

Ship-source Oil Pollution Fund



The Administrator's Annual Report
2008 – 2009
Canada

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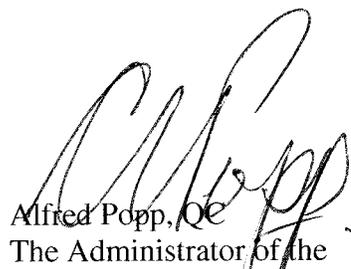
Canada

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

Dear Mr. Baird:

It is my pleasure to submit the Annual Report for the Ship-source Oil Pollution Fund for the fiscal year ending March 31, 2009, to be laid before each House of Parliament, in accordance with Section 100 of the *Marine Liability Act (MLA)*.

Yours sincerely,

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

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

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List of Acronyms

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

* The value of the SDR at April 1, 2009, was \$1.8856. 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, 2009. Section 1 describes the Canadian compensation regime, which is governed by Part 6 of the *Marine Liability Act*. Canada's national fund covers all classes of ships that discharge persistent and non-persistent oil, including oil from unknown sources commonly referred to as "mystery spills". Canada is also a contracting state to the International Oil Pollution Compensation Funds (1992 IOPC Fund) that mutualizes the risk of persistent oil discharged from sea-going tankers. The current limits of liability and compensation available in Canada, including the territorial sea and the exclusive economic zone, under the 1992 Civil Liability Convention (CLC) and the 1992 IOPC Fund are illustrated in figure 1.

On January 29, 2009, the Minister of Transport tabled a bill in the House of Commons containing amendments to the *Marine Liability Act*. On passage of the bill, Bill C-7, significant changes will be made to the Canadian compensation scheme. The changes will provide the legislative basis for Canadian accession to the 2003 Protocol that sets up the Supplementary Fund. That Fund will provide for a significant increase in compensation for oil pollution caused by tankers. Additionally, the changes would allow Canadian accession to the 2001 International Convention on Civil Liability for Bunker Oil Pollution Damage. As of March 31, 2009, Parliament had not yet completed its consideration of Bill C-7.

Financial Section

The financial statements of the SOPF for the fiscal year were examined by independent auditors –section 6 refers. During the year, Canadian claims were settled and paid for a total amount of \$565,464 including interest. The Administrator recovered \$33,100 from third parties liable respecting payments made out of the SOPF. In addition, contributions in the amount of \$5,161,014 were made to the 1992 IOPC Fund for incidents outside of Canada.

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

As at March 31, 2009, the accumulated surplus in the SOPF was \$380,025,462.

Canadian Oil Spill Incidents

The Administrator received reports of oil pollution incidents from different sources such as the Canadian Coast Guard, the Department of the Environment and the Transportation Safety Board Agency. Moreover, enquiries were occasionally made by representatives from provincial and municipal governments, as well as private citizens about whether they are entitled to compensation under the *Marine Liability Act* for oil pollution damage and the resulting clean-up costs and expenses. Many of the incidents that are reported to the Administrator did not result in claims against the SOPF. These occurrences were usually dealt with satisfactorily at the local level, including acceptance of financial responsibility by the shipowner's insurers. Consequently, there may have been no requirement for an investigation by the SOPF.

The oil spill incidents described in section 2 indicate the status of oil pollution claims that were assessed and settled during the fiscal year. Section 2 includes claims that are in various stages of advancement. The Administrator dealt with 58 active incident files during the year. Of these, 44 are reported in section 2. A number of major claims were settled and in one or two cases after lengthy litigation. In most instances, however, claims were settled without recourse to the courts. The current status of recovery action by the Administrator against shipowners is also noted in the oil spill incident section. During the fiscal year, 12 new claims were received in the aggregate amount of \$396,738.90. Investigations are underway, but not all of them were completed by March 31, 2009.

Challenges and Opportunities

During the year the Administrator dealt with a number of new administrative challenges resulting from government policies to promote greater transparency. These new administrative requirements have significantly increased the workload of the SOPF. Section 3 addresses several of these challenges such as:

- Ensuring compliance with the *Access to Information Act*;
- Complying with government legislation and policies aimed at greater transparency and accountability;
- Developing a proper file retirement policy and concluding an agreement with Library and Archives Canada to take over SOPF files on their retirement;
- Negotiating with Transport Canada to conclude a Memorandum of Understanding to clarify the roles and responsibilities of the SOPF and the department;
- Arranging examination of the financial records of the SOPF by an independent auditor.

Outreach Initiatives

The Administrator continues to undertake outreach initiatives aimed at raising awareness of the existence of the Ship-source Oil Pollution Fund and its availability to provide compensation for oil pollution caused by ships. This outreach provides an opportunity for the Administrator to further his personal understanding of the perspectives of individual claimants, shipowners, clean-up contractors and other stakeholders who respond to an oil spill incident and, as a result, file a claim for compensation from the Fund. These outreach initiatives are addressed in section 4 and include:

- Attending sessions of the Canadian Marine Advisory Council's semi-annual national conferences held in Ottawa;
- Participating in the Canada International Maritime Symposium held in Halifax;
- Participating in meetings of the Canadian Maritime Law Association and government officials held in Ottawa;
- Being represented by a marine consultant engaged by the SOPF at the Marine Advisory Council, Northern CMAC, meetings held in Whitehorse, Yukon, and in Iqaluit, Nunavut;
- Being represented by a marine consultant at the 35th Atlantic Regional Environmental Emergency Team (REET) conference held in St. John's, Newfoundland;
- Arranging for a Marine Consultant to attend at the Eastern Canada Response Corporation facility in St. John's, Newfoundland;
- Maintaining contact with representatives of international organizations, such as the International Tanker Owners Pollution Federation; Oil Companies International Marine Forum, and the Protection and Indemnity (Marine Insurance) Association.

The International Compensation Regime

Outlined in section 5 are the highlights of the Administrator's involvement during the year in the International Compensation Regime. The Administrator participated, as a member of the Canadian delegation, in a number of meetings of the governing bodies and working groups of the 1992 IOPC Fund, including:

- The Administrative Council and Executive Committee meetings held in London from June 23 to 27, 2008;
- The Fund Assembly, the Executive Committee and Administrative Council meetings held in London from October 13 to 17, 2008;
- The Executive Committee meetings held in London during March 2009.

1. The Canadian Compensation Regime

The SOPF was established under amendments to the former CSA that came into force on April 24, 1989. The SOPF succeeded the Maritime Pollution Claims Fund (MPCF), which had existed since 1973. In 1989, the accumulated amount of \$149,618,850.24 in the MPCF was transferred to the SOPF. Effective August 8, 2001, the SOPF is governed by Part 6 of the *Marine Liability Act* (MLA) Statutes of Canada, 2001, chapter 6, which superseded the above mentioned amendment to the CSA. The SOPF is a special account established in the accounts of Canada upon which interest is presently credited monthly by the Minister of Finance.

A levy of 15 cents per tonne was imposed from February 15, 1972, until September 1, 1976, during that period a total of \$34,866,459.88 was collected and credited to the MPCF from 65 contributors. Payers into the MPCF included oil companies, power generating authorities, pulp and paper manufacturers, chemical plants and other heavy industries.

During the fiscal year commencing April 1, 2009, pursuant to the pertinent provisions of the MLA, the Minister of Transport has the statutory power to impose a levy of 46.29 cents per metric tonne of “contributing oil” imported into or shipped from a place in Canada in bulk as cargo on a ship. The levy is indexed annually to the consumer price index. No levy has been imposed since 1976.

The SOPF is liable to pay claims for oil pollution damage or anticipated damage at any place in Canada, or in Canadian waters including the exclusive economic zone of Canada, caused by the discharge of oil from a ship.

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

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

During the fiscal year commencing April 1, 2009, the maximum liability of the SOPF is \$154,392,072 for all claims from one oil spill. This amount is indexed annually. The classes of claims for which the SOPF may be liable include the following:

- Claims for oil pollution damage;
- Claims for costs and expenses of oil spill clean-up including the cost of preventative measures; and
- Claims for oil pollution damage and clean-up costs where the identity of the ship that caused the discharge cannot be established (mystery spills).

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

1. All costs and expenses must be reasonable;
2. All clean-up measures taken must be reasonable measures;
3. All costs and expenses must have actually been incurred; and
4. All claims submitted to the SOPF must be investigated by an independent authority (the Administrator).

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

SOPF: A Fund of Last Resort

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.

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 1992 IOPC Fund. In such event, the extent of the SOPF's liability as a last resort is stipulated in section 84 of the MLA.

The Administrator also has the power and authority to participate in any settlement of such litigation, and may make payments out of the SOPF as may be required by the terms of the settlement.

A Response Organization (RO) as defined in the CSA has no direct claim against the SOPF, but it can assert a claim for unsatisfied costs and expenses after exhausting its right of recovery against the shipowner.

SOPF: A Fund of First Resort

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

As provided in section 85 of the MLA, any person may file a claim with the Administrator of the SOPF respecting oil pollution loss or damage or costs and expenses, with one exception. As previously stated, an RO, established under the CSA, has no direct claim against the SOPF.

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

The Administrator may either make an offer of compensation or decline the claim to the extent that it has not been established. An unsatisfied claimant may appeal the Administrator's decision to the Federal Court of Canada within 60 days.

When the Administrator pays a claim, he is subrogated to the rights of the claimant and is obligated to take all reasonable measures to recover the amount of compensation paid to claimants from the shipowner or any other person liable. As a consequence, the Administrator is empowered to commence an action *in rem* against the ship (or against the proceeds of sale, if the ship has been sold) to obtain security to protect the SOPF in the event that no other security is provided. The Administrator is entitled to obtain security either prior to or after receiving a claim, but the action *in rem* can only be continued after the Administrator has paid claims and has become subrogated to the rights of the claimant.

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

Amendments to the Canadian Compensation Regime

On January 29, 2009, the Minister of Transport tabled a bill in the House of Commons containing amendments to the *Marine Liability Act*. On passage of the bill, Bill C-7, significant changes will be made to the Canadian Compensation Scheme. The changes will provide the legislative basis for Canadian accession to the 2003 Protocol that sets up the Supplementary Fund. That Fund will provide for a significant increase in compensation for oil pollution caused by tankers. Additionally, the changes would allow Canadian accession to the 2001 *International Convention on Civil Liability for Bunker Oil Pollution Damage*. As of March 31, 2009, Parliament had not yet completed its consideration of Bill C-7.

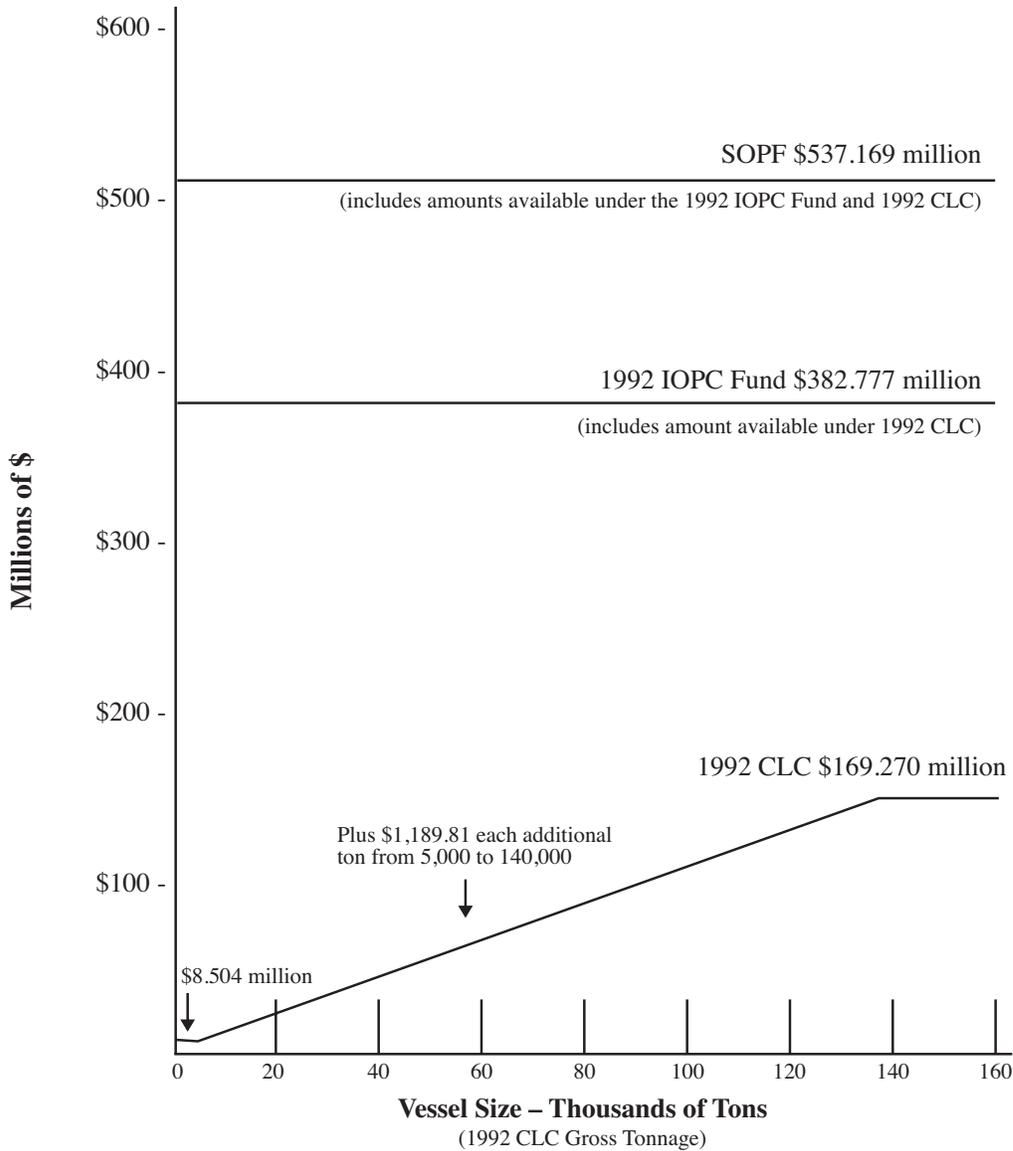
Notes:

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

Figure 1

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

Based on the value of the SDR ⁽¹⁾ at April 1, 2009



(1) The value of the SDR at April 1, 2009, was approximately \$1.8856. This actual value is reflected in Figure 1 above.

