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An Introduction to the Claims & Compensation Regime

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PASIR GUDANG SHIP COLLISION

- 1) MT 'Wan Hai 301' was entering Johor Port, Pasir Gudang, when it collided with APL 'Denver' at 11.45pm on Tuesday.
- 2) The collision damaged starboard tank No. 6 of APL 'Denver' and caused 300 metric tonnes of oil to spill out.
- 3) The waters off Pulau Ubin, Singapore, is the most affected by the oil spill. The Johor Port Authority deployed four anti-pollution craft on site and installed an oil boom. The Maritime and Port Authority of Singapore activated eight anti-pollution craft with dispersant spraying capabilities to clean up the oil spill.



Bunga Alpina, 26 July 2012
Accident area : Lab
Spill area : Port/har

Oil spill off Penang island

- 1 > A 43.6m fishing vessel from Hong Kong sank two nautical miles off Permatang Damar Laut around 5.30am on July 26.
- 2 > The ship, including the remains, remained afloat for about 10 days before it was sighted by a fisherman on July 26.
- 3 > About 100 tonnes of oil were spilled from the ship.

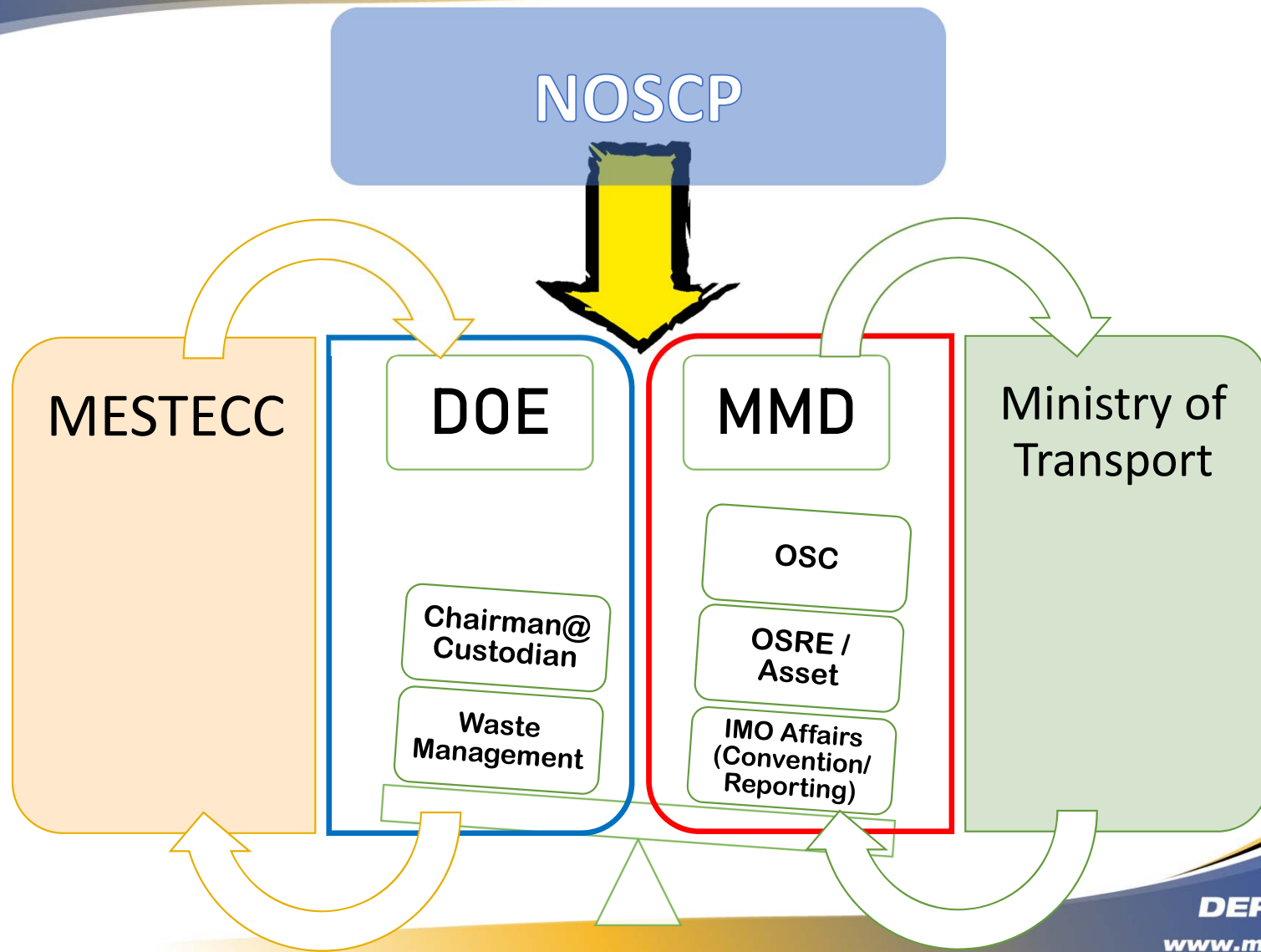
PENANG ISLAND
Permatang Damar Laut



Pulau Rawa, Mersing - 18 Sept 2019



Tg Balau, J



Introduction

- ✘ Cost for oil spill clean up & associated activities can be claimed;
- ✘ Cost & expenditure to respond and combat oil spill considered “reasonable”
- ✘ Process through international arrangement – international liability & compensation regime funds or through ship owner’s P & I;

Loss & Damages

- Personal Injury



- Collision



Loss & Damages

- Damage to Fixed & floating objects



Damage to fixed & floating objects



- Physical damage caused by an entered ship to:
 - docks and terminals
 - fixed and floating objects
 - fishing nets
 - coral reefs

