Ship-source Oil Pollution Fund

The Administrator's Annual Report 2012 - 2013

Canada

Cover Image: "*The Arrow*"

In February of 1970, the tanker *Arrow* ran aground on Cerberus Rock in Chedabucto Bay, Nova Scotia, spilling close to 82,000 barrels of Bunker C oil into the waters of the Bay. The oil eventually impacted approximately 300 kilometres of the shoreline. After the *Arrow* incident, major amendments were made to the *Canada Shipping Act*. The principles of liability and compensation established by these amendments largely remain in force to this day.

Government of Canada photo

With the co-operation of
Mike Grebler of the Canadian Coast Guard
Fisheries and Oceans Canada
Ottawa, Ontario, Canada

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Ship-source Oil Pollution Fund

The Administrator's Annual Report

2012-2013

Canada

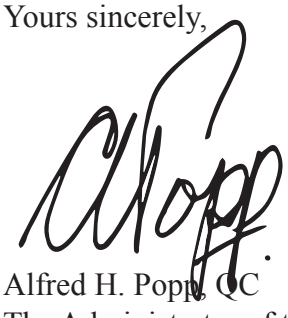
The Honourable Denis Lebel, P.C., M.P.
Minister of Transport, Infrastructure and Communities
Ottawa, Ontario
K1A ON5

Dear Minister:

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

The report covers the fiscal year ending March 31, 2013.

Yours sincerely,



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

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Abbreviations

AMOP	Arctic and Marine Oil Spill Program
ATIP	Access to Information and Privacy
BIO	Bedford Institute of Oceanography
CCG	Canadian Coast Guard
CLC	Civil Liability Convention
CMAC	Canadian Marine Advisory Council
CMLA	Canadian Maritime Law Association
CPA	Canada Port Authority
CSA	*Canada Shipping Act*
CWS	Canadian Wildlife Service
DFO	Department of Fisheries and Oceans
EC	Environment Canada
ECRC	Eastern Canada Response Corporation
EPA	Environmental Protection Agency
ER	Emergency Response
ESTD	Emergencies Science and Technology Division
EU	European Union
FV	Fishing Vessel
GT	Gross Tonnage
HNS	Hazardous and Noxious Substances
IMO	International Maritime Organization
IOPC	International Oil Pollution Compensation Fund
IT	Information Technology
ITOPF	International Tanker Owners Pollution Federation
LOU	Letter of Undertaking
MCTS	Marine Communication Traffic Services
MLA	*Marine Liability Act*
MOU	Memorandum of Understanding
MPCF	Maritime Pollution Claims Fund
MV	Motor Vessel
NASP	National Aerial Surveillance Program
NTCL	Northern Transportation Company Limited
P&I Club	Protection and Indemnity (Marine Insurance) Association
REET	Regional Environmental Emergency Team
RIM	Records and Information Management
RO	Response Organization
SDR	Special Drawing Rights*
SITREP	Situation Report
SOPF	Ship-source Oil Pollution Fund
TC	Transport Canada
TCMS	Transport Canada Marine Safety
WCMRC	Western Canada Marine Response Corporation

* The value of the SDR at April 1, 2013, was $1.52346 CAD. This actual value is reflected in Figure 1.

Summary

The Canadian Compensation Regime

This Annual Report on the operations of the Ship-source Oil Pollution Fund (SOPF) covers the fiscal year ending March 31, 2013. Section 1 describes the Canadian compensation regime which, since January 2, 2010, is governed by Chapter 21 of the Statutes of Canada, 2009, the amended *Marine Liability Act*. Canada's national fund covers all classes of ships that discharge persistent and non-persistent oil, including oil from unknown sources commonly referred to as "mystery spills". Canada is also a member state of the International Oil Pollution Compensation Funds consisting of the 1992 IOPC Fund and the 2003 Supplementary Fund. These funds mutualize the risk of persistent oil discharged from sea-going tankers. The current limits of liability and compensation available in Canada, including the territorial sea and the exclusive economic zone, under the 1992 Civil Liability Convention (CLC), the 1992 IOPC Fund and the 2003 Supplementary Fund Protocol are illustrated in Figure 1. (Section 1)

Financial Section

The financial statements of the SOPF for the fiscal year were examined by independent auditors – section 6 refers. During the year, 12 Canadian claims were settled and paid for a total amount of $383,088.68 including interest. Furthermore, the SOPF paid to the 1992 IOPC Fund a contribution in the amount of $318,156.19 for incidents that occurred outside of Canada – Table 1 refers.

During the fiscal year commencing April 1, 2013, the maximum liability of the SOPF is $161,293,660 for all claims from one oil spill. As of April 1, 2013, the Minister of Transport has the statutory power to impose a levy of 48.37 cents per metric ton of oil, as defined in the Act, imported by ship into or shipped from a place in Canada in bulk as cargo. The levy is indexed to the consumer price index annually. No levy has been imposed since 1976.

As at March 31, 2013, the accumulated surplus in the SOPF was $398,906,816.

Canadian Oil Spill Incidents

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

When the Administrator pays a claim, he has a statutory obligation to take all reasonable measures to recover the amount of payment from the owner of the ship or any other person liable. For that purpose, the Administrator may commence legal proceedings. (Section 1: Funds of first and last resort refers). In claims where the responsible shipowner is clearly known, the services of legal counsel may be obtained for recourse action. In some situations involving abandoned and derelict vessels, the name of the shipowner is

not always readily available. In these instances, when it is necessary to trace the name and location of the registered owner and identify assets that may be available for recovery purposes, the Administrator may obtain the services of a professional locator firm.

The oil spill incidents described in section 2 indicate the status of oil pollution claims that were assessed and settled during the fiscal year. This section also includes claims that are in various stages of progress. The Administrator dealt with 42 active incident files during the year. The current status of recovery action by the Administrator against shipowners is also noted in the oil spill incident section. During the fiscal year, 15 new claims were received in the aggregate amount of $1,222,253.00. Investigations are underway, but not all of the assessments of the claims were completed by March 31, 2013.

Outreach Initiatives

The Administrator continues with outreach initiatives aimed at raising awareness of the existence of the Ship-source Oil Pollution Fund, and its availability to provide compensation for oil pollution caused by ships. This outreach affords an opportunity for the Administrator to further his personal understanding of the perspectives of individual claimants, shipowners, clean-up contractors and other stakeholders who respond to oil spill incidents and, as a result, may file claims with the Fund for compensation.

The Administrator, as a result, participated in a number of outreach initiatives during the fiscal year. For example, the Administrator attended a conference held at Dalhousie University to mark the 30th Anniversary of the signing of the United Nations Convention on the Law of the Sea. In his presentation he gave a brief history of the regime of liability and compensation that has been developed internationally to deal with tanker spills resulting from the transportation of "persistent" oil in bulk as cargo. Outreach initiatives are addressed in section 4.

The International Compensation Regime

Section 5 of this Report focuses on the Administrator's involvement during the year in the International Compensation Regime. The Administrator participated, as part of the Canadian delegation, in a number of meetings of the governing bodies of the 1992 IOPC Fund, the 1971 IOPC Fund and the Supplementary Fund, in April and October 2012, in London, United Kingdom. Additonally, the Administrator attended a meeting of a consultation group, January 17, 2013, that has been established by the Administrative Council of the 1971 Fund to consider options and make recommendations for the winding up of the 1971 Fund.

Section 5 highlights some of the agenda items discussed at the IOPC Fund meetings. The Administrator is interested in different aspects of the IOPC Fund, namely matters relating to incidents and budgetary allocations. Furthermore, the Administrator deems it desirable to keep close attention on claim policies of the IOPC Fund. Active participation at the international meetings ensures that the Canadian Ship-source Oil Pollution Fund claim policies and practices are as closely aligned as possible with those of the 1992 IOPC Fund.

Challenges

Many of the challenges identified in previous Annual Reports have now been met. There remains, however, two matters of concern to the Administrator. First, the ongoing challenge in dealing with claims resulting from abandoned and derelict fishing vessels, primarily on the Pacific Coast and, secondly, the failure of claimants to file well documented claims on a timely basis. The tardy filing of claims impedes the Administrator in his efforts to recover paid out compensation from the primary responsible party and undermines the "Polluter Pay Principle" – section 3 refers.

1. The Canadian Compensation Regime

The Ship-source Oil Pollution Fund (SOPF) was established under amendments to the former *Canada Shipping Act* (*CSA*) that came into force on April 24, 1989. The SOPF succeeded the Maritime Pollution Claims Fund (MPCF), which had existed since 1973. In 1989, the accumulated amount of $149,618,850.24 in the MPCF was transferred to the SOPF. Formerly the SOPF was governed by Part 6 of the *Marine Liability Act* (*MLA*), which superseded the above-mentioned amendments to the *CSA*. As of January 2, 2010, the Fund is governed by Part 7 of the Act, contained in amendments included in Chapter 21 of the Statutes of Canada, 2009.

The SOPF is a special account established in the accounts of Canada upon which interest is credited monthly by the Minister of Finance. Pursuant to the pertinent provisions of the *MLA*, the Minister of Transport has the statutory power to impose a levy on each metric ton of contributing oil imported into or shipped from Canada in bulk as cargo on a ship. The levy is indexed annually to the consumer price index, most recently to the amount 48.37 cents per metric ton. A levy of 15 cents was imposed from February 15, 1972, to September 1, 1976. During that period, a total of $34,866,459.88 was collected and credited to the MPCF from 65 contributors. Payers into the MPCF included oil companies, power generating authorities, pulp and paper manufacturers, chemical plants and other heavy industries. No levy has been imposed since it was suspended in 1976.

In addition to containing important provisions governing the operation of the SOPF, the provisions contained in Chapter 21, referred to above, also implement two international instruments, which have been ratified by Canada as of October 2, 2009. These instruments are the International Convention on Civil Liability for Bunker Oil Pollution Damage, 2001 (Bunkers Convention) and the Protocol of 2003 to the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 2003, (Supplementary Fund Protocol). The Bunkers Convention, as the name suggests, provides international rules governing bunkers spills. Canada has had a statutory bunkers regime since the early 1970s. Implementation of the international rules in Canada bring with them the additional advantage of the requirement that all ships having a gross tonnage greater than 1,000 must maintain insurance or other financial security. This security allows claimants for oil pollution caused by such ships to go directly against the insurer or other person providing financial security. It is anticipated that this feature could be of some benefit to the SOPF in recourse actions, since many of the claims handled by the Fund are in respect of non-tanker spills.

The Supplementary Fund Protocol sets up the International Oil Pollution Compensation Supplementary Fund (Supplementary Fund), which provides compensation for tanker spills in addition to what is currently provided by the 1992 IOPC Funds. Canadian participation in the Supplementary Fund provides additional protection for the SOPF in case of tanker spills that cause pollution damage in Canada or in waters under Canadian jurisdiction.

Subject to the terms and conditions of the governing legislation, the SOPF is available to pay claims for oil pollution damage or anticipated damage at any place in Canada, or in Canadian waters including the exclusive economic zone of Canada, caused by the discharge of oil from a ship. The SOPF pays established claims regarding oil spills from all classes of ships. It is not limited for purposes of compensation to spills from sea-going tankers carrying persistent oil, as are IOPC Funds.

The SOPF is also available to provide additional compensation (a fourth layer) in the event that compensation from the shipowner under the 1992 Civil Liability Convention and the IOPC Funds with respect to spills in Canada from oil tankers is insufficient to cover all established claims arising from such spills (see *Figure 1*).

During the fiscal year commencing April 1, 2013, the maximum liability of the SOPF is $161,293,660 for all claims from one oil spill. This amount is indexed annually. The classes of claims for which the SOPF may be available include the following:

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

A widely defined class of persons in the Canadian fishing industry may claim for loss of income caused by an oil spill from a ship. The present statutory claims regime set out in Parts 6 and 7 of the *MLA* is based on the principle that the polluter should pay.

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

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

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

Notes:

(1) *Figure 1* illustrates the current limits of liability and compensation for oil tanker spills in Canada.

(2) *Table 1* shows the Canadian contributions to the International Funds since 1989.

SOPF: A Fund of Last Resort

As previously noted, the Canadian compensation regime is based on the fundamental principle that the shipowner is primarily liable for oil pollution caused by the ship up to its statutory limits of liability. The *MLA* makes the shipowner strictly liable for oil pollution damage caused by the ship, and for costs and expenses incurred by the Minister of Fisheries and Oceans and any other person in Canada for clean-up and preventive measures. In the case of tanker spills, the strict liability regime is governed by the 1992 Civil Liability Convention (CLC), given the force of law in Canada by section 48 of the *MLA*. In the case of bunker oil spills, the liability regime is governed by the Bunkers Convention, given the force of law in Canada by section 69 of the *MLA*. Oil spills not covered by either of these conventions are governed by the liability regime set out in section 76 and following of the *MLA*.

As provided in the *MLA*, in the first instance, a claimant can take action against a shipowner. The Administrator of the SOPF is a party by statute to any litigation in Canadian courts commenced by a claimant against a shipowner, its guarantor, or the IOPC Funds (see section 109 of the *MLA*). In such event, the extent of the SOPF's liability as a last resort is stipulated in section 101 of the *MLA*. The Administrator also has the power and authority to participate in any settlement of such litigation, and may make payments out of the SOPF as may be required by the terms of the settlement.

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

SOPF: A Fund of First Resort

The SOPF can also be a fund of first resort for claimants, including the Crown. As provided in section 103 of the *MLA*, any person may file a claim with the Administrator of the SOPF respecting oil pollution loss or damage or costs and expenses originating from a spill from a ship, with the one exception. As previously stated, a RO, established under the CSA, has no direct claim against the SOPF.

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

The Administrator may either make an offer of compensation or decline the claim to the extent that it has not been established. The only recourse of an unsatisfied claimant against a final determination of the Administrator is by way of appeal to the Federal Court of Canada, which must be made within 60 days after notification of the Administrator's decision.

When the Administrator pays a claim out of the SOPF, the Administrator is subrogated to the rights of the claimant and is obligated to take all reasonable measures to recover the amount of compensation paid to the claimant from the shipowner or any other person liable. As a consequence, the Administrator is empowered to commence an action *in rem* against the ship (or against the proceeds of sale, if the ship has been sold) to obtain security to protect the SOPF in the event that no other security is provided. The Administrator is entitled to obtain security either prior to or after receiving a claim, but the action *in rem* can only be continued after the Administrator has paid the claim and has become subrogated to the rights of the claimant (see section 102 of the *MLA*).

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

It is worth noting that all claims that arise under the *MLA* must be made within the established time limits. Those time limits are prescribed either by the international convention that governs the claim or by the time limits set out in the Act (see subsection 77(6)). Particularly important to note is that shorter time limits are prescribed by the Act in those instances where the claimant elects to file the claim with the Administrator (first resort) (see subsection 103(2)). The purpose of shorter time limits is to enable the Administrator to pursue the claim by way of recourse action within the required time limits where the claim has been established and has been paid out of the SOPF.

Figure 1

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

Based on the value of the SDR ($1.52347) on April 1, 2013

International Conventions and Funds	$1,142,602,500
Total Domestic Fund (SOPF)	$161,293,660
Total Available to Canada	**$1,303,896,160**

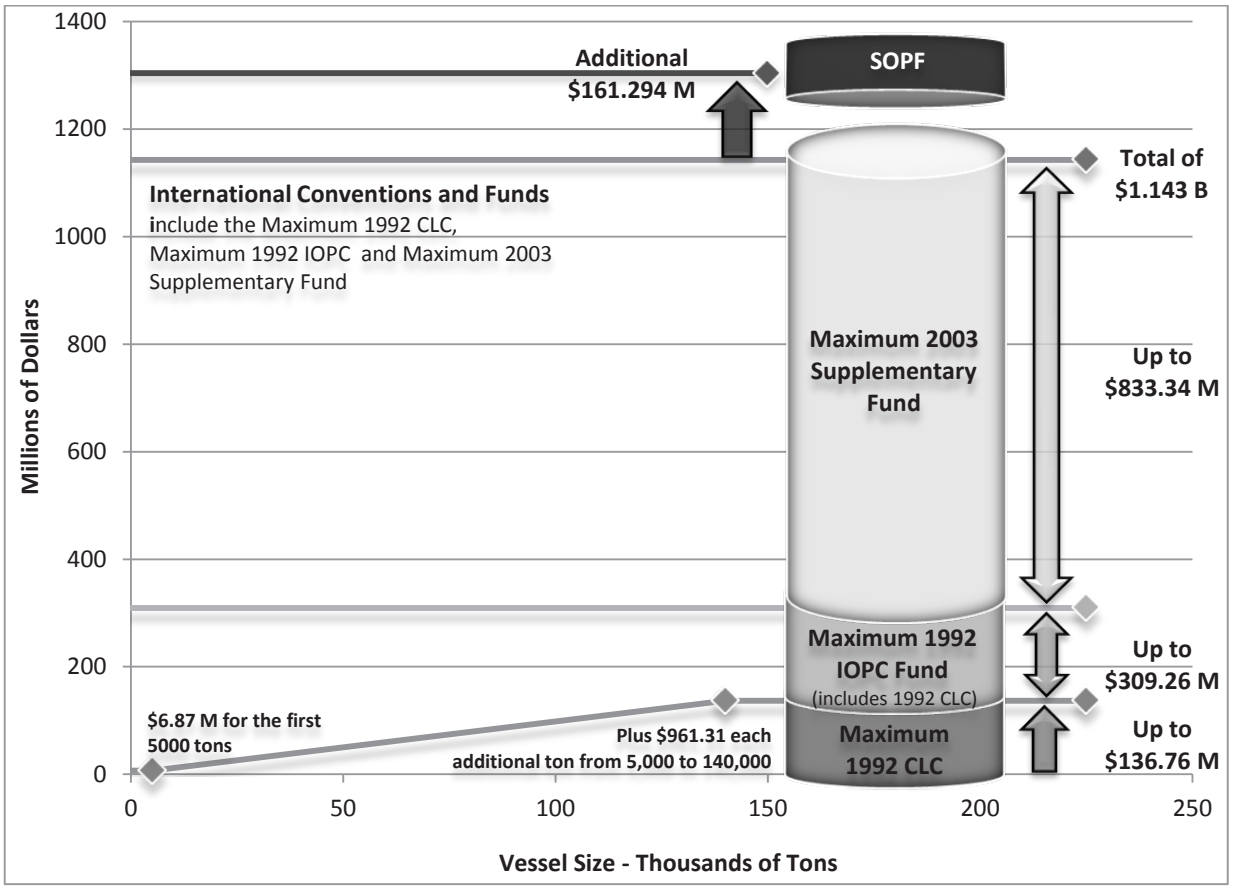


Figure 1 shows the limits of liability and compensation available under the 1992 CLC, the 1992 IOPC Fund Convention, and the Supplementary Fund which provides $833.34 million beyond the amount available under the CLC and IOPC.

