

# Liability and Compensation For Ship Source Pollution

## Oil and HNS

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# Oil Pollution Compensation

## General Framework

- 3-tier, shared liability regime
- *Persistent oil from tankers as cargo or bunkers*
- Shipowner's liability supplemented by IOPC Funds
- Contributions paid by receivers of oil

## Scope of Application

- Pollution damage in territorial waters including the Exclusive Economic Zone (EEZ)

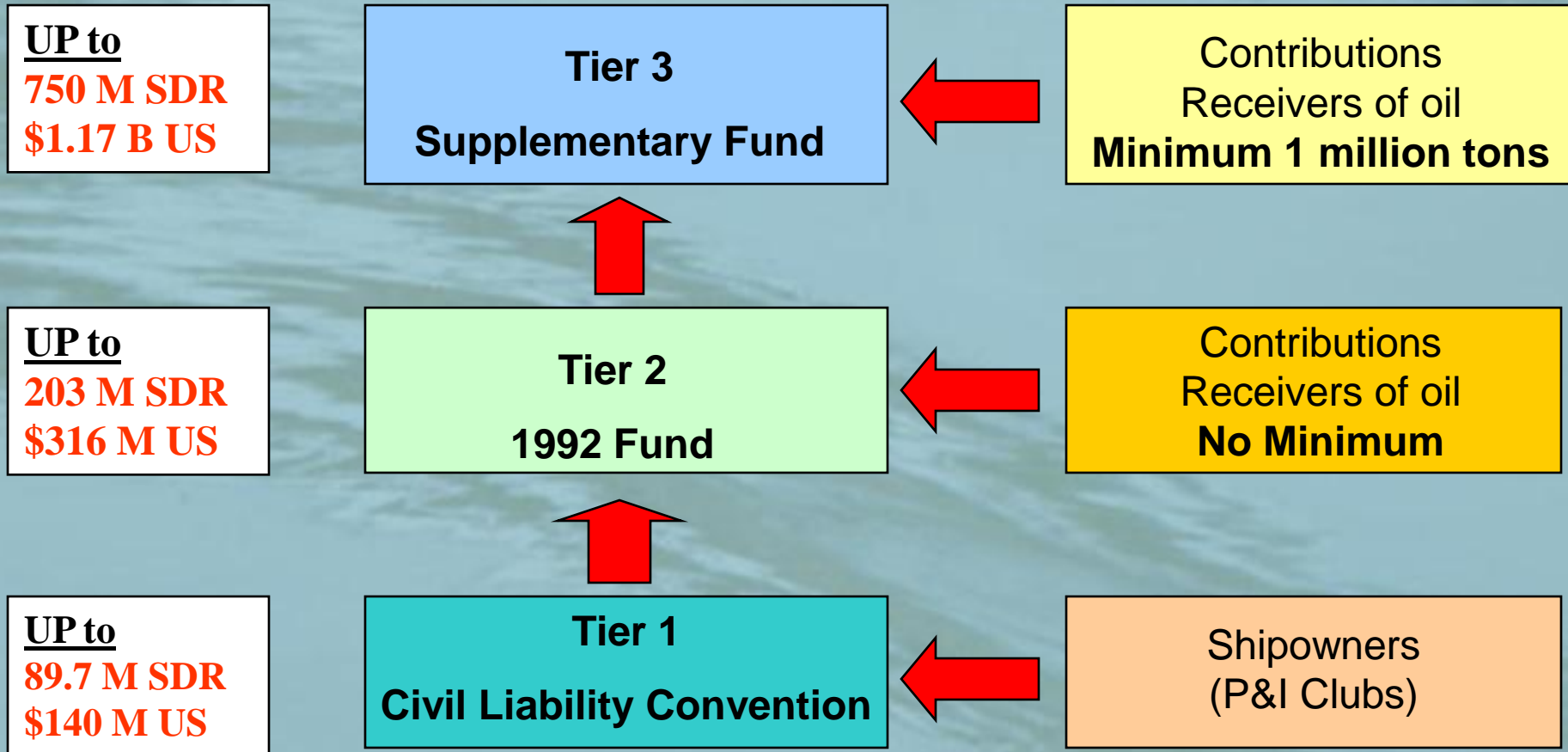
## Shipowner's Liability

- **Strict liability** for pollution damage; only few defences
- Compulsory insurance requirement for tankers carrying more than 2000 tonnes of oil as cargo



