

NOWPAP MERRAC

Northwest Pacific Action Plan
Marine Environmental Emergency Preparedness and Response
Regional Activity Centre

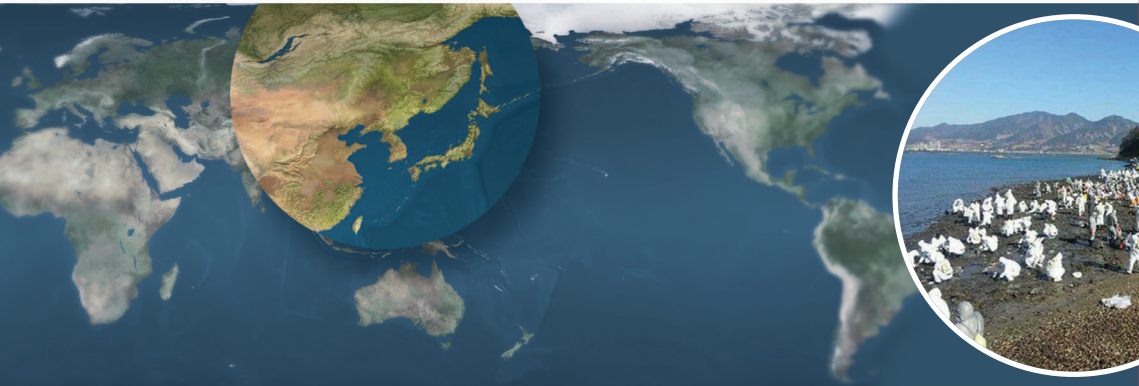
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Legislation and Practices related to Civil Liability and Compensation for Marine Pollution Damage in the NOWPAP Member States



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Acknowledgements

As agreed at the 13th NOWPAP MERRAC Focal Points Meeting (June 2010), this report has been developed as a part of MERRAC Specific Projects to survey information on legislation and practices related to civil liability and compensation for marine pollution damage in the NOWPAP members in order to promote better implementation of the NOWPAP Regional Contingency Plan in case of oil and HNS spill incidents from ships.

The project has been led by the People's Republic of China, Mr. Chunchang ZHANG as the leading expert, with three other nominated national experts who are Ms. Eriko NISHIMURA from Japan, Prof. Yeong Seok CHEONG from the Republic of Korea and Dr. Natalia KUTAEVA from the Russian Federation. The report has been developed by the leading expert and MERRAC based on the national reports submitted by the national experts.

The following MERRAC staffs contributed to the production of this report: Ms. Yoon Young BACK, Dr. Jeong-Hwan OH, Dr. Seong-Gil KANG, Ms. Jung-Hyun LIM and Mr. Bo-Sik KANG with support of MERRAC Focal Points and NOWPAP Regional Coordinating Unit (RCU).

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Chapter 1. Introduction

Attributed to tort (tortious action/ infringement of right) at sea, marine pollution from ships has its special nature which is very different from general civil liability for compensation of tort liability in respect of the constitutive requirements, the scope and principle for compensation. International Maritime Organization (IMO) has set up different compensation systems for the ship pollution including oil and hazardous and noxious substances (HNS) pollution. The civil liability compensation for marine pollution damage by ships is improved by the practices of international conventions.

According to these conventions, each NOWPAP member state has established its own legal system and civil liability and compensation regime for marine pollution damages.

When a marine pollution damage caused by ships occurs in the Northwest Pacific Action Plan (NOWPAP) area, questions and uncertainty both academically and practically need to be answered such as how to establish the liability of ship owners, how to identify the responsible parties, what kinds of claims are admissible, and how to alleviate this burden through compulsory insurance. Hence, a thorough study on the compensation for marine pollution damage by ships is important and meaningful for all NOWPAP member states for better implementation of the NOWPAP Regional Contingency Plan in case of oil and HNS spill incidents from ships.

The Claims Manual in the Annex 6 to the NOWPAP Regional Oil and HNS Spill Contingency Plan (RCP) provides the general procedures and the guide on how a claim should be presented and what in particular should a claim contain. However, the RCP does not address the NOWPAP member states' domestic legislations and practices. For better implementation of the RCP, it would be very helpful if people concerned know beforehand the legal systems of the NOWPAP member states, in order to give better guidance for the claims of compensation from the marine pollution from ships.

Having realized the significance of collecting information on the legislation and practices related to civil liability and compensation for marine pollution damages in the NOWPAP member states, a new specific project on this issue was initiated by the decision of the 13th NOWPAP MERRAC Focal Points Meeting in June 2010, and China was tasked as the leading country for this specific project.

The main objectives of the project were:

- 1) To collect and share the information on legislation and practices related to civil liability and compensation for marine pollution damage in the NOWPAP member states;
- 2) To compare the difference in the legislation and practices related to civil liability and compensation for marine pollution damage from ships in the NOWPAP member states; and
- 3) To draw conclusions or suggestions for better implementation of the NOWPAP RCP in case oil and HNS spills from ships occur in the NOWPAP region.

Chapter 2. The Legislation System

2.1. Applicable Conventions

The *Torrey Canyon* oil spill incident which occurred on the southwest coast of the UK in the spring of 1967 is one of the world's most serious oil spills. Such incident triggered development of the international regimes and as a result International Convention on Civil Liability for Oil Pollution Damage (CLC) 1969 and International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage (Fund) 1971 were elaborated under the auspices of International Maritime Organization (IMO) to provide compensation for pollution damage caused by spills of persistent oil from tankers. A Diplomatic Conference was held in London in 1992 under the auspices of IMO and adopted two Protocols amending the 1969 and 1971 Conventions. The amended Conventions, known as CLC 1992 and Fund 1992, are now widely acceded in the world.

