



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

Twelfth Meeting of the Focal Points of the Regional
Marine Pollution Emergency Response Centre
for the Mediterranean Sea (REMPEC)

REMPEC/WG.41/6/2
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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 the work of the International Oil Pollution Compensation Funds (IOPC Funds) since the last Meeting of the Focal Points of REMPEC held in Malta in June 2015. It seeks to highlight the implications for the Mediterranean coastal States of those recent developments and of the decisions of the IOPC Funds' governing bodies and resulting output of the Organisation during that period.

Actions to be taken: Paragraph 51

Related documents: REMPEC/WG.37/6/2, IOPC/OCT16/11/1, IOPC/APR17/4/4 and IOPC/2017/Circ.2

Introduction

1 This document provides an update on the latest developments in the international liability and compensation regime and sets out recent discussions and decisions of the governing bodies of the International Oil Pollution Compensation Funds (IOPC Funds). Reference is made as to the relevance of the recent developments and of the decisions taken for the Mediterranean coastal States.

Secretariat Matters

2 At its October 2016 session, the 1992 Fund Assembly decided by acclamation to re-appoint the Director, Mr José Maura, to serve as Director of the IOPC Funds for a second term from 1 November 2016 to 31 December 2021. Mr Maura's acceptance statement in which he provided a brief overview of his aims for the organisation during his new term of office, is contained in document IOPC/OCT16/11/1.

3 The offices of the IOPC Funds relocated to the building which houses the International Maritime Organization (IMO) in July 2016. The Secretariat of the IOPC Funds is now based at:

International Oil Pollution Compensation Funds
4 Albert Embankment
London SE1 7SR, United Kingdom

Email and telephone contact details for the Secretariat remain unchanged.

Status of the 1992 Fund Convention and Supplementary Fund Protocol

4 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*

5 The 1992 Fund is currently dealing with 12 incidents. There is currently one incident involving a Mediterranean coastal State, namely the *Alfa I*, which occurred off Elefsis Bay, Piraeus, Greece in 2012.

6 On 5 March 2012, the Greek-registered tanker *Alfa I*, laden with 1 800 tonnes of cargo, hit a submerged object while crossing Elefsis Bay, near Piraeus, Greece and sank in 18–20 metres of water. 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.

7 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 (€5.73 million)^{<1>}. The tanker had an insurance policy limited to €2 million which stated that only non-persistent mineral oils would be covered.

8 Six claims for compensation, together totalling €16.15 million, were submitted by two clean-up contractors to the shipowner. The shipowner also received a claim for clean-up expenses from the Greek authorities for some €222 000.

9 In May 2015, the Piraeus Court of First Instance awarded the first clean-up contractor, the sum of €14.4 million. The 1992 Fund's lawyers were instructed to prepare an appeal once the first instance judgment was formally served.

10 In July 2015, the 1992 Fund met with the first clean-up contractor to further discuss the incident. After lengthy discussions, the first clean-up contractor agreed to a proposal to accept the sum of €12 million in full and final settlement of its claim against the shipowner, insurer and the 1992 Fund. It was understood that the insurer would pay the equivalent of the shipowner's full limit of liability of 4.51 million SDR, as they had indicated their willingness to settle the claim for commercial reasons.

11 At the October 2015 sessions of the IOPC Funds' governing bodies, the 1992 Fund Executive Committee authorised the Director to agree a settlement of €12 million, in full and final settlement of the first clean-up contractor's claim against the shipowner, insurer and the 1992 Fund, on condition that the insurer first paid the equivalent of the limitation amount due (4.51 million SDR or approximately €5.73 million). Subsequently however, the insurer indicated that it was not willing to settle the claim by paying the limitation amount.

12 At the April 2016 sessions of the IOPC Funds' governing bodies, the Executive Committee authorised the Director to settle the main contractor's claim for €12 million and to claim back from the insurer the 1992 CLC limit, noting that it was a pragmatic solution to avoid incurring further costs and interest.

13 In accordance with the decision of the Executive Committee, the 1992 Fund agreed the terms of a settlement agreement with the main contractor, and in October 2016 settled the contractor's claim against the insurer, shipowner and 1992 Fund for €12 million, with the intention to claim back from the insurer the 1992 CLC limit.

14 Shortly after the payment was made to the contractor, the insurer and shipowner filed appeals against the first instance judgment originally rendered in May 2015. The contractor also filed an appeal against the insurer and shipowner, attempting to increase the judgment from the figure awarded in May 2015 (€14.4 million), to the figure originally claimed (€15.8 million). The 1992 Fund's lawyers issued interventions in response to the appeals submitted. Litigation continues before the Greek courts.

