

LEGAL COMMITTEE
109th session
Agenda item 8

LEG 109/8
7 January 2022
Original: ENGLISH
Pre-session public release:

**CLAIMS MANUAL FOR THE INTERNATIONAL CONVENTION ON CIVIL LIABILITY FOR
BUNKER OIL POLLUTION DAMAGE, 2001**

**Draft Claims Manual for the 2001 Bunkers Convention text – Outcome of the informal
correspondence group**

**Submitted by Canada, Republic of Korea, United Arab Emirates, International
Chamber of Shipping, International Group of Protection and Indemnity Associations
and ITOFF Limited**

SUMMARY

Executive summary: The Committee is invited to note and comment on the progress made on the development of a Claims Manual for the International Convention on Civil Liability for Bunker Oil Pollution Damage, 2001, in line with the direction given by the Committee at its 108th session in July 2021. The Committee is also invited to note and comment on the draft claims manual text annexed to this submission.

Strategic direction, if applicable: 1 and 7

Output: 7.18

Action to be taken: Paragraph 8

Related documents: LEG/CONF.12/19; LEG 107/17; LEG 108/13/1 and LEG 108/16/1

Introduction and background

1 The Legal Committee, at its 108th session, agreed to include a new output under the work programme on the development of a Claims Manual for the International Convention on Civil Liability for Bunker Oil Pollution Damage, 2001 (2001 Bunkers Convention), with a target completion year of 2023.

2 The Committee also invited concrete proposals to be submitted to LEG 109 on the new output and agreed to include the item in the provisional agenda for LEG 109. Delegations interested in taking this work forward on an intersessional basis were invited to make contact with the International Group of Protection and Indemnity Associations (P & I Clubs).

3 As a result, the P & I Clubs offered to coordinate the intersessional work with an informal group of Member States that included Australia, Canada, Finland, France, Greece,

Japan, New Zealand, the Republic of Korea, Spain and the United Arab Emirates, and observers from the International Oil Pollution Compensation Funds (IOPC Funds), the International Chamber of Shipping (ICS), ITOPF Limited (ITOPF) and the International Marine Contractors Association (IMCA).

4 Accordingly, the work undertaken by these interested delegations in the informal group and set out in this document fulfils the Committee's request at LEG 108 that concrete proposals be submitted to LEG 109 on the scope of the work on the new output. The output of the work of the informal group to date is contained in the annex to this document in the form of a draft Claims Manual for the 2001 Bunkers Convention. The co-sponsors recognize and acknowledge that the claims manual text contained in the annex is only in draft form and that LEG 109 represents the halfway stage of this work stream, and that the completion date is in 2023 at LEG 110. The draft text is therefore submitted for comment and to highlight the progress made by the informal group. The co-sponsors recognize that further work is needed and recommends that this can be taken forward on an intersessional basis to LEG 110 following LEG 109.

5 The informal group that has taken this work forward to date has represented a wide variety of different delegations, including Member States, industry, intergovernmental and non-governmental organizations. The work of the informal group to date has been on a truly collaborative basis where the draft Claims Manual for the 2001 Bunkers Convention text contained in the annex represents an amalgamation of work undertaken by the different group members. This follows a process whereby different members of the group worked together to draft the four different sections of the draft Claims Manual for the 2001 Bunkers Convention text before reverting back to the group with each draft section that has then been collated into one, complete draft text as contained in the annex.

Draft Claims Manual for the 2001 Bunkers Convention text

6 In drafting the Claims Manual for the 2001 Bunkers Convention text, the informal group has been guided by the following:

- .1 The Claims Manual for the 2001 Bunkers Convention text should be drafted in a manner that provides potential claimants with important information on the processes to follow when submitting claims potentially falling within the scope of the 2001 Bunkers Convention.
- .2 The Claims Manual for the 2001 Bunkers Convention should also seek to provide uniformity of treatment of claims throughout the world as well as providing useful guidance to loss adjustors and technical experts in order to facilitate a uniform approach to the assessment of claims.
- .3 The Claims Manual for the 2001 Bunkers Convention should seek to avoid conflicting and contradictory approaches in cases where pollution damage has occurred in different States Parties to the 2001 Bunkers Convention.
- .4 The IOPC Funds' Claims Manual provides a basis for the draft Claims Manual for the 2001 Bunkers Convention text and each of the four sections has been drafted by cross referencing the corresponding section in the IOPC Funds' Claims Manual as a basis.
- .5 This is both relevant and important given that the definitions of "pollution damage" and "preventive measures" in the 2001 Bunkers Convention are identical to those in the International Convention on Civil Liability for Oil

Pollution Damage, 1992 (1992 Civil Liability Convention) and the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1992 (1992 Fund Convention) (save for the reference in the 2001 Bunkers Convention to "bunker oil" rather than just "oil") and the drafters of the 2001 Bunkers Convention intended the scope of pollution damage in that Convention to be in line with the scope of pollution damage as governed by the 1992 Civil Liability Convention and 1992 Fund Convention.

- .6 It is recognized that the IOPC Funds' Claims Manual does not aim to explain the 1992 Civil Liability Convention and 1992 Fund Convention in detail or in legal terms, and the draft Claims Manual for the 2001 Bunkers Convention also does not seek to do so for the 2001 Bunkers Convention. They are generally intended to provide a usable guide that is accessible to a wide variety of potential claimants and audiences.
- .7 Unlike the 1992 Civil Liability Convention and 1992 Fund Convention regime, claimants cannot access a second tier of compensation (provided by receivers of persistent oil) where liability and compensation are governed by the 2001 Bunkers Convention.
- .8 The nature of a Claims Manual for the 2001 Bunkers Convention will therefore necessarily be different in parts from that of the IOPC Funds' Claims Manual. The IOPC Funds' Claims Manual is a manual agreed by the Funds' governing bodies, describing its practice to claimants and published by the IOPC Funds – the intergovernmental organization established by the 1992 Fund Convention to provide compensation for oil pollution damage arising from spills of persistent oil from tankers.
- .9 As such, the draft Claims Manual for the 2001 Bunkers Convention may describe the type of claims that can be considered as falling within the scope of the 2001 Bunkers Convention. It may also provide information on general principles of admissibility of claims, but it cannot be an authoritative or definitive resource. Ultimately, the nature and admissibility of claims, and the general interpretation afforded to provisions of the 2001 Bunkers Convention are matters that fall to be determined by the national courts of States Parties. This has been made clear in the draft Claims Manual for the 2001 Bunkers Convention text, which has been drafted as a guidance document rather than prescribing a definitive position on admissibility of claims. However, it is recognized that further work on the drafting of the text may be needed to ensure that the draft Claims Manual for the 2001 Bunkers Convention reflects this reality.
- .10 There are several areas where the IOPC Funds' Claims Manual seeks to provide specific guidance but, in some instances, it has been felt preferable to leave issues of evidence and fact-finding in the draft Claims Manual for the 2001 Bunkers Convention text to national jurisdictions and their courts to determine.

7 The co-sponsors note that there are 102 Contracting States to the 2001 Bunkers Convention as of the date of submission. Whilst this represents 95.08% of the world's gross tonnage, there remain many coastal States that are not Contracting States. The co-sponsors are of the view that the adoption and promulgation of a Claims Manual for the 2001 Bunkers

Convention will highlight the importance of the 2001 Bunkers Convention and encourage non-Contracting States to become State Parties.

Action requested of the Committee

- 8 The Legal Committee is invited to:
- .1 take note of the information provided in this document and its annex;
 - .2 consider the recommendation that the work on the draft Claims Manual for the 2001 Bunkers Convention text is taken forward on an intersessional basis to LEG 110; and
 - .3 comment and decide, as appropriate.

