



## Ship–Source Oil Pollution Fund



The Administrator's Annual Report  
2006 – 2007

Canada 

Photo courtesy of Lucie Thériault  
Environment Canada

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The Administrator's Annual Report

**2006 – 2007**

Canada





Office of the Administrator  
of the Ship-source Oil  
Pollution Fund

90 Elgin Street - 8<sup>th</sup> Floor  
Ottawa, Canada K1A 0N5

Bureau de l'Administrateur de la Caisse  
d'indemnisation des dommages dus  
à la pollution par les hydrocarbures  
causée par les navires

90, rue Elgin - 8<sup>ème</sup> étage  
Ottawa, Canada K1A 0N5

June 22, 2007

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

Dear Mr. Cannon:

It is my pleasure to submit the Annual Report on the operations of the Ship-source Oil Pollution Fund (SOPF) for the fiscal year beginning on April 1, 2006 and ending on March 31, 2007, pursuant to section 100 of the *Marine Liability Act (MLA)*.

In the course of the fiscal year covered by the report, there has been a change in Administrators. Mr. K.A. MacInnis, Q.C. was the Administrator until his term expired, December 19, 2006. I became the interim Administrator as of that date, by Order in Council, PC 2006-1669. My appointment became one for a fixed term of four years on January 25 by Order in Council, PC 2007-53. I would like to take this opportunity to pay tribute to the excellent work done by my predecessor during his eight year tenure of this office. I might also add that Mr. MacInnis has been most helpful to me in the preparation of this report, given that for most of the fiscal year that it covers he was in office.

As of January 25, 2007, the Governor in Council has also appointed a Deputy Administrator, Mr. Pierre Adam. I look forward to working with Mr. Adam in the coming years in running the affairs of the SOPF. Mr. Adam brings to this job valuable experience in the accounting and finance sector which will undoubtedly be of benefit to the Fund.

I anticipate that in the coming years the SOPF will continue to play an important role in the Canadian regime of liability and compensation for oil spills caused by ships. In that regard, I am mindful of the proposals for change contained in the

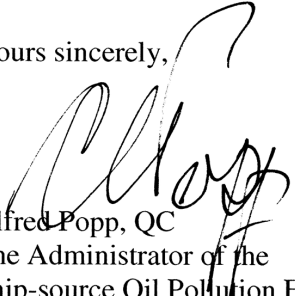
Discussion Paper published by your Department two years ago, which, if implemented, would make changes to Part 6 of the MLA. Those changes would significantly impact on the operations of the SOPF. Please be assured that I am ready and willing to assist your officials in the implementation of any changes that may be decided by Cabinet and Parliament, to the extent that such assistance is compatible with my mandate under Part 6 of the MLA.

In the first few months in office, I have already met with the Commissioner of the Canadian Coast Guard to exchange views on questions of mutual interest and concern. I am also pursuing contacts with the oil pollution response community, in recognition that an efficient and responsive compensation scheme requires active dialogue between the various stakeholders. In the light of renewed interest in the Canadian Arctic, with the prospect of increased marine transportation in that region, the Fund is also keeping an eye on developments in that area. Periodic meetings of the Canadian Marine Advisory Council (CMAC), coordinated by your Department, have proved to be a useful mechanism for us to keep abreast of developments in marine transportation in all regions of the country, including the Arctic.

Another challenge facing the SOPF will be the impact on its operations of the recently adopted *Federal Accountability Act*. The SOPF has also been made subject, as of last September, to the *Access to Information Act*. Both pieces of legislation will require additional time and resources to ensure that the Fund's operations are in full compliance with the legislation.

I look forward to working with officials of your Department and other departments in the coming years to ensure the continued successful operation of the SOPF in meeting the needs of Canadians who may suffer the unfortunate consequences of ship-source oil pollution.

Yours sincerely,



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

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## Abbreviations of Proper Names used in this Report

ABS	American Bureau of Shipping
ALERT	Atlantic Emergency Response Team
AMOP	Arctic Marine Oil spill Program
CCG	Canadian Coast Guard
CEDRE	Centre of Documentation, Research and Experimentation on Accidental Water Pollution
CEPA	Canadian Environmental Protection Act
CLC	Civil Liability Convention
CMAC	Canadian Marine Advisory Council
CMI	Comité Maritime Law International
CMLA	Canadian Maritime Law Association
COPE	Compensation for Oil Pollution in European Waters
CPA	Canada Port Authority
CSA	Canadian Shipping Act
CSO	Combined Sewer Outfalls
CWS	Canadian Wildlife Service
DFO	Department of Fisheries and Oceans
DNV	Det Norske Veritas
DWT	Deadweight Tonnage
EC	European Commission
ECA REG	Eastern Canada Vessel Traffic Services Regulations
ECRC	Eastern Canada Response Corporation
EEZ	Exclusive Economic Zone
ER	Emergency Response
EPA	Environmental Protection Agency
EU	European Union
FTPSO	Floating Production, Storage and Offloading Units
FSU	Floating Storage Units
GT	Gross Tonnage
HELCON	Helsinki Convention
HNS	Hazardous and Noxious Substances
ICONS	International Commission on Shipping
ICS	International Chamber of Shipping
IMO	International Maritime Organization
IOPC	International Oil Pollution Compensation Fund
ISM	International Safety Management Code
ITOPF	International Tanker Owners Pollution Federation
LLMC	Limitation of Liability for Maritime Claim
LOU	Letter of Undertaking
MARPOL	Marine Pollution
MCTS	Marine Communication Traffic Services
MEPC	Marine Environment Protection Committee
MLA	Marine Liability Act
MOU	Memorandum of Understanding
MPCF	Maritime Pollution Claims Fund
MSC	Maritime Safety Committee
MT	Motor Tanker
MV	Motor Vessel
NASP	National Aerial Surveillance Program
NEIA	Newfoundland Labrador Environmental Industries Association

NOAA	National Oceanic and Atmosphere Administration
NRDA	Natural Resource Damage Assessment
NTCL	Northern Transportation Company Limited
OBO	Ore/Bulk/Oil
OCIMF	Oil Companies International Marine Forum
OPA	Oil Pollution Act
OPA 90	Oil Pollution Act 1990 (US)
OSRL	Oil Spill Response Ltd
P&I Club	Protection and Indemnity (Marine Insurance) Association
PPM	Part per Million
PTMS	Point Tupper Marine Services Limited
REET	Regional Environmental Emergency Team
RINA	The Italian Classification Society
RO	Response Organization
SAR	Search and Rescue
SDR	Special Drawing Rights*
SITREP	Situation Report
SIMEC	Société d'Intervention Maritime, Est du Canada
SOLAS	International Convention for the Safety of Life at Sea
SOPF	Ship-source Oil Pollution Fund
TC	Transport Canada
TCMS	Transport Canada Maine Safety
TSB	Transportation Safety Board
UK	United Kingdom
US	United States
USCG	United States Coast Guard
VPA	Vancouver Port Authority
VPC	Vancouver Port Corporation
WCMRC	Western Canada Marine Response Corporation

\* The value of the SDR at April 1, 2007, was approximately \$1.75043. This actual value is reflected in Figure 1 in Appendix A.

## **Summary**

This annual report covers the fiscal year ended March 31, 2007. It describes Canada's domestic compensation regime. Canada's national Fund, the SOPF, covers ships of all classes as well as persistent and non-persistent oil and mystery spills. In addition, Canada is a Contracting State in an international compensation regime that mutualizes the risk of pollution (persistent oil) from sea-going tankers.

### **Financial Status**

This report addresses the financial status of the SOPF, including claim settlements in Canada and the amount of payments by the SOPF to the international Funds – Section 7 refers. During the year, Canadian claims totalling \$ 218,585.13 before interest were settled and paid in the aggregate amount of \$ 201,013.66 plus interest of \$ 9,892.63. The Administrator recovered from third parties liable \$ 10,200.00 respecting payments made out of the SOPF to some claimants. As at March 31, 2007, the balance in the SOPF was \$ 363,782,610.94.

The SOPF is liable to pay claims for oil pollution damage or anticipated damage at any place in Canada, or in Canadian waters including the exclusive economic zone of Canada, caused by the discharge of oil from a ship. Commencing April 1, 2007, the maximum liability of the SOPF for all claims from one oil spill is \$ 149,567,763.80.

During the new fiscal year, the Minister of Transport has the statutory power to impose a levy for the SOPF of 44.85 cents per metric tonne of “contributing oil” imported into or shipped from a place in Canada in bulk as cargo on a ship. The levy is indexed to the consumer price index annually. No such levy (MPCF/SOPF) has been imposed since 1976.

Since 1989, the international IOPC Funds have received approximately \$ 42 million out of the SOPF. Canada is currently a Contracting State to the 1992 international oil pollution compensation regime. As such, our national Fund, the SOPF, continues to have potential significant future liabilities to the IOPC Funds for foreign incidents.

### **Oil Spill Incidents**

This report outlines the status of pollution incidents (Section 3) brought to the attention of the Administrator. The incident section indicates claims that have been settled, including claims that are in various stages of advancement. During the year, the Administrator handled 63 active incident files. Some 55 of these incidents are reported in section 3, because they involved either claims to the SOPF or were of specific interest due to the circumstances surrounding them. The current status of recovery actions by the Administrator against shipowners is also noted in the incident section.

During the fiscal year, the Administrator responded to all enquiries about compensation entitlement and investigated all claims resulting from oil pollution. The length of time taken to process the respective claims depended on the completeness of the supporting documentation.

## **Outreach Initiatives**

The Administrator continues his outreach initiatives by actively participating in conferences, seminars and workshops. He met with management personnel in federal departments, government agencies, and organizations of the marine industry.

These outreach initiatives (Section 5) included:

- Participating in meetings with senior representatives of Fisheries and Oceans, Transport Canada, Environment Canada and the Canadian Coast Guard;
- Attending sessions of the Canadian Marine Advisory Council's National Conferences held in Ottawa;
- Being represented by a Marine Consultant at the Marine Advisory Council (Northern CMAC) meeting held in Churchill, Manitoba;
- Participating in the Canada – United States Joint Response Team meeting held in Halifax, Nova Scotia;
- Attending meetings of the Group of Heads of Federal Agencies held in Ottawa;
- Attending the Canadian Maritime Law Association Executive Committee meeting held in Ottawa;
- Attending meetings of the Eastern Admiralty Law Association (ELA) held in Halifax;
- Participating in the conference on New Directions in Maritime Law, 2006, presented by ELA and the Nova Scotia Barristers's Society held in Halifax;
- Attending the Administrative Law and Practice conference held in Toronto, Ontario;
- Participating with representatives from government agencies and the marine industry – including USCG and ITOPF – in an On-Scene Commander Course for effective response to significant oil spill incident held at the Canadian Coast Guard College;
- Holding discussions with representatives of Organizations in the United Kingdom, including ITOPF, OCIMF and P&I Clubs.

## **Challenges and Opportunities**

Protection of the marine environment from oil pollution is the central theme addressed in the Section 4 (Challenges and Opportunities).

Section 4 outlines how compensation for environmental damage is handled differently under MLA, the 1992 CLC, the 1992 IOPC Fund Convention, and the US OPA 90.

It is noted that Environment Canada is recognized as the federal authority for environmental advice during a pollution incident. Environment Canada chairs the Regional Environmental Emergency Team (REET), which is responsible for promoting consolidated scientific information during the course of oil spill response operations. REET is comprised of representatives from federal, provincial, first nations, municipal and other agencies as necessary.

The Canadian compensation regime covers all classes of ships, as well as persistent and non-persistent oil and mystery spills. The SOPF is liable to pay claims for oil pollution damage, or anticipated damage, in Canadian waters including the exclusive economic zone caused by the discharge of oil from a ship.

Section 51 of the Marine Liability Act (MLA) makes the shipowner strictly liable for oil pollution damage caused by his ship, and for costs and expenses incurred for clean-up and preventive measures. The statutory claims regime of Part 6 of the MLA stems from the basic principle that the polluter should pay. In addition, Canada is a Contracting State in the international compensation regime, which mutualizes the risk of pollution (persistent oil) from sea-going tankers. There are new potential fiscal challenges for the SOPF arising out of the international regime. Section 4 provides a brief update on several International challenges, such as the work of the 4th Intersessional Working Group to promote quality shipping for the transportation of oil by sea; the new International Convention of Civil liability for Bunker Oil pollution damage; and, the International Convention on Liability and Compensation for damage in connection with the carriage of Hazardous and Noxious Substance by sea.

Included in the text of this report are updates on CCG's strategy for the prevention of an oil spill, and operational plans to respond to any incident that might occur north of 60° latitude. Also, included is an overview of the current initiatives undertaken by marine sealift operators to train ships' crew, and community stakeholders, to respond to an oil spill that could happen during the discharging of bulk fuel oil by floating hose from their ships at anchor.

The report also contains certain information about a report by the International Tanker Owners Pollution Federation Ltd. (ITOPF) on trends in oil spills from tankers, which illustrate that oil tanker incidents are decreasing at the International level. Since 1974, ITOPF has maintained a database of oil spills from tankers, combined carriers and barges, which includes all reported accidental spillages.

## **Appendices**

During the year the Administrator, as a member of the Canadian delegation, attended and reported on the Executive Committee and the Assembly sessions of the International Funds held at IMO headquarters in London. Excerpts from his report on these proceedings are contained in the Appendices.



## **1. Responsibilities and Duties of the Administrator**

The Administrator, appointed by the Governor-in-Council:

- Holds office during good behaviour and, as an independent authority, must investigate and assess all claims filed against the Ship-source Oil Pollution Fund (SOPF), subject to appeal to the Federal Court of Canada;
- Offers compensation to claimants for whatever portion of the claim the Administrator finds to be established and, where a claimant accepts an offer, the Administrator directs payment to the claimant out of the SOPF;
- Prepares an annual report on the operations of the SOPF, which is laid before Parliament by the Minister of Transport;
- Has the powers of a Commissioner under Part 1 of the *Inquiries Act*;
- May take recourse action against third parties to recover the amount paid from the SOPF to a claimant and may also take action to obtain security, either prior to or after receiving a claim;
- Becomes a party by statute to any proceedings commenced by a claimant against the owner of a ship, its insurer, or the International Oil Pollution Compensation (IOPC) Funds, as the case may be;
- Has the responsibility under the *Marine Liability Act* (MLA) to direct payments out of the SOPF for all Canadian Contributions to the IOPC Funds (such contributions are based on oil receipts in Canada reported by the Administrator to the Director of the IOPC Funds); and
- Participates in the Canadian Interdepartmental Committee and joins the Canadian delegation to meetings of the Executive Committee and the Assembly of the IOPC Funds.





## **2. The Canadian Compensation Regime**

The SOPF came into force on April 24, 1989, by amendments to the CSA. The SOPF succeeded the Maritime Pollution Claims Fund (MPCF), which had existed since 1973. In 1989, the accumulated amount of \$149,618,850.24 in the MPCF was transferred to the SOPF.

Effective August 8, 2001, the SOPF is governed by Part 6 of the *Marine Liability Act* (MLA) Statutes of Canada, 2001, chapter 6.

The SOPF is a special account established in the accounts of Canada upon which interest is presently credited monthly by the Minister of Finance.

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

During the fiscal year commencing April 1, 2007, the Minister of Transport has the statutory power to impose a levy of 44.85 cents per metric tonne of “contributing oil” imported into or shipped from a place in Canada in bulk as cargo on a ship. The levy is indexed annually to the consumer price index.

No levy has been imposed since 1976.

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

The SOPF is intended to pay claims regarding oil spills from all classes of ships. The SOPF is not limited to sea-going tankers or persistent oil, as is the 1992 IOPC Fund.

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

During the fiscal year commencing April 1, 2007, the maximum liability of the SOPF is \$149,567,763.80 for all claims from one oil spill. This amount is indexed annually.

The classes of claims for which the SOPF may be liable include the following:

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

## *Ship-source Oil Pollution Fund*

A widely defined class of persons in the Canadian fishing industry may claim for loss of income caused by an oil spill from a ship.

The present statutory claims regime of Part 6 of the *MLA*, on the principle that the polluter should pay, has as its four cornerstones:

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

Experience shows that the investigation and assessment of claims is expedited when claimants provide convincing evidence and written explanations. This includes various justifications by the On-Scene Commander (OSC) and proof of payment, etc. Detailed logs and notes by the OSC and others are invaluable in facilitating the settlement and payment of claims. It is essential that the measures taken and the costs and expenses incurred are demonstrably reasonable. The claim should be presented in a timely manner.

### **SOPF: A Fund of Last Resort**

The *MLA* makes the shipowner strictly liable for oil pollution damage caused by his ship, and for costs and expenses incurred by the Minister of Fisheries and Oceans and any other person in Canada for clean-up and preventive measures.

As provided in the *MLA*, in the first instance, a claimant can take action against a shipowner. The Administrator of the SOPF is a party by statute to any litigation in the Canadian courts commenced by a claimant against a shipowner, its guarantor, or the 1992 IOPC Fund. In such event, the extent of the SOPF's liability as a last resort is stipulated in section 84 *MLA*.

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

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

### **SOPF: A Fund of First Resort**

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

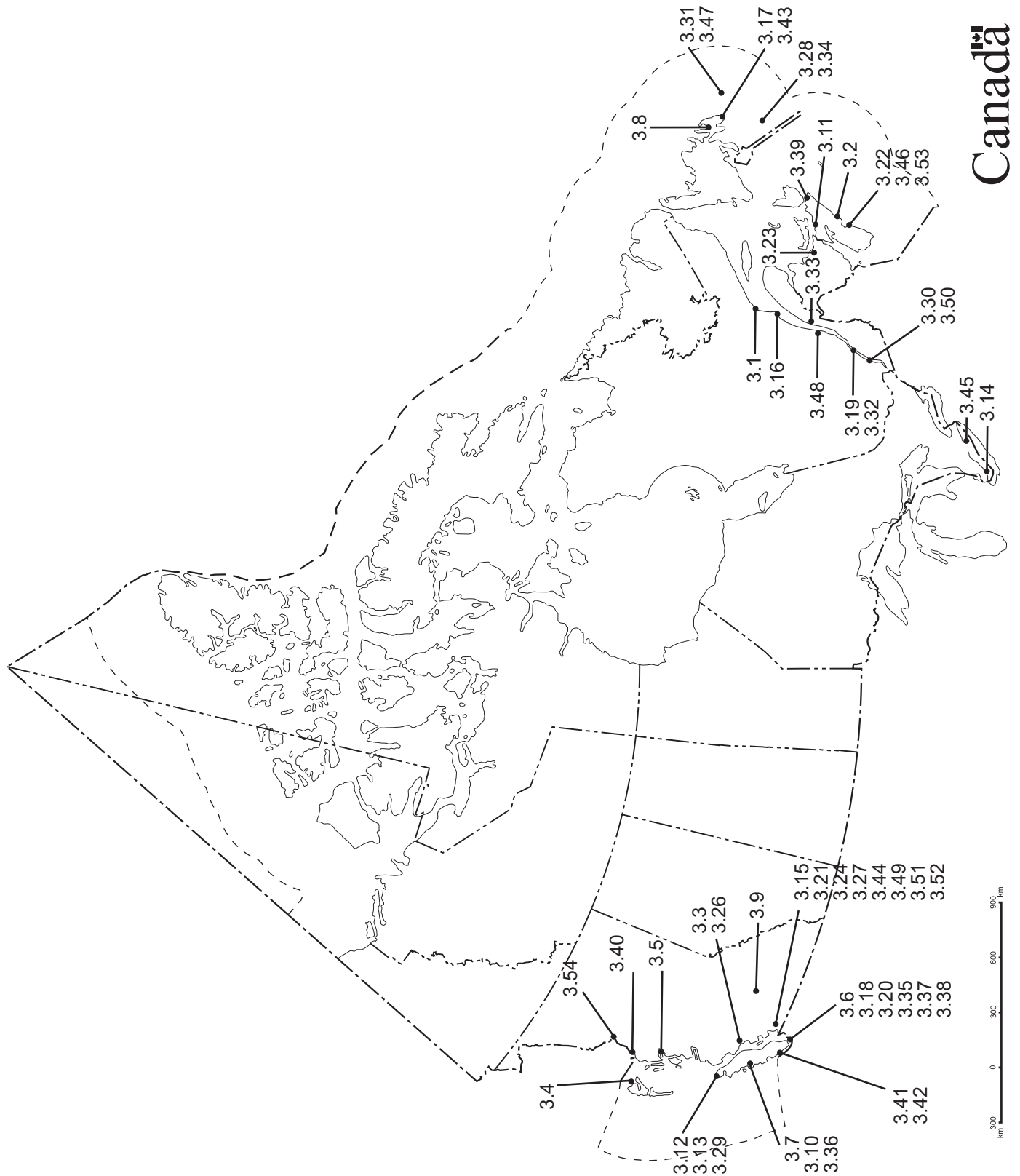
As provided in section 85 *MLA*, any person may file a claim with the Administrator of the SOPF respecting oil pollution loss or damage or costs and expenses, with one exception. An RO, established under the *CSA*, has no direct claim against the SOPF.

The Administrator, as an independent authority, has a duty to investigate and assess claims filed against the SOPF. For these purposes, he has the powers to summon witnesses and obtain documents.

The Administrator may either make an offer of compensation or decline the claim. An unsatisfied claimant may appeal the Administrator's decision to the Federal Court of Canada within 60 days.

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

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



### 3. Canadian Oil Spill Incidents

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During any particular year the SOPF receives many reports of oil pollution incidents from a variety of sources, including individuals who wish to be advised if they are entitled under the CSA/MLA, to be considered as potential claimants as a result of oil pollution damage they have suffered. Many of the incidents have not yet, or will not be, the subject of a claim. The Administrator does not investigate such incidents. The information herein is that provided to him. The Administrator is aware that many more oil pollution incidents are reported nationally. Many of those reported are very minor (sheens). Others involved greater quantities of oil but are not brought to the attention of the Administrator because they were satisfactorily dealt with at the local level, including acceptance of financial responsibility by the polluter.

During the current year, the SOPF handled 63 active incident files. Of these, 55 are reported on in this section because they involved either claims to the SOPF or were of specific interest because of the circumstances surrounding them.

Locations of incidents are indicated on map opposite.