Figure 1 shows the current limits of liability and compensation available under the 1992 CLC, the 1992 IOPC *Fund Convention*, and the SOPF for oil spills from tankers in Canada, including the territorial sea and the exclusive economic zone. See MLA subsection 54(1) and Order P.C. 2003 - 1703 October 2003. Because of the SOPF, Canada has extra cover over and above that available under the international Conventions.

N.B. The above aggregate amount available under the 1992 CLC and the 1992 IOPC Fund is \$382,777 million effective November 1, 2003. The SOPF amount of some \$154,392 million on top of that, results in \$537,169 million being available now for a tanker spill in Canada. If Canada becomes a party to the Supplementary Fund Protocol, the total compensation package available will be approximately \$1.4 billion.

Figure 2

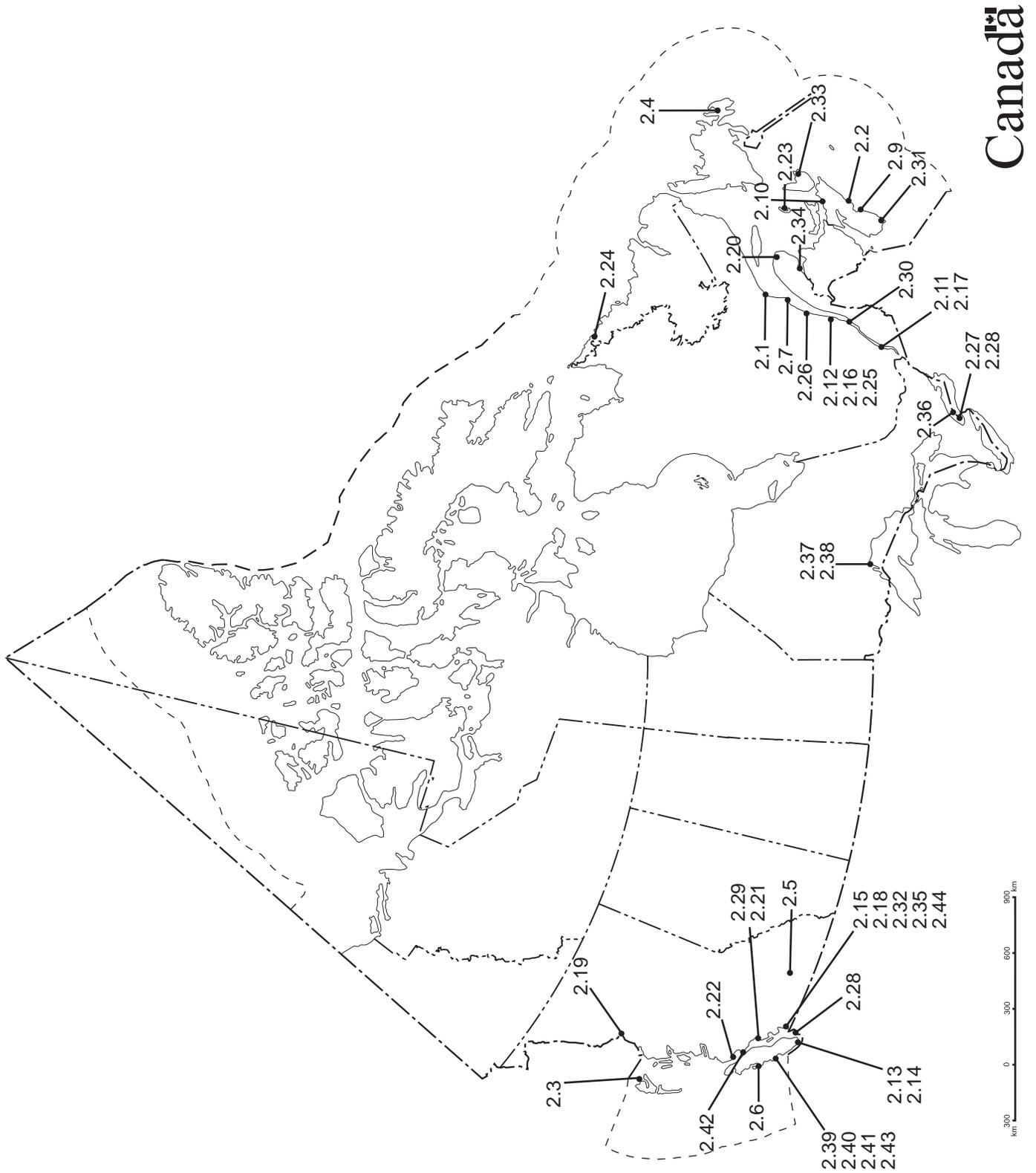
Canadian Contributions to the International Funds

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

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

Fiscal Year	Paid from the SOPF (\$)
1989/90	207,207.99
1990/91	49,161.28
1991/92	1,785,478.65
1992/93	714,180.48
1993/94	4,927,555.76
1994/95	2,903,695.55
1995/96	2,527,058.41
1996/97	1,111,828.20
1997/98	5,141,693.01
1998/99	902,488.15
1999/00	273,807.10
2000/01	6,687,696.71
2001/02	2,897,244.45
2002/03	3,219,969.17
2003/04	4,836,108.49
2004/05	3,448,152.80
2005/06	-
2006/07	360,233.37
2007/08	106,305.06
2008/09	5,161,013.63
Total	\$47,260,878.26

Note: There was no call for Canadian contributions to the International Funds during the fiscal year 2005-2006.



2. Canadian Oil Spill Incidents

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

During the current fiscal year, the Administrator handled 58 active incident files. Of these, 44 are reported on in this section. They involve either claims filed with the Fund, or those for which some action may have been initiated to ensure that the SOPF's interests are properly protected. Some 12 new claims were received during the fiscal year in the aggregate amount of \$396,738.90. Investigations are underway but all of them were not completed by the end of the fiscal year.

Location of incidents is indicated on the map opposite.

2.1 Mystery Oil Spill - Port Cartier, Quebec (2000)

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

Port Cartier is a private harbour of the Compagnie minière Québec Cartier (CMQC). The Port Authorities took charge of the clean-up, in the presence of the CCG. Transport Canada Marine Safety (TCMS) took oil samples. The oil resembled fuel oil and the quantity spilled was estimated at approximately 900 litres.

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

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

On April 30, 2001, the Administrator received a claim in the amount of \$249,137.31 from counsel for CMQC, which was submitted on behalf of the port company for costs and expenses incurred by them when cleaning-up the oil spill. On July 27, 2001, a further claim was received from counsel for CMQC amounting to an additional \$10,878.08, stated to be for the recovery of their legal fees in connection with this incident. These legal expenses were rejected.

A key issue in this case was whether or not the oil came from a shore-based operation. It was reported that over a similar time frame to the incident, Environment Quebec was investigating a source of contamination coming from ashore in Port Cartier.

Following a lengthy investigation by the SOPF, CCG, TCMS and Environment Quebec, the Administrator was not satisfied that a ship did not cause the occurrence.

Ship-source Oil Pollution Fund

Accordingly, settlements were made with CMQC in the amount of \$242,427.45 together with interest of \$42,335.13 and CCG in the amount of \$3,776.05 together with interest of \$638.82. Both payments were made.

Following further analysis of the oil samples and his investigation of ship-source spill probabilities, the Administrator commenced a cost recovery action against the shipowner in the Federal Court.

The Administrator continues his recovery action against the ship *Anangel Splendour* and its owners. A trial date has been set for November 2, 2009, in Montreal. Active preparations are underway to prepare the Fund's case against the shipowner.

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

2.2 Lavallee II (2002)

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

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

By early April of 2002, draft contract specifications had been made for removal of the still contaminated vessel. All interested parties at the Federal and Provincial level, and the SOPF, were invited to comment on the document. The final specification was issued in late May, and on June 5, 2002, potential contractors were invited to the site in order to assess the work. Quotes were received on the bid by the closing date of June 18 and the successful bidder was awarded the contract on June 19, 2002.

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

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

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

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

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

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

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

Meanwhile, the file remains open.

2.3 Pender Lady (2003)

The CCG received a report on June 23, 2003 that this vessel was sinking and listing to port. It was determined that the *Pender Lady* was an old British Columbia Ferry, built in 1923. Together with another old ferry named *Samson IV*, it was moored at Naden Harbour on the north end of the Queen Charlotte Islands, British Columbia and used as a fishing lodge with paying guests. These guests were safely taken ashore by the *CCG Arrow Post* and transported to Masset.

On June 24, 2003, CCG response personnel were on scene and the vessels were boomed off. The stern of the *Pender Lady* submerged in the early morning hours and later that day sank completely and released oil into the water.

It was noted by CCG that the vessel had, at some time in the past, been stuffed full of foam plastic blocks below decks, presumably to add buoyancy and maintain the vessel afloat. Pumps, including those of the *Arrow Post*, had been unable to reduce the flooding which indicated a non-watertight hull condition.

At the time of the incident, the vessel was on the Canadian Ship Registry, but had not apparently been subjected to TCMS inspection and safety surveys for a considerable time.

The CCG took over the incident and engaged a contractor. The Administrator engaged his own marine surveyor to advise him on the operation. It was discovered that the *Samson IV* was in the same condition as the *Pender Lady*, even down to the foam blocks for buoyancy.

It was decided that the only way to rectify the pollution problem was to totally demolish both vessels and dispose of them as recoverable scrap or by burning onshore and this was done. At the same time, work crews recovered oil from the water as it was released and also cleaned-up the shoreline as necessary.

The CCG submitted a claim to the SOPF dated February 11, 2004 for their costs and expenses in responding to the incident, in the amount of \$2,101,017.72. The Administrator investigated and assessed the claim and on March 31, 2004 made an offer of settlement, which was accepted by the CCG that same day. On April 1, 2004, payment of \$1,659,663.06, which included interest, was authorized.

Ship-source Oil Pollution Fund

On May 3, 2006, the Administrator instructed counsel to undertake cost recovery action pursuant to MLA 87 (3).

After extensive discoveries, participation in several dispute resolution, case management, and pre-trial conferences in the Federal Court action, and a thorough examination of the Defendant's business, including an appraisal of the fixed assets, and an independent evaluation of the business as a going concern, it was apparent that there was a very little value in Samson Marine Resources Inc. A settlement offer of \$10,000.00 all inclusive was eventually increased to \$30,000.00 all inclusive. The estimated cost of a 6 week trial was between \$150,000.00 and \$200,000.00, and the prospect of recovering any substantial amount in respect of the claim was poor. Consequently, the Administrator, after consultation with his solicitors, concluded that the cost of proceeding with the trial was not justified. As a result, as of March 13, 2009, the matter was settled in the above mentioned amount, and the Administrator has closed his file.

2.4 Sekme & Treimani (2003)

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

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

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

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

On May 19, 2006, the Administrator received a letter from DFO/CCG requesting that its claim remain unsettled until it can undertake removal and disposal of the vessels in accordance with regulating and legislated requirements.

On December 10, 2007, the Administrator informed DFO/CCG, by letter, that he had reason to believe that further work had been performed on the ships, but he had not been advised whether any threat of oil pollution remained onboard the two ships. Furthermore, the Administrator advised that unless he received additional evidence respecting the potential for further oil pollution before January 31, 2008, he would regard the original offer of \$15,000.00 plus interest as full and final settlement of the DFO/CCG claim.

The CCG advised on January 2, 2008 that DFO/CCG agreed to accept the offer of \$15,000.00 plus the appropriate interest. On January 4, the Administrator, therefore, directed payment of compensation to DFO/CCG in the amount of \$18,784.55 including interest as full and final settlement.

The Administrator instructed counsel to investigate the feasibility of effecting cost recovery in the amount of \$18,784.50 paid to DFO/CCG in response to the claim. As a result of his investigations, the Administrator concluded that there was no viable prospect of recovery against the shipowner

available pursuant to section 87(3)(d) of the MLA, and accordingly closed the file.

2.5 Anscomb (2004)

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

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

On January 23, 2004 CCG took over the lead agency status from WLAP. With the bulk of the work completed, the contractor was stood down on January 28, 2004. The work of incinerating contaminated debris, oiled absorbent pads and boom maintenance was conducted by CCG personnel. It had been determined that salvage of the sunken vessel was not feasible. Work was terminated on February 2, 2004, because there was no recoverable oil at the site.

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

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

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

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

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

The ship *DPN 590* remains under arrest and efforts to execute the judgment are still underway. The Administrator's file remains open.

2.6 Sea Shepherd II (2004)

In April 2004, the Canadian Coast Guard (CCG) received a number of reports that the *MV Sea Shepherd II*, located in Robbers Pass, Tzartus Island, British Columbia, was in a derelict state and

in danger of sinking. The CCG, TCMS, and Provincial authorities attended on-scene to investigate. It was concluded that the vessel's condition made it a threat to the marine environment. The ownership of the vessel could not be determined, so no assistance was forthcoming from that quarter. A Response Order under CSA section 678 was issued on April 26, 2004, by the Commissioner of the Canadian Coast Guard.

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

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

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

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

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

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

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

On October 21, 2008, the CCG, on behalf of the Minister of Fisheries and Oceans, accepted the offer of \$100,000.00 inclusive of interest. The Administrator instructed counsel to investigate whether there were reasonable measures that could be taken to recover the amount paid to DFO/CCG pursuant to the MLA 87(3). On November 18, 2008, a Statement of Claim was filed on the defendant who filed a defense. Further investigations are being conducted. In the meantime, the file remains open.

2.7 Bleuvet (2004)

On September 5, 2004, CCG ER Quebec was informed of a diesel fuel spill on the water at a marina in Tadoussac, Quebec. It was reported that when refuelling, diesel was accidentally pumped into the bottom of the pleasure craft *Bleuvet*. The bilge pump discharged the diesel into the water. The Coast Guard cutter *Isle Rouge* responded with sorbent rolls and pads by using its Rigid Hull Inflated (RHI) boat. On April 21, 2006, the Administrator received a claim from DFO/CCG in the amount of \$3,335.02 for their costs and expenses for this incident.

On August 2, 2006, the Administrator requested additional information from CCG on the particulars of the 7.3 metre RHI boat. CCG had claimed for one full day deployment at a cost of \$1,888.87 for only two hours operation. Additional information was also requested about the actual work performed by each of the five CCG personnel during each day they worked. CCG responded to those requests on December 11, 2006.