- Damage to 3rd party property



Loss & Damages

- Wreck removal

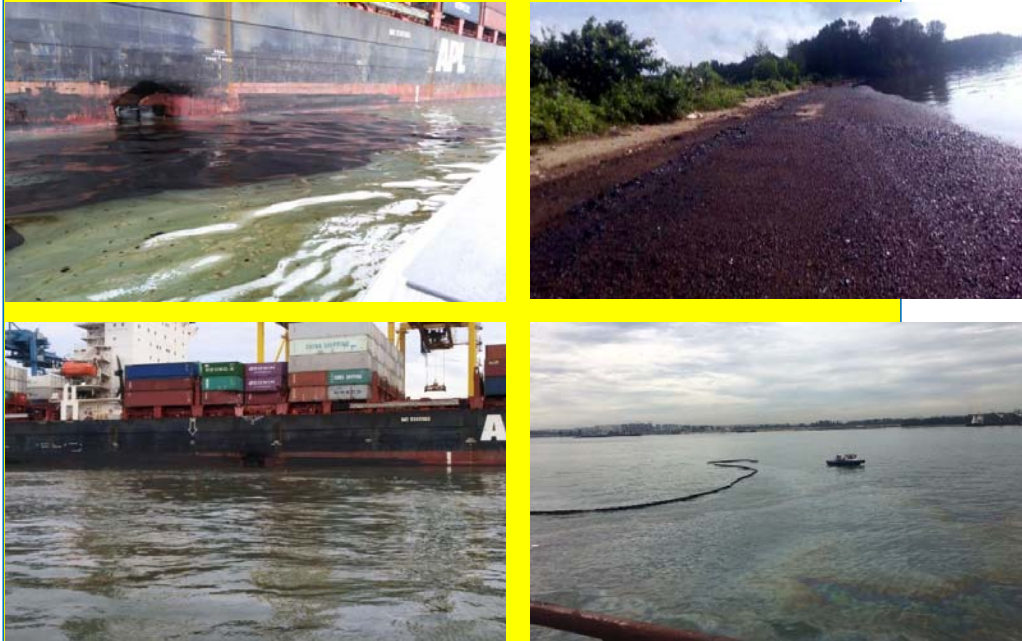


- Cargo damage / loss



Loss & Damages

- Pollution



- Ship owner's legal liability to pay for
 - Clean up of oil spill;
 - Restoration;
 - Consequential losses;
 - Ongoing monitoring if required

National Law



Department of Environment
• Environmental Quality Act,
1974 (Act 127);

Polluter Pay
Principle

Marine Department Malaysia

• Part VA, Merchant Shipping Ordinance
1952

• Merchant Shipping (Oil
Pollution) Act 1994
• Merchant Shipping
(Amendment and Extension) Act
2011 – Act A1393



Polluter Pay
Principle +
Specific IMO
Convention



Port Authorities & Other
Related Government
Agencies

International Instrument – Liability & Compensation

No	International Convention	Enforcement Date
1	The International Convention on Civil Liability for Bunker Oil Pollution Damage, 2001 (Bunkers Convention 2001)	12 th December 2009
2	The International Convention for the Limitation of Liability for Maritime Claims, 1976 as Amended by Protocol of 1996 (LLMC Convention 1996)	10 th February 2009
3	International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage (FUND) Protocol 1992	9 th June 2005
4	International Convention on Civil Liability for Oil Pollution Damage (CLC) 1992	9 th June 2005

WHERE DO WE STAND? – INTERNATIONAL

International Convention on Civil
Liability for Oil Pollution Damage (CLC)
1992

International Law – CLC 1992

- The aim of CLC is to ensure that adequate compensation is available to persons who suffer **oil pollution damage** resulting from maritime casualties involving oil carrying vessels;
- Applies to all **ships carrying oil in bulk as cargo** ;
- Strict liability;
- Definition of oil – “**Persistent Oil**” such as crude oil, fuel oil, heavy diesel oil and lubricating oil carried on board a ship as a cargo;
- Applied to all seagoing vessels carrying oil in bulk as cargo (Tanker), but vessels carrying more than **2000 tons** of oil required to maintain insurance in respect of oil pollution damage;
- Convention covers pollution damage resulting from spills of persistent oils suffered in the territory;
- **1st layer of claims**;

WHERE DO WE STAND? – INTERNATIONAL

International Convention on Civil
Liability for Oil Pollution Damage (CLC)
1992

International Convention on the
Establishment of an International Fund
for Compensation for Oil Pollution
Damage (FUND) Protocol 1992

International Law – Fund 1992

- The purpose of Fund :-
 - To provide compensation for oil pollution damage to extend that the protection afforded by the '92 CLC is inadequate [2nd layer];
 - To give relief to shipowners in respect of the additional burden imposed on them by the 1969 CLC, such relief being subject to conditions designed to ensure compliance with safety at sea and other conventions;
 - To give effect to the related purposes set out in the Convention;
 - Oil Receiver” contribute to the Fund;

WHERE DO WE STAND? – INTERNATIONAL

International Convention on Civil Liability for Oil Pollution Damage (CLC) 1992

International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage (FUND) Protocol 1992

The International Convention on Civil Liability for Bunker Oil Pollution Damage, 2001 (Bunkers Convention 2001)

International Law – Bunker 2001

- To ensure that adequate, prompt, and effective compensation is available to persons who suffer damage caused by spills of oil, when carried as **fuel in ships' bunkers**;
- Applies to damage caused on the territory, (the territorial sea + exclusive economic zones);
- Pollution damage" means:
 - (a) loss or damage caused outside the ship by contamination **resulting from the escape or discharge of bunker oil (persistent & non persistent 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; and
 - (b) **the costs of preventive measures and further loss or damage** caused by preventive measures.

WHERE DO WE STAND? – INTERNATIONAL

International Convention on Civil Liability for Oil Pollution Damage (CLC) 1992

International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage (FUND) Protocol 1992

The International Convention for the Limitation of Liability for Maritime Claims, 1976 as Amended by Protocol of 1996 (LLMC Convention 1996)

The International Convention on Civil Liability for Bunker Oil Pollution Damage, 2001 (Bunkers Convention 2001)

International Law – LLMC 1996

- To limit shipowner interest towards any incident;
- Shipowners and salvors may limit their liability, except if "it is proved that the loss resulted from his personal act or omission, committed with the intent to cause such a loss, or recklessly and with knowledge that such loss would probably result"
- Limits are specified for two types of claims –
 - claims for loss of life or personal injury; and
 - property claims (such as damage to other ships, property or harbour works).

