Ship-source Oil Pollution Fund Annual Report 1992-1993

Canada

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Minister of Transport
Ottawa, Canada
K1A 0N5

Dear Sir,

1. Introduction

Pursuant to Section 722 of the *Canada Shipping Act* (C.S.A.) 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.) commencing on April 1, 1992 and ending on March 31, 1993.

By Order in Council P.C. 1988-247 dated October 24, 1988, the undersigned was appointed to be Administrator of the Maritime Pollution Claims Fund (M.P.C.F.) 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),[2] 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 which will expire on November 17, 1993.

2. Operation of the Canadian Compensation Regime — An Overview

The three components of the Canadian Regime that provide compensation to the victims of oil pollution damage caused by ships in Canadian Waters are:

1. The Ship-source Oil Pollution Fund;

2. The International Convention on Civil Liability for Oil Pollution Damage 1969 (CLC); and

3. The 1971 International Convention on the Establishment of an International Fund for Oil Pollution Damage (Fund Convention).

On April 24, 1989 these three components came into force when the enabling legislation contained in the *Canada Shipping Act* was proclaimed (S.C. 1987, C.7).

Ship-source Oil Pollution Fund

The first component is the Ship-source Oil Pollution Fund, a special account established in the accounts of Canada. It is credited with interest monthly by the Minister of Finance at an average rate of about 7.17% during the 1992-1993 fiscal year. At March 31, 1993 the balance in the S.O.P.F. was $ 209,922,418.59.

During the fiscal year commencing April 1, 1993 the maximum liability of the S.O.P.F. for all claims in respect of any one oil spill is $118,973,185.60. The maximum liability of the S.O.P.F. 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 oil[3] imported into or shipped from a place in Canada in bulk as cargo on a ship. No levy has been imposed or collected since 1976.[4] The levy, if imposed during the fiscal year commencing April 1, 1993, would be 35.69 cents per tonne. The levy is indexed annually to the Consumer Price Index.

The S.O.P.F. serves several important roles.It is a Fund of first resort for all claims for pollution damage caused by the discharge of oil from any ship with only two exceptions:

(a) in Arctic Waters the S.O.P.F. is only a Fund of first resort for claims for oil pollution damage caused by a discharge of oil from laden tankers; and

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[1] On April 24, 1989 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.
[2] Superseded by R.S.C. 1985, C.6 (3rd Supp.) on May 1, 1989.
[3] Crude oils and heavy fuel oils (A.S.T.M. no. 4 and above)
[4] 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.

(b) it is a Fund of last resort for claims made by a Public Authority[5] where the identity of the ship that caused the damage is known.

Additionally, the S.O.P.F. is available to pay compensation to both private individuals and Public Authorities for oil pollution damage where the identity of the ship is unknown, i.e., "mystery spills". In such cases, claimants are entitled to the benefit of the "reverse onus" provided in the C.S.A. and need not prove that the oil came from a ship. The Administrator must however dismiss a claim if he is satisfied on the evidence that the oil spill was not caused by a ship.

When a claim is paid by the S.O.P.F., the Administrator is subrogated to the legal rights of the claimant and has a duty to recover the amount paid from any person liable. The S.O.P.F. is also available to a widely defined class of persons involved in the Canadian fishing industry to pay claims for loss of income and future income caused by an oil spill from a ship.

Such claimants must show that they have no other right of recovery under the C.S.A. or any other law. They must be Canadian citizens or residents and have the appropriate licences to fish or be persons who fish or hunt for food or skins for their own consumption or use.

Canada's contributions to the International Oil Pollution Compensation Fund (IOPC Fund) are also paid by the Administrator annually in accordance with Section 701 of the C.S.A. in order to comply with the Fund Convention (see below).

Contributions totalling $2,756,028.40 have been paid to the IOPC Fund from the S.O.P.F. during the four years that Canada has been a member. Over the same period the IOPC Fund has reimbursed the Government of Canada a total amount of $11,791,848, the cost and expenses of operations undertaken to minimize oil pollution damage and also for preventive measures (the RIO ORINOCO incident dealt with in my 1991-92 report).

Civil Liability Convention (CLC)

The second component is the CLC under which compensation is made available by shipowners and their insurers for oil pollution damage resulting from spills of persistent oil from laden tankers. A unique feature of the CLC is that it provides for compulsory insurance by the shipowner with the right of direct action against insurers up to the shipowner's limit of liability.

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. Compensation for oil pollution damage caused by these classes of spills is provided by the S.O.P.F.

The Fund Convention

Supplementary to the CLC, the final component is the IOPC Fund whose main function is to pay compensation to persons in states party to the Fund Convention who cannot obtain adequate compensation under the CLC. It also indemnifies shipowners for a portion of their liability under that Convention. The IOPC Fund applies only to oil spills covered by the CLC.

Taken together, the two Conventions provide aggregate compensation of up to approximately $105.67 million for any one incident. At March 31, 1993, 79 states were party to the CLC and 56 states were party to the Fund Convention.

Figure 1 depicts the levels of compensation provided by the CLC, the IOPC Fund and the S.O.P.F. Together the components provide up to approximately $224.65 million available as compensation for oil pollution damage in respect of any one incident involving a laden tanker. Figure 1 assumes that the shipowner is entitled to limit liability under the CLC.

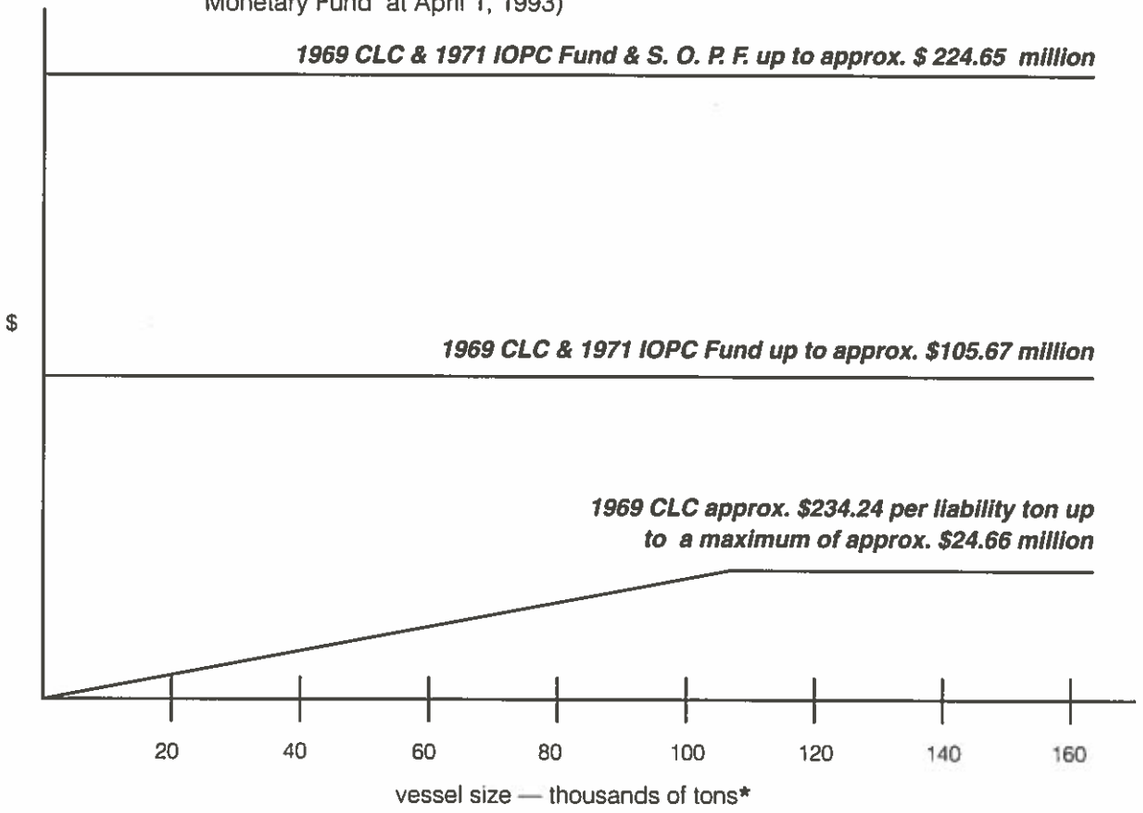
3. IOPC Fund, the Assembly and the Executive Committee

The Administrator headed the Canadian Delegation to the 15th session of the Assembly of the IOPC Fund and the 31st, 32nd, 33rd and 34th sessions of the Executive Committee which took place at London during the year.

[5] Presently, the only Public Authority is the Minister of Transport.

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 Special Drawing Right (SDR) of the International Monetary Fund at April 1, 1993)



1. 1969 Civil Liability Convention (CLC) provides compensation of up to approx. $24.66 million.
2. International Oil Pollution Compensation Fund (IOPC Fund) and CLC provide aggregate compensation of up to approx. $105.67 million.
3. Ship-source Oil Pollution Fund (S.O.P.F.), IOPC Fund and CLC provide a combined amount of up to approx. $224.65 million for any one incident involving a laden tanker.