#### 3.1 Mystery Oil Spill - Port Cartier, Quebec (2000)

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The CCG issued a Sitrep advising that oil pollution was found in the water between the Greek flag 81,120 gross ton bulk carrier *Anangel Splendour*, and the quay, alongside at Port Cartier, Quebec, on May 12, 2000, and extending some 200 meters ahead. There were two other vessel movements within the harbour over a similar period as the discovery of the oil spill.

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

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

On January 31, 2001, the Administrator received a claim from the Crown on behalf of the CCG to recover their costs and expenses, stated to amount to \$4,076.08. The claim was being assessed, however, an offer of settlement was

withheld pending results of the investigation into the origin of the spill.

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

The Administrator wrote to CMQC's counsel on November 28, 2001, with a list of questions that had arisen in his investigation and assessment of the claims. Replies to these questions were received on March 22, 2002, and at the same time corrected a stated error in one of the invoices submitted in the claim, increasing the claim by a further \$1,746.63.

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

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

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

Following further analysis of the oil samples and his investigation of ship-source spill probabilities, the Administrator commenced a cost recovery action against the shipowner in the Federal Court. Since April 2004, there has been discovery of documents between the parties. On February 1, 2005, counsel for the shipowners carried out an examination for oral discovery of the Administrator, in order to seek evidence to contradict the Administrator's allegations on liability and quantum.

Subsequently, counsel for shipowner made a motion to the Court pursuant to Rules 237(1) and (3) asking that the Administrator of the Fund put forward as oral discovery representatives persons from CMQC and CCG. The motion, heard on May 30, 2005, was dismissed by order of Prothonotary Morneau dated June 7, 2005.

On June 9, 2005, counsel for shipowner provided written discovery answers to questions which had been posed by the Administrator's counsel.

In a judgment rendered on July 7, 2005, Justice Pinard dismissed the shipowner's appeal from Prothonotary Morneau's order. The grounds for the judgment included the following:

- CMQC and CCG are not parties to the litigation;
- Rule 237(3) is not engaged, it only provides for substitution of representatives of the same party and in the circumstance where the first witness is unable to adequately and effectively answer the questions asked;
- The Fund has the prerogative to sue in its own name, which gives rise to rights and obligations in relation to discovery principles set out in the Rules, which cannot be modified on the basis of the fact that the Fund could have elected to proceed otherwise;
- Rule 238 is the appropriate provision in the present case, subject to its prerequisites being fulfilled;
- The order sought by Appellants would cause great prejudice to the Fund as it has no control over CMQC and CCG.

At year-end, the Administrator was instructing counsel in responding to an appeal filed for the shipowner from Justice Pinard's judgment in the Federal Court – Trial Division, with the Federal Court of Appeal. On June 7, 2006, the Court of Appeal dismissed the shipowner appeal with costs (docket A-335-05).

The Administrator continues his recovery action against the ship *Anangel Splendour* and its owners.

Settlement has been proposed recently by the shipowner's counsel. In the meantime proceedings continue.

### **3.2 Lavallee II (2002)**

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The *Lavallee II* was built in 1942 as an American wooden minesweeper but, latterly, has been employed as a herring seiner and then as a herring transporter. The vessel is 254 gross ton and would, if operating, require to be registered. At the time of the incident, she was on a beach, unregistered, at Ecum Secum, Nova Scotia, where she had remained for the previous 18

months. On March 8, 2002, it was reported that oil was being released from the vessel into the harbour. The CCG responded on the same day and absorbent boom was deployed. It was found that the engine-less, engine room was flooded. The harbour, in season, houses live lobster in cages and supports a rockweed harvest.



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

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

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

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

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

In his letter of offer the Administrator noted:

“N.B.:

1. The Administrator wishes to stress that the conclusion arrived at is based on a special circumstances of this case. The present determination should not be taken as an acknowledgement that, in the future, any expenses associated with the removal or destruction of a ship will automatically be accepted as a valid claim.
2. The application of the proceeds from the sale or other disposal of a ship and its contents is important in all incidents in light of the express provisions in subsection 678(2) CSA. Complete transparency by the claimant and its contractor(s) in their respective contractual arrangements is essential, particularly for the assessment of claims.”

The Administrator is pleased to note the cooperation that was extended to him by the CCG Maritimes Region throughout the incident and which very much assisted his investigation and assessment of the claim.

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

On March 1, 2005, the statement of claim in the Administrator's recovery action was amended. Defences having been filed, the next step in the proceedings is the discovery of documents.

Recovery action has resulted in negotiated settlements with the two defendants. The Administrator received payment of \$1,000.00 on January 3, 2007 from one defendant. Payment by the second defendant in the amount of \$7,500.00 has been deferred until June 30, 2007. Meanwhile, the file remains open.

### **3.3 Beaufort Spirit (2003)**

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It was reported to the CCG that this vessel was leaking oil into the waters of the Nanoose First Nations Marina at Lantzville, Nanoose Bay, British Columbia on May 11, 2003. The next day the CCG and TCMS met with the owner to inspect the vessel, which was an old riveted construction steel tug built in about the late 1940s and in poor condition.

The owner was advised to plug the leak which he did with a metal plate and rubber gasket and was also instructed by the CCG to do further work on the vessel's tanks and bilges to ensure that there was no future threat of pollution.

On January 20, 2004 the CCG received a further report that the vessel was in a state of disrepair and at risk of leaking oil into the marine environment. The next day the vessel was towed to Ladysmith and inspected by CCG who discovered on board a container/tank with 1000 gallons of oil and some 25 pails that were leaking oil onto the deck of the vessel. The vessel was also beginning to list.

On January 22, 2004 the CCG took over the incident via a Response Order and the Administrator engaged a surveyor to advise him on the condition of the vessel. His inspection on January 28, 2004 revealed that the vessel was a non-operable floating derelict and that there was a considerable risk of oil pollution, particularly if she sank at her moorings. An oil containment boom had meantime surrounded the tug.

By February 6, 2004, the CCG contractor who had also pumped oily water from the hull had removed drums, cans and propane tanks from the vessel.

After receiving several bids, the CCG selected a contractor to demolish/break up the vessel and resolve the remaining pollution problem. By March 28, 2004, the vessel had been broken up and disposed of.

On July 11, 2004, the CCG submitted a claim on the SOPF for \$132,775.12 respecting its costs and expenses in this matter. On September 29, 2004, the Administrator requested further information from the CCG respecting

its claim. By letter dated November 19, 2004, the CCG provided some of the information requested but refused to provide copies of tender documents respecting the contract for the break-up of the vessel.

On December 10, 2004, the Administrator wrote to the CCG reminding them of his powers of investigation under Part I of the Inquiries Act, pursuant to subsection 86(2) of the Marine Liability Act (MLA) and, on the evidence available, offered compensation in the amount of \$109,220.00 plus interest, in settlement of the CCG claim.

By letter dated January 14, 2005, the CCG requested a "clarification" of the SOPF position with respect to the use of the "firm price" contracting approach used in this case by the CCG for the break-up of the vessel.

The Administrator replied to the CCG on February 15, 2005, noting the provisions of sections 85 and 86 of the MLA and Part I of the Inquiries Act. He reminded the CCG that:

- (1) All costs and expenses must be reasonable;
- (2) All measures taken must be reasonable measures;
- (3) All costs and expenses must have been actually incurred;
- (4) All claims on the SOPF must be investigated and assessed by an independent authority (the Administrator) who then offers compensation for whatever portion of the claim he finds to be established.

The Administrator noted that whilst a 1993 amendment to the CSA gave Canada the right to claim directly on the SOPF for the first time, it conferred no special status for claims filed by Canada as compared to claims filed by others. In particular, in order for the Administrator to find a claim, or portion thereof, to be established, under section 86 of the *MLA*, it is essential that the measures taken and the costs and expenses claimed are demonstrably reasonable.

Regarding the “fixed price” contracting approach used by the CCG in this case, the Administrator wrote: “Whilst the Administrator cannot dictate the measures and other actions (including cost control) a claimant takes in any given situation, one must not forget that a contract, “fixed price” or otherwise, by and of itself, does not relieve any claimant from the above requirements. We note in the *Sea Shepherd II* claim, for example, that other types of contracts may be employed, i.e. “ceiling price” or “cap”. We trust that DFO/CCG consider and then inform PWGSC of the recovery process [claiming from the SOPF] referred to above, if such is contemplated, before deciding on the appropriate [contractual] instrument to employ in a given situation.”

On February 22, 2005, the CCG accepted the Administrator’s offer of compensation. On February 23, 2005, the Administrator directed that \$113,971.50 be transferred from the SOPF to the credit of DFO/CCG including \$4,751.50 in interest.

The Administrator considered whether or not it was appropriate to take recovery measures under the *MLA* subsection 87(3). On May 15, 2006, counsel advised that there is not much point in pursuing litigation against the owner of the *Beaufort Spirit*. In these circumstances, the Administrator is of the view that reasonable recovery efforts have been taken.

The Administrator has closed his file.

### 3.4 Pender Lady (2003)

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

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

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

It is noted that the vessel was, at the time of the incident, still on the Canadian Ship Registry but had not apparently been subjected to TCMS inspection and safety surveys for a considerable time.

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

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

It is appreciated that the work on the vessels involved considerable hazard to the response workers because of the condition of the vessels. All work was completed by the end of August 2003.

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

Note: This case shows the threat to the environment and the economic losses caused by derelict vessels. In this year and the previous year payments from the SOPF respecting such vessels exceeded some \$2.8 million dollars.

On May 3, 2006, the Administrator instructed counsel to undertake cost recovery action pursuant to *MLA 87 (3)*. Such action has been commenced and is now underway.

### **3.5 Mystery Spill, Grenville Channel, British Columbia (2003)**

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On September 20, 2003, the United States Coast Guard Cutter “*Maple*” was transiting Grenville Channel, BC and reported that they had seen an oil slick off Lowe Inlet. *CCGS Tanu* investigated the incident and samples of the oil were obtained on September 23, 2003. It was reported that these samples were similar to crude oil in odour and consistency but that there was no apparent source and clean up was not required.

In early October, a commercial airline pilot reported that he had seen further pollution in the area that was “quite thick”.

CCG responded and sent personnel to the site which was in a very remote area and not easily accessible. The presence of the slick was confirmed and some 3 miles of shoreline had been impacted. Again, no source was found and the CCG suspected that the oil could be surfacing from an old wreck.

Arrangements were made by the CCG to have the area surveyed by a remote control underwater vehicle and on October 30, 2003 an old wreck was located with oil escaping from cracks in the hull. At the same time, clean up crews were working to remedy the shoreline contamination. By the middle of November, divers had plugged areas of the wreck’s hull that were breached to stop the escape of oil.

Investigations by the CCG indicate that the source may be that of the *Brigadier General M.G. Zalinski*, a United States Army Transportation Corps vessel that was wrecked on September 20, 1946.

The CCG continues to monitor the situation, responding to oil leakage as necessary and working on a plan to remove all oil from the wreck. This file is held in extended abeyance pending further development.

The Administrator awaits developments.

### **3.6 Mary Todd (2003)**

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This seine fishing vessel sank off the Fisherman’s Wharf in Tsehum Harbour, British Columbia on October 5, 2003 with resulting oil pollution. The CCG responded and ascertained that the owner was unable to respond to the incident. The vessel was boomed off by the CCG and was raised by a CCG Contractor on October 6, 2003.

The *Mary Todd* was taken to the shipyard at Mitchell Island and lifted from the water thereby eliminating the threat of future oil pollution.

On June 28, 2004, a claim on the SOPF was received from the CCG in the amount of \$18,336.77 for its costs and expenses in this incident. On July 15, 2004, the Administrator directed payment to DFO/CCG in the amount of \$18,336.77 plus \$691.05 interest.

By year-end, the Administrator had considered his recovery options pursuant to *MLA 87(3)*, and concluded that recovery measures were not justified. The Administrator has closed his file.

### 3.7 Black Dragon (Heung Ryong) (2003)

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This was an old Chinese flag fishing vessel of some 120 feet in length involved in the smuggling of illegal immigrants to the West Coast at the end of 1999 and had been seized by the authorities and tied up at Port Alberni, British Columbia. Crown Assets subsequently sold the *Black Dragon*.

Over the ensuing years the vessel had been moored at several locations and was in a dilapidated condition. She eventually ended up moored to a DND Navy buoy in Mayne Bay. Several federal and provincial agencies are said to have voiced concern on the overall situation, but the vessel remained.

On October 26, 2003 the vessel sank in about 120 feet of water and was boomed off by the CCG *Bamfield* lifeboat crew. The CCG engaged a contractor to raise the vessel and work commenced on November 7, 2003. The Administrator had engaged his own marine surveyor to attend on site. Initial efforts over the next two days to conduct the lift were unsuccessful and it was apparent that the 200-ton capacity lifting derrick was not sufficient. Also the vessel was firmly stuck in the very soft mud bottom.

Heavier equipment was on site November 28, 2003 and salvage preparations began. The vessel was raised with great difficulty on December 5, 2003 and over the next two days water and mud was pumped out of the vessel and some hull repairs made in preparation for the tow to Ladysmith for disposal.

On December 9, 2003 while undertow and in a position off Johnstone Reef the vessel sank again. It is understood that the CCG will not undertake further action regarding this sinking.

On February 3, 2004 a claim was received from the CCG in the amount of \$728,797.28 to cover the costs and expenses incurred for their response to the incident. The circumstances of

this occurrence involved considerable investigation and assessment by the Administrator and on March 30, 2004 he made an offer of settlement, which was accepted by the CCG that same day. Payment of \$568,749.63 plus interest of \$8,897.00 was also authorized on that date in full and final settlement.

On January 5, 2005, the Administrator received notice of a claim on the SOPF from the Toquaht First Nation, Ucluelet, British Columbia, for oil pollution damage from the *Black Dragon*. It is alleged that damage to clams occurred as a result of the *Black Dragon* being towed, partially submerged, to the mouth of Pipestem Inlet, Toquaht Bay, Barkley Sound, after its raising and prior to its tow to Ladysmith.

On January 13 & 18, 2005, the Administrator requested further information from the Toquaht First Nation respecting the claim. On February 3, 2005, counsel for the Administrator wrote to the CCG advising of the claim and requesting documents and information regarding the incident and related operations. The CCG has provided some of the information asked for.

In his continuing investigation of the Toquaht Nation's claim, the Administrator has obtained further information from the DOE, DFO, and the Toquaht Nation. The Administrator had also consulted a marine surveyor and experts in the aquaculture and fisheries sectors.

On February 8, 2007, the Administrator wrote to the claimant and explained clearly that as a result of his investigation – with the aid of a marine surveyor and experts in the aquaculture and fisheries sectors – and on the basis of the evidence provided by the claimant, he is unable to find that this claim has been established. The Administrator also advised that, if the claimant provides further evidence to address the shortcomings described, he would reopen the investigation and examine new evidence.



### 3.8 Sekme & Treimani (2003)

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

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

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

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

The two fishing vessels are sister ships, the former being built in 1974 and the latter in 1977. They are 54.80 metre overall length and have a gross tonnage of approximately 750.

The CCG ER, St. John's says it visited the vessel in Bay Roberts on numerous occasions and undertook work to ensure that the vessels remained safely moored at the DFO wharf,

determine and minimize the risk of oil pollution should the vessels break adrift, and determine and minimize the risk of hazardous materials pollution should the vessels break adrift.

The work of ensuring the vessels remained securely moored included replacing and increasing the number of mooring lines and replacing the bollards on the wharf. Frequent visits were also paid to the site by CCG personnel to monitor the situation. Minimizing the risk of oil pollution involved the removal and disposal of oil, oily water and oily residue from the vessels. Minimizing the risk of hazardous materials pollution included assessing and considering the removal and disposal of hazardous materials.

Following the removal of oils the vessels' oil pollution threat was significantly reduced, and the main problems remaining were hazardous materials, the unsightly appearance of the vessels and their damage potential to third parties.

After investigation and assessment, the Administrator concluded that the claim included costs and expenses that may fairly be attributable to non-oil pollution risks associated with the custody of the vessels, hazardous materials other than oil, and federal responsibilities other than oil pollution. In the circumstances, he agreed to accept a portion of the claim as established and thus, on March 30, 2006, pursuant to MLA section 86, offered DFO/CCG the global amount of \$ 15,000.00 plus interest under MLA section 101 in full and final settlement of its claim.

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

### 3.9 Anscomb (2004)

This vessel had served as a provincially owned ferry on Kootenay Lake, British Columbia until April 2003 when she was sold.

On January 11, 2004 the vessel sank in deep water with resulting oil pollution.

The Provincial Ministry of Water, Air and Land Protection (WLAP) assumed lead agency status and provided the initial cleanup procedures and hired a contractor. Work was done on cleaning up oil surfacing from the sunken vessel, recovering contaminated debris and shoreline cleanup.

On January 23, 2004 the CCG took over the lead agency status from WLAP. With the bulk of the work completed the contractor was stood down on January 28, 2004 and the work of incinerating contaminated debris, oiled absorbent pads. CCG personnel conducted boom maintenance. It had been determined that salvage of the sunken vessel was not feasible. Work was terminated on February 2, 2003, because there was no recoverable oil at the site.

On March 11, 2003 the CCG submitted a claim in the amount of \$29,753.68 for their costs and expenses. The Administrator assessed this and an offer of settlement made on March 24, 2004 which was accepted. Payment of \$24,316.40 plus interest of \$195.23 was authorized on March 25, 2004.

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

On September 28, 2004, pursuant to MLA subsection 87(3), counsel for the Administrator filed a statement of claim in the Federal Court in Vancouver to commence a recovery action against the Anscomb. Consequently, the ship *DPW No. 590* was arrested on October 4, 2005, as a sister ship of the *Anscomb*. The arrest took place on Kootenay Lake, near the city of Nelson, British Columbia.

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

Counsel for the parties postponed hearing of the motion to, *inter alia*, discuss possible settlement. At year-end, a total of \$6,000.00 had been paid and credited to the SOPF. The Administrator continues to monitor the periodic payments. The ship *DPW No. 590* is still under arrest.

The Administrator awaits developments.

### 3.10 Sea Shepherd II (2004)

Having received a number of reports in April 2004 that the *MV Sea Shepherd II*, located in Robbers Pass, Tzartus Island, British Columbia, was in a derelict state and in danger of sinking, the CCG, TCMS, and Provincial authorities, attended on scene to investigate. It having been concluded that the vessel's condition made it a threat to the marine environment, a Response Order under CSA section 678 was issued on April 26, 2004.

The Administrator engaged local legal counsel and a marine surveyor. The latter attended on the vessel.

On May 10, 2004, CCG contractors began pumping operations on site. By May 11, 2004, some 188 tons of a mixture of waste oil and diesel was pumped off the *Sea Shepherd II*. But, some 16 gallons per hour of seawater was leaking back into the vessel. On May 26, 2004,



the vessel was taken in tow, arriving at the Esquimalt graving dock the next day for break up. By June 17, 2004, seven large waste bins of oiled debris had been removed from the vessel. By July 30, 2004, the break up of the vessel had been completed.

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

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

On March 3, 2005, the CCG on behalf of the Minister of Fisheries and Oceans (DFO/CCG) accepted the Administrator's offer of \$331,892.31 plus interest. On March 3, 2005, the Administrator directed payment to DFO/CCG of \$331,892.31 plus \$9,810.24 interest.

The Administrator awaits the Coast Guard's position on the matter.

Note (1): The lack of supporting evidence for parts of this claim raises similar concerns to those expressed respecting the Beaufort Spirit claim reported herein at 3.3. A claimant to be successful must be able to prove its claim.

(2) This incident is also another example of the many derelict or abandoned vessels in British Columbia. This is a serious problem for the Fund that ought to be addressed by the government authorities and others.

### **3.11 Alicia Dawn (2004)**

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On the morning of September 8, 2004, the fishing vessel *Alicia Dawn 94* with a severe list was towed into Caribou Harbour, Nova Scotia. The vessel had some 1200 litres of diesel and other engine and lube oils onboard. CCG ER Charlottetown, Prince Edward Island, responded, arriving in Caribou that forenoon at 0930.

A diver had been hired to plug the vents, release the fish tubs, and take measures designed to bring the vessel to an upright position. Oil was escaping from the vessel. CCG ER recovered spilled oil, and ordered that pumping be stopped.

The vessel departed Caribou bound for Murray Harbour, PEI, at 1315 September 8, 2004.

On February 4, 2005, the CCG filed a claim on the SOPF for its costs and expenses totalling \$2,625.42. The Administrator's offer of compensation in the amount of \$2,543.01 plus interest was accepted by the DFO/CCG on February 9, 2005. On February 11, 2005, the Administrator directed payment to the DFO/CCG in the amount of \$2,595.99 including interest.

The Administrator is reviewing the feasibility of undertaking cost recovery of the amount paid to DFO/CCG, pursuant to MLA 87(3).

### 3.12 P.H. Phippen (2004)

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On November 3, 2004, it was reported that the *P.H. Phippen* had sunk at the dock at Fisherman's wharf in Port Hardy, British Columbia. The Harbour Master boomed the vessel to contain leaking fuel.

The vessel, for sale at the time and also known as *Underwater Sunshine*, was an ex tug converted to a live aboard type vessel. It had not been moved in several years, but was regularly pumped.

CCG ER was advised that the vessel was lying on its side with fuel leaking from one tank containing some 30-40 gallons of diesel. The second tank containing some 100 gallons of diesel was said to be not leaking.

On November 5, 2004, CCG ER was advised that divers had been successful in plugging the vents. With CCG ER on scene, on November

12-13, 2004, contractors, with a barge and excavators, commenced lift operations. An air-bag was inflated on the stern of the vessel and a forward sling was put in place for the lift. On November 14, 2004, the vessel was lifted to the surface and pumped out. Some unrecoverable diesel was spilled during the recovery operation. The vessel was stabilized and was considered to be no longer a pollution threat.

On January 31, 2005, the CCG filed a claim on the SOPF for its costs and expenses in this incident totalling \$2, 113.91. On February 7, 2005, the Administrator directed payment of compensation to DFO/CCG of \$2,141.95 including interest, in full and final settlement.