<1> Based on the exchange rate of 7 February 2017 of €1 = 0.78709 SDR.

15 The second clean-up contractor also provided further information to enable the 1992 Fund to assess its claim, and agreed to adjourn the Court hearing originally planned for February 2016 in order to allow the 1992 Fund and its experts to discuss the claim in more detail. In February 2017, a revised assessment was prepared for consideration by the second clean-up contractor. The latest information in respect of this incident was reported to the 1992 Fund Executive Committee at its April 2017 session.

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

Interim Payments

17 The procedure for the handling of future incidents which require interim payments was clarified in 2016 following an agreement reached between the International Group of P&I Associations (International Group) and the IOPC Funds. After a number of meetings over the past two years, an agreement was developed together with a template of standard terms and conditions which could apply on a case-by-case basis.

18 The purpose of the Agreement is to enable payments of compensation to be made as promptly as possible, whilst ensuring that the total amount paid is ultimately borne by the Club/shipowner and the IOPC Funds in the proportions envisaged by the 1992 Conventions. The Agreement was signed on 21 December 2016 and is available in document IOPC/APR17/4/4 on the IOPC Funds' website.

STOPIA 2006 and TOPIA 2006

19 The International Group, with the cooperation of the IOPC Funds and the Oil Companies International Marine Forum (OCIMF), carried out a review in 2016 of the Small Tanker Oil Pollution Indemnification Agreement 2006 (STOPIA 2006) and the Tanker Oil Pollution Indemnification Agreement 2006 (TOPIA 2006). The review was based on the experience in the 10-year period from the entry into force of these Agreements.

20 Under STOPIA 2006, the 1992 Fund has legally enforceable rights of indemnification from the shipowner of the difference between the limitation amount applicable to the ship under the 1992 CLC and the total amount of admissible claims up to 20 million SDR. Under TOPIA 2006, the Supplementary Fund is indemnified for 50% of any amounts paid in compensation in respect of incidents involving tankers entered in the Agreement. The results of the review of the Agreements were presented at the sessions and several amendments to be made to the Agreements were reported by the International Group, which were endorsed by the Director. These included points on future reviews and addressing the risk of future sanctions legislation. The revised Agreements, which became effective at noon GMT on 20 February 2017, are available on the IOPC Funds' website.

Agreement with EMSA

21 During 2016, the IOPC Funds' Secretariat, in close cooperation with the International Group and the International Tanker Owners Pollution Federation (ITOPF), held discussions with the European Maritime Safety Agency (EMSA) with the objective of agreeing formulae for the hire rates for the use of EMSA oil spill response vessels, equipment and dispersant (together the 'EMSA Pollution Response Assets') in line with the principles and practices of the Funds and of the International Group.

22 The EMSA Pollution Response Assets currently consist of 17 vessels fully equipped to respond to oil spills, two stockpiles of equipment and four stockpiles of dispersants which are intended to provide a top-up to European Union (EU) Member States' own oil spill response resources. EMSA has made these assets available to EU Member States, Iceland and Norway, non-EU countries sharing a regional sea basin with the EU, and EU membership acceding and candidate countries, as well as to private entities, such as shipowners and operators of oil and gas installations.

23 The agreement does not prejudice the outcome of the assessment of the reasonableness of the use of the EMSA's pollution response assets during a specific spill incident which will have to meet the admissibility criteria as set out in the 1992 Fund's Claims Manual.

24 In early 2017, an agreement in principle was reached between the parties on the terms of a draft Memorandum of Understanding (MoU) containing the proposed formulae. The draft MoU was presented as a proposal for consideration and approval by the IOPC Funds' governing bodies at their April 2017 sessions.

New edition of the 1992 Fund Claims Manual

25 A new edition (the sixth edition) of the 1992 Fund Claims Manual was published by the IOPC Funds during 2016. This latest edition, which is available in English, French and Spanish, incorporates new text regarding compensation for claims for VAT by central governments.

26 The previous policy of the IOPC Funds in respect of claims for compensation of VAT from central governments had been under discussion since 2013. The issue had arisen again in recent years as a result of claims arising from the *Hebei Spirit* incident (Republic of Korea, December 2007) and documents on the subject were presented at the October 2015 sessions of the IOPC Funds' governing bodies. The 1992 Fund Administrative Council and Supplementary Fund Assembly decided in October 2015 that the IOPC Funds may pay compensation for claims for VAT by central governments if a State's national law allowed for the inclusion of VAT in the State's claim for compensation. They also decided that criteria based on the principles of the law of damages should be applied in cases where the national law was not clear. The corresponding text for the new Claims Manual was approved by the 1992 Fund Administrative Council in April 2016.

