

FACILITATING THE SPEEDY PAYMENT OF OIL SPILL COMPENSATION CLAIMS UNDER THE CLC AND FUND CONVENTION

by

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INTRODUCTION

The prompt settlement of claims for compensation following oil spills from tankers is in everyone's interests, especially those who have incurred clean-up costs, had their property contaminated or suffered economic losses. Claimants can facilitate the settlement of their claims by following four basic principles:

- adhere to published international guidelines on the admissibility of various classes of claims;
- keep good records, and follow international advice on claims presentation and the provision of supporting evidence;
- do not submit claims that are speculative in nature or are inflated beyond their true value; and
- co-operate and share information with those who will pay the compensation (i.e. the shipowner's third party liability (P&I) insurers and, if relevant, the 1992 Fund), as well as with those who are working on their behalf, especially during the actual spill.

This paper discusses these basic principles, mainly in the context of the 1992 Civil Liability Convention ("CLC") and 1992 Fund Convention. However, the same basic principles apply to the other international liability and compensation regimes for accidental ship-source pollution that will be described by other speakers, as well as to claims for pollution damage brought under national legislation.

SCOPE OF COMPENSATION: ADMISSIBLE CLAIMS

For a claim to be admissible under the 1992 CLC and 1992 Fund Convention, it must fall within the definition of *pollution damage* and/or *preventive measures* in the Conventions. A common understanding and uniform interpretation of the definitions, and therefore what constitutes an admissible claim, is essential for the efficient functioning of the international system of compensation established by the Conventions. Guidelines and policies have therefore been established by the Governments of Member States within the governing bodies of the 1992 International Oil Pollution Compensation Fund (1992 Fund). These are summarised in the 1992 Fund's Claims Manual.

The following general criteria apply to all claims:

- the expense/loss must actually have been incurred;
- the expense must relate to measures which are deemed reasonable and justifiable;
- an expense/loss or damage is admissible only if and to the extent that it can be considered as caused by contamination;

- there must be a link of causation between the expense/loss or damage covered by the claim and the contamination caused by the spill;
- a claimant must have suffered a quantifiable economic loss; and
- appropriate documents or other evidence has to be presented by the claimant to prove the loss or damage.

There are four general types of claims that can be considered under the 1992 CLC and Fund Convention:

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

Preventive Measures

Claims for measures aimed at preventing or minimising pollution damage may in some cases include a proportion of the costs of removing oil (cargo and/or bunker fuel) from a damaged tanker posing a serious pollution threat, so long as the primary purpose is to prevent pollution damage. Clean-up measures at sea, in coastal waters and on shorelines using specialised equipment and materials such as booms, skimmers and dispersants, as well as non-specialised boats and vehicles, including the cost of labour would normally be considered as preventive measures. The costs of disposing of recovered oil and associated oily debris are also covered. The same would also apply to any consequential loss or damage (for example to roads) caused by the preventive measures, so long as the works are not deemed to be improvements, and subject to deductions for normal wear and tear.

To qualify for compensation under the Conventions, the costs as well as the preventive measures themselves have to be 'reasonable' according to objective criteria. The term 'reasonable' appears in the Conventions. It is 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 be successful in minimising or preventing pollution damage. The fact that a government or another public body decides to take certain measures does not in itself mean that the measures and associated costs are 'reasonable' for the purpose of the Conventions. Equally, 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 widely known that the measures would be ineffective but they were still initiated simply because it was considered necessary 'to be seen to be doing something'. On this basis, measures taken purely to assuage public anger or to protect the image of an involved party 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 world-wide experience. There is little excuse, therefore, for implementing inappropriate or damaging response measures. It is recognised, however, that the boundary between 'reasonable' and 'unreasonable' measures is not always clear-cut even after a full technical evaluation has been made and so there has to be a degree of flexibility. 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 and spreading of the oil or other changes in circumstances. It is therefore important that experienced personnel closely monitor all clean-up operations to assess their effectiveness on an on-going basis.

In considering possible actions in response to a spill it must be recognised that, despite great improvements over the past 30 years in response equipment and international knowledge on how best to deal with such events, it is still not possible to overcome some of the fundamental technical problems associated with combating oil spills on the open sea. One of the fundamental factors that limits the effectiveness of all at-sea response techniques is the rapid speed with which spilled oil spreads across the surface of the sea. At the same time as it is spreading it moves and changes in its characteristics. The type of oil is critical to its behaviour, with heavy crudes and heavy fuel oils frequently posing the greatest problems because of their high viscosity. This means that they do not readily dissipate or degrade naturally. They are therefore highly persistent in the marine environment and so can travel great distances from the original spill location, causing widespread contamination of coastal resources.

