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COMPENSATION
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Agenda item 2

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REVIEW OF THE INTERNATIONAL COMPENSATION REGIME

REQUIREMENT THAT OIL REPORTS AND CONTRIBUTIONS MUST BE SUBMITTED WITHIN A REASONABLE TIME SO AS TO MAINTAIN COVERAGE UNDER THE REGIME

A discussion paper

Submitted by Canada and the United Kingdom

Summary:	The 7th meeting of the 3rd Intersessional Working Group considered proposals to amend the international oil pollution compensation regimes. Document 92FUND/WGR.3/19/2 presented to the meeting proposed that the regime should be amended to address the issue of the non-submission of oil reports. This paper sets out the proposal with accompanying treaty text.
Related documents:	92FUND/WGR.3/19/2
Action to be taken:	See section 4

1 Introduction

- 1.1 The issue of non-submission of oil reports has been considered by the Working Group and the IOPC Funds' Assemblies on a number of previous occasions. It should be noted that the Working Group reached agreement at its 5th session that it is imperative that a solution is found.
- 1.2 The Assembly considered this problem most recently at its 7th session in October 2003, at which the Director informed the Assembly that 31 States had outstanding reports in respect of the 1992 Fund. The Director also informed the Assembly that in the case of 13 States that had outstanding reports for one year only, nine of these had previously had contributions. Nine other States had not submitted reports for four years or more. Some of these States have previously reported quantities of contributing cargo.
- 1.3 Assuming the quantities had remained the same for the 'missing' years, this amounts to substantial contributions. The co-sponsors do not believe that this situation can be allowed to continue if the regime is to function effectively, and, as a mutual system.

2 Proposals

- 2.1 Document 92FUND/WGR.3/19/2 was submitted to the last meeting of the Working Group in February 2004. The document proposed that to address the issue of non-submission of oil reports, the regime should be amended to require States to submit their reports within a given timeframe with the prospect of losing coverage if they do not do so.
- 2.2 The co-sponsors therefore propose that the method adopted in the Supplementary Fund should be applied to the IOPC Fund and present the following treaty text:

Article 15 bis

- 1 *If in a Contracting State there is no person meeting the conditions of article 10^{<1>}, that Contracting State shall for the purposes of this Convention inform the Director thereof.*
 - 2 *No compensation shall be paid by the Fund for pollution damage in the territory, territorial sea or exclusive economic zone or area determined in accordance with article 3(a)(ii), of this Convention, of a Contracting State in respect of a given incident or for preventive measures, wherever taken, to prevent or minimize such damage, until the obligations to communicate to the Director according to article 15^{<2>}, and paragraph 1 of this article have been complied with in respect of that Contracting State for all years prior to the occurrence of that incident. The Assembly shall determine in the Internal Regulations the circumstances under which a Contracting State shall be considered as having failed to comply with its obligations.*
 - 3 *Where compensation has been denied temporarily in accordance with paragraph 2, compensation shall be denied permanently in respect of that incident if the obligations to communicate to the Director under article 15, and paragraph 1 of this article, have not been complied with within one year after the Director of has notified the Contracting State of its failure to report.*
 - 4 *Any payments of contributions due to the Fund shall be set off against compensation due to the debtor, or the debtor's agents.*
- 2.3 This text replicates the provisions of article 15 of the Supplementary Fund Protocol. Paragraph 1 requires States to submit 'nil responses' to the Fund. The co-sponsors consider this necessary to address the current situation where if a State has not submitted an oil report, it is not clear whether there are any persons in that State who would have been liable to contribute, i.e. that no report actually means a nil return.
- 2.4 Paragraph 2 provides that compensation will not be payable in respect of a Contracting State unless all reports have been submitted.
- 2.5 Paragraph 3 further provides that if States do not submit the reports within one year of notification of failure to report then no compensation will be paid in respect of that incident.

3 Proposals

- 3.1 At the 5th meeting of the 3rd Intersessional Working Group, the Group noted that, whilst the international system of compensation gave protection to States, it also imposed responsibilities.

<1> Article 10 sets out the persons liable to contribute to the IOPC Fund.

<2> Requirement on State to provide details of contributors.

- 3.2 As the compensation limits increase it becomes more important to ensure that the requirements on reporting and contributions are fully applied. Otherwise questions will be raised as to the fairness of the system. The principle of mutuality among all Contracting States is a fundamental feature of the regime which requires that all Contracting States continue to meet their obligations under the regime regardless of whether they are contributing States or not.
- 3.3 The co-sponsors recognise that the Assembly has previously decided that it could not pursue the option of withdrawing cover under the regime through the existing Conventions. Yet, the co-sponsors do not believe that amending the Rules of Procedure, forbidding such States to become members of the Executive Committee, a loss of voting rights, or an Assembly Resolution will solve this serious problem. This has been a long-term problem for both the 1971 and the 1992 Funds. Consequently, the co-sponsors believe that the only way to effectively overcome the difficulties of non-submission is to provide a suitable disincentive when the Fund Convention is amended.

4 Recommendation

The co-sponsors of this paper invite the Working Group to consider the solution proposed in this paper.
