



Agenda Item 3	IOPC/OCT18/3/13	
Date	22 October 2018	
Original	English	
1992 Fund Assembly	92A23	
1992 Fund Executive Committee	92EC71	●
Supplementary Fund Assembly	SA15	

INCIDENTS INVOLVING THE IOPC FUNDS—1992 FUND

INCIDENT IN CANADA

Note by the Secretariat

Objective of document:	To report on an oil pollution incident that may involve the 1992 Fund.
Summary:	<p>In October 2018 the Director was served with proceedings concerning an incident that occurred two years earlier in 2016. On 13 October 2016, the articulated tug-barge (ATB) composed of the tug <i>Nathan E. Stewart</i> and the tank barge <i>DBL 55</i> ran aground on Edge Reef near Athlone Island, at the entrance to Seaforth Channel, approximately 10 nautical miles west of Bella Bella, British Columbia (Canada). The tug's hull was eventually breached and approximately 110 000 litres of diesel oil was released into the environment. The tug subsequently sank and separated from the barge.</p> <p>A first nation community consisting of five tribes has brought a legal action against the owner, operators, the master and an officer of the <i>Nathan E. Stewart/DBL 55</i> ATB. The claimants also include as third parties, among others, the Ship-source Oil Pollution Fund in Canada, the 1992 Fund and the Supplementary Fund.</p>
Action to be taken:	<p><u>1992 Fund Executive Committee</u></p> <p>Information to be noted.</p>

1 Summary of incident

Ship	Articulated tug-barge (ATB) composed of the tug <i>Nathan E. Stewart</i> and the tank barge <i>DBL 55</i>
Date of incident	13 October 2016
Cause of incident	Human error (probably due to fatigue)
Quantity of oil spilled	110 000 litres of diesel oil
Area affected	Entrance of Seaforth Channel, British Columbia, Canada
Flag State of ship	United States of America
Gross tonnage	ATB unit less than 5000 units of tonnage (tug 320 GT)
P&I insurer	Standard Club
Legal proceedings	The 1992 Fund and the Supplementary Fund have been named as 'other parties or persons' in legal proceedings.

2 Background information

- 2.1 In October 2018 the Director was informed of an incident that occurred in 2016. On 13 October 2016, the articulated tug-barge (ATB) composed of the tug *Nathan E. Stewart* and the tank barge *DBL 55* ran aground on Edge Reef near Athlone Island, at the entrance to Seaforth Channel, approximately 10 nautical miles west of Bella Bella, British Columbia (Canada). The tug's hull was eventually breached and approximately 110 000 litres of diesel oil and some lube oil, hydraulic oil, gear oil and spent lubricants were released into the environment. The tug subsequently sank and separated from the barge.
- 2.2 The ATB was returning from Alaska where it had delivered jet fuel and gasoline and was on its way to the Port of Vancouver. After the discharge in Alaska, on the return voyage the barge *DBL 55* was in ballast. On its previous voyage the *DBL 55* was loaded with jet fuel and gasoline.
- 2.3 When the *Nathan E. Stewart* was in pushing mode, the bow of the tug was secured to the V-shaped indent at the stern of the barge with pneumatically operated pins. When the two vessels were connected in this manner, they become an articulated tug-barge (ATB). It would appear the *Nathan E. Stewart* routinely transited from petroleum facilities in the State of Washington, United States of America, and Vancouver, British Columbia, Canada, with the *DBL 55* or one of the company's other tank barges loaded with refined petroleum products to be delivered to various ports in Alaska.
- 2.4 The ATB was insured by the Standard Club.

3 Response operations

- 3.1 The crew attempted to surround the ATB with an oil containment boom, which failed due to the sea and weather conditions.
- 3.2 Bunker oil from the tug was transferred to one of the barge's tanks. Approximately 30 000 litres of diesel fuel was transferred by the crew from the *Nathan E. Stewart* to the *DBL 55* before the tug sank. Some 119 000 litres of diesel oil and lube oil were recovered from the tug during emergency response efforts.
- 3.3 In November 2016, the *Nathan E. Stewart* was raised by a salvage team, placed on a deck barge, and towed away.

4 Applicability of the Conventions

- 4.1 Canada is a Party to the 1992 Civil Liability and Fund Conventions and the Supplementary Fund Protocol.
- 4.2 The application of the Conventions, however, is not clear in this case. Firstly, it is not clear whether the *Nathan E. Stewart/DBL 55* ATB falls within the definition of 'ship' under Article I(1) 1992 CLC.
- 4.3 Secondly, at the time of the incident the barge was empty and was therefore not carrying oil in bulk as cargo. In addition, it has not been established whether during any previous voyage it had carried any persistent oil in bulk as cargo. Its last known cargo was jet fuel, a non-persistent product.
- 4.4 If the ATB was carrying non-persistent oil on previous voyages, it would appear that the Civil Liability and Fund Conventions would not be applicable. In that case, since the spilled oil was bunkers, the International Convention on Civil Liability for Bunker Oil Pollution Damage, 2001 (Bunkers Convention 2001) might apply instead.

5 Investigation into the cause of the incident

Investigations into the cause of the incident indicate that the incident was due to human error caused by fatigue. It seems that the ATB missed a change of course and ran aground.

6 Civil proceedings

- 6.1 A first nation community consisting of five tribes has brought a legal action against the owner, operators, the master and an officer of the *Nathan E Stewart/DBL 55* ATB. The claimants also include as third parties the Ship-source Oil Pollution Fund in Canada, the 1992 Fund and the Supplementary Fund.
- 6.2 The claimants say they have aboriginal title and sovereign rights in the affected area. They also state that the area affected by the spill is a traditional harvesting site for food resources such as clams and abalone. The claimants allege that the spill caused immediate and long-term impacts or risks of impacts on populations of marine resources, with loss of harvesting opportunities. The claim includes losses relating to past and future interference with the claimants' use and enjoyment of the area. The claim is also for expenses in connection with response efforts including impact assessment. The claimants also request that the shipowner take necessary action to evaluate the long-term impact of the spill.
- 6.3 The claimants argue for the application of the Bunkers Convention 2001 or, as an alternative, of the 1992 CLC and, in the latter case, seek from the 1992 Fund and the Supplementary Fund any damage in excess of the 1992 CLC. Furthermore, the claimants challenge the validity and application of the limitation of liability or other restriction in the type of damage they can recover under the Conventions as being illegal and an infringement on their aboriginal rights since they were not consulted, nor did they agree to any restriction on the right to full compensation.

7 Director's considerations

- 7.1 The application of the Conventions is not clear in this case, principally on two fronts: firstly it has not been established whether the *Nathan E. Stewart/DBL 55* ATB could be considered a 'ship' under Article I(1) 1992 CLC; and secondly even if this was the case, the unit was not actually carrying oil in bulk as cargo at the time of the incident and it is not clear whether it was carrying any persistent oil in bulk as cargo during any previous voyage. Its last known cargo was jet fuel, a non-persistent product.
- 7.2 Even if this case was proved to fall under the 1992 Civil Liability and Fund Conventions, there is no indication that the damages would exceed the shipowner's liability limit under the 1992 CLC.
- 7.3 The Director will monitor this case and will report any developments to the Executive Committee at a future session.

8 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.
