



International Oil Pollution Compensation Funds

Claims for environmental damage: An overview

2019 Edition



Introduction

The International Oil Pollution Compensation Funds (IOPC Funds) are two intergovernmental organisations (the 1992 Fund and the Supplementary Fund) which provide compensation for oil pollution damage resulting from spills of persistent oil from tankers.

This international liability and compensation regime is based on two Conventions: the 1992 Civil Liability Convention and the 1992 Fund Convention, together with the Supplementary Fund Protocol of 2003.

With regard to environmental damage, the definition of 'pollution damage' in these Conventions provides 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.'

This brochure expands on that definition to provide an overview of the IOPC Funds' policy on claims for environmental damage. More detailed guidance can be found in the publication 'Guidelines for presenting claims for Environmental Damage'.



Admissible claims

The Conventions cover three types of environmental damage claims:



Claims for economic loss as a consequence of impairment of the environment;



Claims for the costs of post-spill studies; and



Claims for the costs of reinstatement measures.

Who can claim?

Claims for environmental damage would be expected to be presented by the organisation mandated to manage natural resources on behalf of the nation or region affected, most likely national or regional governments or government agencies. Individuals or organisations may be entitled to submit claims if they are the natural resource owner or manager or with the cooperation, consent and coordination of the resource owner or manager, where the link with the resource is established.



Types of claims



Claims for economic loss

Claims for loss of profit as a consequence of impairment of the environment are equivalent to economic loss claims in the fisheries and tourism sectors and are covered in the published guidelines for claims in these sectors.



Claims for the costs of post-spill studies

Costs of post-spill studies are admissible in principle if they relate to damage which falls within the definition of pollution damage under the Conventions and if they are intended to quantify damage that is readily observable. Studies aimed at the speculative investigation of hypothetical effects would not be admissible.

The scope of the study should be directed towards:

- establishing the nature, extent and likely duration of any damage that has occurred, and
- monitoring the recovery of damaged environments.

- The scale of the study should be in proportion to the extent of the contamination, the likely effects of that contamination and the benefits achieved through reinstatement.
- The study must provide reliable and useful information and should avoid repeating previous work or duplicating other ongoing studies or projects.
- Studies should follow principles of sound scientific investigation.

In general, the approaches usually taken to carry out post-spill studies can be categorised as follows:

Approach Undertaken	
	Comparison of the pre-spill and post-spill ecological status of the affected resources as well as the levels of oil and its chemical components to which those resources were exposed both pre and post-spill
	Comparison of the affected area with uncontaminated reference sites or sites not impacted by the spill
	Monitoring post-spill recovery of the communities and habitats contaminated by oil

The 1992 Fund should be invited to participate in the assessment as to whether a study is justified for a particular incident.



Claims for the costs of reinstatement measures

The Conventions cover the costs of reinstatement of the damaged environment. The marine environment is in a constant state of flux. Whether or not reinstatement measures will be needed depends on the sensitivity of the affected resources to contamination by oil and their natural rate of recovery. The admissibility of such claims also depends on the viability of the measures proposed.

Reinstatement measures should have the aim of accelerating recovery, that is re-establishing the biological community in which the organisms characteristic of that community at the time of the incident are present and are functioning normally.

Reinstatement measures should be based on the application of Net Environmental Benefit Analysis (NEBA), sometimes referred to as Spill Impact Mitigation Assessment (SIMA).

In principle, both direct and indirect reinstatement measures could be admissible for compensation.

Reinstatement measures taken at a distance from the damaged site should maintain an essential link with the damaged environment and be directed to the reinstatement of the damaged habitats or resources rather than their replacement or the provision of an equivalent alternative or substitute elsewhere.



NEBA/SIMA

This process consists of an analysis of options which offer an appreciable environmental and/or economic benefit, when compared with natural recovery alone.

Key elements considered in the analysis:

- fate and effects of the spilled oil;
- the ecological importance of the affected natural resources;
- expected outcome of the proposed reinstatement measures; and
- assessment of the risk that the measures may do more harm than good.






Non admissible claims:

- Loss of enjoyment. The loss of an amenity such as the ability to enjoy a recreational beach until it has been cleaned may be an inconvenience but, since it does not result in a financial loss, no compensation is payable.
- Claims based on an abstract quantification calculated in accordance with theoretical models (e.g. claims based on the amount of oil spilled, the length of coast affected, surveys of the preferences of the population in the affected area, etc). Such calculations have no relation to costs actually incurred and have no bearing on the recovery of the damaged environments.
- Claims of a punitive nature, based on the degree of fault of the polluter (like fines and penalties) since they are based on an abstract calculation of damages.
- Loss of environmental services (i.e. services that support the plants and animals that live within the marine environment and the humans who depend on the sea and shoreline for livelihoods, recreation and enjoyment).

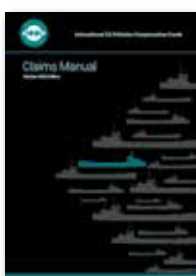
Examples of potential reinstatement measures

The table below indicates the most common measures taken after an oil spill to restore habitats and/or animal population. Whilst each claim is assessed on its own merits and the individual circumstances of the incident, a number of principles have been established by the 1992 Fund Executive Committee regarding the admissibility of certain claims. A more comprehensive table can be found in the publication **'Guidelines for presenting claims for environmental damage'**.

Rehabilitation and release of birds, marine mammals and marine reptiles is considered as a clean-up measure and therefore not included in the table. These measures are instead discussed in the published Guidelines for presenting claims for clean-up and preventive measures. It is not considered reinstatement because while it may result in the survival of oiled individuals, such actions have no effect on populations of affected animals.

	Habitat / Populations	Likely to be admissible	Likely not to be admissible
	Mangroves and salt marshes	Re-colonisation and replanting programmes to restore habitat and to accelerate natural recovery	Replanting programs that do not reflect the natural biodiversity of the damaged habitat
	Coral Reefs	Measures to limit disturbance whilst the coral reefs are recovering from the effects of dispersed oil	Reinstatement measures following physical damage caused by ship groundings
	Marine mammals	Restriction of hunting and other disruptive human activities	Captive breeding programmes
	Marine reptiles	Predator control and minimising disturbances on the beach	Collection, relocation or controlled hatching of turtle eggs and release of juveniles
	Birds	Predator control and minimising disturbances to shore breeding birds	Captive breeding of birds from an affected population

Further information



The Guidelines for presenting claims for environmental damage form part of the IOPC Funds' Claims Information Pack, which also includes the Claims Manual, an example Claim Form and other sector-specific guidelines. The full pack is available to download from the IOPC Funds website www.iopcfunds.org. Hard copies are also available on request.



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