



International Oil Pollution
Compensation Funds

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2010 HNS CONVENTION

Note by the Secretariat

Summary:

This document provides information about recent outreach and technical assistance activities, developments relating to HNS reporting and contributions, progress made on the drafting of a Claims Manual, as well as various other items related to the preparations for the entry into force of the 2010 HNS Convention.

It also indicates the intention to organise another HNS Workshop to coincide with the next sessions of the IOPC Funds' governing bodies in 2024.

Action to be taken: 1992 Fund Assembly

Information to be noted.

1 Introduction

- 1.1 In April 2010, an International Conference on the revision of the HNS Convention adopted the Protocol of 2010 to the International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea, 1996 (2010 HNS Protocol).
- 1.2 Resolution 1 of the Conference requested the 1992 Fund Assembly to instruct the Director of the 1992 Fund to carry out the tasks necessary to set up the International Hazardous and Noxious Substances Fund (HNS Fund) and make preparations for the first session of the HNS Fund Assembly. To this end, the 1992 Fund Secretariat has undertaken a number of administrative tasks in cooperation with the International Maritime Organization (IMO) and has regularly reported progress at sessions of the 1992 Fund Assembly. More information can be found in document IOPC/MAR22/5/1, which also contains a copy of the document submitted to the 109th session of the IMO Legal Committee by the Secretariats of the IOPC Funds and IMO (document LEG 109/3/1).
- 1.3 This document provides an update on the progress being made towards entry into force of the Protocol as well as the work carried out by the 1992 Fund Secretariat since the last session of the 1992 Fund Assembly.

2 Progress towards entry into force of the 2010 HNS Convention

- 2.1 Since May 2023, there has been no further ratification of or accession to the 2010 HNS Protocol. Therefore, the number of contracting States to the Protocol remains at six: Canada, Denmark, Estonia, Norway, South Africa and Türkiye.

- 2.2 As previously reported, a number of States have been preparing their legislation and have contacted their relevant industry. Some of them have also developed tools to facilitate the submission of HNS reporting documentation. Those States have indicated their intention to become Party to the 2010 HNS Convention within the next one to two years.

3 Outreach activities and technical assistance

- 3.1 The IOPC Funds has continued to take opportunities to promote the entry into force of the 2010 HNS Convention, to engage with interested States and other key stakeholders, and to share information with industry representatives through the delivery of various workshops or other training and outreach activities, often in close cooperation with the IMO Secretariat.
- 3.2 States are encouraged to consider holding online workshops for the purpose of highlighting the value of having the 2010 HNS Convention in force, as well as explaining how to prepare the HNS Contributing Cargo Reports, to a wide audience.
- 3.3 In April 2023, the IOPC Funds participated in a webinar on ‘Ship-Sourced Marine Pollution: Policies and Challenges’ co-organised by a number of non-governmental organisations. The Secretariat delivered a presentation on the IMO Conventions which covered liability and compensation, including the 2010 HNS Convention. The event was attended by various stakeholders such as environmental health advocates, government representatives, academia, students, media and other non-governmental organisations.
- 3.4 As part of its preparation to ratify the 2010 HNS Protocol, Nigeria took part in an online workshop that was delivered in September 2023. The Secretariat delivered a webinar on the 2010 HNS Convention for the Nigerian Maritime Administration and Safety Agency (NIMASA). The webinar was attended by 20 representatives from various departments within the Agency, including a dedicated HNS Unit that is working on preparations for Nigeria to ratify the 2010 HNS Convention. The webinar included a general overview of the Convention, reporting of contributing cargo, and an exercise to identify relevant substances and who would be required to report those substances as a ‘receiver’ of the cargo.
- 3.5 There will also be opportunities for States to request wider training sessions introducing the 2010 HNS Convention and explaining the value of its entry into force. However, that type of support is likely to be organised via the Technical Cooperation Division of IMO, with support from the IOPC Funds when required.

