



# 4th Premium Conference

*London, the United Kingdom*



## Recent Development and Future Challenges for the Compensation Regime

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# Today's presentation

## *Summary*

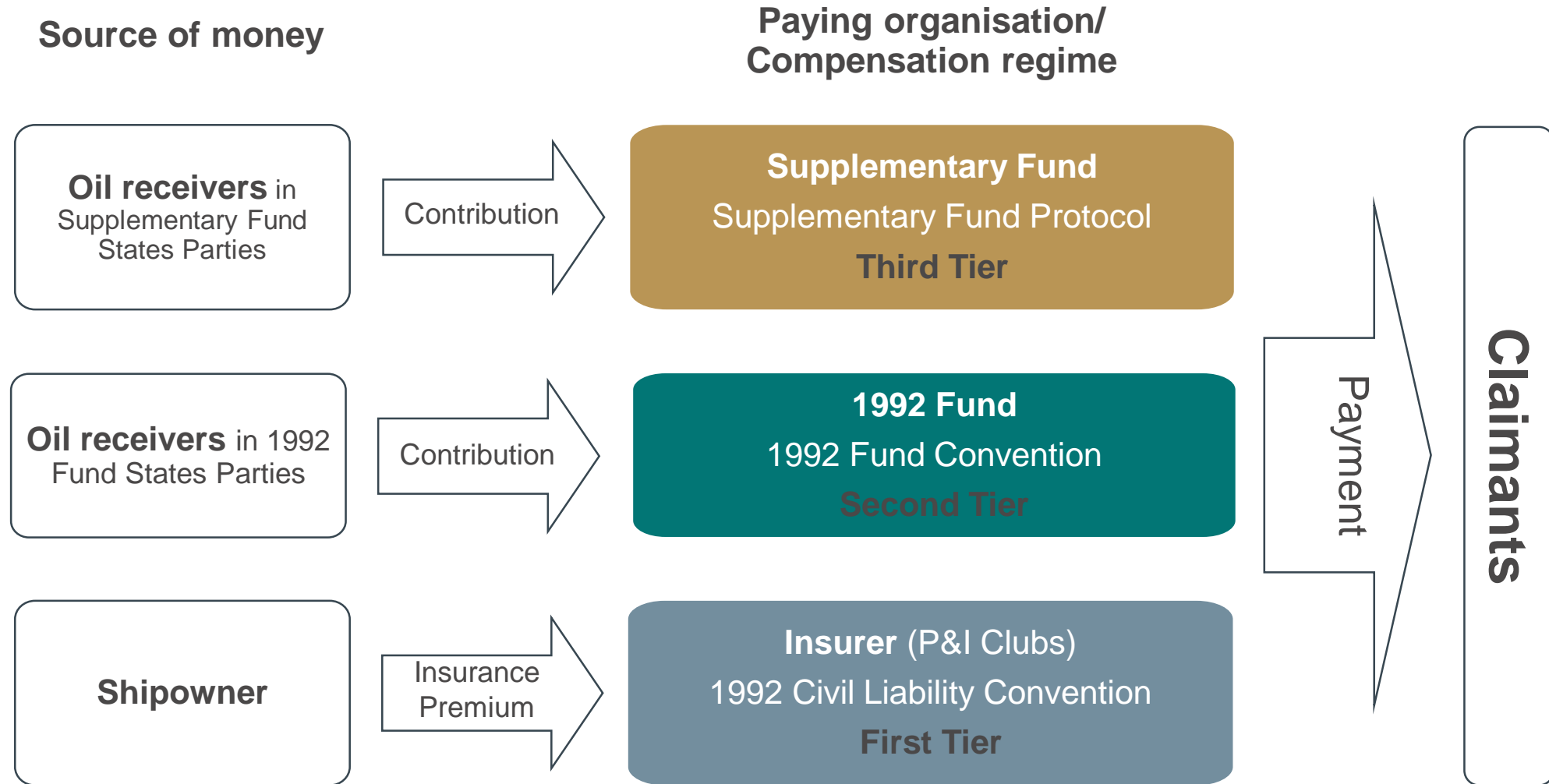
1. Introduction
2. Admissibility criteria for claim for environmental damage
3. Example of claim for environmental damage
4. HNS Convention





