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Amendments to the *Marine Liability Regulations* Implementing Hazardous and Noxious Substances Reporting Requirements

Discussion Paper



International Marine Policy
Transport Canada
February 2015

Canada 

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Introduction

Transport Canada is taking the steps necessary to implement the *International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea, 2010* (2010 HNS Convention). The *Marine Liability Act* (MLA) has recently been amended to implement this Convention in Canada. Transport Canada now proposes to amend the *Marine Liability Regulations* to implement certain provisions under the MLA regarding the reporting of Hazardous and Noxious Substances (HNS) received via maritime transport (i.e., by sea). The regulations are to outline who must report the receipt of HNS, to whom HNS receipts must be reported, and when HNS receipts must be reported.

This Discussion Paper will provide an overview of the 2010 HNS Convention, an update on the current status of the Convention and a detailed description of the implementation of the Convention in Canada, including the proposed regulatory amendments to the *Marine Liability Regulations*. Annexes 1 and 2 provide a more detailed explanation of the HNS Convention, including its history, the damages and substances covered by it, as well as contributions requirements.

The purpose of the Discussion Paper is to inform stakeholders of and obtain feedback on the proposed content of the regulations and obtain information about who receives HNS in Canada, where it is received, and what kind of and how much HNS is received.

Overview of 2010 HNS Convention

The 2010 HNS Convention sets out a regime, based on the “polluter pays” principle, to compensate claimants for damages arising from the international or domestic carriage of HNS by sea. The two-tier model of compensation combines the shipowners’ strict liability for damage caused by HNS backed by compulsory insurance (tier 1), and an international HNS Fund comprised of contributions from the receivers or importers of HNS cargo (tier 2). The HNS regime is similar to the international oil pollution liability and compensation regime (Civil Liability Convention (CLC) and the 1992 Fund Convention and 2003 Supplementary Fund Protocol, which created the International Oil Pollution Compensation Fund (IOPC Funds), and which Canada adopted in 1989. However, the HNS regime covers many more substances (including non-persistent oils) and damages, including certain damages from persistent oils that are not covered by the oil regime (see Annex 1 for more detail on substances and damages covered).

Current Status of the 2010 HNS Convention

To ratify the Convention, a state must have collected data on HNS receipts for the preceding calendar year (i.e. January 1 to December 31). In order for the 2010 Convention to come into force, it must be ratified by at least twelve states, with a minimum of 40 million tonnes of contributing cargo between the ratifying states. Four of the ratifying states must have a registered ship’s tonnage of at least 2 million gross tonnes. At this time, no states have ratified the 2010 HNS Convention. However, a number of other states are also working toward implementing and eventually ratifying the Convention.

In October 2010, Transport Canada issued a discussion paper proposing the Canadian ratification of the 2010 HNS Convention, as well as proposals for implementing it in Canada. The results of the consultations on that discussion paper was broad support from stakeholders in favour of Canada adopting the Convention. The purpose of this round of consultations is to discuss the HNS reporting requirements under the Convention and not whether Canada should ratify the Convention.

Contributions to the HNS Fund

The HNS Fund, which will come into existence once the Convention enters into force, will, in general, be financed by contributions from persons located in a state party who have received contributing cargo. For more information about contributions to the HNS Fund, please see Annex 2.

Reporting Requirements

The HNS Fund will determine the contribution amounts to be paid by each receiver based on reports made by each state party. Canada would be required to report on persons that receive bulk HNS in the following amount in a calendar year:

- over 150,000 tonnes of persistent oil;
- over 20,000 tonnes of Liquefied Petroleum Gas (LPG);
- any quantity of Liquefied Natural Gas (LNG) cargo; and
- any other bulk HNS cargo, including non-persistent oils, in quantities exceeding 20,000 tonnes.

Any reporting requirement applicable to HNS receivers would only apply to bulk HNS received by sea (i.e. imported by ship or received by a domestic sea shipment).

There are three instances when Canada will be required to report its contributing cargo:

- Upon ratifying the 2010 HNS Convention;
- Annually, to the Secretary General of the IMO prior to the Convention coming into force (to fulfill one of the entry into force requirements to calculate the amount of contributing cargo); and
- Annually, to the Director of the HNS Fund, following the entry into force of the Convention.

