

# Civil Liability for Damages Caused by Hazardous and Noxious Substances

## **MALAYSIA & THE HNS CONVENTION**



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# International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea, 1996 (The HNS Convention).

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To ensure adequate, prompt and effective compensation for damage caused by maritime transport of hazardous and noxious substances (HNS).

# Background

- CLC & FUND established in response to Torrey Canyon spilling 31m gallons of crude oil into the English Channel;
- As it covers only oil, work on developing a Fund for HNS began in 1970's at IMO;
- First attempt for 1 tier HNS Fund to be funded by ship-owners rejected in 1984;
- A two tier regime similar to CLC & Fund adopted in May 1996.

# Components

- **The IOPC:** The HNS Convention creates the HNS FUND which will be managed by the IOPC;
- **The HNS ships:** will be subject to mandatory insurance to cover 1<sup>st</sup> tier claims;
- **The HNS FUND:** to pay for 2<sup>nd</sup> tier claims;
- **The Receivers/Contributors:** of HNS in member States subject to levy which will be invoiced directly post-event by the IOPC;
- **The Administration:** member States to monitor and report receipts;
- **Note: IOPC working towards 2007/08 as entry into force date – support from major States.**

# What is HNS ?

Oils	Annex I Appendix I of MARPOL 73/78
Liquids	Annex II Appendix II of MARPOL 73/78
Liquids	Chapter 17 of IBC Code
Gases	Chapter 19 of IGC Code
Solids	Appendix B of BC Code, if also covered by the IMDG Code.
<b>TOTAL</b>	<b>Approximately 6,500 substances are covered.</b>

