

***Ship-source  
Oil Pollution Fund  
Annual Report  
1990-1991***



Canada

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The Honourable Jean Corbeil, P.C., M.P.  
Minister of Transport  
Ottawa, Ontario  
K1A 0N5

Dear Mr. Corbeil,

## 1. Introduction

In accordance with Section 722 of the Canada Shipping Act, I herewith submit to you my report on the operations of the Ship-source Oil Pollution Fund for the fiscal year starting on April 1, 1990 and finishing on March 31, 1991.

The undersigned was appointed Administrator of the Maritime Pollution Claims Fund (M.P.C.F.), by Order in Council P.C. 1988-247 dated October 24, 1988 for a term of five years.

On April 24, 1989, the M.P.C.F. was replaced by the Ship-source Oil Pollution Fund (S.O.P.F.), and by Section 89 of an Act to amend the Canada Shipping Act, (S.C. 1987, C.7) the Administrator of the M.P.C.F. on that day, continues in office as Administrator of the S.O.P.F. for the balance of his term of 5 years which will expire on November 17, 1993.

## 2. The New Legislation

1. The Ship-source Oil Pollution Fund is a creature of statute established by amendments to the Canada Shipping Act which came into force on April 24, 1989.

2. The S.O.P.F. succeeded the M.P.C.F. which had existed since 1973 and the monies in the M.P.C.F. (\$149,618,850.24) on the above date were transferred to the S.O.P.F.

3. The S.O.P.F. is a Special Account established in the Accounts of Canada upon which interest is presently credited monthly by the Minister of Finance (about 10.75% per annum during the 1990-91 fiscal year).

4. The Minister of Transport has the statutory power to impose a levy on "contributing oil"

imported into or shipped from a place in Canada in bulk as cargo of a ship. The levy is indexed annually to the consumer price index. As of April 1, 1991, the levy, if imposed, would be 33.04 cents per metric tonne.

5. No levy has been imposed since 1976.<sup>1</sup>

6. The S.O.P.F. is liable to pay claims for oil pollution damage or anticipated damage at any place in Canada or in Canadian waters caused by the discharge of oil from *any* ship (except where the *Arctic Waters Pollution Prevention Act* applies, in which case, the S.O.P.F. is only liable for oil spills from laden tankers).

7. The maximum liability of the S.O.P.F. is presently \$110,142,000 for all claims from any one oil spill. This amount is also indexed annually.

8. On April 24, 1989 The International Convention on Civil Liability for Oil Pollution Damage 1969 (C.L.C.) and the 1971 International Convention on the Establishment of an International Fund for Oil Pollution Damage (Fund Convention) entered into force for Canada. Consequently, Canada became a member of the International Oil Pollution Compensation Fund (IOPC Fund) established under the Fund Convention on the same date.

9. Taken together the two Conventions provide compensation for oil pollution damage of up to a maximum of approximately \$93.22 million from any one oil spill from a laden oil tanker.

10. The inter-relationship of the two Conventions and the S.O.P.F. is shown on figure 1.

## 3. Contributions to the International Oil Pollution Compensation Fund

The IOPC Fund is financed by contributions based upon the amount of contributing oil received in member states. The contributions are

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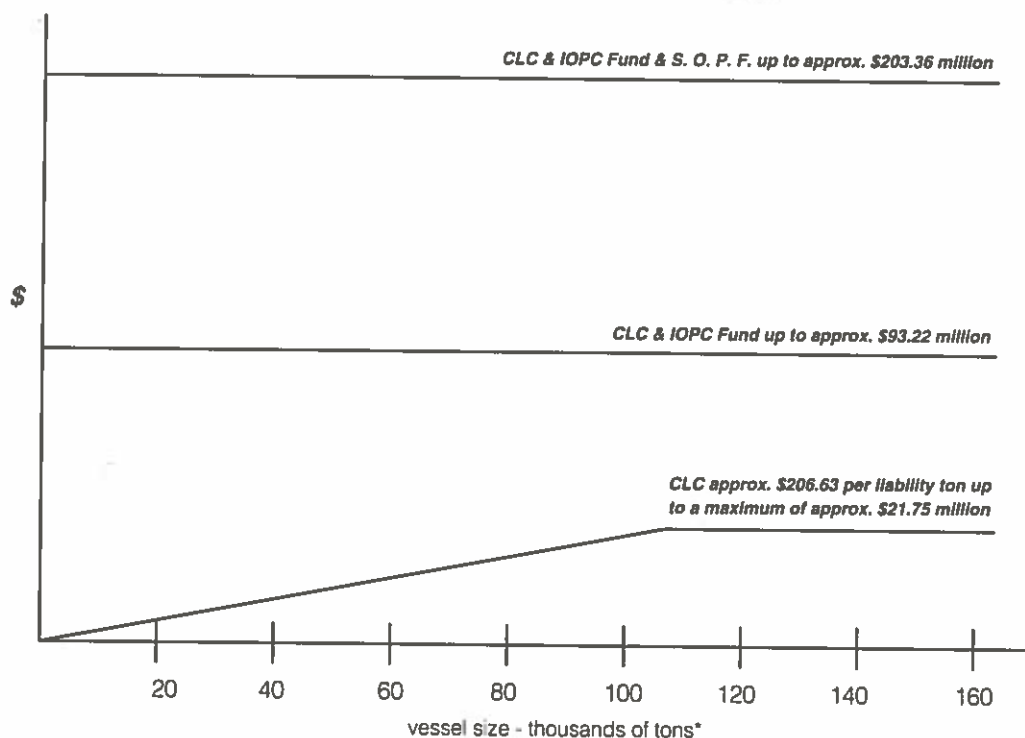
<sup>1</sup> Between 15 February 1972 and 1 September 1976, a levy of \$0.15 per tonne was paid and collected on oil imported into Canada by ship in bulk and shipped in bulk from any place in Canada. The total levy receipts credited to the M.P.C.F. were \$34,866,459.88.