From 16 May 1998, Parties to the 1992 Protocol/CLC 1992 ceased to be Parties to the CLC 1969 due to a mechanism of compulsory denunciation of the "old" regime established in the 1992 Protocol. Protocols to the Fund 1971 were adopted in 1976 and 1984, but were superseded by the 1992 Protocol/Fund 1992 and the 1971 convention ceased to be in force from 24 May 2002.

After years, especially following the incidents of *Nakhodka* (1997), *Erika* (1999) and *Prestige* (2002), which highlighted the inadequacy of the CLC 1992 and Fund 1992 Conventions, the Supplementary Fund 2003 (SF 2003) was created to supplement the inadequacy of CLC 1992 and Fund 1992. CLC 1992 was amended by the 2000 Amendments which entered into force on 1 November 2003; the amendments raised the compensation limits by 50 percent compared to the limits set in the CLC 1992. The CLC 1992 and Fund 1992 are applied to the pollution damages caused by spills of persistent oil carried by the seagoing ships such as cargo or the bunkers of such ships which actually carries oil in bulk as cargo, including costs incurred for measures to prevent or minimize the pollution damages.

All of the NOWPAP member states are currently members of CLC 1992 and Fund 1992, except for China where Fund 1992 is only applicable to Hong Kong SAR. Japan and Korea are also the state members of the SF 2003.

However, the CLC/Fund regime can only resolve problems caused by persistent oil spilled from tankers. In order to overcome this shortcoming, another convention Bunker 2001 was adopted under the auspices of IMO, which provides a liability, compensation and compulsory insurance system for the victims of oil pollution

damage caused by spills of bunker oil. All NOWPAP member states except Japan have now acceded to Bunker 2001.

Having recognized the risks and dangers imposed by the worldwide carriage of HNS by sea, HNS 1996 was adopted under the auspices of IMO in May 1996 to ensure adequate, prompt and effective compensation for damages caused by incidents in connection with maritime transportation of HNS. The HNS Convention is based on the highly successful oil pollution compensation under the CLC/Fund regimes. However, given the nature of the impact of the HNS pollution incidents, the HNS Convention goes further by not only covering pollution damage, but also risks of fire and explosion, including loss of life or personal injury. However, by 2009, the HNS Convention had still not been entered into force due to an insufficient number of ratifications and the 1996 Convention was amended by the Protocol of 2010 (HNS Protocol 2010) in order to promote the ratification of HNS 1996 and also to address practical problems that had prevented many states from ratifying the HNS 1996. The HNS 1996 and the Protocol of 2010 have not yet entered into force and among the NOWPAP member states; Russia is the only state which has ratified the HNS 1996.

The CLC/Fund 1992, Bunker 2001 and the HNS conventions have provided a clear, uniform and efficient means of compensation for the victims of oil and HNS spilled from ships. The basic concepts introduced in these conventions are: the principle of strict liability; compulsory insurance; and two-tiered compensation with limits. Especially, the CLC/Fund regimes have not only proved to be effective, practical and worked well over decades of its operation, but have also been served as a model for regimes covering substances which are not covered by the CLC/Fund regimes: bunkers carried on ships other than tankers and HNS other than oil.

The main international conventions with respect to marine pollution damage civil liability and compensation are as follows:

- 1) International Convention on Civil Liability for Oil Pollution Damage, 1969 [CLC 1969];
- 2) Protocol of 1992 to the International Convention on Civil Liability for Oil Pollution Damage, 1969 [CLC 1992];
- 3) International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1971 [Fund 1971];
- 4) Protocol of 1992 to the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1971 [Fund 1992], Protocol establishing an International Oil Pollution Compensation Supplementary Fund, 2003 [SF 2003];
- 5) Convention on Limitation of Liability for Maritime Claims, 1976 [LLMC 1976];
- 6) Protocol of 1996 to Amend the Convention on Limitation of Liability for Maritime Claims, 1976 [LLMC 1996];

- 7) International Convention on Civil Liability for Bunker Oil Pollution Damage, 2001 [Bunker 2001];
- 8) International Convention on Liability and Compensation for damage in Connection with the carriage of Hazardous and Noxious Substances by Sea, 1996 [HNS 1996] and its 2010 Protocol [HNS Prot 2010]¹; and
- 9) Nairobi International Convention on the Removal of Wrecks, 2007 [WRC 2007]²;

The table below³ shows the conventions applicable on compensation for damage by ship pollution in the NOWPAP region.

Table 1. List of the Conventions Acceded by the NOWPAP Member States

	CLC 1992	FUND 1992	SF 2003	LLMC 1976	LLMC 1996	BUNKER 2001	HNS 1996
China	★	☆ ⁴				★	
Japan	★	★	★		★	⁵	
Korea	★	★	★			★	
Russia	★	★			★	★	★

The following conclusions could be drawn in this regard:

- 1) The principles and provisions of the above conventions are well-known to all NOWPAP member states and they are already applied in the practices of handling the oil pollution compensation claims; and
- 2) It is not difficult to apply these well-known international conventions to deal with compensation issues among the NOWPAP member states as the common guidelines whenever it is necessary to apply under the NOWPAP RCP.