ANNEX

CLAIMS MANUAL FOR THE INTERNATIONAL CONVENTION ON CIVIL LIABILITY FOR BUNKER OIL POLLUTION DAMAGE, 2001, (CLAIMS MANUAL FOR THE 2001 BUNKERS CONVENTION) – [2023] EDITION

Adopted by the Legal Committee at its 110th session

Introduction

The Legal Committee of the International Maritime Organization (IMO) is responsible for any legal matters within the scope of the Organization. This includes issues of liability and compensation for damage related to the use and operation of ships, such as ship sourced pollution damage. The Committee consists of all Member States of IMO. It was established in 1967 as a subsidiary body to deal with legal questions which arose in the aftermath of the Torrey Canyon disaster. The International Convention on Civil Liability for Bunker Oil Pollution Damage, 2001 (2001 Bunkers Convention) was developed under the auspices of the IMO's Legal Committee. It entered into force in 2008 and governs liability and compensation for pollution damage arising from ship sourced bunker oil spills.

This Claims Manual for the 2001 Bunkers Convention (or Manual) is a practical guide to presenting claims for compensation against the shipowner or the registered owner's insurer for pollution damage or preventive measures resulting from a spill of bunker oil from a ship covered by the 2001 Bunkers Convention. This Manual was first adopted by the IMO Legal Committee in 2023. This is the 1st edition. The Manual was developed in accordance with the provisions of the 2001 Bunkers Convention.

The Manual is divided into four Sections

- Section 1 briefly describes the purpose of the Claims Manual for the 2001 Bunkers Convention.
- Section 2 contains general information on the 2001 Bunkers Convention and how it works.
- Section 3 provides information on the submission and assessment of claims.
- Section 4 provides more specific information to assist claimants in presenting their claims and is divided into six parts, each dealing with one of the main categories of claims covered by the compensation regime, namely:
 - clean up and preventive measures;
 - property damage;
 - economic loss in the fisheries, mariculture and fish processing sectors;
 - economic loss in the tourism sector;
 - measures to prevent pure economic loss; and
 - environmental damage and post-spill studies.

Section One

The Purpose of the Claims Manual for the 2001 Bunkers Convention

This Claims Manual for the 2001 Bunkers Convention is a practical guidance document drafted by the IMO Legal Committee to assist national courts, claimants, shipowners, insurers and other interested parties with the application of the 2001 Bunkers Convention¹. It is not a substitute for applicable legal requirements and should not be seen as an authoritative interpretation of the 2001 Bunkers Convention. It is not intended to, and nor does it, impose legally binding requirements, but it does provide general information on how the 2001 Bunkers Convention works and aims to assist parties in the submission and assessment of claims resulting from a spill of bunker oil from a ship covered by the 2001 Bunkers Convention.

General information is also provided on the types of incidents that are covered by the 2001 Bunkers Convention and the parties who are liable in the event of a bunker oil spill as well as the likely extent of that liability. This Claims Manual for the 2001 Bunkers Convention is also designed to give a general overview of the admissibility criteria for claims to assist claimants to ensure that the requirements for compensation under the 2001 Bunkers Convention are met.

In addition, this Claims Manual for the 2001 Bunkers Convention provides more specific information that is intended to help claimants with preparing and submitting claims for compensation for pollution damage or preventive measures covered by the 2001 Bunkers Convention.

Section Two

How does the 2001 Bunkers Convention work?

a. Liability and compensation

Under the 2001 Bunkers Convention, the shipowner is strictly liable for pollution damage up to a certain limit of liability based on the size of the ship and subject to the rules on limitation in the jurisdiction concerned. This means that the shipowner is required to provide compensation, even if the pollution was not due to any fault on their part, subject to specific defences from liability². The shipowner is also exonerated from liability in very specific circumstances³.

Claims for compensation for loss or damage may be made by those parties who suffer losses or incur damages caused by pollution resulting from a bunker oil spill. Claims can be made against any of the parties that are defined as the "shipowner" of the ship from which the bunker oil that caused the damage originated, namely the owner, including the registered owner, bareboat charterer, manager and operator of the ship. Any such claims may also be brought directly against the insurer, or other person providing financial security, for the registered owner's liability.

¹ As recognised in section two of this Claims Manual for the 2001 Bunkers Convention, the national courts of the State Parties where the pollution damage occurred or preventive measures were taken are the final arbiters on both the interpretation of the 2001 Bunkers Convention and the admissibility of claims arising under it.

² If the shipowner proves that:

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

³ If the shipowner proves that the pollution damage resulted wholly or partially either from an act or omission done with intent to cause damage by the person who suffered the damage or from the negligence of that person, the shipowner may be exonerated wholly or partially from liability to such person.

Compensation is payable in respect of loss or damage caused in the territory, territorial sea and exclusive economic zone (or equivalent areas) of countries that have become States Parties to the 2001 Bunkers Convention (See a list of the State Parties here) (link to be added), and for the costs of preventive measures, wherever taken. A general description of the type of claim that may arise and how they can be made, is set out later in this Manual. The Manual also describes the general criteria for a claim to be considered to be admissible under the 2001 Bunkers Convention and is intended to assist claimants to progress claims in a timely manner directly with the shipowner or the registered owner's provider of financial security (insurer).

Unlike in the case of a spill of persistent oil from a tanker, there are no international funds available to claimants in the event that the total amount of loss or damage and costs of preventive measures of a bunker spill exceeds the limit of liability of the shipowner.

i. Limitation of Liability of the shipowner

The 2001 Bunkers Convention allows shipowners to limit their liability in the event of a bunker oil spill. The limit of liability is generally determined by another legal regime, either the Convention on Limitation of Liability for Maritime Claims 1976, as amended, or by other applicable national law. Generally, the shipowners can limit their liability to an amount determined by reference to the gross tonnage of their ship.

[In accordance with the Resolution adopted by the IMO Assembly at its 32nd session, the States Parties present at that session have agreed that the shipowners right to limit their liability is virtually unbreakable.]

In very rare cases, the shipowner may be deprived of the right to limit their liability if it is proved that the pollution damage resulted from their personal act or omission, committed with the intent to cause pollution damage, or recklessly and with knowledge that such damage would probably result. In such circumstances the insurer will however still be able to rely on the right to limit its liability.

ii. The Role of national courts

Although this Manual may assist claimants, shipowners and insurers in understanding what claims can be made under the 2001 Bunkers Convention, national courts of the States Parties where the pollution damage occurred or preventive measures taken are the final arbiters on both the interpretation of the 2001 Bunkers Convention and the admissibility of claims arising under it.

As each State will have its own rules and procedures governing such matters, claimants are encouraged to seek local legal assistance as required.

b. What types of incidents are covered?

i. Types of oil covered

The 2001 Bunkers Convention covers incidents in which bunker oil is spilled from any sea-going vessel. Bunker oil includes any hydrocarbon mineral oil used or intended to be used for the operation or propulsion of the ship. It also includes lubricating oil, and any residues of such oils.

Damage caused by spills of persistent oil carried by sea in bulk as cargo is not compensated under the 2001 Bunkers Convention but may be covered under a separate international regime (See IOPC Funds Claims Manual available at www.iopcfunds.org).

The advent of future fuels used for ship propulsion, technically also "bunkers", may lead to the impression that such fuels may also be covered by the 2001 Bunker Convention. Fuels such as methanol, ammonia, hydrogen, LNG and others, whilst used in the propulsion of ships, are not covered by the 2001 Bunkers Convention because they are not hydrocarbon mineral oils and are therefore outside the scope of this Manual.

ii. Types of Ships covered by the Bunkers Convention

The 2001 Bunkers Convention covers pollution damage by bunker oil spills from any seagoing vessel and seaborne craft, of any type whatsoever.

iii. Insurance requirements

The 2001 Bunkers Convention requires the registered owner of a ship over 1,000 gross tonnage (GT) to obtain insurance or other financial security to cover their liability for pollution damage arising under the 2001 Bunkers Convention in the event of a bunker oil spill. Such insurance or financial security is evidenced by a certificate issued by a State Party to the 2001 Bunkers Convention and that is carried on board the ship. This certificate should be considered as sufficient security for claims arising under the 2001 Bunkers Convention. Ships of less than 1,000 GT are not required to maintain this insurance or financial security but, in such circumstances, the shipowner will still be strictly liable for pollution damage caused by bunker oil.

c. What types of pollution damage are likely to be covered for compensation?

