pursuant to the *Marine Liability Act*. The offer was made conditional upon execution of an attached release and subrogation agreement.

On March 10, 2015, the Administrator received a letter from Coast Guard accepting the offer of settlement, but it did not include the release and subrogation agreement duly executed as requested. The Administrator informed the Coast Guard that he would not be requisitioning payment of this claim pending resolution of the issues concerning the execution of release and subrogation agreements by the Canadian Coast Guard. Meanwhile, the file remains open.

### **2.31 John I (2014)**

*Case number: 120-649*

The Administrator was informed by the Canadian Coast Guard that on March 14, 2014, the Panama-registered bulk carrier, *John I*, which was en route to Montreal, had lost power and drifted onto a shoal near Rose Blanche on the south coast of Newfoundland. The 23 crew members were rescued by a search and rescue helicopter. The shipowner contracted with the marine salvage company Svitzer Salvage for a tug, *Ryan Leet*, out of Mulgrave, Nova Scotia to tow the damaged ship to Argentia, Newfoundland. The Coast Guard ship *Earl Grey* also proceeded to the site and attempted several times to connect a tow line before the ship grounded. Due to the adverse wind and sea state conditions these efforts were unsuccessful.

The CCG Environmental Response personnel considered the grounded ship to be an oil pollution threat. Therefore, personnel were deployed to the area from St. John's. They set up a mobile command post in Rose Blanche with oil pollution response equipment. CCG staff assumed the role of Federal Monitoring Officer. On March 20, the Administrator was advised that the CCGS *Earl Grey* was escorting the tug and its tow to the port of Argentia. It was reported that there was an oil sheen of about 6 to 8 litres detected by surveillance aircraft, but that it was unrecoverable. Also, there is a report that the ship severed an underwater cable off Rose Blanche.

Coast Guard further advised that on March 22 the bulk carrier was secured in Argentia. Upon arrival, Transport Canada Marine Safety inspected the ship and found a significant amount of oily water in the engine room bilges. The bunker fuel had cooled and would require heating in order to pump out the tanks. A diving survey of the hull confirmed that the ship was badly damaged and may be a complete write-off. Transport Canada held the ship under Port State Control. The *John I* was held moored in Argentia and the shipowner arranged for Svitzer Salvage to remove the bunker fuel and lube oils. Finally, the ship was purchased by Meridian Marine of Quebec and was sold for scrap.

When initially informed about the incident, the Administrator instructed counsel to ascertain the ship's ownership and other general particulars, because the case would likely fall under the Bunkers Convention. On May 2, 2014, counsel informed the Administrator that he holds a Letter of Undertaking (LOU) from the shipowner's P & I Club. The LOU is in favour of the Ship-source Oil Pollution Fund and the Canadian Coast Guard. It concerns the monitoring costs incurred by the Coast Guard during the grounding event.

Coast Guard advises that it is in the process of filing a claim with the shipowner. In the meantime the file remains open.

## **2.32 Cape Rouge - Former Registered Name of Ryan Atlantic II (2014)**

*Case number: 120-653*

The incident occurred on March 10, 2014, when the Canadian Coast Guard received a report from a concerned citizen that the vessel *Cape Rouge* was sinking at the wharf in Bridgewater, Nova Scotia. During the mid-afternoon, Coast Guard environmental response personnel arrived at the Bridgewater community wharf where the 120-foot old steel trawler sank by the stern with a 30 degree list to starboard. There was an oil sheen of fuel and lube oils leaking from the vessel. The local fire department was on-site and had placed an absorbent boom around the stern of the wreck.

The Coast Guard on-scene supervisor contacted the owner and gave him verbal “Notice” of his legal responsibility to take measures to prevent further pollution damage from the *Cape Rouge*. The owner stated that he would arrange with a contractor, to raise the vessel and have the fuel oil removed. He also advised that the vessel contained approximately 1,000 gallons of diesel fuel and 40 gallons of lube oil. The owner said he was arranging for an elderly gentleman on the dock to pump the boat out. The owner was informed by Coast Guard that this was unacceptable, because the vessel was so unstable no one could be allowed onboard.

On March 11, two Coast Guard responders returned to Bridgewater from the Dartmouth depot with an emergency response equipment trailer. When on-site, with the use of a boat from the local fire department, Coast Guard deployed 1,000 feet of 18” containment boom around the wreck, which was still releasing an oil sheen into the waters of the LaHave River. Because the owner had not complied with the “Notice” to take appropriate preventative measures, Coast Guard personnel assumed the role of on-scene commander. The owner was notified that Coast Guard was taking appropriate measures due to his lack of response. The Coast Guard legal department was notified accordingly. At that time, Environment Canada enforcement personnel was given a written copy of the “Notice” to deliver to the vessel owner. Environment Canada also boarded the vessel and collected oil samples.

It was soon determined that the situation was severe enough to require special measures by a private contractor. As a result, RMI Marine Limited, with whom Coast Guard has a Standing Offer Agreement for rendering an oil spill response, was engaged to raise the partially sunken *Cape Rouge* and remove the oil pollution threat.

On March 12, Coast Guard arrived on-site with a mobile command post unit and a Pollution Response Vessel (*PRVI*). The *Cape Rouge* had by now sunk to the river bed with only the wheel-house above the water. It was still releasing oil into the LaHave River. RMI began pumping out the fuel tank. Professional divers and a vacuum truck were utilized. Some 10,900 litres of fuel/water mixture were pumped from the fuel tanks, which settled in holding tanks to about 5,000 litres of oil. During the day CG personnel recovered two cubic metres of oil soaked absorbent pads by using the *PRVI* response boat. They also patrolled down river for approximately four nautical miles to ensure that released oil had not escaped the containment boom. They found some sheening along the shoreline in certain areas. The river patrol continued for several days.

On March 13 and during the next three days a boom truck was hired to lift the hatches off the submerged wreck as part of the recovery plan. Throughout this period the contracted divers continued to prepare the vessel’s hull for refloating. Meanwhile, CG personnel continued to remove and replace absorbent boom and conduct river patrols to assess the amount of sheening down stream. In addition, another sub-contractor was hired on two occasions to sand the ice covered dock.

On March 17, the sub-contractor, Eagle Beach Contractors Limited, arrived with a 10-tonne boom truck. Its crane and other heavy equipment were used for three days to drive six piles into the river bed between the *Cape Rouge* and the jetty in preparation for refloating. On March 19, all the piles were in place and RMI demobilized the crane. Throughout this period the RMI four-man diving crew secured extra mooring lines to the bow in order to help stabilize the vessel. They also removed hatch covers from the fish holds to remove debris, such as rope and fish nets that could clog the pumps during salvage. The recovered equipment and salvaged rope were stored on deck of the owner's other vessel, *Hannah Atlantic*, which was also secured at the same dock in Bridgewater. Throughout these operations, Coast Guard personnel placed more sorbent boom in the area, since the vessel was still leaking oil.

On March 25, RMI commenced pumping out the forepeak and the accommodation space of the vessel. This was done with the approval of Environment Canada's Environmental Emergencies personnel. At 1800 hrs the *Cape Rouge* was floating with a five degree port list. When the vessel began to right itself the divers were able to identify two leaks of water entering the engine room. The divers were able to remediate those slow leaks by using neoprene and clamps. The next day there was a snow storm with 40 to 50 cm of snow with winds up to 110 km/per hour. On March 28, Transport Canada Marine Safety inspected the vessel. It was found "to have corroded pipes and faulty valves in the engine room, a broken line to the generator and a rotted out fire main which is the suspected cause of the flooding and sinking". The vessel was determined by Transport Canada Marine Safety and also by the Canadian Coast Guard to be at risk of sinking again. Finally, on April 7, Coast Guard demobilized its command trailer and emergency response equipment. RMI also demobilized equipment on this day. The owner, was informed that Coast Guard was finished with the response operation.

On June 26, 2014, Canadian Coast Guard, on behalf of the Department of Fisheries and Oceans, filed a claim with the Administrator for costs and expenses incurred in the amount of \$362,575.38, pursuant to the *Marine Liability Act*.

The Administrator commenced a preliminary assessment of the claim. On July 29, the Administrator wrote to Coast Guard and explained that the submitted package was not in a form that could be properly assessed without additional information and substantiating documentation. Most of the support information requested was provided later by the Regional Coast Guard Office. However, several items with respect to the Standing Offer Agreement the Coast Guard had with the prime contractor, RMI Marine Services Limited, and the appropriate Statement of Work for the salvage operation were not provided. Coast Guard responded that this specific requested information was "not available".

In order to assess the claim submission thoroughly, the Administrator engaged a technical marine surveyor to review the invoices of the contractor's charges from an industry practices perspective. The consultant was also instructed to carry out an overall survey of the condition of the temporary repairs, which prevent a further ingress of water that caused the *Cape Rouge* to sink in the first place. He found that currently all appears to be in order with respect to the water tightness of the hull. However, he noted that a regular monitoring of the vessel's condition should be implemented by the party responsible for the vessel. Furthermore, he recommended that any deterioration in the condition of the *Cape Rouge* should be reported to the authorities in a timely fashion. (These findings were relayed to the Coast Guard officials for information purposes.)

In general, the Administrator's finding clearly indicated that the subsequent claim documentation, along with a series of photographs, show that the *Cape Rouge* had discharged, was discharging, and was likely to continue discharging oil as it lay partially submerged at the old government wharf. Furthermore, it

was reasonable for Coast Guard to take over, because the vessel owner was unable to take appropriate measures. Moreover, Coast Guard Environmental Response personnel worked in collaboration with the local community authority, the Department of the Environment and personnel of Transport Canada Marine Services throughout the duration of the incident. The documentation also records that several over-flights were requested and conducted by Transport Canada surveillance aircraft over the LaHave River. Several oil slicks were detected. It is recorded that the river area is an extremely sensitive salmon habitat for all stages of salmon, eel, and whitefish development. It is also a habitat for ducks and bald eagles.

