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Liability and Compensation for Ship-source Oil Pollution in the Marine Environment

AN OVERVIEW

November 2021

Ro-Ro ferry grounded in the Kirke Canal, Chile.

The International Group of P&I Clubs (IGP&I) comprises the thirteen P&I Clubs providing marine liability cover (protection and indemnity) for approximately 90% of the world's ocean-going tonnage.

The International Oil Pollution Compensation Funds (IOPC Funds) are two intergovernmental organisations (the 1992 Fund and the Supplementary Fund), that provide compensation for oil pollution damage caused by spills of persistent oil from tankers.

ITOPF is maintained by the world's shipowners and their insurers on a not-for-profit basis to promote effective response to marine spills of oil, chemicals and other hazardous substances.

Disclaimer

This booklet provides an overview of compensation for ship-source oil spills, published to provide a summary that is supplemental to existing reference material. Further information on this topic, for example on liability and the availability of compensation for a specific jurisdiction, scenario or incident, is available from the organisations providing compensation, the contact details of which are included within the appendix to this booklet.

The information within this booklet will be subject to change, for example as liability limits, etc. are amended. While we strive to provide current guidance and to keep this booklet up-to-date through occasional revisions, no reliance, legal or otherwise, should be placed on the contents.

Acknowledgement

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Preamble

Shipping remains the most effective and efficient means of transport of raw materials, oil, and goods within the global chain of supply and demand. Tankers, bulk carriers, container ships, as well as cruise ships, super-yachts and the myriad of other ship types afloat are designed and operated to higher standards than ever with a prominent regard for safety. As a consequence, the great majority of voyages are completed without incident. Nonetheless, while markedly reduced in number and frequency, incidents do occur that can result in a spill of oil carried as cargo or as bunker fuel.

A spill of oil may result in expenditure and financial loss for a variety of organisations and individuals affected. Despite best efforts, the response to an oil spill can be protracted and costly and oil may contaminate property and the environment with associated economic loss to fishing, tourism and other commercial activities. Those who suffer a financial loss as a result of a spill of oil may be eligible for compensation.

The insurer of a vessel's third-party risks, usually a Protection and Indemnity Club (P&I Club), provides coverage for pollution damage, including where caused by oil, in accordance with the terms of the insurance. In some circumstances, compensation may be available from a national or international fund.

International conventions enable compensation to be paid to those affected by an oil spill from a ship in countries that have signed the applicable convention and where it is in force. Amongst many advantages, these conventions provide a uniform set of rules governing liability and the admissibility of claims.

Manual recovery of emulsified fuel oil, France.

Given that shipping is a global industry, it is reassuring that these international conventions are in place in many coastal States and therefore are able to provide a uniform solution for most scenarios of ship-source marine oil pollution. That said, some conventions have not been ratified universally or are not yet in force. In addition, some countries have distinct national arrangements for compensation either in place of, or to supplement, the international conventions. As a result, liability and the availability of compensation can vary.

This booklet provides an overview of the international, and selected national, arrangements in place for compensation of costs arising from pollution damage caused by oil spills from ships in the marine environment, and some background on 'who pays'. While the focus of the booklet is on spills of mineral oils, non-mineral oils (such as vegetable and animal derived oils) are covered also.

This booklet is intended as an introduction to the subject of compensation for ship-source oil spills rather than as an authoritative account of each compensation regime. It is based on the joint publishers' experience of applying the provisions of these compensation regimes to incidents around the world over the past five decades, and the assessment of associated claims for compensation. For a more detailed description of the compensation regimes in place, the reader is referred to the references listed in the appendix to this booklet.

The case studies included in this booklet illustrate the importance of a close relationship between those claiming compensation, those paying compensation and technical advisers, who all work together closely during the claims process.

Sources of compensation for ship-source oil pollution

For oil pollution from ocean-going ships, the shipowner may be liable to pay compensation up to an amount set by national legislation. In certain situations, liability may be established through incorporation of a relevant international convention into national law.

Claims for compensation would be made in many instances to the shipowner, with payments made typically by the insurer of the shipowner's third-party liabilities, usually a P&I Club. In some instances, claims may be made to other parties or brought directly against an insurer. Compensation to supplement money available from the insurer of a casualty may be available from other sources, including international and national funds.

Protection & Indemnity (P&I) insurance

Thirteen primary P&I Clubs provide insurance cover for approximately 90% of the world's ocean-going tonnage and are members of the International Group of P&I Clubs (IGP&I)[1]. These P&I Clubs provide cover on behalf of their shipowner and charterer assureds (termed "Members") for a range of liabilities, including:

- Loss of life and personal injury to crew, passengers and others on-board;
- Cargo loss and damage;
- Pollution by oil and other hazardous substances;
- Wreck removal and damage to property.

The P&I Clubs provide services to their shipowner and charterer Members on claims, legal issues and loss prevention, and play a leading role in the response to casualties. Each P&I Club is owned by its Members and is overseen through a board of directors or a committee elected from the membership. P&I Clubs are non-profit mutual (i.e. cooperative) insurance associations enabling shipowners to share risk and the payment of claims.

The thirteen P&I Clubs within the International Group.

The International Group coordinates the operation and regulation of the P&I Clubs' claim-sharing agreement (the Pooling Agreement) whereby the P&I Clubs share qualifying claims in excess of a threshold. This claim-sharing agreement is underpinned by a market reinsurance programme arranged by the P&I Clubs within the International Group providing additional cover for oil pollution. In addition, the International Group provides a forum for member P&I Clubs to develop common policy and promote the interests of shipowners and takes a lead role in discussions in international fora (e.g. International Maritime Organisation (IMO), IOPC Funds) on compensation and liability matters. The 13 member P&I Clubs are operationally headquartered in the UK, Norway, Sweden, Japan and the USA.

A further number of ocean-going vessels are insured for third party liabilities by other P&I providers and also by fixed-premium insurers that operate in a way analogous to providers of domestic insurance.

Warships, and other government-operated vessels on non-commercial duty, usually operate outside established P&I and other commercial insurance. Such vessels are often self-insured by government agencies and are beyond the scope of this booklet.

[1] See www.igpandi.org for further information

Compensation through international conventions

The availability of compensation first became a major issue following the release of oil from the tanker TORREY CANYON in 1967, when UK and French Governments had difficulties in recovering costs incurred as a result of the response and pollution damage (see the Case Study on page 7).

As a consequence, the shipping and oil industries established two temporary voluntary compensation schemes in the late 1960s to ensure prompt payment following oil tanker incidents. Seven oil-company tanker operators established the Tanker Owners Voluntary Agreement concerning Liability for Oil Pollution scheme (TOVALOP) in 1968. Tanker-owner and bareboat-charterer members of TOVALOP accepted voluntary strict liability for oil pollution damage up to an amount limited by the tanker's tonnage. TOVALOP was administered by ITOPF Ltd. with compensation provided by the casualty's insurer.

The Contract Regarding a Supplement to Tanker Liability for Oil Pollution (CRISTAL) provided an agreement between oil cargo owners to pay voluntary additional compensation above the TOVALOP limits. This compensation was provided from a fund, administered by CRISTAL Ltd, with contributions from the oil company members of CRISTAL.

The success of the subsequent international conventions led to the demise of the industry schemes in 1997[2]. As a consequence, these two industry schemes no longer operate, being superseded by the conventions.

Concurrent to the industry initiatives, governments via the International Maritime Consultative Organization (IMCO)[3] developed two international conventions for the same purpose: the Civil Liability Convention (CLC) and the Fund Convention. Further international conventions have been developed subsequently to cover compensation under other pollution scenarios[4].

For many oil pollution incidents, shipowner liability is established under these conventions. The conventions also introduce international funds as additional sources of compensation. The primary conventions applicable to oil pollution compensation are compared below:

Table 1: Summary of the international conventions applicable to compensation for ship-source marine pollution.US$ amounts converted from SDR at the date of publication.

Convention	Applicability	Source of compensation	Financial limit (US$)[5]	States Parties[6]
1992 Civil Liability Convention	Tankers carrying persistent oil cargo	Shipowner	Dependent on GT of the ship up to $126.1 million	145
1992 Fund Convention		1992 Fund	$285 million	120
*** Supplementary Fund Protocol**		Supplementary Fund	$1,053.1 million	32
Bunkers Convention 2001	Bunker fuel oil from all ships	Registered owner, bareboat charterer, manager and operator of the ship	Dependent on ship GT and separate legislation, including LLMC	102
2010 Hazardous & Noxious Substances Convention (not yet in force)	Ships carrying cargoes of HNS, including non-persistent oils	Shipowner	Dependent on GT up to $140.4 million (bulk) or $161.5 million (packaged)	5
		HNS Fund	$353.1 million	

**The Supplementary Fund Protocol to the Fund Convention is included as a distinct entry.*

[2] For further information, see the ITOPF website www.itopf.org.

[3] Now the International Maritime Organization www.imo.org.

[4] The development of compensation in the USA has taken a different path to other countries.

[5] US$ converted from Special Drawing Rights https://www.imf.org/external/np/fin/data/rms_sdrv.aspx at publication

[6] As at publication https://www.imo.org/en/About/Conventions/Pages/StatusOfConventions.aspx The HNS Convention is not yet in force.

CASE STUDY

TORREY CANYON, 1967 – before the industry and international regimes

TORREY CANYON aground (Crown copyright)

TORREY CANYON ran aground on the Seven Stones Reef, off Lands End, Cornwall, UK on 18th March 1967. The tanker was one of the largest vessels afloat at the time, with a cargo of 119,000 tonnes of Kuwaiti crude oil for discharge at Milford Haven, Wales. Over the following 12 days the entire cargo was lost.

Despite efforts by the UK Government, including aerial bombardment of the tanker, oil affected many parts of the south-west of England, the Channel Islands and Brittany, France. The UK Government incurred costs in excess of £3million and the French Government costs of FFr38.3million during the resultant response. The oil also affected a variety of wildlife and economic activities, notably tourism and shell-fisheries, with consequent financial losses.

In order to recover costs, the UK Government issued a writ against the US-based ship and cargo owners. However, the owners stated the pollution was a result of the UK Government bombing the ship without permission and rejected liability. Negligence or unseaworthiness, required to apportion liability, could not be proven.

A US court awarded compensation of US$50 – the value of a surviving lifeboat. As the owners had no assets in the UK or France, a judgment for a greater amount would have been difficult to uphold. Costs were paid to the UK and French Governments after arresting sister-ships in Singapore and in Rotterdam respectively. Each government settled for ~£1,500,000, considerably less than expenditure and years after the incident, following a protracted legal process.

In recognition of the difficulties of governments in obtaining compensation, the tanker shipping and oil industries established TOVALOP and CRISTAL in 1968 to provide a temporary measure pending widespread acceptance of the international conventions.

