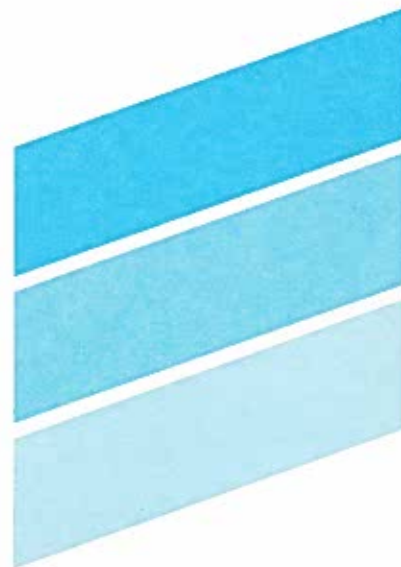


***Ship-source  
Oil Pollution Fund  
Annual Report  
1989-1990***



Canada

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The Honourable Doug Lewis, P. C., M. P.  
Minister of Transport  
Ottawa, Ontario  
K1A 0N5

Dear Mr. Lewis,

## 1. Introduction

Pursuant to section 722 of the *Canada Shipping Act*, I have the honour to submit to you my Annual Report on my operations as Administrator of The Maritime Pollution Claims Fund (M. P. C. F.) and of The Ship-source Oil Pollution Fund (S. O. P. F.) for the fiscal year commencing on April 1, 1989 and ending March 31, 1990.

By Order in Council P. C. 1988-247 dated October 24, 1988, the undersigned was appointed to be Administrator of the M. P. C. F. for a term of five years commencing November 18, 1988.

On April 24, 1989, the M. P. C. F. ceased to exist and was replaced on that day by the S. O. P. F. By section 81 of an Act to amend the *Canada Shipping Act*, S. C. 1987, c. 7,<sup>1</sup> the balance standing to the credit of the M. P. C. F. on that date of \$149,618,850.24 was credited to the S. O. P. F.

By operation of section 89 of that Act, the Administrator of the M. P. C. F. in office on April 24, 1989 continued in office as Administrator of the S. O. P. F. for the balance of his term of five years.

## 2. Transitional Provisions – A New Fund for an Old Fund

The other transitional provisions of the *Canada Shipping Act* dealing with the two funds stipulate:

(a) Part XVI of the *Canada Shipping Act*<sup>2</sup> applies to any loss or damage incurred *after* May 1, 1989 regardless of the date of the incident which gave rise to the loss or damage.

(b) Any claim against the new Fund (S. O. P. F.) made after April 24, 1989 for loss or damage incurred prior to that date must be dealt with

under Part XV<sup>3</sup> of the *Canada Shipping Act* which governed the operations of the M. P. C. F.

(c) All rights and obligations of the M. P. C. F. existing on April 24, 1989 became the rights or obligations of the Ship-source Oil Pollution Fund.

(d) Any claim or any right or obligation pending against the M. P. C. F. on May 1, 1989 may be enforced by or against the S. O. P. F. in accordance with Part XV<sup>3</sup> of the *Canada Shipping Act*.

The M. P. C. F. was only in existence for 23 days in the fiscal year 1989-90. During that time, no claims were filed. Consequently, this Annual Report is devoted almost entirely to the operations of the Ship-source Oil Pollution Fund from April 24, 1989 to March 31, 1990.

## 3. The New Legislation

A new Part XV of the *Canada Shipping Act*, creating a revised and greatly improved legal regime of liability and compensation for oil pollution damage caused by ships, entered into force on April 24, 1989.<sup>4</sup>

As mentioned in my Annual Report for 1988-1989, this legal regime consists of three elements:

(a) A new fund — the S. O. P. F. — replaced the M. P. C. F. which was dissolved and the balance in that fund, \$149,618,850.24, was transferred to the new fund on April 24, 1989.

The new legislation set the maximum aggregate liability of the S. O. P. F. in respect of any one incident at \$100,000,000 during the fiscal year in which the legislation entered into force. It also provided that the limit of liability should be indexed annually to the Consumer Price Index, excluding the food and energy component. Consequently, the limit of liability of the S. O. P. F. has been adjusted to \$105,500,000 for the fiscal year commencing April 1, 1990.

<sup>1</sup> Superseded by R. S. C. 1985, c. 6 (3rd Supp) on May 1, 1989

<sup>2</sup> R. S. C. 1985, c. 6 (3rd Supp)

<sup>3</sup> R. S. C. 1985, c. s-9

<sup>4</sup> S. C. 1987, c. 7 now contained in R. S. C. 1985, c. 6 (3rd Supp) as Part XVI

The legislation also authorizes a levy, were it to be imposed, for payments into the S. O. P. F. during the fiscal year in which the legislation entered into force at 30 cents per tonne. This amount would be levied on oil imported by ship into Canada in bulk as cargo and also on oil shipped from any place in Canada in bulk as cargo of a ship.

