



INTERNATIONAL  
OIL POLLUTION  
COMPENSATION  
FUNDS

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## INFORMATION FOR CLAIMANTS

### GUIDELINES FOR PRESENTING CLAIMS IN THE TOURISM SECTOR

#### Note by the Secretariat

<b>Summary:</b>	<p>The new edition of the 1992 Fund Claims Manual adopted by the 1992 Fund Administrative Council, acting on behalf of the Assembly, in October 2012 is expected to be made available by November 2013. At its tenth session held in October 2012, the 1992 Fund Administrative Council, acting on behalf of the Assembly, instructed the Secretariat to develop a specific set of guidelines for claims from non-fisheries activities, which should be compatible with the general Claims Manual but specifically aimed at the tourism sector and to present it to the Assembly for consideration.</p> <p>The Director tasked an external expert, who has many years' experience in dealing with tourism and other claims, to prepare a draft of the guidelines for consideration by the Assembly.</p>
<b>Action to be taken:</b>	<p><u>1992 Fund Assembly</u></p> <p>Decide whether to publish the guidelines for claimants.</p>

#### 1 **Background**

- 1.1 At its tenth session held in October 2012, the 1992 Fund Administrative Council, acting on behalf of the Assembly, approved amendments to certain sections of the 1992 Fund Claims Manual.
- 1.2 The original text of the 1992 Fund Claims Manual was adopted by the 1992 Fund Assembly in 1998 and has since been revised by the Assembly on several occasions which has gradually led to some minor inconsistencies in terminology throughout the text. The Secretariat has therefore taken the opportunity to carry out a review of the language used in the Claims Manual to ensure that it is consistent and that the terms employed are in common use in 2013. This harmonisation of the text has taken place in English, French and Spanish and has resulted in a number of minor editorial amendments, none of which affect the meaning or substance of the text. The new edition of the Claims Manual is expected to be made available via the website by November 2013.
- 1.3 With the intention of providing the most helpful and comprehensive information to claimants in the event of a spill, the Secretariat has been working on a package of claims information, which would initially include the new Claims Manual, the Guidelines for presenting claims in the fisheries, mariculture and fish processing sector and the example Claim Form. Any future guidelines adopted by the Assembly for the submission of claims in specific sectors would then be added to this package as they become available. The published package is expected to be made available in early 2014.

**2 Guidelines for presenting claims in the tourism and other non-fisheries sectors**

- 2.1 At its October 2012 session, the 1992 Fund Administrative Council, acting on behalf of the Assembly, instructed the Secretariat to develop a standalone set of guidelines for claimants in the tourism sector and to present it to the Assembly for consideration at its next session.
- 2.2 The Director engaged a tourism expert who has worked on several incidents for the IOPC Funds to prepare a simplified set of guidelines, which would be easily understood by claimants in these sectors. These guidelines are in the Annex to this document.

**3 Action to be taken**

1992 Fund Assembly

The 1992 Fund Assembly is invited to:

- (a) take note of the information contained in this document; and
- (b) decide whether to publish the guidelines for claimants in the tourism sector.

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## ANNEX

[Draft]

### **Guidelines for presenting claims in the tourism sector**

#### **Preface**

A general practical guide to presenting claims for losses due to oil pollution caused by an oil tanker can be found in the Claims Manual published by the International Oil Pollution Compensation Fund 1992. This booklet is written specifically to assist claimants in the tourism sector to better understand if, when, and how they can make claims for compensation. Claimants from other sectors should consult the Claims Manual or check the publications section of the IOPC Funds' website for other sector-specific guidelines.

These Guidelines set out what should be done following an oil spill to protect your business and what sort of information is needed to make a claim for compensation.

Please note that following these Guidelines does not guarantee that all claims will be successful or imply that all businesses in the area of the spill will be affected. This booklet does not address legal issues in detail and should not be seen as an authoritative interpretation of the relevant international Conventions.

# 1 INTRODUCTION TO THE INTERNATIONAL OIL POLLUTION COMPENSATION FUNDS

## What are the IOPC Funds?

- 1.1 The International Oil Pollution Compensation Funds (IOPC Funds) are three intergovernmental organisations (the 1992 Fund, the Supplementary Fund and the 1971 Fund) which provide compensation for oil pollution damage resulting from spills of persistent oil from tankers. The 1971 Fund was the original Fund but does not provide compensation for incidents occurring after May 2002.
- 1.2 The International Oil Pollution Compensation Fund 1992 (which, in this booklet, is called ‘the 1992 Fund’) is the newer Fund and is composed of States which have agreed to two Conventions which cover the payment of compensation to people, businesses or organisations that suffer losses due to pollution caused by persistent heavy oil (not gasoline or other light oils) from oil tankers. The Supplementary Fund provides an additional tier of compensation to victims in States which are Party to the Supplementary Fund Protocol. The details of how these different Conventions work are complex. More information on the Conventions can be found in the 1992 Fund Claims Manual and on the IOPC Funds’ website.

