



INCIDENTS INVOLVING THE 1992 FUND

PRESTIGE

Note by Spain

Summary:	This document contains information on the express waiver by a large percentage of the fishermen affected by the incident of any action or compensation to which they could be entitled against the Spanish State and against the IOPC Fund, the decision of 20 May 2005 by the Instructing Magistrate No.1 of Corcubi3n, on the claim by the Spanish State against the 1992 Fund, and on the circumstances relating to the admissibility of the costs of removing the fuel oil from the wreck of the <i>Prestige</i> .
Action to be taken:	Take note of the information contained in this document, and, in particular, accept the admissibility of the claim for costs of removal and of bio-remediation of the fuel oil in the wreck of the <i>Prestige</i> .

- 1 **Waiver of civil actions and compensation claims against the IOPC Fund by a large proportion of the victims in the fisheries sector**
 - 1.1 On 23 September 2005, the legal representative of the largest group of victims in the fisheries, shellfish harvesting and fish-farming sector submitted a document to the Instructing Magistrate in Corcubi3n in which it was stated that he had signed settlement agreements with the General Administration of the Spanish State, and that in accordance with those compensation agreements, any action or compensation to which they could be entitled as a result of the *Prestige* incident, against the Spanish State as well as against the 1992 Fund, were waived.
 - 1.2 This waiver affects approximately thirteen thousand seven hundred (13 700) persons including almost all the fishermen, shellfish harvesters and shipowners in the fishermen's unions of Portosin, Camari3nas, Caion, Camelle, Cedeira, Mugardos, Barallobre, Malpica, Lorbe, Sada, Mi3no, Cabo de Cruz, Carreira y Agui3no, Rianxo, Cari3no, Palmeira, Ribeira, Corme, Ares, Corcubion, Fisterre, Lira, Laxe, Mera, Muros, Muxia, O Pindo, Pontedeume, Porto do Son, Arcade, Baiona, Bueu, Cambados, Carril, Lourizan, Moa3na, Marin, Raxo, Sanxenxo, Vigo, Vilanova, Vilaxoan, Pontevedra, Portonovo, Redondela, a Guarda, Laredo, San Vicente de la Barquera, Santo3na, Colindres, Castro Urdiales, Comillas, Santander, Suances, Aviles, and shellfish harvesters' groups of Anllons and Baldaio; and various fishermen, shellfish harvesters and shipowners of the fishermen's unions of La Coru3na, Pobra do Carami3nal, Noia, Ferrol and Aldan H3o. In total, the waiver of any civil action **covers approximately 75% of the fisheries**

sector affected by the *Prestige* incident. The waiver document was also presented to the Offices of the 1992 Fund.

2 Decision of Court of First Instance and Instructing Magistrate N°1 of Corcubi3n of 20 May 2005

At the June 2005 session of the 1992 Fund Executive Committee of the Fund, the Director of the 1992 Fund informed all delegations that the Court of first instance and Instructing Magistrate No.1 in Corcubi3n had issued a decision on 20 May 2005, in which the direct civil liability of the company Universe Maritime Ltd was declared and the company was ordered to provide a security of €87.7 million. As of today, **this decision has NOT been appealed by the party concerned**, and for this reason the Spanish Administration has not been able, in the corresponding opposition to the appeal, to state that the 1992 Civil Liability Convention and the 1992 Fund Convention are fully applicable under Spanish law, a fact which is, in any case, known to the Spanish judicial authorities.

3 Claim for compensation by the Spanish State against the 1992 Fund

On 30 September 2005, the Spanish State lodged a claim for compensation against the 1992 Fund for the damage resulting from the *Prestige* incident. The action was entered in the Court of first instance and Instructing Magistrate No. 1 in Corcubi3n, in accordance with Article 4 of the 1992 Fund Convention and Article III of the 1992 Civil Liability Convention. The claim refers to all damages suffered directly or by subrogation by the General Administration of the Spanish State and related or dependent public agencies.

4 Removal and bio-remediation of the fuel oil in the wreck of the Prestige

- 4.1 On 9 December 2002, the Spanish Government set up a scientific advisory committee which immediately after the sinking of the *Prestige* directed its efforts to the monitoring and control of the tasks of sealing the leaks from the wreck and, at the same time, to the analysis and evaluation of the various options for neutralizing the problem permanently.
- 4.2 The committee evaluated various options to prevent the contamination that could be caused by the fuel oil remaining in the wreck of the *Prestige*, such as sealing, denaturalizing, refloating and extraction, with several variants of each, and concluded its work by recommending two solutions: recovery of the fuel oil by pumping, and sealing of the wreck.
- 4.3 The Spanish Government considered these options at its meeting on 14 February 2003, and commissioned a technical feasibility study from REPSOL YPF, in collaboration with other national and international companies in the oil sector.
- 4.4 Between 10 and 14 March 2003, a total of 40 international technical experts from the oil companies BP, ENI, PETROBRAS, STATOIL, TOTAL FINA ELF and REPSOL YPF met in 3vila. As a consequence of the conclusions adopted by total consensus at that meeting, the Spanish Government, following the extensive technical/scientific analysis carried out and after consulting the neighbouring countries which could be affected by pollution from the wreck of the *Prestige*, signed a contract with REPSOL YPF to undertake the removal of the fuel oil from the *Prestige* using shuttles.
- 4.5 The work of removing the fuel oil from the wreck was successfully carried out from June to September 2004, and it was estimated that 13 600 tonnes of fuel oil had been recovered (95% of the total contents of the tanks in the wreck), leaving a residue of approximately 1 000 tonnes in the bow section and 711 tonnes in the stern which were treated using a bio-remediation process after sealing of the wreck.
- 4.6 The Spanish Government submitted to the 1992 Fund a claim, dated 18 April 2004 in register of outgoing documents, in the amount of €109 211 495.46 corresponding to the cost of those

operations as a reasonable and justifiable measure for the purpose of preventing or minimising the damages caused by pollution by the vessel *Prestige*.

