

# Vessel-caused Oil Pollution Compensation Fund Claims Manual

(Draft for Deliberation)



## **Introduction**

In order to protect marine environment and promote the healthy development of marine transportation sector, resolve relevant issues regarding compensation to vessel-caused oil pollution damages and costs therefrom, China built vessel-caused oil pollution compensation liability system through the Marine Environment Protection Law of the People's Republic of China, the Regulations on Administration of the Prevention and Control of Environment Pollution Caused by Vessels as well as the Administrative Measures for the Collection and Use of Vessel-caused Oil Pollution Compensation Fund, under which shipowners and cargo owners undertaking risks jointly, and established the vessel-caused oil pollution insurance system and the vessel-caused oil pollution fund system.

On the basis of the above systems, in the event of a vessel-caused oil pollution accident, if the aggrieved party of oil pollution can find the polluting vessel, it shall first claim against the first layer of subject party liable for compensation, i.e. shipowners and oil pollution liability insurer or financial guarantor of the polluting vessel (hereinafter referred to as "shipowner and insurer of the vessel"), for oil pollution damage compensation and relevant costs. Generally, the aggrieved party of vessel-caused oil pollution shall first lodge lawsuit with domestic maritime court, or commence arbitration with arbitration institute, claiming against the shipowner and insurer of the vessel for liability of

compensation for oil pollution damage, and it may only apply to the Vessel-caused Oil Compensation Fund (hereinafter referred to as “Fund”) for the second layer of recompense in the circumstance that effective judicial document of the court or arbitration institute determines that the aggrieved party of vessel-caused oil pollution cannot obtain sufficient compensation from the shipowner and insurer of the vessel. Only in the circumstance that the first layer of subject party liable for compensation, i.e. the shipowner and insurer of the vessel, cannot be found, may aggrieved party of vessel-caused oil pollution apply directly to the Fund for compensation.

This Manual is an operating manual guiding the aggrieved party of vessel-caused oil pollution on how to apply compensation or recompense from the Fund. This Manual provides comprehensive information on the specific requirements for lodging application to the Fund for compensation or recompense, the evidential documents or other evidences that shall be submitted as well as details that shall be contained in documents supporting compensation or recompense application, etc.

This Claims Manual is divided into six chapters, respectively as “Scope of Application”, “Basic Procedures for Submission and Payment of Claims”, “Manual for Submission of Claims of Costs for Emergency Response”, “Manual for Submission of Claims of Costs for Measures of

Controlling and Eliminating Pollution”, “Manual for Submission of Claims of Direct Economic Losses to Fishery and Tourism etc Sectors” as well as “Manual for Submission of Claims of Costs for Marine Ecosystem and Natural Fishery Resources Reinstatement Measures”:

Chapter I “Scope of Application” explains the scope of vessels, accidents, regions and time period to which this Manual is applicable, situations and exceptions for application of the Fund, the scope, sequence and limitation of compensation or recompense, helping aggrieved parties of vessel-caused oil pollution to be aware of the pre-conditions to apply for compensation from the Fund

Chapter II “Basic Procedures for Submission and Payment of Claims” introduces basic procedures claiming against the Fund and requirements for evidential materials, guiding aggrieved parties of vessel-caused oil pollution on how to lodge claim applications to the Fund.

Chapter III to Chapter VI specifically introduces on four usual claim items and costs for which aggrieved parties of vessel-caused oil pollution may apply with the Fund for compensation or recompense, and guides the aggrieved parties of vessel-caused oil pollution to collect, sort out and submit corresponding evidential documents or other evidences as well as to fill in the claim application statements and forms

In the circumstance of satisfying the claim requirements mentioned in this Manual, the aggrieved party of vessel-caused oil pollution may lodge specific compensation or recompense application to the China Vessel-caused Oil Pollution Claims Settlement Center (hereinafter referred to as “Settlement Center”) and submit corresponding evidential documents or other evidences.

This Manual does not constitute an interpretation for relevant laws and regulations concerning vessel-caused oil pollution damage, nor is it appropriate to serve as legal basis for courts or arbitration institutions in trying cases over disputes of vessel-caused oil pollution damage compensation. This Manual may serve as reference for relevant department in handling vessel-caused oil pollution damage compensation disputes.

This Manual will be revised in due course in accordance with variation of laws and claims settlement practice, with interval, in principle, not exceeding two years.

This Manual has been deliberated by the China Vessel-caused Oil Pollution Damage Compensation Fund Management Committee and handed over to the Maritime Safety Administration of the Ministry of Transport for promulgation, and the Maritime Safety Administration of the Ministry of Transport shall be responsible for interpreting the same.

The aggrieved party of vessel-caused oil pollution and other relevant persons may seek advice for relevant legal issues involved in the Manual and obtain relevant technical guidance service from the Settlement Center.

Contact details of the Settlement Center are as follows:

Address: No.190 Siping Road, Hongkou District, Shanghai, China

Tel: 021- 66073564, 66076652(office hours)

Fax: 021-66073563

Email: [copc@shmsa.gov.cn](mailto:copc@shmsa.gov.cn)

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## **Chapter I Scope of Application**

### **I. Applicable vessels**

The Fund is applicable to application of compensation or recompense from the Vessel-caused Oil Pollution Compensation Fund (hereinafter referred to as “Fund”) for oil pollution damages caused by vessel of any type other than government’s vessels engaging in non-commercial purposes (such as vessels used by sea-involved governmental departments, such as maritime department and maritime police department, for public affair purpose), military vessels, fishing vessels, offshore oil platforms and floating storages. Any type of vessel referred herein shall be irrespective of nationality, shipping line, type of vessel and tonnage, etc.

It shall be pointed out that oil pollution damage caused by oil substance leaked from fixed or movable offshore drilling platform, submarine oil pipeline and oil storage equipment, near-shore oil pipeline and oil storage equipment, as well as by land-source oil fall out of the scope of compensation or recompense from the Fund.