27 In the light of the ongoing developments and discussions in other areas, there is a possibility that further amendments to the text of the Claims Manual may be required in the near future. For that reason, the sixth edition is not currently available in hard copy and a decision will be taken with regard to the further amendment or printing of the Claims Manual during 2017.

Development of Guidelines for States and claimants

28 The IOPC Funds has continued to focus on preparedness and has developed a number of publications for claimants and Member States in the last two years.

29 The Claims Information Pack was published in 2013 and contains the Claims Manual, sets of guidelines for presenting claims in different sectors and an example Claim Form. A new set of guidelines has now been added to that pack, namely the 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 published in August 2015.

30 A further set of guidelines is under development and has been the subject of discussion at recent sessions of the governing bodies. This latest publication offers guidance for presenting claims for environmental damage. A draft text was presented and subsequently revised during 2016 and a new text will be presented for approval in April 2017. Once approved by the governing bodies, the Secretariat will publish the document as a new addition to the Claims Information Pack.

31 The publication 'Guidance for Member States—Management of fisheries restrictions and closures following an oil spill' has also been developed since the IOPC Funds last reported to the REMPEC Focal Points. It is written specifically to assist governments and their agencies with responsibilities for the management of fisheries resources and safeguarding public health. It sets out the issues that Member States may wish to consider when planning or implementing fisheries closures or restrictions as a result of an oil spill. The text was adopted in April 2016 by the 1992 Fund Administrative Council and the Supplementary Fund Assembly and published in September 2016.

32 A further guidance document was published in October 2016 for Member States' administrations on the definition of 'ship' under Article I(1) of the 1992 CLC. It reflects decisions taken by 1992 Fund Member States in October 2015, following the recommendations of a Working Group established to consider the issue. The resulting document provides a general guide to the definition of 'ship' and may assist in determining whether compensation should, in principle, be paid following an oil spill incident. It includes illustrative lists of vessels falling clearly within or outside the definition as well as a set of examples of when the maritime chain commences and concludes.

Publications in other languages

33 Following two successful regional workshops conducted in cooperation with the Regional Organization for the Conservation of the Environment of the Red Sea and Gulf of Aden (PERSGA) in June 2014 in Egypt and April 2015 in Saudi Arabia, the Secretariat received an invitation in May 2015 from PERSGA, to work more closely together in order to increase awareness and improve knowledge of the international liability and compensation regime in the Arabic speaking countries of the region. Recognising that the Funds' publications are a key tool used to increase such awareness and knowledge elsewhere, PERSGA offered to translate the Text of Conventions, the Claims Manual and the various Guidelines contained in the Claims Information Pack into Arabic.

34 The IOPC Funds' Secretariat assisted PERSGA in checking the translation in cooperation with IMO and editing the Text of Conventions. That publication is now available both in hard copy and electronically via the Funds' website. The Secretariat continues to work with PERSGA to complete this project with the Claims Manual soon to be published and the rest of the publications within the Claims Information Pack to follow in due course.

Website

35 The IOPC Funds' website (www.iopcfunds.org) is the hub for all information pertaining to the Organisations and is available in English, French and Spanish. To coincide with the relocation of the offices of the IOPC Funds, in July 2016 the Funds' website was made available in a new refreshed format, incorporating the new logo and providing a lighter more contemporary look and feel for users, whilst generally maintaining the main navigation, functionality and content of the site. The site is also now fully responsive for mobile devices.

36 The website is divided into five main sections covering the work and structure of the Organisations, compensation and claims management, incidents, the latest news and upcoming events as well as a section containing the publications produced by the Funds, which includes an online archive of all Annual Reports issued since 1978. Additionally, the website incorporates various interactive features, such as a map of incidents involving the IOPC Funds, with case studies and information relating to incidents dating back to the establishment of the 1971 Fund, a map displaying the membership of the IOPC Funds, a downloadable example Claim Form, statistical information and detailed country profiles. 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.

37 In addition, the website provides access to other IOPC Funds' services and websites, including Document Services, which makes available all IOPC Funds' meeting documents dating back to 1978, the Online Reporting System and the HNS Convention website.

38 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.

Outreach activities

39 The Secretariat has continued its efforts to boost the engagement of Member States and encourage the involvement of non-Member States. Since the last meeting of the Focal Points of REMPEC, the Director and other members of the IOPC Funds Secretariat have participated in national or regional seminars or workshops and conferences relating to the international liability and compensation regime for oil pollution in Cabo Verde, Curacao, Egypt, Ghana, India, Japan, New Zealand, Nicaragua, Portugal (EMSA), Singapore, Thailand and Vietnam. 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.

