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International Oil Pollution Compensation Funds

Agenda Item 3	IOPC/NOV24/**3**/**5**	
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INCIDENTS INVOLVING THE IOPC FUNDS — 1992 FUND

HAEKUP PACIFIC

Note by the Secretariat

Objective of document:	To inform the 1992 Fund Executive Committee of developments regarding this incident.
Summary:	In April 2013, the Secretariat was informed of an incident which took place in April 2010 in the Republic of Korea. The *Haekup Pacific*, an asphalt carrier of 1 087 GT, was involved in a collision with the *Zheng Hang*. The *Haekup Pacific* was heavily damaged on its aft port quarter as a consequence of the collision on 20 April 2010 and subsequently sank in waters approximately 90 metres deep on 21 April 2010 off Yeosu, Republic of Korea. The *Haekup Pacific* was laden with 1 135 metric tons of asphalt cargo together with bunkers comprising 23.37 metric tons of intermediate fuel oil (IFO) and 13 metric tons of marine diesel oil (MDO). The *Haekup Pacific* was entered as a 'relevant ship' within the definition of the Small Tanker Oil Pollution Indemnification Agreement (STOPIA) 2006 and, therefore, STOPIA 2006 applies, increasing the shipowner's limit to SDR 20 million (USD 26.3 million)[<1>]. Shortly after sinking, a small spill of some 200 litres of oil occurred resulting in some minor pollution. The *Haekup Pacific*'s insurer (UK P&I Club) paid some USD 136 000 for the costs of clean-up and preventive measures. In early May 2010, the City of Yeosu and Marine Police issued removal orders to the shipowner, requesting it to remove the wreck with the asphalt cargo and the remaining bunkers on board. In April 2013, the shipowner/insurer issued legal proceedings against the 1992 Fund in the Seoul Central District Court, before the expiry of the three-year anniversary of the date when the damage occurred in order to protect their rights in respect of any future liability for costs of the removal. Subsequently, the UK P&I Club and the 1992 Fund settled the terms of an agreement on the facts, stating that since the costs of the potential claim for the removal operation had not been incurred by the shipowner/insurer as the removal operation had not yet taken place, the damage in respect of the removal operation claim had not yet occurred for the purposes of Article 6 of the 1992 Fund Convention. The legal proceedings

[<1>] The exchange rate used in this document as at 30 June 2024 is SDR 1 = USD 1.315340.

commenced by the shipowner/insurer against the 1992 Fund were withdrawn in June 2013.

In November 2015, the shipowner instructed surveyors to conduct an environmental assessment so as to submit a report to the City of Yeosu and Marine Police. The report concluded that the sunken vessel with the asphalt cargo on board did not pose an environmental hazard and it was safe to leave the wreck with the asphalt cargo lying in its present position and condition.

On 19 April 2016, the shipowner and insurer filed a claim against the 1992 Fund for USD 46.9 million plus interest. The claim was amended in December 2016 to USD 53.27 million to reflect a revised estimate of the costs that would be incurred to remove the asphalt cargo, bunkers and wreck, and served the 1992 Fund through diplomatic channels. The claim was subsequently amended to USD 25.13 million (taking into consideration the STOPIA 2006 limit). The 1992 Fund was not served with the amended claim form for USD 25.13 million.

In April 2017, following an agreement reached between the UK P&I Club and the 1992 Fund, the Court agreed to stay the proceedings until further notice.

In September 2019, the City of Yeosu urged the shipowner/insurer to implement the wreck and oil removal orders by 10 February 2020, and to submit a document to the City and the Korean Coast Guard by the same date, containing information regarding the current situation on the ship and the shipowner/insurer's plans for: the removal of oil residue and the cargo; the wreck removal; and the prevention of oil pollution that might occur during the removal operation.

The shipowner hired a salvage company to examine the wreck's condition. In June 2020, the salvage company conducted a remotely operated vehicle survey of the wreck and provided its results to a firm of naval architects and marine engineers retained by the *Haekup Pacific's* P&I Club, to prepare a report. The report recommended that the *Haekup Pacific* be left undisturbed, but the City of Yeosu and Marine Police instructed the shipowner to remove the bunker fuels from the wreck since, in their view, the possibility could not be ruled out that there were bunker fuels remaining in the wreck.

The bunker fuel oil removal operation was completed in December 2021 at a cost of approximately USD 10 million.

In the legal proceedings between the shipowner/insurer of the *Haekup Pacific* and the shipowner/insurer of the *Zheng Hang*, the appeal by the shipowner/insurer of the *Zheng Hang* against the shipowner/insurer of the *Haekup Pacific* was heard by the Supreme Court. Matters were delayed by the outbreak of the COVID-19 virus, but the Supreme Court referred the case back to the appellate court (the Seoul High Court) so that it could reconsider the question concerning whether the vessel's removal was necessary and whether the administrative orders to salvage and remove the vessel should be revoked.

The City of Yeosu appointed a panel of experts, which has itself appointed a university professor to advise it whether the wreck removal order should be revoked.

