



European Maritime Safety Agency

SAFEMED III seminar on EMSA's pollution response services

13 & 14 May 2014

EMSA, Lisbon

Claims arising due to marine pollution incidents

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European Maritime Safety Agency

International Conventions: General Framework

Prevention

e.g. MARPOL

**Preparedness
&
Response**



**OPRC
Convention 1990**



**OPRC-HNS
Protocol 2000**

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Liability/
Compensation

e.g.
CLC & Fund

e.g.
HNS
Convention

Pollution Response: Legal Instruments

The International Convention on
Oil Pollution Preparedness, Response and Cooperation 1990

↳ **OPRC 1990**

The **Protocol** on Preparedness, Response and Cooperation to
Pollution Incidents by **Hazardous & Noxious Substances 2000**

↳ **OPRC-HNS Protocol 2000**

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National Level

Competent national authority

- Contact points
- Authority to request/provide (international) assistance
- **National Contingency Plan (NCP)**
- To establish:
 - ❑ **"Minimum level of pre-positioned equipment commensurate with risk"**

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Oil pollution damage: Socio-economic & Environmental



❑ Environment and wildlife

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- ❑ Fisheries / mariculture
- ❑ Property
- ❑ Amenity beaches / tourism

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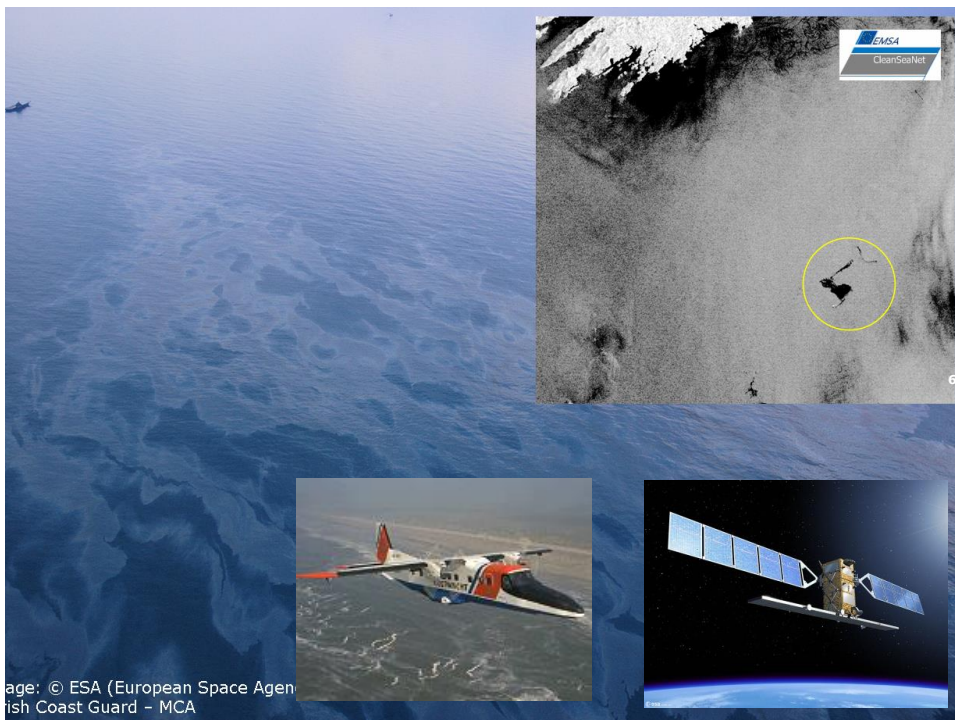
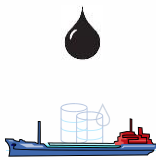


Image: © ESA (European Space Agency)
British Coast Guard – MCA



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International legal regime: Overview



- **CLC 92**
- **Fund 92**
- **2003 Sup Fund**

(Council Decision
2004/246)



**Bunker
2001**

(Council Decision
2002/762)



HNS 96
(not in force)
**Protocol of
2010**

(Council Decision
2002/971)

All*

LLMC 96

*If not covered
by another
Convention

(Directive
2009/20/EC)

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...International legal regime: Overview



**NUCLEAR
71**



**NAIROBI
WRECK
2007**

(Entry into force: 14 April
2015)



**SALVAGE
Convention
89**

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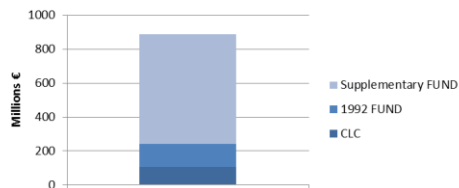
Liability & Compensation International Regime: concepts

- **Strict liability** (irrespective of fault)
- Channel all claims for compensation against the **shipowner**
- Limited number of exceptions to liability (e.g. war)
- **Limited liability** (SDR - ship GT)
- Define circumstances under which limitation right is lost
- **Mandatory insurance**
- Set rules as to jurisdiction and **time bar**

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Compensation limits CLC/FUND