Knowledge of the type of oil and predictions of its probable movement, behaviour and fate are vital in order to select the most appropriate response strategy. On many occasions a combination of light oil and the particular circumstances of the spill will render an active response unnecessary, beyond aerial surveillance to check that the oil is behaving as predicted.

At-Sea Response - When an active response is required to combat oil on the surface of the sea there are two main options:

- the use of floating booms to contain and concentrate floating oil prior to its removal from the environment by using specialised skimmers; and
- the use of chemicals sprayed from boats or aircraft to speed up the natural dispersion of the oil into the water column (where it is naturally eaten by marine micro-organisms), thereby removing it from the sea surface where it causes most damage.

Both these approaches have severe limitations in a major spill, especially if the weather is bad. Failure by those in charge to appreciate these limitations can result in 'unreasonable' actions that will not qualify for compensation. Examples of such 'unreasonable' measures include the large-scale deployment of booms and skimmers on the open sea in severe weather or in circumstances where the oil has already spread and fragmented on the sea surface to such a great extent that it is impossible to recover enough to significantly reduce the impact on coastlines and sensitive resources.

In considering a dispersant strategy it has to be recognised that some types of oil, such as heavy fuel oil and viscous crude, are less amenable to chemical treatment from the outset. This does not always stop those in charge from continuing with spraying operations long after there is any technical justification for doing so, usually on the mistaken assumption that it must be having some effect and that, whatever the technical arguments, it satisfies a need to be "seen to be doing something". In such cases the decision to continue spraying is likely to be regarded as a public appeasement measure rather than a technically justified response. It is also important with dispersants to appreciate that their use might be considered 'unreasonable' if it results in additional damage being caused. An example would be the extensive use of dispersant in inappropriate areas, such as near shallow water fisheries, caged fish or aquaculture facilities where there is a risk of prolonged tainting of marine food products making them unmarketable. Some of these problems can be particularly acute if locally-produced chemical dispersants are used that have not been subject to rigorous effectiveness and toxicity tests under a published Government approval scheme.

Protecting Sensitive Resources - The protective booming of sensitive coastal resources, such as aquaculture facilities, power stations and ecological and wildlife sites of particular importance, is a response option which can be highly successful but which is often not employed to full advantage during an actual spill. This is often due to inadequate planning. Thus, if such a defensive strategy is to be employed with success, there

must be agreement at the contingency planning stage as to which resources are to be given priority for protection. Failure to do so can result in booms being deployed during spills in situations where the current is too strong for them to be anchored in the correct configuration or where accumulated oil cannot promptly be removed. Such failures are likely to result in the booms being damaged and no benefit being derived from their 'unreasonable' use.

Shoreline Clean-up – The cleaning of a contaminated shorelines needs to be carried out in accordance with a clear strategy that takes account of the characteristics of the particular oil, the level of contamination, the types of shoreline that have been impacted and their relative environmental, economic and amenity sensitivities. Effort should first be directed to areas which have the heaviest concentrations of mobile oil, which could otherwise lead to further pollution of surrounding areas. This is normally relatively straightforward using a combination of specialised booms and skimmers and locally-available resources such as vacuum trucks and similar suction devices, so long as there is good access.

Once the oil is no longer mobile and has stranded on shorelines a combination of clean-up techniques is normally used. Such operations once again usually rely on locally-available equipment and manpower, rather than specialised equipment. Shoreline clean-up is usually highly labour intensive and not a 'high-tech' business. Thus, bulk oil can usually be removed without difficulty from hard-packed sand beaches using a combination of well-organised clean-up teams assisted by front-end loaders and road-graders. However, care has to be taken not to remove excessive quantities of uncontaminated sand or to mix the oil deeply into the beach substrate. Such 'unreasonable' actions can result in erosion problems and excessive quantities of material for disposal. Secondary and final cleaning options for sand beaches can include sieving (to remove tar balls), as well as techniques such as flushing with sea water and harrowing to remove residual staining and other light contamination.

