



International Oil Pollution Compensation Funds

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# Guidelines for presenting claims for clean up and preventive measures

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2018 Edition



The original text of these Guidelines was approved by the 1992 Fund Administrative Council, acting on behalf of the Assembly in April 2015.

This 2018 edition contains minor editorial amendments, none of which affect the meaning or substance of the text, and incorporates the new address of the IOPC Funds' offices and the updated logo.

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# Contents

<b>1. Introduction to the International Oil Pollution Compensation Funds</b>	<b>4</b>
What are the IOPC Funds?	4
What does the 1992 Fund do?	4
How is money raised to pay compensation?	4
When does the 1992 Fund come into play?	5
Why are the costs of preventive measures compensated?	5
<b>2. Who can claim?</b>	<b>6</b>
<b>3. What should you do if there is oil pollution?</b>	<b>8</b>
<b>4. What claims are admissible?</b>	<b>9</b>
General principles	9
Additional and fixed costs	11
<b>5. What costs are covered?</b>	<b>12</b>
Surveys by air, by boat and on foot	12
Aircraft	12
Vessels	13
Specialised equipment	15
Shoreline clean up	16
Personnel	16
Consumables	17
Purchased items	17
Damaged equipment	17
How clean is clean?	18
Disposal	19
Salvage operations	20
Removal of oil from sunken tankers	20
Cleaning and rehabilitation of oiled wildlife	20
Administrative costs	20
Use of advisers	21
<b>6. When should you make a claim?</b>	<b>22</b>
<b>7. How can you make a claim?</b>	<b>23</b>
Where can you get a claim form and how should you submit it?	23
What information should you provide?	24
Supporting information and documentation	25
What if you have poor records or no evidence?	29
<b>8. How are claims assessed and paid?</b>	<b>30</b>
<b>9. Contacting the IOPC Funds</b>	<b>32</b>
<b>ANNEX</b>	<b>33</b>

# Preface

A general practical guide to presenting claims for losses due to oil pollution caused by an oil 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 who have incurred costs for clean up or preventive measures to better understand if, when, and how they can make claims for compensation. While losses suffered by claimants working in a range of sectors including fisheries, mariculture, tourism and other coastal industries are also eligible for compensation, this booklet is only concerned with claims for compensation related to the reimbursement of costs for clean-up operations and other preventive measures. Claimants from other sectors should consult the Claims Manual and check the publications section of the IOPC Funds' website for other sector-specific guidelines.

The purpose of these Guidelines is to inform all claimants including Member States, local authorities, private organisations and individuals, what they should do following an oil spill to formulate claims for the reimbursement of clean-up costs and what sort of information is needed to make a claim for compensation.

It is intended that these Guidelines will be used to help reach an amicable settlement of claims, but 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 legal interpretation of the relevant international Conventions in individual Member States.



# 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 ceased providing compensation for incidents occurring after May 2002 and has now been dissolved.
- 1.2** The International Oil Pollution Compensation Fund 1992 (which, in this booklet, is called 'the 1992 Fund') is the current 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 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. 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 that 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** Whether or not the tanker was the cause of the incident, under the 'no fault' provisions of the 1992 CLC the owner of the tanker from which the oil was spilled is responsible for paying compensation for the damage caused, usually through his insurer, typically a P&I Club. However, the 1992 CLC also allows the tanker owner to limit the maximum amount that has to be paid (according to the size of the tanker). 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. Although this happens only rarely, in such cases each successful claimant will be paid a proportion of his/her assessed claim until all the money available from the 1992 Fund is allocated. However, if the damage occurs in a State which is a Member of the Supplementary Fund additional monies will be available from 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 spill of persistent oil from a tanker. The 1992 Fund cannot pay compensation for damage that occurred on the high seas, or outside of the territorial waters or exclusive economic zone of its Member States (except under the circumstances described in paragraph 2.1).
- 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 when assessing the claim are the same. The 1992 Fund and insurer usually work closely together, particularly on large oil spills. The Fund, in cooperation with the insurer, usually appoints experts to observe, follow 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 with the insurer concerned and the 1992 Fund.

## Why are the costs of preventive measures compensated?

- 1.10** The two Conventions which govern the payment of compensation for pollution damage rely on a common definition of preventive measures, namely:

“*Preventive measures*” means any reasonable measures taken by any person after an incident has occurred to prevent or minimize pollution damage.”

The interpretation of this definition agreed by the 1992 Fund Assembly is set out in the Claims Manual which is intended to assist in

the uniform interpretation of the Conventions across all Member States. The Claims Manual makes it clear that the use of the word 'reasonable' applies both to the measures themselves and the costs of those measures. In addition to providing guidance on the formulation of claims for preventive measures, these Guidelines are intended to demonstrate through illustrative examples and explanations how the 1992 Fund has implemented this interpretation and, in particular, how the test of reasonableness is applied in the assessment of claims.

- 1.11** In practice, the term 'preventive measures' means any reasonable actions taken with the aim of preventing or minimising pollution damage in a Member State. The term usually applies to measures taken in responding to a spill and clean-up operations but may include salvage operations undertaken with the specific purpose of preventing or minimising the loss of oil from a damaged tanker. The costs of repairing damage caused by clean-up operations may also be eligible for compensation, for example, roads or other access points damaged by traffic engaged in clean-up operations. Expenses for preventive measures may be recoverable even if no spill occurs provided that there was a grave and imminent threat of pollution damage.
- 1.12** The 1992 Fund recognises the importance of effective salvage and clean-up operations in reducing the impact of a spill and consequently the number and value of losses suffered by victims of oil pollution. In many countries and especially those Party to the International Convention on Oil Pollution Preparedness, Response and Co-operation (OPRC), contingency plans are in place to respond to spills in a range of circumstances; from small spills contained within a port to a major incident affecting an entire region. A major spill would usually call for the implementation of the national oil spill contingency plan involving national authorities so that one of the main claimants seeking recovery of costs for preventive measures is likely to be the Member State itself.

## 2. Who can claim?

- 2.1** Anybody who has incurred costs in taking reasonable measures to minimise or prevent pollution damage in a Member State can make a claim to recover those costs, wherever those measures are taken. For example, if a State that is not Party to the Conventions responded to a spill on the high seas or within its own territorial waters in order to prevent or reduce pollution damage within a Member State, the cost of the response would in principle be admissible for compensation.
- 2.2** Claimants can be private individuals, partnerships, companies, private organisations, non-governmental organisations (NGOs) or public bodies, including States and local authorities. Although clean-up operations are often carried out by local or national authorities, examples of other types of claimant making claims for clean-up costs might include a private individual cleaning oil from a beach front property, a hotel chain employing contractors to clean a beach, a conservation group cleaning oiled wildlife or a sailing club removing oil from slipways.
- 2.3** Different Member States have different arrangements in place to respond to oil spills from tankers. Some may utilise their own and/or contracted resources while others rely on the tanker owner to hire specialist contractors. Still others may call upon State enterprises to clean up the spill but in almost every case involving the 1992 Fund, authorities within the Member State will be involved at some level whether national or local, responding to the spill themselves, directing operations or monitoring the activities of others.
- 2.4** A contractor instructed to respond to a spill for example, by a port, local or national authority, ideally should have a contract with that authority. The authority would then make a claim for reimbursement of the costs incurred in settling the contractor's invoice. However, sometimes no contract exists between the specialist oil spill response contractor and the authority ordering the deployment of equipment, personnel and materials and there is the expectation that the shipowner and his insurer and if necessary, the 1992 Fund will pay the bill. In such circumstances when no contract exists, it may be possible for a contractor to make a claim directly against the shipowner's insurer and the 1992 Fund. However, the 1992 Fund is only able to meet reasonable expenses. Contractors responding outside an agreed contract should be aware that it is possible that invoiced costs may therefore not be fully reimbursed (see example in section 4).
- 2.5** As noted above some administrations expect the tanker owner to provide the resources to clean up the spill and even those that do not may welcome the involvement of the owner. For example, some shipowners belong to industry cooperatives giving them access to oil spill response equipment on a preferential basis. However, only costs for measures considered reasonable can

be successfully reclaimed and in particular, measures with no material benefit to the response and undertaken purely for public relations purposes would not be eligible for compensation.