Simplified Version on International Instrument

Spills from
tankers carrying
persistent oil in
bulk as cargo

CLC 92

FUND 1992

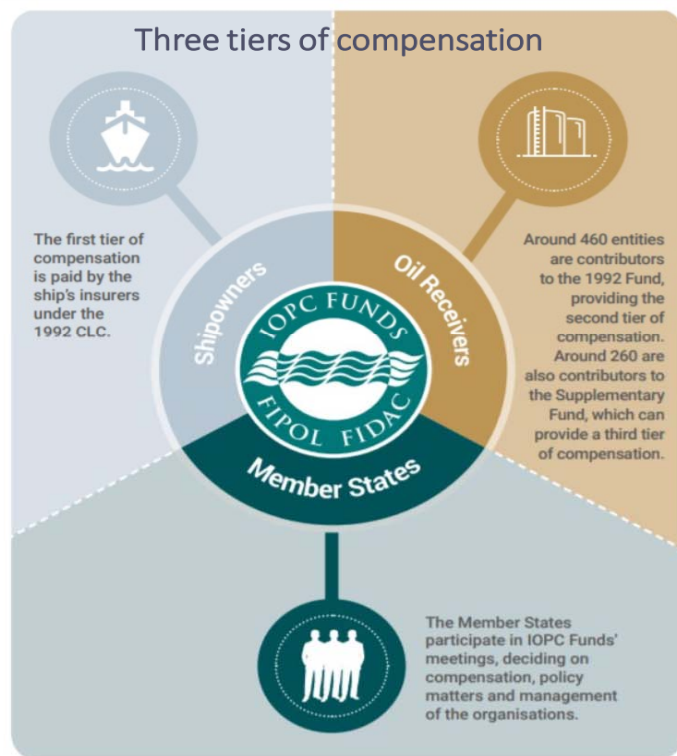
SUPP FUND
2003

Spills from any
other seagoing
vessel

BUNKER
Convention
2001

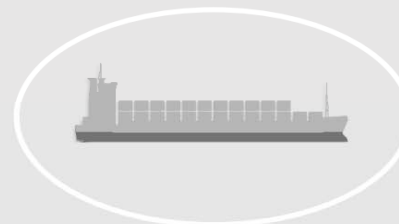
Simplified Version on International Instrument

TANKERS CARRYING PERSISTENT OIL IN BULK AS CARGO



ANY OTHER SEAGOING VESSELS

Single tier of compensation

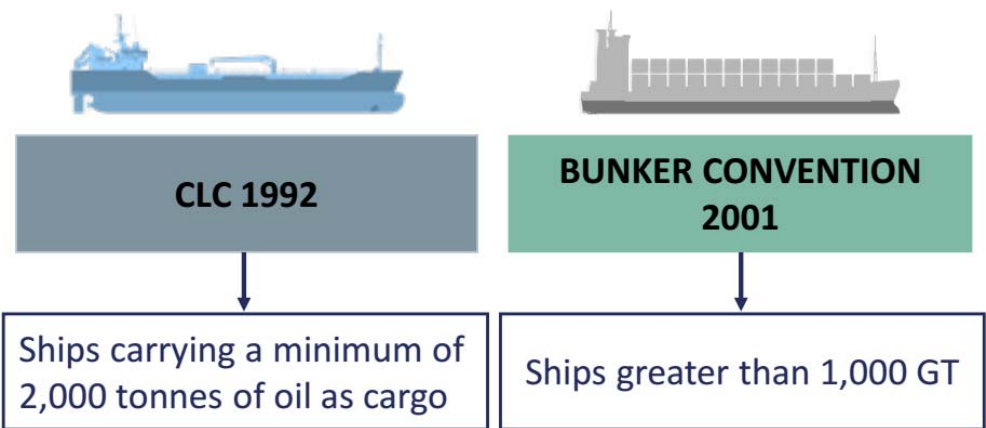
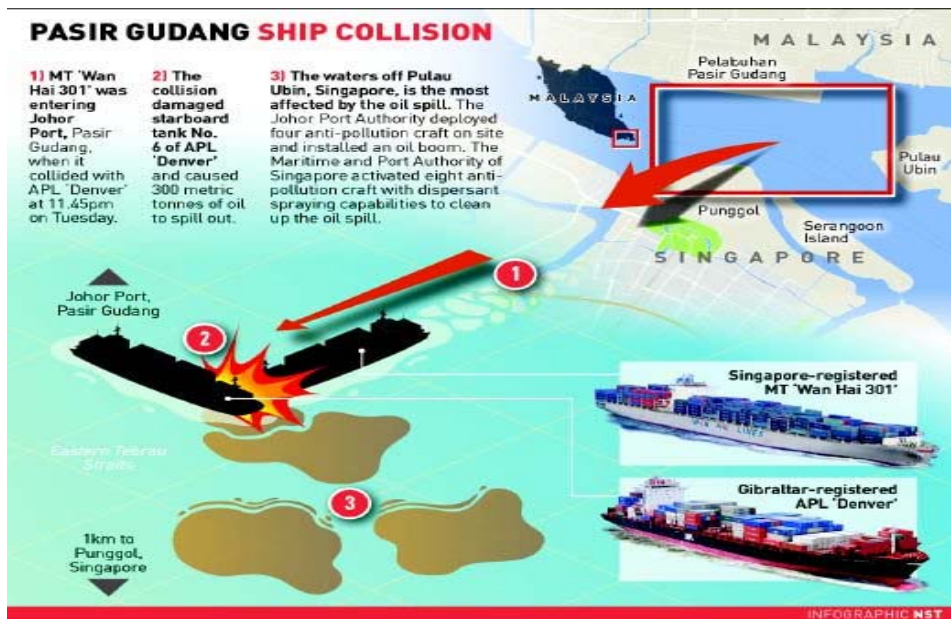


Shipowners

Compensation paid by ship's insurers under the Bunker Convention 2001.