The legislation also provides that the amount of the levy is to be indexed annually in the same manner as the limit of liability of the S. O. P. F. Accordingly, the amount of the levy, were it to be imposed during the fiscal year commencing April 1, 1990, has been adjusted to 31.65 cents per tonne. It should be noted, however, that the revised S. O. P. F. levy has not been imposed to date.<sup>5</sup>

(b) The International Convention on Civil Liability for Oil Pollution Damage 1969 (CLC) also entered into force for Canada on April 24, 1989. The CLC applies to ships carrying persistent oil in bulk as cargo. Its purpose is to ensure that persons suffering oil pollution damage receive compensation. The CLC places strict liability for such damage on the owner of the ship from which the oil discharge took place. With some important exceptions, the owners' liability can be limited to the lesser of approximately \$202 per ton<sup>6</sup> of the ship's liability tonnage, and approximately \$21.25 million.<sup>6</sup> A ship carrying more than 2,000 tons of persistent oil in bulk as cargo and navigating in Canadian waters, must have a Convention Certificate which certifies that the owner has insurance to cover this amount. An important feature of the CLC is the right of claimants to take direct action against insurers to enforce their claim.

(c) On April 24, 1989, the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage (Fund Convention) entered into force for Canada. The Fund Convention established the International Oil Pollution Compensation Fund (IOPC Fund). The purpose of this fund is to supplement the compensation payable under the CLC. The IOPC Fund, financed in most states by persons who receive annually more than 150,000 tonnes of Contributing Oil in bulk by sea, compensates persons suffering oil pollution damage up to a maximum amount (including compensation available under the

CLC), of approximately \$91 million<sup>6</sup> in respect of any one incident. If the ship owner is not liable, or where the owner is liable but cannot meet its liabilities, the IOPC Fund pays the full compensation due. Canada's contributions to the IOPC Fund are paid directly from the S. O. P. F. See Figure 1 showing a summary of levels of compensation available.

(d) This new legal regime of compensation for oil pollution damage operates as follows:

The Administrator of the S. O. P. F. is, where applicable, responsible for investigating, assessing and settling claims for compensation for oil pollution damages caused by oil spills from ships.

A claimant for oil pollution damage (other than a public authority in Canada) has three alternative means of seeking compensation:

(i) submit a claim to the Administrator of the S. O. P. F. Thus, the fund can be considered to be one of first resort;<sup>7</sup>

(ii) sue the ship owner; or

(iii) submit a claim to the Director of the IOPC Fund.

It should be noted that while the CLC and the IOPC Fund apply only to spills for ships carrying oil in bulk as cargo, the S. O. P. F. applies to spills from all classes of ships, mystery spills and claims for loss of fishing income.

#### 4. Contributions to the International Fund

The IOPC Fund is financed by contributions based on imports by sea and coastal shipments of contributing oil received by member states

<sup>5</sup> Between 15 February 1972 and 1 September 1976, a levy of \$0.15 per tonne was paid and collected on oil imported into Canada by ship in bulk and shipped in bulk from any place in Canada. The total levy receipts credited to the M. P. C. F. were \$34,866,459.88.

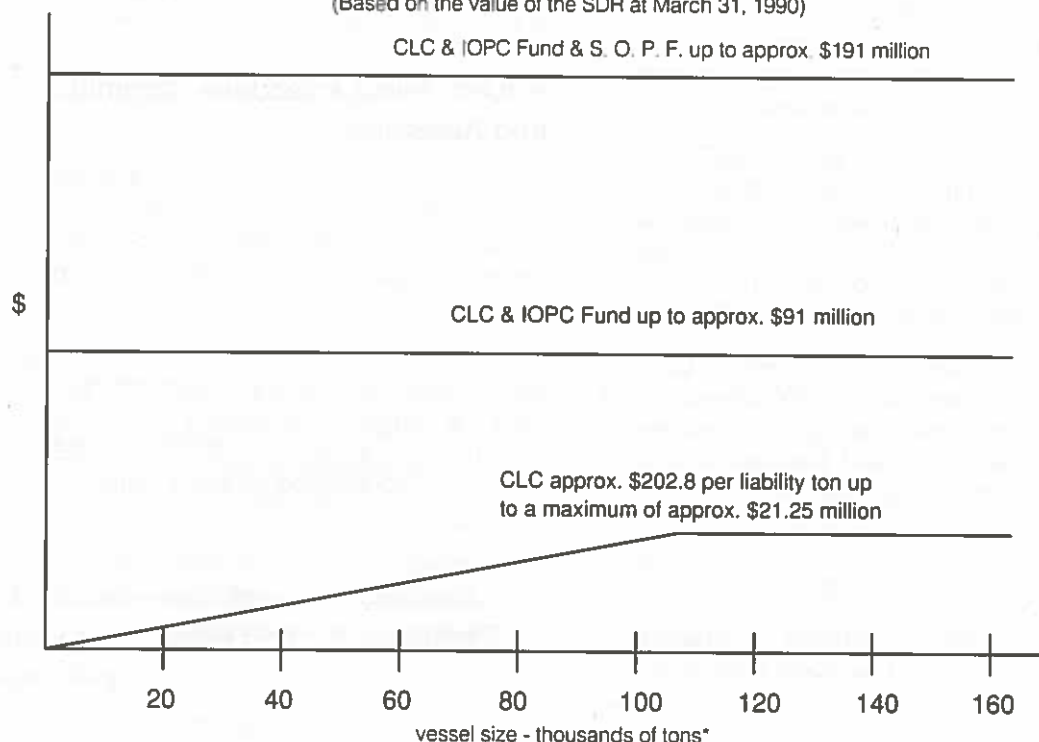
<sup>6</sup> The amounts payable under the CLC and IOPC Fund fluctuate as they are tied to the exchange rate of the Special Drawing Right (S. D. R) of the International Monetary Fund. (As of March 31, 1990, 1 S. D. R. = \$1.52 Cdn.)

