

# 國際海事法委員會油污染損害準則

國際海事法委員會第 38 屆國際會議通過

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## CMI GUIDELINES ON OIL POLLUTION DAMAGE

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#### PART I: GUIDELINES GENERAL

##### 1.

The importance is to be recognised of maintaining internationally a uniform treatment of claims for pollution damage, including a uniform application of the International Convention on Civil Liability for Oil Pollution Damage (CLC 1969) and the International Convention on the Establishment on the International Fund for Compensation for Oil Pollution Damage (Fund Convention 1971) together with any amendments thereof, and to that end due weight should be attached to any relevant policy, decisions or resolutions of the International Oil Pollution Compensation Fund,

##### 2

Compensation may be refused or reduced if a claimant fails to take reasonable steps to avoid or mitigate any loss, damage or expense.

#### PART II: ECONOMIC LOSS

##### 3.

For the purpose of these Guidelines the following definitions are employed:

- (a) "Economic loss" comprises both consequential loss and pure economic loss, as defined below;
- (b) "Consequential loss" means financial loss sustained by a claimant as a result of physical loss of or damage to property caused by contamination by oil;
- (c) "Pure economic loss" means financial loss sustained by a claimant otherwise than as a result of such physical loss of or damage to property;
- (d) "Property" means anything in which the claimant has a legally recognised interest by virtue of a proprietary or possessory right.

##### 4.

In principle compensation is payable for consequential loss.

#### 第一部份 一般性準則

##### 1.

維持油污染求償國際一致性處理之重要性，包括油污損害民事責任國際公約(1969年CLC公約)及設立國際油污損害補償基金國際公約(1971年基金公約)及其後續修正，以及國際油污補償基金之任何相關政策、決定或決議等之參考重要性。

##### 2.

如求償人未能採取適當措施以避免或減輕任何損失、損害或費用，得拒絕或減少其賠償。

#### 第二部分 經濟損失

##### 3.

為本準則之目的，下列名詞之意義如次：

- (a) 「經濟損失」包括下列定義之間接損失及純經濟損失；
- (b) 「間接損失」係指求償權人因油之污染所致對財物之實質減失或毀損，所蒙受之財務上損失；
- (c) 「純經濟損失」係指求償權人因前述財物之實質減失或毀損以外，所蒙受之財務上損失；
- (d) 「財物」係指求償權人基於所有權或占有權之合法權益之任何事物。

##### 4.

原則上，間接損失可獲賠償。

## 5.

Pure economic loss may be compensated when caused by contamination by oil, but normally only as set out below. The loss must be caused by the contamination itself. It is not sufficient for a causal connection to be shown between the loss and the incident which caused the escape or discharge of the oil from the vessel involved in the incident.

## 6.

- (a) Pure economic loss will be treated as caused by contamination only when a reasonable degree of proximity exists between the contamination and the loss,
- (b) In ascertaining whether such proximity exists, account is to be taken of all the circumstances, including (but not limited to) the following general criteria:
  - (i) the geographic proximity between the claimant's activities and the contamination;
  - (ii) the degree to which the claimant is economically dependent on an affected natural resource;
  - (iii) the extent to which the claimant's business forms an integral part of economic activities in the areas which are directly affected by the contamination;
  - (iv) the scope available for the claimant to mitigate his loss;
  - (v) the foreseeability of the loss; and
  - (vi) the effect of any concurrent causes contributing to the claimant's loss.

## 7.

Whilst the result in practice of applying the foregoing general principles will always depend on the circumstances of the individual case, recovery will not normally extend -

- (a) to parties other than those who depend for their income on commercial exploitation of the affected coastal or marine environment, such as, for example, those involved in:
  - (i) fishing, aquaculture and similar industries;
  - (ii) the provision of tourist amenities such as hotels, restaurants, shops, beach facilities and related activities;
  - (iii) the operation of desalination plants, salt evaporation lagoons, power stations and similar installations reliant on the intake of water for production or cooling processes;
- (b) to parties claiming merely to have suffered;
  - (i) delay, interruption or other loss of business not involving commercial exploitation of the environment;
  - (ii) loss of taxes and similar revenues by public authorities.

## 8.

Compensation may be paid for economic loss if it results from damage to, or loss or infringement of, a recognised legal right or interest of the claimant. Such a right or interest must be vested only in the claimant (or in a reasonably limited class of persons to which the claimant belongs) and must not be freely available to the public at large.