Figure 1

### Canada Shipping Act Part XVI — Compensation for Oil Pollution Damage in respect of any one incident involving a laden tanker

(Based on the value of the SDR at April 1, 1991)



1. 1969 Civil Liability Convention (CLC) provides compensation of up to approx. \$21.75 million.
2. International Oil Pollution Compensation Fund (IOPC Fund) and CLC provide aggregate compensation of up to approx. \$93.22 million.
3. Ship-source Oil Pollution Fund (S. O. P. F. ), IOPC Fund and CLC provide a combined amount of up to approx. \$203.36 million for any one incident involving a laden tanker.

**Note:** The S. O. P. F. provides up to \$110.142 million (during fiscal year commencing April 1, 1991) over and above the funds available under the IOPC Fund and CLC in respect of spills from laden tankers. The S. O. P. F. is also available for compensation for oil spills from ships other than laden tankers, certain claims for loss of fishing income and mystery spills.

\* As defined in Article V of the Civil Liability Convention

assessed on the amount of oil received during the previous calendar year. "Contributing oil" is defined to include both crude oil and heavy fuel oil (A.S.T.M. no. 4 and above). In most member states, contributions are assessed and paid by persons who have received by ship on an annual basis total quantities exceeding 150,000 tonnes, by way of imports and coastal movements.

In the case of Canada, however, the obligations to report the amounts of contributing oil received and to pay Canada's annual contribution, assessed each year by the IOPC Fund, are discharged by the S.O.P.F.

The Administrator has a statutory duty on behalf of Canada to report to the Director of the IOPC Fund, the quantities of contributing oil received by

sea at places in Canada. The required information is provided to the S.O.P.F. by Statistics Canada for imports and by the persons receiving the oil pursuant to the Ship-source Oil Pollution Fund Regulations that came into force on January 18, 1990.

Industry has been more than helpful in providing the required information.

In its second year as a member Canada's contribution to the IOPC Fund was assessed at \$49,161.28 and was paid in January 1991.

#### **4. IOPC Fund, The Assembly and The Executive Committee**

The 24th and 25th sessions of the Executive Committee together with the 13th session of the Assembly of the IOPC Fund were held in London, England between September 24-27th, 1990.

##### ***The Assembly***

At the Fund Assembly, a gathering representing all member states, the Canadian Delegation was headed by the Administrator. The Assembly took note of the Auditor's report, adopted the budget for 1991, and decided the amount of the 1990 Annual Contributions.

Canada was re-elected a member of the Executive Committee for a second term. It was decided to set up an intersessional working group to consider the future development of the existing International Oil Pollution Liability and Compensation Regime established by the 1969 Civil Liability Convention and the 1971 Fund Convention (see also paragraph 5).

##### ***The Executive Committee***

At its 24th session, the Committee considered an interesting Canadian incident which occurred before Canada became a member of the Fund. The issue was whether the IOPC Fund could be liable for oil pollution damage suffered after Canada joined the IOPC Fund but which arose out of an incident that had occurred before the entry into force for Canada. (For more details, see the CZANTORIA incident paragraph 10.2).

At the 25th session of the Committee the Chairman and Vice-Chairman were re-elected for the next year.

The 26th session of the Executive Committee was held in London on March 14, 1991 in conjunction with the first meeting of the Working Group. The Committee heard the first report of the Director on the major Canadian incident caused by the grounding of the asphalt tanker RIO ORINOCO, on the south shore of Anticosti Island on October 16, 1990. (For more particulars, see paragraph 10.16).

#### **5. The IOPC Fund Working Group**

In May 1984, two Protocols to amend the Civil Liability Convention and the Fund Convention were adopted in London. These Protocols would provide higher limits of compensation than at present and increase the scope of application of the Conventions.

By 1990, neither Protocol had come into force. With the adoption of the United States Oil Pollution Act 1990 in August 1990, (which did not authorize the United States to ratify the 1984 Protocols) it was unlikely that the 1984 Protocols would come into force in the foreseeable future.

The Working Group chaired by A.H.E. Popp, Q.C., Senior General Counsel, Admiralty and Maritime Law of the Canadian Department of Justice, met for the first time in London on March 13-14th 1991. The Administrator of the S.O.P.F. was the advisor to the Canadian Delegation. Twenty-four member states attended and seven other states were represented as observers.