## What does the 1992 Fund do?

- 1.3 The aim of the 1992 Fund is to provide compensation for losses resulting from a pollution incident involving an oil tanker, so that the claimant is returned to the same economic position in which he/she would have been if the oil spill had not happened. Ideally, the compensation should exactly balance the loss.

## How is money raised to pay compensation?

- 1.4 The owner of an oil tanker is usually insured with what is known as a Protection and Indemnity Association, or P&I Club. The tanker owner is generally covered against damages caused by oil pollution through this insurance up to a certain amount of money. It is this money that is used initially to pay compensation after an oil spill.
- 1.5 When the amount available from the tanker owner’s insurance is not enough to cover the total cost of the pollution incident, compensation is paid by the 1992 Fund. The 1992 Fund is financed mainly by oil companies in Member States, according to the quantity of oil transported by sea that they receive. All companies which receive more than 150 000 tonnes of oil by sea in any year must contribute to the 1992 Fund.

## When does the 1992 Fund come into play?

- 1.6 The owner of the tanker from which the oil was spilled is responsible for paying for the damage caused, usually through his insurer or P&I Club. However, he can limit the maximum amount he has to pay (according to the size of the tanker) under one of the two relevant Conventions. Once this amount has been paid, the 1992 Fund is responsible for any extra payments. Often the owner’s insurance is enough to cover all the costs and the money from the 1992 Fund is not needed. However, in a very large spill, unless the damage occurs in a State which is a Member of the Supplementary Fund, it is possible that not even the money available from the 1992 Fund to pay compensation for that particular spill will be enough to cover all valid compensation claims; in this case – and it is very rare – each successful claimant will be paid a proportion of his/her assessed claim until all the money available from the 1992 Fund is allocated.
- 1.7 If the incident which caused the pollution was a natural disaster, or if it was entirely caused intentionally by somebody (not the tanker owner) or by faulty lights or navigation aids which should have been maintained by the authorities, then the tanker owner is not responsible and the 1992 Fund will come into play immediately. Also, if the tanker owner cannot meet his liability, the 1992 Fund will step in and pay compensation.

- 1.8 The 1992 Fund will not pay compensation if the pollution was caused by an act of war or hostilities or if the spill was from a warship. Nor will the Fund pay if it cannot be proved that the damage was caused by an oil tanker. The 1992 Fund cannot pay compensation for damage that occurred on the high seas, or outside of the territorial waters or exclusive economic zone of its Member States.
- 1.9 Whether the compensation comes from the ship owner's insurer or the 1992 Fund, the process of making the claim and the criteria applied to assessing the claim are the same. The 1992 Fund and insurer usually work closely together, particularly on large oil spills. The Fund, in co-operation with the insurer, usually appoints experts to observe, monitor and record the impact and progress of the clean-up operations. Experts will also be used to review and investigate the technical merits of claims and to assist with determining independent assessments of the losses. Although the 1992 Fund and the insurer rely on experts to assist in the assessment of claims, the decision as to whether to approve a particular claim and the compensation amount assessed rests entirely with the insurer concerned and the 1992 Fund.

#### Why are tourism businesses compensated?

- 1.10 Coastal tourism businesses are dependent on visitors to the marine and coastal resources in the areas where they are located. The 1992 Fund recognises that tourism businesses may be reliant on tourists who travel to and stay in the area for a number of days. Alternatively, they may be reliant on day visitors to businesses such as restaurants, bars and tourist attractions.
- 1.11 The 1992 Fund recognises that visitors may be put off from visiting the affected area but draws a distinction between trade lost due to a decline in tourists and day visitors attracted by the affected sea, coast and beaches and other customers of tourism and day visitor businesses, such as local and business related users. In presenting claims therefore, it will be necessary for the claimant to differentiate between coastal/beach/seafood related tourist and visitors and other sources of demand for their business to the extent possible.
- 1.12 If the claimant confirms that he/she has suffered a loss due to the oil pollution causing a reduction of tourism related business revenues, he/she may claim compensation.

## **2 WHO CAN CLAIM?**

- 2.1 Anybody in a 1992 Fund Member State who has suffered losses due to oil pollution caused by an oil tanker can claim compensation for these losses. In this booklet, however, only claims from the tourism sector are considered (this includes businesses and organisations from the accommodation, restaurant, retail and attraction sectors).
- 2.2 Only businesses providing goods or services directly to tourists and/or leisure visitors in the immediate vicinity of the affected area are eligible for compensation. This includes coastal businesses which are directly dependent on visitors, such as beach users, coastal walkers, water sports enthusiasts and leisure fishermen, drawn by the natural resources of the coast and sea, or those catering to visitors attracted to these areas to eat fresh seafood. Businesses providing services or goods to tourism-related businesses and not directly to tourists would not normally be considered sufficiently dependent on tourism activities to be entitled to compensation.
- 2.3 For a claim to be admissible, the person who is making the claim (the claimant) must be able to show that he/she has suffered a financial loss due to the pollution and that this loss has a direct link to the contamination due to oil.
- 2.4 Claims should be made by the owners or directors of the business. In any case, the person submitting the claim must be able to show their authority to do so. If a governmental body requires your business to have a licence or permit then you will need to prove that such a licence or permit was held at the time of the incident.

