

# Ship-Source Oil Pollution Fund

The Administrator's  
Annual Report

2007 – 2008



Canada

Photos courtesy of  
Gary Wilton, Fire Chief,  
District of North Saanich Fire Rescue,  
North Saanich, British Columbia

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The Administrator's Annual Report

**2007 – 2008**

Canada





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

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

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

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

Ottawa, June 16, 2008

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

Dear Mr. Cannon:

It is my pleasure to submit the Annual Report on the operations of the Ship-source Oil Pollution Fund (SOPF) for the fiscal year beginning April 1, 2007, and ending March 31, 2008, pursuant to section 100 of the *Marine Liability Act (MLA)*. This has been a particularly busy year for the SOPF for a variety of reasons, some of which I would like to draw to your specific attention.

In my last report I referred to the fact that the SOPF had been made subject to the *Access to Information Act* and the *Privacy Act* in the latter part of 2006. A substantial amount of work has been undertaken in the course of this fiscal year to ensure that the SOPF is fully compliant with those Acts. It has been necessary to revise completely the filing system of the Fund and to establish for the first time in the Fund's history a file retirement policy. In discussions with Library and Archives Canada the SOPF has been informed that the Archives consider the file collection of the Fund to be of historic value. Accordingly, special measures were necessary to ensure that retired files that are no longer needed be properly safeguarded in accordance with Archive standards. Shortly the first batch of closed files will be transferred for permanent retention to Library and Archives Canada.

Since the SOPF has practically no staff, its work force consisting of two part time Governor in Council appointees, a full time executive assistant and office administrator and a part time claims officer, the substantial task of reorganizing the filing system could not be accomplished in the ordinary course of business by the existing work force. Accordingly, this work has been largely carried out by consultants retained by the SOPF. While the work has not yet been completed, it is anticipated that it will be completed over the next few months. I have elaborated on this work in the **Challenges and Opportunities** section of this report.

It has also been intimated to me over the course of the last fiscal year that the SOPF should have its financial statements examined by independent auditors. This would ensure that proper financial practices are followed in the financial transactions of the SOPF and contribute to greater transparency. I am happy to report that such an examination has been carried out and that the auditor's report has been included in this report. I would like to

acknowledge the particular contribution of the Deputy Administrator, Mr. Pierre Adam, in this regard who, with his accounting background, was of valuable assistance to me in dealing with the auditors, particularly since this was the first time that such audit has been conducted. It might also be appropriate to note that Mr. Adam has agreed to act as the ATIP coordinator for the SOPF.

While the administrative work of the SOPF has undoubtedly increased significantly over the last fiscal year, I am happy to report that the claims related work of the Fund has not suffered and that all claims throughout the fiscal year have been addressed in a timely manner. Furthermore, I have actively participated, as part of the Canadian delegation, in meetings of the International Oil Pollution Compensation Fund (IOPC Fund) where Canada continues to play a significant role. As you may recall, the SOPF is responsible under the MLA for the payment of Canada's contribution to the international fund. Of particular interest to me is the claims work of the IOPC Fund and close attention to this work ensures that the claims policy of the SOPF is largely compatible with that of the IOPC Fund.

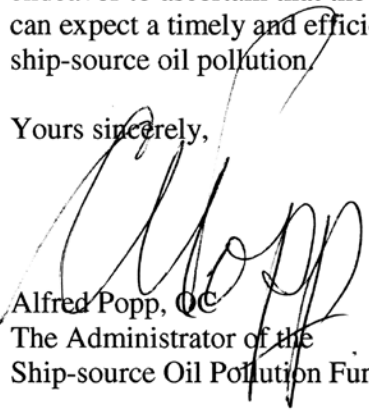
Since the SOPF has an important role to play in the Canadian regime governing ship-source oil spills, I have continued with the outreach activities of the Fund with the aim of raising awareness of this role. It has been particularly gratifying to meet with members of the Coast Guard, including the Commissioner, response organizations and other stakeholders across the country, individually and in a variety of meetings and seminars.

Last but not least, I am happy to report that I have enjoyed excellent relations with your officials. Discussions are currently underway with them to expand the provision of a variety of services, particularly in the realm of financial and information management, with the aim of increasing efficiency and cutting costs, while at the same time safeguarding the independence of the office of the Administrator.

I would like to take this opportunity to pay a special tribute to Mr. Emile Di Sanza, Director General of Shipping Policy, who, until his recent retirement, served as contact point between the SOPF and your department. I have greatly appreciated his willingness at all times to listen to my concerns and to propose ways and means to address them.

I look forward in the coming year to work with you and your officials in our common endeavor to ascertain that the necessary mechanisms are in place to ensure that Canadians can expect a timely and efficient response to the sometimes devastating consequences of ship-source oil pollution.

Yours sincerely,



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

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## **List of Acronyms**

ABS	American Bureau of Shipping
ATIP	Access to Information Act
CCG	Canadian Coast Guard
CLC	Civil Liability Convention
CMAC	Canadian Marine Advisory Council
CMQC	Compagnie minière Québec Cartier
CMLA	Canadian Maritime Law Association
CPA	Canada Port Authority
CSA	Canadian Shipping Act
CWS	Canadian Wildlife Service
DFO	Department of Fisheries and Oceans
EC	European Commission
ECRC	Eastern Canada Response Corporation
EEZ	Exclusive Economic Zone
ER	Emergency Response
EPA	Environmental Protection Agency
EU	European Union
FV	Fishing Vessel
GT	Gross Tonnage
GVHA	Greater Victoria Harbour Authority
HNS	Hazardous and Noxious Substances
IMO	International Maritime Organization
IOPC	International Oil Pollution Compensation Fund
ITOPF	International Tanker Owners Pollution Federation
LNG	Liquefied Natural Gas
LOU	Letter of Undertaking
MARPOL	Marine Pollution
MCTS	Marine Communication Traffic Services
MEPC	Marine Environment Protection Committee
MLA	Marine Liability Act
MOU	Memorandum of Understanding
MPCF	Maritime Pollution Claims Fund
MT	Motor Tanker
MV	Motor Vessel
NASP	National Aerial Surveillance Program
NLEA	Newfoundland and Labrador Environmental Association
NTCL	Northern Transportation Company Limited
OBO	Ore/Bulk/Oil
PC	Pleasure Craft
P&I Club	Protection and Indemnity (Marine Insurance) Association
PTMS	Point Tupper Marine Services Limited
REET	Regional Environmental Emergency Team
RO	Response Organization
SDR	Special Drawing Rights*
SITREP	Situation Report
SIMEC	Société d'Intervention Maritime, Est du Canada
SOPF	Ship-source Oil Pollution Fund
STOPIA	Small Tanker Oil Pollution Indemnification Agreement
TC	Transport Canada
TCMS	Transport Canada Marine Safety
TOPIA	Tanker Oil Pollution Indemnification Agreement
TSB	Transportation Safety Board

*Ship-source Oil Pollution Fund*

VPA	Vancouver Port Authority
VPC	Vancouver Port Corporation
WCMRC	Western Canada Marine Response Corporation

\* The value of the SDR at April 1, 2008, was \$1.69038. This actual value is reflected in Figure 1.

## Summary

### The Canadian Compensation Regime

This report on the operations of the Ship-source Oil Pollution Fund (SOPF) covers the fiscal year ending March 31, 2008. Section 1 describes the Canadian compensation regime, which is governed by Part 6 of the *Marine Liability Act*. Canada's national fund, the SOPF, covers all classes of ships that discharge persistent and non-persistent oil, including oil from unknown sources commonly referred to as "mystery spills". In addition, Canada is a contracting state in the International Oil Pollution Compensation Fund (1992 IOPC Fund) that mutualizes the risk of persistent oil discharged from sea-going tankers. The current limits of liability and compensation available in Canada, including the territorial sea and the exclusive economic zone, under the 1992 Civil Liability Convention (CLC) and the 1992 IOPC Fund are illustrated in figure 1.

### Financial Section

The financial statements of the SOPF for the fiscal year were examined by independent auditors –section 6 refers. During the year, Canadian claims totalling \$972,347, including interest, were settled and paid. The administrator recovered \$7,163 from third parties liable respecting payments made out of the SOPF. In addition, contributions in the amount of \$106,305 were made to the 1992 IOPC Fund for incidents outside of Canada.

During the fiscal year commencing April 1, 2008, the maximum liability of the Fund is \$152,110,416 for all claims from one oil spill. As of April 1, 2008, the Minister of Transport has the statutory power to impose a levy of 45.61 cents per metric tonne of "contributing oil" imported by ship into or shipped from a place in Canada in bulk as cargo. The levy is indexed to the consumer price index annually. No such levy has been imposed since 1976.

As at March 31, 2008, the accumulated surplus in the SOPF was \$376,425,567.

### Canadian Oil Spill Incidents

Each year the Administrator receives reports of oil pollution incidents from different sources such as the Canadian Coast Guard, the Department of the Environment and the Transportation Safety Board Agency. Moreover, enquiries are occasionally made by representatives from provincial and municipal governments, as well as private citizens about whether they are entitled to compensation under the *Marine Liability Act* for oil pollution damage and the resulting clean-up costs and expenses. Many of the incidents that are reported to the Administrator do not result in claims against the SOPF. These occurrences are usually dealt with satisfactorily at the local level, including acceptance of financial responsibility by the shipowner's insurers. Consequently, there may be no requirement for an investigation by the SOPF.

The oil spill incidents described in section 2 indicates the status of oil pollution claims that have been assessed and/or settled during the fiscal year. This section includes claims that are in various stages of advancement. The Administrator dealt with 62 active incident files during the year. Some 48 of these are summarized, because they were of specific interest due to the circumstances surrounding the incident. In total, 14 separate incident files were closed. The current status of recovery action by the Administrator against shipowners is also noted in the oil spill incident section. Furthermore, the Administrator responded to all enquiries from potential claimants about compensation entitlement.

## **Outreach Initiatives**

The Administrator continues with his outreach initiatives aimed at raising awareness of the existence of the SOPF. As well, the Administrator is furthering his understanding of the perspectives of parties interested in Canada's ship-source oil pollution, prevention response, and compensation regime. He has met with senior management personnel in federal departments, government agencies, response organizations and marine industry representatives. These outreach initiatives are addressed in section 4 and include:

- Participating in meetings with representatives of Fisheries and Oceans, Transport Canada, Environment Canada, and the Canadian Coast Guard;
- Attending sessions of the Canadian Marine Advisory Council's semi-annual national conferences held in Ottawa;
- Being represented by a marine consultant engaged by the SOPF at the Marine Advisory Council, Northern CMAC, meeting held in Hay River, Northwest Territories, and at the Northern CMAC meeting held in Iqaluit, Nunavut;
- Being represented by a marine consultant at the 34th Atlantic Regional Environmental Emergency Team (REET) conference held in Wolfville, Nova Scotia;
- Visiting the Eastern Canada Response Corporation (ECRC) depot in Dartmouth, Nova Scotia;
- Visiting the Western Canada Marine Response Corporation (Burrard Clean Operations) in Burnaby, British Columbia;
- Attended meetings with the Commissioner of the Canadian Coast Guard and other senior managers at Coast Guard Headquarters in Ottawa;
- Attending meetings with the Assistant Commissioners of the Canadian Coast Guard and managers in the Regional Headquarters of the Maritimes Region in Dartmouth, Nova Scotia and in the Pacific Region, Vancouver, British Columbia;
- Participated in a workshop held in Vancouver on federal legal authorities related to emergency response to ship-source marine spill organized by the Departments of the Environment and Justice;
- Attending meetings of the Canadian Maritime Law Association; and
- Maintaining contact with representatives of international organizations, including the International Tanker Owners Pollution Federation, Oil Companies International Marine Forum, and the Protection and Indemnity (Marine Insurance) Association.

## **Challenges and Opportunities**

During the year the SOPF has faced a number of new administrative challenges resulting from government policies to promote greater transparency. These new administrative requirements have significantly increased the workload of the SOPF. Section 3 addresses several of these challenges such as:

- Ensuring compliance with the *Access to Information Act* (ATIP);
- Responding to ATIP information requests;
- Developing a file retirement policy;
- Negotiating a Memorandum of Understanding with Archives Canada to take over dormant files; and
- Arranging examination of the financial records of the SOPF by an independent auditor.

## **The International Compensation Regime**

Outlined in section 5 are the highlights of the SOPF involvement during the year in the International Compensation Regime. The Administrator participated, as a member of the Canadian delegation, in a number of meetings of the governing bodies and working groups of the 1992 IOPC Fund, including:

- The Fund Assembly, Executive Committee, and working group meetings held in Montreal (June 2007);
- Meetings held in London (October 2007); and
- Monaco (March 2008).

Further, the Administrator attended the meeting of the 1971 IOPC Administrative Council that was held in Monaco (March 2008).

Section 5 includes a summary of discussions of the first meeting of the Focus Group on the Hazardous and Noxious Substances (HNS) Convention. This meeting was held under the chairmanship of the Administrator in March 2008. The Focus Group considered proposals submitted by member states aimed at resolving the principal obstacles to entry into force of the HNS Convention. Recommendations in the form of an amending protocol will be submitted in June 2008 to the IOPC Fund Assembly. The Assembly will then transmit the draft protocol developed by the Focus Group to the IMO with the recommendation that a diplomatic conference be convened to adopt the protocol.