<sup>7</sup> Upon payment of a claim, the Administrator of the Fund is subrogated to the rights of the claimant and has a statutory duty to seek recovery from the ship owner, or the International Fund as the case may be.

Figure 1

### Canada Shipping Act Part XVI – Compensation for oil pollution damage in respect of any one incident involving a laden tanker

(Based on the value of the SDR at March 31, 1990)



1. 1969 Civil Liability Convention (CLC) provides compensation of up to approx. \$21.25 million.
2. International Oil Pollution Compensation Fund (IOPC Fund) and CLC provide aggregate compensation of up to approx. \$91 million.
3. Ship-source Oil Pollution Fund (S. O. P. F.), IOPC Fund and CLC provide a combined amount of up to approx. \$191 million for any one incident involving a laden tanker.

**Note:** The S. O. P. F. provides up to \$100 million (for fiscal year 1989-1990) over and above the funds available under the IOPC Fund and CLC in respect of spills from laden tankers. The S. O. P. F. is also available for compensation for oil spills from ships other than laden tankers, certain claims for loss of fishing income and mystery spills.

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

during the calendar year previous to the one in which contributions are assessed. "Contributing oil" includes both crude oil and heavy fuel oil (No. 4 and above) for use as a fuel for the production of heat or power. Any amount received by persons in excess of 150,000 tonnes for the year in question must be reported.

The Administrator of the S. O. P. F. has a statutory duty to report to the Director of the IOPC Fund the quantities of contributing oil received at places

in Canada and to pay Canada's contributions out of the S. O. P. F. to the IOPC Fund, in accordance with Article 14 of the Fund Convention. In most other member states, the contributors are the persons who actually receive the oil.

Arrangements were made by which Revenue Canada, Customs and Excise and Statistics Canada are able to provide details, on an annual basis, of the quantities of oil imported thereby avoiding the need to make regulations requiring

companies to make individual reports on their imports. That arrangement has worked smoothly and efficiently.

However, information needed to report coastal shipments of contributing oil was not available from these sources. In the absence of regulations, the co-operation of industry was sought and willingly given to obtain the required information.

By the terms of the Fund Convention, Canada was obliged to make an initial contribution to the International Fund calculated on the basis of a fixed sum, for each ton of contributing oil received during the calendar year preceding that in which this Convention entered into force for Canada.

Based on 30,173,643 tonnes of contributing oil received during calendar year 1988, Canada's initial contribution, amounting to \$134,330.73, has been paid to the International Fund. In addition, Canada's first annual contribution, as determined by the Assembly (for the portion of 1989 during which Canada was a member, i.e. April 24 to December 31, 1989), amounting to \$72,877.26 has also been paid.

A total of 857,458,424 tonnes of contributing oil was received by the 43 members of the IOPC

Fund in the calendar year 1988. Of this total, 3.52% was attributable to Canada which ranked seventh after Japan, Italy, France, Netherlands, United Kingdom and Spain. The breakdown of the annual contributions amongst member states is shown at Figure 2.

### 5. IOPC Fund, Executive Committee and Assembly

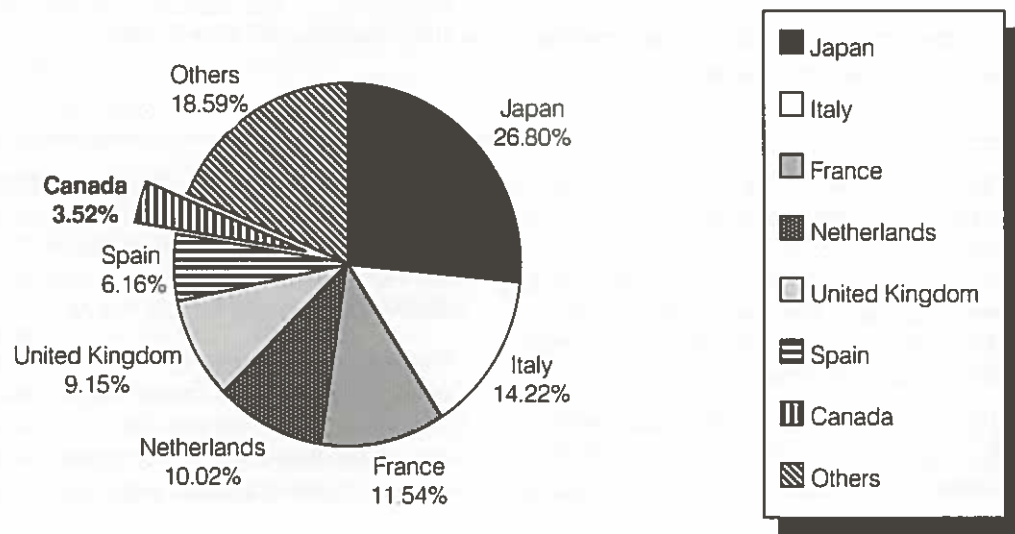
The twenty-second and twenty-third session of the Executive Committee and the twelfth session of the Assembly of the IOPC Fund took place at London, England, during the week of October 23-27, 1989.