- 2.6** Likewise the cargo owner may have access to oil spill response equipment which it would like to make available to the response effort. These costs can be claimed from the shipowner's insurer and the 1992 Fund but again, compensation would not be available for expenditure incurred purely for public relations purposes.
- 2.7** In cases where independent organisations or companies offer assistance to the response

effort it is essential that these operations are conducted in collaboration with the authorities in charge. It is most important that operations are coordinated as compensation may not be available for operations that are duplicated.

- 2.8** For a claim to be admissible, the person who is making the claim (the claimant) must be able to show that he or she, or the organisation they represent, has suffered a financial loss. In the case of preventive measures this means having incurred costs directly linked to the prevention or removal of contamination caused by the spill.



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

- 3.1** In 1980, shortly after the 1971 Fund was established, Fund staff and their experts were conducting aerial surveillance following the *Tanio* incident in which 19 000 tonnes of heavy fuel oil were spilled. Flying along the northwest coast of France all that could be seen was kilometre after kilometre of oiled shorelines and bays, two to three kilometres wide, full of oil. The question in the front of their minds was: "How could anyone deal with that?"
- 3.2** The answer, then and now, is that, although oil pollution does look very bad, shorelines can be cleaned. The IOPC Funds' experience of major spills since 1978 has certainly demonstrated that this is the case. Indeed in the particular case of the *Tanio* incident, most of the oil was removed by the summer of that year.
- 3.3** The shipowners' insurers and 1992 Fund have a well-tested means of compensating for losses, although since all claims need to be thoroughly assessed, it can take time for money to get through to the claimant. However, claims for reimbursement of clean-up costs are settled amicably in the majority of cases, without the need to initiate legal proceedings.
- 3.4** As soon as an incident occurs it is advisable to contact the shipowner's insurer or the 1992 Fund with the outline of the situation so that the shipowner's insurer/1992 Fund can decide whether it should send experts to attend on site to offer their assistance. The shipowner's insurer/1992 Fund and the experts can offer advice not only on appropriate clean-up techniques but also on how best to minimise losses resulting from the spill and how claims should be presented.
- 3.5** If the shipowner's insurer and the 1992 Fund are not informed until sometime after the incident, it will be more difficult to fully appreciate the circumstances which had to be faced and in which the claimed costs were incurred. Details of how to contact the 1992 Fund are set out at the end of this booklet.
- 3.6** An essential element of a successful claim is the quality of the information submitted in support of the claim. This should include accurate and comprehensive records maintained from the start of the incident, through every step of the response, from notification and mobilisation through to the close of operations. A narrative explaining the actions taken, supported by photographs, video clips and illustrative maps will help the 1992 Fund and its experts understand the circumstances in which preventive measures were taken and the reasons why decisions were made to follow a particular course of action. Although in most incidents in which the 1992 Fund is involved, the shipowner's insurer and the 1992 Fund would engage experts to follow and advise on clean-up activities, it may not be possible for these experts to follow every operation, especially if the pollution is widespread. Further guidance on the documentation necessary to support a claim for clean-up costs is provided in section 7 of this booklet.
- 3.7** It is recommended that minutes are taken of meetings when decisions on response operations are reached, a log of events is maintained and all paperwork and other records are retained. Often a position is created within the response organisation specifically to ensure that such records are kept and the reasonable costs of personnel to fill this position would usually qualify for compensation.
- 3.8** It is also valuable to track expenditure as it is incurred, in as close to real time as possible. This allows areas of high expenditure to be identified and evaluated quickly and decisions to be made on whether the level of expense continues to be justified. One advantage of such an approach is to highlight the ongoing costs of equipment which is no longer needed and which should be cleaned and taken off hire as the response operations progress.

### 4. What claims are admissible?

#### General principles

- 4.1** In all cases claims must satisfy the following admissibility criteria which are set out in full in section 1.5 of the Claims Manual:
- Claims will be paid only for costs resulting from contamination by persistent oil from a tanker.
  - There must be a close link between the contamination and the costs claimed.
  - Claimants must prove how much they have spent and must provide information to support this.
  - The expense must have already actually been incurred. Claims for future anticipated costs will not be considered.
  - All claims should relate to measures that are reasonable and justified and will be assessed on a case-by-case basis taking into account the particular circumstances of the incident and the location in which it occurs.
- 4.2** Claims for the costs of measures to prevent or minimise pollution damage must meet the criteria above to be considered admissible but in particular, the test of reasonableness. Were the actions taken proportionate? Were the costs of those measures justifiable? Whether measures are considered reasonable is judged against a technical appraisal of the prevailing circumstances and the facts available at the time the decision was made to take the measures. In most cases the test is applied to some physical action which is intended to materially reduce the risk of pollution damage.
- 4.3** Decisions in respect of response operations, particularly at sea, often have to be taken urgently to deal with the unforeseen situation of an oil spill. The shipowner's insurer/1992 Fund will take this into account when considering decisions taken by the authorities in such circumstances together with the information that was available to them at the time these decisions were taken. However, as the incident proceeds and the situation becomes better understood and controlled, there is an expectation that measures and their corresponding costs would be reviewed as soon as possible to ensure that they continue to meet the test of reasonableness. For example, the opportunity might be taken to renegotiate rates accepted in the heat of the moment.
- 4.4** Claims for costs of response measures are not accepted when it could have been foreseen that the measures taken would be ineffective, for example if dispersants were used on solid or semi-solid oils or if booms were deployed with no regard to their ineffectiveness in fast flowing waters. On the other hand, the fact that the measures proved to be ineffective is not in itself a reason for rejection of a claim, provided that, at the time when the decision was taken to adopt that particular measure, it could have been considered technically reasonable. When assessing such a claim, the 1992 Fund would take into account the information that was available to the authorities at the time the decisions were taken.

### Example

A port authority instructs a spill response contractor, resident in the port with whom it has good working relations but no contract, to respond to a spill from a tanker a few miles off the coast where the tanker has run aground. It is winter with low water temperatures and a substantial amount of heavy fuel oil has been spilled which threatens the port and surrounding coastline. The contractor is ordered to apply dispersant onto the oil in an effort to prevent it reaching the coast but as a result of onshore winds, the oil soon comes ashore and has to be cleaned up there.

On the advice of their experts, the insurer and the 1992 Fund conclude that this element of the response was unreasonable. This is because it should have been foreseen that under those particular conditions, dispersants could not have been effective. As there is no contract with the port authority, the contractor presents a claim directly to the shipowner's insurer and the 1992 Fund but faces the possibility of having compensation denied even though the instructions of the port authority were being followed. Had a contract been in place, the contractor would have been paid by the port authority. However, it is unlikely that a claim submitted by the port authority for reimbursement of the cost of the contractor would be successful since the measures would be judged to have been unreasonable.

- 4.5** The costs incurred and the relationship between those costs and the benefits derived or expected, should be proportionate. For example, a high degree of cleaning, beyond removal of bulk oil, of exposed rocky shores inaccessible to the public is rarely justified, since natural cleaning by wave action is likely to be more effective. On the other hand, thorough cleaning may be necessary in the case of a public amenity beach, particularly immediately prior to or during the holiday season.
- 4.6** While it is understood that response organisations often find themselves compelled by political pressure and concerns expressed by the public and the media to adopt measures which are not technically reasonable, such actions are unlikely to qualify for compensation. For example, increasing the size of the workforce involved in shoreline clean up beyond the numbers that can be effectively managed or continuing operations long after they can be justified on technical grounds, are unlikely to be considered reasonable. Whenever possible the 1992 Fund will, at the earliest opportunity notify the authorities, in writing, that in the opinion of the 1992 Fund, based on advice of their experts on site, such a situation has arisen and that compensation for measures taken after a certain date may not be available. This does not mean that authorities must follow this advice. There is no question that it is for Member States to conduct the response in any way they see fit. However, in the light of such notification, a Member State should be aware that it might not be possible for the 1992 Fund to reimburse costs for measures considered to be unreasonable after a certain date.



