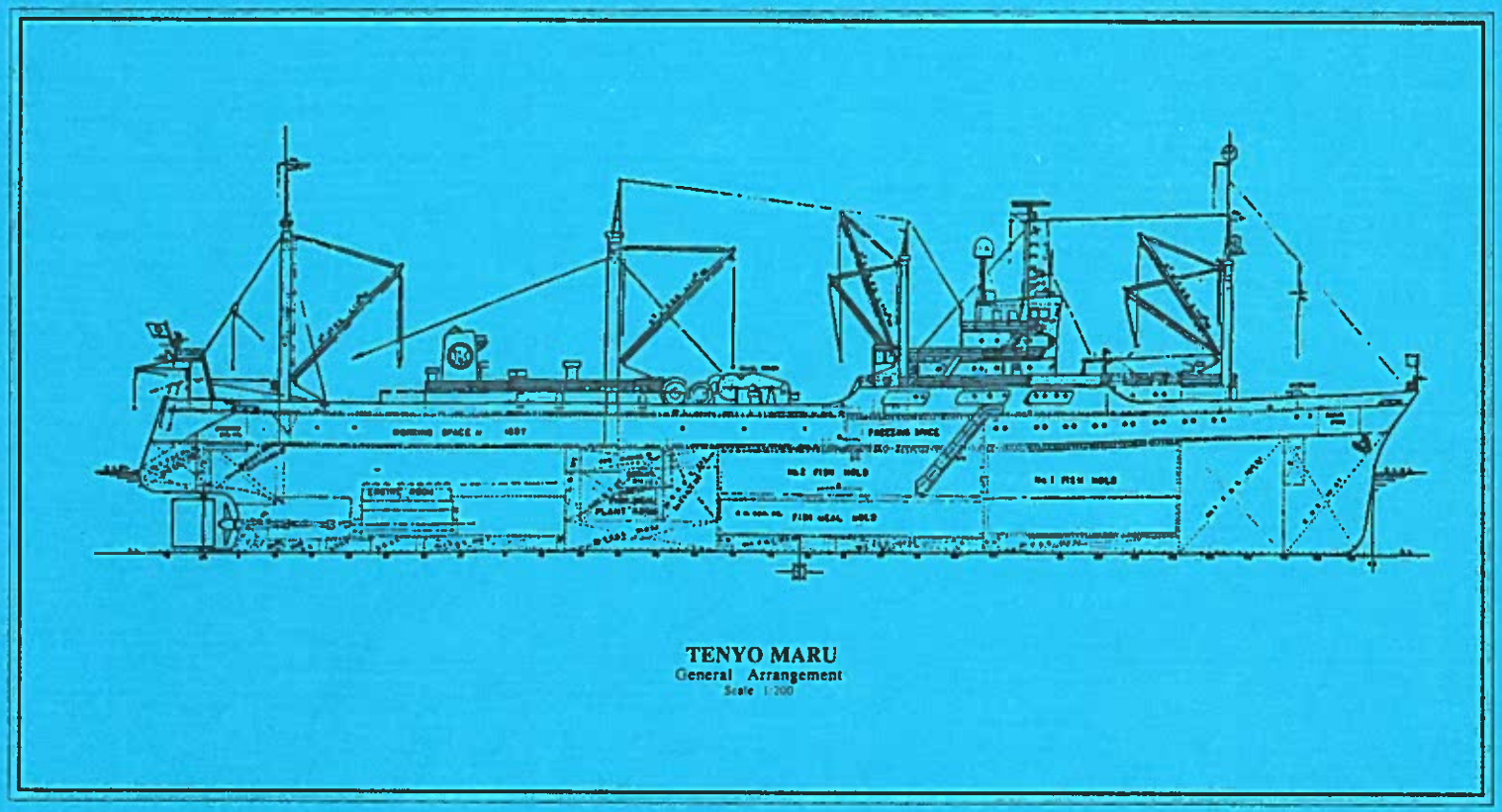
Ship-source Oil Pollution Fund Annual Report 1991-1992



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

Dear Mr. Corbeil,

1. Introduction

I have the honour to submit to you my Annual Report on my operations as Administrator of the Ship-source Oil Pollution Fund (S.O.P.F.) for the fiscal year from April 1, 1991 to March 31, 1992. The report is made to you in conformity with the requirements of Section 722 of the *Canada Shipping Act* (*C.S.A.*).

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

On April 24, 1989 the M.P.C.F. was replaced by the S.O.P.F.[1] and by operation of Section 89 of *An Act to amend the C.S.A.* (S.C. 1987, C. 7) the Administrator of the M.P.C.F. continues in office as Administrator of the S.O.P.F. for the balance of his term of five years.

2. The Ship-source Oil Pollution Fund

The S.O.P.F. has been in operation for just over three years and is a creature of Statute established by amendments to the *C.S.A.* which came into force on April 24, 1989. It is a special account established in the Accounts of Canada upon which interest is presently credited monthly by the Minister of Finance (at an average rate of about 7.75% per annum during the 1991-1992 fiscal year).

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

The maximum liability of the S.O.P.F. is presently $116,640,388 for all claims from any one oil spill. This amount is indexed annually to the consumer price index.

As mentioned in my previous reports, the Minister of Transport has statutory authority to impose a levy on "contributing oil"[2] imported into or shipped from a place in Canada in bulk as cargo of a ship, which would be credited to the account of the S.O.P.F. No levy has been imposed since 1976.[3]

The levy, if imposed during the fiscal year commencing April 1, 1992 would be 34.99 cents per tonne and is also indexed annually to the consumer price index.

3. The Canadian Compensation Regime

International Conventions

On April 24, 1989 two important international conventions that make available compensation for the victims of oil pollution damage resulting from an oil spill from laden tankers entered into force for Canada.

The first, the International Convention on Civil Liability for Oil Pollution Damages 1969 (CLC), provides for compulsory insurance by the shipowner with right of direct action against insurers. At present there are 71 states party to the CLC.

The CLC applies to oil pollution damage resulting from spills of persistent oil from laden tankers. It covers damage suffered in the territory (including the territorial sea) of a state party to the Convention. The flag state of the tanker and the

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[1] The M.P.C.F. ceased to exist and all monies in it ($149,618,850.24) were transferred to the account of the S.O.P.F. on April 24, 1989.
[2] "Contributing oil" is defined to include crude oil and heavy fuel oil (A.S.T.M. no. 4 and above).
[3] Between February 15, 1972 and September 1, 1976 a levy of 15 cents per ton was paid and collected on oil imported into Canada by ship in bulk and shipped in bulk from any place in Canada. Total levy receipts of $34,866,459.88 were credited to the M.P.C.F.

nationality of the shipowner are irrelevant for determining the scope of application of the CLC.

Damages recoverable include measures, wherever taken, to prevent or minimize oil pollution damage in the territory of a state party to the CLC.

It should be noted that the CLC applies only to damage caused or measures taken after an incident has occurred in which oil has escaped or been discharged. The CLC does not apply to pure threat removal measures in cases where there is no actual spill of oil from the tanker involved.

The CLC applies only to ships which actually carry oil in bulk as cargo. Spills from tankers during ballast voyages are therefore not covered by the CLC, nor are spills of bunker oil from ships other than tankers.

Damage caused by non-persistent oil is not covered by the CLC. Therefore spills of gasoline, light diesel oil, kerosene, etc., do not fall within its scope.

The owner of a tanker has strict liability (i.e., without the proof of fault) for pollution damage caused by oil spilled from the tanker as a result of an incident. The owner may be exempted from liability only in a few particular cases, namely when:

(a) the damage results from an act of war or a grave natural disaster;

(b) the damage is wholly caused by an intentional act of a third party; or

(c) the damage is wholly caused by the failure of authorities to maintain navigational aids.

Thus, the tanker owner is liable for pollution damage in almost all incidents.

Tankers must carry a certificate on board as proof of insurance coverage when entering or leaving a port or terminal installation of a state party to the CLC. A certificate is also required for ships flying the flag of a state which is not a party to this Convention.

The second convention, the 1971 International Convention on the Establishment of an International Fund for Oil Pollution Damage (Fund Convention) enabled Canada to become a member of the International Oil Pollution Compensation Fund (IOPC Fund) which represents the cargo owners share of compensation. At the present time 48 states are members of the IOPC Fund.

