

OIL SPILL COMPENSATION

A GUIDE TO THE INTERNATIONAL CONVENTIONS ON LIABILITY AND COMPENSATION FOR OIL POLLUTION DAMAGE



International Petroleum Industry
Environmental Conservation Association



The International Tanker Owners Pollution Federation Limited

PURPOSE OF THIS GUIDE

Those who conduct clean-up operations or suffer damage as a result of an oil spill from a tanker need to be assured that they will receive prompt and adequate compensation. It is therefore in everyone's interest to ensure that the 1992 Civil Liability Convention and 1992 Fund Convention are widely ratified. The purpose of this *Guide* is to provide a summary of the fundamental features of the two Conventions, and to provide a basis on which tanker owners, oil companies and other interested parties can promote their ratification by all coastal States.

The *Guide* comprises an explanatory text and a series of answers to commonly asked questions.

CONTENTS

Introduction	1
Fundamental features of the compensation Conventions	4
Compensation limits	9
Scope of compensation—admissible claims	10
Record keeping	13
Claims presentation	13
Compensation in States that are not party to the Conventions	14
Conclusions	15
Useful addresses	15
Answers to commonly asked questions	16

OIL SPILL COMPENSATION

A GUIDE TO THE INTERNATIONAL CONVENTIONS ON LIABILITY AND COMPENSATION FOR OIL POLLUTION DAMAGE

INTRODUCTION

The *Torrey Canyon* incident in 1967 provided a major stimulus to the development of two voluntary agreements and two international Conventions through which compensation was made available to those who incur clean-up costs or suffer pollution damage¹ as a result of a spill of persistent hydrocarbon mineral oil² from a tanker³.

The interim voluntary agreements of TOVALOP and CRISTAL established by the tanker and oil industries in the aftermath of the *Torrey Canyon* existed far longer than originally expected but their relevance was progressively eroded as States around the world ratified the equivalent international Conventions. In view of this both voluntary agreements were terminated on 20 February 1997.

The international Conventions were developed under the auspices of the International Maritime Organization (IMO). The original Conventions were the 1969 International Convention on Civil Liability

for Oil Pollution Damage ('1969 CLC') and the 1971 International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage ('1971 Fund Convention'). This 'old' regime was amended in 1992 by two Protocols to provide higher limits and an enhanced scope of application. The amended Conventions, which entered into force on 30 May 1996, are known as the 1992 Civil Liability Convention ('1992 CLC') and the 1992 Fund Convention.

In October 2000, in the wake of the *Erika* accident off France, the limits of both the 1992 CLC and 1992 Fund Convention were increased by 50.37 per cent, in accordance with provisions contained in the Conventions. These higher limits came into effect in all States party to one or both Conventions on 1 November 2003. A further important development occurred in May 2003 when a Protocol was adopted at the IMO creating The International Supplementary Fund for Compensation for Oil

¹ 'Pollution damage' is defined in the 1992 Conventions as loss or damage caused by contamination. The costs of reasonable preventive measures (which include clean-up) also fall under this definition, as does any further loss or damage caused by preventive measures. For environmental damage (other than loss of profit from impairment of the environment) compensation is restricted to costs actually incurred or to be incurred for reasonable measures of reinstatement.

² The term 'persistent oil' is not precisely defined in the 1992 Conventions but, as a guide, it can be taken to include crude oil, heavy and medium fuel oil, heavy diesel oil and lubricating oil. Guidelines based on the distillation characteristics of oils have been developed by the International Oil Pollution Compensation Fund. Damage caused by non-persistent oils (e.g. gasoline, light diesel oil) is therefore not covered by the 1992 Conventions.

³ Although this *Guide* refers throughout to 'tankers', the 1992 Conventions actually use the term 'ship', defined as 'any sea-going vessel and seaborne craft of any type whatsoever constructed or adapted for the carriage of oil in bulk as cargo, provided that a ship capable of carrying oil and other cargoes shall be regarded as a ship only 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 of such carriage of oil aboard'.



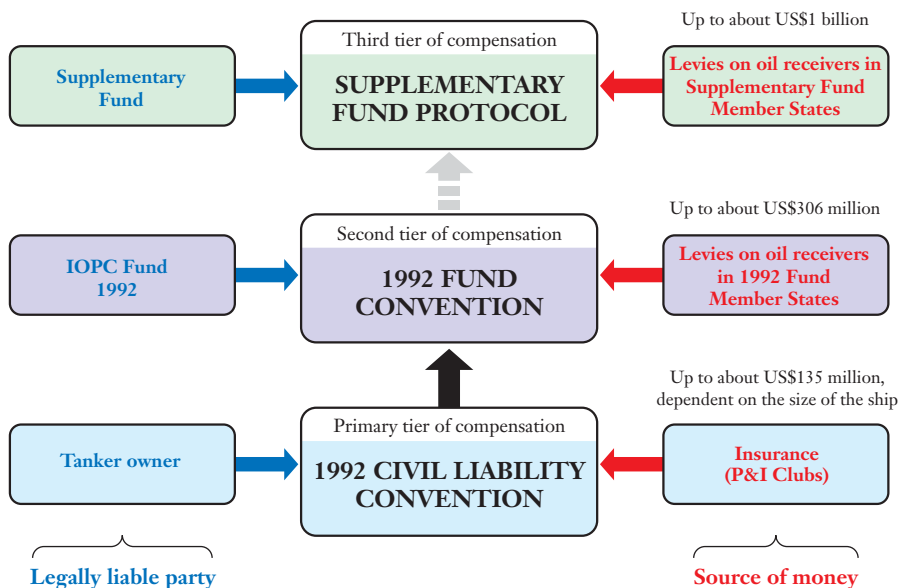
Spill response activity at an oil terminal

Pollution Damage, 2003 ('Supplementary Fund'). This new 'third tier' Fund, which is closely modelled on the 1992 Fund, is designed to address the concerns of those States which consider that even the enhanced 1992 CLC and Fund limits might still be insufficient to meet in full all valid claims arising out of a major tanker accident. Ratification of the 2003 Protocol is

optional but is available to any State that is party to the 1992 Fund Convention. The Supplementary Fund Protocol entered into force in May 2005.

In order to maintain an equitable balance between the financial burdens of ship owners and cargo owners, two voluntary compensation arrangements have been introduced on behalf of the majority of shipowners insured through the International Group of P&I Clubs. These two arrangements are known as The Small Tanker Oil Pollution Indemnification Agreement (STOPIA), and The Tanker Oil Pollution Indemnification Agreement (TOPIA). The provisions of STOPIA and TOPIA are described in this *Guide*.

The international compensation regimes established under the Civil Liability and Fund Conventions have proved highly successful and compensation equivalent to many hundreds of millions of US dollars has been paid to the victims of oil spills, without the need in the vast majority of cases for recourse to litigation. More than 115 States are now party to one or both 1992 Conventions (up-to-date information can be found on the websites of the organizations listed in



The three levels of compensation established by the international Conventions: the owner of the tanker from which the oil is spilled is legally liable for the payment of compensation under the first level; oil receivers in Fund Member States contribute to the second and third level once the tanker owner's applicable limit of liability has been exceeded.



A rocky shoreline heavily contaminated by oil

this *Guide*) and so the original Conventions are now of little significance. Indeed, the 1971 Fund Convention ceased to be in force on 24 May 2002. For this reason this *Guide* deals almost exclusively with the 1992 regime.

