



International Oil Pollution
Compensation Funds

Agenda Item 3	IOPC/APR19/3/5	
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1992 Fund Assembly	92AES23	
1992 Fund Executive Committee	92EC72	●
Supplementary Fund Assembly	SAES7	

INCIDENTS INVOLVING THE IOPC FUNDS — 1992 FUND

NESA R3

Note by the Secretariat

Objective of document:	To inform the 1992 Fund Executive Committee of the latest developments regarding this incident.
Summary:	<p>On 19 June 2013, the 856 GT tanker <i>Nesa R3</i>, carrying 840 tonnes of bitumen from the port of Bandar Abbas in the Islamic Republic of Iran, sank off Port Sultan Qaboos, Muscat, the Sultanate of Oman. Tragically, the master lost his life in the incident.</p> <p>The ship spilled an unknown quantity of oil which polluted, with varying degrees of contamination, about 40 kilometres of the Omani coast. Clean-up operations were concluded in June 2014.</p> <p>The <i>Nesa R3</i> carried less than 2 000 tonnes of persistent oil as cargo and so was not required to maintain compulsory liability insurance. The shipowner of the <i>Nesa R3</i> had nonetheless taken out insurance with the Indian Ocean Ship Owners Mutual P&I Club, Sri Lanka. The limitation amount applicable under the 1992 Civil Liability Convention (1992 CLC) is SDR 4.51 million (£4.9 million)^{<1>}.</p> <p>In October 2013, the Omani Government commenced legal action against the shipowner and the insurer in the Court of Muscat, as they had refused to meet their obligations under the 1992 CLC. In February 2016, the 1992 Fund joined the legal action by the Omani Government against the shipowner and the insurer of the <i>Nesa R3</i>.</p> <p>In December 2017, the Court of Muscat issued a judgment confirming the findings of the court expert and awarding OMR 4 154 842.80 (£8.4 million) to the Omani Government and OMR 1 777 113.44 (£3.6 million) and BHD 8 419.35 (£16 000) to the 1992 Fund. Both the Government and the 1992 Fund have appealed the judgment.</p>
Recent developments:	Thirty-three claims totalling OMR 5 915 218 (£12 million) have been received by the 1992 Fund. Twenty-eight claims have been settled and paid the total amount of OMR 3 521 366 (£6.7 million) and BHD 8 419.35 (£16 000). The remaining claims have been assessed at nil.

^{<1>} The exchange rates used in this document are SDR 1 = £0.9242, £1 = OMR 0.4970 and £1 = BHD 0.4868 (as at 14 January 2019), except in respect of payments made by the 1992 Fund where the conversion has been made at the rate on the date of payment.

Relevant documents:	The online Nesa R3 incident report can be found via the Incidents section of the IOPC Funds' website.
Action to be taken:	<u>1992 Fund Executive Committee</u> Information to be noted.

1 Summary of incident

Ship	<i>Nesa R3</i>
Date of incident	19.06.2013
Place of incident	About 1.4 nautical miles off Port Sultan Qaboos, Muscat, Oman
Cause of incident	Sinking
Quantity of oil spilled	In excess of 250 tonnes
Area affected	Some 40 kilometres of shoreline
Flag State of ship	Saint Kitts and Nevis
Gross tonnage	856 GT
P&I insurer	Indian Ocean Ship Owners Mutual P&I Club, Sri Lanka
CLC limit	SDR 4.51 million (£4.9 million)
STOPIA/TOPIA applicable	Not applicable
CLC + Fund limit	SDR 203 million or OMR 120.8 million (£243 million)
Claims submitted	Thirty-three claims totalling OMR 5 915 218 (£12 million)
Claims paid	Twenty-eight claims totalling OMR 3 521 366 (£6.7 million) and BHD 8 419.35 (£16 000)
Legal proceedings	The 1992 Fund has joined the legal proceedings commenced by the Omani Government against the shipowner and insurer.

