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# Cost Recovery & Record Keeping

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## This presentation will cover:

- The legislative framework for claiming and international funds;
- Who to submit a claim to;
- Admissibility (what can be claimed for);
- Considerations when presenting and submitting a claim (i.e. evidence, layout etc.);
- Joint claims with the MCA; and (if we have time)
- Lessons learned and previous/ongoing claims.

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## Strict liability regimes

Means the shipowner/operator is liable for costs – regardless of fault;

Strict liability regimes cover four distinct sources of pollution:

- Oil carried as cargo on tankers;
- Oil carried as fuel in a ship's bunkers;
- Wreck; and
- Oil released from offshore installations

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## Persistent oil from tankers

- Strict liability in force and compensation available since Torrey Canyon Spill, 1967 (1971 Civil Liability Convention and 1971 Fund Convention);
- Now covered by:

1) The 1992 International Convention on Civil Liability for Oil Pollution (enforces strict liability, direct action against the insurer and the first layer of compensation);
2) The 1992 International Convention for the Establishment of and International Fund for Compensation for Oil Pollution Damage;
3) The Supplementary Fund Protocol

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## Where to seek compensation?

In the first instance, the owners and their insurers, the protection and indemnity club

Strict liability enforced under the Civil Liability Convention - transposed into UK law through Section 153 of the Merchant Shipping Act;

- BUT, oil must be traceable to the vessel, testing may be required;
- Right of direct action against P&I clubs – no pay to be paid clause applies;
- All tankers must carry CLC 'blue cards';
- Only applies to persistent oil carried as cargo

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## liability are:

- If the oil cannot be traced to the suspected polluter – testing of the spilled oil should be carried out against samples of the cargo;
- The source must be a seagoing vessel;
- The only other exemptions are if the incident:

*(a) resulted from an act of war, hostilities, civil war, insurrection or a natural phenomenon of an exceptional, inevitable and irresistible character, or*
*(b) was wholly caused by an act or omission done with intent to cause damage by a third party, or*
*(c) was wholly caused by the negligence or other wrongful act of any Government or other authority responsible for the maintenance of lights or other navigational aids in the exercise of that function.*

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## Where to submit a claim?

To the P&I club and the owners.

- Compensation available for costs associated with prevention, clean-up, restoration, monitoring, consequential economic loss and pure economic loss;
- P&I club and owners will have representatives on scene and they may open a claims handling office near to the scene of the incident;
- Amount of compensation determined by 1976 Limitation Convention.

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## Convention on Limitation of Liability for Maritime Claims, 1976 (Limitation Convention

- Limits any 3rd party liability claim against ship-owners and the P&I Clubs;
- Liability determined by the tonnage of the ship;
- For tankers – starts at roughly 4.5 million GBP for the smallest tankers, up to approximately 89 million GBP for the largest.

IMO INTERNATIONAL MARITIME ORGANIZATION

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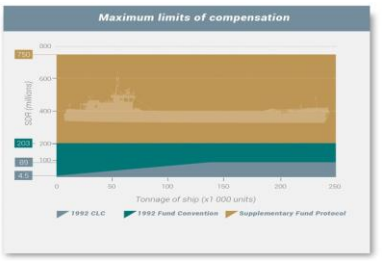
## Additional layers of compensation

**The 1992 International Convention for the Establishment of and International Fund for Compensation for Oil Pollution Damage;**
*Up to 203 million SDR*

**The 2003 Supplementary Fund Protocol;**
*Up to 750 million SDR*

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These funds are administered by the **International Oil Pollution Compensation Funds,** based in London at the International Maritime Organisation

Claims are submitted to and assessed by the fund

They will send representatives to the scene of a incident and, if necessary, open a claims handling office

Importantly – spilled oil does not need to have been traced to specific a ship to be claimed for – only proven that it was a ship based source

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## Bunker Spills

- Strict liability under the 2008 Bunkers Convention – transposed into UK law under Section 154 of the Merchant Shipping Act;
- Compulsory bunkers insurance required for all ships of 1000 gross tonnes or more – these ships must carry a 'blue card' issued by signatory states to the convention, attesting to the fact that appropriate insurance is in place;
- Claims are made against owners and their P&I Clubs - P&I Club will have a representative on scene;
- Liability limited under 1976 Limitation Convention

A growing threat as container ships are built lager – the Maersk Triple E class shown here carries 13,549.4m3 of heavy fuel oil – comparable to a medium sized oil tanker

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## Considerations when claiming under the Bunkers Convention

**It must be proven that the oil came from the ship you are claiming against. Samples should be taken at the earliest opportunity.**

**And**

**It is applicable to seagoing vessels only**

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## Spill from Offshore Installations

- **The Offshore Pollution Liability Association Ltd** will apply
- A 'voluntary' association, but, required for license to operate on the UK continental shelf
- Compensation of up to 250 million US dollars is available – for larger claims e.g. a Deepwater Horizon scale incident, court action may be required
- Claims are submitted directly to the operator
- Again, to claim, oil must be traced to the polluter

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## What if there isn't any oil pollution?