2.5 Generally, the closer the business location is to the affected area or the more it caters for visitors drawn by the natural resource that has been contaminated, the more likely it is to be considered admissible for compensation. However, the 1992 Fund considers a number of factors when deciding on the validity of a claim:

- *Is the business in the area which was directly contaminated by the oil?*

For example, if you own and run a restaurant, accommodation or other tourism business, is the business located in an area that is known to have been directly affected by the spill? Does your business cater for visitors normally attracted to that area for beach or other activities that were themselves directly affected by the contamination?

- *How much does the business depend on the area, or resources, that were contaminated?*

If you run a hotel or restaurant, it is likely that you cater for several different markets. For example some guests may be visiting to enjoy the natural resources affected by the spill whilst others may be using your facilities for entirely different reasons. If the contamination resulted in the total closure of your business for a period of time, then loss of profit will be compensated. If only an element of your business, such as beach tourism, was affected then any compensation will be limited directly to loss of profit arising from this element of the business.

- *Are alternative trading opportunities easily available that will help to offset any losses caused by the contamination?*

For example it is possible that the spill itself will create other revenue opportunities resulting from demand created by journalists, clean up contractors etc. If you run a seafood restaurant it is possible that alternative sources of fish are available for sale. It is also possible to attract business from other sectors: additional room demand from conference organisers or other commercial activity for example.

- *Does the business form an important part of the economy of the area affected by oil? Does it employ people living in the area? Does it source products from other businesses that are located in the area?*

For example, tourism businesses belong to the service economy and in many cases generate business both directly and indirectly by purchasing goods such as fish, meat and vegetables and attract visitors who subsequently buy from other local businesses as a result. The above criterion is met when the business demonstrates its ability to attract and serve tourists.

2.6 Businesses or organisations that rely on tourists or leisure visitors for all or part of their income are entitled to make a claim for economic loss where they can prove that their gross profit was negatively affected by the pollution. You will need to show that all or a significant part of the demand for your business services is generated by tourist or leisure visitors. Employees working for a business are not eligible to claim.

2.7 Compensation is paid for loss of gross profit (revenue less direct operating costs) directly caused by the contamination. If any other organisation stands between you and the tourist or leisure visitor, then your claim will not be admissible. There should be a sufficiently close link of causation between the contamination and the economic loss, which is assessed taking into account the factors set out in paragraph 2.5.

Example

A laundry in a coastal area may consider that it serves tourists. However it is likely that it would not be considered eligible for compensation if a large part of its trade comes from businesses that serve the tourist industry, such as hotels and restaurants, rather than directly from tourists. In this case, any link between the pollution and the laundry is dependent on the service provider, such as hotels and restaurants, and is therefore not considered admissible for compensation.

- 2.8 Experience has shown that the impact of an incident normally lasts for a limited period. We recognise that the loss of key staff could be detrimental to the ability of your business to recover following the end of the incident. Therefore if you employ personnel to work in your business, we would not expect you to reduce the number of full time staff in permanent employment. If, however, you choose to terminate employees' contracts, any saving you make as a result will be considered in the assessment of your claim.
- 2.9 If you work for a business in a tourism-related industry, for example in a restaurant, then your employers would normally make a claim for economic loss, and continue to pay your salary. The conditions of employment would be regulated by your contract. The assessment of your employers' claim would therefore take into consideration the wage costs of the employees, and a separate claim for wages would therefore not be considered.

### **3 WHAT SHOULD YOU DO IF THERE IS OIL POLLUTION?**

- 3.1 Firstly, don't panic. Oil pollution usually looks very bad, but bulk oil contamination of the beaches is normally quickly removed and it is often the case that things will return to normal within a few weeks or months. Also, the more local your visitors are, the quicker the impact of the incident may be overcome as recovery becomes clear. The 1992 Fund has a well-tested means of compensating for losses, though since all claims will need to be thoroughly assessed, it can take a little time for money to get through to the claimant.
- 3.2 You are responsible for your business. Whether it is an accommodation business, a restaurant, café, shop, water sports activity or visitor attraction, it is your responsibility to keep your losses as low as possible. It is important that you do not take any actions that will damage your business in the future or hinder its recovery. Whenever possible your business should remain trading. Key staff should be retained and no actions should be taken that will cause potential visitors to look elsewhere. The 1992 Fund will find it difficult to pay full compensation if you decide to cease trading unless it is physically impossible for the business to continue; for example if you run a restaurant specialising in the sale of fish from a local, affected area and there are no alternative markets or the only access road to your business is closed. If you decide to stop trading however, a desire to resume business operations as soon as possible must be demonstrated, for example any forward booking service you operate must be retained.
- 3.3 You must keep accurate records of any additional costs or losses incurred as a result of the contamination. These may include cleaning materials, loss of perishable stock due to decline in trade and replacement of oil damaged items.
- 3.4 The contamination may create additional trading opportunities, which could be exploited where possible. There may also be opportunities to attract business from markets that you do not normally serve. However any additional costs for marketing will only be admissible if it is likely that the extra revenue generated will help to offset the amount of the claim. In other words if the marketing activity is unlikely to generate revenue in the period immediately after the spill and therefore offset the amount of the losses, then the claim will be inadmissible.
- 3.5 You may consider re-marketing your business to past guests or running additional promotions to draw new visitors to the area. Where possible the 1992 Fund would advise businesses to co-operate with local public marketing bodies, such as tourist boards and local authority tourism offices to reduce duplication of effort. However, where a business has a mailing list or other direct route to market, the Fund would also consider compensating any well-targeted marketing activity, providing that the benefits of any such activity are likely to fall during the affected period. The costs for the development of new websites, brochures and other longer term promotional items, however, are unlikely to be covered by compensation.