The *Guide* aims to provide a summary of the fundamental features of the 1992 CLC and 1992 Fund Convention, the various bodies involved in the payment of compensation, and some general issues regarding the types of claims for compensation that are likely to be admissible. Brief guidance is also given on record keeping and on the presentation of claims. For a more complete understanding of the international compensation Conventions, including the particular conditions which have to be met for each to apply in the case of an incident, reference should be made to the full texts of the 1992 CLC and 1992 Fund Convention, or to explanatory publications produced by the International Oil Pollution Compensation Fund 1992 ('IOPC Fund' or '1992 Fund'). The Secretariat of the 1992 Fund, whose address appears on page 15 of this *Guide*, is also able to give detailed advice on matters relating to the

ratification of the Conventions, implementing legislation and the operation of the IOPC Funds.

Some States which have not ratified the international compensation Conventions have their own domestic legislation for compensating those affected by oil spills from tankers within their territory. A prime example is the USA which in 1990, following the *Exxon Valdez* incident, enacted its own Oil Pollution Act. The provisions of this Act and other national laws are beyond the scope of this *Guide*.

FUNDAMENTAL FEATURES OF THE COMPENSATION CONVENTIONS

As shown in the diagram on page 2, the 1992 CLC, the 1992 Fund Convention and the Supplementary Fund create a two-tier system of compensation, with the owner of the tanker from which the oil is spilled being legally liable for the payment of compensation under the first tier; oil receivers in general contributing once the tanker owner's applicable limit of liability has been exceeded; and oil receivers in States that have ratified the 2003 Supplementary Fund Protocol being required to make further contributions in the event that valid claims exceed the 1992 Fund limit. It should be noted that neither the charterer of the tanker nor the owner of the oil cargo involved in an incident has any liability to pay compensation under the terms of the international Conventions.

First layer of compensation—the tanker owner and his Protection and Indemnity Association (P&I Club)

Scope of application

The 1992 CLC covers pollution damage suffered in the territory or territorial sea or Exclusive Economic Zone (EEZ) or equivalent area of a State party to the Convention. The flag State of the tanker and the

nationality of the owner are irrelevant for determining the scope of application. As the 1992 CLC covers spills of persistent cargo and fuel (bunker) oil from sea-going tankers, it can, under certain circumstances, apply to both laden and unladen tankers (but not to dry cargo ships).

Strict liability

The 1992 CLC is based on the principle of 'strict liability'. This means that the owner of the tanker which spills the oil is liable regardless of whether or not he was actually at fault, subject to very few exceptions (e.g. if the damage resulted from an act of war or grave natural disaster, was wholly caused by sabotage by a third party, or was wholly caused by the negligence of public authorities in maintaining lights or other navigational aids). As a result, claimants can receive compensation promptly, without the need for lengthy and costly litigation.

Limitation of liability

Under the 1992 CLC the tanker owner will normally be entitled to limit his liability to an amount based on the gross tonnage of the tanker involved in the incident (see later). However, the owner will be deprived of the right to limit his liability if it is proved to the satisfaction of a Court that the pollution damage resulted from the owner's personal act or omission, done with intent to cause pollution damage, or recklessly and with knowledge that such damage would probably result.

Who can be held liable?

Claims for pollution damage under the 1992 CLC can be made only against the registered owner of the tanker causing the spill or his pollution liability insurer. The Convention prohibits making such claims against the servants or agents of the owner, members of the crew, the pilot, the charterer (including bareboat charterer), manager or operator of the tanker, or any person carrying out salvage



The 1992 Conventions apply to sea-going vessels and seaborne craft constructed or adapted to carry persistent oil in bulk as cargo.

operations or preventive measures (including clean-up). This last aspect should provide considerable reassurance to responders. Taken with a high degree of certainty of reimbursement for the costs of technically justified ('reasonable') clean-up measures, the 1992 Conventions should facilitate prompt response.

Compulsory insurance

In order to be able to meet their potential financial obligations under the 1992 CLC, owners of tankers carrying more than 2,000 tonnes of persistent oil in bulk as cargo are required to maintain insurance or other financial security, and to carry on board each tanker a certificate attesting to the fact that such cover is in force. Most tanker owners arrange oil pollution insurance with a Protection and Indemnity Association (P&I Club). Under the 1992 CLC, claims for pollution damage (including clean-up costs) for which the tanker owner would be liable may be brought directly against the insurer or provider of financial security.

P&I Clubs

P&I Clubs are mutual, non-profit making associations which insure their shipowner members against various third-party liabilities, including oil pollution. Whilst each Club bears the first part of any claim, the concept of mutuality is extended by the 'pooling' of large claims by the major P&I Clubs that are members of the International Group. To safeguard members in the event of a catastrophic claim above the limit of this 'pool', excess reinsurance is placed by the International Group Clubs on the world's insurance markets, in the case of oil pollution up to US\$1 billion. It should be emphasized, however, that this sum has no relevance in the vast majority of oil spill cases since it would only be available in rare circumstances, for example if a tanker owner lost the right to limit his liability under the CLC in a very expensive case.

Each P&I Club has full-time managers who deal with the day-to-day business of the Club. They are assisted by a worldwide network of commercial representatives (correspondents) who act as the Club's local contact at the site of an incident.

Second layer of compensation—the 1992 Fund

Who administers the 1992 Fund?

The International Oil Pollution Compensation Fund 1992 ('1992 Fund') has the responsibility of administering the regime of compensation created by the 1992 Fund Convention. By becoming a Party to the 1992 Fund Convention a State automatically becomes a Member of the 1992 Fund. The organization's Secretariat is based in London. The same entity also provides the Secretariat for the 2003 Supplementary Fund.

When does the 1992 Fund pay?

Supplementary compensation may be available from the 1992 Fund when the compensation available from the tanker owner under the 1992 CLC is insufficient to meet all valid claims (the definition of 'pollution damage' is identical in the two Conventions). In some rare cases, the 1992 Fund may meet the totality of claims for compensation if, for example, the tanker owner cannot be identified, is uninsured and insolvent, or if the tanker owner is exonerated from liability under certain provisions in the 1992 CLC which do not apply in the case of the 1992 Fund Convention.

The 1992 Fund will not pay compensation if the damage occurred in a State which was not a Member of the 1992 Fund, or if the pollution damage resulted from an act of war or was caused by a spill from a warship. It also has to be proved that the oil originated



Manual beach clean-up during the Prestige incident



Oil recovery at sea during the Prestige incident

from a tanker, as defined in the 1992 Conventions (see footnote 3 on page 1).

A further tranche of compensation is available in States that have ratified the 2003 Supplementary Fund Protocol, once the total of valid claims exceeds the 1992 Fund limit.

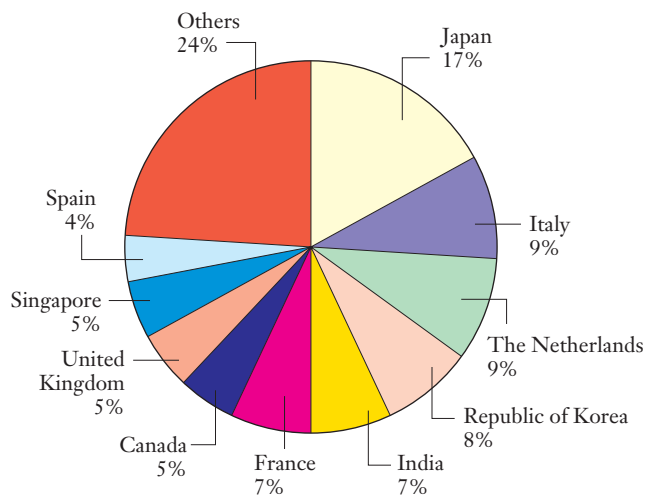
Who contributes to the 1992 Fund?

