

Interspill abstract submission

## **IOPC Funds**

Under either the theme of contingency planning and preparedness or shipping Risks (Insurance and Claims)

### **Oil pollution or HNS incidents – who pays?**

The International Liability and Compensation Regime for Oil Pollution Damage established by the International Maritime Organization has been successfully providing compensation following major incidents for over 45 years. It is a system that functions quietly in the background, but when an incident occurs, its presence and ability to respond promptly and effectively, minimises significantly the financial impact of major incidents on States, individuals, responders and communities. As we are all aware, over the years, the increase in safety regulations and improvement in quality shipping has seen the number of incidents decrease. The IOPC Funds has experienced periods with very few spills and then, as happened in this past year, a sudden occurrence of two or three significant incidents in which its involvement is required within a relatively short space of time. This ongoing risk of spills means that the IOPC Funds continue to be relevant and must remain ready, continue to evolve and adapt to new challenges – but what lies ahead?

The shift to new fuels could see a different kind of incident. The long awaited 2010 HNS Convention – based on the successful IOPC Funds system – is now looking likely to enter into force in 2027, establishing a Fund to compensate those impacted by incidents involving HNS. But how does it differ from IOPC? Which types of claims will it cover and which incidents? How will it function in relation to the existing liability Conventions, and will more States recognise the benefits and ratify this latest treaty aimed at protecting the marine environment?

The demand for HNS is expected to increase with the transition to new fuels, which in turn will lead to an increase in the transport of certain HNS as cargo, potentially via additional routes, exposing further States to the risk of an incident. This risk, combined with the considerable work undertaken in recent years to provide tools, support and guidance in the practical implementation of the Convention, has led to several States now committing to it.

Similar to the liability and compensation regime which sits behind the IOPC Funds, the HNS Fund will also be based on a principle of shared liability, with the shipowner / insurers paying a first tier of compensation and the cargo receivers contributing to a second tier, which will pay when claims exceed the liability of the shipowner. However, the cargo the receivers are required to report is far more varied and complex than for oil. In addition, due to the complexity and nature of the cargoes covered by the HNS Convention, an HNS incident will require a different response to those limited to oil pollution; the types of claims covered by the Convention will also differ to those payable by the IOPC Funds. As well as economic losses, such as impacts on fisheries and tourism, and costs relating to clean up and restoration of the environment, the HNS Fund will also cover costs for fire, explosion and death and personal injury.

Responders will need to be prepared to both deal with the immediate effects of the incident but also have a general understanding of how they can recover their costs. A new Claims Manual, setting out the measures that would be considered reasonable when claiming compensation following a HNS incident is under development and will be made available when the Convention enters into force.