

MANUAL ON OIL POLLUTION

SECTION V – ADMINISTRATIVE ASPECTS OF OIL POLLUTION RESPONSE

2009 EDITION



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MANUAL ON **OIL POLLUTION**

SECTION V – ADMINISTRATIVE ASPECTS OF OIL POLLUTION RESPONSE

2009 EDITION



IMO Publishing

IMO Doc. No. MEPC/Circ.140/Rev.1

IMO INTERNATIONAL
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London, 2009 Document Sharing Hub

First published in 1998
by the INTERNATIONAL MARITIME ORGANIZATION
4 Albert Embankment, London SE1 7SR
www.imo.org

Second edition, 2009

Printed in the United Kingdom by CPI Books Limited, Reading RG1 8EX

IMO Publishing

2 4 6 8 10 9 7 5 3 1

ISBN 978-92-801-1500-0

IMO PUBLICATION

Sales number: IA572E

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Glossary

The following glossary provides explanations of various instruments and abbreviated expressions used in this Manual that may be helpful to the user:

1969	Civil Liability Convention	International Convention on Civil Liability for Oil Pollution Damage, 1969
1992	Civil Liability Convention	International Convention on Civil Liability for Oil Pollution Damage, 1969, as amended by the Protocol of 1992 relating thereto
	CLC Certificate	Certificate of Insurance or Other Financial Security in respect of Civil Liability for Oil Pollution Damage
	Funds	International Oil Pollution Compensation Funds
1971	Fund Convention	International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1971
1992	Fund Convention	International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1971, as amended by the Protocol of 1992 relating thereto
1969	Intervention Convention	International Convention relating to Intervention on the High Seas in Cases of Oil Pollution Casualties, 1969
1973	Intervention Protocol	Protocol relating to Intervention on the High Seas in Cases of Pollution by Substances Other Than Oil, 1973
	IOPC Funds	International Oil Pollution Compensation Funds
	ISM Code	International Management Code for the Safe Operation of Ships and for Pollution Prevention
	ISU	International Salvage Union

ITOPF	International Tanker Owners Pollution Federation Limited
1966 LL	International Convention on Load Lines, 1966
LLMC 1976	Convention on Limitation of Liability for Maritime Claims, 1976
LOF 2000	Lloyd's Standard Form of Salvage Agreement, 2000
MARPOL	International Convention for the Prevention of Pollution from Ships, 1973, as amended by the Protocol of 1978 relating thereto
OPRC 1990	International Convention on Oil Pollution Preparedness, Response and Co-operation, 1990
1910 Salvage Convention	Convention for the Unification of Certain Rules of Law relating to Assistance and Salvage at Sea, 1910
1989 Salvage Convention	International Convention on Salvage, 1989
SCOPIC	A Supplementary Clause to the Lloyd's Form Salvage Agreement "No cure – No pay"
SDR	Special Drawing Right. The US dollar equivalents of SDRs vary according to the current exchange rates
1974 SOLAS	International Convention for the Safety of Life at Sea, 1974
1978 SOLAS Protocol	Protocol of 1978 relating to SOLAS 1974
2004 SOLAS	International Convention for the Safety of Life at Sea. Consolidated version
STOPIA	Small Tanker Oil Pollution Indemnification Agreement
STCW 1978	International Convention on Standards of Training, Certification and Watchkeeping for Seafarers, 1978
TOPIA	Tanker Oil Pollution Indemnification Agreement
UNCLOS	United Nations Convention on the Law of the Sea, 1982

Foreword

The Marine Environment Protection Committee (MEPC), at its thirty-third session, agreed that a new section V of the *IMO Manual on Oil Pollution*, dealing with administrative aspects and, in particular, with the roles and functions of entities which could be involved in an oil pollution emergency and its aftermath, should be developed. The present text is a revision of the first edition of the Manual, published in 1998, taking into account changes and new information on the topic since the original version.

The Manual on Oil Pollution consists of five sections:

- Section I *Prevention* (out of print; revision under consideration)
- Section II *Contingency Planning* (revised edition published in 1995)
- Section III *Salvage* (revised edition published in 1997)
- Section IV *Combating Oil Spills* (2005 edition)
- Section V *Administrative Aspects of Oil Pollution Response* (this publication)
- Section VI *IMO Guidelines for Sampling and Identification of Oil Spills* (1998 edition)

A series of sections of the *Manual on Chemical Pollution* have already been published:

- Section 1 *Problem Assessment and Response Arrangements* (1999 edition)
- Section 2 *Search and Recovery of Packaged Goods Lost at Sea* (2007 edition)

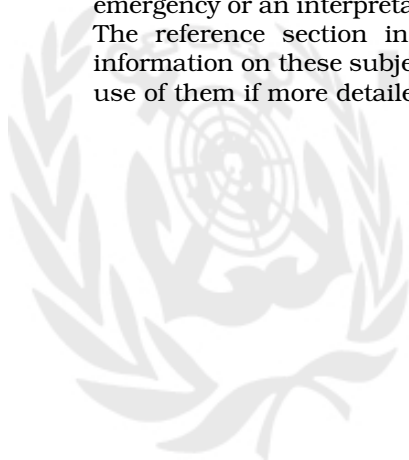


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Introduction

This section of the *Manual on Oil Pollution* is intended to provide the reader, in particular on-scene commanders, lead agencies and others involved in the management of oil pollution response, with an appreciation of the various interests involved in an oil pollution emergency and its aftermath, as well as a general review of the international legal regimes governing limitation of liability and compensation for oil pollution damage. This section is not intended to provide an authorized or definitive commentary on the legal relationships between the various entities involved in an oil pollution emergency or an interpretation of relevant international conventions. The reference section includes sources of more comprehensive information on these subjects, and the reader is encouraged to make use of them if more detailed information is required.