Implementing the 2010 HNS Convention in Canada

Bill C-3, the *Safeguarding Canada's Seas and Skies Act*, received Royal Assent on December 9, 2014. It contained all the necessary amendments to the MLA to implement the 2010 HNS Convention in Canada. The amendments included provisions to make regulations to establish how information about HNS that is received in Canada is reported to the HNS Fund. The implementation of these regulatory requirements would allow Canada to ratify the 2010 HNS Convention.

Reporting requirements are divided into two groups. First, section 74.4 of the MLA requires receivers of HNS other than oils to report to the Minister of Transport, in the form established by regulation, the quantity of HNS they have received. Second, section 117 of the MLA requires receivers of HNS that are oils (both persistent and non-persistent) to report to the Administrator of the Ship-source Oil Pollution Fund (SOPF) or the Minister, in the form established by regulations, the quantity of HNS they have received. Subsections 74.4(3) and 117(1.5) provide the Governor in Council the authority to make the necessary regulations to implement the HNS reporting requirements.

Concept of Receiver

The persons that receive HNS cargo are called receivers. Canada has adopted the definition of a 'receiver' of HNS cargo in article 1.4(a) of the 2010 HNS Convention. Generally speaking, a receiver is the person who physically receives contributing cargo or bulk HNS at ports and terminals in Canada. However, the definition does allow for an agent that receives HNS on behalf of a principal to identify the principal as the final receiver. This will be discussed in greater detail below.

What is Bulk HNS?

Bulk HNS is defined by various IMO safety codes (see Annex 1) that are updated periodically. It includes:

- Oils
 - Persistent oils (crude, fuel oil, lubricating oil, liquid asphalt etc.)
 - Non-Persistent oils (gasoline, jet fuel, etc.)
- LPG (i.e. propane)
- LNG
- Liquid bulk substances and chemicals, including, among others:
 - acids (sulphuric acid, nitric acid, hydrochloric acid, phenol, methanol, etc.)
 - petrochemicals such as xylene, benzene and toluene
 - caustic soda
 - alcohols and carbohydrates
 - vegetable and animal oils
- Bulk gas (ammonia, ethylene, chlorine, etc.)
- Certain solid bulk substances (including fertilizers such as potassium nitrate, zinc ashes, iron oxide, sulphur, aluminum by-products, etc.)

Packaged and Containerized HNS

It is important to note that receivers of packaged or containerized HNS will not be required to report receipts or pay contributions to the HNS Fund. However, damages caused by packaged HNS will continue to be covered by both the shipowners' liability and the HNS Fund. The logistics chain for packaged HNS is complex and creates uncertainty over who would be considered the actual 'receiver'. State parties would have had to put in place burdensome reporting and tracking requirements for packaged HNS.

New Regulations Implementing HNS Reporting Requirements

To meet the mandatory reporting requirements under the 2010 HNS Convention, Canada must collect information on the quantities of bulk HNS received in Canada. Accordingly, the new regulations are to set out who is required to report, when reporting must be done and, in the case of HNS that are oils, to whom reports are to be submitted. As part of the regulatory consultations, Transport Canada will also discuss how reporting would be done.

It is important to note that once the 2010 HNS Convention enters into force, the new HNS Fund will develop a set of regulations that will specify in greater detail how reports will be made by state parties. In addition, Canada's reporting requirements for before and after the Convention enters into force may be different. Before the 2010 HNS Convention enters into force, Canada must only report to the IMO the total quantity of contributing cargo for each account and not the actual individual receivers or the quantities received by each receiver in respect of each account. No contributions will be paid to the HNS Fund at this point. Once the 2010 HNS Convention enters into force, Canada will be required to submit more detailed reports that include information on individual contributors and the quantity of contributing cargo each contributor receives for each account and sector. Canada will have to ensure that the name of any person liable to pay contributions appears on a list to be established by the Director of the HNS Fund.

Therefore, further amendments to the *Marine Liability Regulations* may be required. Transport Canada will use the time between the proposed amendments to the *Marine Liability Regulations* entering into force and the entering into force of the 2010 HNS Convention to identify physical receivers, principal/agent relationships, cargo in transit, and associated persons.

