



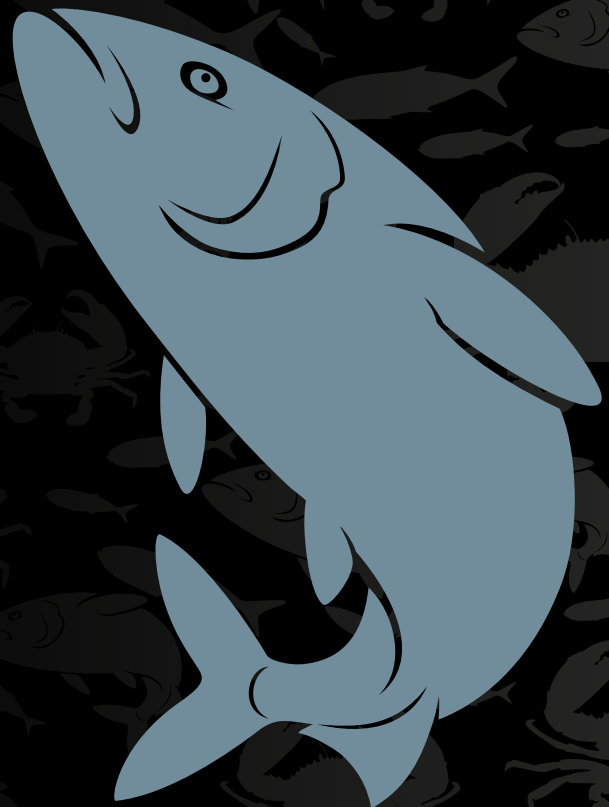
International Oil Pollution Compensation Funds

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# Guidelines for presenting claims in the fisheries, mariculture and fish processing sector

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2019 Edition



The original text of these Guidelines was approved by the 1992 Fund Administrative Council in June 2008.

On the occasion of the 2014 edition, the Secretariat introduced a number of examples of claims to facilitate claimants' understanding of the assessment process. This 2019 edition contains amendments adopted by the Administrative Council in April 2018.

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## International Oil Pollution Compensation Funds

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2019 Edition

As approved by the 1992 Fund Administrative Council, acting on behalf of the Assembly, in June 2008, and amended, most recently in April 2018.



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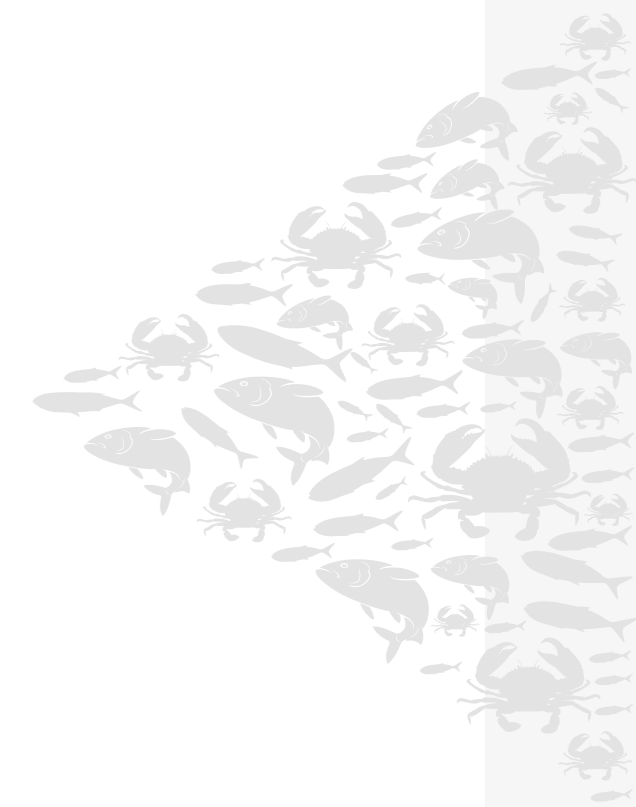
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# Preface

A general practical guide to presenting claims for losses due to oil pollution caused by a tanker can be found in the Claims Manual published by the International Oil Pollution Compensation Fund 1992 (1992 Fund). This booklet is written specifically to assist claimants engaged in catching, farming and processing fish and other seafood to better understand if, when, and how they can make claims for compensation. Claimants from other sectors should consult the Claims Manual or check the publications section of the IOPC Funds' website for other sector-specific guidelines.

These Guidelines set out what should be done following an oil spill and what sort of information is needed to make a claim for compensation.

Please note that following these Guidelines does not guarantee that all claims will be successful. This booklet does not address legal issues in detail and should not be seen as an authoritative interpretation of the relevant international Conventions.



# 1. Introduction to the International Oil Pollution Compensation Funds

## What are the IOPC Funds?

- 1.1** The International Oil Pollution Compensation Funds (IOPC Funds) are two intergovernmental organisations (the 1992 Fund and the Supplementary Fund) which provide compensation for oil pollution damage resulting from spills of persistent oil from tankers. The 1971 Fund was the original Fund but does not provide compensation for incidents occurring after May 2002.
- 1.2** The International Oil Pollution Compensation Fund 1992 (which, in this booklet, is called 'the 1992 Fund') is the newer Fund and is composed of States which have agreed to two Conventions (the 1992 Civil Liability Convention (1992 CLC) and the 1992 Fund Convention) which cover the payment of compensation to people, businesses or organisations that suffer losses due to pollution caused by persistent heavy oil (not gasoline or other light oils) from tankers. The Supplementary Fund provides an additional tier of compensation to victims in States which are Party to the Supplementary Fund Protocol. The details of how these different Conventions work are complex. More information on the Conventions can be found in the 1992 Fund Claims Manual and on the IOPC Funds' website.