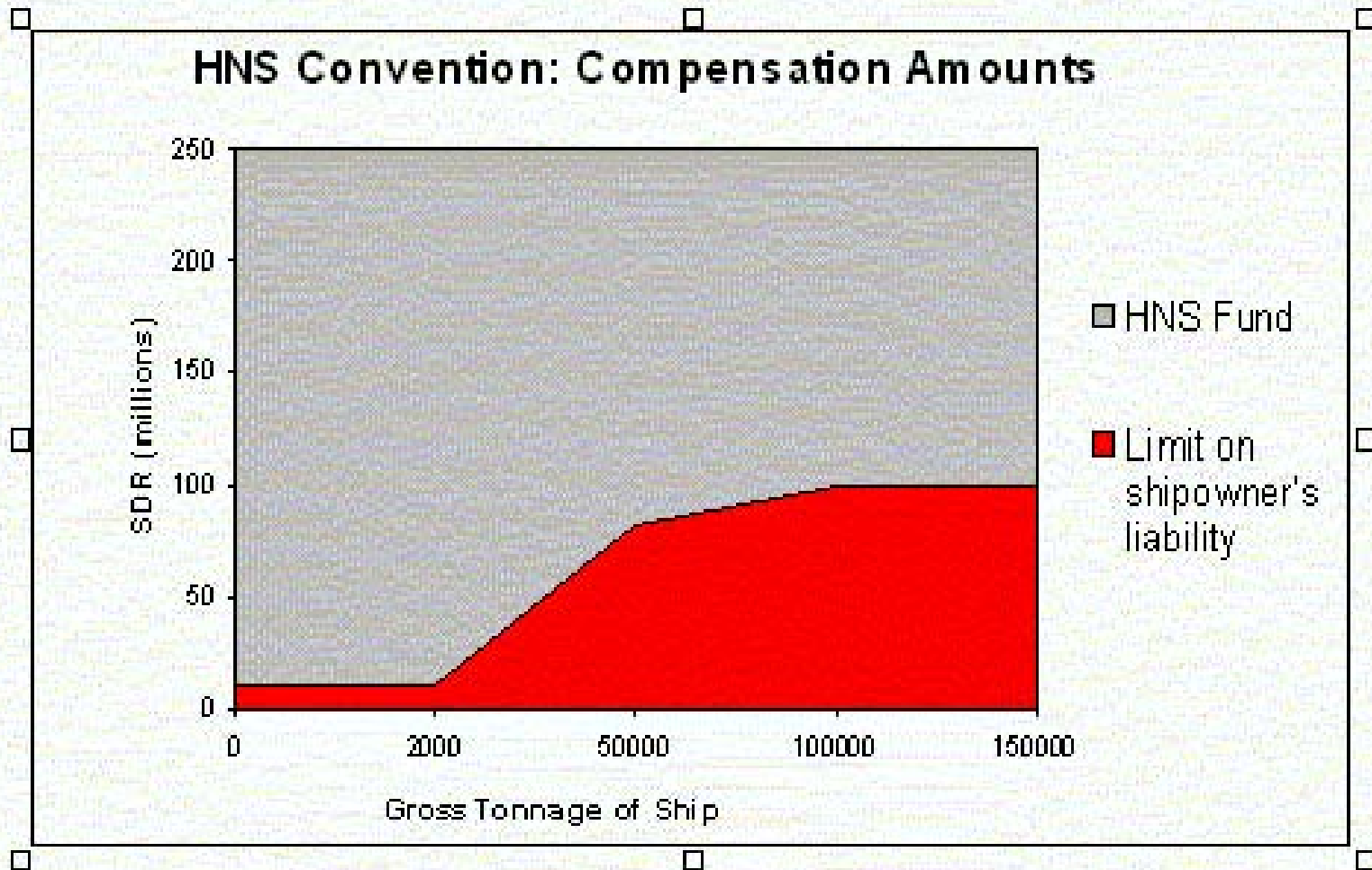
# Concept

- Strict liability for HNS ships in exchange for limitation of liability;
- 1<sup>st</sup> tier compensation between 10 – 100m SDR based on tonnage of ship;
- 2<sup>nd</sup> tier up to 250m SDR top up by the HNS Fund;
- In addition to pollution damages, also covers; loss of life or personal injury, loss or damage to property and costs of preventive measures.

# Limits of Liability

<b>Units of Tonnage</b>	<b>Maximum Liability</b>
2,000 and less	10 million SDR
2,001 to 50,000	Add 1,500 SDR per unit
50,000 or more	Add 360 SDR per unit
Aggregate amount	100 million SDR

# Compensation Amounts





# Compulsory Insurance

- Ships carrying HNS must have insurance cover;
- Compulsory insurance certificate (Blue Card) to be issued by the State or appropriate authority of any State party;
- UK is proposing a £50k fine and up to £250k if a spill occurs.

# Entry into Force

- Open for signature from 01/10/96 – 30/09/97;
- Signed subject to ratification by Canada, Denmark, Finland, Germany, Netherlands, Norway, Sweden and UK – **none have reported receipts.**
- 18 months after 12 States ratify including 4 with more than 2m GT; **and**
- Information that 40m tonnes of contributing cargo to the general account received by the Sec. Gen. of IMO;

# Status April 2006

No.	Contracting States	Remarks
1	<b>Angola</b>	
2	<b>Cyprus</b>	More than 2 million GRT
3	<b>Morocco</b>	
4	<b>Russian Federation</b>	More than 2 million GRT
5	<b>Saint Kitts &amp; Nevis</b>	
6	<b>Samoa</b>	
7	<b>Slovenia</b>	
8	<b>Tonga</b>	
9	Awaiting State ratification.	More than 2 million GRT
10	Awaiting State ratification.	More than 2 million GRT
11	Awaiting State ratification.	
12	Awaiting State ratification.	
<b>NONE HAVE REPORTED RECEIPTS</b>		

# Operational Threshold

Account	HNS Type	Operational Threshold
1	Oil	350 million tonnes
2	LNG	20 million tonnes
3	LPG	15 million tonnes
4	General (bulk & other HNS)	40 million tonnes

# HNS Accounts

Account	HNS Type	Contribution Thresholds
1	Oil - persistent	150,000 tonnes
	Oil – non persistent	20,000 tonnes
2	LNG	No minimum quantity
3	LPG	20,000 tonnes
4	Bulk solids & other HNS	20,000 tonnes

# Reporting

- Before entry into force:
    - States are required to report total quantity of contributing cargo received; and LNG discharged in that State during preceding year;
  - After entry into force:
    - Identity and contacts of receivers;
    - Quantities of contributing cargo received.
  - States are liable for any financial losses due to improper reporting;
  - To date, IOPC have not received any report from any State.
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# Malaysian HNS Receipts

- Raw data from Statistics Dept. listed and coded as per the Custom Code Book;
- This study looked at quantity only;
- Identity of importers is confidential – policy for protection of registered importers;
- 96 primary codes and 803 sub-category codes supplied;
- Each item compared according to trade and/or chemical names;
- Data used from 76 primary and 435 sub-category codes.

# HNS ID

Malaysian Customs Code	MARPOL 73/78	IBC Code	IGC Code	BC Code	IMDG Code
Palm oil fractions = HS 1511	Palm oil fatty acid. Pollution category C	Only palm kernel acid oil listed. Requires ship type 3 and tank type 2G.	Not listed	Palm kernel listed under meal, oil cake, seed expellers. IMO class 4.2. UN No. 1386.	Not listed

