



International Oil Pollution  
Compensation Funds

<b>Agenda Item 3</b>	IOPC/OCT17/3/13	
<b>Date</b>	2 October 2017	
<b>Original</b>	English	
<b>1992 Fund Assembly</b>	92A22	
<b>1992 Fund Executive Committee</b>	92EC69	●
<b>Supplementary Fund Assembly</b>	SA14	

## INCIDENTS INVOLVING THE IOPC FUNDS – 1992 FUND

### TRIDENT STAR

#### Note by the Secretariat

<b>Objective of document:</b>	To report on new developments regarding the <i>Trident Star</i> incident.
<b>Summary:</b>	<p>On 24 August 2016, the tanker <i>Trident Star</i>, of 3 177 GT, spilled an unconfirmed quantity of marine fuel oil in the ATB oil Terminal (ATB Terminal), Port of Tanjung Pelepas, Johor, Malaysia, during loading operations. The incident appears to have resulted from the overfilling of the vessel's no. 5 port side cargo tank.</p> <p>Approximately 3.5 kilometres of an adjacent container terminal wharf belonging to the Port of Tanjung Pelepas (PTP Terminal) was oiled. Several cargo vessels and tugs were oiled following the incident. Some of the container terminal's berths were closed for around three weeks. The PTP Terminal activated their oil spill response service provider to undertake clean-up operations.</p> <p>Claims for pollution damage may surpass the 1992 Civil Liability Convention (1992 CLC) limit applicable to the <i>Trident Star</i>. It is possible, therefore, that the 1992 Fund might be required to pay compensation in respect of this incident.</p> <p>The ship is insured with the Shipowners' Mutual Protection and Indemnity Association (Luxembourg) (Shipowners' Club), which is part of the International Group of P&amp;I Associations (International Group). The <i>Trident Star</i> was entered as a 'relevant ship' within the definition of the Small Tanker Oil Pollution Indemnification Agreement (STOPIA 2006) and STOPIA 2006 will therefore apply to this case.</p> <p>Following the signature in December 2016 of the Agreement on Standard Terms Relating to Interim Payments (2016) between the International Group and the 1992 Fund, the 1992 Fund Executive Committee, at its April 2017 meeting, authorised the Director to sign an agreement with the Shipowner's Club in respect of the <i>Trident Star</i> incident.</p>
<b>Recent developments:</b>	<p>The Agreement on interim payments between the Shipowner's Club and the 1992 Fund, applicable to the <i>Trident Star</i> incident, was signed in late September 2017.</p> <p>Actions by 21 claimants have been filed in the limitation proceedings regarding the <i>Trident Star</i>. Given the possibility that the 1992 Fund will have to make compensation payments in this case, the 1992 Fund will intervene in the limitation proceedings, in order to protect the Fund's rights.</p>

**Relevant documents:** The [online Trident Star incident](#) report can be found via the Incidents section of the IOPC Funds' website.

**Action to be taken:** 1992 Fund Executive Committee

Information to be noted.

## 1 Summary of incident

Ship	<i>Trident Star</i>
Date of incident	24/08/2016
Place of incident	Malaysia
Cause of incident	Overflow
Quantity of oil spilled	Unconfirmed
Flag State of ship	Malaysia
Gross tonnage	3 177 GT
P&I insurer	The Shipowners' Mutual Protection and Indemnity Association (Luxembourg) (Shipowners' Club)
CLC Limit	SDR 4.51 million (US\$ 6.3 million) <sup>&lt;1&gt;</sup>
STOPIA applicable	STOPIA 2006 limit of SDR 20 million (US\$ 27.8 million)
CLC + Fund limit	SDR 203 million (US\$ 282 million)
Claims situation	Five claims have been received for a total of US\$ 12.6 million. Two claims have been assessed at US\$ 2.4 million and this amount has been paid by the Club, with the approval of the Fund.
Legal proceedings	Actions by 21 claimants have been filed in the limitation proceedings. The 1992 Fund is intervening in the limitation proceedings, in order to protect the Fund's rights.