2.2. Member states' Domestic Legislations

Considering the specific circumstances under the NOWPAP member states' own jurisdiction, domestic legislations are important for the members to implement the international conventions as well as to ensure adequate, prompt, and effective compensation available to the persons who suffer damages from the oil pollution. The table 2 outlines the domestic laws related to the civil liability and compensation for the marine pollution damage in the NOWPAP member states.

¹ Not yet in force.

² Not yet in force.

³ IMO website: <http://www.imo.org/About/Conventions/StatusOfConventions/Pages/Default.aspx>

⁴ only applicable to Hong Kong SAR.

⁵ Japan is not a member to Bunker Convention 2001, while it has a domestic law, *the Law on Liability for Ship Oil Pollution Damage* and its latest amendment have been effective from 1st March 2005.

Table 2. *List of Existing Domestic Laws and Regulations in the NOWPAP Member states*

Member	Laws and Regulations
China	General Principles of the Civil Law of the PRC (1986)
	The Maritime Code of the PRC (1993)
	Tort Law of the PRC (2009)
	The Marine Environment Protection Law of the PRC (1999)
	Regulations on Administration of the Prevention and Control of Marine Environment Pollution Caused by Vessels (2009)
	Regulations of the People's Republic of China for the Implementation of Civil Liability Insurance for Ship Oil Pollution Damage (2010)
	Regulations of the PRC on the Emergency Prevention and Handling of Marine Pollution Caused by Vessels (2011)
	Regulations of the PRC on the Prevention and Control of Pollution Caused by Vessels and Relevant Operations (2010)
	Rules of Investigation of Marine Oil Pollution Incident Caused by Vessels (2011)
	Regulations for the Collection, Use and Management of Vessel-caused Oil Pollution Compensation Fund (2012)
	Rules of the Supreme People's Court on Relevant Issues on Trial of Disputes over Compensation for Ship Oil Pollution Damage (2011)
Special Maritime Procedure Law of the People's Republic of China (2000)	
Japan	The Law on Liability for Ship Oil Pollution Damage (1975)
	The Law on Liability Limitation of Ship Owner (1975)
Korea	Commercial Act of Korea (1963)
	Compensation For Oil Pollution Damage Guarantee Act (1992)
	Shipowner's Limitation Procedural Act (1993, latest amendments made in 2009)
Russia	The Merchant Shipping Code of the Russian Federation (1999 with amendments 2001-2012 – includes Chapter XVIII "Liability for Damage of Oil Pollution from Vessels", Chapter XIX "Liability for damage in connection with the Carriage of Hazardous and Noxious Substances by Sea". Chapter XIX "Liability for Damage in connection with Bunker Fuel")
	Regulations of the issuance and verification of certificates of insurance or other financial security of civil liability for oil pollution damage. Order of the Ministry of Transport of the Russian Federation (2002)
	Provisions on the licensing of inland water transport and sea transport of dangerous goods. Decree of the Government of the Russian Federation (2012)
	Federal Law on Environment Protection (2002)
	Federal law on the internal waters, territorial sea and the Contiguous Zone of the Russian Federation (1998)

In the NOWPAP region, Korea and Japan have special laws on compensation for oil pollution. In Russia, there are relevant regulations such as the Merchant Shipping Code of the Russian Federation which cover oil and HNS pollution from vessels. In China, there is no special law to regulate the compensation for oil pollution from ships yet, however, some regulations exist to constitute a legal system in this respect.

The following conclusions can be drawn in this regard:

- 1) Legal systems were already established to cover marine pollution damage civil liability and compensation in the NOWPAP member states; and
- 2) The international conventions have been incorporated into domestic laws, although the way of incorporation may be different.

It is hard to evaluate whether the present legislation systems including domestic and international conventions ensure adequate, prompt, and effective compensation for the pollution damages caused by oil and HNS spills from ships. Also, although there are some provisions in the NOWPAP RCP, the present legislations of each NOWPAP member state cannot yet cover the compensation for the costs of international assistance at national level well.

Chapter 3. Party/Person Involved

3.1. Party/Person Liable

The ship owners whose ship leaks oil or HNS may always be held liable for the marine pollution damage caused by the ship, either under the relevant international conventions or domestic legislations.

Ship owner is defined in CLC 1992 and HNS 1996 as “the person or persons registered as the owner of the ship or, in the absence of registration, the person or persons owning the ship, or the operator of the ship in the case of a ship owned by a State and operated by a company in that State”. On the other hand, Bunker 2001 has enlarged the scope of the ship owner by including the registered owners, bareboat charterers, managers and operators of the ship.

According to the four national reports submitted by the expert of the four NOWPAP members, the scopes of ship owners are different in the NOWPAP member states as follows:

- 1) In China, the definitions of the “ship owner” in CLC 1992 and Bunker 2001 are applicable respectively when the respective convention applies. When none of the convention applies, the “polluter” who causes the pollution is liable according to the domestic laws;
- 2) Japan classifies the “ship owner” by types of the vessels. Liability for damages caused by oil pollution from tankers shall be held by the owner of the vessel who will be responsible for the operation of the vessel at sea whereas liability for damages caused by bunker oil pollution shall be held jointly and severally by the owner and charterer of the vessel who will be jointly responsible for the operation of the vessel;
- 3) Korea more specifically classifies the “ship owner” into two categories of ships, one is oil tankers and general vessels, and the other is oil storage barges. The term “shipowner” can be defined under the following classifications:
 - For oil tankers and general vessels:
 - Any person registered as the owner of a ship under Art. 8 (1) of the Ship Act, Art. 13 (1) of the Fishing Vessels Act, or foreign Acts and subordinate statutes (in the absence of registration, any person who owns an oil tanker or general vessel);