## 9.

Compensation may be paid for the costs of reasonable measures taken by a claimant to prevent or minimise economic loss, where such loss

## 5.

油料之污損所致之純經濟損失，得獲賠償，然通常僅限於下列規定之情況。該損失必須為污染本身。損失及意外事件所涉船舶之油料外洩或溢油所致之事故間具有因果上之牽連並不充分。

## 6.

- (a) 單純經濟損失僅於污損及損失間存在著合理程度之主力近因關係，始可為污損所致處理，
- (b) 於決定是否存在著該主力近因時，應考量所有情況，包括(但不限於)下列因素：
  - (i) 求償人之活動及污損間之地理上主力近因；
  - (ii) 求償權人對於受影響自然資源之經濟上依存度；
  - (iii) 求償權人之商業為受該污損直接影響區域之區域性經濟活動之一部份之程度；
  - (iv) 求償權人減輕其損失可適用之範圍；
  - (v) 損失之可預見性；及
  - (vi) 任何其他會同時造成求償權人損失之效果。

## 7.

實務上通常會視個案情況，適用前述一般原則時，然求償通常不會擴及下列事項：

- (a) 除其收入係依賴受影響海岸或海洋環境之商業開發(例如從事下列事項)以外之人：
  - (i) 漁業、農業或類似產業；
  - (ii) 旅遊供給，例如旅館、餐館，商店、海濱設施及相關活動；
  - (iii) 海水淡化場、曬鹽場、發電廠及與汲水供生產或冷卻有關類似設施之運作；
- (b) 僅蒙受下列事項而提出求償之人：
  - (i) 遲延、不涉及環境商業開發之干擾或其他商業損失；
  - (ii) 稅捐及公務機關類似稅收之損失。

## 8.

如經濟損失係經承認之法律權益之損害損失或侵害所致，則得賠償該經濟損失。該權益必須僅由求償人所專享(或為求償人所屬合理有限之某類之人所專享)，而非大眾得自由主張之權益。

## 9.

求償權人為避免或減輕經濟損失所採取之合理措施之費用，得獲賠償，惟

would itself have qualified for compensation under the terms of these Guidelines. In determining what is reasonable for this purpose, it will normally be required that:

- (a) the costs of the measures were reasonable;
- (b) the costs of the measures were in proportion to the loss which they were intended to prevent or minimise;
- (c) the measures were appropriate and offered a reasonable prospect of being successful; and
- (d) in the case of a marketing campaign, the measures related to actual targeted markets.

### **PART III. PREVENTIVE MEASURES, CLEAN-UP AND RESTORATION**

#### **10.**

- (a) The cost of preventive measures (including clean-up and disposal) is recoverable insofar as both the measures themselves and the cost thereof were reasonable in the particular circumstances,
- (b) In general compensation is payable where the measures taken or equipment used in response to an incident were likely, on the basis of an objective technical appraisal at the time any relevant decisions were taken, to be successful in avoiding or minimising pollution damage. Compensation is not to be refused by reason only that preventive or clean-up measures prove ineffective, or mobilized equipment proves not to be required, A claim should however be refused if the steps taken could not be justified on an objective technical appraisal, in the circumstances existing at the relevant time, of the likelihood of the measures succeeding, or of mobilized equipment being required,
- (c) Where a government agency or other public body takes an active operational role in preventive measures or clean-up, compensation may be claimed for an appropriate proportion of normal salaries paid to their employees engaged in performing the measures during the time of such performance, and such a claim will not be rejected on the sole ground that the salaries concerned would have been payable by the claimant in any event.
- (d) Where any plant or equipment owned by a claimant is reasonably used for the purpose of preventive or clean-up measures, the claimant may claim reasonable hire charges for the period of the use, and any reasonable costs incurred to clean or repair the plant or equipment after its use; provided always that the aggregate of such charges and/or costs should not exceed the acquisition cost or value of the plant or equipment concerned.
- (e) Compensation paid in accordance with sub-paragraphs (c) or (d) is to be limited to expenses which relate closely to the clean-up period in question, and is not to include remote overhead charges.
- (f) Where equipment or material is reasonably purchased for the purpose of preventive or clean-up measures, compensation is payable for the cost of acquisition, but subject always to a deduction for the residual value of such equipment or material after completion of the measures.
- (g) Compensation is payable for the reasonable cost of repairing damage caused by reasonable preventive or clean-up measures, such as damage to sea-defences, roads and embankments caused by heavy machinery,
- (h) Compensation is payable for the cost of reasonable measures to

該經濟損失本身依本準則屬得獲賠償者為限。為此目的於決定何者為合理時，其通常需要符合下列條件：

- (a) 該措施之費用為合理；
- (b) 該措施之費用為其所欲避免或減輕之損失之一部份；
- (c) 該措施為適當且足以提供可以成功之合理期待；及
- (d) 於有市場爭議時，相關措施應與實際目標市場有關。