The 2001 Bunkers Convention defines pollution damage as:

"loss or damage caused outside the ship by contamination resulting from the escape or discharge of bunker oil from the ship, wherever such escape or discharge may occur, provided that compensation for impairment of the environment other than loss of profit from such impairment shall be limited to costs of reasonable measures of reinstatement actually undertaken or to be undertaken".

Bunker oil means "any hydrocarbon mineral oil, including lubricating oil, used or intended to be used for the operation or propulsion of the ship, and any residues of such oil."

Ship means "any seagoing vessel and seaborne craft, of any type whatsoever."

Pollution damage includes preventive measures, which are defined in the 2001 Bunkers Convention as: "any reasonable measures taken by any person after an incident has occurred to prevent or minimize pollution damage."

The main types of pollution damage likely to be covered are:

i. Clean-up and preventive measures

Compensation could be payable for the cost of reasonable clean-up measures and other measures taken to prevent or minimise pollution damage in a State Party, wherever these measures are taken. For example, if a response were undertaken on the high seas or within the territorial waters of a State that is not a Party to the 2001 Bunkers Convention in order to prevent or reduce pollution damage within the territorial sea or exclusive economic zone of a State Party, the cost of the response could in principle qualify for compensation. Expenses for preventive measures could be recoverable even if no spill of bunker oil occurs, provided that there was a grave and imminent threat of pollution damage.

Compensation could be also payable for reasonable costs associated with the capture, cleaning and rehabilitation of wildlife, such as birds, mammals and reptiles.

ii. Property damage

Compensation could be payable for reasonable costs of cleaning, repairing or replacing property that has been contaminated by bunker oil.

iii. Consequential loss

Compensation could be payable for loss of earnings suffered by the owners of property that has been contaminated by bunker oil (consequential loss). One example of consequential loss is loss of income by fisherfolk as a result of their nets becoming oiled, which prevents them from fishing until their nets are either cleaned or replaced.

iv. Pure economic loss

Under certain circumstances compensation could also be payable for loss of earnings caused by bunker oil pollution suffered by persons whose property has not been polluted (pure economic loss). For example, fishers whose nets have not been contaminated may nevertheless be prevented from fishing because the area of the sea where they normally fish is polluted, or subject to an exclusion zone due to the presence of bunker oil, and they cannot fish elsewhere. Similarly, an owner of a hotel or a restaurant located close to a contaminated public beach may suffer losses because the number of guests falls during the period of the pollution.

Compensation may also be payable for the costs of reasonable measures, such as marketing campaigns, which are intended to prevent or reduce economic losses by countering the negative effects which can result from a major pollution incident.

v. Environmental damage

Compensation could be payable for the costs of reasonable reinstatement measures aimed at accelerating natural recovery of the environmental damage that was caused by the bunker oil spill. Contributions could be made to the costs of post-spill studies provided that they relate to damage which falls within the definition of pollution damage under the 2001 Bunkers Convention, including studies to establish the nature and extent of environmental damage caused by a bunker oil spill and to determine whether or not reinstatement measures are necessary and feasible.

Compensation would not typically be paid in respect of claims for environmental damage based on an abstract quantification calculated in accordance with theoretical models. Nor would compensation typically be paid for damages of a punitive nature on the basis of the degree of fault of the wrong-doer.

vi. Use of advisers

Claimants may wish to engage advisers to assist them in presenting claims for compensation. Compensation could be paid for reasonable costs of work carried out by such advisers in connection with the presentation of claims falling within the scope of the 2001 Bunkers Convention. Whether such costs could be compensated would be assessed in connection with the examination of the particular claim for compensation and account could be taken of the necessity for the claimant to use an adviser, the usefulness and quality of the work carried out by the adviser, the time reasonably needed and the normal rate in the country concerned for work of that kind.

d. When are claims likely to be considered as admissible for compensation?

It is the shipowner and the registered owner's provider of financial security who are liable under the 2001 Bunkers Convention for pollution damage caused by the ship. When a claim for compensation is brought directly against the shipowner or the registered owner's provider of financial security, they could decide to settle the claim out of court if agreement is reached as to the admissibility of the claim. Ultimately, the national courts of States Parties will determine the admissibility of claims as the final arbiters. In either case, the following general criteria could apply to determine admissibility of claims:

- Any expense, loss or damage should actually have been incurred.
- Any expense should relate to measures that are considered reasonable and justifiable.
- Any expense, loss or damage is compensated only if and to the extent that it could be considered as caused by contamination resulting from the bunker oil spill.
- There should be a reasonably close link of causation between the expense, loss or damage covered by the claim and the contamination caused by the bunker oil spill.
- A claimant should be entitled to compensation only if he or she has suffered a quantifiable economic loss.
- A claimant should prove the amount of his or her expense, loss or damage by producing appropriate documents or other satisfactory evidence.

Claimants could be required to make a declaration that their claims are a true reflection of their losses as follows:

My claim is, to the best of my knowledge and belief, a true and accurate reflection of my actual loss. It includes information on all financial or material gains I have received, including from clean-up activities, aid organization or government funds, during the period claimed. I am aware that the presentation of fraudulent documentation could constitute a criminal offence.

A claim could therefore qualify for compensation only to the extent that the amount of the loss or damage is actually demonstrated. All elements of proof could be considered, but a claimant should provide sufficient evidence that will enable the shipowner and the registered owner's insurer to make their own judgement as to the amount of the expense, loss or damage actually suffered. The extent to which claimants are able to reduce or mitigate their losses will also be taken into account.

Despite the generality of the foregoing, it is important to bear in mind that each claim is considered on the basis of its own merits. The general criteria listed above therefore allows for some degree of flexibility depending on the particular circumstances of the claimant, industry or State Party concerned as well as the nature of the incident that has occurred which resulted the bunker oil spill.

The specific criteria that could apply to various types of claims are set out in [Section ..].

Section Three

Submission and Assessment of Claims

a. Who can make a claim?

Anyone who has suffered pollution damage in a State that is Party to the 2001 Bunkers Convention may make a claim for compensation.

Claimants may be private individuals, partnerships, companies, private organizations or public bodies, including States or local authorities. If several claimants suffer similar damage, they may find it more convenient to submit co-ordinated claims, which will also facilitate the processing and assessment of the claims.

b. To whom should a claim be submitted?

The parties defined as the "shipowner" in the 2001 Bunkers Convention, including the registered owner, although it will usually be handled by the registered owner's insurer and who is often one of the Protection and Indemnity Associations (P&I Clubs) that insure the third-party liabilities of shipowners, including liability for oil pollution damage. In practice, claims are often channelled through the office of the insurer's correspondent closest to the location of the incident. Claims, together with supporting documentation, can then be sent to either the insurer or the insurer's local correspondent who will usually make themselves available in the locality of the incident to ensure that claimants have the necessary contact details for the submission of claims.

Occasionally, when an incident is likely to give rise to a large number of claims, the insurer may set up a local claims office to handle claims more efficiently. Claimants should then submit their claims to that local claims office. Details of claims offices may be given in the local press and by the insurer's local correspondent.

All claims are referred to the registered owner's insurer for decisions on whether or not they qualify for compensation, and, if so, the amount of compensation due to the claimants.

c. How can I find information on the shipowner?

As there are no supplementary international funds available to provide compensation in the event of a bunker oil spill, a claim must be submitted to the "shipowner" as defined in the 2001 Bunkers Convention, the shipowner's limitation fund, or the insurer or financial security provider of the registered owner.

If the name of the ship is known, the ship registry of the flag State may provide more information on the shipowner. Alternatively, online databases such as Equasis⁴ can be used to identify the shipowner and/or their insurer. The International Group of P&I Associations also maintain an online ship search function for ships that are entered for insurance (P&I) cover with a member P&I Club.⁵

If the identity of the shipowner or their ship is unknown, claimants should contact their State government for assistance.