Payments of compensation and the administrative expenses of the 1992 Fund are financed by contributions levied on any private company or other entity (private or public) in a 1992 Fund-Member State that receives an annual quantity of more than 150,000 tonnes of crude oil and/or heavy fuel oil ('contributing oil') following carriage by sea. As well as oil imported from other countries, receipts after coastal movements of crude oil and heavy fuel oil also qualify as contributing oil. This is particularly significant in the case of some countries, such as Japan.

Whilst private companies and other entities bear the cost of the 1992 Fund, rather than governments, it is important to stress that there is no regular levy on such entities which would lead to the establishment of a large standing fund. Instead, the Assembly of the

1992 Fund, on which are represented the States which are Party to the 1992 Fund Convention, decides the total amount that should be levied each year to meet the general operating expenses of the 1992 Fund and the anticipated payments of compensation in respect of major incidents. The Secretariat then calculates the required levy per tonne of contributing oil by reference to the total quantity of contributing oil received in all 1992 Fund-Member States. The quantity of oil received by each contributor is multiplied by this amount per tonne to give the total amount in UK pounds sterling which has to be paid by that contributor. The Secretariat then issues invoices to the individual oil receiving companies and other entities in 1992 Fund-Member States. The level of contributions fluctuates from year to year mirroring variations in the compensation payments made by the 1992 Fund.

It may be of interest to note that oil receiving companies located in Japan are, in total, the largest contributors to the 1992 Fund, currently followed by those located in Italy, The Netherlands and the Republic of Korea. At the other end of the spectrum, small island States or other countries that do not import large quantities of crude or heavy fuel oil can become Members of the 1992 Fund without



2006 contributions to the 1992 Fund

imposing a financial burden on their oil industry or power generating companies.

Third layer of compensation— the Supplementary Fund

The 2003 Supplementary Fund is also financed by contributions payable by oil receivers in the States which ratify this new Protocol. However, there are two differences to the system that applies in the case of the 1992 Fund Convention. First, for the purpose of contributions it is considered that there is a minimum aggregate quantity of 1 million tonnes of contributing oil received in each Member State of the Supplementary Fund. Secondly, the Protocol contains a provision for so-called ‘capping’ so that the aggregate amount of contributions payable in respect of the contributing oil received in any single State in a calendar year should not exceed 20 per cent of the total contributions levied. This is a temporary measure until the total amount of contributing oil received in States which are party to the Supplementary Fund reaches 1,000 million tonnes or for a period of 10 years from the date of entry into force, whichever is the earlier.

Voluntary Agreements, STOPIA and TOPIA

Taking into account the past disproportionate financial burden on the oil industry in respect of small ships, and recognizing that the Supplementary Fund increases the financial exposure of oil receivers in some States, the International Group of P&I Clubs, with the support of shipowners, has introduced two voluntary agreements that are now in force. The two agreements are known as The Small Tanker Oil Pollution Indemnification Agreement (STOPIA), and The Tanker Oil Pollution Indemnification Agreement (TOPIA). STOPIA increases the financial exposure of tanker owners in 1992 Fund Member States beyond their CLC limit, and TOPIA further increases the financial exposure of tanker owners in those states that ratify the Supplementary Fund Protocol, thereby helping to maintain an equitable



Aircraft equipped for the application of chemical dispersants

sharing of the financial burden of oil spill compensation between tanker owners and oil cargo interests.

STOPIA provides for an increase, on a voluntary basis, of the limitation amount for small tankers to 20 million SDR, and applies to ships of less than 29,548 GT insured by one of the members of the International Group of P&I Clubs and reinsured through the Group's pooling arrangement. The STOPIA provisions apply to pollution damage in any State for which the 1992 Fund Convention is in force.

With effect from 20 February 2006 the members of the International Group of P&I Clubs have also introduced, on a voluntary basis, the Tanker Oil Pollution Indemnification Agreement (TOPIA) which provides that shipowners will contribute 50% of the total costs of compensation in respect of payments made by the Supplementary Fund. It applies to tank ships insured by one of the members of the International Group of P&I Clubs.

Approval and settlement of claims

The Director of the 1992 Fund is authorized to settle claims and pay compensation if it is unlikely that the total payments in respect of the incident will exceed SDR 2.5 million (about US\$3.5 million)¹. For

¹ Compensation limits in the Conventions are expressed in Special Drawing Rights (SDR), which is a currency unit created by the International Monetary Fund. Conversion rates can be found in various newspapers and websites.

incidents leading to higher claims, the Director needs the approval of the settlement from the Executive Committee of the 1992 Fund. In certain circumstances and within certain limits, the Director may also make provisional payments of compensation before a claim is settled, if victims would otherwise suffer undue financial hardship.

Working together

To whom should a claim be addressed?

Claims for compensation under the 1992 CLC should be brought against the tanker owner, or directly against his P&I insurer. To obtain compensation from the 1992 Fund, claimants should submit their claims directly to the Secretariat of the IOPC Funds (see address on page 15 of this *Guide*). Whilst it is necessary to notify the relevant bodies in writing of the existence of a claim, it is not normally necessary to submit full supporting documentation to both the tanker owner/P&I Club and the IOPC Funds.

Cooperation between the P&I Clubs and the 1992 Fund

The IOPC Funds will take a very active interest early on in any incident in a Member State when it appears that it may ultimately be called upon to pay compensation. The P&I Club and the IOPC Funds will usually jointly investigate the incident and assess the damage, and will cooperate closely in the settlement of claims in order to ensure a consistent and efficient approach.

Joint claims offices

In some cases claimants are advised to channel their claims through the P&I Club's local correspondent, or the office of a designated local surveyor. In the event of a major incident the P&I Club involved and the IOPC Funds may establish a joint claims office at an early stage of the incident to facilitate the submission and handling of claims. Details of such claims offices will be given in the local press. It should be emphasized that neither local surveyors nor local claims offices may decide on the admissibility of claims; this is the responsibility of the P&I Club and the IOPC Funds.

In all cases, whether or not a joint claims office is established, the P&I Club and the IOPC Funds will make every effort to settle valid claims promptly, either in whole or in part, in order to minimize any financial hardship suffered by claimants. Difficulties and/or delays can arise, however, if submitted claims are unlikely to be admissible, if they are poorly presented and have insufficient supporting evidence, or if it appears early on that the total of valid claims may exceed the maximum amount of compensation available. As explained later, this last possibility can result in approved claims being paid at less than 100 per cent until the full claims picture becomes clearer.

Technical experts

The cooperation between the P&I Clubs and the IOPC Funds usually extends to the appointment of the same technical advisers and experts. In most cases, a member of the technical staff of The International Tanker Owners Pollution Federation (ITOPF) will be asked to attend on-site at a tanker spill by both the P&I Club and IOPC Funds. ITOPF staff have extensive, first-hand practical experience of combating marine oil spills as a result of having attended on-site at over 550 incidents in more than 95 countries. Their primary role at the site of a spill is to give objective advice and assistance to whoever is in charge of the response operation with the aim of reaching mutual agreement on the clean-up measures which are technically justified in the particular circumstances. This helps ensure that the clean-up is as effective as possible and that the minimum of damage is caused. It also facilitates the prompt and amicable settlement of subsequent claims for compensation, in accordance with the claims admissibility guidelines developed by the IOPC Funds' Member States and summarized in the organization's Claims Manual. ITOPF is almost invariably involved in the post-spill assessment of the technical merits of claims for clean-up costs and damage arising from cases attended on-site. However, the final decision on the admissibility of claims and the appropriate settlement level rests solely with the relevant P&I Club and IOPC Funds.