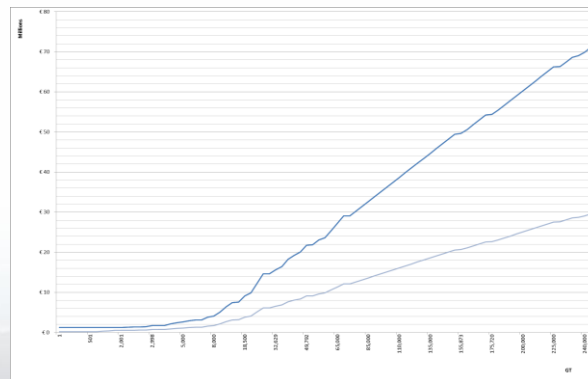
Compensation limits
oil pollution damage from tankers



Tanker size GT	1992 CLC (post 2003) million EUR	1992 FUND (post 2003) million EUR	2003 Supp. Fund Protocol million EUR
5,000	5.32	240	886
10,000	9	240	886
50,000	39	240	886
100,000	76	240	886
140,000	106	240	886
150,000	106.023	240	886
200,000	106.023	240	886

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Compensation limits property claims LLMC 76 & 96



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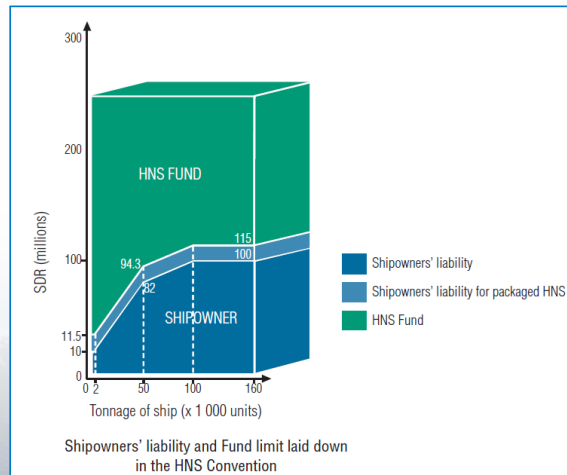
Example: the max. liability for property claims against a vessel of GRT 15,000 is SDR 9,3 million (approx. 10.8 million Eur)

Compensation limits HNS Convention

€300 million

€138 million

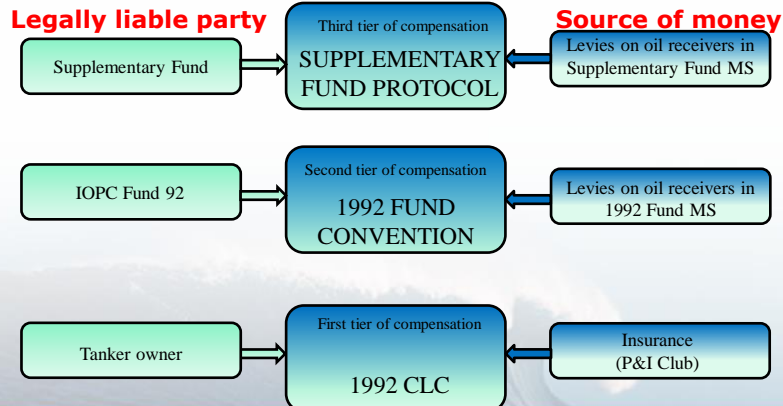
€120 million



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Pollution by persistent oil from tankers

Compensation of victims of persistent oil pollution damage from tankers in the respective contracting states through a **tiered system**



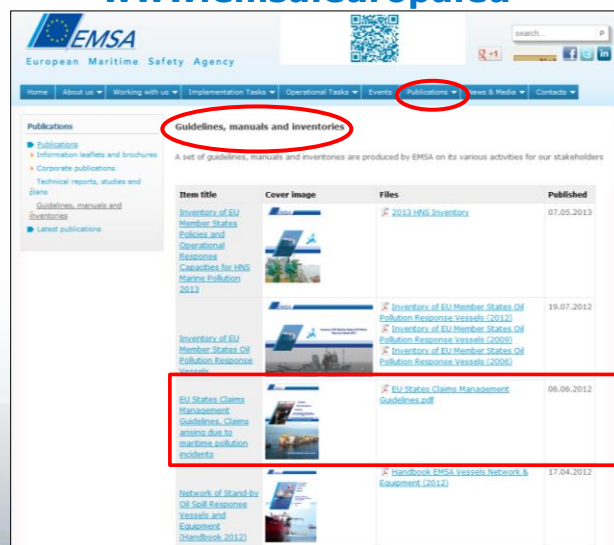
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EU States Claims Management Guidelines



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www.emsa.europa.eu



Publications

Guidelines, manuals and inventories

A set of guidelines, manuals and inventories are produced by EMSA on its various activities for our stakeholders

Item title	Cover image	Files	Published
Inventory of EU Member States Policies and Operational Response Capacities for MNS Marine Pollution 2013		2013 MNS Inventory	07.05.2013
Inventory of EU Member States Oil Pollution Response Vessels		Inventory of EU Member States Oil Pollution Response Vessels (2012) Inventory of EU Member States Oil Pollution Response Vessels (2009) Inventory of EU Member States Oil Pollution Response Vessels (2006)	19.07.2012
EU States Claims Management Guidelines, Claims arising due to maritime pollution incidents		EU States Claims Management Guidelines.pdf	06.06.2012
Network of Stand-by Oil Self-Response Vessels and Equipment (handbook 2012)		Handbook EMSA Vessels Network & Equipment (2012)	17.04.2012