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Part I

Roles and functions of entities which could be involved in an oil pollution emergency and its aftermath

Chapter 1 – The shipowner

1.1 *General rights and obligations*

1.1.1 There may be a great diversity of ownership or possessory interests in a ship. The main ones that a coastal State is likely to encounter in a marine pollution emergency are the shipowner, bareboat charterer, and manager or operator. The role of the shipowner is mainly discussed here. The phrase shipowner is used throughout, although of course, in some cases, a ship may be owned by more than one entity in equal or unequal shares. In such cases, there is usually an agreement between the various owners that one will take operational decisions on behalf of all, and joint ownership only becomes of particular interest when recovery of damages is sought.

1.1.2 Unless there is a bareboat charterer or manager of the ship, the shipowner is normally the entity responsible for the operation of the ship, and the master will act as the agent of the shipowner for that purpose, at least until direct contact is established between the coastal State and the shipowner. For this reason the role of the master is discussed separately in chapter 3.

1.1.3 The interests within the ship are to a considerable extent protected under international law. Not only is there freedom of navigation on the high seas,* but ships are also entitled to the right of innocent passage through the territorial sea. These rights of the ship are, however, affected when a marine pollution emergency occurs that threatens to or causes damage to the coastal State or its territorial sea, so that the coastal State may, in accordance with international law and its own domestic law, take steps which interfere with that freedom. This is dealt with further in chapter 6, under the rights of the coastal State.

* In this context, *high seas* means beyond territorial waters.

1.1.4 The first concern of the shipowner in a marine pollution emergency will be to ensure that the ship and all the life thereon is preserved, and that the cargo, which he has contractually undertaken to deliver to the destination named in the bill of lading, is so delivered. He is therefore concerned about the protection of both his proprietary interest in the ship and his contractual obligations concerning the cargo. If the ship is aground, he will want to arrange for it to resume its voyage as soon as practicable, and this will rightly be the primary focus of his immediate concern, rather than the effect of the polluting substances to the sea or coast, which may have escaped or for which there may be a threat of escape. Because he may be liable to pay compensation for pollution caused, the shipowner can be expected, however, to liaise with all others who are directly concerned with the position of the ship in the emergency, either through the master or directly from his office.

1.1.5 In addition to the general rights and obligations concerning the operation of the ship, the shipowner may have certain specific obligations concerning:

- .1 documentation that is required and carried on board for oil pollution preparedness and response;
- .2 notification of the marine pollution emergency to the nearest coastal State;
- .3 pollution response and clean-up; and
- .4 compensation.

1.2 Shipboard Oil Pollution Emergency Plan

1.2.1 One of the salient documents required to be carried on board for oil pollution preparedness and response is a Shipboard Oil Pollution Emergency Plan. Every oil tanker of 150 gross tonnage and above and every ship other than a tanker of 400 gross tonnage and above must carry on board such a Plan, approved by the flag State (regulation 38 of MARPOL, Annex I and article 3 of the International Convention on Oil Pollution Preparedness, Response and Co-operation, 1990 (OPRC 1990), which entered into force on 13 May 1995). Such a Plan shall be in accordance with the Guidelines for the development of Shipboard Oil Pollution Emergency Plans developed by IMO. The Plan shall consist of:

- .1 the procedure to be followed by the master or other persons to report an oil pollution incident;

- .2 the list of authorities or persons to be contacted in the event of an oil pollution incident; and
- .3 a detailed description of the action to be taken immediately by persons on board to reduce or control the discharge of oil following the incident.

1.2.2 The International Management Code for the Safe Operation of Ships and for Pollution Prevention (ISM Code), made mandatory on 1 July 1998 by amendments to the International Convention for the Safety of Life at Sea, 1974 (SOLAS 1974), also requires “emergency preparedness”, i.e. “the Company should establish procedures to identify, describe and respond to potential emergency shipboard situations”. In this context, the Company means “the owner of the ship or any other organization or person such as the manager, or the bareboat charterer, who has assumed the responsibility for operation of the ship from the shipowner and who, on assuming such responsibility, has agreed to take over all duties and responsibility imposed by the Code” (regulation IX/1 of SOLAS 1974 and paragraph 1.1.2 of the ISM Code).

Please refer to more detailed information in paragraph 5.6 of this Manual. Also refer to the new chapter IX of SOLAS 1974 and the ISM Code as set out in appendix 1.

1.3 Notification

1.3.1 The shipowner may be obliged by an applicable regulation (under the law of the flag State or of the coastal State, either or both of which may derive from international conventions to which these States are party) to notify the nearest coastal State of the marine pollution emergency which has arisen. Normally this obligation would fall upon the master of the ship. However, if the ship has been abandoned, or if the master’s report is incomplete, then an obligation on the owner, charterer, manager or operator to make a report may arise. The obligation to report, which Parties to MARPOL undertake to implement in their domestic law for ships registered in their territory, is contained in Protocol I of that Convention. The text of Protocol I of the MARPOL 1973 Convention, together with resolution MEPC.138 (53) is set out in appendix 2. Article 4 of OPRC 1990 is to similar effect.

1.4.5 The shipowner also incurs legal obligations to the coastal State whose waters are being polluted. These legal obligations can conflict with the shipowner's contractual obligations. In these cases, it is very important to clarify who will pay the costs involved for any response action required by the coastal States.