2 Background information

- 2.1 On 19 June 2013, the 856 GT tanker *Nesa R3*, built in 1981, sank in 65 metres of water approximately 1.4 nautical miles off Port Sultan Qaboos, Muscat, the Sultanate of Oman. The Saint Kitts and Nevis flagged ship had arrived in Port Sultan Qaboos on 19 June 2013 to make a routine delivery of bitumen from Bandar Abbas, Islamic Republic of Iran. The exact nature of the problems encountered, and the sequence of events remain unknown. Tragically, the ship's master lost his life in the incident.
- 2.2 Background information, including an analysis of the claims submitted, is provided in more detail in the [online Nesa R3 incident report](#).

3 Impact

- 3.1 At the time of the incident, the ship was carrying 840 tonnes of bitumen as cargo and five tonnes of bunkers. During the incident and the subsequent sinking of the vessel, some cargo and bunkers were spilled and spread by wind and currents along some 40 kilometres of the Omani coast. The exact amount of cargo and bunkers lost has not been determined. Initial clean-up operations carried out in June 2013, recovered a total of 250 tonnes of the cargo. Further clean-up operations were carried out in 2014, after which the Omani authorities considered clean-up activities for this incident to be completed.
- 3.2 The Omani authorities commissioned a survey of the wreck to, *inter alia*, establish the quantities and condition of the bitumen remaining on board. The survey, carried out in September 2013, found that

the bitumen had solidified and no longer posed a risk to the environment or the economic activities in the area around the wreck. A second operation on the wreck was conducted in March 2014 to secure the wreck and remove any remaining pollutants.

4 Applicability of the 1992 Civil Liability and Fund Conventions

- 4.1 Oman is Party to the 1992 Civil Liability Convention (1992 CLC) and the 1992 Fund Convention.
- 4.2 The tonnage of the *Nesa R3* was 856 GT. The limitation amount applicable under the 1992 CLC is therefore SDR 4.51 million (£4.9 million).
- 4.3 The *Nesa R3* carried less than 2 000 tonnes of persistent oil as cargo, and as such, was not required to maintain compulsory insurance under the 1992 CLC. The shipowner of the *Nesa R3* had nevertheless taken out insurance with the Indian Ocean Ship Owners Mutual P&I Club, based in Sri Lanka. The insurer of the ship, however, refused to consider any claims, stating as the reason for the refusal that the cargo came from the Islamic Republic of Iran.
- 4.4 In October 2013, the 1992 Fund Executive Committee authorised the Director to make payments of compensation in respect of the admissible losses arising out of the *Nesa R3* incident and to claim reimbursement from the shipowner.

5 Claims for compensation

- 5.1 A total of thirty-three claims, totalling OMR 5 915 218 (£12 million) have been submitted to the 1992 Fund by a number of government agencies, the regional organisation responsible for providing assistance during marine emergencies, and private companies covering clean-up operations, surveys of the wreck, environmental monitoring studies, and economic losses. Several claims were assessed on a provisional basis pending the submission of additional information. Following a number of visits by the Fund's experts and a visit in November 2018 by the Director and the Head of the Claims Department, all remaining queries were answered, and the assessments were finalised for those claims. One claim for costs related to claim preparation and submission in the period from 2015 to 2018, which had been submitted in 2018, has also been recently assessed.
- 5.2 As a consequence, 28 claims have been settled by the 1992 Fund for a total of OMR 3 521 366 (£6.7 million) plus BHD 8 419.35 (£16 000). The remaining claims have been assessed by the experts at nil.
- 5.3 The total amount paid in compensation for this incident exceeded the amount available under the General Fund of £4 328 068 (SDR 4 million per incident) and, as per the Director's comments in document [IOPC/OCT18/9/2/1](#) (paragraphs 7.2.3–7.2.4), a Major Claims Fund was established in December 2018.