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

### 3.13 Sonny Boy (2004)

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On September 26, 2004, CCG ER, Victoria, received a report from MCTS that the fishing vessel *Sonny Boy* had sunk at the Fisherman's Wharf in Port Hardy, British Columbia, with an unconfirmed amount of pollutants on board. The vessel was boomed off with absorbent boom and pads applied by the Harbour Manager. Further inquiries revealed that the *Sonny Boy* was tied to another vessel and it was suggested that if immediate action was not taken there would be two sunken vessels. CCG ER then decided to hire a local salvage/dive company to deal with the situation.

Using air bags and pumps, the contractor floated the vessel at 2230 on September 26, 2004, and secured it to the wharf. All suspected pollutants on board had apparently dissipated and the contractor could not find any reason for why the vessel had sunk.

On January 31, 2005, CCG filed a claim on the SOPF for its costs and expenses totalling \$7,902.37. After investigation of the incident and assessment of the claim, the Administrator, on February 10, 2005, directed payment to DFO/CCG of \$7,902.37 plus \$122.80 interest.

The Administrator notes that CCG was unsuccessful in its efforts to obtain recovery of costs and expenses from the shipowner. In the circumstances, the Administrator is of the view that there is little prospect effecting cost recovery.

The Administrator has closed his file.

### **3.14 Mystery Oil Spill, Wheatley Harbour, Ontario (2004)**

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The first the Administrator learned of this October 12, 2004 incident was on January 31, 2005 when he received the CCG claim for its costs and expenses of \$7,944.19. Wheatley Harbour, Ontario, is situated some 30 miles southwest of Pointe-aux-Pins and some nine miles north northeast of Point Pelee, on Lake Erie, one of the Great Lakes. The Village of Wheatley is located about one mile north of the harbour.

The CCG claim referred to the incident as a mystery spill, but also noted that a fishing vessel was the suspected source. CCG ER and its contractor ECRC responded. Equipment deployed by ECRC included a vacuum truck. By 2200, October 12, 2004, 7200 litres of water/oil and oiled debris had been recovered, and CCG ER and ECRC departed the site. The CCG claim made no mention of any oil samples having been taken.

On February 7, 2005, the Administrator wrote to CCG requesting missing information, including the field notes and logs of officials attending the site from CCG ER and ECRC.

In the meantime, the Administrator investigated the incident. He was advised that on the morning of October 12, 2004, a man walking his dog near the harbour had noticed a strong smell of diesel oil, and telephoned the Harbour Master of the Wheatley Harbour Authority Corporation (WHAC). On attending at the scene the Harbour Master noted sludge in the harbour. Ontario Provincial authorities were then notified. Officials from the Ontario Ministry of Natural Resources (MNR), the WHAC, and other local persons tried to contain the spill. Concerned that the spill would drift out of the harbour into Lake Erie, the MNR officer called the CCG at Amherstburg, at 1230, October 12, 2004.

The MNR officer informed the Administrator that he had taken a number of oil samples from and around a suspected fishing vessel, and had recorded details of his observations in writing. He said that he had informed CCG that he had oil samples and was advised that if they (CCG) needed the samples they would contact him. Having had heard nothing from CCG he advised the Administrator that the samples had since been “thrown out”. They had not been sent out for analysis. The spill was located in an area where commercial fishing vessels secure.

Both the WHAC and MNR officials who attended the site provided their written notes on the incident to the Administrator. Subsequently, on February 14, 2005, CCG provided additional information in response to the Administrator’s request of February 7, 2005.

On February 16, 2005, the Administrator directed payment of compensation to DFO/CCG of \$7,502.88 plus \$89.71 interest.

Note: In his letter of offer to DFO/CCG for this Ontario incident, the Administrator reminded the CCG of the transcending importance of the Administrator having timely access to oil samples where available, as part of the evidence package he needs in order to make the polluter pay. The Administrator recalled the statutory scheme in Part 6 of the MLA – under which both federal agencies operate in this respect – and particularly the Administrator’s statutory obligation, under section 87(3)(d), to take measures to recover the amount of the payment (to CCG) from the owner of the ship.

In light of the fact that the cause of the oil pollution damage is currently unknown, and recovery from shipowner may have been compromised by lack of oil samples, the Administrator is unable to pursue cost recovery.

The Administrator has closed his file.

### 3.15 Abandoned Vessel, Vancouver Harbour, British Columbia (2004)

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During the evening of October 8, 2004, the CCG crew at Kitsalano SAR station received a report that a semi-submerged vessel was drifting past a deep-sea vessel at anchorage #4, in English Bay, Vancouver Harbour, British Columbia.

The SAR crew responded and found an abandoned vessel adrift and the smell of fuel oil. As it posed a navigational hazard adrift in the dark, the crew made the decision to tow the vessel and beach it beside the SAR station and then boom it off to prevent further pollution. This was successfully completed that night.

At daylight on October 9, the crew observed pockets of oil and oily debris both inside and outside the boom. At this point CCG ER was notified of the incident.

On site that morning, CCG ER with the assistance of the SAR crew, plugged the vent, recovered the free oil from the water with pads and boom and removed the oiled debris. No indication of ownership or identification of vessel was found at the scene. The vessel had been stripped and it appeared that someone had attempted to sink it out in the bay, as slabs of concrete were found inside and holes had been cut in the hull. Because of the amount of debris inside the vessel the fuel tanks could not be accessed to determine the amount of fuel

remaining onboard. It was decided that it would be necessary to remove the vessel from the water, deconstruct it to access the tanks and dispose of the contaminated waste. The incident site was maintained by CCG ER and the SAR crew over the remainder of the Thanksgiving long weekend.

On October 12, 2004, a contractor working in the area was engaged to do the removal, thus minimizing the mobilization/demobilization charges. On October 13, 2004, the contractor brought in a barge and crane, removed the vessel and took it to its yard for deconstruction and disposal.

On February 4, 2005, the CCG filed a claim on the SOPF for its costs and expenses totaling \$7,493.10. After requesting and receiving further information from CCG, the Administrator on February 11, 2005, directed payment of compensation to DFO/CCG of \$7,236.73 plus \$62.28 interest.

Coast Guard reports that it found no indication of ownership or identification of the 30-foot derelict fishing vessel at the scene of the incident. The identity of the owner would have to be established for any successful recovery action.

The Administrator has closed his file.

### 3.16 Bleuvet (2004)

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On or about September 5, 2004, CCG ER Quebec was informed of a diesel fuel spill in the water at a marina in Tadoussac, Quebec. It is reported that when refuelling diesel was accidentally pumped into the bottom of the boat and the bilge pump then discharged the diesel into the water. The *NGCC Isle Rouge* responded with sorbent rolls and pads. On April 21, 2006, the Administrator received a claim from DFO/CCG in the amount of \$3,335.02 for their costs and expenses for this incident.

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

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

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

### **3.17 Mystery Spill, Placentia and St. Mary's Bays, Newfoundland (2004)**

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On January 6, 2005, the Administrator received a telephone call from Newfoundland respecting alleged losses and/or costs and expenses incurred respecting oiled birds said to be from an oil spill off the coast.

Subsequently, with the correct address then available, the Administrator confirmed in writing to the caller details on the working of the SOPF along with information explaining the claims process including, presentation of claims, information required under various heads of claims, mystery spills and special loss of income claims under MLA section 88.

On January 11, 2005, the Newfoundland and Labrador Environmental Association (NLEA) filed a claim on the SOPF for \$8,320.00 for expenses related to "monitoring and clean-up of recent ship-source oil pollution mystery spill in Placentia and St. Mary's Bays, Newfound-

land." Particularly, the claim refers to seabirds impacted by the mystery spill in the said areas between November 26 and December 28, 2004. The expenses claimed appeared to relate to the capture, cleaning, rehabilitation and release of oiled seabirds. The claimant said that the NLEA is the only entity capable of responding to and dealing with seabirds contaminated by ship source oil in Newfoundland and Labrador.

By correspondence dated January 21, 2005, the Administrator acknowledged receipt of the claim and requested further particulars in its support. On March 11, 2005, the Administrator received some of the additional information requested. Further information is expected presently.

The Administrator's investigation continues.

### **3.18 Mystery Spill, Victoria, British Columbia (2004)**

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On December 30, 2004, there was an oil spill at the Fisherman's Wharf Facility of the Greater Victoria Harbour Authority (GVHA), Victoria Harbour, British Columbia. The GVHA and volunteers mounted the initial clean-up operations the night of December 30 and through the early morning hours of December 31, 2004. The GVHA engaged a contractor to complete the clean-up. The GVHA says the incident is a mystery spill in that its source is unknown.

On December 14, 2005, the Administrator received a claim of \$16,012.02 from the GVHA for costs and expenses in its response and cleanup in the incident. The Administrator requested further particulars of the incident. These were provided on February 20, 2006, by the GVHA. The claim was investigated and assessed by the Administrator. The Administrator's offer of \$10,443.50 plus interest of \$621.35, for a total of \$11,064.85 was accepted by the GVHA. On April 18, 2006, payment for that amount was authorized (and included in the SOPF fiscal year ending March 31, 2006).



On December 31, 2004, an oil sample had been taken from the surface of the waters of Victoria Harbour adjacent to the *M.V. Northwind*. Also, an oil sample was taken from the machinery space bilge of the *M.V. Northwind* on the same date. These samples were analyzed by Environment Canada for Transport Canada to possibly identify the pollution and for potential prosecution purposes. A chemical analysis of the oil samples concluded that the two samples were "... extremely similar. A common source of the samples was indicated".

On August 17, 2006, the Administrator instructed legal counsel to write to the owner of the *M.V. Northwind* to see if a settlement may be achieved short of litigation. Offers and counter-offers were made between counsels for both parties. On February 19, 2007, the owner of the vessel, while denying liability, made without prejudice an offer of \$5,500.00 as final release in connection with an oil pollution incident occurring in Victoria Harbour on about December 30, 2004.

On February 22, 2007, the Administrator received payment and therefore closed his file.

### 3.19 Horizon (2004)

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On July 24, 2004, the Maltese registered container ship *Horizon* ran aground in the area of Buoy S-129 near Sorel, Quebec. The ship was aground in mud. There was no oil pollution reported. A diving survey indicated that the hull remained intact. Soundings of all tanks revealed no ingress of water. The navigation channel remained open.

The shipowner informed DFO/CCG it was developing a salvage plan to remove containers and refloat the ship. During the development of the Environmental Protection Plan for the lightering and salvage of the ship, two ship safety inspectors from Transport Canada Marine Safety attended on board and were involved throughout.

The Regional Environmental Emergency Team (REET) convened to assess all environmental issues surrounding this incident. CCG held a meeting with representatives of Transport Canada, Environment Canada, Quebec Ministry of Environment and Ministry of Public Security. Surveillance flights were conducted by CCG over the site.

On July 31, the owner of the *Horizon* submitted his salvage plan to the Canadian Coast Guard. It was approved and salvage operations commenced.

On August 3, as part of the salvage plan, the shipowner activated its arrangement with the

Response Organization ECRC/SIMEC. The ECRC deployed the following equipment on the water close to the ship through the night and day: one 50 ton aluminium barge, two small tugs, 300 feet of inflatable boom, three seatruck vessels and two oil skimmers. In addition, spill response personnel were on standby ashore for deployment of shore-based equipment in the event of discharge. A total of 109 containers were removed. Six salvage tugs arrived on scene and the ship was successfully refloated with no pollution on August 5, 2004.

On June 7, 2006, the Administrator received a claim (\$9,730.44) for costs and expenses incurred by the CCG in monitoring the response to this incident for potential oil pollution. The Administrator investigated the claim. He wrote to counsel for the shipowner's P & I Club suggesting that the matter be settled directly between the Canadian Coast Guard and the shipowner. Legal counsel responded stating that, in light of the circumstances, the shipowner had serious reservations about the reasonableness of the amount of CCG charges for monitoring the incident.

On January 26, 2007, CCG informed the Administrator that it had accepted the shipowner's offer of \$4,000.00 in full and final settlement of its claim for costs and expenses in the *Horizon* incident.

The Administrator has closed his file.

### 3.20 Mary Mackin (2005)

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On January 23, 2005, a report was received of an oil spill from the *Mary Mackin* in Patricia Bay, Vancouver Island, British Columbia. The *Mary Mackin* was an old world war II-era 125-foot twin-screw wooden tug that had been beached near the Institute of Ocean Sciences by the Receiver of Wrecks on October 31, 1998.

A TC Environmental screening report of January 6, 2005, did not indicate the presence of significant oil volume in the vessel.

In January, 2005, prior to the reported spill, a contractor had been engaged by the Receiver of Wrecks for the demolition and disposal of the vessel on the beach for some \$ 60,000.00. During demolition, they discovered considerable oil onboard and a spill resulted. Substantial oil was found within the vessel, including, 1,000 litres of engine oil and a large quantity of oil soaked mud. On January 24, 2005, the contractor for the Receiver of Wrecks advised CCG ER that they had removed most of the internal components that could contain oil. On site demolition and disposal of the vessel was completed by mid-February 2005.

On August 2, 2005, the Administrator received a claim from Transport Canada, Pacific Region—Marine Safety, Navigable Waters Protection

Division for its costs and expenses in the cleanup and disposal of the tug *Mary Mackin* in the amount of \$223,543.88.

After investigation and assessment, the Administrator, on finding the claim had resulted partially from the negligence of the claimant, found the claim to be established at \$20,000.00, and on March 21, 2006, pursuant to MLA section 86, offered that sum plus interest to TC in full and final settlement of its claim. On April 24, 2006, in response to a request from TC, the Administrator offered to review any new or material information which TC might wish to provide, in order for him to determine whether it would be appropriate to re-open his investigation. In the meantime on May 25, 2006, the Administrator received from the Crown a Notice of Appeal to the Federal Court concerning the adequacy of his offer of compensation, pursuant to MLA section 87(2).

At year-end, the Administrator's decision of negligence by the claimant (Crown) is under appeal. This raises *inter alia* important administrative law procedural issues vis-à-vis the role of the Department of Justice in such an appeal. The Administrator is waiting to hear from the Court.

### 3.21 Tor (2005)

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On January 16, 2005, a report was received that the converted fishing vessel *Tor* sank alongside the dock at the small craft harbour in Mission, British Columbia. Some diesel was seen seeping under the ice in the harbour. Sorbent boom and pads were deployed by the harbour master. On January 22, 2005 CCG ER was advised that fuel was still onboard the vessel. CCG ER took over the management of the response and requested quotes from contractors for the raising of the vessel and removal of pollutants.

On January 28, 2005 the contract to raise the vessel was awarded. The contractor raised the vessel and the harbour master kept it afloat over the weekend with pumps. On January 31, 2005 – due to the continuing ingress of water, the vessel was towed to Shelter Island Marina

and placed on land. The CCG surveyor had advised that the cost to repair the vessel would well exceed the vessel's market value. It was then decided that the vessel be destroyed. CCG ER requested bids from contractors for the destruction of the vessel and the removal of pollutants.

On February 9, 2005 the contract to remove and dispose all pollutants and destroy the vessel was awarded. On March 2, 2005, the contractor reported that the removal and disposal of pollutants and destruction of the vessel has been completed.

On July 27, 2005, the Administrator received a claim from DFO/CCG in the amount of \$22,196.25 for its costs and expenses in the



response to this incident. On September 28, 2005, the Administrator requested some further particulars, which were provided by the claimant on October 5, 2005.

On October 6, 2005, the Administrator, pursuant to MLA section 86, offered DFO/CCG \$21,436.76 plus interest in full and final settle-

ment of its claim. This was accepted and on October 13, 2005, payment of \$22,054.71 including interest was authorized.

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

### 3.22 Sea Sprite (2005)

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

On November 10, 2005, DFO/CCG filed a claim with the Administrator in the amount of \$7,481.28 for its costs and expenses. On December 6, 2005, the Administrator requested further particulars. These were received.

On December 23, 2005, the DFO/CCG accepted the Administrator's offer of \$7,151.04 plus interest in full and final settlement. On January 5, 2006, payment of \$7,381.52 including interest was authorized.

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

### 3.23 Santa Emma (2005)

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

It was reported that in the early morning of April 29, 2005, high winds caused the *Santa Emma* to part several of her lines and blew her off the wharf. The vessel was driven aground by the wind and collided with an adjacent wharf, resulting in a hole in her starboard quarter approximately one metre above the waterline. At first light, it was observed that the *Santa Emma* had a 12-degree list, a damaged hull and an engine room and cargo hold flooded with hundreds of tonnes of fuel oil/water mixture.

Several hundred tonnes of heavy fuel oil was also believed to be on board in double bottom tanks. Authorities were of the view that the vessel was at imminent risk of sinking and causing a serious marine pollution incident. There are scallop and lobster fisheries in the area and a wildlife refuge.

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

By May 27, 2005, some 1000 tonnes of a mixture containing diesel fuel, lube oil, heavy fuel oil and water had been removed from the vessel. An estimated 50 tonnes of heavy oil remained in the *Santa Emma* distributed through several tanks. On May 30, 2005, all the ER personnel and equipment left the site.

On September 16, 2005, the *Santa Emma* left Cape Tormentine undertow destined for demolition in India. On October 7, 2005, the Marine Rescue Centre in Ponta Delgada (Azores) reported that the *Santa Emma* went down as a result of bad weather approximately 135 nautical miles southwest of the Azores at position 36-53.3N 28-14.4W.

By letter dated February 14, 2006, a claim was filed on the SOPF for the costs and expenses of CCG and EC totalling \$717,845.21.

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

tractor engaged by CCG. On October 17, 2006 the Administrator sent an e-mail message and asked further questions on the quantum and reasonableness of various activities.

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

By year-end, CCG advised that information requested in the September 5 letter and e-mail of October 17, 2006, will be provided in mid-April 2007

The Claim is still under investigation.

### **3.24 Malaspina Castle (2005)**

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In Vancouver, on May 5, 2005, the Administrator was made aware of an oil spill incident that had taken place on April 9, 2005, at Howe Sound Pulp and Paper Mill deep sea dock in Port Mellon, British Columbia, while the *MV Malaspina Castle* was alongside the dock.

On June 23, 2005, the Administrator received a notice of claim from the solicitors for the owners of the *MV Malaspina Castle* for costs and expenses in cleaning up the spill. The Administrator was advised that TCMS had returned the letter of undertaking security it had obtained from the shipowners under the CSA Pollution Prevention Regulations. It is said that an analysis of the oil samples taken at the spill site and from the vessel did not show a match.

On July 28, 2005, the shipowner's claim on the SOPF was received in the amount of \$75,468.52. The Administrator retained local counsel. The Administrator has conducted an extensive investigation into the source of the spill. At year-end, the Administrator was still awaiting receipt of a particular piece of information from the owners of the vessel.

The investigation of this claim is being held in abeyance pending receipt of certain information from the claimant.

### 3.25 Elvera II (2005)

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On April 4, 2005, the *FV Elvera II* was reported high and dry on the breakwater at the North Saanich Marine, near Sidney, British Columbia. CCG ER Victoria viewed the situation and noted that the hull of the vessel appeared to be intact with only a bent, rudder stock. An inspection on April 5, 2005, with the vessel still aground, showed fuel spilled in the hold. There was a fuel tank in the hold and a full portable fuel tank on deck. A contractor took the vessel off the breakwater and took it to Ladysmith. CCG sold the vessel for \$1,498.00 including tax.

By letter dated November 10, 2005, the DFO/CCG filed a claim on the SOPF for its response costs and expenses in the amount of \$4,319.93. After deducting the amount CCG received for the sale, the Administrator paid CCG the amount of \$2,821.93 plus interest of \$79.01 in full and final settlement of its claim.

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

### 3.26 Rover No. 1 (2005)

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It was reported that this 74-foot ex tug went aground and sank in Genoa Bay, British Columbia on May 8, 2005. On July 20, 2005, CCG engaged a contractor. The vessel was raised and towed to Nanaimo Shipyards. By September 9, 2005, destruction of the vessel had been completed. Nanaimo Shipyards reported 4500 litres of oil was removed from the vessel.

On March 28, 2006, the Administrator received a claim from DFO/CCG in the amount of \$72,155.93 for its costs and expenses in response to this incident. On May 25, 2006, the Administrator requested further particulars, which were provided by the claimants. On June 30, 2006, the Administrator engaged a local marine surveyor to conduct an investigation on certain aspects of the claim. DFO/CCG was informed that the claim amount had been

reduced based on the disallowance of several visits to the site by Emergency Response personnel to monitor the contractor's work, and the commensurate time for the use of pollution counter-measures equipment.

On December 18, 2006, DFO/CCG accepted the Administrator's offer of settlement in the amount of \$64,740.15 plus appropriate interest. On the same day the Administrator directed that the amount of \$69,394.41 including interest be transferred from the Fund to settle the DFO/CCG claim for the *M.V. Rover No. 1* incident.

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

### 3.27 Joan W1 (2005)

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This fishing vessel was reported sunk at Lynwood Marina, North Vancouver, British Columbia, on June 10, 2005. Marina staff had boomed off the area and was responding to the resulting oil pollution from the vessel. CCG engaged a contractor who raised the vessel and towed it to Ladysmith, BC. By August 4, 2005, the vessel had been destroyed and was in the process of being disposed of.

On November 30, 2005, the Administrator received a claim from DFO/CCG for its costs and expenses in the amount of \$29,821.43. The

Administrator sought further particulars from CCG, which were finally received by February 6, 2006.

On February 7, 2006, the Administrator offered DFO/CCG \$28,510.38 plus interest. This was accepted and payment of \$29,389.72 including interest was authorized on February 8, 2006.

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

### 3.28 Project Europa (2003-2005)

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It has been reported that a guilty plea was entered for this vessel on August 26, 2005, to a charge of illegal discharge on August 23, 2003, approximately 65 miles south of Cape Race, Newfoundland, contrary to the Oil Pollution Prevention Regulations of the Canada Shipping Act. A marine pollution surveillance flight had detected a slick behind the *MV Project Europa*, a cargo ship registered in the Netherlands. The ship was boarded by TCMS at Trois-Rivières, Québec, on August 25, 2003. The investigation continued on the vessel's arrival in Mon-

treál, August 26 and 27, 2003. Apparently, the vessel's engineers had been working on the oily water separator at the time of the sighting, and some water with oil was discharged overboard. It was estimated that the resulting slick contained some 40 litres of an oily substance. The Newfoundland and Labrador Provincial Court ordered the payment of \$70,000.00 penalty.

No claims have been received for this incident. The Administrator has closed his file.