# Oil Pollution Compensation

## Who Pays

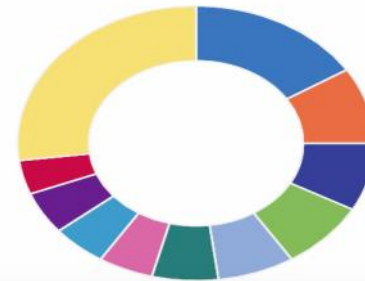
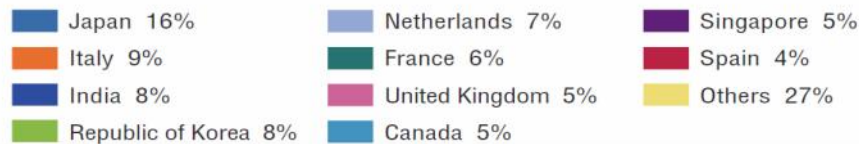


# Contributions

- Anyone who receives more than 150 000 tonnes of oil
- States responsible for reporting oil receipts
- Contributions depend on costs of claims (sharing the burden)

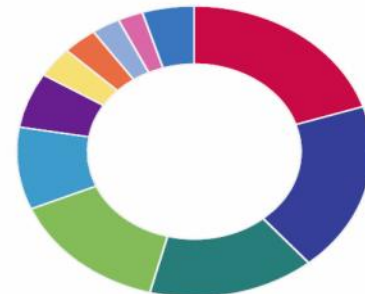
## Contributions to the 1992 Fund by Member State

Figures shown are General Fund contributions for 2008 (based on 2007 oil receipts), the most recent year for which contributions were levied

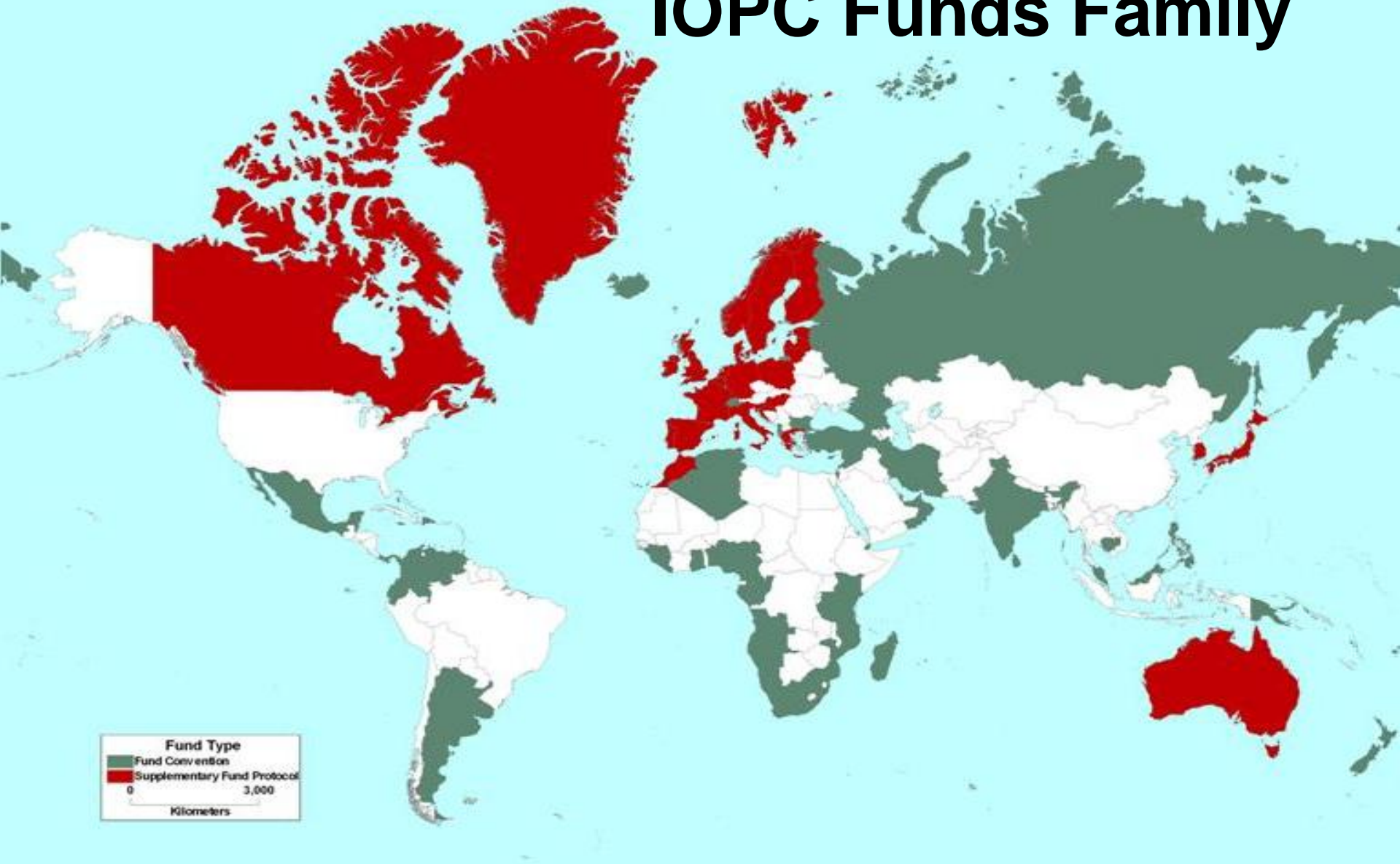


## Contributions to the Supplementary Fund by Member State

Figures shown are General Fund contributions for 2006 (based on 2005 oil receipts), the most recent year for which contributions were levied