## What does the 1992 Fund do?

- 1.3** The aim of the 1992 Fund is to provide compensation for losses resulting from a pollution incident involving a tanker, so that the claimant is returned to the same economic position in which he/she would have been if the oil spill had not happened. Ideally, the compensation should exactly balance the loss.

## How is money raised to pay compensation?

- 1.4** The owner of a tanker is usually insured with what is known as a Protection and Indemnity Association, or P&I Club. The P&I Clubs insure the majority of tankers operating in international trade. A smaller number of tankers, often operating solely in domestic markets, are insured by commercial insurers. The tanker owner is generally covered against damages caused by oil pollution through this insurance up to a certain amount of money. It is this money that is used initially to pay compensation after an oil spill.
- 1.5** When the amount available from the tanker owner's insurance is not enough to cover the total cost of the pollution incident, compensation is paid by the 1992 Fund. The 1992 Fund is financed mainly by oil companies in Member States, according to the quantity of oil transported by sea that they receive. All companies which receive more than 150 000 tonnes of oil by sea in any year must contribute to the 1992 Fund.

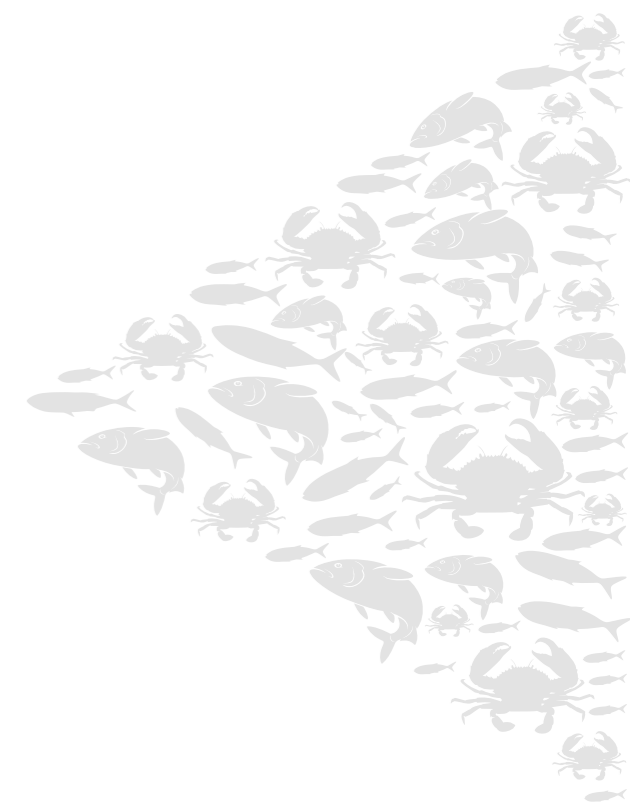
## When does the 1992 Fund come into play?

- 1.6** The owner of the tanker from which the oil was spilled is responsible for paying for the damage caused, usually through his insurer or P&I Club. However, he can limit the maximum amount he has to pay (according to the size of the tanker) under one of the two relevant Conventions. Once this amount has been paid, the 1992 Fund is responsible for any extra payments. Often the owner's insurance is enough to cover all the costs and the money from the 1992 Fund is not needed. However, in a very large spill, it is

possible that not even the money available from the 1992 Fund to pay compensation for that particular spill will be enough to cover all valid compensation claims; in this case – and it is very rare – each successful claimant will be paid a proportion of his/her assessed claim until all the money available from the 1992 Fund is allocated, unless the damage occurs in a State which is a Member of the Supplementary Fund.

- 1.7** If the incident which caused the pollution was a natural disaster, or if it was entirely caused intentionally by somebody (not the tanker owner) or by faulty lights or navigation aids which should have been maintained by the authorities, then the tanker owner is not responsible and the 1992 Fund will come into play immediately. Also, if the tanker owner is not known or cannot meet his liability, the 1992 Fund will step in and pay compensation.
- 1.8** The 1992 Fund will not pay compensation if the pollution was caused by an act of war or hostilities or if the spill was from a warship. Nor will the Fund pay if it cannot be proved that the damage was caused by a tanker. The 1992 Fund cannot pay compensation for damage in the fisheries, mariculture and fish processing sector that occurred on the high seas, or outside of the territorial waters or exclusive economic zone of its Member States.
- 1.9** Whether the compensation comes from the shipowner's insurer or the 1992 Fund, the process of making the claim and the criteria applied to assessing the claim are the same. The 1992 Fund and insurer usually work closely together, particularly on large oil spills. The Fund, in co-operation

with the insurer, usually appoints experts to observe, monitor and record the impact and progress of the clean-up operations. Experts will also be used to review and investigate the technical merits of claims and to assist with determining independent assessments of the losses. Although the 1992 Fund and the insurer rely on experts to assist in the assessment of claims, the decision as to whether to approve a particular claim and the compensation amount assessed rests entirely with the insurer concerned and the 1992 Fund.