### 3.29 Sonny Boy (2005)

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The *FV Sonny Boy* was reported sinking at the dock in Port Hardy, British Columbia, on August 28, 2005. Port Hardy CCG lifeboat was dispatched to assist with the pumping. The vessel was refloated but was still taking on water. The vessel was left in care of the Harbour Master. The CCG has been called on to attend this vessel before – see 3.13 herein.

On August 31, 2005, the CCG determined that the vessel was in extremely poor condition with approximately 400 to 500 litres of fuel onboard. By September 20, 2005, the oil products (fuel, engine oil and hydraulics) were still onboard and the vessel would have sunk were it not for continuous pumping by the Harbour Master.

On September 27, 2005, CCG ER Victoria, attended on the vessel and, with help from a local contractor, removed some 140 gallons

of contaminated oil from the tanks. On September 29, 2005, the remaining oil in the bilge was recovered with sorbents and all material was taken away for disposal. CCG ER personnel left the vessel in the care of the Harbour Authority.

On December 6, 2005, the Administrator received a DFO/CCG claim for its costs and expenses in the amount of \$3,278.06. The Administrator requested further particulars, which were provided. The Administrator's January 5, 2006 offer of \$3,155.86 plus interest was accepted. Payment of \$3,200.38 including interest was made on January 6, 2006, in full and final settlement of this claim.

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

### 3.30 Extasia 1 (2005)

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In the early morning of August 28, 2005, at Ste-Anne de Bellevue, QC, the community firefighters reported to Environment Canada that the pleasure craft *Extasia 1* had pumped diesel oil into the water near the Sainte-Anne lock. The oil slick extended approximately 20 feet by 3 feet, spread throughout aquatic plants and under the public wharf. The firefighters attempted to discuss clean-up action with the owner, but the owner did not want to be dis-

turbed and indicated non-responsibility for the spill.

An Environment Canada employee arrived on-scene and then informed the Canadian Coast Guard. CCG engaged a commercial contractor in Montreal, Urgence Marine Inc., to respond and clean-up the spill. Arrangements were also made for a Transport Canada Marine Safety Inspector to talk to the owner and take oil samples.

By noon the Urgence Marine Inc. finished the clean-up operation. Three 45-gallon drums of oily debris were collected and later disposed of by the contractor.

On June 30, 2006, the Administrator received a claim from DFO/CCG in the amount of \$7,597.73 for costs and expenses incurred with respect to the incident. The Administrator

investigated and assessed the claim. The claim was established at \$7,153.87. On August 31, 2006, payment of \$7,530.77 including interest was authorized.

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

### 3.31 Terra Nova FPSO (2005)

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A release of 50-100 litres of oil from the *Terra Nova FPSO* was reported to St. John's, Newfoundland, MCTS. CCG ER St. John's received this report on September 10, 2005. A CCG ER officer on scene reported a light sheen and residual oil in the general area. The oil sheen was reported to have passed under and over a 1150 foot long 36" solid flotation boom that had been deployed to capture any oil that may be present during a hull cleaning operation.

Petro Canada says it is undertaking a hull cleaning operation on the *Terra Nova FPSO*. It is said to believe that residual oil from the November 21, 2004 spill may be trapped in the undergrowth attached to the vessel. A report on the 2004 spill can be found in the Administrator's Annual Report 2004-2005 at section 3.29.

The Administrator has closed his file.

### 3.32 Mystery Spill, Port de Montréal (2005)

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A claim totalling \$6,488.90 for clean up costs and expenses from an incident at the Port of Montreal (Vieux-Port) on September 6, 2005, Bassin Jacques-Cartier, Quai King Edward was filed with Administrator on February 9, 2006, by La Société du Vieux-Port de Montréal Inc. The claimant says the source of the spill is not known – mystery spill.

On February 22, 2006, the Administrator requested documentation on some of the items claimed, so that an assessment could be made.

On June 22, 2006, the Administrator received the documentation requested. On August 29, 2006, the Administrator made an offer to La Société du Vieux-Port de Montréal in the amount of \$5,642.52 plus interest in full and final settlement of this claim. The offer was accepted in the amount of \$5,957.73 including interest.

In light of the fact that the source of the oil spill is unknown, the Administrator has closed his file.

### 3.33 FV Gagtugwaw (2005)

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The *FV Gagtugwaw* was reported sunk and leaking oil at the wharf in Matane, Québec, on October 16, 2005. CCG ER, Québec attended on site of the recovery operation from October 17 to October 21, 2005, inclusive. It was estimated that there might have been as much as 3000 gallons of diesel and 114 gallons of hydraulic oil on the vessel. Insurers for owners engaged cleanup contractors. Divers plugged the vents

and, with difficulty, the vessel was removed from the water. A considerable amount of oil was released, a vacuum truck was engaged and booms had been deployed to prevent it from spreading. The vessel was in very poor structural condition.

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



On February 15, 2007 the Administrator requested additional information from DFO/CCG, as to why it was considered necessary and reasonable for Coast Guard to have two

persons on site to monitor the operations of the commercial clean-up crew contracted by the owner's representative. The investigation continues.

### **3.34 Front Fighter (2004-2005)**

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On June 22, 2004, a Transport Canada marine pollution surveillance flight detected three slicks in the wake of the crude oil tanker *Front Fighter* (79, 669 Gt, built 1998, registered in Norway) as she was approximately 85 miles southwest of Cape St. Mary's, Newfoundland. The ship was traveling from Yorktown, Virginia towards Whiffen Head, Newfoundland and Labrador.

Upon the ship's arrival at Whiffen Head, TCMS pollution prevention officers boarded her and an investigation was carried out. The officers confirmed that the oil, estimated to be approximately 64 litres had originated from machinery

on board the *Front Fighter*. On June 30, 2004, the vessel was charged for illegally discharging a pollutant, contrary to the Pollution Prevention Regulations of the Canada Shipping Act. On October 17, 2005, the ship's agent pleaded guilty and the ship was fined \$70,000.00 by the Newfoundland and Labrador Provincial Court in St. John's, Newfoundland.

At the time of the incident the vessel was named *Front Fighter*. The vessel has since been sold to new owners and renamed *Nordic Fighter*.

In the absence of any claim the Administrator has closed his file.

### **3.35 Mystery Spill, Victoria, British Columbia (2005)**

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On March 28, 2005, there was an oil spill at the Ship Point Facility of the Greater Victoria Harbour Authority (GVHA), Victoria Harbour, British Columbia. The GVHA hired a contractor for the clean-up response on March 28, 2005. The GVHA says the incident is a mystery spill its source being unknown.

On December 14, 2005, the GVHA filed a claim on the SOPF in the amount of \$8,521.16 for its costs and expenses in the incident clean-up response. On January 16, 2006, the Administrator requested further particulars surrounding the incident. These were provided by the GVHA on February 20, 2006. The Administrator continued his investigation and assessment of the claim. The GVHA accepted the Administrator's offer of \$6,847.42 plus interest. On

April 18, 2006, payment of \$7,170.31 including interest was authorized (and included in the SOPF fiscal year ending March 31, 2006).

During the response Transport Canada Marine Safety personnel took samples of oil from *M.V. Dominion I*, which was moored to the wharf at Ship Point Facility and, also, from the water in the vicinity of the *Dominion I*. A chemical analysis by Environment Canada concluded that the two oil samples were "extremely similar".

Following the Administrator's instructions, counsel wrote to the owner of the *M.V. Dominion I*, on September 11, 2006 to recover the established claim plus interest.

The Administrator is awaiting developments.

### 3.36 Skipjack (2005)

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On November 3, 2005, the Tofino Coast Guard Station reported the *FV Skipjack* had sunk at Opitsat, Vancouver Island, British Columbia, and was leaking oil. A slick about 10 acres in size was reported. The vessel was beached and fully awash with the high storm tides. There was a thick layer of diesel throughout the vessel.

The CCG Tofino lifeboat was dispatched to begin the cleanup. There was a considerable amount of fuel on board the Skipjack.

On November 5, 2005, CCG ER Victoria arrived on scene. An estimated 110 gallons of oil was removed from the vessel that day. On November 6, 2005, three drums of oil and oiled pads were recovered. On November 7, 2005, an estimated 100 gallons of oil and oiled pads

were recovered. The operation was completed on November 8, 2005. The vessel was left at its position on the beach.

On February 20, 2006, the CCG filed a claim on the SOPF for its costs and expenses in the incident in the amount of \$15,269.18. The Administrator requested and received further particulars on the claim for the CCG. On March 23, 2006, the CCG accepted the Administrator's offer of \$11,140.14 plus interest in full and final settlement of its claim. On March 24, 2006, payment to DFO/CCG of \$11,303.43 including interest was authorized.

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

### 3.37 Western Mariner (2005)

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On November 11, 2005, it was reported that a vessel had sunk at Cove Yachts in Maple Bay, British Columbia. This turned out to be the *FV Western Mariner*, with a suspected 5000 litres of diesel onboard. The yacht club deployed boom around the sunken vessel to contain possible pollution. The section of the dock where the vessel had been secured was significantly damaged by the vessel, and had separated from the rest of the dock. A contractor and divers were engaged to deploy booms to contain possible pollution, plug the vessel's vents and do an underwater survey of the hull. Oil continued to escape through the deck heads

and other areas an estimated 800 litres came to surface and was contained in the booms. A T Disk skimmer was deployed. By November 14, 2005, most of the surface oil had been removed. By that day, some 2800 litres of oil had been recovered. On November 16, 2005, the contractor lifted the vessel from the water. The fish hold and accommodation spaces were pumped out. On November 17, 2005, crews were continuing to clean up oil on and around the vessel.

No claims have been received in relation to this incident. The Administrator has closed his file.

### 3.38 Abandoned Vessel, Brentwood Bay, British Columbia (2006)

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On January 14, 2006, an overturned vessel at a mooring buoy in Brentwood Bay, British Columbia, was reported. No oil appeared to be coming from the vessel. CCG engaged a contractor who refloated the vessel on January 20, 2006. The vessel turned out to be a fibreglass hull pleasure craft with twin gasoline engines and inboard fuel tanks. The starboard engine had been removed. The contractor removed the partially filled fuel tanks and oil from the engine. The hatches were replaced, a drain

cock closed and the vessel re-secured to the mooring buoy.

On April 21, 2006, the Administrator received a claim from CCG for its costs and expenses in the incident at \$7,150.60.

After obtaining further particulars from CCG, the claim was investigated and assessed. The Administrator made an offer in the amount of \$6,614.88 plus interest in full and final settle-



ment of this claim, pursuant to sections 86 and 101 of the Marine Liability Act. CCG accepted this offer. On August 2, 2006, the Administrator directed payment of \$6,804.42 including interest.

In light of the fact that the owner of the vessel is unknown the Administrator has closed his file.

### **3.39 Rowan Gorilla VI (2006)**

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It was reported that the offshore oil rig *Rowan Gorilla VI*, at Mulgrave, Nova Scotia, for repairs, witnessed a spill of diesel fuel into the Strait of Canso. The incident occurred on March 20, 2006, and was being investigated

by TCMS under the Oil Pollution Prevention Regulations of the Canada Shipping Act.

The Administrator has no further information on the occurrence. In the absence of any claim, the Administrator has closed his file.

### **3.40 Queen of the North (2006)**

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On March 22, 2006, a report was received from MCTS that the British Columbia Ferry, *Queen of the North*, while enroute from Prince Rupert to Port Hardy, had run aground at the north end of Gil Island, Grenville Channel, British Columbia.

The *Queen of the North (Ex Stena Danica)*, 8,889 Gt, built in Germany in 1969, with a capacity of 700 people and 115 automobiles, had on board some 100 passengers and crew, for the 450 kilometre overnight trip along BC's so called Inside Passage, when the incident occurred approximately 135 kilometres from Prince Rupert. It is reported that she may have had more than 225,000 litres of fuel on board at the time.

Passengers and crew left the vessel in lifeboats and life rafts. The vessel sank. CCG ER Prince Rupert was notified. Various CCG vessels and others were tasked. BC Ferry Services Inc. took on management of the response, and activate its arrangement with the pollution response organization (RO) Burrard Clean Operations. CCG ER assumed the role of Federal Monitoring Officer (FMO).

On March 23, 2006, a steady stream of oil was surfacing from the wreck site. The resulting slick was seen moving around the top of Gil Island and then dissipating to the west side of the island. On March 24, 2006, an over flight showed only sheens of oil near the shoreline. No concentrations of wildlife were observed.

Mechanical recovery efforts were not being successful.

On March 26, 2006, BC Ferry announced that the ferry was located in some 1400 feet of water and was sitting upright buried in mud up to its rubbing strip. On March 27, 2006, BC Ferry was working with local First Nations to develop a long term monitoring plan, to be activated if necessary. A CCG over flight on March 29, 2006, reported a small amount of oil up welling from the incident site, producing a silver sheen that dissipated down current in less than two miles.

At year-end, 5600 feet of protective boom remained in place, with an additional 1000 feet held in reserve in Hartley Bay. By April 3, 2006, on water recovery equipment was being demobilized. The CCG ER vessel stood down and returned to the Prince Rupert base. CCG ER has established a communication plan with the First Nations to respond to any changes in the situation.

The shipowner is currently investigating the feasibility of pumping out the sunken ship. The Administrator has been approached by British Columbia Ferry Services Inc., and certain reports have been made available to the Administrator.

The Administrator continues to monitor the incident closely.

### 3.41 Blue Dawn (2006)

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On April 1, 2006, a member of the Canadian Coast Guard Auxiliary reported to MCTS Victoria that a vessel, *Blue Dawn*, was aground on Slag Point, Lady Smith Harbour, BC. Later that day when the CCG Emergency Response officer arrived on-scene the owner was preparing to float the vessel on the rising tide. The owner reported that there were approximately 400 gallons of diesel oil on board. The CCG ER officer advised the owner to seek salvage support from professionals.

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

On April 2 CCG deployed a containment boom around the vessel, because there was an oil sheen on the water extending along the shoreline. The following day, CCG assumed responsibility to float the vessel. A contractor was engaged to tow *Blue Dawn* to Ladysmith, so that a surveyor could conduct an evalua-

tion survey. The vessel required pumping out on a regular basis. On April 10 the contractor advised CCG that *Blue Dawn* had spilled a significant amount of fuel oil. The contractor responded with a containment boom and sorbent pads. On April 12, CCG was informed by the ship owner of its inability to deal with the situation and provide an acceptable plan ensuring that the vessel would no longer be a threat of pollution. Consequently, CCG informed the shipyard to begin preparation for removal of all accessible bulk oil and other contaminated materials. By the end of the month demolition and disposal was completed.

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

The Administrator is currently investigating the likelihood of successful costs recovery action against the shipowner.

### 3.42 Ocean Tribute (2006)

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

On September 9, Coast Guard was informed in meetings with the owner, contractor and Harbour Authority that the vessel was not insured. The owner did not have the means to respond any further. CCG then assumed the on-scene

commander role and contracted Saltair Marine Services to raise the vessel and remove the accessible fuel, engine oils and hydraulics. Approximately 100 gallons of oily fluids were removed. The vessel was subsequently demolished and disposed of by September 20.

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

### 3.43 Mystery Spill – St. Mary’s Bay, Newfoundland (2006)

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On April 9, 2006, the Canadian Coast Guard Emergency Response (CCG ER) personnel in St. John’s received a report of oiled birds washing ashore in St. Mary’s and Trepassey Bays on the southern coast of the Avalon Peninsula.

CCG ER personnel acted as the lead agency for the operational response to the oil spill of an unknown source. CCG provided support to the enforcement agencies of Transport Canada and Environment Canada in the carrying out of shoreline surveys and collecting oiled birds. The Canadian Wildlife Services, EC, chartered a commercial helicopter for aerial surveillance. Transport Canada also had an aircraft in the area on April 12. The ER crews conducted further beach surveys on April 13 and 14. They

collected more oiled debris and dead oiled birds. This was additional to the oiled dead birds collected by locals and employees of the Canadian Wildlife Services. Transport Canada collected oil samples during its investigation of the source of the oil spill. These samples were sent to Environment Canada laboratories in Moncton, New Brunswick, for chemical analysis.

On December 8, 2006, the Administrator received a claim from DFO/CCG in the amount of \$15,390.04 for costs and expenses incurred during the incident. On February 19, 2007, the Administrator requested additional documentation and general information from DFO/CCG.

### 3.44 Saxony (2006)

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On December 11, 2006, it was reported that the pleasure craft *Saxony* appeared to be sinking in Manion Bay, near Vancouver. CCG investigated and found no one onboard. The vessel sank in approximately 30 feet of water shortly after CCG arrived, with minimal pollution. No owner was identified at the time.

On December 13, residents of Bowen Island observed a large sheen emanating from the vessel. As an owner could not be found by the Bowen Island RCMP, CCG assumed the role of On-Scene Commander and management of the response. CCG contracted local salvage companies to raise the *Saxony* to control and prevent further pollution.

The Administrator’s file remains open.

### 3.45 Tug Mary E. Hannah and Barge #5101 (2006)

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It was reported that on January 31, 2006, the tug *Mary E. Hannah* and barge #5101 discharged a quantity of diesel gas/oil when loading cargo at the Nanticoke Refinery Marine Terminal, Lake Erie. A DFO/CCG Federal Monitoring Team from Sarnia attended on-scene.

The refinery management arranged for Eastern Canada Response Corporation to handle the operational response and clean-up the recoverable oil. The total amount of pollution recovered was later estimated at 3840 kgs of used

sorbent pads, and approximately 22,380 litres of mixed oil/water. Further, it is estimated the evaporation and dissipation rate in this incident was in the range of 50 to 70 per cent.

On June 19, 2006, the Administrator was informed that DFO/CCG had submitted an invoice in the amount of \$2,838.52 to the shipowner for recovery of costs and expenses incurred during the incident.

The Administrator’s file remains open.

### 3.46 Cicero (2006)

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A CCG Status Report advised the Administrator of this incident. On June 13, 2006, the *M.V. Cicero* reported an oil spill at pier 36 in Halifax harbour. The bunker C oil was being held by boom between the pier and the vessel. CCG Emergency Response arrived on-scene and found that the booms were not containing the spill completely. Transport Canada Marine Safety investigations were also conducted.

The Response Organization ECRC engaged by the shipowner commenced clean-up operations with vacuum trucks and absorbent booms. It was later determined that the spill occurred while bunker fuel was being transferred from #3 starboard tank to #3 port tank. It was estimated that approximately 2.5 cubic metres of bunker C was lost. On June 16, the *M.V. Cicero* was cleared to sail.

It is understood that DFO/CCG will submit an invoice to the shipowner. Meanwhile, the Administrator's file remains open.

### 3.47 Terra Nova FPSO (2006)

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On April 21, 2006, the *Terra Nova FPSO* reported to the Canada-Newfoundland Off-shore Petroleum Board (CNOPB) the release of crude oil due to a hole in a pipe in the vessel's process area. The CNOPB is the federal-provincial body that regulates the oil industry offshore Newfoundland and Labrador. It investigated this incident as the lead regulatory agency.

On discovery of the leak, Petro Canada shut down production and began to contain and clean-up the hydrocarbons on deck. The FPSO personnel estimated that a maximum of 300 litres of oil and/or water had flowed off the deck into the ocean. A tracker buoy was deployed from the FPSO to monitor the location of the oil on the ocean. Surveillance flights were scheduled. The shipowner activated its arrangement with the Eastern Canada Response Corporation when the spill was detected.

On April 23, crude oil was found on the water so two offshore supply vessels were deployed to contain and clean-up the oil, using a single vessel side sweep system as well as absorbents. On the same day, CCG Emergency Response personnel were on board the company's chartered surveillance flight, which determined there was no further trace of oil. It appears that the oil had dissipated with the heavy swells.

It is understood that CCG shall submit a claim to the company for costs and expenses incurred.

Note: Whilst Part 6 of the MLA providing for the statutory liability of the SOPF is for oil pollution damage from the ship and for costs and expenses incurred in respect of measures taken to prevent, repair, remedy or minimize oil pollution damage from the ship, etc., to the extent that the measures taken and the costs and expenses are reasonable, Part 6 of the MLA also provides for certain exceptions including, drilling activities, and floating storage units. MLA section 49 states:

"49. (1) This Part does not apply to a drilling ship that is on location and engaged in the exploration or exploitation of the sea-bed or its subsoil in so far as a discharge of a pollutant emanates from those activities.

(2) This Part does not apply to a floating storage unit or floating production, storage and offloading unit unless it is carrying oil as a cargo on a voyage to or from a port or terminal outside an offshore oil field.

### 3.48 Jag Pahel (2006)

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

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

The Administrator awaits developments.

### 3.49 Andre (2006)

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On July 4, 2006, the bulk carrier *M.V. Andre* reported that during a bunkering operation in Burrard Inlet an oil spill occurred. It was bunker C type fuel oil. The harbour master estimated that 200 gallons of bunker C was spilled on the deck of the *M.V. Andre*, and that approximately 20 gallons escaped into the harbour. The agent for the ship contracted the Response Organization, Burrard Clean Operations, to conduct clean-up of the oil. CCG assumed the role of Federal Monitoring officer.

It was reported that pleasure craft at a nearby marina were stained by oil and other private property was oiled as well. A number of oiled birds were collected for rehabilitation under the guidance of the Canadian Wildlife Service.

On July 6, 2006, the Administrator instructed counsel to retain a marine surveyor, who provided an estimate of the total clean-up costs and expenses that would likely be incurred. Subsequently, a joint Letter of Undertaking in the name of the SOPF and the CCG was provided by the ship’s P & I Club.

At year-end it is understood that most of the outstanding claims resulting from this incident have been resolved and paid by the shipowner.

The Administrator continues to follow the activities related to the incidents.

### 3.50 SCL Bern (2006)

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On December 16, 2006, the Administrator was advised of an oil spill incident involving the dry cargo ship *SCL Bern* and the *Shell Canada* bunkering barge *Arca* in the Pointe-aux-Trembles anchorage, Port of Montreal. A spill of heavy fuel oil occurred during refuelling/bunkering operations. Approximately 225 gallons of oil was released.

The Response Organization ECRC/SIMEC was contracted by Shell Canada, owners of the barge *Arca*, to respond to the incident. Approximately 4 to 5 kilometres of shoreline

at Varennes were impacted. By December 18 some 1500 feet of shoreline was cleaned. Further clean-up assessment of the shoreline was conducted by Environment Canada, Quebec Ministry of the Environment and CCG Emergency Response.