COMPENSATION LIMITS

The amounts of compensation available under the 1992 CLC and 1992 Fund Convention from 1 February 2007 are set out below and illustrated in Figure 1. The limits of liability in the Convention are actually expressed in Special Drawing Rights (SDR), which is a currency created by the International Monetary Fund. The value of the Convention limits in a national currency will therefore vary depending upon the exchange rate at the particular time (exchange rates can be found in various newspapers and websites). For ease of comparison, an approximate US dollar equivalent is given in this *Guide*, based on 1 SDR = US\$1.5.

● **1992 CLC**

For a tanker not exceeding 5,000 gross tons, a set maximum limit of SDR 4.51 million (approximately US\$6.8 million); for a tanker in excess of 5,000 gross tons, SDR 4.51 million (US\$6.8 million) plus SDR 631 (approximately US\$947) for each additional gross ton up to a maximum (reached for a tanker of about 140,000 gross tons) of SDR 89.77 million (approximately US\$135 million).

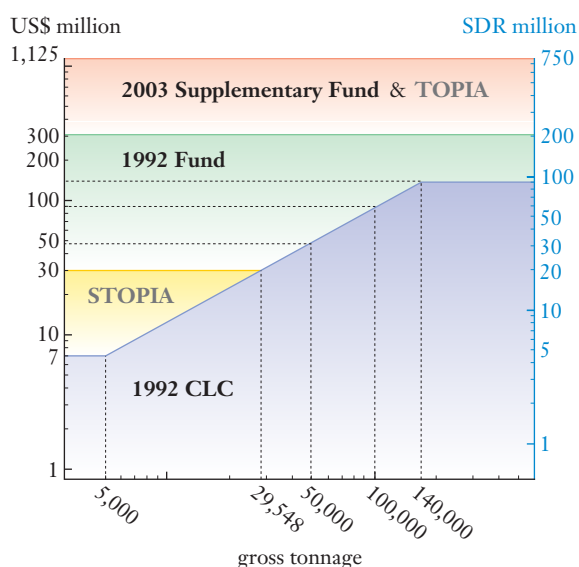
● **1992 Fund Convention**

A maximum of SDR 203 million (approximately US\$305 million) per incident, irrespective of the size of the tanker but including the sum paid by the tanker owner or his insurer under the 1992 CLC.

● **2003 Supplementary Fund**

The total amount of compensation available for pollution damage in States that have opted to become members of the Supplementary Fund is SDR 750 million (approximately US\$1,125 million). This figure includes the SDR 203 million (approximately US\$305 million) available under the 1992 Conventions.

Figure 1: Limits of compensation under the 1992 CLC and STOPIA, the 1992 Fund Convention, and the Supplementary Fund and TOPIA from 1 February 2007.



Notes: The approximate maximum amount of compensation shown as potentially available under the 1992 Fund Convention includes the compensation payable under the 1992 CLC and STOPIA. Similarly, the approximate maximum amount of compensation shown as potentially available under the Supplementary Fund and TOPIA includes the compensation payable under the 1992 Fund, 1992 CLC and STOPIA.

Approximate maximum amounts of compensation available for various sizes of tanker (US\$ million)				
Gross tonnage	1992 CLC	1992 CLC & STOPIA	1992 Fund Convention	Supplementary Fund & TOPIA
5,000	7	30	305	1,125
29,548	26	30	305	1,125
50,000	43	43	305	1,125
100,000	90	90	305	1,125
140,000	135	135	305	1,125

● *Voluntary Agreements*

In accordance with the provisions of STOPIA, the limit of liability in respect of tankers up to 29,548 and insured by a member of the International Group of P&I Clubs is increased to SDR 20 million (US\$30 million). The voluntary contribution provided under the terms of STOPIA is reimbursed to 1992 Fund contributors (via the 1992 Fund) in the event of pollution damage in a State in which the 1992 Fund Convention is in force but irrespective of whether or not the total value of claims exceeded the 1992 Fund limit.

Conversely, the voluntary contribution of 50% of approved claims paid by the Supplementary Fund provided under the terms of TOPIA is reimbursed to 1992 Fund contributors (via the 1992 Fund) in the event of pollution damage in a State in which the 2003 Supplementary Fund Protocol is in force.

What if the total amount of compensation is insufficient to pay all valid claims in full?

If the total of all approved claims for pollution damage exceeds the total amount of compensation available under the 1992 CLC and 1992 Fund Convention, the compensation paid to each claimant will be reduced proportionately. All claimants are required to be treated equally and no class of claim has priority. Concerns in the early stages of an incident that this situation might arise can result in payments being made at a fixed percentage of approved claims, with later adjustments as the position becomes clearer. However, this situation is only likely to arise following major oil spills, and less so in those countries which have opted for the additional compensation resources of the 2003 Supplementary Fund.

SCOPE OF COMPENSATION—ADMISSIBLE CLAIMS

For a claim to be admissible it must fall within the definition of pollution damage or preventive measures in the 1992 CLC and 1992 Fund Convention. A uniform interpretation of the definitions and a common understanding of what constitutes an admissible claim are essential for the efficient functioning of the international system of compensation established by the Conventions. For this reason, the Governments of the Member States of the 1992 Fund have established clear policies and guidelines (while accepting the need for a certain degree of flexibility). Further information on these policies and guidelines, as well as on claims presentation, can be found in the 1992 Fund's Claims Manual. It is strongly recommended that all those potentially involved in this area of activity obtain a copy of the Claims Manual from the IOPC Funds (see address on page 15 of this *Guide*).

Claims in respect of pollution damage can fall under one of the following broad categories:

- Preventive measures (including clean-up)
- Damage to property
- Economic losses
- Reinstatement/restoration of impaired environments

Each of these categories is considered briefly below.

Preventive measures

Claims for measures aimed at preventing or minimizing pollution damage may in some cases include a proportion of the costs of removing oil (cargo and fuel) from a damaged tanker posing a serious pollution threat, as well as the costs of clean-up measures at sea, in coastal waters and on shorelines. Such measures may require the use of specialized equipment and materials such as booms, skimmers and dispersants, as well as non-specialized boats, vehicles and labour. The costs of disposing of recovered oil and associated debris are also covered,



Left: removal of bulk oil from shorelines often calls for the use of locally-available non-specialized equipment. Right: the temporary storage and final disposal of recovered oil and debris is frequently a major component of any clean-up operation.

as would be any consequential loss or damage caused by the preventive measures. For example, if clean-up operations result in damage to a road, pier or embankment, the cost of any work carried out to repair the damage should be an admissible claim, subject to deductions for normal wear and tear.

