

LEGAL COMMITTEE
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Agenda item 3

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**FACILITATION OF THE ENTRY INTO FORCE AND HARMONIZED INTERPRETATION
OF THE 2010 HNS PROTOCOL**

Report on administrative preparations for the setting up of the HNS Fund

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

SUMMARY

Executive summary: In light of the progress towards the entry into force of the 2010 HNS Protocol, this document provides an update on the work carried out by the 1992 Fund Secretariat with regard to the administrative tasks necessary for the setting up of the HNS Fund and its intentions with regard to the preparations for the first session of the HNS Assembly

Strategic direction, if applicable: 6

Output: 6.12

Action to be taken: Paragraph 11

Related documents: None

Introduction

1 Resolution 1 of the International Conference of 2010 on the revision of the HNS Convention, which adopted the 2010 HNS Protocol, requested the 1992 Fund Assembly to instruct the Director of the IOPC Funds to carry out tasks necessary for the setting up of the HNS Fund and to make preparations for the first session of the HNS Assembly.

2 At its seventh session, held in October 2010, the 1992 Fund Administrative Council instructed the Director to:

- .1 carry out, in addition to the tasks under the 1992 Fund Convention, the administrative tasks necessary for setting up the HNS Fund, in accordance with the provisions of the 2010 HNS Convention, on condition that this does not unduly prejudice the interests of the Parties to the 1992 Fund Convention;
- .2 give all necessary assistance for setting up the HNS Fund; and

- .3 make the necessary preparations for the first session of the Assembly of the HNS Fund, which is to be convened by the Secretary-General of the International Maritime Organization (IMO), in accordance with article 43 of the 2010 HNS Convention.

3 Based on that instruction, the 1992 Fund Secretariat has been regularly reporting on its progress to the 1992 Fund Assembly.

Work carried out so far to facilitate the entry into force of the 2010 HNS Protocol

4 The 1992 Fund Secretariat, working in close cooperation with the IMO Secretariat and other interested stakeholders, has provided States with tools and support to facilitate ratification of, or accession to, the 2010 HNS Protocol, namely:

- .1 the development, maintenance and expansion of the online database of substances that fall within the definition of HNS, including contributing cargo, under the 2010 HNS Protocol (the HNS Finder);
- .2 the development of HNS contributing cargo reporting guidelines to assist States' ratification of, or accession to, the 2010 HNS Protocol. The guidelines contain guidance for domestic implementation of the reporting obligations prior to the entry into force of the HNS Convention, including model reporting forms for providing data on the total quantities of HNS contributing cargo received in a State;
- .3 the publication of a brochure describing the main features of the HNS Convention with its first edition in 2010 followed by an updated version in 2014;
- .4 the development and maintenance of a dedicated website aimed at providing all interested stakeholders with a comprehensive source of information about the HNS Convention;
- .5 the support provided between 2014 and 2017 to the HNS Correspondence Group set up by the IMO Legal Committee at its 101st session, in April 2014; and
- .6 the continued engagement with States considering ratifying or acceding to the Protocol and the industry stakeholders potentially affected by the Convention, via correspondence or through workshops and conferences.

5 At its eighteenth session, held in October 2018, the 1992 Fund Administrative Council noted that four States had become Contracting States to the 2010 HNS Protocol (Canada, Denmark, Norway and Turkey). It was also noted that each of those States had more than 2 million units of gross tonnage, thus already fulfilling one of the three conditions for entry into force of the 2010 HNS Protocol.

6 On the basis of these encouraging developments towards the entry into force of the Protocol, the Administrative Council agreed that the work being undertaken by the 1992 Fund Secretariat to set up the HNS Fund and to make preparations for the first session of the HNS Fund Assembly needed to enter a new phase.

Administrative tasks necessary for setting up the HNS Fund

7 Once the conditions for entry into force laid out in article 21 of the 2010 HNS Protocol are fulfilled, the first Assembly of the HNS Fund will have to take decisions on a number of issues related to the setting up of the HNS Fund. The Secretariat of the 1992 Fund intends to focus its work on the following areas:

- .1 the HNS contributing cargo reporting and contributions system;
- .2 the handling of claims for compensation, including the preparation of a claims manual and a proposed mechanism for cooperation with P&I Clubs;
- .3 financial matters, including the preparation of Financial Regulations, the assessment of annual contributions and the budget;
- .4 operational matters, in particular the preparation of Internal Regulations and a proposal for the appointment of auditors;
- .5 the functioning of the HNS Fund Assembly and subsidiary bodies, including the adoption of Rules of Procedure and the relationship with non-State Parties, intergovernmental and international non-governmental organizations;
- .6 the location of the HNS Fund's Headquarters and the preparation of a Headquarters Agreement; and
- .7 the Secretariat of the HNS Fund, including the preparation of Staff Regulations and Staff Rules.

8 Document IOPC/OCT18/8/2 provides details of the proposed tasks to be conducted for each of the issues listed. Since a number of those tasks relate to the drafting of rules, regulations and guidelines, those documents will need to be discussed among all stakeholders concerned, including IMO as the depositary of the HNS Convention, in order to get a preliminary consensus prior to their formal submission to the first HNS Fund Assembly for approval.

9 In order to build that consensus, the 1992 Fund Administrative Council agreed that the Secretariat should undertake the tasks listed in paragraph 7 above and report on its progress to the 1992 Fund Assembly on a regular basis. It also agreed to the suggestion that once IMO has confirmed that the number of Contracting States to the 2010 HNS Protocol has reached or is about to reach the threshold for entry into force (namely, 12 Contracting States), a group should be established, composed of Contracting States and States in the process of acceding to the HNS Convention as well as other interested parties. That group would look at the work carried out up to that point and guide the rest of the preparatory work through to the first session of the HNS Fund Assembly.

10 Once the work on the listed tasks is underway, the 1992 Fund Secretariat intends to provide a progress report to the Legal Committee at its regular sessions.

Action requested of the Committee

11 The Legal Committee is invited to take note of the information contained in this document and comment as it may deem appropriate.