The aggregate amount available under the 1992 CLC, the 1992 IOPC Fund and the Supplementary Fund is $1.143 billion. The SOPF amount of some $161.294 million on top of the International Convention and Funds, result in approximately $1.304 billion being available for a tanker spill in Canadian waters, including the territorial sea and the exclusive economic zone.

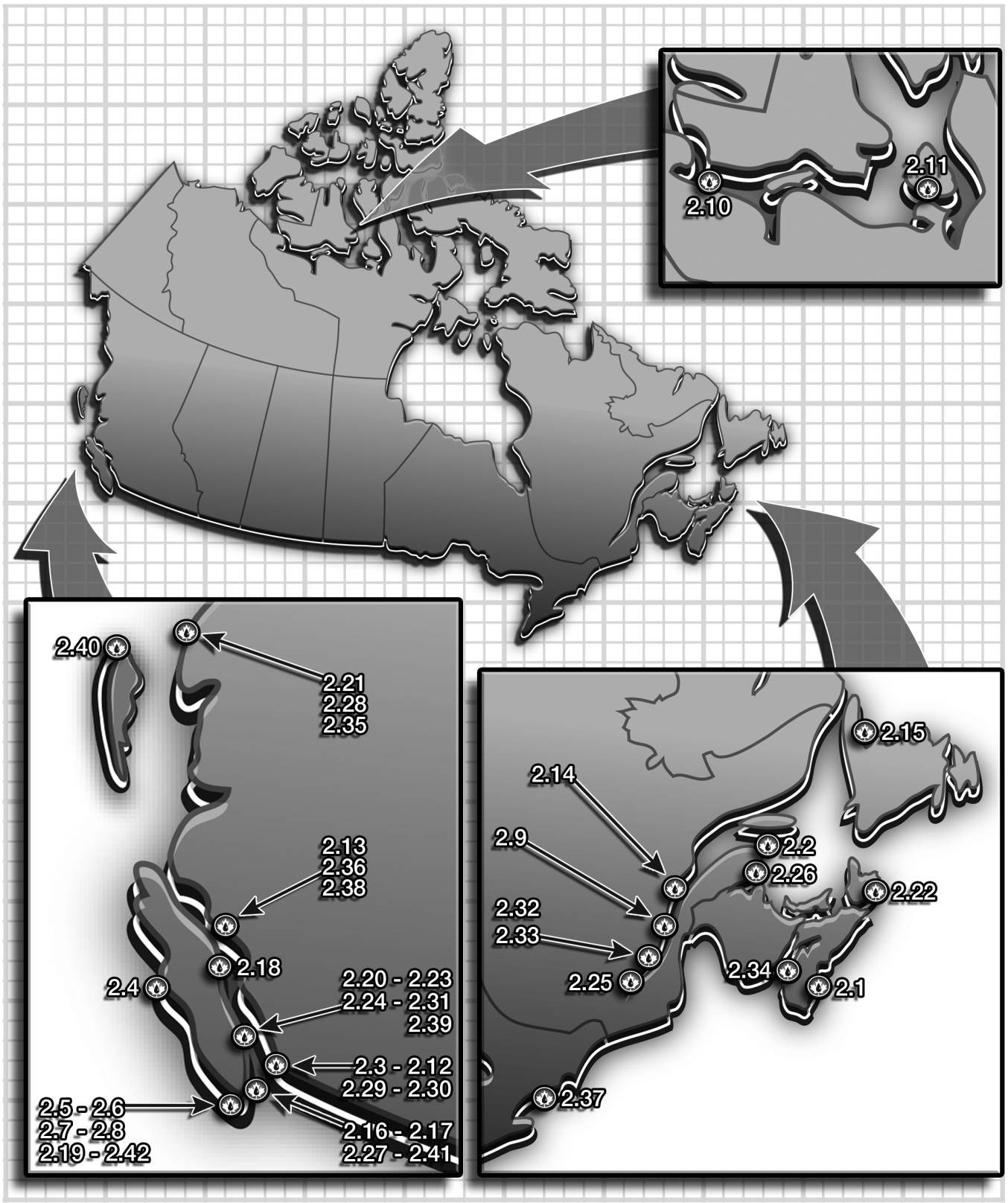
Table 1

Canadian Contributions to the International Funds

Since 1989, the SOPF has paid the IOPC Funds more than $53 million, as listed in the table below. This listing illustrates the "call" nature of the IOPC Funds (not fixed premiums):

Fiscal Year	Paid from the SOPF ($)
1989/90	207,207.99
1990/91	49,161.28
1991/92	1,785,478.65
1992/93	714,180.48
1993/94	4,927,555.76
1994/95	2,903,695.55
1995/96	2,527,058.41
1996/97	1,111,828.20
1997/98	5,141,693.01
1998/99	902,488.15
1999/00	273,807.10
2000/01	6,687,696.71
2001/02	2,897,244.45
2002/03	3,219,969.17
2003/04	4,836,108.49
2004/05	3,448,152.80
2005/06	-
2006/07	360,233.37
2007/08	106,305.06
2008/09	5,161,013.63
2009/10	-
2010/11	3,895,877.19
2011/12	1,394,815.32
2012/13	318,156.19
Total	**52,869,726.96**

Note: There was no call for Canadian contributions to the International Funds during the fiscal years 2005-2006 and 2009-2010.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2. Canadian Oil Spill Incidents

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

This section summarizes the 42 incident files which were handled by the Administrator during the fiscal year beginning April 1, 2012, and ending March 31, 2013. They involve either claims filed with the SOPF, or those for which some action may have been initiated to ensure that the SOPF's interests are properly protected. Some 15 new claims were received during the fiscal year in the aggregate amount of $1,222,253.00. Investigations are ongoing with regards to the outstanding claims filed with the Fund, but not all of the assessments of the claims were completed by the end of the fiscal year. During the fiscal year, 12 claims were settled and paid in the total amount of $383,088.68 including interest.

Note: The location of incidents is indicated on the map opposite.

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

2.1 Stephanie & Darrel (2007)

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

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

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

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

The Administrator commenced a recovery action in the Supreme Court of Nova Scotia in Halifax on December 10, 2008. A Certificate of Judgment was registered on December 23, 2008, in both the Land Registry and Personal Property Security Registry in Nova Scotia. These registrations resulted in the judgment representing an encumbrance against any property the owner of the vessel may have or acquire. The registration of the judgment under the *Land Legislation Act* will expire on December 23, 2013, and the registration in the Personal Property Registry will expire on January 5, 2014. These files will therefore be brought forward for review close to those dates. Meanwhile, the file remains open.

2.2 King Darwin (2008)

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

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

The Fund did not receive a claim in this incident. DFO/CCG advised that on April 16, 2009, it reached a settlement with the shipowner for costs and expenses incurred during its response to the incident.

In September 2009, the Administrator was contacted by counsel for a dredging company, Beaver Marine Limited, which had equipment operating in the Port of Dalhousie, alleging that the equipment was fouled by the spill and could not be used for a period of time. Accordingly, counsel was of the view that there may be a claim against the owner of the *King Darwin*, the International Oil Pollution Compensation Fund and the SOPF. Subsequently, the SOPF was served with a statement of claim, filed in the Federal Court, on behalf of Beaver Marine. As a result of negotiations between counsel, the action against the SOPF was discontinued on November 19, 2009. Since the litigation was ongoing between other parties to the action, the Administrator held the file open for one year and followed developments in this matter. On November 19, 2010, the Administrator closed this file.

2.3 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 (VRQS) shows the Maritime Heritage Society of Vancouver to be the owner.

The Administrator instructed counsel to engage a marine surveyor to attend at Britannia Beach to monitor clean-up operations and report on developments. The surveyor reported that a Canadian Coast Guard (CCG) response team had arrived on-site in May and had deployed a 1,600-foot oil containment boom to encircle the position where oil was upwelling from the sunken vessel – approximately 100 metres offshore. By May 15, the upwelling of hydrocarbons had decreased markedly to several small globules per second.

The CCG engaged the services of Fraser River Pile and Dredge and Canpac Divers to use a remotely operated vehicle to locate the *La Lumiere* to determine the cause of sinking and assess the condition of the hull. On the second dive, the submerged vessel was positively identified as the *La Lumiere*. It was found resting on a slope in depths ranging from 245 to 290 feet. Video footage was obtained and the hull appeared intact. On May 17, only light intermittent oil sheen was sighted. CCG then engaged the response organization, Burrard Clean, to remove the oil containment boom. The incident was then moved to a monitoring-only stage.

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

On February 1, 2011, after investigation and assessment of the claim, the Administrator made a final offer to DFO/CCG for the established amount of $85,641.19, plus interest, in accordance with the *MLA*. On April 1, the offer was accepted by DFO/CCG. In accordance with the *MLA*, the Administrator directed payment of $93,210.63, inclusive of interest, to be made.

The Administrator instructed counsel to commence recourse action against the Province of British Columbia—the *de facto* owner of the vessel on the date of sinking. Prior to June 23, 2006, the registered and beneficial owner of the vessel was the Maritime Society of Vancouver. The Society ceased operating and on June 23, 2006, was dissolved. Pursuant to the *Society Act of British Columbia*, the assets of the Society were surrendered to Her Majesty the Queen in right of British Columbia. Consequently, on April 21, 2011, counsel requested that the Province of British Columbia pay the Administrator the amount of $85,641.19, plus interest, in respect of the oil pollution remediation costs. The province denied that it was the owner of the vessel and refused to pay the costs. On May 3, 2011, counsel commenced legal proceedings against the Province of British Columbia. As of the end of the fiscal year, the litigation was ongoing but discussions have been conducted to settle this claim. The terms of settlement will be reported in the next Annual Report. Meanwhile, the file remains open.

2.4 Island Ranger (2008)

On November 30, 2008, the 68-foot wooden tug *Island Ranger* grounded and partially sank in Tofino Harbour, British Columbia. The vessel lay with its port side submerged across the current, approximately 70 metres off the crab dock. It was reported to contain 800 gallons of diesel fuel, 84 gallons of lubricant oil and a quantity of hydraulic fluids. The crew managed to plug the starboard vents but the port vents were inaccessible. Canadian Coast Guard (CCG) personnel assisted the owner in placing oil booms around the vessel to contain oil being released from the wheelhouse area.

On December 1, the owner engaged a contractor to respond to the situation and raise the *Island Ranger*. On December 3, the CCG booms were removed from around the vessel and redeployed to protect a nearby beach area that was identified as a local shellfish beach. On December 5, CCG personnel returned its pollution response equipment to Victoria, but continued to monitor the shipowners clean-up and salvage operations.

On January 26, 2009, the *Island Ranger* was recovered and the remaining fuel tanks were pumped out. The vessel was slung between two barges and moved to a remote site with less current. The owner deconstructed the vessel and disposed of the debris.

On June 16, 2009, the Administrator received a claim from the Department of Fisheries and Oceans (DFO)/ CCG in the amount of $54,337.20 for costs and expenses incurred, pursuant to the *Marine Liability Act*. On June 23, the Administrator requested additional information from CCG about whether it had followed up with the shipowner, Hustler Tug & Barge Limited, with respect to its efforts to have the company pay the CCG claim.

On January 29, 2010, CCG replied to the Administrator's request for information and noted that they had followed up with the owner of the vessel. The owner had indicated that, on advice from its legal counsel, the company was not in a position to pay the claim. It would seem that the shipowner is suing the CCG on the grounds that a navigation buoy was out of place causing the *Island Ranger* to hit the rock and sink.

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

Since the period of prescription for bringing an action against the owner of the barge was due to expire on November 30, 2011, the Administrator started a protective action in the Federal Court against the owners of the barge on November 7, 2011. A trial date was fixed for October 21, 2013. At the close of the fiscal year, the Administrator, with assistance of counsel, continues to keep this file under observation pending the outcome of the litigation in progress between the owner and the Canadian Coast Guard. Meanwhile, the file remains open.

2.5 Sea Wing II (2009)

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

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

contaminants aboard, it should be hauled ashore and dismantled and disposed of." CCG contracted Saltair Marine Services Ltd. to deconstruct the vessel and remove pollutants.

The deconstruction work was accomplished over a nine-day period from June 22 to July 2. The vessel was removed from the water and placed into a concrete containment pad, so that during the process of demolition waste oils would be contained in a catch basin. The fuel and oils were drained from the fuel tank, the engine and the piping. An excavator was utilized to dismantle and sort the debris, fiberglass, waste wood and recyclable scrap steel. Following the demolition, the crew was employed in cleaning up the concrete containment pad and sorting the barrels of soaked absorbent. When the dismantling of the wreck was completed, the absorbent pads and booms, including 175 litres of oils and oily water, were disposed of by the contractor. The debris and rubbish from the demolished fishing vessel were separately disposed of by DBL Disposal Services.

On December 15, 2009, the Administrator received a claim from the Department of Fisheries and Oceans/ CCG in the amount of $35,552.69 pursuant to the *Marine Liability Act* (*MLA*).

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

As a result of the assessment and investigation of the circumstances surrounding the incident, the Administrator found the amount of $30,268.68, to be established. Therefore, effective February 1, 2011, pursuant to the *MLA* he made an offer in the amount of $30,268.68, plus interest, as compensation in full and final settlement. On April 1, DFO/CCG accepted the offer. Accordingly, on April 13, the Administrator directed payment of $31,856.72, inclusive of interest, in accordance with the *MLA*.

The Administrator conducted background research to ascertain the location of the vessel owner and identify any possible assets for cost recovery purposes. The investigation revealed that the owner did not have any financial assets. After consideration, the Administrator decided that it would not be reasonable to pursue further attempts for cost recovery. Accordingly, on April 10, 2012, the Administrator closed the file.

2.6 Meota (2009)

On June 6, 2009, the Canadian Coast Guard (CCG) received a report that a derelict vessel was sinking at anchor in Tsehum Harbour near Sidney, British Columbia. CCG Emergency Response personnel proceeded to the site and found the old wooden hull vessel, *Meota*, approximately 75 feet offshore resting on the bottom with a starboard list. Oil sheen was present around the wreck. CCG was informed by the owner that he had no financial resources to pay for dealing with the situation. As a result, CCG engaged a contractor, Saltair Marine Services Ltd., to raise the vessel and transport it to its yard facility in Ladysmith. It was kept afloat at the shipyard by pumping operations, which needed constant supervision.

On June 13, a marine surveyor was hired by CCG to determine the status of the vessel. The surveyor reported that the 70-year old, 45-foot *Meota* was constructed of cedar planking and oak frames. It was found in a derelict condition after being sunk. It had extensive areas of rot throughout the structure. The surveyor concluded that, given the condition of the vessel and the fact oil products were still onboard, the vessel should be hauled ashore and dismantled. On June 19, the *Meota* was lifted ashore by Saltair Marine Services Ltd. and deconstructed. Approximately 60 litres of gasoline, 12 litres of lubricant oil and 280 litres of diesel fuel were removed from the vessel.

On December 15, 2009, the Administrator received a claim from the Department of Fisheries and Oceans/ CCG in the amount of $27,564.01 pursuant to the *Marine Liability Act* (*MLA*).

