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## DEFINITION OF "CONTRIBUTING OIL" IN ARTICLE 1.3 OF THE FUND CONVENTION

Note by the Director

### Introduction

1 In connection with its submission of reports on receipts of contributing oil for 1992, the Government of Canada has requested clarification as to whether a particular kind of oil, cohasset-panuke crude, from an oil field off Nova Scotia should be considered as "contributing oil" for the purpose of the Fund Convention. The Director submits this question for consideration by the Assembly.

### Definition of "Oil" in the Civil Liability Convention and the Fund Convention

2 The Civil Liability Convention and the Fund Convention only apply to spills of "persistent oil". However, the Conventions do not contain any definition of "persistent oil". Article 1.5 of the Civil Liability Convention provides that "oil" means "... any persistent oil such as crude oil, fuel oil, heavy diesel oil, lubricating oil and whale oil, whether carried on board a ship as cargo or in the bunkers of such a ship". In 1981, the IOPC Fund elaborated "A Non-technical Guide to the Nature and Definition of Persistent Oil" (documents FUND/A.4/11 and FUND/A.4/16, paragraph 14). It was agreed by the Assembly that this non-technical guide should serve as a guideline for the Director when dealing with claims against the IOPC Fund. This guide has proved useful and has been widely accepted by the oil industry and the P & I Clubs. The guide does not make any reference to cohasset-panuke crude oil.

3 Under Article 1.2 of the Fund Convention, the notion of "oil" has the same meaning in the Fund Convention as in Article 1.5 of the Civil Liability Convention, provided however that for the purpose of the Fund Convention "oil" shall be confined to "persistent hydrocarbon mineral oils".

**Definition of "Contributing Oil" in the Fund Convention**

4 The IOPC Fund is financed by levies on "contributing oil" as defined in Article 1.3 of the Fund Convention. This definition reads:

"Contributing Oil" means crude oil and fuel oil as defined in sub-paragraphs (a) and (b) below:

- (a) 'Crude Oil' means any liquid hydrocarbon mixture occurring naturally in the earth whether or not treated to render it suitable for transportation. It also includes crude oils from which certain distillate fractions have been removed (sometimes referred to as 'topped crudes') or to which certain distillate fractions have been added (sometimes referred to as 'spiked' or 'reconstituted' crudes).
- (b) 'Fuel Oil' means heavy distillates or residues from crude oil or blends of such materials intended for use as a fuel for the production of heat or power of a quality equivalent to the 'American Society for Testing and Materials' Specification for Number Four Fuel Oil (Designation D396-69), or heavier."

5 The definition of "contributing oil" was elaborated at the 1971 Diplomatic Conference on the basis of a text presented by the organisations representing the oil industry. The intentions behind the text were, inter alia, the following:

- (a) to cover all crude oil carried by sea and to prevent a situation arising where a simple treatment or steaming of crude oil, or the addition of an extra component, would enable an operator to claim that the material was not crude oil but something different and that he was therefore not liable to contribute for this material;
- (b) to define fuel oil so as to exclude lubricating oil and blendstocks therefor, bitumen and process stocks which were not intended to be burned as fuel.

6 Fuel oil was defined by reference to the American Society for Testing and Materials' Specification for Number Four Fuel Oil (Designation D396-69)<sup><1></sup> in an endeavour to provide a criterion which was easily understandable to the oil industry for the purpose of establishing whether or not any material should be considered as "contributing oil".

**Cohasset-panuke Crude Oil**

7 Cohasset-panuke crude oil comes from a field off Nova Scotia (Canada) and is a very light crude oil. The characteristics of the oil are as follows:

Specific gravity	0.758
Gasoline fraction (0° - 390°F)	64.00%
Kerosine fraction (390° - 500°F)	14.00%
Distillate fraction (500° - 660°F)	12.00%
Residue (660°F plus)	7.00%
Loss	3.00%
% distilled at 340°C (644°F)	94.00%
% distilled at 370°C (698°F)	97.00%

<1> Designation D396-69 has been updated, most recently by designation D396-90A; however, the definition of Number Four Fuel Oil has not been changed.