The Administrator headed the Canadian Delegation to these meetings which dealt with claims paid, the budget for the ensuing year, annual contributions – a total of £1,600,000 for 1989 – the definition of contributing oil and reports on oil receipts.

Canada was elected to be a member of the Executive Committee as one of the states receiving the largest quantities of contributing oil.

Figure 2

Contributing oil received in the territories of member states of the IOPC Fund in the calendar year 1988



The current Director, Mr. Måns Jacobsson, was elected for a second term of 5 years commencing on January 1, 1990.

## 6. Exxon Valdez

On March 24, 1989, the U. S. flag tanker Exxon Valdez ran aground in Prince William Sound on the South Coast of Alaska, spilling some 11,000,000 gallons of crude oil into the surrounding waters. This event was important, as unlike any other oil spill it changed the public perception and expectations relating to oil spill response, liability and compensation.

The ramifications of this single oil spill will be felt for many years to come. The cost alone (some \$US 2,500,000,000) fundamentally questioned the existing parameters of the international and domestic oil spill compensation regimes presently in force in Canada and elsewhere.

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

In June 1989, the Prime Minister appointed a panel to review measures currently in place to ensure the safe movement of oil and chemicals by tanker and barge through Canadian waters and fishing zones. That review was to include the existing Canadian Legislation and International Conventions dealing with oil spill liability and compensation.

The panel consisted of David Brander-Smith, Q. C., Chairman; Denise Therrien, P. Eng., and Stan Tobin as members, and arrangements were made:

- (a) to invite the three panel members to attend the First Canadian Oil Spill Seminar (see item 8).
- (b) for a meeting between the panel members and the Director of the International Oil Pollution Compensation Fund when he was in Ottawa attending the seminar.
- (c) to provide information on the history and the operations of the M. P. C. F. and the S. O. P. F.

The panel submitted an interim report on September 29, 1989 and their final report is expected in the latter part of 1990. Although the interim report did not contain any recommendations concerning the S. O. P. F., it is expected that the final report will be more comprehensive.

## 8. First Canadian Oil Spill Seminar

The S. O. P. F. sponsored and organized a seminar on the new Canadian Regime regarding Liability and Compensation for Oil Pollution Damage which was held at Ottawa on September 6, 1989.

The seminar was well attended by members of the Admiralty Bar from across Canada, representatives from the oil and shipping industries and senior officials from the Canadian Coast Guard, the Departments of External Affairs, Justice, Fisheries and Oceans, and Environment Canada as well as the members of the Public Review Panel on Tanker Safety and Marine Spills Response Capability.

The purpose of this seminar was to present the details of the new legal regime for oil spill liability and compensation in force in Canada, and to demonstrate its relationship to the International Regime.

The seminar attracted many very fine speakers from both Canada and abroad.

The Director of the IOPC Fund was the principal speaker. The particular speakers and the subjects covered were:

### Welcome Address

Ronald A. Quail  
Assistant Deputy Minister / Marine  
Commissioner, Canadian Coast Guard

### Introduction

P. M. Troop, Q. C.  
Administrator  
Ship-source Oil Pollution Fund

### Topics

The International Conventions on Compensation for Oil Pollution Damage and the International Oil Pollution Compensation Fund  
Mr. Måns Jacobsson  
Director, IOPC Fund



The Ship-source Oil Pollution Fund  
P. M. Troop, Q. C.  
Administrator

Reports to the IOPC Fund  
Fergus Millar

Oil Spill Liability and Compensation in Canada

- (i) The Public Perspective  
L. C. Audette, O. C., Q. C.
- (ii) The Public Authority Perspective  
Michael A. H. Turner  
Deputy Commissioner  
Canadian Coast Guard  
  
A. E. H. Popp, Q. C.  
Senior General Counsel  
Admiralty and Maritime Law
- (iii) The Ship Owner's Perspective  
Dr. Edgar Gold
- (iv) The International Perspective  
Mr. Måns Jacobsson  
Director, IOPC Fund

#### Concluding Remarks

W. David Angus, Q. C.  
President  
Canadian Maritime Law Association

During the year, the Administrator also gave presentations to government and industry groups in Montreal, Toronto, Ottawa, and Halifax.

## 9. Claims Manual

In view of the new expanded role of the S. O. P. F., a Claims Manual was published by the Administrator shortly before the end of the year. It was considered that a manual would help persons filing claims against the S. O. P. F. by identifying the necessary information and documents required for the proper assessment of claims.

The manual contains background information on the S. O. P. F., the 1969 Civil Liability Convention and the 1971 Fund Convention. It also sets out the liability of the S. O. P. F. and the compensation available from it and the two Conventions.

The manual:

- (a) describes the types of claims for which the S. O. P. F. may be liable, who may claim, the time

limit for claims, and where claims should be presented.

(b) sets out, in a straightforward manner, the information and documents required by the Administrator for the purposes of processing claims respecting costs of preventive measures and clean-up operations, replacement and repair costs, loss of earnings or revenue while property is being repaired, replaced or restored to working order, mystery spills and claims for loss of fishing income.