On February 11, 2010, the Administrator instructed counsel to engage a technical marine surveyor to investigate whether all the expenses could be reasonably characterized as pollution prevention, or whether some of them were, in essence, wreck removal. Subsequently, the surveyor reported that, as a result of his investigation, he concurred with the view of the CCG's independent technical surveyor to haul the *Meota* ashore and have it dismantled. As a result of the investigation and assessment of the incident, the Administrator concluded that the amount of $25,290.45 was established. Therefore, effective February 1, 2011, pursuant to the *MLA*, he made an offer in the amount of $25,290.45, plus interest, as compensation in full and final settlement. On April 1, DFO/CCG accepted the offer. Accordingly, on April 13, the Administrator directed payment of $26,611.25, inclusive of interest, from the Fund in accordance with the *MLA*.

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

The Administrator conducted research to ascertain the location of the vessel owner and identify any available assets. The investigation revealed that the owner did not have any financial assets. Therefore, the Administrator decided that it would not be reasonable to pursue further attempts for cost recovery. Accordingly, on April 10, 2012, the Administrator closed the file.

2.7 Just Magic (2009)

On June 23, 2009, the Canadian Coast Guard (CCG) received a report of a sunken vessel in Tod Inlet, British Columbia. The Victoria-based CCG Environmental Response personnel investigated and determined that there was a risk of oil pollution from the partially submerged ex-fishing boat that was tied to a deteriorating barge. The owner was eventually contacted, but stated he had no financial resources to deal with the matter.

CCG engaged Saltair Marine Services Ltd. to raise the derelict vessel and transport it to its facility in Ladysmith. Also, a marine surveyor was engaged to determine the vessel's status. The surveyor ascertained that the gill-net type fishing boat, built in 1958, sank up to the level of its deck amidship. It had retained enough buoyancy to keep from sinking completely. It lay in that condition for over a year. The surveyor concluded that the boat had been damaged and had deteriorated beyond repair and presented an environmental hazard. The surveyor recommended that the wreck be hauled ashore and dismantled. Following the marine surveyor's condition survey, CCG contracted Saltair Marine Services Ltd. to deconstruct the *Just Magic* and remove pollutants.

On December 15, 2009, the Administrator received a claim from the Department of Fisheries and Oceans in the amount of $13,659.53 pursuant to the *Marine Liability Act* (*MLA*).

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

As a result of the investigation and assessment, the Administrator concluded that the amount of $12,266.64 was established. Therefore, effective February 1, 2011, he made an offer in the amount of $12,266.64 plus interest as compensation in full and final settlement. On April 1, DFO/CCG accepted the offer. Accordingly, on April 13, the Administrator directed payment of $12,906.82, inclusive of interest in accordance with the *Marine Liability Act*.

On May 18, 2011, the Administrator sent a letter by registered mail to the known owner of the *Just Magic* requesting payment of the compensation paid to DFO/CCG. The vessel owner was informed of his responsibility for these costs under section 51 of the *Marine Liability Act*. The owner was requested to respond by June 20, failing which the Administrator may commence proceeding for the above amount. On May 31 the Administrator's letter to the vessel owner was returned to his office. The "return to sender" stamp indicated that the addressee had moved.

Further investigations were unable to identify a residential address or any financial assets of the vessel owner. The Administrator concluded that it would not be reasonable to expend additional funds to collect from the owner the amount paid out for this claim. Accordingly, on May 9, 2012, the Administrator closed the file.

2.8 Jessie Island XI (2010)

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

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

On January 20, CCG hired a marine surveyor from Lipsett Marine Consultants Ltd. to conduct a condition survey and estimate the value of the vessel. The surveyor concluded that the oil-fouled vessel was unseaworthy and represented a clear environmental hazard. Furthermore, the vessel should be dismantled and disposed of and that the value was nil. As a result, CCG directed Saltair Marine Services Ltd. to deconstruct the vessel to remove all the oil and dispose of the debris. By January 29, deconstruction of the wreck was completed.

On March 11, CCG mailed a claim to the owner of the *Jessie Island XI* in the amount of $34,281.41 for payment of costs and expenses incurred. There was no response. On April 19, 2010, the Administrator received a claim from the Department of Fisheries and Oceans (DFO)/CCG in the amount of $34,281.31 pursuant to the *Marine Liability Act* (*MLA*). Upon completion of the investigation and assessment of the claim, the Administrator found the full amount to be established. Therefore, on October 6, pursuant to the *MLA* an offer was made in the amount of $34,281.31, plus interest, as full and final settlement of the claim. The offer was accepted on October 26 and the Administrator directed payment in the amount of $34,971.87, inclusive of interest.

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

On May 20, an e-mail was received from the vessel owner in which he claimed not to have any money. The Administrator conducted further research of the owner of the *Jessie Island XI* to identify any possible assets for recovery purposes. On January 10, 2013, counsel commenced legal proceedings and registered a Statement of Claim against the owners for the costs and expenses incurred. At the end of the fiscal year the file remains open.

2.9 Richelieu (2010)

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

On November 15, 2010, the Administrator received a claim from Boralex Inc., a hydroelectric plant at Saint-Lambert, for financial loss of production during the incident. The claim was in the amount of $40,438.90. This claim from Boralex related to the loss of revenue due to the stoppage of electricity production for a period during which they were instructed by the Seaway Authority, in consultation with Fisheries and Oceans Canada, to close their water intake. This action was taken to prevent oily water from contaminating Boralex's plant, and from it being discharged below the Saint-Lambert lock.

The Administrator acknowledged receipt of the claim and the following day instructed counsel to investigate and advise as appropriate. Counsel requested that Boralex Inc. provide additional supporting evidence with respect to its claim for loss of revenues. Furthermore, counsel contacted the legal advisor for the owners of the *Richelieu*, given that the shipowner remains the primary responsible party for this sort of claim. Counsel for both parties held a discussion with a view of securing an amicable resolution of the matter of the recovery for pure economic loss. In the course of the year, counsel for the owners of the *Richelieu* informed the office of the Administrator that a settlement had intervened as a result of which the claim has been withdrawn. Accordingly, on November 13, 2012, the Administrator closed the file.

2.10 Clipper Adventurer (2010)

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

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

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

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

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

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

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

2.11 Nanny (2010)

On September 1, 2010, the Coast Guard was informed that the Canadian-registered product tanker *Nanny*

had grounded on an unchartered shoal of sand and gravel near Gjoa Haven, Nunavut. The double hulled tanker was en route to deliver petroleum products to communities in the Arctic. The cargo consisted of approximately 9,000 metric tonnes of diesel oil, gasoline and jet fuel. After the ship ran aground, the crew conducted an internal inspection of the ballast tanks and determined that there was no structural, hull, or mechanical damage incurred as a result of the incident. Furthermore, there was no discharge of oil. This was confirmed by an overflight conducted by a Transport Canada aerial surveillance aircraft. At the outset, the Administrator was informed about the incident and instructed counsel to cooperate with the Canadian Coast Guard in obtaining a Letter of Undertaking as security.

The Coast Guard icebreaker *Henry Larsen*, which was in the vicinity, was tasked to proceed to the site and monitor the shipowner's salvage operations. The *Henry Larsen* was informed that the grounded ship remained stable, and there was "no list or change of trim" resulting from the 20 centimetre range of tide. The weather was seasonal and not expected to deteriorate during the next week. The *Nanny* was in open water and there was no immediate concern about local ice conditions.

The shipowner promptly assumed responsibility and developed a preliminary plan to transfer a quantity of the cargo from the *Nanny* to the tanker *Tuvaq*, another ship owned by the company, which was also engaged in the Arctic sealift operations. The *Tuvaq* had to proceed to Cambridge Bay and discharge cargo in order to make tank capacity available to lighten the grounded tanker. The *Henry Larsen* later provided ice escort to the *Tuvaq* in Victoria Strait, some distance west of Gjoa Haven. When the accident occurred Transport Canada Marine Safety was informed. A Ship Safety Inspector and a Canadian Transportation Accident Investigation representative went onboard the tanker. They worked with the shipowner to provide advice and guidance for the development of a salvage plan. In addition, a Federal Monitoring Officer from Canadian Coast Guard was dispatched from Sarnia, Ontario, to monitor the planned cargo transfer in order to lighten the tanker and allow it to move off the shoal.

In the period from September 2 to 13, when the shipowner was awaiting the arrival of the *Tuvaq,* there was no action at the site of the grounding. On September 13 and 14, the fuel was transferred under the supervision of the Marine Safety Inspector. Consequently, the *Nanny* was refloated on September 15. The Marine Safety Inspector and the tankers representative conducted a damage survey. The *Nanny* was cleared for reloading and allowed to proceed with the community fuel resupply. No oil pollution occurred throughout the response to the incident. Coast Guard resources were demobilized.

On June 19, 2012, almost 2 years after the incident, the Administrator received a claim in the amount of $441,842.17 made pursuant to section 103(1) of the *Marine Liability Act* from the Department of Fisheries and Oceans (DFO/CCG). The Administrator was informed that CCG had previously sent the claim to the shipowner in April 2012, and that the owner had declined to pay the claim on the grounds that the incident had not caused any pollution damage. The Administrator acknowledged receipt of the claim documentation and requested a copy of the response letter, if any, received from the shipowner with the coordinates of the shipping company. Meanwhile, the Administrator commenced an investigation and assessment of the claim.

On August 23, 2012, the Administrator wrote to DFO/CCG and explained that an initial assessment had been made of the material filed in support of the claim. From the analysis, the preliminary view was that the claim was not established. The Coast Guard was requested to provide additional documentation to support the reasonableness of the essential elements of the claim – namely, the costs incurred by the *Henry Larsen* and its helicopter to monitor the incident, which amounted to approximately 95 percent of the original overall claim. The Administrator specifically requested documentation demonstrating that the degree of monitoring in this case was reasonable, given the considerable presence of federal officials

throughout the duration of the incident, and in particular, the timely and competent response of the shipowner. The Administrator asked for clear evidence of the reasonable grounds on which the Minister (Canadian Coast Guard) formed the belief that the *Nanny* at the time of this incident had discharged, was discharging, or was likely to discharge oil.

On September 28, the Administrator received a response to his written request. However, the requested information was not provided in sufficient detail or in some cases, not at all. The Administrator completed his investigation and assessment of the claim and found only the amount of $85,000.00 to be established. The established amount essentially reflected the costs incurred in the first 24 to 36 hours to determine that there was no damage to the tanker. Accordingly, pursuant to the *Marine Liability Act* section 105(1) (b) on December 12, 2012, a global offer of $85,000.00, inclusive of interest, was mailed to Coast Guard in full and final settlement of this claim. On February 8, 2013, CCG accepted the offer. Therefore, the Administrator authorized payment of that global amount.

Following settlement of the claim, the Administrator instructed counsel to commence action in Federal Court against Coastal Shipping Limited for recovery of its amount paid by the Fund in way of settlement of the Canadian Coast Guard claim. As of the close of fiscal year, the file remains open.

2.12 Corregidor (2010)

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

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

On August 16, the CCG wrote to the owner requesting payment of $26,320.80 as costs incurred by the Minister of Fisheries and Oceans in respect of this incident. There has been no response by the owner. On October 18, the Administrator received a claim from CCG in the amount of $26,893.95. Receipt of this claim and the supporting documents was acknowledged.

The Administrator investigated the circumstances surrounding the incident. The investigation found that, after the hydrocarbons and other pollutants were removed, the Port of Vancouver took control of the vessel and had it towed to Shelter Island Marine in the Fraser River; the vessel was still taking on water. Shortly afterward the Port Authority disposed of the *Corregidor*, because the owner was unable or unwilling to cover the financial expenses the Port Authority was accumulating. The claim documentation was assessed and on December 15, 2010, the Administrator made a final offer to DFO/CCG for the established amount of

$25,518.99 plus interest in full settlement. The offer was accepted and the Administrator directed payment in the amount of $25,949.42, inclusive of interest.

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

Further investigations did not reveal the location of the vessel owner, or any other assets. The Administrator decided, therefore, that all reasonable steps had been taken to recover the compensation paid to Coast Guard. Accordingly, on July 11, 2012, the Administrator closed the file.

2.13 Seaspan Barge 156 (2010)

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

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

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

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

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

On May 13, the Administrator sent a letter to the owner of the vessel *Seaspan Barge 156* requesting payment of the costs incurred in respect of the measures taken by the Canadian Coast Guard during response to the incident. The owner was informed about his responsibilities under section 77 of the *Marine Liability Act* and

was requested to respond by June 12, 2011, failing which the Administrator may commence proceedings for the above amount. No reply was received.

Further investigation determined that the barge was sold to a new owner. The Transport Canada Vessel Registration System shows that it was re-registered on December 19, 2011, under the ownership of City Transfer Inc. of Powell River, British Columbia. On February 29, 2012, counsel for the Administrator wrote to City Transfer Inc. and informed the new owner about the claim that CCG had made against the Fund and noted that it was approved and paid in full. The company was also informed that pursuant to section 79(2) of the *Marine Liability Act*, the jurisdiction conferred on the Federal Court of Canada to allow the Administrator to recover pollution claims may be exercised *in rem* against the vessel that caused the damage as well as *in personam* against the owner of the vessel.

On March 5, counsel, on behalf of City Transfer Inc., advised that the company would pay the expenses incurred to remove the threat of marine oil pollution from the *Seaspan Barge 156*. On April 25, 2012, counsel received a promissory note from City Transfer Inc. promising to pay the Fund the sum of $9,848.58. The amount would be paid in the sum of $1,641.43 per month for six months. It would be paid on the first of each month commencing on May 1, 2012, and ending on October 1, 2012. The final of the six post-dated cheques was deposited on October 5, 2012. Accordingly, on October 24, 2012, the Administrator closed the file.

2.14 Asiaborg (2010)

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

Since no claim was submitted to the Administrator within time limit prescribed by the *Marine Liability Act*, the file was closed on November 3, 2012.

2.15 Sop's Arm (2010)

On April 29, 2010, the Canadian Coast Guard (CCG) received a report from local residents of Sop's Arm, White Bay, Newfoundland, that an abandoned barge was aground near the community. They were concerned about the risk of oil pollution. The CCG Environmental Response personnel from St. John's investigated. Approximately 550 litres of diesel fuel were found in two internal tanks. In addition, there was diesel fuel in a vehicle on deck, and residual fuel in a large propane tank. The barge measures approximately 120 feet by 42 feet. The deck and sides were found in good condition with the exception of three small holes in the starboard side and two punched in the port side. There was considerable water inside the barge, but the responders were unable to confirm whether there were holes in the bottom of the stranded wreck. CCG personnel attempted to locate the owner but were unsuccessful. Consequently, on July 6 and 8, all the fuel oil and other potential pollutants were removed. A local waste management and industrial service company was engaged to assist CCG with removal of the oil, and dispose of the 80 litres of the recovered residual oil.

The barge tanks were flushed to remove any fuel remaining. The community residents were informed that the potential threat of oil pollution was eliminated.

On March 18, 2011, the Administrator received a claim from DFO/CCG for costs and expenses incurred in the amount of $13,546.76, pursuant to the *Marine Liability Act*. Upon completion of his investigation and assessment of the claim, the Administrator found the full amount to be established. Therefore, on May 3, pursuant to sections 106 and 116 of the *Marine Liability Act*, an offer was made to DFO/CCG in the amount of $13,546.76, plus interest, as full and final compensation. The offer was accepted on May 5 and the Administrator directed payment in the amount of $13,976.12, inclusive of interest.

The Administrator conducted background research to ascertain the location of the owner and identify any possible assets for cost recovery purposes.The investigations revealed that the owner did not have any financial assets. After consideration of the amount of the claim and the expenditure, the Administrator decided that it would not be reasonable to pursue further attempts for cost recovery. Accordingly, on July 3, 2012, the Administrator closed the file.

2.16 Rosemary G (2010)

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

On January 19, 2011, CCG submitted a claim to the vessel owner in the amount of $13,145.60 for costs and expenses. CCG did not receive a response. On March 18, 2011, the Department of Fisheries and Oceans (DFO) /CCG filed a claim with the SOPF for costs and expenses incurred during response to the incident in the amount of $13,168.47, pursuant to the *Marine Liability Act*.

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

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

The Administrator conducted background research of the owner of the *Rosemary G* to try and determine his location and identify any possible assets for cost recovery purposes. No significant financial assets were found to be registered in the owner's name. After consideration of the investigation findings and the money

expended to trace possible assets, the Administrator concluded that all reasonable measures had been taken to recover the costs, and that further expenditure would not be warranted. Accordingly, on August 28, 2012, the Administrator closed the file.