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Overview

Compilation and management by the MS of a claim for costs incurred due to a maritime incident polluting or threatening to pollute the marine environment

- Polluter pays principle
- First time this type of document is drafted at the EU level
- No duplication with existing claims manual: different purposes and scope
- Main goal: to improve Member States cost recovery rates
- "Living document" to be reviewed at regular intervals

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Purposes

- Share experiences
- Move towards EU uniformity of claims management
- Identify best recovery practices
- Achieve higher cost recovery rates



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No harmonisation or impact on National legislation

Compiling a dossier & drafting a claim

Objective:

- The claim is based on real expenses actually incurred
- There is a link between the expenses and the incident
- The claim is "reasonable"

Produce:

- Explanatory notes
- Invoices
- Any supporting document justifying the expenses

Sections examples:

- Aerial and satellite resources including modelling
- Counter pollution at sea...

Agreement reached outside of court between claimants and compensation bodies / Compensation decided by national courts

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Content

- 12 chapters
 - ✓ Legal framework (overview)
 - ✓ Regional co-operation
 - ✓ Maritime insurance
 - ✓ Financial securities (LOU, bank guarantee)
 - ✓ Defining a pricing structure
 - ✓ Drafting the narrative & compiling the dossier
 - ✓ Claim settlement (general approach, time bar)
- Proformas

European Maritime Safety Agency February 2008 - Version 1

APPENDIX D

EXAMPLE NOTIFICATION LETTER

TEL :
DDI :
Fax :

[NAME OF OWNERS] Our Ref :
[FULL ADDRESS] Date :

Dear Sirs

[SHIP NAME, INCIDENT, AND DATE]

[YOUR ORGANISATION] exercises [State]
Government's responsibilities for taking, or co-ordinating measures to prevent,
reduce and minimise the effects of marine pollution inside the [jurisdiction]
Actions are undertaken by the [your organisation] on behalf of the
Secretary of State pursuant to [legal basis]

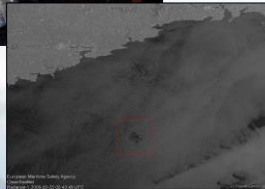
This letter is to inform you that we will shortly be submitting a claim pursuant to
section [legal instrument] for the costs of measures reasonably taken by
[State] in responding to the [INCIDENT TYPE] of the [VESSEL NAME]
The claim totals [] and a breakdown of the costs is enclosed together with
supporting documents and vouchers. A full set of documents has also been
forwarded to the PSI Club [NAME OF PSI]

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Claims headings – what will you claim for ?

- Aerial and satellite resources
- Counter pollution at sea
- Counter pollution beach/shoreline
- Wildlife treatment
- Purchased item
- Waste treatment and disposal
- Staff costs
- Wash down/decontamination facility
- Dispersants
- Media/PR
- Car hire
- Accommodation
- Costs of modelling
- Impact and reinstatement studies



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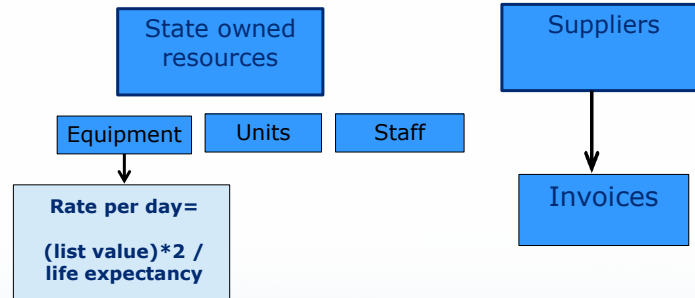
Preparatory work

- Develop a pricing structure
- Develop a system of record keeping for all responders
- Develop personal daily reporting and registration forms
- Draft an overview of what costs will be charged
- Define type of financial securities necessary
- Strategy for government to government assistance
- Develop strategy regarding small and large scale incidents



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Determining hire rates



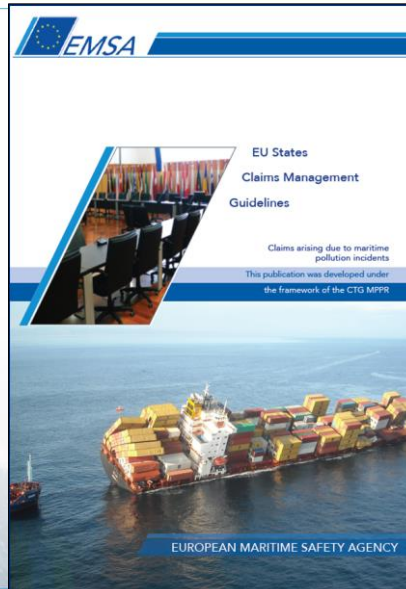
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Thank you

For further info:

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