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## **II. Applicable vessel-caused oil pollution accidents**

The Fund is applicable to application of compensation or recompense from the Fund for oil pollution damages to marine environment caused or might be caused due to vessel-caused oil pollution accident resulted from a vessel's navigational, berthing operations or relevant operations (including sea trials).

The “vessel-caused oil pollution accident” in this Claims Manual means one or a series of events in which the vessel leaks persistent cargo oil, non-persistent cargo oil or fuel oil and their residuals (such as sludge, oil mixture, oily water, etc) and causes oil pollution damage, or the vessel constitutes serious and urgent oil pollution damage threat although it does not leak oil. If the series of events occur due to one same reason, such series of events shall be deemed as one same accident.

Persistent cargo oil means any persistent hydrocarbon mineral oil that is relatively difficult to volatilize or degrades under natural condition, such as crude oil, heavy diesel oil and lubricating oil, etc., carried onboard as cargo.

Non-persistent cargo oil means petroleum or petroleum product that is relatively easy to volatilize or degrades under natural condition, such as gasoline, light diesel oil, naphtha and kerosene oil, etc., carried onboard

as cargo.

In practices, oil pollution damage caused by spill of oil substance, such as cargo oil or fuel oil, spilled from vessels in common vessel-caused accident, ship collisions, stranding, sinking, ageing of vessel hull and other operational accidents etc., falls within the scope of compensation or recompense from the Fund.

### **III. Applicable geographic scope**

This Manual is applicable to application of compensation or recompense from the Fund for oil pollution damages to marine environment in internal waters, territorial seas, contiguous zones, exclusive economic zones and continental shelves of the People's Republic of China and all other sea areas under the jurisdiction of the People's Republic of China caused or might be caused due to vessel-caused oil pollution accident, as well as for relevant costs thereon. Amongst which, “internal waters” means all sea areas on the land-ward side of the baseline of the territorial seas of the People’s Republic of China, and it shall include coastal port waters.

Oil pollution damage caused by vessel and relevant costs occurred in inland rivers would fall out of the scope of compensation or recompense

from the Fund.

#### **IV. Applicable time period scope**

This Manual is applicable to application of compensation or recompense from the Fund for oil pollution damages caused by vessel-caused oil pollution accidents **which occurred after 0000hrs on July 1, 2012 Beijing time.**

#### **V. Applicable situation**

An aggrieved party may apply compensation or recompense from the Fund under one of the following situations:

- (I) upon decision in effective judicial documents by the people's court or arbitration institute: as to an oil pollution accident caused by an oil tanker leaking persistent oils (persistent cargo oil or persistent fuel oil), the total amount of oil pollution damages so caused exceeds limit of compensation by shipowners as provided for in Art.52 of the Regulations on Administration of the Prevention and Control of Marine Environment Pollution Caused by Vessels (promulgated under State Council Decree No.561 in 2009) and Art.5 of the Protocol of

1992 to amend the International Convention on Civil Liability for Oil Pollution Damage (become effective in China as of January 5, 2000); or, as to an oil pollution accident caused by an oil tanker leaking non-persistent oil (fuel oil or cargo oil) or by a vessel, other than oil tanker, leaking fuel oil (persistent fuel oil or non-persistent fuel oil), the total amount of oil pollution damages so caused exceeds amount of corresponding part out of the liability limitation fund for maritime claims as provided for in the Maritime Code of the People's Republic of China and the Provisions of MOT Concerning Limitation of Liability for Maritime Claims for Ships with a Gross Tonnage not Exceeding 300 Tons and Those for Coastal Transport Services or for Other Coastal Operations used to compensated for oil pollution damages;

For example, it is decided in an effective judgment of a Chinese maritime court that: a vessel carrying persistent cargo oil in bulk committed leakage, resulting in vessel-caused oil pollution damages in total of RMB50,000,000. Pursuant to Art.5 of the the Protocol of 1992 to amend the International Convention on Civil Liability for Oil Pollution Damage limitation of liability for compensation to oil pollution damage by the shipowner and insurer of such vessel is RMB45,000,000, then, the aggrieved parties of such vessel-cause oil pollution accident may lodge compensation or recompense application to the Fund for the RMB5,000,000 that they cannot obtain

from the shipowner and insurer of the vessel. If the Settlement Center finds, during examination and verification, that some claimed items fall out of the scope of compensation from the Fund, amount of recompense to the claimant might be less than its claimed amount.

(II) upon decision in effective judicial document by the people's court or the arbitration institute: the shipowner and insurer of the vessel is exempted from liability of compensation in accordance with Art.92 and 97 of the Marine Environment Protection Law of the People's Republic of China (promulgated through Decree No.26 of the President of the People's Republic of China in 1999), Art.3 of the Protocol of 1992 to amend the International Convention on Civil Liability for Oil Pollution Damage, 1969 as well as Art.50 and Art.51 of the Regulations on Administration of the Prevention and Control of Marine Environment Pollution Caused by Vessels, which shall not fall within the scenarios of exemptions as provided for in Art.16 of Administrative Measures for the Collection and Use of Vessel-caused Oil Pollution Compensation Fund (promulgated jointly by Ministry of Transportation and Ministry of Finance as CZ[2012] No.33, coming into effect as of 1<sup>st</sup> July 2012, hereinafter referred to as "Administrative Measures"). Where any of the above laws or regulations is revised, the revised version shall prevail.

For example, it is decided in an effective legal document of a

maritime court that: a vessel-caused oil pollution accident is caused by irresistible natural disaster, or by negligence or other faulty acts of competent department in charge of lighthouses or other navigational aids when exercising its duties, and the aggrieved parties of such vessel-caused oil pollution did not commit any fault for such oil pollution damage. In such circumstance, the shipowner and insurer of the vessel shall be exempted from compensation liability for the aggrieved parties of such vessel-caused oil pollution in accordance with law, such aggrieved parties of such vessel-caused oil pollution may lodge recompense application against the Fund for the vessel-caused oil pollution damages and relevant costs thereon sustained by them.

