



**MEDITERRANEAN ACTION PLAN (MAP)
REGIONAL MARINE POLLUTION EMERGENCY RESPONSE CENTRE FOR THE
MEDITERRANEAN SEA (REMPEC)**

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for the Mediterranean Sea (REMPEC)

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Agenda Item 6

**LATEST DEVELOPMENTS IN THE FIELD OF
COMPENSATION FOR SHIP-SOURCE POLLUTION DAMAGE**

Note by the International Oil Pollution Compensation Funds (IOPC Funds)

SUMMARY

Executive Summary: This document provides information on the latest developments in the field of compensation for ship-source pollution damage and in particular on the dissolution of the International Oil Pollution Compensation Fund, 1971 (1971 Fund). It seeks to highlight the implications for the Mediterranean coastal States of these developments.

Action to be taken: Paragraph 49

Related documents: REMPEC/WG.37/6/1, IOPC/APR15/4/4/1, IOPC/APR15/4/4 and IOPC/2014/Circ.6

Introduction

1 This document provides an update on the latest developments in the international liability and compensation regime. It sets out recent discussions and decisions of the governing bodies of the International Oil Pollution Compensation Funds (IOPC Funds). Particular reference is made to the dissolution of the original International Oil Pollution Compensation Fund, 1971 (1971 Fund) on 31 December 2014. The latest developments in the relation to the remaining IOPC Funds (the 1992 and Supplementary Funds) are also explained, with reference to the relevance of these developments for the Mediterranean coastal States.

Dissolution of the 1971 Fund

2 The 1971 Fund Convention ceased to be in force on 24 May 2002 and did not apply to incidents occurring after that date. However, before the 1971 Fund could be wound up, all pending claims had to be settled and any remaining assets distributed in an equitable manner between contributors. Progress towards the winding up of the 1971 Fund had gained significant momentum in recent years but by 2013, there still remained five outstanding incidents to resolve. Despite the 1971 Fund having no liability to pay for these incidents, it was nevertheless involved in litigation which was expected to last many years. Levying of contributions for such old incidents would have been inevitably difficult and as such the 1971 Fund found itself in a challenging situation.

3 The *Vistabella* (France, 1991) and *Aegean Sea* (Spain, 1992) incidents were resolved before the end of 2013 and the 1971 Fund Administrative Council instructed the Director not to pay compensation in respect of the *Plate Princess* (Venezuela, 1997) and closed the case in respect of

the 1971 Fund. The Council also authorised a global settlement with the North of England P&I Club in respect of the *Iliad* incident in October 2014.

4 In respect of the *Nissos Amorgos* incident (Venezuela, 1997), on 17 October 2014 in a judgement handed down by the High Court in London, Mr Justice Hamblen found in favour of the 1971 Fund in the litigation brought against it by Gard P&I Club, over compensation payments for the *Nissos Amorgos*. The Judge ruled that the 1971 Fund had no contract with Gard, under which it was required to reimburse Gard in respect of the compensation claimed by the Bolivarian Republic of Venezuela above the shipowners' limitation amount. The Judge also concluded that the 1971 Fund had immunity from the jurisdiction of the English Courts, in respect of the claim brought against it by Gard in London over the *Nissos Amorgos* incident. On Tuesday 21 October 2014, at the High Court in London, Mr Justice Hamblen denied Gard leave to appeal the judgement of 17 October 2014. He also awarded all costs against Gard, with the P&I Club to make an immediate payment of £400,000 to the 1971 Fund.

5 At the October 2014 session, the Council approved and adopted a resolution that the 1971 Fund be dissolved and its legal personality ceases to exist with effect from 31 December 2014. That decision was taken after a lengthy debate. Strong opposition from shipping industry representatives was expressed, a number of Member States requested a delay to the winding up and many discussions took place among delegations but no consensus could be reached. The decision was finally taken by vote, in which 29 former Member States voted in favour and 14 against.

6 As a result of that decision the Secretariat reimbursed contributors the remaining £2.4 million, maintaining £29 000 for unforeseen expenditure during the final weeks of the Fund's existence. In accordance with Resolution 18, that £29 000 was finally divided equally between the World Maritime University (Sweden), the International Maritime Law Institute (Malta) and the International Maritime Safety, Security and Environment Agency (Italy) and the 1971 Fund was dissolved with effect from 31 December 2014. The Secretariat organised the final audit of the Fund's accounts and in April 2015, the Secretary-General of IMO, in his capacity as depositary of the 1971 Fund Convention, convened a meeting of all former Member States of the 1971 Fund to approve the Financial Statements for 2014.