Copies may be obtained from:

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

## 10. Oil Spill Incidents

### 10.1. Unidentified Discharge of Oil in Lake Superior near Michipicoten, Ontario (1984)

The Crown commenced proceedings against the Administrator of the M. P. C. F. to recover \$12,354.99 for clean-up costs and expenses for a discharge of oil in the harbour of Michipicoten in July 1984. In the end, the amount of the claim was not disputed; the issue was the source of the pollution. At the time of the incident, the *Canada Shipping Act* required the claimant to prove the discharge of oil was from a ship. Eventually, the Crown was able to produce evidence that the most likely source of the oil spill was a ship and that the reasonable efforts had been made to identify the particular ship but without success. Further investigation revealed no possible land-based source for the oil spill.

In view of the considerable delay by the Crown in bringing this claim to court and the further delay in responding to the Administrator's inquiries, the Crown agreed to drop the claim for 5 years interest as well as any claim for court costs.

The factors engaging the Administrator's agreement to settle this claim were:

- (a) the costs and expenses claimed by the Crown appeared to have been reasonably incurred.

(b) further litigation would be costly and involve a risk that the court would award the Crown interest on its claim as well as costs.

(c) the lack of evidence to prove that the oil spill was from a land-based source.

For these reasons, it was considered that this settlement was appropriate for the proper administration of the Fund and it was completed, the action in the Federal Court was discontinued and a release given.

### **10.2. Discharge of oil from the SOUTH ANGELA at Come by Chance, Newfoundland (1988)**

Last year, I reported the litigation in the Federal Court of Canada by more than 200 commercial fishermen for damages and loss of income arising from the SOUTH ANGELA (G. R. T. 59,353) oil spill.

Although the Administrator has not been made a party to the proceedings, an attempt was made to engage the Fund to pay the solicitor and client costs incurred. The provable actual damages appeared to be nominal.

In response, I brought to the attention of legal counsel acting for the fishermen that before any payment could be made, certain statutory conditions had to be satisfied. The most important conditions to be established were for the fishermen to obtain judgment against the ship owner and that the judgment remains unpaid. Neither of these conditions have been met.

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

In my last annual report (1988-1989), I gave a short description of this oil spill under the title of *The West Coast Oil Spill*. There have been several developments in the current fiscal year.

This oil spill occurred in U. S. waters, yet caused significant oil pollution damage in Canada and in Canadian waters.

On December 23, 1988, the U. S. tug OCEAN SERVICE collided with and punctured her own tow, the U. S. tanker barge NESTUCCA (G. R. T. 5339), carrying approximately 11 million litres of number 6 fuel oil. After the collision, the leaking NESTUCCA was towed some 40 kilometres seaward off the mouth of the Columbia River

where temporary repairs were made. Some 875,000 litres of oil was discharged. Large quantities of oil showed up on Canadian beaches, coming ashore near Carmanah Light station on December 31, 1988. Oil samples taken at Carmanah Point matched the oil from the NESTUCCA.

Both the tug OCEAN SERVICE and the NESTUCCA were owned by Sause Brother's Ocean Towing Inc. and were entered in the West of England P & I Club for full pollution cover to a maximum amount of US \$400,000,000.

The owners commenced legal proceedings in the U. S. Courts to limit their liability in accordance with U. S. law. The court required all claimants to file their claims with the court by December 1, 1989.

Notice of some 15 claims were filed with the Ship-source Oil Pollution Fund for loss of fishing income pursuant to section 675 of the *Canada Shipping Act*. The claimants allege that they lost income from fishing because the Department of Fisheries and Oceans closed certain areas on the West Coast of Vancouver Island as a direct result of the discharge of oil from the NESTUCCA. Fisheries Areas 23 and 24 were closed to selected shell fish harvesting, but were shortly reopened for all shell fish other than crab, which did not reopen until June 26, 1989.

This incident occurred before the new Part XXI of the *Canada Shipping Act* came into force on April 24, 1989.<sup>8</sup> The applicable legal regime at the time was Part XV of the Act<sup>9</sup> which, with one exception, only applies to oil spills from laden tankers in Canadian waters.

The one exception covers claims by fishermen for loss of income caused by an oil spill. Fishermen who assert this type of claim only have to show that the loss of income was attributable to the discharge of oil from a ship.

Parliament has stipulated, however, that notice of claim may only be given by a fisherman if the fisherman cannot recover his loss from any other person, in this case, the ship owner.

<sup>8</sup> S. C. 1987, c. 7

<sup>9</sup> R. S. C. 1985, c. s-9



Accordingly, a letter was sent to the fishing claimants informing them of this requirement and suggesting that each claimant make sure they had taken all necessary steps to recover their loss from the ship owner by filing their claim with the U. S. District Court for Oregon by December 1, 1989. Most of the claimants took the necessary steps to do so in time. The U. S. Court will have to decide whether Canadian fishermen can recover their claims from the ship owner. The first stage in this process is scheduled for December 4, 1990.

#### **10.4. Unidentified discharge of oil at Gabarus, Nova Scotia (1989)**

On June 9, 1989, a report was received by the Coast Guard of Bunker C oil coming ashore in Gabarus Harbour. The next day, additional reports were received regarding an oil slick and that lobster crates in the harbour had been oiled. There was no evidence of the source of the oil.

Coast Guard officials were deployed from the Mulgrave Emergency Centre to recover the oil, prevent further damage, and 300 feet of boom was placed around the lobster crates.