- (III) upon decision in effective legal document by the people's court, the shipowner and insurer of the vessel is unable, in financial capability, to fulfill its obligations in part or in whole, or, the shipowner and insurer of the vessel is deemed as unable to fulfill its obligations in part or in whole;

For example, it is decided in an effective legal document of a Chinese maritime court that: total amount of vessel-caused oil pollution damages in a vessel-caused oil pollution accident is RMB10,000,000. Upon investigation, the court finds that the shipowner of the polluting vessel did not buy civil liability insurance for oil pollution, and

the total enforceable assets of the shipowner of the polluting vessel worth only RMB9,000,000. After the shipowner of the vessel pays the compensation in amount of RMB9,000,000, the aggrieved parties of such vessel-caused oil pollution may lodge recompense application to the Fund for the balance amount of compensation that they did not obtain, i.e. RMB1,000,000. If the Settlement Center finds, during examination and verification, that some claimed items fall out of the scope of compensation from the Fund, amount of recompense to the claimant might be less than its claimed amount.

(IV) Upon decision in document or proof document by the maritime administration agency directly under the China MSA or the ship pollution investigation and handling agency above the level of province (specific list of names can be found in the box “organizational institutes” on website of China MSA [www.msa.gov.cn](http://www.msa.gov.cn)), it is confirmed that oil pollution damages were caused by vessel but the very vessel that caused such pollution cannot be identified.

If an aggrieved party of vessel-caused oil pollution wants to apply with the Fund for compensation, such aggrieved party of vessel-caused oil pollution shall provide the Settlement Center with document or proof document issued by the above administration departments, proving that the oil pollution damage claimed by it was



caused by vessel and that the polluting vessel could not be identified.

## **VI. Exceptions for application**

An aggrieved party of vessel-caused oil pollution shall not obtain compensation or recompense from the Fund under any of the following situations:

- (I) The oil pollution damage is caused by wars or hostile acts or, by government's vessels engaging in non-commercial purposes, military vessels, or resulted from discharge of oils by fishing vessels;
- (II) Aggrieved party of oil pollution cannot prove that the oil pollution damage is caused by oils leaked from vessels;
- (III) The oil pollution is in part or in whole caused by faulty of the aggrieved party of the oil pollution.

## **VII. Scope and sequence for compensation or recompense**

In a vessel-caused oil pollution accident, not all kinds of oil pollution damages and relevant costs may obtain compensation or recompense from the Fund. The Fund may only be used for compensating or

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recompensing for oil pollution damages and relevant costs as provided in the Administrative Measures. Specific scope and sequence for compensation or recompense are as follows:

- (I) Costs incurred for emergency response action: costs incurred for emergency response taken for implementing orders from the vessel-caused pollution accident emergency commanding organization established by the State Council or the competent transport department authorized by the State Council, or by the people's government of the relevant province, autonomous region or municipality directly under the Central Government in conjunction with MSA, or by people's government at the level of a city divided into districts in conjunction with MSA;
- (II) Costs incurred for measures for controlling or eliminating the pollution: costs incurred for reasonable measures taken to prevent, control and eliminate the pollution, for the purpose of mitigating or preventing vessel-caused oil pollution damages; For instance, costs incurred for actions taken on an initiative manner by owners of ships such as yachts polluted by oil pollution, or cultivators of aquatic products or scenic spot open to the public in the sea areas where oil pollution occurred, to prevent or wash and eliminate oil pollution.
- (III) Direct economic losses to fishery and tourism sectors: actual

property damage value having direct causation relation with the vessel-caused oil pollution accident, sustained by fishery and tourism units and individuals; For instance, costs incurred to seaside resorts or scenic spot open to the public for reinstating the polluted sceneries after the end of measures of eliminating pollution; costs incurred to fishermen for cleaning, repairing or replacing their fishing facilities, such as fishing boats, fishing nets, fishing gears, or cultivating facilities, after the end of measures of eliminating pollution .

It shall be pointed out that, indirect economic loss, etc sustained by units or individuals engaged in fishing or tourism sectors, etc due to oils pollution may be compensated from the shipowner and insurer of the vessel, but not from the Fund. For example, income loss for fishing man due to the fact that his fishing gears were polluted by oil pollution and he is unable to conduct fishing before cleaning or replacing such fishing gears or loss from sale of tickets sustained by seaside resorts or tourist attractions due to sustaining of oil pollution. Such economic losses fall out of the scope of compensation or recompense by the Fund.

In special situation in which owner of property sustains income loss due to oil pollution accident but his property was not polluted by oil pollution, such loss could not be compensated or recompensed from the Fund either. For example, although fishing gears of a fishing man

were not polluted by oil pollution, but the sea area where such fishing man often goes fishing has been polluted by oil pollution, the fishing man cannot go there fishing, and the fishing man cannot go other place for fishing, the loss so sustained by such fishing man shall not be compensated or recompensed from the Fund. Further, the Fund will not compensate or recompense for losses sustained by operators of hotels and restaurants due to decrease of number of customers during the period of oil pollution as their operational premises are very close to the polluted sea area.

- (IV) Costs incurred for measures to reinstate the marine ecosystem and natural fishery resources: habitat reinstatement costs incurred for measures that have already been taken to reasonably reinstate the marine ecosystem and natural fishery resources, etc. Such measures are usually implemented under organizing of governments, such as costs incurred for physical, chemical or biological method, for instance, replanting over the beaches, that were actually taken by competent oceanic or fishing department to accelerate the recovery of the damaged environment of the habitat of living creatures to the condition before being damaged, or species recovery costs for methods such as artificial propagation and release to accelerate the recovery of certain bio-population to the level before being damaged.

It shall be pointed that the Fund only compensate or recompense for

reasonable costs incurred for matured and effective ecological restoration measures that have already been taken, including reasonable costs for monitoring, assessment and research. Costs of planned ecological restoration measures and costs of planned species restoration measures fall out of the scope of compensation or recompense from the Fund;

(V) Costs incurred for work of surveillance and monitoring vessel-caused oil pollution carried out by the China Vessel-caused Oil Pollution Damage Compensation Fund Management Committee (hereinafter referred to as “Management Committee”) and its secretariat or by unit(s) or institute(s) under the entrustment of the Management Committee.