NOTE: The S.O.P.F. provides up to $118.97 million (during fiscal year commencing April 1, 1993) 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 1969 Civil Liability Convention.

The Assembly

The Assembly was held from October 6-9, 1992. It was attended by 29 member states and 21 observers from non-contracting states, inter-governmental and non-governmental organizations.

The Assembly approved the budget for 1993 and decided that the Working Capital of the IOPC Fund would remain at £6,000,000 and there would be no need to levy an annual contribution for the General Fund.

Annual Contributions for 1992 paid in February 1993 were set at £10,000,000 in respect of a second levy for the HAVEN Major Claims Fund and a levy of £950,000 for the VOLGONEFT 263 Major Claims Fund.

(Canada's share = £371,118.52 = $714,180.48 or 3.39% of the total amount levied.)

Having served two successive terms, Canada ceased to be eligible in October 1991 to be a member of the Executive Committee. In October 1992, Canada again became eligible and was duly elected to the Committee.

In 1991, in light of concerns in the London banking market, the Director, with the assistance of the External Auditor (U.K. Auditor General), was requested to examine the IOPC Fund's Investment Policy. As a result, the Assembly made a number of important decisions:

(a) the Assembly must approve any significant investments in foreign currencies except where there is a need to buy a specific currency to settle claims in that currency in the near future;

(b) the IOPC Fund should not broaden its investment policy beyond deposits and bank bills;

(c) the policy of investing only with banks, discount houses and building societies should be maintained;

(d) in normal circumstances, the IOPC Fund should not invest more than 25% of its assets in one financial institution or £4,000,000 whichever is less; and

(e) money brokers should not be used for independent advice on investment matters.

The Director was asked to report to the 16th Assembly in October 1993 on:

1) the possibility of the IOPC Fund making investments in other currencies, including the European Currency Unit (ECU);

2) whether it would be appropriate to set up a special investment body to advise the Director on investment matters;

3) whether to enlarge the Secretariat to cope with its large investment portfolio; and

4) to review the current Financial Regulations to ensure they reflect the actual practices and procedures of the IOPC Fund, and meet the concerns raised in these discussions.

During the discussion, several delegations agreed that it was important for the IOPC Fund to have the opportunity to become involved in investigations by flag and coastal states and have access to the results of such investigations as soon as possible. The Assembly accepted an offer by the United Kingdom delegation to study the matter further and develop a draft resolution which might give the IOPC Fund better access to the findings of investigations by flag and coastal states.

Executive Committee

The 31st session of the Committee was held on May 28, 1992. It was convened to discuss the decision of the Court in Genoa on the maximum amount payable by the IOPC Fund in respect of the HAVEN incident. The Court held that the amount should be based on the free market price of gold which would result in a sum of approximately $700 million being payable (including the amount payable by the shipowner under the CLC) instead of approximately $105 million as calculated on the basis of the SDR. The Committee instructed the Director to pursue the IOPC Fund's opposition to this decision.

In addition, the Committee approved the final claim by the Government of Canada in the amount of $1,573,000 in respect of the RIO ORINOCO incident which occurred on the south shore of Anticosti Island in the Gulf of St. Lawrence in October 1990. As already mentioned in this report, the IOPC Fund has reimbursed the Government of Canada a total amount of $11,791,848 for operations undertaken resulting from this incident.

At the 32nd session of the Committee on October 5th 1992, held in conjunction with the 15th Assembly, the HAVEN incident was once again the main topic of discussion. The Director reported that there had been no real progress in the litigation proceedings or the examination by the court of individual claims for compensation. Also, the matter of the use of free market price of gold or SDRs to calculate the exposure of the IOPC Fund remained stalled.

The Committee instructed the Director to examine any means in order to obtain access

to evidence which could assist in determining if the IOPC Fund could break the shipowner's limitation of liability or take recourse action against a third party.

At the 33rd session on October 8, 1992 of the Committee, after the Assembly, the Chairman and Vice Chairman were re-elected for the following year.

At the 34th Session of the Committee, which took place on March 11 and 12, 1993, the agenda was dominated by three major incidents, the HAVEN in 1991, the AEGEAN SEA in 1992 and the BRAER in 1993. These incidents are dealt with in the next section of this report.

4. Major International Incidents

During the year two major oil pollution incidents occurred, the AEGEAN SEA and the BRAER, in respect of which the IOPC Fund has paid and will pay substantial claims. The IOPC Fund will also be called upon to pay substantial claims arising out of the HAVEN incident, which took place in April 1991, once the outstanding legal issues are resolved.

HAVEN

In my Annual Report for 1991-1992 I stated that:

In April 1991, the Cypriot flag tanker HAVEN (G.R.T. 109,977), 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 Government of France, Monaco and possibly Spain have been 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 7.4 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 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 spill liability and compensation scheme in force in the 48 member states of the 1971 Fund Convention at the time of the incident.

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) at a hearing to be held on June 18, 1993. The judgment of that Court, when delivered, can be appealed to the Court of Appeal in Genoa and then to the Italian Supreme Court of Cassation in Rome.

At the end of the year the matters referred to in subparagraphs (a) and (b) above were still before the Italian Court. However, the IOPC Fund is examining the possibility of an out of court settlement in order to make progress with the payment of claims.

In November 1992 the Italian Panel of Inquiry for the Ligurian area, which carried out a formal enquiry into the cause of the incident, made its report available to the IOPC Fund. While it could not establish the cause of the explosion on the HAVEN, the Panel concluded that four persons, including the shipowner, had been guilty of negligence or gross negligence.

The report should have considerable influence on the proceedings to bar the shipowner from limiting its liability which, if successful, would exonerate the IOPC Fund from any liability to pay compensation.

AEGEAN SEA

On December 3, 1992 the Greek flag tanker AEGEAN SEA (G.R.T. 53,964) carrying some 80,000 tonnes of light North Sea Crude oil ran aground while approaching La Coruna harbour in northwestern Spain. All the crew were rescued by helicopter after the grounding.

The vessel broke in two and burnt fiercely for about 24 hours. Subsequently, salvors working from the shore removed about 8,200 tonnes of oil from the after section of the wreck. Whilst the quantity of oil spilled is unknown, it appears that the major part of the cargo was either consumed in the fire on board the ship or dispersed naturally. However, beaches were contaminated to the eastwards of La Coruna and Ria de Ferrol was heavily polluted. Clean-up operations were effective and little oil remained. The total cost of these operations has yet to be determined.

A comprehensive fishing ban was imposed from the outset and at the end of 1992 remained partly in effect. The gathering of shellfish is of importance to the economy of the area, as is fish farming and the culture of mussels. There are over 2,500 licensed fishermen in the area, many of whom may have suffered loss of revenue as a result of the incident. At the end of the year, claims amounting to approximately $1.2 million had been received, but it is expected that substantial claims will be made by individual fishermen and others to the IOPC Fund.

BRAER

On January 5, 1993 the Liberian flag tanker BRAER (G.R.T. 44,989) en route to Canada carrying 85,000 tonnes of Norwegian Gullfaks Crude went ashore and was wrecked on the southern tip of the Shetland Islands in very bad weather after experiencing engine failure.

The crew were forced to abandon ship and were taken off by helicopter in poor weather conditions before the ship went ashore. By the time the storms subsided, the entire cargo and most of its bunker fuel oil had discharged into the surrounding seas from the wreck.

From a claims point of view, the most significant factor is the extensive fishing ban and exclusion zone that was imposed by the Government of the United Kingdom. Once the ban was imposed it was forbidden to move cages containing salmon bred in captivity. Consequently, large numbers of salmon became contaminated and had to be destroyed.

Classes of claims that the IOPC Fund has already settled or remain to be settled are:

(a) The costs of cleaning houses contaminated by oil blown off the wreck.

(b) Damage to grasslands due to airborne oil and the cost of special feed for farm animals including extra labour and other costs.

(c) Claims for loss of fishing income of fishermen who fished in the areas where fishing was banned as well as damage to boats and equipment.

(d) Claims for damage sustained by salmon farmers within the exclusion zone, on the basis that these claims related from damage to property and specifically for the 1991 intake of smolts and, if necessary, for the 1992 intake.

(e) Claims by fish processors for damage suffered as an indirect consequence of the contamination of waters covered by the imposed exclusion zone.

(f) Claims of voluntary groups amounting to some £105,000 for cleaning birds and other animals.

5. International Conference on the Revision of the 1969 Civil Liability Convention and the 1971 Fund Convention

As mentioned in my report last year the Fund Assembly, at its 14th session held in October 1991, requested the Secretary General of the International Maritime Organization to convene an International Conference for the purpose of considering the adoption of the following treaty instruments resulting from the conclusions of the IOPC Fund Working Group:[6]

(i) a draft Protocol to the 1969 International Convention on Civil Liability for Oil Pollution Damage (1969 CLC);

(ii) a draft Protocol to the 1971 International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage (The 1971 Fund Convention); and

(iii) other proposals, including a draft proposal for a system of setting a transitional cap on the total contributions payable by oil receivers in any given state.