The three elements of the mandate of the Working Group were:

*To consider the future development of the inter-governmental oil pollution liability and compensation system by:*

*(a) examining the prospects for the entry into force of the 1984 Protocols to the Civil Liability Convention and the Fund Convention;*

*(b) considering whether it would be possible to facilitate the entry into force of the content of the 1984 Protocols by amending their entry into force provisions;*

*(c) considering which substantive provisions in the existing Conventions and the 1984 Protocols appear to form the main obstacles to their continued relevance, including an examination of the present contribution scheme.*



Article 30 of the 1984 Fund Protocol stipulates that to come into force, the Protocol must be ratified by at least 8 States and those States must between them have received at least 600,000,000 tonnes of contributing oil in the preceding year.

The Working Group considered the above terms of reference and quickly concluded that without the ratification of the 1984 Protocols by the United States it was not realistic to expect that these Protocols, as they are presently cast, would come into force.

Most delegations proposed a significant reduction in the amount of tonnage required to bring this Protocol into force (600,000,000 tonnes) to a level of 400,000,000 – 500,000,000 tonnes.

Two other topics were also discussed:

(a) a proposal to put a cap or limit on the contributions of a member state, and;

(b) a proposal to reconsider the definition of "pollution damage" in the 1984 Protocols in the light of existing national legislation and recent jurisprudence.

During the meeting, the Secretariat of the IOPC Fund was instructed to prepare papers on various issues. The Working Group arranged to meet again in London from 17-19 June 1991.

## **6. Public Review Panel on Tanker Safety and Marine Spills Response Capability**

In my Annual Report for 1989-90, I referred to the establishment of this Panel by the Prime Minister in June 1989. The members of the Panel were:

David Brander-Smith, Q.C. (Chairman)  
Denise Therrien, P. Eng.  
Stan Tobin

Their task was to review measures to ensure the safe movement of oil and chemicals by tanker and barge through Canadian waters and fishing zones, and also to review existing Canadian Legislation and International Conventions dealing with oil spill liability and compensation.

The final report of the Panel, containing 107 recommendations, was presented to the

Government on October 24, 1990 and released to the public on November 2, 1990.

Significant among the recommendations were six which touched upon and concerned the Ship-source Oil Pollution Fund:

- 2-1 *The Minister of Transport should immediately impose a levy of \$2 per tonne on all oil and oil products transported in Canadian waters. The levy should be paid into the Ship-source Oil Pollution Fund, whose purpose should be expanded to expedite replacement of the Canadian-flag fleet with double-hulled vessels and to fund spill response research and equipment purchases.*
- 3-1 *Sufficient funds from the Ship-source Oil Pollution Fund (S.O.P.F.) be allocated to finance one fifth of the cost of replacing the Canadian-flag fleet with double-hulled, ice-strengthened ships over a seven-year period. It would be preferable for the new vessels to be constructed in Canadian shipyards.*
- 3-2
  - *To promote the use of double-hulled vessels, the per tonne levy on oil carried in Canadian waters be discounted 50 percent for double-bottomed vessels and set at zero for double-hulled ones.*
  - *Canada should require that in 10 years time all tankers and tank barges entering its waters be double-hulled.*
- 4-3 *In order to increase regional clean-up capacity to the minimum acceptable level, \$150 million to \$200 million be invested over the next five years. The terms of the Ship-source Oil Pollution Fund be revised to allow capital acquisitions of preparedness equipment by both industry cooperatives and the Canadian Coast Guard.*
- 4-12 *So that the level of Canadian marine spill R&D may be adequate to address the significant lack of knowledge and technology, funding be increased immediately to \$10 million and raised annually to reach \$20 million by 1995, with the industry share being derived from the S.O.P.F.*

*5-5 Existing legislation be amended to provide that the Ship-source Oil Pollution Fund apply to all ships in waters covered by the Arctic Waters Pollution Prevention Act.*

In examining these recommendations, it should be kept in mind that at the present time, there is no authority in the Canada Shipping Act (C.S.A.) to:

- (a) impose a levy of \$2 per tonne at all, nor is there any authority to impose any levy on all oil products transported in Canadian waters;
- (b) use the S.O.P.F. to finance, in part, the replacement of single hull Canadian tankers and tanker barges with double hull vessels;
- (c) discount the levy for double-bottomed vessels and set it at zero for double-hulled ones;
- (d) fund spill response research and equipment purchases; and,
- (e) to apply the S.O.P.F. to all ships in Arctic waters.

Consequently, implementation of *any* of the recommendations for the S.O.P.F. would require *substantial amendments* to Part XVI of the C.S.A. To extend the application of the S.O.P.F. to Arctic Waters would require amendment to the regime of liability and compensation for oil pollution damage caused by ships in those waters.

## **7. International Group of P & I Clubs**

In order to facilitate the prompt payment of claims arising out of oil pollution incidents, the Administrator and the International Group of P & I Clubs entered into an agreement in July 1990 that each party, as soon as reasonably possible, would notify each other of an incident in or near Canadian waters which may cause oil pollution damage and that both parties will cooperate with each other to the extent possible for this purpose. This agreement does not prejudice the rights of the S.O.P.F. and does not apply when its interests conflict with those of the shipowner or its insurer.

## **8. TOVALOP and CRISTAL**

During the year, I had a series of meetings concerning the application of these voluntary private oil pollution schemes to an oil spill in Canadian waters after Canada had acceded to

the 1969 Civil Liability Convention and the 1971 Fund Convention. Meetings were held in Ottawa on December 20, 1990 and on February 21, 1991, and in London on March 15, 1991.