**The Nairobi International Convention on the Removal of Wrecks may apply...**

The Wreck Removal Convention:

- Provides a legal basis for states to have wrecks in their waters removed when they present a threat to life, navigation, economic interests or the environment;
- Requires ship-owners, in the first instance, to take action;
- If they do not, the state may intervene and recover its costs;
- Definitions of wreck are broad: a stranded or sunken ship, anything that has been on or part of a ship, including cargo.

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## Who can costs be recovered from?

The P&I Club, the Wreck Removal Convention:

- Allows direct action against the insurer;
- Requires vessels over 300GT to have wreck removal insurance and carry a 'blue card' (but vessels under 300GT are still liable!!!)
- Level of liability determined by the liability convention i.e. the tonnage (starts at 1.512 million SDR'

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## Issues

- The Wreck Removal Convention only provides compensation for efforts to locate, mark and remove a wreck, not compensation for damaged property or loss of earnings (although this should still be covered under UK Tort law);
- Vessels under 300GT, while still required to be compliant with the Convention, do not have to hold wreck removal insurance;
- The Convention applies all seagoing vessels of any type whatsoever, but, lack of awareness of the convention means that owners of less conventional craft may not realise they require compulsory insurance.

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## Joint Claims

The MCA is prepared, for smaller incidents, to lead joint cost recovery action for public bodies involved in a response. This will be on a case by case basis and is on the condition that:

- The principles and best practice outlined in this presentation are adhered to;
- When the offers of participation in joint action are extended, responses are received promptly;
- The MCA does not accept liability for the recovery of other organisation's costs;

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**The MCA will**:

- Provide advice on admissibility and presentation of claims;
- Assist in claim collation;
- Issues claim templates;
- Negotiate on your behalf

**The MCA will not:**

- Dictate what should or shouldn't be in your claim;
- If an in-admissible or questionable claim item has been submitted, jeopardise the entire joint claim to pursue this item
- Do your claim compilation work for you

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## Is it technically reasonable?

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## Cost recovery over the past two years

**Transocean Winner** – joint claim worth £545,000, seven claimants – 100% recovery

**V Due** – joint claim worth £432,000, four claimants – 100% recovery

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## Joint claims in 2017

**Douglas complex incident**

- 11 joint claimants, including the MCA, local authorities and members of the EG;
- Claims made for a wide variety of costs, including staff time (both in office and clean-up crews), verification aircraft, purchases of equipment and consumables, vehicle hire and welfare of clean-up crews;
- Total claim in excess of £200,000

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## Douglas incident continued

What worked well:

- Joint claims group quickly established within first few days of incident;
- Preference of P&I, the Standard Club Europe Ltd, and operator for dealing with one representative for multiple claimants;
- Early estimates received for final costs; and
- Polluter indicating willingness to pay.

What didn't work so well:

- Inconsistencies in approach between different claimants;
- Large variations between amounts claimed;
- Non-admissible costs claimed for;
- Instances of a lack of detail; and
- Standard formats not being used

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## Lessons learned

- Need to raise awareness on 'technical reasonableness' and admissibility criteria for clean-up activity;
- More discussion and training needed between incidents;
- Need to establish and agree on principles for claiming, between potential joint claimants;
- Need for greater clarity on approaches to cost recovery of different public bodies
- Not possible to have joint claim in a large spill scenario – claims workshops will be organised and templates distributed.

**Sources of further information:**

IOPC Funds claims guidelines: http://www.iopcfunds.org/publications/

EU States Claims Management Guidelines: http://emsa.europa.eu/emsa-documents/latest/item/720-eu-states-claims-management-guidelines-claims-arising-due-to-maritime-pollution-incidents.html

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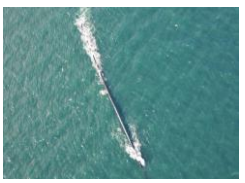
## Pipes incident



- Wreck removal incident;
- Damage caused to navigational aids on artificial reefs;
- Difficulties assigning liability early on with three potential parties liable:
  - The towage company,
  - The owner of the pipes,
  - The vessel which ran over the tow; and
- Issues raised over possible interpretations of Wreck Removal Convention Act. The separated pipes could be defined as wreck under the Convention ***'any object that is lost at sea from a ship and that is stranded, sunken or adrift at sea***.

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## Sinking of fish feeding barge – November 2017

- Sank in Loch Snizort, Isle of Skye;
- Carrying 160 tonnes of salmon feed and 2500 litres of fuel oil;
- Hull integrity severely compromised, hatchets to feed silos imploded, minor fuel seepage.

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## Questions?

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