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

The Administrator awaits developments.



### 3.51 Westwood Annette (2006)

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

The Response Organization Burrard Clean Operations was contracted to conduct response operations. Preliminary results indicated that as much as 2/3 of the amount of oil spilled was recovered by end of the day August 5.

Approximately 1 kilometre of shoreline was impacted and beach clean-up operations were implemented. Canadian Wildlife Service found that some birds were being oiled, mostly Canada Geese.

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

At year-end, it is understood that the total costs and expenses incurred were approximately \$5 million, and that at the present time the P&I Club is addressing all claims.

The Administrator continues to monitor developments.

### 3.52 Star Ikedana (2006)

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On November 15, 2006, the Administrator received a shipping accident report issued by the Transport Safety Board of Canada. The occurrence report indicated that on November 9, 2006, the Singapore registered cargo vessel *Star Ikedana* had struck the south end of berth # 2 at Squamish Terminals, Squamish, British Columbia. The impact caused a large rupture on the hull above the waterline on the starboard side, approximately 30 feet long by 5 feet high. The impact ruptured the starboard fuel tank. The hole was, however, above the liquid level of the bunker C fuel. Fortunately, no fuel was released into the water. The bunker C fuel was

pumped to another of the ship's tanks. During the clean up of the residual, Burrard Clean placed a containment boom around the ship. Transport Canada indicated that repairs would take 8 to 10 days to complete.

The striking of the pier, while manoeuvring at Squamish terminals, appears to have occurred at the same berth referred to in the *Westwood Annette* incident – see section 3.51. In that incident, just a few months earlier, the Squamish estuary sustained considerable environmental damage caused by a significant oil spill from the *Westwood Annette*.

### 3.53 Sanderling (2006)

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A CCG Status Report advised the Administrator that on July 22, 2006, the dry cargo ship *Sanderling* leaked bunker C fuel into Halifax Harbour. The Response Organization ECRC was engaged by the shipowner. A containment boom was placed around the ship. Booms were also streamed around the Dartmouth Marina and Ferry Terminal. By the end of the follow-

ing day the sheen on the water of Halifax Harbour had mostly dissipated. The CCG/ECRC/EC personnel toured the area of the spill, but no recoverable oil was observed.

It is understood that CCG will submit a claim for monitoring the incident to the shipowner. In the meantime, the Administrator's file remains open.

### **3.54 Gayle Ann II (2006)**

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On August 15, 2006, it was reported to CCG that the fishing vessel *Gayle Ann II* had sunk at the Powell River City Marina. Diesel fuel oil was leaking from the vessel causing a large oil slick in the marina. The Powell River Lifeboat crew boomed off the vessel and used absorbent pads to contain the spill. CCG hired local divers to raise and stabilize the vessel in order to remove the fuel from its tanks, including other accessible engine and transmission oils.

On August 17, 2006, the owner was given a notice of intended action by the CCG On-Scene Commander, outlining the work required to remove the pollution hazard. CCG submitted an invoice to the owner on September 14, 2006, but payment has not been received.

On February 14, 2007, the Administrator received a claim from CCG for costs and expenses in the amount of \$9,934.75. The Administrator is investigating and assessing the claim.

### **3.55 Wishing Star (2006)**

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

CCG reports that, due to the owner's inaction, it assumed the role of On-Scene Commander for the incident. A commercial company, Wainwright Marine, was contracted and its tug

*Ingenika* arrived on scene. The tug boomed the area of the sunken vessel and deployed absorbent pads. Divers plugged the vents and rigged the vessel for lifting. On July 31, the *Wishing Star* was raised and towed to Wainwright Marine yard in Prince Rupert. Work crews continued to remove the residual and bilge oil.

On February 14, 2007, the Administrator received a claim from CCG for costs and expenses in the amount of \$112,629.51. The Administrator is investigating and assessing the claim.



## 4. Challenges and Opportunities

### 4.1 Civil Liability for Environmental Damage in Canada

Compensation for environmental damage is handled differently under the *Canadian Marine Liability Act (MLA)*, the 1992 CLC, the 1992 IOPC Fund Convention, and the US OPA 90.

The 1992 CLC and the 1992 IOPC Fund Convention, in their definitions provide that “pollution damage” means [in part]:

*“(a) loss or damage caused outside the ship by contamination resulting from the escape or discharge of oil from the ship, wherever such escape or discharge may occur; provided that compensation for impairment of the environment other than loss of profit from such impairment shall be limited to costs of reasonable measures of reinstatement actually undertaken or to be undertaken...”*

In Canada, the MLA (the SOPF Fund’s governing statute) defines “oil pollution damage” as:

*“...in relation to any ship, means loss or damage outside the ship caused by contamination resulting from the discharge of oil from the ship.”*

The MLA provides:

*“the owner of a ship is liable for oil pollution damage from the ship.”*

The MLA further provides:

*“ If oil pollution damage from a ship results in impairment to the environment, the owner of the ship is liable for the costs of reasonable measures of reinstatement actually undertaken or to be undertaken.”*

In the United States, OPA 90 provides for payment of natural resource damage claims from the Oil Spill Liability Trust Fund. Only designated Trustees may submit natural resource damages. Under the US regulations the trustee may consider a plan to restore and rehabilitate or acquire the equivalent of the damaged natural resource.

The technically justified reasonable cost for reinstatement/restoration measures, for which compensation is available under the 1992 CLC and the 1992 IOPC Fund Convention, might equate to primary restoration under the US Natural Resource Damage Assessment regulations (NRDA). However, the further measure of OPA 90 NRDA is:

- The diminution in value of those natural resources pending restoration, plus
- The reasonable cost of assessing those damages

The 1992 CLC and the 1992 IOPC Fund Convention do not, by their definition of pollution damage, cover this latter sort of compensation provided by the NRDA regulations or other theoretically based assessments of environmental damage.

In Canada it has been mooted by some that the definition of oil pollution damage in the MLA appears sufficiently broad to allow the Administrator of the SSOP Fund to entertain claims for environmental damages for a loss not tied to some identifiable economic consequence. In response, others argue that in light of the particular provision respecting liability for the costs of reasonable measures of reinstatement, it is quite clear that such “non-use value claims” are not provided for under the SSOP Fund’s governing statute.

So far, neither the Canadian courts nor the Administrator of the SSOP Fund have considered the meaning of pollution damage in the governing statute, in this context.

It is noted that the Supreme Court of Canada has touched on the notion of compensation for non-pecuniary loss in the matter of *British Columbia vs. Canadian Forest Products Ltd.* \*

## **4.2 Regional Environmental Response Team**

In Canada there are various pieces of legislation, international agreements, inter-governmental, inter-departmental and agency agreements concerning the roles and responsibilities of lead agencies and resource agencies.

Environment Canada is recognized by the Canadian Coast Guard as the federal authority for environmental advice during a pollution incident. Environment Canada normally chairs the Regional Environmental Emergency Team (REET), which is responsible for providing consolidated environment and scientific information during the course of response operations. The REET is comprised of representatives from federal, provincial, first nations, municipal and other agencies, as necessary.

The contingency plans of the REET organization contain a basic framework to ensure that all partners work together efficiently. These plans are integrated with the emergency plans of other government departments. For instance, REET provides the CCG and/or the polluter’s On-Scene Commander with advice respecting weather forecast. This assistance by the REET organization to the On-scene Commander during an incident can make a major difference in the response to an incident. In addition, the REET may approve the use of chemical dispersion and other shoreline treatment techniques.

In the performance of his duties, the Administrator has a unique perspective on pollution issues that touch Canadians. He closely follows the evolving international and domestic regimes for the prevention, preparedness and operational response for the protection of the marine environment. The administrator supports the continuing efforts of Canadian oil spill response managers to become more aware of the environmental activities in other countries. For example, the continuing long-standing cooperation between the Canadian and US Coast Guards is commendable.

The benefits of partnership development and exchange of information, for instance, were clearly illustrated during the Administrator’s participation at CANUSLANT 2005 exercises held at the College of Atlantic in June 2005 in Bar Harbor, Maine. The benefits were also illustrated during his attendance at the Canada-United States Joint Response Team (JRT) conference held in Halifax in November, 2006.

\* 2004 SCC 38, file number 29266. The link following provides access to this decision:  
<http://scc.lexum.umontreal.ca/en/2004/2004scc38/2004scc38.html>

Note: For information on the CANUSLANT 2005 exercise see the Administrator's Annual Report 2005-2006 at section 5.10, and at section 5.9 herein.

### **4.3 The Polluter Pays**

Section 51 MLA makes the shipowner strictly liable for oil pollution damage caused by his ship and for costs and expenses incurred for clean-up and preventive measures.

As provided in the MLA, in the first instance, a claimant can take action against a shipowner. The Administrator of the SOPF is a party by statute to any litigation in the Canadian courts commenced by a claimant against the shipowner, its guarantor, or the 1992 IOPC Fund. In such event, the extent of the SOPF's liability as a last resort is stipulated in section 84 MLA.

The SOPF can also be a fund of first resort for claimants under section 85 MLA.

On settling and paying such a section 85 claim, the Administrator is, to the extent of the payment to the claimant, subrogated to the claimant's rights, and subsection 87(3) (d) requires that the "...Administrator shall take all reasonable measures to recover the amount of payment to the claimants from the owner of the ship, the International Fund or any person liable...."

In this process, the Administrator has to handle the claim twice, firstly with the claimant, then with the shipowner/person liable in a recovery action.

The Administrator notes that, as normal, in the cases of several incidents the claimant, primarily the CCG has, during the fiscal year, elected to first claim directly against the responsible shipowner. Sometimes this leads to claimants negotiating and settling their claims with the polluter's directly, with or without SOPF intervention as may be necessary. Other times the shipowner is not forthcoming and the claimant must resort to the SOPF.

In the interest of expediting satisfactory claim and recovery settlements the Administrator encourages such direct claim action by claimants where appropriate.

N.B.: In reality, the notion that the polluter pays is subject to the important caveat that the shipowner is entitled to limit his liability. The shipowner is deprived of the right to limit his liability only if it is proved that the pollution damage resulted from the shipowner's personal act or omission, committed with the intent to cause such damage, or recklessly and with knowledge that such damage would probably result. This new test makes it practically impossible to break the shipowner's right to limit liability.

### **4.4 Arctic Oil Pollution Response**

In Canada, the Canadian Coast Guard certifies a network of four private-sector owned and operated Response Organization (ROs) to provide marine oil spill response services up to 10,000 tonnes (full-scale international tier 4) in waters south of 60° north latitude\*. All of these ROs are managed by industry and funded by fees charged to the users. However, there is no certified RO for waters

\* In the eastern Arctic the sixtieth parallel of latitude reaches near the northern tip of Labrador. Westward from there it divides both Ungava Bay and Hudson Bay virtually in half. Thus, these two major bodies of northern waters are south of the 60° north latitude.

north of 60° north latitude. In the Arctic, ships do not need to have a contractual arrangement with a certified RO. The CCG still has overall responsibility for preparedness and response in all Arctic waters.

In light of this responsibility, the CCG's Central and Arctic Region has developed an Arctic oil pollution response strategy. The strategy has been developed by an extensive consultation process with other federal departments, the territorial governments, and commercial marine transportation industries operating north of the 60° north latitude.

The greatest risk of oil pollution in the Canadian Arctic has been identified as likely occurring during fuel transfers by floating hose from ships in any number of Arctic communities. The CCG has developed individual response strategies for 48 of these communities which involve staging of equipment, as well as providing training on the use of this equipment in order to respond to these spill events. In addition, during the shipping season, CCG icebreakers carry first-response spill equipment kits and crew trained in its use. Should a specific oil spill event exceed the resource capacities within a community or available from an icebreaker, CCG could deploy its rapid air transportable spill response equipment suite from Hay River, Northwest Territories. This equipment suite allows recovery and disposal in response to a spill of up to 150 tonnes. In addition, the CCG in Central and Arctic Regions maintains spill response equipment strategically cached in Churchill, Iqaluit, and Tuktoyaktuk. When combined with the air transportable suite, enough equipment would be available from within the region to respond to a 1000 tonne spill.

Note: For additional information about CCG's Arctic Response Strategy, see the SOPF Administrator's Annual Report 2002-2003 at sections 4.2.3 and 5.3, respectively.

## **4.5 Oil spill Risk Assessment Newfoundland**

In September 2005 Transport Canada, in partnership with the Department of Fisheries and Oceans, began a study to assess the risk of an accidental spill of oil products along the southern coast of Newfoundland. The final report is expected to be completed before the end of 2007.

Note: For additional information about this oil spill risk assessment, see section 5.2 herein.

## **4.6 Oil Tanker Incidents Decreasing**

In North America oil tanker incidents appear to have fallen off dramatically. In Canada, a survey of Canadian oil spill incidents reported by the SOPF Administrator from March 31, 1993, to March 31, 2007, shows that 7 per cent were from tankers, 76.5 per cent were from other vessels and 16.5 per cent were mystery spills.

In its October 2005 Newsletter, the International Tanker Owners Pollution Federation Ltd.(ITOPF) reports on trends in oil spills from tankers. Since 1974, ITOPF has maintained a database of oil spills from tankers, combined carriers and barges, which includes all reported accidental spillages except those resulting from acts of war. The amount of oil spill in an incident represents all the oil lost to the environment, including that which is burnt or remains in a sunken vessel. Spills are generally categorized by size (< 7 tonnes, 7-700 tonnes, and > 700 tonnes). The majority of accidental spills on ITOPF's database fall into the smallest category, i.e., <7 tonnes (84%).

It is apparent from the ITOPF database that the number of accidental oil spills in the 7-700 tonnes and the > 700 tonnes categories has decreased significantly during the last thirty years. The average number of large spills per year during the 1990s was less than a third of that witnessed

during the 1970s. The 5-year averages show that this reducing trend is continuing with 35% less spills of 7 tonnes and above occurring in the last 5 years compared with the previous 5 years. The survey reported that 232 tanker incidents resulting in spills of 7 tonnes or more in the last 10 years were distributed over 60 countries.

With the exception of the Republic of Korea, all countries experienced a decline in the reported number of spills in the last 10 years compared with the two previous 10 year periods. Large spills in the Republic of Korea during the 1990s were due mainly to groundings and collisions in the coastal zone during poor weather conditions. In response, the Korean government has taken steps to move large vessels further offshore and away from congested shipping lanes in coastal archipelagos. This appears to have contributed to a significant reduction in accidents.

The highest reported volume of oil spilled from tankers in any one year between 1995-2004 was experienced by the United Kingdom, almost entirely due to the Sea Empress spill (72,360 tonnes). The second highest was Spain, the majority of which was due to the Prestige (63,000 tonnes).

The United States experienced the highest reported frequency, with 55 incidents (24%) of the total number for the period 1995-2004. This figure of 55 incidents is, however, only half the number of spill incidents of 7 tonnes or more for the preceeding 10 year period (1985-1994). The relatively high frequency of spills occurring in the U.S. in any given period is partly attributable to the scale of U.S. oil imports, and partly to a more reliable reporting of oil spill incidents.

ITOPF concludes that the decrease in the number and size of spills in incidents from tanker ships continues despite a steady increase in seaborne oil trade since the mid 1980s. The causes for this trend lie chiefly in improved ship management coupled with the adoption and application of effective international instruments for pollution prevention developed by the International Maritime Organization. In the case of the United States, a downturn in oil spills coincides with the introduction of the Oil Pollution act (1990), as well as positive efforts by shipowners.

Historically, there has been a higher frequency of crude oil spills than any other oil type for all spill size groups. However, in recent years, a shift in the balance is becoming apparent, as relatively higher incidents of fuel cargo spills are being observed. This is likely to continue with increasing exports of fuel cargo out of northern Europe.

#### **4.7 Substandard Transportation of Oil – Fourth Intersessional Working Group**

During the tenth extraordinary session of the 1992 IOPC Fund held from February 27 to March 2, 2006, the Assembly decided to establish a Working Group to consider non-technical measures to promote quality shipping for carriage of oil by sea. It was decided that the Working Group work intersessionally and be open to all governments, inter-governmental and non-governmental organizations, which have the right to participate in the 1992 Fund Assembly. It was also agreed that both State representatives and representatives from the industry, e.g. representatives from shipowners, oil importers, insurance companies and classification societies should be encouraged to participate in the work. The Assembly emphasized that in particular IMO should be encouraged to participate.

The Working Group was instructed to assess non-technical measures and guidelines that may not only be the responsibility of Contracting States, but that may also address industry procedures and practices. The Group was also instructed not to stray into areas of competence of IMO, nor to duplicate work already undertaken by that Organization. The Assembly emphasized that the Work-

ing Group should not consider issues that would require any reopening of discussions regarding a revision of the 1992 Conventions.

At its first meeting in May 2006, the 4th Intersessional Working Group focused on current and planned procedures and practices of the oil and shipping industries, marine insurers, classification societies and States in promoting quality shipping. The Group decided to undertake a study to identify national legal factors that allowed and required, and/or prevented, marine insurers and other related businesses from sharing information on clients.

Following an examination of the oil spill database maintained by ITOPF, and based on the IOPC Funds experience in dealing with incidents, an analysis showed that ships falling outside the ambit of the P&I insurers belonging to the International Group of P&I Clubs are not more likely to be involved in pollution incidents. Further, since the majority of ships insured with P&I insurers are classed with classification societies that are members of IACS, it can be inferred from the study that ships falling outside the ambit of IACS are, also, not more likely to be involved in pollution incidents.

During its second meeting held in March 2007, the Group continued discussing the sharing of information relating to the quality of shipping and possible barriers to sharing such information. The Group considered a number of documents on national legal factors that impacted upon the P&I Clubs, and other related businesses, from sharing information on clients. It also considered whether competition law and practices took into consideration the need for measures to encourage quality shipping for the transportation of oil.

The International Group of P&I Clubs informed the Working Group about a number of recent measures taken to contribute positively to global efforts to improve ship quality and safety standards, in particular, the so called “designated vessel” procedure and the “double retention mechanism”. The procedure provides that an International Group Club will be able to nominate a vessel, which it considers does not meet the minimum acceptable quality standards expected of vessels entered with Clubs within the International Group, for inspection by an independent committee. If upheld by the independent committee, the nominated vessel will be deemed a “designated vessel”. Such vessels will attract a double retention under the International Group claims pooling system pending rectification of the deficiencies identified. In the event that this was not done within 12 months of the vessel being designated, claims arising thereafter would be excluded from pooling.

The Working Group will continue its deliberations at its third meeting to be held during the June 2007 sessions of the IOPC Funds’ governing bodies. Meanwhile, the Working Group has invited the Comité Maritime International\* to undertake a study with the following aims:

- a) to identify factors that allow/require/prevent marine insurers and other business endeavours from sharing information on clients, including national legislation and practices; and
- b) to identify whether competition law and practices take into consideration the need for taking measures to encourage quality shipping for the transportation of oil.

Before deciding how to proceed, the relevant non-governmental organizations, namely ICS, INTERTANKO, OCIMF and the International Group of P&I Clubs will elaborate on current problems regarding free exchange of information, and indicate whether there are similar problems in

\* The Comité Maritime International based in Antwerp, Belgium, is a non-governmental organization. Its object is to contribute by all appropriate means on activities to the unification of maritime law in all its aspects.



other areas. Once the problem had been defined more precisely, the Director shall be in a better position to consider how to conduct the study and recommend to the Working Group the way forward.

Note: For additional information about perspectives on substandard ships and the proposed revisions of the Civil Liability and IOPC Fund Conventions, see the Administrator's Annual Reports 2002-2003, 2003-2004, 2004-2005 and 2005-2006 at sections 4 and Appendix C, respectively.

## **4.8 Bunker Convention and Current Canadian Cover**

On October 4, 2002, Transport Minister David Collenette announced that Canada had signed the new International Convention on Civil Liability for Bunker Oil Pollution Damage.

It is understood that before formally ratifying the convention and implementing it in Canadian legislation, Canadian authorities shall consult industry stakeholders.

When and where the new bunker convention is in force, it will be compulsory for the registered owners of all ships over 1,000 gross tonnage to maintain insurance or other financial security, to cover the liability for pollution damage under the applicable national or international limitations regime. Claims for compensation for pollution damage may be brought directly against an insurer.

The present international conventions covering compensation for oil spills do not include bunker oil spills from ships other than oil tankers. Before the bunker convention can come into force internationally it will require ratification by eighteen Member States, including five Member States each with ships whose combined tonnage is not less than one million gross tons. The high number of States required to ratify the Convention could mean that the bunker convention is not enforced in the near future.

Fortunately in Canada, unlike most other countries, the strict liability of shipowners for bunker spills is stipulated under the *Marine Liability Act*. Further, the SOPF, as directed by the Administrator, is liable to pay compensation for bunker oil spills from ships of all classes, as well as spills of oil carried in ships as cargo. The Administrator has the power under section 53 of the MLA to obtain security (even before receiving a claim for compensation) and may commence an action *in rem* against a ship and arrest the ship for that purpose, if necessary. A letter of undertaking (LOU) usually provides security from the ship's P&I Club in order to preclude the ship's arrest or secure its release.

## **4.9 HNS Convention**

The International Convention on Liability and Compensation for damage in connection with the carriage of Hazardous and Noxious Substance by sea (HNS Convention) was adopted by a Diplomatic Conference held in May 1996 under the auspices of the International Maritime Organization. The Convention aims to ensure adequate, prompt and effective compensation for damage to persons and property, costs of clean-up and reinstatement measures and economic losses by the maritime transport of hazardous and noxious substances.

HNS includes bulk solids, liquids including oils, liquefied natural gases and liquefied petroleum gases, and packaged substances. Some bulk solids such as coal and iron ore are excluded because of the low hazards they present. Loss or damage caused by non-persistent oil is covered as is non-



pollution damage caused by persistent oil. Pollution damage caused by persistent oil is excluded since such damage is already covered by the existing regime on liability and compensation for oil pollution from tankers, i.e., the 1992 Civil Liability Convention, the 1992 Fund Convention and the Supplementary Fund Protocol. Loss or damage caused by radioactive materials is also excluded.