## 2. Who can claim?

- 2.1** Anybody who has suffered losses due to oil pollution in one of the Member States of the 1992 Fund caused by an oil tanker can claim compensation for these losses. In this booklet, however, only claims from the fisheries sector (fish catching, fish farming, mariculture and other businesses related to fishing) are considered.
- 2.2** For a claim to be successful, the person who is making the claim (the claimant) must be able

to show that he/she has suffered a financial loss due to the pollution and that this loss has a close link to contamination due to oil. Generally, the further away from an oil spill that you normally operate, the less likely you are to receive compensation. However, the 1992 Fund considers a number of factors when deciding on the validity of a claim. Some such factors are set out in the table below.

Factors considered during assessment	Questions to ask yourself before submitting a claim
<b>Is the business in the area which was directly contaminated by the oil?</b>	
The area and extent of contamination will vary from incident to incident, depending on a wide range of factors. Claims are not accepted solely on the grounds that a pollution incident occurred. However, if a business is located on or close to an affected coast, and has suffered loss caused by contamination, then it may be admissible for compensation.	<ul style="list-style-type: none"> <li>• If you are a fisherman, is the contamination in the area where you usually fish?</li> <li>• If you operate a fish farm, did the oil actually reach your farm?</li> </ul>
<b>How much does the business depend on the area, or resources, that were contaminated?</b>	
If the fishing is not so good in another area, or if it costs you more to fish there (for example, extra fuel for the boat) then these extra costs can be compensated.	<ul style="list-style-type: none"> <li>• If you fish, could you fish somewhere else that was not contaminated by the oil?</li> <li>• Does your business generate its profits from fishing activities undertaken in the area, e.g. a supplier of ice for fish markets etc.</li> </ul>
<b>Can you obtain alternative sources of supply to reduce your losses?</b>	
If fishing activities are interrupted or disrupted because of an oil spill, you may be able to obtain supplies from other non-affected areas so that you can continue to operate. If you incur extra costs, for example, by buying fish from a non-polluted area, these extra costs can be compensated.	<ul style="list-style-type: none"> <li>• If you are a fish merchant or processor, has the demand for fish decreased as a result of loss of confidence in the produce?</li> <li>• If you are a fish merchant or processor, can you get supplies of fish from other areas?</li> </ul>
<b>Does the business form an important part of the economy of the area affected by oil?</b>	
Fishing can provide business opportunities on which local residents rely, such as transporting the catch to wholesalers, local processing of fish, purchase of nets, bait, ice, fuel etc. If fishing is suspended due to pollution, then any loss of income from impacted individuals may be considered a valid claim. Generally, if the claimant is able to demonstrate his/her ability to generate other significant economic activities in the area, then it is likely to be considered an important part of the economy.	<ul style="list-style-type: none"> <li>• Do you employ people from the area?</li> <li>• Does your business create work for people in the area?</li> <li>• Does it source products from other businesses that are located in the area?</li> </ul>

- 2.3** People or businesses that rely on fishing for all or part of their income or livelihood are entitled to make a claim for economic loss. If you fish for sport and the presence of oil pollution stops you fishing, then you will not have made an economic loss due to the oil and you cannot claim. If your business involves taking other people fishing for sport, however, then you might make a loss and can claim.
- 2.4** If you work for somebody else, for instance as an employee in a fish factory, then your employer would usually pay you your salary and make a claim for full economic loss. Depending on your employer's circumstances, payment of your salary might be delayed in part or wholly until the compensation is paid. If your employer claims for full economic loss, the 1992 Fund will normally only compensate him fully if he is prepared to sign an agreement that he will actually pay you your salary (if he has not already done so).
- 2.5** However, if your employer reduces your wages, places you on part-time work or makes you redundant, the employer's claim will be deducted for the saved costs, and you may be eligible to claim separately if there is a sufficiently close link of causation.

- 2.6** If you are part of the crew of a fishing vessel, you should normally be able to rely on the owner of the vessel to submit a claim for loss of the boat's earnings. He will be asked to sign an agreement that he will pay you once compensation has been paid to him.
- 2.7** If you are the owner of a fishing vessel, then you must make it clear when you claim whether or not your claim includes losses made by your crew and, if it does, you should list who they are.
- 2.8** If you belong to an organisation such as a fishing co-operative or trade union, then these bodies can make a claim on behalf of all of their members. States and local authorities might sometimes make a claim for losses in the fisheries sector too. Whoever makes the claim on your behalf and for your losses, and no matter how many claims you make, you will only qualify once for compensation for the actual losses that you suffered.



### 3. What should you do if there is oil pollution?

- 3.1** Firstly, don't panic. Oil pollution usually looks very bad, but it is not as poisonous to fish and marine life as most people think. It is very likely that things will return to near normal within a few weeks or months. The 1992 Fund has a well-tested means of compensating you for your losses, though since all claims will need to be thoroughly assessed, it can take a little time for money to get through to the claimant.
- 3.2** You are responsible for your business, whether it is fishing, mariculture or any other business related to these activities, and it is your responsibility to keep your losses as low as possible. The 1992 Fund will find it difficult to pay full compensation if you stop business completely when in fact there are other ways of operating. This might mean fishing in another area, working in some other job (such as cleaning up the oil) or getting supplies of fish from unaffected areas. The Fund can compensate for the difference

between what you would normally expect to earn and what you actually do earn.