These efforts had not been taken soon enough to prevent contamination of a large quantity of lobsters and lobster crates in the harbour at that time. As a direct result of this contamination, the Department of Fisheries and Oceans ordered one lobster fisherman to dispose of 47 crates of live lobsters belonging to him. Subsequently, under the direct supervision of Fisheries and Oceans, and after culling 185 lbs of acceptable lobsters, the condemned lobsters were taken off shore and released to the sea.

On July 26, 1989, that lobster fisherman filed a claim with the Administrator of the Ship-source Oil Pollution Fund pursuant to section 710 of the *Canada Shipping Act* for oil pollution damage of some 4,000 lbs of market and canner lobsters.

The identity of the ship or ships that discharged the oil remains unknown, but the claimant is entitled to the benefit of Section 710(5) of the Act which states that he is not required to satisfy the Administrator that the oil pollution damage suffered was caused by a ship.

I investigated the claim and obtained evidence from the claimant under oath of the quantum of his

loss, damages, costs and expenses suffered and incurred by him, including his legal costs. I also determined the amount of interest to which he was entitled under Section 723 of the Act.

Accordingly, I assessed this claim at \$16,276.00 plus legal costs of \$2,700. This amount was offered to and accepted by the claimant on October 5, 1989. The agreed amount was paid out of the Fund to the claimant on October 16, 1989.

On August 30, 1989, local sea-food processing companies filed a claim with the Administrator pursuant to Section 710 of the *Canada Shipping Act* for oil pollution damage for the loss of 6,408 lbs of market lobsters, 5,922 lbs of canner lobsters and for the cost and expense of cleaning and repairing 430 new or almost new lobster crates contaminated by the oil in Gabarus Harbour.

I investigated this claim as well and obtained evidence from company officers and employees under oath. That evidence established to my satisfaction that the Department of Fisheries and Oceans ordered these companies to dispose of 55 crates of live lobsters belonging to them and that the condemned lobsters be taken offshore and released to the sea. Further, to mitigate their loss, company employees cleaned and culled some 20,000 lbs of other lobsters contaminated by oil. These efforts were only partially successful as 6,438 lbs of lobsters died in the process. There was no evidence to show that this claim resulted from the claimants' wrongful act or omission or from negligence.

After determining the interest to which the companies were entitled under the Act, I assessed this claim at \$48,000 plus interest of \$2000. That amount was offered and accepted on October 6, 1989 and paid on October 16, 1989.

As of March 31, 1990, no claim had been received from the Canadian Coast Guard for Her Majesty's costs and expenses of oil recovery and clean-up.

#### **10.5. Discharge of oil by CAMARGUE into the Bay of Fundy, New Brunswick (1989)**

On Sunday, June 18, 1989, the French flag tanker CAMARGUE (G. R. T. 69016) overflowed her engine room port wing tank while taking on

bunkers, (intermediate fuel oil), from a bunker barge. This discharge occurred while the tanker was moored at the Canaport Monobuoy near Saint John, N. B. As the overflow occurred in fog, the actual amount of oil discharged could not be accurately determined.

A 2.5 kilometre slick was seen off the Coleson Cove generating station. At first, there appeared to be some threat to fish farms in the Black Bay and Passamaquoddy Bay areas, but the tides and winds carried the slick away from the beaches, weirs and salmon farms and out into the Bay of Fundy where it quickly evaporated.

CAMARGUE was a laden tanker carrying more than 2000 tons of oil, having a valid certificate of insurance issued under the Civil Liability Convention showing that she was fully insured for oil pollution risks in the United Kingdom Protection and Indemnity Club. Both the ship owner and its insurers would be fully and directly responsible for the costs and expenses, and any oil pollution damage caused by the spill is not expected to exceed the limit of the owner's liability.

No claims have been made and no claims are expected to be made against the Ship-source Oil Pollution Fund.

#### **10.6. NANCY ORR GAUCHER (1989)**

This double bottomed and double sided Canadian owned and registered tanker ( G. R. T. 2999) arrived at Hamilton on July 25, 1989, carrying 4,275 tonnes of heated bitumen from St. Romuald, Quebec.

Shortly after arrival, while preparing to discharge the cargo from No. 7 tank, there was a sudden eruption of bitumen from the ullage port and the from the deck valve at No. 1 tank.

Some 250 cubic metres of cargo escaped with about 25 cubic metres discharging into the harbour. The ship owner and its insurers arranged and paid for the costs of \$230,599 to recover that cargo, the owner's limit of liability being approximately \$473,000.

The additional cost of cleaning the tanker (approximately \$483,000) has been claimed by the owners from the International Oil Pollution Compensation Fund which disputes the claim.

From Canada's point of view, the significance of this incident is that the IOPC Fund has been directly engaged in an oil spill in Canadian waters for the first time since Canada became a member of the Fund.

#### **10.7. A. S. L. SANDERLING (1989)**

On August 21, 1989, the Coast Guard Traffic Centre at Halifax reported a spill of Bunker C at Pier 30 alongside A. S. L. SANDERLING (G. R. T. 14,741) in Halifax harbour. A boom was deployed around the ship's bow and stern. The ship owner took charge and paid the expenses of the clean-up operation at a cost of less than \$10,000. There was conflicting evidence as to whether the oil came from that ship or not. No oil samples were taken from the ship, although samples of the oil spilled were taken.

I received inquiries as to whether the Fund would reimburse the ship owner or the Crown for the costs incurred. The ship owner, not being a public authority, would have no claim against the Fund. If the ship owner was reimbursed by the Crown on the basis that the Crown and not the ship owner should have paid the costs and expenses, there is doubt whether the Fund could be called upon to reimburse the Crown.