Chapter 2 – The ship operator

2.1 The ship may be owned by one entity, such as a bank or other financial institution, and leased or bareboat chartered to another entity. This is a common method of financing, whereby the shipping company that wishes to use the ship has the possession of it, but the bare legal ownership resides in the institution which puts up the money for its purchase. The relationship between the shipowner and the lessee or bareboat charterer is governed by a contract of lease or bareboat charter – for our purposes there is no significant difference, so we shall refer to the *bareboat charterer* below. In this connection, it should be noted that the bareboat charterer will be required to comply with the requirements of the ISM Code (see paragraphs 1.2.2 and 5.6).

2.2 It is the bareboat charterer who has the possession of the entire ship, and it is therefore he who is responsible for the commercial and operational management of the ship, and not the shipowner. Thus, where this type of arrangement is in operation, the master will not be the agent of the shipowner, but the agent of the bareboat charterer, and the latter will fulfil all the roles and functions which were discussed in paragraph 1.1, so that in most cases one can read *bareboat charterer* for *shipowner*.

2.3 The notable exception concerns the liability of the shipowner under the 1969 and 1992 Civil Liability Conventions, which cannot be directly assumed by any other person.

2.4 In any event, the bareboat charterer would wish to avail himself of any right of limitation which he may have under the relevant law, such as the Convention on Limitation of Liability for Maritime Claims, 1976 (LLMC 1976).

2.5 It should be noted that the 1989 Salvage Convention places an obligation on the owner to co-operate with a salvor and, in so doing, to exercise due care to prevent or minimize damage to the environment. The 1989 Salvage Convention does not define owner, and so it is left to each State Party to define it in its own legislation. Such legislation may or may not provide that a bareboat charterer shall be in the same position as an owner in this respect.

2.6 Another common arrangement which may complicate the picture still further on the side of the interests in the ship is the appointment of ship managers or operators who run the day-to-day non-commercial side of the ship's operation. Managers would normally be responsible for providing the ship with officers and crew and ensuring that the ship is maintained and insured. Operators have a similar, but lesser role. In each case the shipowner (or bareboat charterer, as the case may be) retains commercial control of the ship and takes the commercial risks and benefits of its operation, deciding whether to trade the ship directly for his own benefit or to charter the ship out. Where there is a manager or operator (who employs the master), the master will still be the agent of the shipowner or bareboat charterer (as the case may be) for purposes of dealing with the operation of the ship and for salvage purposes. However, the master will additionally represent his employer, and his act or neglect may make his employer liable for compensation. Managers and operators usually enjoy the same rights to limit their liability as shipowners and bareboat charterers.

Chapter 3 – The master

3.1 The master is the officer aboard ship entrusted with the responsibility of the entire maritime voyage. He is, therefore, responsible for the safety of the ship, the cargo and all personnel aboard, and he will take such action as he can to achieve this as soon as an incident giving rise to the emergency occurs. He will give priority to saving life. His responsibility and authority are further described in the ISM Code (see paragraph 5.6 of this Manual and the ISM Code, the latter of which appears in appendix 1).

3.2 If the ship is in distress, the master will be responsible for ensuring that a distress signal is sent and, under SOLAS regulation V/33(2), has the right to requisition any ship with which he is in contact and which he considers best able to render him assistance, whereupon the master of the requisitioned ship or ships must proceed with all speed to the assistance of the distressed ship. In addition, under article 10 of the International Convention on Salvage, 1989 (1989 Salvage Convention), every master is bound to render assistance to any person found in danger of being lost at sea, insofar as he is able to do so without serious danger to his ship and persons thereon.

3.3 The master is usually the person responsible for notifying to the nearest coastal State of the incident giving rise to the marine pollution emergency (see paragraph 1.3.1 and appendix 2 for details).

3.4 The master is, in most if not all, systems of law, the agent of the shipowner in the navigation and shipboard management of the ship. Where the cargo is in danger, he is usually also deemed the agent of the cargo owner, insofar as any action to save the cargo is taken. Coastal States may therefore deal with the master in confidence that his word will bind the shipowner and cargo owner insofar as the security of ship and cargo are concerned, when the owners themselves are not in contact with the coastal State.

3.5 The agency of the master is the legal basis for the law of salvage. The role of salvors is discussed in chapter 7, but it may be noted here that the master is able to reach agreement with a salvor himself. The master will send out distress calls as appropriate after the incident occurs, and he will call specifically for tugs, if that is what is needed. Even if he does not specifically call for tugs, any salvage tug in the vicinity hearing a distress message is likely to try to contact the ship and may proceed in its direction "on speculation". The salvage tug will attempt to secure an agreement for its services with the master. This would usually be on the basis of a Lloyds Open Form, but if the situation permits, the master will may attempt to negotiate a form of daily hire contract with the tug operator.

3.6 Under article 6(2) of the 1989 Salvage Convention, the authority of the master to conclude a contract for salvage operations with a salvor on behalf of the owners of the ship and the cargo is given effect in the laws of all States Parties thereto. There is also a new dimension to his legal responsibilities. Under article 8(2) of the 1989 Salvage Convention, the master is under a duty to the salvor to co-operate fully with him during the course of the salvage operations and, in so doing, to exercise care to prevent or minimize damage to the environment.

3.7 In a marine pollution emergency, a master will often attempt to initiate direct contact with his shipowner's office, once the emergency has arisen, so that the shoreside management may become involved in the decision-tracking process. However, it is worth noting that, whether the master is in contact with his shoreside office or not, his decisions on the protection of the marine environment should not be unduly influenced by instructions given by his shoreside office, taking into account that the protection of the marine environment must be the master's primary concern in all situations

which arise, and that economic and other pressures on the master should not at any time interfere with the decisions he must take in that regard.