#### Fishermen

- 3.3** It is important that you keep records of what you do and what has happened. It is very useful to know exactly when the oil arrived in your area, what the weather conditions were and what you did when it arrived. If you are able to fish somewhere else, keep a record of how much you catch and how much extra it costs you to fish there. Once the oil has gone from your normal fishing grounds, then you should try to return to fishing there straight away.
- 3.4** If you have fishing gear left in the sea (nets, traps, etc) then you should get them back as soon as it safe to do so without causing them to become contaminated. If they do become contaminated by oil, then keep them until they have been inspected by somebody representing the shipowner's insurer/1992 Fund, or at least try to take clear photographs showing the extent of damage.

#### Example

After a major oil spill, a national government imposed precautionary fisheries restrictions along the coastline. The Government contracted a scientific agency to carry out samplings and tests to ascertain the level of contamination in the waters and the fishery resources.

Despite the sampling showing that there was no further contamination in the water column and the fish from only a few weeks after the incident, the Government only lifted the ban several months later, when it managed to get consensus from all the local stakeholders.

The 1992 Fund accepted that it was reasonable to set up a ban at the very beginning of the incident. However, it also considered that, based on the evidence submitted by the same government, as well as local fishermen, there was no scientific or technical justification to maintain such ban in place for more than two months after the spill.

As a consequence, the Fund only accepted claims for losses up to two months after the spill. Any loss the fishermen may have suffered after that time could not be linked to the spill but was in fact linked to unreasonably long fishing bans and therefore the Fund was not liable to pay compensation for any such loss.

- 3.5** Sometimes the Government or local authority will impose a ban on fishing in the polluted area. You must be aware that such a ban is not automatically recognised by the 1992 Fund and that the authorities must be able to justify their decision. If the Fund thinks that it is reasonable that fishing should start again, it may pay compensation only up to that point in time, even if there is still a ban on fishing. Representatives of the shipowner's insurer/1992 Fund will always make the Fund's position on a fishing ban clear to claimants. Do not hesitate to contact the 1992 Fund on this matter.
- 3.6** It is very rare for oil spills to kill wild fish, but if you think that this has happened, then please contact a representative of the shipowner's insurer/1992 Fund so that this can be investigated further.

#### Mariculture operators

- 3.7** You must decide what action, if any, you can take to protect your business. For instance, if there is oil on the surface of your fishponds or cages, it may be best to stop feeding your fish for a few days so that they don't come to the surface. You might want to use booms or similar methods to stop the oil from reaching your farm. Alternatively, you may choose to harvest your stock early, before oil reaches your facility.
- 3.8** If you decide to destroy your stock, then payment of compensation will depend on many factors including:
- Was the stock contaminated?
  - If it was, would the contamination have disappeared before the normal time when you would have harvested the stock and would you have been able to sell it?
  - Would keeping contaminated stock in your ponds or cages have stopped you from growing more?







**Example**

An octopus rearing farm submitted a claim for mortality and consequent loss of profit.

The farmer had to prove that the octopuses' mortality was due to the pollution and stress suffered by the octopus because of the same pollution.

The loss was calculated by comparing the number of octopuses stocked before the spill and ready to be sold, to the number of octopuses already sold, taking into consideration the average mortality in the farm.

The price was calculated based on the invoices submitted or based on average market prices in the area where the farm was located.

The consequent economic loss was calculated by applying the average weight of the specimen at the time of sale in that farm and in similar farms, and by applying the average sale price.

			TOTAL
A	N° specimen stocked		4 255
B	Normal mortality		22%
C	Total ready for sales	(A-B)	3 319
D	Sales after Spill		2 291
E	N° specimen unsold	(C-D)	1 028
F	Average weight (kg,)		2.5
G	Total mortality in Kg	(E x F)	2 570
H	Average price		£6.42
I	<b>Total loss</b>	<b>(G x H)</b>	<b>£16 499.40</b>

**3.9** It is for you to decide what is the best thing to do, but any action you take should be reasonable and should be aimed at keeping your damage to a minimum. Keep good records of your actions and why you thought it was reasonable to take them. The 1992 Fund is prepared to pay compensation for losses that become unavoidable, where you have operated prudently given the information and resources reasonably available at the time. If you are in doubt as to what you should do, then you, your association or your representative should talk to a representative of the shipowner's insurer/1992 Fund before taking any major actions. It is up to you whether you follow such advice. Following such advice does not guarantee you compensation, but it will certainly improve your chances of a successful claim.

**Other fishing businesses (processing, marketing, supply etc.)**

**3.10** It is important that you keep good records of what you do during the time your business is affected. Keep a close watch on the area of pollution and the extent to which your normal supplies are affected. You may want to try and get supplies of fish from somewhere else -if this costs you more than from your usual source, you can claim compensation for the difference, but you must have evidence of this.

**3.11** It is important that you do not allow fish that have been in contact with oil to be sold. Often the Government or local authority will arrange for fish to be tested to see if they have been tainted by oil. You should arrange to get the results of these tests.





