

## ANNEX II

### **Proposed list of vessels which clearly fall within or outside the definition of 'ship' under Article I.1 of the 1992 CLC and examples of when the maritime transport chain commences and concludes**

#### *Considerations*

The list of vessels contained in the following document is not exhaustive. It is only indicative and illustrative of the craft which clearly fall within the definition of 'ship', and which clearly fall outside the definition of 'ship'. Other craft with similar characteristics may fall within or outside the definition depending on the circumstances, which are to be considered on a case-by-case basis.

It is the overall view of the Working Group that 'grey areas' are to be decided on a case-by-case basis using the hybrid approach. The hybrid approach involves the list of examples of ships which clearly fall within the definition of 'ship' or clearly fall outside the definition, and the use of the maritime transport chain test as an interpretative tool for addressing situations where it is not clear if the structure is a 'ship' or not.

Even if a craft is not included within either list, the 1992 Fund governing bodies will be able to consider whether it is or is not a 'ship', in light of the circumstances.

#### *Examples of craft which clearly fall within the definition of 'ship'*

The Working Group proposes that the following non-exhaustive, illustrative list, provides examples which are clearly within the definition of 'ship' under Article I(1) of the 1992 CLC: (alternative texts proposed by the delegation of the Bahamas are shown in italics)

- 1) A seagoing vessel or seaborne craft constructed or adapted for the carriage of oil in bulk as cargo when it is actually carrying oil in bulk as cargo;
- 2) A seagoing vessel or seaborne craft in ballast following a voyage carrying oil with residue of oil onboard;
- 3) A craft carrying oil in bulk as cargo being towed (or temporarily at anchor for purposes incidental to ordinary navigation or force majeure or distress);
- 4) A ship capable of carrying oil and other cargoes (ie an Oil Bulk Ore carrier (OBO)) when it is actually carrying oil in bulk as cargo and during any voyage following such carriage unless it is proved that it has no residues;

*(Alternative text proposed by the delegation of the Bahamas)*

*(4) A ship capable of carrying oil and other cargoes (ie an Oil Bulk Ore carrier (OBO)) when it is actually carrying oil in bulk as cargo and during any voyage following such carriage unless it is proved that it has no residues;*

- 5) Offshore craft that have their own independent motive power, steering equipment for seagoing navigation and seafarer onboard so as to be employed either as storage units or carriage of oil in bulk as cargo and that have the element of carriage of oil and undertaking a voyage. This also includes when an Offshore craft is towed; and

*(Alternative text proposed by the delegation of the Bahamas)*

*For the purposes of the following examples the term "offshore craft" means Floating Drilling Production Storage and Offloading units (FDP SO), Floating Production Storage and Offloading units (FSO) and FSU whether purpose-built, or converted or adapted from seagoing vessels constructed for the transportation of oil.*

- (5) Offshore craft that have their own independent motive power, power, steering equipment for seagoing navigation and seafarers onboard undertaking a voyage carrying oil in bulk as cargo; and (Alternative text proposed by the delegation of the Bahamas)*

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- 6) Craft that are originally constructed or adapted (or capable of being operated) as vessels for transportation of oil, but later converted to FSOs, with capacity to navigate at sea under their own power and steering retained and with seafarer onboard and that have the element of carriage of oil and undertaking a voyage.

*(Alternative text proposed by the delegation of the Bahamas)*

*(6) Offshore craft that do not have their own independent motive power, steering equipment for seagoing navigation and seafarers onboard being towed and carrying oil in bulk as cargo.*

*Note: Existing paragraph (6) is deleted since converted craft are covered by proposed new paragraph (5) and the proposed definition text of the term "offshore craft".*

*(End of alternative texts proposed by the delegation of the Bahamas)*

*Examples of craft which clearly fall outside the definition of 'ship'*

The Working Group considers that the following (non-exhaustive) illustrative examples, clearly do not fall within the definition of 'ship' under Article I(1) of the 1992 CLC:

- A) Barges certified or classed only for use on inland water ways;
- B) Vessels which are not constructed or adapted for the carriage of oil in bulk as cargo. Such categories include 'non-tanker' vessels, such as:
  - (a) Container vessels;
  - (b) Cruise Ships;
  - (c) Tugs;
  - (d) Dredgers;
  - (e) General cargo vessels;
  - (f) Diving support vessels;
  - (g) Bulk carriers;
  - (h) Passenger vessels;
  - (i) Car carriers;
  - (j) Fishing vessels; and
  - (k) Ferries.
- C) Vessels or craft involved in:
  - a) Exploration, for example jack-up rigs<sup><13></sup> or Mobile Offshore Production Units (a jack-up platform whether or not it carries oil, gas and water separation equipment); or
  - b) The production or processing of oil, for example Drill-ships, FDPSOs, and FPSOs, including separation of water and gas, and its management;

*'Grey areas' to be decided on a case by case basis*

There are, however, a number of vessel types where it is not clear whether they comply with the definition of 'ship' under Article I(1) of the 1992 CLC. These cases will be decided by the 1992 Fund governing bodies on a case-by-case basis, using the maritime transport chain test (suggested by Spain and refined by the Australian delegation), as an interpretive tool. The hybrid approach involves both the list of examples of ships which clearly fall within the definition of 'ship' or clearly fall outside the definition, and the use of the maritime transportation chain test as an interpretive tool for addressing situations where it is not clear if the structure is a 'ship' or not.

<sup><13></sup>

An offshore drilling rig or platform having a floating hull fitted with retractable legs that are lowered to the seabed from the operating platform to elevate the hull above wave level.