In response to the request by the Assembly, the Secretary General of IMO convened an International Conference to consider these matters which was held at IMO Headquarters in London, England from November 23-27, 1992.

Representatives of 55 states participated in the Conference. His Excellency Dr. L.M. Singhvi, High Commissioner for India and head of the Indian Delegation, was elected president of the Conference. Hong Kong, an associate member of the IMO, sent an observer to the Conference.

The Canadian Delegation consisted of:

Representative and Head of Delegation:	A.H.E. Popp, Q.C. Senior General Counsel Admiralty and Maritime Law Department of Justice, Canada
Alternate:	M.A.M. Gauthier Transport Canada, Legal Services
Advisor:	P.M. Troop, Q.C. Administrator Ship-source Oil Pollution Fund
Advisor:	D. Bieber Counsellor (Economic) Canadian High Commission London, United Kingdom

There were also observers from various inter-governmental and non-governmental organizations, including the International Oil Pollution Compensation Fund (IOPC Fund) and those representing shipowning, cargo underwriting and environmental interests.

The 1969 CLC and 1971 Fund Convention

The prime objective of this International Conference was to amend the coming into force provisions of the 1984 Protocols to the 1969 CLC and to the 1971 Fund Convention done by the International Conference on Liability and Compensation for Damage in connection with the Carriage of Certain Substances by Sea at London in May 1984. These Protocols made important adjustments to the Conventions.

These Protocols have not entered into force and as written were not likely ever to come into force on account of the inability of the United States of America to ratify or accede to them.

[6] The Working Group held two sessions in London, the first from March 13-14, 1991 and the second from June 17-18 1991, to prepare the draft protocols and other proposals.

It was not the intent of the 1992 Conference to re-examine or revisit the substance of the 1984 Protocols, but to remove as many obstacles as possible to the early coming into force of those Protocols.

The Structure of the Conference

The Conference established a Committee of the Whole. Mr. A.H.E. Popp, Q.C., the Head of the Canadian Delegation, was elected Chairman of that Committee, which was responsible for the substantive consideration of the two draft Protocols, as well as the proposal on "capping" and a number of draft Conference resolutions. The Conference also established a Drafting Committee to take care of the drafting of all the texts to be adopted by the Conference and a Credentials Committee to examine the credentials of representatives attending the Conference.

The Conference used, as the basis of its work, the following documents prepared by an Intersessional Working Group established by the 13th Assembly of the IOPC Fund and approved by the Legal Committee of the IMO:

(a) A draft Protocol to the 1969 CLC.

(b) A draft Protocol to the 1971 Fund Convention.

(c) Two draft Conference resolutions relating to treaty law issues.

As a result of its deliberations, the Conference adopted the Final Act consisting of the following instruments:

(a) The 1992 Protocol to amend the 1969 CLC.

(b) The 1992 Protocol to amend the 1971 Fund Convention.

(c) The following resolutions:

Resolution 1: On the recognition of certificates issued under the 1969 CLC and under the 1992 Liability Convention.

Resolution 2: On the establishment of the IOPC Fund, 1992.

Resolution 3: On the need to avoid conflict between the 1984 and the 1992 Protocols.

Resolution 4: On certain problems of treaty law concerning states which have already expressed their consent to be bound by the 1984 Protocols.

Resolution 5: On the acceptance of an interim cap on contributions payable by oil receivers in any given state.

The above Protocols incorporate the amendments made to the 1969 CLC and the 1971 Fund Convention at the 1984 Conference as well as the amendments done at the 1992 Conference described below.

The two Conventions, as now amended, shall be known as the International Convention on Civil Liability for Oil Pollution Damage 1992 (1992 Liability Convention) and the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage 1992 (1992 Fund Convention).

After a preliminary meeting by heads of delegation, the first part of the Conference was devoted to establishing rules of procedure and administrative matters. Of particular importance was the rule adopted concerning voting. It was agreed that decisions would be made at the plenary by a 2/3 majority of all states present and voting with a 50% majority of contracting states present and voting.

The Committee dealt with the following issues:

A. The Coming into Force of the Protocol to the 1969 CLC

1984 CLC Protocol

The 1984 Protocol to the 1969 CLC stipulates that it would come into force 12 months following the date on which ten states including six states each with not less than one million units of gross tanker tonnage have ratified that Protocol. To date, only one state (France) with over one million units of gross tanker tonnage, has ratified this Protocol.

Decision Taken at the Plenary

It was decided to amend Article 13 paragraph 1 of the 1984 Protocol to the 1969 CLC so that only ten states, including only four states with not less than one million units of gross tanker tonnage, would be required to bring the Protocol into force.

B. The Coming into Force of the Protocol to the 1971 Fund Convention

1984 Fund Protocol

The 1984 Protocol to the Fund Convention shall enter into force 12 months following the date on which the following requirements are fulfilled:

(a) at least eight States have ratified it;

(b) that during the preceding year a total of at least 600 million tonnes of contributing oil has been received in Contracting States.

To date, only France and Germany have ratified this Protocol.

Decision Taken at the Plenary

The Plenary adopted unanimously the Chairman's proposal to amend Article 30, paragraph 1, to reduce the amount from 600 million tonnes to 450 million tonnes.

C. The "Capping" Proposal

The 1971 Fund Convention

There is no provision in the Fund Convention limiting the amount of annual contributions payable by the receivers of oil in one contracting state.

Decision Taken at the Plenary

Upon receiving the report of the Drafting Committee, the Plenary adopted a free-standing Article 36 ter incorporating the agreement on "capping" as proposed by the Committee of the whole.

That Article provides that:

(a) the aggregate amount of the annual contributions payable in respect of contributing oil received in a single Contracting State during a calendar year shall not exceed 27.5% of the total amount levied on all Contracting States;

(b) in the event that annual contributions would have exceeded 27.5% in a single state, such contributions will be reduced to 27.5%;

(c) the amount of the above reduction will then be added to the annual contributions payable by other states on a pro rata basis; and

(d) the capping arrangement shall only operate until the total quantity of contributing oil received in all contracting states in a calendar year has reached 750 million tonnes or until five years after the date of entry into force of the 1992 Protocol, whichever is the earlier.

In Conference Resolution 5, the Conference took great pains to emphasize that the introduction of the capping system was not to be regarded as a precedent for any existing or future convention.

It should be noted that all decisions in the Committee of the Whole, the Drafting Committee and the Plenary were arrived at by consensus without putting any issue to a vote.

The Final Act

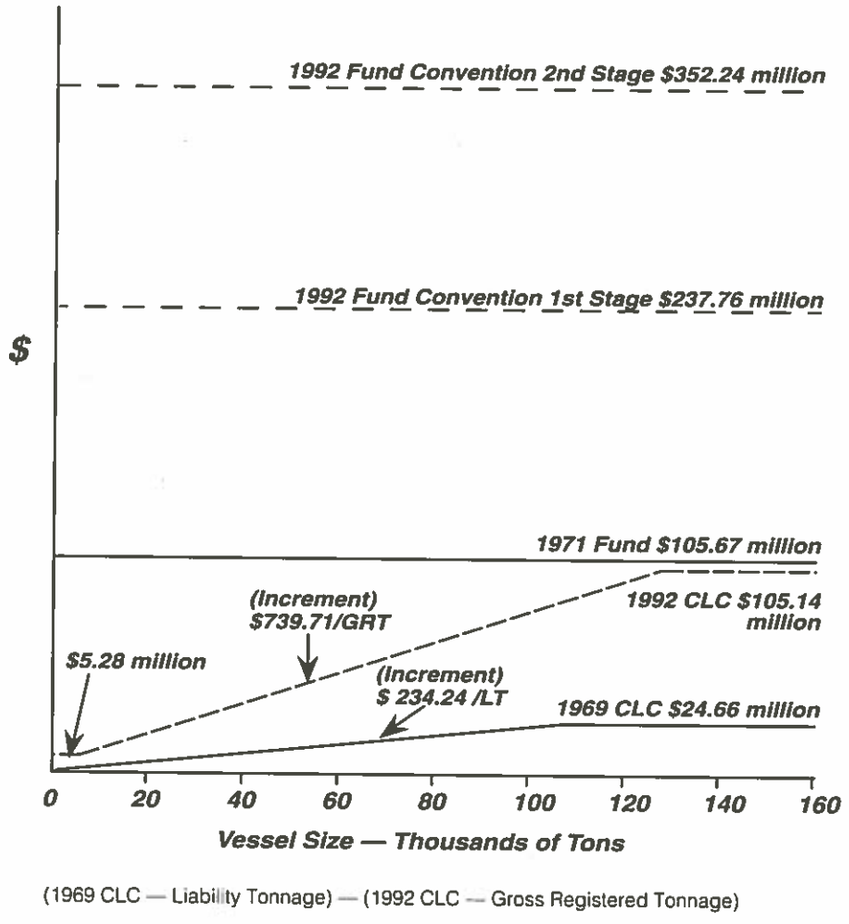
The final Act was signed by 49 delegations, with six abstentions. It was decided that the 1992 Protocols will be open for signature from 15 January 1993 to 14 January 1994.