Greater problems are caused where oil penetrates deeply into shorelines consisting of boulders, cobbles or gravel since it is rarely practical to do more than remove surface accumulations. If amenity or wildlife concerns dictate a more thorough clean-up, the most effective technique is likely to be sea water flushing, with the containment and collection of any oil that is released using booms and skimmers. However, if the residual oil is very persistent or if a higher degree of cleanliness is required then it may be necessary to resort to more 'aggressive' techniques such as high pressure (hot or cold) water washing or even sand blasting. However, such techniques often result in additional environmental damage and delayed recovery. For this reason in many cases with rocky shores it will be most appropriate and least damaging to the flora and fauna to leave natural processes such as wave action and scouring to deal with any residual oil over a longer period of time. A similar approach of leaving residual oil to weather and degrade naturally is usually recommended for sensitive shoreline types such as salt marshes and mangroves which have been shown to be more easily damaged by the physical disturbance caused by clean-up teams and vehicles than by the oil itself.

The concept of balancing environmental sensitivities against socio-economic factors (e.g. fisheries, tourism) in order to help determine the most appropriate techniques and level of cleanliness (sometimes referred to as "Net Environmental Benefit Analysis") is well known and widely accepted. It is frustrating, therefore, that such issues are frequently not adequately addressed in contingency plans or are ignored by those in charge of actual operations. As a result, shoreline clean-up is often not carried out with the degree of care and control that is warranted. This can mean that operations are unnecessarily prolonged, that excessive amounts of material are generated for disposal (a major problem now in most spills), that additional environmental and economic damage is caused, and that the cost of clean-up and third party damages is higher than it should be. All this can lead to questions about the 'reasonableness' of the actions and consequent disputes over claims for compensation

Termination of Clean-up -All clean-up activities should be constantly evaluated to ensure that they remain appropriate as circumstances change. As soon as any operation has been shown to be ineffective, likely to cause unacceptable additional damage to environmental or economic resources, or the costs begin to greatly exceed diminishing benefits it should be stopped. Regrettably, there are frequently strong pressures on those in charge of response operations to adopt other non-technical criteria to decide when to terminate a response measure. Thus, on many occasions the ineffectiveness of offshore oil combating techniques and the inappropriateness of cleaning certain types of shorelines will be ignored and as many resources as possible deployed in an attempt to demonstrate that everything possible is being done to deal with the problem. The fact that the operations may be ineffective or more damaging to the environment than the oil, and that the costs will be excessive can be highly relevant when claims for compensation are subsequently considered.

MANAGEMENT OF SPILL RESPONSE

Whilst the technical aspects of dealing with an oil spill are clearly important, the effectiveness of the response to a major spill will ultimately depend upon the quality of the contingency plan, and of the organisation and control of the various aspects of the clean-up operation. Numerous difficult decisions as well as compromises will be required throughout the response operation, and the widely differing requirements of a multitude of governmental and private organisations, as well as public and other pressures, will need to be reconciled. In doing so it is vital that due account is taken of the extensive experience and technical knowledge that is available so that past mistakes are not repeated. Regrettably this is often not the case.

Oil spill response is not a core activity for most government authorities due to the fact that serious events are an infrequent occurrence. The organisational structure for responding to oil spills therefore tends to follow administrative structures created for other purposes. This is particularly evident when it comes to shoreline clean-up, where the responsibility usually falls on a multitude of local and regional government authorities. In harbour areas some responsibility may also fall on the port authority and on the operators of terminals and other facilities. This is frequently a recipe for confusion in a major spill, especially if insufficient effort has been devoted prior to such an incident to developing an integrated and consistent approach. Such co-ordination and management problems are rarely overcome by inviting all interested parties to serve on one or more committees during an incident so that they can participate in the decision-making process (whether or not they are technically qualified to do so). On the contrary, such an approach usually leads to large, unwieldy spill management teams, delayed decision making and, frequently, the adoption of inappropriate or conflicting response strategies that may be deemed to be 'unreasonable'.

When the oil is on the water or on the shore informed and decisive leadership is required, with authority vested in an appropriate individual or in a small command team, so that an effective response consistent with the contingency plan is initiated promptly. However, the individual or small command team cannot be expected to manage the response to a significant spill alone. It will be necessary for them to be supported by experienced technical and scientific advisors that are part of a larger management team that looks after the various components of the overall operation, as well as logistic support, record keeping and financial control. The shipowner may be able to support the management team, including through providing specialist assistance such as ITOPF.