Impacted industries

There are currently some 2914 different bulk HNS commodities covered by the 2010 HNS Convention that receivers would need to report. These, generally, fall under the following industry sectors:

- oils (includes all types of oil such as crude, fuel oil, refined products, etc.);
- chemicals and petro-chemicals;
- mining;
- aluminum;
- forestry products;
- fertilizers;
- LNG;
- LPG;
- asphalt;
- electricity production using oil; and,
- vegetable and animal oils.

1. What type of bulk HNS commodities does your company receive by ship and at which physical location (port or marine terminal)?

An international electronic database, known as the HNS Finder (see <http://hnsconvention.org/Pages/FinderOverview.aspx>), has been developed to assist states and potential contributors in identifying and reporting contributing cargoes covered by the 2010 HNS Convention. The name or United Nations number of the substance can be used to find out whether or not a chemical falls within the definition of HNS. The HNS Finder provides those receivers who would potentially need to report information as to whether a specific substance falls under the reporting requirements in the Convention.

Note that certain low hazard bulk solids are excluded from the reporting and contribution requirements of the 2010 HNS Convention. This includes high volume and low risk commodities such as coal, fishmeal, wood chips and pellets, petroleum coke, etc. A more complete list is available from Transport Canada.

Only those who import HNS by sea or move HNS by sea domestically would be required to report. This includes independent storage terminals physically receiving bulk HNS and acting as an agent for a principle/owner of the HNS cargo being received. Exports by ship from Canada would not be subject to reporting or contributions to the HNS Fund.

Who would be required to report?

It is proposed that persons that receive HNS in the below amounts in a calendar year be required to report the total amount of contributing cargo:

- over 150,000 tonnes of persistent oil;
- over 17,000 tonnes of Liquefied Petroleum Gas (LPG);
- any quantity of LNG cargo; and
- any other bulk HNS cargo, including non-persistent oils, in quantities exceeding 17,000 tonnes.

2. Does your company receive (i.e. import or receive from a domestic shipment) bulk HNS by ship that is covered by the Convention (see the [HNS Finder](#))?

Persistent oil

In Canada, receivers of persistent oil already report to the Administrator of the Ship-Source Oil Pollution Fund (SOPF) in order to meet Canada's obligations under the 1992 Fund Convention and 2003 Supplementary Fund Protocol. Section 3 of the *Marine Liability Regulations* requires persons that receive more than 150,000 tonnes of oil to report the total quantity of oil received in a calendar year. Reporting thresholds are to be the same for the HNS Fund and the IOPC Funds. Therefore, the information they already provide to the Administrator would simply be forwarded to both the IOPC Funds and the IMO or HNS Fund, as the case may be, thus not creating any new reporting requirements. The SOPF will continue to pay the contributions to the IOPC Funds and eventually will do the same to the HNS Fund.

Other HNS

Although the Convention has a 20,000 tonnes threshold for reporting LPG, non-persistent oil and any other bulk HNS cargo, it is proposed that the regulations set out a lower threshold of 17,000 tonnes for reporting HNS shipments to the Minister and the Administrator of the SOPF.¹ This would allow the Minister and Administrator to better monitor the HNS trade flows and those parties that would be on the margins of the annual threshold that could potentially be brought into the levy system in any given year. This is particularly important because the expected number of receivers in Canada has been estimated to be quite low with many smaller receivers under the annual 20,000 tonnes threshold. It is important to note that the establishment of a lower national threshold is proposed only for the purpose of reporting annual HNS receipts to the Minister and the Administrator and not for the purpose of providing contributions to the HNS Fund. Information collected from those under the contribution threshold would not be shared with the HNS Fund in any way.

3. How does your company track the amount of bulk HNS received? Is the data easily accessible and user-friendly? Do you know the quantities of HNS received by your company? Would the aggregate amount of HNS received annually be above the proposed thresholds for reporting HNS?

Associated person²

It is important to note that, if the quantity of a given type of contributing cargo received in Canada by any person is combined with the quantities of the same type of cargo received in Canada by any associated person and exceeds the above limits, the person must report the total quantity even though the quantities received by the person and associated persons separately would not exceed the above limits. Thus, the reporting requirement would be for an aggregate amount of bulk HNS received annually by marine shipment.

4. Does your company have affiliates or subsidiaries that receive bulk HNS cargo? If so, would the aggregate amount of HNS received annually be above the proposed thresholds for reporting HNS?

To whom would reports be made?