At the time, and when faced with the potential recurrence of such an incident, the incumbent UK Prime Minister Harold Wilson called on the Council of IMCO (now IMO) to meet in extraordinary circumstances to consider possible changes in maritime law and international regulations. IMCO met in May 1967 and drafted 21 “proposals for study”, including requiring all vessels to carry compulsory liability insurance, and to make shipowners responsible for the damage caused by their vessel “without consideration of negligence”. These proposals formed the basis of the subsequent international conventions.

Firemen and military personnel surveying oil from TORREY CANYON, Porthleven, Cornwall (PA Images)

In the decades since TORREY CANYON, the international compensation regime has developed to encompass a wider range of ships and pollutants. (Grounded container ship, Norway).

The international conventions follow a defined process of signature, ratification, acceptance, approval and accession through the IMO[7] before coming into force in a country and becoming binding upon that government and on activities in the waters of that country. To be applicable, an international convention is enacted into national law.

Many countries are State Parties to one or more of the conventions described in this booklet[8]. However, the number of State Parties to the HNS Convention is presently insufficient to enable the Convention to come into force[9].

Although different in their application, the international compensation conventions have basic principles in common. For example, they apply primarily to pollution damage within the waters of countries that have signed that convention, although in some circumstances the geographic application can be wider. The HNS Convention will apply also to incidents involving other pollutants that are not covered in this document[10].

The Civil Liability, Bunkers and HNS Conventions each require shipowners to have in place compulsory insurance to meet their liabilities under those conventions. The Fund and HNS Conventions establish international funds to supplement shipowner insurance. These funds are financed by receivers of oil in States Parties (the HNS Fund will be funded also by receivers of substances other than oil[10]).

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[7] See www.imo.org/en/About/Conventions/Pages/Default.aspx for information on the convention process.

[8] The 2007 Nairobi International Convention on the Removal of Wrecks (Wreck Removal Convention) establishes liability for shipowners for the costs of locating, marking and removing a wreck under specific circumstances. As such, while the nature and quantity of the wreck's cargo, the amount and types of oil on board and the damage likely to result should the cargo or oil be released, are factors to take into account when determining whether a wreck poses a hazard, this Convention has limited applicability to compensation for oil pollution damage. As a consequence, the Wreck Removal Convention is not considered within this booklet.

[9] See https://www.hnsconvention.org/status/ for further information on the status of the HNS Convention.

[10] See https://www.hnsconvention.org/hns-finder/ for information on substances covered by the HNS Convention.

IMO Building, London (image courtesy IMO).

The International Maritime Organization

Following the establishment of the United Nations, an international conference in Geneva in 1948 adopted a Convention formally establishing the Inter-Governmental Maritime Consultative Organization (IMCO). This Convention entered into force in 1958 and the new Organization met the following year. The name was changed in 1982 to International Maritime Organization (IMO). 175 States are Party presently to the IMO Convention, representing 97.4% of world tonnage.

The Organization provides "machinery for cooperation among governments in the field of governmental regulation and practices relating to technical matters of all kinds affecting shipping engaged in international trade…"(Article 1(a) IMO Convention). The primary role of IMO is to create a regulatory framework for the shipping industry that is 'fair and effective, universally adopted and universally implemented'.

IMO comprises an Assembly, a Council, five main Committees, a number of Sub-Committees to support the work of the main technical committees and a Secretariat. The Secretariat of IMO is led by the Secretary-General with some 300 international personnel based at the headquarters of the Organization in London.

Aside from the liability and compensation conventions described in this booklet, important developments at IMO include measures to address the safety of life at sea, the carriage of dangerous goods, regulation of ship design and processes to address accidental and operational oil and chemical pollution, sewage, garbage and air pollution; the development of a global search and rescue system, a ship safety management system, standards of training, certification and watchkeeping for seafarers, standards for anti-fouling systems, for ballast water management to prevent the invasion of alien species, and for ship recycling, as well as on maritime security, amongst many other important subjects.

The promotion of sustainable shipping and sustainable maritime development is one of the major priorities of the present and future work of IMO. Further information is available at www.imo.org.

Liabilities under each Convention are stipulated in Special Drawing Rights (SDR), the unit of account of the International Monetary Fund (IMF). The relevant SDR limit is converted to the appropriate national currency following an incident using exchange rates provided by the IMF[11].

The international conventions allow uniform application of liability within States Parties. This uniformity allows a clearer understanding and predictability of the financial risks associated with shipping. For claimants, a claim for reimbursement of costs/losses as a result of oil pollution can be made under the relevant convention without the need to prove that the owner of the ship causing the pollution was at fault, and without a need, in most instances, to engage lawyers or to go to court. However, each convention has a time limit during which claims should be submitted and restricts the types of claims that can be made. Crucial differences exist between the individual conventions and between earlier versions of some of these conventions, and an understanding of their applicability specific to each incident is important.

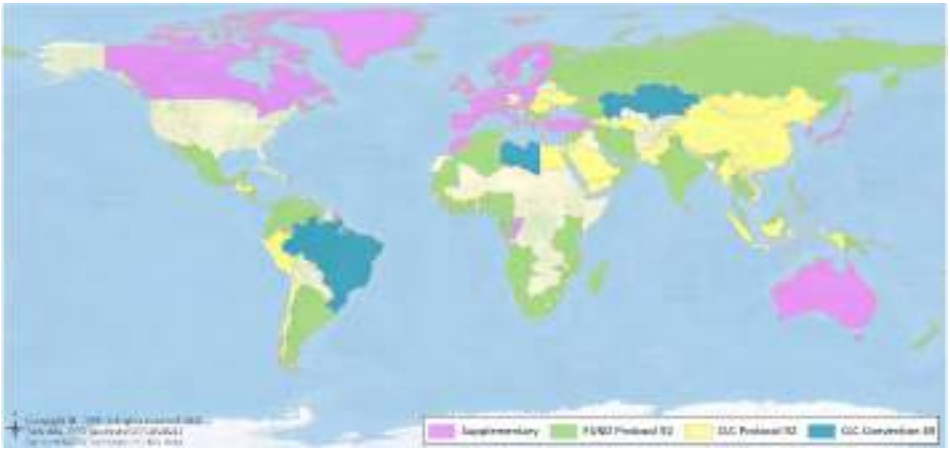


Figure 1: States Party to the 1969 & 1992 Civil Liability Conventions, the 1992 Fund Convention and Supplementary Fund Protocol (as at November 2021).

Figure 2: States Party to the Bunkers Convention 2001 (as at November 2021).

Figure 3: States Party to the 2010 HNS Convention (as at November 2021).

[11] See https://www.imf.org/external/np/fin/data/rms_five.aspx for SDR exchange rates.

What is 'persistent' oil?

Application of the international conventions is dependent in part on the characteristics of the oil spilled: in particular whether or not the oil is persistent. For example, a spill of persistent mineral oil cargo is covered by the CLC whereas non-persistent mineral oil cargo will be covered by the HNS Convention. The IOPC Funds have developed guidelines accepted widely, defining a mineral oil as non-persistent if, at the time of shipment, at least 50% of the hydrocarbon fractions, by volume, distil at a temperature of 340°C (645°F) and at least 95% of the hydrocarbon fractions, by volume, distil at a temperature of 370°C (700°F) when tested in accordance with the American Society for Testing and Materials (ASTM) Method D86/78 or any subsequent revision thereof.

Generally, persistent oils contain a greater proportion of heavy, high-boiling-point fractions, including most crude oils, heavy fuel oils and lubricating oils. Persistent oils do not dissipate as quickly when released and may have a greater potential to threaten natural and economic resources. In contrast, non-persistent oils are composed of lighter hydrocarbon fractions that will usually dissipate rapidly through evaporation, such as condensates, kerosene and gasoline/petrol. As a result, the response to a spill of a non-persistent oil may be limited to monitoring only[12].

Oil	Percentage volume distilling at 340°C	Percentage volume distilling at 370°C	Classification
Terengganu Condensate	>99%	>99%	Non-persistent
Cohasset-Panuke crude	94%	97%	Non-persistent
Cossack crude	79%	83%	Persistent
Coco crude	41%	47%	Persistent

Table 2: Example persistent and non-persistent crude oils and natural condensate.

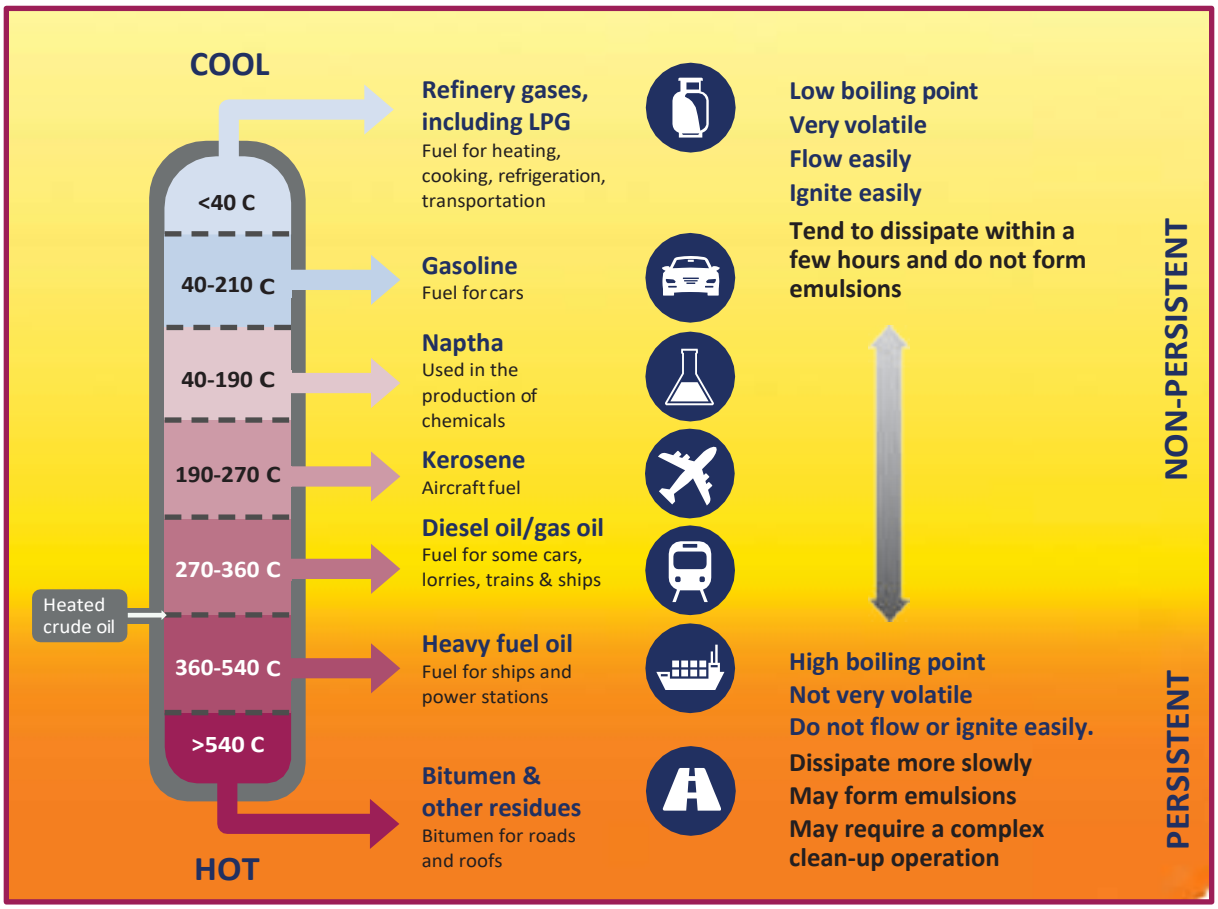


Figure 4: Distillation of crude mineral oil into non-persistent and persistent fractional products.