## 4. What losses are covered?

### Property damage

**4.1** You can claim compensation for damage to fishing and mariculture gear or other equipment which has been caused by contamination by oil from the spill. The compensation can be for cleaning or repairing equipment. If the equipment is too dirty to be cleaned, you may claim for it to be replaced (though some allowance will need to be made for wear and tear). You

can also claim compensation for cleaning contaminated boats and rafts, but usually not for painting them as oil rarely causes damage to paint. If possible, store damaged items that need to be replaced until they have been inspected by a representative of the shipowner's insurer/1992 Fund. You should keep receipts or invoices for any new equipment you buy or for any materials used for cleaning contaminated property.

### Example

A collision between a tanker and a fishing boat outside a port caused a spill of oil. The oil reached the harbour where the local fleet of fishing boats were moored. As a result, almost all the small boats moored in the harbour suffered oil-staining damage to their hull, mooring buoys, mooring ropes, etc., to varying degrees.

The majority of the oil-stained small boats were cleaned by local shipyards. These were lifted up onto slipways. Others were cleaned by the owners of the boats without lifting up onto slipways.

The claims lodged by the oil-stained small boat owners covered the cleaning and repainting charges of their boats, the cost of materials consumed in the cleaning and floats and mooring ropes that were replaced due to the oil-staining damage.

The 1992 Fund based its assessment on the photographic evidence provided by the fishermen as well as direct inspection of the contaminated boats by its nominated experts in the State. The assessment of the cost of the repainting was based on the average market costs of paints, thinners and related materials in the area. The Fund also considered that a full repainting of the hulls, when the stains only covered part of it, would be an improvement of the conditions of the boat and therefore took the previous state of the boat, the extent of the contamination and the

extent of the work done into consideration in the assessment.

The cost of durable items such as mooring ropes and floats which could not be cleaned and had to be bought new after the spill, was assessed based on the market cost of the items, but taking into due consideration the age of the item and applying the relevant depreciation to the final amount assessed. This is known as residual value, which is calculated as follows:

Cost of equipment	X	$\frac{\text{Usable life} - \text{Period in use}}{\text{Usable life}}$	=	Residual value
399	X	$\frac{3-2}{3}$	=	133

The final claim was therefore calculated as follows:

Cost of personnel used	+	£750
Cost of equipment purchased	+	£399
Residual value of equipment purchased	-	£133
Cost of equipment rented	+	£589
Other costs (slipway charges etc.)	+	£500
<b>TOTAL CLAIM</b>	<b>=</b>	<b>£2 105</b>



### Consequential loss

**4.2** These are losses caused as a result of contamination to your property. If your fishing gear or business equipment has been contaminated by oil then you can claim for the money you lose through not being able to use the gear until it has been cleaned or replaced. However, it is your responsibility to get back to normal as quickly as possible; the 1992 Fund might pay only for what it considers to be a reasonable period of time for you to resume normal business. Remember, the Fund will compensate only for loss of profit, and this will be calculated as the value of your normal catches less the amount you would normally spend on such things as fuel and bait.

### Pure economic loss

**4.3** Even if your fishing or mariculture gear or business equipment has not been contaminated by oil, you might not be able to go about your normal business. For

instance, if the sea is covered with oil on your normal fishing grounds and you cannot go somewhere else to fish, then you can claim compensation for the money you would have made if the pollution had not happened. If nobody will buy your produce because they believe it is tainted by oil, then you can claim for this, though it is not always easy to prove. Or, if you are a fish seller and you cannot get fish to sell because nobody is catching it, then you can claim compensation for the lost profit. However, there has to be a close link between the oil pollution and your losses.

**4.4** You may be able to claim for actions which will prevent further economic losses. For instance, if you are finding it difficult to sell your fish because people think it might be contaminated by oil, then the reasonable costs of a marketing campaign to reassure the public might be paid by the 1992 Fund. You should talk to a representative of the shipowner's insurer/1992 Fund before going ahead with this kind of action.



**Example:**

Lost profit normally arises when revenues are reduced and the level of gross profit (revenue less direct costs such as wage costs and costs of sale) is less than it would normally be expected to be. In any case, you will need to show your calculation of loss and enclose documentation and evidence to prove your loss. Those costs, referred to as variable costs, differ depending on the type of business you operate. For instance, to go out fishing will result in fuel and ice costs. Any loss of revenue will therefore lead to a reduction in variable costs and this saving needs to be taken into account. The calculation for the economic loss will therefore be:

Loss of revenue	A
Saving of variable costs	B
Loss of gross profit (A – B)	C
Additional costs	D
Subtotal (C + D)	E
Additional income	F
Economic loss (E – F)	G

**Preventive measures**

**4.5** In some circumstances you can claim for reasonable measures you might take to prevent oil causing damage. For instance, you might use a boom at the entrance to a harbour to stop oil coming in and contaminating boats or to prevent oil from reaching a fish farm. You could claim for the costs of this action.

**Use of advisers**

**4.6** You might need some professional help in making a claim for compensation. In some cases you can claim compensation

**Explanatory notes:**

**A Loss of revenue:** This should be demonstrated by showing the difference between revenues in the claim period and those normally generated in a comparable period of the previous year(s).