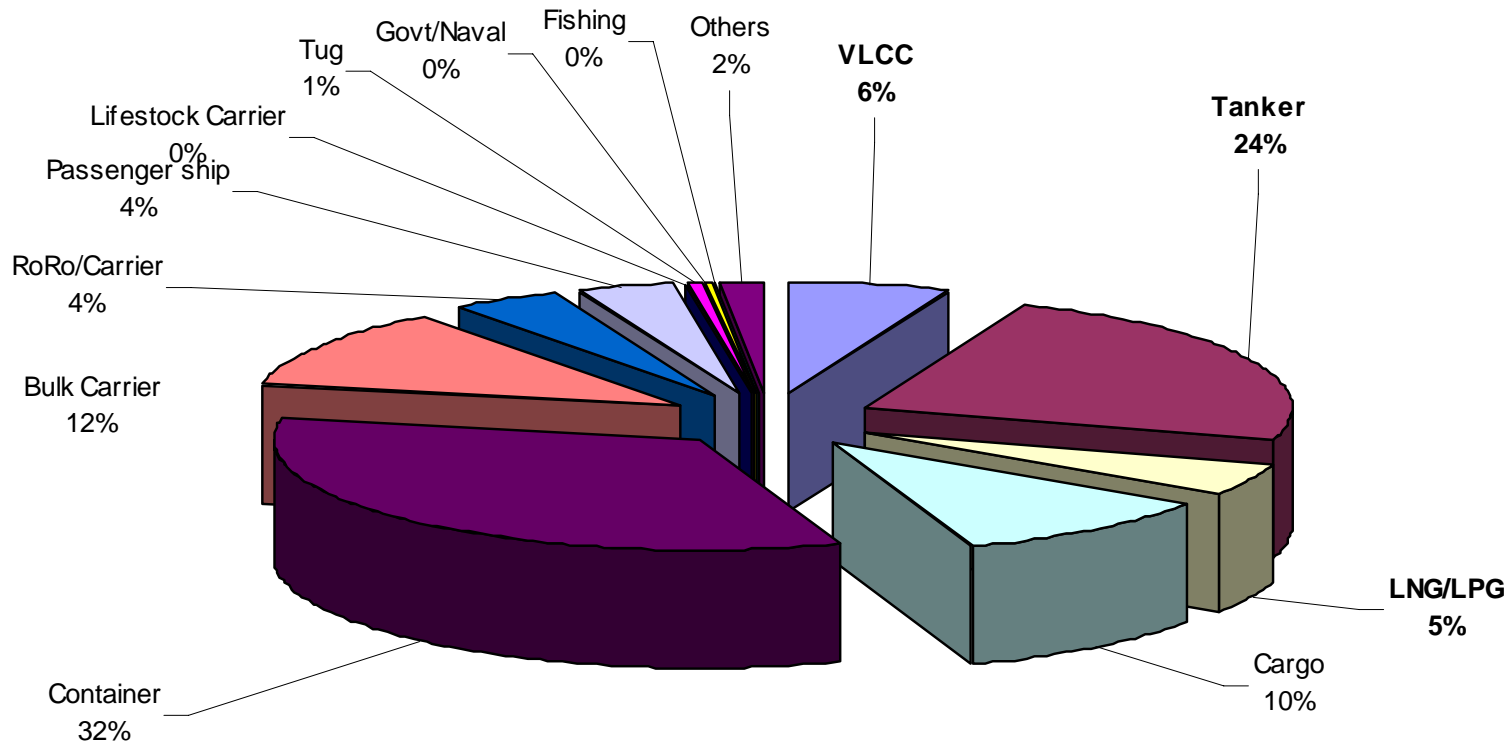


# Malaysian Receipts

<b>Account</b>	<b>Malaysian receipt for 2004 (tonnes)</b>
1. Oil	168,214,609.22
2. LNG	1,193,431.66
3. LPG	770,156.80
4. Others	276,595,028.74

# Strait of Malacca 2005

Strait of Malacca Ship Type 2005



# Possible HNS Ships

Ship Type	Percentage
1. VLCC	6%
2. Tanker	24%
3. LNG & LPG	5%
<b>Total Possible HNS Ships (60 ships per day !)</b>	<b>(21916 ships) 35%</b>

# Summarizing

- IOPC is determined to enforce the HNS Convention in the near future;
  - Malaysia imports substantial amounts of HNS; **and**
  - Strait of Malacca faces high risk from HNS ships; **but**
  - No State has responded to the calls for submission of HNS receipts.
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# Option 1 – Do nothing

## ■ Advantages:

- ❑ No burden to set up monitoring & reporting system;
- ❑ No burden on receivers of HNS in Malaysia;

## ■ Disadvantages:

- ❑ No protection against HNS risk;
  - ❑ Malaysian HNS ships will be affected and will have to look elsewhere for their “Blue Card”.
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# Option 2 – Ratify & Implement



- Advantages:
    - Protects against HNS risk;
    - Provides avenue for prompt, adequate and effective compensation;
    - Businesses receiving below contribution threshold enjoys free protection;
  - Disadvantages:
    - Increased financial liabilities for Malaysian ship owners and HNS importers;
    - Administrative burden to set up monitoring and reporting system.
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# Recommendation

- As a state bordering the Strait of Malacca and import substantial amount of HNS it is in her interest that Malaysia take steps to ratify the HNS Convention; HOWEVER
- Based on current lukewarm world wide response, ACTION RECOMMENDED
- **Defer ratification, continue monitoring the IOPC and HNS Convention whilst taking steps in preparation for ratification.**

# Next step

- Establish mechanism to identify HNS importers;
- Establish amount of HNS imported for previous years;
- Analyse and consider use of the HNS CCCC for monitoring and reporting system;
- Ministries/Agencies:
  - MOT; MITI; Customs Dept.; Statistics Dept.; MARDEP.



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# THANK YOU