The main functions of the IOPC Fund are to provide supplementary compensation to those who cannot obtain full compensation for oil pollution damage under the CLC, and to indemnify the shipowner for a portion of his liability under that Convention.

As the Fund Convention is a supplementary convention to the CLC, only those states which are parties to the CLC can become members of the IOPC Fund.

The IOPC Fund pays compensation to any person who has suffered oil pollution damage in a state party to the Fund Convention if that person is unable to obtain full compensation under the CLC for one of the following reasons:

(a) no liability for pollution damage arises under the CLC;

(b) the owner is financially incapable of meeting its obligations under the CLC and the insurance is insufficient to satisfy the claims for compensation for pollution damage; or

(c) the damage exceeds the owner's liability under the CLC.

Experience has shown most incidents fall within category (c).

The IOPC Fund is relieved of its obligation to pay compensation if it proves that the pollution damage resulted from an act of war or if it was caused by a spill from a warship.

The IOPC Fund has no obligation to pay compensation if the claimant cannot prove that the damage resulted from an incident involving one or more ships. Spills of oil from an unidentified source, "mystery spills," are thus not covered by the Fund Convention.

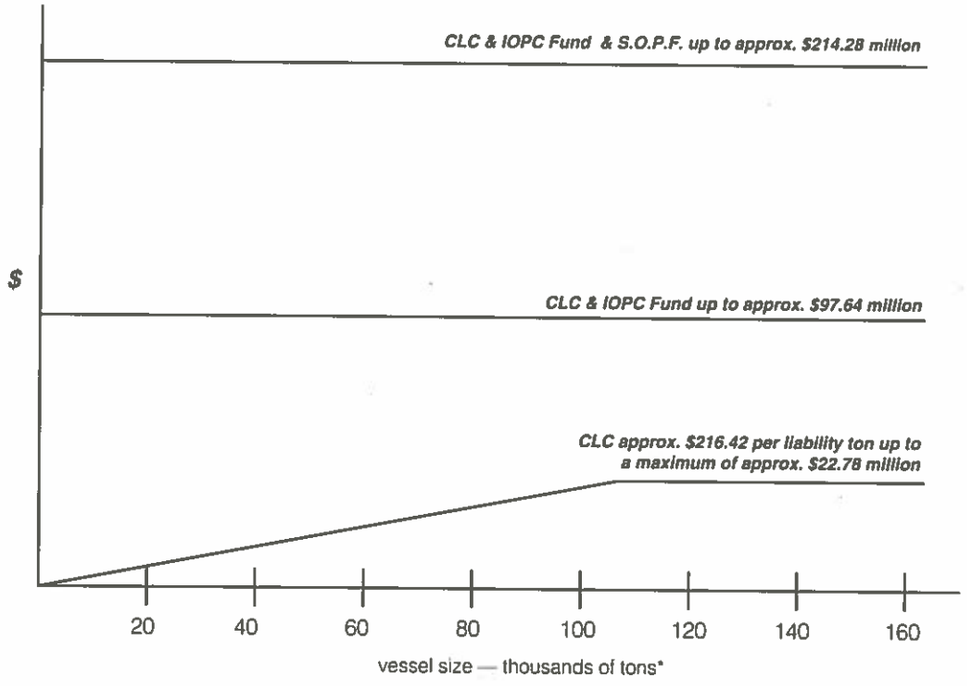
In aggregate these two conventions currently provide compensation of up to a maximum of approximately $97.64 million[4] for any one spill from a laden oil tanker.

[4] The aggregate amount of compensation available under the two conventions is calculated in Special Drawing Rights of the International Monetary Fund.

Figure 1

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

(Based on the value of the SDR at April 1, 1992)



1. 1969 Civil Liability Convention (CLC) provides compensation of up to approx. $22.78 million.
2. International Oil Pollution Compensation Fund (IOPC Fund) and CLC provide aggregate compensation of up to approx. $97.64 million.
3. Ship-source Oil Pollution Fund (S.O.P.F.), IOPC Fund and CLC provide a combined amount of up to approx. $214.28 million for any one incident involving a laden tanker.

Note: The S.O.P.F. provides up to $116.64 million (during fiscal year commencing April 1, 1992) in addition to the funds available under the CLC and IOPC Fund 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

The Role of the Ship-source Oil Pollution Fund

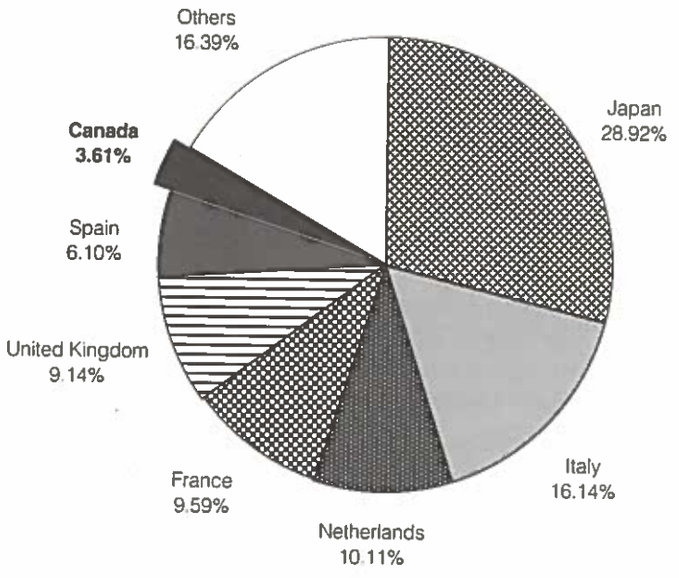
Figure 1 shows that under the CLC, the IOPC Fund and the S.O.P.F. there is approximately up to $214.48 million available as compensation for oil pollution damage in respect of any one incident involving a laden tanker.

The S.O.P.F. is also available to compensate for oil spills from ships not covered by the two conventions (i.e., ships other than laden tankers), certain claims for loss of fishing income and mystery spills.

Annual contributions to the IOPC Fund are based on the amount of oil received by ship in member states during the previous calendar year. In most member states the contributions, assessed annually by the IOPC Fund, are paid by persons receiving total quantities in excess of 150,000 tonnes of "contributing oil" during the calendar year. In the case of Canada, all

Figure 2

IOPC Fund General Contributions 1991



contributions to the IOPC Fund are paid from the S.O.P.F.

The Administrator has a statutory duty on behalf of Canada to report to the Director of the IOPC Fund the quantities of contributing oil received by sea at places in Canada. Industry has been most cooperative in providing the Administrator with the required information on a confidential basis.

In the three years that Canada has been a member, contributions totalling $2,041,847.98 have been paid to the IOPC Fund from the S.O.P.F. on behalf of Canada. Over the same period the IOPC Fund has reimbursed the Government of Canada a total amount of $11,791,848 for claims submitted to the IOPC Fund by the Canadian Coast Guard for operations undertaken for oil pollution damage and the removal of the tanker RIO ORINOCO which grounded on the south shore of Anticosti Island in the Gulf of St. Lawrence in October 1990 (see Section 9.18).

Figure 2 shows the percentages of the 1991 annual contributions in respect of the member states of the IOPC Fund.

4. The IOPC Fund Working Group

As mentioned in my report last year, the first session of the Working Group was held in London on March 13-14, 1991 to examine measures that should be taken to bring into force the two Protocols done in 1984 to amend the Civil Liability Convention and the Fund Convention.

The Protocols would provide significantly higher levels of compensation, but as the United States *Oil Pollution Act of 1990* did not permit the United States to ratify the Protocols, it was unlikely that these Protocols would come into force in their present form.

The Working Group was given the mandate to consider the future development of the international oil pollution liability and compensation system by:

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

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

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

The second session of the Working Group was held in London from 17-18 June 1991 under the chairmanship of A.H.E. Popp, Q.C., Senior General Counsel, Admiralty and Maritime Law, Canadian Department of Justice. The Administrator of the S.O.P.F. was advisor to the Canadian Delegation.

The report submitted to the IOPC Fund Assembly included draft texts for new Protocols amending the 1984 Protocols to both Conventions.