**B Variable costs:** This could include sales commission, gas, costs of fuel saved from not fishing or from fishing in a closer fishing ground than normal, ice for storage, bait, packaging, maintenance, cost of fish food, crew wages (if calculated on a 'per voyage' basis), and other costs incurred through the supply of the product or service.

**C Loss of gross profit:** Loss of revenue less variable costs (A – B)

**D Additional costs incurred:** This may include additional fuel costs incurred to visit alternative fishing grounds, measures taken to prevent or minimise pure economic loss, or the cost of advisors to prepare the claim if necessary. Please explain the reason for the additional costs.

**E Subtotal:** Loss of revenue plus additional costs incurred (C + D).

**F Additional income:** This may include additional income earned during cleaning operations, or paid employment for other tasks.

**G Economic loss:** Subtotal less additional income (E – F).

for reasonable costs of work done by an adviser. As part of its assessment of your claim, the 1992 Fund will look at the need for such advice or help, how well it was carried out, how long it took and how much it cost.

**4.7** Remember, in all of this, the actions that you take and your claim for compensation must be reasonable and realistic. The 1992 Fund cannot compensate for any activity outside the law, such as catches greater than that allowed by applicable regulations, fishing in closed areas or damage to illegal fishing gear.

## 5. What claims can be compensated?

**5.1** All claims must satisfy the following points:

- Claims will be paid only for losses caused by contamination from oil from a tanker.
- There must be a close link between the contamination and your losses.
- All claims should relate to measures that are reasonable and justified.
- Compensation will only be paid for an economic loss that can be measured.
- You must prove how much you have lost and must provide information to support this.
- The expense, loss or damage must already

have taken place. Claims for future losses cannot be considered.

- Compensation will be paid only if you are carrying out your business within the relevant legislation.

**5.2** There is some flexibility in the assessment of claims, depending on the circumstances of the claimant. If you think you have suffered a loss, but you think you cannot provide all the evidence to prove it, we recommend that you contact the shipowner's insurer/1992 Fund and they will provide advice more tailored to your specific circumstances in order to assist you in submitting the claim.







## 6. When should you make a claim?

**6.1** Compensation can be paid only for losses or damages that have already happened. If your fishing gear or equipment has been contaminated by oil, then it is safe to make a claim straight away, unless there is a chance that more damage might occur. However, if you are claiming for loss of earnings due, for example, to not being able to go fishing, then there is no point in making this claim only a few days after the spill has happened, as you can only claim for those few days and not for possible future losses. It is best to wait a few weeks and see how things turn out – the incident may be over by then and you can make one claim for all your losses. If it looks like the pollution may affect you for a long time, you could put in a claim on a regular

basis, such as every month or every three months.

**6.2** Whatever the period of your claim, you should try to submit your claim as soon as possible and it must be submitted within three years of the damage taking place. If you have made a claim, but have not come to an agreement with the shipowner's insurer/1992 Fund within three years of the damage occurring, you must protect your rights in court. Failure to do this will result in you losing your right to compensation. Although damage may occur some time after an incident takes place, court action must in any event be brought within six years of the date of the incident (see section 2.5 of the Claims Manual for further information).

## 7. How can you make a claim?

### 7.1 Where can you get a claim form and how should you submit it?

**7.1.1** In the event of an incident, the process for claim submission will be explained and specific customised claim forms and facilities will normally be made available by the 1992 Fund via its website ([www.iopcfunds.org](http://www.iopcfunds.org)) or can be requested from the shipowner's insurer/1992 Fund. We advise claimants to provide all the documentation necessary to support their claim. Claim forms are designed to help you identify and provide the information required to assess your claim and as a result will speed up the assessment process. Original documents, such as ledgers, logbooks and other in-house records should be submitted with your claim. You are strongly advised to keep a copy of all of the information submitted for your own future use. Please note these documents will only be returned upon request and normally only on settlement of the claim. For spills which fall entirely within the CLC and therefore do not involve the 1992 Fund, contact should be made with the shipowner's insurer.

**7.1.2** In general, claims should be submitted through the office of the insurer's local correspondent or representative or, in a very large incident, through the dedicated claims handling office set up by the shipowner's insurer and the 1992 Fund. The claims handling office is there to help you to make a claim, to advise on how the claim form may be completed, to forward your claim to the shipowner's insurer/1992 Fund and to assist in paying your claim once it has been reviewed and a compensation amount has been approved by the shipowner's insurer/1992 Fund. Claimants should note that the insurer's correspondent/representative, claims handling office staff and experts do not make any decisions as to whether a claim will be paid or how much compensation will be paid—that is for the shipowner's insurer and the 1992 Fund to

decide. In instances where the ship that was the source of the spill cannot be identified or no insurer is available, claims should be submitted directly to the 1992 Fund. Whether or not claimants are working in close consultation with the Fund and its experts, claims for compensation for the costs of studies and reinstatement measures must still be formally presented..

**7.1.3** The IOPC Funds' website will provide the contact details of either the insurer's correspondent/representative or claims handling office as appropriate. Details are also usually given in the local press. Contact details for the 1992 Fund are provided at the end of this booklet.