- 4.7 In addition to the studies carried out by the committee, in the opinion of other international experts, the bulk of the oil remaining in the wrecks which had sunk at sea would eventually spill into the marine environment. For this reason one of the conclusions of the recent '**2005 International Oil Spill Conference**' co-sponsored by the International Maritime Organization, the American Petroleum Institute, the US Coast Guard and the US Environmental Protection Agency, among others, emphasises as a general principle that **if the magnitude of the risk and the probability of environmental damage are significant, the oil contained in the remains of a wreck must be extracted, since removing the oil from the remains of a wreck is, in most cases, significantly less costly than cleaning up the oil in the marine environment after it has escaped or been released from the wreck, with damage to fishing, marine life and other natural resources.**
- 4.8 The innovative techniques used to carry out successfully the removal of the fuel oil from the remains of the *Prestige* show that the extraction of oil from any wreck is from now on technically possible at great depths, and those techniques can be improved if required and applied to any other situation where necessary.
- 4.9 In considering the specific case of the *Prestige*, the Spanish Government commissioned a study, **Analysis of the ecological and social necessity to remove oil from the wreck of the *Prestige***, in order to have an independent and detailed report on various questions which would allow to identify the operations to extract the oil and neutralize the wreck of the *Prestige* as reasonable preventive measures in the context of the CLC/Fund Conventions.
- 4.10 The study commissioned from the *Centre de Documentation de Recherche et d'Experimentations sur les Pollutions Accidentelles des Eaux* (CEDRE), the most experienced European technical body in the field of accidental marine pollution, was carried out by a group of international experts composed of Dr. Michel Girin, Director of CEDRE, Professor Lucier Laubier, Director of the *Institut Océanographique de Paris*, and Professor Ezio Amato of the University of Viterbe (Italy) and Head of the Environmental Impact and Damage Evaluation Department at the *Istituto Centrale per la Ricerca Scientifica e Tecnologica Applicata al Mare (ICRAM)* in the Italian Ministry of the Environment.
- 4.11 This expert group worked in collaboration using their own documentation sources to reach conclusions on the necessity of removing the fuel oil from the wreck of the *Prestige*. The conclusions were reached by answering five simple questions :
- 1 **Would the cargo trapped in the wreck of the *Prestige* inevitably leak out, totally or partially, over the medium or long term because of corrosion or any other factor or could assurance be provided that this would not be the case?**
 - 2 **If all or part of the cargo were to leak from the wreck, would it rise to the surface or could one be certain that it would definitely remain at the bottom?**
 - 3 **If all or part of the cargo were to leak from the wreck, which coastlines would it affect, in what way and how seriously?**
 - 4 **If all or part of the cargo were to leak from the wreck, would the oil retain a fingerprint upon reaching the coast which would make it possible to distinguish it from operational discharges from passing ships?**
 - 5 **Based on the answers to the preceding questions, would you consider that there was an urgent necessity to act, a non-urgent need to act whilst possibly monitoring**

changes in the wreck or that there was justification for taking no action, and for what reasons?

4.12 The answers to these questions can be found in the CEDRE report which is annexed to document 92FUND/EXC.30/9/2, Note by the Director, from which the following can be extracted:

- 1 There is no doubt that the fuel oil in the *Prestige* would have retained the same capacity to flow and the same buoyancy for decades, and during that time the remains of the *Prestige* would be affected by corrosion which would allow virtually all of the residual cargo in the wreck to escape.
- 2 The entire quantity of fuel oil released from the remains of the *Prestige* would inevitably rise to the surface of the sea, not only directly above the wreck, but within a radius of several nautical miles around this vertical axis, which would cause recurrent pollution of known origin.
- 3 Depending on winds and currents, the pollution produced by the eventual release of fuel oil from the *Prestige* would affect any point on the Atlantic coast between the Cape Verde islands and the shores of the English Channel, obviously with a higher probability of impact on the coast of Galicia and the shores of the Bay of Biscay. The form of that contamination would be similar to that already experienced and would seriously affect the marine ecosystems and tourist beaches in those areas.
- 4 Given the characteristics of the product, it would be possible, for as long as a century, to find traces of *Prestige* fuel oil released from the wreck having drifted for weeks at sea before reaching the coast.
- 5 Doing nothing about the fuel oil from the *Prestige* would have meant passing the problem to future generations. That option had been justified in previous incidents when the technological capacity to carry out the removal operations did not exist, and the environmental and social considerations were not so much taken into account. Moreover, monitoring of changes in the state of the remains of the *Prestige* over the years without any intention of intervening would not have been of any benefit, but it would, on the contrary, have involved costs and ecological, economic and social damage in the long term. Thus, as in the most recent cases of maritime incidents (*Ievoli Sun, Erika, Tricolor*), the principle of treatment of the remains of the wreck was unquestionable in the case of the *Prestige*, and not to have done so would have been unreasonable. Furthermore, the responsibility of the Spanish authorities went beyond the purely national framework since the French and Portuguese authorities, too, throughout the operational coordination meetings, never ceased to consider it necessary to deal with a risk capable of generating recurrent pollution along the Atlantic coast.

5 Action to be taken by the Executive Committee

The Executive Committee is invited:

- (a) to take note of the information contained in this document; and
 - (b) to consider the proposal and decide on the admissibility of the claim for the costs of extraction and bio-remediation of the fuel oil in the remains of the *Prestige*.
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