3.8 It was for this reason that the IMO Assembly adopted resolution A.443(XI), in November 1979, on decisions of the shipmaster with regard to maritime safety and marine environment protection, following the *Amoco Cadiz* incident in 1978. The resolution invites Governments to take necessary steps to safeguard the master in the proper discharge of his responsibilities in regard to maritime safety and the protection of the marine environment by ensuring that:

- .1 the shipmaster is not constrained by the shipowner, charterer or any other person from, in this respect, taking any decision which, in the professional judgement of the shipmaster, is necessary; and
- .2 the shipmaster is protected by appropriate provisions, including the right of appeal, contained in, *inter alia*, national legislation, collective agreements or contracts of employment, from unjustifiable dismissal or other unjustifiable action by the shipowner, charterer or any other person, as a consequence of the proper exercise of his professional judgement.

3.9 Since that time, several new resolutions have been introduced which provide additional guidance, notably Assembly resolution A.949(23)* adopted in December 2003, which provides guidelines on places of refuge for ships in need of assistance and Assembly resolution A.987(24),† adopted in December 2005, providing guidance on the fair treatment of seafarers in the event of a maritime accident. It should also be noted that when a marine pollution emergency has arisen, the master's considerable responsibility may very well lie heavily upon him and the pressure on him may be very great. He may very well feel personally responsible for what has happened. In many cases, an inquiry may follow which could result in his licence being suspended or revoked. There may also be considerable danger in

* Refer to Assembly resolution A.949(23), Guidelines on places of refuge for ships in need of assistance.

† Refer to Assembly resolution A.987(24), Guidelines on fair treatment of seafarers in the event of a maritime accident.

staying aboard ship. It is important that anyone dealing with the master during or in the immediate aftermath of the marine pollution emergency is aware of these possibilities and acts accordingly.

Chapter 4 – The cargo owner

4.1 The owner of the cargo at the time of the marine pollution emergency will not necessarily be the shipper or the consignee, for the ownership may have changed hands several times since the ship sailed. Therefore, it may not in the initial stages be easy to establish who owns the cargo, although the chain of enquiry will begin with the shipper named on the bill of lading, a copy of which will be retained on board by the master. Bulk cargoes tend to be owned by a single entity, or perhaps by a few different interests. Packaged cargoes, on the other hand, are more likely to be owned by a greater number of entities.

4.2 While cargo interests, collectively, are the ones who contribute to the two international Funds outlined in chapter 10, the individual cargo owner would not normally be liable to compensate those suffering pollution damage, and certainly there is no international legal regime which makes provisions for the liability of the cargo owner for such damage.

4.3 Once the cargo owner becomes aware of a marine pollution emergency, his interest will lie mainly in ensuring that, to the extent possible, his cargo is secured and delivered to the port of destination. This is the task which has been delegated to the shipowner, and, under the bill of lading or other contract governing the carriage of the cargo by sea (such as a charter-party), this responsibility will remain with the shipowner throughout the marine pollution emergency, unless and until the shipowner abandons the voyage. For this reason the cargo owner does not normally feature prominently in a marine pollution emergency.

4.4 The cargo owner's interest extends also to a liability to contribute in general average and salvage. In respect of both of these liabilities, he will normally be insured by the cargo underwriter. Since the cargo owner (or the cargo underwriter, using the right of subrogation) will look primarily to the shipowner for compensation for any loss or contamination of the cargo, it can be readily appreciated that the interests of the shipowner and the cargo owner may be somewhat at odds.

4.5 The cargo owner's knowledge of the nature of the cargo will vary enormously according to the type of entity concerned. If the cargo owner is an end-user of the cargo, he may very well have technical staff who are familiar with the behavioural characteristics of that cargo, which is often the source of the marine pollution emergency (the main exception being the escape of marine fuel oil or marine diesel used as bunkers). Therefore, the cargo owner may be someone to whom the coastal State, or even the shipowner, may turn to for advice on how to handle the cargo in an emergency. If the cargo owner is a trading company which does not use the cargo itself, such technical expertise is less likely to be available from that source and it may have to be sought from the manufacturer or from an industry body. One particular instance where cargo owners may become involved in the marine pollution emergency, is in the lightering of the stricken ship. It is not uncommon for the cargo owner – particularly an end-user – to assist in the identification of a suitable lightering ship to be hired for the job.

4.6 Under article 8(2) of the 1989 Salvage Convention, if a salvage contract to which that Convention applies is entered into, the owner of any property in danger – including the cargo owner and the owner of freight at risk – is under a duty to the salvor to co-operate fully with him during the course of the salvage operations and, in so doing, to exercise care to prevent or minimize damage to the environment.

Chapter 5 – The flag State

5.1 The major impacts of the flag State's role will take effect before the marine pollution emergency occurs, for it is the flag State that is responsible for enacting and enforcing all design and equipment standards, all safety standards, and all crew certification and training. This includes issuing certificates provided for by international conventions; setting minimum staffing levels and standards relating to the prevention of collisions and the prevention of pollution; and exercising jurisdiction and control over the ship while it is on the high seas. However, there are obligations on a flag State after a marine casualty has occurred.