- In case a ship is owned by a foreign government, any corporation or association in that country registered as the operator of the oil tanker or general vessels shall be deemed as the ship owner; and
 - In case an oil tanker or general vessel of foreign registry is chartered by a national of the Republic of Korea, both the person registered as the owner of the ship and the charterer shall be regarded as the ship owners.
- For oil storage barges:
- The “ship owner” of oil storage barges means any person who owns or rents an oil storage barge.
- 4) In Russia, the definition of the “ship owner” under the Merchant Shipping Code of the Russian Federation shall be understood as a person who operates the vessel in his own name, as the owner of it or on any other lawful basis. For example, a charterer may operate the vessel in his own name under a contract or time charter or bareboat charter. In such a case, the lawful basis would be an administrative act of the relevant state authority. For example, the vessels which are state-owned are assigned to the state unitary enterprises as an act of business.

3.2. Party/Person Entitled to Claim

Regarding the person who has the right to claim the damage, the NOWPAP member states follow the same general principles, i.e. any person who suffers losses from the marine pollution is entitled to claim for such damages, including the competent authorities on behalf of the state, any organizations or individuals.

In requesting and rendering assistance among the NOWPAP member states, the requesting member should reimburse the assisting member state for the cost of its action taken at the express request of the requesting member state⁶. On the other hand, it is unclear whether a foreign government can also be a claimant in accordance with the NOWPAP member states' domestic laws. In case of *Hebei Spirit* (2007), the Korean government reimbursed the assistance cost incurred to China for the sorbents requested through a diplomatic channel. This is a good example of how to solve this kind of matter in a prompt and proper way. However, it is still necessary to examine the dispute resolution approaches in case there is a dispute on the reimbursement of assistance costs and to see whether in such situation the assisting government can be entitled to make claims under the domestic law of the requesting country.

⁶ NOWPAP RCP, 6.2 financial procedures.

Chapter 4. Limitation of Liability and Compulsory Insurance

4.1. Limitation of Liability

4.1.1. Limits of liability for oil pollution

The limitation of liability of ship owner and the level of compensation of IOPC Fund under the framework of CLC/Fund/SF is illustrated as follows:

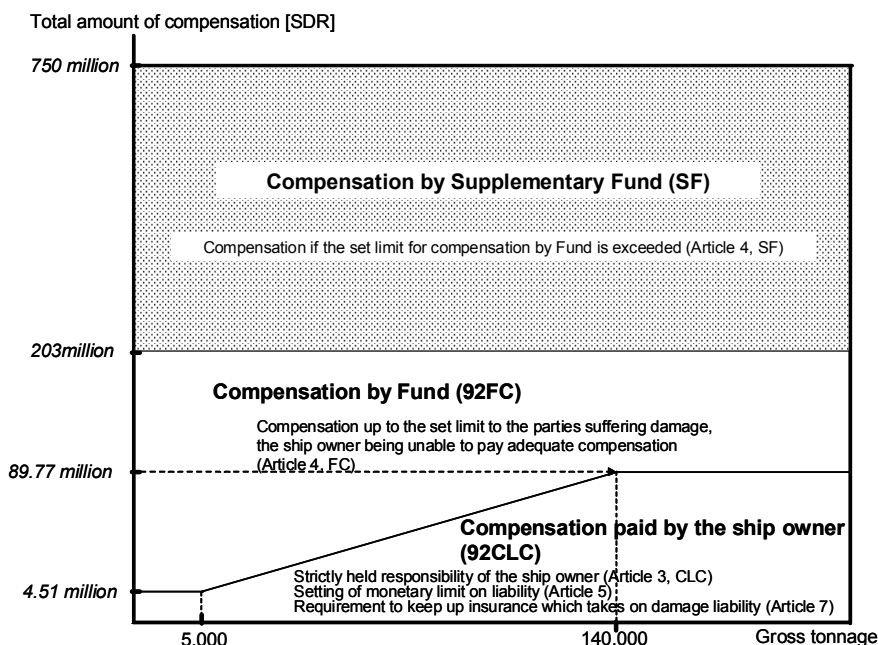


Figure 1. Limitation of Liability under CLC/Fund/SF

The international compensation regimes for persistent oil pollution damage from tankers, developed under the auspices of the IMO have a three tier system:

- 1) First tier: the International Convention on Civil Liability for Oil Pollution Damage 1992 (CLC 1992);
- 2) Second tier: the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage 1992 (Fund 1992); and;

- 3) Third tier: the Protocol of 2003 to the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1992 (SF 2003)

Under CLC 1992, if it is proved that the pollution damage resulted from the ship owner's personal act or omission, committed with the intent to cause such damage, or recklessly and with knowledge that such damage would probably result, the ship owner is deprived of the right to limit his liability.

All the NOWPAP members have acceded to Fund 1992 which provides the second tier compensation for the victims of oil pollution from tankers, however, in China, Fund 1992 is currently only applicable to Hong Kong SAR. Korea and Japan are the member states of SF 2003 which provides a third tier compensation for the victims of the oil pollution damages.

With respect to the domestic fund, China has established its own domestic compensation fund for oil pollution from ships since July 2012, while the other three member states do not have domestic fund.

