

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).

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 1st tier claims;
- **The HNS FUND:** to pay for 2nd 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.
TOTAL	Approximately 6,500 substances are covered.

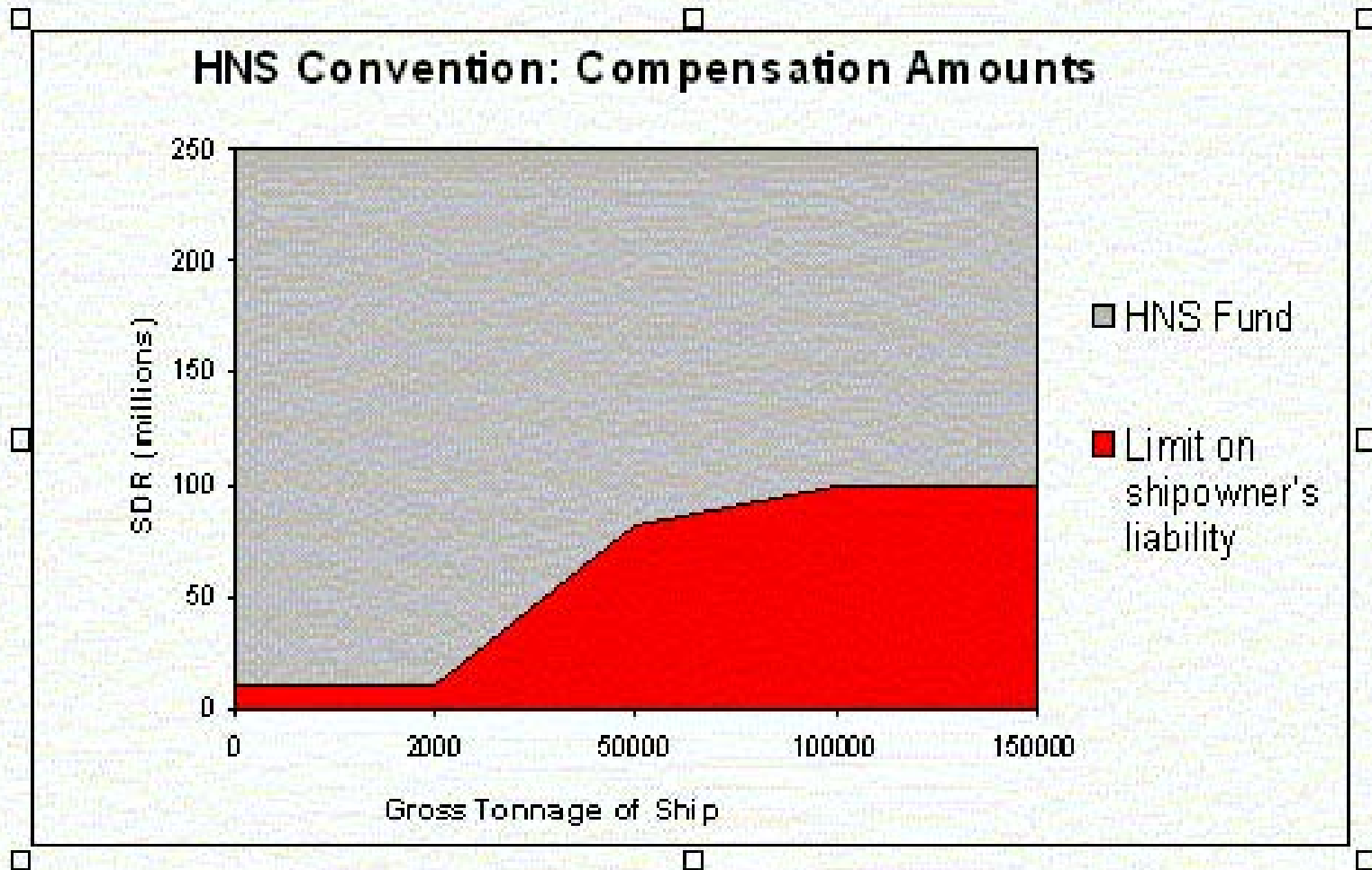
Concept

- Strict liability for HNS ships in exchange for limitation of liability;
- 1st tier compensation between 10 – 100m SDR based on tonnage of ship;
- 2nd 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