7 Following that meeting, a special session was held to commemorate the 1971 Fund, with a number of key figures taking the opportunity to look at the establishment and operation of the 1971 Fund over its 36-year existence. A commemorative brochure was also distributed.

8 The IOPC Funds' longstanding relationship with the P&I Clubs was unfortunately damaged as a result of the decision to dissolve the 1971 Fund. Repairing that damage and rebuilding the relationship between the Clubs and the Funds is at the very top of the Director's agenda for 2015. Progress has already been made in that regard with discussions on interim payments with the International Group of P&I Associations scheduled to take place in early May (see paragraph 26 below).

9 The difficulties in 2014, should not, however, overshadow the success of the 1971 Fund as an organisation. Having been involved in over 100 tanker incidents worldwide, paying some £331 million in compensation, the success and experience of that first International Oil Pollution Compensation Fund, paved the way for the new ever growing 1992 Fund which exists today.

Status of the 1992 Fund Convention and Supplementary Fund Protocol

10 There are currently 114 States Parties to the 1992 Fund Convention and 31 States Parties to the Supplementary Fund Protocol. A list of States Parties is contained in the **Annex** to the present document.

Incidents involving the 1992 Fund – *Alfa I*

11 The 1992 Fund is currently dealing with 13 incidents. There is currently one incident involving a Mediterranean coastal State, namely the *Alfa I*, which occurred off Elefsis Bay, Piraeus, Greece in 2012.

12 On 5 March 2012, the Greek-registered tanker, laden with 1 800 tonnes of cargo, hit a submerged object while crossing Elefsis Bay and sank in 18-20 metres of water. The incident also resulted in the tragic loss of the master's life.

13 Oil impacted some 13 kilometres of the shoreline of Elefsis Bay, contaminating a number of local beaches. Clean-up operations were conducted at sea and on the shoreline.

14 Since the tonnage of *Alfa I* (1 648 GT) is below 5 000 units of tonnage, the limitation amount applicable under the 1992 Civil Liability Convention (1992 CLC) is 4.51 million SDR (€5.63 million)^{<1>}. The tanker had an insurance policy limited to €2 million which stated that only non-persistent mineral oils would be covered.

15 Six claims for compensation totalling €16.1 million have been submitted to the shipowner, comprising of a claim for clean-up expenses from the Greek authorities for €260 000 and a claim by the clean-up contractors for €15.8 million. In addition, in June 2012 the Elefsis Harbour Master issued a fine of €150 000 to the shipowner.

16 In October 2013, the 1992 Fund was formally notified and served with a copy of the clean-up contractors' claim against the shipowner and insurer for €15.8 million before the Maritime Court of First Instance in Piraeus, Greece. The 1992 Fund was also served with a Notice of Hearing specifying the date of the first hearing, which was set for February 2014.

17 In February 2014, the 1992 Fund filed an intervention before the Maritime Court of First Instance to defend the 1992 Fund's interests and to challenge the quantum of the losses claimed by the clean-up contractors. By agreement between the parties, the date of the initial hearing was adjourned to October 2014.

18 In July 2014, the 1992 Fund met with the insurer's lawyers and surveyors in preparation for a subsequent meeting with the clean-up contractors to discuss the claim.

19 In October 2014, the clean-up contractors' claim and the 1992 Fund's intervention were heard by the Court. The Court was expected to render its judgment approximately six months after the court hearing.

20 In January 2015, the Director and the Claims Manager responsible for dealing with the incident, together with the Fund's expert, met with the insurer, and the clean-up contractors to further discuss the claim and to ascertain whether it was possible to settle the claim before the court rendered its judgment.

21 In the meeting, the insurer indicated that the reinsurers had instructed it to fight the claim, on the basis that since the *Alfa I* had carried less than 2 000 tonnes of persistent mineral oil, the 1992 CLC did not apply, and thus the insurer and reinsurers had no liability. This view was not shared by the Fund.

22 In a subsequent meeting with the clean-up contractors during which their claim was discussed in detail, they stated that they would provide further documentation to prove their claim, but to date this has not been provided.

23 In February 2015, the clean-up contractors also served the 1992 Fund with legal proceedings before the expiry of the three-year time bar.

24 Details of all other incidents involving the 1992 Fund are available under the Incidents section of the IOPC Funds' website (www.iopcfunds.org).