Claims for preventive measures are assessed on the basis of objective criteria. The fact that a government or other public body decides to take certain measures does not in itself mean that the measures and the associated costs are 'reasonable' for the purpose of the Conventions. 'Reasonable' is generally interpreted to mean that the measures taken or equipment used in response to an incident were, on the basis of an expert technical appraisal at the time the decision was taken, likely to have been successful in minimizing or preventing pollution damage. The fact that the response measures turned out to be ineffective or the decision was shown to be incorrect with the benefit of hindsight are not reasons in themselves for disallowing a claim for the costs involved. A claim may be rejected, however, if it was known that the measures would be ineffective but they were instigated simply because, for example, it was considered necessary 'to be seen to be doing something'. On this basis, response measures taken for purely public relations reasons would not be considered reasonable.

Most oil spill clean-up techniques have been in existence for many years and their practical limitations are well understood through worldwide

experience of their use during actual incidents. It is recognized, however, that the boundary between reasonable and unreasonable measures is not always clear-cut, even after a full technical evaluation has been made. Furthermore, a particular response measure may be technically justified early on in an incident but may become inappropriate after some time has elapsed due to the weathering of the oil or other changes in circumstances. It is therefore important that all clean-up operations are closely monitored by experienced personnel to assess their effectiveness on an ongoing basis. Once it has been demonstrated that a particular method is not working satisfactorily, or it is causing disproportionate damage, it should be terminated.

Property damage

Claims under this category would include, for example, the costs of cleaning contaminated fishing gear, mariculture installations, yachts and industrial water intakes. In cases of very severe contamination of fishing gear and mariculture equipment where effective cleaning is impossible, replacement of the damaged property may sometimes be justified, with a reduction for normal wear and tear.

Economic loss

Spills can result in economic losses through, for example, preventing fishing activity or causing a reduction in tourism. Such economic losses may be the direct result of physical damage to a claimant's



Both natural environments and tourism can be adversely affected by an oil spill.

property ('consequential loss') or may occur despite the fact that the claimant has not suffered any damage to his own property ('pure economic loss'). An example of the first category is the fisherman who cannot fish because his boat and gear are contaminated with oil, whereas in the second case the fisherman remains in port while there is oil on the water in order to avoid damaging his property but still suffers 'pure economic loss' as he is thereby prevented from catching any fish or shellfish.

Claims for pure economic loss are admissible only if they are for loss or damage caused by oil contamination. The starting point is the pollution and not the incident itself. In order to qualify for compensation it is necessary that there is a reasonable degree of geographic and economic proximity between the contamination and the loss or damage sustained by the claimant. Account is also taken of the extent to which a claimant can mitigate his loss.

In certain circumstances claims for the cost of measures taken specifically to minimize pure economic loss, for example through special marketing campaigns to counteract the negative effects of the pollution, may be admissible. However, the costs have to be reasonable and not disproportionate to the loss which they are intended to mitigate. Such measures also have to be targeted to markets and offer a reasonable prospect of being successful.

Reinstatement/restoration of an impaired environment

In some circumstances it is possible to enhance the speed of natural recovery of an impaired environment following an oil spill through reasonable reinstatement measures. However, for the costs of any such measures to be considered admissible they would have to satisfy a number of criteria aimed at demonstrating that they were technically justified and likely to enhance significantly the natural process of recovery, and that the costs were reasonable and not out of proportion to the extent and duration of the damage and the benefits likely to be achieved. In addition, compensation will only be payable for reasonable measures that are actually undertaken or to be undertaken, and if the claimant has sustained an economic loss that can be quantified in monetary terms. Thus, claims based on abstract quantification calculated according to theoretical models will not be entertained. Neither would claims of a punitive nature designed to punish the polluter.

Studies are sometimes required to establish the precise nature and extent of environmental damage caused by an oil spill and to determine whether or not reinstatement measures are necessary and feasible. A contribution towards the cost of such studies conducted with professionalism, scientific rigour and balance may be forthcoming provided that they concern damage which itself falls within the definition of pollution damage in the Conventions.

RECORD KEEPING

The speed with which claims are settled depends largely upon how long it takes claimants to provide the P&I Club and the IOPC Funds with the information they require in a format that readily permits analysis. For this reason it is vital during any counter pollution incident that all those involved keep records of what was done, when, where and why in order to support claims for the recovery of the money spent in clean-up. Pressures, frequently severe, to deal with new issues and problems will often unfortunately result in record keeping being relegated to a lesser priority.

It is important that the financial records can be linked with policy/strategy decisions taken by those in

overall charge of the response, as well as actions taken at individual work sites. Records should therefore extend from minutes of decision-making meetings to records of the source and number of personnel, plant and materials used on particular beaches on specific days. Daily work sheets should be completed by supervisory personnel to record the operation in progress at each major work site, the equipment in use, consumable materials used, where and how they are being used, the number of personnel, and how and where they are deployed. The appointment of a financial controller at an early stage of an incident can be extremely valuable, both to coordinate expenditure and to ensure that adequate records are maintained.

CLAIMS PRESENTATION

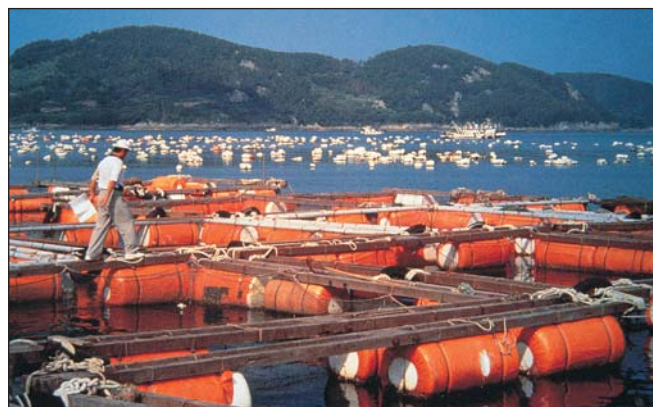
Who is entitled to compensation under the 1992 Conventions?

Anyone may make a claim who has suffered pollution damage (including the taking of preventive measures) in a State which is Party to the 1992 CLC and/or 1992 Fund Convention. Claimants may be private individuals, partnerships, companies (including ship owners, charterers and terminal operators) or public bodies (including central and local government authorities and agencies).

Within what period must a claim be made?

Claimants should be aware that claims under the 1992 CLC and 1992 Fund Convention are subject to time limits and so they should submit their claims as soon as possible after the damage has occurred. If a formal claim cannot be made shortly after an incident, the P&I Club and IOPC Funds should be notified as soon as possible of a claimant's intention to present a claim at a later stage.

Claimants will ultimately lose their right to compensation unless they bring a Court action against the tanker owner and his P&I Club, or against the IOPC Funds within three years of the date on which the *damage occurred*. Although certain types of damage may only become evident some time after the actual



Oil spills can have serious economic consequences for those engaged in mariculture and coastal fisheries.

incident, Court action must in any case be brought within six years of the *date of the incident*. Claimants are recommended to seek legal advice on the formal requirements of Court actions, to avoid their claims becoming time-barred.

Formal legal action to enforce a claim will usually be the last resort since P&I Clubs and the IOPC Funds always endeavour to settle claims out of Court. However, claimants are advised to present their claims well in advance of the expiry of the periods mentioned above. This allows time for claims to be examined and settled out of Court, but also ensures that claimants will be able to prevent their claims from being time-barred, if they and the P&I Club/IOPC Funds are unable to agree on amicable settlements.

How should a claim be presented?

Claims should be presented clearly and in sufficient detail so that the amounts claimed can be assessed on the basis of the facts and the documentation presented. Each item of claim must be supported by an invoice or other relevant documentation, such as work sheets or explanatory notes. Photographs or



The 1992 Conventions provide compensation for technically-justified measures to reinstate a damaged environment.

videos can be helpful to explain the extent and nature of the contamination and the problems which had to be confronted. If there is any doubt as to the source of the pollution, chemical analysis of correctly preserved samples may be necessary.