## 1. The Canadian Compensation Regime

The SOPF was established under amendments to the former CSA that came into force on April 24, 1989. The SOPF succeeded the Maritime Pollution Claims Fund (MPCF), which had existed since 1973. In 1989, the accumulated amount of \$149,618,850.24 in the MPCF was transferred to the SOPF. Effective August 8, 2001, the SOPF is governed by Part 6 of the *Marine Liability Act (MLA)* Statutes of Canada, 2001, chapter 6, which superseded the above mentioned amendment to the CSA. The SOPF is a special account established in the accounts of Canada upon which interest is presently credited monthly by the Minister of Finance.

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

During the fiscal year commencing April 1, 2008, pursuant to the pertinent provisions of the *MLA*, the Minister of Transport has the statutory power to impose a levy of 45.61 cents per metric tonne of “contributing oil” imported into or shipped from a place in Canada in bulk as cargo on a ship. The levy is indexed annually to the consumer price index. No levy has been imposed since 1976.

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

The SOPF pays established claims regarding oil spills from all classes of ships. It is not limited for purposes of compensation, to spills from sea-going tankers or persistent oil, as is the 1992 IOPC Fund.

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

During the fiscal year commencing April 1, 2008, the maximum liability of the SOPF is \$152,110,415.80 for all claims from one oil spill. This amount is indexed annually. The classes of claims for which the SOPF may be liable include the following:

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

A widely defined class of persons in the Canadian fishing industry may claim for loss of income caused by an oil spill from a ship. The present statutory claims regime of Part 6 of the *MLA*, based on the principle that the polluter should pay, has as its four cornerstones:

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

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

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

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

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

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

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

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

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

The Administrator, as an independent authority, has a duty to investigate and assess claims filed against the SOPF. For these purposes, he has the powers of a Commissioner under Part I of the *Inquiries Act*, which includes the power to summon witnesses and obtain documents.

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

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

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

Notes:

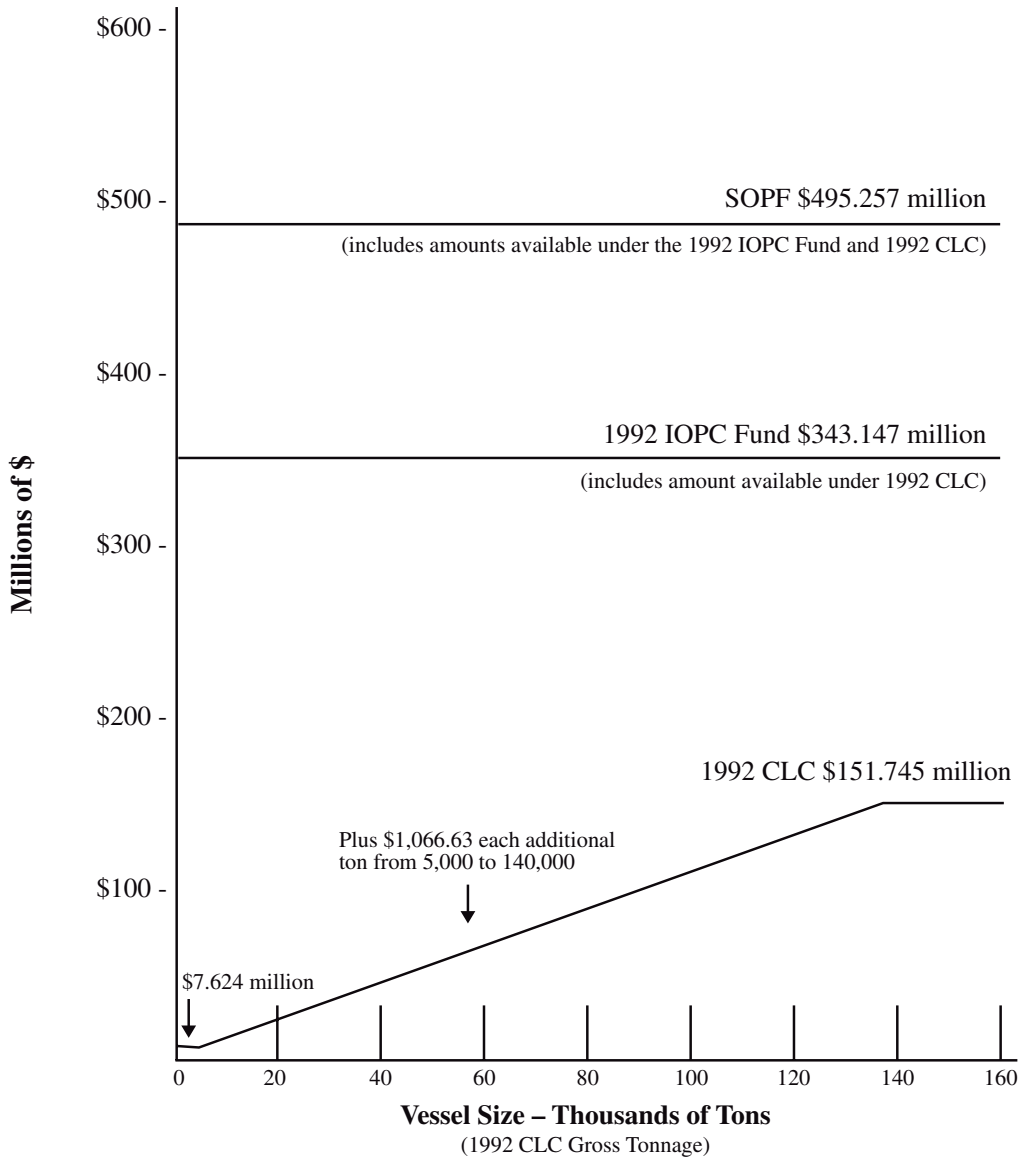
- (1) For information on Canada's and the SOPF's involvement in the International Funds, and the voluntary agreements STOPIA and TOPIA, see section 5 herein and the Administrator's Annual Report 2006-2007 at Appendix A.
- (2) Figure 1 illustrates the current limits of liability and compensation for oil tanker spills in Canada.
- (3) Figure 2 shows the Canadian contributions to the International Funds since 1989.



**Figure 1**

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

Based on the value of the SDR <sup>(1)</sup> at April 1, 2008



(1) The value of the SDR at April 1, 2008, was approximately \$1.69038. This actual value is reflected in Figure 1 above.

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

N.B. The above aggregate amount available under the 1992 CLC and the 1992 IOPC Fund is \$343,147 million effective November 1, 2003. The SOPF amount of some \$152,110 million on top of that, results in \$495,257 million being available now for a tanker spill in Canada. If Canada becomes a party to the Supplementary Fund Protocol, the total compensation package available will be approximately \$1.4 billion.

## Figure 2

### Canadian Contributions to the International Funds

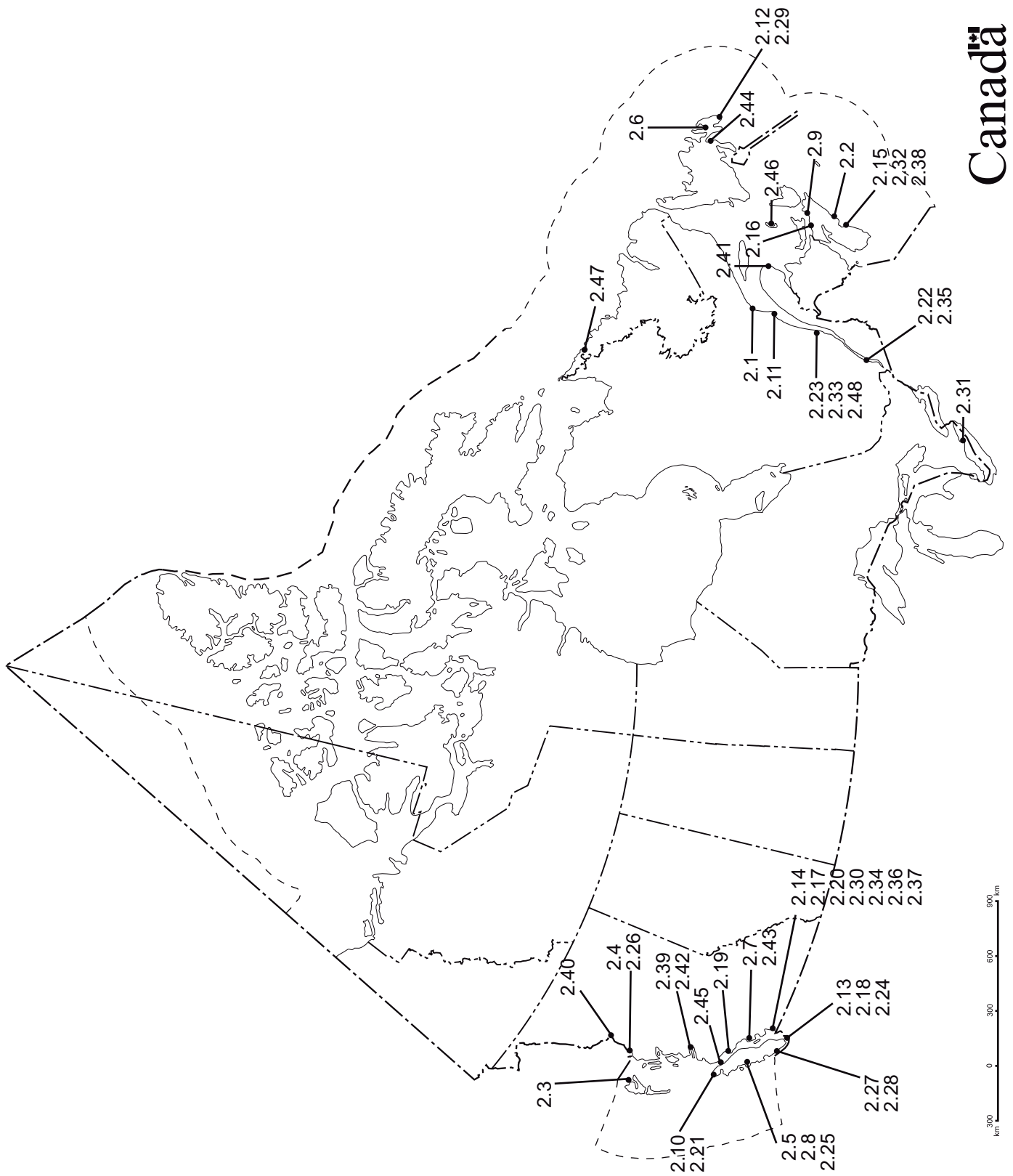
Since 1989, the SOPF has paid the IOPC Funds approximately \$42 million, as listed in the table below.

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

<b>Fiscal Year</b>	<b>Paid from the SOPF (\$)</b>
1989/90	207,207.99
1990/91	49,161.28
1991/92	1,785,478.65
1992/93	714,180.48
1993/94	4,927,555.76
1994/95	2,903,695.55
1995/96	2,527,058.41
1996/97	1,111,828.20
1997/98	5,141,693.01
1998/99	902,488.15
1999/00	273,807.10
2000/01	6,687,696.71
2001/02	2,897,244.45
2002/03	3,219,969.17
2003/04	4,836,108.49
2004/05	3,448,152.80
2005/06	-
2006/07	360,233.37
2007/08	106,305.06
<b>Total</b>	<b>\$42,099,864.63</b>

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





## 2. Canadian Oil Spill Incidents

During any particular year the SOPF receives many reports of oil pollution incidents from a variety of sources, including individuals who wish to be advised if they are entitled under the *MLA*, to be considered as potential claimants as a result of oil pollution damage they have suffered. Many of these incidents do not result in claims. Consequently, the Administrator does not investigate them. The Administrator is aware that many more oil pollution incidents are reported nationally. Many of those reported are very minor (sheens). Others involved greater quantities of oil but are not brought to the attention of the Administrator because they have been satisfactorily dealt with at the local level, including acceptance of financial responsibility by the polluter.

During the current year, the SOPF handled 62 active incident files. Of these, 48 are reported on in this section because they involved either claims to the SOPF or were of specific interest on account of the circumstances surrounding them.

Locations of incidents are indicated on map opposite.

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

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

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

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

On January 31, 2001, the Administrator received a claim from the Crown on behalf of the CCG to recover their on-site monitoring costs and expenses, stated to amount to \$4,076.08. The claim was being assessed, but an offer of settlement was withheld pending results of the investigation into the origin of the spill.

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

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

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

Following a lengthy investigation by the SOPF, CCG, TCMS and Environment Quebec, the

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Administrator was not satisfied that a ship did not cause the occurrence.

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

Following further analysis of the oil samples and his investigation of ship-source spill probabilities, the Administrator commenced a cost recovery action against the shipowner in the Federal Court.

Note: Details of the action are included in the Administrator's Annual Report 2006-2007 at section 3.1.

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

At the end of the fiscal year the action continues but no date for a trial has been set.

## **2.2 Lavallee II (2002)**

The *Lavallee II* was built in 1942 as an American wooden minesweeper but, latterly, has been employed as a herring seiner and then as a herring transporter. The vessel is 254 gross ton and would, if operating, require to be registered. At the time of the incident, she was on a beach, unregistered, at Ecum Secum, Nova Scotia, where she had remained for the previous 18 months. On March 8, 2002, it was reported that oil was being released from the vessel into the harbour. The CCG responded on the same day and absorbent boom was deployed. It was found that the engineless, engine room was flooded. The harbour, in season, houses live lobster in cages and supports a rockweed harvest.

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

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

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

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

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

plus interest of \$7,404.98 to the CCG was authorized on March 6, 2003.

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

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

Recovery action has resulted in negotiated settlements with the two defendants. The Administrator received payment of \$1,000.00 on January 3, 2007 from one defendant.