6 Legal proceedings

- 6.1 The Omani Government's attempts to obtain a financial commitment from the shipowner were unsuccessful. The Government therefore commenced legal action in respect of all claims in the amount of OMR 5 932 703 (£12 million) at the Court of Muscat against the shipowner and the insurer of the *Nesa R3* since they had refused to meet their obligations under the 1992 CLC. The 1992 Fund and the Omani Government agreed to cooperate with each other in their attempts to recover compensation from the shipowner and insurer. Under Omani law, the time bar period is five years from the date the claimant is aware of the damage.

- 6.2 In February 2016, the 1992 Fund joined the legal action commenced by the Omani Government against the shipowner and its insurer in the Court of Muscat. In March 2017, the Court of Muscat appointed a court expert to evaluate the claims submitted in respect of the *Nesa R3* incident. In October 2017, the court expert issued his report, which concluded that the amount due in respect of the claims was OMR 1 777 113.44 (£3.6 million) plus BHD 8 419.35 (£16 000) as paid by the 1992 Fund at that time plus the difference between the amount claimed by the Omani Government in court i.e. OMR 5 932 703 (£12 million) and the amount received from the 1992 Fund, in other words, OMR 4 154 842.80 (£8.4 million).
- 6.3 In December 2017, the Court of Muscat rendered a judgment which confirmed the conclusions of the court expert and found that the shipowner and insurer of the *Nesa R3* were jointly liable to pay compensation to the IOPC Funds and the Omani Government for the amounts determined by the expert.
- 6.4 The 1992 Fund appealed the judgment since it had awarded amounts above the value of the claims already settled by the 1992 Fund. The Omani Government also appealed the judgment, claiming that the amount they should be entitled to receive in compensation should be OMR 10 million (£20 million).
- 6.5 Following the settlement of all the claims, the Omani Government agreed to withdraw from Court all claims settled with the 1992 Fund.
- 6.6 The 1992 Fund will continue to pursue the subrogated claims with a view to recovering from the shipowner/insurer the amount paid in compensation.
- 6.7 The next hearing of the Appeal Court is scheduled for 11 February 2019.

7 Director's considerations

- 7.1 The Omani authorities requested the 1992 Fund's support in dealing with the consequences of the *Nesa R3* spill. The Secretariat visited Oman immediately after the incident and thereafter on several occasions, including a visit by the Director in 2018.
- 7.2 In October 2013, the Executive Committee authorised the Director to make payments of compensation in respect of the admissible losses arising out of the *Nesa R3* incident and to claim reimbursement from the shipowner.
- 7.3 The Director is pleased to note that the cooperation between the Omani Government and the 1992 Fund has been excellent and that this working relationship has been paramount in resolving the last pending claims.
- 7.4 As a result, the Director is pleased to inform the Executive Committee that the 1992 Fund has paid and subrogated against the shipowner/insurer the claims submitted by the Omani Government to the 1992 Fund.
- 7.5 The shipowner and insurer of the *Nesa R3* had not set up a limitation fund in accordance with the 1992 CLC. The Omani Government and the 1992 Fund commenced legal proceedings against both the shipowner and insurer in order to recover the amounts due in compensation. Now that the 1992 Fund has subrogated all claims arising out of the incident, it is expected that the Omani Government will shortly withdraw from the legal proceedings and the 1992 Fund will continue to pursue recovery of the compensation from the shipowner and insurer of the *Nesa R3*.

- 7.6 The legal proceedings have progressed slowly, due to the fact that it has been difficult to contact the insurer, who has from the beginning refused to pay compensation. The Court of Muscat has postponed its hearings several times, in an attempt to reach the insurer. It is expected that it will take some time for the 1992 Fund to make progress in the recovery from the insurer.
- 7.7 The Director would like to thank the Omani Government for its continued cooperation which has permitted the 1992 Fund to make prompt payments of compensation in relation to this incident.

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.