On March 19, 2015, the Administrator informed Coast Guard that, on the basis of the documentation filed and his overall assessment he was able to offer the amount of \$358,117.79, plus interest, as full and final settlement pursuant to the *Marine Liability Act*. The letter of offer was made conditional on the Administrator receiving notification of acceptance along with the duly executed release and subrogation agreement which was included with the letter of offer.

As of the end of the fiscal year, Coast Guard has not notified the Administrator whether they accept or refuse the offer. Meanwhile the file remains open.

### **2.33 Hannah Atlantic (2014)**

*Case number: 120-652*

This claim from the Canadian Coast Guard (CCG) and the above-noted claim (section 2.32) both occurred in Bridgewater, Nova Scotia, during March and April 2014, respectively. The two old steel trawlers were sister ships. They were tied up at a berth near each other in the environmentally sensitive LaHave River.

As CCG personnel were demobilizing their oil pollution response equipment at the site of the *Cape Rouge* incident on April 10, they investigated whether there was any real threat of pollution from the *Hannah Atlantic*. Along with personnel from Transport Canada Marine Services (TCMS) and an Environment Canada (EC) representative, CCG inspected the vessel. They found the engine room bilges full of heavily contaminated water and that the sea valves were in a state of corrosion and leaking. It was determined that the old fishing vessel contained approximately 2,250 litres of diesel fuel, 900 litres of hydraulic oils and 15,000 to 20,000 litres of oily bilge water. All three agencies agreed that the vessel was a potential pollution threat. It was in danger of sinking and needed to be addressed. Consequently, TCMS placed a Detention Order onboard the *Hannah Atlantic*, and EC enforcement officials collected bilge water samples. Furthermore, CCG gave the owner a Direction Order to remove the pollutants, and instructed him to provide an appropriate action plan to deal with the situation by noon April 14, 2014.

During the morning of April 14, Coast Guard personnel were in communication with the vessel owner. He advised that since he did not have the financial means he would not be taking any measures to remove the fuel and hydraulic fluids. Therefore, Coast Guard contracted RMI Marine Limited to render a response under its existing Standing Offer Agreement to remove the pollutants from the vessel as per the issued Direction Order.

On April 15, RMI Marine Limited commenced removal of the bilge sludge, fuel, hydraulic oils and other pollutants from the vessel. In total, 18,000 litres of oily bilge water was pumped from the engine

room, and 5,400 litres of diesel oil was removed from the day tank. Also, 421 litres of waste oil was off loaded from various containers onboard. After removal of the oil pollutants the bilges and deck plates were steam cleaned.

On July 3, 2014, the Department of Fisheries and Oceans, (DFO/CCG) filed a claim with the Administrator in the amount of \$19,956.15, pursuant to the *Marine Liability Act*, for costs and expenses incurred during response to the incident.

After investigation and assessment of the claim, on September 16, the Administrator made a final offer to DFO/CCG for the established amount of \$19,682.37, plus interest. The offer was accepted, and on October 1, 2014 the Administrator directed payment of \$19,975.18, inclusive of interest. In order to try and identify assets that may be available for recovery purposes, the Administrator obtained the services of a professional locator firm. In the meantime, the file remains open.

### **2.34 Silver King (2014)**

*Case number: 120-660*

On June 23, 2014, the Canadian Coast Guard (CCG), Western Region, informed the Administrator that it was aware of an abandoned derelict tug near a sensitive fishing area in Deep Bay on the east coast of Vancouver Island. The CCG was hiring a surveyor of McAllister Marine Survey and Design Ltd. to inspect the old tug and offer an opinion as to whether there existed a significant or imminent oil pollution threat to the environment.

Upon receiving the report, the Administrator arranged through counsel – without prejudice to his obligations under the *Marine Liability Act* – for a technical surveyor to jointly survey the vessel along with the Coast Guard contractor. The surveyors reported that the vessel contained approximately 2,323 litres of oil and 4,586 litres of oily water in accessible areas. These amounts did not include oils in other areas, such as double bottom fuel tanks. In addition, it was determined that the hull was in a precarious condition and in danger of sinking. It was the opinion of both surveyors that the *Silver King* posed a significant and imminent threat to the environment, due to its deteriorated condition in a sensitive area. Consequently, it was recommended that in order to remove the hydrocarbons the old tug – built in Baltimore, Maryland, in 1945 for service in the United States Navy – should be moved to a nearby suitable dock as soon as possible. The action would avoid the additional costs of utilizing a tug and barge as a working platform and then transferring the hydrocarbons and equipment ashore.

Later, the CCG provided the Administrator a copy of its own surveyor's report, which recommended the deconstruction of the *Silver King*. The surveyor engaged by counsel, however, recommended that before carrying out the demolition, alternative quotes should be obtained for cleaning the vessel to a reasonable standard that will not cause damage to the environment should the old tug sink.

On December 16, 2014, Coast Guard advised in its latest update to the Administrator that quotes were solicited from several hazardous waste service providers for the option of *in situ* cleaning. In addition, Public Works and Government Services were engaged to administer the process of soliciting bids for the removal of the vessel. In the meantime, no claim has been filed with the Fund; therefore, at the end of the current fiscal year, the file remains open.

### **2.35 Spudnik (2014)**

*Case number: 120-665*

On November 12, 2014, the Canadian Coast Guard (CCG) informed the Administrator that the vessel *Spudnik* had broken its moorings and was adrift in Howe Sound, British Columbia. At the time there was a north wind of some 20 to 30 knots outflowing the Sound, which is almost entirely hemmed in by rugged mountains. The owner was unable to take any proper action. The vessel is an ex-US Navy landing ship of approximately 195 feet in length and 35 feet in breadth, constructed of welded steel and built in 1945. It was estimated that there were 5,000 litres of diesel fuel in tanks onboard, and 1,500 litres of lube oil mixed with water in the engine room. CCG Emergency Response personnel hired a Seaspan tug to tow the vessel to New Westminster in the Fraser River for removal of the diesel and lube oils. On December 11, the Administrator learned that the cleaning of the vessel had been completed. As of the end of the current fiscal year, it appears that there will be no claim submitted to the SOPF, as the vessel has been cleaned of hydrocarbons. Meanwhile, however, the file remains open.

### **2.36 Australian Spirit (2014)**

*Case number: 120-666*

The Administrator was informed by the Canadian Coast Guard on December 10, 2014, that the Bahamian – registered crude oil tanker *Australian Spirit* was adrift about 40 nautical miles off the coast of Nova Scotia due to loss of steering. The off-shore supply tug *Venture Sea* had arrived on scene and connected to tow the disabled crude carrier to Halifax. The Coast Guard vessel *Earl Grey* was deployed to escort the tow. Transport Canada selected Bedford Basin as a Port of Refuge awaiting a sister tanker to arrive from New England in order to offload the cargo of oil. Rudder repairs, if necessary, would be undertaken at the Halifax shipyard.

The Coast Guard indicated that there may not be a claim against the Ship-source Oil Pollution Fund. All costs and expenses incurred by Coast Guard would be submitted to the shipowner's P & I Club. As of the end of the current fiscal year, no claim has been filed with the Fund. In the meantime, the file remains open.

### **2.37 Windago (2014)**

*Case number: 120-659*

On June 12, 2014, the Canadian Coast Guard (CCG) informed the Administrator that a sailing vessel, *Windago*, was sinking off Kitsilano Beach, near the approach to Vancouver Harbour. Representatives of the provincial Ministry of Environment and the City of Vancouver were on-site. In response, Coast Guard requested the Western Canada Marine Response Corporation to boom off the polluting vessel, and remove it from the water.

The Coast Guard informed the Administrator that the vessel owners had advised that they were unable to pay for any response. Therefore, CCG may be submitting a claim to the Ship-source Oil Pollution Fund. As of the end of the current fiscal year, no claim has been filed with the Fund. Therefore, the file remains open.

### 2.38 Maryjack (2014)

Case number: 120-657

The incident occurred on May 31, 2014, when the ex-fishing vessel *Maryjack* sank in Sibell Bay on Vancouver Island. On June 2, the Canadian Coast Guard (CCG) informed the Administrator that the 60-foot wooden hull vessel was discharging oils. The CCG Environmental Response personnel deployed an oil containment and sorbent boom, and was in the process of engaging a salvor to raise and remove the pollutants from the wreck. Coast Guard estimated the response measures to be in the order of \$57,500.00.

When the initial CCG notification was received, the Administrator instructed counsel to engage a marine technical surveyor to attend during the recovery operation. He was assigned to independently assess whether the measures taken by CCG and the salvor were reasonable under the circumstances. The surveyor was also instructed to talk directly with the principals involved.

On June 16, the surveyor reported to the Administrator that CCG personnel had captured over 1,000 litres of hydrocarbons prior to June 4, but that the upwelling of oil continued. As a result, Coast Guard engaged Public Works and Government Services Canada (PWGSC) to procure bids and put in place a contract for salvage of the wreck in order to prevent a further discharge of oil. A PWGSC contract was awarded to Saltair Marine Services Ltd. Coast Guard informed the surveyor that the awarded contract was based on time and materials with a \$68,000.00 ceiling. The contract included refloating, hauling, deconstruction, and disposal of the vessel. The refloating of the vessel commenced on the morning of June 5. Saltair Marine mobilized two spud barges with cranes aboard. To assist with the refloating, the prime contractor hired divers from Westcoast Divers Ltd. They rigged basket slings near the forward and aft ends of the *Maryjack*.

After the old fishing vessel was raised to the surface, an inspection revealed that all interior bulkheads of the wooden hulled 1927 built ex-fishing vessel were heavily contaminated by hydrocarbons. The hull planks were rotting and the beams and frames were saturated with oil. It was apparent that the hull was unseaworthy and the oil contaminated material within the vessel presents a potential of future oil pollution.