5.2 Under article 12 of MARPOL, the flag State is obliged to investigate a casualty in which one of its ships has been involved, if the casualty has produced a major deleterious effect upon the marine environment. It must also undertake to provide IMO with information concerning the findings of such an investigation, when it judges that a change in the regulatory regime is desirable. Most States with

sizeable fleets have made provisions for conducting an investigation when there is loss of life, and, under regulation I/21 of SOLAS 1974 and article 23 of LL 1966, a flag State must undertake to conduct an investigation of any casualty when it judges that such an investigation may assist in determining what changes in SOLAS 1974 and LL 1966, might be desirable. Apart from SOLAS 1974, LL 1966 and MARPOL, no other international conventions currently in force make extensive provisions for the holding of marine investigations.

5.3 Under article 94(7) of the United Nations Convention on the Law of the Sea, 1982 (UNCLOS), which entered into force on 16 November 1994, the flag State is under a duty to hold an inquiry into every marine casualty, including where there has been serious damage to ships or installations of another State or to the marine environment, and the other State involved is to co-operate in such an inquiry.

5.4 Under article 5(3) of MARPOL, the flag State is entitled to receive notification if any other State Party denies the ship entry to its ports or offshore terminals or takes any action against the ship for the reason that it does not comply with MARPOL.

5.5 Under article 6 of MARPOL, the flag State must co-operate with other Parties in the detection of violations and the enforcement of the provisions of the Convention. If presented with evidence of a violation, the flag State must investigate the matter and, if satisfied that there is sufficient available evidence for proceedings to be brought for a violation, it must instigate such proceedings. Similar, but less detailed, provisions exist in regulation I/19 of SOLAS 1974, as modified by the 1978 SOLAS Protocol, and in article 21 of LL 1966 and article X of the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers, 1978 (STCW 1978). Where a coastal State presents a flag State with evidence of a violation, it can always contact the flag State to see what the outcome of the investigation is and to offer assistance with the presentation of oral or written evidence at any subsequent legal proceedings which the flag State may bring.

5.6 SOLAS 1974 was amended in May 1994 to include a new chapter IX to the Convention, which is designed to make mandatory the ISM Code, which was adopted by the IMO Assembly in November 1993 by resolution A.741(18). The ISM Code takes into account that the most important means of preventing maritime casualties and pollution of the sea from ships is to design, construct, equip and maintain ships and to operate them with properly trained crews, in

compliance with international conventions and standards relating to maritime safety and pollution prevention. The Code provides an international standard for the safe management and operation of ships and for pollution prevention (see appendix 1).

5.7 Chapter IX of SOLAS 1974 applies to ships, regardless of the date of construction, as follows:

- (1) passenger ships including passenger high-speed craft, not later than 1 July 1998;
- (2) oil tankers, chemical tankers, gas carriers, bulk carriers and cargo high-speed craft of 500 gross tonnage and upwards, not later than 1 July 1998; and
- (3) other cargo ships and mobile offshore drilling units of 500 gross tonnage and upwards, not later than 1 July 2002.

Chapter 6 – The coastal State

6.1 Within OPRC 1990, salient features are stipulated in article 6 (National and regional systems for preparedness and response) and article 7 (International co-operation in pollution response). Specifically, under article 6, each Party shall:

- (a) establish a national system for responding promptly and effectively to oil pollution incidents which has, as a minimum, developed a national contingency plan and designated national authorities and operational focal points responsible for oil pollution preparedness and response, reporting and handling requests for assistance;
- (b) within its capabilities, either individually or through bilateral or multilateral co-operation and, as appropriate, in co-operation with the oil and shipping industries and other relevant entities, establish a minimum level of pre-positioned oil spill response equipment, proportionate to the risk involved, and programmes for its use; and
- (c) commit to co-operate and render assistance to Parties that request assistance to deal with oil pollution incidents, subject to capability and availability of relevant resources.

6.2 Whether or not a coastal State is a Party to OPRC 1990, in general, the different roles of the coastal State's various competent authorities will be defined in its constitution and in its marine pollution contingency plan. These plans vary from State to State, and the considerations which should be taken into account in preparing them should include those contained in this document. Guidance on the elaboration of such a plan is covered by other documents, such as section II of the *Manual on Oil Pollution, Contingency Planning*.^{*} The Manual discusses the roles and functions of the various competent authorities of a coastal State, as if there were but one national authority to deal with the marine pollution emergency, and this will simply be referred to as the "coastal State".

6.3 When faced with a marine pollution emergency, the coastal State must look both to its international rights and duties and to its national position. Insofar as the former are concerned, every State has a general duty, under customary international law, to warn other States of a marine pollution threat of which it becomes aware and which is likely to affect them, and this is reinforced by article 8(3) of MARPOL, which requires a State Party to notify the flag State and any other State which may be affected. Article 5 of OPRC 1990 is to similar effect.

6.4 In addition, articles 194(2) and 198 of UNCLOS contain a specific obligation to notify other States which the coastal State deems likely to be affected. Therefore, once a marine pollution emergency is actually within the jurisdiction and control of a coastal State, the coastal State must consider the likely effect on other States and take the appropriate action, which, at the bare minimum, is to notify those likely to be affected.

6.5 Such general obligations may have been given greater precision in an intergovernmental regional agreement which commits the groups of States who are Party thereto to co-operate in responding to major incidents of marine pollution which are likely to affect more than one State. If a coastal State is a Party to a regional agreement, then its provisions should be implemented. Under such an agreement, a coastal State is usually under a duty to report marine pollution incidents to neighbouring States which may be affected, to take the necessary response actions, and to monitor the situation. Other Parties to the agreement are usually obliged to use their best endeavours to respond to requests for assistance which may be made by the affected

^{*} Refer to IMO sales publication number IA560E.

coastal State and to co-operate in any pollution response actions. Any regional mutual aid centre which may have been established pursuant to such a regional agreement will be able to assist States Parties in the task of implementing such an agreement in the actual marine pollution emergency, primarily by providing technical advice and liaising with other sources of assistance. There may also be a list of equipment stockpiles established by oil companies or groups of countries, which a coastal State may be able to use.