### 7.2 What information should you provide?

#### General

- 7.2.1** The more details about your business activities and your losses that you can provide to the shipowner's insurer/1992 Fund, the quicker your compensation claim can be assessed. The first information you should provide is:
- The name and address of the person making the claim, and his/her representative or adviser (if any).
  - The name of the ship involved in the incident.
  - The date, place and details of the incident (unless the 1992 Fund already knows about this).
  - The type of pollution damage that occurred (property damage, economic loss etc.) and how it happened.
  - The amount of compensation you are claiming and how you arrived at this figure.



### **Proof of your involvement in fishing, fish farming or associated business**

**7.22** For fishermen this can include a fishing licence, membership of a fishing cooperative, association or trade union, boat registration papers in your own name or some other proof that you are actively involved in the fisheries sector. For mariculture and other businesses, you may have official company documents, or proof of ownership or lease of seabed or land-based property for your business.

### **Description of how the pollution has affected you**

**7.23** You should provide a simple description of what you normally do, where and at what times. You should show how you are dependent on the area that was polluted for all or part of your business. This might be evidence of where you live, a fishing licence for the polluted area or some other means of showing that you depend on the polluted area and that you cannot operate anywhere else. Fishing records and charts may also be useful. You should also explain what options were open to you to minimise your losses and how the contamination caused your losses.

### **Business records, sales notes and receipts**

**7.24** You should include any business records that you may have, even if you do not have official accounts. These might include fishing log books, sales notes or other evidence of how much fish you catch, receipts for things you buy for your business, such as fish feed, packaging, fuel or ice, and anything else that will make it easier for the 1992 Fund to work out how much compensation you might be due. The Fund needs to know how your business worked before the spill happened, so any information that might be useful for this should be included.

### **Accounts**

**7.25** If you have trading accounts, these (for at least three years before the oil spill if possible) should be included with your claim. Monthly details of income and expenses over this three-year period should also be included if you have them. Details of income and expenses during the time of the spill will allow the difference between normal operations and those during the spill to be worked out.

### **Details of fishing operations or other business**

**7.26** It is useful if the 1992 Fund can fully understand your fishing operations – what type of gear you use, where you usually fish, what you catch on a normal day, how much you sell it for, how many days you fish each week and any other details. You should also give some idea of when is the best time of year for different fish and if there are any seasons when you cannot work much due to bad weather or no fish. For mariculture operators, details of your normal stocking, feeding and harvesting patterns should be provided.

### **Contaminated fishing or mariculture gear**

**7.27** If any of your fishing gear or other equipment has been contaminated by oil and cannot be cleaned, then you should keep it for inspection by a representative of the shipowner's insurer/1992 Fund. If it has been damaged but can be cleaned or repaired, then try to take photographs of it before you clean it, so that the 1992 Fund can work out how much it cost you to clean or repair it. You should keep any receipts or invoices for cleaning or replacing equipment. In your claim you should make it clear how old the gear was and what its normal life span would be, so allowance can be made for wear and tear.



### **Photographs**

**7.28** If possible, take some photographs of the oil pollution to show how it has affected your business. If you operate a mariculture business, then photographs of the oil in or around your premises would be useful.

### **Extra payments**

**7.29** You should say if you have received any payments or compensation from the Government or local authorities, or any other income during the spill. Usually, small amounts of money paid to those who take part in the clean-up operations are not taken into consideration when working out compensation, but if, for instance, you have chartered your boat to help with the clean-up operations, then these payments may be deducted from your final compensation.

### **7.3 Fraud**

The 1992 Fund takes the presentation of fraudulent documentation seriously and if it becomes aware that such documentation

has been submitted in support of any claim, the shipowner's insurer/1992 Fund reserves the right to inform the appropriate national authority.

### **7.4 What if you have poor records or no evidence?**

In some cases, people have very little evidence to show their normal income levels. Don't worry if you are in this position – the 1992 Fund has a great deal of experience in working in these situations and, if you have suffered a genuine loss, the Fund will make every effort and will usually be able to work out how much compensation you are due. Please tell a representative of the shipowner's insurer/1992 Fund if you are having difficulties and your situation will be treated sympathetically. Assemble whatever limited evidence you can to support your claim. Don't try to 'make up' records, as these will not be accepted. Providing fake documents in support of a compensation claim is a criminal offence.





**Example**

A claim was received by divers fishing in a rocky sub-tidal area not far from where a spill occurred. The divers operated in 10m of water and sold what they fished directly to tourists or to restaurants on the water front. They claimed that the oil had polluted the rocks where they went fishing and that they could therefore not catch anything. No fishing ban was imposed in the area.

The 1992 Fund's surveyors visited the area of the claim and found that the oil had not contaminated the species normally caught as they were underwater and therefore not affected by the traces of pollution which were seen in the vicinities. The survey also showed how many hours the divers worked during the period and what was the normal catch. A check in the local

market and spot checks on the waterfronts showed that there was a reduction in demand of the fish for a period after the spill. It also provided information regarding species normally caught and selling price.