Diagram : Source from ITOPF

Simplified Version on International Instrument

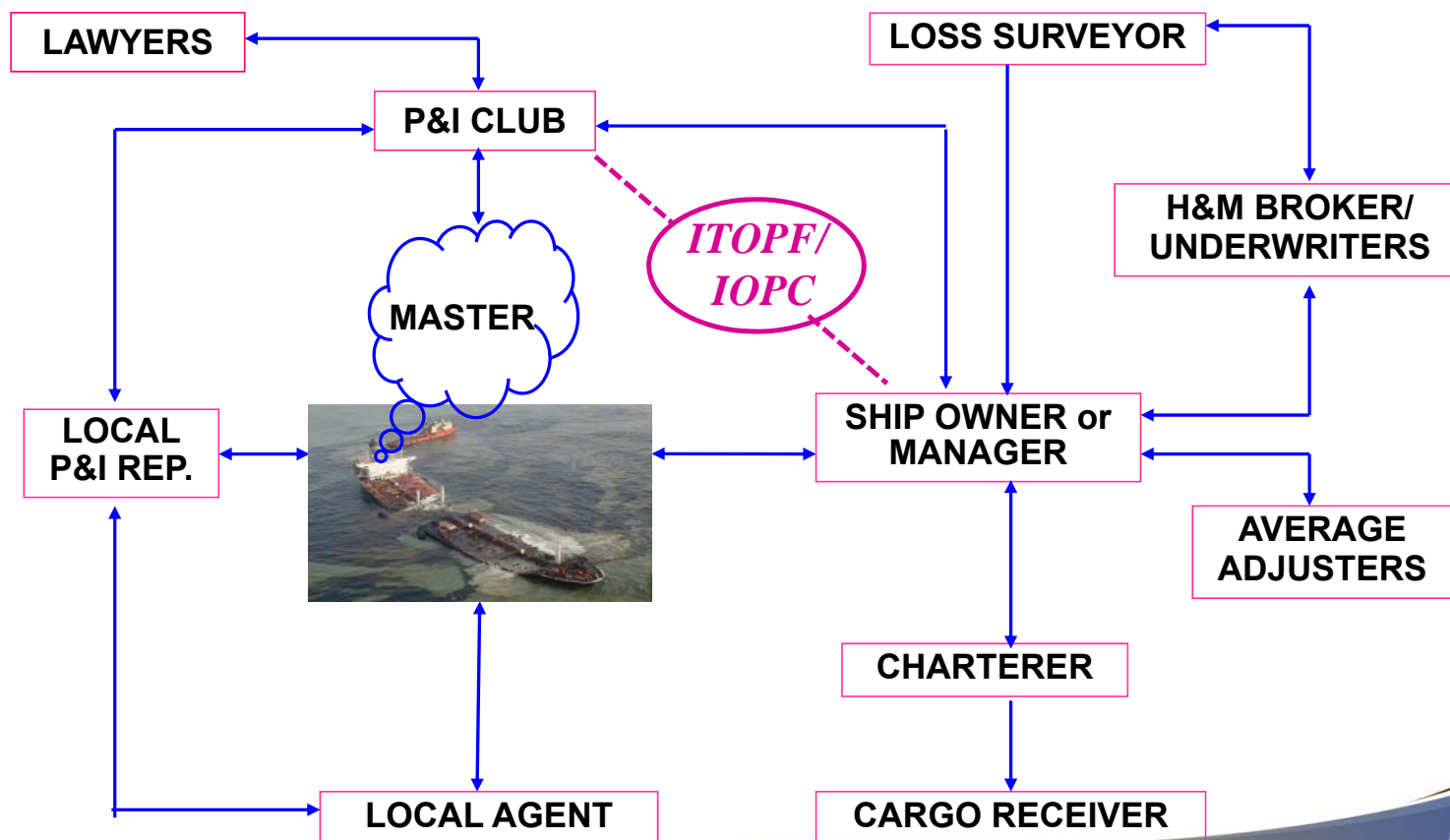


Compulsory Insurance

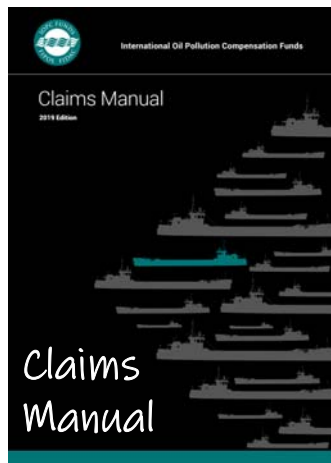
- Shipowner is required to maintain **adequate insurance**;
- Victims have right of direct action against the insurer;
- State certificates carried on board ships as evidence;

CLAIMS

Communication Flow [Incident]



Claims

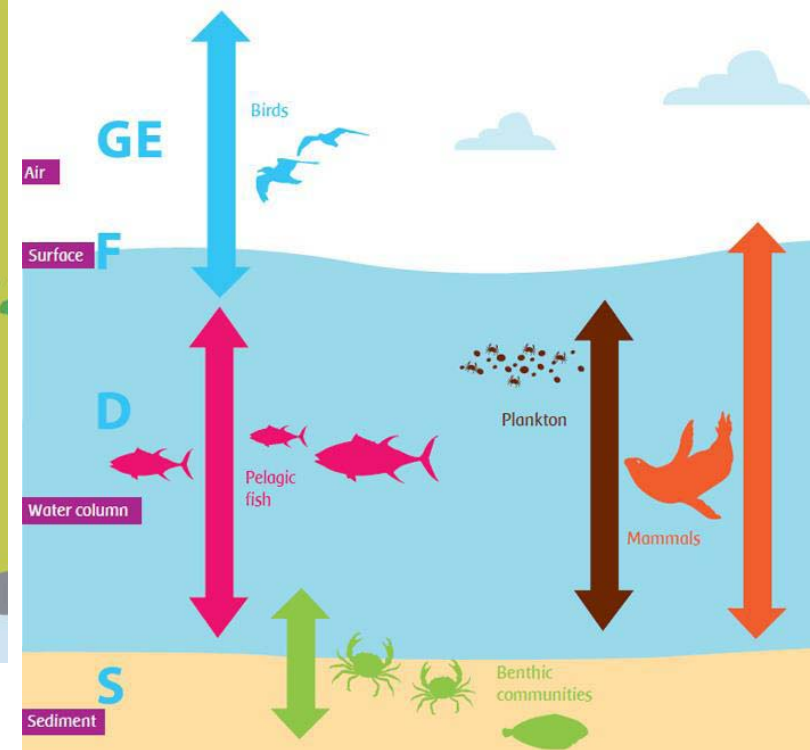
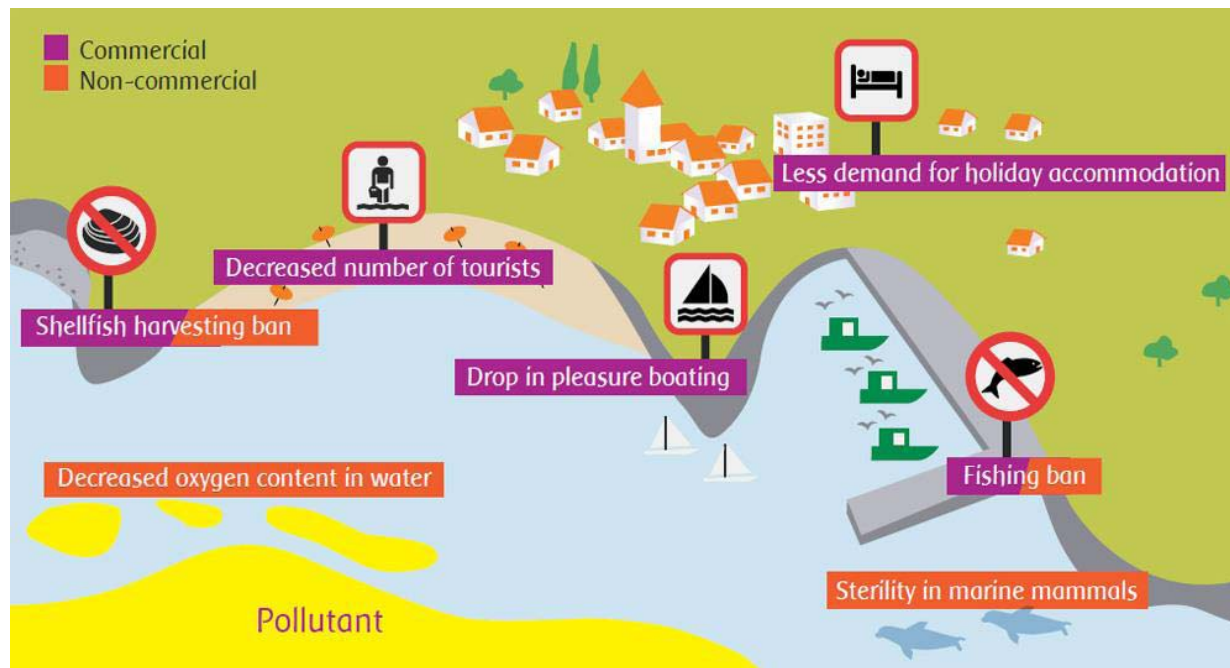