The International Tanker Owners Pollution Federation (ITOPF) was established in 1969 for the principal purpose of administering the Tanker Owners Voluntary Agreement Concerning Liability for Oil Pollution (TOVALOP) and its companion voluntary industry agreement known as CRISTAL (the Contract Regarding a Supplement to Tanker Liability for Oil Pollution).

Although those meetings helped to clarify several issues, there was no consensus on whether or not these voluntary schemes provide additional compensation, over and above that available under the 1971 Fund Convention and the S.O.P.F. for a spill from an oil tanker in Canadian waters.

## **9. 1991 International Oil Spill Conference**

The 12th biennial Oil Spill Conference, the largest ever, took place on March 4-7, 1991 in San Diego, California. The Conference was sponsored by the American Petroleum Institute, the U.S. Coast Guard and the U.S. Environmental Protection Agency.

The Conference accepted a paper prepared by the Administrator and the Director of Technical Services entitled "Ship-source Oil Pollution Fund: 20 Years of Canada's Experience". Copies of the paper, which was presented on March 6, 1991, can be obtained from:


Ship-source Oil Pollution Fund  
900-270 Albert Street  
Ottawa, Ontario  
K1A 0N5

## **10. Oil Spill Incidents**

### **10.1 SOUTH ANGELA (1988)**

Since my last report, the Administrator was made a party to an action commenced by the Crown in the Federal Court of Canada, pursuant to Section 713 of the Canada Shipping Act. In that Action, the Crown claims the amounts of \$15,832.28 and





\$234,396.58 for costs and expenses related to the discharge of oil from the tanker SOUTH ANGELA (G.R.T. 59,353) into the waters of Placentia Bay, Newfoundland on March 6/7, 1988.

As the Shipowner has provided security to pay the Crown's claim in the event he is found to be liable, it is very unlikely that the S.O.P.F. will be required to pay any portion of the Crown's claim.

In a second action, commenced by Fishermen also in the Federal Court of Canada, the Administrator has not been made a party. I have been informed that the fishermen incurred substantial legal costs in prosecuting their claims against the SOUTH ANGELA. The shipowner has not made offers to settle their claim for costs.

During the year in question the S.O.P.F. did not receive any claim to pay these costs. If the fishermen choose to submit a claim to the S.O.P.F., it would be examined in accordance with the applicable provisions of the Canada Shipping Act in force *at the time of the incident*. Without knowing all the particulars and circumstances of the claim, it is not clear whether a fisherman would, or could have, a claim payable by the Fund.

### 10.2 CZANTORIA (1988)

On May 7, 1990, two actions were filed in the Federal Court of Canada, joining the Administrator as a party by statute. The subject matter of the two actions being a discharge of oil by the Liberian flag tanker CZANTORIA (G.R.T. 81,197), at the oil terminal facility at St. Romuald, Quebec on April 8, 1988.

As the incident happened before the coming into force of Part XVI of the Canada Shipping Act, any claim against the S.O.P.F. must be dealt with under the former Part XV of the Act.

The first action was commenced by the owner of the terminal, claiming losses of not less than \$2,500,000 against the CZANTORIA and the second action, commenced by the Crown claimed costs and expenses of \$338,867.84 against the ship and her owners.

As considerable security has been posted to cover both claims, it is unlikely that any resort will be made to the S.O.P.F. to satisfy any portion of the claims advanced. It has been agreed by

Counsel in both actions that, for the time being, they do not require the S.O.P.F. to take any steps in the actions, and that if the situation changed, reasonable notice will be given.

The Director of the IOPC Fund was also joined as a party in the first action notwithstanding that the incident occurred some eleven months before the 1969 Civil Liability Convention and the 1971 Fund Convention entered into force for Canada. The Executive Committee of the IOPC Fund took the position that these conventions did not apply to any incident which occurred prior to their coming into force in the state where the damage occurred and thus there was no right of compensation from the IOPC Fund in this case. Canada, as a member of the Executive Committee, supported that decision. After some delay the proceedings against the IOPC Fund have now been discontinued.

In support of its position in the Executive Committee, Canada made the following points:

1. The incident happened almost one year before the Fund Convention came into force for Canada on April 24, 1989. The bulk of the damages occurred before that date.
2. As far as is known, the Plaintiff's claim is only a protective claim against the IOPC Fund. The limit of liability of the shipowner appears to be well in excess of the aggregate amount of the claims.
3. It is unlikely that the issue will arise again in Canada.
4. The transitional provisions of Canada Shipping Act were not intended to extend the scope of the Convention.
5. The circumstances in which the IOPC Fund can be liable are spelled out clearly in the Canada Shipping Act and then only in terms of the Convention itself. Section 699 of the Act is quite clear, it is the Convention that governs the liability of the IOPC Fund, not the Act. If the Fund does not apply to damages resulting from incidents occurring before the entry into force of the Fund Convention for Canada then the Canadian legislation does not alter that interpretation.
6. For these reasons Canada supported the interpretation of the Fund Convention by the Director of the IOPC Fund.



### **10.3 NESTUCCA (1988)**

This oil spill, which began on Dec. 23, 1988, had two out-of-the-ordinary features:

(a) the oil was spilled into United States waters, but caused oil pollution damage in Canada and in Canadian waters.