On August 14, the Administrator was informed by counsel that the *Maryjack* had been deconstructed. As of the end of the fiscal year, no claim has been filed with the Fund. Meanwhile, the file remains open.

### 2.39 Crown Forest 84-6 (2014)

Case number: 120-663

On September 27, 2014, the Canadian Coast Guard (CCG) informed the Administrator that an old 40-metre barge was sinking and polluting in Zeballos Inlet on the west side of Vancouver Island. The apparent barge owner, a former chief of the Ehattesaht First Nation territory, advised CCG that he was unable to respond. (It was later determined that the person who presented himself as the owner was not, in fact, the registered owner of the barge. The registered owner had previously sold the barge for \$1.00, so that the barge could be built as a youth centre for the Ehatis Nation; he did not realize at the time that it was registered in a vessel registry.)

The CCG Environmental Response personnel found the barge partially submerged and hung up on the rocks, subject to tidal action, in a sensitive herring and salmon spawning ground. A light non-recoverable oil sheen was observed. They also found that the old camp barge, originally used to accommodate a 25

men logging crew, still had various trailers and mechanical equipment on deck containing oils. The CCG personnel used vacuum pumps to remove 600 litres of diesel fuel from a tank on deck. In addition, CCG hired a local contractor – the Response Organization (WCMRC) – to use heavy equipment to remove the remaining pollution threats, such as fuel tanks and miscellaneous oil containers.

When informed about the incident, the Administrator instructed counsel to engage a marine technical surveyor to attend at Zeballos and investigate the situation. The surveyor met with the CCG Environmental Response supervisor and the provincial government personnel who were involved. The surveyor was informed that the provincial Ministry of Forests, Lands and Natural Resource Operations was working on a plan to pull the barge ashore and deconstruct it.

On March 11, 2015, Coast Guard advised that it was not aware of the current position and condition of the barge. No claim has been filed with the Fund. The file remains open.

## **2.40 Chaulk Determination (2014)**

*Case number: 120-667*

The incident occurred on December 26, 2014, when the tugboat *Chaulk Determination* sank at the wharf in the port of Trois-Rivières, Quebec, and began leaking fuel oil into the St. Lawrence River. The tug was holding 22 tonnes of fuel when it sank. Government agencies, including the Canadian Coast Guard (CCG), Transport Canada, the provincial Ministry of the Environment, and the port authority responded to the incident. The priority was to conduct oil containment and vessel recovery operations.

On December 28, counsel based in Montréal advised the Administrator about the ongoing incident. On January 6, 2015, the CCG informed the Administrator that the tug owner – some numbered company operating out of Moncton, New Brunswick – had declared that they had no money and no insurance. The estimated cost of the initial clean-up was in the region of \$200,000.00 and that raising the vessel may entail a further cost of over \$1 million.

At this point, the Administrator instructed counsel to retain a technical advisor to monitor the developing situation, as well assist if, and when, a claim is submitted to the Fund by the CCG. Consequently, counsel engaged a technical marine surveyor to keep in touch with the government authorities and report back, from time to time, on the reasonableness of the measures being proposed to salvage the sunken tug. Throughout the salvage operations the surveyor provided a series of updates including photographs capturing the work performed by the salvage master and the various contractors involved in the efforts to refloat the *Chaulk Determination*.

The Administrator was informed that the fuel was removed from the tanks and that the *Chaulk Determination* was refloated on February 19, 2015. When the tug was raised, the hull and interior were cleaned. Also the engine room was partially cleaned. The wreck was secured alongside the wharf in Trois-Rivières. Meanwhile, the file remains open.

## **2.41 Schwalbe (2015)**

*Case number: 120-670*

The Canadian Coast Guard (CCG) informed the Administrator that on February 1, 2015, a 60-foot sailboat, *Schwalbe*, had broken its moorings and drifted ashore on the south side of Lunenburg Harbour, Nova Scotia. The CCG Environmental Response personnel learned from local residents that the sailboat

had been anchored in the harbour for several years and was thought to be abandoned. The boat owner was finally contacted and advised about his responsibilities to respond to the incident. He was requested to provide CCG with a response plan by noon on February 3. The owner replied that he had no insurance and no money, so he was unable to deal with the situation. He did, however, inform CCG that there were 20 litres of diesel fuel in the day tank, and additional oil in several containers onboard and oil in the engine area. On February 4, CCG personnel boarded the vessel which was aground with a 45 degree list. No oil sheen was detected in the water around the hull or in the rockweed surrounding the area. When the weather conditions were more suitable, several days later, CCG personnel removed the accessible oil from the wreck. The boat remains aground where it initially drifted ashore.

As of the end of the fiscal year, no claim has been filed with the Fund. In the meantime, the file remains open.

## **2.42 Navicula (2015)**

*Case number: 120-668*

On February 3, 2015, the Canadian Coast Guard (CCG) informed the Administrator that a former Canada Fisheries Research Vessel, *Navicula*, sank at a Welland Canal marina in Port Weller, Ontario. The manager of the marina reported to Coast Guard that the old 65-foot vessel was half encased in ice. All that was visible was part of the hull and a rusty foremast. There was a small amount of oil released, resulting in a minimal sheen but it was contained by the use of absorbent pads. Furthermore, Coast Guard was advised by the Seaway Authority that a salvage plan was under review.

As of the end of the fiscal year, no claim has been filed with the Fund. In the meantime, the file remains open.

## **2.43 Chilcotin Princess (2015)**

*Case number: 120-669*

On January 30, 2015, the Canadian Coast Guard (CCG) informed the Administrator that a 51-metre old steel vessel, *Chilcotin Princess*, was listing at its berth and in danger of sinking at Namu, British Columbia. The vessel was moored alongside the old dock of the abandoned Namu cannery for over 10 years. A portion of the dock had collapsed, so the vessel was at risk of capsizing and causing oil pollution.

The CCG Environmental Response personnel from Prince Rupert had previously contacted the owner and issued a "Notice" requesting that he provide a plan to address the situation by either relocating the vessel or removing the oil and lubricants from aboard. However, no action was taken by the owner.

On February 11, CCG engaged a marine surveyor from the firm of McAllister Marine Survey & Design Ltd., to examine the *Chilcotin Princess* and offer an opinion as to whether there was a significant threat to the marine environment. The surveyor found that due to the deteriorated condition of the hull an imminent and ever-increasing threat existed. He recommended that all oils onboard should be removed at the vessel's current location, because the hull condition was in such poor condition that it would be unsafe to tow the vessel to any properly equipped oil removal facility.

The Administrator has been further informed that in mid-March, Coast Guard hired a tug and barge loaded with recovery and pumping equipment from Wainwright Marine Services in Prince Rupert, to proceed to Namu and remove all recoverable hydrocarbons from the *Chilcotin Princess*. The on-site operation was expected to take at least three days and the cost was established at approximately \$60,000.00. As of the end of the fiscal year, no further information has been made available. Meanwhile, the file remains open.

## **2.44 Cormorant (2015)**

*Case number: 120-672*

On March 18, 2015, the Canadian Coast Guard (CCG) was notified that the *Cormorant*, a former diving support ship in the Royal Canadian Navy that had been decommissioned and sold in 1997, was listing heavily at the dock in LaHave River, Bridgewater, Nova Scotia. Inspection indicated that water had flooded the main hold of the ship. It was most likely as a result of frozen and ruptured pipe lines. It was reported by the owner's employee that there was no fuel in the main tanks, but there was approximately 200 litres of diesel fuel in the emergency generator tank and lube oil in the main engines.

On March 20, CCG Environmental Response personnel proceeded to Bridgewater and met the owner's representative to discuss a salvage plan. At this point, the ship appeared to be resting on the riverbed with only the upper decks above water. The ship had a 45 degree starboard list. However, no oil pollution was seen in the water around the hull after several tide cycles. The owner provided a basic response plan and had moved personnel and equipment on-site. The CCG Environmental Response personnel remained as the Federal Monitoring Officer.

As of the end of the fiscal year, the Administrator has not been provided further information. Meanwhile, the file remains open.

### **3. Challenges and Opportunities**

Since this will likely be the last Annual Report submitted by the current Administrator (his term expires on February 2, 2016), it might be appropriate to review challenges and opportunities encountered over the past eight years. Mr. Alfred Popp, QC took over the role of Administrator of the SOPF on December 19, 2006 for a term of four years. He has since been reappointed two times, on February 3, 2011 for a term of two years and again on February 3, 2013 for a further three-year term.

When the present Administrator initially took over the running of the Fund, the office was staffed by a full-time executive assistant, recruited through a temp agency, who also doubled as secretary, filing clerk and financial officer, and one part-time marine consultant to assist with the assessment of claims and other related work. The position of Administrator is a part-time Governor-in-Council appointment, meaning that the number of days per year that the Administrator could work is limited to 180 days. For the first two years of his first term, a Deputy Administrator, also engaged on a part-time basis, assisted the Administrator. The Deputy Administrator's experience as a Chartered Professional Accountant was of great help to the Administrator in organizing the Fund's first financial audit. That term was not renewed, so that for the balance of his time at the SOPF, the Administrator has operated without a Deputy.

Within the first year of his term, it became clear to the Administrator that the temporary staffing arrangements at the Fund were not satisfactory. This became obvious when, in 2007, the Administrator received two access to information requests. The SOPF had been made subject to the *Access to Information Act* and *Privacy Act* (ATIP) the previous year. While past Administrators had operated a filing system, no systematic file retirement policy was in place with the result that every paper file ever created by the Fund, some 4,000 files, were in the Administrator's office under his control and technically subject to search within the time limits prescribed by the Act for the production of relevant documents in response to the requests. Since the ATIP office of Transport Canada was unable to help, the Administrator had to engage lawyers, with ATIP experience, to review the SOPF files at significant expense to the Fund.