[12] See www.itopf.org/knowledge-resources/documents-guides/tip-02-fate-of-marine-oil-spills/ for further information on the fate and behaviour of oils.

Historical developments mean the availability of compensation for releases of oil from ships is dependent primarily upon three factors:

- the type of ship: in a broad sense either an ocean-going tanker or a non-tanker;
- the type of oil involved: whether persistent or non-persistent hydrocarbon mineral oil, or non-mineral oil, and whether this oil is carried as cargo or as bunker fuel; and
- whether the country affected has signed one or more applicable international compensation conventions and/or operate(s) a national compensation scheme.

These factors are summarised in the diagram in Figure 5:

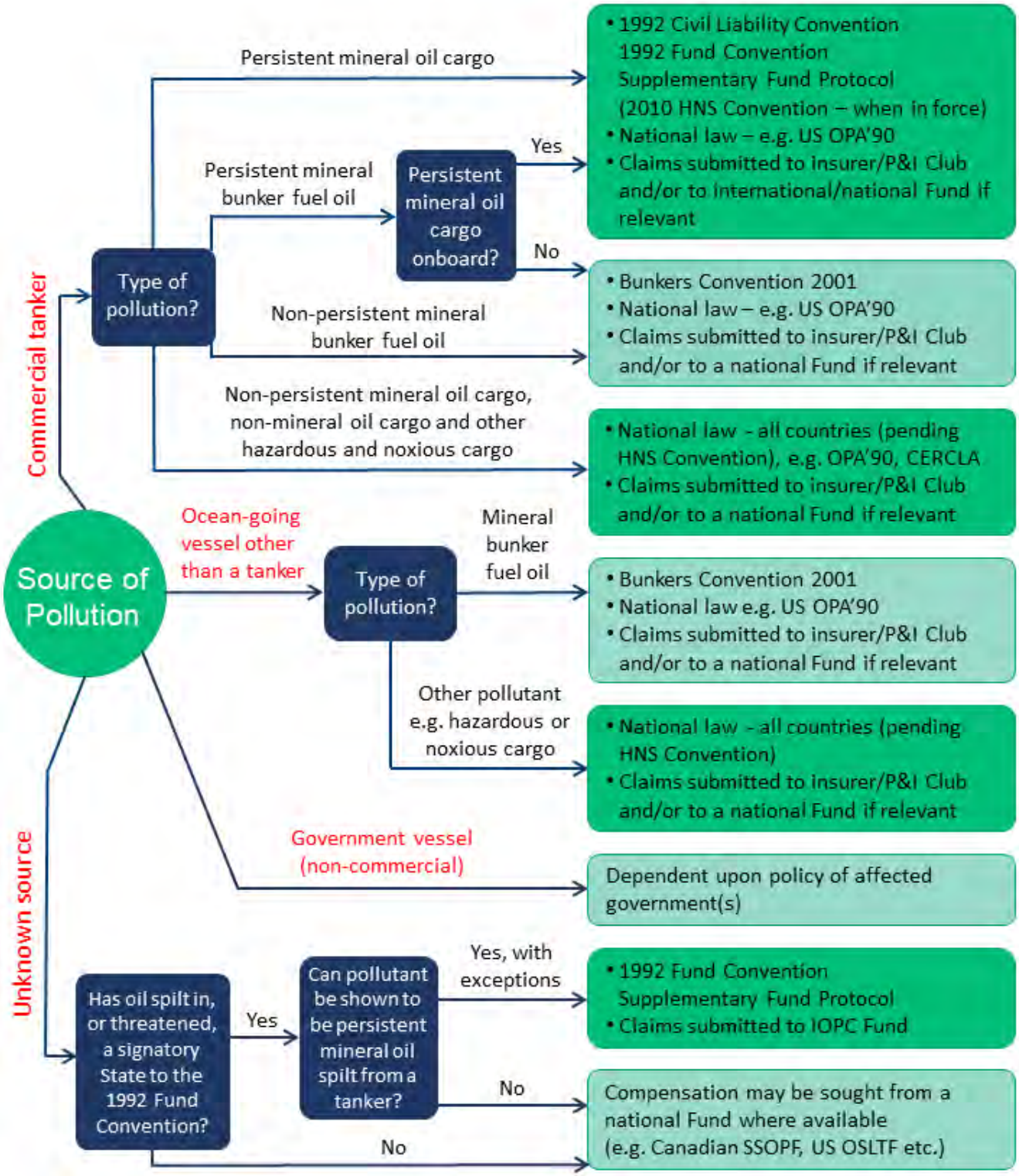


Figure 5: Summary of the availability of compensation for ship-source marine oil pollution, dependent upon ship and pollutant type and the available compensation regime. The 1969 CLC, and compensation for spills from small craft, are omitted for simplicity. Compensation may be available from other organisations if oil pollution can be shown to have derived from a source other than a ship.

CASE STUDY

BRAER, 1993 – example of fisheries losses

BRAER grounded at Garths Ness, Shetland Isles.

On 5th January 1993, tanker BRAER lost power and grounded on the southern point of the Shetland Isles, Scotland, UK, releasing 84,700 tonnes of Norwegian Gullfaks crude oil and ~1,600 tonnes of heavy fuel oil. A combination of the light nature of the cargo and exceptionally strong wind and wave energy dispersed a significant part of the oil naturally into the water column. Subsurface currents spread the oil over a wide area, with oil settling eventually in two deep, fine-sediment sinks.

To avoid the risk of contaminated fish and shellfish entering the food chain, a Fisheries Exclusion Zone was imposed. The primary concern centred on the commercially important salmon mariculture industry and testing showed that ~20% of the salmon farms in Shetland, close to the incident, were contaminated, with stock tainted by the dispersed oil. Harvesting of mature salmon stock in the affected area, for onward sale, was suspended.

Depuration of the mature fish was not completed in time for sale and the remaining stock of mature fish, ~1,700 tonnes, was removed and destroyed. Younger fish, due to be harvested the following year, were expected to have depurated in time for sale but the local authorities maintained the harvesting ban and a further ~3,500 tonnes of fish were destroyed as a result. Fresh smolt were introduced to the affected farms in the spring of 1993 and were harvested successfully two years later. The initial exclusion zone was extended to wildfish for three months and to some lobster and mussels until March 2000.

Compensation for clean-up and pollution damage resulting from BRAER was provided by the shipowner's P&I Club under the 1969 Civil Liability Convention and by the 1971 Fund. Of the total £51.9 million compensation paid, payments for fishery-related losses amounted to £38.5 million.

Inspection of Shetland fish farms.

Civil Liability Convention

Applicability	Source of compensation	Financial limit (US$)	States Parties*
Tankers carrying persistent oil cargo	Registered owner/insurer	Dependent on GT up to ~$126.1 million ('92 CLC)	145

** as at November 2021*

The International Convention on Civil Liability for Oil Pollution Damage (CLC)[13] provides a first level of compensation paid by the owner, or insurer, of a tanker which causes pollution damage as a result of a release of persistent hydrocarbon mineral oil. A tanker is defined under the Convention as a seagoing vessel or seaborne craft constructed or adapted to carry oil in bulk as cargo.

The CLC applies to pollution damage in the waters of a country in which the Convention is in force, and to activities undertaken to respond to pollution damage. The 1969 CLC[14] came into force in 1975 and has been through a number of iterations with the latest 1992 CLC now in force in more than 140 countries[15]. The 1992 iteration of the CLC, amongst other changes, expanded coverage to the EEZ of a State Party and to situations where no oil was spilt but a grave and imminent threat of a spill existed, as well as increasing the limits of liability. Nonetheless, in a limited number of countries the original 1969 CLC remains solely in force[16].

While applying usually to tankers carrying persistent oil as cargo, the 1992 CLC may apply to a release, or threat of a release, from an unladen tanker, for example to a release of bunker fuel oil used to power the vessel's engines, providing the tanker has residues of a persistent cargo on-board at the time of the release. However, a release of bunker fuel from a clean tanker, for example on a delivery voyage from a shipyard, or from a tanker that has carried only non-persistent oils, may instead be covered by the Bunkers Convention 2001[17].

The CLC places strict liability on the tanker owner, meaning that the shipowner is liable to pay compensation even if the pollution was not due to any fault of the owner and in most instances without the need for a claimant to involve the courts. The tanker owner is entitled to take recourse action against third parties in accordance with national law, for example if the release of oil was not the fault of the tanker owner.

Table 3: Shipowner liability limits under the two iterations of the Civil Liability Convention in force.

Convention	Shipowner Limit of liability* (US$)	Example liability limits (US$ approx..)
1969 CLC	2,000 francs Poincaré (~$83) per gross tonne (GT) up to a maximum of 210 million francs Poincaré ($8.5 million). (One franc Poincaré equalled the value of 65.5 milligrams of gold and has been replaced by Special Drawing Rights (SDR))	2,000GT = $166,000 10,000GT = $830,000 50,000GT = $4.15 million 100,000GT = $8.3 million 200,000GT = $8.5 million
1992 CLC (limits after subsequent amendment)	• Ship not exceeding 5,000 GT – SDR4.51 m ($6.3 million); • Ship between 5,000 and 140, 000 GT – as for a ship of 5,000GT plus SDR631 ($873) for each additional GT; • Ship of 140,000 GT or greater – SDR89.77 million ($129 1 million)	2,000GT = $6.3 million 10,000GT = $10.8 million 50,000GT = $46.2 million 100,000GT = $90.6 million 200,000GT = $126.1 million

**Shipowner liability can be increased under certain circumstances beyond the scope of this booklet[18]*
US$ figures converted from SDR at publication.

[13] The Convention text available at: www.iopcfunds.org/publications/iopc-funds-publications/

[14] The text of the 1969 CLC is available at https://treaties.un.org/doc/Publication/UNTS/Volume%20973/v973.pdf (from page 19).

[15] See the website of the International Maritime Organization (www.imo.org) and the membership section of the IOPC Funds website (www.iopcfunds.org) for an up-to-date list of countries.