The 1992 Liability Convention and the 1992 Fund Convention

The most important feature of these Conventions is the substantially increased compensation which they make available. Figure 2 compares the compensation under the existing regime (the 1969 CLC and the 1971 Fund Convention) with that which will be available under the revised regime (1992 Convention) when it enters into force internationally.

Figure 2

Comparison of Current & Revised CLC and IOPC Fund Limits of Compensation
(Based on the value of the SDR at April 1, 1993)



Other important changes extend the geographical scope of the Conventions from the outward edge of the territorial sea to the 200 mile economic zone (the fishing zones of Canada) and to unladen tankers on any voyage subsequent to the voyage on which oil was carried in bulk as cargo. This is designed to cover spills of cargo residues.

A new definition of pollution damage in the new Convention extends it to costs actually incurred or to be incurred for the reinstatement of the environment. The existing regime does not cover the cost and expenses of preventive measures taken before an oil spill actually occurs whereas the new regime provides for this eventuality.

The present regime contains what is known as the fault and privity rule, i.e., a shipowner's right to limit liability can be broken where the shipowner cannot disprove that the oil pollution damage was caused by his own fault or privity. However, the new regime provides that the shipowner can limit his liability in all cases except where it can be proved that the shipowner or its agents were either reckless or had knowledge that damage would result from their acts. Nevertheless, it should be borne in mind that the 1992 Conventions provide for greatly enhanced compensation than heretofore.

The 1969 CLC channels liability to the shipowner. This provision is considerably strengthened in the 1992 Liability Convention. The 1992 Convention also provides of a more rapid amendment procedure than that under the existing Conventions.

As already mentioned, the 1992 Conference modified the entry into force provision of the new Conventions in order to bring them into effect at the earliest possible date. The Canadian Coast Guard (CCG), supports the early ratification of the two 1992 Protocols.[7]

6. Amendments to the *Canada Shipping Act*

Stemming from the report of the Public Review Panel on Tanker Safety and Marine Spills Response Capability released to the public in November 1990, the CCG finalized amendments to the C.S.A. during the year.

The amendments will enhance government and industry's ability to prevent oil pollution damage and protect the marine environment. These represent the first phase of legislative changes made in response to the recommendations of the Review Panel. They were introduced in Parliament on April 2, 1993 as Bill C-121[8] and assented to on June 23, 1993 (S.C. 1993, C. 36).

The amendments that impact directly on the S.O.P.F. provide that:

1) the S.O.P.F. will apply in the future to oil spills from all classes of ships in Arctic Waters, including mystery spills. Presently the S.O.P.F. only applies to oil tankers covered by the CLC and Fund Convention;

2) the S.O.P.F. will be a Fund of first resort for claims for oil pollution damage, preventive measures and costs and expenses submitted by the Minister of Transport. Under the existing legislation a Public Authority[9] must first claim against the shipowner, the insurer or the IOPC Fund as the case may be; and

3) where there is an occurrence that gives rise to liability of an owner of a ship, the Administrator may either before or after receiving a claim commence an action *in rem* against the ship. The Administrator will be entitled to claim security in an amount not less than owner's maximum liability under Part XVI of the C.S.A.

7. Admiralty Seminar

The S.O.P.F. and the Department of Justice jointly sponsored an Admiralty Seminar which was held at Ottawa on February 10-11, 1993. The theme of the Seminar was "Liability in Maritime Law — Where are we going?"

The Seminar was well attended by members of the Admiralty Bar from across Canada, the United Kingdom and representatives from the oil and shipping industries and senior officials from the Canadian Coast Guard, the Departments of Justice, External Affairs, Fisheries and Oceans, Environment Canada, National Defence, and the National Funds Center of the United States Coast Guard.

The purpose of the Seminar was to review and discuss important aspects of maritime liability regimes in Canada and other jurisdictions. The Seminar attracted many fine speakers and panelists.

The particular speakers and subjects covered were:

February 10, 1993

- *Welcome Address*
  John C. Tait Q.C., Deputy Minister of Justice, Ottawa

- *General Overview of Liability Regimes*
  Chair: P.M. Troop, Q.C., Administrator of the Ship-source Oil Pollution Fund

Global Limitation and Insurability
Dr. Frank L. Wiswall Jr., Proctor & Advocate in Admiralty Law, Castine, Maine, U.S.A.

Oil Pollution Regimes including the Emerging HNS Regime
A.H.E. Popp, Q.C., Senior General Counsel
Admiralty & Maritime Law
Department of Justice, Ottawa

[7] Final Response to the Public Review Panel on Tanker Safety and Marine Spills Response Capability — June 1993.
[8] *An Act to amend the Canada Shipping Act* and to amend another Act in consequence thereof.
[9] At present the only Public Authority is the Minister of Transport.

Carriage of Goods by Sea
Hugh Kindred, Professor, Faculty of Law, Dalhousie University

Carriage of Passengers and their Luggage
M.A.M. Gauthier, Senior Counsel, Legal Services, Department of Transport, Ottawa

• *Global Limitation*
Chair: P.M. Troop, Q.C.

The Case for Limitation
David F. Marler, Barrister & Solicitor, Marler Sproule Castonguay, Montréal

The Case Against
James Thomson, Barrister & Solicitor, Paterson McDougall, Toronto

• *Liability for Oil Pollution*
Chair: A.H.E. Popp, Q.C.

Impact of the Oil Pollution Act of 1990 (OPA '90)
– *Overview of OPA '90*
Daniel F. Sheehan, Commander, National Pollution Funds Center, Arlington, Virginia, U.S.A.

Certificate of Financial Responsibility
"Impasse"
David Bovet, Vice President, Mercer Management Consulting Inc., Lexington, Massachusetts, U.S.A.

Vessel Response Plans and Responsibilities of Qualified Individuals
William F. Holt, Consultant, Mercer Management Consulting Inc., Lexington, Massachusetts, U.S.A.

Liability and Compensation — Current Regime and Proposed Amendments to the Canada Shipping Act
M.A.M. Gauthier

• *Film — BRAER Incident —*
David Hebden, Senior Partner, Thomas Cooper & Stibbard, Solicitors, London, England

• *International Conventions on Liability and Compensation for Oil Pollution Damage and the Activities of the IOPC Fund*
Chair: A.H.E. Popp, Q.C.
Mäns Jacobsson, Director, International Oil Pollution Compensation Fund, London, England

February 11, 1993

• *Presenting and Defending an Oil Pollution Claim*
Chair: M.A.H. Turner, Acting Commissioner, Canadian Coast Guard

Dr. Ian White, Managing Director, International Tanker Owners Pollution Federation London, England

C. Breton, Regional Cost Accountant, Laurentian Region, Canadian Coast Guard

Patricia Collins, Counsel, National Pollution Funds Centre, Arlington, Virginia, U.S.A.

P.M. Troop, Q.C.

• *Liabiity Questions Related to Aids to Navigation and Vessel Traffic Management*
Chair: Danièle Dion, Counsel, Admiralty & Maritime Law Section, Department of Justice, Ottawa

Dr. Edgar Gold, Barrister & Solicitor, & Professor of Law Dalhousie University

M.A.M. Gauthier

Dr. Frank L. Wiswall Jr.

• *The Role of P & I Clubs after Fanti*
Chair: R.B. Carter, Counsel, Admiralty & Maritime Law Section, Department of Justice, Ottawa

Letters of Undertaking, Bonds and other Guarantees
Nigel Frawley, Barrister & Solicitor, Meighen Demers, Toronto

Certificates of Financial Responsibility
John Devine, Director, Transport Mutual Services, New York, U.S.A.

• *Measure of Damages*
Chair: The Honourable Mr. Justice A.J. Stone, Judge, Court of Appeal, Federal Court of Canada and a former Chairman of the Canadian Maritime Law Association

Economic Loss
David F. McEwen, Barrister & Solicitor, McEwen Schmitt & Co., Vancouver

Environmental Damages
K.J. Spears, Barrister & Solicitor, Vancouver

Natural Resource Damage Assessment
Randall B. Luthi, Senior Counsel, National Oceanic & Atmospheric Administration, Washington, D.C., U.S.A.

- *Summary*
  Dr. Edgar Gold
- *Closing of Seminar*
  M.A.H. Turner, Acting Commissioner, Canadian Coast Guard

8. 1993 International Oil Spill Conference

The 13th International Oil Spill Conference, took place on March 29-April 1, 1993 at Tampa, Florida. The Conference was sponsored by the American Petroleum Institute, the U.S. Coast Guard and the U.S. Environmental Protection Agency. The Administrator and the Director, Technical Services, attended.

The main underlying theme of this year's conference was international cooperation as it related to oil spill issues. Some 125 papers were presented and 225 international companies and agencies exhibited products and services related to spill prevention and response.

Unfortunately, the papers that were to be presented on the HAVEN incident were withdrawn by their authors at the last moment.