- 3.6 If you think that you may have suffered a loss as a result of the pollution, it is advisable to make contact with the 1992 Fund/shipowner's insurer. It may be possible to arrange for an expert, jointly appointed by the Fund/insurer, who is familiar with pollution issues and the claims process to visit your business and provide advice more tailored to your specific circumstances in order to assist you in minimising your losses.

#### **4 WHAT LOSSES ARE COVERED?**

##### Property damage

- 4.1 You can claim compensation for damage to property or equipment that has been caused by contamination by oil from the spill. For example, this may include beach furniture or watersports equipment that you were unable to move before it became oiled. The compensation can be for cleaning or repairing this equipment. If the equipment is too contaminated or damaged to be cleaned, you may claim for it to be replaced (although some allowance will need to be made for wear and tear). You must, whenever possible, store damaged items that need to be replaced until they have been inspected by a representative of the 1992 Fund/shipowner's insurer. You must keep receipts or invoices for any new equipment you buy or for any materials used for cleaning contaminated property. You may also wish to keep a photographic record of the damage which will help to explain and illustrate your claim.

##### Pure economic loss

- 4.2 Even if your business has not been directly contaminated by oil, your trading may decline as tourists and leisure visitors decide to visit alternative areas. In this instance you can claim compensation for the profit you would have generated had the pollution not occurred. You will need to show that the decline in trade is due to the fall in the number of visitors and tourists that normally use the now affected coast, sea and beach. A decline in revenue alone may not be sufficient to show that you have suffered a loss due to the incident. This will require that you show evidence that before the incident you catered for visitors and tourists who used the affected resources and that you also show the share of your total trade generated by tourists during a comparable period of time.
- 4.3 Tourism and leisure trading levels can vary from season to season for a variety of reasons, including a change of capacity or tariffs, additional competition, changes to the communication network, changes in the weather, variations in national holidays and changes in the economy. These factors can lead to variations in demand which is unrelated to the pollution and their possible impact will be considered when assessing your claim.
- 4.4 You may be able to claim for the cost of actions that are aimed at preventing or minimising economic losses. This will normally include marketing and promotional costs and other direct expenses necessary to generate additional and/or replacement revenue. This marketing activity is normally needed to show visitors that their fears regarding the impact of the spill are not justified or that the impact of the pollution has been overcome. The objectives of the marketing or other activity will need to be explained within your claim and you will need to show that there was a realistic chance of the promotional activity generating a greater return than the associated costs incurred, within the period when the business was affected by the spill. You must also keep a copy of any promotional literature produced for this purpose and copies of all invoices. The 1992 Fund recommends area-wide mitigation marketing activities to be undertaken by professional area marketing authorities or tourist offices to prevent duplication. However the Fund also recognises that individual businesses have a role to play and may be better placed to undertake direct marketing to past visitors.

##### Area-wide mitigation marketing

- 4.5 The 1992 Fund recommends that, if necessary, area-wide or resort-wide mitigation marketing is undertaken by an appropriate body such as a tourist board or local authority tourism body. The Fund recognises that in some cases such activity is essential to enable usual trading to return to the pre-spill levels as soon as possible. However, for any claims for this activity to be considered admissible it is essential that:



- There is a clear objective for the activity to be undertaken and this should be to encourage visitors to return as soon as possible. The objective should be clearly stated in the claim.
- The proposed activity and marketing channels used must be proportional and relevant to the objective and be targeted at known and proven markets.
- The cost of the targeted activity must be reasonable and commensurate with the objective and the effectiveness of the activity used must be measurable.
- Details of all activity must be logged and copies of promotional items retained for submission together with the claim. The claim must also show levels of promotional activity and expenditure employed in the years prior to the spill to demonstrate that the items and expenditure within the claim are additional to the ordinary marketing expenses.
- All invoices must be retained and submitted with the claim.

4.6 Any proposed activity can be discussed prior to its commencement with the 1992 Fund/insurer's joint experts, who can advise on the likelihood of such activity being considered admissible by the Fund.

#### Use of advisers

4.7 You might need some help in making a claim for compensation. In some cases you can claim compensation for reasonable costs of work done by an adviser. As part of its assessment of your claim, the 1992 Fund will look at the need for such advice or help, how well the work was carried out, how long it took, how much it cost and its value to the claim review process.