Subsection 117 (1.4) of the MLA states that, in the case of HNS that are oils (persistent and non-persistent), reports are to be made to the Minister or the Administrator of the SOPF, in

¹ Transport Canada has not proposed a lower cut-off for reporting HNS receipts that are persistent oil because it would be inconsistent with the requirements to report to the IOPC Funds and the SOPF.

² Section 74.3 of the MLA stipulates that associated person means any subsidiary or commonly controlled entity. If two bodies are affiliated with each other within the meaning of section 2 of the *Canada Business Corporations Act*, they are deemed to be “associated persons”.

accordance with the regulations. Therefore, the regulations must specify to whom reports of HNS that are oils would be made. To maintain consistency with the reporting requirements for the IOPC Funds and the SOPF, it is proposed that reports of HNS that are oils be made to the Administrator, who would then submit the reports to the necessary persons.

In the case of HNS that are not oils, reports are to be made to the Minister (i.e. Transport Canada), as per subsection 74.4(2) of the MLA. Therefore, no regulatory provisions are necessary to set out to whom reports of HNS that are not oils are to be reported.

When must reporting be done?

It is proposed that reports on HNS receipts for a calendar year be filed on an annual basis, no later than February 28 of the following calendar year. This is consistent with the current requirements in the *Marine Liability Regulations* to file receipts of oil with the SOPF and limits the administrative burden for all stakeholders.

How would reporting be done?

The proposed reporting method is a system in which industry self-reports with provisions for verification by Transport Canada and the Administrator of the SOPF. This is consistent with the reporting requirements of the SOPF. The MLA has already been amended to provide enforcement and contravention provisions in cases where reports are not filed, information is missing from reports or any person hinders the pursuit of such information, which will be discussed below in more detail.

Transport Canada is exploring various reporting options. The goal is to create a reporting system that:

- Minimizes the resource impact (e.g. financial, time) on all stakeholders (industry and government) for the development, implementation and ongoing use of the system;
- Minimizes the complexity of the information that is requested and the reporting process; and
- Manages all stakeholder data securely.

5. Is there a particular type of reporting system that you favour?

Coming into force of the regulations

As previously discussed, in order to ratify the 2010 HNS Convention, a state must have collected data on HNS receipts for the preceding calendar year (i.e. from January 1st to December 31st). Transport Canada is expecting the regulations to come into force on January 1, 2017. This would allow for data to be collected on HNS receipts over the 2017 calendar year, thus allowing Canada to possibly ratify the 2010 HNS Convention in 2018.

Exceptions to Reporting

There are two exceptions to reporting in the Convention, which are discussed below. However, the HNS Fund will likely adopt its own regulations for the purposes of reporting on each one. Thus, the IMO adopted in 2013 Guidelines on Reporting HNS Contributing Cargo. The purpose of these Guidelines is to further simplify the initial reporting requirements for states by adopting the same approach currently being used for the IOPC Funds and for HNS that are not subject to the exceptions. That is, to have the physical receiver of the HNS report and, if able to, indicate whether any of the exceptions below would apply. The Guidelines are available at the following link: http://www.hnsconvention.org/Documents/Guidelines_2014.pdf.

Principal/agent relationship

First, in the case of HNS that are not persistent oils (i.e. all HNS cargo except persistent oils), the definition of receiver allows for a principal/agent relationship. If the person who physically receives the cargo acts as an agent for a principal, then the principal shall be deemed the receiver. This allows the physical receivers of cargo, such as storage companies, to pass on the obligation to pay a levy to principal receivers or the owners of the cargo, by identifying the final receivers. Both the person who physically receives the contributing cargo in a port or terminal, and the designated third party must be subject to the jurisdiction of a state party to enable the physical receiver to pass on the levy. The principal receiver would not be required to report HNS receipts – the physical receiver would remain responsible for reporting.

In the case of persistent oils, the receiver under the 2010 HNS Convention is the same party responsible for paying contributions to the IOPC Funds. This means that, unlike for other types of HNS, the person that receives the oil is responsible for reporting, even if the person is acting as an agent.

6. In the case of an independent storage terminal that would be required to report annually, can you identify the principals (owners) of the HNS being received?