Claims Form



www.iopcfunds.org

Properties Damage / Economic Losses / Environmental Damages



Claims - Prestige



The hull of the Bahamas-registered *Prestige* oil tanker broke in two before sinking in the Atlantic Ocean, 150 miles off the Spanish coast

• Spain

Category of claim	No. of claims	Amount claimed €
Property damage	232	2 066 103
Clean up	17	3 011 744
Mariculture	14	20 198 328
Fishing and shellfish gathering ⁽²⁾	180	3 610 886
Tourism	14	688 303
Fish processors/ vendors	299	20 838 322
Miscellaneous	74	1 775 068
Spanish State	14	968 524 084
Total	844	1 020 712 838

• France

Category of claim	No. of claims	Amount claimed €
Property damage	9	87 772
Clean up	61	10 512 569
Mariculture	126	2 336 501
Shellfish gathering	3	116 810
Fishing boats	59	1 601 717
Tourism	195	25 166 131
Fish processors/ vendors	9	301 446
Miscellaneous	19	2 029 820
French State	1	67 499 154
Total	482	109 651 920

Report : Source from IOPC Funds

Claims – Heibei Spirit

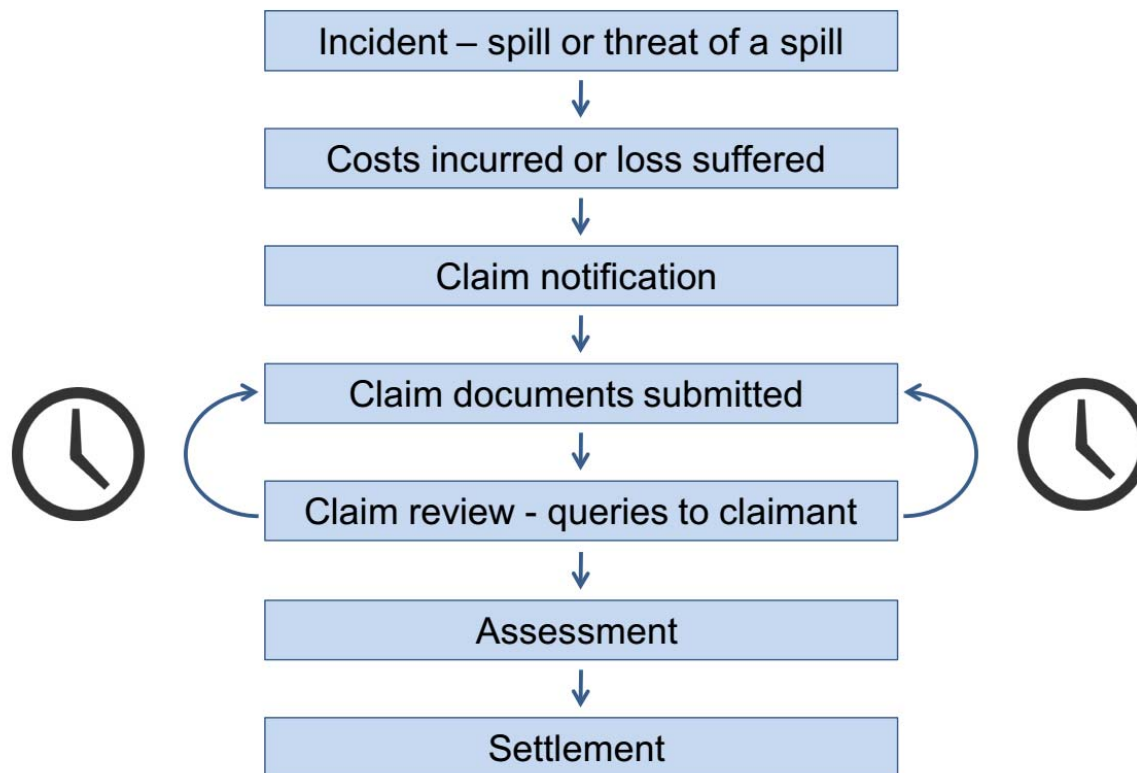
Volunteers work to remove some of the over 10,000 tonnes of export crude oils spilled following the ramming of the Hebei Spirit. PHOTO: ITOFF



Category of claim	Number of claims	Claimed amount (KRW million)	Claims assessed > 0	Assessed amount (KRW million)	Claims paid	Paid amount (KRW million)	Claims rejected
Clean up and preventive measures	274	197 221	204	90 419	172	85 708	28
Property damage	22	3 042	12	440	7	393	4
Fisheries and mariculture	10 624	1 606 605	207	19 982	188	9 969	997
Tourism and other economic damage	16 347	385 748	1 639	17 456	1 559	16 272	4 787
Environmental damage	1	2 195	-	-	-	-	-
Total	27 268	2 194 811	2 062	128 297	1 926	112 342	5 816