In view of the fact that the defendants have not lived up to the negotiated settlement, the Administrator is looking into securing a judgement for the outstanding amounts.

### **2.3 Pender Lady (2003)**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

The CCG continues to monitor the situation, responding to oil leakage as necessary and working on a plan to remove all oil from the wreck. No claim has been received, therefore, the Administrator has closed his file.

### **2.5 Black Dragon (Heung Ryong) (2003)**

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

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

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

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

On December 9, 2003 while undertow and in a position off Johnstone Reef the vessel sank again.



As reported last year, it is understood that the CCG will not undertake further action regarding this sinking.

On February 3, 2004 a claim was received from the CCG in the amount of \$728,797.28 to cover the costs and expenses incurred for their response to the incident. The circumstances of this occurrence involved considerable investigation and assessment by the Administrator and on March 30, 2004 he made an offer of settlement, which was accepted by the CCG that same day. Payment of \$568,749.63 plus interest of \$8,897.00 was also authorized on that date in full and final settlement.

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

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

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

On February 8, 2007, the Administrator wrote to the claimant and explained that as a result of his investigation, he is unable to find that this claim has been established. The Administrator also advised that, if the claimant provides further evidence to address the shortcomings described, he would reopen the investigation and examine new evidence.

As of March 31, 2008, the Administrator has not received any response and, accordingly, has closed his file.

## **2.6 Sekme & Treimani (2003)**

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

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

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

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

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Note: For detailed information, see the Administrator's Annual Report 2006-2007 at section 3.8.

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

On December 10, 2007, the Administrator informed DFO/CCG by letter that he had reason to believe that further work had been performed on the ships, but he had not been advised whether any threat of oil pollution remained onboard the two ships. Furthermore, the Administrator advised that unless he received additional evidence respecting the potential for further oil pollution before January 31, 2008, he would regard the original offer of \$15,000.00 plus interest as full and final settlement of the DFO/CCG claim.

The Canadian Coast Guard advised on January 2, 2008 that DFO/CCG agreed to accept the offer of \$15,000.00 plus the appropriate interest. On January 4, the Administrator, therefore, directed payment of compensation to DFO/CCG in the amount of \$18,784.55 including interest in full and final settlement.

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

### **2.7 Anscomb (2004)**

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

On January 11, 2004 the vessel sank in 120 to 170 feet of water with resulting oil pollution.

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

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

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

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

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

of the *Anscomb*. The arrest took place on Kootenay Lake, near the city of Nelson, British Columbia.

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

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

The Administrator awaits developments.

## **2.8 Sea Shepherd II (2004)**

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

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

On May 10, 2004, CCG contractors began pumping operations on site. By May 11, 2004, some 188 tons of a mixture of waste oil and diesel was pumped off the *Sea Shepherd II*. But, some 16 gallons per hour of seawater was leaking back into the vessel. On May 26, 2004, the vessel was taken in tow, arriving at the Esquimalt graving dock the next day for break up. By June 17, 2004, seven large waste bins of oiled debris had been removed from the vessel. By July 30, 2004, the break up of the vessel had been completed.

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

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

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

On February 13, 2008, CCG advised that additional information to support the remaining parts of the claim will be provided to the Administrator in the near future.

## **2.9 Alicia Dawn (2004)**

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

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

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

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

Recovery action has resulted in a negotiated settlement with the owner of the fishing vessel based on 50% of the costs put forward by the SOPF. As a consequence of this action, on August 29, 2007, the Administrator received a cheque from the owner's insurance company in the amount of \$1,298.00 payable to the Receiver General for Canada.

The Administrator has closed his file.

## **2.10 P.H. Phippen (2004)**

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

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

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

On November 5, 2004, CCG ER was advised that divers had been successful in plugging the vents. With CCG ER on scene, on November 12-13, 2004, contractors, with a barge and excavators, commenced lift operations. An airbag was inflated on the stern of the vessel and a forward sling was put in place for the lift. On November 14, 2004, the vessel was lifted to the surface and pumped out. Some unrecoverable diesel was spilled during the recovery operation. The vessel was stabilized and was considered to be no longer a pollution threat.

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

On March 12, 2007, the Administrator instructed counsel to investigate whether there were reasonable measures that could be taken to recover the amount paid to DFO/CCG pursuant to MLA section 87(3). On May 22, 2007, counsel advised that various searches ascertained that further

cost recovery action was not justified and, consequently, counsel recommended the claim should be abandoned. The Administrator has accepted this advice and accordingly closed the file.

## **2.11 Bleuvet (2004)**

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

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

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

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

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

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

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

On January 11, 2005, the Newfoundland and Labrador Environmental Association (NLEA) filed a claim on the SOPF for \$8,320.00 for expenses related to "monitoring and clean-up of recent ship-source oil pollution mystery spill in Placentia and St. Mary's Bays, Newfoundland." Particularly, the claim refers to seabirds impacted by the mystery spill in the said areas between November 26 and December 28, 2004. The expenses claimed appeared to relate to the capture, cleaning, rehabilitation and release of oiled seabirds. The claimant said that the NLEA is the only entity capable of responding to and dealing with seabirds contaminated by ship-source oil in Newfoundland and Labrador.

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

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In response to an enquiry from the claimant, the Administrator wrote to the claimant on July 18, 2007 and advised that the claim was under active consideration.

On the basis of his investigations, the Administrator formed the opinion it was not possible to say that the occurrence giving rise to the damage was from a source other than a ship. Accordingly, on September 27, 2007, the Administrator informed NLEA that, as a result of his investigation and assessment of the legal and factual issues of the claim, he found the payment of fuel, replacement of required work wear and utility costs to be established. However, he did not find the remaining costs for payment of volunteers to be established. Accordingly, the Administrator offered NLEA \$2,320.00 plus interest. This amount was accepted and payment was made on November 1, 2007 in the amount of \$2,720.00 including interest.

The Administrator has closed his file.

### **2.13 Mary Mackin (2005)**

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

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

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

On August 2, 2005, the Administrator received a claim from Transport Canada, Pacific Region—Marine Safety, Navigable Waters Protection Division for its costs and expenses in the cleanup and disposal of the tug *Mary Mackin* in the amount of \$223,543.88.

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

A hearing of the appeal has not yet been scheduled.

### **2.14 Tor (2005)**

On January 16, 2005, a report was received that the converted fishing vessel *Tor* sank alongside the dock at the small craft harbour in Mission, British Columbia. Some diesel was seen seeping under the ice in the harbour. Sorbent boom and pads were deployed by the harbour master. On

January 22, 2005 CCG ER was advised that fuel was still onboard the vessel. CCG ER took over the management of the response and requested quotes from contractors for the raising of the vessel and removal of pollutants.

On January 28, 2005, the contract to raise the vessel was awarded. The contractor raised the vessel and the harbour master kept it afloat over the weekend with pumps. On January 31, 2005, due to the continuing ingress of water, the vessel was towed to Shelter Island Marina and placed on land. The CCG surveyor had advised that the cost to repair the vessel would well exceed the vessel's market value. It was then decided that the vessel be destroyed. CCG ER requested bids from contractors for the destruction of the vessel and the removal of pollutants.

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

On July 27, 2005, the Administrator received a claim from DFO/CCG in the amount of \$22,196.25 for its costs and expenses in the response to this incident. On September 28, 2005, the Administrator requested some further particulars, which were provided by the claimant on October 5, 2005.

On October 6, 2005, the Administrator, pursuant to MLA section 86, offered DFO/CCG \$21,436.76 plus interest in full and final settlement of its claim. This was accepted and on October 13, 2005, payment of \$22,054.71 including interest was authorized.

On March 12, 2007, the Administrator instructed counsel to investigate whether there were reasonable measures that could be taken to recover the amount paid to DFO/CCG pursuant to MLA section 87(3). On the basis of these investigations, it is the Administrator's opinion that there is no reasonable prospect of recovering the salvage and clean-up cost related to the incident. Accordingly, the Administrator has closed his file.

## **2.15 Sea Sprite (2005)**

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

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

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

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

## **2.16 Santa Emma (2005)**

In early January 2004, the *Santa Emma* arrived at Cape Tormentine, New Brunswick from Piraeus, Greece. The Panamanian registered vessel, which has since been confirmed, was a twin screw Ro/Ro cargo vessel. On January 7, 2004, Transport Canada Marine Safety detained her for a number of deficiencies. On June 24, 2004, the vessel was arrested at Cape Tormentine. Concerns had been

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expressed by some authorities for the safety and security of the *Santa Emma* at the Cape Tormentine Wharf and the potential for an oil pollution incident involving the vessel.

It was reported that in the early morning of April 29, 2005, high winds caused the *Santa Emma* to part several of her lines and blew her off the wharf. The vessel was driven aground by the wind and collided with an adjacent wharf, resulting in a hole in her starboard quarter, approximately one metre above the waterline. At first light, it was observed that the *Santa Emma* had a 12-degree list, a damaged hull and an engine room and cargo hold flooded with hundreds of tonnes of fuel oil/water mixture. Several hundred tonnes of heavy fuel oil was also believed to be on board in double-bottom tanks. Authorities were of the view that the vessel was at imminent risk of sinking and causing a serious marine pollution incident. There are scallop and lobster fisheries in the area and a wildlife refuge.

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

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

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

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

During the summer of 2006, the Administrator sought additional information and documentation from DFO/CCG and Environment Canada to assist in his investigation and assessment of the claim. On July 21, DFO/CCG provided the Administrator with the information requested up to that date. On September 25, Environment Canada responded with information with respect to the technical and scientific support provided to CCG during the incident. On September 5, 2006, the Administrator wrote to DFO/CCG again requesting further particulars on the quantum and reasonableness of various activities carried out by the commercial contractor engaged by CCG. On October 17, 2006 the Administrator sent an e-mail message and asked further questions on the quantum and reasonableness of various activities.

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

On July 17, 2007, the Administrator received a letter from DFO/CCG in response to his predecessor's letter of October 4, 2006. The reply from DFO/CCG addressed the questions raised in connection with the Administrator's obligation under the parameters of section 86(3) (b) (ii) of the



*Marine Liability Act.* Under this provision, the Administrator is to consider whether the claims presented by DFO/CCG in the *Santa Emma* incident may be characterized as resulting wholly or partially from the negligence of the claimant. The information and documentation provided by DFO/CCG enabled the Administrator to advance the investigation and assessment of the claim. After review of the additional information, the Administrator concluded the circumstances in section 86(3)(b)(ii) were not established and offered to settle the claim.

On October 11, 2007, DFO/CCG accepted the Administrator's offer of \$768,268.67 including interest in full and final settlement of its claim. On October 19, 2007, payment to DFO/CCG of \$768,268.67 was authorized.

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

## **2.17 Malaspina Castle (2005)**

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

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

On July 28, 2005, the shipowner's claim on the SOPF was received in the amount of \$75,468.52. The Administrator retained local counsel. The Administrator has conducted an extensive investigation into the source of the spill.

On November 21, 2005, the solicitor for the shipowner was requested to produce sounding tables for the ship's fuel tanks. The request for this technical information was followed-up on several occasions. On August 3, 2006, the solicitor was advised that the Administrator could not complete his investigation unless the sounding tables were provided and, therefore, he was putting his file into extended abeyance. The shipowner never produced the sounding tables.

After a through investigation of the circumstances surrounding this incident, including the physical features of the port to eliminate land-based sources for the appearance of oil, the Administrator concluded that the *Malaspina Castle* was the source of the spill and, consequently, it could not be characterized as a "Mystery Spill". The Administrator, therefore, disallowed the claim and informed the owners to that effect in a letter dated May 24, 2007.

At the end of the fiscal year, the Administrator has not received any response from the claimant and, consequently, he has closed the file.

## **2.18 Elvera II (2005)**

On April 4, 2005, the *FV Elvera II* was reported high and dry on the breakwater at the North Saanich Marine, near Sidney, British Columbia. CCG ER Victoria viewed the situation and noted that the hull of the vessel appeared to be intact with only a bent, rudder stock. An inspection on April 5, 2005, with the vessel still aground, showed fuel spilled in the hold. There was a fuel tank in the

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hold and a full portable fuel tank on deck. A contractor removed the vessel off the breakwater and moved it to Ladysmith. CCG sold the vessel for \$1,498.00 including tax.

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

On March 12, 2007, the Administrator instructed counsel to investigate whether there were reasonable measures that could be taken to recover the amount paid to DFO/CCG pursuant to MLA section 87(3). On May 22, 2007, counsel advised that various searches related to this matter indicate that further costs are expected to exceed any recovery. Counsel recommended that the claim should be abandoned and the file closed.

The Administrator accepted this advice and accordingly has closed his file.

### **2.19 Rover No. 1 (2005)**

It was reported that this 74-foot ex tug went aground and sank in Genoa Bay, British Columbia on May 8, 2005. On July 20, 2005, CCG engaged a contractor. The vessel was raised and towed to Nanaimo Shipyards. On August 2, 2005, the CCG consulted with the shipyard on the preparations that were underway to begin removing the oil. It was determined that the vessel was in extremely bad condition and would need to be deconstructed to safely remove all the oil. By September 9, 2005, destruction of the vessel had been completed. Nanaimo Shipyards reported 4500 litres of oil was removed from the vessel.