Cargo in transit

Second, cargo in transit is not a contributing cargo, as provided for in Article 1(10) of the 2010 HNS Convention. Cargo in transit is defined as:

Cargo in transit which is transferred directly, or through a port or terminal, from one ship to another, either wholly or in part, in the course of carriage from the port or terminal of original loading to the port or terminal of final destination shall be considered as a contributing cargo only in respect of receipt at the final destination.

This means that bulk HNS received at an intermediary stage during carriage at sea, either transferred directly from ship-to-ship or indirectly through a port or terminal, does not constitute a “contributing cargo” since it is a transshipment in the “course of carriage by sea”. Only the

final receiver will be required to report the cargo and pay any levies. The purpose of this provision is to avoid the situation where two separate levies from two separate contributors, first at the port of transshipment and then again at the port of final destination, would be paid on the same HNS cargo. However, bulk HNS cargo received in a port for transshipment by truck or rail to its final destination will be subject to reporting at that port.

7. Is any of the bulk HNS received by your company transhipped from one ship to another, either directly or indirectly, in the course of a carriage by sea?

LNG Titleholders

With regard to LNG, the physical receiver of the LNG cargo would always be required to report the quantity of LNG cargo received. However, the physical receiver of LNG in Canada may enter into an agreement with the titleholder of the LNG cargo to transfer the responsibility to pay any contributions to the HNS Fund to the titleholder. The receiver must inform Transport Canada that such an agreement exists so the titleholder is levied. In addition, if the titleholder does not make the contributions or any part thereof, the physical receiver would make the remaining contributions.

8. In the case of LNG receivers, will you have an arrangement with the titleholders to the LNG cargo to pay the contributions?

Sanctions for Non-reporting

Canada is responsible for any levies lost as a result of the non-submission of reports by persons liable to pay the levy. The 2010 HNS Convention contains the following sanctions on states that do not submit contributing cargo reports:

- an instrument of ratification by a state, which is not accompanied by a contributing cargo report, will not be accepted by the Secretary General of the IMO;
- in the period prior to the Convention coming into force, a state will be temporarily suspended from being counted as a contracting state, should it not submit annual reports to the IMO; and
- following the entry into force of the Convention, no compensation shall be paid for any incident in a state that has not submitted a report until a report is submitted to the Director of the HNS Fund because the Director would be unable to assess contribution amounts for the state. States will have one year to submit missing reports after being notified of their failure to fulfill their obligations. It should be noted that these sanctions do not apply in respect of death or personal injury claims and these claims will continue to be assessed and paid.

Therefore, Canada must ensure that accurate reporting takes place. The 2010 HNS Convention enables state parties to take appropriate measures under their national law, including the

imposition of sanctions, to achieve the effective implementation of any obligations for which the receivers of HNS are responsible.

The MLA contains enforcement and contravention provisions that allow the Minister and, where applicable, the Administrator of the SOPF to, at a reasonable time, enter a place where they believe there is information about the required reports. In addition, any person that hinders the Minister or the Administrator in their pursuit of such information or knowingly makes a false or misleading statement is guilty of an offence and liable to a fine not exceeding \$100,000. Any person that fails to file the required reports is guilty of an offence and liable to a fine not exceeding \$1,000 for each day they are in default.

Conclusion

Regulation is an important tool for protecting the health and safety of Canadians, preserving the environment, and securing the conditions for an innovative and prosperous economy. It is incumbent upon the Government of Canada to create accessible, clear, and responsive regulation. Transport Canada is currently preparing to draft the proposed amendments to the *Marine Liability Regulations*. Consultations with stakeholders will occur in March and April of 2015. If major changes are made to the proposed regulatory amendments, Transport Canada will hold additional consultation sessions. As part of the *Canada Gazette* publication process, stakeholders will have further opportunities to provide comments and feedback.

Questions for Stakeholders

1. What type of bulk HNS commodities does your company receive by ship and at which physical location (port or marine terminal)?
2. Does your company receive (i.e. import or receive from a domestic shipment) bulk HNS by ship that is covered by the Convention (see the [HNS Finder](#))?
3. How does your company track the amount of bulk HNS received? Is the data easily accessible and user-friendly? Do you know the quantities of HNS received by your company? Would the aggregate amount of HNS received annually be above the proposed thresholds for reporting HNS?
4. Does your company have affiliates or subsidiaries that receive bulk HNS cargo? If so, would the aggregate amount of HNS received annually be above the proposed thresholds for reporting HNS?
5. Is there a particular type of reporting system that you favour?
6. In the case of an independent storage terminal that would be required to report annually, can you identify the principals (owners) of the HNS being received?
7. Is any of the bulk HNS received by your company transshipped from one ship to another, either directly or indirectly, in the course of a carriage by sea?
8. In the case of LNG receivers, will you have an arrangement with the titleholders to the LNG cargo to pay the contributions?