[16] The version of the CLC relevant to each country is listed on the websites of the IMO and IOPC Funds.

[17] The factors distinguishing application of the Civil Liability Convention and the Bunkers Convention to an unladen tanker are presently the subject of a court process. See https://documentservices.iopcfunds.org/wp-content/uploads/sites/2/2020/11/IOPC-NOV20-3-12-1_e.pdf

[18] See https://www.igpandi.org/article/stopia-and-topia-2017-amendments

CASE STUDY

SOLAR 1, 2006 - small scale fisheries

Oil from SOLAR 1 affecting the shoreline of Guimaras Island, Philippines.

On 11th August 2006, tanker SOLAR 1, carrying 2,081 tonnes of fuel oil, sank off Guimaras Island, Republic of the Philippines. Two of the 20 crew members were lost at sea.

A substantial quantity of the cargo was spilled when the vessel sank, with continued leakage from the wreck. An operation to remove the remaining oil from the sunken vessel in March 2007 found little of the cargo remained onboard.

About 125km of shoreline was contaminated to varying degrees on Guimaras Island and a number of small islets off the south-east coast, including ~500 hectares of mangroves. The Philippine Coast Guard (PCG) led the response with assistance from the vessel charterers and international support, including ITOPF.

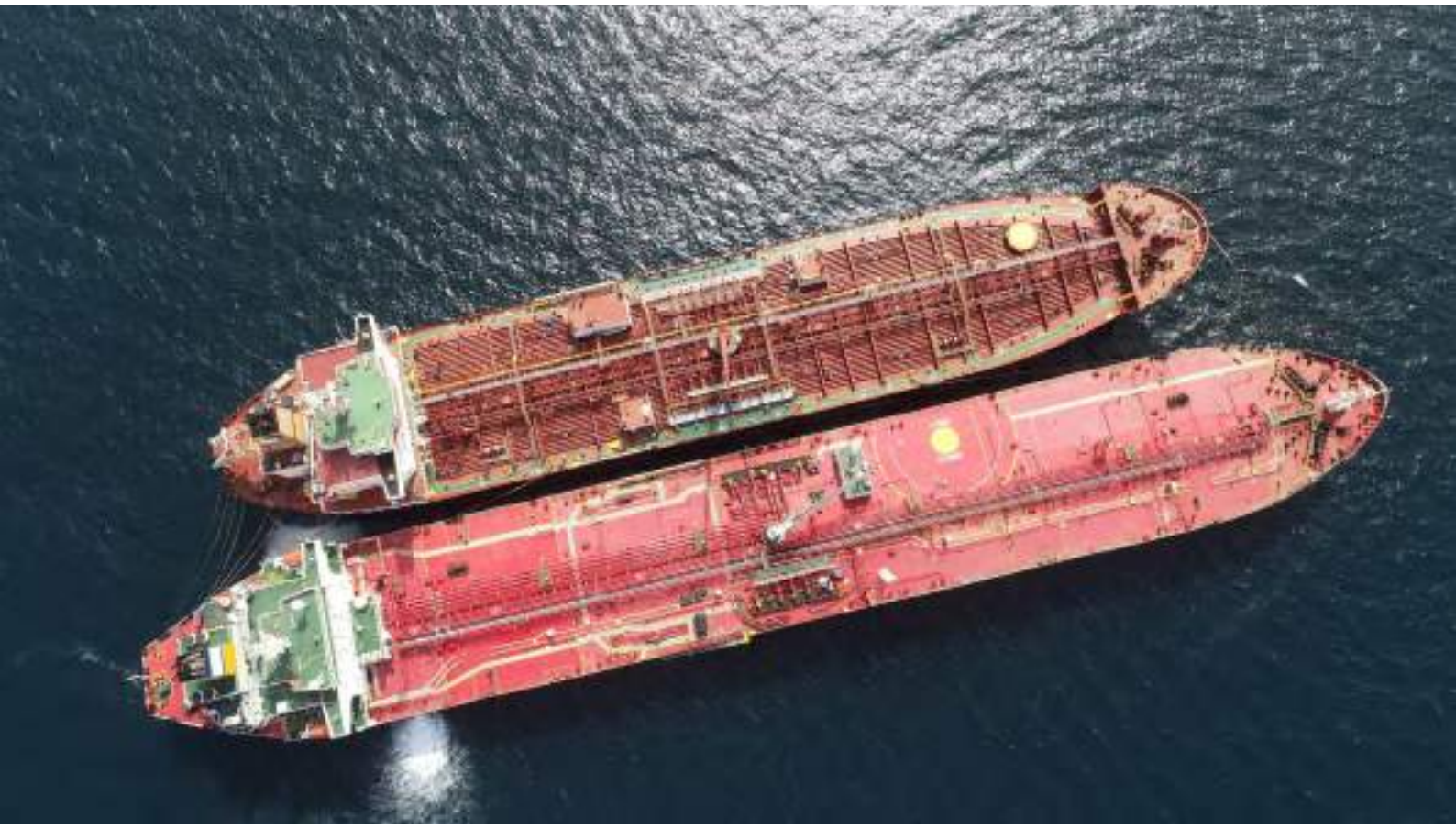
The spill also had a major impact on the small-scale fisheries on Guimaras Island. A number of fishpond operators, seaweed farmers and tourist businesses also suffered losses.

The casualty's P&I Club and the 1992 Fund established a claims office in Iloilo to assist with the handling of claims. 32,466 claims were submitted and assessed, with payments totalling ~PHP986.6 million (~US$18.6million) made for 26,870 claims, mainly in the fisheries sector. A further 132,642 claims were received but found to be inadmissible.

Cleaning the shoreline on Guimaras Island.

The tanker owner is exempt from this strict liability only in exceptional circumstances. At the same time, the CLC allows the tanker owner's liability to be limited to an amount of money dependent upon the size (gross tonnage) of the tanker. The limitation amount varies according to the version of the CLC in force in the country or countries affected.

The right to limit liability under the 1992 CLC does not apply if the pollution damage is proved to have resulted from the tanker 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' ('92 CLC Art. V(2)).



For an oil tanker, the applicable international convention is dependent in part upon the type of cargo on-board at the time of the incident – in particular whether the oil is persistent or non-persistent. (Shutterstock)

The tanker owner is not liable under the 1992 CLC if the pollution damage was caused either by a natural disaster, intentionally by a third party, or as a result of the negligence of public authorities in maintaining lights or other navigational aids. The CLC does not apply if the pollution damage resulted from an act of war, hostilities, civil war or insurrection, or a release from a warship.

For tankers carrying more than 2,000 tonnes of oil as cargo in bulk, the tanker owner is obliged to maintain insurance to cover liability under the 1992 CLC, and claimants have a right of direct action against the insurer. Evidence of insurance is carried on board every tanker, and at all times, where the Convention is in force and applicable and by means of a Convention certificate issued by a State that is a Party to the Convention.

Claims under the CLC are accepted for a number of categories[18] of pollution damage:

Under the CLC, claims must be submitted within three years of the date of the damage or six years of the date of the incident, whichever is sooner[19].

In situations where the compensation available from the tanker owner is insufficient, additional money may be available under the 1992 Fund Convention or from a national, domestic fund.

[18] These categories are described in greater detail in the IOPC Fund's Claims Manual and associated Guidelines, available at http://www.iopcfunds.org/publications/iopc-funds-publications/.

[19] See Article VIII of the 1992 Civil Liability Convention for clarification.

Fund Convention

Applicability	Source	Financial limit (US$)	States Parties*
Tankers carrying persistent oil cargo	1992 Fund – financed by oil receivers	Liability irrespective of ship size. Up to SDR203 million ($285 million), including shipowner liability	120
	Supplementary Fund – financed by oil receivers	Liability irrespective of ship size. Up to SDR750 million ($1,053.1 million) available, including shipowner and 1992 Fund liability	32

** as at November 2021*

The International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1992 (1992 Fund Convention)[20] provides a second level of compensation for pollution damage, caused by a release, or the threat of a release, of persistent mineral oil from a tanker, within the territory, exclusive economic zone or equivalent of a country in which the Convention is in force.

The original framework, the 1971 Fund Convention, was in force from 1978 to 2002 and the organisation ceased to exist at the end of 2014. The current framework, the 1992 Fund Convention, entered into force in 1996 and is now in force in 118 countries, with two further countries pending[21].

The 1992 Fund Convention established the 1992 Fund, financed by a levy on companies and other entities in countries that have signed the Convention, that receive crude or fuel oil carried by sea over a certain annual threshold.

The 1992 Fund is an intergovernmental organisation, administered by a Secretariat, based in the headquarters of IMO in London, and governed by two bodies: an Assembly and an Executive Committee. The Assembly is composed of representatives of the governments of all States Parties, while the Executive Committee, composed of 15 Member States, is a subsidiary body elected by the Assembly, the main function of which is to approve claims.

Meeting of the 1992 Fund Assembly at the headquarters of the International Maritime Organization.

[20] The text of the 1992 Fund Convention is available from the publications section of the IOPC Funds website.

[21] See the websites of IMO (www.imo.org) or the IOPC Funds (www.iopcfunds.org) for a list of countries.

CASE STUDY

HEBEI SPIRIT, 2007 – significant claims

On 7th December 2007, tanker HEBEI SPIRIT, laden with 209,000 tonnes of four different Middle Eastern crude oils, was struck by a crane barge whilst at anchor off Taean, South Korea. The barge broke free from its tow in poor weather, puncturing three port-side cargo tanks. Despite mitigating efforts by the crew of HEBEI SPIRIT, ~10,900 tonnes of Iranian Heavy, Upper Zakum and Kuwait Export crude oils were released to the sea.

The oil affected ~340 kilometres of coastline, both on the mainland and on numerous islands of three provinces, along the western coast of South Korea. A major shoreline clean-up operation was undertaken with 21 separate clean- up contractor companies and numerous province-level and city authorities hiring many local villagers as labourers. Significant numbers from the army were also deployed together with a large volunteer involvement.

Seaweed cultivation facilities, particularly laver, and intertidal oyster cultivation areas were affected to various degrees by the oil. Many oyster farms and facilities required removal and replacement. Large-scale hatchery production facilities for sea mustard, abalone, sea cucumber, and finfish were affected also.

Oiling of beaches and coastline of Taean National Park affected the important tourist industry, with resultant economic losses.

Compensation for pollution damage as a result of HEBEI SPIRIT was paid by the shipowner's P&I Club under the 1992 Civil Liability Convention and by the 1992 Fund.

The P&I Club and 1992 Fund established a joint claims office in Seoul to receive and process claims. A team of Korean and international surveyors and experts was appointed to monitor the clean-up operations and investigate the potential impact of the pollution to assess claims.