⁴ <http://www.equasis.org/EquasisWeb/public/HomePage>: Equasis is an information system which collates existing safety-related information on ships from both public and private sources, and makes it available on the Internet. Its services are free of any charge; registration is required as a user to access the information.

⁵ <https://www.igpandi.org/ship-search/>

d. How should a claim be presented?

Claims should be submitted in writing (preferably by electronic mail). If appropriate, the insurer will issue claim forms to assist claimants in the presentation of claims.

A claim should be presented clearly and with sufficient information and supporting documentation to enable the amount of the damage to be properly assessed and quantified. Each item of a claim must be substantiated by an invoice or other relevant supporting documentation, such as work sheets, explanatory notes, accounts and photographs. It is the responsibility of claimants to submit sufficient evidence to support their claims. It is important that the documentation is complete and accurate. If the documentation in support of a claim is likely to be considerable, claimants should contact the insurer's local correspondent or the local claims office as soon as possible after costs or losses have been incurred to discuss claim presentation.

e. What information should a claim contain?

As a minimum, each claim should contain the following basic information:

- The name and address of the claimant and of any legal or other representative.
- The identity of the ship involved in the incident.
- The date, place and specific details of the incident, if known to the claimant.
- The type of pollution damage sustained by the claimant.
- The amount of compensation claimed together with supporting evidence.

Additional information may be required for specific types of claim (see Section ..).

f. Within what period should a claim be made?

Claimants are strongly encouraged to submit their claims as soon as possible after the damage has occurred. If a formal claim cannot be made shortly after an incident, claimants should endeavour to provide notification as soon as possible to the shipowner and the registered owner's insurer of their intention to present a claim at a later stage. To avoid requests for further information and to speed up the process, claimants should provide as much of the information detailed above as possible.

Claimants will ultimately lose their right to compensation under the 2001 Bunkers Convention unless they bring court action against the "shipowner" and/or the registered owner's insurer within three (3) years of the date on which the damage occurred. Although damage may occur sometime after an incident takes place, court action must in any event be brought within six (6) years of the date of the incident. Claimants are recommended to seek legal advice if they have not been able to settle their claims to avoid their claims becoming time-barred.

g. Claims assessment and payment

The registered owner's insurer will usually appoint experts to monitor clean-up operations and wider pollution damage, to investigate the technical merits of claims and to make independent assessments of the losses.

The P&I Clubs and other insurers have developed a worldwide network of experts with expertise in the various sectors likely to be affected by ship sourced oil pollution. It also draws on the advice of ITOPF Ltd., a non-profit making organization funded primarily by shipowners through their insurers. ITOPF's technical staff has acquired considerable experience in spill response and are very familiar with claims for losses arising from ship sourced oil pollution damage, including pollution damage caused by bunker oil. During the clean-up phase of an

incident members of ITOPF's technical staff usually attend on site where they are able to offer technical advice on the most appropriate response measures consistent with the intention and objectives of the 2001 Bunkers Convention.

Although the P&I Clubs rely on experts to assist in the assessment of claims, the decision as to whether to approve or reject a particular claim rests entirely with the relevant P&I Club.

Once the insurer has made its decision regarding a claim, the claimant is contacted, usually in writing, to explain the basis of the assessment. If the claimant decides to accept an offer of compensation, they will be asked to sign a receipt upon payment of the amount due. In the event that the claimant does not agree with the assessment of the claim, they may provide additional information and request a further evaluation. Alternatively, claimants can bring the matter before the competent court in the State in which the damage occurred

h. How long does it take to assess and pay claims?

Insurers try to reach agreement with claimants and pay compensation as promptly as possible. They may make provisional payments before a final agreement can be reached if a claimant would otherwise suffer undue financial hardship. However, provisional payments are subject to special conditions and limits, particularly if the total monetary amount of claims exceeds the total amount of compensation available, since a system of equitable apportionment may need to be put in place in such circumstances

The speed with which claims are agreed and paid depends largely on how long it takes for claimants to provide the required information. Claimants are therefore advised to follow this Manual as closely as possible and to co-operate fully with any appointed experts and provide all information relevant to the assessment of the claims.

Target time frame for assessing claims

Following receipt of a completed claim form and registration of a claim, the insurer will aim to provide claimants with an acknowledgement of receipt of the claim together with an explanation of the assessment procedure going forward. Subsequently, following registration of the claim, the insurer will aim to provide the claimant with an initial view in the form of a letter notifying the claimant, inter alia, of one of the following:

- A.** Claim is admissible and is being assessed;
- B.** Claim is admissible in principle but further supporting evidence (usually in the form of documents) are required to assess the claim;
- C.** Claim is admissible but further time is required to assess the claim;
- D.** Claim is not admissible and is therefore rejected.

The size and complexity of the incident will determine the time period this process.

[Fast track assessment of small claims

How claims will be handled for each individual incident is a matter for decision by the relevant insurer. In order to avoid undue delay in settlement of small claims, the insurer could decide, after considering the cost effectiveness and merit of assessing large numbers of small claims, to approve the use of 'fast track' assessments for the particular incident and set the quantum of what constitutes a 'small' claim for that incident. It is worth reiterating that the availability of these 'fast track' assessments is at the discretion of the relevant insurer and will be made on

the basis of a brief investigation by the insurer and its experts of the circumstances of the loss and must include confirmation that such losses have actually occurred and that there was a clear causal link between that loss and the incident. Alternatively, claimants may prefer to await a settlement based on an in-depth, comprehensive assessment which will inevitably take longer. It is likely that claimants who disagree with the settlement offer under a 'fast-track' assessment will only have the assessment of their claim reconsidered based on the provision of new information proving their loss. This may result in a higher or lower assessment than that first offered under the fast-track assessment process.]

i. What if a claimant does not agree with the claims settlement offer?

An aim of the 2001 Bunkers Convention is the amicable settlement of claims by the parties without the need to involve lawyers or the courts. However, if it is not possible to reach an agreement on the assessment of the claim, the claimant has the right to bring their claim before the competent court in the State in which the damage occurred. Since the 2001 Bunkers Convention entered into force in 2008, court action by claimants have not been necessary in the majority of incidents where pollution damage arose under the scope of the 2001 Bunkers Convention.

Section Four

Specific Guidelines on the submission of different types of claims

a. Claims for costs of clean-up and preventive measures

Scope of compensation

In most cases, clean-up operations at sea and on shore are considered as preventive measures since such measures are usually intended to prevent or minimise bunker oil pollution damage.

Compensation can be payable for the costs of 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. Compensation can also be paid for the costs of mobilising clean-up equipment and salvage resources for the purpose of preventive measures even if no pollution occurs, provided that the incident created a grave and imminent threat of causing bunker oil pollution damage and on the condition that the measures were reasonable in proportion to the threat posed.

Loss or damage caused by reasonable measures to prevent or minimise pollution can also be compensated. For example, if clean-up measures result in damage to roads, piers and embankments, the cost of the resulting repairs can be compensated. However, claims for work that involves improvement rather than merely repair of damage resulting from a bunker oil spill are unlikely to be compensated.

As a consequence of concerns for animal welfare, efforts are often made to clean contaminated animals, particularly oiled birds, mammals and reptiles. The capture, cleaning and rehabilitation of oiled wildlife requires trained personnel, and the work should be carried out by special interest groups, often with the assistance of volunteers who establish cleaning stations close to the spill location. Cleaning is difficult and slow and causes 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 incident, materials, medication and food are normally compensable, as are reasonable food and accommodation costs of volunteers. If several special interest groups undertake cleaning and rehabilitation activities these should be properly co-ordinated to avoid duplication of effort. Deductions will be made for funds raised from the public for the specific purpose of maintaining field operations for a specific incident.