Two things became apparent to the Administrator as a result of this initial experience with ATIP requests. First, the vast collection of files had to be inventoried and the SOPF filing system had to be completely reformed to enable the quick identification of pertinent files for the purposes of responding to future ATIP requests, within the time limits prescribed by the legislation. Secondly, it was necessary to establish a policy governing the handling of SOPF records. The Administrator engaged an expert consultant for this purpose and over an extensive period of time, a new records and information management (RIM) system was created, inclusive of policies, procedures and standards, for the proper management of SOPF record holdings. This work was carried out in consultation with Library and Archives Canada (LAC) which ruled most of the SOPF file collection to be of historic value. These records would therefore have to be transferred to LAC at the end of their life cycle at the SOPF. The new RIM system made the task of finding information in response to future ATIP requests more manageable.

With the help of the consultant, the SOPF acquired an electronic filing and indexing system to quickly locate records associated with requests for information. This would further facilitate responding to future ATIP requests on a timely basis and also enable the Administrator and his staff to track incident and claims files in conformity with prescription periods for such claims specified by the *Marine Liability Act* (MLA).

In his letter to the Administrator upon his appointment, the Minister of Transport outlined a number of things that he would like to see addressed at the SOPF including the development of a Memorandum of Understanding (MOU) between Transport Canada and the SOPF to specify clearly their respective roles, and the development of a website, created in conformity with general government guidelines and directives to promote transparency and improve the visibility of the SOPF. Another matter to be addressed was the production of an up-to-date claims manual for the purpose of assisting claimants and other parties who deal with the SOPF, and to enhance the understanding of claims procedures at the Fund.

All these requirements suggest that the government would like the SOPF to operate more like a government agency. The requirements partly mandated by practice, as noted in regard to the MOU, are not as problematic as those mandated by legislation, however, as they present a special challenge since the SOPF lacked many of the tools available to regular government departments and agencies to fulfill these requirements. The challenge manifests itself in two ways. First, the Administrator cannot staff his organization through the Public Service, with all the benefits that accrue to public servants (pension and medical benefits, to name the most obvious). Secondly, in the realm of shared services, which on account of the tiny size of the Fund administration would bring significant cost benefits, the Administrator has encountered insurmountable impediments stemming mainly from the fact that the Fund is not subject to the *Financial Administration Act* (FAA).

Early on in his mandate, it was recommended to the Administrator that he initiate an audit of SOPF accounts, although this was not at the time a requirement of the *Marine Liability Act*. This requirement would later be enshrined in the law by amendments to the Act in January of 2010, as also the requirement to keep proper books of account, and to conduct a special examination of the SOPF at least every five years. These requirements made it necessary to expand its accounting practices by employing a full-time finance officer.

In March of 2008, the Administrator was given notice by the department of Public Works and Government Services, that the SOPF would need to vacate the premises at 90 Elgin because the building was slated for demolition. The search for new accommodations took two years. This proved to be a monumental task for the SOPF, given the limited staff of the Fund. The Administrator was grateful to have an interior designer from Transport Canada to assist with the logistics of this project. The SOPF moved into its new offices in August of 2010 but it would take another year to complete the refit of the space, bringing the cost of this move to approximately \$800,000.

With the added number of people working at the SOPF, the archaic IT setup of one basic Central Processing Unit (CPU) and a retired email server handed down from the department started to break down, compromising the day-to-day operations of the Fund. Lacking the necessary in-house IT expertise, the Administrator sought the advice of Transport Canada and jointly with the Fund's private IT service provider, purchased a new and more reliable IT infrastructure for the office. The new equipment was installed in December of 2012 at the approximate cost of \$80,000 for this project.

To meet the increased obligations of the Fund, as described above, the Administrator has expanded the staff of the SOPF in key areas. Over time, the executive assistant has become the Director of Corporate Services taking on the responsibility of overseeing the day-to-day business of the Fund on behalf of the Administrator. Further, as already mentioned, to meet its various financial obligations, the Administrator has appointed a full-time Payroll and Finance Officer. The Fund also has a Multimedia and IT Support Officer to assist with the in-house production of mandatory annual publications,

IT related matters and to keep the SOPF website up to date. The Administrator has retained, on a part-time basis, a records management consultant to oversee the proper maintenance of the SOPF filing system and to safeguard the sustainability of the new electronic database. An ATIP consultant is retained on an as-needed basis to ensure the SOPF complies with the various requirements of the *Privacy Act* and the *Access to Information Act*. The SOPF has two marine consultants to assist the Administrator in the investigation and assessment of claims, and other related matters.

To provide some incentive to key employees to stay with the SOPF, the Administrator has gradually introduced the practice of offering contracts, after a period of probation, which can become indeterminate if performance is satisfactory. The Administrator has negotiated for these employees some medical coverage and also arranged, with the help of his legal advisors, for the SOPF to make contributions to their registered retirement savings plan (RRSP). Offering these benefits, however, has presented the Administrator with other challenges. On account of the very small size of the Fund, it does not have pay and benefits personnel. To ensure that proper deductions are made at source in conformity with the Canada Revenue Agency (CRA) requirements, the Administrator has outsourced the provision of these services along with obtaining independent workplace safety insurance.

Finally, the last challenge that the Administrator has had to take on is a special examination of the Ship-source Oil Pollution Fund. The performance audit is a new statutory requirement of recent amendments to the MLA in January 2010 for the purpose of providing assurance that SOPF assets are safeguarded and its resources managed in an efficient and cost effective way. As explained earlier, because the SOPF is not part of the FAA it has to rely on independent auditors for the performance of its annual financial audits and hence special examination. The Administrator approached the Office of the Auditor General (OAG) to conduct the special examination but it declined to take on the work in part because of the unique legislative framework of the SOPF and in part because it is not an entity that falls under the FAA. The OAG did, however, assign a principal to provide guidance to the Administrator during the course of the special examination which was carried out by a private accounting firm. The Administrator is happy to report that no significant deficiencies were identified as a result of this audit.

In recent years, the Administrator has introduced some new ways of processing claims at the SOPF with the aim of reducing the amount of time it takes to establish a claim and improving recourse and recovery actions by hiring a professional locator service.

A challenge that the Administrator has encountered is the timely submission of claims from the Canadian Coast Guard, the main source of claims, and the lack of proper documentation accompanying the claims which impedes the assessment process. To improve this, the Administrator and his marine consultants have initiated quarterly meetings at Canadian Coast Guard Headquarters along with a series of workshops within Regions of the Canadian Coast Guard (CCG) to explain the claims procedure. Another challenge which is currently under debate is the request from the Administrator for the CCG to sign a release and subrogation agreement whenever a claim is paid out of the SOPF. This practice has been in place at the SOPF for all claimants and it has been recommended by the legal advisors to the Administrator as a good business practice that should be applied to all claimants, including the Crown.

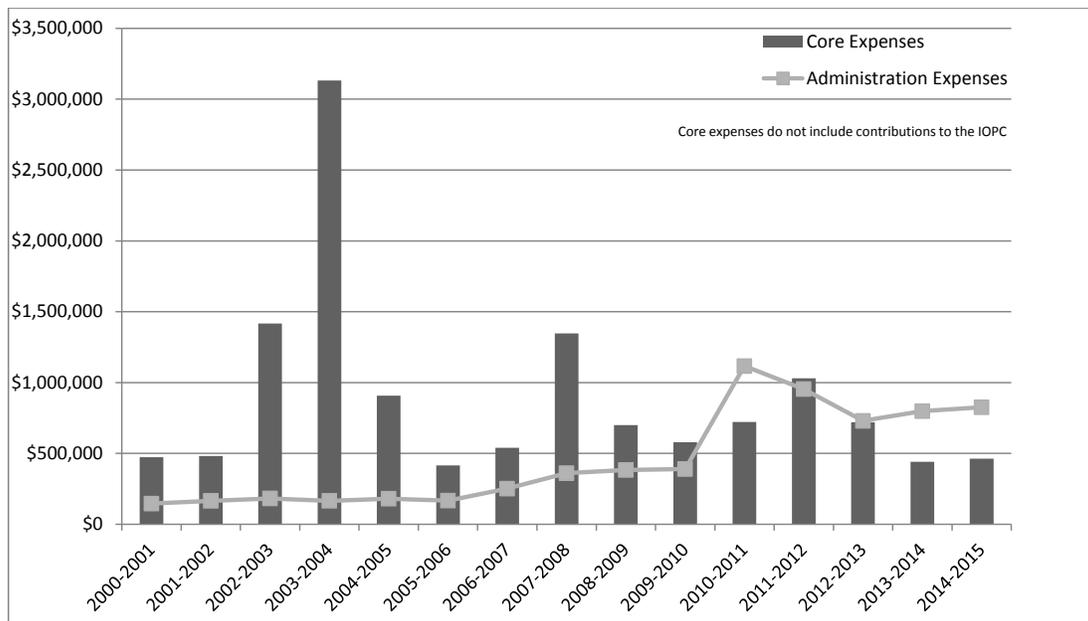
As he nears the end of his final mandate, the current Administrator looks back on these past challenges and how they have translated into opportunities for improvement at the SOPF. The management, auditing and performance reporting practices that are in place today enhance transparency and accountability of the organization.

## Ship-source Oil Pollution Fund

Modernizing the Fund, however, has had a tremendous impact on this tiny organization. Up until 2007, operational expenses at the SOPF were at a minimum, the bulk of its expenses being directly related to the core mandate of the Fund which is the investigation and assessment of claims, and the payment of compensation for damages caused by ship-source oil pollution.

The Administrator has kept track of administrative expenses that are not directly related to the core mandate of the Fund. Such non-core related expenses that emanate from the *Access to Information Act* and the *Privacy Act*, the *Library and Archives Act* and associated compliance measures, have been included separately in the Financial Statement section of the Administrator's Annual Report since 2007. Other expenses relating to annual financial audit and special examination, visibility vehicles such as the website, the relocation and infrastructure projects and human resources expenses relating to the expansion of the office have also been tracked.