4.8 Any adviser employed should focus on demonstrating how the spill affected your business and caused the economic loss, not on the causes of the incident or wider economic or environmental effects which will in most incidents be the subject of government-led investigations and studies.

## **5 WHAT CLAIMS CAN BE COMPENSATED?**

5.1 All claims must satisfy the following points:

- Claims will be paid only for losses caused by contamination from oil from an oil tanker.
- There must be a direct link between the contamination and your economic losses. That link needs to be established with reference to the impact of the contamination on tourists and day visitors who would normally use your products or services.
- Claims will only be paid for property damage, pure economic loss caused by contamination and/or consequent area-wide mitigation marketing by authorised organisations such as local tourism offices. Compensation will only be paid for an economic loss that can be measured. Please note that projected or estimated profits will not be acceptable for demonstrating economic loss. If you are opening a new business during the period of the spill it may be necessary to use the following year's trading information to support your claim.
- You must prove how much you have lost by providing revenues/gross profits from previous comparable periods as a base to any loss calculation, as well as dated invoices for additional costs or other documented evidence.
- The economic loss or expense must have already taken place. Claims for future anticipated losses will not be considered.
- Compensation can only be claimed if you are undertaking a lawful activity and operate with all the necessary licences and/or permits.
- If you own similar businesses in areas not affected by the incident you need to demonstrate that demand was not displaced from the affected area to these other locations.

5.2 There is some flexibility in the assessment of claims, depending on the circumstances of the claimant. If you think you have suffered a loss, but you think you cannot provide all the evidence to prove it, we recommend that you contact the 1992 Fund/shipowner's insurer and they will provide advice more tailored to your specific circumstances in order to assist you in submitting the claim.

## **6 WHEN TO MAKE A CLAIM**

- 6.1 Compensation can be paid only for losses or damages that have already happened. If you are claiming for physical damage, ie oiling of your premises, then the claim can be made straight away unless it is possible that more damage might occur. If you are claiming for loss of profit then a reasonable time is required to substantiate that your business has been affected. This may be as short as six to eight weeks, though a longer period is preferable. The reason for this length of claim period is that trading anomalies can affect a tourist and leisure visitor business at any time and a clear trend of contamination-linked loss needs to be established.
- 6.2 Most tourism and leisure visitor businesses have trading seasons. The physical impact of a spill can be over relatively quickly, though the impact on visitor numbers may last longer than the physical contamination due to booking patterns and possible negative public perception of the affected area. It is rare for the direct impact on tourists and leisure visitors to last beyond the end of the trading season immediately following the spill. For this reason you may wish to delay making your claim until the end of the trading season so that the overall impact may be assessed accurately.
- 6.3 Small businesses severely affected by a spill may find that cash flow becomes an issue. In these circumstances you may be able to submit claims on a monthly or bi-monthly basis until the business returns to its normal trading levels.
- 6.4 Whatever the period of your claim, it must be submitted within three years of the damage taking place. If you have made a claim, but have not come to an agreement with the 1992 Fund/insurer within three years of the damage occurring, you must protect your rights in court. Failure to do this will result in you losing your right to compensation (see section 2.5 of the Claims Manual for further information).

## **7 HOW TO MAKE A CLAIM**

- 7.1 The 1992 Fund prepares claim forms for each incident. The form will be available to download from [www.iopcfunds.org](http://www.iopcfunds.org) or can be requested from the 1992 Fund/shipowner's insurer. We advise claimants to use the claim form and submit it together with all the documentation in support of your claim. The claim form is designed to help claimants with identifying and providing the information required to assess their claims and as a result will speed up the assessment process. Original copies of ledgers, logbooks and other in-house records as well as external authority (ie tax office) revenue and cost records should be submitted with your claim. You **MUST** keep a copy of all of the information submitted for your own future use. Please note these documents will only be returned upon request and normally only on settlement of the claim. Please note that if you request the documents to be returned before your claim is settled, it may not be possible to complete the assessment.
- 7.2 In general, claims should be submitted through the office of the local correspondent or representative of the insurer. If there are a large number of claims, the 1992 Fund/shipowner's insurer may decide to set up a dedicated claims handling office for receiving claims in a location near to where the claimants are based. Details are usually given in the local press and on the IOPC Funds' website. The claims handling office is there to help you to make a claim, to advise on how the claim form may be completed, to forward your claim to the Fund/insurer and to assist in paying claims once the claim has been reviewed and compensation amount approved by the Fund/insurer.
- 7.3 Claimants should note that the insurer's correspondent/representative, claims handling office staff and experts do not make any decisions as to whether a claim will be paid or how much compensation will be paid – that is for the 1992 Fund/shipowner's insurer to decide.
- 7.4 Claims should be submitted by post or e-mail and should include as much information as possible in support of your claim.