Report : Source from IOPC Funds

Claims Process



Report : Source from IOPC Funds

Claims & Claimant

✘ Claims, generally grouped into 4 types:



Cost of **clean-up / preventive measures** at sea and onshore



Property damage, including cleaning, restoring etc



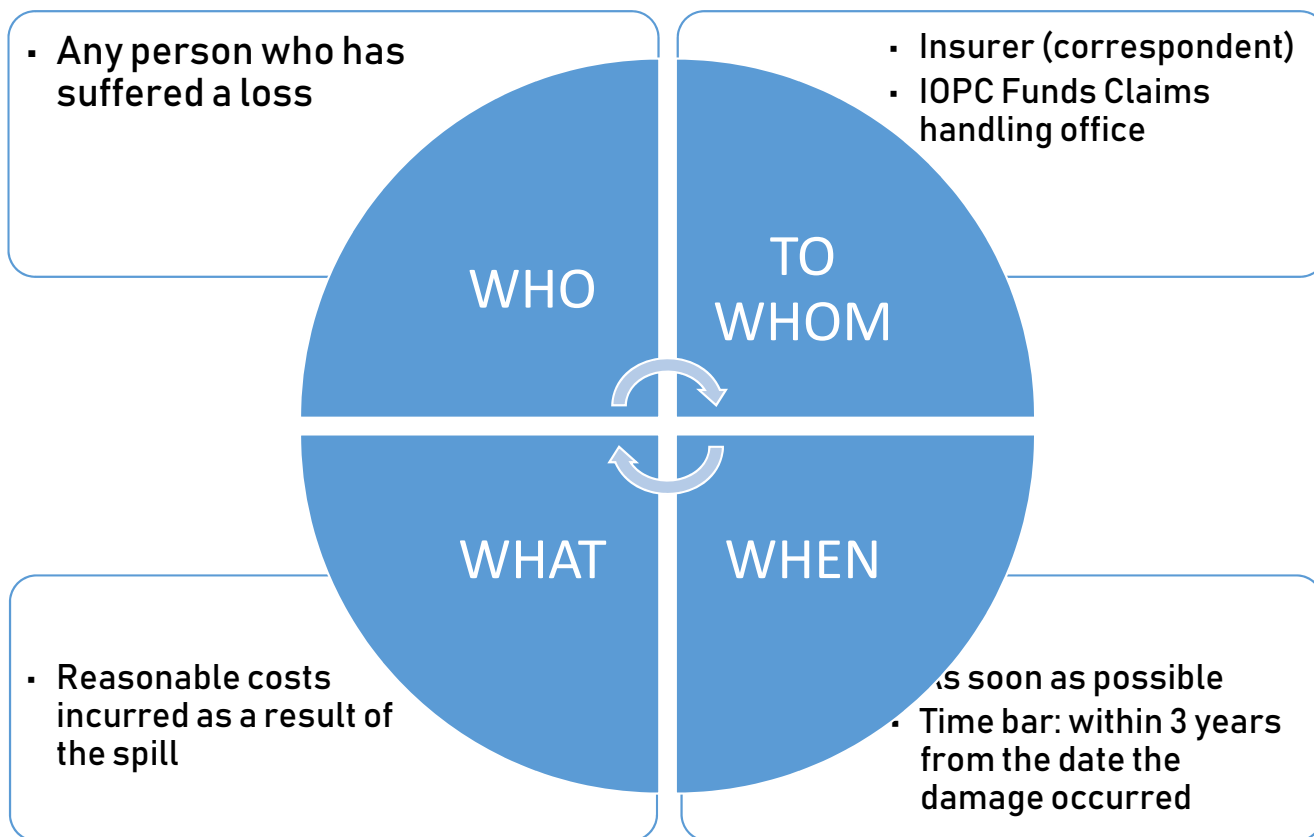
Economic losses fisherman / marine culture / farms / tourism



Costs for **re-instatement** of the environment, including capture, cleaning and rehabilitation of wild animals

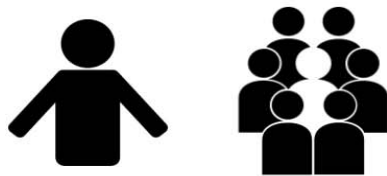
✘ Claimants can be private individuals, partnerships, companies, private, organisations and/or public bodies, including state or local authorities

Claims Presentation



Claims Presentation – Essential Information

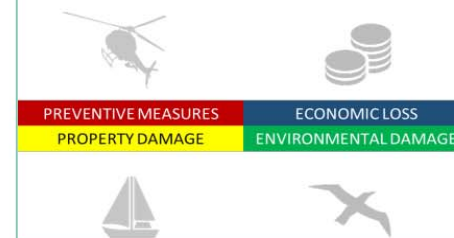
Claimant details



Incident details



Type of claim



PREVENTIVE MEASURES

ECONOMIC LOSS

PROPERTY DAMAGE

ENVIRONMENTAL DAMAGE

Claim amount



Documentation



Photos : Source from ITOPF

Claims Presentation – Supporting Document

- ✘ Description and justification of the activities undertaken.
- ✘ Dates on which work was carried out and at which sites
 - ✘ Daily reports of activities
 - ✘ Pictures
 - ✘ Maps
 - ✘ Corresponding costs



Photos : Source from ITOPF

EXAMPLE DAILY PROGRESS REPORT (DPR)

1. General information

Incident name	Vessel name
Date	Date of operations
Entity name	Company/Government agency name
Location	General area of operation

2. Weather conditions

General weather conditions	AM:	PM:
----------------------------	-----	-----

3. Summary of activities

Main activities undertaken	Include an outline of activities undertaken today (e.g. containment and recovery, dispersant application, aerial surveillance, monitoring, etc.)
Site A	Provide more specific details of activities on a site by site basis
Site B	Provide more specific details of activities on a site by site basis
Site C	Provide more specific details of activities on a site by site basis

4. Resources

PERSONNEL						
	FULL NAME	Work start	Work end	Position	Work area	Responsibility
1	Mr Fairuz	Time	Time	Head of Operations	Site A & B	e.g. Overseeing the entire response
2	Mrs Marchand	Time	Time	Supervisor	Site B, Section 1,2,3	e.g. Supervising the clean-up team
3	Mr Patel	Time	Time	Technician	Site A, Section 1	e.g. High pressure washing of rocks