Clean-up operations are often carried out by public authorities which use their own permanently employed personnel, vessels, vehicles and equipment. These are 'fixed costs' that would have arisen for the authorities concerned even if the incident had not occurred, e.g. normal salaries for permanently employed personnel and capital costs of vessels owned by the authorities. A reasonable proportion of fixed costs may be

accepted by those paying compensation, provided they correspond closely to the clean-up period in question and do not include remote overhead charges. Additional costs and expenses which arise solely as a result of the incident and which would not have been incurred had the incident and related operations not taken place are usually accepted more readily.

Property Damage

Claims under this category would include, for example, the costs of cleaning contaminated fishing gear, aquaculture installations, yachts and industrial water intakes. In cases of very severe contamination of fishing gear and aquaculture equipment where effective cleaning is impossible, replacement of the damaged property may sometimes be justified, with a reduction for normal wear and tear. Such claims are relatively easy to assess so long as the required evidence is not destroyed or cleaning not carried out before the damaged property is shown to surveyors or other experts working on behalf of those who will be required to pay the compensation. This underlines the importance of allowing such people unfettered access to contaminated areas.

Economic Loss

The assessment of claims for economic losses following oil spills can be far more complex. Such losses may be the direct result of physical damage to a claimant's property ('consequential loss') or may occur despite the fact that the claimant has not suffered any damage to his or her own property ('pure economic loss'). An example of the first category is the fisherman who cannot fish because his or her boat and gear are contaminated with oil, whereas in the latter case the fisherman remains in port while there is oil on the water in order to avoid damaging his or her property but still suffers 'pure' economic loss as he or she is thereby prevented from catching any fish or shellfish. An example of the second category is the hotel owner whose premises are close to a contaminated public beach and who suffers loss of profit because the number of guests falls as a result of the pollution.

Claims for pure economic loss are admissible only if they are for loss or damage caused by oil contamination. Claimants must prove a reasonable degree of proximity between the contamination and the loss or damage. In determining reasonable proximity, the following elements are normally taken into account:

- the geographic proximity between the claimant's activity and the contamination;
- the degree to which a claimant was economically dependent on an affected resource;
- the extent to which a claimant had alternative sources of supply or business opportunities; and
- the extent to which a claimant's business formed an integral part of the economic activity within the area affected by the spill.

The assessment of a claim for pure economic loss is based on the actual financial results of the individual claimant for appropriate periods during the years before the incident. The assessment is based on actual documented figures not on budgeted figures, with account taken of the particular circumstances of the claimant and any evidence submitted. The main criterion is whether the claimant's business as a whole has suffered economic loss as a result of the contamination.

For both consequential and pure economic loss claims any saved overheads or other normal expenses not incurred as a result of the incident should be subtracted from the claimed amount. Claimants should also be prepared to allow the experts working for those who will be required to pay the compensation to have access to their records and other evidence and to co-operate with their enquiries in an open manner.

If there are mortalities in fish and aquaculture stocks following an oil spill incident the claimant should document the loss by preserving samples and using photographic and other forms of recording to demonstrate the nature and extent of the loss. Claimants are also advised to contact the shipowner's P&I insurers (or the designated local surveyor or other experts employed by the insurers) without delay so that a joint survey of the loss can be carried out.

Sometimes claims are made for made for lost catches or the destruction of farmed fish and other marine products as a result of orders issued by public authorities in the form of fishing/harvesting bans or fishing exclusion zones. The existence of such bans or exclusion zones imposed by a public authority is not considered as conclusive justification for destroying produce affected by a ban. Such claims are admissible if and to the extent that the destruction of the produce was admissible on the basis of scientific and other evidence. This will take into account:

- whether the produce was contaminated;
- the likelihood that the contamination would disappear before normal harvesting time;
- whether the retention of the produce in the water would prevent further production; and
- the likelihood that the produce would be marketable at the normal time of harvesting.

It is important that properly authenticated sampling and controlled testing is carried out by a competent body. In the case of alleged tainting, for example, samples from an area contaminated by a spill ('suspect samples') and samples from an unpolluted nearby site ('control samples') should be tested at the same time in equal numbers. The taste testers should not be able to identify which samples they are tasting so as to avoid bias ('blind testing'). Experts working for the P&I insurers should be involved in the design of the tests and be allowed to observe them being conducted.