On December 13, 2006, the Administrator completed his investigation and informed CCG by letter that the total incident claim had been provisionally assessed at \$1,549.18 plus interest. The offer of \$1,549.18 plus interest was accepted by CCG. On December 18, 2006, payment in the amount of \$1,736.16 including interest was authorized in full and final settlement.

The Administrator instructed counsel to investigate whether reasonable measures could be taken to recover the amount paid to DFO/CCG pursuant to MLA section 87(3). On the basis of these investigations, it is the Administrator's opinion that there is no reasonable prospect of recovering the costs related to the incident. Accordingly, the Administrator has closed the file.

2.8 Mary Mackin (2005)

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

In January, 2005, prior to the reported spill, a contractor had been engaged by the Federal Receiver of Wrecks for the demolition and disposal of the vessel on the beach for \$60,000.00. During demolition, they discovered considerable oil onboard and a spill resulted. Substantial oil was found within the vessel, including a large amount of engine oil and oil soaked mud.

On January 24, 2005, the contractor advised CCG ER that they had removed most of the internal components that could contain oil. On-site demolition and disposal of the vessel was completed by mid-February 2005.

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

claim and concluded that most of the costs arose out of the failure of Transport Canada to deal with the oil in the vessel prior to it being beached. Accordingly, on March 21, 2006, pursuant to MLA section 86, Transport Canada was offered \$20,000.00 in full and final settlement of its claim. On April 24, 2006, in response to a request from Transport Canada, the Administrator offered to review any new or material information which Transport Canada might wish to provide, in order for him to determine whether it would be appropriate to re-open his investigation. In the meantime, on May 25, 2006, the Administrator was served with a Notice of Appeal by the Crown to the Federal Court concerning the adequacy of his offer of compensation, pursuant to MLA section 87(2).

The appeal was heard by the Federal Court on September 3 and 4, 2008. The Court concluded that the lengthy delay in removing and disposing of the vessel and its contents was unreasonable under the circumstances and that the Crown was negligent in waiting five years in responding to its statutory obligation. The delay in exercising its statutory powers in a timely fashion increased the claim in an unnecessary way. However, the court also found that the Administrator should have shared with the Crown the report of the surveyor on which he relied to reduce the claim. Accordingly, the court quashed the Administrator's decision and ordered him to share the report with the Crown and afford it the opportunity to comment and provide arguments on it. The Administrator, having considered the Crown's argument, should then make an offer of compensation.

Fresh argument was submitted by the Crown and after due consideration, the Administrator repeated his offer of \$20,000.00 plus interest as per section 101 of the *Marine Liability Act*. On January 21, 2009, this offer of compensation was accepted by the Crown. On January 26, 2009, payment of \$24,701.66 including interest was authorized.

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

2.9 Sea Sprite (2005)

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

On November 10, 2005, DFO/CCG filed a claim with the Administrator in the amount of \$7,481.28 for its costs and expenses. On December 6, 2005, the Administrator requested further particulars. These were received. On December 23, 2005, the DFO/CCG accepted the Administrator's offer of \$7,151.04 plus interest in full and final settlement. On January 5, 2006, payment of \$7,381.52 including interest was authorized.

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

2.10 Santa Emma (2005)

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

It was reported that in the early morning of April 29, 2005, high winds caused the *Santa Emma* to

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

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

By May 27, 2005, some 1,000 tonnes of a mixture containing diesel fuel, lube oil, heavy fuel oil and water had been removed from the vessel. An estimated 50 tonnes of heavy oil remained in the *Santa Emma* distributed through several tanks. On May 30, 2005, all the ER personnel and equipment left the site.

On September 16, 2005, the *Santa Emma* left Cape Tormentine undertow destined for demolition in India. On October 7, 2005, the Marine Rescue Centre in Ponta Delgada, Azores, reported that the *Santa Emma* went down as a result of bad weather approximately 135 nautical miles southwest of the Azores.

On February 14, 2006, a claim was filed with the SOPF for the costs and expenses of CCG and EC totalling \$717,845.21.

During the summer of 2006, the Administrator sought additional information and documentation from DFO/CCG and Environment Canada to assist in his investigation and assessment of the claim. On July 21, DFO/CCG provided the Administrator with the information requested up to that date. On September 25, Environment Canada responded with information with respect to the technical and scientific support provided to CCG during the incident. On September 5, 2006, the Administrator wrote to DFO/CCG again requesting further particulars on the quantum and reasonableness of various activities carried out by the commercial contractor engaged by CCG. On October 17, 2006 the Administrator sent an e-mail message and asked further questions on the quantum and reasonableness of various activities.

On October 4, 2006, the Administrator wrote to DFO/CCG with questions about the Crown's knowledge of the critical events i.e., weather forecast, the state of the ship and whether it was properly secured, etc., immediately prior to the incident. The Administrator also asked questions about related responsibilities and actions of the Department of Fisheries and Oceans, the Department of Transport and the Department of the Environment. DFO/CCG responded and expressed assurance of providing all the information requested. The response explained that it may take some time to provide the material because the matter required consultation with other government departments.

On July 17, 2007, the Administrator received a letter from DFO/CCG in response to his predecessor's letter of October 4, 2006. The reply from DFO/CCG addressed the questions raised in connection with the Administrator's obligation under the parameters of section 86(3) (b) (ii) of the *Marine Liability Act*. Under this provision, the Administrator is to consider whether the claims presented by DFO/CCG in the *Santa Emma* incident may be characterized as resulting wholly or partially from the negligence of the claimant. The information and documentation provided by DFO/CCG enabled the Administrator to advance the investigation and assessment of the claim. After review

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of the additional information, the Administrator concluded the circumstances in section 86(3)(b) (ii) were not established and offered to settle the claim.

On October 11, 2007, DFO/CCG accepted the Administrator's offer of \$768,268.67 including interest in full and final settlement of its claim. On October 19, 2007, payment to DFO/CCG of \$768,268.67 was authorized.

Following settlement of the claim, the Administrator instructed counsel to investigate whether there were reasonable measures that could be taken to recover the amount paid to DFO/CCG pursuant to MLA section 87(3).

On February 6, 2008, counsel obtained a certificate issued by the Consulate General of Panama in New York indicating that the vessel *Santa Emma* was currently in the registered ownership of Marine Management Services (UK) Limited. It was in that registered ownership since September 23, 2003, which included the time of the April 29, 2005, incident. Counsel cautioned that the certificate conflicts with other information obtained to the effect that the title was transferred to a Liberian corporation called Rikan Shipping Inc. in November or December 2004. Therefore, there is a possibility that ownership may have been transferred to Rikan Shipping without having been properly registered with Panamanian authorities.

On April 24, 2008, a Federal Court action was served against the two companies identified as potentially having an ownership interest in the vessel *Santa Emma* at the time of the pollution incident. Neither company filed a defence or otherwise appeared, nor made contact following service.

The services of counsel both in the United Kingdom and Liberia were engaged to advise on searches and inquiries that could be made in their respective jurisdictions. This was an effort to determine whether these companies had any assets against which the Administrator could execute if he proceeded to pursue default judgment in Federal Court action.

The United Kingdom solicitors pursued public record searches and also arranged the services of an asset searching company. Unfortunately, none of this provided any indication that Marine Management Services (UK) Ltd. was still operating or had any assets against which a judgment could be executed.

The Liberian solicitor reported that Rikan Shipping Inc. is a non-resident Liberian corporation and, following searches that he was retained to perform, he reported that there is no information available from Liberian records to indicate where the company is resident. Accordingly, they were not able to identify any assets on the part of this company.

On the basis of these investigations, the Administrator, in consultation with counsel, concluded that there was no reasonable prospect of recovering the costs related to the incident. He, therefore, considered it inadvisable to incur further expenses in pursuing this matter. Accordingly, the Administrator has closed the file.

2.11 Extasia 1 (2005)

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

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

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

The Administrator reviewed the feasibility of undertaking cost recovery action pursuant to MLA 87(3). As of the end of the fiscal year, there is ongoing discussion with the yacht owner's insurer aimed at recovering the cost. Meanwhile, the file remains open.

2.12 Gagtugwaw (2005)

On October 16, 2005, the fishing vessel *Gagtugwaw* was reported sunk and leaking oil at the wharf in Matane, Québec. CCG ER, Québec attended on-site of the recovery operation from October 17 to October 21, 2005. It was estimated that there might have been as much as 3,000 gallons of diesel and 114 gallons of hydraulic oil in the vessel. Insurers for the owners engaged cleanup contractors.

Divers plugged the vents and the vessel was removed from the water. A considerable amount of oil was released, so a vacuum truck was engaged and booms were deployed to prevent it from spreading. The vessel was in very poor structural condition.

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

On February 15, 2007 the Administrator requested additional information from DFO/CCG as to why it was considered necessary and reasonable for Coast Guard to have two persons on-site to monitor the operations of the commercial clean-up crew contracted by the owner's representative. In its reply DFO/CCG stated that Coast Guard Environmental Response personnel are required to take site-safety training. For safety reasons, the personnel involved in this incident were working on the "buddy" system, which requires at least two employees to work together.

On May 3, 2007, the Administrator completed his investigation and assessment and informed DFO/CCG by letter that the total incident claim had been established at \$7,698.03 plus interest. The DFO/CCG accepted the offer in full and final settlement. On May 14, 2007, payment in the amount of \$8,448.22 including interest was authorized.

The Administrator investigated whether or not it was feasible to undertake cost recovery action pursuant to MLA 87(3). As a result of the investigation, the Administrator, in consultation with counsel, considers that there does not appear to be any reasonable prospect of cost recovery. Accordingly, the Administrator has closed the file.

2.13 Blue Dawn (2006)

On April 1, 2006, a member of the Canadian Coast Guard Auxiliary reported to MCTS Victoria that a vessel, *Blue Dawn*, was aground on Slag Point, Lady Smith Harbour, BC. Later that day when the

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CCG Emergency Response officer arrived on-scene the owner was preparing to float the vessel on the rising tide. The owner reported that there were approximately 400 gallons of diesel oil onboard. The CCG ER officer advised the owner to seek salvage support from professionals.

The *Blue Dawn* was a side-trawl fishing vessel built in Lunenburg, Nova-Scotia, in 1962. The ex-fishing vessel was 96 feet in length with a beam of approximately 23 feet. In recent years the vessel was used as an accommodation for shake block crews on the British Columbia coast.

On April 2, CCG deployed a containment boom around the vessel, because there was an oil sheen on the water extending along the shoreline. The following day, CCG assumed responsibility to float the vessel. A contractor was engaged to tow *Blue Dawn* to Ladysmith, so that a surveyor could conduct an evaluation survey. The vessel required pumping out on a regular basis. On April 10 the contractor advised CCG that *Blue Dawn* had spilled a significant amount of fuel oil. The contractor responded with a containment boom and sorbent pads. On April 12, CCG was informed by the shipowner of its inability to deal with the situation and provide an acceptable plan ensuring that the vessel would no longer be a threat of pollution. Consequently, CCG informed the shipyard to begin preparation for removal of all accessible bulk oil and other contaminated materials. By the end of the month demolition and disposal was completed.

On July 18, 2006, the Administrator received a claim from DFO/CCG in the amount of \$121,856.95 for costs and expenses. This claim was investigated and assessed by the Administrator. On December 18, 2006, an offer of settlement in the amount of \$119,482.80 including interest was accepted by the claimant.

The Administrator investigated, with the assistance of counsel, whether reasonable steps could be taken to recover the amount paid.

As a result of the investigation, the Administrator considers that it would not be worthwhile to obtain a default judgment in this matter. Given the limited income of the owner and the fact that the claim exceeds \$120,000.00, there does not appear to be any reasonable prospect of cost recovery. Accordingly, the Administrator closed the file.

2.14 Ocean Tribute (2006)

On September 5, 2006, the Wharfinger of the Fisherman's Wharf, Ladysmith, BC reported that the *Ocean Tribute* had sunk at the dock. There was fuel oil in the water and absorbent pads were used to clean-up. The *Ocean Tribute* was an ex-fishing vessel built in 1926. It was approximately 45 feet in length with a beam of about 15 feet. It had been converted to a fish & chip restaurant. The owner hired a commercial contractor to raise the vessel. It was raised but sank again shortly thereafter.

On September 9, Coast Guard was informed in meetings with the owner, contractor and Harbour Authority that the vessel was not insured. The owner did not have the means to respond any further. CCG then assumed the on-scene commander role and contracted Saltair Marine Services to raise the vessel and remove the accessible fuel, engine oils and hydraulics. Approximately 100 gallons of oily fluids were removed. The vessel was subsequently demolished and disposed of by September 20.

On December 13, 2006, the Administrator received a claim from DFO/CCG in the amount of \$26,407.23 for costs and expenses incurred with respect to the incident. The Administrator investigated and assessed the claim. On February 9, 2007, the Administrator made an offer to DFO/CCG in the amount of \$24,901.42 plus interest as full and final settlement.

On March 30, 2007, DFO/CCG advised that as of April 2006 the CCG vehicle rates were revised to reflect industry standard of \$43.00 a day plus \$0.22 per km for its trucks and vans. Consequently, CCG asked the Administrator to re-consider his reduction to the mileage rates when establishing the amount of the claim. The Administrator accepted the new vehicle rate submitted by DFO/CCG.

On May 3, 2007, the Administrator made an offer to DFO/CCG in the amount of \$25,041.42 plus interest in full and final settlement of this claim, pursuant to sections 86 and 101 of the *Marine Liability Act*.

On May 10, 2007, the Coast Guard accepted the Administrator's offer of \$25,806.29 including interest. On May 14, payment to DFO/CCG in the amount of \$25,806.29 including interest was authorized for transfer from the SOPF Fund in payment of this claim.

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

2.15 Saxony (2006)

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

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

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

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

On April 8, 2008, the Administrator wrote to CCG requesting further general information and additional documentation in support of the claim. On November 10, 2008, the CCG provided the information and material requested to advance investigation and assessment of the claim.

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

The Administrator is reviewing the feasibility of undertaking cost recovery action pursuant to MLA 87(3). Meanwhile, the file remains open.

2.16 Jag Pahel (2006)

On October 23, 2006, the Indian-registered motor vessel *Jag Pahel* and the tug *Ocean Delta* were involved in a “small” oil spill incident in the port of Quebec. Clean-up was performed by the ship and a commercial company, Group Ocean, undertook the cleaning of the tug.