The graph below reflects the expenses associated with the core work of the Fund and the increases in administration expenses at the SOPF since 2006.



As explained in this section, these past challenges that the Administrator has had to take on since his appointment in 2006 have translated into opportunities for improvement and modernizing of the Fund to enhance the transparency and accountability of the organization.

Many challenges faced over the last eight years related to the fact that the SOPF operates as an independent agency outside the ambit of the *Public Service Employment Act* and the *Financial Administration Act*. The Administrator feels confident that these challenges have been met and that the Fund now operates on a sound basis. In meeting those challenges, the Administrator would like to say a special word of thanks to his Director of Corporate Services, Monique Pronovost, without whose hard work and dedication over the years it would have been difficult to meet the various challenges. The Administrator would also like to thank the staff of the Fund who have provided him with loyal support over the years.

## **4. Outreach Initiatives**

The Administrator's outreach initiatives are 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 outreach affords an opportunity for the Administrator to further his personal understanding of the perspectives of individual claimants, shipowners 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. Attendance at these meetings also provides opportunities to review IOPC Fund claims policies to ensure that SOPF claims policy is aligned as closely as possible with those of the IOPC Funds.

### **4.1 Canadian Marine Advisory Council (National)**

The Canadian Marine Advisory Council (CMAC) is Transport Canada's national consultative body for marine regulatory amendments and other domestic marine matters. The CMAC meetings are held in Ottawa during the spring and autumn. In addition, regional CMAC meetings are held in each of Transport Canada's operational regions. The Administrator was represented at the CMAC meetings 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. Participants include representatives of shipping companies, the fishing industry and other stakeholders who have a recognized interest concerning marine safety, recreational boating matters, navigational aids and so forth. There are Standing Committees and Working Groups that discuss a variety of issues and make recommendations for the development of regulations and standards. During the fiscal year, CMAC held national meetings in Ottawa from April 29 to May 1, 2014, and from November 4 to 6, 2014. The CMAC meetings are of interest to the Administrator, particularly the discussions and findings of the Standing Committee on the Environment. The Administrator personally attends some of the meetings, but when he is unable to be present, the Fund is represented by a marine consultant. The Administrator wishes to keep abreast of the regulatory framework for the prevention of oil pollution from ships.

During the spring session, the Minister of Transport, Lisa Raitt, spoke at the opening plenary. The Minister addressed the progress being made to enhance the Canadian marine sector. Among the several issues discussed were the amendments to implement the International Maritime Organization's Hazardous and Noxious Substances (HNS) Protocol in the *Maritime Liability Act*. (The Bill has since received Royal Assent.) The new legislation will help to protect Canadians against the financial consequences if there is an HNS leak or spill from ships. Once the legislation is in force, it would ensure that shipowners carry an appropriate amount of insurance for the risk associated with their cargo. The Minister also spoke briefly about the World-Class Tanker Safety System and the new measures to strengthen oil spill prevention, preparedness, response and the polluter pay principle.

The CMAC Chairman, Donald Roussel, spoke about the work of the independent Tanker Safety Expert Panel to strengthen Canada's tanker safety system. The panel has submitted its first report, which is under study by government officials. He explained that the second phase of the study concerning Arctic Marine Safety was well in-hand. (The second report was presented to the Minister of Transport on September 30, 2014.) In addition, Transport Canada has reviewed the existing pilotage and tug escort

requirements. Marine Safety is inspecting all foreign tankers on their first voyage to Canada and will do so once a year thereafter. Moreover, Transport Canada has expanded coverage of the National Aerial Surveillance Program that detects oil pollution in the water. The chairman noted that Canada actively supports the development of an International Polar Code which is expected to come into force in early 2017. When in force, however, its impact on Canadian Arctic operations will likely be minimal, since the pollution prevention provisions are similar to those already in place under the *Arctic Waters Pollution Prevention Act*. In addition, the chairman spoke about the recent Transport Canada study of the extent of abandoned and derelict vessels in Canada. The study found that there are approximately 250 derelict vessels constructed from various materials including steel, wood and fiberglass known to exist in various locations throughout the country. These abandoned and derelict vessels are a concern for communities and shoreline property owners. The report recommended that a working group should be formed to address the issues related to abandoned and derelict vessels.

Note: Section 2 of this report clearly indicates that many of the claims filed with the Ship-source Oil Pollution Fund are for costs and expenses incurred during response to abandoned and derelict vessels that contain fuel oil and other lubricants.

During the fall meeting, the Acting Director General, Marine Safety and Security, Sylvain Lachance, provided an update on significant developments in Marine Safety and Security. He explained that among the various new measures that are moving ahead is a plan to amend legislation to allow alternative oil spill measures, such as spill-treating agents and *in situ* burning of spilled oil, but only when these measures would have a net benefit on the environment. Further, he noted that there are plans to modernize Canada's navigation system by moving toward an electronic system and investing in state-of-the-art technology. New navigational products and services will give ships' officers the best information to navigate safely by avoiding uncharted shoals and prevent oil spills.

The Deputy Commissioner of Operations, Canadian Coast Guard, Nadia Bouffard, highlighted some of the Coast Guard Services, such as the ship that was deployed to tow the crippled Russian ship *M/V Simushir* away from the shoreline off Haida Gwaii on the West Coast. The Coast Guard's prompt response kept the situation under control until an oceangoing tug from Prince Rupert successfully took over the towing operations and prevented an oil spill occurrence.

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

Note: Minutes of the CMAC meetings held in Ottawa are available on the National CMAC website at: <http://www.tc.gc.ca/eng/marinesafety/rsqa-cmac-menu-826.htm>

## **4.2 Arctic and Marine Oilspill Program (AMOP) Seminar**

The Administrator was represented by a marine consultant, Captain George Legge, at the 37th Arctic and Marine Oilspill Program (AMOP) seminar held in Canmore, Alberta, from June 3 to 5, 2014.

By way of background, Environment Canada began the AMOP technical seminar in 1978 to improve the knowledge base and technology for cleaning up Arctic marine oil spills. The technical seminar soon evolved into an international forum about oil spills in any environment, as well as other spill-related topics. The seminar is organized annually by the Emergencies Science and Technology Section (ESTS)

of Environment Canada. Most of the ESTS projects are conducted in partnership with other government departments, agencies and industry.

The 37th AMOP Technical Seminar on Environmental Contamination and Response provided a forum for professionals working in the field of oil and hazardous materials spills. The seminar facilitated the transfer of scientific and technical experts. The presenters were from many parts of Canada, and from Greece, China, United States, Australia, United Kingdom, France, and Spain. The chairman explained that this broad participation adds immense value to the seminar and provides participants with a world view of emerging research, and its practical application in the field of responding to environmental contamination and oil spills. The Canmore seminar featured plenary sessions of 10 to 20 minute presentations on spill-related topics including oil, chemical and biological research. The presentations were followed by a question and answer period. Poster sessions were also held daily at which participants presented their most recent research. In addition, a number of exhibits were set up to display equipment used for oil and chemical cleanup and spill related services.

The Administrator considers that a first-hand look at the latest technologies and oil spill counter-measures equipment is valuable for consultants of the Ship-source Oil Pollution Fund in the ongoing work of investigation and assessment of claims filed with the Fund.

### **4.3 Canadian Marine Advisory Council - Northern**

The Administrator was invited to attend the Canadian Marine Advisory Council - Northern (CMAC-N) meeting held in Ottawa on May 15, 2014. The Ship-source Oil Pollution Fund was represented by a marine consultant, Mr. Charles Gadula. The meeting was co-chaired by the Regional Director, Marine, Transport Canada, Prairie and Northern Region, and the Assistant Commissioner, Canadian Coast Guard, Central and Arctic Region.

The meeting was well attended with representatives from Transport Canada, Canadian Coast Guard, Northern Transportation Company Ltd., Environment Canada, Government of Nunavut, World Wildlife Canada, Transport Desgagnés, Office of Boating Safety – Transport Canada, Nunavik Eastern Arctic Shipping Ltd., Department of Fisheries and Oceans, National Research Council, Canadian Hydrographic Service, Government of the Northwest Territories, Parks Canada and others, including those involved with the Annual Northern Sealift.

Transport Canada provided a regional update on activities including: Technical Services, Marine Safety and Marine Security, as well as details regarding the Domestic Vessel Regulatory Oversight group. The presentation included plans for alternate service delivery, and an update on the Safety Management Systems, the Transportation of packaged Dangerous Goods and the planned Concentrated Inspection Campaign.

The Coast Guard representative provided information on the CCG helicopter acquisition program; the mid-life extension work on the CCGS *Amundsen*; the planned delivery of the Polar icebreaker; the work underway in partnership with industry on electronic navigation and the work being completed regarding Marine Corridors in the North. It was also noted that plans were being finalized for an environmental response exercise involving Canada and the United States in the Western Arctic. (The exercise was held in Juneau, Alaska during the summer of 2014.)

The Assistant Deputy Minister of Safety and Security (Transport Canada) provided the keynote address. She covered, at the strategic level, the following: Arctic increases in shipping; state of Search and Rescue (SAR) and Environmental Response in the Arctic; challenges in transiting the Northwest Passage; the precautionary approach required for SAR in the Arctic; the World-Class Tanker Safety Panel work and the current state of the Polar Code and the training requirements being discussed for ships' officers sailing in Arctic waters.

Industry provided insightful information on work conditions in the Arctic and the challenges facing shippers and communities. There was a focus on the need to attract more northerners into operations and some thoughts on how to move this agenda forward. The presentations were provided by Nunavik Eastern Arctic Shipping, Desgagnés Transarctik, Nunavut Sealink and Supply, Taqramut Transport, Fed-Nav; and Petro-Nav. The presentations highlighted the increase in Arctic shipping during the past twenty years, and expectation of future growth.