### Example

Specialised oil spill recovery vessels from several countries work together to collect oil at sea following a serious incident. Operations continue over several weeks but after some time the nature of the oil changes and becomes widely fragmented so that the use of these specialised vessels is no longer effective in recovering any significant quantities of oil. Experts engaged by the shipowner's insurer/1992 Fund pass this opinion to both the shipowner's insurer/1992 Fund and to the authority within whose waters the vessels are working. Operations at sea nevertheless continue but in assessing the subsequent claim to recover the costs of these operations, the 1992 Fund sets a series of cut off dates to reflect the limit of the period for which the activities of each vessel are deemed to be reasonably effective, beyond which costs are not accepted.

- 4.7** The example above is intended to help illustrate the interpretation given to 'reasonable' measures by the 1992 Fund. The authorities of a Member State are, of course, entitled to conduct whatever measures they deem appropriate and to bring those operations to a close whenever they see fit, however, it is always advisable to regularly review whether such actions remain reasonable and consequently whether future claims for the reimbursement of the associated costs are likely to be considered admissible.
- 4.8** 'Bad press' can adversely influence the confidence, motivation and cohesion of the response organisation at a critical time when they are under most stress. Although the importance of good media relations is recognised, the costs of arrangements to deal with the media are not considered preventive measures and the costs of media coverage of clean-up operations will not be compensated.

### Additional and fixed costs

- 4.9** Clean-up operations are often carried out by public authorities or quasi-public bodies using permanently employed personnel or vessels and vehicles owned by such authorities or bodies. Compensation is paid for reasonable additional costs incurred by such organisations, i.e. expenses that arise solely as a result of the incident and which would not have been incurred had the incident and related operations not taken place.
- 4.10** Compensation is also paid for a proportion of so-called fixed costs incurred by public authorities and quasi-public bodies, i.e. costs which would have been incurred by the authorities or bodies even if the incident had not occurred, such as normal salaries for permanently employed personnel. However, in order to qualify for compensation, such costs must correspond closely to the clean-up period in question and should not include remote overhead charges. Personnel provided by public authorities can offer a number of benefits to the response, for example, it is likely that command and control systems are in place that can enhance the effective organisation of spill response. For the authorities the redirection of staff to spill response means that the normal responsibilities of those staff have to be covered perhaps leading to additional costs or loss of efficiency in the day-to-day activities of the authorities concerned.



## 5. What costs are covered?

- 5.1** Clean-up operations at sea and on shore are in most cases considered as preventive measures since such measures are usually intended to prevent or minimise pollution damage.
- 5.2** The clean-up costs covered include reasonable measures taken to combat oil at sea, to protect resources vulnerable to oil (such as sensitive coastal habitats, seawater intakes of industrial plants, mariculture facilities and yacht marinas), to clean shorelines and coastal installations and to dispose of collected oil and oily wastes. Reasonable costs of cleaning and rehabilitation of oiled wildlife, particularly birds, mammals and reptiles are also met.
- 5.3** Claims for clean-up operations may include the cost of aircraft, vessels and vehicles, the hire or purchase of equipment and materials and personnel. Claims for the costs of equipment placed on standby, but not actually deployed, are assessed at a lower rate to reflect the reduced wear on the equipment. Reasonable costs of cleaning and repairing clean-up equipment and of replacing materials consumed during clean-up operations are accepted. Equipment, vessels, aircraft and vehicles as well as manpower are assessed on a case-by-case basis taking into account the availability of appropriate resources and daily rates that are reasonable in the local context of wherever the incident occurs.

### Surveys by air, by boat and on foot

- 5.4** Costs of reasonable aerial surveillance operations to establish the extent of pollution at sea and on shorelines and to identify resources vulnerable to oil are accepted. One of the factors to be considered is whether the type of aircraft is appropriate for the role. For example, maritime surveillance fixed-wing aircraft are not well suited to shoreline surveillance where

the manoeuvrability of helicopters is more appropriate. Although generally less effective than aerial surveillance, surveys by boat may be more appropriate for some situations and compensation is also available for such costs. However, with the exception of aircraft equipped to detect oil at night, surveys by boat or aircraft during the hours of darkness would not normally be considered reasonable. If oil reaches the shoreline a more detailed shoreline survey may be necessary to find out how much oil has come ashore in each of the areas affected and to decide on the best clean-up methods. Once clean-up operations are underway, regular surveys are required to monitor progress and follow the movement of the oil and changes in its behaviour so that methods can be adapted or operations closed down in response to changing conditions.

- 5.5** The reasonableness of a particular survey, whether carried out by aircraft, boat or on foot, is likely to be judged on whether the information that the survey was expected to provide served a clearly defined purpose in terms of the preventive measures it was intended to support. Where several organisations are involved in the response to an incident, surveys should be properly coordinated to avoid duplication of effort.

### Aircraft

- 5.6** Two approaches can be followed to derive the reasonable costs for aircraft (i) deriving the hire rate from the actual costs of operating the aircraft or (ii) by comparison with rates for commercially available aircraft suitable for the same role. Providing the necessary information can be made available, the methodology for calculating the actual costs of operating the aircraft involves using the purchase cost amortised over the aircraft's expected lifetime and adds in annual costs such as, mortgage, insurance, surveys, maintenance and crewing costs then divides

these by the number of days the aircraft is available in a year. This methodology is sometimes referred to as 'first principles'. Sometimes aircraft that have a primary maritime defence role are used because these aircraft are equipped for long-range, aerial surveillance over the sea and they are available to and controlled by the Government. However, in comparison with commercial aircraft the costs of operating such aircraft are likely to include significant fixed costs due to the more sophisticated equipment and larger crews associated with routine maritime surveillance and defence operations and these would need to be taken into account when deriving a reasonable rate.

- 5.7** Commercial aircraft are usually charged by hours in flight and sometimes attract a minimum number of flight hours each day. A positioning fee may also be charged for flying the aircraft from its normal operating base to the area of the spill. These fees, as well as landing fees and crew expenses are normally accepted provided the criteria for admissibility are met. In large spills where several aircraft are operating it is accepted that it may also be necessary to set up protocols and personnel to control aircraft traffic.

### Vessels

- 5.8** As described in paragraph 5.6 in relation to aircraft, reasonable costs for vessels can be derived from either (i) the actual costs of operating the vessel (see example on page 14) or (ii) by comparison with rates for commercially available vessels suitable for the same role. If data is available consideration is also given to the elements of fixed costs which make up the calculated daily rate. In the case of vessels which have a primary role substantially different to oil spill response, such as a defence role, there are clearly fixed costs which cannot be included in a rate derived for spill response.

- 5.9** A standby rate calculated as a proportion of the operational rate is accepted to reflect on the one hand, saved fuel, where the daily rate includes fuel and lubricating oils, and reduced wear and tear while on the other, keeping the vessel in a state of readiness. Vessels are considered to be on 'standby' when in a state of readiness but not involved in operations for example, alongside in port during bad weather or while being cleaned at the end of an operation. When assessing vessel costs, consideration is also given to the suitability of the vessel to the particular role in the response to the spill it was required to fulfil.





**5.10** Some Member States belong to mutual aid organisations within which cooperative agreements exist to make spill response vessels available from one country to another during an incident. The State offering the vessels or other equipment frequently sets the rates which are accepted by the receiving State due to the operational necessity of the resource in an emergency situation. Some vessels may also be chartered in at market rates.

**5.11** If, when assessing the use of vessels, the rates claimed appear particularly high, a comparison is sometimes made between the rates claimed and the rates derived from a formula, for example, based on the specification of the vessel.

**5.12** The example shown below, shows one method of deriving the daily rate of a response vessel, typically for a vessel owned by the State or public authority, as no allowance has been made for profit. The figures used are illustrative only and should not be construed as representing reasonable values.