4 HNS reporting and contributions

4.1 Updating of the HNS Finder

- 4.1.1 The HNS Finder is an online database that allows users to search the list of all HNS as defined by the 2010 HNS Convention. It provides information on HNS classification criteria and verifies whether a substance qualifies as contributing cargo. Users can also obtain information on which accounts the contributing substances belong to. It has been in operation since 2011 and has been updated annually by the 1992 Fund Secretariat.
- 4.1.2 The most recent update of the list (version 13, data for 2022 reports) was completed on 1 August 2023. This latest version has undergone a thorough review, both in terms of its content and its search functionality, resulting in the introduction of several updates and improvements and is available at www.hnsconvention.org.
- 4.1.3 The annual deadline for States to submit their reports to IMO is 31 May, as indicated in Article 45.6 of the 2010 HNS Convention.

4.2 Improvements to HNS reporting guidelines

- 4.2.1 Ensuring correct HNS reporting is a major issue for existing and future contracting States. The 1992 Fund Secretariat continues to engage with contracting States to develop a set of guidelines and support for HNS reporting and contributions as a priority.
- 4.2.2 A workshop aimed at assisting States in their work towards ratification of the 2010 HNS Protocol, with particular emphasis on preparing implementing legislation and HNS cargo reporting, took place at the IMO Headquarters in London on 3 and 4 April 2023. The event was organised by Canada in cooperation with IMO and the IOPC Funds and was attended by over 200 representatives from States and industry who participated in the event either in person or remotely (see document IOPC/MAY23/5/1/2).
- 4.2.3 The definition of the 'Receiver' was an issue raised by participants throughout the two days of discussion. Under Article 1.4(a) of the Convention, the 'Receiver' is usually the person who physically receives HNS contributing cargo, or a third party designated by the person who physically receives it on behalf of that third party, for example a storage company acting as an agent. However, Article 1.4(b) allows States to establish their own definition of a 'Receiver' through domestic legislation.
- 4.2.4 The Secretariat indicated that aspects of Article 1.4(a) were causing difficulties and it was suggested that using the definition of 'Receiver' under the Article 1.4(b) provision would simplify the reporting process as States can rely on the physical receiver only, and not use the Agent/Principal option within Article 1.4(a). This would mean that States put the obligation of reporting and contributing solely on the Physical Receivers, in the same way as they do for the purpose of managing oil reporting and contributions for the IOPC Funds. This would significantly simplify the management of reporting and contributions for States and for the HNS Fund.
- 4.2.5 A number of States indicated that they were open to discussion on solutions to the definition of 'Receiver' and other changes to the current HNS Contributing Cargo Reporting Guidelines, but that time and further detailed discussions were first necessary.
- 4.2.6 It was also stated at the workshop that an important focus was to develop an efficient and jointly approved system for reporting HNS contributing cargo. It was considered as essential to facilitate the entry into force of the Convention, as well as the effective functioning of the HNS Fund once established.
- 4.2.7 The Secretariat will continue to spend time engaging with motivated States and the industry in order to make further progress on an improved set of guidelines that will clearly describe who is the 'Receiver', the 'Principal' and the 'Agent', and facilitate the reporting process.
- 4.2.8 The Director intends to organise another workshop just after the April 2024 sessions of the IOPC Funds governing bodies. This workshop will be exclusively focused on the finalisation of the required improvements to the HNS Reporting Guidelines.

4.3 Online HNS reporting and financial management system

- 4.3.1 The task of developing and implementing an online HNS reporting and financial management system is obviously complex and requires considerable exploration and discussion internally and externally before significant progress can be made.
- 4.3.2 The main option being explored is the development of an in-house reporting and financial structure, similar to the one developed recently for oil reporting (ORS) under the IOPC Funds. As a consequence, the work to be done for HNS will provide benefits for the development of the current ORS, including the movement towards a paperless system and the removal of electronic signatures.

- 4.3.3 During 2024, work will begin to develop a set of requirements for an online reporting system enabling HNS Fund Member States to report receipt of contributing substances by parties in their State. It has been estimated that £50 000 will be needed in 2024 for consultancy services to develop a project scope and set of project requirements.