By having a representative at these CMAC-N meetings, the Administrator keeps up to date on the issues surrounding the transportation by sea of oil products throughout the high Arctic.

#### **4.4 Meeting with the Western Canada Marine Response Corporation**

On November 27, 2014, while in Vancouver on other business for the Fund, the Administrator and counsel met the President/General Manager of the Western Canada Marine Response Corporation (WCMRC). The reason for the meeting was to discuss the claim previously received from Burrard Clean Operations in the amount of \$223,056.46 for costs and expenses incurred by the WCMRC, in response to the cruise ship *Oceanic* incident that had occurred in Vancouver on July 30, 2009. On December 5, 2013, the Administrator had disallowed the claim on the grounds that, in his opinion, WCMRC had not taken all reasonable measures to secure payment of its claim from the owners of the ship. (The Administrator's Annual Report of 2013-2014 section 2.4 refers.)

The discussion focused on what more the Response Organization (RO) could do to ensure that it gets compensated in cases where it has proved impossible to get compensation from the shipowners, or their insurance, for response measures. The Administrator reminded the General Manager that relying on the contracted arrangements and the assurances received during the *Oceanic* incident may not be enough. It was only prudent for the RO to make sure that it had security before the ship departed the jurisdiction. In similar situations, a Letter of Undertaking (LOU) can usually be obtained at no cost to the RO. It was noted that while it may not be necessary to obtain a LOU in respect of a ship that trades into Canada on a regular basis, or is actually a Canadian registered ship, extra caution is required when the foreign ship does not enter Canadian waters regularly.

Furthermore, the General Manager was reminded that, if the Administrator is given early notice, the SOPF has the power of arrest, which it will not hesitate to exercise if there is any doubt about the reliability of the owners or their insurers. In conclusion, it was emphasized that the Fund has been set up to assist claimants, not the shipowners and that ROs remained the agents of the owners hence the need, as a sound business practice, for ROs to ensure that their expenses are paid by the owners. It was also suggested that in future the Response Organizations should, early on in the course of an incident, consult their lawyers on how best to protect their interests.

#### **4.5 Annual General Meeting of the Canadian Maritime Law Association and Seminar**

The Administrator attended a series of meetings with the Canadian Maritime Law Association (CMLA) which were held in Ottawa from May 21 to 23, 2014.

First, on May 21, the Administrator attended the annual meeting between the Executive of the CMLA and officials of the Government of Canada. This meeting is used to brief the CMLA Executive on a number of initiatives of the government and provides opportunity to receive feed-back on those initiatives. The Administrator is invited to the meetings to provide an update of activities of the SOPF, including the Administrator's involvement with the International Oil Pollution Compensation Funds (IOPC Funds). This year much of the discussion at the meeting focused on the recently announced government measures to enhance tanker safety in Canada. A variety of other subjects of mutual interest were covered. The proceedings concluded with a lunch at the Rideau Club at which the Assistant Deputy Minister of Policy, Transport Canada, Mr. Scott Streiner, was the guest speaker. In his speech, Mr. Streiner gave further details on the government's plans to improve tanker safety in the light of the first report of the Tanker Safety Expert Panel, established last year.

Second, the following day, May 22, the Administrator attended the Annual General Meeting (AGM) of the CMLA. The Administrator is an honorary member of the CMLA and regards its meetings as a valuable opportunity to cultivate contacts in the Canadian maritime community. The Association, while largely consisting of lawyers active in the practice of maritime law, also represents other stakeholders in the maritime community, notably insurers, maritime arbitrators and shipowners. This meeting is open to all members of the Association. In addition to receiving a comprehensive report of the President, Mr. John O'Connor, on the activities of the Association, as well as the financial statements for the calendar year ending December 31, 2013, the meeting also heard from subcommittee chairmen regarding various matters being studied by the Association, including various government initiatives, notably Bill C-3, which was before Parliament. That Bill, which has since received Royal Assent, provides the legislative base for the implementation of the HNS Convention and has implications for the SOPF. The Association is supportive of this government initiative.

Both the meeting with government officials and the AGM demonstrate that the CMLA is a useful sounding board for various government initiatives. Moreover, it is clear that contacts between government and the Association are not restricted to these two meetings but are on-going throughout the year.

Third, on May 23, the Administrator attended the Seminar, organized by the Federal Judicial Institute, for the benefit of the Federal Court of Appeal and the Federal Court, in collaboration with the CMLA. The seminar was open to all judges of those courts, as well as members of the CMLA. This kind of seminar is held every two or three years. The aim of this seminar was to instruct the judges on the principles of maritime/admiralty law and was suitably entitled *Back to Basics*. High quality papers were presented by speakers drawn from the membership of the CMLA on basic topics, including the sources of Canadian maritime law, actions *in rem* and limitation of liability. The seminar provided useful opportunities to meet and discuss matters of mutual interest with judges and members of the maritime bar. At the lunch, the guest speaker was the Chief Justice of the Australian Federal Court, the Honourable James L.B. Allsop, AO. The Chief Justice provided insights into the nature and sources of Australian maritime law, drawing interesting parallels with Canadian, American and British maritime law.

## **4.6 Meetings with the Canadian Coast Guard**

**4.6.1** During the year, the Administrator accepted an invitation to meet with the new Commissioner of the Canadian Coast Guard. The purpose of the requested meeting was to provide the Commissioner with a better understanding of the Ship-source Oil Pollution Fund (SOPF) and its relationship with the Coast Guard. The meeting was held at Coast Guard Headquarters on February 17, 2015. The Commissioner was accompanied by several Directors General and other senior staff.

The Administrator explained that the SOPF is set up for the benefit of claimants and not for shipowners, or any other responsible party. He emphasized that the filing of claims with the SOPF as soon as it is reasonably practicable after the incident has been dealt with allows him to properly investigate and assess the submitted documentation. The legal time limits should not necessarily determine the claim submission date. The earlier that compensation can be paid out to any claimant facilitates taking recourse action against the shipowner.

In some situations, delays in the filing of claims may be to the financial advantage of the responsible party, because the Administrator's investigation of an incident cannot really commence until a claim has been submitted. The Administrator mentioned that some Coast Guard claims have been received just short of the prescribed time limit. There was a brief discussion about the advantage of Coast Guard submitting a claim directly to the shipowner, or to the P&I Club. Such actions are in accord with the overall principle of the polluter pays. There was also an exchange of views of claim documentation and the need to improve the submissions in certain areas as previously discussed with Coast Guard staff and outlined in the Fund's claims manual. The subject of abandoned and derelict vessels was raised, which for the Commissioner continues to be a funding problem. Coast Guard is unable to deal with the issue without regulatory change. Other day-to-day matters were discussed. The Commissioner was aware of the Administrator's recent efforts during meetings held in the Regions with respect to the preparation of claims and the substantiating documentation required to determine that the Coast Guard's response measures are reasonable under the circumstances. The Administrator noted that the regular quarterly meetings held between the Coast Guard Headquarters' operational management staff and the consultants working with the SOPF continue to be beneficial. These meetings are valuable to both Coast Guard and the Administrator and allows the participants to better appreciate the overall investigation and assessment of claims filed with the SOPF for compensation.

**4.6.2** In addition to the quarterly meetings held between CCG and SOPF representatives, the Administrator invited the Coast Guard manager of incident management to provide a briefing on Coast Guard's recently established Incident Command System (ICS). The manager explained that, as the lead federal agency to ensure an appropriate response to a ship-source oil spill, the CCG works with other stakeholders to ensure the protection of the marine environment and public safety. The CCG adopted the ICS to allow for a more effective response to a major spill and integrate its operations with other agencies, including the private sector response organizations. It was shown that the ICS structure for a particular occurrence would be based on the size and complexity of the incident and the essential counter-measures that need to be taken. In effect, the ICS is an internationally accepted management system used for the command, control, and coordination of emergency response operations. It was a very useful and informative session.

**4.6.3** On November 28, 2014, the Administrator and counsel met in Vancouver in the offices of counsel, with the Director of Coast Guard Programs, Ms. Miriam Van Roosmalen, and two of her Regional Environmental Response personnel. The purpose of the meeting was primarily to address areas of concern with respect to the submission of claims by Coast Guard to the Ship-source Oil Pollution Fund.

The Administrator emphasized the need for Coast Guard to file claims on a timely basis, since this improves the chances of quick and satisfactory payment by the SOPF. Furthermore, it improves the chances of reimbursement of a claim by the owners of ships, if such owners are identifiable and available. It was emphasized that there is a need for sufficient documentary evidence for recourse action against the shipowner. Most of the discussion revolved around what are reasonable costs and expenses. The Administrator explained that where there is insufficient substantiating documentation filed with a claim it is difficult to conduct a thorough investigation and assessment.

In particular, the Director of Programs wanted to know whether certain administrative costs, for example, time taken to compile a claim would be recoverable. The Administrator pointed out that much depends on the facts and complexity of a particular claim, so there is no definite answer to that issue. If the claim is a relatively simple, straightforward affair, there seems to be little merit in adding significant administrative costs. However, if a claim is complicated and compiling it requires considerable effort and time, there may be some room for including such costs in a claim. Further discussion ensued about the Incident Command System being implemented by Coast Guard and the updating of the Regional Chapter of Coast Guard's Marine Spills Contingency Plan. Basically, it was a productive meeting and all appreciated the opportunity to discuss the role of the SOPF and its requirements when claims are filed with the Fund for compensation.

#### **4.7 Meeting with officials from the City of Vancouver**

On November 28, 2014, the Administrator met at City Hall with officials from the City of Vancouver: the manager of Risk Financing and Loss Control, and the manager of Risk Management. In attendance was Mr. Peter Wright, a consultant engaged by the City to plan for dealing with an oil spill that might occur in the vicinity of Vancouver. He was hired to write a report on the oil spill regime in Canada. Mr. Wright had previously met with the Administrator in Ottawa on October 9 for a briefing on the purpose and mandate of the Ship-source Oil Pollution Fund (SOPF).