**Example**

**Methodology for deriving the hire rate of an oil spill response vessel**

Name	RESPONSE II
GT	650
DWT	1 500
Engine power output, KW	2 500
Year Built	1998

Manning Costs (Currency units )	£
Master (1 500/month)	18 000
Chief Officer (1 000/month)	12 000
Chief Engineer (1 250/month)	15 000
Seaman (800/month)	9 600
Oiler (800/month)	9 600
Deck hand (600/month)	7 200
<b>Subtotal</b>	<b>71 400</b>

Annual Costs (Currency units )	£
Cost of vessel	4 500 000
Amortised over 15-year lifespan	300 000
Insurance	60 000
Classification Surveys	5 000
Repairs and Dockings	200 000
Superintendency	7 600
Fuel Cost (at average of 5 000 litres/month at 0.30 per litre)	18 000
Victualling and consumables (at 2 700/month)	32 400
<b>Subtotal</b>	<b>623 000</b>
<b>Manning subtotal</b>	<b>71 400</b>
<b>Total Annual Cost</b>	<b>694 400</b>

Daily Rate = total annual cost/available working days	
Number of days in a year	365 days
Less Holidays	13 days
Less Weekends	110 days
Less Surveys and Repairs	20 days
<b>Total available working days</b>	<b>222 days</b>
<b>Daily Rate (694 400/222) =</b>	<b>£3 128</b>

**Specialised equipment**

**5.13** A daily rate is calculated so that the purchase cost of the item is recovered over its expected useful working life, plus a proportion of the costs of storing, insuring and maintaining the equipment. If the equipment is owned by a private contractor a reasonable element of profit would also be accepted in the assessment in order to provide a return on investment. The expected life of a piece of equipment varies considerably depending on its construction and the conditions it is designed to withstand. More robust items such as skimmers and power packs for use at sea are expected to last typically 180 days 'in use' while offshore booms about half that time and less sturdy inshore equipment has an even shorter life expectancy.

**5.14** In incidents that last for several weeks and where it becomes clear that clean-up operations are set to continue for some considerable time, well beyond the expected lifetime of an item of equipment, outright purchase of the equipment may be a viable option. However, it is recognised that without some financial incentive there would be no benefit to maintaining the equipment in readiness and two alternative approaches to applying reasonable rates are used. The first is to apply a rate that gradually reduces with time while the other is for daily rates to be capped once the cumulative daily rate has exceeded the purchase cost of the equipment by a factor of about two. However, after that point the only costs to be accepted as reasonable would be for operating and maintaining the equipment, together with an element of profit in the case of commercial companies.

**5.15** Claims for use of specialised equipment should be supported by a clear description of the equipment, including photographs and information to explain their use in the response.

**Example**

A clean-up contractor supplies a skimmer for a period of 20 days. For five days the equipment is held on standby. The purchase cost of the skimmer including taxes is £36 000 including a power pack, pump and ancillaries.

**Assuming a life 'in use' of 180 days, the base rate for the skimmer would be:**

$$\text{Purchase cost/Expected life in use} = \text{Daily base rate}$$

$$£36\,000/180 = £200 \text{ per day}$$

To this has to be added maintenance and storage costs and for a contractor, costs of finance and a profit element. Such costs are not often declared and so for a contractor an allowance up to a factor of two is usually accepted, i.e. in this case £400 per day in use and £200 per day on standby.

**The amount claimed would then be:**

$$(15 \times 400) + (5 \times 200) = £7\,000$$

*The figures used in the example above are for illustrative purposes only.*





16

### Shoreline clean up

**5.16** Most aspects of shoreline clean up do not demand specialised equipment but usually involve manpower supported by excavators, front-end loaders, lorries and other vehicles. Claims should closely follow national market rates for both manpower and non-specialised equipment. In assessing such claims, comparisons are made with commercial rates charged by vehicle and plant hire companies located in the region of the spill. Such assessments take into account the emergency situation, which can lead to low availability of the necessary resources, so that they have to be sourced from some distance with associated costs. Nevertheless it is anticipated that rates would be rationalised as the incident entered a project phase.

### Personnel

**5.17** A wide range of different personnel can be involved in responding to a spill from state and local authority staff, military personnel, contractors and volunteers. Each will attract different costs which must be documented, not only in terms of the time claimed for working on the incident, but also their role in the response. The basis of admissibility for government personnel claims is broadly that the actual costs to the administration are accepted i.e. for salaries, social costs and overtime. Most administrations have well-established tariffs for their personnel but when presenting a claim for government personnel costs, the individual components that make up the rates charged should be identified so that remote overheads, such as for headquarters staff not involved in the incident, can be excluded.

**5.18** While volunteers offer their labour without charge, it is not cost free. Volunteers may attract a variety of associated costs including costs of the personnel to manage them as well as for insurance, local transport, accommodation and food. As for government or contracted personnel, volunteers also need Personal Protective Equipment (PPE); boots, gloves, overalls, rain gear, etc. and the tools for the job. In general, claims for reasonable costs of volunteers within the affected area are accepted but not their costs for travelling from distant domiciles to the affected area.

### Consumables

**5.19** Materials consumed during a response to a spill typically include such items as fuel, dispersant, sorbents, PPE, plastic bags, plastic sheets, rope and many miscellaneous items but may also include small tools such as buckets, rakes, shovels, trowels, etc. which are unlikely to find use after the incident. Invoices should be provided for the purchase of each item and a record kept of where it was used. For example, a detailed account should be maintained of the use of fuel purchased for aircraft, vessels or vehicles identifying for which aircraft, vessel or vehicle the fuel was used and what role that particular aircraft, vessel or vehicle played in the response. Similarly, accounts need to be maintained for the use of items such as dispersants, sorbents and PPE, noting the dates, quantities and locations where they were used.

### Purchased items

**5.20** Examples of capital items purchased specifically for the response to an incident might range from booms, skimmers, pumps, and temporary storage tanks to office furniture, computers, GPS, cameras, radios, etc. These high value items may have a residual value at the end of the response. Assuming the purchases were justified and were reasonably required to support the response operations, two options are available to claim reimbursement; claims can be made for either a reasonable hire charge for the period of use as described in paragraph 5.14 or for the purchase cost less any residual value. Residual values are calculated on the basis of accounting standards applicable in the country where the incident occurs. Claims should be supported by invoices and a clear explanation of how the item was used in the response.

### Damaged equipment

**5.21** Equipment that becomes damaged as a result of its use in an incident generally falls into one of two categories: damaged beyond repair or requiring 'running repairs'. While the costs of routine maintenance would not usually be accepted, the reasonable costs of minor running repairs to keep equipment operational would usually form part of an admissible claim. In assessing compensation for equipment damaged beyond repair several factors are considered such as, how the damage occurred, the original purchase price, its replacement cost and the age of the equipment. Photographs of the damage and a description of how the damage was caused will facilitate assessment of such claims.

17

### How clean is clean?

**5.22** One of the most difficult issues to resolve is when clean-up operations should be brought to a close. While this is true for all aspects of the response, it is particularly pertinent to shoreline clean up and is encapsulated in the question 'how clean is clean?'. The difficulty is compounded by the fact that as the amount of oil remaining diminishes the effort required to remove this residue becomes ever greater. At some point the effort required outweighs the benefit of any further work. The point at which this happens is different for different shoreline types, for example, in general it is easier to bring sand beaches to a higher degree of cleanliness than shingle or cobble shores. A further consideration in closing operations on shorelines is the selection of reasonable end points which are heavily dependent on the 'use' or 'service' that a section of the shoreline provides. For example, the end points for an amenity beach and a remote rocky cove would be quite different. Experts engaged by the 1992 Fund are a good source of advice on the end points that can be reasonably achieved. As noted previously, if the 1992 Fund becomes aware that work is continuing beyond what is likely to be considered a reasonable end point, it would endeavour to formally notify the concerned authorities of its point of view in writing.

**5.23** The end points described in the table below are typical examples of those which might be set as the goal of clean-up operations. However, in some circumstances it may not be possible to achieve the desired end points, for example, due to safety concerns and risks to the work force.

#### When to bring operations to a close – how clean is clean?

Operation/Shoreline type	Examples of typical closure criteria
<b>At sea</b>	
• General	Oil has spread over very wide area and is fragmented, reduced to thin film or has dissipated naturally
• Mechanical recovery	Oil has weathered such that significant quantities of oil are no longer recoverable
• Dispersant application	Due to weathering and emulsification of oil – dispersants no longer effective
<b>Ashore</b>	
• General	Return of 'use' of shoreline or 'service'
• High amenity areas – easy public access	End point: No smell – no visible oil or sheen on surface and no evidence of buried/trapped oil – no greasy texture
• Industrial port	End point: Light staining
• Remote rocky cove	End point: Bulk oil removal - reliance on natural cleaning
• Ecologically sensitive	End point: dependent on nature of sensitivity/seasonality – careful removal of bulk oil – specialist advice required

### Disposal

**5.24** Clean-up operations frequently result in considerable quantities of oil and oily debris being collected. Reasonable costs for transport, storage and disposal of the collected material are accepted. If it has been possible to sell any of the recovered oil, the proceeds of the sale would normally be deducted from any compensation paid.