Claims for the costs of measures to prevent or minimise pollution damage are assessed on the basis of objective criteria. The fact that a government or other public body decides to take certain measures does not in itself mean that the measures are reasonable for the purpose of compensation under the 2001 Bunkers Convention. The technical reasonableness is assessed on the basis of the facts available at the time the decision was made, with the facts known at the time. However, those in charge of the operations should continually reappraise their decisions in the light of developments and technical advice.

Claims for costs of response measures are unlikely to be compensated if 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. At the time the decision was taken to deploy such measures, it may have been reasonable to expect that they would have been effective.

The costs incurred, and the relationship between those costs and the benefits derived or expected, should be reasonable. 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 is usually necessary in the case of a public amenity beach, particularly immediately prior to or during the holiday season. Account is taken of the particular circumstances of an incident.

Claims for the cost of measures to remove any remaining bunker oil from a sunken ship are also subject to the overall criterion of reasonableness from an objective point of view, as it applies to all preventive measures. In order for the costs of such measures to be admissible, the measures should have been reasonable from an objective point of view at the time they were taken, as set out in the previous paragraphs, and the relationship between the costs and the benefits derived or reasonably to be expected at the time the measures were taken should be reasonable as well. If it is possible to measure, with a degree of accuracy, at reasonable cost and with minimal risk of causing further pollution, the quantity of oil remaining on board a sunken ship, this should normally be the first step before deciding whether or not to remove the oil.

Whether measures to remove any remaining bunker oil from a sunken ship were reasonable is determined on a case-by-case basis, usually taking into account the following factors, as appropriate:

A. Factors relating to the situation and condition of the sunken ship, such as:

- The likelihood of the release of the remaining bunker oil from the ship, for example because of damage to its hull, age, corrosion, etc.;
- The quantity, type and characteristics of the bunker oil remaining on board the ship; and
- The stability of the seabed at the location of the sunken ship.

B. Factors relating to the likelihood, nature and extent of the possible pollution damage, such as:

- The likely pollution damage which would have resulted from the release of the remaining bunker oil from the ship, especially in relation to the cost of the removal operation;
- The extent to which areas most likely to be affected by a release of the remaining bunker oil from the ship were vulnerable to oil pollution damage, either from an economic or an environmental point of view; and
- The likely environmental damage which would have resulted from the release of the remaining bunker oil from the ship.

C. Factors relating to the feasibility of the operation, such as:

- The technical feasibility and likelihood of success of the operation, for example taking into account weather and geospatial conditions, the presence of other wrecks in the vicinity and whether the ship was at a depth at which operations of the kind envisaged were likely to be carried out successfully;
- The safety of personnel undertaking the work, for example the risk of working in dangerous, exposed locations; and
- The likelihood of a release of a significant quantity of bunker oil from the ship during the wreck removal operation.

D. The cost of the operations, especially in relation to the likely pollution damage which would have resulted from the release of the remaining bunker oil from the ship.

Costs of reasonable aerial surveillance operations to establish the extent of pollution at sea and on shorelines and to identify resources vulnerable to contamination can be accepted. Where several organizations are involved in the response to an incident, aerial surveillance should be properly co-ordinated to avoid duplication of effort and cost.

Claims for clean-up operations may include the cost of personnel and the hire or purchase of equipment and materials. Claims for the costs of equipment placed on standby, but not actually deployed, are usually 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 can be accepted. In the assessment of claims for the cost of equipment purchased for a particular bunker oil spill, deductions should be made to take into account the residual value of the equipment if it is suitable for use in future incidents or for some other purpose. If a public authority, as part of its contingency planning, has purchased and maintained materials or equipment so that they are immediately available to respond should an oil spill occur, compensation can be paid for a reasonable part of the purchase price of the items actually used. This is usually based on a daily rate that is calculated in such a way that the capital cost of the item is recovered over its expected useful working life, plus a proportion of the costs of storing and maintaining the equipment. A reasonable element of profit could also be included if the equipment was owned by a private contractor.

Clean-up operations frequently result in considerable quantities of oil and oil material being collected. Reasonable costs for storing and disposing of the collected material can be accepted. If the claimant has received any extra income following the sale of the recovered bunker oil, these proceeds would normally be deducted from any compensation to be paid.

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 can be paid for reasonable additional costs incurred by such organizations, that

is, 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.

Compensation can also be paid for a reasonable proportion of so-called fixed costs incurred by public authorities and quasi-public bodies, that is, costs which would have arisen for 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 should correspond closely to the clean-up period in question and should not include remote overhead charges.

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 can qualify in principle for compensation under the 2001 Bunkers Convention. However, if salvage operations have another purpose, such as saving the ship and/or the cargo, the costs incurred should not be accepted under the 2001 Bunkers Convention. 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 can be 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. Instead, compensation can be limited to costs, including a reasonable element of profit.

Presentation of claims

It is essential that claims for the costs of clean up are submitted with supporting documentation showing how the expenses for the operations are linked with the actions taken. The key to the successful recovery of costs is good record keeping.

Good record keeping means that a claim should 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, timesheets and wage records, whilst providing useful confirmation of expenditure, are insufficient by themselves. A brief report describing the response activities and linking these with expenses will greatly facilitate the timely assessment of claims.

Spreadsheets offer a particularly useful way of summarising some of the key information required in support of a claim. Each response organization or contractor should maintain a daily log of activities, including decisions taken, details of the number of personnel involved, the type and quantity of equipment and materials used, and the type and length of shoreline cleaned. If response vessels are used to combat bunker oil at sea, extracts from their deck logs covering their period of deployment provide an additional useful source of information.

Specific information should be itemised as follows:

- Delineation of the area affected by the spill, describing the extent of the bunker oil pollution damage and identifying those areas most heavily contaminated (for example using maps or nautical charts and supported by photographs, video or other recording media).
- Analytical and/or other evidence linking the bunker oil pollution with the ship involved in the incident (such as chemical analysis of bunker oil samples, relevant wind, tide and current data, observation and plotting of floating oil movements).
- Summary of events, including a description and justification of the work carried out at sea, in coastal waters and on shore, together with an explanation of the grounds for selecting the various working methods.

- Dates on which work was carried out at each site.
- Labour costs at each site (number and categories of response personnel, the name of their employer, hours or days worked, regular or overtime rates of pay, method of calculation or basis of rates of pay and other costs).
- Travel, accommodation and living costs for response personnel.
- Equipment costs at each site (types of equipment used, by whom supplied, rate of hire or cost of purchase, method of calculation of hire rates, quantity used, period of use).
- Cost of replacing equipment damaged beyond reasonable repair (type and age of equipment, by whom supplied, original purchase cost and circumstances of damage supported by photographs, video or other recording material).
- Consumable materials (description, by whom supplied, quantity, unit cost and where used).
- Any residual value at the end of the operations of equipment and materials purchased specifically for use in the incident in question.
- Age of equipment not purchased specifically for use in the incident in question but used in that incident.
- Transport costs (number and types of vehicles, vessels or aircraft used, number of hours or days operated, rate of hire or operating cost, method of calculating rates claimed).
- Cost of temporary storage (if applicable) and of final disposal of recovered oil and oily material, including quantities disposed, unit cost and method of calculating the claimed rate.

Claims for the costs of treatment of oiled wildlife should essentially follow a similar pattern to that set out above for clean-up costs. Details of the number of animals treated and the number successfully released back into the wild should also be provided. If the specialist groups undertaking the work mounted campaigns to raise public funds for the purpose of maintaining field operations for a specific incident, details should be provided, including the costs of the campaigns, the amounts raised and how the money was utilised.

Claims for Value Added Tax (VAT) by central governments

The central government of an affected State may incur significant costs following a bunker oil spill, inter alia, by using its own resources to undertake the clean-up and counter-pollution operations, or by engaging private contractors specialising in the collection, transport and treatment of waste.

The central government of an affected State which incurs VAT in connection with the prevention of oil pollution operations may recover VAT, if its national law allows for its inclusion in the claim for compensation.