127,483 claims totalling KRW4,227 billion (~US$3,700 million) were submitted to the Limitation Court, with ~111,000 of these claims from the fisheries sector, and more than 10,000 related to tourism. The Court awarded a total of KRW432.9 billion (~US$381 million) to claimants. The P&I Club and 1992 Fund made combined payments up to the limit of the 1992 Fund (KRW321.6 billion (~US$283 million)), with the Korean Government standing last in queue and paying all other claims in full.

The P&I Club and 1992 Fund brought successful recourse actions against the owner and operator/bareboat charterer of the Marine Spread (barge & tow) and recovered a small part of the monies paid out.

More details regarding this incident are available on the website of the IOPC Funds.

Shoreline clean-up

Removal of oiled mariculture facilities

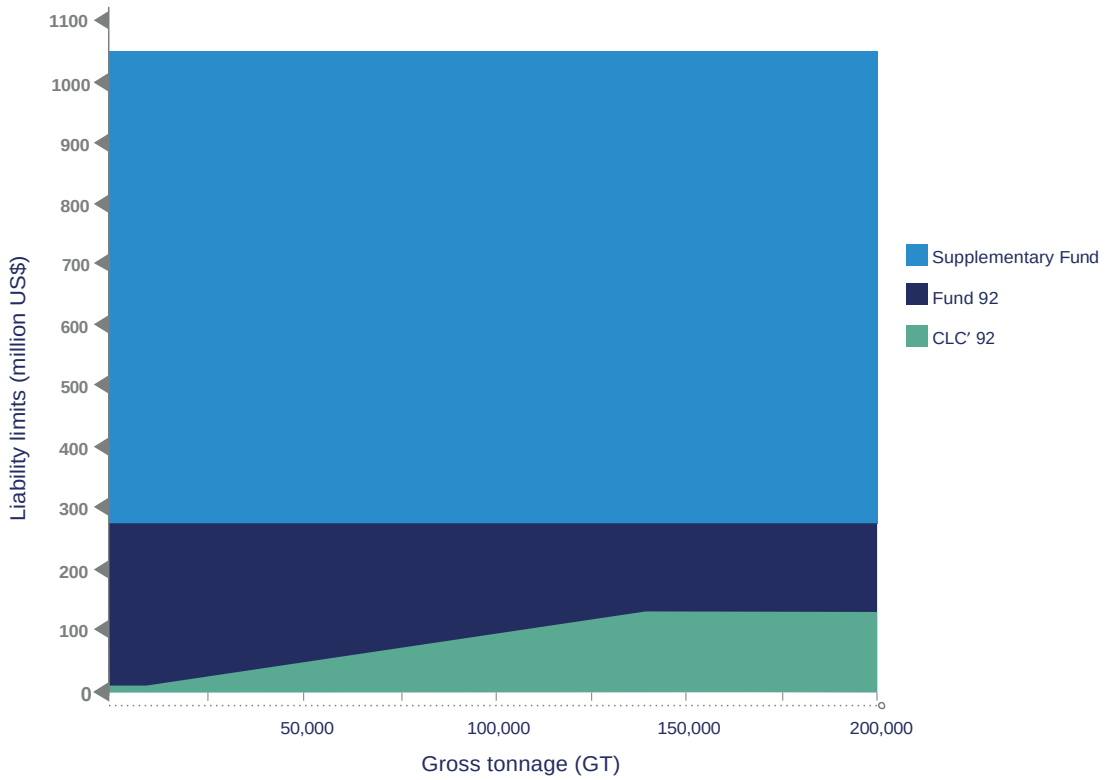


Figure 6: Compensation limits under the 1992 Civil Liability and Fund Conventions (including Supplementary Fund Protocol).

Compensation may be available from the 1992 Fund when claimants do not obtain full compensation under the 1992 CLC, such as when:

- the damage exceeds the limit of the tanker owner's liability under the 1992 CLC;
- the tanker owner is exempt from liability under the 1992 CLC;
- the tanker owner is financially incapable of meeting their obligations under the 1992 CLC; or
- the tanker owner is unknown.

The maximum amount of compensation payable under the 1992 Fund Convention for any one incident is 203 million Special Drawing Rights (SDR), approximately US$286.7 million, irrespective of the size of the ship. This maximum amount includes the compensation paid by the shipowner or insurer under the 1992 CLC.

As with the 1992 CLC, the 1992 Fund does not pay compensation if the pollution damage resulted from an act of war, hostilities, civil war or insurrection, was caused by a release from a warship, or if the release of persistent oil cannot be proved to have originated from a tanker.

The same categories of claims under the 1992 CLC are allowed under the 1992 Fund Convention, with the same restrictions on time for submission of claims in relation to the date of the damage or incident[22]. The criteria for submission of admissible claims are described within the IOPC Funds' Claims Manual and associated Guidelines[23]. The International Group has in place a Memorandum of Understanding with the IOPC Funds to facilitate cooperation for an incident involving a ship insured by a member P&I Club of the International Group[24].

In 2003, a Protocol was agreed to the 1992 Fund, to establish the Supplementary Fund, providing a third level of compensation for pollution damage in those countries that are States Parties to the Protocol. For States Parties, the total amount of compensation payable under the Supplementary Fund for any one incident is SDR 750 million, (~US$1,053.1 million), including the amount payable under the 1992 Civil Liability and Fund Conventions. The Supplementary Fund is financed by a levy on receivers of crude and fuel oil carried by sea in countries that have signed the Protocol, and is administered on a basis similar to the 1992 Fund. However, since its establishment, no incidents have occurred requiring payments by the Supplementary Fund.

[22] See Article VI of the 1992 Fund Convention for clarification.

[23] IOPC Fund publications are available at http://www.iopcfunds.org/publications/iopc-funds-publications/.

[24] See https://www.igpandi.org/article/group-signs-new-memorandum-of-understanding-with-iopc-funds and https://documentservices.iopcfunds.org/download/2373/en/92FUND-A-ES-11-6_en.pdf

CASE STUDY

TK BREMEN, 2011 – Bunkers Convention

After discharging cargo at Lorient, France, general cargo vessel TK BREMEN ran aground at Kerminihy beach, Erdeven during a storm on 16th December 2011. The casualty spilled an estimated 70 tonnes of bunker fuel, affecting beaches, oyster farms and the hulls of fishing and pleasure craft.

Salvors removed the oil remaining on-board and the vessel was broken up in-situ by a local demolition contractor. Cleaning of beaches and dune restoration took several months, exacerbated by the presence of buried oil.

The vessel's P&I Club paid clean-up and pollution damage costs, totalling ~US$4.5million, promptly under the Bunkers Convention 2001. Additional costs of US$3.8 million were paid by the Club for salvage and wreck removal.

TK BREMEN beached, prior to demolition

Moving lightly-oiled sand for cleaning by natural wave action (surf washing).

Bunkers Convention

Applicability	Source of compensation	Financial limit	States Parties*
Bunker fuel oil from all ships	Registered owner, bareboat charterer, manager and operator of the ship	Dependent on GT and separate legislation including LLMC	102

** as at November 2021*

The success of the Civil Liability Convention (CLC) to provide prompt payment of compensation for releases of persistent mineral oil from tankers led to the development of the International Convention on Civil Liability for Bunker Oil Pollution Damage 2001 (Bunkers Convention)[25] and that is applicable to a wide range of vessels. The Convention came into force in 2008 and is now in force in 100+ countries[26].

[25] The text of the Bunkers Convention is available on the UK Government website, as written into UK law https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/273257/6693.pdf.

[26] See https://www.imo.org/en/About/Conventions/Pages/StatusOfConventions.aspx for a list of States Parties.

The Bunkers Convention 2001 applies to pollution damage caused by any hydrocarbon mineral oil used for the operation or propulsion of any type of sea-going vessel in the territory of a State Party, as well as to response activities undertaken anywhere to protect a State Party. As such, the Convention applies to fuel and lubricating oils used in a wide range of ships, including fishing vessels, tugs, ferries, container ships, bulk carriers and tankers. However, the Convention does not apply to a release of bunker fuel from a tanker covered by the CLC, i.e. with a persistent oil cargo, or traces of a persistent oil cargo, on-board[27], and does not apply to warships or other types of government ships except in certain circumstances[28].

The Bunkers Convention 2001 is a single-tier compensation regime modelled on the CLC, but without provision for supplemental compensation above the shipowner's limit. As with the CLC, a key requirement of the Bunkers Convention 2001 is the need for the registered owner of a vessel (over 1,000 GT for the Bunkers Convention 2001) to maintain compulsory insurance to cover liability, evidenced by a convention certificate. However, the limit of liability of the shipowner under the Bunkers Convention 2001 is determined by separate applicable national legislation or an international limitation regime, such as the Convention on Limitation of Liability for Maritime Claims (LLMC—see below) where applicable and in force.

The Bunkers Convention 2001 covers similar claims to the CLC, i.e. for the costs of preventive measures (clean-up response) and for pollution damage. In particular, the Bunkers Convention 2001 states that compensation for damage to the environment is restricted to loss of profit from the damage and the costs of reasonable reinstatement work. Claims must be made under the Bunkers Convention 2001 within three years of the date of the damage or six years of the date of the incident, whichever is sooner.

Alternate substances as bunker fuel

While mineral oil remains the primary bunker fuel for ships, other substances may become more prevalent, such as liquefied natural gas, biofuels, hydrogen, ammonia etc. These alternative fuels are not classed as oil and consequently are not covered by either the Civil Liability or Bunkers Conventions.

Convention on Limitation of Liability for Maritime Claims (LLMC)

The LLMC allows the owner of a sea-going ship to establish limitation for a wide range of maritime claims including:

- Claims for loss of life and personal injury
- Claims for loss or damage to property
- Claims for 'the raising, removal, destruction or the rendering harmless of a ship which is sunk, wrecked, stranded or abandoned, including anything that is or has been on board such ship'
- Claims for the 'removal, destruction or the rendering harmless of the cargo of the ship'
- Claims for measures taken to avert or minimise loss and further loss caused by these measures

The Convention sets two separate limits for claims related to:
(i) loss of life or personal injury, and
(ii) other claims (e.g. property claims, economic loss)

The sole purpose of the LLMC is to set limitation amounts for shipowners, and the Convention does not establish a means of providing compensation. Instead, this would be set by other legislation, such as the Bunkers Convention 2001 or legislation established nationally.

[27] The factors distinguishing application of the Civil Liability Convention and the Bunkers Convention to an unladen tanker are presently the subject of a court process. See https://documentservices.iopcfunds.org/wp-content/uploads/sites/2/2020/11/IOPC-NOV20-3-12-1_e.pdf.

[28] Article 4 (3) of the Bunkers Convention allows a country to apply the Convention to warships and other government ships by notifying the Secretary General of the IMO.

The 1976 LLMC came into force in 1986 and has undergone a number of revisions. Currently, the 1996 version is in force in ~63 countries, with the earlier 1976 version solely in force in a number of additional countries. Liability is limited to an amount dependent on the size of the ship. For example, for a ship of 80,000 GT, for property claims, i.e. excluding loss of life and personal injury, the limitation amount would be approximately US$14.3 million under the 1976 version, and approximately US$55.6 million under the 1996 version, as amended in 2012.