All of the NOWPAP members apply the provisions on limitation of liability under CLC 1992 for compensation for oil pollution damage from tankers. However, for oil pollution except for oil pollution from tankers, domestic laws are applied:

1. China

Bunker 2001 applies for pollution caused by non-persistent bunker oil carried by tanker or bunker oil carried by non-tanker vessel. According to Art 6 of Bunker 2001, the limitation of liability shall be in accordance with national or international regimes. Considering that China is not member state of LLMC 1976 and its 1996 Protocol, as per paragraph 2 of Art 5 and paragraph 1 of Art 19 of "the Oil Pollution Rules of the PRC Supreme People's Court", the provisions of Chapter 11 (i.e. LLMC) of China Maritime Code shall apply.

For specific oil pollution caused by ship for which neither CLC 1992 nor Bunker 2001 applies, for example, pollution caused by non-persistent oil carried on board a ship (including tanker) as cargo, the provisions of chapter 11 of China Maritime Code may be applied for the limitation of liability of the liable party.

2. Japan

Limits of liability for ocean-going vessels excluding oil tankers shall be according to provisions of "the Law on Liability Limitation of Ship Owner" as follows:

- 1) Limits of liability in cases involving personal claims for bunker oil pollution
 - For 2,000 tons, 1,000,000 SDR⁷;
 - From 2,000 to 30,000 tons, 12,200,000 plus 400 SDR per ton;
 - For 70,000 tons, 24,200,000 plus 400 SDR per ton;
 - For over 70,000 tons, 24,200,000 plus 200 SDR per ton

- 2) Limitation of liability in cases involving damage to other than oil tanker and bunker oil pollution:
 - For 2,000 tons, 3,000,000 SDR;
 - For 30,000 tons, 36,600,000 SDR;
 - For 70,000 tons, 72,600,000 SDR;
 - For over 70,000 tons, plus 600 SDR per ton

3. Korea

Korea applies the Commercial Act of Korea and the limit of liability is calculated on the basis of tonnage of the ships:

- 1) For a ship with tonnage of less than 300 tons, limits of liability shall be 83,000 SDR;
- 2) For a ship not exceeding 500 tons, 167,000 SDR;
- 3) For a ship with a tonnage in excess of 500 tons, the following additional rules apply:
 - For each ton from 501 to 30,000 tons, 167 SDR;
 - For each ton from 30,001 to 70,000 tons, 125 SDR; and
 - For each ton in excess of 70,000 tons, 83 SDR.

4. Russia

According to the Chapter XIX of “the Merchant Shipping Code of the Russian Federation” on “Liability for Damage in connection with Bunker Fuel”, the owners of all vessels of gross tonnage of 1,000 tons and above, have right to limit his liability which are also consistent with the provisions of LLMC 1996.

⁷ Special Drawing Rights: an international reserve asset created by the International Monetary Fund (IMF) in 1969 to supplement the existing official reserves of member countries.

4.1.2. Limits of liability for HNS pollution

For the limitation of liability under HNS 1996, the ship owner is entitled to limit his liability to an amount calculated on the basis of the units of gross tonnage of the ship (Table 3):

- 1) For a ship not exceeding 2,000 GRT, 10 million SDR;
- 2) For a ship in excess of 2,000 GRT, 10 million SDR plus;
 - 1,500 SDR for each unit of tonnage from 2,001 to 50,000 GRT;
 - 360 SDR for each unit of tonnage in excess of 50,000⁸

Table 3. *Limitation of Liability under HNS 1996*

Ship Tonnage (GRT)	Limit of Liability-Bulk (SDR)	Limit of Liability-Packaged (SDR)
Up to 2,000	10 million	11.5 million
2,001 to 50,000	1,500 per unit	1,725 per unit
50,001 to 100,000	Add 360 per unit	Add 414 per unit
Over 100,000	Max. 100 million	Max. 115 million

Among the NOWPAP member states, Russia has ratified HNS 1996 therefore the limits of liability will follow the above rules provided in HNS 1996. In case of HNS spills in the other member states, domestic laws are applied.

⁸ Overview of the HNS Convention- IMO p. 4
http://www.imo.org/blast/blastDataHelper.asp?data_id=6505&filename=HNSconventionoverview.pdf

4.2. Compulsory Insurance

Compulsory insurance on liability of compensation for oil and HNS pollution damage is required in all of the NOWPAP member states. The Table 4 below indicates the compulsory insurance requirements for oil and HNS pollution damage compensation.

Table 4. Compulsory Insurance Requirements for Oil Pollution Damage Compensation

Member	Requirements
China	Ship owners of: <ul style="list-style-type: none"> · Oil tankers; and · General vessels with the gross tonnage exceeding 1,000 units of tonnage, should be insured or obtain financial guarantees.
Japan	Ship owners of: <ul style="list-style-type: none"> · Oil tankers carrying more than 2,000 tons of oil in bulk (consistent with CLC 1992); and · Ocean-going vessels excluding oil tankers, with the gross tonnage of 100 or larger, should be insured or obtain financial guarantees.
Korea	Ship owners of: <ul style="list-style-type: none"> · Oil tankers carrying not less than 200 tons of oil in bulk as cargo; and · General vessels with the gross tonnage exceeding 1,000 units of tonnage, should be insured or obtain financial guarantees.
Russia	Ship owners of: <ul style="list-style-type: none"> · Oil tankers carrying more than 2,000 tons of oil in bulk (consistent with CLC 1992); and · General vessels with the gross tonnage exceeding 1,000 units of tonnage (consistent with Bunker 2001), should be insured or obtain financial guarantees Ship owners of: <ul style="list-style-type: none"> · Vessels carrying HNS are required to have insurance or other financial guarantees in the sums representing the limit of their liability in accordance with the Art 331 of the Merchant Shipping Code of the Russian Federation.