6.6 If the coastal State chooses to focus its attention on its own response to the marine pollution emergency, then one question which may arise is the extent to which the coastal State may take action against the wishes of the master or other parties who have interests in the ship or cargo. Ideally, the coastal State will have considered the international law position on intervention in conjunction with the preparation of its contingency plan before the marine pollution emergency arises, and will have enacted legislation or made other satisfactory provisions for taking appropriate steps when an emergency arises. Some coastal States have chosen to establish marine pollution emergency funds, which provide for some independence in these decisions.

6.7 A detailed analysis of the international law on the right to intervene is outside the scope of this document, but mention should be made of the International Convention relating to Intervention on the High Seas in Cases of Oil Pollution Casualties, 1969 (1969 Intervention Convention), which gives greater precision to existing rights under customary international law. The 1969 Intervention Convention deals only with rights to intervene on the high seas, and does not cover territorial waters (the position in internal waters being a matter purely for the domestic law of the coastal State). Under customary international law, however, the position in territorial waters is similar to that adopted in the 1969 Intervention Convention.

6.8 The 1969 Intervention Convention permits the coastal State to intervene on the high seas against the wishes of the shipowner and the cargo owner, to the extent necessary to prevent, mitigate or eliminate grave and imminent danger to the coastline or related interests from pollution or the threat of pollution of the sea, or following a maritime casualty, which may reasonably be expected to result in major harmful consequences. The measures taken must be proportionate to the potential or actual damage, and if this is exceeded, the coastal State must pay compensation to those who

have suffered thereby. Also, the right to intervene must be preceded by due consultation with States or persons whose interests are affected, except in cases of extreme urgency.

6.9 The related interests to be protected and for which an intervention is possible include tourism, fishing and other marine resources and wildlife, so that intervention under this Convention is possible on purely environmental grounds. IMO maintains a list of experts under the 1969 Intervention Convention, who may be called upon for consultation in such an emergency.

6.10 One of the possible options for intervention, which a coastal State has at its disposal, is to require salvage services to be accepted or provided, or even to undertake them itself. There are certain practical problems in implementing such an imposed requirement, where the responsible Parties are unwilling to take action. However, articles 5 and 9 of the 1989 Salvage Convention recognize that States may wish to control or provide such services themselves by providing that nothing in the Convention shall affect provisions which the coastal State may have made in this respect (although salvors carrying out such services under the control of a public authority are still entitled to avail themselves of the Convention's rights and remedies).

6.11 In fact it is relatively unusual that the coastal State will need to exercise its rights to intervene or to control salvage operations. The coastal State has an absolute right in international law to deny a ship entry to any of its ports or offshore installations, and very often this is the only thing the coastal State will want to do that causes disagreement. In most cases, co-operation between the master and the coastal State achieves all that is necessary, and the coastal State's task of co-ordinating and arranging all the pollution response and clean-up actions under its contingency plan is not hindered by the ship or cargo interests.

6.12 Under article 11 of the 1989 Salvage Convention, Parties must take into account the need for co-operation between salvors and others when regulating or deciding upon salvage matters, such as admittance into ports of ships in distress or the provision of facilities to salvors, so that operations to save life or property in danger, as well as preventing damage to the environment, are taken into account.

6.13 After a marine pollution emergency is over, a marine investigation is often held. Co-operation between flag States in the holding of marine investigations has already been mentioned in chapter 5.

6.14 One administrative aspect of “port State” which is of interest to a coastal State is worthy of discussion in this chapter. A number of IMO conventions contain provisions for port State control inspections. Regulation 11 of MARPOL Annex I makes it possible for ships to be inspected when in the ports of other Parties to MARPOL, to ensure that crews are able to carry out essential shipboard procedures relating to marine pollution prevention. The procedures for the control of operational requirements relating to the safety of ships and pollution prevention are contained in Assembly resolutions A.787(19) as amended by A.882(21).*

6.15 Extending port State control to operational requirements is seen as an important way of improving the efficiency with which international safety and anti-pollution treaties are implemented.

Chapter 7 – The salvors

7.1 Professional salvors

7.1.1 The majority of professional salvors are members of the International Salvage Union (ISU). This organization represents some 52 companies based in 30 different countries around the world. The salvage companies have tugs and other salvage equipment at a number of different ports and areas throughout the world and some of the companies have salvage tugs stationed at various strategic locations. Some salvage tugs are being maintained at salvage stations in certain coastal States as a result of arrangements made between their owners and other commercial interests or the authorities in those States. When a salvage company is engaged to assist a marine casualty they will be able to bring specialist expertise to the task which is unique to the marine industry. Their business is not without risks, and frequently the skills and efforts of salvage officers have saved ships and their cargoes from extreme situations. Some companies have the ability to mobilize equipment, together with expert personnel, at very short notice, either from their own resources or from elsewhere.

* Refer to Assembly resolution A.787(19), Procedures for port State control; and A.882(21), Amendment to the Procedures for port State control. (See IMO sales publication number IA650E)

7.1.2 The number of salvage tugs in operation has significantly decreased in recent years, and those that remain are frequently engaged in ocean towage of rigs, barges, etc., on commercial terms. However, salvage of casualties is still normally undertaken on traditional “no cure – no pay” terms, whereby, if successful, the tug owner/salvage company will earn a reward based upon a number of factors, including the risks from which the property was saved, the time occupied in the services, the dangers to the salvor’s property and personnel, the value of the salvaged property, the skills shown by the salvors and the expenses incurred by them in rendering the services. The 1989 Salvage Convention entered into force on 14 July 1996, enshrining these principles and introducing substantial changes to the salvage industry with respect to the protection of the environment and adequate incentives for those providing salvage services.