Annex 1

Detailed background of the Hazardous and Noxious Substances Convention

In the 1990s, several incidents involving water-borne spills of HNS highlighted a gap in the marine liability system and prompted the international community to take action. Through the International Maritime Organization (IMO), a liability regime was devised to compensate claimants in the event of spills involving chemicals and other hazardous substances. This effort culminated in the *International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea, 1996* (1996 HNS Convention), which was adopted under the auspices of the IMO in 1996.

Eight states signed the 1996 HNS Convention, subject to ratification, including Canada following its widespread consultations with industry stakeholders. Fourteen other states ratified the Convention. However, the 1996 HNS Convention never came into force because those states that ratified it did not submit reports on the quantity of HNS cargo they received over the thresholds established in the Convention, which was an entry into force provision. Discussions among states and with stakeholders also identified the following underlying causes that have inhibited the ratification and entry into force of the 1996 HNS Convention:

- 1) Contributions to the Liquefied Natural Gas (LNG) Account were to be made by the titleholders to LNG cargo, who may not have been subject to the jurisdiction of a state party (i.e. persons with certain LNG supply contracts) and would therefore not be required to contribute to cover compensation from LNG incidents;
- 2) The complex logistics chain for packaged HNS and uncertainty over who would be considered the actual ‘receiver’ meant that states would have needed to put in place very burdensome reporting and tracking requirements for packaged HNS; and
- 3) The 1996 HNS Convention did not impose any sanctions against states that did not report the HNS received in their territory and this presented an unfair sharing of the burden among states when assessing contributions to the HNS Fund.

To address these issues and facilitate entry into force, a Working Group set up by the International Oil Pollution Compensation (IOPC) Fund’s 1992 Fund Assembly and the IMO’s Legal Committee developed the 2010 Protocol to the 1996 HNS Convention. The IMO adopted the 2010 HNS Protocol at a diplomatic conference held from April 26th-30th, 2010. On October 25, 2011, Canada was one of eight states to sign the 2010 HNS Protocol, subject to ratification.

The 1996 HNS Convention, as amended by the 2010 Protocol, became the 2010 HNS Convention. The 2010 HNS Convention follows the two-tier model of compensation of the international oil pollution liability and compensation regime (Civil Liability Convention (CLC) and the IOPC Funds), which Canada adopted in 1989. That is, the 2010 HNS Convention sets out a liability regime to compensate claimants for damages arising from the international or domestic carriage of HNS by seagoing vessels. Based on the “polluter pays” principle, the two-

tiered regime combines the shipowners' liability backed by compulsory insurance (tier 1), and an HNS Fund comprised of contributions from the receivers or importers of HNS cargo (tier 2).

The 2010 HNS Convention differs from the oil pollution regime mainly in that it:

- Covers many more substances, as set out in article 1 (5) of the 2010 HNS Convention, including damage from oil that is not covered by the oil pollution regime;
- Combines the shipowner liability regime and the HNS Fund into one instrument;
- Covers loss of life and personal injury and fire and explosion damage; and
- Payment of compensation can occur before other types of claims have been satisfied.

Damage covered by the 2010 HNS Convention

The HNS regime provides compensation of up to 250 million Special Drawing Rights (SDR)³, or approximately CDN \$450 million, for:

- loss of life or personal injury onboard or outside the ship carrying HNS;
- loss of, or damage to, property outside the ship;
- loss or damage caused by contamination of the environment; and
- costs of preventive measures taken by any person after an incident has occurred to prevent or mitigate further damage.

The Convention covers any damage caused during the international or domestic carriage of HNS by any seagoing ships in the territory, including the territorial sea, of a state party to the Convention. It also covers pollution damage in the exclusive economic zone, or equivalent area, of a state party. In addition, the Convention covers damage (other than pollution damage) caused by HNS carried onboard seagoing ships of member states when they are outside the territory or territorial sea of any state.