(b) the liability of the owner and of the S.O.P.F. was governed by out of date provisions of the Canada Shipping Act.

Although notice of 15 claims were filed with the S.O.P.F. for loss of fishing income caused as a result of the closure of two fishing areas on the west coast, off Vancouver Island, there was no authority to pay these claims until it was established that the fisherman could not recover from the shipowner whose ship caused the oil spill.

The first stage of the trial, to establish the liability of the shipowner and whether it could limit its liability in accordance with the applicable U.S. Law, was heard by the United States District Court, Oregon, on Dec. 4, 1990. The trial lasted for 5 days.

In a very strong judgement rendered on Jan. 24, 1991, United States District Court Judge James A. Redden found that:

(a) The shipowner could not be exonerated from its liability for the damages caused by the oil spill.

(b) The shipowner was ineligible for limitation of liability pursuant to the United States Limitation of Liability Act.

In support of this judgement the court made the following findings of fact:

(a) The winter voyage attempted by the tug OCEAN SERVICE and the barge NESTUCCA could expect heavy seas and four difficult bar crossings at Gray's Harbour and the Columbia River.

(b) The oil carried by the barge presented a significant risk if a spill were to occur.

(c) The preponderance of all the evidence before the Court demonstrated that the tow wire was defective and the shipowner was negligent in its maintenance and inspection of that wire.

(d) The shipowner failed to enforce compliance with the 12 hour limit of crew watches on the tug.

(e) The shipowner was negligent in failing to supply experienced officers and crew members and for the lack of reasonable tow wire inspection procedures.

The second stage of the trial, in which the court would determine the amount of the damages is scheduled for July 1991. However, the Court's minute order of March 29, 1991 forecasted a settlement meeting in the near future and specified that all individual claimants who wished to file claims of damages must do so by May 29, 1991.

### **10.4 NEW ZEALAND CARIBBEAN (1989)**

Registered in Vanuatu, owned in Liberia and managed in London, England, the container ship NEW ZEALAND CARIBBEAN (G.R.T. 19,613) struck the pier at Versatile Pacific Shipyards in North Vancouver, B.C. on 30 January 1989.

As a result of the collision, the port side oil fuel service tank of the ship was pierced, discharging bunker fuel oil into Vancouver Harbour. On August 16, 1990 the Vancouver Port Corporation commenced an action against the ship and others for unstated damages in the Federal Court of Canada.

In accordance with Section 713 of the Canada Shipping Act, the Administrator was joined as a party by Statute in the action. It was agreed that no further steps need be taken by the Fund until further notice. As of March 31, 1991, no notice had been received.

### **10.5 HAPPY SITANI (1989)**

A Norwegian flag tanker, the HAPPY SITANI, (G.R.T. 60,337) on April 11, 1989, discharged bunker oil into the St. Lawrence River while alongside the Ultramar Wharf at Saint Romuald, Quebec.

The Canadian Coast Guard and the Quebec Port Corporation took measures, together with the shipowner, to contain and recover the discharged oil.

The Canadian Coast Guard obtained an undertaking from the P. & I. Club in which the ship was entered to pay up to \$30,000 to satisfy the legal liability of the shipowner under the Canada Shipping Act for the costs and expenses of the Canadian Coast Guard, which are said to amount to \$20,118.40.

As the shipowner and its insurer have not paid the claims of the Canadian Coast Guard, the Crown has commenced an action in the Trial Division of the Federal Court of Canada joining the Administrator of the Ship-source Oil Pollution Fund as a party by Statute.

In this case, the liability of the S.O.P.F. is governed by the previous provisions of the Canada Shipping Act (old Part XV) because the incident occurred just before the new Part XVI came into force on April 24, 1989.

In any event, it is unlikely that any claim will be made to the S.O.P.F. as there is adequate security to pay the Canadian Coast Guard claim in full.

#### **10.6 TOVE COB (1989)**

A Singapore flag ship TOVE COB (11,102 GRT) discharged a quantity of heated tallow at the Petro Canada dock in Clarkson, Ontario on April 26, 1989. The ship owner and the Canadian Coast Guard, took measures to contain and recover the tallow from the waters and shoreline of the harbour.

The shipowner's insurer, the Newcastle Protection and Indemnity Association agreed to post security up to \$100,000 to satisfy Canadian Coast Guard costs if the ship is found to be liable to pay costs and expenses incurred.

An action was started by the Deputy Attorney General of Canada on November 14, 1990 in the Trial Division of the Federal Court of Canada to recover \$124,088.60 for Canadian Coast Guard costs and expenses. In order to comply with Section 713 of the Canada Shipping Act, a copy of the Statement of Claim was served on me on November 22, 1990.

At that time, it was agreed that it was not necessary for the Administrator to take any further steps in the proceedings.

Subsequently, I was advised that the action was being settled with the shipowner without resort to the S.O.P.F. and that the proceedings would be discontinued.

#### **10.7 Mystery Oil Spill, Rocky Bay, Nova Scotia (1989)**

At about noon on Sunday, June 11, 1989, there was a report of Bunker C oil coming ashore at Bay

of Rocks, Isle Madame, Richmond Co., N.S. A second report confirmed that there was oil on Rocky Bay Beach. Samples were taken, but the source was unknown. The next morning, the clean up commenced. Twenty-nine bags of oily debris were recovered from the beaches at Martinique and Pondmille (Isle Madame). The beaches were further inspected and no more oil was found.