## 8 WHAT INFORMATION SHOULD YOU PROVIDE?

- 8.1 In the first instance, you should download the claim form relating to the incident from the website ([www.iopcfunds.org](http://www.iopcfunds.org)) and complete the appropriate section, depending on the type of loss you have suffered (eg tourism and/or property damage). Alternatively, you should contact the Fund/insurer's office as specified above to request a hard copy of the form.
- 8.2 The more details and evidence you can provide to the Fund/insurer about your business activities, the impact of the spill on your business and your losses, the quicker your compensation claim can be assessed. In particular you should provide:
- The name and address of the person making the claim and the name of any representative or adviser. Please note it is not necessary to use a representative or adviser and we suggest you make the claim yourself.
  - The name of the business for which the claim is being made.
  - The type of pollution damage that occurred (such as property damage or economic loss)

### Confirmation of your right to claim on behalf of the business

- 8.3 Copies of trading licences, where applicable, trading accounts showing owners or directors names, leases or tenancy agreements or other official documentation from government agencies or tax authorities can all be used to confirm ownership and the right to claim for compensation on behalf of the business.

### Details of your business

- 8.4 Please describe your business. You should include its capacity including the number of rooms or self-catering units; number of restaurant seats; equipment for hire; size of retail or usage area of facility where relevant, for example the number of charged-for parking spaces. Details of room tariffs, menus, equipment hire charges and daily charges should also be provided. Please also supply details of any changes to your business's capacity in recent years, including extensions or closures describing how and when the capacity of your business changed as a result. Include details of any significant changes to the business during the past three years including changes, for example, in restaurant service style, opening hours and other factors that may have caused revenue to increase or decline.

### Description of how the pollution has affected your business

- 8.5 This may include a brief description of the physical location of the business and its proximity to the areas affected by the spill. You should also describe the reasons why tourists/leisure visitors use your business and the impact the spill has had on these visitors. If you offer any special service to visitors such as boat or fishing trips please list them and provide details of the number of visitors using those services.

### Details of your claim period

- 8.6 The claim period should start when the impact of the spill first affected your business. This may be the time when the incident occurred, if your business is located very close to the area affected, or when the impact of the spill first became evident if your business is located some distance away from the incident and later became affected as the oil moved to your area. Or, if your business was closed for non-spill reasons at the time of the spill, for instance if yours is a seasonal business which was closed out of season at the time of the spill, the claim period should start from the date when your business started trading again. Please ensure you include the dates of your normal trading season when submitting your claim.

- 8.7 Please note that the first impact of a spill may be an increase in revenues due to media activity, visits by curious sightseers, catering requirements for clean-up volunteers and visits by spill associated professionals. In this case the increase in revenue marks the start of the impact for your business. The closing date of the period of your claim is when the impact of the spill is no longer affecting your business. This may be when revenues have returned to past trading levels, when any additional costs being claimed no longer apply or when the tourist/leisure visitor season ends.

Calculation of economic loss

- 8.8 The compensation process is intended to return your business to the position it would have been in had the incident not occurred. Submitting a claim for economic loss indicates that you consider that you have either lost profit (economic loss) and/or incurred additional costs. Lost profit normally arises when revenues are reduced and the level of gross profit (revenue less direct costs such as wage costs and costs of sale) is less than it would normally be expected to be. In both cases you will need to show your calculation of loss and enclose documentation and evidence to prove your loss. It is normal for tourism and leisure visitor businesses to incur costs depending on the volume of the business. Those costs, referred to as variable costs, differ depending on the type of business you operate. For instance, to let a room will result in cleaning and laundry costs, a restaurant meal will include direct food and service costs. Any loss of revenue will therefore lead to a reduction in variable costs and this saving needs to be taken into account. The calculation for the economic loss will therefore be:

Loss of revenue	A
Saving of variable costs	B
Loss of gross profit (A – B)	C
Additional costs	D
Subtotal (C + D)	E
Additional income	F
Economic loss (E – F)	G

**Explanatory notes:**

- A Loss of revenue:** This should be demonstrated by showing the difference between revenues in the claim period and those normally generated in a comparable period of the previous year(s).
- B Variable costs:** This should include cost of sales such as food or drink, a share of energy costs and other costs incurred through the supply of the product or service.
- C Loss of gross profit:** Loss of revenue less variable costs (A – B)
- D Additional costs incurred:** This may include additional marketing costs, oil cleaning costs, purchase/hire of equipment to replace equipment damaged or lost as a result of the spill, additional labour required to clean the premises. Please explain the reason for the additional costs.
- E Subtotal:** Loss of revenue plus additional costs incurred (C + D).
- F Additional income:** This may include additional rentals paid by clean-up companies for the hire of a car park or other area of land, the gross profit generated by the supply of meals to volunteers and professional clean-up workers, additional accommodation supplied to oil spill related visitors not otherwise included in general revenue.
- G Economic loss:** Subtotal less additional income (E – F).

Example

A restaurant may operate at a food cost equal to 35% of sales, have direct costs equal to 8% of revenue, with half of these being variable. In addition half of energy costs may be variable and change as revenue either increases or decreases.

The total variable cost ratio is calculated by taking the revenue and actual cost figures for the full year prior to the incident. The total variable cost ratio is then applied to the actual decline of revenue in the claim period to calculate the actual variable cost to be applied to the claim.