Chapter 5. Admissibility and Assessment of Claims

In respect to the admissibility of the claims, all NOWPAP member states have their own rules. China has the admissibility of claims stipulated in the Oil Pollution Rules of the Supreme People's Court and Regulations on Domestic Fund. The Russian Federation follows the provisions of the Article 316 on "Grounds for liability of the vessel's owner", Article 325 on "Claims for compensation for pollution damage" and the Chapter XVIII on "Liability for Damage of Oil Pollution from Vessels" of the Merchant Shipping Code of the Russian Federation as well as the relevant recommendations of the IMO concerning the claims procedures and admitting claims. In Korea and Japan, both the admissibility and assessment of claims are entirely entrusted to the judicial system.

The compensation for the cost of clean-up operations, preventive measures, damage to property and economic loss is admissible once it is proven to be reasonable. Generally speaking, the principles and criteria under CLC/Fund are followed by the four NOWPAP member states.

In China, according to the Article 10 of the Oil Pollution Rules of the PRC Supreme People's Court, several factors should be taken into account including the pollution scope, pollution degree, amount of leaked oil, the reasonableness of the preventive measures and the charges of cleaning up personnel and equipment used, to assess the expenses paid for preventive measures and further loss or damage caused by the preventive measures,.

In Japan, the assessment of claims follows the IOPC Fund Claims Manual according to which the decision as to whether to approve or reject a particular claim rests entirely on the P&I Club and the Fund. Same in Korea, it is subject to the domestic rule which is the Ship Owner's Limitation Procedural Act but the IOPC Fund Claim Manual acts as basic principle for the assessment of the claims.

In Russia, the Federal Supervisory Natural Resources Management Service (federal body subordinated to the Ministry of Natural Resources and Environment of the Russian Federation) has established the instruction for the calculation of the cost of damage of the natural resources and restoration of the affected natural resources. According to the Federal Law "About the Environment Protection", claims will be submitted to the court by the territorial bodies of the Federal Supervisory Natural Resources Management Service in order to receive compensation for the damages incurred to the natural resources and the cost of restoration.

Since the criteria for the assessment of the costs for the cleaning-up operations and preventive measures is critical for the calculation of the costs of the international assistance, it is advised that the NOWPAP member states have the national criteria issued by the competent authorities. This issue can be well resolved through the adoption of the principles and criteria provided by the CLC/Fund regimes.

Annex 6 of the NOWPAP RCP also provides a claim manual to assist claimants by listing up the particulars which a claim should contain and by explaining the nature of the supporting documentation which is required⁹.

The NOWPAP RCP also states¹⁰ that the NOWPAP member states should preferably inform each other in advance on the hourly rates and wages of the personnel, the rental rates for equipment, vehicles, vessels and aircrafts and the cost of treatment products, which might be rendered as assistance. The rates should include any insurance costs for equipment and personnel incurred to the assisting member state. This information has to be updated by Marine Environmental Emergency Preparedness and Response Regional Activity Center (MERRAC) of NOWPAP regularly based on information provided by each member and be made available to all NOWPAP member states.

⁹ NOWPAP RCP Annex 6

¹⁰ NOWPAP RCP 6.2.3

Chapter 6. Claim Procedure

Claim procedure is usually based on the national procedural laws; the following charts illustrate the claim procedure of each NOWPAP member state.

6.1. Claim Procedure in China

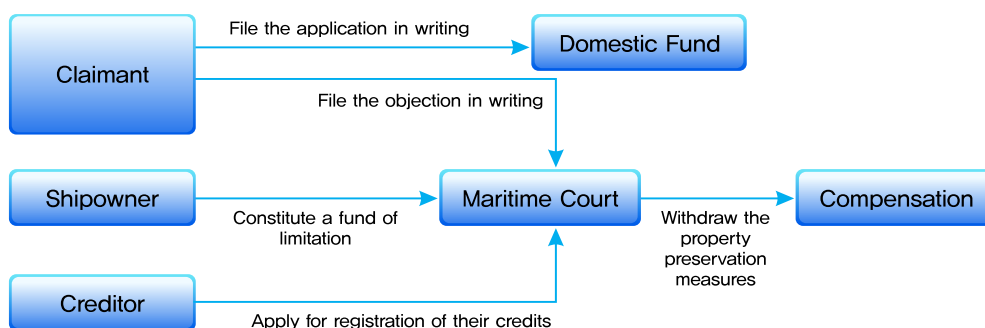


Figure 2. *Claim Procedure in China*

The claimant can bring a claim against the ship owner or directly against the insurer. The defendant (owner or insurers) can exercise his right of limitation and usually apply to constitute fund for limitation of liability for the oil pollution damages in “the maritime court of the place where the ship oil pollution accident occurred”. Before the limitation fund is constituted, the claimant can object to such application of fund for limitation of liability in writing to the maritime court within 7 days after the receipt of the notice or within 30 days from the date of the announcement if the notice has not been received. The maritime court, after receiving a written objection from the claimant, examines and makes an order within 15 days. If the parties are not satisfied with the order, they may file an appeal within 7 days after the receipt of the order.

If the claimant does not raise objection against the ship owner’s constitution of limitation fund within the given period, once the fund is constituted, the maritime court shall withdraw the property preservation measures exercised on the properties of the ship owners, or release the security provided for the purpose of withdrawing the preservation. The creditors shall then apply for registration of their credits during the stipulated period against the limitation fund, and if failed, the creditors shall be deemed to have abandoned their rights to debts to be satisfied with the limitation fund for the oil pollution damage liability. In case the limitation fund cannot fully compensate the relevant oil pollution damages, the distribution shall be made in proportion as per the determined compensation amount.