The claim was assessed based on the documents provided, the results of the survey and of the checks at the market and the restaurants in the area. The claim for damage to the products caused by the pollution was rejected since no contamination was found. However, since there was a reduction in demand for the products, it was accepted that normal business had been interrupted as a result of the spill and the claim was calculated as follows:

Number of days interrupted	X	Average daily revenues	X	Number of divers	=	Loss due to business interruption
53	X	£278	X	4	=	£58 936

**8. How are claims assessed and paid?**

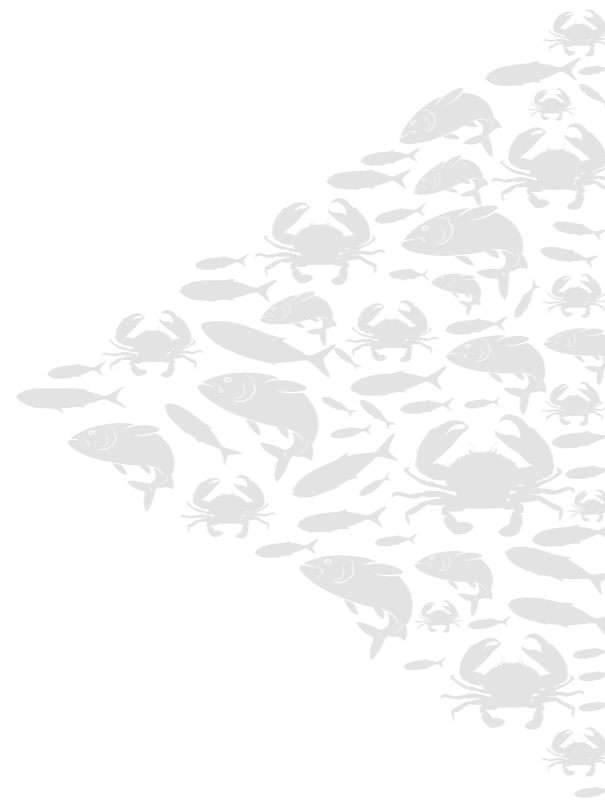
- 8.1 Claims are assessed based on the evidence provided by the claimant and any other information that has been gathered relating to similar fishing or related business. An expert working for the shipowner's insurer/1992 Fund may come and discuss your individual business with you so as to better understand your situation and the impact that the pollution has caused. The Fund tries to arrive at a true assessment of your real losses due to the oil pollution and to return you to the economic position in which you would have been if the oil spill had not happened.
- 8.2 The decision on whether to approve or reject a claim lies with the shipowner's insurer/1992 Fund only, and not with the expert who assesses the claim, any technical adviser or any person working in a local office.
- 8.3 Once your claim has been assessed by the shipowner's insurer/1992 Fund, you will be told how much compensation they think is fair, based on evidence available from all relevant sources. This assessment will be in writing and it may be given directly to yourself or to an organisation such as a co-operative or trade union that has been helping you to make your claim.
- 8.4 Usually an offer is made as a 'full and final' settlement. This means that no further claims for losses suffered during the period covered by the claim will be considered, and you will be asked to sign an agreement to this effect. You can make further claims if you feel that you have suffered losses after the period to which your first claim relates, and these would be treated as separate claims.
- 8.5 Please be aware that the 1992 Fund may have to deal with hundreds or perhaps thousands of compensation claims. Your claim will be assessed as quickly as possible but it may

- take some time for the 1992 Fund to gather and cross-check relevant information necessary to assess the claim, particularly if little information has been submitted in support of your claim.
- 8.6 Sometimes an interim offer can be made, particularly if the 1992 Fund believes that you are suffering hardship due to the oil pollution. This could be made before your claim has been fully assessed, and will be for a smaller amount of money; which will be taken off the final payment once that has been assessed.
- 8.7 The local office, if there is one, will make arrangements for you to be paid. Otherwise the 1992 Fund will contact you to make the arrangements. You will be asked to provide some means of identity, such as a passport, an identity card or a voter's card.
- 8.8 If you do not agree with the amount of money that you have been offered, then you should contact the 1992 Fund (through the local office, if there is one) and explain why you think that the offer is not enough. If you have new evidence to support your claim, then send that as well. The Fund may decide to have another look at your claim and make a new offer, or it may decide that the original offer is fair. The Fund may contact you and arrange to discuss the matter in more detail.
- 8.9 If you still do not agree with the amount offered, then you have the right to take legal action through a court in your country. It could be an action against the tanker owner, the shipowner's insurer and the 1992 Fund, disputing the assessment of the amount of your losses. It is suggested that you refer to the Claims Manual and/or your own legal adviser if you wish to take this course of action.



## 9. Contacting the IOPC Funds

- 9.1 If the 1992 Fund establishes a local office following a large oil spill, the contact details for that office will be published through the local media and at [www.iopcfunds.org](http://www.iopcfunds.org).
- 9.2 The contact details of the Secretariat of the 1992 Fund are as follows:
- International Oil Pollution Compensation Funds**
- 4 Albert Embankment  
London SE1 7SR  
United Kingdom
- Telephone:** +44 (0)20 7592 7100  
**Fax:** +44 (0)20 7592 7111  
**E-mail:** [info@iopcfunds.org](mailto:info@iopcfunds.org)  
**Website:** [www.iopcfunds.org](http://www.iopcfunds.org)
- 9.3 Should you need to contact the local claims handling office or the 1992 Fund Secretariat regarding your specific claim, you will be asked to quote the claim number or provide additional information to confirm your identity.
- 9.4 Copies of the 1992 Fund Claims Manual and other useful documents can be found at the IOPC Funds' website at [www.iopcfunds.org](http://www.iopcfunds.org).









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