	Amount £	Variability %	Variable costs £
<b>Revenue</b>			
Annual revenue	750 000		
<b>Variable costs</b>			
Food costs	262 500	100%	262 500
Direct costs	60 000	50%	30 000
Energy costs	45 000	50%	22 500
Total variable costs			315 000
Total variable costs as a % of revenue			42%

- 8.9 A claim for property damage should simply describe the damage caused and show the cost of reasonable repair or replacement. Please note that in the case of replacement you should state when the original equipment was purchased and show a calculation to demonstrate the deduction of fair wear and tear.

Example

A beach-side business has a number of beach chairs and beach umbrellas contaminated by oil washed ashore. The chairs and umbrellas were three years old and their expected life was five years. Their purchase price was £1 000. The residual value is calculated by

Cost of equipment X

$$\begin{array}{rcl} \text{Cost of equipment X} & \frac{\text{Usable life} - \text{Period in use}}{\text{Usable life}} & = \text{Residual value} \\ 1\ 000\ X & \frac{5 - 3}{5} & = 400 \end{array}$$

So the deduction for wear and tear of the equipment would be £1 000 - £400= £600.

Business records, accounts, sales notes and receipts

- 8.10 When submitting your claim you should provide copies of accounts for the last three years, where available. Even if you do not need to produce official accounts to the authorities, you should include copies of any business records that you may have. Where official accounts or statements of return are required for the business for legal or tax reasons, these should be provided in support of your calculations even though they may be for different periods. For example you may be claiming for a period of three months that spans two different financial years. In this case official documents covering each year and the three years prior to the incident will be required. Where computerised records of revenue and/or costs are maintained within the business, these should be provided in as

much detail as possible for the claim period and for two or three comparable periods from previous years, where available. Where computerised records are not available, revenue losses may be established through the submission of: reservation/booking sheets, restaurant or letting diaries, logbooks or any other available information. These should be provided together with copies of bank statements and/or cash receipt books for the business.

Example

Details of revenues table (available to download from the IOPC Funds' website)

The following table will help you record your sales and monthly revenue during the period of your claim, as well as for the three years prior to the incident. Please use additional sheets of paper clearly marking them, to show to which question and time period they relate. Please note that monthly revenue should exclude sales tax.

Month	Year of incident -3		Year of incident -2		Year of incident -1		Year of the incident	
	Units sold	Monthly revenue	Units sold	Monthly revenue	Units sold	Monthly revenue	Units sold	Monthly revenue
January								
February								
March								
April								
May								
June								
July								
August								
September								
October								
November								
December								
<b>Total</b>								

- 8.11 Business costs can be established by providing details of trading, profit and loss accounts, wage costs, cost receipts and bank statements for the claim period and the comparable periods in the previous three years. Similar information sources should be used to confirm the receipt of any additional income. Where insufficient business cost information is provided, the 1992 Fund/shipowner's insurer may have no option but to use standard industry averages, which may disadvantage your business. Please note that the Fund will gather area-specific information to identify the average business costs. Your own internal records are the best source of information to support your claim so please take the time to present as much information as possible.

Taxation records

- 8.12 Please provide copies of any appropriate documents that cover the claim period and the three previous years where available.

Additional marketing costs

- 8.13 Please provide details of normal, annual marketing activity undertaken prior to the spill and additional marketing activity applied to overcome the impact of the spill. In each case, where possible, please include copies of advertisements, brochures, mail shots and online marketing activity. Please identify which marketing activity relates to which invoice. Please also include the address of your business website and details of any additional third party promotions undertaken as a result of the spill. A third party promotion may include using external agents to direct visitors to your business. Total annual expenditure on marketing in the years prior to the incident must also be clearly shown.

### Licences and permits

- 8.14 Please provide a copy of any licence and/or permit that should be held by your business, proving that the licence was in place at the time of the incident.

### Photographs

- 8.15 If possible, take some photographs of the oil pollution to show how it has affected your business. If you operate a water sports or leisure fishing business, then photographs of the oil in and around the location of your business would be useful. Please ensure that the location and date on which the photos were taken are clearly stated and identifiable.

### Extra payments

- 8.16 You must say if you have received any payments or compensation from the government, local authorities or from any other insurance policy covering economic loss or additional costs due to an oil spill. Payments received for assisting the clean-up operation may be taken into account when working out the amount of compensation due.
- 8.17 Please note that any inaccuracy in the documents or statements submitted may lead to delays in handling the claim and/or in its rejection. You are therefore advised to ensure that the claim is a true and accurate reflection of your actual loss and that it includes information on all financial or material gains you have received, including those from clean-up activities and aid organisations or government funds, during the period claimed.

### Fraud

- 8.18 The 1992 Fund takes the presentation of fraudulent documentation seriously and if it becomes aware that such documentation has been submitted in support of any claim, the 1992 Fund reserves the right to inform the appropriate national authority.