Claimants would be well advised to contact the relevant P&I Club, IOPC Funds or ITOPF early on in an incident to seek advice on the preparation and submission of claims. The 1992 Fund's Claims Manual, referred to earlier, provides helpful guidance.

COMPENSATION IN STATES THAT ARE NOT PARTY TO THE CONVENTIONS

Some States which have not ratified the international compensation Conventions have their own domestic legislation for compensating those affected by oil spills from tankers within their territory. Some of these national laws may be highly specific, such as the Oil Pollution Act of 1990 in the USA, and are beyond the scope of this *Guide*.

In other countries that have not acceded to the international compensation Conventions reliance in the event of an oil spill may have to be placed on broader laws originally developed for other purposes. In such cases there can be considerable uncertainty in the

event of a tanker spill as to the legal, operational and financial responsibilities of the main parties involved (e.g. tanker owner, cargo owner, P&I Club), as well as the amount of compensation that will be available to pay for clean-up and damage. This is not always conducive to the rapid implementation of required response measures or to the prompt and complete settlement of valid claims. This can result in significant financial and political problems for the government and, potentially, for local oil companies, even if they do not have a direct involvement in the incident. These problems can be overcome if governments accede to the 1992 CLC and 1992 Fund Convention.

CONCLUSIONS

The 1992 CLC and 1992 Fund Convention provide a straightforward mechanism whereby the costs of clean-up measures and pollution damage can be recovered on a strict liability ('no fault') basis from the individual tanker owner and P&I Club involved in an incident, and from the IOPC Funds. So long as the clean-up measures taken in response to an incident and the associated costs are 'reasonable' in the

particular circumstances, and the claims for compensation are well presented and supported by relevant documentation and evidence, few difficulties should be encountered. The total amount of compensation currently available under the 1992 Conventions (approximately \$305 million) should be more than adequate to deal with the vast majority of cases.

USEFUL ADDRESSES

International Oil Pollution Compensation Funds
(IOPC Funds)
Portland House
Bressenden Place
London SW1E 5PN
United Kingdom
Tel: +44 (0)20 7592 7100
Fax: +44 (0)20 7592 7111
E-mail: info@iopcfund.org
Website: www.iopcfund.org

International Maritime Organization (IMO)
4 Albert Embankment
London SE1 7SR
United Kingdom
Tel: +44 (0)20 7735 7611
Fax: +44 (0)20 7587 3210
E-mail: info@imo.org
Website: www.imo.org

International Tanker Owners Pollution Federation Limited
(ITOPF)
1 Oliver's Yard
55 City Road
London EC1Y 1HQ
United Kingdom
Tel: +44 (0)20 7566 6999
+44 (0)7623 984 606 (out of office hours)
Fax: +44 (0)20 7566 6950
E-mail: central@itopf.com
Website: www.itopf.com

ANSWERS TO COMMONLY ASKED QUESTIONS RELATING TO COMPENSATION MECHANISMS FOR OIL POLLUTION DAMAGE

What types of ship are covered by the 1992 Civil Liability Convention (1992 CLC) the 1992 Fund Convention and the Supplementary Fund?

Both Conventions apply to pollution damage caused by a spill (or the threat of a spill) of persistent hydrocarbon mineral oil (whether carried as cargo or as bunkers) from any type of sea-going ship that is constructed or adapted for the carriage of such oil in bulk as cargo. Thus the Conventions can apply to spills from tankers, combination carriers (when they are carrying a cargo of persistent oil) and barges. Spills of bunker fuel from other types of ship (e.g. dry cargo ships, container liners, bulk carriers) are not covered by the 1992 CLC and 1992 Fund Convention.

What is persistent oil?

The term 'persistent oil' is not precisely defined in the 1992 Conventions but, as a guide, it can be taken to include crude oil, heavy and medium fuel oil, heavy diesel oil and lubricating oil. Guidelines based on the distillation characteristics of oils have been developed by the International Oil Pollution Compensation Funds.

Are there IMO Conventions to deal with spills of non-persistent oils and bunker fuel from non-tankers?

The International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea, 1996 (HNS Convention) is modelled on the CLC and Fund Convention. It provides compensation up to SDR 250 million (about US\$375 million) for loss or damage caused by incidents involving cargoes of non-persistent oils, gases and chemicals, plus other substances which are hazardous in packaged form. At the time of writing the HNS Convention had not been ratified by sufficient States to bring it into force.

Recognition of the problems that can be caused by spills of heavy bunker fuel from non-tankers led to

the adoption of the International Convention on Civil Liability for Bunker Oil Pollution Damage, 2001 (Bunker Convention). This is a single tier Convention, with strict liability being imposed on the registered owner, bareboat charterer, manager and operator of the ship. The limit of liability is determined by applicable national or international limitation regime, but in no case to exceed the amount calculated in accordance with the Convention on Limitation of Liability for Maritime Claims, 1976. At the time of writing the Bunker Convention had not been ratified by sufficient States to bring it into force.

What prevents all maritime States from ratifying the 1992 CLC?

There is no simple answer to this question since there is no cost attached to ratifying the 1992 CLC and the benefits are potentially great. It can only be assumed that some States consider the risk of a major tanker spill to be low or there are other priorities that demand the time of administrators and politicians. Unfortunately, failure to ratify at least the 1992 CLC can cause problems for all parties in the event of a major spill since there will be great uncertainty over the availability of funds to pay for prompt clean-up and to compensate victims such as fishermen.

What does the 1992 Fund stand for?

1992 Fund and IOPC Funds are commonly-used abbreviations for the International Oil Pollution Compensation Fund 1992. This is the intergovernmental body that administers the regime of compensation created by the 1992 International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage (1992 Fund Convention). By acceding to the 1992 Fund Convention a State automatically becomes a Member of the 1992 Fund.

Who can join the 1992 Fund?

Only States can become Members of the 1992 Fund and then only if they have also ratified the 1992 CLC.

Which States are party to the various compensation Conventions?

This is constantly changing. Up-to-date information can be found on the following websites:

www.iopcfund.org

www.imo.org

www.itopf.com

What are the advantages of joining the 1992 Fund?

If a pollution incident occurs involving persistent oil from a tanker, compensation totalling SDR 203 million (about US\$305 million, depending on the exchange rate) is available to central and local government authorities, private companies and individuals who incur costs for clean-up operations and other preventive measures, or who suffer damage within a 1992 Fund-Member State as a result of the oil pollution. The flag of the tanker and ownership of the oil do not affect the right to compensation. The total amount of compensation available from the 1992 Fund is not affected by the size of the tanker but does include the compensation paid by the tanker owner under the 1992 CLC.

What prevents maritime States from ratifying the 1992 Fund and the Supplementary Fund?

As in the case of those States that have not ratified the 1992 CLC, failure to ratify the 1992 Fund may be due to the perception within the State of the level of risk and other demands on the time of administrators and politicians who would be required to enact the necessary legislation. The fact that the 1992 Fund imposes a financial burden on oil receivers may also be a factor in some States with national oil companies or where imported oil is merely in transit to elsewhere, since this does not remove the obligation on the company that first receives the oil after sea transport to make contributions to the 1992 Fund. Similar considerations may also apply concerning the merits of ratifying the Supplementary Fund Protocol. States where there is a significant issue in this regard may decide only to ratify the 1992 CLC.