A Letter of Undertaking naming the SOPF was obtained from the North of England P & I Association Limited to cover any potential claim for costs and expenses incurred in the clean-up of the incident. In the absence of any claim, on October 28, 2008, the letter of undertaking was returned to the P&I Club and the Administrator therefore closed his file.

2.17 SCL Bern (2006)

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

The Response Organization ECRC/SIMEC was contracted by Shell Canada, owners of the barge *Arca*, to respond to the incident. Approximately 4 to 5 kilometres of shoreline at Varennes were impacted. By December 18 some 1500 feet of shoreline was cleaned. Further clean-up assessment of the shoreline was conducted by Environment Canada, the Quebec Ministry of the Environment and CCG Emergency Response.

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

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

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

At the close of the fiscal year, the Administrator awaits the information and material requested from Coast Guard. The file remains open.

2.18 Westwood Annette (2006)

On August 5, 2006, the Administrator received a copy of Alert Update #1 issued by the National Environmental Emergencies Centre regarding a significant bunker C spill in Squamish, British Columbia. On the previous day, when departing Squamish Terminals Ltd. No. 2 berth in high winds with the aid of two tugs, the bulk carrier *Westwood Annette* contacted a Pier dolphin causing two holes in the ship’s shell plating. Fuel oil ran out of these holes. Later the CCG estimated that approximately 29,000 litres of oil were released into the water in the north end of Howe Sound, near the Squamish River estuary.

The Response Organization Burrard Clean Operations was contracted to conduct response operations. Preliminary results indicated that as much as 2/3 of the amount of oil spilled was recovered by end of the day August 5. Approximately 1 kilometre of shoreline was impacted and beach clean-up operations were implemented. Canadian Wildlife Service found that some birds were being oiled, mostly Canada Geese.

A Letter of Undertaking naming the Department of Fisheries and Oceans and the SOPF was obtained from the shipowner's P&I Club. The Administrator also employed a local marine surveyor.

At the end of the 2006-2007 fiscal year, it was understood that the total costs and expenses incurred by the Response Organization were approximately \$5 million, and that the P&I Club was addressing all claims.

On April 25, 2007, the Administrator received a claim in the amount of \$11,510.35 from Squamish Outdoor Recreation to recover expenses incurred during the oil spill. The Squamish Outdoor Recreation officials had previously filed a claim in the amount of \$15,460.35 with the legal representative of the *Westwood Annette*. However, the owner of the ship only paid \$3,950.00 to cover costs incurred by the District of Squamish for its public information call centre, liaison officer and assistant on the basis that those services were specifically requested by the shipowner. The remaining parts of the claim were not considered to be recoverable claims.

Under instructions from the Administrator, counsel investigated the material received from the District of Squamish officials, and discussed the matter directly with the solicitor for the shipowner. On May 9, 2007, counsel responded to the letter from the Squamish officials and advised, *inter alia*, that if they had additional information that, in their opinion, supports that some part of their remaining claims are recoverable claims, they should provide that information to the solicitor for the shipowner, with a copy to the office of counsel. As of the end of the fiscal year, no response has been received from the District of Squamish. The Administrator has closed the file.

2.19 Wishing Star (2006)

On July 26, 2006, the MCTS in Prince Rupert was informed that the charter fishing vessel *Wishing Star* grounded and sank in Hudson Bay Passage on the east side of nearby Dundas Island, British Columbia. The passengers and crew were rescued by the CCG cutter *Point Henry*. There were 2000 litres of diesel oil in the vessel, but only a small amount of oil was released causing a sheen on the water.

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

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

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

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

On February 14, 2007, the Administrator received a claim from DFO/CCG for costs and expenses

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in the amount of \$112,629.51. Subsequently, the CCG was requested to provide additional information and documentation, so that the assessment of the claim could be advanced.

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

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

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

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

In the meantime, the Administrator's file remains open.

2.20 Marcel-André (2007)

On April 03, 2007, the Administrator received a CCG Status Report on an oil pollution incident in Ste-Thérèse de Gaspé. A Transport Canada Marine Safety (TCMS) inspector, responding to a report from a member of the public conducted an on-site inspection and discovered traces of diesel oil on the water and on surrounding ice at the wharf in Ste-Thérèse de Gaspé. On March 23, the TCMS inspector determined that the probable source of the oil spill originated from the fishing vessel *Marcel-André*. It was estimated that over 4,000 litres of oil were lost, apparently leaking from a damaged fuel tank. The owner advised that action would be taken by a contractor to pump the remaining diesel oil from the vessel's bilges and damaged tank. The operation also included recovery of the contaminated harbour ice. On March 24, CCG Emergency Response personnel arrived on scene to monitor the situation and ensure an appropriate response. An assessment revealed no oil contamination along the shoreline.

As of March 31, 2009, the Administrator has not received any claim and has closed the file.

2.21 Robertson II (2007)

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

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

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

At the end of the fiscal year the Administrator has not received a response from CCG. Meanwhile, the file remains open.

2.22 Robson Bight (2007)

On August 20, 2007, a deck barge carrying logging equipment, including a tanker truck containing approximately 10,000 litres of diesel fuel and approximately seventy 20-litre plastic pails of hydraulic oil, developed a severe list off northern Vancouver Island near Robson Bight in proximity to the Michael Bigg's Ecological Reserve. The tanker truck, equipment and pails slid off the barge and sank in Johnston Strait to a depth of 320 to 350 meters.

Initially, a large oil slick was observed over the entire area which dissipated within a couple of days. There were sporadic observations of minimal upwelling for several weeks following the incident, all of which gradually dissipated. There were no contaminated birds or wildlife observed. The site continues to be monitored by both government agencies and non-government organizations. The responsible party contracted the Response Organization, Burrard Clean Operations, to respond to the oil spill.

It was reported that Burrard Clean deployed 850 feet of protection boom in the area identified by the Regional Environmental Emergency Team. Shortly after the incident, British Columbia Parks personnel arrived on scene and reported large amounts of fuel oil on the surface. Transport Canada aerial surveillance indicated an estimated 200-litre slick on the water. Environment Canada conducted a shoreline assessment in order to make a determination of possible impact on wildlife.

On August 22, a surveillance flight indicated that 95% of the oil seen the previous day on the shoreline had dissipated. The remaining diesel fuel was expected to evaporate and dissipate naturally. The Canadian Wildlife Service advised that no oiled birds had been found. The CCG ER continues to monitor the situation and ensure an appropriate response.

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

The Province of British Columbia and the federal government subsequently conducted a cost-shared Diver Operated Vehicle dive operation to confirm the status of the wreckage. This dive discovered the subject tanker truck sitting upright at a depth of 339 meters with its aft cargo tank apparently intact and stable with the forward tank hatch's locking device not secured.

Analysis of a video of the wreckage was performed by CCG and the British Columbia Ministry of the Environment through independent means. Although opinions differ on the amount of product released at the time of the incident, all concluded that there may be some trapped diesel remaining inside the tanker truck, although it is not possible to ascertain the amount.

At the outset, the Administrator was informed about this incident by Coast Guard officials. In

the meantime, the Administrator became aware of plans to recover the tanker truck on board the barge. Subsequently, the Administrator was contacted by a representative of the British Columbia Ministry of the Environment concerning a possible claim arising out of this incident. The Administrator believes that the recovery project will be funded jointly by the provincial government and the Coast Guard agency.

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

The Administrator is monitoring developments.

2.23 Ambassador (2007)

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

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

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

The Administrator has not received any claim for costs and expenses. In the meantime, the file remains open.

2.24 Barge McNally Olympic (2007)

On October 8, 2007, the Coast Guard received a report that the tug *Jerry Newberry* had parted its towline with the barge *McNally Olympic*. The incident occurred in high winds approximately 12 miles off Nachvak Bay, on the northern coast of Labrador. The tug did not have any additional towlines so it sought assistance to retrieve the barge, which was drifting towards the land at about 3 knots. The Coast Guard deployed the *Henry Larsen* to support the barge retrieval operations.

The barge owner advised that there were 20,000 gallons of diesel fuel and approximately 500 gallons of waste oil onboard the barge. CCG Emergency Response personnel proceeded to the site to assess the situation. On October 10, CCG ER personnel reported that the barge was resting on the bottom adjacent to the shoreline. It was not moving in 45 knot winds with waves in excess of 3 metres. The sea was breaking over portions of the barge with the tallest vertical section being submerged in the crest of the waves. No oil pollution was observed.

On October 12, the *Henry Larsen* and CCG ER personnel remained on-site in nearby Saglek Bay. A Transport Canada surveillance flight out of Iqaluit did not observe any oil pollution in the area. The Coast Guard continued to monitor the incident. A REET meeting chaired by Environment Canada was held with representative from the RCMP, DFO, Canadian Wildlife Service, Public

Safety Canada, the province of Newfoundland and Labrador, and the Government of Nunatsiavut. Arrangements were made to discuss with the shipowners the implementation of a long-term monitoring plan of the site over the winter.

The CCG reported that its claim, of \$52,886.51 for costs and expenses was settled by the shipowner on March 15, 2008. The Administrator has therefore closed the file.

2.25 Grande Baie Remorqueur (2007)

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

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

On January 9, the shipowner presented its salvage plan to CCG ER personnel. A REET meeting was held to discuss the salvage plan. On January 16, the first salvage attempt on the tug *Grande Baie* was conducted unsuccessfully. All operations ceased. The contractor advised they were working on a revised plan and that Transport Canada was assisting. Consequently, the tug *Grande Baie* was raised on January 18. By January 25, all clean-up operations were completed. No claim has been received, but the Administrator's file remains open.

2.26 Le Grand Détour (2007)

On July 24, 2007, the Canadian Coast Guard was informed by Transport Canada that there was a risk of oil pollution from an old pleasure craft that had ran aground near a marina at Île d'Orléans, Québec. The pleasure craft contained fuel oil and other lubricating oils. The hull was damaged and the craft nearly submerged during each rising tide. The owner had abandoned the craft and when contacted advised that he was not in a financial position to undertake any remedial action.

Representatives of the Coast Guard, Transport Canada, Environment Canada and the province decided to remove the oil from the boat. Consequently, a local company, Veolia Services Ltd., was engaged to remove the pollutants and other waste oil. Coast Guard monitored the operation and provided support. On July 26 some 546 litres of oily waste was removed and disposed of by the contractor. The clean-up operation was completed to the satisfaction of CCG, Transport Canada, and Environment Canada.

On February 10, 2008, the Administrator received a claim from DFO/CCG for costs and expenses in the amount of \$3,558.51, pursuant to Part 6 of the *Marine Liability Act*.

The Administrator investigated the circumstances of the incident and made an assessment of the claim. It was concluded that it was a legitimate claim on the SOPF, and that the full amounts had been established with supporting documentation. As a result, DFO/CCG was offered the amount of \$3,558.51 plus interest in full and final settlement pursuant to the MLA sections 86 and 101.

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The offer was accepted by DFO/CCG and on May 14, 2008, directed payment in the total amount of \$3,740.30 including interest.

The Administrator instructed legal counsel to investigate whether reasonable measures could be taken to effect cost recovery in the amount of \$3,740.30 paid to DFO/CCG. The Administrator considers that with respect to cost recovery in this incident there is a principle involved, namely, that owners should not be allowed to abandon their vessels in conditions where they pose an oil pollution threat. However, during the investigation, counsel determined that the owner appears to have little or no money. It is, therefore, the Administrator's view that in this case there is no likelihood of recovering the compensation paid out in respect of this claim. The Administrator has accordingly closed the file.

2.27 Mystery Spill, Hamilton Harbour (2008)

On April 24, 2008, the Hamilton Harbour Spills Action Centre informed the Harbour Master's Office that an oil spill had occurred in the southwest area of the harbour. The possible sources of the oil spill were investigated by the Hamilton Port Authority staff, the Port Security Officers, a representative of the provincial Ministry of the Environment and a Ship Safety Inspector from Transport Canada. Based on visual observation the oil on the water was considered to be diesel fuel. The Ministry of Environment had no reports of a land-based incident that could lead to diesel fuel entering the water. The authorities who investigated the incident could not find evidence of diesel fuel inside the booms that the City of Hamilton places at all outlets that flow into the harbour. They also conducted a search of the marina and the adjacent shoreline, but did not find any evidence of the oil having originated from a land-based source. The Ship Safety Inspector also visited ships secured in the area of the spill at the time of the occurrence, but did not find any evidence of oil discharge. As a result of the investigations the authorities concluded that an unknown ship in Hamilton harbour was the most likely cause of the incident.

The Hamilton Port Authority engaged a local contractor, Team-Hazco Environmental Services, to clean-up and dispose of the oil remaining on the surface of the water. On April 26, 2008, the removal of oil from within the containment booms was completed. The oily waste was disposed of at a licensed waste facility.

On June 6, 2008, the Administrator received a claim from the Hamilton Port Authority for costs and expenses in the amount of \$23,640.50, pursuant to Part 6 of the *Marine Liability Act*.

On June 25, 2008, the Administrator advised the Hamilton Port Authority that further general information and documentation would be required for some of the items claimed, so that a full and proper assessment of the claim could be made. On July 24, the Hamilton Port Authority provided the additional information requested.

On September 23, 2008, the Administrator informed the Hamilton Port Authority that the investigation and assessment of the claim was completed and he had found the amount of \$19,903.81, plus interest, to be established.

The appropriate Release and Subrogation Agreement was executed by a duly authorized officer of the Authority. On December 9, 2008, payment of \$20,525.40 was authorized, and a cheque was forwarded to the Hamilton Port Authority.

The Administrator accepted the claim as a mystery spill, because the extensive on-site investigations had proven it impossible to ascertain from where the oil originated. As a mystery spill the SOPF is unable to take any recourse action. Therefore, the Administrator has closed the file.

2.28 Royal Hamilton Yacht Club Oil Spill (2008)

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

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

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

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

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

The Administrator is reviewing the feasibility of undertaking cost recovery action pursuant to MLA 87 (3).

2.29 Tug Winamac (2008)

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

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

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

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

The Administrator is reviewing the feasibility of undertaking cost recovery action pursuant MLA 87 (3). Meanwhile, the file remains open.

2.30 MLJet (2008)

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

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

The Administrator's file remains open.