In cases where it is not clear whether national law allows for the inclusion of VAT in the claim for compensation, the claim can be assessed applying the rules on the law of damages, namely that:

- (1) a party may not recover damages where it has suffered no loss; and
- (2) a party may not enjoy a double recovery of damages.

b. Claims for property damage

Scope of compensation

Reasonable costs of cleaning, repairing or replacing property that has been contaminated by bunker oil, for example the hulls of vessels, pleasure craft, fishing gear and mariculture facilities, can be compensable. This also applies to the costs of cleaning the intakes, machinery and equipment of industrial installations that extract seawater, such as power stations and desalination plants and units. If it is not possible for the property to be cleaned or repaired, then replacement costs can also be accepted. However, compensation is not usually paid for the full costs of replacing old items with new ones. Instead, account is taken of the age of the property and its expected durability. For example, if a two-year old fishing net has to be replaced due to heavy contamination, but it would have needed replacing after three years' use anyway, only one third of the replacement cost would be compensated.

Property damage may in some cases result in an economic loss until the property is cleaned, repaired or replaced as a consequence of the owner of the property not being able to conduct their normal business. For example, mariculture may be disrupted if the facilities are contaminated by bunker oil. Such consequential loss can be compensable (see sub- [...], dealing with claims for economic loss).

Claims can also be accepted for costs of repairs to roads, piers and embankments damaged by heavy vehicles, such as trucks and earth-moving equipment, involved in clean-up operations. In assessing these claims account should be taken of the condition of the property prior to the incident and the normal repair schedules.

Presentation of claims

Claimants should provide evidence of the damage to their property and invoices confirming that repairs, cleaning or replacement have been undertaken or quotations for the work to be carried out.

It is important that property is retained or at least photographed. Claimants are advised to contact the representative of the insurer (or where appropriate the designated surveyor or local claims office) without delay so that a survey of the damaged property can be arranged and carried out if appropriate.

Specific information should be itemised as follows:

- Extent of pollution damage to property and an explanation of how the damage occurred.
- Description and photographs of items destroyed, damaged or needing cleaning, repair or replacement (for example boats, fishing gear, roads, clothing), including their location.
- Cost of repair work, cleaning or replacement of items.
- Age of damaged items replaced.
- Cost of restoration after clean up, such as repair of roads, piers and embankments damaged by the clean-up operations, with information on normal repair schedules.

c. Claims for economic loss in the fisheries, mariculture and fish processing sectors

Scope of compensation

Compensation can be payable in the fisheries, mariculture and fish processing sectors for loss of earnings by the owners of property contaminated by bunker oil (consequential loss). For example, fisherfolk whose gear becomes contaminated may suffer loss of income for the period during which they are prevented from fishing pending the gear being cleaned or replaced.

However, losses can also be suffered by persons whose property has not been contaminated by bunker oil (pure economic loss). For example, fisherfolk whose gear does not become contaminated may decide not to go fishing in order to prevent their gear and catch becoming contaminated resulting in economic loss. Reasonable levels of reduced income after an incident due to reputation or market effects can also be considered for compensation.

In some instances, natural and cultivated stocks of fish, shellfish and other marine products may become contaminated with oil to such an extent that governments, due to human health concerns, impose temporary fishing and harvesting bans.

Owners of mariculture facilities may suffer losses as a result of the interruption of feeding, growth or normal stocking cycles. If the level of contamination is not sufficient to cause health concerns, fisherfolk and fish cultivators may nevertheless impose their own temporary bans to protect markets. Owners of fish processing facilities may suffer losses due to the contamination of premises and equipment or shortages of supply due to interruption of fishing and mariculture activities.

Claims for economic loss not resulting from property damage, for example from businesses that depend directly on the fisheries and mariculture activities (including suppliers of fuel and ice, fish porters, fish wholesalers and retailers), can qualify for compensation only if the loss was caused by contamination. In other words, a claim is not accepted solely because a pollution incident occurs. All claims in the fisheries, mariculture and fish processing sectors should satisfy the general criteria set out in Section XX. However, in order for a claim for pure economic loss to be accepted for compensation there should be a sufficiently close causal link between the contamination and the loss or damage. When considering whether such a close link exists, account is taken of the following factors:

- The geographic proximity of the claimant's business activity to the contaminated area (for example if fisherfolk operate predominantly in the affected area or if a fish farm or processing facility is located on or very close to the affected coast).
- The degree to which a claimant's business is economically dependent on an affected resource, such as a polluted fishing ground (for example whether fisherfolk also exploit a nearby, unaffected fishing ground, or is able to exploit an alternative fishing ground to the one affected without being economically disadvantaged).
- The extent to which a claimant had alternative sources of supply or business opportunities (for example whether a fish processor was able to find alternative sources of fish).
- The extent to which a claimant's business forms an integral part of the economic activity within the area affected by the spill (for example if a claimant's business is located or has assets in the affected area or provides employment for people living there).

Claims for economic losses suffered by employees who have suffered a reduction in wages, been placed on part-time work, or been made redundant as a consequence of bunker oil pollution damage can qualify for compensation if there is a close causal link between their loss and the pollution damage. The period for which the claimant may be compensated should not exceed the period for which the employer has, or would have had an admissible claim, since the employer theoretically would be in a position to re-employ the claimant at the end of the admissible period. When considering whether such a close link exists, consideration should be given to the employment practices, laws and regulations of the affected State, in particular, to the following factors:

- claimants should have a concluded contract of employment (either written, oral or implied) at the time of the bunker oil pollution damage;
- actual commencement of employment by the time of the pollution damage is not necessarily required, but mere expectation of employment is usually regarded as insufficient link of causation;
- claimants should have suffered economic loss as a result of a reduction in wages, having been placed on part-time work or having been made redundant by his/her employer for the reason that the employer's business was affected by the bunker oil pollution damage (regardless of the status of the submission of any claim(s) by the employer); and
- if alternative employment opportunities exist in the same geographical area, claimants should have tried to reduce or mitigate their losses by applying for such opportunities. The meaning of "alternative employment opportunity" and "same geographical area" should be determined on a case-by-case basis, taking into account the circumstances of the claimants, their employment and those of the areas affected.

A government may recover the amount of the social security paid to victims in relation to their economic losses suffered as a result of a reduction in wages, having been placed on part-time work or having been made redundant as a consequence of the bunker oil pollution damage, if its national law allows for the recovery of the amounts paid from the paying parties.

Experience shows that mortalities of wild fishery stocks arising from oil spills are very rare. However, if there is concern amongst fisherfolk that mortalities have occurred in fish stocks, they should contact the representative of the insurer (or where appropriate the designated surveyor or local claims office) without delay so that a survey of the damaged resource can be arranged and carried out.

Mortalities in mariculture stocks following an incident are also rare, but if they do occur the claimant should document the loss by preserving samples and taking photographic evidence to demonstrate the nature and extent of the loss. Claimants are again advised to contact the representative of the insurer (or where appropriate the designated surveyor or local claims office) without delay so that a survey of the damaged resource can be arranged and carried out.

If farmed fish or shellfish are destroyed, it is important that scientific or other evidence in support of the destruction decision is provided. The decision by a public authority to impose fishing or harvesting bans is not considered as conclusive justification for destroying produce affected by a ban. Claims for losses resulting from the destruction of marine products or fishing or harvesting bans can be accepted if and to the extent that such destruction or bans were reasonable. When assessing whether the destruction or a ban was reasonable, account should be taken of the following factors:

- Whether the produce was contaminated.

- The likelihood that the contamination would disappear before the normal harvesting time.
- Whether the retention of the produce in the water would prevent further production.
- The likelihood that the produce would be marketable at the time of normal harvesting.

Since the assessment of whether the destruction or ban was reasonable is based on scientific and other evidence, it is important that sampling and testing are carried out by chemical analysis and for sensory oil taste (taint). Samples from an area affected by the bunker oil spill (suspect samples) and control samples from a nearby stock or commercial outlet outside the polluted area should be tested at the same time. The two groups of samples should be of equal numbers. In the case of taint testing, the testers should not be able to identify whether the sample being tasted is a suspect or a control sample (blind testing).