No claims were filed with the S.O.P.F. at the time, but over a year later, on July 3, 1990 the Canadian Coast Guard submitted a claim of \$1,239.81 to the S.O.P.F.

It was evident that further documents and information were needed to properly assess the claim. Some of those documents and some of that information were submitted in the early part of 1991. As of March 31, 1991, the claim was still under consideration.

#### **10.8 Mystery oil spill at Gabarus, Nova Scotia (1989)**

In my report last year, I described the mystery oil spill affecting Gabarus Harbour and the measures taken by the Canadian Coast Guard to recover this oil and to prevent further damage. As a result of the oil spill, I settled the claims of a local lobster fisherman and a local sea-food processing company in accordance with sections 710 and 711 of the Canada Shipping Act.

During the current fiscal year (1990-91) a claim was submitted on behalf of the Canadian Coast Guard for its costs and expenses in attempting to recover the oil discharged. The claim submitted on July 3, 1990, amounted to \$16,548.98. Upon review, it was determined that further documents and information were necessary to properly assess the claim. At the close of the fiscal year, the claim was still under consideration.

#### **10.9 TRIDENT DELTA (1989)**

On August 17, 1990, the Vancouver Port Corporation started an action in the Federal Court of Canada against the Kuwait registered ship TRIDENT DELTA (G.R.T. 15,122), and others for unstated damages caused by the discharge of fuel oil by the ship while she was docked at Burlington Northern Dock in the Port of Vancouver.

The Administrator was joined as a party by Statute in the action, but on October 26 1990, I was advised that the claim of the Vancouver Port Corporation had been satisfied and the action had been discontinued.

#### **10.10 Mystery Oil Spill, Sooke, British Columbia (1989)**

In the early morning of Thursday, November 23, 1989, a Canadian Coast Guard helicopter pilot observed an extensive oil slick in Sooke Harbour on the south west shore of Vancouver Island. Further investigations were conducted from which it appeared that the oil came from an unknown ship.

The following day, the Ship Safety Branch of the Canadian Coast Guard carried out an investigation on a ship that may have been responsible for the discharge of oil. From the investigation and examination of oil records sighted on board, there was no evidence that that ship had discharged oil overboard. Samples of oil were taken but the analyst was not able to conclusively match the samples from that ship with those taken at the site of the oil spill.

In March 1991, the Canadian Coast Guard submitted a claim of \$84,551.90 for its costs and expenses incurred in this incident.

This claim was still being examined at the end of the Fiscal Year 1990-1991.

#### **10.11 LOK PRATIMA (1990)**

On or about April 3, 1990, the Indian flag bulk carrier LOK PRATIMA (G.R.T. 15,972) loading bunker fuel into its no. 5 starboard double bottom tank, discharged bunker fuel at or near the Pioneer Grain Terminal in Vancouver Harbour.

On August 16, 1990, the Vancouver Port Corporation commenced legal proceeding in the Trial Division of the Federal Court of Canada for unstated damages against the ship and her owner. To comply with Section 713 of the Canada Shipping Act the Administrator was joined and served as a party by Statute. It was agreed with Counsel that it was not necessary for the S.O.P.F. to take any further steps in the action until further notice. As of March 31, 1991 no such notice had been received.

#### **10.12 Mystery Oil Spill, Wedgeport, Nova Scotia (1990)**

On the morning of January 18, 1990, it was reported that there was oil in the water at the new government wharf in Wedgeport Harbour and a fear that a change of wind might carry the oil into the lobster-holding facilities nearby.

The oil was said to be a mixture of diesel oil, hydraulic fluid and bilge wastes. The source of the oil spill was investigated by the Ship-Safety Branch of the Canadian Coast Guard. As there were a large number of fishing vessels (possibly 50 according to the Canadian Coast Guard), in the harbour at the time, all fueling from the same facility, the taking of oil samples was not considered. There was no evidence to show that the oil did not emanate from a ship.

On August 27, 1990, the Coast Guard submitted a claim of \$3,282.82 for costs and expenses incurred to recover the oil and to prevent further oil pollution damage. As of March 31, 1991, no other claims had been submitted.

To properly assess the Coast Guard claim further information and documents were requested which had not been received by year end.

#### **10.13 ARCTURUS/RUBIN LOTUS, (1990)**

This oil spill occurred in Vancouver Harbour on February 23, 1990 as a result of a collision. The Vanuatu flag bulk carrier RUBIN LOTUS (G.R.T. 21,947) struck the Polish flag fishing vessel ARCTURUS (G.R.T. 2,603) at berth no. 3 at the Vanterm terminal. An action was commenced in the Federal Court of Canada by the Vancouver Port Corporation against both ships, their Owners and Masters. Security was posted by the owner of RUBIN LOTUS. The Administrator was not joined in the action as of March 31, 1991 and no steps had been taken to join him.

#### **10.14 St. John's Harbour Spill (1990)**

Although the evidence is not conclusive, the Russian fish factory ship PROFESSOR BARANOV (G.R.T. 10,155) spilled about two barrels of oil from its bilges into the harbour of St. John's on the morning of May 10, 1990. It appeared that the PROFESSOR BARANOV was owned by Sovryr

Flot, Moscow and managed by the Anglo-Soviet Shipping Co. Ltd., represented in Canada by Cansov Marine Products Ltd.