# IOPC Funds Family



# *International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea, 1996*

- Liability regime to compensate claimants for damages arising from the carriage of HNS
- Shared Liability regime - Shipowners and Receivers of HNS cargo

## **Development**

1984	Diplomatic Conference failed to agree original HNS Convention
1996	HNS Convention agreed
1996-2007	Work on implementation of Convention (Both in IOPC Funds and IMO LEG)
2007	HNS Focus Group set up to revise Convention
2008	Agreement in IOPC Fund Assembly to submit draft Protocol to IMO LEG
2008-2009	Draft Protocol discussed in IMO LEG
April 2010	Diplomatic Conference



# Hazardous and Noxious Substances

- HNS – any substance that, spilt into the marine environment, is likely to create a hazard to human health or other living resources, to damage amenities or interfere with other legitimate uses of the sea
- HNS spills currently not as frequent as oil spills
- Quantities spilled can be small
  - Chemical tanker: 40,000 m<sup>3</sup> – 150,000 m<sup>3</sup> (many products onboard)
  - Container: 10m<sup>3</sup>
  - ICB: 1m<sup>3</sup>
  - Drum: 200 litres



# HNS Convention

- **What is covered:** By reference to existing codes and agreements adopted by IMO for safe handling and carriage of dangerous goods (Article 1 – 6,500 substances – “evergreen” list)
- **Who:** All sea-going ships carrying HNS to, from, within Contracting State
- **Where:** Territory, territorial sea and exclusive economic zone (EEZ – 200 miles)
- **Damages Covered:** life and personal injury (onboard and outside of ship), as well as property (including evacuation costs) and pollution damage to the environment (including cost of preventative measures)



# Shipowners' Liability

- Tier 1 of the coverage in HNS Convention
- Strict liability
- Compulsory insurance
  - Approved insurers and state certification
  - Direct action by claimants against insurer
- Limits of liability per incident:
  - Bulk HNS: maximum \$100M SDR (\$155M US)
  - Packaged HNS: maximum \$115M SDR (\$180M US)



# HNS Fund

- Tier 2 of the coverage under the HNS Convention
- Modeled on the IOPC Funds
- Pays compensation post-incident when shipowners' liability is insufficient to cover costs of damages
- Contributions to HNS Fund paid by receivers of Bulk HNS in state parties, subject to annual thresholds – includes chemicals, liquefied petroleum gas and liquefied natural gas



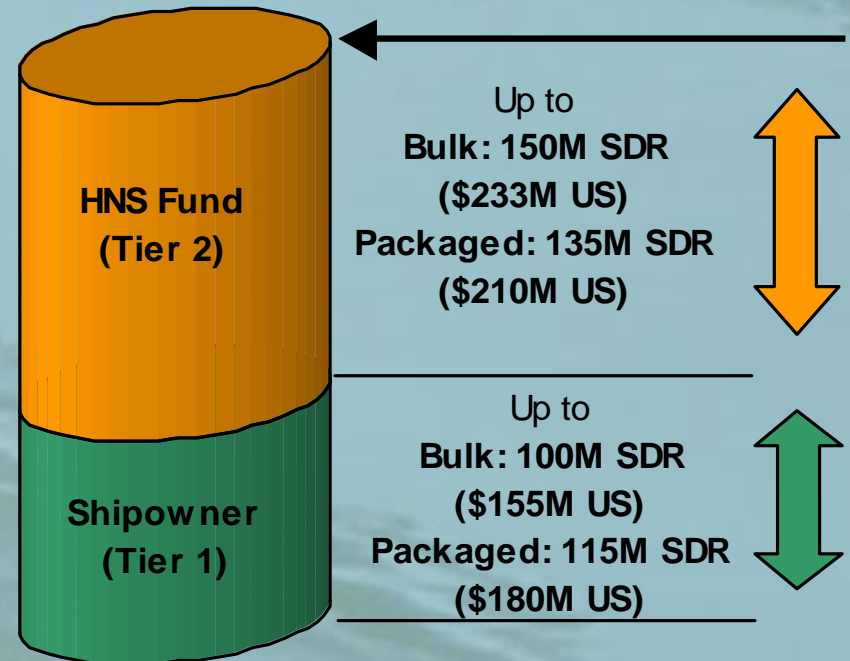
# Compensation limits

## Shipowner

- **ships up to 2000 GT**
  - 10 million SDR (US\$15 million)
- **ships 2000 - 100 000 GT**
  - sliding scale