Presentation of claims

The assessment of claims for economic loss in the fisheries, mariculture and processing sectors is, whenever possible, based on a comparison between the actual financial results during the claim period and those for previous periods, for example in the form of audited accounts or tax returns of the individual claimant for the three years prior to the incident. The assessment is not based on budgeted figures. The criterion should be whether the claimant's business as a whole has suffered economic loss as a result of the bunker oil pollution damage. The purpose of examining historical financial results is to make it possible to determine the revenue that could have been expected during the period covered by the claim if the spill had not occurred by taking into account the past economic performance of the claimant's business, for example whether its revenues had been increasing or decreasing or had remained stable over recent years, and any underlining reasons for such trends. In doing so, account is taken of the particular circumstances of the claimant and any evidence presented. In addition, catch records, sales records and records of fishing expenses, or other evidence that indicates normal fishing income and expenditure, may be considered, as well as various aspects of fishing regulations that apply to the fisheries in the polluted area.

Consideration is also given, as appropriate, to changes in fishing effort, species mix, catch rates, sales prices and expenses, according to prevailing trends in the fishing activities in which the claimant is engaged and their regulation. In the case of a relatively new fishing activity or business with incomplete or no trading records, the average reduction from similar activities or businesses in the affected area can sometimes be used by assuming that the new enterprise would have suffered a similar downturn.

Compensation can be paid on the basis of lost gross profit, and so saved overheads or other normal expenses not incurred as a result of the incident have to be deducted from the loss in revenue. Such variable costs fluctuate depending on the level of business achieved. The nature of items to be taken into account should be business-specific but could include cost of purchases such as food, fishing bait, ice and packaging, fuel and lubricants, utilities such as gas and electricity, and transport. Any saved labour or crew costs should also be deducted from the reduction in turnover.

Claimants need to substantiate their loss with appropriate evidence, including the following information:

- Nature of the loss, including evidence that the alleged loss resulted from the contamination.

- Monthly breakdown of income for the period of the loss and over the previous three years.
- Where possible, monthly breakdown of the quantity (kilograms) of each marine product caught, harvested or processed for the period of the loss and over the previous three years.
- Saved overheads or other normal variable expenses.
- Method of calculation of loss.

Claimants should indicate whether they have received any extra income as a result of the incident. For example, claimants should indicate whether they have received any payments or interim compensation from public authorities or other bodies in connection with the incident. Deductions will not normally be made, however, for small amounts paid to individuals who, without acting to protect their own property or trade, take part in general clean-up operations.

Claimants who have suffered a reduction in wages, been placed on part-time work, or been made redundant as a consequence of bunker oil pollution damage, should disclose any compensation received from social security, contractually or non-contractually agreed redundancy payment, or any other source, whether determined by national law or otherwise, which provided extra income to remedy the loss. Compensation may be payable to the claimant for the unrecovered part of his/her loss, taking into account any such payments. A claimant should not receive double payment.

It is recognised that some fishery and mariculture sectors are operated on a very small scale, some of which are at a subsistence or only semi-commercial level. Such claimants may not be required to maintain records of catches or income and will therefore have difficulty in submitting documentary evidence in support of their claims. In such circumstances claims would be assessed on the basis of relevant information available, such as government statistics or other published information and field surveys of the affected fishery and similar unaffected fisheries. Such claimants should seek legal advice with regard to the evidence that may be required in their own jurisdiction.

d. Claims for economic loss in the tourism sector

Scope of compensation

Businesses in the tourism sector, or that derive a large part of their income from tourists, which are located close to contaminated public amenity beaches may suffer loss of profit because the number of guests falls during the period of the pollution. However, claims for such economic loss (normally referred to as pure economic loss, see paragraphs xx - xx) can qualify for compensation only if the loss was caused by contamination. In other words, a claim is not usually accepted solely on the grounds that a pollution incident occurs. All claims in the tourism sector should satisfy the general criteria set out in Section xx. However, in order for a claim within this sector to qualify for compensation there should be a sufficiently close causal link between the contamination and the loss or damage suffered.

When considering whether such a close link exists, account is taken of the following factors:

- The geographic proximity of the claimant's business activity to the contaminated area (for example whether a tourist hotel, campsite, restaurant or bar is located on or close to the affected coast).
- The degree to which the claimant's business is economically dependent on an affected coastline (for example whether a hotel or restaurant located close to an affected coast caters solely or predominantly for leisure visitors or for the business community).

- The extent to which a claimant had alternative sources of supply or business opportunities (for example whether a reduction in income from tourists was offset by income from those involved in the response to a bunker oil pollution incident, such as clean-up personnel and representatives from the media).
- The extent to which the claimant's business forms an integral part of the economic activity within the area affected by the spill (for example whether the business is located or has assets in the area, or employs people living there).

Claims for economic losses suffered by employees who have suffered a reduction in wages, been placed on part-time work, or been made redundant as a consequence of pollution damage can qualify for compensation if there is a close causal link between their loss and the bunker oil pollution damage. The period for which the claimant may be compensated should not exceed the period for which the employer has, or would have had an admissible claim, since the employer theoretically would be in a position to re-employ the claimant at the end of the admissible period. When considering whether such a close link exists, consideration should be given to the employment practices, laws and regulations of the affected State, in particular, to the following factors:

- claimants should have a concluded contract of employment (either written, oral or implied) at the time of the bunker oil pollution damage;
- actual commencement of employment by the time of the bunker oil pollution damage is not necessarily required, but mere expectation of employment is usually regarded as insufficient link of causation;
- claimants should have suffered economic loss as a result of a reduction in wages, having been placed on part-time work or having been made redundant by his/ her employer for the reason that the employer's business was affected by the bunker oil pollution damage (regardless of the status of the submission of any claim(s) by the employer); and
- if alternative employment opportunities exist in the same geographical area, claimants should have tried to reduce or mitigate their losses by applying for such opportunities. The meaning of 'alternative employment opportunity' and 'same geographical area' should be determined on a case- by-case basis, taking into account the circumstances of the claimants, their employment and those of the areas affected.

A government may recover the amount of the social security paid to victims in relation to their economic losses suffered as a result of a reduction in wages, having been placed on part-time work or having been made redundant as a consequence of the pollution damage, if its national law allows for recovery of the amounts paid from the paying parties.

Presentation of claims

The assessment of claims for pure economic loss in the tourism sector is, whenever possible, based on a comparison between the actual financial results during the claim period and those for previous periods, for example in the form of audited accounts or tax returns of the individual claimant for the three years prior to the incident. The assessment is not based on budgeted figures. The criterion should be whether the claimant's business as a whole has suffered economic loss as a result of the contamination. The purpose of examining historical financial results is to make it possible to determine the revenue that could have been expected during the period covered by the claim by taking into account the past economic performance of the claimant's business, for example whether its revenues had been increasing or decreasing or had remained stable over recent years, and any underlying reasons for such trends. In doing so, account is taken of the particular circumstances of the claimant and any evidence presented.

In the case of relatively new businesses with incomplete or no trading records, the average reduction of similar businesses in the affected area can sometimes be used by assuming that the new business would have suffered a similar downturn.

Compensation can be paid on the basis of lost profit, and so saved overheads or other normal variable expenses not incurred as a result of the incident have to be deducted from the loss in revenue. Such variable costs fluctuate depending on the level of business achieved. The nature of items to be taken into account should be business-specific but could include cost of purchases such as food, hotel toiletries and goods for sale such as souvenirs, utilities such as fuel and electricity, cleaning and maintenance costs. Any saved labour costs should also be deducted from the reduction in turnover, but the employee may be eligible to claim separately for their loss resulting from reduced or lost employment.