2.17 Dominion I (2010)

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

Upon boarding, the engine room was found to be flooded some two feet above the deck plates with oil on the surface of the water. The responders pumped out approximately six feet of water from the engine room. The ingress of water was from damaged small copper cooling lines. It would seem that vandals had been removing copper wire and other equipment from the vessel while at anchor for more than two years. Furthermore, there was little or no maintenance of the vessel. Temporary repairs of the cooling lines prevented further ingress of seawater. On deck were nine drums of various hydrocarbons. In addition, the day tank contained 750 gallons of fuel. The ship's drawings indicated 13 main fuel tanks. It was difficult to take accurate tank soundings, but CCG estimated some 5,800 gallons of diesel oil were still onboard.

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

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

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

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

The Administrator conducted background research of the owner of the *Dominion I* to try and identify any possible assets for cost recovery purposes. On April 18, 2012, counsel wrote to the owner via registered mail, and informed him that, pursuant to the *Marine Liability Act,* the Administrator is subrogated to (acquires) the rights of CCG/DFO and is required to recover the amount of $16,589.81, paid in respect of the alleviation of oil pollution problems. The owner was asked to advise, prior to May 2, what arrangement he could offer to repay the Fund, failing which the Administrator would take action to compel payment of that debt. Subsequently, it was found that the registered owner of the vessel has a new address in Oregon, United States. On April 25, counsel sent, via registered mail, a demand letter to the new mailing address in Oregon. No replies were forthcoming. As of the end of the fiscal year the owner has not replied to the demand letter. Counsel is continuing efforts of recovery. Meanwhile the file remains open.

2.18 Bates Pass (2010)

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

The Harbour Master informed the Canadian Coast Guard (CCG) of the situation, and advised that there was an oyster lease approximately 2,000 feet away from the sunken wreck. In response, CCG personnel deployed its search and rescue cutter *Point Race* from nearby Campbell River to stream an absorbent boom around the upwelling oil. The next day, after meeting with the owner, CCG arranged through Public Works and Government Service Canada for a commercial contractor, D.C.D. Pile Driving Ltd. at Campbell River, to mobilize a tug and barge fitted with a crane to proceed to Heriot Bay and raise the submerged *Bates Pass*.

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

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

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

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

The Administrator conducted further investigations to locate the owner of *Bates Pass* and identify any possible assets for costs recovery action. No significant financial assets were found to be registered in the owner's name. As a result of the investigation, the Administrator concluded that all reasonable measures had been taken to recover the claim costs and additional expenditure of SOPF funds could not be justified. Accordingly, on August 7, 2012, the Administrator closed the file.

2.19 Silver Harvester (2010)

This incident occurred on April 2, 2010, when the *Silver Harvester*, a 45-ton wooden fishing vessel built in 1944, dragged anchor in a windstorm and went aground at the north end of Esquimalt Harbour, Vancouver Island. When the vessel was swept onto the rocks it partially submerged and released oil into the water. The following day when the storm subsided, the Harbour Management Authority dispatched its Marine Environmental Emergency Response Team to provide containment of the oil spill. The Harbour Authority conducted a technical survey of the vessel and found that the hull was severely damaged and impregnated with hydrocarbons. The vessel was determined to be unsalvageable and the threat of further pollution continued. It was concluded that the most cost effective way to deal with the situation was to deconstruct the vessel.

When contacted the registered owner advised that he was financially incapable of dealing with this occurrence. The owner provided written permission for the Harbour Management Authority to deconstruct and dispose of the wreck. The Authority then applied to Transport Canada's Receiver of Wrecks to have the ownership transferred to the Department of National Defense (DND) in order to proceed with the salvage and prevent further pollution. When the custody of the transfer was completed all the hydrocarbons and other hazardous materials were removed. The debris was disposed of through DND's supply system. The oil impregnated old fishing vessel was finally demolished by DND personnel at the Canadian Forces Base (CFB) Esquimalt. All the metal was sent for recycling. The salvage operation was completed on April 27, 2010.

On December 12, 2012, the Administrator received a claim dated November 23, 2012, from the Esquimalt Harbour Management Authority in the amount of $17,956.53 for the costs and expenses incurred during its response to the sinking of the *Silver Harvester* in Esquimalt Harbour. Receipt of the claim was acknowledged on the day it was received.

The time period between the completion of the deconstruction work and the filing of the claim seemed to be well after the two-year limitation period prescribed by the *Marine Liability Act.* On the advice of counsel,

the Administrator concluded that the claim was time-barred. On this basis the Administrator declined to entertain the claim and advised the Auxiliary Fleet Manager accordingly. On January 24, 2013, the Administrator closed the file.

2.20 Ladysmith Harbour Fire (2011)

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

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

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

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

January 24, 2012, CCG received payment from one insurance company and have requested payment from the other three owners. On April 16, CCG advised that it had received payment from two additional shipowners. The total amount of $1,586.88 had been recovered from three of the four owners involved in the incident. However, all efforts to contact the fourth owner for the amount of $528.96 due were unsuccessful.

On April 17, the Administrator informed CCG that an assessment of the overall claim of $2,115.85 was found to be established in the sum of $1,907.47. Therefore, pursuant to the *Marine Liability Act*, the Administrator offered DFO/CCG the amount of $320.59 plus interest – that is, $1,907.47 minus the $1,586.88 collected.

On June 27, the Administrator mailed a demand letter to the outstanding vessel owner requesting payment in the amount of $334.39 paid to CCG. A reply was requested by July 15, 2012, failing which the Administrator may commence legal proceedings to recover the above amount. No reply was received. After consideration of the circumstances, most notably the minimal amount of the claim, the Administrator concluded that it would be unreasonable to incur further expenditure to recover the costs. Accordingly, on January 23, 2013, the Administrator closed the file.

2.21 Barbydine (2011)

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

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

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

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

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

Given the amount of the claim, the Administrator instructed counsel to send a letter to the vessel owner demanding payment of the amount paid to the Canadian Coast Guard. On April 12, 2012, counsel sent a letter by registered mail to the owner of the fishing vessel advising that the Administrator is required to recover any amount paid to claimants of the polluting vessel. The owner was requested to make arrangements to pay the sum of $27,714.52 to the SOPF. The cheque was to be made payable to the Receiver General for Canada. Subsequently, on June 12, counsel received a cheque in the amount of $27,714.52. On June 27, the Administrator forwarded the cheque to Expenditure Accounting and Control Department of Transport to be credited to the Ship-source Oil Pollution Fund. On July 19, counsel wrote to the owner and confirmed that the claim of the Administrator is now fully and finally satisfied. Accordingly, on August 8, 2012, the Administrator closed the file.

2.22 Miner (2011)

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

Before its departure from Montreal, Transport Canada-Marine Safety inspected the tug *Hellas* and the towline arrangements. A "green passport" and a towing certificate were issued. (A green passport provides an inventory of all potentially hazardous materials used in the ship and is aimed at ensuring the safety of all workers involved in dismantling the vessel.) Marine Safety also reports that, prior to departure, all oil had been removed from the towed vessel, except approximately 13 metric tons of marine diesel fuel contained in day tanks for the emergency generator. When informed about the incident, CCG conducted a helicopter flight to assess the status of the grounded vessel. In addition to the 20.3 hours of helicopter monitoring flights throughout the duration of the incident, a further 9 hours of flight reconnaissance was carried out by fixed-wing aircraft operated by the Transport Canada National Aerial Surveillance program.

On September 21, CCG issued a Letter of Notice to the owner's representative requesting notification of their intentions with respect to response measures. Later a second notice was issued to the owners to remove the pollutants due to deteriorating weather conditions.

Two days after the grounding, when sea state and wind conditions were favourable, the master of the tug, *Hellas*, inspected the *Miner* and reported that no hull damage had been sustained. The fuel tanks and ship bilges were found free of any ingress of sea water. No oil pollution was apparent on the surface of the water, neither near the ship nor in the surrounding area. On September 24, and during the following few days, the tug made several attempts to pull the *Miner* off the rocks at high tide, but those efforts were unsuccessful. During this phase, CCG deployed the *Spindrift*, a 16-metre Search and Rescue cutter, from nearby Louisburg as an observation platform.

On September 27, Regional Emergency Team (REET) meetings were held resulting in requests for further information from the owners and their salvors concerning hull stress factors, availability of additional tugs and a detailed salvage plan. The following day, REET was informed that the *Miner* had moved further up the shoreline. Several sections of the hull were holed with some ingress of sea water. The next day CCG and

Transport Canada personnel boarded the wreck and determined that none of the double bottom tanks had been breached, but there were cracks along the hull in way of several cargo tanks. There was also seawater in the engine room with a skim of oil on the surface, but no oil was visible outside the hull. Following the survey, CCG issued a Letter of Notice for removal of the fuel onboard. Subsequently, REET was informed that the shipowner had hired Mammoet Salvage to conduct a survey in advance of removing the oil. During the next week, Mammoet transferred 10 metric tons of generator fuel, and some 5,000 litres of oily waste to the vessel *Vulcan* chartered from Samsonia Maritime Ltd. of Sydney, Nova Scotia.

On October 4, Mammoet Salvage advised Coast Guard that "all funds were used and they will not be returning to the vessel the next morning as planned". The following day a storm caused additional major structural damage. The vessel moved further ashore and the engine room was now flooded. Consequently, on October 7, the Coast Guard itself contracted Mammoet Salvage to remove the estimated 3,000 litres of oily mixture remaining onboard. The Mammoet personnel were flown in from Texas and Amsterdam. In all, 15 tanks were opened and pumped dry, two of the four engines were opened and the oil removed. The other two engine bases and gearboxes were open to the sea and could not be pumped out. As of October 9, the only oil remaining onboard was some residual oils, which allowed sheening to continue. Later in the month, on October 18, Coast Guard replaced the sorbent boom that had been originally placed around the stern to absorb any oil that may be released from the engines.

The Coast Guard situation reports indicate that, following the CCG contract completion, the Province of Nova Scotia contracted Mammoet to remove the moveable objects, panelling etc. still onboard (chairs, beds, tables etc.). Mammoet commenced removing the floatables the morning of October 21. The contract with the Province was for 7 to 10 days. Coast Guard monitored operations for the duration of the removal operations. On July 12, 2012, the Administrator received a claim from Coast Guard in the amount of $251,629.13. The Administrator acknowledged receipt of the claim documentation.

On September 19, 2012, the Administrator wrote to Coast Guard and requested additional information and documentation in order to advance his investigation and assessment of the claim. Coast Guard was advised that the original documents filed in support of the claim contained insufficient detail to assess the claim and allow an offer of compensation. The Administrator's letter of request enumerated the areas in which he would require further information, documentation and explanations. A response to the request was received on December 7 but the response did not provide the requested, detailed chronology clearly linking CCG actions and associated costs. The absence of a detailed chronology made an assessment of the measures taken by CCG and the associated costs impossible.

On February 5, 2013, the Administrator informed the Coast Guard that the investigation and assessment of the claim was completed and the amount of $9,667.74 was found to be established. The established amount esentially reflected the costs incurred to place a boom around the stern of the wreck and to place sorbent material in the engine room. The *Spindrift* crew deployed the boom and later retrieved this containment equipment. These incurred costs and expenditures were allowed. Accordingly, a global offer of $10,000.00, inclusive of interest, was made in full and final settlement pursuant to the *Marine Liability Act*.

On March 28, 2013, the Administrator received a letter of notification that DFO/CCG accepts the global offer of $10,000. At the close of the fiscal year the file remains open, because the Administrator is investigating recourse action.

2.23 Finella (2011)

Note: Two claims 2.23 and 2.24 arose out of the same incident.

On October 11, 2011, the commercial fishing vessel *Finella* partially sank at the dock in Deep Bay, Vancouver Island, British Columbia. The vessel commenced leaking diesel fuel and heavier engine and gear oil. There was an estimated 2,000 litres of fuel onboard, as well as other hydraulic oils. With the assistance of the local Canadian Coast Guard Auxiliary, the Harbour Authority deployed containment booms and absorbent pads in an attempt to prevent the material from moving into the nearby commercial shellfish growing waters and beaches. The vessel owner was reported to be "out of the country." Consequently, the Harbour Authority hired a contractor, Sawchuck Pile Driving, to raise the *Finella* and move it to shallow water in order to prevent it from sinking completely and cause environmental damage to the surrounding wetlands and commercial shellfish areas. The vessel was removed from the water on October 12, 2011, and placed on the beach.

On March 22, 2012, the Administrator received a claim from the Manager, Deep Bay Harbour Authority, in the amount of $9,969.09, for costs and expenses incurred during response to the incident. The claimant noted that he had attempted to recover the costs from the vessel owner, but there was no reply to any of his communications. Receipt of the claim was acknowledged by the Administrator.

After investigation and assessment, the Administrator made a final offer to the Harbour Authority on May 8 in the established amount of $9,969.09, plus interest, for a total compensation of $10,098.60. The offer was accepted. A release and subrogation agreement was returned to the Administrator. On June 5, a cheque in the amount of $10,098.60 was mailed to the Manager, Harbour Authority of Deep Bay.

On June 5, the Administrator mailed a registered letter to the owner of the fishing vessel *Finella* requesting payment of the costs incurred by Harbour Authority in respect to the measures taken during the incident. The owner was informed of his responsibility under section 77 of the *Marine Liability Act.* The owner was requested to make payment in the amount of $10,098.60 payable to the Receiver General of Canada in order to reimburse the Ship-source Oil Pollution Fund failing which the Administrator may commence legal proceedings to recover the above amount. On July 4, the letter to the vessel owner was returned by the post office to the office of the Administrator.

After further investigation, which did not reveal the location of the owner or any assets, the Administrator concluded that additional expenditure of funds to recover the amount paid in compensations to the Harbour Authority would not be reasonable. Accordingly, on December 19, 2012, the Administrator closed the file.

2.24 Finella (2011)

This claim from the Canadian Coast Guard (CCG) and the above-noted claim (section 2.23) from the Harbour Authority arose out of the same incident that occurred at Deep Bay wharf on October 11, 2011. As described in section 2.23, on October 12, the Harbour Authority's contractor placed the refloated *Finella* on the beach at Deep Bay. The vessel owner was eventually contacted by CCG and issued a "Letter of Notice" to remove the vessel, so as to prevent any further discharge of pollutants into the sheltered bay and its sensitive aquaculture sites. The owner did not remove the vessel as per the CCG "Notice".

On December 6, CCG was informed that the vessel had fallen over on the tidal grid and was again discharging pollutants into the marine environment. Upon inspection CCG personnel found that the vessel was leaking oil through ruptured hull planks. There were approximately 700 litres of fuel oil onboard, with considerable amounts of lube oil floating freely in the engine space. The hull damage was such that the wreck was filling up on the high tide and leaking out on the low tide. CCG personnel hired a vacuum truck to remove all oil from the fuel tank, and used sorbent material in the engine room to recover the free-floating sheen of oil. Some 3,000 litres of oily waste were removed. The contaminated sorbents were later incinerated. On December 17 the wrecked vessel was removed from the area.

On June 14, 2012, CCG mailed a registered letter to the vessel owner requesting payment in the amount of $3,686.76 for costs and expenses incurred during response to the incident. The letter was unclaimed and returned to sender.

On October 19, the Administrator received a claim from the Department of Fisheries and Oceans (DFO/CCG) in the amount of $3,686.76, made pursuant to the *Marine Liability Act.* As a result of his investigation and assessment of the claim, the Administrator found the amount of $3,675.26 to be established. Therefore, effective November 15 pursuant to the Act the Administrator made an offer to DFO/CCG in the amount of $3,675.26, plus interest, as compensation in full and final settlement. The offer was not accepted within the time limits prescribed by legislation. DFO/CCG was notified by letter January 23, 2013, that under section 106(1) of the Act, the offer of compensation is deemed to have been refused. Accordingly, on January 24, 2013, the Administrator closed the file.

2.25 Mystery Spill, Oka, Quebec (2011)

On June 5, 2011, the Canadian Coast Guard (CCG) was informed of an oil slick within the Oka Marina. The surface area of the oil slick was approximately 40 feet by 60 feet between the Marina and the local ferry wharf. The CCG hired a private contractor from Montreal, Urgence Marine Inc. to deploy a containment boom and, if possible, to clean up and recover the oil with absorbents.

Although the source was never determined, it was initially considered that the ferries operating east of the Marina might have been the source of the oil pollution. Finally, the ferries were ruled out because the river current and the prevailing winds would have carried the spilled oil further eastwards and not towards the Marina. The sheen was found to be composed of motor oil, but there was no evidence that the origin was land-based.

On May 8, 2012, the Department of Fisheries and Oceans (DFO/CCG) filed a claim with the Administrator for costs and expenses in the amount of $7,753.29, pursuant to the *Marine Liability Act (MLA).* Receipt of the claim was acknowledged the following day.

The Administrator commenced an investigation and assessment of the claim. The Administrator concluded that the incident was a mystery spill and most likely it was ship-source. As a result, on May 30, an offer was made to DFO/CCG for the established amount of $7,753.29, plus interest, as compensation in full and final settlement. The Administrator's offer was accepted and the Administrator directed payment in the amount of $7,995.15, inclusive of interest, pursuant to the *MLA*. Because the incident was a mystery spill no recourse action was available. Accordingly, on August 8, 2012, the Administrator closed the file.