Environmental Damage

Oil spills can cause environmental damage, the extent and nature of which will depend on several factors, including the type and amount of oil and the characteristics of the affected area. Such damage is normally of short duration due to the great potential for natural recovery exhibited by many species of marine plants and animals. Indeed, evidence from past oil spills around the world indicates that the well-known and sometimes dramatic short-term effects of oil spills on marine animals and plants do not normally translate into long-term population effects. This is because many components of the marine environment are highly resilient to short-term adverse changes, whether they are caused by oil spills, other pollution events or natural changes.

In some circumstances it is possible to enhance the speed of natural recovery after an oil spill through reasonable reinstatement measures. Reinstatement of a damaged ecosystem begins with careful clean-up so that the physical and chemical condition of the affected habitats is suitable for re-colonisation by animals and plants. In rare cases further measures may be warranted. An example would be to replant an area of salt marsh or mangrove area damaged by an oil spill to prevent erosion and encourage re-colonisation by other forms of biological life. However, it should be recognised that attempts at restoration will neither be feasible nor appropriate in every case. In many instances, natural recovery will proceed quickly so that human intervention, other than by judicious clean-up, would have no benefit or may actually cause additional damage.

The aim of any reasonable measures of reinstatement should be to bring the damaged site back to the same ecological state that would have existed had the oil spill not occurred, or at least as close to it as possible (that is to re-establish a biological community in which the organisms characteristic of that community at the

time of the incident are present and are functioning normally). Reinstatement measures taken at some distance from, but still within the general vicinity of the damaged area may be acceptable, so long as it can be demonstrated that they would actually enhance the recovery of the damaged components of the environment. This link between the measures and the damaged components is essential for consistency with the definition of *pollution damage* in the 1992 CLC and Fund Convention.

As well as satisfying the general claims admissibility criteria summarised on the first page of this paper, claims for the costs of reasonable measures to reinstate impaired components of the environment should additionally fulfil the following criteria if they are to be considered admissible:

- the measures should be likely to accelerate significantly the natural process of recovery;
- the measures should seek to prevent further injury as a result of the incident;
- the measures should not result in the degradation of other habitats or in adverse consequences for other natural or economic resources;
- the measures should be technically feasible; and
- the costs of the measures should not be out of proportion to the extent and duration of the damage and the benefits likely to be achieved.

The assessment should be made on the basis of the information available when the specific reinstatement measures are to be undertaken.

Claims for environmental damage based on an abstract quantification calculated in accordance with theoretical models or speculative assessments will not be accepted. Neither will claims of a punitive nature on the basis of the degree of fault of the wrong-doer.

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. Such studies will not be necessary after all spills and will normally be most appropriate in the case of major incidents where there is evidence of significant environmental damage.

The cost of such studies may qualify for compensation if they concern damage which falls within the definition of *pollution damage* in the Conventions, including reasonable measures to reinstate a damaged environment. In order to be admissible for compensation it is essential that any such post-spill studies are likely to provide reliable and usable information. For this reason the studies must be carried out with professionalism, scientific rigor, objectivity and balance. This is most likely to be achieved if a committee or other mechanism is established within the affected country to design and co-ordinate any such studies, as well as any subsequent reinstatement measures.

The scale of the studies should be in proportion to the extent of the contamination and the predictable effects. On the other hand, the mere fact that a post-spill study demonstrates that no significant long-term environmental damage has occurred or that no reinstatement measures are necessary, does not by itself exclude compensation for the costs of the study.

The P&I insurers and, if relevant, 1992 Fund and their respective experts should be invited at an early stage to participate in the determination of whether or not a particular incident should be subject to a post-spill environmental study. If it is agreed that such a study is justified they should then be given the opportunity of becoming involved in the planning and in establishing the terms of reference for the study. In this context the insurers and 1992 Fund can play an important role in helping to ensure any post-spill study is likely to provide reliable and usable information and that it does not unnecessarily repeat what has been done

elsewhere. They can also assist in ensuring that appropriate techniques and experts are employed. It is essential that progress with the studies is monitored, and that the results are clearly and impartially documented. This is not only important for the particular incident but also for the compilation of relevant data for future cases.

RECORD-KEEPING

The speed with which compensation claims are settled largely depends upon how long it takes claimants to provide the P&I insurers and, if relevant, the 1992 Fund with the information they require in a format that readily permits analysis. For this reason, it is vital during any counter-pollution operation that records are kept of what was done, when, where and why to support claims for the recovery of the money spent in clean-up. Unfortunately, pressures to deal with practical clean-up problems are frequently severe and often result in record-keeping being relegated to a lesser priority. The appointment of a financial controller at an early stage of an incident can be valuable, both to co-ordinate expenditure and to ensure that adequate records are maintained.