In its report the Working Group reached the following conclusions:

(a) the entry into force conditions of the 1984 Protocol to the Civil Liability Convention should be amended so as to reduce the requirement as to the number of states each with not less than one million units of gross tanker tonnage from six to five or four;

(b) the entry into force provisions in the 1984 Protocol to the Fund Convention should be amended so as to reduce the quantity of contributing oil required for the entry into force from 600 million tonnes; most delegations expressed preference for 400 million tonnes;

(c) it would not be appropriate to amend the conditions laid down in Article 6.4 of the 1984 Protocol to the Fund Convention for the increase from 135 million SDR to 200 million SDR of the total amount of compensation payable by the IOPC Fund in respect of any one incident, even if the quantity of contributing oil required for the entry into force of the Protocol were to be reduced;

(d) it would not be appropriate to amend Article 31 of the 1984 Protocol to the Fund Convention governing the denunciation of the 1969 Civil Liability Convention and the 1971 Fund Convention by reducing the quantity of contributing oil prescribed therein, even if the quantity of contributing oil required for the entry into force of that Protocol were to be reduced. Some delegations, however, were of the opinion that this question should be given further consideration;

(e) the IOPC Fund Assembly should consider the question of whether there should be introduced in the Fund Convention a "cap" on contributions payable by oil receivers in any given state; and

(f) there was no legal impediment to the replacement of the 1984 Protocols by new protocols to modify the 1969 Civil Liability Convention and the 1971 Fund Convention.

5. IOPC Fund, the Assembly and the Executive Committee

The 14th session of the Assembly and the 27th, 28th, 29th and 30th sessions of the Executive Committee took place at London during the year. The Canadian Delegation to these meetings was headed by the Administrator.

The Assembly

The Fund Assembly, which was attended by 31 member states, observers from 12 non-contracting states, inter-governmental and non-governmental organizations, was held from 8-11 October 1991.

At this Assembly, important discussions took place which will shape the future of the IOPC Fund.

The major event was the examination and debate on the report of the IOPC Fund Working Group (mentioned at Section 5) which included draft texts of new Protocols amending the 1984 Protocols to the Civil Liability Convention and the Fund Convention.

At the conclusion of the debate the Assembly decided to request the Secretary General of the International Maritime Organization (IMO) to convene an International Conference to consider:

(a) the draft protocols prepared by the Working Group modifying the 1969 Civil Liability Convention and the 1971 Fund Convention;

(b) two draft resolutions dealing with conflicting treaty regimes and law issues; and

(c) whether there should be introduced in the new Protocols to the Fund Convention a system setting a *cap* on contributions payable by oil receivers in any given state, along the lines set out in the report of the Working Group.

IMO has now scheduled an International Conference in November 1992 to deal with these matters.

The Assembly adopted the budget for 1992 and decided the amount of the Annual Contributions for 1992, increased the Working Capital of the Fund from £4,000,000 to £6,000,000 and gave the Director increased authority to settle claims. These measures will enable the Fund to pursue its policy of rapid settlement of claims.

Major Claims Funds for the HAVEN and RIO ORINOCO incidents (see Sections 6 and 9.18) were established causing significant increases in the 1991 Annual Contributions by member states. Canada's contributions alone (approximately 3.61% of the total call on contributors in member states) amounted to $1,785,478.65; a substantial increase over previous years.

The Assembly asked the Director of the IOPC Fund, with the help of the External Auditor (U.K. Auditor General) to examine the IOPC Fund's Investment Policy and report back to the next Assembly. This decision was taken in light of the current concerns in the London banking market and the fact that the IOPC Fund would be investing large amounts of money in the various major classes of funds as well as the increase in Working Capital.

Several delegations agreed with the Canadian Delegation that the IOPC Fund was under some handicap in not being able to conduct an independent investigation of the cause of incidents. Consequently, the Director was also asked to report on this issue at the next Assembly.

Canada could not be re-elected a member of the Executive Committee (having already served two successive terms) and will not be eligible for re-election until the 15th Assembly in October 1992.

The Executive Committee

The 27th session of the Committee was held on June 18, 1991 in conjunction with the second session of the Working Group. The primary business of the meeting was to deal with two recent major incidents in Italian waters and to instruct the Director of the IOPC Fund on how they should be handled.

At its 28th session held on October 7, 1991, in conjunction with the 14th Assembly, the Committee reviewed all incidents that had taken place during the previous 12 months. The Committee also approved the settlements proposed by the Director of the IOPC Fund of claims submitted up to January 31, 1991 by Canada for operations carried out by or on behalf of the Canadian Coast Guard for the removal of the tanker RIO ORINOCO from Anticosti Island. An interesting video film on this incident was shown to the Committee.

At the 29th session of the Committee following the Assembly, the Chairman and Vice Chairman were re-elected for the next year.

The 30th session of the Committee took place on December 16th, 1991. It was called to deal mainly with legal issues arising from the HAVEN incident off Genoa in April 1991 when the tanker exploded and caught fire. The Administrator attended the meeting as the Canadian observer.

6. The HAVEN Incident

In April 1991, the Cypriot flag tanker HAVEN, after exploding and sinking off Genoa, caused serious oil pollution on the coasts of Italy, France and Monaco.

More than 1,300 claims totalling more than $1,600,000,000 are being considered by a specially appointed Italian Judge. Claims by the Governments of France, Monaco and possibly Spain have or will be presented.

In accordance with the CLC, the shipowner and his insurers, on 16 May 1991, constituted a fund in the Court of First Instance in Genoa in order to limit their liability under that Convention. Pursuant to Article 7.5 of the Fund Convention, the IOPC

Fund intervened in the limitation proceedings reserving its right to challenge the shipowner's right to limit its liability.

This incident in the Gulf of Genoa may have a major impact on the operations of the IOPC Fund. Certain long standing assumptions have been challenged in the Italian Courts, i.e.:

(a) The method of calculating the maximum amount payable by the IOPC Fund in one incident.

(b) Whether claims for unquantified damages to the marine environment are admissible under the CLC and the Fund Convention.

In an initial hearing before the Judge, some claimants, (apparently not including the Government of Italy) obtained a ruling that the Gold Franc, converted at the market price of gold, remains the unit of account for the Fund Convention because, unlike the Civil Liability Convention, the 1976 Protocol to the Fund Convention substituting the SDR as the unit of account has not yet come into effect.

On 14 March 1992, Judge Costanzo of the Court of First Instance in Genoa delivered a judgment which will have, unless it is overturned on appeal, a significant impact on the international oil liability and compensation scheme presently in force in the 48 member states of the 1971 Fund Convention.

The position of the IOPC Fund going into these proceedings in Genoa was that its limit of liability, measured in SDRs, was approximately $92,000,000. On the other hand, the local Judge decided that the IOPC Fund's limit of liability should be measured in Gold Francs, as prescribed in the 1971 Fund Convention, and therefore the limit of liability so measured was increased by almost 1,000%.

This judgment will be contested by the IOPC Fund before the three member Court of First Instance (of which Judge Costanzo is a member) and the judgment of that Court can be appealed to the Italian Court of Appeal and then to the Italian Supreme Court of Cassation in Rome.

It is more than likely that, no matter which side succeeds, the case will go to the highest Court in Italy as so much money is involved.

7. Amendments to the *Canada Shipping Act*

Last year I referred to the recommendations made by the Public Review Panel on Tanker Safety and Marine Spills Response Capability which would impact on the S.O.P.F.

The undernoted recommendations made by the Tanker Safety Panel that would require significant amendments to Part XVI of the *C.S.A.* are under consideration by the Government:

2-1 The Minister of Transport should immediately impose a levy of $2 per tonne on all oil and oil products transported in Canadian waters. The levy should be paid into the Ship-source Oil Pollution Fund, whose purpose should be expanded to expedite replacement of the Canadian-flag fleet with double-hulled vessels and to fund spill response research and equipment purchases.

3-1 Sufficient funds from the Ship-source Oil Pollution Fund (S.O.P.F.) be allocated to finance one fifth of the cost of replacing the Canadian-flag fleet with double-hulled, ice strengthened ships over a seven-year period. It would be preferable for the new vessels to be constructed in Canadian shipyards.

3-2

- *To promote the use of double-hulled vessels, the per tonne levy on oil carried in Canadian waters be discounted 50 percent for double-bottomed vessels and set at zero for double-hulled ones.*
- *Canada should require that in 10 years time all tankers and tank barges entering its waters be double-hulled.*

4-3 In order to increase regional clean-up capacity to the minimum acceptable level, $150 million to $200 million be invested over the next five years. The terms of the Ship-source Oil Pollution Fund be revised to allow capital acquisitions of preparedness equipment by both industry cooperatives and the Canadian Coast Guard.