On March 28, 2006, the Administrator received a claim from DFO/CCG in the amount of \$72,155.93 for its costs and expenses in response to this incident. On May 25, 2006, the Administrator requested further particulars, which were provided by the claimants. On June 30, 2006, the Administrator engaged a local marine surveyor to conduct an investigation on certain aspects of the claim. DFO/CCG was informed that the claim amount had been reduced based on the disallowance of several visits to the site by Emergency Response personnel to monitor the contractor's work, and the commensurate time for the use of pollution counter-measures equipment.

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

On March 12, 2007, the Administrator instructed counsel to investigate whether there were reasonable measures that could be taken to recover the amount paid to DFO/CCG pursuant to MLA section 87(3). These investigations suggested that the owner does not own any property and, therefore, there is no reasonable prospect of recovering the salvage and clean-up costs related to the incident.

The Administrator has accepted this advice and accordingly closed the file.

### **2.20 Joan W1 (2005)**

This fishing vessel was reported sunk at Lynnwood Marina, North Vancouver, British Columbia, on June 10, 2005. Marina staff had boomed off the area and was responding to the resulting oil pollution from the vessel. CCG engaged a contractor who raised the vessel and towed it to Ladysmith,

BC. Based on the oil contaminated condition of the interior of the vessel, on July 19, 2007, CCG entered into a contract with Saltair Marine Services Limited to provide services for the removal, break-up and disposal of the derelict. By August 4, 2005, the vessel had been destroyed and was in the process of being disposed of.

On November 30, 2005, the Administrator received a claim from DFO/CCG for its costs and expenses in the amount of \$29,821.43. The Administrator sought further particulars from CCG, which were finally received by February 6, 2006.

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

On March 12, 2007, the Administrator instructed counsel to investigate whether there were reasonable measures that could be taken to recover the amount paid to DFO/CCG pursuant to MLA section 87(3). However, it proved impossible to locate the owner or any property owned by the vessel owner in British Columbia.

The Administrator has consequently decided not to pursue the matter and closed his file on this incident.

## **2.21 Sonny Boy (2005)**

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

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

On September 27, 2005, CCG ER Victoria, attended on the vessel and, with help from a local contractor, removed some 140 gallons of contaminated oil from the tanks. On September 29, 2005, the remaining oil in the bilge was recovered with sorbents and all material was taken away for disposal. CCG ER personnel left the vessel in the care of the Harbour Authority.

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

On March 12, 2007, the Administrator instructed counsel to investigate whether there were reasonable measures that could be taken to recover the amount paid to DFO/CCG pursuant to MLA section 87(3). The investigations proved negative and it was decided to abandon the claim and close the file.

## **2.22 Extasia 1 (2005)**

In the early morning of August 28, 2005, at Ste-Anne de Bellevue, QC, the community firefighters reported to Environment Canada that the pleasure craft *Extasia 1* had pumped diesel oil into the water near the Sainte-Anne lock. The oil slick extended approximately 20 feet by 3 feet, spread

throughout aquatic plants and under the public wharf. The firefighters attempted to discuss clean-up action with the owner, but the owner did not want to be disturbed and indicated non-responsibility for the spill.

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

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

On June 30, 2006, the Administrator received a claim from DFO/CCG in the amount of \$7,597.73 for costs and expenses incurred with respect to the incident. The Administrator investigated and assessed the claim. The claim was established at \$7,153.87. On August 31, 2006, payment of \$7,530.77 including interest was authorized.

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

## **2.23 FV Gagtugwaw (2005)**

The *FV Gagtugwaw* was reported sunk and leaking oil at the wharf in Matane, Québec, on October 16, 2005. CCG ER, Québec attended on site of the recovery operation from October 17 to October 21, 2005, inclusive. It was estimated that there might have been as much as 3000 gallons of diesel and 114 gallons of hydraulic oil on the vessel. Insurers for owners engaged cleanup contractors. Divers plugged the vents and, with difficulty, the vessel was removed from the water. A considerable amount of oil was released, a vacuum truck was engaged and booms had been deployed to prevent it from spreading. The vessel was in very poor structural condition.

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

On February 15, 2007 the Administrator requested additional information from DFO/CCG, as to why it was considered necessary and reasonable for Coast Guard to have two persons on site to monitor the operations of the commercial clean-up crew contracted by the owner's representative.

In its reply DFO/CCG stated that Coast Guard Environmental Response personnel are required to take site-safety training. For safety reasons, the personnel involved in this incident were working on the "buddy" system, which requires at least two employees to work together.

On May 3, 2007, the Administrator completed his investigation and assessment and informed DFO/CCG by letter that the total incident claim had been established at \$7,698.03 plus interest. The DFO/CCG accepted the offer in full and final settlement. On May 14, 2007, payment in the amount of \$8,448.22 including interest was authorized.

The Administrator is reviewing the feasibility of undertaking cost recovery action pursuant to MLA 83(3).

## 2.24 Mystery Spill, Victoria, British Columbia (2005)

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

On December 14, 2005, the GVHA filed a claim on the SOPF in the amount of \$8,521.16 for its costs and expenses in the incident clean-up response. On January 16, 2006, the Administrator requested further particulars surrounding the incident. These were provided by the GVHA on February 20, 2006. The Administrator continued his investigation and assessment of the claim. The GVHA accepted the Administrator's offer of \$6,847.42 plus interest. On April 18, 2006, payment of \$7,170.31 including interest was authorized (and included in the SOPF fiscal year ending March 31, 2006).

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

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

After some negotiations, an amount was agreed as settlement in connection with the oil pollution incident. By letter received January 17, 2007, counsel for the shipowner advised that his client's offer of \$4,000.00 was made without prejudice.

After further consideration, the Administrator formed the opinion that the amount involved does not make litigation cost-efficient, regardless of the merits. The Administrator accepted the offer. On April 13, 2007, a cheque was received in the amount of \$4,000.00 payable to the Receiver General for Canada.

The Administrator has closed his file.

## 2.25 Skipjack (2005)

On November 3, 2005, the Tofino Coast Guard Station reported the *FV Skipjack* had sunk at Opit-sat, Vancouver Island, British Columbia, and was leaking oil. The vessel was beached and fully awash with the high storm tides. There was a thick layer of diesel throughout the vessel.

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

On November 5, 2005, CCG ER Victoria arrived on scene. An estimated 110 gallons of oil was removed from the vessel that day. On November 6, 2005, three drums of oil and oiled pads were recovered. On November 7, 2005, an estimated 100 gallons of oil and oiled pads were recovered. The operation was completed on November 8, 2005. The vessel was left at its position on the beach.

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

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On March 12, 2007, the Administrator instructed counsel to investigate whether there were reasonable prospects to recover the amount paid to DFO/CCG pursuant to MLA section 87(3). On May 22, 2007, counsel advised that, because of the vessel owner's financial circumstances, it is recommended that the claim be abandoned and the file closed.

The Administrator concurred and has closed his file.

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

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

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

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

On March 23, 2006, a steady stream of oil was surfacing from the wreck site. The resulting slick was seen moving around the top of Gil Island and then dissipating to the west side of the island. On March 24, 2006, an over flight showed only sheens of oil near the shoreline. No concentrations of wildlife were observed. Mechanical recovery efforts were not being successful.

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

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

As previously reported, the shipowner was investigating the feasibility of pumping out the sunken ship. The Administrator has since learnt that the shipowner will not pump out the ship. The Administrator has closed his file.

### **2.27 Blue Dawn (2006)**

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

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

On April 2, CCG deployed a containment boom around the vessel because there was an oil sheen on the water extending along the shoreline. The following day, CCG assumed responsibility to float the vessel. A contractor was engaged to tow *Blue Dawn* to Ladysmith, so that a surveyor could conduct an evaluation survey. The vessel required pumping out on a regular basis. On April 10 the contractor advised CCG that *Blue Dawn* had spilled a significant amount of fuel oil. The contractor responded with a containment boom and sorbent pads. On April 12, CCG was informed by the ship owner of its inability to deal with the situation and provide an acceptable plan ensuring that the vessel would no longer be a threat of pollution. Consequently, CCG informed the shipyard to begin preparation for removal of all accessible bulk oil and other contaminated materials. By the end of the month demolition and disposal was completed.

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

The Administrator is currently investigating, with the assistance of counsel, whether reasonable steps might be taken to recover the amount paid. These investigations remain ongoing and, therefore, the Administrator file remains open.

## **2.28 Ocean Tribute (2006)**

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

On September 9, Coast Guard was informed in meetings with the owner, contractor and Harbour Authority that the vessel was not insured. The owner did not have the means to respond any further. CCG then assumed the on-scene commander role and contracted Saltair Marine Services to raise the vessel and remove the accessible fuel, engine oils and hydraulics. Approximately 100 gallons of oily fluids were removed. The vessel was subsequently demolished and disposed of by September 20.

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

On March 30, 2007, DFO/CCG advised that as of April 2006 the CCG vehicle rates were revised to reflect industry standard of \$43.00 a day plus \$0.22 per km for its trucks and vans. Consequently, CCG asked the Administrator to re-consider his reduction to the mileage rates when establishing the amount of the claim. The Administrator accepted the new vehicle rate submitted by DFO/CCG. On May 3, 2007, the Administrator made an offer to DFO/CCG in the amount of \$25,041.42 plus interest in full and final settlement of this claim, pursuant to sections 86 and 101 of the *Marine Liability Act*.

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On May 10, 2007, the Coast Guard accepted the Administrator's offer of \$25,806.29 including interest. On May 14, payment to DFO/CCG in the amount of \$25,806.29 including interest was authorized for transfer from the SOPF Fund in payment of this claim.

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

### **2.29 Mystery Spill – St. Mary's Bay, Newfoundland (2006)**

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

CCG ER personnel acted as the lead agency for the operational response to the oil spill of an unknown source. CCG provided support to the enforcement agencies of Transport Canada and Environment Canada in the carrying out of shoreline surveys and collecting oiled birds. The Canadian Wildlife Services, EC, chartered a commercial helicopter for aerial surveillance. Transport Canada also had an aircraft in the area on April 12. The ER crews conducted further beach surveys on April 13 and 14. They collected more oiled debris and dead oiled birds. This was additional to the oiled dead birds collected by locals and employees of the Canadian Wildlife Services. Transport Canada collected oil samples during its investigation of the source of the oil spill. These samples were sent to Environment Canada laboratories in Moncton, New Brunswick, for chemical analysis.

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

On April 17, 2007, Coast Guard provided a copy of Environment Canada's oil match analysis. It also advised that further investigation to identify the source of the oil pollution had been led by Transport Canada, with Environment Canada and Coast Guard in a supporting role. As a result of the interdepartmental investigation of this incident, the source of the oil was determined through oil sample analysis to be ship-source. Furthermore, Environment Canada provided assistance to Transport Canada in trying to narrow down the area of ocean to be investigated through the use of modeling and hindcast trajectories. It was not possible, however, to identify a specific ship.

As a result of the investigation and assessment of the claim on May 3, 2007, the Administrator offered DFO/CCG the total amount of \$15,390.04 plus interest in full and final settlement, pursuant to sections 86 and 101 of the *Marine Liability Act*. Further, in his letter of offer the Administrator informed Coast Guard that he considered the overall presentation and support documentation of this claim to be exemplary. The composition of the schedules outlining the work performed helped to facilitate a full assessment and payment of the claim without delay. It could well be used as a model for similar type incident claims.

The DFO/CCG accepted the Administrator's offer. On May 14, 2007, payment in the amount of \$16,360.88 including interest was authorized.

The Administrator has closed his file.

### **2.30 Saxony (2006)**

On December 11, 2006, it was reported that the pleasure craft *Saxony* appeared to be sinking in Manion Bay, near Vancouver. CCG investigated and found no one onboard. The vessel sank in



approximately 30 feet of water shortly after CCG arrived, with minimal pollution. No owner was identified at the time.

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

On February 9, 2008, the Administrator received a claim from CCG for costs and expenses in the amount of \$6,802.99. The Administrator is investigating and assessing the claim.

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

It was reported that on January 31, 2006, the tug *Mary E. Hannah* and barge #501 discharged a quantity of diesel gas/oil when loading cargo at the Nanticoke Refinery Marine Terminal, Lake Erie. A DFO/CCG Federal Monitoring Team from Sarnia attended on-scene.

The refinery management arranged for Eastern Canada Response Corporation to handle the operational response and clean-up the recoverable oil. The total amount of pollution recovered was later estimated at 3840 kgs of used sorbent pads, and approximately 22,380 litres of mixed oil/water. Further, it is estimated the evaporation and dissipation rate in this incident was in the range of 50 to 70 per cent.

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

The Administrator has, therefore, closed this file.

### **2.32 Cicero (2006)**

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

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

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

### **2.33 Jag Pahel (2006)**

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

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

The Administrator awaits developments.

### **2.34 Andre (2006)**

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

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

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

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

The Administrator understands that no further action is required by him and, therefore, he has closed his file.

### **2.35 SCL Bern (2006)**

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

The Response Organization ECRC/SIMEC was contracted by Shell Canada, owners of the barge *Arca*, to respond to the incident. Approximately 4 to 5 kilometres of shoreline at Varennes were impacted. By December 18 some 1500 feet of shoreline was cleaned. Further clean-up assessment of the shoreline was conducted by Environment Canada, Quebec Ministry of the Environment and CCG Emergency Response.

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

As at the end of the 2007-2008 fiscal year, the Administrator has no further information on the occurrence. In the meantime, the file remains open.

### **2.36 Westwood Annette (2006)**

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

The Response Organization Burrard Clean Operations was contracted to conduct response operations. Preliminary results indicated that as much as 2/3 of the amount of oil spilled was recovered by end of the day August 5. Approximately 1 kilometre of shoreline was impacted and beach clean-up operations were implemented. Canadian Wildlife Service found that some birds were being oiled, mostly Canada Geese.