The need to provide evidence and records to support claims also applies in the case of physical damage, economic losses and environmental damage. For example, claims for 'consequential loss' and 'pure economic loss' should include the following information:

- nature of the loss, including proof that the alleged loss resulted from the contamination;
- comparative figures for earnings in previous periods and during the period when economic loss was suffered;
- comparison with similar areas outside the area affected by the oil spill;
- method of assessment of loss; and
- saved overheads and expenses.

Claimants should also indicate if they have been able to mitigate their loss. Examples might include being paid to assist with the clean-up, or receiving aid or payments from public authorities or international organisations in connection with the incident.

In order to avoid difficulties arising in the claims process, advice on the above matters should be sought before and after a spill from the P&I insurers, the 1992 Fund (when involved) and from experts working on behalf of these organisations such as ITOPF. As repeatedly stressed in this paper, it will be important to co-operate with these bodies and their representatives during an incident and allow them access to clean-up sites and areas where damage has been caused. Failure to do so is likely to make claims assessment more difficult and thereby delay the settlement process. Finally, all claimants should be strongly encouraged to avoid submitting claims that are speculative or inflated beyond their true value. Not only will they be vigorously fought by the P&I insurers and, if relevant, the 1992 Fund but they will delay the settlement process for all concerned, including those who have submitted genuine claims.

ASSISTANCE FROM EXPERTS: THE ROLE OF ITOPF

ITOPF provides a broad range of technical services in the field of marine oil pollution. The organisation is non-commercial and is funded by subscriptions paid on an annual basis by the world's shipowners through their P&I insurers. Despite this, the organisation operates free of partisan commercial or other influences. ITOPF's technical and scientific staff pride themselves in giving objective technical advice in all circumstances and in all parts of the world.

At the request of a P&I insurer or 1992 Fund, ITOPF's priority technical service includes giving objective and practical advice on the most appropriate clean-up response with the aim of mitigating damage to the environment and economic resources. This advice is designed to serve the wider response community. ITOPF is always ready to respond to any incident anywhere in the world and members of its technical staff have been on-site at more than 450 spills in over 85 countries since the mid-1970s. This gives ITOPF extensive first-hand practical experience of the realities of combating marine oil spills and the damage they can cause.

The ITOPF technical staff at the site of a spill will always seek to co-operate and work closely with all parties involved in the response operations, and to reach agreement on measures that are technically justified ('reasonable') in the particular circumstances. This not only helps ensure that the clean-up is effective as possible and that minimum of damage is caused, but also that subsequent claims for compensation can be dealt with promptly and amicably.

The assessment of the technical merits of claims for compensation is a natural extension of ITOPF's on-site attendance at the time of a spill. Claims for clean-up expenses, for damage to economic resources such as fisheries and aquaculture, and for measures to help reinstate impaired natural environments are assessed according to the guidelines developed by the IOPC Funds and described in this paper. It is important to emphasise that ITOPF's role is to provide advice on the technical merit of claims. ITOPF does not itself decide whether or not a particular claim is admissible or the appropriate level of settlement. This is the responsibility of the P&I insurer and ultimately the Government delegations within the Executive Committee and Assembly of the 1992 Fund if the spill occurs in a country that is party to the 1992 Fund Convention.

CONCLUSIONS

Since the mid-1970s when the Civil Liability and Fund Conventions first entered into force, compensation equivalent to many hundreds of millions of US dollars has been paid to the victims of oil spills in the countries that have ratified them, without the need in the vast majority of cases for recourse to litigation. The system is therefore highly successful. To be in a position to benefit from the system in the event of a spill of persistent oil from a tanker, all maritime countries should ratify the 1992 Civil Liability and Fund Conventions without delay.

In order to obtain prompt compensation after a pollution incident all potential claimants should:

- adhere to published international guidelines on the admissibility of various classes of claims;
- keep good records;
- follow international advice on claims presentation and the provision of supporting evidence;
- co-operate and share information with those who will pay the compensation (i.e. P&I insurers and, if relevant, the 1992 Fund) and with those who are working on their behalf; and
- avoid submitting claims that are speculative or inflated beyond their true value.

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