**5.25** Disposal of oily waste materials is usually controlled by national or regional regulations. In addition, in a major incident the quantities of material for disposal can exceed the capacity of some potential disposal methods, calling for waste to be held at temporary storage sites. However, if a range of options are available within the applicable regulations then, for disposal costs to be reimbursed, the most cost effective option should be selected.

**5.26** Efforts should be made to keep the amount of waste collected to a minimum. Experience has shown that typically the amount of waste generated can be as much as ten times the quantity of oil spilled. A ratio of the amount of waste collected to the amount of oil spilled far in excess of this factor of ten would signal the need for a closer examination of the circumstances that led to an excessive level of waste and may result in a portion of the costs of clean up and disposal being found to be unreasonable.

### Example

Clean-up operations following a spill of some 2 000 tonnes of heavy fuel oil generates almost 80 000 tonnes of oily waste. Whereas it might have been anticipated that the spill would generate approximately 20 000 tonnes of waste, in fact, the quantity of waste collected was some 40 times the amount of oil spilled. There was little doubt that this amount of waste had been collected since the quantity was verified against weigh bridge tickets and from estimates of volumes piled up at storage sites. In assessing the claim for disposal and associated transport and storage costs the 1992 Fund took the view that in some places the inappropriate use of heavy machinery to remove oil from shorelines had resulted in excessive quantities of oily waste being collected. After detailed investigations it was concluded that adverse weather conditions and the types of shoreline to be cleaned had led to exceptional circumstances and the costs of dealing with some 40 000 tonnes of waste were accepted as reasonable.



## Salvage operations

**5.27** Salvage operations may in some cases include an element of preventive measures. If the primary purpose of such operations is to prevent pollution damage, the costs incurred would, in principle, qualify for compensation under the 1992 Conventions. However, if salvage operations have another purpose, such as saving the ship and/or the cargo, the costs incurred are not accepted under the Conventions. If the operations are undertaken for the purpose of both preventing pollution and saving the ship and/or the cargo, but it is not possible to establish with any certainty the primary purpose, the costs are apportioned between pollution prevention and salvage. The assessment of claims for the costs of preventive measures associated with salvage is not made on the basis of the criteria applied for determining salvage awards, but is instead limited to the cost of the work, including a reasonable element of profit.

## Removal of oil from sunken tankers

**5.28** Whether the costs of removing any remaining oil from a sunken tanker would be accepted as reasonable is determined on a case-by-case basis, taking into account a number of factors which are set out in detail in the Claims Manual. The first step is normally to measure the quantity of oil remaining on board a sunken ship, providing this can be done with minimal risk of causing further pollution. Other factors which would be considered include the situation and condition of the sunken tanker; the risk of oil being lost during the removal operation; the feasibility of successful removal and the cost, especially compared to the likely pollution damage which would result if the oil was left in place in the sunken ship.

## Cleaning and rehabilitation of oiled wildlife

**5.29** The capture, cleaning and rehabilitation of oiled wildlife requires trained personnel and the work is normally carried out by special interest groups, usually with the assistance

of volunteers who establish cleaning stations close to the spill location. Cleaning is often difficult and slow and can cause the animals further distress, and should only be undertaken if there is a reasonable chance of the animals surviving the process. Claims for reasonable costs associated with the provision of local reception facilities appropriate to the scale of the problem, materials, medication and food are normally compensable, as are reasonable food and accommodation costs of workers, including volunteers. If several special interest groups undertake cleaning and rehabilitation activities these should be properly coordinated to avoid duplication of effort. Deductions will be made for funds raised from the public for the specific purpose of maintaining the field operations for a particular incident.

## Administrative costs

**5.30** Reasonable administrative costs are accepted to cover areas of work, which cannot easily be identified individually but are closely related to clean-up operations, i.e. not remote costs. Different names are sometimes used for claims covering this type of cost, such as management fee, general expenses or general overheads. Examples of the types of costs covered under this heading might include a bookkeeper, stationary, copying, computing costs, communication charges and office service fees, that is, the general costs of running a business or organisation for the period of the operation.

**5.31** Administrative costs are usually expressed as a percentage of the claim. However, levels much in excess of 5% would not be accepted as a percentage and the 1992 Fund may ask for detailed information for the individual costs. Correspondingly, if individual administrative costs such as those given as examples above were to be included as individual items within the claim, it would be anticipated that administrative costs would be reduced proportionately or not appear at all. In very high value claims, administrative costs

expressed as a percentage can represent exceptionally large sums of money which far exceed the actual cost of meeting these types of expense. In such cases general practice has been to apply reducing percentages if assessed costs exceed a series of defined thresholds.

**5.32** Organisations involved in a response are often required to contract or sub-contract services, for example clean-up companies, vehicle operators, catering companies, etc. and each contractor/sub-contractor may invoice an additional percentage for administration. Where the chain of sub-contracts is extensive, the shipowner's insurer/1992 Fund will compensate a reasonable overall percentage.

## Use of advisers

**5.33** There may be a need for some professional assistance in making a claim for compensation. In some cases compensation can be claimed for reasonable costs of work done by an adviser. As part of its assessment of a claim, the 1992 Fund will look at the need for such advice or help, how well it was carried out, how long it took, how much it cost and its value to the claim review process. In a major incident with the involvement of several authorities, agencies and contractors working at numerous clean-up sites, compiling a claim can be complex and bringing together all the required supporting documentation can be very time consuming. In such circumstances the reasonable costs of formulating the claim may also be included in the claim. For less complex claims it would be expected that such costs would be included within administrative costs.

**5.34** In most cases settlement of claims for preventive measures is reached through amicable agreement without the need for the case to be referred to a court. Consequently legal advice is usually not necessary to support claims for clean-up activities in a 1992 Fund Member State. However, if settlement has not been reached within three years of the date of the incident (or the date of damage if it occurs after the incident), you may need legal advice to protect your claim (see paragraph 8.10). The 1992 Fund would meet the reasonable costs of that advice.





## 6. When should you make a claim?

- 6.1** You should try to submit your claim as soon as possible. If you are considering making a claim at a later stage you should inform the 1992 Fund of your intention to do so.
- 6.2** Compensation is normally only paid for expenses that have already been incurred. While it is important to inform the 1992 Fund at the earliest opportunity that an incident has occurred and that a clean-up operation is underway, costs can only be reimbursed some time later. However, the 1992 Fund understands that cash flow problems can arise if clean up continues over several weeks or months. Workers' wages are usually paid on a weekly basis and can put a severe strain on finances especially in a large, complex spill where the wage bill can represent a substantial sum of money. In such cases, multiple claims can be submitted as the work progresses enabling these claims to be assessed and provisional payments to be considered. It is likely that such provisional payments will only meet a proportion of the costs claimed, pending a final assessment, but they are intended to alleviate the immediate cash flow difficulties.
- 6.3** Government claimants may choose to stand last in the queue (SLQ) if the value of established claims is likely to exceed the money available under the Conventions and there is a risk that claims will need to be pro-rated. The purpose of SLQ is to increase the level of payments to non-governmental claimants or to avoid pro-rating altogether.

Once all non-government claims have been settled there is sometimes sufficient money remaining to settle government claims, at least in part. However, it can take several years to settle all the non-government claims and so it is most important that even SLQ claims are examined as soon as possible after the incident rather than waiting to see if there is sufficient money remaining. With the passage of time, governments may find it more and more difficult to provide the necessary information to satisfy queries raised by the shipowner's insurer/1992 Fund. The individuals who were involved at the time of the incident, and who might have been able to assist in answering the queries of the shipowner's insurer/1992 Fund, may no longer be available.

- 6.4** 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 or certified copies of documents such as logbooks, meeting minutes, purchase orders, invoices, receipts and any other records must 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 to assist in paying your claim once it has been reviewed and a compensation amount has been approved by the shipowner's insurer/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 and evidence you can provide to the shipowner's insurer/1992 Fund about the clean-up operations and preventive measures you undertook and the costs you incurred, the quicker your compensation claim can be assessed. In particular you should provide:

- The name and address of the person making the claim and the name of any representative or adviser or conversely the name and address of the organisation you represent.
- The name of the tanker involved in the incident (if known), or evidence that the spill originated from a tanker.