The 1992 IOPC Fund Secretariat is responsible for the implementation of the HNS Convention in advance of its coming into force. The Secretariat has compiled a “Guide to the Implementation of the HNS Convention.” This Guide is available on the website ([www.hnsconvention.org](http://www.hnsconvention.org)). The HNS Convention will enter into force 18 months after ratification by at least 12 States.

The Director of the IOPC Funds convened a workshop in London on the HNS Convention on May 25 and 26, 2006, which was attended by some 150 participants. This was the second workshop organized on the matter – the first was held in June 2005.

[The Administrator participated in these workshops.] The basis purpose of the second workshop included:

- an opportunity to learn about the shipping and chemical industries’ perspectives on the ratification of the HNS Convention
- discuss issues in the process of ratification as being incurred by States considering ratifying the Convention; and
- discuss practical problems being encountered by the eight States that have already ratified the Convention.

During the workshop, the Canadian delegation gave a brief presentation on the status of Canadian stakeholders and Canada’s current level of consultation with industry towards preparing a proposal for ratification. Recommendations on ratification shall be submitted for Cabinet approval in due course.

Note: For an overview of the HNS Convention see the SOPF Administrator’s Annual Report 2005-2006 at section 4.4

## **5. Outreach Initiatives**

### **5.1 General**

The Administrator continues with outreach initiatives to further his understanding of the perspectives of parties interested in Canada's ship-source oil pollution, prevention response, liability and compensation regime. In Canada, these include citizens, ship owners, insurers, ROs, oil receivers, REET, CPPI, CCG, TC, EC, CMAC, CMLA, other federal and provincial government agencies and non-government organizations.

On the international front organizations of interest include: ITOPF, OCIMF, CEDRE, P&I Clubs, INTERTANKO, ICS, IOPC Fund, EC, USCG, U.S. Dept. of Commerce (NOAA), U.S. Dept. of Interior and the U.S. EPA.

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

The Canadian Marine Advisory Council (CMAC) held meetings in Ottawa from May 1 to May 4 and from November 6 to 9, 2006. The Administrator and a marine consultant engaged by the SOPF attended some of the meetings. The Administrator follows with great interest the on-going discussions on the marine environmental issues addressed at the national CMAC sessions. He keeps abreast of the proposed regulatory framework for the prevention of oil pollution from ships of all classes. Of particular interest to the Administrator are the deliberations of the Standing Committee on the Environment, and the issues discussed by the working group on marine oil pollution.

The Administrator is interested in the public consultation process and Transport Canada's regulatory reform projects to ensure the proper implementation of the new Canada Shipping Act, 2001. The new Act received Royal assent on November 1, 2001, but it is not yet in force. The process for implementation of the Act continues to focus on developing the essential regulations for publication in the Canada Gazette. The CSA 2001 has been reorganized, updated and streamlined to make it clear and easy to understand. The antiquated provisions and prescriptive details contained in the old CSA have been removed. The liability provisions have been moved to the Marine Liability Act.

### **Environmental Risk Study**

During the May CMAC meetings, a representative of Transport Canada presented information on the department's study to assess the environmental risk of transportation of oil along the southern coast of Newfoundland. Transport Canada, in partnership with the Department of Fisheries and Oceans, began this study in September 2005 to assess the risk of an accidental spill of oil products. These federal departments are working in collaboration with the provincial Department of the Environment and the local marine industry, including other environmental groups. Some of the factors under study are: the increase in marine transits; the size, age, and number of tankers transiting the area; the vessel traffic routing management system; oil spill probability assessments; and the potential impact of oil spills on the environment.

Transport Canada reports that there are approximately 20,000 oil tanker passages off the coast of Canada each year. Of these, about 17,000 occur off the east coast. Due to the increase in offshore oil exploration and production, the tanker traffic along the south coast of Newfoundland is rising significantly, particularly in the Placentia Bay area. The environmental risk study will provide Transport Canada with valuable information to evaluate the level of preparedness currently provided by the marine oil spill response Regime and, also, make necessary adjustments as required.

During the November CMAC, a report on Phase I of the environmental risk project was made available. This phase provides a summary of the public consultation meetings held in communities along the south coast of the island. Copies of this document may be obtained through Transport Canada's website at [www.tc.gc.ca/marinesafety/ships-and-operations-standards/nl-study/menu.htm](http://www.tc.gc.ca/marinesafety/ships-and-operations-standards/nl-study/menu.htm). The final report is expected to be completed before the end of 2007.

### **Memorandum of Understanding between Transport Canada and Environment Canada**

During the May CMAC meeting, a representative of Transport Canada provided an update on the enforcement Memorandum of Understanding (MOU) between Transport Canada and Environment Canada. This MOU outlines the level of cooperation required in enforcing pollution prevention, and wildlife legislation, for the protection of the marine environment from ship source oil spills and other pollutants. There are a number of compliance and enforcement areas, which requires inter-departmental cooperation. These include sharing of information, communications, inspections, investigations, detention of ships and prosecutions.

Copies of the MOU on enforcement of the regulations were distributed at the CMAC meeting. The Canadian Shipowners Association indicated that it intends to provide additional comments on the current document to Transport Canada for consideration.

In the investigation of oil pollution from ships, Transport Canada has the legislative and regulatory authority under the *Canada Shipping Act* and the *Arctic Waters Pollution Prevention Act*, and the regulations made pursuant to these Acts. Transport Canada, also, conducts Port State Control inspections of foreign ships in Canadian ports. These inspections are made to verify compliance with the provisions of the International Convention for the Prevention of Pollution from Ships. Environment Canada has responsibility for enforcement of the *Canadian Environmental Protection Act*, the *Migratory Birds Convention Act*, as well as regulation made under the *Canada Wildlife Act* and the *Species at Risk Act*.

### **Marine Oil Spill Response Regime**

A representative of the Canadian Coast Guard presented information on the new Special Operating Agency status of the Coast Guard. The operational role of the Coast Guard has become more focused on oil spill response operations. The Coast Guard's responsibility for marine environmental response under domestic and international obligations was discussed. It was noted that the Coast Guard has a large inventory of response equipment. There are 74 emergency response personnel strategically placed across the country throughout the five Canadian Coast Guard Regions.

With respect to preparedness to combat oil pollution, the Coast Guard's role was summarized in the following manner:

- Development of emergency response plans and international emergency response plans with countries who share contiguous waters.
- Provision of an initial response capacity for all Canadian waters south of 60° latitude.
- Provision of a primary response capacity for north of 60° latitude.

With respect to Emergency Response Operations, the Canadian Coast Guard's role includes:

- Response to mystery spills and ship source spills in waters under Canadian jurisdiction.
- Provide Federal Monitoring Officer and On Scene Commander functions for the clean-up of marine pollution incidents on a cost recovery basis.
- Response to requests for assistance from countries signatory to the International Convention on Oil Pollution, Preparedness, Response and Cooperation.

### **National Aerial Surveillance Program (NSAP)**

During the May CMAC meeting, a representative of Transport Canada reported on the acquisition of a new suite of remote sensing equipment for the Dash 8 pollution surveillance aircraft operating in the Ontario, Quebec and Atlantic Regions. The new surveillance equipment includes:

- Side Looking Airborne Radar
- Ultraviolet / Infrared Line Scanner
- Electro-optical/ Infrared Camera System
- Automatic Identification System Transponder Receiver.
- Geo-coded digital Still and Video Camera System.
- Data Uplink System.

These recent acquisitions and the government's renewed focus on the NSAP will increase significantly the effectiveness of Canada's surveillance program for observing, detecting, and reporting oil spills. The NSAP program will assist Transport Canada in preventing pollution from ships and thereby protect the marine environment. The aerial surveillance program is the primary tool available to Transport Canada for detecting any illegal discharges at sea

During the presentation on the NSAP Transport Canada highlighted that the recent increase in patrol hours has increased the effectiveness of the program. The fiscal year 2005/2006 was a record year for the NSAP. Over 1500 pollution patrol hours were flown by the four fixed-wing aircraft that are strategically located across the country. It was also reported that a second surveillance system has been ordered for the Pacific Region and western Arctic waters. The equipment is expected to be installed in the aircraft and made operational by the autumn of 2007 or winter 2008.

### **Update**

On December 1, 2006, the Minister of Transport, Mr. Lawrence Cannon, unveiled the newly equipped Dash 8 surveillance aircraft at the St. John's international airport. The Minister was joined by the federal Minister of the Department of Fisheries and Oceans, Mr. Loyola Hearn, and the Minister of the Environment, Ms. Rona Ambrose, during the launch of the new aircraft.

Note: For additional detailed information about the NASP see the Administrator's Annual Report 2001-2002 at section 4.23.

## **Disposal of Marine Oily Waste**

In regard to the issue of oiled seabirds caused by the illegal discharge of oily waste at sea, during most years the Administrator reports the presence of mystery oil spills found on exposed shore-lines, principally on the eastern seaboard of Canada. The oil is devastating to wildlife and often a considerable expense to the public purse from clean-up, including claims paid by the SOPF. The Administrator cannot recover payments made for cleaning-up these mystery spills, because the identity of the polluter is unknown.

During the November CMAC meetings, Transport Canada reported that the new TCMS database on the availability of waste reception facilities still needs considerable information input from port authorities. Consequently, TCMS is planning to engage a consultant to further evaluate its current database system. A draft report on the ongoing feasibility study for implementation of a national marine port waste reception facilities regime has been delivered to TCMS. The final report is expected in the near future. It was also reported that on the international level IMO has developed an action plan to tackle the inadequacy of port facilities internationally.

Note: For a comprehensive overview on the issue of port reception facilities for oily waste, both domestic and international, see the Administrator's Annual Report 2005-2006 at section 4.6.

## **5.3 Canadian Marine Advisory Council (Arctic)**

The Administrator was represented by a marine consultant at the Regional Canadian Marine Advisory Council (Northern CMAC) meetings held in Churchill, Manitoba, from November 21 to 23, 2006. The Administrator has a direct interest in the issues surrounding the transportation of oil product to the High Arctic. The participants at the Northern CMAC represent the federal and territorial governments and a range of sealift operators from the marine shipping industry. Discussions were co-chaired by representatives of Fisheries and Oceans, CCG Central and Arctic Region, and Transport Canada Prairie and Northern Region.

### **Delivery of Fuel Products**

A representative of Petro-NAV reported on the delivery of fuel oil to communities in Northern Quebec and in Foxe Basin. Petro-NAV is a subsidiary of Groupe Desgagnés and operates tankers in the Canadian domestic trade. The tankers operated by Petro-NAV are constructed with double hulls. They are Canadian registered and crewed by Canadians. The Petro-NAV fleet includes seven Canadian flag product/chemical tankers, which are constructed as ice class 1A with double hulls. The lightering and fuel transfer equipment fitted in the Petro-NAV ships is designed specifically for the Arctic sealift.

This company also operates a tug and oil barge unit. The tankers are all ISM certified and registered to operate both in the Canadian and International trade.

During the 2006 Arctic sealift the Company's tankers *Maria Desgagnés* and *Jade Star* made five voyages to 16 communities, some 157 ship-days in total. Approximately 63,000,000 litres of petroleum products were delivered, including jet fuel, gasoline and diesel fuel. Petro-NAV is proud of its performance in the North. It meets client schedules with timely deliveries, and has a solid record in protecting the marine environment. The Arctic sealift for the delivery of oil products has two different operational profiles:

1. At Kuujuaq (Ungava Bay) the fuel oil is discharged into barges, which in turn shuttles the cargo to the tank farm 20 miles away. In Ungava Bay there are 40-foot tides, which makes the operation very difficult.
2. At all other ports the ship anchors off and discharges ashore through a floating hose that may be as long as 7,000 feet. This fuel transfer operation requires constant monitoring by the ship's crew in workboats.

Petro-NAV officials attribute its operational success and safety record in protecting the marine environment to the experience and training of their shipboard officers and crew.

Another major Arctic operator, Coastal Shipping Limited of Goose Bay, Labrador, has a contract with Public Works and Government Services Canada to supply oil fuel to the DEW Line sites on Baffin Island and in the Foxe Basin area. The ice strengthened tankers utilized for these fuel re-supply voyages, from Newfoundland to the eastern Arctic, are the *Mokami*, *Tuvaq* and *Dorsch*. In the summer of 2006 these ships delivered approximately 170,000,000 litres of fuel oil to the Arctic.

In the western Arctic fuel oil is delivered by the Northern Transportation Company Limited (NTCL) tug and barge, as has been the practice for decades. During the 2006 shipping season NTCL delivered, from its terminal at Hay River, fuel to communities in the western Arctic. Some 21,280,000 litres were shipped down the Mackenzie River to communities in western Nunavut, and 29,420,000 litres were delivered to other coastal communities in the Northwest Territory. In addition, 3,000,000 litres were delivered to the sites of the National Defence North Warning System.

Note: The total amount of fuel shipped to the Canadian Arctic during the navigation season was approximately 286,700,000 litres. There were no reported oil spills and no claims made against the Fund for oil pollution clean-up in Arctic waters during the year.

### **Delivery of Dry Cargo**

The general manager, Nunavut Sealink and Supply Inc. and Desgagnés Transarctik Inc gave a presentation about the Arctic 2006 re-supply. He noted that for the regular sealift operations the partnership deployed dry cargo vessels *Anna Desgagnés*, *Camilla Desgagnés*, *Cecilia Desgagnés* and *Mathilda Desgagnés*. Also, a 65-foot tug and a 160-foot by 40-foot barge were utilized for lightering and discharge operations from the port of Churchill to the Kivalliq communities in western Hudson Bay.

The Desgagnés ships delivered cargo to most of the eastern Arctic communities, including the Department of National Defense at Thule, Greenland. The ships and tug were deployed for approximately 500 ship-days for regular sealift, and transported 151,500 cubic metres of north-bound cargo. The manager reported that the shipping company had another successful season with increasing cargo volumes. Also, the inclusion of the Port of Churchill as a departure port for the Kivalliq Region was a successful operation.

Presentations were also made on cargo delivery by Nunavut Eastern Arctic Shipping and Canarctic Shipping.



## **Arctic Oil Spill Exercises**

During the 2006 sealift Petro-NAV conducted several oil spill exercises and pollution equipment deployment drills. One of these drills was carried out when the tanker *Jade Star* was discharging through floating hose at Iqaluit. A second exercise was held while the tanker *Maria Desgagnés* was pumping fuel ashore at Kangiqsuijung (Hudson Strait).

These training exercises were designed to provide an opportunity for the ships' crew to practice oil spill equipment deployment under real conditions with floating hoses and during barge off-loading activities.

During the exercise, some 600 feet of containment booms were deployed throughout the duration of barge operations. In addition, containment booms were streamed around the stern of the tankers. Skimmer operations were also carried out. The exercises were all successful. It is noted that during the Arctic sealift of the previous year a similar type of oil spill response training exercise was performed at Inukjuaq and Kujjuaq during the discharge of fuel from the tankers.

Some of the pollution counter-measures equipment used during exercises was provided by the Canadian Coast Guard from the Quebec Region. In addition, equipment was provided by La Fédération des coopératives du Nouveau-Québec. Representatives of FCNQ and the Nunavik government were on hand as observers. Further, Transport Canada Marine Safety arranged for a ship safety inspector to be on-hand during the training evolutions.

Following this informative presentation, the Coast Guard chairman expressed appreciation for the work performed by the shipowners, and specifically for conducting the oil spill exercises. These training efforts help to ensure that an effective response capability is in place to respond to any marine pollution incidents that may occur in the Canadian Arctic. It was noted that under the present system there is no certified Response Organization (RO) for waters north of 60° latitude. Consequently, the shipowners do not need to have a contractual arrangement with a certified RO for oil spill clean-up. Furthermore, there are no Arctic Regional Environmental Emergency Team meetings held in the Arctic to develop a joint planning approach with Environment Canada. As a result, CCG continues to seek input from the shipping companies directly, and from the Arctic communities to develop its oil pollution response efforts based on local needs and sensitivities. The CCG has overall responsibility for preparedness and response in all Canadian Arctic waters and, therefore, appreciate the initiatives taken by the shipping companies.

## **5.4 Canadian Maritime Law Association**

The Administrator attended the annual general meeting of the Canadian Maritime Law Association (CMLA) held in Halifax on June 15, 2006. He also participated in the CMLA meeting held with representatives of the federal government in Ottawa on April 6, 2007.

## **5.5 Eastern Admiralty Law Association**

The Administrator attended the conference on New Directions in Maritime Law, 2006, presented by the Eastern Admiralty Law Association (EALA), and the Nova Scotia Barristers' Society held in Halifax on June 17, 2006. He also participated in the Annual General Meeting of the EALA in Halifax on November 14, 2006.

The Administrator notes the valuable work done by this organization in Halifax towards new developments in Maritime Law.

## **5.6 The Canadian Institute**

The Administrator attended the Administrative Law and Practice conference sponsored by The Canadian Institute in Toronto from April 25 to 27, 2006.

## **5.7 International Oil Pollution Compensation Fund**

On June 27, 2006, the incumbent Director of the International Fund, Mr. Måns Jacobsson, and the Director designate, Mr. Willem Oosterveen of the Netherlands, visited the office of the Administrator. The discussion focused on some of the unique features of the Canadian Ship-Source Oil Pollution Fund, which came into force on April 24, 1989, by amendment to the CSA. They exchanged information and shared perspectives on both the International Fund and the Canadian SOPF. The Administrator discussed the development of Canadian legislation to the current Marine Liability Act, which came into force on August 8, 2001. Later, in a letter of appreciation, Mr. Jacobson expressed thanks on behalf of both of them for the interesting and useful meeting in the office of the Administrator. He noted that it is always valuable for the Director of the International Fund to exchange views with Canadian officials, who demonstrate an active interest in the administration of the IOPC Fund.

During their visit to Ottawa, the Messrs. Jacobson and Oosterveen also met with officials of Transport Canada and the Canadian Coast Guard. Furthermore, they attended a special meeting of the CMLA at McGill University in Montreal on June 28. The Administrator also attended this meeting and participated in discussion.

## **5.8 Group Heads of Federal Agencies**

During the year, the Administrator attended several meetings of the Group Heads of Federal Agencies held at the Canada School of Public Service in Ottawa. This group was established in order that heads of federal agencies are provided with opportunities for networking and sharing of information and discussion about matters of common interest. The Administrator's participation during these sessions enhances his awareness of federal government developments. This ongoing exchange of information and cooperation with other agencies is helpful to the Administrator in carrying out his duties and functions under Part 6 of the Marine Liability Act.

## **5.9 Joint Response Team- Atlantic Coast**

The Administrator attended the Canada-United States Joint Response Team (JRT) meetings held in Halifax on November 28 and 29, 2006. The meeting was hosted by the Canadian Coast Guard and co-chaired by representatives of both Canadian and United States Coast Guards. The participants represent various federal and provincial/state agencies, such as the Departments of the Environment, Customs and Immigration, Coast Guards, and the Compensation Regime of both countries. The Administrator gave a presentation on the Ship-Source Oil Pollution Fund. He spoke about the creation and principal elements of Canada's Ship-source Oil Pollution Fund. His presentation addressed the role of the SOPF in oil spills incidents from ships of all classes operating in Canadian waters, including the St. Lawrence River system and other inland lakes and waterways. He explained that the responsibilities and duties of the Administrator include the authority to offer compensation to claimants for whatever portion of a claim the Administrator finds to be established. Where a claimant accepts an offer, the Administrator directs payment to the claimant out of the SOPF. Prior to any offer every claim for compensation is investigated and then assessed. In

appropriate cases the Administrator may take measures to recover the amount of the payment from the shipowner, the International Fund, or any other person liable.

The Administrator explained the SOPF claims handling process including investigation, assessment, payments, and recoveries made under the “pollutor pays” principle. The “pollutor pays” principle has as its four cornerstones:

1. All costs and expenses must be reasonable
2. All measures taken must be reasonable measures
3. All costs and expenses must have been actually incurred
4. All claims must be investigated and assessed by an independent authority (the Administrator)

During the JRT session the participants reviewed recent CANUSLANT oil pollution exercises and discussed lessons learned. They also conducted a workshop for development of a scenario for CANUSLANT 2007, which will be held in Saint Andrews, New Brunswick, from September 10th to the 14th, 2007. The term “CANUSLANT” is the short title of the Canada-US Joint Marine Pollution Contingency Plan for the boundary waters on the Atlantic Coast. The authority for the Atlantic operational supplement stems from the *Great Lakes Water Quality Agreement* between Canada and the United States.

Note: For information about the CANUSLANT 2005 Atlantic coast oil pollution exercise see the SOPF Administrator’s Annual Report 2005-2006 at section 5.10.

## **5.10 On-Scene Commander Course**

The On-Scene Commander Course, held each year at the CCG College, offers an opportunity for representatives from government agencies and the marine to meet and work together. The course is designed for CCG officers and operational managers of the marine industry. It addresses the on-site coordination and developments of clean-up strategies that are necessary to respond effectively to an oil spill up to the international tier 3 response capability (i.e. maximum quantity of oil spilled at 2,500 tonnes). Under the tier 3 criteria the equipment and resources must be deployed to the site within 18 hours after notification of an oil spill.

With the concurrence of the Administrator, Mr. Kenneth A. MacInnis, QC, was invited to attend as a presenter at the On-Scene Commander Course held at the Canadian Coast Guard College in Sydney, Nova Scotia during March 2007.

In his presentation, Mr. MacInnis spoke about the role and responsibilities of the Administrator of the SOPF. Further, as a panel member he explored the interface between the Administrator and the Canadian marine oil spill response regime. This sort of interaction contributes to an increased awareness among stakeholders about Canada’s overall statutory scheme for marine oil pollution prevention response, liability and compensation. As requested, the CCG College was provided with copies of the Administrator’s Annual Report 2005-2006, for distribution to the candidates for their personal use as a reference document.

## 6. SOPF Liabilities to the International Funds

### 1969 CLC and 1971 IOPC

Canada first became a Contracting State to the International Conventions on May 24, 1989. These two Conventions were the 1969 International Convention on Civil Liability for Oil Pollution Damage (1969 CLC) and the 1971 International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage (1971 IOPC Fund Convention).

Some of the major incidents involving the 1971 IOPC Fund since 1989 include Haven (Italy 1991) *Aegean Sea* (Spain, 1992), *Braer* (UK, 1992), *Sea Prince* (Republic of Korea, 1995), *Sea Empress* (UK, 1996), *Nakhodka* (Japan, 1997), and the *Nissos Amorgos* (Venezuela, 1997).