Units of Tonnage	Maximum Liability
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	Angola	
2	Cyprus	More than 2 million GRT
3	Morocco	
4	Russian Federation	More than 2 million GRT
5	Saint Kitts & Nevis	
6	Samoa	
7	Slovenia	
8	Tonga	
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.	
NONE HAVE REPORTED RECEIPTS		

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

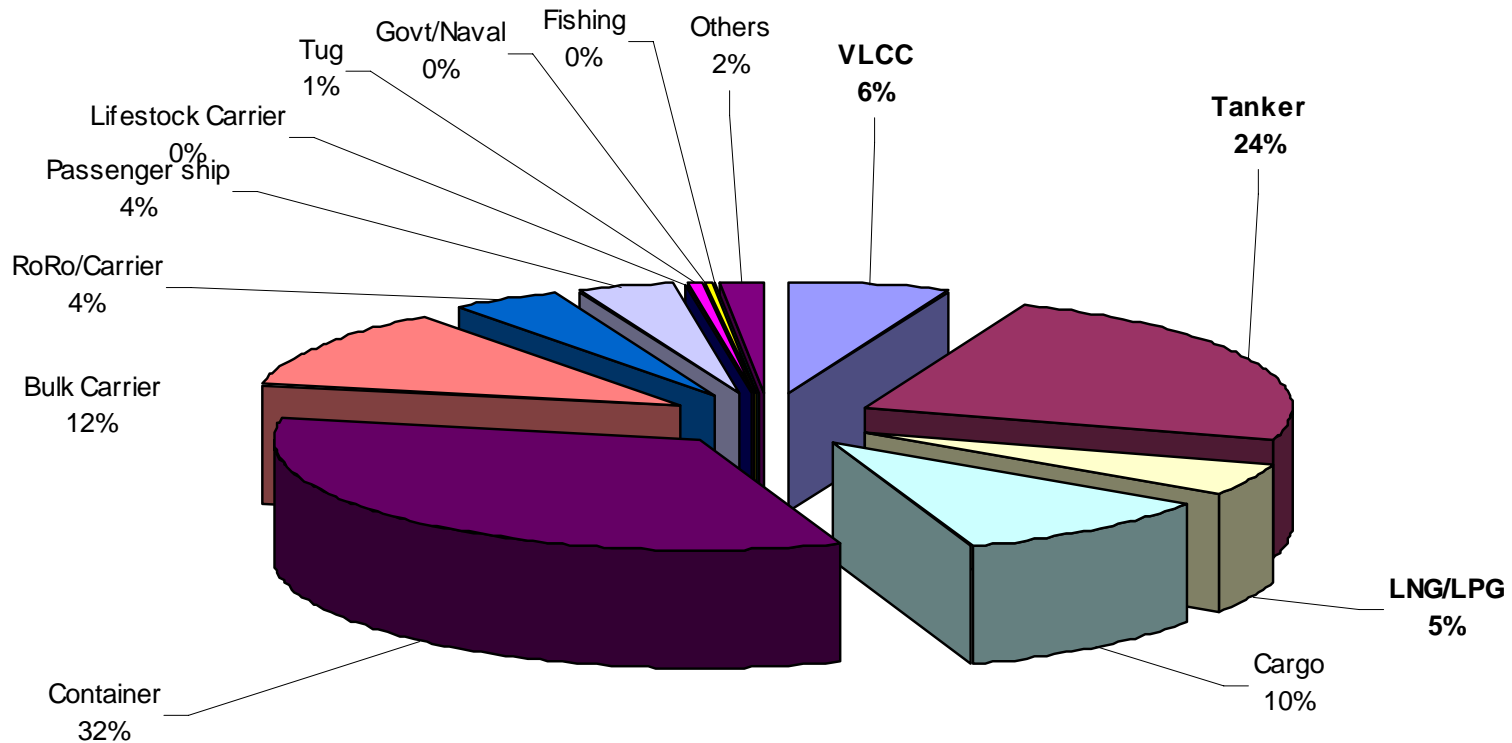
Malaysian Customs Code	MARPOL 73/78	IBC Code	IGC Code	BC Code	IMDG Code
Palm oil fractions = HS 1511	Palm oil fatty acid. Pollution category C	Only palm kernel acid oil listed. Requires ship type 3 and tank type 2G.	Not listed	Palm kernel listed under meal, oil cake, seed expellers. IMO class 4.2. UN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

Malaysian Receipts

Account	Malaysian receipt for 2004 (tonnes)
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%
Total Possible HNS Ships (60 ships per day !)	(21916 ships) 35%

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”.

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