## 2 Background information

- 2.1 The background information to this incident is summarised above. Further background information, including an analysis of the claims submitted, is provided in more detail in the [online Trident Star incident report](#).
- 2.2 On 24 August 2016, the tanker *Trident Star*, of 3 177 GT, spilled an unconfirmed quantity of marine fuel oil in the ATB oil Terminal (ATB Terminal), Port of Tanjung Pelepas, during loading operations. The port is situated on the estuary of the Pulai River in Johor, Malaysia.
- 2.3 The incident appears to have resulted from the overfilling of the vessel's no. 5 port side cargo tank. It appears that cargo tanks 2P and 2S were in this instance the only nominated tanks to receive the marine fuel oil (500 CST RMK). There is a tank suction valve between tanks no. 2P and 2S which allows loading into both tanks concurrently. Along the cargo manifold, there is a crossover valve between tank no. 2 (P and S) and 5 (P and S). If the same cargo is to be loaded into all four tanks, this valve will be opened to allow concurrent loading. This crossover valve was not closed by the crew prior to loading, therefore the cargo was also loaded into the non-nominated tank 5P, which was already part-loaded, leading to the overflow onto the deck of the vessel and overboard.

<sup><1></sup> The currency exchange rates at 11 August 2017 were as follows: 1 US\$ = SDR 0.7197 / RM 4.2985

### **3 Impact**

- 3.1 The affected area's commercial activity depends largely on a petroleum product terminal on the western bank of the ATB Terminal and a container terminal on the river's eastern bank (PTP Terminal).
- 3.2 Approximately 3.5 kilometres of the container terminal wharf was oiled. Sections under the wharf were the most heavily oiled, with bulk oil found in the rocky revetments at the rear of the wharf structure. Several cargo vessels and tugs were oiled following the incident. Some of the container terminal's berths were closed for around three weeks.
- 3.3 A shipping company has suggested that it had suffered losses as a result of having to deviate some of its ships to the Republic of Singapore as a result of the spill.
- 3.4 The Malaysian Port of Tanjung Pelepas is very close to Singapore. However, there are no reports of the oil affecting Singapore.

### **4 Response operations**

- 4.1 Overall responsibility for oil spill response in Malaysia rests with the Department of Environment, with the major operating role falling to the Marine Department of the Ministry of Transport. In small spills such as this, a local contingency plan (Tier 1) is activated and clean-up operations are managed by the authorities of the relevant port, terminal or depot. In this case, the port operator activated their oil spill response service provider.
- 4.2 During the initial response, operations focused on under-wharf containment and recovery of oil. Later, due to the oil's tendency to weather rapidly, resources were reallocated to focus on wharf-side ship cleaning and tug-assisted under-wharf flushing. The first phase of the clean-up operations has been completed.
- 4.3 The second phase of the clean-up operations, which commenced in January 2017 and finished in April 2017, concentrated on the clean-up of the front side of the under-wharf structures.

### **5 Applicability of the Conventions**

- 5.1 Malaysia is party to the 1992 Civil Liability Convention (1992 CLC) and the 1992 Fund Convention. The claims for pollution damage may surpass the 1992 CLC limit applicable to the *Trident Star*. It is therefore possible that the 1992 Fund might be required to pay compensation in respect of this incident.

#### *Details of the insurance and STOPIA 2006*

- 5.2 The ship is insured with The Shipowners' Mutual Protection and Indemnity Association (Luxembourg) (Shipowners' Club), which is part of the International Group of P&I Associations (International Group). The limitation amount applicable to the *Trident Star* in accordance with the 1992 CLC is SDR 4.51 million, but the owner of the *Trident Star* is a party to the Small Tanker Oil Pollution Indemnification Agreement 2006 (STOPIA 2006) whereby the tanker owner agrees to pay, on a voluntary basis, up to SDR 20 million. The 1992 Fund, however, will continue to be liable to compensate claimants if, and to the extent that, the total amount of admissible claims exceeds the limitation amount applicable to the *Trident Star* under the 1992 CLC. 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 tanker under the 1992 CLC and the total amount of admissible claims up to SDR 20 million.