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

As of the end of the 2006-2007 fiscal year, it is understood that the total costs and expenses incurred were approximately \$5 million, and that at the present time the P&I Club is addressing all claims.

The Administrator continues to monitor developments.

### **2.37 Star Ikedana (2006)**

On November 15, 2006, the Administrator received a shipping accident report issued by the Transport Safety Board of Canada. The occurrence report indicated that on November 9, 2006, the Singapore registered cargo vessel *Star Ikedana* had struck the south end of berth # 2 at Squamish Terminals, Squamish, British Columbia. The impact caused a large rupture on the hull above the waterline on the starboard side, approximately 30 feet long by 5 feet high. The impact ruptured the starboard fuel tank. The hole was, however, above the liquid level of the bunker C fuel. Fortunately, no fuel was released into the water. The bunker C fuel was pumped to another of the ship's tanks. During the clean up of the residual, Burrard Clean placed a containment boom around the ship. Transport Canada indicated that repairs would take 8 to 10 days to complete.

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

The Administrator has not received a claim relating to this incident and has, therefore, closed his file.

### **2.38 Sanderling (2006)**

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

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

On December 31, 2007, CCG reported that a claim will not be pursued and, accordingly, the Administrator has closed his file.

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

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

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

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

On May 10, 2007, the DFO/CCG accepted the Administrator's offer of \$9,876.01 plus appropriate interest in full and final settlement of its claim. On May 14, 2007, payment to DFO/CCG of \$10,391.73 including interest was authorized.

As a result of his investigations, the Administrator has concluded not to take cost recovery action and, therefore, has closed the file.

### **2.40 Wishing Star (2006)**

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

CCG reports that, due to the owner's inaction, it assumed the role of On-Scene Commander for the incident. A commercial company, Wainwright Marine, was contracted. Its tug *Ingenika* arrived on scene. The tug boomed the area of the sunken vessel and deployed absorbent pads. Divers plugged the vents and rigged the vessel for lifting. On July 31, the *Wishing Star* was raised and towed to Wainwright Marine yard in Prince Rupert. Work crews continued to remove the residual and bilge oil.

The Administrator instructed counsel to engage a marine surveyor in Prince Rupert to attend the vessel at Wainwright Marine's yard and, also, to meet with the CCG response officer. On August 3, 2006, the marine surveyor submitted an interim report of his initial findings. It was indicated that the vessel was a wreck and had no salvage value.

On December 15, 2006, DFO/CCG awarded a fixed-price contract to Wainwright Marine Services for deconstruction and disposal of the fishing vessel and all the contaminants onboard.

The Administrator considered whether measures to deconstruct the vessel were in fact wreck removal and could no longer be characterized as pollution prevention measures. After due inves-

tigation, the Administrator concluded that break-up of the vessel was the most effective method to remove any further threat of oil pollution from residual oil that might still be onboard.

On February 14, 2007, the Administrator received a claim from DFO/CCG for costs and expenses in the amount of \$112,629.51. Subsequently, the CCG was requested to provide additional information and documentation, so that the assessment of the claim could be advanced.

On November 1, 2007, CCG provided the information requested. As a result of the investigation of circumstances surrounding the incident – including the specific issue whether the deconstruction and disposal of the vessel could properly be characterized as an oil pollution threat removal, as opposed to wreck removal – the Administrator concluded that the total amount was a legitimate claim on the SOPE. As a result of this assessment, DFO/CCG was offered the full amount of \$112,945.77 plus interest in full and final settlement of the claim, pursuant to sections 86 and 101 of the *Marine Liability Act*. On November 8, 2007, DFO/CCG accepted the offer and transfer of funds were authorized in the amount of \$121,566.79 including interest.

The Administrator instructed counsel to initiate cost recovery action pursuant to MLA section 87(3). Various searches had indicated that there may be some prospects of a recovery; therefore, the Administrator has commenced action against the shipowner.

## **2.41 Marcel-André (2007)**

On April 03, 2007, the Administrator received a CCG Status Report on an oil pollution incident in Ste-Thérèse de Gaspé. A Transport Canada Marine Safety (TCMS) inspector responding to a report from a member of the public conducted an on-site inspection discovered traces of diesel oil on the water and surrounding ice at the wharf in Ste-Thérèse de Gaspé. On March 23, the TCMS inspector determined that the probable source of the oil spill originated from the fishing vessel *Marcel-André*. It was estimated that over 4,000 litres of oil were lost, apparently leaking from a damaged fuel tank. The owner advised that action would be taken by a contractor to pump the remaining diesel oil from the vessel's bilges and damaged tank. The operation also included recovery of the contaminated harbour ice. On March 24, CCG Emergency Response personnel arrived on scene to monitor the situation and ensure an appropriate response. An assessment revealed no oil contamination along the shoreline.

As at the end of the fiscal year, the Administrator has not received any claim. Meanwhile, the file remains open.

## **2.42 Sea Voyager (2007)**

The Administrator was informed by CCG that on March 7, 2007, the commercial tug *Sea Voyager* grounded on Serpent Point in Lama Pass, British Columbia. The Coast Guard Marine Communication Traffic Services reported the tug was leaking fuel from a tank that contained 10,000 US gallons. The shipowner advised CCG that fuel was being transferred to other tanks, and commercial arrangements were made to manage the incident.

The CCG monitored the incident and tasked its cutter *Cape Farwell* to deploy oil pollution containment booms around the tug during the transfer of fuel. On March 21, the tug was reflooded and towed to the nearby Shearwater marine facility for repairs. As a result of the actions of the salvage operation the *Sea Voyager* showed no sign of losing oil during the tow to the shipyard.

On February 8, 2008, DFO/CCG informed the Administrator that its incident claim for costs and expenses was settled by the shipowner. The Administrator has therefore closed his file.

### **2.43 Robertson II (2007)**

The Administrator was informed of this incident by a CCG Status Report. On July 1, 2007, a 40-metre sailing vessel, *Robertson II*, grounded on Minx Reef, in the Gulf Islands on the west coast of Vancouver Island. It was reported that the vessel was leaking traces of diesel fuel. The CCG cutter *Cape Calvest* arrived on scene to assess the situation. The CCG hovercraft from the Richmond Environmental Response base also deployed 240 feet of sorbent boom, but reported minimal fuel in the water. However, some oil escaped the containment boom around the *Robertson II* due to the high volume of vessel traffic causing wave action.

On July 2, the CCG contracted local salvage operators to board the vessel and remove the remaining fuel from the tanks. Furthermore, CCG contracted a Marine Surveyor to conduct a full survey of the vessel and determine its condition, value, and any further oil pollution threat.

On February 9, 2008, CCG filed a claim on the SOPF for costs and expenses in the incident in the amount of \$20,748.53. The Administrator is investigating and assessing the claim.

### **2.44 Glass Lady (2007)**

On August 13, 2007, CCG received a report that the fishing vessel *Glass Lady* was on fire near Petit Forte, Newfoundland. Local residents reported that the vessel sank in 10-feet of water at high tide. Oil was leaking from the vessel. The local harbour authority deployed sorbent boom. A CCG crew was dispatched to assess the situation. The CCG ER Duty Officer was in contact with the owner of the fishing vessel and informed him of his responsibilities regarding the oil pollution. The owner reported that a representative of his insurance company would address the oil pollution concerns.

On August 15 the vessel was still releasing fuel oil, but it was contained in the sorbent boom. The vessel owner arranged to have the vessel towed farther upon the beach and remove the fuel from the tanks. The CCG continued to monitor the incident to ensure an appropriate response.

On February 11, 2008, DFO/CCG reported to the Administrator that its incident claim was settled by the shipowner. The Administrator has therefore closed his file.

### **2.45 Robson Bight (2007)**

The Administrator was informed of this incident by DFO/CCG. On August 21, 2007 an equipment barge situated at Robson Bight off the northeast coast of Vancouver Island rolled over and with all contents onboard were lost. The barge was later righted and towed ashore. The responsible party contracted the Response Organization Burrard Clean Operations to respond to the incident. It was reported that Burrard Clean deployed 850 feet of protection boom in areas identified by the Regional Environmental Emergency Team.

Shortly after the incident, British Columbia Parks personnel arrived on scene and reported large amounts of fuel oil on the surface. Transport Canada aerial surveillance indicated an estimated a 200 litre slick on the water. Environment Canada conducted a shoreline assessment and the determination of possible impact on wildlife.

On August 22, a surveillance flight indicated that 95% of the oil seen the previous day on the shoreline had dissipated. The remaining diesel fuel seen was expected to evaporate and dissipate naturally. The Canadian Wildlife Service advised that no oiled birds had been found. The CCG ER continues to monitor the situation and ensure an appropriate response.

The DFO/CCG has informed the Administrator that its claim for costs and expenses has been settled by the shipowner. Meanwhile the Administrator's file remains open.

#### **2.46 Ambassador (2007)**

On September 27, 2007, DFO/CCG in Quebec informed the Administrator that the Vanuatu – registered bulk cargo ship *Ambassador* had spilled 300 litres of residual oil on the wharf at Selene Mines, Iles de la Madeleine, with 50 litres estimated to have entered the water in a very sensitive area in Iles de la Madeleine. A fishing area used by commercial and recreational interest was closed for preventive measure by the Department of Fisheries and Oceans. CCG indicated that it expected claims from DFO and local fishermen.

The Administrator instructed legal counsel to send a letter to the shipowners putting them on notice of potential claim against the Ship-source Oil Pollution Fund. A letter of understanding was issued, in the usual terms, by the Standard Club in an amount of \$500,000.

At the time of the incident, the CCG *Cap aux Meules* was deployed to the scene and oil containment operations were conducted. Shoreline and aquaculture assessment operations were also conducted by DFO and Quebec provincial environment personnel. Local aquaculture sites were closed by DFO as a precautionary measure.

As at the end of the fiscal year, the Administrator has not received any claim for costs and expenses. The file remains open.

#### **2.47 Barge McNally Olympic (2007)**

On October 8, 2007, the Coast Guard received a report that the tug *Jerry Newberry* had parted its towlines with the barge *McNally Olympic*. The incident occurred in high winds approximately 12 miles off Nachvak Bay, on the northern coast of Labrador. The tug did not have any additional towlines, and it sought assistance to retrieve the barge, which was drifting towards the land at about 3 knots. The Coast Guard deployed CCG ship *Henry Larsen* to support the barge retrieval operations.

The barge owner advised that there was 20,000 gallons of diesel fuel and also approximately 500 gallons of waste oil onboard the barge. CCG Emergency Response personnel proceeded to the site via fixed wing aircraft to assess the situation.

On October 10, CCG ER personnel reported that the barge was resting on the bottom adjacent to the shoreline. It was not moving in 45 knot winds with waves in excess of 3 metres. Sea water was breaking over all portions of the barge with the tallest vertical section being submerged in the crest of the waves. No oil pollution was observed.

On October 12, the *Henry Larsen* and CCG ER personnel remained on-site in nearby Saglek Bay. A Transport Canada surveillance flight out of Iqaluit did not observe any oil pollution in the area. The Coast Guard continued to monitor the incident.

A REET meeting was held chaired by Environment Canada with representative from the RCMP, DFO, Canadian Wildlife Service, Public Safety Canada, the province of Newfoundland and Labrador and the Government of Nunatsiavut. Arrangements were made to discuss with the shipowners the implementation of a long term monitoring plan of the site over the winter.

The CCG reports that its claim for costs and expenses incurred has been submitted to the barge owner.

The Administrator's file remains open.

## **2.48 Grande Baie Remorqueur (2007)**

In early January 2008, it was brought to the Administrator's attention via CCG HQ Status Reports that on December 31, 2007, the Alcan harbour tug *Grande Baie* had sunk at the wharf in Port Alfred, Quebec. It was reported that the tug contained 100 tons of diesel fuel, as well as other oil pollutants onboard. Oil was observed around the vessel; however, the harbour ice contained the oil and prevented it from spreading.

The shipowner assumed overall management of and response to the incident. The Response Organization (ECRC-SIMEC) was contracted to conduct response operations. CCG assumed the posture of Federal Monitoring Officer. On January 1, approximately 3,000 litres of product were recovered. Divers were hired to conduct an inspection of the tug and prepare it for salvage operations. On January 3, clean-up operations continued. Another tug, *Alexis Simard*, was impacted by the spill. Its hull was contaminated by the oil. On January 4, operations focussed on recovering the oil covered ice. On scene were personnel from DFO/CCG, Quebec Ministry of the Environment, and representatives from Fisheries and Oceans Habitat.

On January 9, the shipowner presented its salvage plan to CCG ER personnel. A REET meeting was held to discuss the salvage plan. By that date, 35,768 litres of diesel and 100 cubic metres of oiled ice was recovered. On January 16, the first salvage attempt on the tug *Grande Baie* was conducted unsuccessfully. All operations ceased. The contractor advised they were working on a revised plan and that Transport Canada was assisting. Consequently, the tug *Grande Baie* was raised on January 18. By January 25, all clean-up operations were completed. So far, no claim has been submitted.

The Administrator's file remains open.



### **3. Challenges and Opportunities**

In the fiscal year ending March 31, 2008, the SOPF has faced a number of new challenges resulting from government legislation and policies that aim to promote greater transparency and accountability not only for government departments but also for government agencies, large and small, such as the SOPF. These requirements have significantly increased the workload of the SOPF administration which operates with a minimum of staff, namely, two part time GIC appointees, a full time Executive Assistant who also functions as the Office Administrator, and a part time marine consultant to assist with the assessment of claims.