Secondly, when a claim is brought to a Domestic Fund, the scope and sequences of the claims are constituted as below (consistent with the IOPC fund procedures):

- 1) costs incurred in taking emergency disposal measures to minimize oil pollution damage;
- 2) costs incurred in preventing or clearing up oil pollution;
- 3) direct economic loss caused to fishery, tourism etc;
- 4) costs incurred in taking preventive measures to restore ocean environment and natural fishery resources;
- 5) cost incurred by the Fund Administration Committee for the monitoring and surveillance oil pollution; and
- 6) other costs/ expenses ratified by the State Council.

6.2. Claim Procedure in Japan

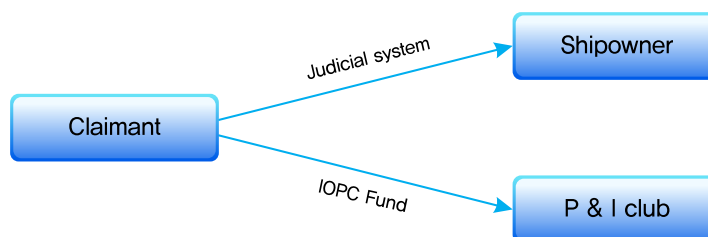


Figure 3. *Claim Procedure in Japan*

Claimants can present claims to both ship owner and IOPC Fund. If the claim is brought against a ship owner, the International Fund may intervene in the procedure of limitation of liability pursuant to the provisions of the Rules of Supreme Court and the tanker owner may intervene in the procedure for limitation of liability if he/she voluntarily took measures to prevent damage as the tanker owner shall be deemed to have a limited claim on the cost of provided preventive measures.

Also, the claim to the IOPC Fund should be made in writing and it should contain:

- 1) the name and address of the claimant and of any representative;
- 2) the identity of the ship involved in the incident;
- 3) the date, place and specific details of the incident, if known to the claimant, unless this information is already available to the Fund 1992;
- 4) the type of pollution damage sustained; and
- 5) the amount of compensation claimed

6.3. Claim Procedure in Korea

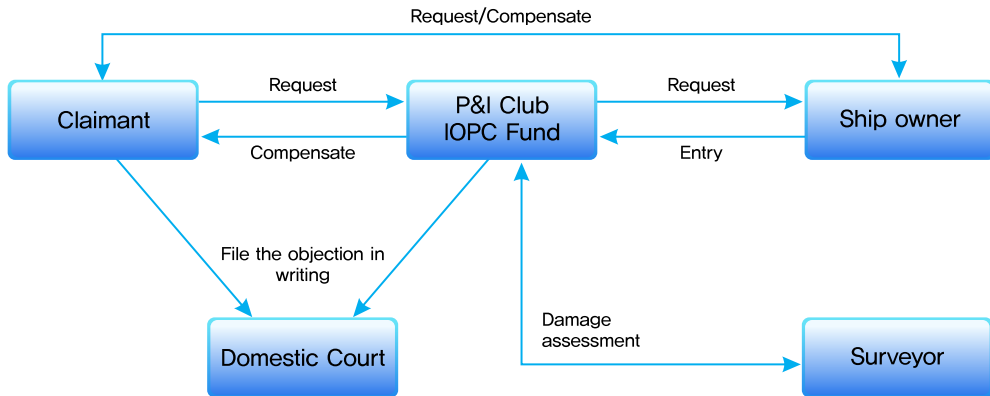


Figure 4. Claim Procedure in Korea

Claimants can bring claims against the ship owner, his insurer, and the IOPC Fund by submitting the written forms with supporting documentation. The IOPC Fund and P&I Club nominate experts to monitor clean-up process and to approve to pay for damages. The IOPC and P&I Club contact the claimants to explain and notify the results of the assessment. If the claimants agree with the decisions, the compensation will be paid or in case the claimants disagree, the claimants may request for a reassessment by providing additional documentation or by bringing the case to a domestic court.

6.4. Claim Procedure in Russia

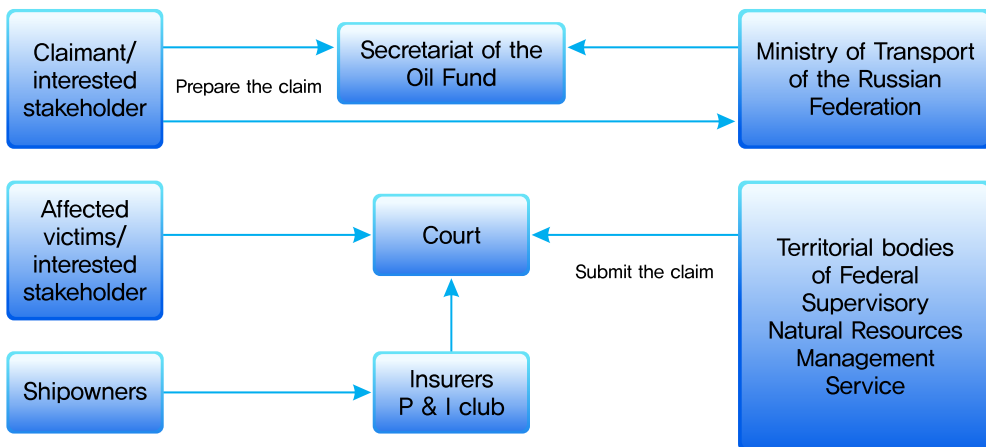


Figure 5. Claim Procedure in Russia

The Ministry of Transport of the Russian Federation is the competent federal authority to whom to submit and delineate the claim in International Fund. The insurer will cover the damage as well as expenses for the clean-up. In case the pollution gives harmful effects to the environment, the damages will be calculated and submitted to the court. All claims for the reimbursement of damages to the natural resources and the cost of restoration will be submitted to the court by the territorial bodies of the Federal Supervisory Natural Resources Management Service. In case of any profit loss, all claims should also be submitted to the court by the affected parties. If the case needs to involve the IOPC Fund, the Ministry of Transport will act on behalf of the Russian government and provide assistance to the claimants in the negotiations with the Oil Fund.