As of March 31, 1990, no claim arising out of this incident had been received.

#### **10.8. MINERVA (1989)**

On October 6, 1989, the Brazilian flag MINERVA (G. R. T. 14,150) discharged an unknown amount of fuel oil in Montreal Harbour.

In due course, after denying liability, the ship's insurers employed a local contractor to recover the oil spill.

A dispute arose as to whether or not all the work done by the contractor was caused by the discharge of oil from MINERVA. In the result the ship's insurers refused to pay the contractor's account in full.

Counsel for the contractor asked whether the Fund would pay the unpaid portion of its account on the basis that some of the oil resulted from a mystery spill.

He was informed that I was not aware of any basis upon which the Fund could be responsible for this claim. No such claim has been received as of March 31, 1990.

#### **10.9. ARCTURUS / RUBIN LOTUS (1990)**

In the early morning of February 23, 1990, the Polish flag fishing vessel ARCTURUS (G. R. T. 2603), alongside berth no. 3 at Vanterm Terminal in the Port of Vancouver, was struck on the port bow by the Vanuatu flag bulk carrier RUBIN LOTUS (G. R. T. 22,599). As a result, the port fore peak fuel tank of ARCTURUS, holding some 40 tonnes of diesel oil was holed thereby discharging diesel oil into the waters of Vancouver Harbour.

Various organizations under the direction of Vancouver Port Corporation were engaged in the clean-up operations.

The Vancouver Port Corporation commenced legal proceedings in the Federal Court of Canada on February 26, 1990 against both ships, their owners and masters. Court records show that a bond for \$1,171,000 was posted by the owners of RUBIN LOTUS to permit the ship to sail.

Notwithstanding paragraph 713(1)(a) of the *Canada Shipping Act* the Administrator was not made a party to the action. As it appeared that the posted security would be sufficient to settle all claims arising, counsel for the Vancouver Port Corporation agreed to amend the proceedings to join the Administrator as a party only if it became necessary to proceed with the action.

### **11. History of the Maritime Pollution Claims Fund**

With the demise of the Maritime Pollution Claims Fund, it may be useful to you, to Parliament and to the public to have a retrospective summary of all the claims made and the claims paid by that Fund since the appointment of the first Administrator in 1973, particulars are shown at Figure 3.

**Figure 3**

**Summary of Claims/Settlements — M.P.C.F. and S.O.P.F.  
(to March 31, 1990)**

Date	Vessel (Flag State)	Location of Incident	Cause of Incident	Quantity/ Type of Oil	Claims Received	Remarks — Payments Made
4.7.73	St. Spiridon (Liberia) Florence (Liberia)	St. Lawrence River	Collision	300 Tonnes Fuel Oil	Fisherman's loss of income: \$3,200.00	Settled in amount of \$345,90
29.9.74	Island Spruce (Caymen Islands)	East Coast of Nova Scotia	Stranding	36 Tonnes Diesel Oil	Clean-up Costs: \$10,514.20	Settled in amount of \$9,895.86
30.9.74	Golden Robin (Greek)	Dalhousie, N.B.	Grounding	Bunker C	Fisherman's loss of income: \$3,000.00	Settled in amount of \$300.00
29.9.77	Vasco D'Orey (Portuguese)	St. John's, Nfld.	Ship-board Fire	65 Tonnes Diesel Fuel	Clean-up Costs/ Damages: \$179,000.00	Out-of-court settlement by interested parties — no payments from Fund
15.3.79	Kurdistan (British)	Cabot Strait	Structural Failure	6,300 Tonnes Bunker C	Preventive actions: \$39,313.36	Claim discontinued
20.8.79	George M. Kellar (Liberia)	Saint John, N.B.	Accidental Discharge	1.5 Tonnes Crude Oil	Fishermen's loss of income: \$422,000	Out-of-court settlement by all interested parties. Settled in amount of \$2,349,364.00
21.10.79	Mystery Spill	Lake Ontario (Kingston Area)	Unknown	0.4 Tonnes Bunker C	Clean-up Costs: \$6,946,109	Out-of-court settlement by shipowner
31.10.79	Sevonnia Team (British)	Port-au-Saumon, P.Q.	Tank cleaning	Unknown Crude Oil Washings	Fishermen's Claim: Loss of fish \$85,000.00 Gear Damage \$4,500.00	Settled in amount of \$58,633.82
					Clean-up Costs: \$14,500.00	Claim discontinued/time barred
					Fishermen's loss of income/gear damage \$24,610.00	

Figure 3 (cont'd)

