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Cost Recovery & Record Keeping

Counter Pollution & Response

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MCA Policy

…..the MCA must use its best endeavours to recover all of the costs which it reasonably incurs in dealing with an actual or potential pollution threat to UK waters / coastline….

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UK Tanker Incidents

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Costs that can be incurred during an oil spill

- Property damage
  - Oiled fishing gear
- Clean-up costs
  - Manpower, equipment,
- Salvage and response measures
- Consequential loss and pure economic loss

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Types of loss

- Consequential loss
  - Loss of earnings suffered by property being contaminated with oil, e.g. Fisherman with oiled nets
- Pure economic loss
  - Loss of earnings suffered by people whose property has not been contaminated with oil e.g. Hotel owner with reduced bookings

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Insurance arrangements

- In the UK the liability for oil pollution damage lies with ship owners
- Compensation for damage caused by oil pollution will be paid by insurers/owners in most circumstances
- P&I (Protection and Indemnity) Clubs provide third party liability insurance for ship owners, operators and charterers

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Insurance claims

- Like all insurance claims, adequate documentation is absolutely essential for cost recovery for oil spill response
- Will return to this point

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Oils spills from laden tankers

- First layer: 1992 CLC
  - International Convention on Civil Liability for Oil Pollution Damage
- Second layer: 1992 Fund Convention
  - International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage (Fund Convention)

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The first layer of compensation

- 1992 CLC
  - Governs the liability of tanker owners for oil pollution damage
  - Lays down the principle of strict liability even in the absence of fault
  - Creates a system of compulsory liability insurance
  - Claims, including clean-up costs can be brought against tanker owner or the owner's P&I insurance

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The second layer of compensation

- 1992 Fund Convention
  - Regime for compensation when the compensation available under CLC is exceeded
  - This regime is financed by contributions levied on oil companies in the 1992 Fund Convention
  - The contributions received from States that receive crude and heavy fuel oil after sea transport

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Financial limits

- From 1 November 2003 – 203 million SDR
  - (288 million USD / £164 million)
- Supplementary Compensation Fund Protocol – 750 million SDR
  - (1060 million USD / £602 million)

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Non-Tanker Spills

- International Convention on Civil Liability for Bunker Oil Pollution Damage
  - The Bunker Convention
- International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances
  - adopted but not yet in force
  - HNS Convention

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The Bunker Convention

- Will introduce strict liability for damage & loss arising from actual, or threatened, pollution from ALL ships' bunkers for:
  - owners
  - managers
  - charterer or operators
- However, there will be no Fund

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HNS Convention

- Will significantly increase the financial responsibilities of both ship owners and cargo interests for pollution and hazards arising from:
  - polluting chemicals
  - liquid natural gas
  - liquid petroleum gas
  - & non persistent oils

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Financial Security

- Club Letter of Undertaking

……..then argue !!!!!

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Making an insurance claim

MCA Best Practice in dealing with
Shipowners, their Solicitors,
the IOPC Fund
and P&I Insurance Clubs

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MCA Best Practice 1

- Expense must have been incurred and third party invoices provided
- Response measures must be deemed to be reasonable and justifiable
- A summary of events - together with WHY the working methods or courses of action were selected is very useful

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MCA Best Practice 2

- Investigate rates quoted for all hired in equipment - prove investigation!
- Keep a record of dates on which work was carried out at EVERY site - date and time stamped photographic evidence
- Keep a record of the number and categories of response personnel, regular / overtime rates of pay & who is paying them - names

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MCA Best Practice 3

- Keep a record of travel, accommodation and living costs for response personnel
- Apply industry standard of 100% of hire rate for in-use and 50% rate for stand-by
- Keep a record of all equipment costs for EVERY site
  - Type of equipment
  - Rate of hire
  - Costs of purchase - remember residual values
  - Quantity used of each piece of equipment
  - Period of use - in use / standby

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MCA Best Practice 4

- Photograph any damaged equipment – get assessed by an independent body prior to repair or replacement
- Do not bring equipment to a better state than at the commencement of the hire
- Keep a record of consumable materials - get responders to sign out consumables and say which site the item will be used on

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NAO Recommendation…….

Claim within 6 months, but have now got a good, consistent record for Cost Recovery

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Conclusion

Record-keeping is the key to making claims for costs incurred in oil spill response

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