How does a State become a Member of the 1992 Fund?

A State must accede to the 1992 CLC and to the 1992 Fund Convention by depositing a formal instrument of accession with the Secretary-General of the International Maritime Organization (IMO). The Conventions should also be incorporated into the national law of the State concerned. A State will automatically become a Member of the 1992 Fund twelve months after the instrument of accession to the 1992 Fund Convention has been deposited with the IMO. Assistance in these matters can be obtained from the Secretariat of the 1992 Fund.

Who pays for the 1992 Fund?

The 1992 Fund levies contributions on private companies and other entities in 1992 Fund-Member States that have received more than 150,000 tonnes of crude and/or heavy fuel oil ('contributing oil') in a year after sea transport, either from international or domestic sources (including coastal oil movements). Member States provide the Fund Secretariat with information on quantities of oil received but invoices are sent directly to each contributing company or other entity. Normally, therefore, governments do not pay any contributions to the 1992 Fund. (See page 6.)

Why do oil exporters not contribute?

This was a decision taken when the original Conventions were being developed, partly on the grounds that it would be more straightforward to count oil quantities for contribution purposes when they were received at a port in a Member State after sea transport. This means that the financial burden of paying compensation falls mainly on consumers in industrialized countries since it is ultimately they who require the oil to be moved on the world's oceans and seas, and around the coasts of individual countries.

What happens if there are no entities in a Fund-Member State that receive oil?

If there are no entities in a State that receive more than 150,000 tonnes of contributing oil (i.e. crude

and heavy fuel oil), that State and its citizens will have financial protection for oil spills at no cost at all.

How much does it cost a company or other entity that receives crude oil or heavy fuel oil if the State in which it operates becomes a Member of the 1992 Fund?

The amount that a company or other entity will have to pay cannot be predicted since it will vary from year to year, depending on the incidents that occur and the amounts of compensation that the 1992 Fund has to pay. The total amount required each year is decided by the Assembly of the 1992 Fund. This amount is divided by the total quantity of contributing oil received in all 1992 Fund-Member States, to give an amount per tonne of contributing oil received. The quantity of oil received by each contributor is multiplied by this amount per tonne to give the amount in UK pounds sterling which has to be paid by that contributor. Invoices are then issued by the Secretariat of the 1992 Fund to the individual companies and other entities.

The local risk of a major oil spill is small and so why should we encourage the government to accede to the 1992 CLC and Fund Convention, especially as my company would have to contribute to the IOPC Funds?

The perceived local risk may be small due to the small amount of oil being imported, which would call for correspondingly small contributions to the 1992 Fund. However, it would be wise not to overlook the threat from tankers carrying exported crude, tankers passing the country *en route* to elsewhere, and the potential for very high clean-up and damage costs as a result of a small spill of a 'difficult' oil in a sensitive location. Whilst statistically the risk of a major spill is small for any part of the world, the consequences could exceed local financial resources. Such an event could therefore pose major problems for the government, as well as for all the oil companies in a country, whether or not they are directly involved in the incident. Like all forms of insurance, it can appear uneconomic if no claims are made. However, the real

issue is the risk of inadequate compensation in the event of a major spill if a State is not a Party to the 1992 CLC and Fund Convention. This could result in delayed implementation of required response measures and the delayed or only partial payment of valid claims. This could have serious financial and political consequences for the government and resident oil companies. These problems can be overcome by the government's accession to the 1992 CLC and 1992 Fund Convention.

Why should I pay for a spill in another part of the world?

The 1992 Fund and the Supplementary Fund exist to share the costs of spills, particularly very expensive incidents where the tanker owner's limit of liability under the 1992 CLC is exceeded. The concept of contributing to the 1992 Fund is based on the premise that consumers in the major industrialized countries are ultimately responsible for crude oil being shipped on the oceans and seas of the world. The CLC/Fund regime recognizes that it would be inequitable for tanker owners to bear all the compensation attributable to extensive pollution damage, and that receivers of crude oil and heavy fuel oil cargoes in all States which are Members of the 1992 Fund should contribute to a secondary layer of compensation.

How much does the tanker owner pay?

This depends on the size of the tanker. Under the 1992 CLC, the maximum paid by the owner of a large tanker of over 140,000 GT is SDR 89.77 million (about US\$135 million). The maximum for a small tanker is SDR 4.51 million (about US\$6.8 million), but this can be increased by the provisions of the voluntary agreement known as the Small Tanker Oil Pollution Indemnification Agreement (STOPIA 2006), which applies to incidents in countries that have ratified the 1992 Fund and involving tankers indemnified through members of the International Group of P&I Clubs. Subject to the terms of STOPIA 2006, the liability in respect of incidents involving tankers of less than 29,548 GT is increased

to SDR 20 million (about US\$30 million). It should be noted that the increased STOPIA 2006 limit of liability includes the applicable 1992 CLC limit for the tanker in question. (See pages 9 and 10.)

Why is it necessary to join the 1992 Fund if tankers already have US\$1 billion in oil pollution insurance?

Under the terms of the CLC, tanker owners are able to limit their liability based on the gross tonnage of the tanker from which the oil is spilled (see previous answer). The US\$1 billion oil pollution insurance cover that most tanker owners arrange is therefore only relevant in circumstances where an owner loses his right to limit his liability. Under the 1992 CLC this can occur if it is proved that the pollution damage resulted from the owner's personal act or omission, committed with the intent to cause such damage, or recklessly and with knowledge that such damage would probably result. This is generally difficult to prove.

What happens if the tanker owner cannot pay?

Under the terms of the 1992 CLC, the owner of a tanker carrying more than 2,000 tonnes of persistent oil in bulk as cargo is required to maintain insurance (normally with one of the P&I Clubs) or other financial security, and to carry on board a certificate attesting to the fact that such cover is in place. It is therefore rare that a tanker owner cannot meet his financial obligations under the 1992 CLC, but it can happen, for example in the case of small tanker that is not required to carry insurance. It can also happen if one of the exonerations that are applicable under the 1992 CLC but not under the 1992 Fund Convention is relevant (e.g. the incident was caused by a grave natural disaster). In these circumstances the 1992 Fund would meet all the claims, rather than just those that exceed the tanker owner's limit under the 1992 CLC. These two examples of the extra 'protection' provided by the 1992 Fund should give governments and oil companies considerable reassurance.

Can the amounts of compensation available under the 1992 CLC and 1992 Fund Convention be increased?

Yes, in two potential ways. Firstly, the 1992 CLC and 1992 Fund Convention incorporate a mechanism whereby the limits of liability under both Conventions can be increased, up to a maximum of six per cent per annum calculated on a compound basis. Any proposal to amend the limits in this way requires the support of one quarter of the contracting States to the respective Conventions before it can be considered by IMO's Legal Committee. Adoption of the proposal by the Committee requires a two-thirds majority of the contracting States present and voting. All contracting States then have to be notified of the amendment, which is deemed to have been accepted 18 months later unless by that time not less than one quarter of the contracting States have informed the IMO that they do not accept the amendment. So long as this does not happen, the increased limits automatically enter into force in all contracting States in a further 18 months' time. This mechanism was employed for the first time in October 2000, resulting in the 50.37% increase in limits with effect from 1 November 2003. Under the terms of the Conventions, a further amendment of the limits through this mechanism cannot be considered for 5 years after the entry into force of a previous amendment. (See pages 6, 9 and 10 of this *Guide* for more information on the calculation of contributions to the 1992 Fund and on the current limits under the 1992 CLC and 1992 Fund Convention.)