2.26 Mystery Spill, Bonaventure, Quebec (2011)

On May 8, 2011, the Canadian Coast Guard (CCG) received a report that a fishing vessel, *Le Dernier,* had recovered a sealed barrel full of liquid labeled as kerosene from the sea near Bonaventure, Gaspésie, Quebec. Given the time of the year and location of the finding, it was considered that the barrel originated from a vessel. The operator of the *Le Dernier* landed the barrel on the wharf at Bonaventure and reported the incident to Coast Guard in Quebec City. CCG subsequently contracted a private company, Plante Vacuum Transport et Fils Ltée, of Gaspé, Quebec, to transport the barrel to its storage area in order to identify the product and safely dispose of the contents. The contractor confirmed that the content of the barrel was only oily water.

On April 24, 2012, the Department of Fisheries and Oceans (DFO/CCG) filed a claim with the Administrator for costs and expenses in the amount of $1,907.86, pursuant to the *Marine Liability Act (MLA).* Receipt of the claim was acknowledged.

The Administrator commenced an investigation and assessment of the claim. It was concluded that the response action was a reasonable measure under the circumstances and that the incident could be categorized as a mystery spill. Consequently, on May 9 the Administrator made an offer to DFO/CCG for the established amount of $1,907.86, plus interest, as compensation in full and final settlement. The offer was accepted. The Administrator directed payment in the amount of $1,970.20, inclusive of interest, pursuant to the *MLA*. The Administrator accepted the incident as a mystery spill. As a result, no recourse action was available. Accordingly, on August 8, 2012, the Administrator closed the file.

2.27 Lady Patricia (2011)

On September 2, 2011, a concerned citizen reported to the Canadian Coast Guard (CCG) that a half-sunken vessel was on the beach in front of her residence near Deep Cove, Saanick Inlet, Vancouver Island. The vessel had arrived overnight and was leaking oil pollutants. The CCG 15-metre lifeboat *Cape Naden* was tasked to investigate. The grounded vessel was identified as a 1975 fiber form 24-foot cabin cruiser named *Lady Patricia*.

A quantity of gasoline and lubricating oil was seeping into the marine environment on the high tides. There was also a thick film of engine oil covering the interior of the craft. The *Cape Naden* towed the pleasure craft to the Institute of Ocean Sciences at Patricia Bay – about 1.5 miles south of the incident site. Upon arrival, during the evening of September 2, the *Lady Patricia* was hauled out of the water and loaded onto a boat trailer. The *Cape Naden* returned to the CCG station at Ganges.

In its efforts to trace the vessel owner, CCG found that it had been registered in Maple Ridge, BC, in 1980 under the Transport Canada Pleasure Craft Licensing System. The registered owner had died and the *Lady Patricia* was sold several years ago. The RCMP at North Couichon and the Vancouver Police Department Marine squad were unable to determine the new ownership.

The CCG engaged an accredited marine surveyor of Active Marine Services to ascertain the vessel's fair market value. The surveyor reported that in its salvaged condition it had no appreciable sale value. On October 4, CCG contracted with Jenkins Marine Ltd. of Victoria to break up and dispose of the vessel and dispose of the remaining pollutants. Some 20 litres of fuel and oily water and 8 litres of lubricating oil were recovered from onboard during the deconstruction.

On June 5, 2012, the Department of Fisheries and Oceans (DFO/CCG) filed a claim with the Administrator for costs and expenses in the amount of $5,656.31 pursuant to the *Marine Liability Act (MLA*). Receipt of the claim was acknowledged the following day. After investigation and assessment of the claim, on August 29 the Administrator made a final offer to DFO/CCG for the established amount of $4,856.35 plus interest. The offer was accepted and on September 12, the Administrator directed payment in the amount of $5,009.34 inclusive of interest. Since it was impossible to determine the ownership of the vessel, the Administrator concluded that no recourse action was available. Accordingly, on October 9, 2012, the Administrator closed the file.

2.28 Mistann (2011)

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

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

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

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

The Administrator commenced an investigation and assessment of the claim. On May 28, 2012, the Administrator instructed counsel to engage a technical marine surveyor to investigate whether all the expenses claimed could reasonably be characterized as pollution prevention, or whether some of them were, in essence, wreck removal. Subsequently, the surveyor reported that, diesel and lubricating oil were emanating from the fishing vessel *Mistann* up until the time it was refloated, consistent with hydrocarbons being displaced from internal machinery spaces and fuel tanks by seawater. The vessel had sunk in a recreational

and commercial marina situated approximately 400 metres from a cruise ship dock. Approximately 540 litres of hydrocarbons and oily water were removed from the *Mistann* subsequent to it being refloated. The surveyor concluded that the course of action by the Canadian Coast Guard was reasonable to minimize and remedy oil pollution emanating from the sunken vessel.

In light of the overall assessment, investigation and circumstances surrounding the incident, the Administrator found the amount of $100,462.51 to be established. Therefore on September 12, 2012, the Administrator made an offer of $100, 462.51, plus interest, as full and final settlement pursuant to the *Marine Liability Act*. DFO/CCG accepted the offer. On September 27, 2012, the Administrator directed payment of $103,428.74, inclusive of interest, in accordance with the *MLA*.

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

In order to try and locate the registered owner and identify assets that may be available for recovery purposes, the Administrator obtained the services of a professional locator firm. Meanwhile, as of the end of the fiscal year the file remains open.

2.29 Kelly Maree (2011)

On November 16, 2011, the Canadian Coast Guard (CCG) received a report from a concerned citizen that an old fishing vessel had partially sunk in the Fraser River near Maple Ridge, British Columbia. Environmental Response personnel from the Richmond CCG base attended the scene of the incident. The 17-metre *Kelly Maree* was found in derelict condition with its foredeck awash. It had not settled lower in the water or submerged because it was secured alongside a steel hulled larger vessel – the *Norpac III.* There was a strong odour of hydrocarbons, and the water trapped within the hull was covered with a sheen of oil. The forward compartment and the cargo hold were nearly full of water with free-floating emulsified oil. The wheelhouse and engine room spaces were also contaminated with free-floating oil. The response crew used portable equipment to pump out water from the hull. After dewatering the interior the vessel was found coated with fuel oil and lubricants.

On November 23, a report was received that the *Kelly Maree* was again sinking with a sheen of oil on the surrounding surface of the water. CCG personnel attended and once more pumped out the hull. Because the owner could not be found, arrangements were made to tow the vessel to Shelter Island Marina and Boatyard – the only travel lift in the area with sufficient capacity to haul it out of the river. On November 29, CCG engaged Forrest Marine Towing to tow the leaking vessel to the Boatyard in Richmond. During the transit down river, the *CG Cutter 709* escorted the tow in the event further pumping was necessary.

With the assistance of the RCMP, Coast Guard ascertained that the registered owner of the *Kelly Maree* had died. CCG engaged Chris Small Marine Surveyors Ltd. to conduct a survey in order to assess the vessel's condition and value, as it lay hauled out of the water in Richmond. Upon inspection, the surveyor saw that the vessel was beyond reasonable restoration, or refit, and that there was no net salvage value available in the craft. Moreover, the surveyor reported that, as the derelict vessel continually takes on water

while afloat, liabilities would be reduced if it remained on dry land until it could be deconstructed. On December 21, Shelter Island Marine and Boatyard were instructed to commence cleaning and deconstruction.

At the outset CCG informed the Administrator about the circumstances of the incident. In view of the measures in hand, counsel was instructed to engage a technical marine surveyor to investigate the cause of the partial sinking and determine the vessel's potential to pollute the marine environment with hydrocarbons. On January 9, 2012, the surveyor provided a comprehensive report which concluded the course of action taken by CCG Environmental Response was reasonable and cost effective to prevent, remedy and minimize oil pollution emanating from the *Kelly Maree.* Furthermore, the Fund's surveyor concurred with the assessment of the CCG engaged technical marine surveyor.

On April 24, 2012, the Department of Fisheries and Oceans Canada (DFO/CCG) filed a claim with the Administrator for costs and expenses in the amount for $26,604.41, pursuant to the *Marine Liability Act (MLA)*. Receipt of the claim was acknowledged on May 1. After investigation and assessment of the claim, the Administrator made an offer of $26,548.10, plus interest, as full and final settlement pursuant to the *MLA*. The offer was accepted and the Administrator directed payment of $27,018.40, inclusive of interest.

As instructed on June 27, counsel wrote a demand letter to the executor of the estate of the registered vessel owner. As a result of his investigations counsel advised that there appeared to be little prospect for recovery and recommended that the file be closed. Accordingly on August 23, 2012, the file was closed.

2.30 Tyee Princess & YF-875 (2011)

During investigation of *La Lumiere* incident claim (section 2.3 refers) the Canadian Coast Guard informed the Administrator that two additional vessels, *Tyee Princess and YF-875,* are moored at Britannia Beach, Howe Sound, British Columbia. The Administrator takes the position that the two vessels belong to the Province of British Colombia, since the previous owners, the Maritime Heritage Society of Vancouver, has ceased to exist and the assets of the Society were transferred to the Province. They continue to present a serious threat to cause pollution damage. Given the visual condition of these vessels, the Coast Guard hired McAllister Marine Survey and Design Ltd. to conduct a technical survey of their condition. The Administrator then instructed counsel to engage a surveyor to attend the inspection of the vessels.

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

On March 30, 2012, the surveyor engaged by the SOPF was advised that the provincial Ministry of Forests, Lands and Natural Resources had hired Hazco (a company specializing in disposal of pollutants) to remove pollutants from the two vessels. During the following week Coast Guard personnel boarded the vessels to determine whether any hydrocarbons remained onboard. The inspection found that the contractor had removed loose barrels and other containers of used oils, paints and thinners. Also, they had pumped out the engine room bilges of oily water, and the rainwater accumulated in the cargo hold of the *Tyee Princess*. However, the oil had not been removed from machinery sumps, hydraulic systems or fuel tanks of the *Tyee Princess,* or from the bilges and oil filter casing in the engine room of the *YF-875*. Consequently, the overall situation remained unchanged in that oil pollution will occur if either of the vessels sinks.

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

Throughout, the Administrator encouraged those responsible to take measures to remove the threatened pollution, because response action in the future will undoubtedly be more expensive if the vessels sink at the wharf. Meanwhile, these two files are held in extended abeyance.

2.31 Vicki Lyne II (2011)

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

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

As of the end of the fiscal year, CCG advises that it is working with Public Works Canada in respect to developing contract specification for the process of tendering. No claim has been filed with the Fund. This file is held in abeyance.

2.32 Centurion (2012)

Note: Two claims 2.32 and 2.33 arose out of the same incident.

On January 25, 2012, a Canadian owned dry bulk carrier, *Centurion*, caused an oil pollution incident in the ice-covered waters surrounding the port of Sorel, Quebec. Transport Canada Marine Safety inspectors were informed that the engine room crew had inadvertently discharged an oily mixture by virtue of having activated the bilge pump. As a result, it was estimated that approximately 9,000 litres of pollutants were discharged into port waters. The Canadian Coast Guard (CCG), a certified Response Organization and other contractors were mobilized in order to monitor the clean-up operation. By February 3 most of the pollution had been recovered. There remained some oil pollution in the crevices of the quay, but ice conditions

prevented removal at that time. It was envisioned that a further clean-up operation would be necessary in either spring or summer.

When originally informed about this incident by Coast Guard, the Administrator instructed counsel to keep a watching brief and to explore whether or not the pollution incident falls within the scope of the Bunker Convention. Counsel was also instructed to enquire with Transport Canada about the identity of the insurers under the certificate of compulsory insurance.

On September 11, 2012, the Administrator received a claim from the Department of Fisheries and Oceans (DFO/CCG) for costs and expenses in the amount of $26,703.53, pursuant to the *Marine Liability Act (MLA)*. The Administrator acknowledged receipt of the claim on the day it was received. At the close of the fiscal year the Administrator is continuing, with the assistance of counsel, his investigation and assessment of the DFO/CCG claim. Meanwhile, the file remains open.

2.33 Centurion (2012)

This claim from the Eastern Canada Response Corporation (ECRC) and the above-noted claim (section 2.32) from the Canadian Coast Guard (CCG) arose out of the same incident that occurred at Sorel on January 25, 2012. When the incident happened, the shipowner requested that ECRC respond and clean up the oil emanating from the ship *Centurion*. ECRC quickly cleaned up the oil pollution. In responding to the shipowner's request, ECRC incurred costs and expenses in the amount of approximately $111,000.00 which remains unpaid. As a consequence, on March 5, 2013, the Eastern Canada Response Corporation filed a claim with the Administrator totaling $111,055.48, plus applicable interest, for compensation in cleaning up the oil spill. The claimant advises that an invoice had been submitted to the shipowner on March 30, 2012, but was later informed that the shipowner had filed for restructuring under the *Companies Creditor Arrangement Act.* As a result, the *Centurion* was vested free and clear of all encumbrances to a new owner. The Administrator acknowledged receipt of the claim.

At the close of the fiscal year the Administrator is continuing with the assistance of counsel to investigate the ECRC claim. It is noted, however, that a Response Corporation, as defined in the *Canada Shipping Act* has no direct claims against the Ship-source Oil Pollution Fund unless it has taken all reasonable steps to recover the amount from the shipowners or their insurers. Meanwhile, the file remains open.

2.34 Cetacean Venture (2012)

On February 21, 2012, the Canadian Coast Guard (CCG) received a report from the Harbour Authority at Freeport, Nova Scotia, that there was an oil sheen around the fishing vessel *Cetacean Venture*, which was secured at the local South Cove wharf. The Authority was unable to reach the vessel owner. The CCG lifeboat at nearby Westport was tasked to investigate. The lifeboat crew found a light oil sheen but could not determine the source. Adverse weather prevented CCG from responding further until February 24, at which time CCG environmental response personnel proceeded from Dartmouth to investigate. They found the leaking of oil from the fishing vessel resulted from damaged fuel lines and open fuel tanks valves. The fuel lines were secured and sorbents were placed to absorb any additional leakage. It was estimated that 40 litres of oil remained in the fuel tanks. The CCG personnel met with Environment Canada enforcement officers and assisted in taking samples of the oil from the surface of the water, as well as from the fuel tanks. The

oil samples were passed to Transport Canada for investigation. On February 27, CCG personnel responded to remove the fuel from the boat. It was pumped out and disposed of in a waste oil tank provided by the Harbour Authority. It was contaminated and not reusable.

The CCG Situation Report indicated that the oil sheen surrounded several other fishing vessels, and that some lobsters in cages had died from the pollution. With the assistance of the RCMP, the CCG personnel contacted the vessel owner, but he advised that he did not have insurance and was financially unable to care for *Cetacean Venture*.

On May 8, 2012 the Administrator received a claim from the Canadian Coast Guard on behalf of the Minister of Fisheries and Oceans for costs and expense incurred in the amount of $ 3,176.96, pursuant to the *Marine Liability Act.* Receipt of the claim was acknowledged on the following day. After investigation and assessment of the claim, the Administrator made a final offer to DFO/CCG for the established amount of $3,176.96 plus interest. The offer was accepted by DFO/CCG on June 5. The Administrator then directed payment in the amount of $3,205.60, inclusive of interest.

On June 12, the Administrator mailed a letter to the owner of the *Cetacean Venture* requesting payment of the cost incurred in respect of the measures taken by the Canadian Coast Guard during its response to the incident. The owner was informed about his responsibilities under section 77 of the Act. The owner was requested to respond by July 15, 2012, failing which the Administrator may commence legal proceedings to recover the expenditures. No reply was received. The Administrator concluded that, in view of the amount of the claim, it would not be prudent to spend further funds to recover the payment of compensation from the owner of the fishing vessel. Accordingly, on August 8, 2012, the Administrator decided to close the file.

2.35 Golden Dragon 1 (2012)

On April 10, 2012, the Canadian Coast Guard (CCG) received a report from the Harbour Authority at Prince Rupert, BC, that a fishing vessel, *Golden Dragon 1*, secured to the Fairview dock was discharging diesel oil. Along with the local wharfinger, CCG personnel attended the scene. They found a large oil slick encompassing the vessel and extending throughout the dock area. CCG assisted the Harbour Authority in streaming a containment boom and absorbent pads around the vessel. A Transport Canada Marine Safety inspector obtained oil samples. The vessel owner was reported to be out of the country and could not be contacted. Upon inspection of the unmanned vessel, CCG found that the bilge pump was pumping oily waste overboard that had accumulated in the bilges from a leaking fuel line. CCG effected temporary repairs and pumped the bilges of the remaining oily residue. It was estimated that 2,000 litres of diesel oil remained in the fuel tank.

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

On January 28, 2013, the Department of Fisheries and Oceans (DFO/CCG) filed a claim with the Administrator for costs and expenses in the amount of $3,697.35, pursuant to the Act. Receipt of the claim was acknowledged the following day. (CCG submitted the original claim in the amount of $4,697.35 to the vessel owner, who paid the amount of $1,000.00.)