The SOPF now has contingent liabilities in the 1971 IOPC Fund for oil spill incidents prior to May 29, 1999. The SOPF will pay these as they mature. It has no responsibility for any administrative costs after that date.

### 1992 CLC and the 1992 IOPC

On May 29, 1999, Canada acceded to the 1992 CLC and the 1992 IOPC Fund Convention. These two Conventions apply only to spills of persistent oil from sea-going tankers.

The 1992 IOPC Fund Assembly decides the total amount that should be levied each year to meet general operating expenses and anticipated compensation payments in major incidents. The required levy is calculated by the IOPC Secretariat. The SOPF receives an invoice from the 1992 IOPC Fund based on the calculated levy multiplied by the total amount of Canada's "contributing oil".

Under the *MLA* (SOPF) regulations the reporting of imported and coastal movements of "contributing oil" is mandatory by persons receiving more than 150,000 tonnes during the previous calendar year.

Reports must be received by the SOPF no later than February 28 of the year following such receipt. In early January of each year the Administrator writes to each potential respondent explaining the process and providing the necessary reporting form. All the completed forms are then processed to arrive at the consolidated national figure that is, in turn, reported to the 1992 IOPC Fund. Currently there are 10 respondents who report. They represent organizations in the oil (refining and trans-shipment operations) and power generation industries.

The Erika incident (France, 1999) provided the SOPF with its first test of the 1992 IOPC regime, where compensation payable reached the 1992 IOPC limits. The SOPF payments to date to the 1992 IOPC Fund for the Erika incident amount to approximately \$11.2 million.

The SOPF payments to the 1992 IOPC Fund for the Prestige incident may amount to approximately \$13 million.

The SOPF is also liable to pay ongoing contributions to the 1992 IOPC Fund's General Fund and for other 1992 IOPC Fund major incidents happening after May 29, 1999. However, Canada will have no responsibility to the 1992 Fund for any incidents or administrative costs prior to May 29, 1999.

### *Ship-source Oil Pollution Fund*

Since 1989, the SOPF has paid the IOPC Funds approximately \$ 42 million, as listed in the table below.

### **Canadian Contributions to the International Funds**

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

<b>Fiscal Year (\$)</b>	<b>Paid from the SOPF</b>
1989/90	207,207.99
1990/91	49,161.28
1991/92	1,785,478.65
1992/93	714,180.48
1993/94	4,927,555.76
1994/95	2,903,695.55
1995/96	2,527,058.41
1996/97	1,111,828.20
1997/98	5,141,693.01
1998/99	902,488.15
1999/00	273,807.10
2000/01	6,687,696.71
2001/02	2,897,244.45
2002/03	3,219,969.17
2003/04	4,836,108.49
2004/05	3,448,152.80
2005/06	-
2006/07	360,233.37
<b>Total</b>	<b>\$41,993,559.57</b>

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

## 7. Financial Summary

### Ship-source Oil Pollution Fund of Canada (SOPF)

#### Income

Balance forward from March 31, 2006	\$350,842,718.29
Interest credited (April 1, 2006 – March 31, 2007)	14,081,985.75
Recoveries of settlements – MLA section 87	10,200.00
<b>Total Income</b>	<b>\$364,934,904.04</b>

#### Expenditure

Pursuant to MLA sections 81 and 82, the following was paid out of the SOPF:

Administrator fees	96,525.00
Legal services	126,786.78
Professional services	82,579.15
Administrative services	84,411.77
Travel	52,624.20
Printing	15,000.00
Occupancy	87,099.96
Office expenses	36,126.57
<b>Total expenses</b>	<b>\$581,153.43</b>

Pursuant to MLA sections 85-87, the Administrator paid for <i>Canadian claims</i> :	\$210,906.29
Canadian Contributions to the International Funds:	\$360,233.37

<b>Total expenditure from the SOPF</b>	<b>\$1,152,293.09</b>
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Balance in SOPF as at March 31, 2007	\$363,782,610.94
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## **Appendix A: The International Compensation Regime**

The International Oil Pollution Compensation Fund 1992 - IOPC - is an intergovernmental organization established by States.

### **The International Conventions**

The present international regime of compensation for damage caused by oil pollution from oil tankers is based on two International Conventions adopted in 1992 under the auspices of the International Maritime Organization (IMO), a specialized agency of the United Nations. These Conventions are the 1992 Civil Liability Convention (CLC) and the 1992 Fund Convention. The IOPC Fund 1992 established under the 1992 Fund Convention follows an earlier Fund created under the 1971 Fund Convention, which still exists but is in the process of being wound up. On March 3, 2005, an “optional” Supplementary Fund to the 1992 Fund came into force.

The Conventions have been implemented into the national law of the States, which have become parties to them. Canada is a Contracting State to the 1992 CLC and the 1992 Fund Convention, but not the Supplementary Fund.

### **The Civil Liability Convention**

The 1969 and the 1992 CLC govern liability of oil tanker owners for oil pollution damage. The shipowner is normally entitled to limit his liability to an amount that is linked to the tonnage of his ship. The source of compensation money comes from insurance (P&I Clubs).

Figure 1, shows the limits of liability.

Under the 1969 CLC, the shipowner is deprived of the right to limit his liability if the incident occurred as a result of the owner’s actual fault or privity. Jurisprudence provides reasonable prospects for breaking the shipowner’s right to limit liability under this test.

Under the 1992 CLC, claims for pollution damage can be made only against the registered owner of the tanker or his insurer. The shipowner is deprived of his right to limit his liability only if it is proved that the pollution damage resulted from the shipowner’s personal act or omission, committed with the intent to cause such damage, or recklessly and with knowledge that such damage would probably result. This new test makes it practically impossible to break the shipowner’s right to limit liability. The shipowner’s limit of liability is higher than in the 1969 CLC.

### **The IOPC Fund Conventions**

Under the IOPC Fund Conventions, which mutualize the risk of oil pollution from tankers, the IOPC Funds pay a supplementary layer of compensation to victims of oil pollution damage in the IOPC Fund – Contracting States that cannot obtain full compensation for the damage under the applicable CLC. The 1971 and the 1992 Fund Conventions are supplementary to the 1969 CLC and the 1992 CLC respectively. The source of the money is the levies on oil receivers in Contracting States, collected retrospectively. Canada is the exception, where the SOPF pays all Canadian contributions to the IOPC.

The compensations payable by the 1971 IOPC Fund for any one incident is limited to 60 million Special Drawing Rights (SDR), including the sum actually paid by the shipowner or his insurer under the 1969 CLC. Effective November 1, 2003, the maximum amount payable by the 1992 IOPC Fund for any one incident is 203 million (SDR) (approximately \$355 million as of April 1, 2007), including the sum actually paid by the shipowner or his insurer and any sum paid by the 1971 Fund.

Figure 1, shows compensation available from the 1992 IOPC Fund.

## **Contracting States**

Contracting States, as of January 2, 2007, to the 1992 protocols are listed in Appendix D.

## **Principal Changes**

In the 1992 CLC and the 1992 IOPC Fund Convention, the underlying principles remain.

- A special limit of liability for owners of small vessels and a substantial increase in the limitation amount. The limit is approximately \$7.89 million for a ship not exceeding 5,000 units of gross tonnage, increasing on a linear scale to approximately \$157.14 million for ships of 140,000 units of tonnage or over, using the value of the SDR at April 1, 2007.
- An increase in the maximum compensation payable by the 1992 IOPC Fund to \$355.34 million, including the compensation payable by the shipowner under the 1992 CLC up to its limit of liability. This includes the compensation levels increase of approximately 50% on November 1, 2003.
- A simplified procedure for increasing the limitation amounts in the two Conventions by majority decision taken by the Contracting States to the Conventions.
- An extended geographical scope of application of the Conventions to include the exclusive economic zone or equivalent area of a Contracting State.
- Pollution damage caused by spills of bunker oil and by cargo residues from unladen tankers on any voyage after carrying a cargo are covered.
- Expenses incurred for preventative measures are recoverable even when no spill of oil occurs, provided that there was a grave and imminent danger of pollution damage.
- A new definition of pollution damage retaining the basic wording of the 1969 CLC and 1971 IOPC Fund Convention with the addition of a phrase to clarify that, for environmental damage, only cost incurred for reasonable measures actually undertaken to restore the contaminated environment are included in the concept of pollution damage.
- Under the 1969 CLC the shipowner cannot limit liability if the incident occurred as a result of the owner's actual fault or privity. Under the 1992 CLC, however, the shipowner is deprived of his right only if it is proved that the pollution damage resulted from the shipowner's personal act or omission, committed with the intent to cause such damage or recklessly and with knowledge that such damage would probably result.
- Claims for pollution damage under the CLC can be made only against the registered

owner of the ship concerned. This does not preclude victims from claiming compensation outside the CLC from persons other than the owner. However, the 1969 CLC prohibits claims against the servants or agents of the owner. The 1992 CLC does the same, but also prohibits claims against the pilot, the charterer (including a bareboat charterer) manager or operator of the ship, or any person carrying out salvage operations or taking preventive measures.

## **Supplementary Fund - “Optional” Third Tier**

The Diplomatic Conference convened by IMO in London May 13, 2003, adopted a Protocol creating the International Oil Pollution Compensation Supplementary Fund. The most important elements of the Protocol include:

- The aggregate maximum amount of compensation available is 750 Million SDR per incident, consisting of the 1992 CLC; the 1992 Fund Convention, and the Supplementary Fund. This amount represents about \$1.3 billion as compared to the current amount of \$355 million.
- The minimum receipt of one million tons of contributing oil is deemed to be received in each Contracting State to the Supplementary Fund. This is a new feature designed to deal with those States that normally submit nil reports and, therefore, make no contributions.
- The amount of annual contributions payable by a single Contracting State will be capped at 20% of the aggregate amount of annual contributions. As a result, the annual contributions payable by all other Contracting States will be increased *pro rata* to ensure that the total amount of contributions payable by all persons liable to contribute to the Supplementary Fund, in respect of the calendar year, will reach the total amount of contributions decided by the Assembly.

The IOPC Supplementary Fund entered into force on March 3, 2005. The first session of the Supplementary Fund Assembly was held from March 14 to 23, 2005. The following Contracting States were present: Denmark, Finland, France, Germany, Ireland, Japan, Norway and Spain.

Note: For detailed information about the IOPC Supplementary fund see the SOPF Administrator’s Annual Report 2004-2005 at Section 4.6.2.

## **STOPIA 2006 and TOPIA 2006**

In February 2006, the International Group of P&I Clubs submitted to the Director of the International Fund a revised Small Tanker Oil Pollution Indemnification Agreement (STOPIA) 2006 and a new Tanker Oil Pollution Indemnification Agreement (TOPIA) 2006.

Under the revised STOPIA 2006, the limitation amount applicable to small tankers on a voluntary basis is increased to 20 million SDR for tankers of 29,548 gross tonnage or less for pollution damage in all 1992 Fund Member States. TOPIA 2006 results in the shipowner indemnifying, on a voluntary basis, the Supplementary Fund for 50% of the compensation amounts paid by it under the Supplementary Fund Protocol.

The 1992 Fund would, in respect of ships covered by STOPIA 2006, continue to be liable to compensate claimants if and to the extent that the total amount of admissible in force on claims exceeds the limitation amount applicable to the ship in question under the 1992 Civil Liability

Convention. If the incident involves a ship to which STOPIA applies, the 1992 Fund would be entitled to indemnification by the shipowner of the difference between the shipowner's liability under the 1992 Civil Liability Convention and 20 million SDR.

STOPIA 2006 and TOPIA 2006 will apply to incidents occurring after February 20, 2006. The agreements are to continue until the current international compensation system is materially and significantly changed.

Note: For a comprehensive overview of STOPIA and TOPIA see the SOPF Administrator's Annual Report 2005-2006 at Section 4.1.1.

## **Winding up the 1971 IOPC Fund**

In September 2000, a Diplomatic Conference of remaining parties to the 1971 IOPC Fund Convention adopted a Protocol to amend Article 43.1 of the 1971 Fund Convention. This action was considered essential, because most Contracting States had acceded to the 1992 IOPC Fund Convention.

Under the amended text, the 1971 IOPC Fund Convention ceased to be in force the date on which the number of Contracting States fell below twenty-five, or 12 months following the date on which the Assembly (or any other body acting on its behalf) noted that the total quantity of contributing oil received in the remaining Contracting States fell below 100 million tonnes, whichever was earlier.

Consequently, the 1971 Fund Convention ceased to be in force at midnight London time on May 24, 2002. Claimants in remaining Member States are not able to claim compensation from the 1971 IOPC Fund for incidents occurring after May 24, 2002. The 1971 IOPC Fund continues to be administered under the joint Secretariat for 1971 IOPC Fund and the 1992 IOPC Fund, until all outstanding claims are settled and paid.

Canada is past the critical period for current liability to the 1971 IOPC Fund. On May 29, 1999, Canada ceased to be a member of the 1971 IOPC Fund and became a Contracting State to the 1992 IOPC Fund. Nevertheless, Canada continues to have obligations to the 1971 IOPC Fund, but only for contribution respecting oil spills prior to May 29, 1999.

## **Damage covered by the Conventions**

Any person or company which has suffered pollution damage in a Contracting State of the IOPC Fund 1992 caused by oil transported by ship can claim compensation from the shipowner, his insurer and the Fund. This applies to individuals, businesses, local communities or States.

To be entitled to compensation, the damage must result from pollution and have caused a quantifiable economic loss. The claimant must substantiate the amount of his loss or damage by producing accounting records or other appropriate evidence.

An oil pollution incident can give rise to claims for damage of mainly four types:

- Property damage;
- Costs of clean-up at sea or on shore;
- Economic losses by fisherman or those engaged in mariculture;
- Economic losses in the tourism sector.

Claims assessment is carried out according to the criteria laid down by the representatives of the governments of Contracting States. These criteria are set out in the IOPC Fund 1992's claims manual, which is a practical guide to the presentation of claims for compensation.

In a number of major cases, the IOPC Funds and the shipowner's insurer have jointly established local claims offices in the country where the oil spill occurred to facilitate the handling of the large number of claims. Depending on the nature of the claims, the IOPC Fund 1992 uses experts in the different fields to assist in the assessment of claims.

## **Structure of the IOPC Fund 1992**

The Assembly and Executive Committee are composed of Contracting States.

The IOPC Fund 1992, whose headquarters is in London, England, is governed by an Assembly composed of representatives of all the Contracting States. The Assembly holds an ordinary session every year. It elects an Executive Committee made up of 15 Contracting States. The main function of the Executive Committee is to approve the settlement of claims for compensation.

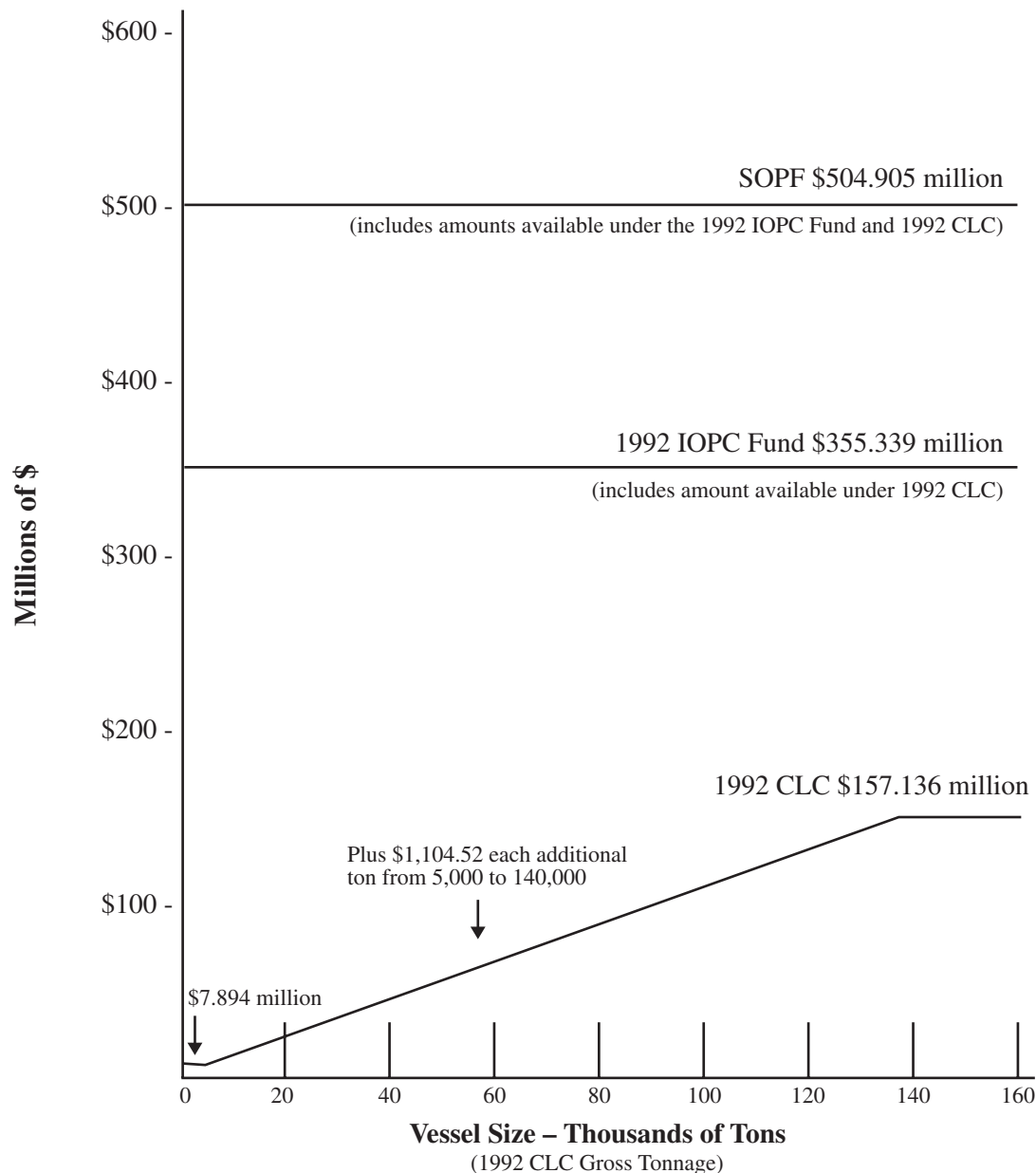
Organizations connected with the maritime transport of oil, such as those representing the shipowners, marine insurers and the oil industry, as well as environmental organizations, are represented as observers at the 1992 IOPC Fund meetings.

The Assembly appoints a Director, who is responsible for the operations of the IOPC Fund 1992. The Executive Committee has given the Director extensive authority to take decisions regarding settlement of claims.



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

Based on the value of the SDR <sup>(1)</sup> at April 1, 2007



(1) The value of the SDR at April 1, 2007, was approximately \$1.75043. This actual value is reflected in Figure 1 above.

### Figure 1

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

N.B. The above aggregate amount available under the 1992 CLC and the 1992 IOPC Fund is \$355.339 million effective November 1, 2003. The SOPF amount of some \$149.568 million on top of that, results in \$504.905 million being available now for a tanker spill in Canada - without reference to the new International "optional" Supplementary Fund.

## **Appendix B: 1971 IOPC Fund – Administrative Council**

The Administrative Council held three sessions during the year. These sessions were held by chairperson Mrs. Teresa Martins de Oliveira (Portugal).

Note: The complete Record of Decisions of the three sessions of the Administrative Council that were held during the year can be found at [www.iopcfund.org](http://www.iopcfund.org).

### **The 19th Administrative Council – May 22 and 25, 2006**

#### **Incident involving the 1971 IOPC Fund**

##### **PLATE PRINCESS (1997)**

On May 27, 1997, the Maltese tanker *Plate Princess* (30,423 gross tons) was loading a cargo of crude oil at Puerto Miranda on Lake Maracaibo (Venezuela) when 3.2 tons of oil, together with ballast water, were discharged in Lake Maracaibo.

In October 2005, the 1971 Fund was formally notified by the Venezuelan authorities of action for compensation brought by two fishermen's unions in June 1997 against the shipowner and the master of the *Plate Princess* for an estimated amount of £ 11.2 million. This notification was nearly eight and a half years after the damage occurred. Consequently, the Director maintained that the action by the fishermen's unions was time-barred, under the first sentence of Article 6.1 of the 1971 Fund Convention. Also, in the Director's view the claims were time-barred under the second sentence of Article 6, since no action had been brought against the 1971 Fund within six years from the date when the incident occurred.

The Venezuelan delegation stated it did not share the Director's view that the claim by fishermen was time-barred, because legal action had been taken against the shipowner within the time set out in Article 6 and 7.6 of the 1971 Fund Convention.

The Council recalled that the question of whether or not the claims were time-barred had been considered at its February/March 2006 session on the basis of a document submitted by the Director. After debate, the Council decided that the claims referred to were time-barred in respect of the 1971 Fund.

The Venezuelan delegation stated that it intended to submit a document on the *Plate Princess* to the Council and asked that the incident, therefore, remain on the agenda.

### **The 20th Administrative Council – October 23 to 27, 2006**

The Administrative Council dealt mainly with items of administration, including the situation regarding outstanding incidents involving the 1971 Fund and progress towards winding up that Fund. With regard to pending incidents, the Council noted that it anticipated that by the end of 2007 there would only be outstanding compensation and/or indemnification claims in respect of the *Nissos Amorgos*, *Plate Princess* and *Alambra* incidents. Further payments relating to the *Nissos Amorgos* and *Vistabella incidents* would be made from their respective Major Claims Funds

All legal proceedings involving the 1971 Fund should be concluded during 2007. The Council noted that any additional costs arising from other incidents (e.g. *Aegean Sea*, *Braer* and *Kriti Sea*) would be paid from the General Fund.

Notes: (1 ) For information about the *Aegean sea* and *Braer* incidents see the SOPF Administrator`s Annual Report 2001-2002 at Appendix B. (2) For information about the *Nissos Amorgos* and *Alambra* incidents see the SOPF Adminstrator`s Annual Report 2004-2005 at Appendix B.