Chapter 7. Financial Procedures of the NOWPAP RCP

Each NOWPAP member state has its own National Contingency Plan (NCP) and resources to respond to oil and HNS spills in its waters. When the member states are threatened by a particular oil spill and need assistance from the other NOWPAP member states, the NOWPAP RCP provides a framework under which NOWPAP member states may co-operate at the operational level in responding to oil and HNS spill incidents and provide a joint response operation. The NOWPAP member states cooperate in order to coordinate and integrate their response to the marine oil and HNS spill incidents which affect or seem likely affect the action area of one or more of the NOWPAP member states and which exceeds the response capability of a NOWPAP member state and the resources available to it¹¹.

The NOWPAP RCP financial procedure principles are based on the Annex of the OPRC Convention 1990 and stipulate that the requesting member state should reimburse the assisting member state for the cost of its action taken at the express request of the requesting member. The RCP further states that once a member state receives a request for assistance from another member state, the assisting member state should submit the requesting member state an estimate of the costs of assistance. The costs of assistance have to be fairly calculated and in accordance with the relevant laws and current practices of the assisting member state, unless otherwise agreed¹².

Once the assistance is provided, the assisting member state will submit an invoice for the reimbursement to the requesting member state as soon as the operations are terminated and the requesting member state should pay the assisting member state all agreed expenses incurred in rendering the assistance according to the invoice, except that the action was taken by a member state on its own initiative, in which case the assisting member state has to bear the costs of its action. The submitted invoice has to contain wages of personnel (including the daily work logs for approval), costs of rental of equipment, cost of treatment products and other used consumable materials, costs of repair or replacement of damaged or missing equipment etc¹³.

In order to achieve the objectives of the RCP which is to develop appropriate preparedness measures and effective system for detecting and reporting pollution incidents affecting or likely to affect the action area of the NOWPAP member states and also to promote and implement regional cooperation in oil and HNS pollution

¹¹ NOWPAP RCP paragraph 2.1

¹² NOWPAP RCP paragraph 6.2.5

¹³ NOWPAP RCP paragraph 6.2.7

contingency planning, prevention, response, control and clean-up operation¹⁴, the NOWPAP member states have been exchanging information concerning pollution incidents through sharing of POLREP and on the designated competent national authorities and inventories of pollution response equipment and products as well as other means such as vessels and aircraft etc. The member states have also been also conducting joint training courses and exercises. Under the NOWPAP RCP framework and through these efforts, the NOWPAP region has been able to cooperate and seek assistance from the other members for which the compensation of the action rendered to the requesting member state has been guaranteed.

¹⁴ NOWPAP RCP paragraph 1.2.4

Chapter 8. Conclusions and recommendations

There are international regimes for oil or HNS pollution compensation depending on the limitation of liability such as CLC/Fund, SF 2003, HNS 1996 and Bunker 2001. Although not all NOWPAP member states have acceded to these conventions yet, the conventions are generally well incorporated into the member states domestic laws as long as they are party to the conventions and provide a common base for the better understanding on the laws and practices of the NOWPAP member states.

During the *Hebei Spirit* incident which occurred in 2007 in Korea, the RCP was activated and response resources have been provided by China and Japan following a request of the Korean government. The Korean government received a free of charge support from Japan and reimbursed to China the assistance costs incurred based on the compensation system provided by the RCP. Although both countries made a good example of regional cooperation, the compensation which went through diplomatic channels between the Chinese and Korean governments took long time.

The following recommendations can be given to improve the efficiency and adequacy of the compensation procedure for oil/HNS pollution damage in the NOWPAP region:

- 1) Under the RCP framework, the NOWPAP member states have been collecting and exchanging list of response equipment and products in order to be able to promptly provide assistance in case of oil/HNS spills in the NOWPAP region. In order to promptly proceed with the assistance among the member states, information on the rental rates of the providable equipment, vehicles and vessels and also the wages of the personnel could be shared in advance which in turn will facilitate the compensation procedure in the future.
- 2) In order to build a more effective and smooth compensation system, the NOWPAP member states may consider a possibility of establishing a regional standard of the rates for a prompt estimation of the cost of assistance (i.e. the Oil Spill Response Limited (OSRL) list can be used as reference) or consider having an agreement for a free support system for certain materials or products between the members (i.e. certain amount of absorbent provided free of charge).
- 3) Under the current RCP, the assisting members are asked to provide the required forms or documentary evidence to the requesting members. The invoices including the daily work logs can be standardized among member states and additionally be provided in more detail.

- 4) The NOWPAP region may also consider having specific regional fora to discuss issues related to the claim management including each member state's domestic laws and practices, develop a detailed guidance and rules and make a common effort to facilitate the compensation process in the region on a regular basis through the existing annual NOWPAP MERRAC Competent National Authorities meetings.

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