2.31 Stephanie & Darrel (2007)

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

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

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

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

The Administrator commenced a recovery action in the Supreme Court of Nova Scotia at Halifax on December 10, 2008. A Certificate of Judgment was registered on December 23, 2008, in both the Land Registry and Personal Property Security Registry in Nova Scotia. These registrations result in judgment representing the encumbrance against property the owner of the vessel may have or acquire. The registration of the judgment under the *Land Legislation Act* will expire on December 23, 2013, and the registration in the Personal Property Registry will expire on January 5, 2014.

Meanwhile, the file remains open.

2.32 Gala Babe II (2008)

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

By January 7, 2009, the amount of oil on the surface was increasing. The owner was not taking any corrective action to prevent the pollution, or raise the vessel. Consequently, on January 8th Coast Guard contracted a local salvage operator, Fraser River Pile and Dredge, to raise the vessel and transport it to Shelter Island Marina. The salvaged vessel was assessed for fair market value by Active Marine Services. The firm's surveyor estimated the cash value of the salvaged *Gala Babe II* to be \$20,000.00 to \$25,000.00.

On January 9th, Coast Guard informed the Administrator about the incident and indicated that its costs and expenses may reach \$100,000.00. The Administrator, in anticipation of a claim and litigation, instructed counsel to engage a marine surveyor to conduct a survey of the vessel at the Marina and determine the fair market value. The surveyor opines that value of the vessel in its current condition is \$15,000.00 to \$20,000.00.

The Administrator has not received a claim in this incident. It is understood, however, that the salvage costs were less than the original estimate of \$100,000.00. In addition, the Administrator is informed that CCG has found a buyer for the *Gala Babe II* for the price of \$15,000.00

The Administrator continues to monitor developments.

2.33 Farley Mowat (2008)

On December 11, 2008, a legal advisor for Coast Guard informed the Administrator that a letter was sent to the shipowner, Sea Shepherd Conservation Society, which directed the owners "to take measures to remove all threat of pollution from the MV *Farley Mowat* by 8:00 a.m. Eastern Canada time, December 13, 2008."

The *Farley Mowat* was tied up in Sydney, Nova Scotia, having been arrested in connection with alleged illegal activities during the seal hunt. The vessel was not in good condition. The Coast Guard feared that over the winter it could start leaking oil. Therefore, Coast Guard took action on December 16, 2008, under the CSA 2001 section 180, to remove and dispose of all pollutants on the vessel.

By December 22, the removal of diesel fuel and the lubricating and hydraulic oils had been completed. In total, some 87,000 litres of diesel were pumped from the ship's fuel tanks. Furthermore, approximately 13,000 litres of other petroleum products were removed from the ship.

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

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

2.34 King Darwin (2008)

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

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

The Administrator received a copy of the LOU from legal counsel engaged by the Canadian Coast Guard in Dartmouth, Nova Scotia. The Fund has not received a claim in this incident. In the meantime, the file remains open.

2.35 Columbia (2008)

On August 25, 2008, an American-owned 65-foot fishing vessel, *Columbia*, sank at the mooring float in Steveston Harbour, British Columbia. The Steveston Harbour Authority boomed off the old wooden vessel. It commenced clean-up of the leaking oil in order to minimize pollution from entering the marine environment.

On August 28th, the Harbour Authority contacted the owner who was fishing in Alaska. The owner appeared to accept responsibility for the costs of clean-up and salvage, but indicated that there was no insurance on the old vessel. No follow-up action was taken by the owner. The fishing vessel was effectively abandoned.

On August 30th, the Harbour Authority contracted a salvage company. The *Columbia* was raised and transported to Shelter Island Marina, where it was lifted ashore. It was then discovered that the vessel's fuel tanks were partially full.

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

On December 8th, the Steveston Harbour Authority filed a claim with the SOPF in the amount of \$81,470.88 for costs and expenses incurred.

On December 18th, the Administrator acknowledged receipt of the submission and informed the Steveston Harbour Authority that the claim was being investigated to determine the appropriate offer of compensation that should be made. In the meantime, the Administrator engaged legal counsel and a technical marine surveyor to investigate the circumstance surrounding the incident.

The investigation and assessment continues.

2.36 Sailboat – Toronto Harbour (2009)

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

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

In anticipation of a claim, the Administrator instructed counsel to engage a marine surveyor to assist in evaluating any plan of the Coast Guard to remove the sailing boat. In the meantime, the file remains open.

2.37 Mystery Spill, Thunder Bay (2008)

Note: This claim and the subsequent claim (2.38) arose out of the same incident, but relate to clean-up costs in respect of oil at two different locations.

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

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

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

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

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

Ship-source Oil Pollution Fund

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

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

Meanwhile, the file remains open.

2.38 Mystery Spill, Thunder Bay (2008)

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

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

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

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

2.39 Delta I (2008)

On January 3, 2008, Coast Guard was informed that a non-propelled cargo barge had overturned while secured to a mooring buoy in Toquart Bay on the westside of Vancouver Island. By January

10 the barge had completely sunk in 35 feet of water. Coast Guard requested that the barge owner provide a detailed list of all items onboard that may contain oil. The inventory was provided on January 17th.

On January 30th, the CCG requested by written "Notice" that the owner provide, before February 5, 2008, information about the measures the owners intended to take in order to prevent oil pollution.

On February 25th, the DFO Fisheries officers reported that oil was still coming to the surface at the site. Additional containment booms were deployed. At this time, the owner informed CCG that the "Insurance" had not yet agreed to cover the liability to complete salvage operations, but the barge owner was considering other options for removal, such as a salvage contract for the value of goods recovered.

On April 16th, the CCG was informed that a contractor, Saltair Marine Services Ltd, had made an arrangement with the barge owner to remove the barge and the scrap steel. The removal of an excavator was not included in the arrangement as it contained fuel oil and it would not be cost effective to remove it for its value. CCG agreed to hire Saltair Marine Services Ltd to also raise the excavator and remove the threat of oil pollution. During the first week of May 2008 the operation was completed.

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

The Administrator has commenced his investigation of this claim, which was not completed by the end of the fiscal year.

2.40 Ganges I (2008)

On July 6, 2008, the Coast Guard was informed that the pleasure craft *Ganges I* was aground in Ucluelet Harbour on the westside of Vancouver Island. The Coast Guard ship *Provo Wallis* arrived on scene and found the pleasure craft listing at approximately 45 degrees. Oil was leaking into the water from tanks that contained about 400 gallons of diesel fuel. The crew of the *Provo Wallis* successfully plugged fuel vents and deployed a boom around the grounded pleasure craft. When the owner was contacted it was determined that the owner had no plans to deal with the incident.

On July 7th, a CCG Environmental Response team proceeded to Ucluelet, but were unable to board the vessel due to the sea state and strong winds. A salvage contractor, Saltair Marine Services Ltd, was engaged by CCG to attend the next morning with a larger vessel and conduct an assessment as to how safely to remove the fuel oil. When the contractor arrived, diesel fuel was seen visible leaking as a result of the additional hull damage that had occurred overnight.

On July 9th, salvage equipment was deployed. The contractor made preparations to pump the fuel tanks, but most of the fuel had leaked out. Approximately 12 gallons of waste oil were recovered from the equipment inside the pleasure craft. On July 10, the absorbent pads and remaining oil were cleaned-up and the response team stood down.

On March 23, 2009, the Administrator received a claim from Coast Guard in the amount of \$47,895.49 for costs and expenses incurred during the incident.

The Administrator has commenced his investigation of this claim, which was not completed by the end of the fiscal year.

2.41 May's Landing (2008)

On September 29, 2008, the Coast Guard received a report that the barge *May's Landing*, located in Toquart Bay, on the westside of Vancouver Island, was listing significantly and in danger of sinking. The *May's Landing*, an old cargo vessel converted to a helicopter maintenance barge, was apparently no longer in operation. The CCG Environmental Response personnel contacted the owner, who indicated that the excess water would be pumped out in order to stabilize the barge.

On October 21st, CCG personnel visited the site. There was no sign that the barge had been pumped-out. On November 12 Coast Guard personnel and a Marine Inspector from Transport Canada embarked the *May's Landing*. The inspection determined that all the internal fuel tanks appeared to be either dry or contained water with no sign of a pollution risk from below deck. A number of compartments were tidal or open to rain water. However, there was oil stored on deck in 45-gallon drums and in five gallon pails. There was also a crane truck onboard.

On November 14, 2008, the owner of *May's Landing* was sent a "Notice" requesting information about his intentions with respect to measures to prevent a discharge of oil into the water. Subsequently, the owner did not take any measures to remedy the situation. On December 9, 2008, CCG removed the drums of oil stored on decks, including hydraulic oil from the crane truck.

On March 23, 2009, the Coast Guard filed a claim with the SOPF for costs and expenses in the amount of \$3,209.82, pursuant to sections 51(1), 84 and 85 of the *Marine Liability Act*.

The Administrator has commenced his investigation of this claim, which was not completed by the end of the fiscal year.

2.42 Patricia Louise (2008)

On November 1, 2008, the Coast Guard received a report that the old wooden fishing vessel *Patricia Louise* had sunk alongside the wharf at Discovery Harbour Marina in Campbell River, British Columbia. It was reported that there were 100 gallons of diesel oil onboard, and an oil slick had occurred.

The Harbour Authority assisted the owner to deploy a containment boom around the vessel. The Marina hired a contractor, DCD Pile Diving 1990 Ltd, to raise the *Patricia Louise* and remove the fuel oil from onboard. Upon recovery, it was found that the interior of the vessel was coated with oil.

On November 2nd, the owner advised Coast Guard of his financial inability to pay for the raising and/or removal and disposal of the oil found onboard. Subsequently, Coast Guard engaged the contractor (DCD) to remove the oil and deconstruct the *Patricia Louise*. The operation was completed on November 4th.

On March 23, 2009, Coast Guard filed a claim with the SOPF for costs and expenses in the amount of \$36,696.95, pursuant to sections 51(1), 84 and 85 of the *Marine Liability Act*.

The Administrator has commenced his investigation of this claim, which was not completed by the end of the fiscal year.

2.43 Saxon Viking (2008)

On November 14, 2008, the Coast Guard received a report that the 1987 built wooden fishing

vessel, *Saxon Viking*, had slipped anchor and grounded on the beach in Ucluelet Harbour on the westside of Vancouver Island. The vessel was reported to have approximately 500 gallons of fuel oil onboard. The owner was advised of his responsibility and a plan of action was requested.

With no response from the owner, the Coast Guard Environmental Response personnel from Victoria proceeded to the scene and began removing oil containers from the vessel. When the owner was provided a written copy of a “Notice” to deal with the situation, Coast Guard was informed by the owner that he did not have any financial resources to handle the situation. On November 19th, Coast Guard pumped the oil from the fuel tanks and also removed several small containers of oil.

On March 23, 2009, Coast Guard filed a claim with the SOPF for costs and expenses in the amount of \$9,999.00 pursuant to sections 51(1), 84 and 85 of the *Marine Liability Act*.

The Administrator has commenced his investigation of this claim, which was not completed by the end of the fiscal year.

2.44 La Lumiere (2008)

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

The Administrator instructed counsel to engage a marine surveyor from Oceatec Marine Services Ltd. to attend at Britannia Beach to monitor clean-up operations and report on developments. The surveyor reported that a Coast Guard response team had arrived on site on May 8th and had deployed a 1600-foot oil containment boom to encircle the position where oil was upwelling from the sunken vessel – approximately 100 metres offshore. By May 15th the upwelling of hydrocarbons had decreased markedly to several small globules per second.

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

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

The Administrator has not received any claim for costs and expenses. The file remains open.

3. Challenges and Opportunities

As in the previous fiscal year, so also in the fiscal year ending March 31, 2009, the work of the SOPF has been dominated by efforts of the Administrator and his staff to comply with government legislation and policies aimed at greater transparency and accountability. The Administrator is aware that this aspect of the work of the SOPF will increase with the passage of Bill C-7, currently before Parliament, which contains a number of provisions aimed at improving the governance of the Fund. While the SOPF already complies with some of these requirements on a voluntary basis, the challenge in the coming fiscal year will be to ensure that there is strict compliance with the requirements of the new legislation in the procedures and practices of the Fund. This work has to be accomplished in addition to the core work of the SOPF, relating to claims management in conformity with Part 6 of the *Marine Liability Act* (MLA).

Because of the significant increase in the administrative work associated with the management of the SOPF, the Administrator is increasingly conscious of the fact that current recruiting practices for staff are no longer satisfactory. The SOPF is in a period of transition from a very small office, devoted primarily to the settlement of claims, expanding its staff as the claims work requires, to a regular office that is required increasingly to conform to government requirements and directives. This poses new challenges for the Fund's administration.

The current recruiting practices, based on provisions in Part 6 of the MLA that have not significantly changed since the early 1970s, are no longer satisfactory for the recruitment of permanent staff, essential for the development of experience and expertise in government practices and procedures. At the present time the SOPF is served by a very small staff, consisting of two part-time GIC appointees (Administrator and Deputy Administrator), a marine specialist who assists with the processing of claims and other related tasks; and three contract employees who work on a full-time basis (Executive Assistant and Office Business Manager, and two administrative support staff).

To overcome these shortcomings, the Administrator is resorting to longer term contracts with key employees to achieve permanence in the staffing of the Fund. As we have discovered, however, this gives rise to other challenges that the current Fund administration is ill-equipped to deal with, notably in the area of human resources management. The current staff of the SOPF has little experience in these matters. To meet the requirements of the Canada Revenue Agency, it has been necessary for the SOPF to obtain a business number and ensure that proper deductions are made in respect of salaries.

But even more permanent arrangements with staff by means of longer term contracts is not a complete solution to these problems. In recruiting suitable staff, the SOPF is hampered by the fact that it cannot offer other benefits enjoyed in the Public Service, such as contribution to a pension plan and provision of proper medical coverage. In the long run, therefore, the Administrator is of the view that it will be necessary to revisit the recruiting arrangements of the SOPF in order to achieve a more stable and attractive staffing environment for the Fund.

Another matter already referred to in previous Annual Reports of the Administrator relates to the reorganization of the Fund's filing system. Over the last two fiscal years, the SOPF has spent considerable financial resources on this project. As noted in the Administrator's Annual Report 2007-2008, this became necessary to ensure compliance with the *Access to Information and Privacy Acts*. In the context of that project, it was necessary to develop a proper file retirement policy and to conclude agreements with Library and Archives Canada (LAC) to take over SOPF files upon their retirement. While this work has now been largely accomplished, an important element of this reorganization is not yet in place, namely, an electronic data base, which is crucial in locating files within the system and identifying files that are due for retirement in accordance with the file retirement policy. An electronic data base would also provide a useful tool for tracking limitation periods in respect of claims for which no entirely satisfactory mechanism exists at the present time.