A small group of in-shore fishermen filed claims with the S.O.P.F. alleging damages because the oil spill postponed their preparation for the 1990 lobster season. I wrote to each fisherman asking for details and information in order to deal effectively with their claims. Correspondence ensued, but the fishermen were unable to provide any more definitive information to assist me to properly evaluate their claims.

#### **10.15 AMY & SISTERS (1990)**

On July 20, 1990, there was a discharge of a substantial amount of diesel oil from the fishing vessel AMY & SISTERS (G.R.T. 12.36) in Gabarus Harbour, Nova Scotia.

The fuel oil discharged spread across the harbour contaminating some 61 crates holding live lobsters owned by two lobstermen and a seafood processing company.

As a direct result of this contamination, the Department of Fisheries and Oceans condemned over 6,100 lbs. of live lobsters and ordered that they be taken off-shore and released to the sea in accordance with the Fisheries Act.

By September claims had been filed with the S.O.P.F. for oil pollution damage pursuant to Section 710 of the Canada Shipping Act.

As I am required to do, I investigated the claims, obtaining evidence under oath to establish the claimants loss, damages, and the costs and expenses suffered by them. I also determined the amount of interest that the claimants were entitled to under Section 723 of the Act.

The evidence submitted established to my satisfaction that the condemnation of the live lobsters was a direct result of the discharge of fuel oil by the AMY & SISTERS and that the claims did not result wholly or partially from the claimants wrong act or omission or from their negligence.

I assessed the three claims in the total amount of \$23,413.83, inclusive of interest and costs. Offers were made to and accepted by each claimant

and payment of each settlement was made on December 31, 1990.

The owner of the fishing vessel AMY & SISTERS was prosecuted and fined for a violation of the Oil Pollution Prevention Regulations.

Steps are being taken to recover some or all of the amounts paid to the three claimants to whose rights the Administrator is subrogated under Section 711 of the Act.

#### **10.16 RIO ORINOCO (1990)**

At about 0430, October 16, 1990, the tanker RIO ORINOCO (G.R.T. 5,999) registered in the Cayman Islands, loaded with 9080 tonnes of liquid asphalt was reported grounded on the south shore of Anticosti Island in the Gulf of St. Lawrence.

It was reported that the tanker was hard aground and her engine room was flooded. Some bunker fuel oil, but none of her cargo, was discharged and had polluted the shoreline.

As liquid asphalt is regarded as oil under the 1971 Fund Convention I immediately informed the Director of the IOPC Fund upon receipt of the first report of the incident. On the following day, he informed me that as it was possible that the IOPC Fund would become involved, he would co-operate with the shipowner and his P & I insurer (The Swedish Club) in accordance with the Memorandum of Understanding between the IOPC Fund and the International Group of P & I Insurers. The Director also informed me that the IOPC Fund had requested the ITOPIF to attend at the site of the incident as a technical adviser to him and asked me to advise the Canadian Coast Guard to that effect. The S.O.P.F. continued to supply the IOPC Fund with daily copies of the status report issued by the Coast Guard so as to provide as much information as possible to the IOPC Fund.

At the 26th meeting of the Executive Committee of the IOPC Fund held on March 14, 1991, the Director made his first report on this incident. From that report, it appeared that the RIO ORINOCO (5,999 G.R.T.), carrying 9,000 tons of asphalt, on a voyage from Curacao in the Dutch Antilles to Montréal grounded on the south shore of Anticosti Island in the Gulf of St. Lawrence on



October 16, 1990. The ship discharged some 180 tonnes of fuel oil, heavily polluting 10 km of coast line. The cause of the grounding was not specified other than to say that the ship experienced problems with its main engines.

Notwithstanding the bad weather, the Canadian Coast Guard was able to clean the beaches. Various attempts by the shipowner to remove the ship were unsuccessful. The ship was declared a constructive total loss on November 18, 1990 and shortly thereafter, the shipowner informed the Canadian Coast Guard that it was unable to remove the ship or cargo.

Exercising his powers under Section 678 of the Canada Shipping Act the Minister of Transport, acting through the Canadian Coast Guard, made various attempts to remove the ship before winter set in on the basis that the ship and its cargo were a threat of pollution. These attempts were also frustrated by extraordinary bad weather. Further attempts would be made in the summer of 1991.

The Swedish Club (the insurer of the RIO ORINOCO), on behalf of the owners, submitted claims to the IOPC Fund for amounts paid for oil recovery and clean up in excess of the shipowners limit of liability of some \$1,182,617. The Executive Committee authorized the Director to settle these claims.

The Committee agreed with the Director that these operations constituted in principle "Preventive Measures" as defined in the 1969 Civil Liability Convention because their primary purpose was to prevent further pollution.

It was evident that a further substantial claim would be submitted by the Canadian Coast Guard to the IOPC Fund. It is likely that the first Major Claims Fund for a Canadian incident will be established by the IOPC Fund under Article 12 of the 1971 Fund Convention. The S.O.P.F. would be responsible to pay Canada's contribution to the RIO ORINOCO's Major Claims Fund when it is established.