5 Development of a draft HNS Convention Claims Manual

- 5.1 As regularly indicated, the Secretariat has been working with a number of relevant organisations, namely IMO, Cedre, the International Chamber of Shipping (ICS), the International Group of P&I Associations (International Group) and ITOPF, to develop a draft HNS Convention Claims Manual.
- 5.2 The group has met on several occasions and is in the process of finalising a draft text of the Claims Manual. Further discussions will take place at the end of the year to agree on the next steps. Once complete, it will be circulated for comments among contracting States to the 2010 HNS Convention and will become an additional HNS Convention tool to be presented for adoption by the Member States during the first meeting of the HNS Fund Assembly after entry into force.

6 HNS Convention website

- 6.1 The IOPC Funds Secretariat continues to update and maintain the website www.hnsconvention.org which is an important tool for accessing information related to the 2010 HNS Convention and its progress towards entry into force. The Secretariat has been maintaining the current version of the site since 2011, ensuring that its infrastructure and content remain fit for purpose.
- 6.2 Given the increased interest in the 2010 HNS Convention and the need for additional tools and information, the intention is to introduce new features corresponding to some of the important developments ahead, including:
- (i) a Q&A system to record and share the questions and answers provided to interested parties;
 - (ii) information documents to better understand the content of the HNS Finder and demonstrate how it is maintained;
 - (iii) an HNS reporting system to complete the existing HNS Finder;
 - (iv) access to the websites and data of other organisations that have useful information on the subject (IMO, Cedre, ITOPF, CEFIC among others); and
 - (v) information in relation to the types of HNS transported in large quantities, those that are lost the most, etc..

7 Preparation of documentation for the first meeting of the HNS Fund Assembly

7.1 Looking ahead – Rules of Procedure for the HNS Fund Assembly

On the assumption that the HNS Fund will have a joint Secretariat with the IOPC Funds, the Rules of Procedure of the HNS Fund Assembly and any subsidiary bodies should be similar to those of the IOPC Funds' governing bodies where possible. The IOPC Funds' Secretariat will prepare draft Rules of Procedure for the consideration of the HNS Fund Assembly at its first session.

7.2 Internal and Financial Regulations of the HNS Fund

- 7.2.1 Under Article 26(c) of the 2010 HNS Convention, the HNS Fund Assembly shall develop, apply and keep under review Internal and Financial Regulations related to the aim and related tasks of the HNS Fund.

- 7.2.2 The Internal Regulations will govern the internal operational rules of the HNS Fund mainly with respect to contributions; reports of contributing cargo; claims and claims settlement; intervention in legal proceedings and delegation of authority; and compensation for claims from incidents. The IOPC Funds Secretariat will prepare draft Internal and Financial Regulations for the consideration of the HNS Fund Assembly at its first session.

8 Financing of work to be undertaken in 2023

- 8.1 An appropriation of £135 000 was approved for 2023 to cover a larger number of activities and additional administrative tasks in respect of these activities (document IOPC/OCT22/9/1/1, paragraph 8.3.4). Some of those activities will be delayed until 2024, so the full appropriation for 2023 will not be required.
- 8.2 Given the extensive list of activities to be conducted, some costs will be incurred in 2024 relating to the work of the IOPC Funds Secretariat (staff costs and management fees), as well as development costs.
- 8.3 An appropriation of £424 000 has been included in the 2024 budget for the 1992 Fund (document IOPC/NOV23/9/1/1, paragraph 8.3.4) to cover the costs for the preparations and other administrative tasks in respect of the HNS Fund.
- 8.4 More details on the HNS development budget can be found in document IOPC/NOV23/8/2/1, in which the Director proposes that the HNS Fund should pay a flat management fee to the 1992 Fund, as well as the cost of the new post of HNS Project Officer, in order to cover the costs in respect of the preparation for the entry into force of the 2010 HNS Convention. The management fee will be based on the model used to calculate the fee paid by the Supplementary Fund to the 1992 Fund.
- 8.5 All costs incurred by the 1992 Fund for the setting up of the HNS Fund will be reimbursed by the HNS Fund with interest. Further information on the history of the monies incurred by the 1992 Fund related to the 2010 HNS Convention up to November 2023 is set out in document IOPC/NOV23/8/2/1, paragraphs 1.2–1.4.

9 Action to be taken

1992 Fund Assembly

The 1992 Fund Assembly is invited to take note of the information contained in this document.