Subjects that were addressed during the Conference were grouped under the headings of Planning, Clean-up Operations, Spill Response, Case Histories, Fate and Effects, Bioremediation, Research and Development, Legal, Economics, In-situ Burning and Training. In addition to the formal papers there was also a total of seven Poster Sessions during which 62 presentations were made.

Conference subjects of special interest to the S.O.P.F. were the International Maritime Organization Convention on Oil Pollution Preparedness, Response and Co-operation (OPRC Convention), the U.S. *Oil Pollution Act* of 1990, (OPA 90) and Natural Resource Damage Assessment methods in regard to compensation payments. Informal discussions were also held with staff of the U.S. National Pollution Claims Fund and the Marine Spills Response Corporation during the Conference.

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. 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.

Although this incident occurred almost 25 years ago, the wreck of the IRVING WHALE and its cargo remains very much in the news. At the time of sinking, the IRVING WHALE was owned by J.D. Irving Ltd. and her cargo was owned by one of the Irving companies. The waters in which it sank were not, at that time, "Canadian Waters" to which the *Canada Shipping Act* did not apply. The shipowners were paid for the loss of the ship and abandoned it to the underwriters who refused to accept the abandonment.

In the summer of 1971, consideration was given to raising the wreck. At the time, the shipowners said they had no plans for raising the IRVING WHALE because the best plan would be to leave the wreck on the bottom indefinitely. At that time, there was public perception which considered that the wreck should be raised.

Although various steps were taken during 1971-1972 in preparation to salvage the wreck, no action was taken and the wreck was not disturbed. In 1992-1993 there appeared to be some public perception that the IRVING WHALE has become a pollution threat and preventive measures must be taken. The Canadian Coast Guard has obtained various technical studies on the feasibility of various salvage methodologies and on the possible environmental risks that

might result. The Canadian Coast Guard plans to hold a series of meetings in the autumn of 1993 to obtain public reaction to the various proposals.

9.2 LIBERTY BELL VENTURE (1987)

This incident happened on March 29, 1987 when this Liberian flag oil tanker (G.R.T. 31,821.99) discharged part of its cargo of oil into Conception Bay, Newfoundland.

For the purpose of cleaning up the discharged oil, the Canadian Coast Guard incurred costs and expenses amounting to some $11,659.71 and legal proceedings commenced in the Federal Court of Canada to recover these costs and expenses on March 28, 1989. The Administrator was made a party by statute, but was not served at that time.

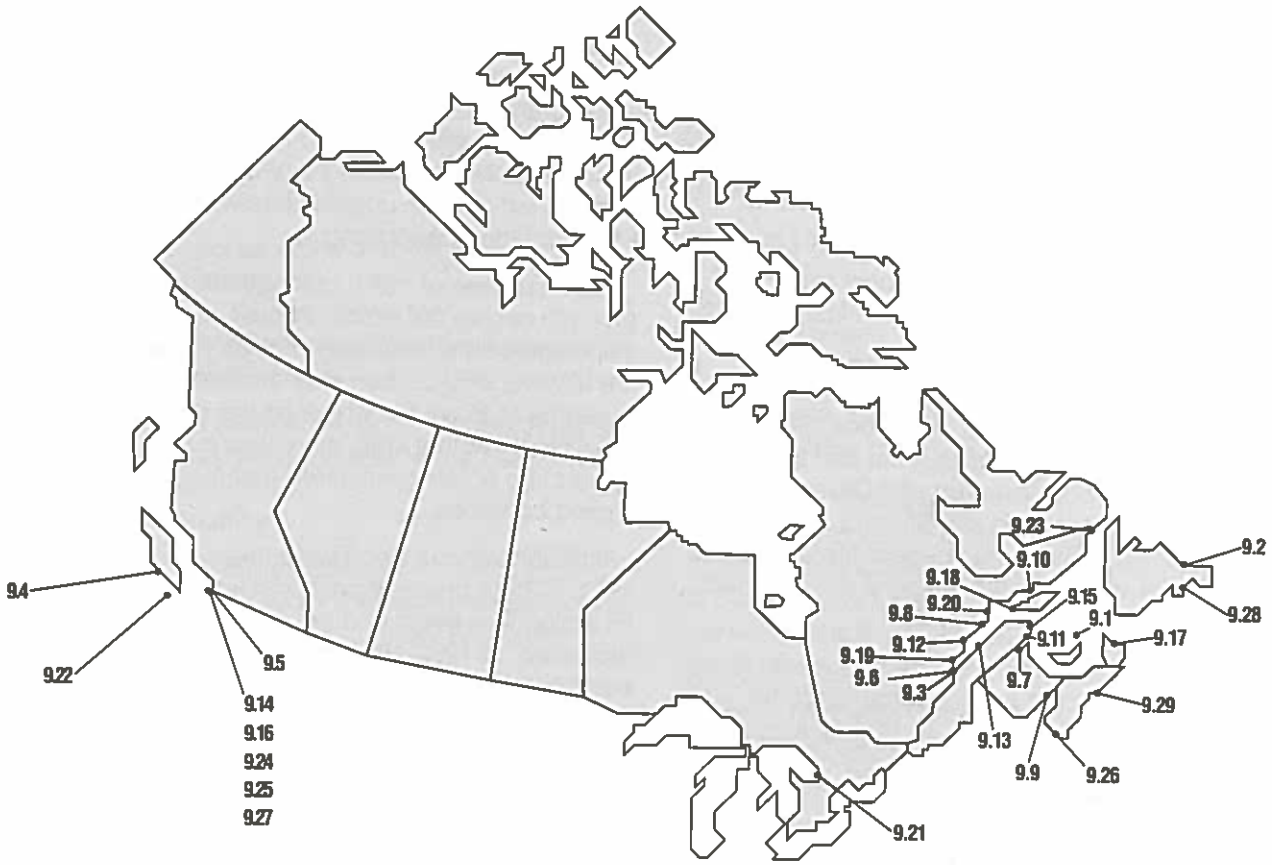
Subsequently, in 1992, it was agreed that there was no need for the Administrator to take any further steps in the action, because the Crown expected to recover its claim from the shipowner. I was informed by the Crown's Counsel that he is awaiting the outcome of the criminal appeal before the civil case can be settled.

9.3 CZANTORIA (1988)

The actions in Federal Court of Canada relate to an incident that occurred on 8 May 1988, prior to the coming into force of Part XVI of the *Canada Shipping Act* on April 24, 1989.

Out of abundance of caution, both the Director of the International Oil Pollution compensation Fund (IOPC Fund) and the Administrator of the Ship-source Oil Pollution Fund were joined as

Figure 3 **Oil Spill Incidents***



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

parties to the proceedings in the Federal Court. The IOPC Fund, after some delay, was successful in obtaining an undertaking from the plaintiffs not to pursue any claims against the IOPC Fund in July 1991.

In 1992, it appeared that the S.O.P.F. was becoming involved in various interlocutory proceedings without any real purpose because the shipowner's underwriters had provided security for an amount well in excess of the combined claims of the plaintiffs, Her Majesty the Queen and Ultramar Canada Inc. No useful purpose has been served by having the Administrator of the S.O.P.F. continuing as a party in the proceedings in the Federal Court.

On February 9, 1993, the solicitors for Ultramar confirmed that Ultramar would not be making any claim against the S.O.P.F. and discontinued the proceedings on 27 April 1993. A discontinuance of the Crown proceedings is being sought.

9.4 NESTUCCA (1988)

This incident occurred in U.S. Waters on December 23, 1988, when the U.S. registered barge NESTUCCA grounded and discharged substantial quantities of oil. Some of that oil was carried by current and tides into Canadian Waters and eventually landed on various places on the west coast of Vancouver Island. The Canadian Government incurred substantial costs and expenses in the clean-up of oil.

Legal proceedings were commenced in the United States District Court of the District of Oregon. After that Court found that, on the facts, the shipowner was not entitled to limit its liability, and after extensive Discoveries, a conference before a settlement judge was held in May 1992 in Portland, Oregon and on May 20, 1992 all issues were settled by agreement by which the shipowner agreed to pay the following:

1. For all the individual claims, commercial fishing claims, clean-up claims of the entity of the Nuu-Chah-Nulth Tribal Council the sum of: Cdn$505,000.

2. To the Federal Government of Canada for clean-up costs the sum of: Cdn$4,382,000.

3. For environmental claims, (a) to the Nuu-Chah-Nulth Tribal Council the sum of: Cdn$700,000; and (b) to the Federal Government of Canada and the Province of British Columbia, for the purposes of restoration of the environment the sum of: Cdn$1,749,500, plus an annuity payable over a ten-year period purchased with the sum of Cdn$1,600,000.

On June 17, 1992, the Canada-British Columbia-NESTUCCA Agreement was signed by the Minister of the Environment, Canada and the Minister of the Environment, Lands and Parks, British Columbia. This agreement established the NESTUCCA Oil Spill Natural Resource Damage Fund and provides for the administration of that Fund.