4-12 So that the level of Canadian marine spill R&D may be adequate to address the significant lack of knowledge and technology, funding be increased immediately to

$10 million and raised annually to reach $20 million by 1995, with the industry share being derived from the S.O.P.F.

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

In April 1991, the Canadian Coast Guard (CCG) published a Discussion Paper showing the proposed CCG position on the recommendations of the Tanker Safety Panel and invited comments from industry, the public and government departments.

The paper contains the undernoted proposed positions adopted by the CCG that impact on the S.O.P.F. respecting the following recommendations:

2.1 The CCG believes that the level of compensation available in the Ship-source Oil Pollution Fund is not adequate. Alternatives to reimposing the levy need to be developed by the private sector. If no suitable alternative is identified, serious consideration will have to be given to recommending the imposition of the S.O.P.F. levy in accordance with the C.S.A.

3.1 The CCG intends to revise design standards for all tankers operating in Canadian waters and set out an appropriate timetable for meeting these standards without the provision of money from the Ship-source Oil Pollution Fund.

4.12 The CCG proposes that industry develop a mechanism to fund R&D and response initiatives as recommended by the Panel. If no satisfactory proposal is made, legislative initiatives to increase the levy and expand the structure and uses of the S.O.P.F. will be brought forward.

Also, in response to recommendation 5.5 the paper states that, "Legislative changes will be sought to have the S.O.P.F. apply fully in Arctic waters, thereby increasing the level of compensation available in the event of a spill in that area."

8. United States Legislation

In November 1991, the Administrator and the Director of Technical Services were invited by the United States Coast Guard to a symposium/ workshop organized by the Director of the Oil Spill Liability Trust Fund established by the United States *Oil Pollution Act of 1990* (*OPA 90*).

The purpose of the symposium/workshop, attended by legal experts and representatives from the oil, chemical, response and shipping industries, was to review implementation of *OPA 90*. From a Canadian viewpoint the symposium/workshop was important because of the interaction between *OPA 90* and the Canadian Regime of Liability and Compensation for Oil Pollution Damage and the effect *OPA 90* could have on claimants in Canada and on the S.O.P.F.

With the adoption of *OPA 90*, United States participation in the international regime, of which Canada is a member, is unlikely in the foreseeable future. Thus, there will be two regimes in North America which differ significantly and may give rise to problems in trans-frontier spills in the following areas:

(a) the rules governing liability, including the rules under which limitation can be broken, are different under the two regimes so that shipowners and their insurers will have to respond to two different regimes in one and the same spill; and

(b) the need to respond to two different regimes is reinforced by the provisions in both regimes ruling out claims by nationals of one country under the regime of the other country with one noteworthy exception.[5]

In addition to the differences in the amount of compensation available in the two regimes, there may be very different notions of natural resource damage in the two regimes.

During our visit to Washington, I also met with consultants retained by the United States Coast Guard National Pollution Funds Center (NPFC).

[5] The rights of Canadian claimants to remedies under the former United States *Trans Alaska Pipeline System Act* are preserved under *OPA 90*.

These consultants had been asked to develop business practices for the NPFC.

At their request, I reviewed with the consultants the claims practices and procedures of the S.O.P.F. and supplied them with various claims documents and other materials developed by the S.O.P.F. to enable the Administrator to carry out his functions under the *C.S.A.*

9. Oil Spill Incidents

9.1 IRVING WHALE (1970)

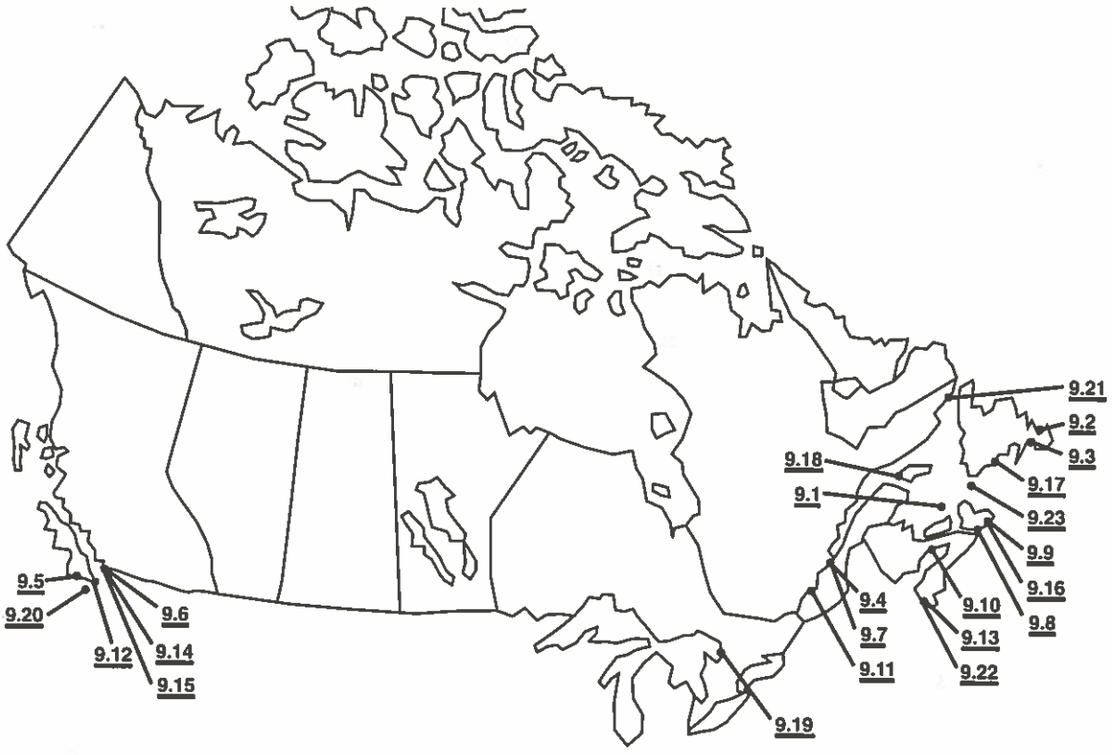
The tank barge IRVING WHALE (G.R.T. 2,261) carrying a cargo of 4,200 M.T. of Bunker C Oil sank on September 7, 1970, in 75 meters of water about 60 km northeast of North Point, Prince Edward Island.

In its final report released on November 2, 1990, the Public Review Panel on Tanker Safety and Marine Spills Response Capability recommended the wreck should be examined in 1990 and a decision made as to whether or not to remove the oil and/or raise the barge (Recommendation 6-13, p. 220).

Over the years, the CCG has maintained surface surveillance in the area of the sinking and conducted several diving inspections. About 3,100 M.T. remains on board, according to an underwater survey conducted in August 1990.

Figure 3

Oil Spill Incidents *



* Refer to Section 9 for a description of the oil spill incidents shown on this map.

On November 22, 1990, small oil patches found on the north shore of Prince Edward Island (Cavendish Beach) had similar characteristics to oil from the sunken barge but a subsequent survey in the vicinity of the wreck reported no visible pollution. A more recent comparative analysis of the beach pollution samples against those from the RIO ORINOCO and the IRVING WHALE indicated that the Cavendish Beach pollution was from the IRVING WHALE.

Subsequent surface inspections of the site of the wreck revealed nothing unusual.

In the spring of 1992, the CCG awarded a contract to Marex International Ltd. to conduct a feasibility study for the salvage of the tank barge IRVING WHALE by the Government of Canada. The study will evaluate the salvage options available for dealing with the wreck, with a review of the technical and practical feasibility of removing and disposing of the cargo and/or barge.

In view of the possibility that the Government of Canada may seek to recover all or some of the costs involved from the Ship-source Oil Pollution Fund, the Administrator has kept a close watching brief on these developments and has also retained a leading expert to advise the S.O.P.F. on technical issues.

9.2 LIBERTY BELL VENTURE (1987)

During the evening of March 29, 1987, this Liberian flag oil tanker (G.R.T. 31,821.99), while discharging a cargo of oil at the Newfoundland and Labrador Hydro terminal at Seal Cove, Conception Bay in the province of Newfoundland, discharged oil into the bay. The CCG incurred costs and expenses for the purpose of cleaning up the oil discharged which, it is stated, amounted to $11,779.71.

