1.4 Liability and compensation for waste management

The cost of oil spill waste treatment corresponds often to a large portion of the overall cost of the response operations (up to 50%). Some International Conventions, related to oil spill compensation, are relevant and may apply to the waste treatment.

A compensation regime for spills of persistent oil originating from tankers (bunker oil or cargo oil), was originally established in 1978 and is now based on two Conventions:

- the 1992 International Convention on Civil Liability for Oil Pollution Damage (1992 Civil Liability Convention),
- the 1992 International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage (1992 Fund Convention), and
- a Protocol to the 1992 Fund Convention was adopted in 2003, which established a Supplementary Fund.

The IOPC Fund Claims Manual indicates that:

> "*Clean-up operations frequently result in considerable quantities of oil and oil debris being collected. Reasonable costs for storing and disposing of the collected material are accepted. If the claimant has received any extra income following the sale of the recovered oil, these proceeds would normally be deducted from any compensation to be paid.*
> *(…)*
> *Presentation of claims*
> *It is essential that claims for the costs of clean-up are submitted with supporting documentation showing how the expenses for the operations are linked with the actions taken.(…)*
> *Cost of temporary storage (if applicable) and of final disposal of recovered oil and oily material, including quantities disposed, unit cost and method of calculating the claimed rate*."
>
> (Source: International Oil Pollution Compensation Fund, 2008. *Claims Manual*)

This three-level compensation regime can cover expenses related to oil spill waste treatment operations (as well as the cost incurred by the temporary and intermediate storage, the transport and handling of the oil and oily waste) if the incurred costs are "reasonable", i.e. covering technically well-suited and cost-effective solutions.

In the rare cases involving persistent oil spills from tankers where the compensation limit is exceeded, further claims may be made against parties involved.

Note. The 1992 Civil Liability Convention does have a "channelling" of liability which involves that claims can only be made against the registered owner of the tanker concerned and prohibits claims against the servants or agents of the owner, members of the crew, the pilot, the charterer, manager or operator of the ship, or any person carrying out salvage operations or preventive measures. The owner is entitled to take recourse action against third parties who are not similarly protected, e.g. the shipper of the goods, in accordance with national laws.

A spill of non-persistent oil falls outside the above-mentioned international compensation regime, though incidents of this kind are less damaging to the environment and have not led to claims compare to spills of persistent oil. In this case, domestic laws will apply.

For European countries, the Waste Directive could provide a remedy against the ship-owner as well as the charterer and shipper, in the absence of domestic laws to the contrary.

In case of oil spills of heavy bunker fuel from non-tankers, the International Convention on Civil Liability for Bunker Oil Pollution Damage (entered into force on 21 November 2008) can apply. The strict liability under this Convention extends beyond the registered owner to the bareboat charterer, manager and operator of the ship.

This Convention requires the registered owner of ships greater than 1,000 GT to maintain insurance or other financial security.

For all other oil spills (from tank farms, bunkering installations, exploration or production or storage installations, etc.), the national laws will apply. Claims are usually made to the "producer" of the waste, i.e. the polluter, and will be settled on a case-by-case basis.

Proposed content of this Sub-Section of the Plan

➔ **Recommendations on liability and compensation in case of unknown producer of waste.**

➔ **Recommendations on liability and compensation in case of known producer of waste, and considering the different nature of OSW and origin of pollution.**

Recommendations to develop this subsection

Refer to Questionnaire of REMPEC, Section 7, Questions 7-1 and 7-2

ⓘ **See the following web sites** for general documentation and full text of the Conventions and for information on the limit of liabilities:

- http://www.iopcfund.org : web site of the International Oil Pollution Compensation Funds (IOPC Funds).
- http://www.itopf.com : web site of the International Tanker Owner Pollution Federation Limited (ITOPF).