The Convention does not cover:

- damage caused during the transport of HNS on land before or after carriage by sea⁴;
- pollution damage caused by persistent oil, since such damage is already covered under the existing international regime established by existing oil pollution conventions for tankers (i.e., the 1992 Civil Liability Convention and the International Oil Pollution Compensation (IOPC) Funds); and
- damage caused by radioactive material in either bulk or packaged form.

³ The value of 1 SDR is approximately 1.8 Canadian dollars but fluctuates daily. The actual total amount of compensation would be set in accordance with the value of the SDR in Canadian dollars at the time of an incident.

⁴ Article 1(9) of the 2010 HNS Convention defines "carriage by sea" as "the period of time from when the hazardous and noxious substances enter any part of the ship's equipment, on loading, to the time they cease to be present in any part of the ship's equipment, on discharge. If no ship's equipment is used, the period begins and ends respectively when the hazardous and noxious substances cross the ship's rail".

Hazardous and Noxious Substances

Estimates indicate there are approximately 6,500 substances covered under the definition of HNS. Note that this includes packaged/containerized HNS that would not be subject to the reporting and contribution requirements in the proposed regulations. The definition of HNS substances and the relevant Codes can be found in Article 1(5) of the 2010 HNS Convention. Table 1 provides an overview of the substances covered under the Convention. However, not all of these substances would be subject to reporting requirements – only bulk HNS receipts must be reported.

Table 1 – HNS Substances

Substances covered	Conventions Codes	Reference (www.imo.org/)
Bulk Oils	MARPOL 73/78 ⁵	Annex I, Regulation 1
Noxious Liquids	MARPOL 73/78	Annex II, Regulation 1.10
Dangerous liquids Liquids with a flashpoint not exceeding 60°C	IBC Code ⁶	Chapter 17
Gases	IGC Code ⁷	Chapter 19
Solids	IMBSC Code ⁸	(if also covered by the <u>IMDG Code in packaged form</u>)
Packaged or Containerized	IMDG Code ⁹	Not subject to reporting or contributions

⁵ *International Convention for the Prevention of Pollution from Ships, 1973, as modified by the Protocol of 1978 relating thereto*

⁶ International Code for the Construction and Equipment of Ships Carrying Dangerous Chemicals in Bulk, as amended.

⁷ International Code for the Construction and Equipment of Ships Carrying Liquefied Gases in Bulk, as amended.

⁸ International Maritime Solid Bulk Cargoes Code (IMBSC Code).

⁹ International Maritime Dangerous Goods Code (IMDG Code).

Annex 2

Contributions to the HNS Fund

The HNS Fund will consist of four separate accounts covering different HNS cargo:

- Oil (Persistent Oil Account);
- Liquefied natural gas (LNG Account);
- Liquefied petroleum gas (LPG Account); and
- All other HNS (General Account).

The principal reason for the separate accounts is to ensure that each account pays its own claims, thus avoiding cross-subsidization of claims among major HNS groups and the industries involved.

Generally speaking, the HNS Fund and its accounts will be financed by contributions from persons located in a state party who have received contributing cargo. Although the Convention covers damages from approximately 6,500 substances, only bulk HNS receipts count as contributing cargo and only if received in the below quantities:

- Over 150,000 tonnes of persistent oil;
- Over 20,000 tonnes of LPG;
- Any quantity of LNG; and
- Over 20,000 tonnes of any other bulk HNS cargo, including oils other than persistent oils.

If the quantity of a given type of contributing cargo received in Canada by any person is combined with the quantities of the same type of cargo received in Canada by any associated person and exceeds the above limits, contributions will be paid on the total quantity even though the quantities received by the person and associated persons separately would not exceed the above limits.

The contributions to the HNS Fund will be made in respect of HNS carried by seagoing ships and received in Canadian ports. While the Convention covers damages caused by HNS carried in whatever quantity, the duty to pay levies will rest only with those persons who exceed the above thresholds of HNS received in a given year. With the exception of any administrative costs, the contributions will generally be made post-event, i.e. they will only be due after an incident occurs and will be levied only in respect of the account(s) involved in that incident (i.e. Oil/LNG/LPG/all other bulk HNS). The levies applying to individual receivers will be calculated according to the quantities of contributing cargo received in the year preceding the year of the incident. Levies may be spread over several years, depending on the progress of payments of claims resulting from the incident.