Definition of 'ship'

25 The 1992 Fund seventh intersessional Working Group held its fourth and final meeting on 23 April 2015 under the chairmanship of Mrs Birgit Sølling Olsen (Denmark). The Working Group considered a number of proposals, including a possible guidance document to assist Member States when considering an issue involving the definition of 'ship' under Article I.1 of the 1992 Civil Liability Convention. The Chairman agreed to submit the report of the fourth meeting of the Working Group,

<1> Based on the exchange rate of 23 February 2015 of €1 = 0.800921 SDR.

containing the Group's final conclusions and proposals to the 1992 Fund Assembly in October 2015^{<2>}.

Interim Payments

26 The Director presented a document at the April 2015 sessions of the governing bodies to explain the consequences of making interim payments by the 1992 Fund (see document IOPC/APR15/4/4). He explained the contents of the 1992 Fund Internal Regulations which govern his authority to settle claims and make provisional payments. He also explained the risks that the 1992 Fund could potentially face when making provisional payments. The International Group of P&I Associations also presented a document on the subject (document IOPC/APR15/4/4/1), reiterating the concerns of the P&I Clubs in making interim payments in the future, following the decision to wind up the 1971 Fund and the conduct of the *Nissos Amorgos* incident (see paragraph 8 above), which for them had raised a number of fundamental issues.

27 The International Group recognised that it must continue to maintain a working relationship with the IOPC Funds' Secretariat and stated that the Clubs would continue to strongly support the compensation system established by the Conventions which had served claimants well for more than 40 years. It made reference to the possibility of the Clubs making interim payments on a different basis to that followed in previous incidents, but expressed concern that doing so would fundamentally change the approach taken in respect of the payment of claims and be administratively inconvenient since it would lead claimants to receiving compensation from two different parties. The International Group explained that it was considering whether any concerns surrounding the funding of interim payments could be more effectively dealt with on a case-by-case basis rather than through a generic agreement with the 1992 Fund that would apply to all future 1992 CLC/1992 Fund Convention cases. A first meeting on interim payments between the Secretariat and the International Group is scheduled to take place in early May.

28 The 1992 Fund Administrative Council responded positively to the news of the scheduled meeting and noted that it was in the interest of both parties to reach a solution. The Council instructed the Director to examine section 7 of the Internal Regulations of the 1992 Fund, in consultation with the Audit Body, and to report back with proposed changes to the governing bodies in October 2015.

Development of Guidelines for States and Claimants

29 The 1992 Fund continued to focus its work in 2014 on the preparedness of the Secretariat, claimants and Member States and produced a number of publications to that end. The Claims Information Pack contains the 2013 edition of the Claims Manual, sets of guidelines for presenting claims in different sectors and an example claim form. Further guidelines are under development and are expected to be added to this information pack and published in 2015 and 2016. These include Guidelines for presenting claims for clean-up and preventive measures, which were approved at the April 2015 session of the 1992 Fund Administrative Council, and Guidelines for presenting claims for environmental damage, which are expected to be presented to the 1992 Fund Assembly for consideration in spring 2016.

30 A further booklet aimed at preparing Member States in advance of an oil spill was also published as a result of the work carried out by the 1992 Fund 6th intersessional Working Group. This Guidance document contains measures which Member States might wish to consider in preparation for, or in the event that they suffer pollution damage as a result of an oil spill. Such measures are aimed at facilitating the claims handling process following an incident.

31 At its April 2015 session, the 1992 Fund Administrative Council also indicated its support in principle for the development of a guidance document on the management of fisheries closures and restrictions. It considered a draft text which offered guidance on the implications of imposing fisheries restrictions in the event of an oil spill. It was noted that these latest guidelines were intended to assist Member States achieve a degree of preparedness for monitoring contamination in fishery products and managing closures before a spill takes place in their waters. It was also noted that the Guidelines also aim to explain how those measures are imposed and the way they can have an impact on the shipowner's, insurer's and/or the 1992 Fund's assessment of the resulting claims from the fishery

<2> All documents relating to the discussions of the 7th intersessional Working Group are available under the Document Services section of the IOPC Funds' website (www.iopcfunds.org).

sector. The Council encouraged delegations to contact the Secretariat to provide any input in advance of the October 2015 session of the 1992 Fund Assembly, with the view to adopting the revised guidelines at that session.

Website

32 The Secretariat launched the current IOPC Funds' website (www.iopcfunds.org) in English in November 2012 and in French and Spanish in January 2013. The new more informative and interactive site has received very positive feedback from a wide range of users and has seen a significant increase in traffic over the two years. The Document Services section of the website provides online access to all meeting documents and circulars in English, French and Spanish. Areas of the site which have proved particularly popular with users are the regular updates on news and events, the interactive incident and membership maps and the general information provided under the 'About Us' section.