The shipowner paid the amounts stipulated in the settlement by July 27th 1992.

9.5 NEW ZEALAND CARIBBEAN (1989)

On January 30, 1989, this container ship (G.R.T. 19,613) collided with the pier at the Versatile Pacific Shipyards in North Vancouver, B.C., and discharged bunker fuel oil into Vancouver Harbour.

The Administrator is a party by statute in the action in the Federal Court of Canada by the Vancouver Port Corporation to recover its costs and expenses and damages against the shipowner. It is unlikely that this case will be settled. It is not expected, however, that the Ship-source Oil Pollution Fund will be required to pay any portion of the claim of the Vancouver Port Corporation.

9.6 HAPPY SITANI (1989)

This case has been settled and the proceedings against the Administrator have been discontinued.

9.7 LUCETTE C (1989)

On May 8, 1989, the Canadian fishing vessel LUCETTE C, while at anchor at Newport Harbour in the Bay of Chaleurs, sank with some 1,000 gallons of diesel oil on board. After providing the owner with an opportunity to recover the discharged oil, which the owners failed to do, the Canadian Coast Guard took the necessary measures to recover the oil at a

cost to the shipowners of $136,669.32, which included the cost of raising the wreck of the LUCETTE C. After failing to recover these costs from the owner, proceedings were instituted in the Federal Court of Canada on 24 April 1992 by the Crown against the shipowners, Poissonnerie Anse-à-Beaufils Inc. with its head office at Cap-d'Espoir, Québec, and Donat Bertrand.

As stipulated by Section 713 of the *Canada Shipping Act*, the Administrator of the Ship-source Oil Pollution Fund was joined as a party by statute. At the conclusion of the fiscal year under review, discussions had been initiated to determine whether it was possible to settle this litigation.

9.8 ENERCHEM REFINER (1989)

On 14 May 1989, the Canadian flag tanker, ENERCHEM REFINER, (G.R.T. 4,892) berthed at the Cargill Wharf in the port of Baie Comeau, discharged some 2,000 to 3,000 gallons of bunker fuel on the wharf and into the St. Lawrence River.

On receiving a report of the oil spill, the Canadian Coast Guard took measures to determine the extent of the spill and to determine whether the shipowner was prepared to accept its primary liability to contain the spill, and to clean up and recover the oil which was discharged into the port of Baie Comeau. The shipowner, with some assistance from and under the supervision of the Canadian Coast Guard, took measures to do so.

The Standard Steamship Owner's Protection & Indemnity Association (Bermuda) Ltd., the P & I Insurers of the ship "ENERCHEM REFINER" provided security, up to $250,000, in the event the shipowner was found liable for the incident.

The Coast Guard claimed from the shipowner costs and expenses and damages in the amount of $59,751.77. Legal proceedings were instituted in the Federal Court on April 24, 1992 by the Crown *in rem* against the ship and *in personam* against the shipowner, the master and pilot. The Administrator was joined as a party by statute. On March 27, 1993 the parties agreed to a settlement and the proceedings in the Federal Court were discontinued in July 1993.

9.9 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.

On April 24, 1992, the Crown commenced an Action *in rem* and *in personam* against the M.T. CAMARGUE and its owners, Compagnie Nationale de Navigation, claiming $1,275,048.78 for damages, costs and expenses to minimize or prevent pollution, incurred as a result of oil discharged from the tanker on June 17, 1989. An amended Statement of Claim was filed on June 12, 1992, changing the name of the shipowner. The Administrator was joined as a party by statute in accordance with Section 713 of the *Canada Shipping Act*.

In particulars provided on September 10, 1992, it is alleged by the Crown that several resources and industries were threatened by the pollution, such as the lobster fishery under way, the aquaculture industry in the immediate vicinity valued at $58,000,000, an important sea bird sanctuary and tourist base in the Bay of Fundy area as well as the Fundy park and beach areas.

After denying any liability for the Crown's costs and expenses on the basis that the incident did not result in any pollution damage, the defendants brought third party proceedings against Universal Sales Limited, Atlantic Towing Limited and Irving Oil Terminals Limited. The order for Third Party Directions was signed by the Senior Prothonotary of the Federal Court on 24 February 1993. The defendant claims it is entitled to contribution or indemnity from the third parties, either individually or collectively.

At the close of the year under review no further proceedings had been filed in the Court. The Administrator remains a party by statute, but, by agreement, the Administrator is not, as yet, involved in the merits of the proceedings.

9.10 SIRIUS III (1989)

On August 26, 1989, the Canadian fishing vessel SIRIUS III (G.R.T. 30) sank while tied up alongside the wharf at Longue Pointe de Mingan sud, Québec, discharged black oil and diesel fuel oil into the waters at the wharf to which Part XVI of the *Canada Shipping Act* applies.

It was necessary for the Canadian Coast Guard to take measures to recover the oil to prevent further pollution damage and at the same time, to refloat the SIRIUS III. An independent contractor was employed to do the necessary work. When the Coast Guard was unable to recover its costs, claimed to be about $20,000, the Crown instituted legal proceedings in the Federal Court on 12 May 1992 against the owner of the SIRIUS III joining the Administrator of the Ship-source Oil Pollution Fund as a party by statute.

At the end of March 1993, discussions were taking place to achieve a settlement between the Crown, the shipowner and the Administrator.

9.11 EGMONT (1989)

On September 6, 1989, the Canadian fishing vessel EGMONT (G.R.T. 511) struck the wharf at le port de Paspébiac in the province of Québec and discharged 3,000 gallons of oil into the waters of that port. As the owners of the EGMONT failed to take action to control or recover the oil and thereby prevent pollution damage, the Canadian Coast Guard hired an independent contractor to take the necessary measures which were completed on September 7 at a cost, as claimed by the Coast Guard, of $12,776.60.

On 28 August 1992, the Crown commenced an action *in rem* in the Federal Court of Canada against the EGMONT, her Master and crew and the owner, Cantin Navigation Ltée. At the same time, the Administrator was joined as a party by Statute, but Crown counsel agreed that it was not necessary for me to take any further steps in the action until further notice. No such notice has been received by March 31, 1993.

A defence to the action was filed by the shipowner in the Court in February 1993.

9.12 Mystery Oil Spill, Baie des Ha! Ha! (1989)

On June 20, 1992 the Port of Chicoutimi submitted a claim to the Ship-source Oil Pollution Fund for costs and expenses in the amount of $9,185.31 for oil recovery and clean up in Baie des Ha! Ha! as a result of an oil spill on December 2, 1989.

The oil was discharged by one of the two ships, M.V. MARIA H or M.V. SINGELGRACHT, docked in the port at the time of the incident. The Canadian Coast Guard was unable to identify which ship caused the spill. As a consequence, the shipowner of each ship denied liability and the Port of Chicoutimi was unable to recover its costs and expenses from either ship.

As there was no doubt that the occurrence that gave rise to the damage was caused by a ship, the Port of Chicoutimi would be entitled to recover from the Ship-source Oil Pollution Fund if the Port could show that it had taken all reasonable steps to recover from the responsible shipowner and has been unsuccessful.

In the circumstances, there was doubt whether the Port should be responsible for the failure to identify the particular ship involved. In view of this uncertainty, on October 29, 1992, the Port offered to settle for 50% of its claim together with interest payable under Section 723 of the *Canada Shipping Act*, which totalled $6,500. The Administrator accepted this offer on 6 November 1992 and the settlement was completed on 23 November 1992.

9.13 M.V. EUROSTAR (1990)

While moored at Gros Cacouna, Québec, on January 10, 1990, the Bahamian flag EUROSTAR (G.R.T. 4,751) discharged bunker fuel into the port. As the owners refused to take the necessary measures to prevent oil pollution and oil pollution damages, the Canadian Coast Guard deployed pollution equipment to mitigate damages and engaged the services of a contractor to recover the oil under its powers in Part XVI of the *Canada Shipping Act.* In so doing, the Crown claimed the cost of such measures was $25,344.18 which the shipowner has refused to pay.

The Crown commenced legal proceedings on 2nd December 1992 in the Federal Court and the Administrator was served immediately thereafter. Crown counsel has agreed that the Administrator need not take any further steps in the action unless and until further notice.

9.14 ARCTURUS/RUBIN LOTUS (1990)

As a result of a collision in Vancouver Harbour on 23 February 1990, the Polish flag fishing vessel ARCTURUS (G.R.T. 2,603) was struck by the Vanuatu flag bulk carrier RUBIN LOTUS (G.R.T. 21,947) while berthed at the Vanterm Terminal. The Vancouver Port Corporation has commenced legal proceedings against both ships, their owners and masters.

By agreement, no proceedings have been commenced against the Administrator of the S.O.P.F., and it now appears that the case will be settled.