## **The 21st Administrative Council- March 14 to 16, 2007**

### **Incident involving the 1971 IOPC Fund**

#### **PONTOON 300 (1998)**

The barge *Pontoon 300* (4,233 gross tons) sank in heavy seas off the United Arab Emirates while being towed by the tug *Falcon I*. The barge was not covered by any insurance for oil pollution liability. It is estimated that 8,000 tons of intermediate fuel oil were spilled. The oil spread over 40 kilometres of coastline, affecting four Emirates. The worst affected Emirate was Umm Al Quwain.

The Administrative Council dealt primarily with the barge *Pontoon 300* incident.

The claim, which was the subject of legal proceedings in the Umm Al Quwain Court of First Instance, was settled by the owner of the tug *Falcon I*. As a result, the 1971 Fund is making arrangements to pay all claimants who had received 75% of the settlement amounts, the remaining 25% by the end of March 2007. It was also noted that further payments relating to the *Pontoon 300* incident would be made from its Major Claims Fund.

Note: For information about the *Pontoon 300* incident see the Administrator`s Annual Report 2000-2001 and 2002-2003 at Appendix B.

## **Appendix C: 1992 IOPC Fund – Executive Committee and Assembly Sessions**

The Executive Committee of the 1992 IOPC Fund held four sessions during the year. The 33<sup>rd</sup> session was held from May 22 to 25, 2006, and the 34<sup>th</sup> session was held from October 23 to 27, 2006. Both of these sessions were held under the chairmanship of Captain Carlos Ormaechea (Uruguay). The 35<sup>th</sup> session was held from October 23 to 27, 2006. The 36<sup>th</sup> session was held from March 14 to 16, 2007. Both of these sessions were held under the chairmanship of Mr. John Gillies (Australia).

The Assembly held two sessions during the year. The 11<sup>th</sup> Extraordinary Session was held on May 22, 2006, and the 11<sup>th</sup> Session of the Assembly was held from October 23 to 27, 2006. Both of these sessions were held under the chairmanship of Mr. J. Rysanek (Canada).

Note: The complete Record of Decisions of these sessions of the Executive Committee and the Assembly session held during the year can be found at [www.iopcfund.org](http://www.iopcfund.org).

### **The 33rd Executive Committee – May 22 to 25, 2006**

#### **Incidents Involving the 1992 IOPC Fund**

##### **ERIKA (1999)**

The Maltese tanker *Erika* (19,666 gross tons) broke in two in the Bay of Biscay, France, on December 12, 1999. The tanker was carrying a cargo of 31,000 tonnes of heavy fuel oil. Approximately 19,800 tonnes of oil spilled as the ship sank.

The Executive Committee noted that as at April 30, 2006, some 6,990 claims for compensation had been submitted for a total of £143 million, and that 98.4 per cent of the claims had been assessed. Compensation had been made in respect of 5,645 claims for a total of £80.9 million, out of which the shipowner's insurer, Steamship Mutual, had paid £5.8 million and the 1992 IOPC Fund £72.1 million. Some 1,050 claims totaling £16.7 million had been rejected.

Legal actions against the shipowner, Steamship Mutual, and the 1992 Fund had been taken by 796 claimants. By April 30, 2006, out-of-court settlements had been reached with 432 of the claimants. The Courts had rendered judgments in respect of 80 claims and that actions by 285 claimants (including 145 salt producers) were pending. The total amount claimed in the pending actions, including the claims by the French State and Total SA, was £ 42.6 million.

Note: For additional information about the *Erika* incident and its significant impact on the international regime see the SOPF Administrator's Annual Reports 1999-2000, 2000-2001, 2001-2002, 2002-2003, 2003-2004, 2004-2005 and 2005-2006 at Appendix C, respectively.

##### **Prestige (2002)**

On November 19, 2002, the Bahamas registered tanker *Prestige* (42,820 gross tons) broke in two and sank 170 nautical miles west of Cape Finistere on the northwest coast of Spain. The tanker was loaded with approximately 77,000 tonnes of heavy fuel oil. The break-up and sinking released an estimated 25,000 tonnes of cargo.

The Executive Committee recalled that the Spanish Government had originally submitted a claim for £ 75 million for the cost to remove oil from the wreck of the *Prestige*. This amount included the costs of preparatory work and the feasibility trials conducted in the Mediterranean and at the wreck site. In January 2006, the Spanish Government had confirmed it had been awarded concession aid by the European Commission. Some £ 35 million had been received, and further payments of £ 22.7 million were pending. As a result of this concession, the Spanish Government had reduced its claim of £ 75 million to £ 16.8 million.

The Executive Committee had decided at its February 2006 session that some of the costs incurred in 2003 for sealing the oil leaking from the wreck and various surveys and studies were admissible in principle. It was also decided that the claim for costs incurred in 2004 relating to the removal of oil from the wreck was inadmissible (document 92 Fund/Exc.32/6, paragraph 3.28 refers).

The Committee noted that, in accordance with its decision of February 2006, an assessment was being carried out of the admissible costs of activities, which had a bearing on the assessment of the pollution risk posed by the oil in the wreck. This assessment was to include the costs incurred by the Spanish Government in 2003 prior to the removal of oil from the wreck. The Director is currently examining the issue to enable the 1992 Fund Assembly to discuss possible alternatives for admissibility within the framework of the 1992 Conventions.

#### **Nº 7 KWANG MIN (2005)**

On November 24, 2005, the Korean tanker *Nº7 Kwang Min* (161 gross tons) collided with the Korean fishing boat *Chi'l Yang No.1* (139 gross tons) in the port of Busan, Republic of Korea. A total of 64 tonnes of heavy fuel oil escaped into the sea from a damaged cargo tank.

The Committee recalled that, in view of the fact that the shipowner was financially incapable of meeting his obligations under the 1992 Civil Liability Convention to pay compensation in full to persons suffering pollution damage arising out of the incident, the 1992 Fund was liable in accordance with Article 4.1 (b) of the 1992 Fund Compensation to pay compensation. At its February 2006 session, the Executive Committee had endorsed the position taken by the Director as regards his authority to settle claims under Internal Regulation 7.4. It had also authorized him to make final settlement of all further claims arising out of the incident. As at May 2006, ten claims totalling £ 1.5 million in respect of costs of clean-up and preventive measures had been settled for £ 1.1 million. Three additional claims totalling £ 540 000 were being assessed.

Note: For additional information about the *Nº 7 Kwang Min* incident see the SOPF Administrator's Annual Report 2005-2006 at Appendix C.

### **The 34<sup>th</sup> Executive Committee – October 23 to 27, 2006**

The Executive Committee took note of document 92FUND/EXC.34/3. It contains summaries of the situation and settlement proceedings, in respect of all eight incidents dealt with by the 1992 Fund since the Committee's 30<sup>th</sup> session, of October 2005. The incidents included:

#### **ERIKA (1999)**

The Committee took note of developments regarding the *Erika* incident and the 14 court judgments rendered in respect of claims against the 1992 Fund, which had been made public since the Executive Committee's May 2006 session. These judgments are summarized in documents 92FUND/EXC.34.6, 92FUND/EXC.34/6/ Add.2 and 92FUND/EXC.34/6/ Add.3.

The Director referred to the fact that of the 86 judgments rendered against the 1992 Fund in the Erika incident, for the most part, these judgments had gone in the Fund's favour. Some courts had applied the Fund's admissibility criteria, some had made the point that the criteria were not binding on the courts and others had ignored the criteria. In four cases in which the judgments of the Court of First Instance had gone against the Fund, the Court of Appeal had recently overturned these judgments. It was gratifying to the Director that the French courts had generally sided with the Fund.

### **SLOPS (2000)**

The Greek-registered waste oil reception facility *Slops* (10,815 gross tons) sustained a fire and explosion on June 15, 2000, while at anchor in the port of Piraeus, Greece. The *Slops* was laden with 5,000 tonnes of oily water of which 1,000 to 2,000 tonnes were believed to be oil. A substantial quantity of oil was spilled causing extensive shoreline pollution.

The Executive Committee recalled that at its July 2000 session it decided that the floating waste oil reception facility *Slops* should not be considered a "ship" for the purpose of the 1992 Civil Liability Conventions, and the 1992 Fund Convention. It had decided that the Conventions did not apply to this incident. The *Slops* was originally designed and constructed for the carriage of oil in bulk as cargo. It had later undergone a major conversion for use exclusively as an oil waste storage and processing unit.

Two Greek companies had taken legal action in Piraeus against the registered owner of *Slops* and the 1992 Fund. They claimed compensation of approximately £1.5 million for costs of clean-up operations and preventative measures. The Court of First Instance held that the *Slops* fell within the definition of "ship", and ordered the Fund to pay the two Greek companies the amount claimed. The 1992 Fund appealed against the judgment.

The Court of Appeal overturned the judgment of the Court of First Instance. It held that the *Slops* did not meet the criteria required by the Conventions and, therefore, could not be considered a ship. The claimants appealed against this judgment to the Supreme Court. After hearing the case at a plenary session, held in May 2006, the Supreme Court held that the *Slops* should be regarded as a ship under the 1992 Conventions. The majority of the judges held that the Court of Appeal had contravened the substantive law provisions of the 1992 Conventions pertaining to the definition of "ship". The majority held that at the time of the incident, the *Slops* should be regarded a "ship" as defined in the 1992 Conventions as it had the character of a seaborne craft, which, following its modification into a floating separating unit, stored oil products in bulk and, furthermore, it had the ability to move by towing with a consequent pollution risk. The Supreme Court referred the case back to the Court of Appeal to examine the merits of the substance of the dispute- that is, the quantum of the claim, etc. The minority of the judges had considered, however, that the appeal should be dismissed.

The Committee noted that the Director had requested ITOPF to examine the claim for the cost of clean-up and preventive measures, and to assess the admissible quantum of the claim.

Note: For additional information about the *Slops* incident see the SOPF Administrator's Annual Report 2002-2003 at Appendix C.



## **PRESTIGE (2002)**

The Executive Committee recalled that at its October 2005 session it agreed to an increase in the level of payments from 15 per cent to 30 per cent of the loss of damage actually sustained by individual claimants, as assessed by the experts appointed by the 1992 Fund and the London Club. This agreement was subject to the governments of France, Spain, and Portugal providing certain undertakings and guarantees.

In December 2005, the Portuguese government informed the 1992 Fund that it would not provide any bank guarantee. Consequently, the Portuguese government only requested payment of 15 per cent of the assessed amount of its claim. In August 2006, the 1992 Fund made a payment of £ 222,600 corresponding to 15 per cent of the final assessment.

In January 2006, the French government gave the required undertaking in respect of its own claim. The Director was authorized to pay each claimant in France, except the French government, 30 per cent of the amount assessed by the Fund or as decided by a final court judgment.

In March 2006 the Spanish government gave the required undertaking and bank guarantee. Payment of £ 38.5 million was made to the Spanish government in March 2006.

The Committee recalled that the Spanish State had taken legal action against the American Bureau of Shipping (ABS) before the Federal Court of First Instance in New York, U.S.A. Spain requested compensation for all the damage caused by the incident, estimated initially to exceed US\$700 million and estimated later to exceed US\$1billion. The Spanish State had maintained, *inter alia*, that ABS had been negligent in the inspection of the *Prestige*. The inspection had failed to detect corrosion, permanent deformation, defective materials and fatigue in the vessel. Spain maintained that ABS had been negligent in granting a classification certificate.

ABS denied the allegation made by the Spanish State and made a counterclaim requesting that the Spanish State be ordered to indemnify ABS for any amount that it might be obliged to pay. In July 2006, the New York Court confirmed its earlier decision on the Spanish State's entitlement to sovereign immunity. ABS resubmitted its counterclaim on different grounds.

The Director was instructed to continue to follow the ongoing litigation in the United States. He was also instructed to monitor the ongoing investigations into the cause of the incident and take any steps necessary to protect the 1992 Fund's interests in any relevant jurisdiction.

## **SOLAR I (2006)**

On August 11, 2006, the Philippines registered tanker *Solar I* (998 gross tons) laden with 2,081 tonnes of industrial fuel oil sank, in heavy weather, in the Guimaras Straits, Republic of Philippines. A substantial quantity of oil was released from the ship after it sank in 630 metres of water. The sunken wreck continued to release oil, albeit in ever decreasing quantities.

About 124 kilometres of shoreline, and around 500 hectares of mangrove on Guimaras Island and surrounding islets, were polluted to varying degrees. The oil had a significant impact on small-scale fisheries and aquaculture, as well as on small-scale tourism businesses leading to considerable financial hardship for some individuals. As a result, the 1992 Fund and the shipowner's insurer took a pro-active approach.

The Executive Committee granted the Director the authority to settle all claims arising from the incident to the extent they did not give rise to issues of principle not previously considered by the Fund's governing bodies. The Committee also granted the Director authority to make payments on behalf of the 1992 Fund in respect of all admissible claims arising from the incident to the extent that the shipowners P&I Club refused to make payments.

The Committee decided that the claim for the cost of removing the oil from *Solar I* was admissible in principle. The incident is the first involving a vessel entered in the Small Tanker Oil Pollution Indemnification Agreement 2006 (STOPIA 2006).

Note: For information on STOPIA see Appendix A herein at "STOPIA 2006 and TOPIA 2006."

## **The 11<sup>th</sup> Extraordinary Session of the 1992 IOPC Assembly – May 22, 2006**

### **Co-operation with P&I Clubs.**

At their February/March 2006 sessions the Assemblies of the 1992 Fund and the Supplementary Fund had approved a Memorandum of Understanding (MOU) between these Funds and the International Group of P&I Clubs regarding joint claims settlement procedures. The MOU included undertakings by the Clubs in respect of the new voluntary arrangements of STOPIA and TOPIA. The Assembly authorized the Director to agree to minor editorial amendments to the text with the International Group and to sign the Memorandum on behalf of the Funds. The Director and the Chairman of the International Group of P&I Clubs signed the Memorandum on April 19, 2006.

## **The 35th Executive Committee- October 27, 2006**

The Executive Committee elected Mr. John Gillies (Australia) as Chairman, and M. Léonce Michel Ogandaga Agondjo (Gabon) as Vice-Chairman to hold office until the end of the next regular session of the Assembly.

## **The 11th Session of the 1992 IOPC Assembly – October 23 to 27, 2006**

### **Report of the 4th Intersessional Working Group**

At its February/March 2006 session, the Assembly established a working group to consider non-technical measures to promote quality shipping for carriage of oil at sea. The working group held its first meeting in May 2006 and the elected Ms. Birgit Solling Olsen (Denmark) as its Chairperson.

The Working Group continued to discuss the sharing of information relating to its quality of shipping. Furthermore, it discussed recent measures taken by the International Group of P&I Clubs to contribute positively to global efforts to improve ship quality and safety standards.

Note: For information on the measures taken by the International Group of P&I Clubs to contribute to global efforts to improve ship quality and standards see section 4.1 herein.

### **Future Sessions**

The Assembly noted the invitation of the Government of Canada to hold the June 2007 sessions of the IOPC Funds' governing bodies in Montreal at the Headquarters of the International Civil Aviation organization. The Assembly decided to accept the invitation and hold sessions in Montreal during the week of June 11<sup>th</sup> 2007.

### **The 36th Executive Committee – March 14 and 16, 2007**

The Executive Committee discussed the settlement proceedings and recent Court judgments in respect of claims against the 1992 Fund. The status updates relating to these incidents included the *Erika*, *Prestige* and the *Nº 7 Kwang Min*. The 1992 Fund continues to hold discussions with the claimants, whose claims are not time-barred, for the purpose of arriving at out-of-court settlements if appropriate. More detailed information on the applicable Court judgments is available via the IOPC Fund's website: <http://www.iopcfund-docs.org/docs>.

The Executive Committee's also focused on the following recent incidents:

#### **SOLAR I (2006)**

When the incident occurred, the Republic of the Philippines was a party to the 1992 Civil Liability and Fund Conventions. The limitation amount applicable to the *Solar I* under the 1992 CLC was £ 3.6 million. The owner of the *Solar I* was a party to STOPIA 2006. Consequently, the shipowner will pay the limitation amount under the Convention, plus the indemnity to the 1992 Fund provided by STOPIA 2006 for an aggregate of £15.8 million. The Philippine Coast Guard, as the lead government agency for spill response in the Philippines, took overall control of the clean-up operations. The at-sea response focused on the application of chemical dispersants to the freshly released oil using a light aircraft and vessels. Attempts were made to protect some sensitive sites using commercial booms and home-made booms. The shoreline clean-up was undertaken using predominantly manual methods and about 2,100 tons of oily waste were generated from shoreline cleaning.

In November 2006, the shipowner's insurer had signed a contract with an underwater engineering company to conduct the operation to remove the oil remaining in the wreck of the ship. The operation, which commenced on March 12, 2007, is expected to cost between £4 and £7 million.

#### **Shosei Maru (2006)**

On November 28, 2006, the Japanese tanker *Shosei Maru* (153 gross tons) collided with the Korean cargo vessel *Trust Busan* (4,690 gross tons) two kilometres off Teshima, in the Seto Inland Sea in Japan. About 60 tons of heavy fuel oil and bunker diesel oil escaped into the sea from the *Shosei Maru*.

Approximately five kilometres of shoreline, as well as port installations, were polluted to varying degrees. The oil affected a number of seaweed cultivation farms contaminating nets and other cultivating equipment.

The claims for damages arising out of this incident are expected to exceed the limitation amount applicable to the *Shosei Maru* and the 1992 CLC, which is £3.4 million.

The Japan P&I Club had informed the 1992 Fund that since the vessel was only engaged in coastal trade, it had not been insured through the pooling agreement of the International Group of P&I Clubs. The Japan P&I Club had informed the Fund that the owner of the *Shosei Maru* had not given written consent for the vessel to be entered in STOPIA 2006. The ship had, therefore, not been entered in the Agreement. As a consequence, if the total amount of damages were to exceed the limitation amount applicable to the *Shosei Maru* under the 1992 Civil Liability Convention, the Fund would be required to pay compensation in respect of this incident without being subsequently indemnified under STOPIA 2006.

A number of delegations expressed their concern regarding the fact that some tankers in Japan were not entered in STOPIA 2006, which in their view highlighted the shortcomings of voluntary agreements. They suggested that it would be useful if details of the total number of tankers that were not entered in STOPIA 2006 could be provided at the next Executive Committee session in June 2007. Those delegations also urged the International Group of P&I Clubs to extend STOPIA 2006 to as many vessels as possible and to actively encourage shipowners to enter their vessels into the Agreement.

The Executive Committee authorized the Director to make settlements of claims arising from the incident to the extent that they did not give rise to questions of principle not previously considered by the Committee.

Note: For more information about STOPIA 2006 see the Administrator's SOPF Annual Report 2005-2006 at section 4.1 and at Appendix A herein.



## Appendix D

### State Parties of the Supplementary Fund Protocol

*as at 2 January 2007*

*(and therefore Members of the Supplementary Fund)*

<i>19 States Parties to the 2003 Supplementary Fund Protocol</i>		
Barbados	Ireland	Norway
Belgium	Italy	Portugal
Croatia	Latvia	Slovenia
Denmark	Lithuania	Spain
Finland	Japan	Sweden
France	Netherlands	United Kingdom
Germany		
<i>1 State which has desposited an instrument of accession but for which the Protocol does not enter into force until date indicated</i>		
Greece		23 January 2007

### State Parties to the 1992 Civil Liability Convention but not to the 1992 Fund Convention

*as at 2 January 2007*

*(and therefore Members of the 1992 Fund)*

<i>16 States for which 1992 Civil Liability Convention is in force</i>			
Azerbaijan	Indonesia	Republic of	Soloman Islands
Chile	Kuwait	Moldova	Syrian Arab
China	Lebanon	Romania	Republic
Egypt	Peru	Saudi Arabia	Viet Nam
El Salvador	Pakistan		
<i>1 State which has desposited an instrument of accession but for which the 1992 Civil Liability Convention does not enter into force until date indicated</i>			
Yemen			20 September 2007

### State Parties to the 1969 Civil Liability Convention

*as at 2 January 2007*

<i>38 States Parties to the 1969 Civil Liability Convention</i>		
Azerbaijan	Georgia	Mauritania
Benin	Ghana	Mongolia
Brazil	Guatemala	Nicaragua
Cambodia	Guyana	Peru
Chile	Honduras	Saint Kitts and Nevis
Costa Rica	Indonesia	Sao Tomé and Principe
Côte d'Ivoire	Jordan	Saudi Arabia
Dominican Republic	Kazakhstan	Senegal
Ecuador	Kuwait	Serbia and Montenegro
Egypt	Latvia	Syrian Arab Republic
El Salvador	Lebanon	United Arab Emirates
Equatorial Guinea	Libyan Arab Jamahiriya	Yemen
Gambia	Maldives	
<i>Note: the 1971 Fund Convention ceased to be in force on 24 May 2002</i>		



**State Parties to both the  
1992 Civil Liability Convention and the 1992 Fund Convention**  
*as at 2 January 2007 (and therefore Members of the 1992 Fund)*

<i>98 States for which 1992 Fund Convention is in force</i>		
Albania	Georgia	Panama
Algeria	Germany	Papua New Guinea
Angola	Ghana	Philippines
Antigua and Barbuda	Greece	Poland
Argentina	Grenada	Portugal
Australia	Guinea	Qatar
Bahamas	Iceland	Republic of Korea
Bahrain	India	Russian Federation
Barbados	Ireland	Saint Kitts and Nevis
Belgium	Israel	Saint Lucia
Belize	Italy	Saint Vincent and the Grenadines
Brunei Darussalam	Jamaica	Samoa
Bulgaria	Japan	Seychelles
Cambodia	Kenya	Sierra Leone
Cameroon	Latvia	Singapore
Canada	Liberia	Slovenia
Cape Verde	Lithuania	South Africa
China	Luxembourg	Spain
(Hong Kong Special Administrative Region)	Madagascar	Sri Lanka
Colombia	Malaysia	Sweden
Comoros	Maldives	Switzerland
Congo	Malta	Tonga
Croatia	Marshall Islands	Trinidad and Tobago
Cyprus	Mauritius	Tunisia
Denmark	Mexico	Turkey
Djibouti	Monaco	Tuvalu
Dominica	Morocco	United Arab Emirates
Dominican Republic	Mozambique	United Kingdom
Estonia	Namibia	United Republic of Tanzania
Fiji	Netherlands	Uruguay
Finland	New Zealand	Vanuatu
France	Nigeria	Venezuela
Gabon	Norway	
	Oman	