### **第三部分 防止措施、清除及復育**

#### **10.**

- (a) 防止措施之費用(包括清除及處置)可以求償，然僅限於該措施本身及其費用於該個別情況時尚屬合理，
- (b) 一般而言，為因應某事件而採行措施或使用設備時，於任何決定當時基於其主觀技術上判斷，可能可以成功地避免或減輕污染損害時，即可予以賠償。不得僅以防止或清除措施證明無效，或機動設備經證明不需要為由，而予以拒賠。然如所採取之措施，於相關時間之當時狀況，依一主觀技術判斷，措施成功的可能性或所需之機動設備為不合理時，則得以拒賠該求償，
- (c) 政府官署或其他公務機關採行防止措施或清除之主動作業任務時，應支付給執行該措施之雇員於其執行職務期間之正常薪津之適當比例部分，得予以賠償，且不得僅以相關薪津已由求償權人為任何形式之支付為由而予以拒賠。
- (d) 求償權人所擁有之任何工廠或設備，為防止或清除措施之目的為合理使用時，求償權人得求償使用期間之合理租用費用，及任何清除或修理該工廠或設備於使用後所發生之任何合理費用；然該費用或花費之總額不應超過該工廠或相關設備徵購成本或價值。
- (e) 依第(c)或(d)項所支付之賠償應限於與該係爭清除期間緊密相關之費用，且不應包括過於無關之費用。
- (f) 為防止或清除措施之目的而合理購買設備或材料時，得賠償其徵購成本，然應扣除該設備或材料於措施完成後之剩餘價值。
- (g) 合理防止或清除措施所致損害之合理修復成本，得予以賠償，例如因重機器所致對海防設施、道路及提防之損害。
- (h) 清理受到油料污損之鳥類、哺乳動

clean birds, mammals or reptiles contaminated by oil.

物及爬蟲動物之合理措施之費用，得予以賠償。

#### 11.

Compensation for impairment of the environment (other than loss of profit) shall be limited to the costs of reasonable measures of reinstatement actually undertaken or to be undertaken. It is not payable where the claim is made on the basis of an abstract quantification of damage calculated in accordance with theoretical models,

#### 11.

對環境損傷之賠償(營利損失除外)應限於實際所採行或即將採行之合理復原措施之費用。基於依理論模型計算所得之損害量概算所提出之求償，不予以賠償。

#### 12.

- (a) Admissible claims for the cost of reasonable measures of reinstatement need not be limited to the removal of spilt oil, but may include appropriate steps to promote the restoration of the damaged environment or assist in its natural recovery.
- (b) Specific studies may be necessary to quantify or verify pollution damage and to determine whether or not reinstatement measures are in fact feasible and will accelerate natural recovery. Contributions may be paid to the reasonable costs of such studies, provided they are reasonably proportionate to the actual damage, and provided they produce, or are likely to produce, the required data.
- (c) A claimant may recover a reasonable sum in respect of the estimated cost of reinstatement measures, before they have actually been carried out, provided always that the measures could not otherwise be carried out due to lack of financial resources, and provided an undertaking is given, or other satisfactory evidence is provided, that the proposed measures of reinstatement will actually be carried out.
- (d) In determining whether measures of reinstatement are reasonable, account is to be taken of oil the relevant technical factors including (but not limited to) the following:
  - (i) the extent to which the observed state of the environment, and any changes therein, are to be regarded as damage actually caused by the incident in question, as distinct from other factors whether man-made or natural;
  - (ii) whether the measures are technically feasible and likely to contribute to the re-establishment at the site in question of a healthy biological community in which the organisms characteristic of that community are present and are functioning normally;
  - (iii) the speed with which the affected environment may be expected to recover by natural processes and the extent to which the reinstatement measures concerned may accelerate (or inadvertently impede) natural processes of recovery; and
  - (iv) whether the cost of the measures is in proportion to the damage or the results which could reasonably be expected.

#### 12.

- (a) 可獲賠償之合理復原措施費用不限於清除外洩之油料，且包括促進受損環境復原或協助其自然復育所採取之適當措施。
- (b) 為判定或認定污染損害及決定復原措施是否具事實上之可行性且可促進自然復育，或有需要進行特別研究。應分擔該研究之合理費用，然其應與實際損害成合理比例，且其可產出或可能產出所需之資料。
- (c) 於實際採行措施前，求償權人得求償有關復育措施之預估費用之合理金額，然以該措施如缺少財務支援即無法進行為限，且於提供擔保或提供其他充分證據時，所建議之復育措施應實際執行之。
- (d) 於決定復育措施是否合理時，應考量油料之相關技術因素，包括(但不限於)下列事項：
  - (i) 環境監測範圍及其內之任何改變被認定為系爭事件實際所致損害，而非人為或自然因素所致之範圍；
  - (ii) 該措施是否具技術上的可行性且可能提供系爭區域現有種群之生物特徵及正常運作之健康生物群落之重新建立；
  - (iii) 受影響環境自然復原之預期速度，及相關復原措施得以加速(或不致阻礙)自然復原過程之範圍；及
  - (iv) 採行措施所生費用與損害是相稱的，且其結果是合理可期待的。