9.15 MARIE PAULE (1990)

On March 5, 1990, the Canadian fishing vessel MARIE PAULE (G.R.T. 134) sank at its berth in the port of Grand Rivière, Québec, thereby discharging fuel oil into the port. Although primarily liable for the costs and expenses of the necessary measures for oil clean-up and recovery, the owner of the fishing vessel informed the Coast Guard that he was financially unable to accept responsibility. The Coast Guard then mobilized pollution equipment to mitigate the damages and engaged the services of a contractor to clean up the oil, at a cost claimed to be $25,692.13. When the shipowner refused to pay the amount claimed, the Crown started proceedings in the Federal Court of Canada against the vessel *in rem* and the owner, joining the Administrator as a party by statute.

Although there was some initial difficulty in serving the owner, it was not clear at the end of the fiscal year whether the shipowner would defend the action.

9.16 LOK PRATIMA (1990)

On April 3, 1990, the Indian flag bulk carrier LOK PRATIMA (G.R.T. 15,197.2), following bunkering, discharged bunker fuel oil into Vancouver Harbour. The Vancouver Port Corporation commenced an action in the Federal Court of Canada on August 16, 1990, claiming costs, expenses and damages to prevent or limit the spread of fuel oil from the ship and for cleaning up Vancouver Harbour. Since March 18, 1992, the Deputy Attorney General of Canada has had the charge of this litigation.

Although the Administrator has been joined as a party by statute, it has been agreed by Crown Counsel that it was not necessary to take any further steps in the action until further notice. As of March 31, 1993, the Administrator had not received any such notice.

9.17 Mystery Spill, North Sydney, Nova Scotia (1990)

On May 22, 1992, the Department of Justice filed a claim with the Ship-source Oil Pollution Fund on behalf of the Canadian Coast Guard for costs and expenses totalling $21,407.83 for an oil spill incident in the harbour at North Sydney, Cape Breton Island on 5 April 1990. The Administrator has no previous knowledge of this incident.

The documents supporting the claim were reviewed in detail and on September 17, 1992, the S.O.P.F. replied asking for more information and documents in support of the claim so that the claim could be assessed. At March 31, 1993 the information and documents had not been received.

9.18 RIO ORINOCO (1990)

This incident and its consequences were fully reported in the 1991-1992 Annual Report. Only two matters are outstanding:

(a) The shipowners' claim for indemnification by the IOPC Fund has not been paid because the issue of the shipowner's claim to limit it's liability has not been determined.

(b) That issue cannot be determined until the report of the investigation into the cause of the incident by the Transportation Safety Board of Canada is made public.

9.19 CARRY BULK (1990)

While alongside Berth No. B4 at the Port of Bécancour, Québec the Panamanian flag general cargo ship CARRY BULK discharged

bunker fuel into the port. The Canadian Coast Guard took measures to mitigate the damages caused and incurred costs and expenses in engaging the services of a contractor to clean up the oil spill. In so doing, the Coast Guard incurred costs and expenses in the amount of $20,493.85.

After the failure of the shipowner to reimburse the costs and expenses the Crown, on December 2, 1992, started an action in the Federal Court of Canada to recover its claim in *rem* against the ship and *in personam* against the shipowner. The Administrator of the S.O.P.F. was made a party by statute, but it is agreed that it is not necessary for the Administrator to take any further steps in the action until further notice. No such notice had been received by March 31, 1993.

9.20 FORUM GLORY (1991)

On March 26, 1993, La Compagnie Minière Québec Cartier filed a claim with the Administrator of the Ship-source Oil Pollution Fund pursuant to Section 710 for oil pollution damage, costs and expenses in the amount of $32,776.41 caused by the discharge of bunker oil apparently from a ship loading iron ore in Port Cartier in the Province of Québec on March 27, 1991.

On the evidence, the occurrence was caused by the discharge of oil from a ship or ships in Port Cartier. One of the ships in the Port on March 27, 1991 was the M.V. FORUM GLORY (G.R.T. 40,567). There was no evidence that the claim resulted wholly or partially from the claimant's wrongful act or omission or from its negligence. Accordingly, the claim was assessed in the total amount of $44,399.98 covering damages, and interest payable under Section 721 of the *Canada Shipping Act* and legal costs.

It was a condition of the settlement that the claimant would supply the Administrator with copies of all relevant documents. By the terms of the settlement, the Administrator is subrogated to the rights of the claimant against the owners of any ship from which the oil was discharged. The claimant has agreed to cooperate fully with the Administrator, to testify as a witness and to use its best efforts to produce other witnesses of fact to assist the Administrator to prosecute any such claim. When this report went to press, the Administrator was assembling all available evidence for this purpose.

9.21 EASTERN SHELL (1991)

During the early morning of May 10, 1991, the Canadian flag motor tanker, EASTERN SHELL (G.R.T. 4,009) with a draft of 6.67 meters contacted the bottom on Knight Shoal at the entrance to the main channel, Parry Sound, Ontario. At the time, the EASTERN SHELL, owned by Soconav Inc. was loaded with a mixed cargo of diesel oil and gasoline. As a result of this occurrence, 100,000 liters of diesel oil was lost into the surrounding waters from the ship's tanks. The remaining cargo was transferred into the tanker LE CHENE NO.1, also owned by Soconav Inc. (For further particulars of the incident, see Marine Occurrence Report No. M91C2008 issued by the Transportation Safety Board of Canada on 8 December 1991.)

Soconav Inc., Shell Canada Products Limited the owner of the cargo, and the Canadian Coast Guard participated in the measures taken in the clean up of resulting pollution, which was reported to be minimal in view of the precautions taken and the fact that the petroleum products vaporized.

Counsel for the shipowner has informed the Administrator of the following claims:

(a) The Canadian Coast Guard claim for costs and expenses amounting to $332,844.37.

(b) Soconav Inc.'s claim for its direct costs and expenses was $326,546.08.

(c) Shell Canada Products Limited claim presented to Soconav Inc. was $473,125.11.

At a later date, the Administrator was informed that Soconav had settled the Shell Canada claim for a total amount of $310,000.

On January 29, 1993, notice of a claim by Soconav Inc. was received by the Ship-source Oil Pollution Fund on the basis that all the claims arising from this incident would exceed

the limit of liability of the shipowner, calculated at $728,238.33 and that the *Canada Shipping Act* gives the shipowner the right to be indemnified by the S.O.P.F. for any amount the shipowner should have to pay exceeding its limit of liability.

At the close of the fiscal year under review, counsel acting for the Administrator and counsel acting for the shipowner were discussing possible options to resolve the important issue of whether the shipowner has any direct claim against the S.O.P.F. under Part XVI of the *Canada Shipping Act*.

9.22 TENYO MARU (1991)

On the morning of July 22, 1991, the Chinese flag bulk carrier TUO HAI (G.R.T. 86,959) was in collision 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 north west 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 fuel oil, 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 accommodation areas of the wreck of the TENYO MARU. This oil was from fractured tanks.

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.

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 (US) for the release of the TUO HAI, which was provided by a guaranty of the Royal Bank of Canada dated 16 October 1991. On October 19, 1992, an additional bank guarantee in the amount of $1,290,000 (U.S.) in accordance with the order of the Federal Court was filed, bringing the total security to $18.49 million (U.S.)

A report prepared by the Canadian Coast Guard, as of March 31, 1993, indicated that the final amount of the total Coast Guard claim amounted to $5,319,853.59, but no details were provided. On March 29, 1993, the U.S. State of Washington advised the Federal Court that it no longer intended to intervene in the two actions in that Court. On January 12, 1993, the Province of British Columbia presented a claim to the Administrator of the Ship-source Oil Pollution Fund for $28,848.14 for the costs of the provincial response to this incident in accordance with Part XVI of the *Canada Shipping Act*. On 23 February 1993, Counsel for the S.O.P.F. asked for further particulars of the Province's claim. The particulars had not been supplied as of March 31, 1993.

9.23 OGDENSBURG (1991)

The Canadian registered barge OGDENSBURG (G.R.T. 1,405) sank while under tow, on September 28, 1991, 17 nautical miles west of St. Augustine in the Province of Québec. At the

time of sinking, the barge was carrying a cargo of gravel, two payloaders and two trailers. It was later determined that the payloaders were discharging oil. At the time of the incident, the registered owner of the OGDENSBURG was McKeil Work Boats Limited of Hamilton, Ontario, and, it is alleged, the barge was chartered to Navigation Harvey & Frères Inc. The OGDENSBURG was entered in the Ship Owner's Mutual Protection & Indemnity Association (Luxembourg).

On March 26, 1993, counsel for the Crown submitted a claim for $157,916.49 for costs and expenses incurred by the Canadian Coast Guard to the Ship-source Oil Pollution Fund on the basis that it was unlikely to obtain payment from the shipowners. As of March 31, 1993, the Administrator was investigating the claim to determine whether the Crown had taken sufficient steps to recover payment of compensation from the shipowner and its insurers.

9.24 BEHRAM KAPTAN (1991)

On December 6, 1991, the Turkish flag bulk carrier BEHRAM KAPTAN (G.R.T. 11, 188), while at anchorage No. 4 in English Bay, within the Port of Vancouver, discharged a quantity of marine diesel oil from the engine room bilge. The Vancouver Port Corporation incurred costs and expenses of approximately $250,000 in taking remedial measures to prevent or limit the spread of oil or oily mixture from the ship.