In order to recover these costs and expenses, the Crown sued the ship and her owners in the Federal Court of Canada on March 28, 1989. The Administrator of the M.P.C.F. was joined as a party by Statute. On April 24, 1989, the S.O.P.F. succeeded to and become responsible for the obligations of the M.P.C.F. However, no notice of the proceedings in the Federal Court were received by the Administrator until March 1992. At that time I was informed by the solicitors acting for the Crown that service of this claim was delayed due to the location of the defendants who were situated in other jurisdictions, and the refusal of their solicitors in Newfoundland to accept service.

I have agreed with the Crown's solicitor that it is not necessary for me to take any further steps in the action at this time because it is expected that the Crown will recover its claim from the shipowner.

9.3 SOUTH ANGELA (1988)

On March 5, 1988, the Liberian registered oil tanker SOUTH ANGELA (59,353 G.R.T.), while discharging a crude oil cargo at the Newfoundland Processing Limited refinery at Come-by-Chance in the province of Newfoundland, discharged a portion of her cargo into Placentia Bay.

As this incident happened prior to April 24, 1989, it is governed by the former Part XX of the *C.S.A.* and not by Part XVI of the *C.S.A.* As a result, the S.O.P.F. is only liable to pay compensation in the event that a claimant is unable to recover its claim from the owner of the tanker from which the oil discharged. I have been informed that the shipowner has provided security to pay the Crown's claim of $234,396.58 for costs and expenses if it is found to be liable. It is very unlikely that the S.O.P.F. will be required to pay any portion of the Crown's claim.

In my previous report, I described the situation regarding certain fishermen who had commenced an action in the Federal Court. The Administrator was not made a party to that action. I was informed that the fishermen had incurred substantial legal costs in so doing for which they had not been reimbursed by the shipowner. Last year I reported that the S.O.P.F. had not received any claim to pay these costs. No such claim had been received as of March 31, 1992.

9.4 CZANTORIA (1988)

This is another incident which happened prior to the coming into force of the new Part XVI of the *C.S.A.*

On April 8, 1988, the Liberian flag tanker CZANTORIA (G.R.T. 81,197) is alleged to have discharged oil at the oil terminal facility at St. Romuald, Quebec.

By the transitional provision of the *C.S.A.*, the S.O.P.F. must respond to any liability of the previous Maritime Pollution Claims Fund. The S.O.P.F. is now, by Statute, a party to two separate actions in the Federal Court of Canada, namely:

(a) An action commenced on May 11, 1988 by Ultramar Canada Inc. and other related companies against the ship CZANTORIA and those interested in the ship, claiming not less than $2,500,000 in losses and damages.

(b) An action commenced on 7 May 1990 by Her Majesty the Queen against the ship CZANTORIA, her owners, as well as Ultramar Canada Inc., for $338,867.84 plus interest for the clean-up costs and expenses incurred.

I have been informed by the solicitors acting for Ultramar Canada Inc. that the shipowner's underwriters have provided security for an amount well in excess of the combined claims of Ultramar Canada Inc., and the Crown.

Although the S.O.P.F. is keeping a watching brief on these legal proceedings, it is most unlikely that the S.O.P.F. will be asked to pay any amount of compensation for this incident.

9.5 NESTUCCA (1988)

This incident was unusual for the reason that, although the oil spill occurred outside of Canadian waters, oil pollution damage occurred within Canada and within Canadian waters.

In all, the S.O.P.F. received 15 claims for loss of fishing income caused by the closure of two fishing areas on the west coast of Vancouver Island. The S.O.P.F., however, had no authority to pay these claims unless it could be established that the fishing claimants were unable to recover their losses from the shipowner.

All claimants were informed of this requirement and most of them filed claims against the shipowner in proceedings in the United States District Court in Portland, Oregon.

As a result of a very strong judgment of the District Court Judge on January 24, 1991, and subsequent developments in the Court proceedings, the shipowner settled all the claims for loss of fishing income, other than a small number of claims which had not been pursued in the United States Courts.

9.6 NEW ZEALAND CARIBBEAN (1989)

This container ship (G.R.T. 19,613), which subsequently changed its name to ABACUS, collided with the pier at the Versatile Pacific shipyards in North Vancouver, B.C. on 30 January 1989 thereby discharging bunker fuel oil into Vancouver Harbour.

Although the Administrator was joined as a party by Statute in the proceedings commenced by the Vancouver Port Corporation in the Federal Court of Canada, no steps were taken during this year against the S.O.P.F. to recover any part of the damages claimed by the Vancouver Port Corporation as a result of this incident.

9.7 HAPPY SITANI (1989)

The HAPPY SITANI is a Norwegian flag tanker (G.R.T. 60,337) which on April 11, 1989, while berthed at the Ultramar wharf at Saint Romuald, Quebec, discharged bunker oil into the St. Lawrence River.

Both the CCG and the Québec Port Corporation, together with the shipowner, took measures to contain and recover the oil discharged.

The shipowner's guarantors agreed to pay up to $30,000 to satisfy the legal liability of the shipowner under the *C.S.A.* for the costs and expenses of the CCG which, it is alleged, amount to $20,118.40.

On April 8, 1991, the Crown commenced an action in the Federal Court to recover these costs. In compliance with Section 713 of the *C.S.A.*, the Administrator was made a party by Statute and was served with the statement of claim on April 15, 1991. At that time, it was agreed that it was not necessary for the Administrator to appear or to file a defence until further notice.

No such notice has been received as of March 31, 1992.

9.8 Mystery Oil Spill, Rocky Bay, Nova Scotia (1989)

On July 20, 1989, the CCG discovered an oil spill at Rocky Bay on the East Shore of Isle Madame. The waters polluted were waters to which Part XVI of the *C.S.A.* applies.

The CCG, acting on behalf of the Minister of Transport, pursuant to Section 677 of the *C.S.A.*, took action to clean up the oil spill and claimed costs and expenses totalling $1,239.81 in so doing.

As the CCG was unable to identify the particular ship that caused the oil spill, the CCG filed a claim on July 3, 1990 with the S.O.P.F. under Section 709 of the *C.S.A.*

As the cause of the oil pollution damage is unknown, and I have been unable to establish that the incident which gave rise to the damage was not caused by a ship, the CCG is entitled to the presumption that the oil spill was caused by a ship.

After investigation, I assessed that actual and reasonable costs and expenses of the incident incurred by the CCG at no more than $500 which amount was offered to the Crown. That offer was accepted.

By virtue of Section 723 of the *C.S.A.*, interest accrued on the CCG's agreed claim at the rate prescribed under the *Income Tax Act* for late payment and overpayment of income tax. For the applicable period that rate varied each quarter from 12% to 16% per annum.

The factors engaging the Administrator's agreement to settle this claim involving payment from the S.O.P.F. of $500 are:

(a) The costs and expenses claimed by the Crown as assessed appear reasonable.

(b) Litigation would be costly and involve serious risk that the Court would award further interest on the claim together with costs.

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

(d) That this settlement was appropriate for the proper administration of the Fund.

For all the foregoing reasons and by virtue of Section 709(f) of the *C.S.A.*, I directed that payment from the monies in the S.O.P.F. of the sum of $500 together with interest in the amount of $149.04 be made to the Receiver General of Canada in full and final settlement of all costs and expenses claimed by the Crown as a result of the mystery spill at Rocky Bay on or about July 20, 1989.

9.9 Mystery Oil Spill, Gabarus, Nova Scotia (1989)

On June 9, 1989, a report was received by the CCG of Bunker C oil coming ashore in Gabarus Harbour. The waters polluted were waters to which Part XVI of the *C.S.A.* applies.

As a result of the oil spill, I had previously settled claims of a local lobster fisherman and a local seafood processing company (for details please see my Report for 1989-90).

The CCG, acting on behalf of the Minister of Transport, pursuant to Section 677 of the *C.S.A.*, took action to clean up the oil spill claiming to have incurred costs and expenses totalling $16,548.98 by so doing.

As the CCG was unable to identify the particular ship that caused the oil spill, it filed a claim on July 3, 1990 with the S.O.P.F. under Section 709 of the *C.S.A.*

As the source of the oil pollution damage is unknown and I have been unable to establish that the incident which gave rise to the damage was not caused by a ship, the CCG is entitled to the presumption in Section 710 of the *C.S.A.* that the oil spill was discharged by a ship.

After investigation, I assessed the actual reasonable costs and expenses of the incident incurred by the CCG at no more than $12,000 which I offered to the CCG on June 13, 1991, subject to the CCG supplying a report on their investigation of the source of the oil spill. That report was supplied and the offer accepted.