8 The above-mentioned Non-technical Guide to the Nature and Definition of Persistent Oil suggests, inter alia, that where there is doubt as to whether any oil is "persistent" or "non-persistent", two criteria for assessing whether any specific sample is "non-persistent" should be applied. An oil should thus be regarded as "non-persistent" if:

- (a) at least 50% by volume distils at 340°C; and
- (b) at least 95% by volume distils at 370°C.

#### Director's Analysis

9 In the above-mentioned Guide it is stated that crude oil is a mixture of hydrocarbons and that the lighter fractions which evaporate easily are not persistent whereas the heavier residual fractions with high boiling ranges are. It is further stated that all crude oils should therefore be considered as persistent. At the time of drafting the Guide, it was thus not envisaged that any crude oil would qualify as "non-persistent".

10 In view of the characteristics of cohasset-panuke crude oil set out in paragraph 7 above, an application of the criteria laid down in the Guide would result in this product being considered as "non-persistent" oil. In the opinion of the Director, these criteria should be applied by the IOPC Fund in respect of this product, which should therefore be considered as non-persistent oil. Cohasset-panuke crude oil would thus fall outside the scope of application of both the Civil Liability Convention and the Fund Convention as regards compensation for oil pollution damage.

11 With regard to the question of whether oils which are not persistent oils could fall within the notion of "contributing oil" and therefore be subject to the levy of contributions, the situation is less clear. Unlike the definition of "oil" in the Civil Liability Convention and therefore also in respect of the Fund Convention, the definition of "contributing oil" does not contain the word "persistent". Cohasset-panuke crude oil is undoubtedly a crude oil. It could therefore be argued that, in the absence of the word "persistent" in the definition of "contributing oil" contained in Article 1.3(a) of the Fund Convention, cohasset-panuke crude oil should be subject to the levy of contributions. It could be maintained, on the other hand, that since the system of compensation established by the Civil Liability Convention and the Fund Convention applies only to persistent oil, the definition of "contributing oil" should be interpreted against that background and that any non-persistent crude oil should therefore be considered as falling outside the definition of "contributing oil".

12 In the view of the Director, the text of the Fund Convention does not give any guidance as to whether cohasset-panuke crude oil, a non-persistent crude oil, should be considered as falling within the definition of "contributing oil". The Director is of the opinion, however, that since the compensation system established by the Civil Liability Convention and the Fund Convention only applies to persistent oil, it is reasonable to interpret the definition of "crude oil" within the definition of "contributing oil" in the Fund Convention as being limited to persistent crude oils. For this reason, the Director proposes that cohasset-panuke crude oil should be considered as falling outside the definition of "contributing oil".

13 The Director has been informed that the Board of Directors of Cristal Limited will consider, at its next meeting to be held on 11 October 1993, whether cohasset-panuke crude oil should be considered as a "contributing oil" for the purpose of the CRISTAL Contract.

14 It will be recalled that in 1988 the IOPC Fund Secretariat prepared a list in which various materials were classified under the headings "contributing oil" and "non-contributing oil", respectively. It was stressed by the Assembly that this list should not be considered as exhaustive but that it was

intended to serve as a guideline for the Director when dealing with reports on receipts of contributing oil (documents FUND/A.12/14 and FUND/A.12/19, paragraphs 17.1 and 17.2). Cohasset-panuke crude oil will be inserted in this list under the appropriate heading, depending on the decision of the Assembly.

**Action to be Taken by the Assembly**

- 15 The Assembly is invited to:
- (a) take note of the information contained in this document; and
  - (b) decide whether cohasset-panuke crude oil should be considered as falling within the definition of "contributing oil" laid down in Article 1.3 of the Fund Convention (paragraph 12 above).
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