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

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

2.36 Emerald Tide (2012)

On May 1, 2012, the Canadian Coast Guard (CCG) was informed that an old abandoned pleasure craft, *Emerald Tide*, was sinking near the fuel dock at Port McNeil on Vancouver Island. The fuel dock personnel had placed a bilge pump onboard when the vessel's automatic pumping system failed. The next day CCG Environmental Response personnel travelled from Victoria for an on-site assessment of the incident. Upon arrival the vessel was found to be low in the water, with visible rotten planking with patches above and below the waterline. The personnel discovered that the bilges were filled with oily waste above the deckplates. Furthermore, the engine room space was awash with oil. The fuel tanks contained several hundred litres of fuel. When contacted, the owner's representative informed CCG, in writing, that the owner did not have the financial means to respond to the pollution threat.

On May 7, CCG personnel removed the accessible oils from the vessel's machinery and tankage. Meanwhile, a commercial marine surveyor of Strathcona Marine Surveyors of Campbell River was contracted by Coast Guard to conduct an independent condition assessment of the *Emerald Tide.* The surveyor reported that the vessel was saturated with oil and the hull was thoroughly rotten. As a result, the vessel should be removed from the water in order to dispose of the contaminated materials.

Consequently, CCG engaged Public Works and Government Services Canada (PWGSC) to undertake competitive bidding to ensure that costs and expenses were kept to a minimum. On May 25, PWGSC awarded a deconstruction contract to Jenkins Marine Ltd. of Esquimalt. As a result, the *Emerald Tide* was towed to Esquimalt and demolition was completed on June 22.

When the towed vessel arrived at the Esquimalt Graving Dock, the Administrator instructed counsel to engage a technical marine surveyor to survey the old vessel after it was hauled out of the water. The marine surveyor reported that as a consequence of the poor hull condition and hydrocarbon-saturated hull planking, decking, stringers and framing, as well as residual hydrocarbons being contained within tanks, piping and machinery, the most economic course of action to minimize the threat of pollution from the *Emerald Tide* was to deconstruct the vessel.

On January 28, 2013 the Department of Fisheries and Oceans (DFO/CCG) filed a claim with the Administrator for costs and expenses in the amount of $123,073.89, pursuant to the *Marine Liability Act (MLA)*. Receipt of the claim was acknowledged the next day.

After completion of an investigation and assessment of the claim, the Administrator made a final offer to DFO/CCG for the established amount of $122,195.62, plus interest. The offer was accepted by DFO/CCG. On March 7, 2013, the Administrator directed payment in the amount of $125,370.70, inclusive of interest.

(In his letter of offer the Administrator complimented the Coast Guard personnel on both the content and presentation of the claim documentation).

As of the end of the fiscal year, on behalf of the Fund, counsel has written to the vessel owner and requested that he make arrangements to pay the costs incurred plus additional interest. The owner was asked to advise within fourteen days, what arrangements could be made to pay the amount. He was also informed that failing satifactory arrangements being made to pay the balance, the Administrator may proceed with an action in the Federal Court. The file remains open.

2.37 Portofino 46 (2012)

On September 3, 2012, the 46-foot sports cruiser, *Portofino 46,* sank at its berth in Port Dalhousie, Ontario. After sinking, the small passenger vessel began and continued to leak hydrocarbons, including diesel fuel and engine lubricating oil. The Corporation of the City of St. Catharines and the Department of Fisheries and Oceans requested that the owner raise the wreck forthwith, and take measures to prevent or minimize discharge of pollutants and damage to the environment. Because the vessel owner failed to take any effective measures, on September 7 the Corporation arranged for the wreck to be raised and placed in storage.

On November 2, the Administrator received a letter of notification from counsel for the City of St. Catharines that legal action had been taken to arrest the *Portofino 46* in order to recover its incurred costs and expenses. The letter also indicated that later a claim may be filed with the Fund. The Administrator acknowledged receipt of the notice of claim in the estimated amount of $40,000. At this point, the Administrator retained counsel to maintain a watching brief on the legal proceedings.

On November 7, the Administrator received from counsel for the Corporation, a Statement of Claim served upon the Fund pursuant to the Federal Court Rules. As of the end of the fiscal year, no claim for compensation has been filed with the Fund. The file remains open.

2.38 Colleen K (2012)

On December 12, 2012, the Canadian Coast Guard (CCG) received a report that an old 13-metre steel-hulled tugboat, *Colleen K*, had sunk at Port Simpson Marina in Northern British Columbia. The following day the CCG Environmental Response personnel, based at Prince Rupert, conducted a helicopter flight and observed that oil was visible around the submerged vessel, and several non-recoverable oil slicks were seen in the marina area. With local assistance, Coast Guard streamed a sorbent boom around the area of the polluting wreck. The tug owner explained that he did not have the financial resources to respond to the occurrence. As a result, Coast Guard engaged commercial salvors to take measures to remove the 1949 built tug from the marine environment.

The *Colleen K* was raised by the contractor on December 16, placed on a barge and taken to Wainwright Marine Services shipyard for survey and assessment. Coast Guard monitored the recovery operations throughout. Coast Guard hired an independent technical marine surveyor from Northern Breeze Surveyors Ltd. to attend at Wainwright Marine to determine the condition and evaluation of the vessel. The surveyor offered the opinion that the *Colleen K* was a "Total Constructive Loss" and the cost of repairs would far exceed any recoverable value.

Subsequently, CCG contracted with Wainwright Marine to remove all hydrocarbons from the tug, deconstruct and dispose of the debris in accordance with the applicable federal and provincial regulations. On March 20, 2013, the Department of Fisheries and Oceans (DFO/CCG) filed a claim with the Administrator for costs and expenses in the amount of $84,522.02, pursuant to the *Marine Liability Act (MLA)*. Receipt of the claim was acknowledged. The Administrator commenced an investigation and assessment of the claim, but it was not completed by the end of the fiscal year. Therefore the file remains open.

2.39 Pine Isle (2013)

On January 4, 2013, the Canadian Coast Guard (CCG) informed the Administrator that a small vessel, *Pine Isle*, had sunk at Silva Bay, Gabriola Island, BC. The vessel sank overnight on December 31 while at anchor and was discharging oil. The vessel was reported to be abandoned and the owner could not be found. Consequently, the CCG engaged a local contractor to refloat the wreck and prevent further discharge of oil pollutants. As of the end of the fiscal year, no claim has been filed with the Fund. The file remains open.

2.40 Mikon (2013)

On March 6, 2013, the Canadian Coast Guard (CCG) informed the Administrator that an ex-fishing vessel, *Mikon,* had sunk at Port Browning, Pender Island, British Columbia, and was discharging oil. The CCG Environmental Response personnel were tasked to deploy containment booms and absorbent pads in response to the incident. The vessel owner informed CCG that he did not have the financial means to respond to the incident. Coast Guard advises that it intends to raise the wreck to prevent further discharge and minimize pollution damage. As of the end of the fiscal year, no claim has been filed with the Fund. The file remains open.

2.41 Mystery Spill, Victoria, BC (2013)

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

2.42 Dominion I (2013)

In November 2011, the Canadian Coast Guard filed a claim with the Administrator for costs incurred in response to an occurrence with the *Dominion I*, while at anchor in Cowichan Bay, Vancouver Island. The Administrator found the claim to be established and directed payments as compensation (section 2.17 refers). In addition to the 2011 occurrence, there was another incident involving the same vessel back in 2005. At that time the Greater Victoria Harbour Authority filed a claim for oil pollution clean-up costs and expenses. It was assessed and settled.

In June 2012, The Administrator was informed by Coast Guard that, in light of the vessel's condition, it was necessary to take further pollution preventative measures. In order to conduct a thorough examination, Coast Guard cut the anchor cables and moved the vessel alongside a wharf. A local contractor, McAllister Marine Survey was engaged to conduct an onboard technical survey. At the same time – without prejudice to his obligations under the *Marine Liability Act* – the Administrator arranged through counsel for a technical surveyor to jointly survey the vessel along with the Coast Guard contractor. The surveyor reported that the vessel contains a significant quantity of oil and oily waste, which may amount to 55,000 litres of hydrocarbons.

McAllister reported that the condition of the vessel raises serious issues about the seaworthiness of the *Dominion I,* and the risk for pollution if the vessel sinks. The surveyor recommended that disassembly and scraping of the vessel is the only certain way of removing the threat to the environment.

In February 2013, Coast Guard advised that, through the department of Public Works Canada, it had obtained a Statement of Work to deal with the situation. This document would provide prospective contractors with the scope of work descriptions necessary to safely remove and dispose of hydrocarbons found onboard.

As of the end of the fiscal year Coast Guard has not awarded a tender for the work to be done. The file, meanwhile, remains open.

3. Challenges and Opportunities

Many of the challenges identified in previous Annual Reports have now been met. As already noted in previous reports, the offices of the SOPF have been successfully relocated. A new electronic data base has been installed to better manage SOPF record holdings. The records and information management system ensures that pertinent information is available on a timely basis to deal with access to information requests and ascertains that records containing personal information are dealt with in accordance with privacy laws and regulations. The Fund has also improved its financial controls and has for a number of years included in its reports properly audited financial statements.

There remain, however, two matters of concern to the Administrator. First, as noted in several of the oil spill incident narratives of section 2, the Administrator faces an ongoing challenge in dealing with claims resulting from abandoned and derelict fishing vessels, primarily on the Pacific Coast. When it comes to cost recovery, in most cases, it becomes impossible to recover any compensation paid out of the Fund, because the owners cannot be traced or have no attachable assets. Those vessels remain a challenge also for national, provincial and local government. The existing vessel licensing and registration systems do not accurately capture change of vessel ownership. Until this is fixed, we will continue to have difficulties in recovering costs in keeping with the Government's "Polluter pay Principle" from responsible ship owners.

Another challenge arises out of the failure of claimants to file claims on a timely basis. This has been a particular problem lately in a number of major claims. Late filing of claims makes it difficult for the Administrator to properly investigate and assess these claims. The problem is further exacerbated if the claims are not properly documented. The tardy filing of poorly documented claims impedes the Administrator in his efforts to recover the compensation that has been paid out of the SOPF from the primary responsible party and further serves to undermine the polluter pays principle. To assist claimants in filing claims, the Administrator has extensively revised the Claims Manual.

4. Outreach Initiatives

The Administrator's outreach initiatives are aimed at raising awareness of the existence of the Ship-source Oil Pollution Fund (SOPF) and its availability to provide compensation for oil pollution caused by ships. The outreach affords an opportunity for the Administrator to further his personal understanding of the perspectives of individual claimants, shipowners and other stakeholders who respond to an oil spill incident and, as a result, may file a claim for compensation. When attending meetings of the International Oil Pollution Compensation Funds (IOPC Funds), the Administrator maintains contact and dialogue with delegates representing international organizations and government agencies of IOPC Funds member states.

4.1 Canadian Marine Advisory Council (National)

The Canadian Marine Advisory Council (CMAC) is Transport Canada's national consultative body for Marine regulatory amendments and other domestic marine matters. The CMAC meetings are normally held in Ottawa during the spring and autumn. In addition, regional CMAC meetings are usually held twice a year in each of Transport Canada's operational regions. Participants include representatives of shipping companies, the fishing industry and other stakeholders who have a recognized interest concerning marine safety, recreational matters, navigational aids and so forth. There are Standing Committees and Working Groups that discuss issues and make recommendations for the development of regulations and standards, for example, for matters related to marine pollution prevention and response. During the fiscal year, CMAC held national meetings in Ottawa from April 23 to 26, 2012 and from November 6 to 8, 2012. The CMAC meetings are of interest to the Administrator, particularly the discussions and findings of the Standing Committee on the Environment. The Administrator personally attends some of the meetings, but when he is unable to be present the Fund is represented by a marine consultant. The Administrator wishes to keep abreast of the regulatory framework for the prevention of oil pollution from ships.

During the fall session, the Deputy Commissioner of the Canadian Coast Guard provided updates on some of the Coast Guard initiatives. The Deputy Commissioner reported that a fundamental priority for Coast Guard is to strengthen its Environmental Response Program. Recently, Coast Guard has been focusing on two specific areas. The first involves addressing the recommendations from external audits of the Environmental Response Program, such as assessing the response capacity of the Coast Guard Environmental Response program by applying to Coast Guard equipment the Transport Canada standards used to certify Canadian Response Organizations. Secondly, Coast Guard is also developing a plan to implement the Incident Command System for the Environmental Response program according to recommendations from past external audits. The Incident Command System is an internationally standardized management system used to organize and manage a range of operational capabilities for response to emergency incidents of any magnitude. Furthermore, it was announced that an independent Advisory Panel will be established to assess Canada's Marine Oil Spill Preparedness and Response regime.

With respect to the Canadian Arctic, a representative of Coast Guard is leading the Canadian delegation to the Arctic Council Task Force on Oil Spill Preparedness and Response. The task force is developing an agreement between Arctic nations to help each other in the event of an oil spill in Northern waters. The Administrator appreciates being invited to participate in the deliberations of the national CMAC sessions.

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

4.2 Annual General Meeting of the Canadian Maritime Law Association and Seminar

The Administrator attended the Annual General Meeting (AGM) of the Canadian Maritime Law Association (CMLA), held in Vancouver, May 11, 2012. The Administrator is a member of the CMLA which is an association devoted to promoting uniformity in maritime law. It is the Canadian chapter of the Comité Maritime International (CMI), an international organization devoted to developing international maritime conventions. The CMLA accomplishes its work by means of various subcommittees devoted to the study of various aspects of Canadian maritime law. Because the Association touches all aspects of maritime activity in Canada, the Administrator regards it as an important forum for fostering contacts with stakeholders in the field of maritime law in Canada.

Following the AGM, on May 12, the CMLA organized a one-day Maritime Law Seminar at which the Administrator gave a presentation, together with Mr. John O'Connor, a prominent maritime lawyer practicing in Quebec City, on the implications of various court decisions handed down in France in the *Erika* incident (1999) and the implications of those decisions for the compensation regime embodied in the 1992 Civil Liability and the IOPC Fund Conventions, which provide a regime for oil spills caused by tankers carrying cargoes of persistent oil. Canada, as is noted elsewhere in this report, is a member of this international regime. The presentation was well received and served to emphasize the importance of the international regime, which is a key element of the current Canadian regime contained in the *Marine Liability Act.*

4.3 Arctic Marine Oilspill Program (AMOP) Seminar

The Administrator was represented by a Marine Consultant at the 35th Arctic Marine Oilspill Program (AMOP) technical seminar on Environmental Contamination and Oil Spill Response held in Vancouver from June 5 to 7, 2012.

Environment Canada began the Arctic and Marine Oil Spill Program (AMOP) in 1978 to improve the knowledge base and technology for cleaning up Arctic marine oil spills. The AMOP Technical Seminar soon evolved into an international technical forum about oil spills in any environment, as well as spill-related topics. The seminar is organized annually by the Emergencies Science and Technology Section (ESTS) of Environment Canada. The ESTS runs an ongoing national program of research and development (R&D) with respect to marine oil spills. The results of the R&D program are applied to actual oil spill incidents, providing assistance to spill responders on the direction of their work. Most of the ESTS projects are conducted in partnership with other government departments, agencies, and industry, and cover a wide spectrum of issues related to spills.

During the three days of the seminar, there were many presentations about a broad range of technical development: the detection, tracking and remote sensing of oil spills, operational approaches and contingency planning, the fate and effects of oil. With respect to counter-measures for oil spills, a number of presentations addressed the issues of using dispersment and oil surface washing agents and their effectiveness. A representative of BP America Inc. discussed the results of controlled *in situ* burning of oil on the surface of the water during the *Deepwater Horizon* incident that occurred in 2010 in the Gulf of Mexico. Also, presentations were made by a representative of Norway about the country's ongoing field research, response technologies, and counter-measures for dealing with oil spills in ice-covered waters.

Two professors from the Faculty of Engineering and Applied Sciences, Memorial University, Newfoundland, gave a series of presentations on the University's research on the challenges of combating offshore oil spills in the cold waters off Newfoundland. Their research and simulation programs focus on offshore oil spill recovery in the event of an incident in the harsh environments such as on the Grand Banks.

The displays provided were informative and covered a range of oil pollution clean-up equipment and the latest technologies. This up-to-date information is valuable for the Administrator in the process of investigating and assessing claims filed with the Fund. The AMOP seminar coordinator from Environment Canada expressed appreciation that copies of the Administrator's Annual Report were made available to participants.

4.4 United Nations Convention on the Law of the Sea (UNCLOS) Conference

To mark the 30th Anniversary of the signing of the United Nations Convention on the Law of the Sea (UNCLOS), the University of Virginia and Dalhousie University, jointly organized a conference. It was the 36th conference organized by the Law Schools of the two universities, which are alternatively held at the University of Virginia and Dalhousie University. This year the conference was in Halifax.