Date	Vessel (Flag State)	Location of Incident	Cause of Incident	Quantity/ Type of Oil	Claims Received	Remarks — Payments Made
7.11.79	Sprague Arcturus (Liberia)	Saint John, N.B.	Accidental Discharge	0.7 Tonnes Bunker C	Fishermen's Claims: Loss of fish \$8,500.00 Gear Damage \$8,700.00	Circumstances precluded isolation of claims by incident. Claims discontinued/time barred
11.11.79	Irving Arctic (Canada)	Saint John, N.B.		1.6 Tonnes Fuel Oil		
30.8.80	Mystery Spill	Point Tupper, N.S.	Unknown	Unknown Bunker C	Clean-up Costs: \$20,000.00	Paid by Gulf Canada — no Fund liability
16.9.80	Lady Era (Greece)	Port Cartier, P.Q.	Grounding	482 Tonnes Fuel/Lube Oil	Removal of oil \$303,339.28	Settled in amount of \$298,339.28
23.9.81	Armonia (Greece)	Quebec City, P.Q.	Tank rupture while berthing	143 Tonnes Bunker Fuel	Clean-up Costs: \$250,000.00 Fishermen's Claims: Loss of income and gear damage \$15,000.00	Claimed against shipowner
7.10.81	Mystery Spill	Cornwall, Ontario	Bilge pumping	4.1 Tonnes Mixture	Clean-up Costs: \$95,531.00	
7.12.83	Unisol (Peru)	Chandler, P.Q.	Grounding	Unknown Fuel Oil	Clean-up/Removal Costs: \$1,409,747.14	Settled in amount of \$108,449.60 (includes legal costs and interest)
27.4.84	Mystery Spill	Michipicoten, Ontario	Unknown	Unknown	Clean-up Costs: \$12,354.99	Negotiated settlement in amount of \$200,000.00
?06.84	Mystery Spill	Point Pelee, Ontario	Unknown	Unquantifiable	Clean-up Costs: \$182,979.45	Settlement discussions in progress
3.11.85	Pointe Lewy (Canada)	Matane, P.Q.	Grounding	236 Tonnes Bunker C	Clean-up Costs: \$3,079,937.39	Settled in the amount of \$95,563.42
6/7.03.88	South Angela (Liberia)	Come-by- Chance, Nfld.	Overflows	69 Tonnes Crude Oil	Fishermen's Claims: Unknown. Clean-up Costs: \$202,000.00	Claim discontinued/time barred
23.12.88	Nestucca (United States)	off Grays Harbour, Washington State	Collision between tug and barge	860 Tonnes Bunker C	Fishermen's Claims Clean-up Costs	Court proceedings pending
9/10.06.89	Mystery Spill	Gabarus, N.S.	Unknown	Unknown Bunker C	Fishermen's Claims	Under litigation (U.S. Courts)
						Settled in amount of \$68,976.00

## 12. Status of the Fund

During fiscal year 1989-90, the Maritime Pollution Claims Fund and the Ship-source Oil Pollution Fund paid out, at the direction or the request of the Administrator pursuant to:

(a) sections 706 and 707 of the Act, the total sum of \$177,020.48, comprising the following costs and expenses:

Administrator Fees	\$53,725.00
Legal Fees	58,480.70
Miscellaneous Expenses	3,044.15
Office Expenses	26,442.08
Professional Assistance	23,103.32
Seminar Costs	1,288.00
Statistics Canada	4,360.00
Travel Costs	<u>6,577.24</u>
	\$177,020.48

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

Initial Contribution	\$134,330.73
1989 Annual Contribution	<u>72,877.26</u>
Total	\$207,207.99

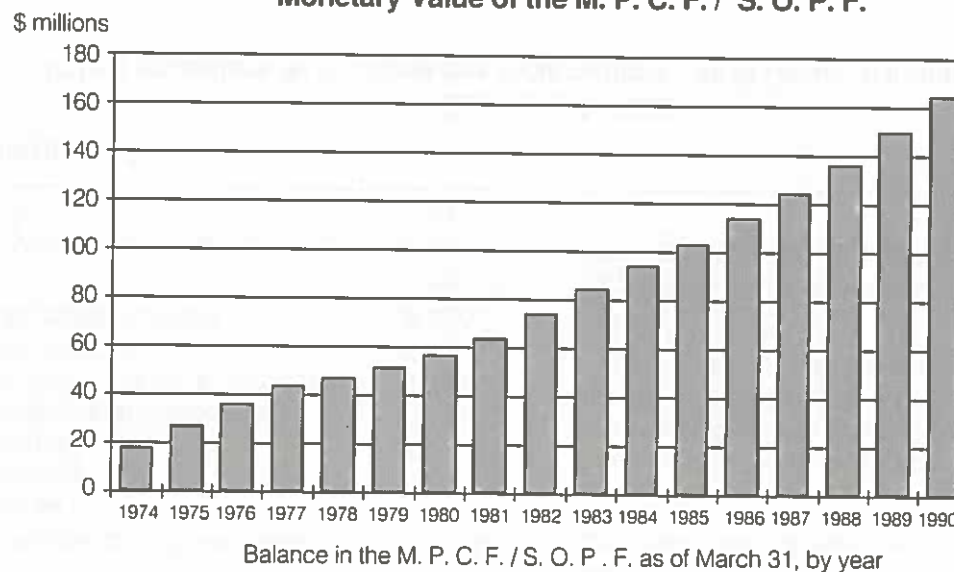
(c) sections 710 and 711 of the Act, the Administrator settled claims arising from the unidentified discharge of oil at Gabarus, Nova Scotia in June 1989 for the sum of \$81,330.99.

During the reporting fiscal year, interest credited to the Fund was \$15,629,699.69. At March 31, 1990, the balance in the Fund was \$164,782,990.47.

The status of the two funds from 1974 to 1990 is shown at Figure 4.

Figure 4

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



Yours sincerely,

Peter M. Troop  
Administrator  
Ship-source Oil Pollution Fund