Claimants should substantiate their loss with appropriate evidence, including the following information:

- Nature of the loss, including evidence that the alleged loss resulted from the contamination.
- Monthly breakdown of income for the period of the loss and for the same period for the previous three years.
- Where possible, monthly breakdown of the number of units sold for the period of the loss and for the previous three years (for hotels the number of bedrooms let, for campsites the number of pitches let, for self-catering accommodation the number of weeks let, for restaurants the number of meals sold and for tourist attractions the number of visitors/tickets sold; for other businesses such as shops and bars, only a breakdown of income is required).
- Details of changes in capacity of the business (for example the number of bedrooms in a hotel) and changes in opening hours or prices charged in the year in which the loss occurred and during the previous three years.
- Saved overheads or other normal variable expenses.
- Method of calculation of loss.

Claimants should indicate whether they have received any extra income as a result of the incident. For example, claimants should indicate whether they have received any payments or interim compensation from public authorities or other bodies in connection with the incident.

Claimants who have suffered a reduction in wages, been placed on part-time work, or been made redundant as a consequence of pollution damage, should disclose any compensation received from social security, contractually or non-contractually agreed redundancy payment, or any other source, whether determined by national law or otherwise, which provided extra income to remedy the loss. Compensation may be payable to the claimant for the unrecovered part of his/her loss, taking into account any such payments but a claimant should not receive double payment.

e. Claims for costs of measures to prevent pure economic loss

Scope of compensation

Claims may be accepted for the costs of measures to prevent or minimise pure economic loss, which if sustained, would qualify for compensation under the 2001 Bunkers Convention. Such measures may be aimed, for example, at counteracting the negative impact of the pollution on the fishery and tourism sectors. In order to qualify for compensation, the measures should fulfil the following requirements:

- The cost of the measures should be reasonable.

- The cost of the measures should not be disproportionate to the further damage or loss that they are intended to reduce or mitigate.
- The measures should be appropriate and offer a reasonable prospect of being successful (for example, measures to restore confidence in seafood products should normally only be undertaken once fishing grounds are cleared of contamination and there is little or no risk of further contamination).
- In the case of marketing campaigns, the measures should relate to actual targeted markets (for example, measures to counteract the negative effects on tourism in a particular area should normally be focused on the normal visitor client base of that area).

Claims for the costs of marketing campaigns or similar activities can be accepted if the activities undertaken are additional to measures normally carried out for this purpose. In other words, compensation can be available only for additional costs resulting from the need to counteract the negative effects of the pollution. Marketing campaigns that are too general a nature, or that would have been carried out anyway, are not usually accepted. If several public bodies undertake campaigns relating to the same negative effects, these campaigns should be properly co-ordinated to ensure that there is no duplication of effort. Claims for measures to prevent pure economic loss are not normally accepted until the measures have actually been carried out.

The criterion of reasonableness should be assessed in the light of the particular circumstances of the case, taking into account the interests involved and the facts known at the time the measures were taken. When claims for the cost of an organization's marketing activities are considered, account should be taken of the claimant's attitude towards the media after the incident and, in particular, whether that attitude increased the negative effects of the pollution.

Presentation of claims

Claims relating to marketing campaigns should include the following information:

- Details of the nature, purpose, timing and target group for each additional marketing activity undertaken.
- Detailed breakdown of the costs of any marketing strategy or campaign to reduce or mitigate the economic impact of the incident with relevant invoices/ documentation to support costs.
- Details and costs of the claimant's normal marketing strategies and campaigns (if any).
- Results of the additional marketing activity, where measurable results are available.

f. Claims for environmental damage and post-spill studies

Scope of compensation

Under the 2001 Bunkers Convention, compensation for impairment of the environment is usually limited to loss of profit from such impairment and costs of reasonable measures of reinstatement actually undertaken or to be undertaken.

Examples of acceptable claims for economic loss due to environmental damage can include a reduction in revenue for a marine park or nature reserve which charges the public for admission or a reduction in catches of commercial species that are directly affected by the oil. Reference is made to the previous sections in the Manual dealing with economic losses in the fisheries, mariculture and processing sectors and in the tourism sector (sub-sections xx - xx).

In most cases a major bunker oil spill will not cause permanent damage to the marine environment due to its great potential for natural recovery. Whilst there are limits to what measures can be taken to improve on natural processes, in some circumstances it is possible to enhance the speed of natural recovery after an oil spill through reasonable reinstatement measures. The costs of such measures can be accepted for compensation under certain conditions.

In view of the fact that it is virtually impossible to bring a damaged site back to the same ecological state that would have existed had the oil spill not occurred, the aim of any reasonable measures of reinstatement should be to re-establish a biological community in which the organisms characteristic of that community at the time of the incident are present and are functioning normally. Reinstatement measures taken at some distance from, but still within the general vicinity of, the damaged area may also be acceptable, so long as it can be demonstrated that they would actually enhance the recovery of the damaged components of the environment. The link between the measures and the damaged components is essential for consistency with the definition of pollution damage in the 2001 Bunkers Convention (see sub-section xx).

In addition to satisfying the general criteria for the acceptance of claims for compensation set out in sub-section xx, claims for the costs of measures of reinstatement of the environment can qualify for compensation only if the following criteria are fulfilled:

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

Claims should be assessed on the basis of the information available when the reinstatement measures were undertaken. Compensation can be paid only for reasonable measures of reinstatement actually undertaken or to be undertaken. Claims for economic loss as a result of environmental damage that can be quantified in monetary terms are assessed in a similar way to other economic loss claims.

Studies are sometimes required to establish the nature and extent of environmental damage caused by an oil spill and to determine whether or not reinstatement measures are necessary and feasible. Such studies will not be necessary after all spills and will normally be most appropriate in the case of major incidents where there is evidence of significant environmental impact. It is also useful to consult previous studies undertaken on the environment in the area in question. If none are available, a brief study should be undertaken as soon as practicable after the bunker oil spill has occurred to determine the baseline environmental condition of the affected area. This will not always be possible.

The insurer may contribute to the cost of such studies provided that the concerned damage falls within the definition of pollution damage in the 2001 Bunkers Convention, including reasonable measures to restore the environment that sustained damage by way of such pollution. In order to qualify for compensation, it is essential that any post-spill studies are likely to provide reliable and usable information. For this reason, the studies must be carried out with professionalism, scientific rigour, objectivity and balance. This is most likely achieved if a committee or other mechanism is established within the affected State to design and co-ordinate any such studies, as well as the reinstatement measures.

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

The insurer should be invited at an early stage to participate in determining whether or not a particular incident should be subject to a post-spill environmental study. If it is agreed that such a study is justified, the insurer should then be given the opportunity to become involved in planning and establishing the terms of reference for the study. In this context, the insurer can play an important role in helping to ensure that any post-spill environmental study does not unnecessarily repeat what has been done elsewhere. The insurer's experience of other incidents also assists in ensuring the employment of appropriate techniques and experts. It is essential that progress with the studies is monitored, and that results are clearly and impartially shared and documented. This is not only important for the particular incident but also for the compilation of relevant data by the insurer for future cases and analytical purposes.

It is also important to emphasise that the participation of the insurer in the planning of environmental studies does not necessarily mean that any measures of reinstatement later proposed or undertaken will qualify for compensation.

Claims for the costs of reinstatement measures and associated studies should be itemised as follows:

- Delineation of the area affected by the spill, describing the extent, distribution and level of the bunker oil pollution and the resources impacted by the oil (for example using maps or nautical charts and supported by photographs, video or other recording media).
- Analytical and/or other evidence linking the bunker oil pollution with the ship involved in the incident (such as chemical analysis of bunker oil samples, relevant wind, tide and current data, observation and plotting of floating oil movements).
- Details and results of any studies undertaken to assess environmental damage and to monitor the effectiveness of any reinstatement measures proposed, together with a breakdown of the costs involved.
- Detailed description of any reinstatement measures undertaken or to be undertaken and a breakdown of the costs.

Claims for economic losses resulting from environmental damage should follow a similar pattern to those set out for pure economic losses (see paragraphs xx - xx).

Annex I

Definitions

To be inserted