LLMC does not apply to claims for salvage, claims for pollution damage under the CLC and to claims under a number of other scenarios.

Hazardous and Noxious Substances (HNS) Convention

Applicability	Source of compensation	Financial limit (approximate US$)	Contracting States*
Ships carrying cargoes of HNS, (including non-persistent oils)	Shipowner	Dependent on GT - up to $140.4 million (bulk) or $161.5 million (packaged)	5
	HNS Fund	Liability irrespective of ship size. Up to SDR250 million ($351 million), including shipowner liability	

** as at November 2021*

Damage caused by Hazardous and Noxious Substances carried as cargo, including mineral and non-mineral oils, will be covered by the International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea[29], known as the HNS Convention.

The HNS Convention was adopted by an IMO international conference in 1996. However, by 2009, the Convention had not entered into force due to an insufficient number of State ratifications. A second international conference, in 2010, adopted a Protocol to the HNS Convention to address practical problems that had prevented many states from ratifying the original HNS Convention. The 2010 HNS Convention has been ratified by five countries but is not yet in force[30].

The 2010 HNS Convention will cover damage caused by HNS in the waters of a country in which the Convention is in force, as well as damage caused by HNS carried on board ships registered in, or entitled to fly the flag of, a State Party anywhere. Compensation will be available for pollution damage and damage caused by other risks, including fire and explosion and for loss of life or personal injury on board or outside the ship carrying HNS.

The Convention will apply to the carriage of HNS by sea by any sea-going craft, including tankers and other ships carrying bulk cargoes, as well as container ships carrying packaged goods, but excluding ships owned or operated by a government (other exclusions may apply). Bulk cargoes can be solids, liquids, or liquefied gases. A large number of substances are included under the HNS Convention[31], as referenced in various IMO Conventions and Codes. For example, the International Maritime Dangerous Goods (IMDG) Code[32] lists hundreds of materials which can be dangerous when shipped. Some bulk solids, such as coal and iron ore, are excluded from the Convention.

The 2010 HNS Convention will not cover pollution damage covered under the 1992 Civil Liability Convention. However, other damage caused by a release of a persistent mineral oil, for example by fire or explosion, or loss of life, may be covered by the HNS Convention.

The availability of compensation under the HNS Convention will be modelled largely on the existing Civil Liability and Fund Conventions. However, the HNS Convention combines shipowner

[29] The text of the Convention is available at https://www.hnsconvention.org/the-convention/

[30] See the websites of the International Maritime Organization (www.imo.org) or the HNS Convention (www.hnsconvention.org) for a list of countries.

[31] Article 1(5) of the HNS Convention provides a broad definition of substances covered by the Convention https://www.hnsconvention.org/wp-content/uploads/2018/08/2010-HNS-Convention-Consolidated-text_e.pdf, while specific substances can be identified using the HNS Finder https://www.hnsconvention.org/hns-finder/

[32] See IMO website for information on the IMDG Code – https://www.imo.org/en/OurWork/Safety/Pages/DangerousGoods-default.aspx

Collapsed container stack – dangerous goods packaged within containers may be covered by the HNS Convention.

Palm oil spill. Vegetable oil spills will be covered by the HNS Convention in States Parties. (Photo courtesy of Elastec www.elastec.com).

and cargo-receiver liability in a single convention. For the first level, the shipowner will be strictly liable for the loss or damage, up to an amount dependent upon the size of the ship, and whether the HNS is in bulk or packaged form, paid by the shipowner/insurer of the vessel.

Table 4: Shipowner liability limits under the 2010 HNS Convention.

Convention	Limit of liability (US$)	Example liability limits (US$)
2010 HNS Convention Bulk cargoes	• Ship <=2,000 GT — SDR10 million ($14 million); • Ship between 2,001 and 50,000 GT — as for a ship of 2,000GT plus SDR1,500 ($2,106) for each additional GT; • Ship in excess of 50,000 GT — as for a ship of 50,000GT plus SDR360 ($506 for each additional GT, up to a maximum of SDR100 million ($140.4 million). Excludes additional money available from the HNS Fund	2,000GT = $14 million 10,000GT = $30.9 million 50,000GT = $115.1 million 100,000GT = $141.3 million 200,000GT = $140.4 million
2010 HNS Convention Packaged cargoes*	• Ship <=2,000 GT — SDR11.5 million ($16.1 million); • Ship between 2,001 and 50, 000 GT — as for a ship of 2,000GT plus SDR1,725 ($2,437) for each additional GT; • Ship in excess of 50,000 GT — as for a ship of 50,000GT plus SDR414 ($585) for each additional GT, up to a maximum of SDR115 million ($162.4 million). Excludes additional money available from the HNS Fund	2,000GT = $16.1 million 10,000GT = $35.5 million 50,000GT = $132.4 million 100,000GT = $161.5 million 200,000GT = $161.5 million

**The limits of liability for packaged cargoes apply also if damage is a result of both packaged and bulk HNS or where this cannot be determined[33]. Additional money will be available from the HNS Fund for claims above the shipowner's limit. US$ figures converted from SDR at publication.*

The shipowner will be exempt from liability under the 2010 HNS Convention on a similar basis as the 1992 CLC, with an additional exemption due to the failure of the shipper, or any other person, to provide information on the hazardous and noxious nature of the substance shipped.

An HNS Fund will provide a second level of additional compensation when full compensation is not available from the shipowner. The HNS Fund will be financed by companies and other entities which receive bulk HNS after sea transport in a State Party. The liability of the HNS Fund will be independent of the size of the casualty ship, with up to SDR250 million (US$353 million) available, including shipowner liability. The HNS Fund will be administered by a Secretariat and overseen by an Assembly, under circumstances that are expected to be similar to the IOPC Funds.

[33] HNS Convention Art 9(1) https://www.hnsconvention.org/the-convention/

Once in force, claims under the HNS Convention should be submitted within three years of the damage or ten years of the date of the incident, whichever is sooner.

A summary of payment limits under the HNS Convention are outlined in the figure below:

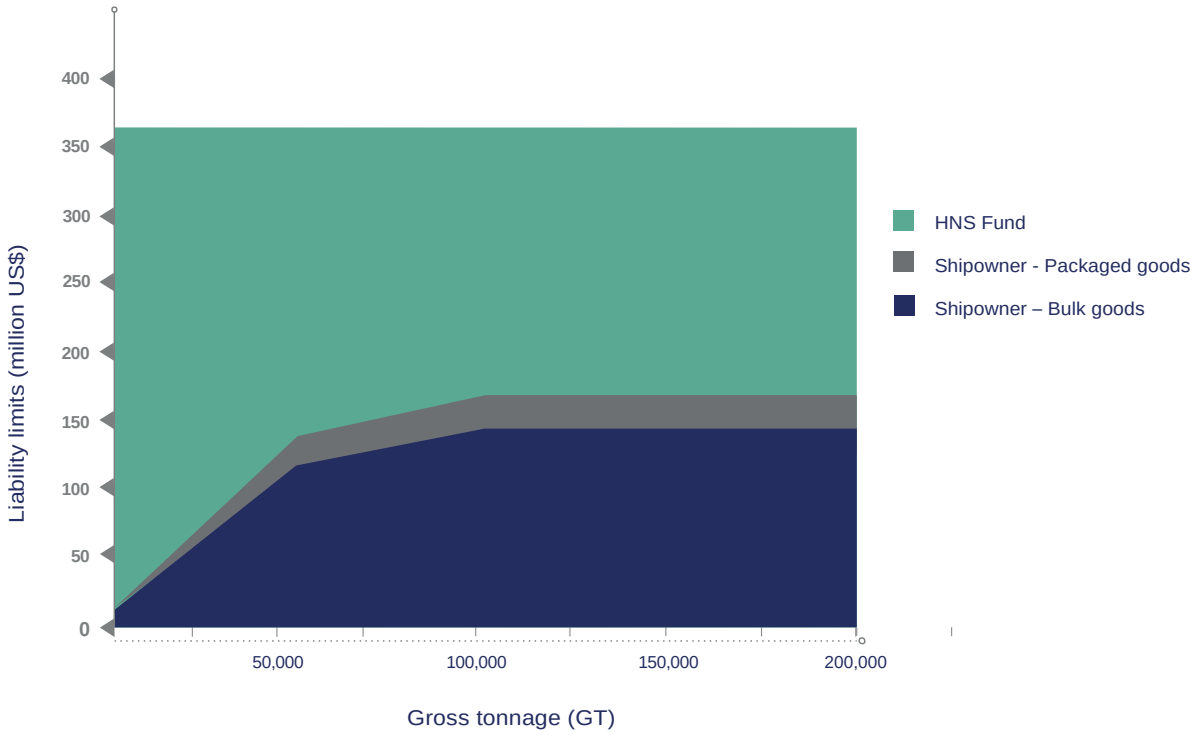


Figure 7: Compensation limits under the 2010 HNS Convention. Showing the limits in US$ for vessels up to 200,000GT.

Until the HNS Convention is in force, the availability of compensation for incidents involving non-persistent mineral oil and non-mineral oil carried as cargo and other HNS cargo will be dependent upon legislation established nationally, if at all, and consequently will vary widely internationally.

National and regional legislation for compensation for ship-source oil spills

For incidents where an international convention does not apply, either because the affected country has not signed the applicable convention, or the convention is not in force, liability and the availability of compensation will be dependent upon legislation established nationally, if at all. This legislation can be highly specific, such as the Oil Pollution Act of 1990 (OPA '90) in the USA, or be based on broader laws developed originally for other purposes. This variability means that compensation for spills of oil from ships that are not covered by an international convention will be dealt with in different ways according to the applicable national law. For example, in some jurisdictions, claims for pure economic loss (i.e. loss that is not caused as a direct consequence of damage to property) may be inadmissible and therefore rejected by a court. Furthermore, an absence of strict liability in national law may require a potential claimant to prove fault on the part of a shipowner.

An analysis of the relevant legislation on liability and compensation for ship-source oil spills in every country is beyond the scope of this document. However, given its importance to the oil and shipping industries, OPA '90 is summarised below, as are similarly important arrangements in Canada and China.

CASE STUDY

EXXON VALDEZ, 1989 – most expensive ship-source spill

EXXON VALDEZ on Bligh Reef.

EXXON VALDEZ grounded on Bligh Reef in Prince William Sound, Alaska, on 24th March 1989, releasing ~37,000 tonnes of Alaska North Slope crude oil. Despite the utilisation of significant numbers of personnel, vessels, boom, skimmers and other resources, the oil spread widely to affect a variety of shores to varying degrees over an estimated 1,800km in Prince William Sound and along Alaska's south coast as far west as Kodiak Island. The response was the most expensive ever for a ship-source oil spill, with over 10,000 workers employed at the height of the clean-up operations, many of them in shoreline clean-up, often in remote areas.