While it would be possible to acquire such a database on a commercial basis, the cost of doing so would be substantial and so the obvious solution is to acquire access to one within the government. Negotiations are underway with Transport Canada, already a key service provider to the SOPF for financial and accounting services, to provide access to a data base. It is understood that the SOPF would of course cover any incremental costs that might be involved but those costs would be very small when compared with the cost of acquiring a data base on the commercial market.

Another area in which the SOPF faces significant challenges on account of its lack of experience and limited staff relates to analyzing Treasury Board policies and directives pertaining to financial management and control. In larger department there is dedicated staff to perform this function. The SOPF has no staff familiar with these policies and directives and has no means of analyzing them. While the *Financial Administration Act* does not strictly speaking apply to the SOPF, the current Administrator, in keeping with his predecessors, strives wherever possible to comply with government wide directives, for example, in relation to travel and hospitality, website management and procurement requirements.

The list of administrative services required by the SOPF could be further extended. The point is that while the Administrator has authority to obtain professional, technical and other advice and assistance under the MLA, the office is too small to justify dedicated personnel in house to provide those services. In larger agencies these services are often provided by dedicated personnel or even entire offices. The obvious solution is to acquire these services on a shared basis with other agencies or government department. An added advantage of such an arrangement would be that such services would be supplied in full conformity with government directives, procedures and practices.

Negotiations are currently underway with Transport Canada to conclude a memorandum of understanding (MOU) the purpose of which is to clarify the roles and responsibilities of the SOPF and the department. The Administrator is of the view that such an MOU could be a useful instrument to address some of the challenges outlined above. Since many small agencies face similar problems, the Administrator has over the past year been a regular attendee at functions organized by the Association of Heads of Federal Agencies with the aim of networking with colleagues and learning as much as possible about the way other agencies are meeting these challenges. It would appear that in most cases, the services referred to above are either provided on a shared basis with another agency or are provided by the lead department in the same portfolio. Hence it is the belief and hope of the Administrator that the planned MOU might offer solutions to the challenges facing the SOPF.

As pointed out in the last Annual Report, it is important that the additional administrative work does not overshadow the core work of the Fund related to the assessment and payment of claims. The claims work has proceeded at a steady pace. A significant number of long standing files have been settled and closed in the fiscal year, but this has been balanced by the arrival of new claims. The Administrator has also been attentive to the activities of the IOPC Fund. As noted elsewhere in this report, the SOPF is responsible for collecting data on contributing oil received by sea in Canada and reporting on it to the IOPC Fund. The SOPF also remains vitally interested in the claims work of the international fund, seeking to align its claims policies as closely as possible with that of the international fund.

Due to the increased work load of the SOPF, it has not been possible to make further progress on the updating of the SOPF Claims Manual. This remains a high priority and the Administrator expresses the hope that this project can be tackled in the next fiscal year and, hopefully, completed.

The issue of abandoned and derelict vessels and their potential to cause oil pollution in the opinion of the Administrator remains a significant problem. The problem was highlighted in a recent judgment of the Federal Court of Canada in an appeal by the Crown against an assessment of the Administrator of a claim. The judgment handed down by the court pointed to the risks in failing to take prompt measures to deal with abandoned vessels. Particulars of that case are noted in the

Incident section of this Annual Report in relation to the *Mary Mackin* (see section 2). The Administrator reiterates his willingness to seek solutions to this problem in concert with the Canadian Coast Guard and Transport Canada.

As already noted, the Administrator has paid particular attention to Bill C-7, tabled in the House of Commons, January 29, which contains a significant redraft of Part 6 of the MLA. While the new legislation, if adopted by Parliament, would significantly increase the amount of compensation available in the case of oil spills caused by tankers, it is not anticipated the new legislation will materially change the claims procedures and practices of the SOPF.

4. Outreach Initiatives

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

4.1 Canadian Marine Advisory Council (National)

The Canadian Marine Advisory Council (CMAC) held its semi-annual meetings in Ottawa from April 28 to May 1 and from November 3 to 6, 2008. The Administrator and a marine consultant engaged by the Fund, Captain George Legge, attended some of the meetings. The Administrator follows with interest the ongoing discussion on all marine environmental issues addressed at the national CMAC sessions. He keeps abreast of the proposed regulatory framework for the prevention of oil pollution from ships of all classes. The Administrator attends the plenary sessions and the deliberations of the Standing Committee on the Environment. He also follows the issues discussed by the working group on marine oil pollution.

The Administrator is aware that, on the issue of marine waste disposal, CMAC reports that Transport Canada will invest money to develop and implement a Ship Waste Reduction Strategy to further prevent marine pollution from ships. Transport Canada recognizes the importance of having adequate facilities in Canadian ports to receive engine room oily waste and other residual oils generated by ships. From an economic and practical standpoint, all Canadian port reception facilities have to be adequate and conveniently located to meet the requirements of the ship without causing undue delay. The facilities must also be affordable for all classes of ships. It is not the shipowners themselves who own and operate disposal facilities. In this respect, a comprehensive study has been completed on the feasibility of adopting the Baltic Strategy in Canada. The Baltic Strategy includes in port fees the cost of providing port facilities for the disposal of residual oils from ships.

Note: For information about the Baltic Strategy see the Administrator's Annual Report 2004-2005 at section 4.5.1.

The Administrator has a particular interest in the regulatory developments by the federal government to address the problem of oiled marine wildlife caused primarily by illegal discharge of waste machinery oil, either accidental or deliberate, by ships transiting the Canadian coastline. The Administrator periodically receives claims for the cleaning of oiled birds and the clean-up of beaches resulting from "mystery oil spills" that occur along exposed shorelines, near bird sanctuaries and other marine ecological reserves, particularly on the eastern seaboard of Canada. The discharged residual oily waste is devastating to the sea bird populations. The Administrator cannot recover payments made by the Fund for expenses incurred for the clean-up of these "mystery spills", because the identity of the polluter is unknown. Consequently, it is imperative that more incentives should be provided for the ship to retain oily bilge water and residue onboard for disposal in port, rather than dumping at sea.

The Administrator is also aware that the National Aerial Surveillance Program is an essential component of the federal oil pollution prevention program. One means by which Canada detects

marine polluters is by deploying fixed-wing aircraft with state-of-the-art surveillance systems, to conduct pollution patrols over coastal waters. These aircraft are deployed over the Pacific, Atlantic and Arctic coastal waters, including the Great Lakes. The surveillance program successfully collects data that is used to prosecute ships that pollute Canada's navigable waters. Through the air surveillance program Canada is striving to send a strong message that our marine environment must be protected. In all coastal areas the aircraft acts as a significant deterrent to would-be polluters.

The Administrator follows the CMAC sessions covering the public consultation process for regulatory reform to ensure proper implementation of the new *Canada Shipping Act (CSA)*, 2001. The process for implementation of the Act continues to focus on developing the essential regulations for publication in the Canada Gazette. The liability provisions were moved from the CSA to the *Marine Liability Act (MLA)*. Part 6 of the MLA governs liability and compensation for marine oil pollution.

A report has been received by CMAC to the effect that Marine Safety is working on amendments to the *Arctic Waters Pollution Prevention Act*. The amended Act will enable Canada to extend its sovereignty in Arctic waters from the existing 100 nautical miles limit to 200 nautical miles. In addition, it is intended to make the Arctic Marine Traffic Reporting System mandatory. CMAC advises that these requirements should be in place for the 2010 shipping season. In the longer term, Marine Safety is planning to update the *Arctic Shipping Pollution Prevention Regulations* and to harmonize requirements with the CSA 2001.

Another important issue is the preparation to meet the challenges that will be posed in future by shipping in the Canadian Arctic. With a number of mining projects planned in the Arctic, it appears that northern marine traffic may increase substantially. In this respect, the Administrator is cognizant of the fact that the four independent corporations which are certified Response Organizations in Canada only provide marine oil spill clean-up services south of 60 degrees north latitude. Consequently, there is no Response Organization in the higher latitudes for shipowner to contract when required. In the North, the Canadian Coast Guard is the lead agency and, therefore, has overall responsibility for preparedness and response to all ship-source oil spills in the Canadian Arctic. The Administrator appreciates being invited to participate in the deliberations of the National CMAC sessions

4.2 Canadian Marine Advisory Council (Northern)

The Administrator was represented by Captain George Legge at the Regional Canadian Marine Advisory Council (Northern CMAC) meetings held in Iqaluit, Nunavut, from April 22 to 23, 2008, and also in Whitehorse, Yukon, from November 25 to 26, 2008. The Northern CMAC meetings are held semi-annually and usually in different Arctic communities. The Administrator has a direct interest in actively participating and becoming more aware of the issues surrounding the transportation by sea of oil products throughout the High Arctic.

The Northern CMAC participants represent the federal government and the territorial governments. They included a broad range of sealift operators from the marine shipping industry. Discussions are co-chaired by Directors of Fisheries and Oceans, CCG Central and Arctic Regions, and Transport Canada, Ship Safety, Prairie and Northern Region. The attendees include representatives of the Department of National Defence, Canadian Hydrographic Services, National Research Council of Canada, Royal Canadian Mounted Police, Indian Affairs and Northern Development, the Canadian Ice Services and the Meteorological Services of Environment Canada. As well, agencies of the Government of Nunavut, Northwest Territories and Yukon actively contributed to the agenda items of the various CMAC sessions. Moreover, many sealift operators participate, notably Nunavut

Eastern Arctic Shipping Inc., Northern Transportation Company Ltd., CanArctic Shipping, Petro Nav. Inc., Desgagnés Transarctik Inc., the Woodward Group of Companies, and others. In addition, representatives of several consulting firms attend and present papers during the meetings.

Of particular interest for the Administrator, among other agenda items, are the discussions on the regulatory reform for the prevention of pollution from ships. Specifically, the attendees were interested in Transport Canada's efforts to formulate Arctic Waters Guidelines for lay-up of petroleum barges and vessels in ice and, also, on the status of Arctic Waters Oil Transfer Guidelines from tankers at anchorage to storage tanks ashore that are being developed.

The Arctic sealift operators consider there is a risk that an oil spill may occur during fuel oil transfer by floating hose from ship to shore in a number of communities. To mitigate this risk, the commercial oil tankers, which are deployed for fuel delivery during the annual sealift operations, are equipped with oil pollution counter-measures equipment. The fuel transfer hoses and other lightering equipment utilized by these ships are designed specifically for Canadian Arctic operations.

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

The sealift managers attribute the operational success and safety record in protecting the northern marine environment to the experience and training of their shipboard officers and crew.

In the Arctic, shipowners do not need to have a contractual arrangement with a certified Response Organization. The Canadian Coast Guard is the lead federal agency for preparedness and response throughout the region north of 60 degrees latitude. In this respect, the Coast Guard has developed individual response strategies for local communities, which involve storing of equipment, as well as providing training on the use of the equipment in order to respond to spill incidents. Moreover, CCG icebreakers carry first-response spill equipment and the crew members are trained in its use. Should a specific oil spill situation exceed the resource capacities within a community or available from an icebreaker, CCG would deploy its rapid air transportable spill response equipment from Hay River, Northwest Territories. This equipment allows recovery and disposal in response to a spill of up to 150 tonnes. In addition, the CCG maintains spill response equipment strategically cached in Churchill, Iqaluit, and Tuktoyaktuk.

During the CMAC Northern meetings presentations were made by various shipping companies about the annual sealift operations, and the delivery of fuel oil products to the Arctic communities. Also, the participants provided an overview of the Arctic oil spill exercises conducted regularly by the sealift shipping companies.

In response to a request from the Secretariat of Northern CMAC, the Administrator prepared a presentation which was delivered at the CMAC meetings in Whitehorse by the SOPF Marine Consultant. The PowerPoint presentation focused on the sort of documentation required by the SOPF in order to investigate and assess claims filed with the Fund.

4.3 Regional Environmental Emergency Team Conference

The Administrator was represented by a Marine Consultant at the 35th Atlantic Regional Environmental Emergency Team (REET) conference and at the Oil In Ice Workshop held in St. John's Newfoundland, from October 21 to 25, 2008. The REET conferences are organized annually by Environment Canada. The attendees represented federal and provincial departments and agencies. Also included were representatives of the Eastern Canada Response Corporation (ECRC), private shipping industry, oil industries (i.e. Exxon Mobil, Chevron, Imperial Oil, Ultramar and Petro Canada), the USA National Oceanic and Atmospheric Administration, and other non-government organizations interested in protecting the environment.

By way of background, Environment Canada is the federal authority with responsibility for advice on environmental aspects during a pollution incident. During the course of an active response operation, a senior manager of Environment Canada normally chairs the REET meetings which provide the On-Scene Commander from the Canadian Coast Guard or the Response Organization with consolidated environmental and scientific information such as spill movement, trajectory forecasts, and advice respecting weather forecast. In addition, REET may approve the use of chemical dispersion and other shoreline treatment techniques.

On the first day of the conference, a workshop focused on the challenges of dealing with clean-up operations of an oil spill occurrence in ice-covered waters. The Oil In Ice Workshop was held in the Johnson Geocentre and sponsored by the REET organization. The workshop provided an opportunity for the participants to discuss advances in technology, current research, and methods of response to an oil spill in ice. The presentations consisted mainly of case studies, a joint industry program of oil spill response for the Arctic waters, technologies for remote sensing of oil trapped in ice and various other response strategies, such as mechanical recovery, in-situ burning, and the use of dispersants. Some of the presenters were from abroad, for example, there was a chemical engineer from the University of Houston, and a representative from Lamor Corp based in Finland.

The REET conference itself focused on perspectives about oil spill incidents, technology updates, counter-measures, case studies, lessons learned, crisis communication, and international contingency planning. The participants, industry and government, represented a broad scope of expertise currently available to respond during environmental emergencies, including ship-source oil spills.

On behalf of the Administrator, the marine consultant made a presentation during the conference addressing the documentation required by the Ship-source Oil Pollution Fund when a claimant files a claim with the Fund.