The SOPF became subject to the *Access to Information and Privacy Acts (ATIP)* in September of 2006. While most government departments have already been compliant with this legislation for many years and have designated staff that deal exclusively with ATIP, the Fund has had to rely on expert ATIP and Information Management consultants to efficiently and cost-effectively meet these new requirements.

One of the consequences of the requirement to comply with the *Access to Information and Privacy Acts (ATIP)* is the obligation to provide periodically to Treasury Board statistical reports and personal information banks for inclusion in *Info Source* publications. Additionally, two individual annual reports, one on the *Access to Information Act* and one on the *Privacy Act* must now be prepared for tabling in Parliament.

During the fiscal year, the SOPF has received two access to information requests. Since these were the first formal requests, the SOPF relied on its legal advisors, with the resulting costs, to deal with these requests within the time limits laid down by the legislation.

To effectively process any future ATIP requests, it has been essential to make a complete inventory of the records under the control of the SOPF. It has transpired that currently the Fund has custody of all its files going back to its initial creation in the early 1970s. Without such an inventory, it is impossible for the Administrator to know what information he has in his custody and control for the purposes of access to information requests. To address this short-coming, an expert consultant has been hired to implement a new Information and Records Management system.

In the initial phase of the project, the Administrator was informed that all of its record holdings were identified as a collection of historical value by Library and Archives Canada. The entire collection, which dates back to the time when the Fund was first created in 1973, is to be archived at Library and Archives Canada at the expiry of its retention period at the SOPF.

As of March 31, 2008, the inventory and classification of SOPF files is just about complete. The SOPF record holdings have been organized in a manner that will efficiently and cost-effectively address any future access to information requests. A file retirement policy has been established to ensure a sound retention and disposal schedule for future transfer to Library and Archives Canada.

Discussions with the Technology and Information Management Services at Transport Canada are currently underway to examine the possibility of extending an information management application to the SOPF to better sustain its Records and Information Management Program.

Since the Fund's creation, Transport Canada has been a key service provider to the SOPF and efforts to formalize the provision of these services by means of memoranda of understanding are underway between the department and the SOPF. The Administrator has recently concluded a Service Level Agreement with the Assistant Deputy Minister of Financial Services at Transport Canada to provide a variety of financial services to the SOPF. In this agreement and any other agreement that may be concluded in the future, special care will be taken to maintain the Fund's

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arm's length relationship with the government, given that the biggest claimants against the SOPF are government agencies and all claims, whether public or private, must be dealt with on an equal basis under the governing legislation.

Under the terms of the recently concluded memorandum of understanding, the Administrator has also agreed to a request from Accounting Services at Transport Canada to have the books of the Fund audited by an independent chartered accountants firm. A copy of the Auditor's financial report is included in this report. Auditing of SOPF records will now become a yearly event and will respond to the government's wish for greater transparency in the financial dealings of government agencies. The SOPF now has a Deputy Administrator, appointed for the first time at the beginning of last year. His insight and experience has proved to be of valuable assistance in fulfilling the requirements of this audit.

While a significant amount of time and effort has been devoted in this fiscal year to administrative challenges, it is important that this other work does not overshadow the core work of the Fund, namely the assessment, payment and collection of claims.

The Administrator sees new challenges ahead. First and foremost, the Administrator continues to follow developments in the Canadian Arctic. The Administrator already adverted to this subject in his last report and notes that public focus remains on ship transport in that region and the potential for oil pollution incidents as traffic increases.

In past reports, the Administrator has also referred to the potential oil pollution threat posed by abandoned and derelict vessels at various locations on our coasts. The Administrator has had the opportunity to discuss this problem with the Commissioner of the Canadian Coast Guard with a view to identifying options to address this problem within the framework of existing legislation. The Administrator is anxious to extend this dialogue to include other departments, notably Transport Canada, which, he believes, has a contribution to make in this discussion.

In the context of the meetings of the governing bodies of the IOPC Fund, which the Administrator attends as a member of the Canadian delegation, of particular interest are the discussions taking place under the auspices of this organization aimed at facilitating the early entry into force of the Hazardous and Noxious Substances Convention. While this convention deals largely with the damages that may be cause by sea transport of substances other than oil, it does contain an important oil component and could potentially provide further relief for the SOPF, should Canada eventually decide to join this regime once it enters into force.

The Administrator has noted with interest the recent entry into force of the Bunkers Convention. While this convention does not provide for the creation of an international fund, it does include a requirement for compulsory insurance. This requirement will provide greater protection than is currently available for claimants. This will also have beneficial effects for the SOPF in fulfilling its statutory obligation to take all reasonable steps to recover compensation that has been paid out of the Fund.

## **4. Outreach Initiatives**

The Administrator continues with outreach initiatives aimed at raising awareness of the existence of the SOPF as well as furthering the Administrator's understanding of the perspectives of parties interested in Canada's ship-source oil pollution, liability and compensation regime. In Canada, these interest groups include citizens, shipowners, insurers, response organizations, federal and provincial government agencies, and other non-governmental organizations. On the international level, the Administrator takes advantage during the IOPC meetings to maintain personal contact with various delegates representing commercial organizations and government agencies involved in providing compensation for pollution damage resulting from oil spills caused by sea-going tankers.

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

The Canadian Marine Advisory Council (CMAC) held meetings in Ottawa from April 30 to May 3 and from November 5 to 8, 2007. The Administrator and a marine consultant engaged by the SOPF, Captain George Legge, attended some of the meetings. The Administrator follows with interest the ongoing discussion on the marine environmental issues addressed at the national CMAC sessions. He keeps abreast of the proposed regulatory framework for the prevention of oil pollution from ships of all classes. The Administrator attends the deliberations of the Standing Committee on the Environment, and follows the issues discussed by the working group on marine oil pollution.

The Administrator is interested, for example, in the ongoing regulatory developments undertaken by the federal government, made in consultation with the marine industry, to address the problem of oiled marine wildlife caused by the illegal discharge of oily machinery waste by ships transiting the Canadian coastline. The Administrator regularly receives claims resulting from "mystery oil spills" that occur along exposed shorelines, particularly on the eastern seaboard of Canada. The discharged residual of oily waste is devastating to wildlife. Often claims for clean-up costs and expenses are submitted to the SOPF. The Administrator cannot recover payments made for cleaning-up these "mystery spills" because the identity of the polluter is unknown.

### **4.2 Canadian Marine Advisory Council (Northern)**

The Administrator was represented by Captain George Legge at the Regional Canadian Marine Advisory Council (Northern CMAC) meetings held in Iqaluit, Nunavut, from April 24 to 26, 2007, and also in Hay River, Northwest Territories, from November 20 to 23, 2007. The Administrator has a direct interest in the issues surrounding the transportation by sea of oil products throughout the High Arctic.

The participants at the Northern CMAC meetings, which are held semi-annually in different Arctic communities, represent the federal and territorial governments and a broad range of sealift operators from the marine shipping industry. Discussions are co-chaired by representatives of Fisheries and Oceans, CCG Central and Arctic Regions, and Transport Canada, Ship Safety, Prairie and Northern Region. The participants include the Department of National Defence, Canadian Hydrographic Services, National Research Council of Canada, Royal Canadian Mounted Police, Indian Affairs and Northern Development and the Canadian Ice Services. Moreover, the sealift operators are always present notably Nunavut Eastern Arctic Shipping Inc., Northern Transportation Company Ltd., CanArctic Shipping, Petro Nav. Inc., Desgagnés Transarctik Inc. and others. In addition, representatives of various consulting firms present papers during the meetings.

Of particular interest for the Administrator, among other agenda items, are the Northern CMAC

discussions on the regulatory reform for the prevention of pollution from ships and the Transport Canada Arctic waters standards for lay-up of petroleum barges in land-fast ice, and the Arctic guidelines for fuel oil transfer from tankers at anchor to storage tanks ashore.

The greatest risk of oil pollution in the Canadian Arctic has been identified as likely occurring during fuel transfers by floating hose from ships in a number of Arctic communities. The CCG has developed individual response strategies for 48 of these communities which involve storing of equipment, as well as providing training on the use of the equipment in order to respond to spill events. In addition, during the shipping season, CCG icebreakers carry first-response spill equipment and the CCG crew members are trained in its use. Should a specific oil spill event exceed the resource capacities within a community or available from an icebreaker, CCG could deploy its rapid air transportable spill response equipment suite from Hay River, Northwest Territories. This equipment suite allows recovery and disposal in response to a spill of up to 150 tonnes. In addition, the CCG in Central and Arctic Regions maintains spill response equipment strategically cached in Churchill, Iqaluit, and Tuktoyaktuk. When combined with the air transportable suite, enough equipment would be available from within the region to respond to a 1,000 tonne spill.

It is noted that there is no certified Response Organization for marine waters north of 60° north latitude. In the Arctic, shipowners do not need to have a contractual arrangement with a certified Response Organization. The CCG has overall responsibility for preparedness and response in all Arctic waters.

During the CMAC Northern meetings presentations were made by various shipping companies about the annual sealift operations, including the delivery of fuel oil products to the Arctic communities. Also, the participants provided an overview of the Arctic oil spill exercises conducted regularly by the sealift shipping companies. During the 2007 summer, separate oil spill exercises were conducted at Salluit in Hudson Strait and in Milne Inlet on northern Baffin Island. Transport Canada Marine Safety arranged for a Ship Safety inspector to be present during the training exercises.

### **4.3 Regional Environmental Emergency Team Conference**

The Administrator was represented by Captain George Legge at the 34<sup>th</sup> Atlantic Regional Environment Emergency Team (REET) conference held in Wolfville, Nova Scotia from October 22 to 25, 2007.

The annual REET conference was organized and chaired by the Regional Manager of Environmental Emergencies, Environment Canada. The participants represented federal and Atlantic provincial government departments and other agencies, marine oil spill response organizations, oil industry, railways, United States Coast Guard, the USA National Oceanic & Atmospheric Administration, the Government of St. Pierre and Miquelon, the departments of the environment of Ontario and Alberta, and other non-government organizations interested in protecting the environment.

The conference focussed on perspectives on oil spill incidents, technology updates, counter-measures, case studies, lessons learned, crisis communication, and international contingency planning. The participants, industry and government, represented the broad scope of expertise currently available to respond during environmental emergencies, including ship-source oil spills.

Environment Canada is the federal authority with responsibility for environmental advice during a pollution incident. During the course of an active response operation, a senior manager of Environment Canada normally chairs the REET meetings which provides the On-Scene Commander from the Canadian Coast Guard or the Response Organization with consolidated environmental and scientific information such as spill movement, trajectory forecasts, and advice respecting weather

forecast. This assistance by the REET organization to the On-Scene Commander during a marine oil spill makes a major difference in the overall response to an incident. In addition, REET may approve the use of chemical dispersion and other shoreline treatment techniques.

#### **4.4 Response Organizations**

On April 19, 2007, while in Vancouver for meetings with the Canadian Coast Guard, the Administrator took advantage of an invitation to visit the facility of Burrard Clean Operations, a division of the Western Canada Marine Response Corporation, in Burnaby BC. He had discussion with the President and General Manager of the Response Organization, and was provided with a tour of the facilities.

By way of background, there are four certified Response Organizations (ROs) in Canada to provide marine oil spill response services south of 60 degrees north latitude. They are industry-managed and funded by fees charged to users. Although each of the response organizations is an independent corporation, they are linked together through various support and mutual aid agreements to supplement the resources of each other if required during a major marine oil spill. The four ROs in Canada are:

1. Western Canada Marine Response Corporation, which in general covers British Columbia waters;
2. Eastern Canada Response Corporation, which covers the waters of the Great Lakes, Quebec and the Atlantic Coast (except two small areas in New Brunswick and Nova Scotia);
3. Atlantic Emergency Response Team, which basically includes the port of Saint John, New Brunswick, and surroundings waters; and
4. Point Tupper Marine Services Limited, which covers the port of Port Hawkesbury and approaches.

The Administrator is interested in continuing the ongoing dialogue with the response organizations in all regions of Canada. He fully appreciates that their respective roles and responsibilities regarding oil spill pollution prevention, preparedness and response are essential parts of Canada's national system for protection of the marine environment.

On August 15, 2007, the Administrator visited the Eastern Canada Response Corporation (ECRC) depot in Dartmouth, Nova Scotia. The visit provided him with an opportunity to see first-hand the ECRC inventory of marine oil spill response equipment. The ECRC depot in Dartmouth has a high response capability at the Tier 3 level (2,500 tonnes) within 18 hours after notification of an oil spill. It comprises a mix of specialized oil spill response equipment to meet the capability for which it is certified. The inventory includes booms, skimmers, boats, sea-trucks, containments barges and portable storage tanks for recovery of waste oil. The depot has a large amount of shoreline clean-up equipment and a number of mobile command communications units. The personnel of the Response Organization Centre work closely with federal, provincial, local authorities and various sectors of the oil industry.

#### **4.5 Canadian Coast Guard Regional Meetings**

On April 19, 2007, the Administrator met with the Assistant Commissioner, Canadian Coast Guard, Pacific Region and other senior managers at CCG Headquarters in Vancouver.