## **9 WHAT IF YOU HAVE POOR RECORDS OR NO EVIDENCE?**

In some circumstances small lifestyle businesses may have little evidence to show their normal revenue or income levels. If you are in this situation, you may still make a claim, by providing whatever information you can. The first issue will be to prove that you were providing a service to tourists and leisure visitors. Photographs, external signage or past correspondence with clients may assist you to do this. You will then need to demonstrate that the business generated some revenue and you will need to estimate what this was and how much less it was than normal. This will enable you to estimate your economic loss. Please tell a representative of the 1992 Fund/shipowner's insurer if you are having difficulties and your situation will be treated sympathetically. Assemble whatever limited evidence you can to support your claim. Don't try to 'make up' records as these will be detected and your claim may as a consequence be rejected. Providing fake documents in support of a compensation claim is fraudulent and you may be prosecuted under your domestic legislation.

## **10 HOW ARE CLAIMS ASSESSED?**

- 10.1 Claims are assessed based on the evidence the claimant has provided and any other information that has been gathered relating to similar tourism claims, such as statistics on past performance of tourism businesses and of tourism/leisure visitors in the same area. In addition an expert working for the 1992 Fund/shipowner's insurer may come and discuss your individual business with you so as to better understand your business and the impact the spill has caused. The Fund tries to arrive at a true assessment of your real losses due to the oil pollution and to return your business to the economic position it would have been in if the oil spill had not happened.
- 10.2 The decision of whether to approve or reject a claim and the amount of compensation to be paid lies with the 1992 Fund/shipowner's insurer and not with the expert who assesses the claim, any technical adviser or any person working in a local office.

- 10.3 The 1992 Fund will gather as much external tourism data as possible including for example: traffic statistics, car park user numbers, ferry passenger statistics, area visitor numbers and survey results. It will also gain intelligence from reviewing claims made by other businesses. However it is recognised that each business has its own traits and these can affect trading results significantly. As a result the internal business information you provide will be central to the assessment.

## **11 HOW ARE PAYMENTS MADE?**

- 11.1 Once your claim has been assessed by the 1992 Fund/shipowner's insurer, you will be told how much compensation they think is fair, based on the evidence available from all relevant sources. This assessment will be in writing and it will be given to you, as the claimant, or your representative if you have nominated someone to act on behalf of your business.
- 11.2 Usually an offer is made as a 'full and final' settlement. This means that no further claims for losses suffered during the period of the current claim will be considered, and you will be asked to sign an agreement to this effect. You can make further claims if you feel that you have suffered losses after the period to which your first claim relates, and these would be treated as separate claims.
- 11.3 Please be aware that the 1992 Fund may have to deal with hundreds or perhaps thousands of compensation claims. Your claim will be assessed as quickly as possible but it may take some time for the Fund to gather and cross-check relevant information necessary to assess the claim, particularly if little information has been submitted in support of your claim.
- 11.4 Sometimes an interim offer of compensation can be made, particularly if the 1992 Fund believes that you are suffering hardship due to the oil pollution. This could be made before your claim is fully assessed, and will be for a lesser amount of money; this will be deducted from the final payment once the claim has been assessed.
- 11.5 The local office, if there is one, will make arrangements for you to be paid. Otherwise the 1992 Fund will contact you to make the arrangements. You will be asked to provide some means of identification, such as a passport, an identity card or a voter's card.
- 11.6 If you do not agree with the amount of money that you have been offered then you should contact the 1992 Fund/shipowner's insurer (directly or through the local claims handling office, if there is one) and explain why you think that the offer is not sufficient. If you have new evidence to support your claim, you should submit that as well. The use of past trading information to argue your case will assist your claim. The Fund/insurer may decide to review your claim and make a second offer, or it may decide that the original offer was fair. The 1992 Fund may contact you and arrange to discuss the matter in more detail. Whatever the outcome the Fund/insurer's reasons for its decision will be disclosed in writing.
- 11.7 If you still do not agree with the amount offered, then you have the right to take legal action through the courts in your country. It could be an action against the shipowner, the insurer and the 1992 Fund, disputing the assessment of the amount of your losses. If you have not reached a settlement with the 1992 Fund within three years of the date of the damage, the Fund strongly suggests you file an action in court against it, or you run the risk of your claim becoming time-barred. This means that you would lose your right to receive compensation. It is suggested that you refer to the Claims Manual and/or your own legal adviser if you wish to take this course of action.

## **12 CONTACTING THE IOPC FUNDS**

- 12.1 If a local office is established following a large spill, the contact details for that office will be published through the local media and at [www.iopcfunds.org](http://www.iopcfunds.org).



12.2 The contact details of the Secretariat of the 1992 Fund are as follows:

International Oil Pollution Compensation Fund 1992  
23rd Floor  
Portland House  
Bressenden Place  
London  
SW1E 5PN  
United Kingdom

Telephone: +44 (0)20 7592 7100  
Fax: +44 (0) 207592 7111  
E-mail: [info@iopcfunds.org](mailto:info@iopcfunds.org)

- 12.3 Should you need to contact the local claims handling office or the 1992 Fund Secretariat regarding your specific claim, you will be asked to quote the claim number or provide additional information to confirm your identity.
- 12.4 Copies of the 1992 Fund Claims Manual and other useful documents can be found at the IOPC Funds' website at [www.iopcfunds.org](http://www.iopcfunds.org).
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