As a consequence of the spill, fisheries for salmon, herring, crab, shrimp, rockfish, and sablefish were closed.

Exxon spent ~US$2.1 billion in clean-up costs and pleaded guilty to violations of the Clean Water Act, the Refuse Act, and the Migratory Bird Treaty Act, with a fine of US$150 million, later reduced to US$25 million plus restitution of US$100 million.

A civil action by the United States and the State of Alaska for environmental damage ended with payments of ~US$900 million toward restoring natural resources. A further US$303 million was paid in voluntary settlements to commercial fishermen for lost income due to fish stock damages, to Alaska Natives for lost harvest foods, to seafood processors and employees and to other organisations for lost income, as well as to private landowners for damage to their land as a result of the oil. With additional fines and damages ~US$4 billion was paid as a consequence of the spill. A part of this amount was recovered from various insurance companies, including from the vessel's P&I Club under TOVALOP and from cargo owners through CRISTAL

Following the grounding, Alaska Governor Jay Hammond authorised the creation of the Alaska Oil Spill Commission in 1989 to examine the causes of the spill and issue recommendations on potential policy changes. Fifty of these recommendations formed the basis for the Oil Pollution Act bill introduced into the legislative process in March 1989 by congressman Walter B. Jones, Sr. The bill was signed by President Bush on 18th August 1990, officially enacting the Oil Pollution Act.

Recovery of oil floating in Prince William Sound.

See: Exxon Shipping Co. et al. v. Baker et al. - https://www.supremecourt.gov/opinions/07pdf/07-219.pdf
King v Brandywine Reinsurance Company - https://archive.onlinedmc.co.uk/king_v__brandywine_reinsurance.htm

USA – Oil Pollution Act of 1990 - Oil Spill Liability Trust Fund

The US Government participated in negotiations on the Civil Liability and Fund Conventions and signed the 1984 Protocols to these Conventions (although these Protocols did not come into force). However, the US Senate was unable to ratify these Conventions for a number of reasons, including the pre-emption of US State laws and the perceived low liability limits. Instead, following the discharge of oil from EXXON VALDEZ, in 1989, the US Congress passed the Oil Pollution Act of 1990[34] (OPA '90), which amended the existing Clean Water Act (see the Case Study on page 25).

OPA '90 includes provisions for liability and compensation of damage resulting from discharges, or the substantial threat of discharges, of oil from onshore and offshore facilities, ships and other watercraft. OPA '90 does not prevent individual US States from implementing more stringent laws for discharges of oil and many have done so. However, this document is limited to an overview of the Federal law.

OPA '90 applies to discharges of oil of any kind and in any form, including petroleum, fuel oil, sludge, oil refuse, and oil mixed with wastes other than dredged spoil. As such, OPA '90 applies to incidents involving persistent and non-persistent mineral oils and to non-mineral based oils. However, OPA '90 does not apply to substances listed specifically in, or designated as a hazardous substance under, the separate Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA)[35].

Under OPA '90, the owner, operator or bareboat charterer (termed collectively as the Responsible Party (RP)) of a vessel from which oil is discharged, or which poses a substantial threat of discharge, into the navigable waters of mainland USA, within the US Exclusive Economic Zone, or its overseas territories and possessions, is liable for removal costs and damages.

The first level of liability is placed on the Responsible Party and varies according to the type and size of the ship. Liability limits have changed a number of times since OPA '90 came into force, with present example liabilities[36] shown below, emphasising the differences in liability according

Table 5: Tank vessel liability limits under OPA '90 –increased limits effective from November 2019[35]

Source tank vessel liability (US$)	Example liability limits (US$)
For an oil cargo tank vessel less than or equal to 3,000GT with a single hull, including a single-hull tank vessel fitted with double sides only or a double bottom only: The greater of $3,700 per GT or $7,478,800	2,000 GT = $7,478,000
For a tank vessel less than or equal to 3,000 GT, other than a single-hull vessel referred to above: The greater of $2,300 per GT or $4,985,900	2,000 GT = $4,985,900
For an oil cargo tank vessel greater than 3,000 GT with a single-hull, including a single-hull tank vessel fitted with double sides only or a double bottom only. The greater of $3,700 per GT or $27,422,200	10,000 GT = $37 million 50,000 GT = $185 million 100,000 GT = $370 million 200,000 GT = $740 million
For a tank vessel greater than 3,000 GT, other than a single hull vessel referred to above. The greater of $2,300 per GT or $19,943,400	10,000 GT = $23 million 50,000 GT = $115 million 100,000 GT = $230 million 200,000 GT = $460 million

[34] The text of the Act is available at http://uscode.house.govTitle 33 Chapter 40.

[35] For a list of oils covered by OPA'90 see: https://www.dco.uscg.mil/Our-Organization/Assistant-Commandant-for-Prevention-Policy-CG-5P/Commercial-Regulations-standards-CG-5PS/Design-Engineering-Standards/eng5/

[36] Revised limits at November 2019, as provided in the US Federal Register Vol.84 No. 156, August 13, 2019 https://www.govinfo.gov/content/pkg/FR-2019-08-13/pdf/2019-17234.pdf

CASE STUDY

ATHOS 1, 2004 – OPA'90 and Oil Spill Liability Trust Fund

Tanker ATHOS 1 grounded in the Delaware River.

On 26th November 2004, tanker ATHOS 1 struck an abandoned submerged and uncharted anchor on the approach to the Citgo refinery dock on the Delaware River, Paulsboro, New Jersey, USA, while delivering ~53,000 tonnes of heavy Bachaquero crude oil from Venezuela. The anchor punctured the single hull of ATHOS 1, discharging ~1,000 tonnes of oil to spread 115 miles downriver, affecting ~280 miles of shoreline in Pennsylvania, New Jersey, and Delaware. The Salem nuclear power plant was shut down temporarily and the US Coast Guard closed the Delaware River to commercial traffic for more than a week.

The response involved over 1,800 people per day at its peak. On-water recovery operations continued for two weeks with shoreline clean-up continuing for several months into 2005, exacerbated by numerous derelict piers and wharfs, debris and cold weather, including snow. Sunken oil proved particularly difficult to detect and recover

Cleaning of oiled shorelines.

The owner of ATHOS 1, as the Responsible Party under OPA'90, spent US$143 million to clean up the spill. In March 2005, the spill was federalised with continued costs paid from the Oil Spill Liability Trust Fund directly. Total clean-up costs, natural resource damages and third-party claims combined to >US$300 million. The National Pollution Funds Center, as administrator of the OSLTF, limited the shipowner's liability under the Act to ~US$45.5million and reimbursed the shipowner for expenditure in excess of the limitation amount.

In 2016, after a lengthy legal process, the shipowner and US Government were awarded US$71.5 million and US$48.6 million respectively, including interest, from the sub-charterer refinery owners, as a result of a court judgment finding a contractual breach of safety warranty under the charter party to provide a safe berth.

Citgo Asphalt Refining Co. v. Frescati Shipping Co. - https://www.law.cornell.edu/supct/cert/18-565

to hull type i.e. for a single-hull tanker of 50,000 GT, liability would be limited currently to US$185 million. For a double hull tanker of the same size, liability would be limited currently to US$115 million.

OPA '90 applies also to non-tank vessels, with liability limits shown in the below table.

Table 6: Non-tank vessel liability limits under OPA '90 - increased limits effective from November 2019[35]

Non-tank vessel liability (US$)	Example liability limits (US$)
The OPA 90 limits of liability for any vessel other than a vessel listed above (in Table 5), and including for any edible oil tank vessel and any oil spill response vessel: The greater of $1,200 per gross ton or $997,100	2,000GT = $2.4 million 10,000GT = $12 million 50,000GT = $60 million 100,000GT = $120 million 200,000GT = $240 million

The owners of ships over 300 GT must obtain a Certificate of Financial Responsibility (COFR) as evidence of their financial capability to satisfy the maximum liability under OPA '90[37].

The right of a RP to limit liability under OPA '90 can be lost if: the incident was caused by gross negligence or willful misconduct; if any applicable Federal safety, construction or operating regulation has been violated; and the failure or refusal to report the incident, to provide all reasonable cooperation and assistance requested by a responsible official (usually the US Coast Guard, USCG, for a ship-source discharge of oil) in connection with removal activities; or to comply with an order under certain sections of other Acts.

Removal costs comprise containment and removal of oil from the water and shorelines, as well as other activities required under the US National Contingency Plan to mitigate damage to public health or welfare, including fish, shellfish, wildlife, and public and private property, shorelines and beaches.

A wide range of damages are covered specifically by OPA '90, including:

- real or personal property damage (real property comprises land or buildings);
- loss of profits or earning capacity;
- loss of subsistence use of natural resources;
- loss of government revenues from taxes, royalties, rents, fees etc.;
- costs of providing increased public services; and
- natural resource damage and the costs of assessing such damage (NRDA).

In certain circumstances claims may be submitted to the US Oil Spill Liability Trust Fund (OSLTF), for example when the Responsible Party denies a claim or fails to settle within 90 days, or when the first level of liability is insufficient to satisfy all admissible claims for compensation. In circumstances where the OSLTF pays claims that the Responsible Party has denied, it will later seek to recover the costs of settling those claims from the Responsible Party. The OSLTF will consider claims for oil removal costs, third-party damages and NRDA costs, although there are a number of conditions which have to be satisfied, as well as restrictions as to who is able to claim from the OSLTF[38]. The maximum amount of compensation available from the OSLTF is US$1,000 million per incident, funded by a per-barrel tax on imported crude oil and petroleum products, as well as domestically produced oil, and paid by refinery operators and importers and exporters of the oil[39]. The OSLTF is administered by the US Coast Guard National Pollution Funds Center (NPFC)[40].

Under OPA'90, claims for removal costs must be made within six years after the date of completion of all removal actions for the incident. With the exception of claims for natural resource damage assessment, claims for damages must be submitted to the NPFC within three years of the date on which the damage, and its connection with the oil discharge, was reasonably discoverable.

The OPA'90 has a number of areas in common with the international conventions, for example strict liability and limitation. However, the two regimes are largely independent of each other. For an incident affecting both US waters and the waters of a neighbouring country, for example Canada, both regimes may apply.

[37] For information on COFRs see https://www.uscg.mil/Mariners/National-Pollution-Funds-Center/COFRs/

[38] OSLTF Claims Regulations are available at https://www.ecfr.gov/cgi-bin/text-idx?node=pt33.2.136&rgn=div5

[39] See http://uscode.house.gov Title 26, Chapter 38, Section 4611 for funding of the Oil Spill Liability Trust Fund.

[40] See https://www.uscg.mil/Mariners/National-Pollution-Funds-Center/ for further information.

CASE STUDY

COSCO BUSAN, 2007 – non-tanker incident under OPA'90

COSCO BUSAN at anchor (courtesy USCG).