- The date, place and details of the incident (unless the information is already known to the 1992 Fund).
- Confirmation that the claim is made for the recovery of clean-up costs (preventive measures).
- The amount of compensation you are claiming and how you arrived at this figure.

**7.2.2** It is essential that claims for the costs of clean up are submitted with supporting documentation showing how the expenses are linked with the actions taken. Experts engaged by the shipowner's insurer and the 1992 Fund to follow clean-up operations review the claimed costs against those operations when making their assessment. A claim should therefore clearly set out what was done and why, where and when it was done, by whom, with

what resources and for how much. Invoices, receipts, worksheets and wage records, whilst providing useful confirmation of expenditure, are insufficient by themselves. The addition of a report describing how the claimed expenses are linked to clean-up operations will greatly facilitate the assessment of claims.

### Claims submission in electronic format – Spreadsheets

**7.2.3** Although some supporting documentation can only be submitted as either original documents or certified copies, information transmitted electronically can also greatly facilitate the assessment of claims. Spreadsheets offer a particularly useful way of summarising some of the key information required in support of a claim. Ideally the spreadsheet would have a summary page, followed by the detailed entries for each contractor, organisation or worksite with references to supporting materials. Each response organisation or contractor should maintain a daily log of activities, including details of the number of personnel involved, the type and quantity of equipment and materials used, the type and length of shoreline cleaned and the amount of waste materials collected. If response vessels are used to combat oil at sea, extracts from their deck logs covering their period of deployment provide an essential source of information to explain the measures taken.

**7.2.4** Very often contractors submit just a single spreadsheet in support of their claim showing their overall costs. However, this often provides insufficient information on the distribution of the claimed costs between worksites. The experts usually engaged by the shipowner's insurer/1992 Fund to follow clean-up operations need to be able to link their observations with subsequent claims for cost recovery. Therefore information relating to each worksite should be provided. The annex contains a theoretical claim for clean-up operations and includes simplified examples of typical spreadsheets. The purpose of the example is to demonstrate one way in which a

claim for clean-up costs might be structured (Figure 1) and the types of documentation you should submit in support of such a claim for clean-up operations (Table 2). The spreadsheets are intended as illustrations only and the rates used should not be taken as representative of reasonable rates.

## 7.3 Supporting information and documentation

**7.3.1** The lists on pages 26-27 provide examples of the types of supporting information and documentation which should be presented with claims for the costs of particular resources used and other general costs incurred during clean-up operations. Such information assists the shipowner's insurer/1992 Fund in the assessment of your claim. When considering what information can reasonably be expected to be provided, account is taken of the normal accounting practices in the countries affected by an incident. Claimants are also encouraged to maintain a dialogue with the shipowner's insurer/1992 Fund during the formulation of a claim so that there is a clear understanding of the methods used to compile the claim and the opportunity for the shipowner's insurer/1992 Fund to offer advice on methods which would facilitate its assessment. Such a dialogue can be particularly useful in a major spill when the claim submitted by a Member State is likely to be highly complex, involving costs incurred by a range of national agencies and government departments.

**7.3.2** The following lists are not exhaustive nor would all the items listed be appropriate or necessary under all circumstances.



### Aircraft

#### 7.3.3 Examples of supporting documentation that could be included:

- Aircraft supplier/operator
- Aircraft type and call sign
- Hourly rate (showing components included in the rate for government aircraft)
- Logs showing flying hours and number of crew
- Receipts for landing fees and crew expenses
- Passenger names and affiliations
- Area surveyed, flight path followed, weather and visibility
- Aerial survey reports, charts, photographs and video clips

### Vessels and spill response equipment

#### 7.3.4 Examples of supporting documentation that could be included:

- Vessel supplier/operator
- Craft characteristics: name, length overall, horsepower (kW)
- Daily rate (showing components included in the rate for government vessels)
- Normal crew complement
- Fuel and lubricant consumption and receipts (if not included in daily rate)
- Port dues and receipts
- Passenger names and affiliations
- Deck log including record of operational area, activities, working hours
- Inventory of spill response equipment on board each vessel, daily rate for each type of equipment (if not included in vessel rate), deployment log recording period 'in use' for each equipment type, photos and video clips
- A daily estimate of the quantity of oil recovered
- Record of volume of oil discharged (to mother ship or ashore) for each discharge
- Records of any equipment damage including circumstances in which damage occurred and photographs
- Materials consumed by each vessel e.g. dispersant

### Response organisation

#### 7.3.5 Examples of supporting documentation that could be included:

- Organisational structure, roles and responsibilities
- Personnel rates related to roles and responsibilities (showing components included in calculation for government employees) time sheets, pay advice and justification of expenses incurred for travel, accommodation and food
- Photographs, video clips, and charts identifying the area affected by the spill and chronicling progress of clean-up operations
- Records of weather conditions and predictions of oil movement
- Communication logs with each sector of the response operation
- Log of events
- Minutes of strategic meetings, noting amongst other things, how priorities were set and the rationale for response decisions including decisions to bring operations to a close
- Minutes of daily progress review meetings

### Protection of sensitive resources

#### 7.3.6 Examples of supporting documentation that could be included:

- Maps of location of sensitive resources and associated protective measures
- Description of sensitive resources
- Description of type of protective measures implemented e.g. hard booms, sorbent booms, temporary physical barriers, tidal currents, lengths involved, materials used, costs
- If booms were used; manufacturer, model, length deployed, anchoring arrangements, daily rates, period of deployment and supplier
- Photographs

### Shoreline clean up

#### 7.3.7 Examples of supporting documentation that could be included:

- Maps or charts of the extent of shoreline pollution
- SCAT team (Shoreline Clean-up Assessment Technique) reports or equivalent detailing levels of pollution and recommended clean-up techniques and end points for each worksite or section of shoreline, photographs and video clips
- Daily worksite (Beach master) reports recording work done, for example, hours worked, area cleaned and amount of oily waste collected
- For each worksite, daily lists of equipment used, rates and supplier
- Incident or damage reports
- For each worksite daily lists of materials consumed, noting supplier
- Contractor rate sheets
- Rates and time sheets for personnel by worksite (showing components included in the calculation of the rate for government employees)
- Payslips

### Disposal

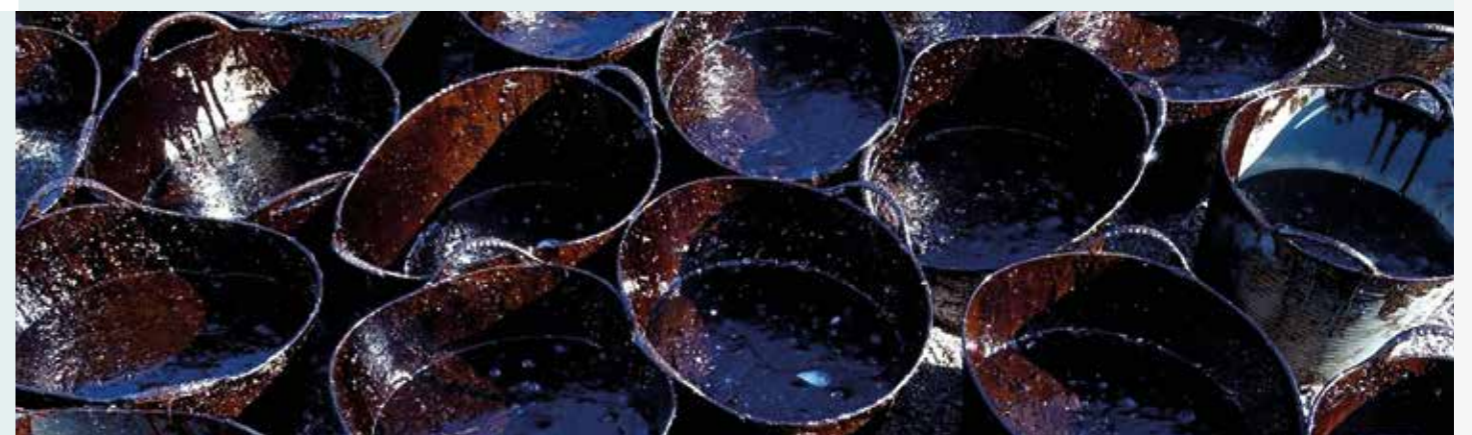
#### 7.3.8 Examples of supporting documentation that could be included:

- Source of waste (vessel names or beach name for shoreline point of origin)
- Cost of temporary storage, location of sites used and records of movement of waste; material coming in and going out
- Disposal methods and quantity of waste by each method
- Name of disposal contractors and location of facilities
- Unit rate for each disposal method showing how costs were derived
- Weigh bridge tickets
- Waste authority consignment notes or equivalent
- Transport costs: vehicles used, distance travelled, rate/km
- Invoices and receipts
- Photographs

### Wildlife cleaning and rehabilitation

#### 7.3.9 Examples of supporting documentation that could be included:

- Name of organisations involved
- Names of personnel, roles, responsibilities and qualifications, hours worked and amounts paid as for other spill response personnel
- Number of each species undergoing treatment
- Photographs and video clips
- Period required for cleaning and rehabilitation
- Numbers of animals successfully released back into the wild
- Cost breakdown as for other spill response costs e.g. personnel, equipment, materials, transport and disposal
- Value of any donations or aid received





#### **Extra payments**

- 7.3.10** You must declare any payments, aid or compensation you have received from other parties or paid under an insurance policy to assist with the costs of clean-up operations. Such payments may be taken into account when working out the amount of compensation due from the 1992 Fund.
- 7.3.11** Please note that any inaccuracy in the documents or statements submitted may lead to delays in handling the claim and/or in its rejection. You are therefore advised to ensure that the claim is a true and accurate reflection of your actual costs and that it includes information on any financial assistance you may have received.

#### **Fraud**

- 7.3.12** 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 1992 Fund reserves the right to inform the appropriate national authority.

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

- 7.4.1** In most Member States accountability for public expenditure is rigorously observed and records are routinely maintained to justify expenditure. Claims against the 1992 Fund are no different. However, it is possible that circumstances could arise so that no records exist, for all or part of the response, or only limited information is available to support the claim. This might be because in the Member State concerned, detailed record keeping is not the norm or because in the emergency situation of the initial response there was no realisation that claims would later need to be made. Another possibility is that a very long time has elapsed between the incident occurring and the claim being submitted, during which records have been lost and the individuals concerned at the time are no longer available to provide the necessary explanations to support the amount claimed.

- 7.4.2** If you are lacking information or documentation you may still be able to make a claim by providing as much information as you can. Independent anecdotal and circumstantial evidence, such as media reports, indicating the extent of pollution and response efforts, photographs of the clean-up operations and the application of reasonable rates could provide you with sufficient information to calculate your approximate costs. Nevertheless, the underlying requirements as set out in paragraph 4.1 still have to be met for compensation to be paid.
- 7.4.3** Any difficulties in compiling supporting information should be discussed with a representative of the shipowner's insurer/1992 Fund who may be able to offer further advice and assistance. Assemble whatever limited evidence you have to support your claim. Do not provide falsified records as these will be detected and your claim may be rejected as a consequence. Providing fake documents in support of a compensation claim is fraudulent and you may be prosecuted under your domestic legislation.





## 8. How are claims assessed and paid?

- 8.1** Claims are assessed against three broad questions:
- (i) Were the actions taken reasonable?
  - (ii) Were the costs of those measures reasonable? and
  - (iii) Is the calculation of the claimed expenses correct?

The approaches used by the 1992 Fund to judge whether claims and costs are reasonable have been discussed earlier in sections 4 and 5. It should be recalled, however, that although the 1992 Fund relies on the advice of its experts, the assessment made by the 1992 Fund is made on a case-by-case basis, taking into account the particular circumstances of the incident

- 8.2** The way claims are presented is often unique to those particular circumstances and the measures taken to meet the situation that it presents. In addition, administrations have different ways of deriving and recording costs leading to differing approaches to claims' formulation. As a consequence, after an initial review of the claim documents, it is normal for further queries to arise and further explanations to be required in order to allow the 1992 Fund and its experts to complete a detailed assessment. The process is usually one of iteration with a series of exchanges between the shipowner's insurer/1992 Fund and claimants, until it becomes clear how the claimed costs were derived and what these expenses represent. In most cases, on the basis of such a dialogue, an amicable agreement can be reached on the amount of compensation to be paid.
- 8.3** Member States, response organisations and specialist clean-up companies are encouraged to consider 'pre-agreeing' rates with the 1992 Fund in anticipation of a possible spill. Although such agreements cannot guarantee that all costs incurred in

responding to a spill would be accepted as reasonable, they can avoid the need for a detailed discussion of rates when a claim is being assessed.

- 8.4** In cases where further information is requested but the shipowner's insurer/1992 Fund consider that in the meantime you are at risk of suffering financial hardship, a provisional assessment may be made on the basis of the information that is available. You would be advised that the assessment can be revisited if further information to support your claim can be provided. Any payment made on a provisional basis would be less than that paid following a full assessment to ensure there was no overpayment. The amount of any provisional payments would be deducted from the final payment once the claim has been fully assessed.
- 8.5** If you are a contractor involved in a large ongoing incident resulting in cash flow difficulties, you can submit a provisional claim or a series of provisional claims. Any interim payments made would be taken into account in the final settlement of your claim once operations have come to a close.
- 8.6** 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 the evidence available from all relevant sources. This assessment will be in writing and it will be given to you, as the claimant, or your representative if you have nominated someone to act on your behalf.
- 8.7** Usually an offer is made as a 'full and final' settlement. This means that no further claims for losses suffered during the period of the current 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.

- 8.8** Please be aware that the shipowner's insurer/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 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.
- 8.9** If you do not agree with the amount of money that you have been offered then you should contact the shipowner's insurer/1992 Fund (directly or through the local claims handling office, if there is one) and explain why you think that the offer is not sufficient. If you have new evidence to support your claim, you should submit that as well. The shipowner's insurer/1992 Fund may decide to review your claim and make a second offer in the light of new information, or it may decide that

the original offer was fair. The 1992 Fund may contact you and arrange to discuss the matter in more detail. Whatever the outcome the reasons for the decision will be disclosed in writing.

- 8.10** If you still do not agree with the amount offered, then you have the right to take legal action through the courts in your country. It could be an action against the shipowner, the insurer and the 1992 Fund, disputing the assessment of the amount of your losses. If you have not reached a settlement with the 1992 Fund before three years from the date of the damage have elapsed, the Fund strongly recommends you file an action in court against it. At this stage you would probably need to take legal advice. If you take no action within three years you run the risk of your claim becoming time-barred and you would lose your right to receive compensation.



## 9. Contacting the IOPC Funds

**9.1** If a local claims handling office is established following a large 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

**Website:** [www.iopcfunds.org](http://www.iopcfunds.org)

**E-mail:** [info@iopcfunds.org](mailto:info@iopcfunds.org)

**9.3** When you submit your claim you will be issued a claim number. This is a unique reference that links you with that specific claim and should be quoted in all subsequent correspondence. Should you need to contact the local claims handling office or the 1992 Fund Secretariat regarding your 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 under the publications section of the IOPC Funds' website at [www.iopcfunds.org](http://www.iopcfunds.org).

## ANNEX

The example below (Figure 1) shows the summary page of an illustrative spreadsheet for a small incident involving the response agencies of a Member State and three contractors. The folder references might refer to different aspects of the response, for example, AT1 might refer to aerial surveillance; AT2 to response at sea; AT3 to shoreline clean-up and AT4 to transport and disposal of oily waste. A simplified detailed breakdown for the contractor, OSRO Co Ltd engaged in recovery of oil at sea is shown on the following pages as Table 1 and examples of supporting information in Table 2.

The example is continued over the pages which follow showing simplified and illustrative spreadsheets for clean-up costs at three different worksites along the affected shoreline, The Beach, Rocky Cove and Cobble Bank, each calling for different clean-up techniques. The data from each worksite is fed into the overall costs for the contractor and this is then itself linked into the summary page below.