On December 10, 1991, the Vancouver Port Corporation commenced an action against the ship, her owners and master in the Trial Division of the Federal Court of Canada, joining the Administrator of the Ship-source Oil Pollution Fund as a party by Statute as required by Section 713 of the *Canada Shipping Act*. That action was settled in April 1993 and by consent, the action was dismissed without costs to any party on June 9, 1993.

9.25 FEDERAL OTTAWA (1992)

On the 22nd and 23rd of January 1992, the Luxembourg flag bulk carrier FEDERAL OTTAWA (G.R.T. 21,661) discharged several quantities of bunker fuel oil while the ship was either at anchorage in Vancouver Harbour or in English Bay. The Vancouver Port Corporation, having the administration of Vancouver Harbour, took remedial measures to prevent the spread of oil and to clean up Vancouver Harbour, and, in doing so, claims to have incurred costs estimated at $50,000.

On the following day, the Vancouver Port Corporation instituted legal proceedings in the Federal Court of Canada against the M.V. FEDERAL OTTAWA and its owners as well as the Administrator of the Ship-source Oil Pollution Fund, who was served January 11, 1993. At that time, it was agreed by counsel acting for the Vancouver Port Corporation that it was expected that the Corporation would be able to recover its claim from the shipowners and their insurers, and it would not therefore be necessary for the Administrator to take any steps in the action without further notice.

9.26 Mystery Oil Spill, Lockeport, Nova Scotia (1992)

On March 19, 1992, there was a discharge of diesel oil, apparently from a fishing vessel, into Lockeport Harbour. The fuel oil so discharged spread on the harbour waters to the lobster car holding live lobsters owned by R. Baker Fisheries Ltd.

As a direct result of this contamination, the Department of Fisheries and Oceans ordered R. Baker Fisheries Ltd. to dispose of 3,400 lbs. of live lobsters belonging to that company. Subsequently, under the direct supervision of the Department of Fisheries and Oceans, the contaminated lobsters were taken off shore and released to the sea in accordance with the *Fisheries Act*.

On April 16, 1992, R. Baker Fisheries Ltd. ("the claimant") 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 for $63,980.35, the particulars being as follows:

(a) Contaminated lobster — 47 crates x 100 lbs./crate = 4,700 lbs. x $10.40	$48,880.00
(b) Contaminated lobster car (replacement cost)	$10,160.59
(c) Contaminated lobster crates (replacements cost — 92 crates x $14/crate)	$ 1,260.00
(d) Related labour costs (68 hrs. @ $10/hr.)	$ 680.00
(e) Legal fees re: preparation of claim	$ 3,000.00
TOTAL	$63,980.59

On June 11, 1992, the claimant filed a further claim with the Administrator of the Ship-source Oil Pollution Fund pursuant to Section 712 of the *Canada Shipping Act* for a total loss of income of $36,960 with an indication that the company had suffered unspecified losses of future income for the weeks commencing April 13th, 1992 and April 20th 1992.

The Administrator investigated the claims and obtained evidence from the claimant, and others, to establish the quantum of its loss, damage, costs and expenses suffered by it as a result of the oil pollution damages and loss of income resulting there from. In accordance with his statutory powers, the Administrator obtained evidence under oath from the President and General Manager of the claimant on June 26th, 1992 in Halifax, Nova Scotia.

On the evidence, the Administrator was satisfied that the occurrence was caused by the discharge of oil from a ship or ships in Lockeport Harbour. There was no evidence that the claims of the claimant resulted wholly or partially from its wrongful act or omission or from its negligence. On the evidence provided by the claimant and by others, the Administrator assessed the claims of the claimant for oil pollution damage, for loss of income and future income, for interest pursuant to section 723 of the *Canada Shipping Act* and for legal fees and disbursements in the total amount of $59,350.

An interim payment of $20,000 was made to the claimant on May 22, 1992. The Administrator directed a further payment to the claimant out of the Ship-source Oil Pollution Fund of $39,350 pursuant to section 711 (3)(*a*) and section 712 (5)(*a*) of the *Canada Shipping Act*, which was accepted and paid on 15 July 1992.

Samples of the oil taken in Lockeport Harbor were analyzed and assessed by environmental consultants. Their assessment indicated that there were significant differences in the chromatographic "finger prints" of the samples. These differences were sufficient to conclude that the samples most probably did not originate from a common source. Accordingly, the Administrator has not taken any action to recover the amount paid to the claimant.

9.27 NORPAK 1 (1992)

At 1800 Pacific Daylight Time (PDT) on August 10, 1992, the fishing vessel NORPAK 1 (ex. SEAMARK 1) (G.R.T. 38) struck the Iranian flag bulk carrier IRAN SHARIAT while anchored at anchorage No. 12 in English Bay in the Port of Vancouver, B.C. At 1830 PDT the NORPAK 1, with 700 gallons of diesel on board and attended by a Vancouver police vessel, the harbour master's launch and the CCGC OSPREY, was observed to be sinking by the bow. At 2023 PDT, the NORPAK 1 was securely beached and boomed on a falling tide by the tug MILLER DELTA on the Spanish Banks before it sank.

Although there was a diesel sheen around the NORPAK 1, a survey showed only minimal leaks and the vessel's fuel tanks were intact. At 1255 PDT, a Coast Guard hovercraft was on the scene, placing sorbent boom and pads inside the containment boom to recover small amounts of oil being released.

By August 13, tank mountings appeared secure and there was no evidence of oil on the

surface of the surrounding waters. It was not considered necessary or desirable to remove oil from the fuel tanks and the NORPAK 1 was stabilized so it could be transferred to a repair yard.

At the close of the fiscal year under review, the Administrator had not received any official notice of the Canadian Coast Guard's claim or of any legal proceedings to recover its claim from the owner of the NORPAK 1.

9.28 AMERICAN FALCON (1992)

On the evening of October 25, 1992, the U.S. flag M.V. AMERICAN FALCON (G.R.T. 15,952) struck a bollard on the wharf in Argentia Harbour while docking. The after starboard fuel tank was damaged in the collision with the wharf. Approximately 20 tons of bunker fuel was discharged into the harbour. The damaged tank and adjacent tank spaces were pumped out to prevent any further discharge of fuel oil. An oil boom, carried by the AMERICAN FALCON was deployed by the pilot boat to contain further pollution.

Clean up by Coast Guard Emergencies personnel of the intertidal zone and skimming operations commenced. A response order was issued to the on-scene Commander on 27 October 1992. An inspection of the dock in Argentia was carried out revealing extensive pollution. The dock structure was boomed to contain 5-6 tons of fuel oil adhering to the dock face and piles.

The AMERICAN FALCON, owned by the American Transportation Line and managed by Crowley Maritime Corporation, was permitted to sail on October 28, 1992 after providing a letter of undertaking for $500,000 from the United Kingdom P & I Club. It would appear that the letter of undertaking will be sufficient security for the costs and expenses of the Canadian Coast Guard.

As of March 31, 1993, no claims have been received by the Administrator of the Ship-source Oil Pollution Fund.

9.29 Mystery Oil Spill, Halifax Harbour (1992)

On November 5, 1992, there was a discharge of oil in Halifax Harbour. Although the source could not be identified, there was no evidence that the oil was not discharged by a ship.

On November 24, 1992, Imperial Oil Limited filed a claim with the Administrator pursuant to Section 710 of the *Canada Shipping Act* for costs and expenses in the amount of $8,818.39. The claim was investigated by the Administrator in accordance with the Act and evidence was obtained from the claimant, the Canadian Coast Guard and the Department of the Environment on which the quantum of the claim was assessed at $5,870.67. There was no evidence that the claims resulted wholly or partially from any wrongful act or omission of the claimants or from its negligence. Together with interest payable pursuant to Section 723, the claim was settled at $6,236.28.

10. Status of the Fund

During the fiscal year 1992-1993 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 $1,081,629.39 comprising the following costs and expenses:

Administrator Fees	$ 60,550.00
Legal Fees	$ 32,222.34
Professional Services	$ 32,731.25
Secretarial Services	$ 41,237.80
Travel Expenses	$ 26,510.36
Admiralty Seminar Travel Expenses	$ 6,794.58
Printing	$ 14,203.10
Office Expenses	$ 13,440.32

(b) Pursuant to Section 701 of the Act, the payment of $714,180.48 to the IOPC Fund for contributions payable by Canada in accordance with Articles 10 and 12 of the 1971 Fund Convention:

The above amount paid to the IOPC Fund comprised:

Major Claims Fund (Haven)	$653,818.27
Major Claims Fund (VOLGONEFT 263)	$ 60,362.21

(c) Pursuant to Sections 710 and 711 of the Act, the Administrator settled claims for the sum of $139,750.16.

During the reporting fiscal year, interest credited to the Fund was $14,474,230.54

At March 31, 1993, the balance in the Fund was $209,922,418.59.

Yours sincerely,

Peter M. Troop
Administrator
Ship-source Oil Pollution Fund