During the Vancouver meeting the officials expressed concern about the expansion of activity in the Port of Vancouver, particularly the planned increase in tanker traffic. The Administrator reminded the officials that the SOPF is strictly a compensation mechanism and does not have any say in policy matters related to the proposed port expansion. He advised that any concerns that the City has in that respect should be taken up with Transport Canada and, possibly, the Canadian Coast Guard. The Administrator did outline for them the claims procedures, since if there was an incident in the port, or in the approaches to the port, the City might have claims. These claims could not only be with respect to response costs that may have been incurred in protecting City property, but also for things such as loss of tourism. A copy of the SOPF claims manual was left with the official and it was mentioned that the SOPF Annual Report is available online.

#### **4.8 Meeting with the Chairman of the IOPC Supplementary Fund**

On September 15, 2014, the Chairman of the IOPC Supplementary Fund, Mr. Sung-bum Kim, from the Republic of Korea visited the office of the Administrator. The prime reason for the visit was to obtain a better understanding of Canada's national ship-source oil pollution compensation regime. Prior to the meeting the Chairman provided a list of issues and questions for discussion.

The Administrator explained that the Canadian statutory claims regime is set out in the *Marine Liability Act*, and it is based on the principle that the polluter pays. Under the Act, the SOPF is available to pay claims for oil pollution damage, caused by the discharge of oil from a ship in all Canadian waters including the exclusive economic zone of Canada. Under the IOPC regime, compensation is limited to sea-going tankers carrying persistent oil. The Canadian Fund does not have this limitation because in Canada ships of all classes are covered. The SOPF will also compensate for oil pollution damage and clean-up costs where the identity of the ship that caused the discharge cannot be established. Furthermore, under the *Marine Liability Act*, the principle of paying compensation to fishermen for loss of income is recognized. With respect to the principles and guidelines of Canada versus the International Regime, the Administrator noted that Canada operates primarily on the basis of two funds: the international fund and the domestic fund. The scope of these two funds is somewhat different. In the event of a major tanker spill, both funds would work together in close cooperation to avoid duplication of claim submission and substantiation. A number of other matters were discussed briefly, such as the Canadian regime of Response Organization, the National Aerial Surveillance Program, and that the SOPF is both a Fund of First and Last Resort.

As requested by Mr. Kim, the financial bases from the Canadian Fund was addressed. The Administrator explained that the amount of money in the Fund is actually a liability amount on the accounts of Canada, and that there is no bank account per se where the money is held. Moreover, the Minister of Finance credits, on a monthly basis, interest on the balance of the Fund.

Finally, the Administrator explained that the SOPF was established for claimants and not the responsible party. The Administrator must, however, take all reasonable steps to recovery costs from the shipowner. Mr. Kim asked about the powers of a Commissioner under the *Inquiries Act*. The Administrator explained that only the Federal Court of Canada can overturn the Administrator's decision on the established amount of any final offer of claim settlement.

## **4.9 McGill Lecture**

In keeping with previous practice, at the invitation of Mr. John O'Connor, a member of the teaching staff in the Faculty of Law, McGill University, the Administrator attended a lecture at the University on November 18, 2014 to give law students an account of the operations of the Ship-source Oil Pollution Fund (SOPF). The lecture was focused on the international regime of liability and compensation for oil pollution caused by ships and how the SOPF fits into that scheme. The lecture also focused on the domestic aspect of ship-source oil pollution. The talk proved to be most instructive, both for the students and for the Administrator, provoking a number of interesting questions from students.

The Administrator hopes that this initiative will be repeated in the future as a means of raising awareness of future lawyers in this very specialized field of maritime law. Special thanks go to Mr. O'Connor for organizing this initiative.

## 5. SOPF Involvement in the International Compensation Regime

In October 2014, the Administrator attended meetings of the governing bodies of the IOPC Funds as an advisor to the Canadian delegation. For a detailed report on the discussions and decisions taken at the meetings, the record of decisions is available on the IOPC Funds website [www.iopcfunds.org](http://www.iopcfunds.org) (doc. IOPC/OCT14/11/1). For present purposes it is intended to mention two subjects, dealt with at the meetings, namely, the decision taken by the Administrative Council of the 1971 Fund to go ahead with the winding up of the Fund by December 31, 2014, and the adoption of the budget. The record of decisions also contains review and discussion of the various incidents currently under consideration by the IOPC Funds.

### 5.1 Winding up of the 1971 Fund

Most of the time of the meetings was taken up with the deliberations of the 1971 Administrative Council concerning the adoption of Resolution 18. That resolution included a decision by the Council to wind up the 1971 Fund by December 31, 2014. The decision to adopt the resolution did not come easily. Prior to the October meetings a number of states, led by the United Kingdom, had lobbied for a postponement of the decision to wind up the Fund on the grounds that there were outstanding obligations that had not been dealt with to the satisfaction of all the parties concerned. Most notably, it was argued, the final decision of the Venezuelan Supreme Court in the *Nissos Amorgos* case remained unresolved.

The Administrative Council at previous meetings had already decided that the claim in the *Nissos Amorgos* case, a claim for environmental damage by the government of Venezuela, was inadmissible for a variety of reasons, including that the claim was time barred, that it was based on principles not recognized under the 1971 Fund Convention and that the final judgement did not identify the 1971 Fund as a liable party. The Gard Club, the P&I Club that had insured the vessel, countered those arguments with the submission that the Fund was liable pursuant to binding agreements between the Club and the 1971 Fund that the Fund would pay any amounts that the Club was obliged to pay beyond the limit of liability of the shipowner. In that regard, there was also the issue of the right of the shipowner to limit its liability which, in the view of all concerned, including the IOPC Fund, had been improperly denied by the Venezuelan courts.

To prevent the winding up of the Fund, the Gard Club had commenced litigation in the UK High Court the aim of which was to freeze the remaining assets of the Fund and to enforce the alleged agreements with the Fund, referred to above. The freezing order was granted in April 2014, but in a decision handed down by the court just before meetings of the governing bodies in October, the court ruled that there was no binding agreement and, further, that the Fund enjoyed immunity from suit under the Headquarters Agreement it had concluded with the UK government.

Although the legal obstacles had been removed by this favourable ruling, some delegations, as well as industry observers, remained uneasy about a winding up of the Fund. In the ensuing debate a consensus could not be reached, so that finally the matter had to be resolved by a vote, the first vote in the history of the 1971 IOPC Fund and certainly the last one. The result was a convincing majority in favour of winding up the Fund, 29 states voting for winding up and 14 states voting against. One factor that may have influenced the vote was the fact that the Fund was running out of money and could only survive for any extended time if contributions were levied. Most delegations seemed to agree that a levy under a convention that is no longer in force in respect of a claim (*Nissos Amorgos*) the validity of which was questionable would be difficult, if not impossible to enforce.

As of December 31, 2014, the winding up of the 1971 Fund has been completed in accordance with Resolution 18. On December 9, 2014, the SOPF received a refund of £68 573.00 (\$122,903.39) reflecting Canada's share of the monies remaining in the accounts of that Fund at the time of dissolution. On April 17, 2015, a session of former member states to the 1971 Fund was convened at the International Maritime Organization, the depository of the governing treaty, to approve the final accounts of the Fund.

## **5.2 Budget**

As is customary at the October meetings of the governing bodies, the Director proposed a budget for the next year. The adoption of the budget provides the basis for any decisions to levy contributions, if needed, based on the budgetary forecast submitted by the Director. Contributions are required for two purposes. First, contributions may be required to defray the costs and expenses associated with the running of the joint Secretariats of the IOPC Funds. It should be noted that the Secretariat of the 1992 Fund administers the 1971 Fund and the Supplementary Fund against the payment by these Funds of an annual flat fee. Secondly, contributions may be needed to pay compensation for established claims arising out of the various incidents being dealt with by the Funds.

With respect to administrative costs, the 1992 Assembly adopted a budget for 2015 of £4 604 140. It also approved a levy of £3.8 million, payable by March 1, 2015, in respect of that budget item. On December 12, 2014, the SOPF received an invoice for £128 121 07, reflecting Canada's share of the levy, based on oil reports for 2013. This amount was paid in full on February 4, 2015.

The 1992 Assembly decided not to levy any contributions in respect of any of the Major Claims Funds currently established in respect of the *Prestige* incident, the *Volgoneft* incident and the *Hebei Spirit* incident.

For further details of the budget adopted at the October 2014 session, the record of decisions, referred to above, should be consulted.

## **6. Financial Statements**

This section contains the auditor's report on the financial position of the SOPF and the results of its operations as of March 31<sup>st</sup>, 2015.



**SHIP-SOURCE OIL POLLUTION FUND**

FINANCIAL STATEMENTS

MARCH 31, 2015

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

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## INDEPENDENT AUDITOR'S REPORT

To the Administrator of  
Ship-source Oil Pollution Fund

We have audited the accompanying financial statements of the Ship-source Oil Pollution Fund, which comprise the statement of financial position as at March 31, 2015, the statements of operations, change in net financial assets and cash flows 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 public sector accounting standards, 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 entity'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 entity'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.

**Marcil Lavallée**

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*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, 2015, as well as the results of its operations, its change in net financial assets and its cash flows for the year then ended in accordance with public sector accounting standards.

*Budget*

As explained in Note 11 to the financial statements, budget figures are not disclosed in the financial statements, although it is required according to public sector accounting standards.