EQUIPMENT					
Description	Model & Specifications	Unit	Quantity	Area of operation	
Workboat		Item	1	Site A	
Response vessel		Item	1	Site A	
Containment Boom 1,200 m		metre	1,200	Site A	
Excavator		Item	1	Site A, Section 1	
Disk Skimmer with Power Pack & Hoses		Item	1	Site B, Section 1	
Fast Tank		Item	1	Site B, Section 1	
High pressure washer (hot)		Item	1	Site A, Section 1	

VEHICLES			
Description	Model & Registration		Quantity
4x4 Pickup truck	Toyota Hilux, K216 PSX		1
Van	Where applicable		1
Crane Truck	Where applicable		2

CONSUMABLES			
Description	Model & Specifications	Unit	Quantity
Tyvek suit		Item	1
Rubber boots		Pair	1
Containment Boom		1.2 m	1
Big Bags		Item	1
Absorbent Pads		Pack (100)	1

WASTE				
Type	Quantity	Site/section collected	Disposal facility	
Liquid waste	20m ³	Site A1	Petrodiposa Berhad	
Contaminated soil				
Contaminated sorbent material				

5. General comments

Additional information relevant to response operations

EXAMPLE DAILY PROGRESS REPORT (DPR)

APPENDIX

- INSERT MAPS OF SITES WHERE RESPONSE WAS UNDERTAKEN.
- INSERT PHOTOGRAPHS OF RESPONSE OPERATIONS AT EACH SITE.

Areas of operation



Photo 1



Panoramic photo of Site A1

Photo 2



Wiping of rock revetment (Site A1)

Photo 3



Excavator operations (Site A1)

Photo 3



Photo 4



Information : Source from ITOPF

Claims Presentation – Supporting Document

- ✘ Description and justification of the activities undertaken.
- ✘ Ensure the claim reflects the actions and that the claim total adds up.
 - ✘ Daily breakdown of costs
 - ✘ Relevant units
 - ✘ Invoices, receipts, photographs
 - ✘ Specifications

Diagram : Source from ITOPF

Personnel	Rate/Unit Cost	14/8/19	15/8/19	16/8/19	17/8/19	18/8/19	19/8/19	20/8/19	21/8/19	Total No	Unit	Total	Supporting documents (e.g. invoices, receipts, specifications, photographs)
Operations Manager	MYR -		1	1	1	4	5	5	5	22	Person/Day	MYR -	Attachment No.x
Supervisor	MYR -		1	2	2	10	11	10	11	47	Person/Day	MYR -	Attachment No.x
Technician	MYR -		21	23	29	60	88	116	133	470	Person/Day	MYR -	Attachment No.x
Subtotal (A)			23	26	32	74	104	131	149	539		MYR -	
Vessels	Unit Cost	14/8/19	15/8/19	16/8/19	17/8/19	18/8/19	19/8/19	20/8/19	21/8/19	Total No	Unit	Total	Ref
Name of vessel (including type)	MYR -						1	1	1	3	Vessel/Day	MYR -	Attachment No.x
Name of vessel (including type) - standby	MYR -										Vessel/Day	MYR -	Attachment No.x
Subtotal (B)							1	1	1	3		MYR -	
Equipment	Unit Cost	14/8/19	15/8/19	16/8/19	17/8/19	18/8/19	19/8/19	20/8/19	21/8/19	Total No	Unit	Total	Ref
Oil boom (inc. type)	MYR -								30	30	meter	MYR -	Attachment No.x
Oil boom (inc. type) standby	MYR -										meter	MYR -	Attachment No.x
Inflatable shore boom	MYR -										meter	MYR -	Attachment No.x
High pressure washer (hot)	MYR -										Unit/Day	MYR -	Attachment No.x
Generator	MYR -										Unit/Day	MYR -	Attachment No.x
Skimmer (inc. make and model)	MYR -										Unit/Day	MYR -	Attachment No.x
Bobcat	MYR -							1	2	3	Unit/Day	MYR -	Attachment No.x
Forklift	MYR -							3	4	7	Unit/Day	MYR -	Attachment No.x
JCB	MYR -										Unit/Day	MYR -	Attachment No.x
Container	MYR -				1					1	Unit/Day	MYR -	Attachment No.x
Open top container	MYR -					4	4	4	8	20	Unit/Day	MYR -	Attachment No.x
Fast Tank	MYR -										Unit/Day	MYR -	Attachment No.x
IBC Tank	MYR -										Unit/Day	MYR -	Attachment No.x
VHF	MYR -										Unit/Day	MYR -	Attachment No.x
Back pack sprayers	MYR -										Unit/Day	MYR -	Attachment No.x
Subtotal (C)					1	4	4	8	44	61		MYR -	
Vehicles	Unit Cost	14/8/19	15/8/19	16/8/19	17/8/19	18/8/19	19/8/19	20/8/19	21/8/19	Total No	Unit	Total	Ref
Vacuum truck	MYR -			2	2	3	3	3	8	21	Unit	MYR -	Attachment No.x
Van	MYR -		1	1	1	2	2	4	7	18	Unit	MYR -	Attachment No.x
Van standby	MYR -										Unit	MYR -	Attachment No.x
Pickup truck	MYR -				1	2	2	2	1	8	Unit	MYR -	Attachment No.x
Pickup truck standby	MYR -										Unit	MYR -	Attachment No.x
Subtotal (D)			1	3	4	7	7	9	16	47		MYR -	
Consumables	Unit Cost	14/8/19	15/8/19	16/8/19	17/8/19	18/8/19	19/8/19	20/8/19	21/8/19	Total No	Unit	Total	Ref
Sorbent Pads	MYR -		3000	900	200	2100	3200	2900	2100	14,400	Pack 100	MYR -	Attachment No.x
Sorbent booms	MYR -										Meter	MYR -	Attachment No.x
Heavy duty plastic bags	MYR -		350	600	500	4250	1540	7900	7700	22,840	Unit	MYR -	Attachment No.x
Drums	MYR -										Drum	MYR -	Attachment No.x
Rubber boots	MYR -		21	23	29	60	88	116	133	470	Pair	MYR -	Attachment No.x
Subtotal (E)			3,350	1,500	700	6,350	4,740	10,800	3,800	37,240		MYR -	
Miscellaneous	Unit Cost	14/8/19	15/8/19	16/8/19	17/8/19	18/8/19	19/8/19	20/8/19	21/8/19	Total No	Unit	Total	Ref
Equipment fuel	MYR -	50			80		150	60	200	540	Litres	MYR -	Attachment No.x
Travel-Transportation	MYR -										Trip	MYR -	Attachment No.x
Personnel Meals	MYR -		23	26	32	74	104	131	149	539	Meals/Day	MYR -	Attachment No.x
Subtotal (F)			23	26	32	74	104	131	149	539		MYR -	
GRAND TOTAL												MYR -	Supporting documents presented in the