Secondly, any 1992 Fund country may ratify the Supplementary Fund Protocol and thereby gain access to additional compensation funds of up to SDR 750 million (about US\$1.125 billion).

Who will pay for the Supplementary Fund?

Oil receivers in States that become party to the Supplementary Fund will be required to contribute when valid claims exceed the maximum amount of compensation available from the 1992 Fund, up to the Supplementary Fund's limit of SDR 750 million

(about US\$ 1,125 million). Recognizing that this new Fund has the potential to increase the financial exposure of oil receivers in these States, tanker owners and their P&I Clubs have introduced a voluntary agreement known as the Tanker Oil Pollution Indemnification Agreement (TOPIA) that significantly increases the limit of liability of tankers owners in States that are members of the Supplementary Fund. Subject to the terms of TOPIA, indemnification will be provided to the Supplementary Fund for 50% of the amounts paid in compensation in respect of incidents involving tankers entered in one of the P&I Clubs which are members of the International Group. In this way a more equitable sharing of the compensation costs between the tanker owner and Fund contributors is achieved.

Does the 1992 Fund protect contributing companies from excessive and speculative compensation claims or legal action?

The admissibility of claims and the general policies relating thereto are decided by representatives of the Governments of the 1992 Fund-Member States within the Executive Committee and, ultimately, the Assembly of the 1992 Fund. Great importance is placed on the uniform application of the 1992 Fund Convention in all Member States and on a common interpretation of what constitutes an admissible claim. To this end the claims admissibility principles and policies established by the 1992 Fund are publicized in a Claims Manual. However, ultimate jurisdiction is with the Courts within individual Fund-Member States. Ratification of the 1992 Fund Convention does not therefore prevent litigation if claimants wish to pursue this route, though in countries where the CLC/Fund regime is in force very few oil spills from tankers have historically resulted in Court actions.

It is worth noting that the CLC/Fund regime protects various parties, including the charterer of the tanker involved in a spill and the owner of its cargo, from liability for pollution damage under the Conventions. However, nothing in the Conventions

prevents the owner of the tanker or indeed the 1992 Fund from seeking recourse from other parties once the claims have been settled.

Who decides what is a 'reasonable' claim?

The P&I Club involved and, when relevant, the IOPC Funds decide on the nature and quantum of valid claims, but they will pay heed to the advice of the technical experts they employ, including those from ITOPE. Guidance on these issues and on the presentation of claims is contained in the 1992 Fund's Claims Manual. In the case of clean-up measures, emphasis is placed on the technical merits ('reasonableness') of response actions and associated costs in the light of information available to decision makers at the time. Claims for the costs of response actions carried out for purely political and public relations reasons will be regarded as invalid. (See pages 10 to 12.)

How is the payment of claims expedited?

During major incidents, a Joint Claims Office may be established near to the spill location by the P&I Club and IOPC Funds and its presence advertised. All claims should be supported by good documentation and relevant evidence. Inadequate supporting documentation frequently results in the payment of compensation being delayed. Guidance can again be found in the 1992 Fund's Claims Manual.

Why has the USA never become a Party to the international compensation Conventions?

The United States did contemplate becoming a Party to the CLC and Fund Convention in the mid-1980s but concerns were expressed about the maximum amount of compensation available and about the rights of individual States in the USA to have their own supplementary liability and compensation laws (not permitted if a country has ratified an international Convention). These concerns were exacerbated by the *Exxon Valdez* accident in 1989, which resulted in the USA adopting its own comprehensive legislation in the form of the Oil Pollution Act of 1990. This is not a viable option for most other countries. (See page 14.)

Did not the Exxon Valdez spill cost billions of dollars to clean up? Surely even the 1992 Fund would have left many people out of pocket?

Some of the clean-up in the case of the *Exxon Valdez* would not have been regarded as technically valid by the 1992 Fund and significant costs would therefore have been ruled inadmissible. Also, a high proportion of the financial sums quoted in relation to this spill relate to punitive fines, legal actions, Natural Resource Damage Assessment (NRDA) and scientific studies, many of which would not have been compensable under the 1992 Fund Convention. Concerns over the possibility that not all claimants would be fully compensated in the case of a major spill in a 1992 Fund State have resulted in the adoption of the 2003 Supplementary Fund Protocol. (See pages 1 and 9.)

Does the 1992 Fund put a financial value on environmental damage in the same way as provided for by the Natural Resource Damage Assessment regulations in the USA?

The simple answer is ‘no.’ The 1992 CLC and 1992 Fund Convention do provide for the payment of compensation for the reasonable costs of technically-justified reinstatement/restoration measures. Such measures might equate to primary restoration under the USA’s Natural Resource Damage Assessment (NRDA) regulations. However, these NRDA regulations also provide, amongst other things, for compensatory restoration for the services that might have otherwise been provided by the injured resources (to the public and other components of the environment) and which are deemed to have been lost while the resources are recovering naturally or being restored. These and other theoretically-based assessments of environmental damage are not covered by the definition of pollution damage agreed by governments in the 1992 CLC and 1992 Fund Convention. (See pages 11 and 12.)

Why the greater interest from industry for States to accede to the Conventions?

A State must have acceded to the 1992 CLC and Fund Convention to ensure that the costs of clean-up operations can be reimbursed and that those who suffer economic losses can be compensated. Failure to ratify the Conventions can result in significant problems for all parties, including government agencies and local oil companies, in the event of a major tanker spill affecting a State’s waters and coastline.

How can I contact the IOPC Funds?

The Secretariat of the International Oil Pollution Compensation Funds is based in London and can be contacted at the address on page 15 of this *Guide*.



International Petroleum Industry
Environmental Conservation Association

209–215 Blackfriars Road, London SE1 8NL, United Kingdom
Tel: +44 (0)20 7633 2388 Fax: +44 (0)20 7633 2389
E-mail: info@ipieca.org Website: www.ipieca.org

The International Petroleum Industry Environmental Conservation Association (IPIECA) was founded in 1974 following the establishment of the United Nations Environment Programme (UNEP). IPIECA provides one of the industry's principal channels of communication with the United Nations.

IPIECA is the single global association representing both the upstream and downstream oil and gas industry on key global environmental and social issues. IPIECA's programme takes full account of international developments in these issues, serving as a forum for discussion and cooperation involving industry and international organizations.

IPIECA's aims are to develop and promote scientifically-sound, cost-effective, practical, socially and economically acceptable solutions to global environmental and social issues pertaining to the oil and gas industry. IPIECA is not a lobbying organization, but provides a forum for encouraging continuous improvement of industry performance.



International Tanker Owners Pollution Federation Limited
1 Oliver's Yard, 55 City Road, London EC1Y 1HQ, United Kingdom
Tel: +44 (0)20 7566 6999 Fax: +44 (0)20 7566 6950
E-mail: central@itopf.com Website: www.itopf.com

The International Tanker Owners Pollution Federation Limited (ITOPF) is a non-profit making organization involved in all aspects of combating accidental spills of oil and chemicals in the marine environment. Its highly experienced technical staff have responded to more than 550 ship-source spills in more than 95 countries to give advice on clean-up measures, environmental and economic effects, and compensation. They also regularly undertake contingency planning and training assignments. ITOPF is a source of comprehensive information on marine oil pollution through its library, wide range of technical publications, videos and website.