# International Oil Pollution Compensation regime

## Basics





# Types of claim compensated

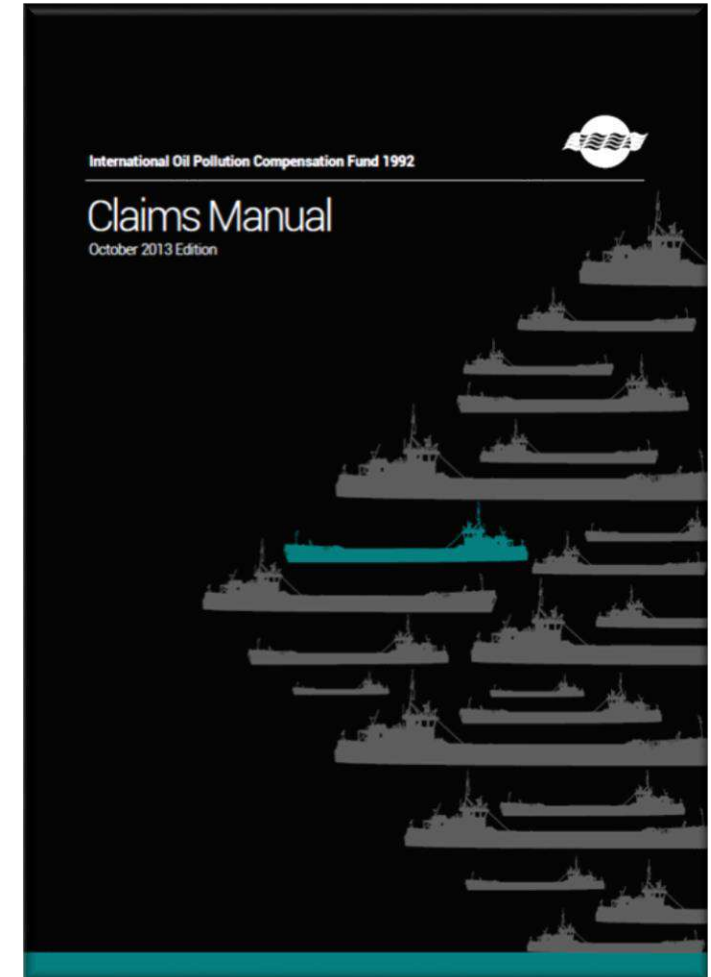
## *What we accept*

### Types of claim categorised in Claims Manual

- Cost of clean-up operations and preventive measures
- Property damage
- Economic losses in fisheries, mariculture and tourism sectors
- Cost of measures to prevent pure economic loss
- Environmental damage and post-spill studies

Claim for environmental damage and post-spill studies is one of the main types of claim

Cost of clean-up operations (above) can be a part of claim for environmental damage



Marine environment is naturally resilient, able to cope with natural impacts

Massive natural mortalities are common but ecosystems recover

### Impact of pollution damage

Influencing factors:

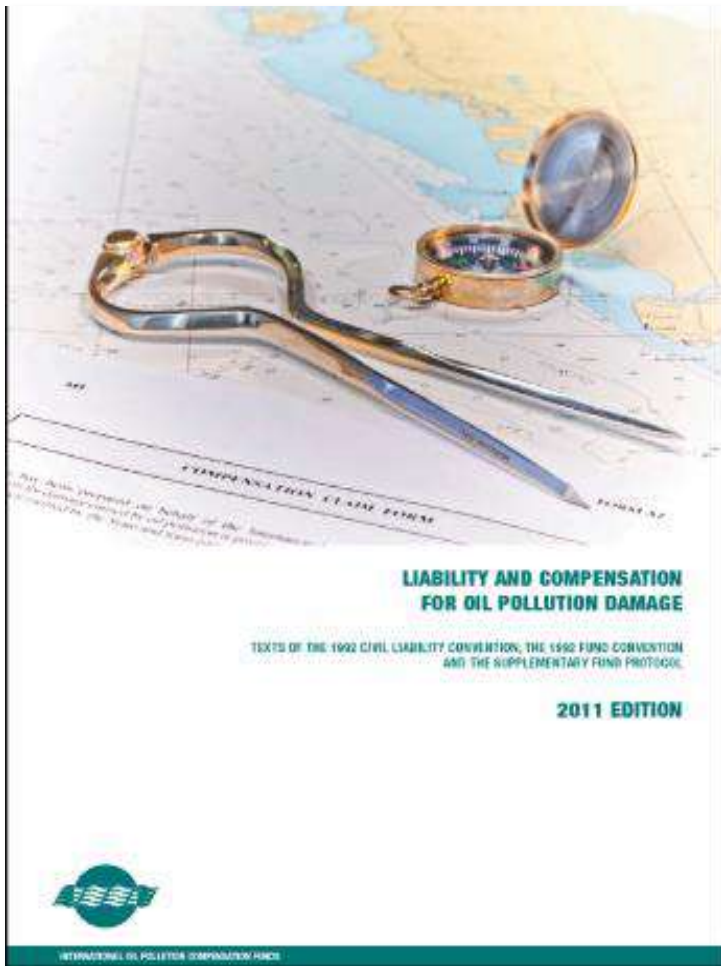
- Type and amount of oil spilled
- Physical characteristics of affected area
- Time of year – Seasonality and weather conditions
- Clean up response effectiveness





# Pollution damage

## Definition



Both the 1992 CLC and the 1992 Fund Convention use the same definition of 'pollution damage'

Detailed definition for the compensation for environmental damage

'Pollution damage' (1992 CLC Article I 6 (a))

loss or damage caused outside the ship by contamination resulting from the escape or discharge of 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;

### General criteria to all claims

- Incurred expense, loss or damage
- Reasonable measures
- Caused by contamination
- Link of causation
- Quantifiable loss
- Proven expense, loss or damage





# Admissibility of claims

*What we pay / not pay in relation to environmental damage*



## General criteria for environmental damage claim

### Payable

- Costs of reasonable reinstatement measures aimed at accelerating natural recovery of environmental damage
- Cost of post-incident studies



### Not payable

- Claims based on an abstract quantification of damage calculated in accordance with theoretical models
- Damages of a punitive nature on the basis of the degree of fault of the wrong-doer





# Reinstatement measures

*Its purpose, types*

## Purpose:

**Re-establishing of a biological community** in which the organisms characteristic of that community at the time of the incident are present and are functioning normally

## Types of Reinstatement Measures

- Clean-up (considered to prevent pollution damage including damage to environment)
- Replanting of mangrove saplings
- Replanting of marsh plants
- Replenishment of sand etc.



Source CGC



Source MSommerville



# Reinstatement measures

## *Specific admissible criteria*

### The measures should:

- be aimed at enhancing the recovery of the damaged component of the environment
- have a realistic prospect of accelerating the natural process of recovery and be based on sound scientific principles
- seek to prevent further damage
- not result in the degradation of other habitats or in adverse consequence of other natural or economic resources
- be undertaken within the general vicinity of the damaged area
- have link between the measures taken and the damaged component
- be technically feasible
- be proportionate (damage / benefits) in terms of cost

⇒ The criteria provide **sufficient flexibility for innovative proposals** for reinstatement measures

### Purpose:

- establishing the environmental damage (nature, extent)
- determining the necessity and feasibility of reinstatement measures

### Types of post-incident studies

- comparison of the pre-spill and post-spill ecological status
- comparison of the affected area with uncontaminated reference sites
- monitoring post-spill recovery of the communities and habitats





# Post-incident studies

## *Specific admissible criteria*



### The study:

- should relate to pollution damage
- should be proportionate (contamination / benefits) in terms of cost
- must provide reliable and useful information
- should avoid duplication
- should follow principles of sound scientific investigation
- should monitor and document the progress