Whilst leaving the port of San Francisco in thick fog on 7th November 2007, laden container vessel COSCO BUSAN allided with a pier of the Oakland Bay Bridge causing a tear in the vessel's hull in the way of two bunker tanks and the discharge of ~200 tonnes of bunker fuel.

The tidal cycle spread the oil widely within San Francisco Bay, affecting approximately 90 miles of shoreline. A significant response ensued, with a local state of emergency declared by the Governor of California and the closure of the crab fisheries at what would have been the start of the crab fishing season.

Cleaning wildlife affected by the oil.

Shoreline cleaning in San Francisco Bay.

The majority of the clean-up was completed within two months under intense media scrutiny, and concluded in autumn 2008 at a cost of ~US$81.5 million.

In total the claims - including from amongst others, herring and crab fisherman, and for pollution damage to pleasure craft, marinas, commercial and residential property, fishing boats, Natural Resource Damage to birds, fish & eelgrass, various habitats and recreational activity, and the cost of repairs to the bridge - were settled marginally in excess of US$100 million.

Although it is possible to limit liability under OPA'90, the right to limit is not available in particular circumstances. These include violations of applicable Federal safety regulations. The speed of the vessel in severely restricted visibility would have prejudiced the right to limit.

Canada – Ship-source Oil Pollution Fund

Canada is a State Party to the 1992 Civil Liability and Fund Conventions, to the Supplementary Fund protocol and to the Bunkers Convention 2001. These Conventions are incorporated into Canadian legislation, within the Marine Liability Act[41]. Canada is also a Contracting Party to the 2010 HNS Convention, although this Convention is not yet in force. Where applicable, claims for oil pollution from qualifying incidents would be paid under those Conventions, in the first instance from the shipowner and where appropriate from the IOPC Funds or HNS Fund (when in force). The Marine Liability Act also covers incidents that fall outside the international conventions.

The Canadian Ship-source Oil Pollution Fund (SOPF) was established in 1989 to pay claims for oil pollution damage or anticipated damage at any place in Canada, including the Canadian Exclusive Economic Zone (EEZ), caused by the discharge of oil from a ship. The SOPF pays claims for oil spills from all classes of ships and boats[42].

Therefore, for a spill of persistent oil from a tanker, the SOPF is available to provide additional compensation in the event that money from a vessel's insurer or the IOPC Funds is insufficient to meet all established claims for compensation for a release of oil in Canada, or if the shipowner is unknown or unable to pay. The great majority of cases dealt with by the SOPF fall outside the scope of the international conventions, for example abandoned or derelict ships at risk of discharging oil.

The SOPF is financed by a levy on oil imported into, or shipped from, a place in Canada in bulk as cargo on a ship and is overseen by an Administrator. Since December 2018, the SOPF has no limit of liability for an incident.

China – Oil Pollution Compensation Fund

China is a State Party to the 1992 Civil Liability Convention and the Bunkers Convention 2001. The 1992 Fund Convention applies in Hong Kong SAR only[43]. The 2010 Regulations on the Prevention and Control of Marine Pollution from Ships established the China Oil Pollution Compensation Fund (COPCF)[44] as an additional source of compensation. Claims may be submitted to the COPCF if damages from an incident exceed the shipowner's liability under these Conventions, or if the shipowner is exempt from liability, the shipowner is unable to pay; or the damage was caused by an unidentifiable ship.

The COPCF will provide compensation for a release, or the threat of a release, of persistent or non-persistent oil cargo, fuel oil and oil residues.

The COPCF is financed by a levy on receivers of persistent oil transported by sea. An Administrative Committee, based in Beijing, oversees the use of the COPC Fund, comprising representatives from a number of government departments and national oil companies.

The Secretariat of the COPC Fund Compensation Settlement Centre is based in Shanghai and has responsibility for accepting and settling claims with the COPC Fund. A Claims Manual and Claim Settlement Guidelines provide the criteria against which claims are assessed.

The International Group has in place a Memorandum of Understanding with the COPC Fund to facilitate cooperation for an incident involving a ship insured by a member P&I Club of the International Group[45].

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[41] The Marine Liability Act is available at https://laws-lois.justice.gc.ca/eng/acts/m-0.7/

[42] See http://sopf.gc.ca for further information on the Canadian Fund.

[43] See https://www.imo.org/en/About/Conventions/Pages/StatusOfConventions.aspx for a list of States Parties to IMO Conventions. China is party to the 1992 Fund Convention in respect of the Hong Kong Special Administrative Region only.

[44] See https://www.ukpandi.com/news-and-resources/articles/2016/copc-fund-updating-the-claims-manual-and-claims-settlement-guidelines/ for further information.

[45] See https://www.igpandi.org/article/international-group-signs-mou

Surveyors inspecting oiled oyster beds, South Korea.

ITOPF providing advice on-site, Greece.

When an incident occurs involving a ship

Responsibility for responding to a release of oil varies globally. In some countries, the response will be led by the government, with the involvement of a shipowner restricted potentially to crew and salvage matters, or providing technical support and paying compensation ultimately through the relevant insurer. In some other countries, a shipowner-led response is required with government agencies retaining the authority to direct operations and intervene in defined circumstances. In other countries, a response would be undertaken by a combination of the government and the shipowner. The necessary resources may be provided by a combination of government agencies, private contractors and other sources.

When an incident occurs, the ship's insurer, or other body paying compensation, may send a representative to the site, for example from the insurer's local correspondent. Local surveying companies may be engaged to record the extent of the pollution and response, and to assist in determining losses. In jurisdictions requiring a shipowner-led response, other organisations such as a spill management team may be mobilised to act as a liaison with government agencies and with potential claimants. Expert organisations such as ITOPF may also be requested to provide advice on appropriate clean-up techniques, environmental damage assessment, and on measures to mitigate economic losses. Guidance may also be provided on the admissibility of potential claims as defined under the international conventions, the types of evidence required to support a claim and how a claim should be formulated and submitted[46]. Where a financial loss is anticipated as a result of an oil release, a potential claimant should notify the liable party at the earliest opportunity, thereby allowing such advice to be provided in a timely manner.

Within countries that are State Parties to the 1992 Fund Convention, the agreement existing between the P&I Clubs within the International Group and the IOPC Funds to share information during an incident allows claims to be coordinated between the two organisations. In significant tanker incidents, a claims office may be established jointly by the vessel's P&I Club, the IOPC Funds and/or domestic funds, to receive and process claims. Contact details for a claims office may be advertised in the local media - although there is no obligation to do so in these states, unlike the U.S. where the RP is compelled by law to publish full details of how claims can be registered and made against them. In addition, the IOPC Funds and/or domestic funds can become involved in an incident when the tanker owner is unable to pay or where the shipowner is unknown. In such instances, claims would be submitted to the fund(s).

[46] Information on the submission of claims is available from the websites of the organisations paying compensation – see contact information in Appendix 3 of this booklet. See also ITOPF Technical Information Paper (TIP) No.15 on Preparation and submission of Claims from Oil Pollution https://www.itopf.org/knowledge-resources/documents-guides/tip-15-preparation-and-submission-of-claims-from-oil-pollution/ Also available in nine other languages.

Appendix 1

Acronyms

ASTM	American Society for Testing and Materials
CERCLA	Comprehensive Environmental Response, Compensation and Liability Act 1980 (USA)
CLC	Civil Liability Convention
COFR	Certificate of Financial Responsibility
COPCF	China Oil Pollution Compensation Fund
CRISTAL	Contract Regarding a Supplement to Tanker Liability for Oil Pollution
EPA	Environment Protection Agency (USA)
FOSC	Federal On-Scene Commander
GT	Gross Tonnage
HNS	Hazardous and Noxious Substances
IGP&I	International Group of P&I Clubs
IMDG	International Maritime Dangerous Goods code
IMCO	International Maritime Consultative Organization (now IMO)
IMO	International Maritime Organization
IOPC Funds	International Oil Pollution Compensation Funds
LLMC	Convention on Limitation of Liability for Maritime Claims
NOAA	National Oceanic and Atmospheric Administration (USA)
NPFC	National Pollution Funds Centre (USA)
NRDA	Natural Resource Damage Assessment
OPA'90	US Oil Pollution Act of 1990
OSLTF	Oil Spill Liability Trust Fund (USA)
P&I Clubs	Protection and Indemnity Clubs
RP	Responsible Party
SDR	Special Drawing Rights
SOPF	Canadian Ship-source Oil Pollution Fund
TOVALOP	Tanker Owners Voluntary Agreement concerning Liability for Oil Pollution
USCG	United States Coast Guard

Appendix 2

Selected further reading

IMO Conventions—an introduction:
https://www.imo.org/en/About/Conventions/Pages/Default.aspx

International Group of P&I Clubs:
https://www.igpandi.org/

International Oil Pollution Compensation Funds:
www.iopcfunds.org

Introduction to the HNS Convention (maintained by the IOPC Funds):
https://www.hnsconvention.org/

Natural Resource Damage Assessment—an introduction (NOAA's Damage Assessment, Remediation and Restoration Program (DARRP) website):
https://darrp.noaa.gov/science-and-economics/economics

National Pollution Funds Center (website) US Coast Guard:
https://www.uscg.mil/Mariners/National-Pollution-Funds-Center/

Canadian Ship-source Oil Pollution Fund (website)
http://sopf.gc.ca/

ITOPF Technical Information Papers (list of titles on the ITOPF website):
https://www.itopf.org/knowledge-resources/documents-guides/technical-information-papers/

Appendix 3

Contact details for furtherinformation

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

International Group of P&I Clubs
3rd floor, 78/79 Leadenhall Street,
London EC3A 3DH, United Kingdom
Telephone: +44 (0)20 7929 3544
E-mail: secretariat@internationalgroup.org.uk
Website: www.igpandi.org

International Oil Pollution Compensation Funds
4 Albert Embankment,
London SE1 7SR United Kingdom
Telephone: + 44 (0)20 7592 7100
E-mail: info@iopcfunds.org
Website: www.iopcfunds.org

Canadian Ship-source Oil Pollution Fund
Suite 830, 180 Kent
Ottawa, Ontario, Canada K1A 0N5
Telephone: +1 613 991 1726
E-mail: info@sopf-cidphn.gc.ca
Website: http://www.sopf.gc.ca/

National Oceanic and Atmospheric Administration
Office of Response and Restoration 1305 East-West Highway
Silver Spring, Maryland 20910, United States of America
Telephone: +1 301 713 4248
E-mail: orr.webmaster@noaa.gov
Website: http://response.restoration.noaa.gov

U.S. Coast Guard National Pollution Funds Centre
U.S. Coast Guard Stop 7605
2703 Martin Luther King Jr Ave SE
Washington, DC 20593-7605, United States of America
Telephone: +1 202 795 6003
Website: https://www.uscg.mil/Mariners/National-Pollution-Funds-Center/

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