Claims Presentation – Personnel Cost

Personnel	Rate/Unit Cost	14/9/19	15/9/19	16/9/19	17/9/19	18/9/19	19/9/19	20/9/19	21/9/19	Total No	Unit	Total	Supporting documents (e.g. invoices, receipt specifications, photographs)
Operations Manager	MYR -		1	1	1	4	5	5	5	22	Person/Day	MYR -	Attachment No.x
Supervisor	MYR -		1	2	2	10	11	10	11	47	Person/Day	MYR -	Attachment No.x
Technician	MYR -		21	23	29	60	88	116	133	470	Person/Day	MYR -	Attachment No.x
Subtotal (A)			23	26	32	74	104	131	149	539		MYR -	



- ✘ Number and categories of personnel
- ✘ Hours and dates worked
- ✘ Regular / overtime rates
- ✘ Method of calculation / basis of rates
- ✘ Relevant information, i.e invoices, receipts, worksheets, log books etc.

Diagram : Source from ITOPF

Claims Presentation – Equipment



Equipment	Unit Cost	14/3/19	15/3/19	16/3/19	17/3/19	18/3/19	19/3/19	20/3/19	21/3/19	Total No	Unit	Total	Ref
Oil boom (inc. type)	MYR -								30	30	meter	MYR -	Attachment No.x
Oil boom (inc. type) standby	MYR -										meter	MYR -	Attachment No.x
Inflatable shore boom	MYR -										meter	MYR -	Attachment No.x
High pressure washer (hot)	MYR -										Unit/Day	MYR -	Attachment No.x
Generator	MYR -										Unit/Day	MYR -	Attachment No.x
Skimmer (inc. make and model)	MYR -										Unit/Day	MYR -	Attachment No.x
Bobcat	MYR -							1	2	3	Unit/Day	MYR -	Attachment No.x
Forklift	MYR -							3	4	7	Unit/Day	MYR -	Attachment No.x
JCB	MYR -										Unit/Day	MYR -	Attachment No.x
Container	MYR -				1					1	Unit/Day	MYR -	Attachment No.x
Open top container	MYR -					4	4	4	8	20	Unit/Day	MYR -	Attachment No.x
Fast Tank	MYR -										Unit/Day	MYR -	Attachment No.x
IBC Tank	MYR -										Unit/Day	MYR -	Attachment No.x
VHF	MYR -										Unit/Day	MYR -	Attachment No.x
Back pack sprayers	MYR -										Unit/Day	MYR -	Attachment No.x
Subtotal (C)													

Diagram : Source from ITOPF

- ✘ Types of equipment used
- ✘ Supplier
- ✘ Hire rate or cost of purchase

- ✘ Method of calculation of hire rates
- ✘ Relevant information (invoices, contracts, hire or charter agreements, worksheets, log books, etc.)
- ✘ Quantity & period of use

Claims Presentation – Waste

Quantities generated from response

Type of waste

Method of disposal

Unit cost

Manifests and receipts

Entity responsible for disposal



Diagram : Source from ITOPF

Claims Presentation – Oiled & Damaged Property

- ✘ Condition of property prior to incident
- ✘ How did the damage occur?
- ✘ Photographs and proof of ownership
- ✘ Joint inspections with P&I correspondents or surveyors to establish the extent of damage



Diagram : Source from ITOPF

Claims Presentation – Economic Loss

- ✘ **Financial records** as evidence of reduction in revenue
- ✘ **Proof of ownership** of the business / fishing licence
- ✘ Importance of **baseline data** and/or reference sites



Diagram : Source from ITOPF

Claims Presentation – Environmental Damage



Diagram : Source from ITOPF

- ✘ Importance of baseline data and/or reference sites
- ✘ Post-spill studies –not for academic purposes
- ✘ Coordination of efforts –no duplication
- ✘ Sampling & analysis –results

Claims Timelines

- ✘ Within **3 years** from damage occurrence date,
- ✘ Claimants to either **take court action** against Fund, or give notice to Fund of court action against Shipowner or his Insurer, or
- ✘ No later than **6 years** from the date of incident through normal process

Claims – Lesson Learnt**

- ✘ Designated & dedicated Finance and Administration Officer to **keep adequate record – how, when, why, etc;**
- ✘ Supporting document and explanatory information, e.g. **photographs, diagrams, maps**, spread sheets, response narrative, etc;
- ✘ Incident Management Team **daily record & minutes of meeting;**
- ✘ Appointment by Authority on **Claims Management Team** of the NOSCP;
- ✘ **National experts assistance** of the NOSCP, e.g. lawyers, consultant, etc to assist the claim;

Claims – Lesson Learnt**

- ✘ Pricing structure, hires rate & methods of claim calculation to be established under the NOSCP;

Maritime assets	Aerial assets	Contract personnel	Staff personnel	Equipment	Sub contractor
Vehicles	Sample analysis	Oil spill trajectory	Documentation	Waste management	Telco
	On site office	Special weather reports	Environmental assessment	Outsourced expert advise	

Catapult Internal

CONCLUSION

Conclusion - A Thought

Challenges

- ✗ Lack of knowledge;
- ✗ Claims
 - ✗ Inadmissible;
 - ✗ Opportunistic;
 - ✗ Lack of evidence
- ✗ Payment
 - ✗ Delayed
 - ✗ Pro-rated

Aim

- ✗ Education & information
 - ✗ MoU Agreement on Tarif
 - ✗ Concerted & regular training;
- ✗ Claims handling
 - ✗ Transparent;
 - ✗ Fair;
 - ✗ Consistent;
 - ✗ Expert;
- ✗ Payment;
 - ✗ prompt as possible;
 - ✗ hardship

Thank you
Danke
Xie
Khawp khun
Gum
Mahalo
Selamat
Juspa
Gracias
Spacibo
Arigato
Terima kasih