⇒ Again, the criteria provide **sufficient flexibility for innovative proposals** for post-incident studies



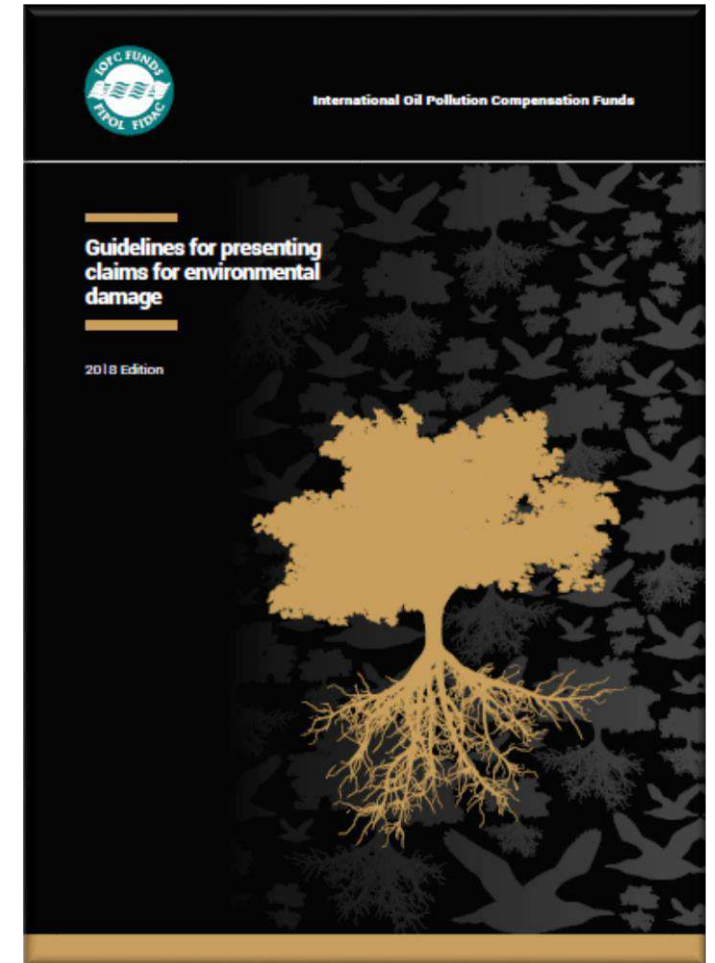
# Environmental guidelines

*Approved in October 2017*

Guidance document providing detailed reference information (admissible criteria, types of costs covered, past experiences etc.) for presenting claims for environmental damage

Through the guidelines, we expect the victims to :

- be familiar with the claim procedure
- have more accurate information on the environmental damage we accept





# Example of environmental damage claims

*An example from recent case*



## An environment monitoring after the incident

- sampling of seawater
- visual observation on selected coastal sections
- chemical analyses of aliphatic and polycyclic aromatic hydrocarbons in samples of seawater and sediments
- estimation of the ecological / environmental status of the area following the accident etc.

## Following costs were claimed

Personnel costs, Sampling costs, Consumables, Scientific equipment / services, Management costs