33 Under the Incidents section of the site, users can either view just the recent developments of a specific incident or download and print an entire case study for that incident, which replicates the information contained in the former publication 'Incidents involving the IOPC Funds'.

34 The Secretariat regularly monitors the usage of the site and introduces new features to ensure it continues to be useful and is meeting the needs of its visitors. Most recently a timeline setting out the key events in the history of the IOPC Funds and detailed country profiles have been added to the site.

35 States are invited to submit copies of relevant national legislation to the Secretariat for inclusion in the country profiles. This could be in the form of a link to the relevant pages of a government website or in the form of a PDF. These documents will be made available in their original language, unless the State is in a position to provide them in English, French and/or Spanish.

Outreach activities

36 The Secretariat has continued its efforts to boost the engagement of Member States and encourage the involvement of non-Member States. Since the October 2014 sessions of the governing bodies, the Director and other members of the Secretariat have participated in national or regional seminars or workshops and conferences relating to the international oil pollution compensation regime in Finland, Gabon, Japan, Malta, Malaysia, Morocco, Netherlands, Qatar and Saudi Arabia. On a number of occasions, the issue of implementation of the Conventions and the situation with respect to outstanding oil reports or contributions have been discussed with the appropriate authorities in these countries.

37 The Secretariat has also been working with the European Commission's Directorate-General for Mobility and Transport (DG Move) and Directorate-General for Environment (DG ENV) on the ongoing review of the application of the European Environmental Liability Directive (ELD), ten years after its adoption. A meeting was held in Brussels, following a report provided by the IOPC Funds' Secretariat on amounts paid under the 1992 Civil Liability and Fund Conventions (one of the exceptions to the ELD's scope) for the costs of preventive measures and impairment of the environment following oil pollution incidents from tankers since 2002. The Secretariat also gave a presentation on its experience dealing with claims for environmental damage and restoration measures at the 3rd ELD Stakeholder Workshop in the Management Centre Europe in Brussels in November 2014. The ELD review is due to be completed in 2015.

38 In addition, the IOPC Funds participated in Interspill 2015 which was held in Amsterdam in March 2015. The Funds' had organised two workshops, chaired two sessions, made a presentation on environmental damage and had a stand where information on the compensation regime had been provided to interested persons.

39 The fifth IOPC Funds' Short Course will take place from Monday 15 to Friday 19 June 2015 in London. The course programme will cover all aspects of the work of the IOPC Funds and the international liability and compensation regime in general and will include practical exercises which allow participants to study a theoretical incident and the subsequent claims submission process. The course is supported by IMO, INTERTANKO, ICS, the International Group of P&I Associations and ITOFF. The Short Course takes place annually and is open to a maximum of ten self-funded

participants from 1992 Fund Member States. Further details can be found in Circular: IOPC/2014/Circ.6

40 The Secretariat regularly hosts informal regional lunch meetings for London-based representatives of Member and non-Member States. An informal lunch for the UK-based representatives of States from the Middle East and surrounding regions was held in December 2014 and another for UK-based Intergovernmental Organisations (IGOs) and Non-Governmental Organisations (NGOs) which shared the same interests as the IOPC Funds was held in January 2015. The next regional lunch meeting for Member and non-Member States is expected to take place in early summer 2015 and will focus on European States.

HNS

41 Since the 2010 HNS Protocol was adopted, the 1992 Fund Secretariat has carried out numerous tasks necessary to set up the HNS Fund. Throughout 2014 and into 2015, the Secretariat continued to provide assistance to IMO and States in order to support the Protocol's early entry into force.

42 In May 2014, the Legal Committee of the IMO approved the re-establishment of the HNS Correspondence Group. Chaired by François Marier of Canada, the group advocates for the ratification of the 2010 HNS Protocol through information and experience sharing. The 1992 Fund Secretariat supports this group by administrating its online blogging site, which has been successfully used to publicise a number of workshops and informal meetings during the year, to share reports of those meetings and key papers produced as a result, including most recently a chart for States to update each other with progress towards ratification.

43 The Secretariat has also continued to maintain and improve the website www.hnsconvention.org, which provides easy access to a number of tools and resources for the use of those States considering, or in the process of, ratifying the Protocol. This includes the IMO-approved HNS contributing cargo reporting guidelines and accompanying model reporting forms; the consolidated text of the 2010 HNS Convention, Protocol and reporting guidelines in English, French and Spanish; and the web-based database, the HNS Finder, which provides a complete list of HNS covered by the Convention. The HNS Finder includes a search function which enables users to look up substances and determine whether a substance is contributing cargo that must be reported, and whether it qualifies for compensation under the Convention.