By virtue of Section 723 of the *C.S.A.*, interest accrues on the CCG's agreed claim at the rate prescribed under the *Income Tax Act* for late payment and overpayment of income tax. For the applicable period that rate varied each quarter from 12% to 16% per annum.

The factors engaging the Administrator's agreement to settle this claim involving payment from the S.O.P.F. of $12,000 are:

(a) The costs and expenses incurred by the Crown as assessed appear reasonable.

(b) Litigation would be costly and involve serious risks that the Court would award further interest on its claim together with costs.

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

(d) This settlement was appropriate for the proper administration of the Fund.

For all the foregoing reasons and by virtue of Section 709 (f) of the *C.S.A.*, I directed that payment from the monies in the Ship-source Oil Pollution Fund of the sum of $12,000 together with interest in the amount of $3,982.85 be made to the Receiver General of Canada in full and final settlement of all costs and expenses claimed by the Crown as a result of the mystery spill at Gabarus, N.S. on or about June 9, 1989.

9.10 CAMARGUE (1989)

On June 17, 1989, the French flag M.T. CAMARGUE (G.R.T. 19,016) arrived at the Canaport Monobuoy off Mispec Point in the Bay of Fundy to discharge a cargo of crude oil. On the following day, while the bunker barge IRVING SHARK was transferring fuel oil into the CAMARGUE fuel tanks, a considerable amount of bunker fuel overflowed its fuel tanks, discharging into the water.

The CCG took measures to contain and recover the fuel oil discharge.

An action *in rem* has been taken in the Trial Division of the Federal Court of Canada by the Crown against the CAMARGUE, and its owners claiming $1,275,048.78 for the costs and expenses incurred.

The United Kingdom Mutual Steamship Assurance Association (Bermuda) Limited has provided a letter of undertaking to the Crown, whereby it undertook to pay any judgment adjudged against the M.T. CAMARGUE up to $500,000.

In accordance with Section 713 of the *C.S.A.*, the Administrator has been made a party by Statute in the action.

CAMARGUE was a laden tanker carrying more than 2,000 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. Both the shipowner and its insurers would be fully and directly responsible for the costs and expenses. Any oil pollution damage caused by the spill is not expected to exceed the limit of the owner's liability.

As it is unlikely that the shipowner and its insurers will not satisfy any judgment obtained against the ship, Crown Counsel has agreed that the Administrator need take no further steps in the action until Crown Counsel advises to the contrary.

9.11 MINERVA (1989)

My last report on this incident was in my Annual Report for 1989-90. At that time, I reported:

> *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.*

On January 28, 1992, a solicitor acting for the Brazilian shipowner, Netumar Lines, approached the S.O.P.F. to determine whether the shipowner could file a claim with the S.O.P.F. The basis of this novel claim was that the shipowner had, under mistake of fact, paid for the clean-up of oil in Montreal Harbour which had not been discharged from the MINERVA.

After lengthy discussion, it was agreed that if the shipowner submitted the relevant documents, the Administrator would review the documents to determine whether the S.O.P.F. could be liable to pay all or any of this very unorthodox claim.

As of March 31, 1992, no such documents had been received.

9.12 Mystery Oil Spill, Sooke, British Columbia (1989)

On November 23, 1989, a report was received by the CCG of Bunker C oil coming ashore in Sooke Harbour on Vancouver Island. The waters polluted were waters to which Part XVI of the *C.S.A.* applies.

The CCG, acting on behalf of the Minister of Transport, pursuant to Section 677 of the *C.S.A.*, took action to clean up the oil spill claiming to have incurred costs and expenses totalling $84,551.90 by so doing.

As the CCG was unable to identify the particular ship that caused the oil spill, it filed a claim on March 18, 1991 with the S.O.P.F. under Section 709 of the *C.S.A.*

As the source of the oil pollution damage is unknown and I have been unable to establish that the incident which gave rise to the damage was not caused by a ship, the CCG is entitled to the presumption in Section 710 of the *C.S.A.* that the oil spill was discharged by a ship.

After investigation, on the basis of the information so far submitted, the Administrator was able to assess the actual reasonable costs and expenses of the incident incurred by the CCG at $55,370.20 which I offered to the CCG in February 1992, on the condition that the CCG may submit further material, information and submissions to enable me to reassess the claim at a later date.

By virtue of Section 723 of the *C.S.A.*, interest accrues on the CCG's agreed claim at the rate prescribed under the *Income Tax Act* for late payment and overpayment of income tax. For the applicable period that rate varied each quarter from 12% to 16% per annum.

The factors engaging the Administrator's agreement to partially settle this claim involving payment from the S.O.P.F. of $55,370.20 are:

(a) The agreed costs and expenses incurred by the Crown as assessed appear reasonably to have been incurred.

(b) Litigation would be costly and involve serious risk that the Court would award further interest on the claim together with costs.

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

(d) A partial settlement would mitigate the payment of further interest.

(e) This settlement was appropriate for the proper administration of the Fund.

For all the foregoing reasons and by virtue of Section 709 (f) of the *C.S.A.*, I directed that payment from the monies in the S.O.P.F of the sum of $55,370.20 together with interest in the amount of $18,529.96 be made to the Receiver General of Canada as a partial settlement of all costs and expenses claimed by the Crown as a result of the mystery spill at Sooke Harbour, B.C. on or about November 23, 1989 and interest thereon. This payment was not completed until the 1992-1993 fiscal year.

The Department of Justice, on behalf of the CCG, submitted further information for additional costs and expenses in support of the claim which were under review at year's end.

9.13 Mystery Oil Spill, Wedgeport, Nova Scotia (1990)

On January 18, 1990, the CCG discovered an oil spill at the new government wharf in Wedgeport Harbour. The waters polluted were waters to which Part XVI of the *C.S.A.* applies.

The CCG, acting on behalf of the Minister of Transport, pursuant to Section 677 of the *C.S.A.*, took action to clean up the oil spill and claiming costs and expenses totalling $3,282.82 in so doing.

As the CCG was unable to identify the particular ship that caused the oil spill, the CCG filed a claim with the S.O.P.F. under Section 709 of the *C.S.A.*

As the cause of the oil pollution damage is unknown and I have been unable to establish that the incident which gave rise to the damage was not caused by a ship, the CCG is entitled to the presumption that the oil spill was caused by a ship.

After investigation, I assessed the actual costs of the incident incurred by the CCG at no more than $2,000 which I offered to the CCG on June 10, 1991. That offer was accepted.

By virtue of Section 723 of the *C.S.A.*, interest accrues on the CCG's agreed claim at the rate prescribed under the *Income Tax Act* for late payment and overpayment of income tax. For the applicable period that rate varied for each quarter from 12% to 16% per annum.

The factors engaging the Administrator's agreement to settle this claim involving payment from the S.O.P.F. of $2,000 are:

(a) The agreed costs and expenses claimed by the Crown as assessed appear reasonably to have been incurred.

(b) Litigation would be costly and involve serious risk that the Court would award the Crown further interest on its claims together with costs.

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

(d) That this settlement was appropriate for the proper administration of the Fund.

For all the foregoing reasons and by virtue of Section 709(f) of the *C.S.A.*, I directed that payment from the monies in the S.O.P.F. of the sum of $2,000 together with interest in the amount of $456.69 be made to the Receiver General of Canada in full and final settlement of all costs and expenses claimed by the Crown as a result of the mystery spill in Wedgeport, N.S. on or about January 18, 1990.

9.14 ARCTURUS/RUBIN LOTUS (1990)

In my 1990-91 Annual Report I informed you that:

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

The Administrator has not been informed of any developments affecting the S.O.P.F. during the fiscal year ending March 31, 1992.

9.15 LOK PRATIMA (1990)

This is another incident where the Vancouver Port Corporation commenced proceedings in the Federal Court for unspecified damages after the Indian flag bulk carrier LOK PRATIMA (G.R.T. 15,197.2), following bunkering, discharged fuel into the waters of the inner harbour of the Port of Vancouver on April 3, 1990.

The Vancouver Port Corporation alleges that it incurred costs, expenses and damages in taking remedial measures to prevent or limit the spread of bunker fuel oil from the ship and in cleaning up Vancouver Harbour and surrounding water as well as the bed of Burrard Inlet.