4.4 Response Organizations and CCG Equipment Facilities

On October 24, 2008, while participating in the 35th Annual REET Conference, the Administrator's marine consultant attended at the Eastern Canada Response Corporation facility in Donovan's Industrial Park near St. John's, Newfoundland. The manager of the Newfoundland-based facility advised that the depot has a high response capability at the Tier 3 level (2,500 tonnes) within 18 hours after notification of an oil spill. This Response Organization depot comprises a mix of specialized oil spill response equipment to meet the capability for which it is certified. The inventory includes booms, skimmers, boats, sea-trucks, containment barges and other storage tanks for recovered waste oil. There is also a large amount of shoreline clean-up treatment equipment and mobile command communication units. The personnel of the RO Centre work closely with federal, provincial, local authorities and various sectors of the oil industry, particularly with the off-shore oil exploration and development industry located on the Grand Banks of Newfoundland and Labrador.

The consultant also met with the Assistant Commissioner of the CCG in St. John's. The Coast Guard may respond to a marine oil spill incident as the lead agency, or it may provide support to another organization leading the response. The consultant also visited the CCG Environmental Response depot. The CCG's environmental response equipment storage facility in St. John's maintains a large stockpile of clean-up equipment and containment barges and auxiliary equipment to contain and recover oil at sea or from beaches. The equipment used in offshore operations by CCG personnel is standardized across the country. This standardization reduces training requirements. It provides for deployment of resources to react to spills anywhere in Canada.

The first-hand knowledge and information obtained during visits to these response and equipment depots are invaluable when investigating and assessing claims filed with the SOPF. Consequently, the Administrator is interested in continuing dialogue and the ongoing cooperation with CCG and the response organizations, in all regions of Canada. He is appreciative of their respective roles and responsibilities regarding oil spill pollution prevention, preparedness and response.

4.5 Canadian Maritime Law Association

The Administrator participated in meetings of the Canadian Maritime Law Association (CMLA) and government officials held in Ottawa on April 3, 2008. The Administrator's remarks focused on the operational status of the SOPF, and the growing concerns about the number of derelict and abandoned vessels located in coastal communities. Some of these abandoned vessels pose oil pollution threats. The Administrator also attended the Annual General meeting of CMLA held in Vancouver on June 10, 2008. He values his contacts with the CMLA and continues to dialogue with members.

4.6 Maritime Symposium

The Administrator was invited to participate in the Canada International Maritime Organization (IMO) Maritime Symposium held in Halifax, Nova Scotia, from November 16 to 18, 2008.

The Administrator was the moderator of a panel that focused on the work of the Legal Committee of the IMO. The panel speakers addressed two initiatives of the Legal Committee: the recently adopted Convention on the Removal of Wrecks, 2007, and recent activities aimed at bringing into force the 1996 Convention for Damage in connection with the Carriage of Hazardous and Noxious Substances (HNS Convention).

5. SOPF Involvement in the International Compensation Regime

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

5.1 1992 IOPC Fund Meetings

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

5.2 Meetings held in London – June 23 to 27, 2008

In June, the IOPC Fund held a number of meetings of its governing bodies. Those meetings were held in the newly renovated Headquarters of the International Maritime Organization (IMO) in London. The IOPC Fund traditionally holds its meetings at that location, but was obliged to find alternative locations for its meetings while the IMO building underwent almost two years of renovation.

The 1992 IOPC Fund Assembly was scheduled to hold its 13th extraordinary session in June but being unable to do so, on account of a lack of quorum, it reconstituted itself into the Administrative Council. The Administrative Council was chaired by Mr. Jerry Rysanek of Canada, the current chairman of the IOPC Fund Assembly.

With regard to claims matters, the Administrative Council took note, with approval, of *Technical Guidelines for Assessing Fisheries Sector Claims* that had been prepared by the Secretariat. These *Guidelines* are intended to assist the worldwide network of fisheries experts that might be engaged by the IOPC Fund to assess claims from that sector. Furthermore, the Administrative Council noted a simplified version of those *Guidelines*, also prepared by the Secretariat, aimed at assisting claimants. Experience has shown that claimants in that sector often need guidance in presenting their claims. Both documents are likely to be of value in Canada where, under the provisions of the *Marine Liability Act*, a specific remedy has been provided for loss of income suffered by individuals engaged in the fishing industry resulting from ship source oil spills.

The Administrative Council also noted the work of the 5th Intersessional Working Group (HNS Focus Group), the outcome of which will be discussed later in this report in connection with the IOPC Fund meetings of last October. For further background regarding this working group, please refer to last year's Annual Report of the Administrator at section 5.8.

At the June meeting, the Administrative Council considered two major claims, namely the *Volgoneft 139* in Russia and the *Hebei Spirit* in the Republic of Korea. Both claims will be discussed further in this report in relation to the October and March meetings of the IOPC Fund. For present purposes, it is sufficient to note that on the basis of a proposal from the Director of the IOPC Fund it was agreed to levy a contribution of £50 million in respect of the *Hebei Spirit* incident. On September 2, 2008, SOPF paid Canada's share in the sum of £2,249,241.47 (\$4,318,543.62).

During the June meeting, the Executive Committee of the 1992 IOPC Fund held its 41st session. Although Canada was not a member of the Committee, it attended as an observer. The main business of the Executive Committee is to receive reports on progress with respect to claims handling arising out of various incidents and to provide the Director with such instruction and direction in that regard as it considers appropriate. These meetings are of particular interest to the Administrator, since they provide first hand knowledge of the claims handling procedures followed by the IOPC Fund, as well as providing him with valuable contact within the IOPC Fund and in other national delegations. The incidents discussed will be taken up later in connection with the October and March meetings, below.

5.3 Meetings held in London – October 13 to 17, 2008

In October of last year, the governing bodies of the IOPC Fund held their traditional fall meetings.

1. 1992 IOPC Fund Assembly

First and foremost the 1992 IOPC Fund Assembly held its 13th regular session and as its first item of business reelected Mr. Jerry Rysanek of Canada as its chairman.

Membership of the 1992 IOPC Fund continues to grow, its membership now standing at approximately 101 states. Likewise the Supplementary Fund is experiencing steady growth, current membership standing at 21 states. As previously noted, Parliament is currently considering draft legislation, Bill C-7, which, if passed, will allow Canadian accession to the supplementary Fund.

The current turmoil in financial markets received some attention at the October meeting, since the IOPC Fund has considerable investments, mainly on account of a number of major claims funds. A major claims fund is usually established in relation to an incident that is expected to give rise to a large number of claims. Their purpose is to ensure the prompt payment of established claims. The Assembly received assurances both from the Director and the Investment Advisory Body that in the short term no problems are anticipated, all investments being with European banks, which, over the last little while, have received guarantees from their governments. Nevertheless, even the prudent investment policies of the Fund cannot be seen as a complete shield from losses in these uncertain times.

Two subjects continue to retain the attention of the Assembly, namely, the non payment of contributions and the non-submission of oil reports. These are recurring problems and are naturally of considerable concern to many delegations, including the Canadian delegation. As already noted, in Canada the duty to report annually to the IOPC Fund the amount of contributing oil received in Canada by the sea, as well as the payment of contributions levied by the international fund calculated on the basis of those reports, has been assigned to the SOPF. In Canada, both reports on contributing oil and the payment of contributions are accomplished on a timely basis.

The Audit Body of the Organization was instructed by the Assembly to review the matter of outstanding contributions and to put forward proposals to ensure prompt payment of contributions. The Audit Body has also, over the years, studied the issue of non submission of oil reports, result-

ing in a recommendation that a policy decision be taken by the Assembly to defer the payment of claims in those states where two or more oil reports are in arrear i.e., those claims would be assessed but not paid until the reporting deficiency has been rectified. Although there were some doubts expressed about the legal enforceability of such a policy, it was decided to adopt it.

The October Assembly of the IOPC Fund adopted the budget of the Organization for 2009. The budget is a determining factor for the amount of the contributions that it will be necessary to levy in that year. Accordingly, on the recommendation of the Director, it was agreed that a levy of £10 million should be made in respect of the General Fund, which is used to cover the administrative costs of the IOPC Fund, as well as to maintain the working capital at £22 million. The latter money is used to pay smaller claims that are not covered by a Major Claims fund.

The Assembly dealt with three Major Claims funds, namely those covering the *Volgoneft 139* incident, the *Hebei Spirit* incident and the *Prestige* incident. It was agreed that a levy should be made in respect of the *Prestige* Major Claims Fund and the *Hebei Spirit* Major Claims Fund of £2.0 million and £33.5 million, respectively, but both levies were deferred, the Director being authorized to invoice all or part of these levies in the second half of 2009, to the extent required.

In the case of the *Volgoneft 139* it was agreed to raise a levy of £50 million but it was also agreed that the levy should be deferred until the Executive Committee authorizes the payment of compensation. This latter incident is of particular concern to the membership of the IOPC. More detail on this incident and the problems that have arisen will be dealt with later in this report.

The Assembly took note of the outcome of the work of the HNS Focus Group. This Group had been set up by the Assembly to examine a number of issues associated with the implementation of the international *Convention on Liability and Compensation for the Carriage by Sea of Hazardous and Noxious Substances* (HNS Convention). The Group met twice under the chairmanship of Alfred Popp, QC of Canada and reported back to the Assembly, with a draft protocol, to the extraordinary session of the Assembly Administrative Council in June 2008. The draft protocol is aimed at addressing the issues that are hindering the implementation of the convention by making appropriate changes to the convention. The June meeting instructed the Director to send the draft protocol to the International Maritime Organization (IMO) with a request that a diplomatic conference be convened as soon as possible. (Note: the draft Protocol was approved by the Legal Committee at its April session and it is anticipated that a diplomatic conference will be convened in the spring of 2010).

The Assembly reelected Canada to sit on the Executive Committee. It is also noteworthy that Mr. Emil Di Sanza, formerly of Transport Canada, has been elected to sit on Audit Body. Mr. Maurice Jaques, also of Canada, had completed a term of six years on the Audit Body and was therefore not eligible for reelection.

2. IOPC Fund Executive Committee

During the October meetings of the IOPC Fund, the 1992 Fund Executive Committee held its 42nd session. During this meeting, the Committee reached an important decision in relation to a possible recourse action in the *Slops* incident (Note: For additional information see the SOPF Annual Report 2006-2007, at Appendix C). This incident involved a vessel that was being permanently used as a waste oil storage facility. When the facility suffered a fire in June 2000, a substantial quantity of oil was spilled. The IOPC Fund denied liability for claims arising out of the incident on the grounds that the facility should not be considered a ship as defined in the 1992 Civil Liability Convention. After various appeals, the matter finally reached the Greek Supreme Court. The Greek Supreme Court disagreed with the position of the IOPC Fund ruling that the facility did qualify as a ship within the meaning of the convention.

All rights of appeal having been exhausted, the issue before the Executive Committee was whether it should pursue the Greek government in a recourse action on the grounds that the government had allowed the *Slops* to operate without a valid insurance certificate under the terms of the *Civil Liability Convention*. In the final analysis, however, it was agreed that no recourse action should be brought against the government, since it had acted in conformity with IOPC Fund policy regarding the definition of ship in the *Civil Liability Convention*. The Committee instructed the Director to examine the Fund's policy on the definition of ship and to present a document to the IOPC Fund Assembly in October 2009.

Another case that is attracting significant concern in the Executive Committee relates to the *Volgoneft 139* incident. (Note, see Administrator's Annual Report, 2007–2008, at section 5.4). This incident continues to present a number of preoccupying features, some of which merit specific mention. First, as previously reported, the ship was not insured to required limits specified under the 1992 *Civil Liability Convention*, although Russia is a party to that instrument, resulting in an unfortunate “insurance gap”. It seems that the Russian government failed to bring into force amendments to the limitation amounts in the convention that had come into force on November 1, 2003, so that Russian law at the time of the incident was based on limits that prevailed prior to that date. So far the Russian courts have ruled that the shipowner's limitation fund is governed by the outdated limits in force under Russian law. This ruling would appear to fly in the face of a rule of Russian constitutional law that international conventions to which Russia is a party prevail over domestic law. It is not yet clear whether the Russian government will eventually fill the “insurance gap” or whether the IOPC Fund will have to fill it and seek reimbursement from the government by way of a recourse action.

Next, the shipowner and the insurer have raised the defense in Article III.2 (a) of the 1992 *Civil Liability Convention*, which would exonerate them from all responsibility for the spill if it can be proved that the pollution damage resulted from a natural phenomenon of an exceptional, inevitable and irresistible character. Experts retained by the IOPC Fund have expressed the preliminary conclusion that the storm provoking the incident was not of such an intensity so as to qualify for that defense. A more likely cause was that conditions of the storm were in excess of the ship's design criteria. There is also a suggestion that the ship was not certified to navigate in the waters where the incident occurred at that time of the year. This view is not shared by the Russian government. In the event that the courts were to find that this defense has been established, the IOPC Fund would become liable to pay compensation for the totality of the oil pollution damage caused by this spill.

A further preoccupying feature of this case relates to the method used to calculate a claim submitted by Ministry of Natural Resources. This claim was compiled in accordance with a calculation, known as “Methodika”, which, almost since the beginning of the IOPC Fund system, has been rejected by the IOPC Funds on the grounds that it is based on an abstract quantification calculated in accordance with a theoretical model (Note, see the definition of pollution damage in Article I.6 of the 1992 *Civil Liability Convention*, which in relation to impairment of the environment, speaks of “costs of reasonable measures of reinstatement actually undertaken or to be undertaken”, and the IOPC Fund Claims Manual, 2008, at page 35). Apparently the Methodika formula forms part of Russian law and would, consequently, be applied by Russian courts called upon to resolve any disputes concerning the assessment of damage. It should be borne in mind that the national courts are the final arbiters on all disputes relating to the assessment and payment of compensation under the international system.

Lastly, it is clear that the totality of claims so far submitted substantially exceed the amount of compensation available under the IOPC Fund system. This means that if the Committee were to agree to pay any claims, it could not agree to pay the claims in full but would also have to settle on an appropriate level of payment to ensure that all claimants are treated on an equal footing as required by the terms of the convention.

Another case that is attracting considerable attention in the Executive Committee relates to the *Hebei Spirit* incident of December 2007. Note: Administrator's Annual Report, 2007-2008, at section 5.4. This spill has caused major damage on the south west coast of the Republic of Korea, which is likely to result in claims the value of which will exceed the amount of compensation available under 1992 *Civil Liability Convention* and IOPC Fund Convention. The Republic of Korea is not a party to the Supplementary Fund; consequently, it will not benefit from the additional compensation available from that Fund.

