



International Oil Pollution
Compensation Funds

Agenda Item 4	IOPC/APR17/4/1/1	
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Original	English	
1992 Fund Assembly	92AES21	●
1992 Fund Executive Committee	92EC68	
Supplementary Fund Assembly	SAES5	●

INFORMATION FOR CLAIMANTS

GUIDELINES FOR PRESENTING CLAIMS FOR ENVIRONMENTAL DAMAGE

Note by the Secretariat

Summary:	Since the publication of document IOPC/APR17/4/1 , containing the draft Guidelines for presenting claims for environmental damage, further comments have been received on the draft text from a Member State which had previously submitted comments within the given deadline. The Secretariat has considered the latest proposed amendments to the text and, following some discussion with the Member State in question, has developed a new text for paragraphs 1.14 and 4.7 of the draft Guidelines, as set out in section 2 below.
Action to be taken:	<u>1992 Fund Assembly and the Supplementary Fund Assembly</u> When considering the draft Guidelines for presenting claims for environmental damage, decide whether paragraphs 1.14 and 4.7 of the Guidelines should be amended as proposed in this document.

1 Introduction

Since the publication of document [IOPC/APR17/4/1](#) containing the draft Guidelines for presenting claims for environmental damage, further comments have been received on the draft text from a Member State which had previously submitted comments within the given deadline. The Secretariat has considered the latest proposed amendments to the text and, following some discussion with the Member State in question, considers that paragraphs 1.14 and 4.7 could be revised as set out in section 2 below.

2 Proposed revised paragraphs

2.1 Some concerns were raised by the Member State with regard to the text in paragraph 1.14, notably the inference that the impacts referred to would not be observed in the wider environment. To address that concern, the following sentence is now proposed:

1.14 'Nevertheless, while such effects have been observed in the immediate vicinity of a spill, it is rare for such impacts to be evident at population levels in the wider environment.'

2.2 Further concerns were raised by the Member State with regard to the text in paragraph 4.7, notably that the wording of the proposed paragraph introduces a more stringent requirement to allow for compensation than the Convention itself. To address that concern the following text is now proposed to more closely reflect that of the Claims Manual:

4.7 When considering all the elements of the criteria set out in this section above, it should be noted that post-incident studies and reinstatement measures would normally be most appropriate in the case of major spills where there is evidence of significant environmental impact, that is conspicuous effects or the threat thereof.

2.3 For ease of reference a comparison of the original text and the amended text is set out in the Annex.

3 Action to be taken

1992 Fund Assembly and Supplementary Fund Assembly

The 1992 Fund Assembly and Supplementary Fund Assembly are invited to:

- (a) take note of the information contained in this document; and
- (b) when considering the draft Guidelines for presenting claims for environmental damage, decide whether paragraphs 1.14 and 4.7 of the guidelines should be amended as proposed in this document.

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ANNEX

Original version contained in document IOPC/APR17/4/1	Amended version
<p>1.14 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. In many cases there may be no need for reinstatement measures following an oil spill. The marine environment is naturally very resilient and is subject to an extreme range of physical conditions and to natural perturbations such as red tides and storms. For example, organisms living on tidal shorelines are not only exposed to daily cycles of drying out and becoming submerged but are also able to tolerate significant ranges of temperature and salinity due to exposure to sunlight, wind, rain and freshwater runoff. However, some species suffer sub-lethal effects such as impaired feeding and reproduction and juveniles, eggs and larvae are particularly sensitive to toxic components of oil. Nevertheless, while such effects have been observed in laboratory studies and in the immediate vicinity of a spill, it is rare for such impacts to be observed at population levels in the environment, often due to recruitment from adjacent unaffected areas. In addition, the evolution of many marine species has involved survival strategies that may reduce their sensitivity to oil contamination as well as reproductive strategies that enable the rapid recovery of affected populations.</p>	<p>1.14 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. In many cases there may be no need for reinstatement measures following an oil spill. The marine environment is naturally very resilient and is subject to an extreme range of physical conditions and to natural perturbations such as red tides and storms. For example, organisms living on tidal shorelines are not only exposed to daily cycles of drying out and becoming submerged but are also able to tolerate significant ranges of temperature and salinity due to exposure to sunlight, wind, rain and freshwater runoff. However, some species suffer sub-lethal effects such as impaired feeding and reproduction and juveniles, eggs and larvae are particularly sensitive to toxic components of oil. <u>Nevertheless, while such effects have been observed in the immediate vicinity of a spill, it is rare for such impacts to be evident at population levels in the wider environment.</u> In addition, the evolution of many marine species has involved survival strategies that may reduce their sensitivity to oil contamination as well as reproductive strategies that enable the rapid recovery of affected populations.</p>
<p>4.7 When considering all the elements of the criteria set out in this section above, it should be noted that in the absence of a threat of significant environmental damage or conspicuous effects, that is, evidence of significant environmental impact, it is unlikely that either post-incident studies or reinstatement measures would be justified.</p>	<p>4.7 When considering all the elements of the criteria set out in this section above, it should be noted that <u>post-incident studies and reinstatement measures would normally be most appropriate in the case of major spills where there is evidence of significant environmental impact, that is conspicuous effects or the threat thereof.</u></p>

N.B. For the purpose of indicating the proposed amendments made since October 2016, the relevant text was highlighted in grey in document [IOPC/APR17/4/1](#). To avoid confusion this has been maintained in this document but the latest amendments are also underlined.