Pursuant to Section 713 of the *C.S.A.*, the Administrator was joined as a party by Statute in the Federal Court proceedings. It was agreed, however, that it was not necessary for the Administrator to take any steps in the action until further notice.

On March 18, 1992, I received notice that the Deputy Attorney General of Canada has been appointed to act as solicitor for the Vancouver Port Corporation.

The previous agreement that it was not necessary for the Administrator to take any further steps in the action until notified was continued.

9.16 AMY & SISTERS (1990)

In the 1990-91 Annual Report, I reported the settlement of three claims for oil pollution damage caused by the discharge of fuel oil from the fishing vessel AMY & SISTERS (G.R.T. 12.36) in Gabarus Harbour, N.S. on July 20, 1990. The three claims were settled for $23,413.83 inclusive of interest and costs.

Under Section 711 of the *C.S.A.*, the Administrator is required to take all reasonable measures to recover the amount of his payment to the claimant from the owner of the ship which caused the discharge of oil.

A claim for the full amount was made against the owner of the AMY & SISTERS on March 8, 1991. He had already been given an opportunity to challenge the proposed settlements before they were finalized, but he did not do so.

Various proposals to settle the claim of the S.O.P.F. were offered. Finally, the owner of the fishing vessel AMY & SISTERS offered to pay $8,000 in seven installments over a six month period. The offer was accepted.

In considering whether this offer to settle should be accepted, the relevant factors were:

(a) whether it was possible to establish that all the damages claimed were, in fact, caused by the oil discharged by the fishing vessel involved;

(b) whether the fishing vessel owner could establish that the discharge of oil and the subsequent oil pollution damage occurred without actual fault and privity and thereby limit his liability to $2,630 in respect of all claims in accordance with Section 679 of the *C.S.A.*; and

(c) further litigation would involve a further risk that the legal costs involved would be out of proportion to the amount of the claim and could not be recovered even if the S.O.P.F. was completely successful in the litigation.

For these reasons, it is considered that this settlement was appropriate for the proper administration of the S.O.P.F. and should be accepted.

The final installment was received in December 1991 and the owner was released for all liability to the S.O.P.F. arising out of this incident.

9.17 Mystery Oil Spill, Big Barasway Beach, Newfoundland (1990)

On May 19, 1991, the Ship-source Oil Pollution Fund received a claim pursuant to Section 710 of the *C.S.A.* from a resident of Burgeo, Newfoundland for unspecified costs and expenses incurred in cleaning the Big Barasway Beach in September 1990.

I investigated the claim and found that:

(a) some oil was reported and found on the Big Barasway Beach (also known as the Big Barachois Beach) on or about September 21, 1990;

(b) a chemical analysis of the oil involved indicated a heavy fuel oil such as Bunker C;

(c) as this fuel type is not used in the area, the oil must have arrived in these sections of the shoreline after being discharged by a passing ship, the identity of which was unknown; and

(d) after investigation by officials of Environment Canada and the CCG, it was determined that the environmental damage caused by the oil was negligible and any action to recover and clean up the small amount of oil was not warranted.

I was satisfied, however, that the claimant did incur actual costs and expenses as a result of oil pollution damage on this beach, which I assessed at $100. This amount was offered to him on July 25, 1991 in accordance with the *C.S.A.* which he accepted by letter dated July 31, 1991.

In making the offer, it was made clear to the claimant that the payment was intended to cover out-of-pocket costs and expenses only and not for the claimant's own time.

9.18 RIO ORINOCO (1990)

The British flag asphalt carrier RIO ORINOCO (G.R.T. 5,999) grounded on the south shore of Anticosti Island in the Gulf of St. Lawrence on October 16, 1990 after experiencing engine problems en route from Curacao to Montreal. About 185 M.T. of bunker fuel, but none of her cargo, was discharged and heavily polluted about 10 km of shoreline.

In very bad weather, the CCG was able to recover some oil from the shoreline, but various salvage attempts to move the ship to a place of safety were unsuccessful. In fact, the ship moved again to become more hard aground between two shelves of rock. The RIO ORINOCO was declared a constructive total loss by her hull insurers on November 18, 1990.

In close consultation with experts acting on behalf of the IOPC Fund, the CCG, on behalf of the Minister of Transport, concluded that the ship, her cargo and remaining fuel oil constituted a serious pollution threat because the ship might be crushed by ice and her cargo would be released and would further contaminate the shore of Anticosti Island. As a result, most of the remaining fuel oil was removed in December 1990, but the

ship and her cargo wintered in the ice. By this time, the cargo had cooled and solidified to a large extent.

Elaborate plans to refloat the RIO ORINOCO in the summer of 1991 were devised by the CCG, again in consultation with the IOPC Fund and its experts. A contract was put out to tender, based, in part, on the "no cure, no pay" principle.

The successful Canadian Contractor (Groupe Desgagnés) commenced preparation of the removal operations in July 1991. A portion of the cargo had to be removed to lighten the ship. To achieve this, the asphalt cargo had to be heated before being pumped. On August 7, 1991, the RIO ORINOCO was refloated and towed to Sept-Îles without causing any pollution.

The CCG incurred substantial costs and expenses in the total operations which were spread over a period of more than eight months. The CCG submitted its claim to the IOPC Fund in three parts. The first claim submitted in August 1991 in respect of the operations up to January 31, 1991 amounted to $7,261,540. After negotiations with the IOPC Fund, this claim was settled, approved by the Executive Committee and paid in an aggregate amount of $6,950,000.

The second claim covering the operations by the contractor to remove the RIO ORINOCO and her asphalt cargo to a place of safety, was submitted to the IOPC Fund in September 1991 in the amount of $3,497,667. This claim was settled at $3,268,848 and authorized by the Executive Committee at its 28th session in October 1991.

The IOPC Fund paid $6,000,000 to the Canadian Government on November 20, 1991 and the balance of $4,218,848 on February 10, 1992.

The third claim in respect of the operations by the CCG after 31 January 1991 and the operations of the Department of the Environment and the Department of Fisheries and Oceans was approved by the Executive Committee for a total amount of $1,573,000 in May 1992 and the monies were received in June 1992.

The 14th Assembly of the IOPC Fund in October 1991 established a major claims fund for the RIO ORINOCO in the amount of £6,700,000.

The only outstanding issue of the incident is whether the IOPC Fund will challenge the claim of the shipowner to limit its liability under the Civil Liability Convention. For this purpose, the IOPC Fund is awaiting publication of the report of the investigation by the Transportation Accident Safety Board.

The settlement of these claims in such a short space of time of so major an incident was unprecedented, reflecting the excellent co-operation between the IOPC Fund and the CCG.

9.19 EASTERN SHELL (1991)

The Canadian flag tanker EASTERN SHELL (G.R.T. 4,009) was reported on 10 May 1991 to have touched bottom at the entrance to Parry Sound, Ontario. Owned by Socanav Inc., EASTERN SHELL was loaded with a mixed cargo of diesel oil and gasoline; some 100,000 liters of gasoline and 6,300 liters of diesel was discharged. Most of the gasoline evaporated, but the diesel came ashore on Franklin Island.

The shoreline clean-up was completed by May 17, 1991 by the shipowner who accepted responsibility for the incident.

Although no claim had been filed with the S.O.P.F. as of March 31, 1992, there has been some indication that if the costs of clean-up exceed the limit of liability of the tanker, the shipowner may request the S.O.P.F. to pay the amount, if any, that the total costs exceed the limit of liability.

9.20 TENYO MARU (1991)

On the morning of July 22, 1991, the Chinese flag bulk carrier TUO HAI (G.R.T. 86,959) collided in thick fog with the Japanese flag fish factory ship TENYO MARU (G.R.T. 4,239) which sank in position 48° 29' N, 125° 17' W at the entrance to the Juan de Fuca Strait 23.2 miles northwest of Cape Flattery on the Olympic Peninsula in the state of Washington, U.S.A. The location of the collision was within a Canadian fishing zone prescribed under the *Territorial Sea and Fishing Zones Act*.

At the time of the collision, the TENYO MARU was carrying, in many separate fuel and other tanks, some 1,000 metric tons of intermediate

Bunker C, some 400 metric tons of diesel fuel oil and 30 metric tons of lubricating oil. Two tanks contained fish oil. The collision caused a considerable discharge of oil.