Chartered Professional Accountants, Licensed Public Accountants

Ottawa, Ontario  
May 12, 2015

# SHIP-SOURCE OIL POLLUTION FUND

## STATEMENT OF FINANCIAL POSITION

MARCH 31, 2015

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	2015	2014
<b>FINANCIAL ASSETS</b>		
Balance of the account with Receiver General for Canada (Note 3)	\$ 409,835,893	\$ 406,005,275
Accounts receivable	-	1,000
Prepaid expenses	1,690	1,189
<b>TOTAL FINANCIAL ASSETS</b>	<b>409,837,583</b>	<b>406,007,464</b>
<b>LIABILITIES</b>		
Accounts payable and accrued liabilities	336,633	129,776
Provision for claims under review (Note 4)	948,619	804,020
<b>TOTAL LIABILITIES</b>	<b>1,285,252</b>	<b>933,796</b>
<b>NET FINANCIAL ASSETS</b>	<b>408,552,331</b>	<b>405,073,668</b>
<b>NON-FINANCIAL ASSETS</b>		
Capital assets (Note 5)	97,963	218,050
<b>ACCUMULATED SURPLUS</b>	<b>\$ 408,650,294</b>	<b>\$ 405,291,718</b>

*Contingencies* (Note 6)

  
\_\_\_\_\_, Administrator

# SHIP-SOURCE OIL POLLUTION FUND

## STATEMENT OF OPERATIONS

FOR THE YEAR ENDED MARCH 31, 2015

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	2015	2014
<b>REVENUE</b>		
Interest	\$ 5,266,651	\$ 6,826,266
Recoveries related to previously awarded settlements	133,144	2,138,651
	<b>5,399,795</b>	<b>8,964,917</b>
<b>CLAIMS</b>		
Payments made towards Canadian claims	341,218	141,796
Increase of provision for claims under review	144,599	199,696
International Oil Pollution Compensation Funds Contributions (Note 6)	246,095	1,028,982
	<b>731,912</b>	<b>1,370,474</b>
	<b>4,667,883</b>	<b>7,594,443</b>
<b>OPERATING EXPENSES</b>		
Administrator's fees	99,000	98,450
Legal fees	83,527	74,787
Consulting fees	133,176	96,630
Audit fees	16,498	16,216
Special examination fees	56,500	-
Administrative services, salaries and office	467,789	460,149
Travel	37,310	16,247
Rent	225,717	225,717
Access to Information and Privacy Act (Note 8)	60,633	62,294
Amortization of capital assets	129,157	159,051
	<b>1,309,307</b>	<b>1,209,541</b>
<b>OPERATING SURPLUS</b>	<b>3,358,576</b>	<b>6,384,902</b>
<b>ACCUMULATED SURPLUS, BEGINNING OF YEAR</b>	<b>405,291,718</b>	<b>398,906,816</b>
<b>ACCUMULATED SURPLUS, END OF YEAR</b>	<b>\$ 408,650,294</b>	<b>\$ 405,291,718</b>

## SHIP-SOURCE OIL POLLUTION FUND

### STATEMENT OF CHANGE IN NET FINANCIAL ASSETS

FOR THE YEAR ENDED MARCH 31, 2015

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	2015	2014
<b>OPERATING SURPLUS</b>	<b>\$ 3,358,576</b>	<b>\$ 6,384,902</b>
Acquisition of capital assets	(9,656)	(21,924)
Amortization of capital assets	129,157	159,051
Loss on disposal of capital assets	586	-
	<b>120,087</b>	<b>137,127</b>
<b>INCREASE IN NET FINANCIAL ASSETS</b>	<b>3,478,663</b>	<b>6,522,029</b>
<b>NET FINANCIAL ASSETS, BEGINNING OF YEAR</b>	<b>405,073,668</b>	<b>398,551,639</b>
<b>NET FINANCIAL ASSETS, END OF YEAR</b>	<b>\$ 408,552,331</b>	<b>\$ 405,073,668</b>

# SHIP-SOURCE OIL POLLUTION FUND

## STATEMENT OF CASH FLOWS

FOR THE YEAR ENDED MARCH 31, 2015

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	2015	2014
<b>OPERATING TRANSACTIONS</b>		
Operating surplus	\$ 3,358,576	\$ 6,384,902
<b>Adjustments for:</b>		
Amortization of capital assets	129,157	159,051
Loss on disposal of capital assets	586	-
	<b>3,488,319</b>	<b>6,543,953</b>
<b>Net change in non-cash working capital items:</b>		
Accounts receivable	1,000	(1,000)
Prepaid expenses	(501)	(1,189)
Accounts payable and accrued liabilities	206,857	28,060
Provision for claims under review	144,599	199,696
	<b>351,955</b>	<b>225,567</b>
<b>INVESTING TRANSACTION</b>		
Acquisition of capital assets	(9,656)	(21,924)
<b>INCREASE IN BALANCE OF ACCOUNT WITH RECEIVER GENERAL FOR CANADA</b>		
	<b>3,830,618</b>	<b>6,747,596</b>
<b>BALANCE, BEGINNING OF YEAR</b>	<b>406,005,275</b>	<b>399,257,679</b>
<b>BALANCE, END OF YEAR</b>	<b>\$ 409,835,893</b>	<b>\$ 406,005,275</b>

# SHIP-SOURCE OIL POLLUTION FUND

## NOTES TO THE FINANCIAL STATEMENTS

MARCH 31, 2015

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### 1. GOVERNING STATUTES AND PURPOSE OF THE ORGANIZATION

The Ship-source Oil Pollution Fund (the Fund) was created on April 24, 1989 by amendments to the *Canada Shipping Act* and succeeded the Maritime Pollution Claims Fund. The Fund is governed by Part 7 of the *Marine Liability Act* (MLA) as modified by Statutes of Canada, 2009, Chapter 21.

### 2. SIGNIFICANT ACCOUNTING POLICIES

#### Basis of accounting

The financial statements are prepared in accordance with Treasury Board accounting policies which are consistent with public sector accounting standards.

#### Accounting estimates

The preparation of financial statements in accordance with Treasury Board Secretariat accounting policies, which are consistent with public sector accounting standards requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and the reported amounts of revenue and expenses for the periods covered. The primary estimates relate to the useful life of capital assets and the valuation of provision for claims under review. Actual amounts could differ from the estimates.

#### Revenue recognition

Interest income is recognized as revenue when it is earned. Recoveries related to previously awarded settlements are recognized when 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:

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 of the International Oil Pollution Compensation Funds Contributions

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

#### Foreign currency translation

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

# SHIP-SOURCE OIL POLLUTION FUND

## NOTES TO THE FINANCIAL STATEMENTS

MARCH 31, 2015

8

### 3. 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 0.66% and 1.57% during the year (2014: 1.10% and 2.24%). The average interest rate for March 2015 was 0.70% (2014: 2.24%).

### 4. 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 \$948,619 for claims received prior to March 31, 2015 (2014: \$804,020) 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.

### 5. CAPITAL ASSETS

	2015		
	Cost	Accumulated amortization	Net book value
Computer equipment	\$ 151,768	\$ 144,988	\$ 6,780
Furniture and equipment	185,555	94,372	91,183
Leasehold improvements	487,714	487,714	-
	<b>\$ 825,037</b>	<b>\$ 727,074</b>	<b>\$ 97,963</b>

	2014		
	Cost	Accumulated amortization	Net book value
Computer equipment	\$ 153,345	\$ 138,777	\$ 14,568
Furniture and equipment	176,874	76,206	100,668
Leasehold improvements	487,714	384,900	102,814
	<b>\$ 817,933</b>	<b>\$ 599,883</b>	<b>\$ 218,050</b>

# SHIP-SOURCE OIL POLLUTION FUND

## NOTES TO THE FINANCIAL STATEMENTS

MARCH 31, 2015

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### 6. 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 Compensation Funds. The amounts contributed are used to pay compensation for claims arising 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 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, 2015, the Fund has contributed \$246,095 (2014: \$1,028,982) to the International Oil Pollution Compensation Funds.

During the fiscal year commencing April 1, 2015, the maximum liability of the Fund is \$165,837,463 (2014: \$162,745,303) for all claims from one oil spill. Furthermore, as of April 1, 2015, the Minister of Transport also has the statutory power to impose a levy of 49.74 cents (2014: 48.81 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.

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 likelihood 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.

### 7. INFORMATION INCLUDED IN OPERATIONS

	2015	2014
Foreign exchange gain included in the recoveries related to previously awarded settlements	\$ 1,563	\$ 178,704
Foreign exchange loss included in the International Oil Pollution Compensation Funds contributions	\$ 19,436	\$ 91,546

# SHIP-SOURCE OIL POLLUTION FUND

## NOTES TO THE FINANCIAL STATEMENTS

MARCH 31, 2015

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

	2015	2014
Consultant fees	\$ 54,452	\$ 54,042
Records and information management database	5,932	7,595
Administration costs	249	657
	\$ 60,633	\$ 62,294

The *Access to Information and Privacy Act* expenses incurred in 2015 are related to application development and system improvements of a records and information database and activities to facilitate the processing of access to information requests and to ensure that records containing personal information are dealt with in accordance with privacy laws and regulations.

### 9. RELATED PARTY TRANSACTIONS

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

#### Rent

During the year, the Fund has paid \$225,717 (2014: \$225,717) to Public Works and Government Services Canada (PWGSC) for the use of office space.

The Fund was committed to making minimum annual lease payments to PWGSC in the amount of \$225,717 for the rental of office space up to March 31, 2015. As a tenant, the Fund is also responsible to pay its share of escalation costs annually. The lease agreement has not yet been renewed as at May 12, 2015.

#### Accounting services

During the year, the Fund has paid \$29,934 (2014: \$30,780) to Transport Canada for accounting services.

### 10. SUBSEQUENT EVENT

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, 2015 were provided for in the financial statements. During the period from April 1, 2015 to May 12, 2015, the Fund has received an additional claim totalling \$5,738. This claim is not provided for in the financial statements.

### 11. BUDGET

The Ship-source Oil Pollution Fund does not prepare an annual budget.