With the increase in offshore activities on the continental shelf, it was thought appropriate to focus the discussion of the conference on various aspects of offshore activities, with heavy emphasis on offshore oil and gas exploration and exploitation. Obviously, the *Deepwater Horizon (Macondo)* Incident of 2010, in the Gulf of Mexico was on every one's mind, but there was also much focus on activities in the Arctic and the opening of both the North East and the North West passage.

It was noted at the outset of the conference that one area, namely, liability and compensation relating to accidents, has not been comprehensively addressed in respect of offshore activities on the continental shelf. For this reason, the Administrator was invited to make a presentation outlining what has been achieved in this regard in the realm of maritime transport. The aim was to provide ideas as to what could be done with respect to liability and compensation in relation to offshore oil and gas exploration and exploitation.

The Administrator in his presentation gave a brief history of the regime of liability and compensation that has been developed internationally to deal with tanker spills resulting from the transportation of "persistent" oil in bulk as cargo. He noted that this regime was a shared liability regime, the shipowner assuming responsibility on a strict liability basis, backed by compulsory insurance, up to a specified limit of liability, calculated as a function of the ship's tonnage, with cargo owners contributing supplementary compensation through the mechanism of the International Oil Pollution Compensation Fund (IOPC Fund).

The Administrator also noted that the concept of "sharing" was further buttressed by two private sector agreements, the Small Tanker Oil Pollution Indemnification Agreement (STOPIA) and the Tanker Oil Pollution Indemnification Agreement (TOPIA), essentially undertakings by the Protection and Indemnity Clubs (P&I) on the behalf of shipowners to further alleviate the burden of cargo interests in providing supplementary compensation through the IOPC Fund.

To what extent the scheme governing oil spills from tankers could be adapted for use in respect of liability and compensation for offshore activities on the continental shelf remains to be seen.

4.5 Regional Environmental Emergency Team Conference (REET)

The Administrator was represented by a marine consultant at the 39th Atlantic Regional Environmental Emergency Team (REET) workshop and annual meeting held in Saint John, New Brunswick, on October 17 and 18, 2012.

By way of background, the regional Environmental Emergencies Teams are national and regional advisory committees mandated to provide guidance in the prevention, planning and response to environmental emergencies. These teams are made up of representatives from federal and provincial governments and from private industry. Each committee is referred to as the Regional Environmental Emergencies Team or REET. The Regional REET focuses on providing scientific and technical advice to the lead agency and industry on behalf of all government departments and agencies. It develops consensus on environmental protection and clean-up priorities. Advice is also provided on waste storage and disposal.

This year, the workshops focused on revalidation of the REET process and how to develop a sustainable path forward. Environment Canada indicated that, because of restructuring and reduction of personnel in the regional offices, it cannot sustain the REET model in both response and preparedness in the way that its partners have experienced in the past. During an environmental response, Environment Canada will continue to provide scientific support, but given that its new response centre is now located in Montreal, it will not be able to effectively chair the regional REET meetings as previously performed.

Environment Canada has established a new National Environmental Emergencies Centre (NEEC) in Montreal. The NEEC is now Canada's prime emergency response coordination centre, providing basic bilingual scientific and technical advice in the event of an environmental emergency. NEEC personnel will travel to attend major incident sites and provide expertise when requested by the lead government response agency. Within Environment Canada, discussions are continuing about the formation of a structure where the lead agency would coordinate scientific and technical information for small to moderate incidents. Environment Canada is committed to seek practical and sustainable solutions to achieve a successful transition and to support lead agencies in gathering scientific information for environmental response from various sources. A follow-up meeting has been planned with representation from each lead agency to agree on the new administrative and operational approach. The options for establishing a Chair for the new model are under consideration.

The Administrator appreciates being invited to attend the Regional environmental conferences.

4.6 Canadian Marine Advisory Council (Northern)

The Administrator was invited to attend the Regional Canadian Marine Advisory Council (CMAC-N) meetings held in Ottawa on December 4 and 5, 2012. The Fund was represented by a marine consultant engaged by the Fund. In the past, the CMAC-N meetings were normally held bi-annually and usually convened in different northern communities. However, this year for financial reasons, Transport Canada reduced the regional CMAC meeting to once a year.

The December meetings were co-chaired by representatives of the Regional Director of Marine, Transport Canada, Prairie & Northern Region and the Assistant Commissioner of Canadian Coast Guard, Central and Arctic Region. The participants represented federal and territorial governments and a range of operators from the Arctic marine shipping industry. The major northern sealift operators were present,

namely, Nunavut Eastern Arctic Shipping Inc., Northern Transportation Company Ltd., CanArctic Shipping-Fednav, Coastal Shipping Ltd., Desgagnés TransArctic Inc., Petro-Nav and others. Presentations were made by representatives of Environment Canada, Transport Canada Marine, Fisheries and Oceans Canada, the Canadian Hydrographic Service, Parks Canada Agency, the Government of the Northwest Territories and the Government of Nunavut.

During the meeting, discussions focused on the increase in the annual Arctic shipping activities. For example, the Marine Communications and Traffic Services reported that some 117 vessels made a total of 295 voyages in the Northern Canada Vessel Traffic Services zone during the 2012 shipping season. Nunavut Eastern Arctic Shipping reported in its 2012 season overview that it had conducted 13 sailings with its fleet of dry cargo ships for over 50 destinations. Petro-Nav noted that during its 2012 sealift some 75,000 cubic metres of petroleum products were delivered to 17 locations in Nunavik and Nunavut in 200 ship days. In the various communities the oil was pumped ashore through floating hoses and in some locations 7,500 feet of hose are necessary.

The operators of the product tankers engaged in the Arctic sealift operations advised that oil spill response exercises were carried out on each ship prior to departure to the Arctic. Also, exercises are routinely conducted in the North preferably with client shore side participation.

As reported in previous Annual Reports, shipowners do not have contractual arrangements with a certified Response Organization in Arctic waters north of 60 degrees latitude. Coast Guard indicated the joint Canada and United States (CAN US NORTH) 2012 exercise focused on oil well spills. The CCG Beaufort Regional Environmental Assessment initiative is continuing. The various presentations concluded with comments and questions from the participants.

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

4.7 The 24th Annual Maritime Law Seminar

The Administrator attended the above seminar, December 7, 2012, as part of his outreach initiatives. The program of the conference included a variety of subjects, including a presentation on West Coast Terminal Developments in Prince Rupert, B.C. An update on international and Canadian maritime law initiatives was provided by Ms. Gillian Grant, Senior Counsel, Legal Services, Transport Canada. The conference provided opportunities to cultivate contacts with various stakeholders in maritime transport in Canada, including lawyers active in the field of maritime law, representatives of shipowners' associations, marine insurers and port authorities.

4.8 Meeting with the Ferries Operators Association

On March 5, 2012, at the request of the Ferries Operators Association, the Administrator met with representatives to discuss the nature and purpose of the Ship-source Oil Pollution Fund (SOPF). The two representatives present were Mr. Stuart Jones of the Ontario Ministry of Transport and Mr. Walter Pumphrey, Marine Transportation Services, Government of Newfoundland and Labrador. Broadly speaking they wanted to know what linkages, if any, might be established between their organizations and the SOPF.

The Administrator gave an outline of the history of the SOPF and its predecessor, Maritime Pollution Claims Fund, noting that its principal purpose is to provide compensation for oil pollution damage and any costs and expenses incurred for clean-up and pollution prevention measures. He emphasized that the SOPF is there principally for the benefit of claimants, not for the shipowner, since the basic principle remains that the polluter pays. To the extent that compensation is paid out of the Fund for established claims, the Administrator is obliged to take all reasonable steps to recover the amount from the owner or any other party that may be responsible for the pollution damage.

The focus was on the notion of "owner" as defined in section 75 of the *Marine Liability Act (MLA),* noting that both the governments of Ontario and Newfoundland might be claimants to the extent that they have been involved in cleaning up of a spill from a ship. In the case of ferries, however, owned and operated by those governments, that have caused oil spills, there may not be a claim against the SOPF. Crucial to the issue would be the precise relationship between the ferry and the government concerned. In some cases, the government owns the ferry, in other cases it may own the ferry but it has entrusted its operation to a separate company, and in other cases it does not own the ferry at all. These relationships would have to be studied in determining whether the SOPF would pay a claim.

The Administrator provided some information on the relationship between the SOPF and the IOPC Fund, but it was noted that the international regime was not relevant, given that it is confined to oil spills caused by laden tankers. Discussions focused on the status of Response Organizations (RO) and their inability to claim directly against the SOPF, except where they have been unsuccessful in obtaining compensation from the owners or their insurers.

The Administrator pointed out that the principal issue in most claims dealt with by the SOPF relates to whether the measure taken and the expenses are reasonable. There was also some discussion of the right of the Minister of Fisheries and Oceans to recover reasonable monitoring costs, noting that the extent of those costs is often a bone of contention between the SOPF and the CCG.

4.9 Workshop on Assessing Marine Transport of Canadian Oil Sands

The Administrator attended a one-day workshop in Vancouver, March 21, 2013, to discuss marine transport in connection with Canadian oil sands. The workshop was organized by IHS CERA, an information handling organization that is also in the business of organizing workshops on various topics of current interest. Since the topic of oil sands and their possible marine transportation is under discussion in various quarters, the Administrator agreed to attend this workshop, given that consideration of marine transport of oil sands would have important implications for the Canadian regime of liability and compensation for oil spills caused by ships.

The workshop opened with an overview of various elements of marine transport, including the rules and regulations governing tanker safety under the *Canada Shipping Act* and the regime of liability and compensation contained in the *Marine Liability Act.* Canada's jurisdiction over different bodies of water were also described, as well as the need or otherwise of various pipeline projects aimed at opening up new markets for Canadian oil sands. An analysis of tanker safety in the years since 1989 was provided, suggesting that tanker safety had significantly improved over the years, evidenced by the decline in tanker incidents, this despite the increase in the number of tankers and their total carrying capacity.

Much of the discussion focused on tanker traffic out of Vancouver (Kinder Morgan) and possible increase of tanker traffic out of Kitimat (Enbridge). Response preparedness in Canada and in other jurisdictions (United States, Norway, and Australia) was discussed and compared. The Pacific Pilotage Authority made a presentation on the pilotage regime on the West Coast, including Vancouver and Kitimat.

In summary, the workshop proved to be most instructive on this very topical subject. It also provided a valuable opportunity for the Administrator to forge new contacts with key personnel who have current and future interests in tanker traffic on the West Coast.

4.10 CANUSLANT Information Sessions

As requested by the Administrator, one of our Marine Consultants attended the noted CANUSLANT Information Session and presented the topic "Compensation, Canada the Ship-source Oil Pollution Fund".

Participants included industry representatives from non-governmental organizations (NGO's) including Grand Manan Whale and Seabird Research Station, Eastern Charlotte Waterways Inc. and Fundy Baykeeper-Conservation Council of New Brunswick; Fisheries including Charlotte County Clam Harvesters Co-operative, Grand Manan Fisherman's Association, Alma Fishermen's Association and Lobster Storage Association of New Brunswick; and Aquaculture, represented by Atlantic Canada Association of New Brunswick. In addition, there was a broad representation by Government including United States National Oceanic and Atmospheric Administration, the Canadian Coast Guard, Fisheries and Oceans Canada, Marine Department of Marine Resources, Marine Department of Environmental Protection, Environment Canada, Transport Canada, Canadian Food Inspection Agency, New Brunswick Environment and Local Government and New Brunswick Agriculture Aquaculture and Fisheries.

This was very much an information session, and during the course of the day it was noted that it had been more than ten years since a similar session had been held. The day was co-chaired by Canadian Coast Guard and US National Oceanic and Atmospheric Administration. The focus at the operational level was treating the geographic area of the Bay of Fundy as one spill potential area irrespective of the Canadian or US geography and the jurisdictional issues which might arise post spill.

CANUSLANT 2013 is scheduled for June 18-20, in Saint John, New Brunswick, and this session (March 19, 2013) was used to inform the group on the focus of CANUSLANT 2013. Specifically, the need to work closely with the fishing communities, post spill to manage effectively the fisheries and to establish protocols for use, if necessary, for reopening transborder joint fisheries. Transport Canada provided a very interesting presentation on the use of fishing vessels of opportunity post spill to assist in operations. This was followed by a question and answer session with a focus on understanding any additional requirements of Transport Canada for vessels or crews in the event the vessel switched from being a fishing vessel to a contracted commercial vessel.

The Manager from Alert (Response Organization (RO)) discussed their interest in having fishermen participate in spill response with their fishing boats and noted that it has been a number of years since training was undertaken by the RO to train local fishermen and that they were interested in moving in this direction. Those present indicated this was welcome.

Two case studies were briefly presented and discussed; the Deepwater Horizon Spill, Gulf of Mexico and the *MT Hebei Spirit* Oil Spill. The focus of the Deepwater discussion was related to fishing closure limits and

the impact of spills on fish. The discussion of the *Hebei Spirit* Spill was on the similarity of the environment of the Bay of Fundy to the area in Korea where the spill occurred.

There was significant interest by the participants in the discussion concerning the closing and reopening of fisheries in the event of a spill and the specific impact of closures on fishermen and aquaculture. Participants expressed their thanks for the SOPF attendance at and contribution to the working session. At the close of the day a working group was struck to further the ongoing work of involving local people involved in the various fisheries in developing contingency plans, protocols and response options prior to a spill occurring in the local area.

5. SOPF Involvement in the International Compensation Regime

The Administrator attended two meetings of the governing bodies of the International Oil Pollution Compensation Funds (IOPC Funds), as part of the Canadian delegation, respectively, April 24 to 27, and October 15 to 19, 2012. Additionally, the Administrator attended a meeting of the consultation group, January 17, 2013, that has been established by the Administrative Council of the 1971 Fund to consider options and make recommendations for the winding up of that Fund.

It is not proposed to give a detailed account of the meetings of the governing bodies, since the records of decisions of those meetings are available online at www.iopcfund.org. Instead it is proposed to deal with the highlights of those meetings, beginning with some of the incidents being dealt with by the governing bodies. This report will also provide details of the budget adopted at the October meeting, since contributions payable to the Funds are based on the budget. It may be recalled that the SOPF pays contributions levied by the international funds on behalf of receivers of contributing oil located in Canada. Finally, the report will deal with the consultation group, referred to above, in connection with the winding up of the 1971 Fund.

5.1 Incidents

As reported in previous Annual Reports, an administrative council has been set up to deal with the outstanding business of the 1971 Fund. It may be recalled that the governing convention for the 1971 Fund has ceased to be in force as of May 24, 2002. Nevertheless, it is not possible to wind up the Fund until all outstanding business, particularly compensation matters in respect of all incidents, have been resolved. Outstanding compensation matters relating to incidents and other issues that currently impede the winding up of the 1971 Fund will be dealt with later in reporting on the consultation group.

Turning to incidents covered by the 1992 Fund, the *Hebei Spirit* incident was extensively discussed in the governing bodies of the Fund both at the April and at the October meetings. As noted in previous reports a Claims Office, jointly administered by the IOPC Fund Secretariat and the P&I Club (Skuld) that provided insurance in respect of the vessel, has been established to deal with the assessment of claims. As of October 2012, 128,400 claims have been registered, 83,946 claims have been rejected and interim payments have been made in respect of 37,108 claims.

The majority of claimants who have received interim payments have not, however, agreed to the quantum assessed by the Claims Office. Consequently these claimants are maintaining their claims in the limitations proceedings in the Korean courts. Given the uncertainties as to the final amounts that IOPC Fund may have to pay, it was decided by the Administrative Council to maintain the level of payments at 35% of established losses. This decision follows from the terms of the conventions that require that all claims be dealt with on an equal footing and that claims be prorated where the total amount available under the conventions is insufficient to satisfy all established claims. The total amount available under the 1992 Civil Liability and Fund Conventions is $311.74 million. The Republic of Korea, at the time of the incident, was not party to the Supplementary Fund Protocol and therefore claimants do not benefit from the additional compensation available from that Fund.

The *Volgoneft* incident, dating back to December 20, 2007, is making progress but to date no payments have been made because of the unresolved issue of the so-called “insurance gap”. This gap results from the fact that the shipowner’s limit of liability under Russian law is lower than what the 1992 Civil Liability Convention prescribes due to the failure of the Russian government to implement higher limits in Russian

domestic law in keeping with the amendment of limits agreed to in 2003. This is unfortunate, since the amount of the "insurance gap" is small. Most other outstanding issues have been favorably resolved by court decisions. Discussions are ongoing between the Secretariat and the Russian government to try to resolve this issue, so that claimants of established claims, who have been waiting for a long time, can at last be paid.