The TENYO MARU, lying upright at a depth of 540' was discharging oil. The CCG command centre, established at Ucluelet, B.C. decided to attempt to pump oil from the wreck. This was the first time that oil recovery had been attempted at such a depth. Over a period of some 20 days, more than 100 tons of oil was pumped from the wreck of the TENYO MARU.

The currents in the vicinity of the wreck and the prevailing winds drove the bulk of the oil released from the TENYO MARU into United States waters, onto the coast of the state of Washington and as far south as the Oregon Coast. There were no confirmed sightings of oil on any Canadian beaches, due in part to the successful preventive measures carried out by the CCG.

Substantial costs and expenses were incurred by the CCG. On 7 August 1991, the Crown commenced an action *in rem* against the two ships, TENYO MARU and the TUO HAI, and *in personam* against their respective owners, claiming oil pollution damages, costs and expenses. Shortly thereafter the bulk carrier was arrested by the Crown in Vancouver Harbour as security for payment of the costs and expenses incurred by the CCG.

The Administrator of the S.O.P.F. was made a party by Statute in the Crown action.

The Federal Court set bail of $17.2 million (U.S.) for the release of the TUO HAI, which was provided by a guaranty of the Royal Bank of Canada dated 16 October 1991.

On 19 September 1991, the Federal Court had ordered that the Administrator of the S.O.P.F. was entitled to security, and the guaranty of the Royal Bank of Canada so provides.

Evidence of CCG officers indicates that the costs and expenses incurred to the end of August 1991 exceed $4,000,000 and that future costs to remove all the oil from the wreck of the TENYO MARU might reach $15,700,000.

A Statement of Defence was filed on behalf of the Administrator on 30 December 1991. There were no major developments in this litigation up to March 31, 1992.

9.21 OGDENSBURG (1991)

On September 28, 1991, the barge OGDENSBURG (G.R.T. 1,405) sank 17 miles west of St. Augustine, Quebec, off Île Mauger. The barge, owned by Windsor-Detroit Barge Line Limited, was carrying a load of gravel, two payloaders and two trailers. It was reported to the CCG that the fuel tanks of the payloaders had been drained prior to being loaded on the barge.

The OGDENSBURG was under tow by the tug MANIC at the time of the casualty.

The shipowner and its underwriters took full responsibility for raising the two payloaders. The first loader was raised on October 27, and the second on the morning of October 28, 1991. The pollution created by the operation was contained by booms and subsequently cleaned up.

There is a newly established mussel farm near the position of the casualty. The owner of the mussel farm was in touch with the S.O.P.F. and informed me that he had 30,000 lbs. of mussels ready for delivery at the time.

It was not clear, at that time, whether Fisheries Officers had decided whether there was any contamination of the mussels. More recent information would indicate that there was no contamination.

In any event, no claim has been filed with the S.O.P.F. by the end of the fiscal year under review.

9.22 FERMONT (1991)

This United States flag wartime-built tank landing craft grounded on the east side of Seal Island off Yarmouth Harbour, Nova Scotia, on November 17, 1991. The FERMONT had an estimated 3,800 U.S. gallons of diesel fuel on board at the time of the grounding, presenting a threat to the local lobster fishery as the lobster season was to open on November 25, 1991.

As a preventive measure the CCG announced its intention of removing all the fuel oil from the ship, and by November 22, 1991, more than 3,730 gallons of diesel oil had been transferred to shore from the FERMONT by helicopter.

It is not known whether the CCG will be able to recover all its claim for costs and expenses from the shipowner.

In any event, no claim had been filed with the S.O.P.F. as of March 31, 1992.

9.23 SKRIM (1992)

While en route to Quebec to load a cargo of iron ore, the Panamanian flag bulk carrier SKRIM (G.R.T. 86,093), on March 13, 1992, reported to Halifax traffic centre that in the Port-aux-Basques, Newfoundland area it had sustained ice damage on its port bow, causing heavy fuel oil from its portside deep tank to discharge through cracks near the ship's waterline. That tank was reported to contain 1,000 cubic meters of fuel oil. It is estimated that 100-145 cubic meters of fuel oil was discharged.

The following day, oil and tar balls were discovered in the Port-aux-Basques area, with intermittent oiling along three miles of shoreline.

The shipowner of the SKRIM, Blue Trans Shipping Inc. of Panama, confirmed that it accepted responsibility for the oil spill.

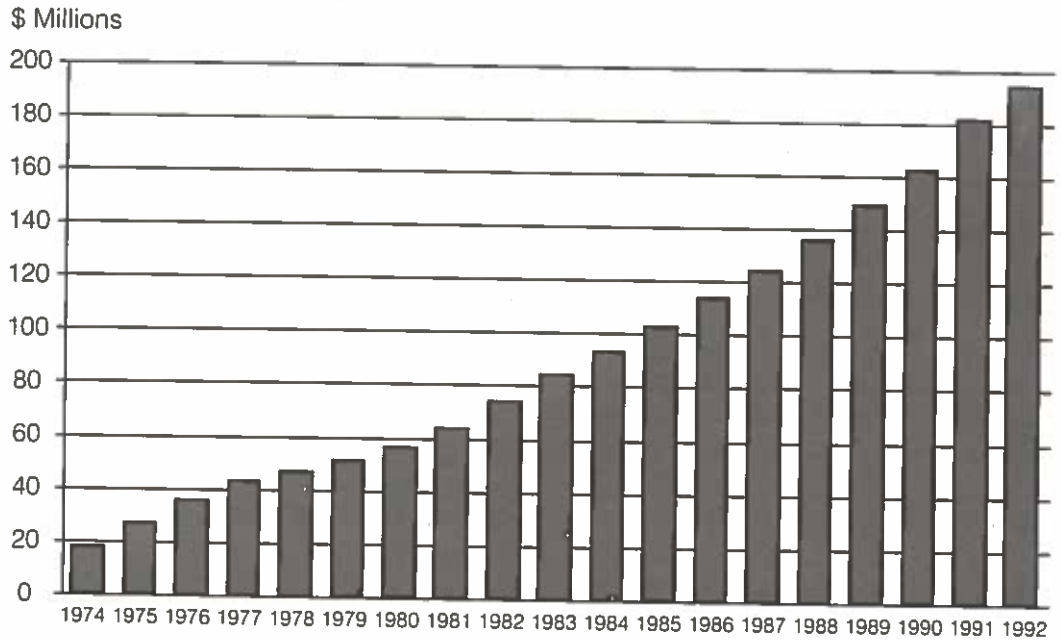
The CCG released the ship after it had been cleaned at dockside in Halifax Harbour and its owner had submitted a letter of intent to clean the remaining pollution in and around Port-aux-Basques in the spring of 1992.

The S.O.P.F. advised the International Group of P. & I. Clubs of the incident on March 17, 1992.

No claims had been filed with the S.O.P.F. as of March 31, 1992.

Figure 4

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



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

10. Status of the Fund

During the fiscal year 1991-1992 the Ship-source Oil Pollution Fund paid out, at the direction or the request of the Administrator:

(a) Pursuant to Sections 706 and 707 of the *Act*, the total sum of $215,859.10 comprising the following costs and expenses:

Administrator Fees	$64,225.00
Legal Fees	$47,562.42
Professional Services	$35,200.00
Secretarial Services	$31,493.50
Travel Expenses	$18,037.41
Printing	$10,689.00
Office Expenses	$ 8,651.77

(b) Pursuant to Section 701 of the *Act*, the Administrator directed the payment of $1,785,478.65 in contributions to the IOPC Fund out of the Ship-source Oil Pollution Fund in accordance with Articles 10, 11 and 12 of the 1971 Fund Convention:

The above amount paid to the IOPC Fund comprised:

1991 General Fund Contribution	$ 288,637.79
Major Claims Fund (RIO ORINOCO)	$ 440,466.66
Major Claims Fund (HAVEN)	$1,056,374.20

(c) Pursuant to Sections 710 and 711 of the *Act*, the Administrator settled claims for the sum of $19,188.58.

(d) Pursuant to Section 711 (3) (c) of the *Act*, the Administrator recovered the sum of $8,000 of the monies previously paid out with reference to the AMY & SISTERS oil spill which occurred in 1990 at Gabarus, N.S.

During the reporting fiscal year, interest credited to the Fund was $16,135,878.40.

At March 31, 1992, the balance in the Fund was $196,529,808.44 (see Figure 4).

Yours sincerely,

Peter M. Troop
Administrator
Ship-source Oil Pollution Fund