For example, costs incurred for works, done by Management Committee and its secretariat or by units under the entrustment of Management Committee and its secretariat, in respect of collecting photos of accident, characteristics images of oil pollutants and images of damaged biological resources, simulating the drifting tracks of oil spill, dynamic surveillance on oil pollution through aerial remote sensing technology based on oil spill satellites.

(VI) Other costs as approved by the State Council.

## **VIII. Limitation of compensation or recompense**

The total amount compensated or recompensed by the Fund against any vessel-caused oil pollution accident for all oil pollution damages and relevant costs shall not exceed RMB30,000,000. Where compensation or recompense from the Fund is insufficient to cover all the oil pollution damages or costs that may apply for compensation or recompense from the Fund pursuant to provisions of the Administrative Measures, i.e. total amount of vessel-caused oil pollution damages that may, upon verification by the Fund, be compensated or recompensed exceeds RMB30,000,000, then, pursuant to provisions in the Administrative Measures, compensation or recompense shall be made in accordance with compensation sequence as provided for in the above VII “Scope and sequence for compensation or recompense”, and where items under a same sequence could not be compensated or recompensed sufficiently from the Fund, such items shall be compensated or recompensed in proportion.

For example, as to oil pollution damages and relevant cost for a vessel-caused oil pollution accident, after various aggrieved parties of such vessel-caused oil pollution accident apply for recompense from the Fund, it is decided by the Management Committee after deliberation that, the total amount of recompense payment to be paid by the Fund to aggrieved parties of vessel-caused oil pollution is RMB51,000,000,

amongst which, cost for emergency response that ranks at the first place to be compensated or recompensed is RMB10,000,000, cost for measures of controlling or eliminating pollution that ranks at the second place to be compensated or recompensed is RMB10,000,000, the direct economic loss to fishery and tourism sectors that ranks at the third place to be compensated or recompensed is RMB20,000,000, and the cost for measures already taken to reinstate natural fishery resources that ranks at the fourth place to be compensated or recompensed is RMB10,000,000; cost incurred for work of surveillance and monitoring vessel-caused oil pollution carried out by unit(s) entrusted by the Management Committee that ranks at the fifth place is RMB1,000,000; and no cost, as approved by the State Council, that ranks at the sixth place, was incurred. Since the limitation of amount compensated or recompensed by the Fund against any vessel-caused oil pollution accident is RMB30,000,000 and payment shall be made in sequence, when actually making compensation or recompense, the Fund may only compensate or recompense for costs of the vessel-caused oil pollution damages ranking at the first three places, paying RMB10,000,000 for each item, compensation or recompense for the direct economic loss to fishery and tourism sectors that ranks at the third place will be insufficient, and the Fund will not recompense for the cost for measures already taken to reinstate natural fishery resources in amount of RMB10,000,000 that ranks at the fourth place and cost for work of surveillance and monitoring vessel-caused oil pollution carried out by unit(s) entrusted by the Management Committee in amount of

RMB1,000,000 that ranks at the fifth place.

For another example, after occurrence of a vessel-caused oil pollution damage accident, 10 ship pollution response organizations applied to the Fund for recompense of costs for emergency response, and there was no other aggrieved parties of oil pollution applying with the Fund for recompense, upon investigation and verification by the Settlement Center as well as deliberation by the Management Committee, it is determined that the Fund shall recompense RMB3,200,000 to each ship pollution response organization for cost of emergency response, and the total amount of compensation that the Fund shall pay in respect of such accident is RMB32,000,000. Since the limitation of amount for compensation or recompense from the Fund for a single accident is RMB30,000,000, when actually making recompense, the Fund may only recompense in proportion, recompensing RMB3,000,000 to each ship pollution response organization for the costs of emergency response.

## **Chapter II Basic procedures for submission and payment of claims**

### **I. Claimant**

An aggrieved party who sustained vessel-caused oil pollution damage applies with the Fund for compensation or recompense and satisfies the precondition of application of the Fund as provided for in Chapter I of this Manual is referred to as “claimant”.



A claimant may be a unit or individual such as natural person, partner, company, enterprise or institute and governmental department. For example, aquatic product cultivator, fisherman and tourism operator who sustained vessel-caused oil pollution damage, ship pollution response unit and other units participating in emergency response action, various levels of local people's governments, relevant governmental administrative departments such as fishery, oceanic and maritime administrative departments.

As for a same vessel-caused oil pollution accident, the Fund encourages all claimants who have sustained same type of loss lodge claim applications together, so that oil pollution damages caused by the accident can be assessed comprehensively and enhance the efficiency for claims settlement.

After occurrence of a vessel-caused oil pollution accident, aggrieved parties who sustained vessel-caused oil pollution damages and all related parties for such vessel-caused oil pollution accident, such as the shipowner and insurer of the vessel and the vessel-caused pollution accident emergency commanding organization, etc. shall, upon estimation that the Fund might be utilized for compensation matters in respect of oil pollution and relevant costs caused by such accident, get in touch with the Settlement Center as soon as possible, so as to obtain technical support

and legal consulting services from the Settlement Center as soon as possible.

After occurrence of vessel-caused oil pollution accident, even if it is estimated that it is impossible to use the Fund for compensation or recompense for oil pollution damages and relevant costs so caused by the accident, if the aggrieved parties of oil pollution need the Settlement Center to provide technical support and legal consulting services in respect of vessel-caused oil pollution damages, they may also contact the Settlement Center.

Contact details of the Settlement Center are as follows:

Address: No.190 Siping Road, Hongkou District, Shanghai, China

Post code: 200086

Tel: 021- 66073564, 66076652

Fax: 021-66073563

Email: [copc@shmsa.gov.cn](mailto:copc@shmsa.gov.cn)

## **II. Submission of claim application**

The key of successful claim lies in well recording of the process and various completed and standardized evidential materials.