The P&I Club involved has set up a Claims Office in Seoul. Additionally, the Club has concluded agreements with the Korean government to ensure 100% payment of claims approved by the Club and the IOPC Fund up to the limit of the Club's exposure. Because the totality of claims is likely to exceed significantly the amount of compensation available, the level of the Fund's payments of claims has been fixed at 35%, subject to review from time to time. In line with budgetary decisions made at the IOPC Fund meetings in June, previously discussed, in August 2008 the IOPC Fund levied a contribution for this incident of £50,000,000.00. Canada's share of that contribution was some £2,249,241.00, which in accordance with the *Marine Liability Act* has been paid out of the SOPF. Note: see MLA ss. 76(1).

Some claims in two other major incidents of long standing, namely the *Erika* (December 1999) and the *Prestige* (November 2003) have not yet been settled. In the first case, the process of claims settlement is proceeding well. A series of challenges of the IOPC Fund's assessments of claims in the French courts have in the overwhelming majority been decided in favour of the Fund, suggesting that the claims criteria applied by the Fund are legally sound. In the case of the *Prestige* incident some progress in the resolution of claims is being made, but a number of very major claims, mainly from the Spanish government, have not yet been resolved. Legal proceedings in Spain are also underway in respect of some of the claims. Because in this case, too, the totality of claims filed exceed the amount of compensation available under the conventions, the level of payment has been fixed at 30% of assessed amounts.

Of considerable interest to the IOPC Fund are the legal proceedings that have been commenced by the Spanish government against the classification society, the American Bureau of Shipping (ABS), on the grounds that the classification society had been negligent in inspecting the *Erika* and thereby contributed to the cause of the incident. ABS in turn has started an action against the Spanish government, suggesting that the damages caused in this case were attributable to government negligence in ordering the stricken vessel out to sea and not affording it a place of refuge. The IOPC Fund continues to follow this litigation with interest, since its final outcome may have implications for any recourse action that the Fund might have against the Spanish government.

3. Administrative Council, 1971 IOPC Fund

During the October meetings, the Administrative Council of the 1971 IOPC Fund held its annual meeting. As pointed out previously, the 1971 IOPC Fund Convention is no longer in force. Nevertheless, because there remain outstanding claims that go back to the time before the 1971 Fund Convention ceased to be in force (May 24, 2002), the Administrative Council was set up to provide direction on these claims and any other administrative matters on which the Fund Secretariat might need direction. Canada remains exposed for claims in respect of incidents that arose before Canada ceased to be a member of the 1971 Fund on May 29, 1999. Accordingly, the Administrator attends the meetings of the Administrative Council as part of the Canadian delegation.

The 1971 Fund is jointly administered with the 1992 IOPC Fund and the Supplementary Fund by the 1992 IOPC Fund Secretariat and pays to the 1992 Fund a flat fee (£210,000.00) for the services it receives from the Secretariat. There are seven incidents with outstanding claims of which the *Nissos Amorgos* incident is the most notable one. In that case, there are substantial claims from the Republic of Venezuela, as well as from three fish processors that have not yet been resolved.

There does not seem to be any immediate prospect that these claims will be settled. In the case of the government claim there are procedural problems in the Venezuelan courts. The IOPC Fund also takes the position that the alleged pollution damage falls outside the scope of the 1969 *Civil Liability Convention*.

5.4 Executive Committee Meeting, March 2009

At the March meeting of the Executive Committee there were further detailed discussions of major incidents already mentioned in relation to the October meetings of the IOPC Fund. Notably, the Committee focused on the judgment handed down in the *Erika* incident by the Criminal Court in Paris in January 2008. When the judgment came out initially, the IOPC Fund Secretariat had been asked to study its implications for the international compensation regime. It was noted that the judgment was now under appeal to the Court of Appeal and that any analysis of the judgment, it was suggested, should await the decision of the Court of Appeal. A hearing of the appeal is scheduled to start in early October 2009.

The Canadian delegation, in concert with other delegations, expressed concern with the judgment, given that the Criminal Court had awarded substantial amounts of compensation. It noted that there seems to be a trend in some jurisdictions for criminal courts to award compensation without full regard for the provisions of the 1992 *Civil Liability Convention* and Fund Convention. The legal advisor of the IOPC Fund pointed out, however, that in this particular case, the Criminal Court had taken pains to avoid conflict with the international regime by holding parties liable that were not shielded by the channeling provisions of the *Civil Liability Convention*.

Obviously a final view on this judgment must await the outcome of the appeal in October. The Director was encouraged to provide an analysis of the implications, if any, for the international scheme, once a judgment of the Court of Appeal becomes available.

Reference has already been made in the report regarding a number of decisions handed down by the civil courts in France concerning challenges of the IOPC Fund's assessment of claims and, encouragingly, in most instances the IOPC Fund assessments have been upheld. This bodes well for the uniform application of the international regime world wide.

Last but not least, the Executive Committee took note of litigation in France that has been mounted by a Commune against *Total*, suggesting that the cargo on board the *Erika* qualified as waste under European law and, consequently, the oil company, as the "producer" and the "previous owner" of the cargo could be required to bear the cost of disposal of the "waste". The matter has been before the French Supreme Court, which referred it to the European Court of Justice (ECJ). Based on the opinion of the ECJ, the Supreme Court has concluded that the oil would qualify as waste once it is spilled and becomes mixed with sea water and that *Total* would be liable to bear the cost of disposal, if it was found to have contributed to the risk of pollution caused by the ship wreck. This issue is now before the Court of Appeal in Bordeaux. No doubt there will be further discussion of the implications of this litigation for the international regime, once the Court of Appeal has handed down its decision.

The Committee received an update on the claims arising out of the *Prestige* incident. Because the amount of outstanding claims substantially exceeds the amount of compensation available under the international regime, the level of payment of established claims has been maintained at 30%.

In addition to legal proceedings in Spain, including criminal proceedings against the Master, Chief Officer and Chief Engineer, there are legal proceedings in progress in France in respect of claims related to this incident. So far judgments in France that have been rendered seem to favor the IOPC Fund's assessments.

The Executive Committee received updates on two other major incidents, namely, the *Volganeft 139* incident and the *Hebei Spirit* incident. The preoccupying elements of the *Volganeft 139* incident remain unresolved.

Accordingly, the Executive Committee, in view of the uncertainties surrounding this incident, declined to authorize the Director to make any payment of claims at this stage.

The Executive Committee also received an extensive update of the *Hebei Spirit* incident. As of March 2009, claims totaling approximately £250 million have been filed with the Claims Office set up in collaboration with the P&I Club. It is anticipated that the losses arising out of this incident will exceed the amount of compensation available under the international regime. As previously noted, the Republic of Korea is not a party to the Supplementary Fund. Given the uncertainty regarding the total number of claims, the Executive Committee has maintained the level of payments of established claims at 35%.

Ship-source Oil Pollution Fund
Financial Statements
March 31, 2009

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**Raymond Chabot
Grant Thornton**

Auditors' Report

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To the Administrator of
Ship-source Oil Pollution Fund

We have audited the balance sheet of Ship-source Oil Pollution Fund as at March 31, 2009 and the statement of operations and accumulated surplus for the year then ended. These financial statements are the responsibility of the Fund's management. Our responsibility is to express an opinion on these financial statements based on our audit.

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

In our opinion, these financial statements present fairly, in all material respects, the financial position of the Fund as at March 31, 2009 and the results of its operations and its cash flows for the year then ended in accordance with Canadian generally accepted accounting principles.

Raymond Chabot Grant Thornton LLP

Chartered Accountants,
Licensed Public Accountants

Ottawa, Canada
May 7, 2009

Ship-source Oil Pollution Fund
Statement of operations and accumulated surplus
Year ended March 31, 2009

	<u>2009</u>	<u>2008</u>
	\$	\$
Revenue		
Interest	10,122,651	14,454,922
Recoveries of previously awarded settlements	33,100	7,163
	<u>10,155,751</u>	<u>14,462,085</u>
Claims		
Payments and accruals made towards Canadian claims	(565,464)	(972,347)
International Oil Pollution Compensation Funds contributions (Note 8)	(5,161,014)	(106,305)
	<u>(5,726,478)</u>	<u>(1,078,652)</u>
	<u>4,429,273</u>	<u>13,383,433</u>
Operating expenses		
Administrator and Deputy Administrator fees	105,809	106,374
Legal fees	258,981	187,456
Consulting fees	102,874	68,675
Audit fees	20,800	3,098
Administrative services, salaries and office expenses	126,747	147,672
Travel	36,584	38,495
Rent	97,552	87,100
Printing - annual report	14,630	15,000
Access to Information and Privacy Act expenses (Note 6)	61,529	83,596
Amortization of capital assets	3,872	3,011
	<u>829,378</u>	<u>740,477</u>
Surplus for the year	3,599,895	12,642,956
Accumulated surplus, beginning of year	<u>376,425,567</u>	<u>363,782,611</u>
Accumulated surplus, end of year	<u>380,025,462</u>	<u>376,425,567</u>

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

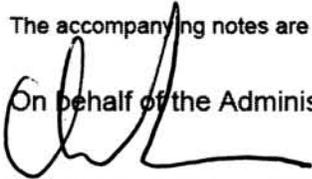
Ship-source Oil Pollution Fund Balance Sheet

March 31, 2009

	<u>2009</u>	<u>2008</u>
	\$	\$
ASSETS		
Current assets		
Balance of the account with Receiver General for Canada (Note 4)	380,473,601	376,453,502
Amounts receivable	30,000	
	<u>380,503,601</u>	<u>376,453,502</u>
Capital assets (Note 5)	20,156	17,124
	<u>380,523,757</u>	<u>376,470,626</u>
LIABILITIES		
Current liabilities		
Accounts payable and accrued liabilities	223,117	45,059
Provision for claims under review (Note 7)	275,178	
	<u>498,295</u>	<u>45,059</u>
ACCUMULATED SURPLUS		
	<u>380,025,462</u>	<u>376,425,567</u>
Contingencies (Note 8)	<u>380,523,757</u>	<u>376,470,626</u>

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

On behalf of the Administrator,



Deputy Administrator

Ship-source Oil Pollution Fund

Notes to Financial Statements

March 31, 2009

1 - GOVERNING STATUTES AND PURPOSE OF THE ORGANIZATION

The Ship-source Oil Pollution Fund (the Fund) was created April 24, 1989 by amendments to the *Canada Shipping Act* and succeeded the Maritime Pollution Claims Fund. The Fund is established under Part 6 of the *Marine Liability Act* (MLA).

2 - ACCOUNTING POLICIES

Basis of accounting

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

Accounting estimates

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

Revenue recognition

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

Foreign currency translation

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

Capital assets

Capital assets are recorded at cost.

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

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

3 - INFORMATION INCLUDED IN OPERATIONS

	<u>2009</u>	<u>2008</u>
	\$	\$
Foreign exchange gain included in International Oil Pollution Compensation Funds contributions	337,837	-

Ship-source Oil Pollution Fund

Notes to Financial Statements

March 31, 2009

4 - BALANCE OF THE ACCOUNT WITH RECEIVER GENERAL FOR CANADA

The cash balance of the Fund is held within the Consolidated Specified Purpose Accounts of the Government of Canada. Public Works and Government Services Canada acts as the custodian of this cash balance and makes the various expenditures on behalf of the Fund. Interest is credited to the Account in accordance with the provisions of the MLA at a rate based on a 5-year Government of Canada bond interest rate, calculated monthly. The interest rates varied between 1.71 percent and 3.37 percent during the year. The rate for March 2009 was 1.71 percent.

5 - CAPITAL ASSETS

	2009		
	Cost	Accumulated amortization	Net
	\$	\$	\$
Computer equipment	5,005	3,094	1,911
Furniture and equipment	22,034	3,789	18,245
	<u>27,039</u>	<u>6,883</u>	<u>20,156</u>
	2008		
	Cost	Accumulated amortization	Net
	\$	\$	\$
Computer equipment	4,275	1,425	2,850
Furniture and equipment	15,860	1,586	14,274
	<u>20,135</u>	<u>3,011</u>	<u>17,124</u>

6 - ACCESS TO INFORMATION AND PRIVACY ACT EXPENSES

	2009	2008
	\$	\$
Administration costs	11,041	11,293
Consultant fees	50,213	46,314
Legal fees	275	25,884
Training		105
	<u>61,529</u>	<u>83,596</u>

During the year, the Fund was required to incur additional expenses to meet the requirements of the *Access to Information and Privacy Act*. In addition to the above-mentioned operating expenses, the Fund has acquired furniture and equipment totalling \$6,174 during the year (\$8,274 in 2008), in order to maintain proper filing systems in accordance with this Act.

Ship-source Oil Pollution Fund

Notes to Financial Statements

March 31, 2009

7 - MEASUREMENT UNCERTAINTY

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

8 - CONTINGENCIES

The Ship-source Oil Pollution Fund is required to make an annual contribution to the International Oil Pollution Compensation Funds, for which the amount owing is determined by the International Oil Pollution Compensation Funds' governing bodies. The amounts contributed to this organization are used to clean-up oil pollution damage under the jurisdiction of the contracting states to the International Oil Pollution Compensation Funds. The size of the contribution is contingent on the number of claims received by the International Oil Pollution Compensation Funds, resulting in varying levels of contributions from year to year. Given this volatility, it has been determined that an estimate of this contribution can not be reasonably estimated. The amount of the 2009 contribution will be paid and recorded by the Ship-source Oil Pollution Fund once the contribution has been determined and requested by the International Oil Pollution Compensation Funds. During the year ended March 31, 2009, the Fund has contributed \$5,161,014 (\$106,305 in 2008) to the International Oil Pollution Compensation Funds.

During the fiscal year commencing April 1, 2009, the maximum liability of the Fund is \$154,392,072 (\$152,110,416 in 2008) for all claims from one oil spill. Furthermore, as of April 1, 2009, the Minister of Transport also has the statutory power to impose a levy of 46.29 cents (45.61 cents in 2008) per metric tonne of "contributing oil" imported into or shipped from a place in Canada in bulk as cargo in a ship. Both the maximum liability and the levy is indexed annually to the consumer price index. No levy has been imposed since 1976.

9 - RELATED PARTY TRANSACTIONS

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

During the year, the Fund has paid \$97,552 (\$87,100 in 2008) to Public Works and Government Services Canada for the use of the office space.

10 - STATEMENT OF CASH FLOWS

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