On August 14, 2007, the Administrator visited the regional headquarters of the Canadian Coast Guard in Dartmouth, Nova Scotia. He met with the Assistant Commissioner and the Acting Regional Superintendent of Marine Environmental Response. The Administrator expressed his

satisfaction and positive experiences during his first year in dealing with the Coast Guard and the handling of regional claims. The Administrator also visited the CCG's environment response equipment facility in Dartmouth that maintains an inventory of clean-up equipment, containment barges, other auxiliary equipment utilized in the Maritimes Region to contain and recover oil at sea or from beaches.

The Administrator is interested in visiting other Coast Guard Regions and continuing the ongoing co-operation and relationship between both agencies.

#### **4.6 Canadian Maritime Law Association**

The Administrator has throughout the fiscal year maintained his interest in the work of the Canadian Maritime Law Association (CMLA). Of particular interest to him is the work of the Pollution Committee, which has been following closely the discussion at the international level concerning the entry into force of the HNS Convention.

#### **4.7 Workshop on Federal Legal Authorities related to Emergency Response to Ship-Source Marine Spills**

In November 2007, the Administrator was invited to participate in a workshop in Vancouver, organized jointly by the Department of Justice and Environment Canada, to discuss legal authorities available to respond to marine spills. The workshop was organized out of a concern that in a series of recent spills issues remain as to the appropriate legal authorities for response, given that various departments and agencies of the government are operating under different legislation.

In addition to members of the sponsoring departments, representatives from a number of other federal departments were in attendance. Noteworthy was the presence of a number of officials from the provincial government, some of whom made presentations to the workshop, suggesting the need for good dialogue between the two levels of government when it comes to emergency response for marine spills, given that many of the resources impacted by marine spills are provincially owned.

The Administrator was invited to attend for the purpose of outlining the Canadian compensation regime, set out in Part 6 of the *Marine Liability Act*, with particular reference to the role of the Ship Source Oil Pollution Fund in that regime.

#### **4.8 Meeting with the Commissioner of Canadian Coast Guard**

The Administrator met with the Commissioner of the Canadian Coast Guard in February to discuss with him and some of his senior officials a variety of issues of mutual interest. Of particular interest to the Administrator are the issues of derelict and abandoned vessels and the threat of oil pollution that they may pose. The Administrator has offered whatever assistance he can provide to address this issue within the limited mandate that he has under the governing legislation.

Another topic discussed at the meeting related to the upgrading of the National Response Strategy that is underway in the Coast Guard to ensure an appropriate response to significant oil pollution incidents. The Administrator expressed his willingness to participate in on scene commander courses that are held annually at the Coast Guard College and to attend a meeting of the Management Board of the Coast Guard with the objective of raising awareness of the purpose of the SOPF and its claims handling mechanism.

The Administrator sees great value in these periodic meetings with the senior management of

the Coast Guard to discuss matters of mutual concern and hopes to continue this practice in the future.





## **5. SOPF Involvement in the International Compensation Regime**

### **5.1 1992 IOPC Fund – Assembly, Executive Committee, Working Groups**

During the fiscal year ending March 31, 2008, the Administrator attended, as part of the Canadian delegation, a number of meetings of the governing bodies and working groups of the 1992 IOPC Fund. Complete Records of Decisions of the Assembly and the Executive Committee, as well as reports of the working groups, are available from the Secretariat of the 1992 IOPC Fund at [www.iopcfund.org](http://www.iopcfund.org). For the present report, it is intended merely to refer to some highlights of these meetings.

### **5.2 Meetings held in Montreal – June 2007**

The 1992 IOPC Fund Assembly and the Executive Committee, as well as the Working Group on non-technical measures to promote quality shipping for the carriage of oil by sea, held meetings in June. At the invitation of the Canadian Government, these meetings were held in Montreal at the Headquarters of the International Civil Aviation Organization. The IMO headquarters building in London, England, where IOPC Fund meetings are usually held, was closed for renovation.

Mr. Emil Di Sanza, Director General, Marine Policy, Transport Canada, welcomed delegates and observers to these meetings of the 1992 IOPC Fund. He noted that this was the first time that the bodies of the 1992 IOPC Fund were meeting outside London. Mr. Willem Oosterveen, Director of the 1992 IOPC Funds, expressed his gratitude to the Canadian Government for its kind invitation to hold its meetings in Montreal, noting that it was an outstanding venue.

Since the Assembly at this meeting could not achieve a quorum, the Administrative Council, set up under an earlier Assembly resolution, acting on behalf of the Assembly, dealt with the agenda. The Administrative Council met under the chairmanship of Mr. Jerry Rysanek of Canada, who is the current chairman of the 1992 IOPC Fund Assembly.

Of particular note at this meeting were the following agenda items. First, there was discussion and approval of admissibility criteria for preventive measures relating to the removal of oil from wrecks. Next, there was further discussion aimed at resolving difficulties preventing entry into force of the Convention on Liability and Compensation in connection with the Carriage of Hazardous and Noxious Substances (HNS). This convention was adopted in 1996 but has failed to attract sufficient ratifications to bring it into force. The discussion at this meeting focused on submissions by groups of states, including Canada, aimed at providing solutions but, regrettably, no consensus could be achieved on the various proposals.

The early entry into force of the HNS Convention is of particular interest to the Administrator, given that the convention covers oil to the extent that oil pollution damage caused by such carriage is not covered by the CLC and IOPC Fund Convention. Should Canada eventually implement this convention it would provide some additional relief for the SOPF.

During the Montreal meetings, the Executive Committee of the 1992 Fund held its 37<sup>th</sup> session. Besides receiving updates on long-standing cases such as the *Erika* and the *Prestige* incidents, the meeting was briefed on a new incident that occurred the previous August in the Philippines, involving the small tanker, *Solar I*. The tanker sank in heavy weather in the Guimaras Strait, releasing a

substantial quantity of oil. The incident is noteworthy, since it is the first one involving a tanker that was entered in the Small Tanker Oil Pollution Indemnification Agreement (STOPIA). In accordance with the 1992 CLC the limitation amount applicable to the *Solar I* is approximately \$5.8 million. However, on account of its entry in STOPIA the amount available from the shipowner is increased, on a voluntary basis, to \$32.2 million. There is a possibility, therefore, that this amount will cover the damages, including the cost of clean-up and other preventive measures caused by this incident, so that the IOPC Fund may not be required to levy contributions in respect of this incident.

The Working Group on non-technical measures to promote quality shipping referred to earlier held its third meeting in Montreal on June 14, 2007. It focused on two main areas:

- Practices within the marine insurance industry to promote quality shipping for the carriage of oil by sea, including the sharing of information within the industry and possible barriers to sharing such information; and
- Practices by Member States to promote quality shipping for the carriage of oil by sea, and more specifically whether these practices could be improved in any way.

### **5.3 Meetings held in London – October 2007**

In October, the IOPC Funds governing bodies met in London at the International Maritime Satellite headquarters. The 12<sup>th</sup> session of the Assembly, besides taking note of various reports, adopted the budget for 2008 for the administrative expenses for the joint Secretariat for a total of £3 646 000, including external audit fees for the three Funds. Of particular note was the discussion in the Assembly of the issue of the entry into force of the HNS Convention in the light of the fruitless discussion of this subject in Montreal, referred above.

The Assembly decided to establish a Working Group (the HNS Focus Group) with the aim of facilitating the entry into force of the HNS Convention. The Assembly further decided that the chairman of the Focus Group would be Mr. Alfred Popp, QC (Canada). The terms of reference of the HNS Focus Group are available on the IOPC website in document 92 Fund/A.12/28. The Focus Group's mandate includes an examination of the underlying causes of the issues which have been identified as inhibiting the entry into force of the HNS Convention, such as:

- Contributions to the LNG Account;
- The concept of “receiver” in relation to packaged cargo; and
- Non-submission of contributing cargo reports on ratification of the Convention and annually thereafter.

The Executive Committee held its 38<sup>th</sup> session in London in October but, aside from receiving updates on ongoing incidents, there were no fresh incidents to report.

### **5.4 Meetings held in Monaco – March 2008**

From March 11<sup>th</sup> to 14<sup>th</sup> the Executive Committee held its 39<sup>th</sup> session in Monaco, at the invitation of the Government of the Principality of Monaco, the IMO building in London still being under renovation. Besides reviewing progress on ongoing cases, the Committee took note of two new incidents:

#### **Volganef 139 (2007)**

On November 11, 2007, the Russian registered tanker, *Volganef 139*, (3,463 gross tons) broke in

two in heavy weather in the Strait of Kerch, linking the Sea of Azov and the Black Sea between the Russian Federation and Ukraine. It is believed that between 1,200 and 2,000 tonnes of fuel oil were spilt at the time of the incident. Some 50 kilometres of shoreline both in the Russian Federation and in Ukraine were affected by oil. Shoreline clean-up in Russia was reported to have been undertaken by the Russian military. Heavy bird casualties in excess of 30,000 have been reported.

The vessel was not insured by a P&I Club belonging to the International Group of P&I Clubs and therefore STOPIA does not apply to this incident. It was noted that the Russian Federation is a party to the 1992 Civil Liability and Fund Conventions whereas Ukraine is a party only to the 1992 Civil Liability Convention.

The pre-occupying feature of the case is that it would appear that the ship was insured for less than the shipowner's limit of liability under the 1992 CLC.

In January 2008, the 1992 IOPC Fund received a claim for compensation from a Russian clean-up contractor in the amount of £1.5 million for the costs of preventive measures and clean-up operations. Proceedings against a variety of parties, including the 1992 IOPC Fund, have been commenced in the Arbitration Court of Saint Petersburg and Leningrad Region.

### **Hebei Spirit (2007)**

On December 7, 2007, the Hong Kong flag tanker *Hebei Spirit* (146,848 gross tons) was struck by the crane barge *Samsung No. 1*, while at anchor about five miles off Taean on the West Coast of the Republic of Korea. About 10,500 tonnes of crude oil escaped into the sea from the *Hebei Spirit*.

The oil polluted, in varying degrees, three of the four provinces along the western coast of the Republic of Korea. A significant number of aquaculture and mariculture facilities have been contaminated by the oil, which escaped from the *Hebei Spirit*. Claims are expected in the fisheries and mariculture sectors. Claims are also expected for economic losses to tourism-related and non tourism-related business. The estimated losses arising out of this incident are expected to exceed the limitation amount applicable to the *Hebei Spirit* under the 1992 Civil Liability Convention.

The Executive Committee also took note of developments in the long-standing *Prestige* and *Erika* incidents.

### **Prestige (2002)**

Of particular interest to the Committee were the court proceedings commenced by the Spanish government in the Federal Court of the United States in New York against the American classification society, American Bureau of Shipping (ABS), on the grounds that ABS was negligent in its inspection of the tanker and should not have granted it classification. ABS filed a counter claim against the Spanish government.

On application for summary judgement by ABS to dismiss the action of the Spanish government, the Federal Court in New York, on January 8, 2008, granted the application and dismissed the Spanish action against ABS. In their application, ABS had argued that they were entitled to immunity from action pursuant to Article III.4 (a) and (b) of the CLC on the grounds that they were an agent or servant of the shipowner. They also argued that the court had no jurisdiction in the action since under the terms of the convention actions had to be taken in a state party to the conventions. The United States is not a party to the CLC. In essence, the Federal Court upheld the reasoning of ABS on the above two points.

It was noted that the Spanish government has appealed the decision of the Federal Court. It has also requested that the 1992 IOPC Fund, which is not a party to the action, should intervene in the

appeal by filing an *amicus curiae* brief. The Director examined the request and has concluded that it would not be appropriate for the IOPC Fund to file an *amicus curiae* brief. This position of the Director was endorsed by the Executive Committee.

### **Erika (1999)**

With respect to this incident, the Committee took note of the recent decision of the Criminal Court in Paris of January 2008 convicting the representative of the registered owner, the president of the management company, the classification society Registro Italiano Navale, and Total SA. The judgement made the convicted parties jointly and severally liable for the damage caused by the incident. The Court decided that these parties were not covered in the exemptions provided for in the CLC.

Note: Details of the decision may be obtained from the Secretariat of the IOPC Funds at [www.iopcfund.org](http://www.iopcfund.org).

## **5.5 1971 IOPC Fund - Administrative Council Meeting**

In the fiscal year ending March 31, 2008, the Administrative Council of the 1971 IOPC Fund held one session. The 22<sup>nd</sup> session of the Council was held in London on October 19, 2007. The Administrator, as a member of the Canadian delegation, attended the meeting. In addition to dealing with administrative matters such as approval of the financial statements and budget, the Council dealt with a number of long-standing incidents, notably the incident involving the Greek tanker *Nissos Amorgos*, which grounded in the Maracaibo Channel in the Gulf of Venezuela in February 1997. The outstanding issues yet to be resolved in this incident, together with a number of others reported in the IOPC Fund annual report, prevent the final winding-up of the 1971 Fund. Moreover, some of those unresolved incidents occurring before May 29, 1999, represent contingent liabilities for the SOPF in that, depending on the outcome of the court cases, contributions may be levied. It is impossible to predict when final resolutions of claims will be achieved so that the 1971 Fund can be finally wound-up. Even where claims are finally settled that may not be an end of the matter, since there may be room for recourse actions.

Notes:

- (1) For further information about the *Nissos Amorgos* incident see the SOPF Administrator's Annual Report 2005-2006 at Appendix B.
- (2) The complete Record of Decisions of each session of the Administrative Council may be obtained from the Secretariat of the IOPC Funds at [www.iopcfund.org](http://www.iopcfund.org).