7.1.3 On a traditional “no cure – no pay” basis, if no property is saved, the salvor receives no reward for his efforts. This basis of working obviously carries with it considerable financial risk, and a salvor therefore expects to be rewarded far more generously than on normal commercial terms. Indeed, the 1989 Salvage Convention stipulates that “the reward shall be fixed with a view to encouraging salvage operations, taking into account the following criteria, without regard to the order in which they are presented...” (See paragraphs 1(a) to (j) of article 13 of the 1989 Salvage Convention). Statistical data collected and published by the ISU have shown that the average revenue from salvage services carried out under “no cure – no pay” terms has averaged just over 6% of the property values salvaged. To achieve any such average there are obviously awards at either end of the scale. However, on a traditional “no cure – no pay” basis, the award cannot exceed the value of the property salvaged.

7.1.4 Salvage services rendered under other forms of commercial contract, i.e. “Daily Rate” or “Lump Sum”, “Towage Contract” do not call for elaboration here. Professional salvors will not normally work on such a basis for normal salvage services. If a non-salvage commercial contract is utilized, there will have been negotiation between the parties, who may include the coastal State. No special limiting considerations are therefore relevant to marine pollution emergency in such a case. Salvage services rendered under “no cure – no pay” terms do, however, under article 13(b) give rise to important considerations for the handling of a marine pollution emergency.

7.1.5 The contract that salvors will normally offer to the master and/or owners of a ship involved in a marine casualty will be the current version of Lloyd's Standard Form of Salvage Agreement. This form, reproduced in appendix 3, was issued by Lloyd's following the enactment of the 1989 Salvage Convention into English law on 14 July 1996. The services to be provided to the casualty are set out in Clause A of LOF 2000, namely:

"Contractors' basic obligation: The Contractors identified in Box 1 hereby agree to use their best endeavours to save the property specified in Box 2 and to take the property to the place stated in Box 3 or to such other place as may hereafter be agreed. If no place is inserted in Box 3 and in the absence of any subsequent agreement as to the place where the property is to be taken the Contractors shall take the property to a place of safety."

7.1.6 The Agreement is governed under Clause J by English law and provides for arbitration in London before one of the panel of Lloyd's salvage arbitrators, who are all lawyers experienced in marine salvage claims.

7.1.7 LOF 2000 extends an obligation upon the Contractor to protect the environment as set out under Clause B, as follows:

"Environmental protection: While performing the salvage services the Contractors shall also use their best endeavours to prevent or minimise damage to the environment."

7.1.8 The 1989 Salvage Convention defines "damage to the environment" as "substantial physical damage to human health or to marine life or resources in coastal or inland waters or areas adjacent thereto, caused by pollution, contamination, fire, explosion or similar major incidents" (see article 1(d) of the 1989 Salvage Convention). In reality, salvors have always made considerable efforts during any salvage operations to avoid pollution and to co-operate with national and/or local authorities.

7.1.9 On occasion, professional salvors may need to engage the services of other companies to assist them in the provision of salvage services to the casualty. It will be appreciated that no company can expect to have all the ships, other floating plant, equipment and personnel immediately available at the site of a casualty. In such situations the salvage company will sometimes need to sub-contract assistance from other organizations. These sub-contracted services may range from the provision of additional tugs, crane vessels,

anti-pollution ships and equipment through to lightering ships. Some of these units could be entitled to a salvage award in their own right. However, where a professional salvor has been engaged, he can be expected to organize such assistance on terms which will not lead to a proliferation of salvage claims. This may involve utilizing, for example, the ISU Sub-Contract Award Sharing Agreement, or other daily rate or lump sum terms.

7.2 *The International Convention on Salvage, 1989*

7.2.1 The main purpose of the 1989 Salvage Convention is to review the international rules contained in the 1910 Salvage Convention, to ensure that those who undertake salvage operations are provided with sufficient incentive and to reflect the interests of environmental protection in the way salvage contracts work.

7.2.2 The Convention applies whenever judicial or arbitration proceedings relating to matters dealt with in the Convention are brought in a State Party (see article 2). It applies to all types of salvage operations in navigable waters, or in any other waters whatsoever, except to those relating to fixed or floating platforms or mobile offshore drilling units, which are actually on location, and ships that are entitled to sovereign immunity (unless such immunity is waived). It applies to any ship or craft, or any structure capable of navigation and property not permanently and intentionally attached to the shoreline. Because of the wide definition of damage to the environment in article 1, its environmental protection provisions apply not just to damage to marine flora and fauna, but also to human health, and the cause may be pollution, contamination, fire, explosion or any similar major incidents.

7.2.3 By article 6, the parties to a salvage contract can, if they wish, vary the provisions of the Convention in their contract, but they cannot vary the duties to prevent or minimize damage to the environment which the Convention contains. These duties are, therefore, applicable whenever the Convention applies to a salvage operation, even if the other provisions have been varied by the contract.