The claimant shall start collecting, sorting out and preserving various necessary evidential material and relevant records from the initial stage upon sustaining vessel-caused oil pollution damages, which will not only be the basis for applying compensation or recompense from the Fund but also the key for the claimant to claim against the shipowner and insurer of the vessel successfully.

The claimant shall timely submit, in a written form, to the Settlement Center the claim materials such as the claim application. The claim application shall be clear, contain sufficient information and shall be attached with various proof documents or other evidences that can prove its claim as true and reasonable, so as to help the Settlement Center to effectively verify and assess amount of every claimed item and accelerate the settlement progress.

Where the claimant submits claim application, it shall fill in the Vessel-caused Oil Pollution Compensation Fund Compensation/Recompense Application (Appendix I and II) in a truly, standardized and completed manner, and fill in corresponding application forms respectively based on different claimed items.(Appendix V to VIII)

The claimant must submit effective judgment, order or conciliation statement issued by court, or effective award or mediation statement issued by arbitration institute, or proof document in which the maritime

administration agency directly under the China MSA or the ship pollution investigation and handling agency above the level of province confirmed that the oil pollution damages were caused by vessel but the very vessel that caused such pollution could not be identified.

The claimant must also submit claim application materials list and specific various proof documents or other evidences (for the format please refer to Appendix III). For example, in case of claiming for cost of emergency response, when the claimant is filing the Vessel-caused Oil Pollution Compensation Fund Compensation/Recompense Application, Information Form for Cost of Emergency Response and Cost of Controlling or Eliminating Pollution as well as specific costs breakdown (Appendix V), it shall clearly describe on what operation has been finished, the reason, time and place for taking such operation as well as operating personnel thereon, what kind of equipment and resource was utilized and the quantity of such equipment/resource so used, and it shall also provide corresponding supporting evidential materials such as invoices, receipts, working sheet, payroll, on-site photos and videos, etc.. The claimant shall pay attention that any cost of item for which it claims shall has corresponding evidential material for proving. As to evidential materials such as documentary evidence and physical evidence, original ones shall be provided, if it is truly difficult to provide original ones, the claimant may provide copied ones, photos, duplicated ones or extracts.

The claimant and its agent shall also submit identity proof materials that meet requirement. Where the claimant is an unit, identity proof materials such as the unit's legal person certificate or industrial or commercial business license or organization code certificate; where the claimant is an individual, personal identification shall be submitted for examination and verification. Where the claimant entrusts agent(such as law office or consulting company) to handle relevant matters of lodging claim against the Fund, the letter of authorization issued by the claimant as well as the identifications of the claimant itself and the authorized agent shall be submitted. The specific handling person entrusted by a unit to handle matters of lodging claim application shall, in addition to the identification of such unit, submit the letter of authorization issued by such unit as well as the personal identification of the handling person.

### **III. Requirements to be observed for claim application**

The claimant shall pay attention on whether or not the following requirements are complied with when applying with the Fund for compensation:

- (I) the claimant shall have the qualification of lodging claim application, i.e. the claimant shall be an unit or individual who actually sustained damages due to vessel-caused oil pollution accident.

- (II) the claimant shall lodge the claim application within the period of limitation for the claim, and the Settlement Center will not accept claim application lodged after the period of limitation;
- (III) the claim application and evidential materials shall be true, and the claimant shall not resort to falsification, conceal, fabricate or exaggerate; if the claimant provided untrue claim application, proof documents or other evidences, in addition to bearing adverse settlement result, the claim might also bear corresponding legal responsibility.
- (IV) any cost or loss so claimed shall have been incurred actually, and such cost or loss shall be ascertained as appropriate and reasonable; the Fund will not compensate or recompense for cost that is predicted to be incurred, such as predicted cost for reinstatement of marine ecosystem and natural fishery resources. The so called “reasonable” means that measures taken or means of transport, equipment or resources utilized based on available information when making the decision will effectively reduce the vessel-caused oil pollution damage.
- (V) costs so claimed and damages so sustained shall be resulted from vessel-caused oil pollution, and shall have consequential direct

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causation relation with the vessel-caused oil pollution accident. In respect of some indirect economic losses, such as economic losses caused by traffic accident happening to vessel participating in emergency response during emergency response operations, the Fund will not compensate or recompense. As to indirect economic loss brought by oil pollution, cost for reasonable reinstatement of environment to be implemented, litigation cost, arbitration fee and taxes, etc. that the claimant can usually claim against the shipowner and insurer of the vessel shall fall out of the scope of compensation or recompense from the Fund.

(VI) losses so claimed and damages so sustained shall be economic losses that can be quantified in currencies; the Fund will not compensate or recompense for economic loss that is difficult to be quantified, such as spiritual damage.

(VII) corresponding proof documents, true and sufficient evidential materials shall be submitted for the costs and losses so claimed as well as damages so sustained; if certain evidential material is lacked, or such evidential material lacks authenticity, legality, relevancy or reasonableness, the Settlement Center will not admit corresponding claim application, and the claimant will bear adverse settlement result.

(VIII) where the claimant has obtained governmental relief, commercial insurance indemnity and other incomes as to the oil pollution damages and relevant costs so sustained, such part of oil pollution damages and relevant costs shall not be compensated or recompensed repeatedly from the Fund. If the claimant did not disclose the above situation to the Fund on a truthful basis and obtained repeated compensation or recompense from the Fund, the Fund will take action to recover the same.

#### **IV. Period of limitation for claim**

The claimant shall be reminded that pursuant to relevant provisions in the Maritime Code of the People's Republic of China, in the circumstance in which the polluting vessel can be identified, it is suggested that the claimant shall commence lawsuit or arbitration against the shipowner and insurer of the vessel as soon as possible within 3 years from the day when oil pollution damage occurred. In some circumstances, the loss might emerge at moment after elapse of certain period after the occurrence of oil pollution accident. In any circumstance the claim must commence lawsuit or arbitration against the shipowner and insurer of the vessel within 6 years from the day on which the vessel-caused oil pollution occurred, otherwise the claimant will lose the right to rely on the Maritime Code of the People's Republic of China to obtain vessel-caused oil pollution damage



compensation, and it will also be difficult for the claimant to apply with the Fund for recompense.