## **5.6 Supplementary Fund Protocol**

On May 13, 2003, an IMO Diplomatic Conference adopted a Protocol creating the International Oil Pollution Compensation Supplementary Fund (Supplementary Fund Protocol). This Protocol came into force on March 3, 2005. The purpose of the supplementary fund is to provide a "third tier" of compensation for claims arising out of pollution caused by spills of oil from tankers. Canada supported the development of the Supplementary Fund Protocol but is not yet a party to it.

On February 25, 2008, the Minister of Transport tabled in the House of Commons the 2003 Supplementary Fund Protocol of the 1992 International Oil Pollution Compensation Fund. The tabling of this instrument is necessary prior to the introduction of amendments to the MLA to implement this treaty. When the amendments to the MLA are in force Canada will be in a position to ratify the Supplementary Fund Protocol.

Note: For information about the Supplementary Fund Protocol see the SOPF Administrator's Annual Report 2004-2005 at section 4.6.2.

## **5.7 Bunker Convention**

On February 25, 2008, the Minister of Transport tabled in the House of Commons the 2001 International Convention on Civil Liability for Bunker Oil Pollution Damage. The tabling of this convention is a necessary step prior to introducing the required amendments to the MLA. When the amendments to the MLA are in force Canada will be in a position to ratify the Bunker Convention.

Note: For information about the Bunker Convention, and the current Canadian cover, see the SOPF Administrator's Annual Report 2006-2007 at section 4.8.

## **5.8 HNS Focus Group Discussions – March 2008**

During the March meetings in Monaco, the Focus Group, referred to earlier, held its first meeting under the chairmanship of Alfred Popp (Canada). In keeping with its terms of reference, the group considered proposals, submitted by groups of states, aimed at resolving the principal obstacles to entry into force of the HNS Convention. These proposals contained proposed treaty language for amending the original treaty. In accordance with the terms of reference, these amendments had been included in a draft protocol, prepared by the chairman in collaboration with the IOPC Fund Secretariat. The main focus of the discussion was therefore the draft protocol.

The Canadian delegation led the discussion on the proposal to modify the treatment of the Liquefied Natural Gases (LNG) Account by placing contributors to this account on the same footing as contributors for other hazardous and noxious substances in the HNS Fund to be set up under the convention. The treaty, as presently drafted, places the obligation to make contribution to the LNG Account on the person holding title to an LNG cargo immediately prior to discharge of the cargo in a port or terminal. In the view of most states this posed a risk for the LNG account since in the emerging spot market for LNG cargoes it might be difficult, if not impossible, to identify contributors. It was also seen as prejudicial to developing countries, which are the main suppliers of LNG. Although there was significant opposition to this modification from a number of important receiver states, the modification was broadly endorsed, including the provisions on this point included in the draft protocol.

Next the Focus Group dealt with the notion of "receiver". This notion is important for the reporting requirements of HNS cargoes transported by sea, which provides the basis for fixing the contributions for the HNS Fund under the convention. It had become clear over the years that the inclusion of packaged cargoes for reporting and payment of contributions posed states with particular difficulties, in this age of containerized transportation of HNS cargoes. A group of states, including Canada, therefore proposed that packaged cargoes be excluded from the reporting requirements and payment of contributions. Damage caused by packaged goods would, nevertheless, be covered by the HNS Fund, to the extent that those damages exceed the shipowners limit of liability under the convention. To make these proposals palatable to contributors of bulk cargoes, it was further proposed that the limit of liability for the shipowner should be increased beyond the current limit in the convention. These proposals received broad support. Ship owning interest, however, maintained that only a modest increase in limits of liability of shipowners was justified, given that past experience with damage caused by HNS cargoes suggested that they were in most cases well within current limits of liability in the convention.

Lastly, the Focus Group approved proposals to reinforce the reporting requirements of the convention. The current provisions in the HNS Convention are modeled on the equivalent provisions in

## *Ship-source Oil Pollution Fund*

the 1992 IOPC Fund Convention, which have proved relatively ineffective in obtaining outstanding reports from states that fail to report. The Focus Group approved a modification of the reporting requirements along the lines of what has been included in the Supplementary IOPC Fund Protocol, the effect of which is to withdraw cover for claims in a contracting state that has failed to report, except for claims in respect of death and personal injury.

While the Focus Group has largely completed its work, it will meet again in June 2008, during the meetings of the IOPC Fund meetings in London, to approve some redrafting of the draft instrument agreed to at the March meeting. The plan is then to recommend to the IOPC Fund Assembly that the draft protocol be transmitted to the IMO with the request for the convening of a diplomatic conference to adopt the protocol.

## **6. Financial Statements**

This section contains the Auditors' Report on the financial position of the SOPF and the results of its operations as at March 31, 2008





**Ship-source Oil Pollution Fund**  
**Financial Statements**  
**March 31, 2008**

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## Auditors' Report

To the Administrator of  
Ship-source Oil Pollution Fund

We have audited the balance sheet of Ship-source Oil Pollution Fund as at March 31, 2008 and the statement of operations and accumulated surplus for the year then ended. These financial statements are the responsibility of the Fund's management. Our responsibility is to express an opinion on these financial statements based on our audit.

We conducted our audit in accordance with Canadian generally accepted auditing standards. Those standards require that we plan and perform an audit to obtain reasonable assurance whether the financial statements are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation.

In our opinion, these financial statements present fairly, in all material respects, the financial position of the Fund as at March 31, 2008 and the results of its operations and its cash flows for the year then ended in accordance with Canadian generally accepted accounting principles.

The financial information for the year ended March 31, 2007 presented for comparative purposes has not been audited.

*Raymond Chabot Grant Thornton LLP*

Chartered Accountants,  
Licensed Public Accountants

Ottawa, Canada  
April 18, 2008

## Ship-source Oil Pollution Fund

### Statement of operations and accumulated surplus

Year ended March 31, 2008

	2008	Unaudited 2007
	\$	\$
<b>Revenue</b>		
Interest revenue	14,454,922	14,081,986
Recoveries of settlements	7,163	10,200
	<u>14,462,085</u>	<u>14,092,186</u>
<b>Claims</b>		
Payments made towards Canadian claims	(972,347)	(210,906)
International Oil Pollution Compensation Fund contributions	(106,305)	(360,233)
	<u>(1,078,652)</u>	<u>(571,139)</u>
	<u>13,383,433</u>	<u>13,521,047</u>
<b>Operating expenses</b>		
Amortization of capital assets	3,011	
Administrator and Deputy Administrator fees	106,374	96,525
Legal fees	187,456	126,787
Consulting fees	68,675	82,579
Audit fees	3,098	
Administrative services and office expenses	147,672	120,539
Travel	38,495	52,624
Rent	87,100	87,100
Printing - annual report	15,000	15,000
Access to Information and Privacy Act expenses (Note 5)	83,596	
	<u>740,477</u>	<u>581,154</u>
<b>Surplus for the year</b>	<u>12,642,956</u>	12,939,893
<b>Accumulated surplus, beginning of year</b>	<u>363,782,611</u>	<u>350,842,718</u>
<b>Accumulated surplus, end of year</b>	<u>376,425,567</u>	<u>363,782,611</u>

The accompanying notes are an integral part of the financial statements.

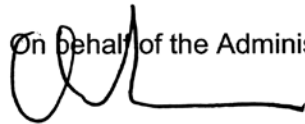
# Ship-source Oil Pollution Fund Balance Sheet

March 31, 2008

	<u>2008</u>	Unaudited
	\$	2007
		\$
<b>ASSETS</b>		
Current assets		
Balance of the account with Receiver General for Canada (Note 3)	<b>376,453,502</b>	363,782,611
Capital assets (Note 4)	<b>17,124</b>	
	<b><u>376,470,626</u></b>	<b><u>363,782,611</u></b>
<b>LIABILITIES</b>		
Accounts payable and accrued liabilities	<b>45,059</b>	
<b>ACCUMULATED SURPLUS</b>	<b><u>376,425,567</u></b>	<b><u>363,782,611</u></b>
	<b><u>376,470,626</u></b>	<b><u>363,782,611</u></b>
Contingencies (Note 7)		

The accompanying notes are an integral part of the financial statements.

On behalf of the Administrator,



Deputy Administrator

# Ship-source Oil Pollution Fund

## Notes to Financial Statements

March 31, 2008

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### 1 - GOVERNING STATUTES AND PURPOSE OF THE ORGANIZATION

The Ship-source Oil Pollution Fund (the Fund) was created April 24, 1989, by amendments to the *Canada Shipping Act* and succeeded the Maritime Pollution Claims Fund. The Fund is established by Part 6 of the *Marine Liability Act* (MLA).

### 2 - ACCOUNTING POLICIES

#### Basis of accounting

The financial statements are prepared in accordance with Treasury Board accounting policies which are consistent with Canadian generally accepted accounting principles for the public sector.

#### Accounting estimates

The preparation of financial statements in accordance with Treasury Board accounting policies which are consistent with Canadian generally accepted accounting principles for the public sector requires management to make estimates and assumptions that affect the amounts recorded in the financial statements and notes to financial statements. These estimates are based on management's best knowledge of current events and actions that the Fund may undertake in the future. Actual results may differ from these estimates.

#### Revenue recognition

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

#### Foreign currency translation

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

#### Capital assets

Capital assets are recorded at cost.

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

	<u>Periods</u>
Computer equipment	3 years
Furniture and equipment	10 years

## Ship-source Oil Pollution Fund Notes to Financial Statements

March 31, 2008

### 3 - BALANCE OF THE ACCOUNT WITH RECEIVER GENERAL FOR CANADA

The cash balance of the Fund is held within the Consolidated Specified Purpose Accounts of the Government of Canada. Public Works and Government Services Canada acts as the custodian of this cash balance, and makes the various expenditures on behalf of the Fund. Interest is credited to the Account in accordance with the provisions of the MLA at a rate based on a 5-year Government of Canada bond interest rate, calculated monthly. The interest rates varied between 2.95 percent and 4.47 percent during the year. The rate for March 2008 was 2.95 percent.

### 4 - CAPITAL ASSETS

	2008		
	Cost	Accumulated amortization	Net
	\$	\$	\$
Computer equipment	4,275	1,425	2,850
Furniture and equipment	15,860	1,586	14,274
	<u>20,135</u>	<u>3,011</u>	<u>17,124</u>

### 5 - ACCESS TO INFORMATION AND PRIVACY ACT EXPENSES

	2008	Unaudited 2007
	\$	\$
Administration costs	11,293	-
Consultant fees	46,314	-
Legal fees	25,884	-
Training	105	-
	<u>83,596</u>	<u>-</u>

During the year, the Fund was required to incur additional expenses to meet the requirements of the *Access to Information and Privacy Act*. In addition to the above-mentioned operating expenses, the Fund has acquired furniture and equipment totalling \$8,274 in order to maintain proper filing systems in accordance with this Act.

### 6 - COMMITMENT

The Fund has entered into a lease agreement with Public Works and Government Services Canada for the use of office space used for their operations, which expires in March 2009. The minimal annual lease payment is \$97,552 for 2009.

## Ship-source Oil Pollution Fund Notes to Financial Statements

March 31, 2008

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### **7 - CONTINGENCIES**

On August 2, 2005, the Fund received a claim from Transport Canada, Pacific Region-Marine Safety, Navigable Waters Protection Division in an amount of \$225,548, relating to environmental clean-up costs of the *Mary Mackin* incident. The Fund had offered compensation of \$20,000 as settlement for this claim due to the fact that, in the opinion of Fund management, the claim had partially resulted from the negligence of the claimant. The claimant has since appealed this offer of settlement, claiming an amount of \$155,544, plus interest and costs. The claim is currently under appeal and management is of the opinion that the outcome is not reasonably determinable, and accordingly, the related costs, if any, will be paid and recorded in the period in which the outcome has been determined.

The Ship-source Oil Pollution Fund is required to make an annual contribution to the International Oil Pollution Compensation Funds, in which the balance owing is determined by the International Oil Pollution Compensation Funds' governing bodies. The amounts contributed to this organization are used to clean-up environmental damage in International Waters. The size of the contribution is contingent on the number of claims received by the International Oil Pollution Compensation Funds, resulting in varying levels of contributions from year to year. Given this volatility, it has been determined that an estimate of this contribution can not be reasonably estimated. The amount of the 2008 contribution will be paid and recorded by the Ship-source Oil Pollution Fund once the contribution has been determined and requested by the International Oil Pollution Compensation Funds. During the year, the Fund has contributed \$106,305 (\$360,233 in 2007) to the International Oil Pollution Compensation Funds.

During the fiscal year commencing April 1, 2008, the maximum liability of the Fund is \$152,110,416 (\$149,567,764 in 2007) for all claims from one oil spill. Furthermore, as of April 1, 2008, the Minister of Transport also has the statutory power to impose a levy of 45.61 cents (44.85 cents in 2007) per metric tonne of "contributing oil" imported into or shipped from a place in Canada in bulk as cargo in a ship. Both the maximum liability and the levy is indexed annually to the consumer price index. In fact, no levy has been imposed since 1976.

### **8 - RELATED PARTY TRANSACTIONS**

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

During the year, the Fund has paid \$87,100 (\$87,100 in 2007) to Public Works and Government Services Canada for the use of the office space.

### **9 - STATEMENT OF CASH FLOWS**

No statement of cash flows has been presented since principal operating, investing and financing activities may be readily apparent from the other financial statements and presenting such a statement would provide no additional information.

# Ship-source Oil Pollution Fund Notes to Financial Statements

March 31, 2008

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## ***10 - COMPARATIVE FIGURES***

Certain comparative figures have been reclassified to conform with the presentation adopted in the current year.