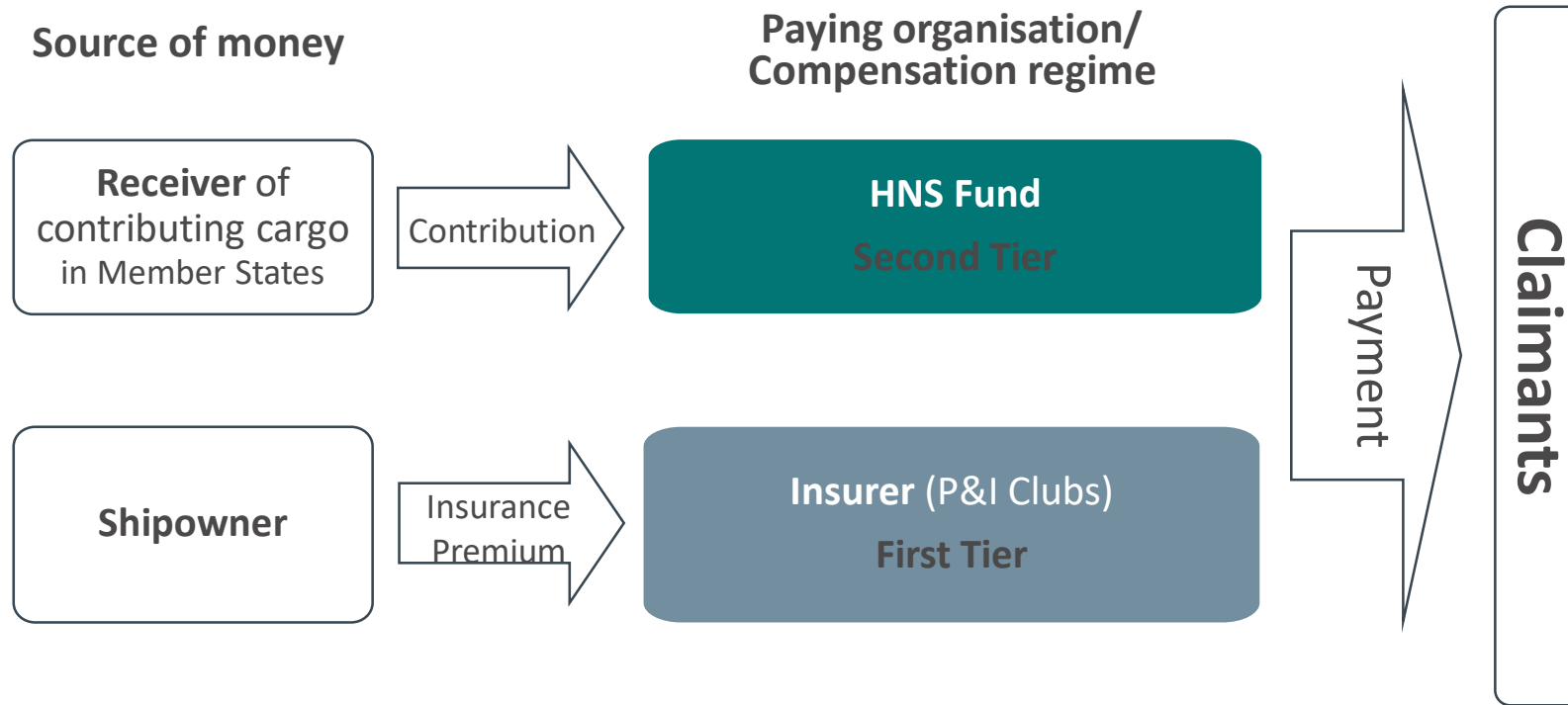


Each section of the claims was examined and **the 1992 Fund accepted the totality of the claimed amount.**



# 2010 HNS Convention

## Outline



### “Damage” (Article 1.6 (c))

loss or damage by contamination of the environment caused by the hazardous and noxious substances, 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



# 2010 HNS Convention

## Compensation coverage for wider substances



The term 'HNS' covers various substances and is defined by reference to a list of individual substances previously identified in a number of IMO international Conventions and Codes



Substances Carried in bulk	
I Oils	Regulation I Appendix I MARPOL 73/78
II Liquids	Regulation 1.10 Annex II MARPOL 73/78
III Liquids	Chapter 17 of IBC Code
V Gases	Gases - Chapter 19 of IGC Code
VI Liquids	Flammable/combustible liquids having a flash point not exceeding 60°C
VII Solids	Both in IMSBC Code and IMDG Code



Packaged goods	
IV	IMDG Code





# 2010 HNS Convention

*Current status and entry into force*

## Current status

**3 Ratifications** : Norway (April 2017)  
Canada (April 2018)  
Turkey (April 2018)



## Requirements for entry into force

When minimum of  
**12 States** ratify

1. Including 4 States each with fleet greater than 2 million gross tonnage
2. The total general account's contributing cargo volume reaches at least 40 million tonnes



Protocol enters into force

**18 months later**



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