Two other incidents merit specific mention, namely the *JS Amazing* incident and the *Redfferm* incident, both in Nigeria. In the case of the *Amazing* the IOPC Fund only became aware of the spill in May 2011, although, allegedly, it had occurred in June 2009. As late as March 2012 the Nigerian Ministry of Transport established a Marine Board of Inquiry to investigate the causes of the spill. The Board handed down its report a month later. That Board enumerated a number of causes for the spill, including poor management of the vessel, failure to maintain safe manning levels and the presence onboard at the time of the incident of unqualified master and crew. The immediate cause of the spill was the hitting of the remains of a mooring dolphin, the existence and location of which was unknown.

The incident reveals other disturbing circumstances, namely unsatisfactory or no insurance cover for the vessel and no payment of any compensation by the owner. There is also a suggestion that the vessel may not have been certified, in accordance with its class certificate, to carry heavy grade oil. Another circumstance that requires further investigation is whether an earlier spill from a vandalized oil pipeline may have contributed to oil pollution damage in the area. As of October 2012 a claim for £121.5 million has been filed against the shipowner. While investigations are still ongoing, the Executive Committee of the 1992 Fund has already made it clear that compensation in this case could only be paid on the basis of established losses.

The *Redfferm* incident also gives cause for concern. In this case, too, the incident allegedly took place in March 2009, but the IOPC Fund Secretariat was only notified of it as late as January 2012. It seems that the spill occurred during transshipment of oil, in the course of which the barge, *Redfferm*, sank and some 500 to 600 tonnes of oil were released. Currently there are uncertainties regarding the ownership of the barge and whether it was a seagoing ship within the meaning of the governing conventions. Some $26.25 million worth of claims have been submitted on behalf of 102 communities allegedly affected by the spill but no calculation or justifications for the claims have been provided. The Director has been instructed to continue his investigations both on the issue of the status of the vessel as seagoing and on the basis for the claims and report back to the Executive Committee at its next meeting.

Another recent incident relates to the Greek tanker, the *Alfa I*, which sank, March 5, 2012, in Greek waters, resulting in the tragic death of the master. In this case, too, there are uncertainties concerning the vessel, notably the amount of insurance cover for damage caused by the vessel, as well as the amount of oil she was actually carrying at the time of the accident. As of October 2012 a claim amounting to €13.3 million has been submitted to the owners by cleanup contractors. This claim is currently under investigation by the Secretariat. However, given the uncertainties, described above, the Executive Committee has not authorized the payment of claims, pending the results of further investigations.

5.2 Winding up of the 1971 Fund

As already noted, the 1971 Fund Convention ceased to be in force as of May 24, 2002. However, it has not been possible to wind up the 1971 Fund due to five incidents where compensation issues have not been resolved. There are other unresolved issues, notably some outstanding contributions and the failure in some states to file reports on oil receipts. The 1971 Fund has some £5 million in its accounts to cover its liabilities

and, although technically it could levy contributions to pay compensation, it is recognized that it would be difficult to do so, given that the governing convention ceased to be in force more than 10 years ago. It is therefore desirable that all outstanding incidents and other issues be settled without attempting to levy further contributions.

Of the five incidents, three could possibly be cleared up without the need for further payments by the Fund, notably, the *Vistabella, Iliad* and *Aegean Sea.* In the first case, the *Vistabella,* the Secretariat is seeking to enforce a judgment obtained in Guadeloupe in favor of the Fund against an insurer located in Trinidad and Tobago. The Fund membership is therefore in control should it wish to abandon its efforts to enforce the judgment, given the assessed amount involved, the legal costs of enforcement and the time it might take to achieve enforcement. Currently, the IOPC Fund has applied to the Privy Council in London, the final court of appeal for Trinidad and Tobago, to overturn a judgment in Trinidad and Tobago, denying this Fund the right to enforce the judgment in its favour.

In the second case, the *Iliad*, there is good reason to believe that the amounts of the claims will not exceed the shipowner's limit of liability, but the matter is before the Greek courts and it is impossible to predict when final court decisions will be handed down. In the third case, the *Aegean Sea,* the Fund does not face any liability on the strength of an agreement it reached many years ago with the Spanish government whereby the government agreed to pay all outstanding claims in consideration of a lump sum paid by the Fund to the government. However, there remains one claim where the claimant has declined to settle and the matter has been submitted to the Spanish courts for final adjudication. In this case too, it is impossible to predict when the judicial process might reach finality.

In the *Iliad* and the *Aegean Sea* discussions are underway, respectively, with the insurers and the Spanish government, to find solutions which would allow the IOPC Fund to bow out of these cases.

This leaves two cases, the *Plate Princess* and the *Nissos Amorgos,* both in Venezuela. In the first case, as previously reported, the Administrative Council has taken the decision not to comply with the judgment handed down by the final court of appeal in Venezuela, on the grounds that the claims in that case were time-barred, the 1971 Fund was not properly notified of the proceedings and the Fund was not given reasonable opportunity to defend itself in the proceedings dealing with claims. There is also a suggestion that some of the evidence submitted in support of the claims was fraudulent. In this case, therefore, the initiative is now with the Venezuelan claimants to decide whether to try to enforce the final judgment.

In the case of the *Nissos Amorgos,* the main bone of contention is two identical claims of $60 million filed in both the criminal and the civil courts by the Venezuelan government. All individual claims have long been assessed and paid by the shipowner and the IOPC Fund. Technically, the 1971 Fund is not a party to those claims by the government. There is another outstanding claim for $30 million filed by fish processors against the government and the 1971 Fund but there have been no developments in the prosecution of that claim for many years.

To try to resolve all outstanding matters, the Administrative Council has established a Consultation Group with the mandate to consider options and make recommendations for the early winding up of the 1971 Fund. The Group consists of five members, including Canada (Alfred Popp), who has also been elected to chair the Group. A first meeting of the Group was held at the IOPC Fund headquarters, January 18, 2013, and it is anticipated that it will file an interim report with recommendations to the meeting of the Administrative Council scheduled for the second half of April 2013.

5.3 Budget

At the October 2012 meetings of the governing bodies, budgets were adopted in respect of the three funds (1971 Fund, 1992 Fund, and Supplementary Fund). In the case of the 1971 Fund and the Supplementary Fund, the budget essentially consists of making provision for the payment to the Secretariat of a flat management fee. In both cases, the flat fee and other administrative costs can be met out of monies already on account for those Funds, so that no levy of contributions is required.

In the case of the 1992 Fund, the budget adopted by the Administrative Council of that Fund, includes a contribution of £15 million, of which £5 million was payable by March 1, 2013, and the remaining amount deferred for payment to the second half of 2013 to the extent that it may be required. The deferred amount would only be invoiced if the Executive Committee decided to authorize payments in respect of the *JS Amazing, the Redfferm* and *Alfa I* incidents. The £5 million levy has been invoiced and Canada has paid its share of it in the amount of $318, 156.19.

6.0 Financial Statements

This section contains the auditor's report on the financial position of the SOPF and the results of its operations as of March 31st, 2013.

SHIP-SOURCE OIL POLLUTION FUND

FINANCIAL STATEMENTS

MARCH 31, 2013

SHIP-SOURCE OIL POLLUTION FUND

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INDEPENDENT AUDITOR'S REPORT

To the Administrator of
Ship-source Oil Pollution Fund

We have audited the accompanying financial statements of the Ship-source Oil Pollution Fund, which comprise the statement of financial position as at March 31, 2013, the statements of operations, of change in net financial assets and cash flows for the year then ended, as well as a summary of significant accounting policies and other explanatory information.

Management's Responsibility for the Financial Statements

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

Auditor's Responsibility

Our responsibility is to express an opinion on these financial statements based on our audit. We conducted our audit in accordance with Canadian generally accepted auditing standards. Those standards require that we comply with ethical requirements and plan and perform the audit to obtain reasonable assurance about whether the financial statements are free from material misstatement.

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

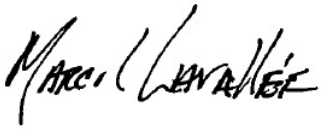
We believe that the audit evidence we have obtained is sufficient and appropriate to provide a basis for our audit opinion.

Opinion

In our opinion, the financial statements present fairly, in all material respects, the financial position of the Ship-source Oil Pollution Fund as at March 31, 2013, as well as the results of its operations, its change in net financial assets and its cash flows for the year then ended in accordance with public sector Accounting Standards.

Budget

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



Chartered Accountants, Licensed Public Accountants

Ottawa, Ontario
May 14, 2013

SHIP-SOURCE OIL POLLUTION FUND

STATEMENT OF FINANCIAL POSITION

MARCH 31, 2013

	2013	2012
FINANCIAL ASSETS		
Balance of the account with Receiver General for Canada (Note 3)	**$ 399,257,679**	$ 395,960,119
LIABILITIES		
Accounts payable and accrued liabilities	**$ 101,716**	$ 206,355
Provision for claims under review (Note 4)	**604,324**	518,000
TOTAL LIABILITIES	**706,040**	724,355
NET FINANCIAL ASSETS	**398,551,639**	395,235,764
NON-FINANCIAL ASSETS		
Capital assets (Note 5)	**355,177**	512,848
ACCUMULATED SURPLUS	**$ 398,906,816**	$ 395,748,612

Contingencies (Note 6)

_____, Administrator

SHIP-SOURCE OIL POLLUTION FUND

STATEMENT OF OPERATIONS
FOR THE YEAR ENDED MARCH 31, 2013

	2013	2012
REVENUE		
Interest	**$ 5,133,742**	$ 6,670,900
Recoveries related to previously awarded settlements	**37,605**	35,066
	5,171,347	6,705,966
CLAIMS		
Payments made towards Canadian claims	**(383,089)**	(652,635)
Decrease (increase) of provision for claims under review	**(86,324)**	141,371
International Oil Pollution Compensation Funds Contributions (Note 6)	**(318,156)**	(1,394,815)
	(787,569)	(1,906,079)
	4,383,778	4,799,887
OPERATING EXPENSES		
Administrator's fees	**96,800**	99,000
Legal fees	**109,248**	149,718
Consulting fees	**109,572**	130,727
Audit fees	**15,820**	15,820
Administrative services, salaries and office	**397,154**	401,826
Travel	**31,744**	34,662
Rent	**225,717**	225,717
Access to Information and Privacy Act (Note 8)	**77,745**	91,024
Amortization of capital assets	**161,774**	160,467
	1,225,574	1,308,961
OPERATING SURPLUS	**3,158,204**	3,490,926
ACCUMULATED SURPLUS, BEGINNING OF YEAR	**395,748,612**	392,257,686
ACCUMULATED SURPLUS, END OF YEAR	**$ 398,906,816**	$ 395,748,612

SHIP-SOURCE OIL POLLUTION FUND

STATEMENT OF CHANGE IN NET FINANCIAL ASSETS

FOR THE YEAR ENDED MARCH 31, 2013

		2013		2012
OPERATING SURPLUS	**$**	**3,158,204**	$	3,490,926
Acquisition of capital assets		**(4,103)**		(198,875)
Amortization of capital assets		**161,774**		160,467
		157,671		(38,408)
INCREASE IN NET FINANCIAL ASSETS		**3,315,875**		3,452,518
NET FINANCIAL ASSETS, BEGINNING OF YEAR		**395,235,764**		391,783,246
NET FINANCIAL ASSETS, END OF YEAR	**$**	**398,551,639**	$	395,235,764

SHIP-SOURCE OIL POLLUTION FUND

STATEMENT OF CASH FLOWS

FOR THE YEAR ENDED MARCH 31, 2013

		2013		2012
OPERATING TRANSACTIONS				
Operating surplus	**$**	**3,158,204**	$	3,490,926
Adjustment for:				
Amortization of capital assets		**161,774**		160,467
		3,319,978		3,651,393
Net change in non-cash working capital items:				
Accounts payable and accrued liabilities		**(104,639)**		123,955
Provision for claims under review		**86,324**		(141,371)
		(18,315)		(17,416)
INVESTING TRANSACTIONS				
Acquisition of capital assets		**(4,103)**		(198,875)
INCREASE IN BALANCE OF ACCOUNT WITH RECEIVER GENERAL FOR CANADA		**3,297,560**		3,435,102
BALANCE, BEGINNING OF YEAR		**395,960,119**		392,525,017
BALANCE, END OF YEAR	**$**	**399,257,679**	$	395,960,119

1. GOVERNING STATUTES AND PURPOSE OF THE ORGANIZAT/ON

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

2. ACCOUNTING POLICIES

Basis of accounting

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

Accounting estimates

The preparation of financial statements in accordance with Treasury Board accounting policies which are consistent with public sector accounting standards requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities at the date of the financial statements, and the reported amounts of revenue and expenses during the period. Actual amounts could differ from these estimates.

Revenue recognition

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

Capital assets

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

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

Recognition of the provision for claims

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

Recognition of the International Oil Pollution Compensation Funds Contributions

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

Foreign currency translation

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

3. BALANCE OF THE ACCOUNT WITH RECEIVER GENERAL FOR CANADA

The cash balance of the Fund is held within the Consolidated Specified Purpose Accounts of the Government of Canada. Public Works and Government Services Canada acts as the custodian of this cash balance, and Transport Canada performs the various transactions on behalf of the Fund. Interest is credited to the account in accordance with the provisions of the MLA at a rate based on a 5-year Government of Canada bond interest rate, calculated monthly. The interest rates varied between 1.12% and 1.51% during the year (2012: 1.26% and 2.59%). The average interest rate for March 2013 was 1.24% (2012: 1.48%).

4. MEASUREMENT UNCERTAINTY

Due to uncertainties inherent to the claims review process, it is possible that the provision for claims under review may be insufficient. Accordingly, a provision of $541,324 for claims received prior to March 31, 2013 (2012:$518,000) but not completely reviewed by that date has been calculated and recorded in the books. This provision is based on management's estimate and supported by claims payment historical data. All subsequent adjustments due to further investigation will be recognized in the year in which the claims are reviewed.

5. CAPITAL ASSETS

	2013		
	Cost	**Accumulated amortization**	**Net book value**
Computer equipment	**$ 133,005**	**$ 100,226**	**$ 32,779**
Furniture and equipment	**175,290**	**58,519**	**116,771**
Leasehold improvements	**487,714**	**282,087**	**205,627**
	$ 796,009	**$ 440,832**	**$ 355,177**

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

6. CONTINGENCIES

The Ship-source Oil Pollution Fund may be required to make contributions to the International Oil Pollution Compensation Funds, for which the amount owing is determined by the International Oil Pollution Compensation Funds. The amounts contributed are used to pay compensation for claims arising under the jurisdiction of the contracting states to the International Oil Pollution Compensation Funds. The size of the contribution is contingent on the number of claims received by the International Oil Pollution Compensation Funds, resulting in varying levels of contributions from year to year. Given this volatility, it has been determined that this contribution cannot be reasonably estimated from year to year. The amount of the contribution is paid and recorded by the Ship-source Oil Pollution Fund once the contribution is determined and requested by the International Oil Pollution Compensation Funds. During the year ended March 31, 2013, the Fund has contributed $318,156 (2012: $1,394,815) to the International Oil Pollution Compensation Funds.

During the fiscal year commencing April 1, 2013, the maximum liability of the Fund is $161,293,660 (2012: $159,854,965) for all claims from one oil spill. Furthermore, as of April 1, 2013, the Minister of Transport also has the statutory power to impose a levy of 48.37 cents (2012: 47.94 cents) per metric tonne of "contributing oil" imported into or shipped from a place in Canada in bulk as cargo in a ship. Both the maximum liability and the levy are indexed annually to the consumer price index. No levy has been imposed since 1976.

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

7. INFORMATION INCLUDED IN OPERATIONS

		2013		2012
Foreign exchange gain included in International Oil Pollution Compensation Funds contributions	**$**	**521**	$	42,437

8. ACCESS TO INFORMATION AND PRIVACY ACT EXPENSES

		2013		2012
Consultant fees	**$**	**57,856**	$	72,701
Records and information management database software		**7,701**		14,670
Administration costs		**2,168**		755
Legal fees		**10,020**		2,898
	$	**77,745**	$	91,024

The Access to Information and Privacy Act expenses incurred in 2013 were related to the implementation of a records and information database and activities to manage access to information and privacy requests and to protect the privacy of individuals with respect to personal information held by the SOPF.

9. RELATED PARTY TRANSACTIONS

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

During the year, the Fund has paid $225,717 (2012: $225,717) to Public Works and Government Services Canada (PWGSC) for the use of office space.

The Fund is committed to making minimum annual lease payments to PWGSC in the amount of $225,717 for the rental of office space. The commitment of the Fund under the lease agreement aggregates to $451,434 for the next two years. As a tenant, the Fund is also responsible to pay its share of escalation costs annually.

10. SUBSEQUENT EVENTS

The Fund recognizes a provision for an indemnification claim when a formal and duly prepared claim is submitted by the claimant and is effectively received by the Fund. All claims received before March 31, 2013 were provided for in the financial statements. During the period from April 1, 2013 to May 14, 2013, the Fund has received an additional claim totalling $31,548. This claim is not provided for in the financial statements.

11. BUDGET

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

12. COMPARATIVE FIGURES

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