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CAPPING OF CONTRIBUTIONS

Note by the Director of the International Oil Pollution Compensation Funds 1971 and 1992

Summary:	It is proposed that the Supplementary Fund Protocol should follow the same procedures in respect of the capping system as has been applied by the 1992 Fund.
Action to be taken:	Decide on the procedures to be followed in respect of the capping of contributions during the transitional period.

1 The issue

1.1 As was the case for the 1992 Fund Convention in respect of the early years following its entry into force, the Supplementary Fund Protocol provides for a system of capping of contributions prior to its widespread ratification. That system is governed by Article 18 of the Protocol which reads:

- 1 Subject to paragraph 4, the aggregate amount of the annual contributions payable in respect of contributing oil received in a single Contracting State during a calendar year shall not exceed 20% of the total amount of annual contributions pursuant to this Protocol in respect of that calendar year.
- 2 If the application of the provisions in Article 11, paragraphs 2 and 3, would result in the aggregate amount of the contributions payable by contributors in a single Contracting State in respect of a given calendar year exceeding 20% of the total annual contributions, the contributions payable by all contributors in that State shall be reduced pro rata so that their aggregate contributions equal 20% of the total annual contributions to the Supplementary Fund in respect of that year.
- 3 If the contributions payable by persons in a given Contracting State shall be reduced pursuant to paragraph 2, the contributions payable by persons in all other Contracting States shall be increased pro rata so as to ensure that the total amount of contributions payable by all persons liable to contribute to the Supplementary Fund in respect of the calendar year in question will reach the total amount of contributions decided by the Assembly.
- 4 The provisions in paragraphs 1 to 3 shall operate until the total quantity of contributing oil received in all Contracting States in a calendar year, including the quantities referred to in article 14, paragraph 1, has reached 1,000 million tons or until a period of 10 years after the date of entry into force of this Protocol has elapsed, whichever occurs earlier.

- 1.2 As the capping system under the Supplementary Fund Protocol is, from a technical point of view, identical to that which applied under the 1992 Fund Convention, it may be useful to recall certain decisions taken by the 1992 Fund Assembly as regards the application of the capping provisions in that Convention (document 92FUND/A.1/34, paragraphs 17.2-17.4):

The 1992 Fund Assembly decided that the capping system should apply separately for a given year to each levy for the general fund and to each levy for a major claims fund. It was agreed that the assessments should be made in such a way that the basic levy and the additional capping levy (or capping deduction, in respect of contributors in a capped State) were shown separately in the Fund's accounts and on the invoices sent to contributors.

It was decided that the Director should make the decision - at the time of invoicing - of whether to cap contributions, since this would make it possible to base the decision on more complete figures on oil receipts than if the decision were taken by the Assembly.

The Assembly decided that the capping procedure should not apply in respect of decisions to levy contributions taken by the Assembly after the date on which the Director received from Member States reports on contributing oil where the reported quantity received in all Member States (ie those States for which the 1992 Fund Convention has entered into force) together exceeded 750 million tonnes^{<1>}. It was noted in this context that the timing of a decision by the Assembly to levy contributions could affect whether or not the capping procedure would be applied.

- 1.3 At its 8th extraordinary session in May 2004, the 1992 Fund Assembly endorsed the Director's proposal that the Supplementary Fund should follow the same procedures in respect of the capping procedures as had been applied by the 1992 Fund (document 92FUND/A/ES.8/4, paragraph 3.5.12).
- 1.4 It should be noted that as a result of there being at present only a small number of Member States the aggregate contributions may have to be pro rated in respect of the first levy of contributions to 20% of the total annual contributions to the Supplementary Fund for more than one Member State.

2 Action to be taken by the Assembly

The Assembly is invited to decide on the procedures to be followed in respect of the capping of contributions during the transitional period.

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The quantity which triggered the termination of the capping period under the 1992 Fund Convention.