7.2.4 The main obligations of a salvor, which are owed not to the coastal State, but to the owners of the ship and property in danger, are contained in article 8(1). The salvor must not only carry out the salvage operations with due care, but in doing this, he must “exercise due care to prevent or minimize damage to the environment”. In this way, due care to protect the environment becomes a legal duty in all of

the salvage operations to which the Convention applies, and it cannot be varied by the contract. In return, article 13(1) grants to the salvor the right to have the skill he has exercised and the efforts he has made in preventing or minimizing damage to the environment taken into account when the reward for successful or partly successful salvage is fixed. Also, the risk of liability he has run (which would include liability for damage to the environment) may also be taken into account. However, salvage services accepted in accordance with article 13 of the 1989 Salvage Convention, with Lloyds Open Form, are based on the principle of “no cure – no pay” and the property must be delivered to owners in order for an award to be made, notwithstanding the provisions of article 14.

7.2.5 However, if, despite his due care, the salvage operations were not successful, or if they were only partly successful, or if the value of the successfully salvaged ship, cargo and freight at risk was low, it would be possible for the salvor to have spent considerable sums in fulfilling his duty to protect the environment, which are not recouped, let alone rewarded. Article 14 attempts to deal with this situation and is intended to give the salvor an incentive to provide salvage services in the event of low value high-risk operations, where there is threat of damage to the environment. It does this by making provisions for the salvor to be awarded special compensation, equivalent to his out of pocket expenses, in certain circumstances, where the salvor has actually prevented or minimized damage to the environment. There are two other preconditions to the award of this special compensation:

- (a) the salvor must have carried out salvage operations in respect of a ship which by itself or its cargo threatened damage to the environment, and
- (b) the amount of any reward he has earned under article 13 must be less than the amount of special compensation assessed under article 14.

7.2.6 The Convention therefore envisages that, in every case where the ship or cargo actually threaten damage to the environment, two calculations will be carried out: the reward to be fixed under article 13 and the special compensation to be fixed under article 14. If the article 13 reward figure exceeds the figure for special compensation, then in fact only the reward is payable. If the special compensation figure under article 14 exceeds the reward figure, then the reward is topped up to the level of the special compensation

figure (see article 14(4)). The salvor does not get paid twice, but his environmental efforts can lead to the enhancement of the total remuneration he receives from the salvage services he performs.

7.2.7 The special compensation under article 14 varies according to the circumstances. If there was a threat of damage to the environment, but in fact the salvor did not, by his salvage operations, prevent or minimize such damage, then the special compensation figure is equal to his reasonably incurred out-of-pocket expenses, plus a fair rate for equipment and personnel actually and reasonably used in the salvage operations (which we shall call below the “salvage expenses”). If, on the other hand, his salvage operations did prevent or minimize damage to the environment, then the special compensation figure may be increased to up to 30% of the salvage expenses. Where exceptional service has been rendered, the special compensation may be increased still more, but in no case shall the total increase be more than 100% of the expenses incurred by the salvor.

7.2.8 There is a lot at stake for the salvor under these and related provisions. If he is negligent, both the reward and the special compensation figures may be reduced. If he is not negligent, at worst he may end up merely with his salvage expenses reimbursed, if there was a threat to the environment. He must therefore do his job with the care and skill, for which the salvage industry is noted, before he earns a good remuneration. He must also carefully consider the location of the casualty in relation to the definition of “damage to the environment”, as, if the casualty is not within or close to coastal or inland waters or areas adjacent thereto, then the special compensation provisions of article 14 may not apply. In this event, the salvor could be back to the traditional “no cure – no pay” scenario.

7.2.9 The article 14 special compensation was introduced to provide salvors with an incentive to provide salvage services for low value/high-risk operations, such that they would be recompensed in the event of successfully preventing or minimizing damage to the environment. It was incorporated into Lloyds Open Form and provided for the payment of salvage expenses, even if the property itself was not saved. However, because security was not demanded of the owner until after the salvage was completed, due to the lack of clarity on the definition of ‘coastal’, ‘areas adjacent thereto’, ‘substantial’ and the ‘threat of damage to the environment’ many article 14 awards were subject to extensive litigation while these points were argued and the amount of the award was assessed.

Salvors became discouraged and were reluctant to provide salvage services in low reward operations. A simpler and more effective system was required to remove these anomalies.

7.2.10 The answer to special compensation under article 14 was the introduction of the special compensation P&I Clause (SCOPIC) on 1 August 1999, included in appendix 7. This clause, which is supplementary to any Lloyds Form of Salvage Agreement “no cure – no pay” that incorporates the provisions of article 14, removed the need for the salvor to prove there was a threat of damage to the environment. This provided the salvor with the incentive that security was placed by the owners within two working days of the SCOPIC Clause being invoked and established a means of assessing his reward by means of a set tariff of rates for equipment and personnel.

Chapter 8 – The liability insurer

8.1 The third-party liabilities of the shipowner, and often of charterers, will generally be covered by mutual insurance associations called Protection and Indemnity Associations.

8.2 These associations are normally referred to as P&I Clubs, the word *Club* being used to denote their nature as mutual associations of shipowners. Approximately 92% of the world’s ocean-going tonnage is entered in one of the thirteen P&I Clubs that comprise the International Group of P&I Clubs (see appendix 4 for a list of members of the International Group). Vessels not entered with International Group Clubs are, by and large, entered with non-Group P&I insurers.

8.3 Some discussion of the structure of P&I Clubs is relevant here, as this helps to account for the particular character of these organizations, which affects the way they are able to interact with coastal States in a marine pollution emergency.

Examples of coverage offered by a P&I Club are:

- (1) personal injury to or illness or loss of life of crew members and passengers, and loss of their effects;
- (2) one fourth of collision liability;
- (3) excess collision liability, including payments in excess of the limit of the hull policies and items of claim excluded from policies such as oil pollution, dock damage, wreck removal and loss of life, personal injury and illness;