44 The Secretariat took advantage of every opportunity in 2014 to assist States in deepening their understanding of the implementation of the Protocol, including assisting the Italian Government with a workshop on HNS in Rome in October 2014, speaking at the World LPG Forum in London in October 2014 and contributing to and participating in a number of other initiatives to promote awareness of the Protocol and encourage its prompt ratification by States.

45 In April 2015, the Legal Committee decided to extend the mandate of the Correspondence Group until its next session (tentatively scheduled for June 2016) and agreed to add the following three items to its mandate:

- a. The development of a publication "Understanding the HNS Convention";
- b. The development of a series of Powerpoint slides that provide states and industry stakeholders with information on HNS incidents; and
- c. A draft Legal Committee resolution on implementation and entry into force of the 2010 HNS Convention.

46 The Secretariat will continue to support the Correspondence Group in fulfilling its mandate.

Conclusion

47 The Director of the IOPC Funds wishes to highlight in particular the importance for the Mediterranean coastal States Parties to the 1992 CLC and the 1992 Fund Convention to consider whether or not those conventions have been correctly implemented in national law. The 1992 Fund Assembly has repeatedly stated that correct implementation of the 1992 Civil Liability and Fund Conventions is essential for the proper functioning of the international compensation regime

established by these Conventions. Unless the Conventions are implemented correctly into national law, the regime cannot function in a proper, uniform and equitable manner. Significant difficulties can arise as a result at the time of an incident which can lead to delays in compensation being paid.

48 In that regard and in all other aspects relating to ship-source oil pollution damage, the Director is looking forward to further engagement with REMPEC in the future.

Action to be taken

49 **The Meeting is invited to take note** of the information provided as well as to comment as deemed appropriate.

**States Parties to both the
1992 Civil Liability Convention and the
1992 Fund Convention**
as at 6 April 2015
(and therefore Members of the 1992 Fund)

114 States for which 1992 Fund Convention is in force

Albania	Greece	Panama
Algeria	Grenada	Papua New Guinea
Angola	Guinea	Philippines
Antigua and Barbuda	Hungary	Poland
Argentina	Iceland	Portugal
Australia	India	Qatar
Bahamas	Ireland	Republic of Korea
Bahrain	Islamic Republic of Iran	Russian Federation
Barbados	Israel	Saint Kitts and Nevis
Belgium	Italy	Saint Lucia
Belize	Jamaica	Saint Vincent and the Grenadines
Benin	Japan	Samoa
Brunei Darussalam	Kenya	Senegal
Bulgaria	Kiribati	Serbia
Cambodia	Latvia	Seychelles
Cameroon	Liberia	Sierra Leone
Canada	Lithuania	Singapore
Cape Verde	Luxembourg	Slovakia
China ^{<3>}	Madagascar	Slovenia
Colombia	Malaysia	South Africa
Comoros	Maldives	Spain
Congo	Malta	Sri Lanka
Cook Islands	Marshall Islands	Sweden
Côte d'Ivoire	Mauritania	Switzerland
Croatia	Mauritius	Syrian Arab Republic
Cyprus	Mexico	Tonga
Denmark	Monaco	Trinidad and Tobago
Djibouti	Montenegro	Tunisia
Dominica	Morocco	Turkey
Dominican Republic	Mozambique	Tuvalu
Ecuador	Namibia	United Arab Emirates
Estonia	Netherlands	United Kingdom
Fiji	New Zealand	United Republic of Tanzania
Finland	Nicaragua	Uruguay
France	Nigeria	Vanuatu
Gabon	Niue	Venezuela (Bolivarian Republic of)
Georgia	Norway	
Germany	Oman	
Ghana	Palau	

States Parties to the Supplementary Fund Protocol
as at 6 April 2015
(and therefore Members of the Supplementary Fund)

31 States Parties to the Supplementary Fund Protocol

Australia	Greece	Poland
Barbados	Hungary	Portugal
Belgium	Ireland	Republic of Korea
Canada	Italy	Slovakia
Congo	Japan	Slovenia
Croatia	Latvia	Spain
Denmark	Lithuania	Sweden
Estonia	Montenegro	Turkey
Finland	Morocco	United Kingdom
France	Netherlands	
Germany	Norway	