Pursuant to the Administrative Measures, where an aggrieved party applies compensation or recompense from the Fund, such application shall be submitted to the Claims Settlement Center within 3 years from the day on which the oil pollution is actually caused, regardless of whether or not the polluting vessel has been identified; in any situation such application shall be submitted within 6 years from the day on which the vessel-caused oil pollution occurs. Where the claimant has submitted to court or arbitration institute in respect of vessel-caused oil pollution damage dispute and such submission has been accepted, the limitation of period for the claimant to apply with the Fund for compensation or recompense shall be deemed as being suspended from the day when such submission was accepted by court or arbitration institute, and the limitation of period for the claimant to apply with the Fund for compensation or recompense shall continue from the day when judgment by the court or award by the arbitration institute becomes effective. In other words, the duration in which court try the vessel-caused oil pollution damage dispute between the claimant and the shipowner and insurer of the vessel shall not counted in the period of limitation for claim. It is suggested that the claimant shall, upon obtaining materials such as case acceptance proof issued by the court or arbitration institute, submit the same to the Settlement Center as soon as possible, so as to make clear of the commencing time of such suspension and facilitate

the Settlement Center in following up with the court or arbitration institute with the trial of vessel-caused oil pollution damage dispute between the claimant and the shipowner and insurer of the vessel, guiding the claimant timely to apply with the Fund for compensation or recompense.

As to claim applications meeting Item (3) and (4) of Art.15 of the Administrative Measures, when submitting the same, the claimant shall also provide and sign the Subrogation Form / Letter of Authorization (Appendix IV), transferring its right of claiming against shipowner and insurer of the vessel who did not fulfill statutory obligation for vessel-caused oil pollution damages to the Settlement Center up to the amount of compensation or recompense it obtained from the Fund.

As to a same vessel-caused oil pollution accident, after the Settlement Center accepts the application for recompense lodged by the first claimant, it will publish fund claim registration announcement through the website of the China Vessel-caused Oil Pollution Compensation Fund ([www.copcfund.org](http://www.copcfund.org) and [www.copcsc.org](http://www.copcsc.org)), leading comprehensive newspapers of the place where the vessel-caused oil pollution accident or vessel-caused oil pollution damage occurred or other news media, urging other aggrieved parties of oil pollution of such same accident to lodge claim applications with the Fund as soon as possible. Aggrieved parties of oil pollution of a same accident shall handle claim registration with the Settlement Center within the period as described in the registration

announcement if they want to apply for recompense from the Fund. If the aggrieved party of oil pollution fails to handle registration within such period, as the total compensation or recompense from the Fund to all aggrieved parties of a same vessel-caused oil pollution accident shall not exceed RMB30,000,000, such aggrieved party failing to handle registration might bear adverse claims settlement consequence.

Where a claimant applies with the Settlement Center for claim registration, it shall submit written application. Within 15 days from the day when the Settlement Center registers the claim application, the claimant shall, in accordance with requirements of this Manual, submit specific claim application, evidential documents or other evidences to the Settlement Center. During preparing the claim evidential materials, the claimant may seek guidance and help from the Settlement Center.

The Settlement Center will, within 15 working days from receipt of application materials submitted by the claimant, finish formality examination, and notify the claimant on whether or not the claim application is accepted through direct service, service by mail or by electronic means. Where such notice is directly served upon the claimant or its agent, the date stated on the receipt signed by the claimant or its agent shall be deemed the date of service of the notice; if direct service proves to be difficult, service of the notice may be done by mail or, upon consent by the claimant or its agent, the Settlement Center may adopt

electronic means such as email to serve the notice whereby service of the same can be confirmed by the claimant or its agent.

Service through mail will be attached with a service receipt, where the date stated on the receipt for postal delivery of registered mail is inconsistent with the date stated on the service receipt, or where the service receipt is not sent back, the date stated on the receipt for postal delivery of registered mail shall be the date of service.

In case of service by electronic means, the claimant or its agent shall confirm in the service confirmation statement, and the date shown in the corresponding system of the Settlement Center that the mail has been sent out successfully shall be the date of service, however, if the claimant or its agent proves that the date when the mail entered into their specific system is different from the date on the corresponding system of the Settlement Center showing the mail has been sent out successfully, the date proved by the claimant or its agent as when the mail entered into their specific system shall prevail.

## **V. Investigation on claimed items**

The Settlement Center accepts successively, in accordance with the time sequence of application, the claim applications submitted by claimants, and conducts investigation, verification and assessment on the claimed items.

The claimant shall cooperate actively and offer necessary assistance. During the process of claim settlement, the Settlement Center might contact the claimant, requiring it to provide further information and evidences. If the claimant fails to provide relevant information timely, the Settlement Center will assess the claim based only on available information, however, the claimant shall realize that such assessment might lead to adverse consequences such as reduction of amount to be compensated or recompensed or the claim application is not recognized.

The time needed by the Settlement Center for investigation, verification and assessment depends, to a large extent, on whether or not the proof documents or other evidences provided by the claimant are authentic, sufficient and effective. Therefore, it is suggested that the claimant shall adhere to requirements of this Manual as far as possible, fully cooperate with the Settlement Center, and do its utmost to provide all information relating to assessment of the claim, so as to jointly enhance claim settlement efficiency.

### **VIII. Transfer of the right to claim**

The Settlement Center may, from the day on which it makes compensation payment to a claimant, exercise by subrogation the right of the claimant to demand compensation against the third party up to the

amount of compensation or recompense payment it made. The right to demand compensation by subrogation exercised by the Settlement Center shall in no way affect the claimant's right to demand compensation against the third party for the portion un-indemnified.