## 6 Investigation into the cause of the incident

It is understood that the Malaysian Department of Environment is conducting an investigation on the circumstances of the incident. It appears that no conclusion has been reached so far.

## 7 Claims for compensation

- 7.1 A claim totalling some US\$ 2.9 million has been received from a clean-up contractor for costs incurred in the clean-up operations carried out in the container terminal, including cleaning of the hulls of some vessels that were in the affected terminal. The claim has been provisionally assessed by the experts engaged by the Club and the Fund at the amount of US\$ 1.4 million and, with the 1992 Fund's approval, the assessed amount has been paid by the Shipowners' Club.
- 7.2 A second claim totalling some US\$ 953 000 has been submitted by the same clean-up contractor for costs incurred during the second phase of the clean-up operations, consisting of clean-up of the front rows of the under-wharf structures that had been affected by the oil spill. The claim, with the 1992 Fund's approval, has been settled for the claimed amount.
- 7.3 The operator of the affected terminal has submitted a claim totalling RM 31.9 million (US\$ 7.4 million) for losses suffered as a result of the temporary closure of the terminal.
- 7.4 Two shipping companies have submitted claims for costs of hull clean up, totalling US\$ 1 269 408.
- 7.5 Another shipping company has suggested that it had suffered losses as a result of having to deviate some of its ships to Singapore as a result of the spill. However, no such claim has been received so far.
- 7.6 The experts engaged by the Club and the Fund are assessing the outstanding claims. The following table provides a summary of the claims received so far:

<b>Claimants</b>	<b>Claimed amount (US\$)</b>	<b>Claimed amount (RM)</b>	<b>Amount paid by the Club and approved by the 1992 Fund (US\$)</b>
Clean up contractor (two claims)	3 883 344		2 401 640
Container terminal operator		31 862 212	
Shipping companies (two)	1 269 408		
<b>TOTALS</b>	<b>US\$ 5 152 7512</b>	<b>RM 31 862 212 (US\$ 7 412 402)</b>	<b>US\$ 2 401 640</b>

## 8 Interim payments

- 8.1 Following the signature in December 2016 of the Agreement on Standard Terms relating to Interim Payments (2016) between the International Group and the 1992 Fund, the Director was authorised in April 2016 to sign an agreement on interim payments with the Shipowners' Club in respect of the *Trident Star* incident.
- 8.2 The agreement on interim payments between the Shipowner's Club and the 1992 Fund, applicable to the *Trident Star* incident, was signed in late September 2017.

**9**      **Limitation proceedings**

- 9.1      The shipowner applied to the High Court of Malaya in Kuala Lumpur (Malaysia) for commencement of limitation proceedings. The limitation decree was granted in February 2017.
- 9.2      The 1992 Fund has appointed a Malaysian lawyer to follow the proceedings.
- 9.3      Actions by 21 claimants have been filed in the limitation proceedings. Given the possibility that the 1992 Fund will have to make compensation payments in this case, the 1992 Fund has applied for leave to intervene in the limitation proceedings, in order to protect the Fund's rights. The Fund's application has been accepted by the Court.

**10**     **Director's considerations**

- 10.1     Claims for pollution damage arising from this incident will surpass the 1992 CLC limit applicable to the *Trident Star*. Although STOPIA 2006 applies to this incident it is not likely that the STOPIA 2006 limit will be reached. The 1992 Fund will be liable to pay compensation once the 1992 CLC limit is reached, albeit all payments will be later recovered from the shipowner's insurer under STOPIA 2006.
- 10.2     The 1992 Fund will intervene in the limitation proceedings, in order to protect the Funds' rights.
- 10.3     The Secretariat will continue to monitor this incident closely.

**11**     **Action to be taken**

1992 Fund Executive Committee

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

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