#### **10.17 JAHRE SPRAY (1990)**

The Norwegian flag tanker, JAHRE SPRAY (G.R.T. 60,491) on December 27, 1990, was leaving the refinery jetty at Come-By-Chance,

Newfoundland, when oil was observed in the water between the tanker and the jetty. The tanker was ordered to anchor and await clearance. About 20 barrels of crude oil was discharged. The ship was inspected, samples collected and after a P. & I. Club letter of undertaking was obtained, the tanker was cleared to sail at 1530 hours.

Refinery personnel recovered some 60 barrels of oiled debris and seaweed from the beach and disposed of it at the refinery waste disposal site.

It was reported that the refinery may have incurred clean up costs and expenses of up to \$100,000. There is a dispute as to whether or not the oil was discharged from the tanker.

As of March 31, 1991, no legal proceedings have been served on the S.O.P.F.

#### **10.18 LUCIEN PAQUIN (1991)**

On March 3, 1991, the Canadian registered LUCIEN PAQUIN (G.R.T. 10,034) discharged an estimated 10 tons of intermediate fuel while refuelling at anchorage #6 from the tanker IMPERIAL DARTMOUTH.

There was substantial shoreline contamination around Halifax Harbour and adjacent areas.

Assisted and supervised by the Canadian Coast Guard, Imperial Oil cleaned up the oil at McNab's Island. Later, a contractor hired by the ship's insurer took over the clean up with Canadian Coast Guard assistance and supervision. There are indications that the clean up costs and expenses were substantial.

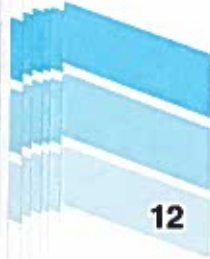
No claims had been filed with the S.O.P.F. by the end of the fiscal year under review.

### **11. Status of the Fund**

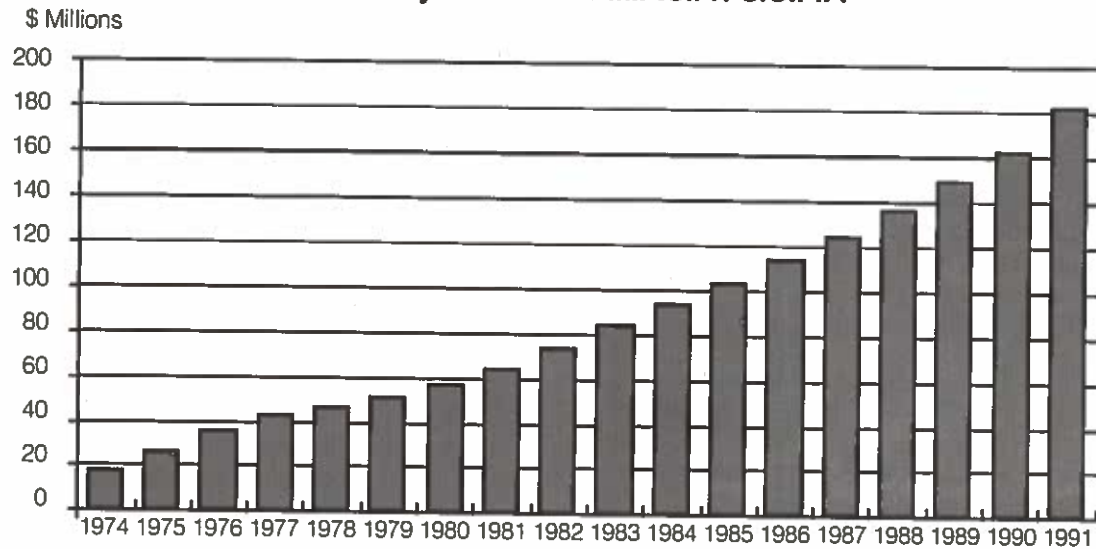
During the fiscal year 1990-1991 the Ship-source Oil Pollution Fund paid out, at the direction or the request of the Administrator:

(a) pursuant to sections 706 and 707 of the Act, the total sum of \$185,257.98 comprising the following costs and expenses:

Figure 2



**Status of the Funds  
Monetary Value of the M.P.C.F. / S.O.P.F.**



Balance in the M.P.C.F. / S.O.P.F. as of March 31st, by year

Administrator Fees	\$64,575.00
Legal Fees	\$20,552.46
Professional Services	\$27,625.00
Secretarial Services	\$29,275.72
Travel Expenses	\$11,123.75
Printing	\$14,707.88
Office Expenses	\$17,398.17

During the reporting fiscal year, interest credited to the Fund was \$17,881,298.99. At March 31, 1991, the balance in the Fund was \$182,406,456.37 (see figure 2).

Yours sincerely,

(b) pursuant to section 701 of the Act, the Administrator directed the following payments out of the Ship-source Oil Pollution Fund to the IOPC Fund in accordance with Articles 10, 11 and 12 of the 1971 Fund Convention:

1990 Annual Contribution \$49,161.28

(c) pursuant to sections 710 and 711 of the Act, the Administrator settled claims arising from the unidentified discharge of oil at Gabarus, Nova Scotia in July 1990 for the sum of \$23,413.83.

Peter M. Troop  
Administrator  
Ship-source Oil Pollution Fund