## HNS Fund

- **maximum of 250 million SDR**  
(US\$390 million)  
(including amount paid by shipowner/insurer)



# What does the Convention not cover?

- Pollution damage caused by persistent oil (already covered by CLC/Fund regime)
- Loss or damage caused by radioactive substances



# Status of 1996 HNS Convention

- Fourteen States have ratified the 1996 Convention (Angola, Cyprus, Ethiopia, Hungary, Liberia, Lithuania, Morocco, the Russian Federation, Saint Kitts and Nevis, Samoa, Sierra Leone, Slovenia, Syrian Arab Republic and Tonga)
- Only 2 of these States (Cyprus and Slovenia) have submitted reports on contributing cargo



# HNS Focus Group

- Set up by 1992 Fund Assembly in October 2007
- Mandate to develop draft Protocol to resolve three main issues:
  - contributions to the LNG Account
  - concept of “receiver”
  - non-submission of contributing cargo reports
- Not a wholesale revision of the HNS Convention



# Concept of “receiver”

- **Issue**: Standard definition of receiver creates administrative burden for reporting packaged goods
- **Proposal**:
  - Packaged goods to be covered for compensation by the HNS Fund but not liable for contributions
  - Increase in shipowner’s limit to balance extra contributions by receivers of bulk goods
- **Packaged HNS is covered, but does not contribute to HNS Fund.**
- **Higher liability limit for shipowner except where only bulk HNS caused the damage.**



# Cargo accounts table

	Establishment of account	Contributions to account/sector
<b>General account</b>	40 million tonnes*	
• Bulk solids		20 000 tonnes
• Other HNS	No minimum quantity	20 000 tonnes
<b>Separate accounts (or Sectors within the general account)</b>		
<b>Oil account</b>	350 million tonnes	
• Persistent oil		150 000 tonnes
• Non-persistent oil		20 000 tonnes
<b>LNG account</b>	20 million tonnes	No minimum quantity
<b>LPG account</b>	15 million tonnes	20 000 tonnes

\*Condition for entry into force

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ГБС account	12 million tonnes	50 000 tonnes
ГНС account	50 million tonnes	No minimum quantity
		50 000 tonnes



# Contributions to the LNG Account

- **Original text**: Person liable for contributions is “person who ..., immediately prior to its discharge, held title to an LNG cargo discharged in a port or terminal of that State”
- **Issue**: person liable for contributions may not be subject to jurisdiction of a Member State and therefore payment of contributions cannot be enforced
- **Proposal**: Change to standard definition of receiver
  
- **Contributor is the (physical) receiver**
- **Titleholder may assume obligations on contractual basis**



# Non-submission of contributing cargo reports

- **Issue**: Only 2 out of 8 States have submitted reports but:
  - a. Non-reporting States would still become Member States if other states would bring the Convention into force; and
  - b. Claimants in those non-reporting States would still be eligible for compensation
- **Proposal**:
  - Suspend compensation temporarily and then permanently to claimants in States which have not submitted reports
  - Exception for claims for death and injury
  - Consider excluding States which have not submitted reports
  - a. Before entry into force: temporary suspension of status of “Contracting State”**
  - b. After entry into force: temporary or permanent denial of compensation**



# Aim of the HNS Convention

**To ensure adequate, prompt and effective compensation for:**

- Loss of life or personal injury
- Loss of or damage to property (outside the ship carrying HNS) and economic losses
- Costs of preventive measures, clean-up and reasonable measures of reinstatement of the environment caused by hazardous and noxious substances (HNS) in connection with their transport by sea



# To achieve this aim:

- HNS Convention open for signature from November 1, 2010 to October 31, 2011
- **Entry into force provisions:**
  - 18 months after ratification by at least 12 States, subject to:
  - 40 million tonnes of contributing cargo (bulk solids and other HNS, not oil, LNG or LPG) received in these States in previous calendar year, and
  - 4 States each having ships with a total tonnage of at least 2 million GT
- Ratification of 2010 -----> Denunciation of 1996



# HNS Protocol, April 2010

## International Level

Open for signature  
1st November 2010  
to 31st October 2011

The HNS Convention will  
come into force 18 months  
following the date when

12 States have ratified  
- Four of which with not less than  
2 million units of gross tonnage  
- The volume of contributing  
cargo for the general account must  
be of at least 40 million tonnes

HNS Protocol enters into force

## National Level

Member State

Develop National Legislation

Regulatory Authorities' Approval

Implementation into National Law



Thank you for your attention!

For further information

[www.iopcfund.org](http://www.iopcfund.org)