40 In addition, the IOPC Funds participated in the oil spill conferences ADRIASPILLCON 2016 in Croatia, Spillcon 2016 in Australia and Oil Spill India 2016 in Mumbai, India.

41 The Secretariat previously reported having worked with the European Commission's Directorate-General for Mobility and Transport (DG Move) and Directorate-General for Environment (DG ENV) on the review of the application of the European Environmental Liability Directive (ELD), ten years after its adoption. The ELD review was completed in April 2016 and concluded that the

exceptions listed in Annex IV of the ELD (the 1992 CLC, the 1992 Fund Convention, the Bunkers Convention 2001, the HNS Convention and the Dangerous Goods Convention) should remain.

42 The seventh IOPC Funds' Short Course will take place from Monday 26 to Friday 30 June 2017 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, the International Chamber of Shipping (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/2017/Circ.2.

43 The Secretariat organises informal lunch meetings at the IOPC Funds' offices for London-based representatives of Member and non-Member States according to geographical regions. These meetings provide an opportunity for the Secretariat to improve contacts with States and to deal with queries relating to membership, oil reporting and contributions. During 2015 and 2016, lunch meetings were held for States in the regions of Europe, Latin America and the Caribbean, the Middle East, Africa and South Asia. Further events are planned for 2017.

HNS

44 Since the 2010 HNS Protocol was adopted, the 1992 Fund Secretariat has carried out numerous tasks necessary to set up the HNS Fund. Throughout 2016 and into 2017, the Secretariat continued to provide assistance to IMO and States in order to support the Protocol's early entry into force.

45 The HNS Correspondence Group, established by the Legal Committee of IMO in 2014 and chaired by Mr François Marier of Canada, has continued its work, advocating for the ratification of the 2010 HNS Protocol through information and experience sharing. The 1992 Fund Secretariat supports this group by administering its online blogging site and has worked closely with the Chairman and other key stakeholders to produce the planned outputs of the Correspondence Group.

46 The Secretariat also maintains 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 Convention. This website, which is available in English, French and Spanish, includes all the official texts related to that Convention as well as the IMO-approved HNS contributing cargo reporting guidelines with its model reporting forms 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.

47 During 2016 the Secretariat has continued to promote the Convention and to offer assistance and information to both States and contributors alike on the practical aspects of the 2010 HNS Convention. It participated in a workshop hosted in Montreal by Canada in March 2016 which focused on the next steps required by States to bring about the entry into force of the Convention and also delivered presentations on the HNS Convention at a number of conferences in London and abroad.

48 The Secretariat participated in various workshops on the liability and compensation regime for oil spills in 2016, as referred to in paragraphs 39 and 40, which enabled the Secretariat to also deliver presentations on the importance of introducing a similar system for HNS. The Secretariat has also engaged further with the European Institutions in Brussels in 2016 as discussions were held on the adoption of a decision by the Council of the European Union (EU) aimed at authorising and encouraging EU States to ratify the 2010 HNS Convention within a certain deadline.

Conclusion

49 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 and application of the 1992 Civil Liability and Fund Conventions are 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.

50 In that regard and in all other aspects relating to ship-source oil pollution damage, the Director is looking forward to further cooperation with REMPEC in the future. As stated at the High Level Meeting and launch of the Fortieth Anniversary Celebrations of REMPEC held in October 2016, and confirmed in the Director's post-election speech in the same month, the IOPC Funds is committed to finding new ways to reach out and build stronger relationships with each of its 114 Member States. Working together directly with those Member States but also with the assistance of key organisations such as REMPEC, through the creation of further engagement opportunities for relevant authorities and wider information sharing, the IOPC Funds can help States in their preparedness for dealing with claims from any oil spill.

Actions requested by the Meeting

51 **The Meeting is invited to:**

- .1 **take note** of the information provided in this document; and
- .2 **comment** as deemed appropriate.

ANNEX**States Parties to both the
1992 Civil Liability Convention and the
1992 Fund Convention**

as at 4 April 2017

*(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	Iran (Islamic Republic of)	Republic of Korea
Bahrain	Ireland	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
Cabo Verde	Latvia	Seychelles
Cambodia	Liberia	Sierra Leone
Cameroon	Lithuania	Singapore
Canada	Luxembourg	Slovakia
China ^{<2>}	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 4 April 2017
(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	