If the claimant waives the right to demand compensation against the third party, for such waived part of compensation, the claimant shall not apply with the Fund for compensation or recompense, and if such claimant has obtained compensation or recompense from the Fund for such part of waived compensation, it shall refund the Fund with the payment of compensation or recompense it obtained from the Fund.

The claimant shall also provide necessary information and materials to the Settlement Center, and assist the Settlement Center in an active manner in exercising the right of subrogation. The Settlement Center may deduct a corresponding sum or demand refunding a corresponding sum of compensation or recompense if it is not able to exercise the right to demand compensation by subrogation due to the deliberation or major fault of the claimant.

## **IX. Handling of objections**

Where the claimant raises objection to the compensation/recompense

decision, it may, within 10 working days after receipt of the compensation/recompense decision, apply to the Settlement Center for review for once and submit relevant proof materials; failing to lodge review application within specified period, the Settlement Center will not accept such application. For any claim settlement case, the claimant may only apply for review for once.

Where, upon review, no matter whether or not the Settlement Center holds necessary to change the claim settlement plan, it shall submit the same to the meeting of Management Committee for deliberation, and shall issue final claim settlement decision to the claimant within 15 working days from the next meeting of the Management Committee whereby the decision is rendered.

### **Chapter III Manual for Submission of Claims of Costs for Emergency Response**

Costs for emergency response are costs incurred for emergency response action(s), taken following order(s) of vessel-caused pollution accident emergency commanding organization during the period of emergency response, to mitigate or prevent vessel-caused oil pollution damages. For example, reasonable costs to a ship pollution response organization incurred for labor and material resources paid for conducting oil pollution cleanup work during the period of emergency response in order to

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implement the compulsory oil pollution cleanup order of maritime administrative department.

Period of emergency response is a period from the time when the vessel-caused pollution accident emergency commanding organization activates emergency response action under the emergency response plan till the end of emergency response action(s).

Costs for emergency response for which the claimant may apply compensation or recompense from the Fund must be costs that incurred for emergency response measures that have actually been taken, and these emergency response measures shall be deemed as reasonable to be adopted at the prevailing conditions. Costs for emergency response for which the claimant may claim compensation from the Fund mainly include costs incurred for actions of pollution cleanup at sea, actions of protecting polluted resources (such as shore animals habitats, cultivation bases and water inlets, etc.), actions of pollution cleanup for coastlines and tidal flats, actions of monitoring and surveillance on the spread of oil spill as well as action of protecting wildlife, etc, specifically including:

#### **I. Charges for use of ships, planes and vehicles**

Charges for use of ships, plane and vehicles shall mean costs incurred to the claimant for utilization of various types of ships, planes and vehicles



for works of ship oil pollution cleanup as well as monitoring and surveillance on oil spill, including amortization charges and necessary washing charges for ships, planes and vehicles, wages and remunerations for crews, aviators and personnel equipped for vehicles, costs for fuel oil and lubricating oil consumed by ships, planes and vehicles.

Function of ships, planes and vehicles shall be suitable to the cleanup actions they participate in. Time consumed by a ship to, based on order from the vessel-caused pollution accident emergency commanding organization, wait for further instruction at berthing base, or to leave the oil pollution scene to take shelter from winds, to undergo maintenance (excluding the time for daily maintenance for ship) or to supply materials and provisions shall be deemed as “standby time”, and the standby rate usually is a certain proportion of utilization rate.

(I) Claim materials for charges for use of ships

the claimant shall keep properly materials such as various written orders from the vessel-caused pollution accident emergency commanding organization, meeting minutes and decisions relating to emergency response actions; during emergency response actions, the claimant shall timely record specific items incurring costs, amount, the time and the place in detail; the claimant may take photos or videos to reflect actions it took.

The claimant must provide corresponding evidential materials to prove the ownership, type of the ship, total power of her main engine, her tonnage, the time, place, content and effect of operation done by the ship, the time and place of standby of the ship, and consumption of oils, the time range that vessel-caused pollution accident emergency commanding organization instructed the ship to conduct emergency response, the time, place for operation of cleaning ships, as well as costs for third parties.

Main evidential materials include:

1. Certificates of the ship

The claimant shall provide the certificate of ownership of the ship, certificate of ship's inspection and the MMSI certificate.

2. Logbook, engine logbook, oil record book

The claimant shall provide the logbook and engine logbook for the period of emergency response. The logbook and the engine logbook shall record the sailing time, the time, place and content of operation, when the ship receives the order from the vessel-caused pollution accident emergency commanding organization, when the engine is standby, when the anchors are heaved up, when the ship arrives at the scene, the content, process and duration of operation, when the ship

receives the standby order, the standby duration, when the ship receives the order declaring the end of mission, when the ship returns to berth base, when the engine of the ship is stopped, the situation of fuel oil and lubricating oil consumed by the ship during the period of emergency response, as well as whether or not there was cleaning action after termination of emergency response etc.. In addition, materials recording operating personnel onboard, equipments, materials and supplies provided onboard as well as the situation of consumption and supplementation thereon shall be provided.

### 3. Materials proving work effect

The claimant shall provide work report, text, image and video materials, to prove the content, time and effect of emergency response work done by the ship, or instead, the claimant may provide materials such as assessment report issued by professional institute for the content and effect of work done by the ship.

#### (II) Proof materials for claim of charges for use of planes

The claimant shall provide contract of hire of the plane, bills for expenses, flight logbook, work report as well as text, image and video materials, to prove the time range that vessel-caused pollution accident emergency commanding organization instructed the ship to conduct emergency

response, the type of the plane, the flight time, flight zone, flight mission and effect of operation, etc, or instead, the claimant may provide documents such as assessment report issued by professional institute for the content and effect of work done.

(III) Proof materials for claim of charges for use of vehicles

The claimant shall provide the vehicle's license, transport certificate, vehicle dispatch note, vehicle rental contract, invoice, transport records and relevant text, image and video materials, to prove the name, type, time of use, place of use and operation content of the vehicle, or instead, the claimant may provide documents such as assessment report issued by professional institute for the content and effect of work done.