Figure 1: Example summary sheet

ATANKER: Grounding off Aport, Member State (MS), June		
	Claimed £	Folder Ref
1. MS Response Agency (Air)	46 355	AT1.1
2. MS Response Agency (Sea)	260 889	AT2.1
3. OSRO Co Ltd	75 660	AT2.2
4. MS (Shoreline)	115 789	AT3.1
5. Marine Pollution Responders Ltd	455 608	AT3.2
6. Waste Services Co Ltd	247 248	AT4.1
<b>TOTAL</b>	<b>1 201 549</b>	

TABLE 1: Example spreadsheet.

3 OSRO Co Ltd

I Personnel	Unit cost £	12 June	13 June	14 June	Sat June 15	Sun June 16	Number	Unit	Rate	Claim £	Reference
Command	850	1	1	1	1	1	5	Man days	100%	4 250	AT2.21
Supervisors	350	3	3	3			9	Man days	100%	3 150	AT2.22
	350				3	2	5	Man days	150%	2 625	
Technicians	200	5	5	5			15	Man days	100%	3 000	AT2.23
	200				5	3	8	Man days	150%	2 400	
Labourers	150	15	15	15			45	Man days	100%	6 750	AT2.24
	150				12	9	21	Man days	150%	4 725	
Meals	12						108	Man days	100%	1 296	AT2.25
<b>II Equipment</b>								<i>Personnel subtotal</i>		<b>28 196</b>	
Boat 1	1 500	1	1	1	1	1	5	Days	100%	7 500	AT2.26
Boat 2	1 200	1	1	1	1		4	Days	100%	4 800	AT2.27
Boat 3	1 200	1	1	1			3	Days	100%	3 600	AT2.28
5-ton truck	250	1	1	1	1	1	5	Days	100%	1 250	AT2.29
Cars	55	3	3	3	3	2	14	Days	100%	770	AT2.210
Sorbent booms	25	12		12			24	m	100%	600	AT2.211
Booms	8.5	250	250	250	250		1 000	M days	100%	8 500	AT2.212
Sorbent mats	7.5	10		10			30	kg	100%	225	AT2.213
Disc skimmer	120						0	Days in use	100%	-	AT2.214
	120	1	1	1	1	1	5	Days standby	50%	300	
Drum skimmer	150	1	1	1	1		4	Days in use	100%	600	AT2.215
	150						1	Days standby	50%	75	
Power pack	160	1	1	1	1		4	Days in use	100%	640	AT2.216
	160	1	1	1	1		6	Days standby	50%	480	
Pump	50						0	Days in use	100%	-	
	50	1	1	1	1	1	5	Days standby	50%	125	AT2.217
Cotton gloves	0.5	24	24	24	9	6	87	Pr days	100%	44	AT2.218
Life vests	24	24					24	Lvest days	100%	576	AT2.219
Tivek suits	4.5	24	24	24	9	6	87	Suit days	100%	392	AT2.220
Safety boots	15	24					24	Boot days	100%	360	AT2.221
								<i>Equipment subtotal</i>		<b>30 836</b>	
<b>III Miscellaneous</b>								Tonne	100%	9 750	AT2.222
Waste disposal	150						65				
								<i>Misc subtotal</i>		<b>9 750</b>	
								<b>SUBTOTAL:</b>		<b>68 782</b>	
								10%		<b>6 878</b>	
								<b>CLAIM TOTAL:</b>		<b>75 660</b>	
<b>IV Management Fee</b>											

TABLE 2: Examples of supporting documentation

AT2.21	Name; function in response to the spill; job sheet; daily reports; pay advice
AT2.22	Names; functions in response to spill; assigned to Boat 1, 2 or 3; work sheets; daily reports; payslips
AT2.23	Names; functions in response to spill; assigned to Boat 1, 2 or 3; time sheets; payslips
AT2.24	Names; functions in response to spill; assigned to Boat 1, 2 or 3; time sheets; payslips
AT2.25	Supplier; invoices & receipts
AT2.26	Craft specification: Name; type; length overall; Horsepower (kW); Normal crew complement; fuel & lubricants consumption; daily fuel tank dips. Deck log including notes on operational area, activities, working hours, quantities of oil & water recovered, daily recovered oil storage tank dips
AT2.27	Craft specification & Deck log as above
AT2.28	Craft specification & Deck log as above
AT2.29	Vehicle make and model; registration number; driver's name
AT2.210	Vehicle make & models; registration numbers; drivers' names
AT2.211	Manufacturer and specification – size; section length & depth; material; invoices & receipts
AT2.212	Manufacturer and specification – size; section length & depth; material; invoices & receipts
AT2.213	Manufacturer and specification – size; weight no. mats/kg; material; invoices & receipts
AT2.214	Manufacturer and model – rated capacity
AT2.215	Manufacturer and model – rated capacity
AT2.216	Manufacturer and model – rated capacity
AT2.217	Manufacturer and model – rated capacity
AT2.218	Supplier; invoices & receipts
AT2.219	Supplier; invoices & receipts
AT2.220	Supplier; invoices & receipts
AT2.221	Supplier; invoices & receipts
AT2.222	Disposal method; disposal contractor; weigh bridge tickets; invoices & receipts

The spreadsheets on pages 36 -37 expand the entry of the summary sheet for item 5 for the fictitious company, Marine Pollution Responders (MPR) Ltd., engaged in shoreline clean up. The spreadsheets are a simplified illustration of how a claim might be formatted but should be accompanied by a short narrative such as that shown below and supporting documentation identified in paragraph 7.3.5. The first spreadsheet shown represents the overall costs for the contractor which are made up of the costs for

each of the three worksites, ie The Beach, Rocky Cove and Cobble Bank shown in spreadsheets 5.1, 5.2 and 5.3 respectively, with additional costs added to Table 5 for overall management of the three sites.

As noted previously, the rates shown are for illustrative purposes only and should not be taken as representative of reasonable costs nor would the methods described in the narrative necessarily be accepted as reasonable measures, depending on the circumstances of the incident.

### Example Narrative

#### 5. Marine Pollution Responders (MPR) Ltd

In the early hours of 12 June the tanker *Atanker* went aground in bad weather some three miles northwest of Aport. The vessel was carrying a cargo of medium fuel oil (IFO 180) and reportedly lost some 500 tonnes from one of the cargo tanks. Oil quickly moved towards the coast and by the same evening had come ashore along some three kilometres of a sandy shoreline known locally as The Beach. Overnight on 12/13 June some of this oil floated off and moved along the coast to the adjacent Rocky Cove and Cobble Bank.

MPR were alerted at midday on 12 June once it had become clear that oil would come ashore and were contracted by the Member State Response Agency to provide resources for shoreline cleaning. The initial focus was on The Beach but over the weekend MPR was additionally tasked to work on Rocky Cove and Cobble Bank.

#### The Beach

MPR initially deployed 45 men increasing to 60 the following day and up to 100 over the weekend. Manpower was used to collect stranded oil into plastic bags, consolidated into jumbo bags for transport off the beach. Oil floating at the water's edge was pumped into portable tanks. Bulk oil was flushed to collection points with water pumps for the diaphragm pumps to transfer into portable tanks. Oil separating out in the portable tanks was loaded into ten-ton tank trucks for transport to disposal.

Numbers were ramped up during the following week and reached daily totals of 120 labourers on Thursday and Friday, 20 and 21 June but were run down over the second weekend. Following an inspection with the MS Response Agency on 24 June, a final tidy up and demobilisation was completed over the next two days.

#### Rocky Cove

MPR mobilised to Rocky Cove on the morning of Saturday 15 June using high pressure washing to remove oil from rocks. Labour was used to collect oil released with sorbent mats.

#### Cobble Bank

An excavator was used to move cobble to the water's edge to allow 'surf washing' to take place. Sorbent booms were set at the end of the bank to corral floating oil moving along the bank and a small work force was used to collect it with sorbent mats.

#### Enclosures:

- MPR Ltd invoice to MS Response Agency (Shore)
- MPR Manager's daily summary report
- Beach masters daily reports
- Company rate sheet
- Daily time sheets The Beach; Rocky Cove; Cobble Bank
- 5t Truck logs
- 10t Tank truck logs
- Invoices for 3rd party supplies





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