In January 2024, the Seoul High Court rendered a judgment in respect of the claim by the owners of the *Haekup Pacific* against the colliding vessel. The judgment denied the claimed costs of the wreck removal of the *Haekup Pacific,* such costs having not been

	incurred at that time. Given the financial situation of the owners of the *Zheng Hang* (the colliding vessel), the owners of the *Haekup Pacific* did not consider it worthwhile to attempt to pursue the owners of the *Zheng Hang* for any contribution to the oil removal expenses or legal costs.
Recent developments:	Following the judgment, on 31 January 2024, the City of Yeosu officially lifted the wreck removal order and subsequently, the owners of the *Haekup Pacific* withdrew their lawsuit and claims against the 1992 Fund, the effect of which was to render the lawsuit non-existent, as if it had never existed. As the time bar for commencing claims has expired, all claims against the 1992 Fund have been extinguished. All the outstanding claims have been withdrawn and this incident can now be considered closed.
Relevant documents:	The online *Haekup Pacific* 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	*Haekup Pacific*
Date of incident	20.04.2010
Place of incident	Yeosu, Republic of Korea
Cause of incident	Collision and subsequent sinking
Quantity of oil spilled	Estimated to be approximately 200 litres (one barrel)
Area affected	No immediate impact on coastline
Flag State of ship	Republic of Korea
Gross tonnage	1 087 GT
P&I insurer	UK P&I Club
CLC limit	SDR 4.51 million (USD 5.9 million)
STOPIA/TOPIA applicable	Yes – STOPIA 2006 limit of SDR 20 million (USD 26.3 million)
CLC + Fund limit	SDR 203 million (USD 267 million)
Compensation paid	None paid to date by the 1992 Fund. USD 136 000 paid in respect of clean-up and preventive measures, and USD 10 million paid by the UK P&I Club, in respect of oil removal operations from the wreck.

2 Background information

The background information to this incident is summarised above. Further details on the background information and claims submitted are provided in the online *Haekup Pacific* incident report.

3 Applicability of the Conventions

3.1 At the time of the incident, the Republic of Korea was a Party to the 1992 Civil Liability Convention (1992 CLC) and the 1992 Fund Convention. The limit of liability of the shipowner is estimated to be SDR 4.51 million. The *Haekup Pacific* was also entered as a 'relevant ship' within the definition of the Small Tanker Oil Pollution Indemnification Agreement (STOPIA) 2006.

3.2 Under the terms of STOPIA 2006, the 1992 Fund has legally enforceable rights of indemnification from the shipowner for the difference between the limitation amount applicable to the tanker under the 1992 CLC (SDR 4.51 million) and the total amount of admissible claims, or SDR 20 million, whichever is less.

4 Claims for compensation

As at 25 July 2024, all claims against the 1992 Fund have been withdrawn and are now time-barred. Details of the claims previously submitted against the 1992 Fund, may be found in document IOPC/NOV23/3/5.

5 Limitation proceedings

No limitation proceedings have been commenced.

6 Civil proceedings

6.1 Details of the civil proceedings may be found in document IOPC/NOV23/3/5.

6.2 Subsequent to the publication of document IOPC/NOV23/3/5, in January 2024 the Seoul High Court rendered its judgment, in which it denied the claim for the costs of the wreck removal of the *Haekup Pacific* as ordered by the City of Yeosu as a 'loss' as claimed by the owners, stating that it had not been incurred, because (1) the wreck was situated 90 metres below the surface and buried in the seabed; (2) the City of Yeosu did not impose any sanctions on the owners for not proceeding with the wreck removal, other than insisting upon the wreck removal order itself; (3) it was understood that the City of Yeosu did not take any actions against the shipowner, since it was aware of the technical difficulty, the risks, and the high costs associated with the wreck removal order; and (4) it recognised that the wreck removal order might have been lifted subsequently.

6.3 Given the financial situation of the owners of the *Zheng Hang* (they had been declared bankrupt), the owners of the *Haekup Pacific* did not pursue any recovery action for any costs they had incurred, which in any event fell below STOPIA 2006. The 1992 Fund was not required to pay any compensation for this incident.

7 Recent developments

7.1 Subsequent to the judgment, on 31 January 2024 (with the fuel oil onboard the wreck having been removed in December 2023), the City of Yeosu lifted the wreck removal order and subsequently, the shipowners decided to withdraw all legal proceedings against the 1992 Fund.

7.2 The effect of the withdrawal of legal proceedings, has the retrospective effect of rendering the lawsuit non-existent as if the lawsuit had never been started. The time bar applicable to this incident (which occurred on 20 April 2010) has expired so the 1992 Fund's liability to the shipowners/insurers has been extinguished.

8 Director's considerations

8.1 The Director is pleased to note that an operation took place to remove the bunker fuels from the wreck of the vessel in December 2023, and notes that all legal proceedings against the 1992 Fund have now been withdrawn. No claims for compensation were required to be paid by the 1992 Fund.

8.2 The Director thanks the UK P&I Club for its involvement and co-operation throughout this incident, and is pleased to report that this incident may now be considered closed.

9 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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