## **II. Charges for use of professional equipments**

Charges for use of professional equipments mean costs incurred to claimant for utilization of oil booms, skimmers, sprayers, washers and other relevant professional equipments for works of ship oil pollution cleanup as well as monitoring and surveillance on oil spill, including amortization charges, necessary storing charge and maintenance charge as well as necessary washing charges for equipments, where the equipment is damaged during use, the charge for repair or the charge for re-purchasing the same shall be included.

Proper claimed amount may be compensated or recompensed for reasonable standby equipment that was actually brought with working personnel who took emergency response measures but was not actually used, so as to make up the wear and tear and amortization of the same.

(I) Proof materials for claim of charges for use of professional equipments

The claimant shall provide corresponding evidential materials to prove the ownerships, type and quantity of such equipments, content of operation, time of operation, standby time as well as work effect, etc..

Main evidential materials include:

1. ledgers of the equipments, including the inventory records book, the stock-in registration book, the stock-out registration book, service and maintenance records book as well as the purchase invoices, etc of such equipments, to prove corresponding situation of purchase, use, maintenance, wear and tear of the same.
2. Service record of the equipment, including when the equipment was allocated out of the warehouse, how the equipment was transported to the accident scene, when it was put into use, the situation and effect of use of such equipment, etc, to determine the duration of operation as well as the standby duration of such equipment. In addition, service

record of the equipment shall corroborate with evidential materials such the ship's logbook, engine logbook and working record of operating personnel.

3. The claimant shall provide work report, text, image and video materials, to prove the situation and effect of use of such equipment, or instead, the claimant may provide documents such as assessment report issued by professional institute for the content and effect of work done.

### **III. Charges for consumables**

Charges for consumable mean all costs incurred to claimant for utilization of oil absorption materials, oil spill dispersants and other consumables all well as costs for necessary warehousing of the same, such as purchase costs for oil sorbents, oil disperse agents, chemical adsorbents, oil absorbent booms and oil trailing nets that were put into use, as well as necessary cost for warehousing of them since the purchase.

#### **(I) Proof materials for claim of charges for consumables**

The claimant shall provide corresponding evidential materials to prove the name, type, time of use, place of use, condition of use, quantity of use, effect of use of such consumables as well as the situation of pollutants collection, etc.. Main evidential materials include:

1. ledgers of consumables, including the inventory records book, the stock-in registration book, the stock-out registration book and the purchase invoices, etc of such consumables, to prove corresponding situation of purchase and use of the same.
  
2. Records for the situation of use of the consumables, including when the consumable was allocated out of the warehouse, how the consumable was transported to the accident scene, when it was put into use, the quantity of consumables used, the quantity of oil collected as well as the work effect, etc. As to the quantity of oil collected by oil absorption materials, the claimant shall also provide collection certification issued by the unit engaged in disposal of pollutants. In addition, situation of use of the consumables shall corroborate with content of ship's logbook, engine logbook and working record of operating personnel.
  
3. The claimant shall provide work report, text, image and video materials, to prove the situation and effect of use of such consumables, or instead, the claimant may provide documents such as assessment report issued by professional institute for the content and effect of work done.

#### **IV. Charges for disposal of wastes**

Charges for disposal of wastes mean costs incurred to the claimant for disposal of solid wastes containing oil, oily water and scrapped equipments of vessel, etc during the process of emergency response. Such costs incurred to the claimant in post-disposal of wastes such as various oil sorbents, residual oil, sludge and oily water reclaimed during ship oil pollution cleanup operation due to implementation of orders from vessel-caused pollution accident emergency commanding organization. During the emergency response, if the claimant obtains additional income through the reclaimed dirty oil, the salvage value of such reclaimed dirty oil shall be used to offset corresponding costs that have incurred for emergency response.

(I) Proof materials for claim of charges for disposal of wastes

The claimant shall provide evidential materials to prove the information such as the method, type, quantity, time, place and effect of disposal of solid wastes containing oil and of oily water as well as the situation of reclaimed pollutants and the overview of the unit disposing of wastes.

Main evidential materials include:

1. Logs for disposal of wastes, including the method, type, quantity, time, and of disposal of solid wastes containing oil and of oily water, as well as records for the participants, the situation of equipments used as well as the situation of recycling, to prove the situation of disposal of



wastes.

2. Relevant documental materials proving that the unit disposing of wastes has specialized capability for such disposal.
3. The claimant shall provide work report, text, image and video materials, to prove the effect of disposal of wastes, or instead, the claimant may provide documents such as assessment report issued by professional institute for the content and effect of work done.

## **V. Charges for personnel**

Charges for personnel mean costs incurred to the claimant in dispatching/assigning emergency response personnel for emergency response actions during the process of emergency response.

Based on different posts, emergency response personnel may generally be divided as senior commanders, on-site commanders, emergency response operators, ordinary operators, logistic support personnel and consulting professors, etc.. Costs for crews, aviators and drivers manned on ships, planes and vehicles for their daily work shall not be counted as charges for personnel.

Senior commander are personnel who have macro-control ability for

emergency response to vessel-caused pollution accidents, conduct comprehensive risk appraisal in accordance with the situation of accident, make emergency response decisions timely, and organize effective implementation of decisions timely.

On-site commanders are personnel who formulate specific emergency response plan pursuant to decisions of the commanding organization and in combination with the on-site situation, and organize emergency response personnel to conduct emergency operation.

Emergency operators are personnel who possess basic knowledge and skills for emergency response and use specialized emergency response equipments and devices to carry out emergency response operations at the scene.

Ordinary operators are personnel who use simple tools to participate in on-site emergency response operation without undergoing professional trainings.

Logistic support personnel are staffs engaged in purchase of materials and supplies, information communication as well as arrangement of accommodations. Consulting professors are personnel who provide consulting suggestions helping in commanding and decisions making for emergency response to vessel-caused pollution accidents, mainly

including professor specialized in aspects of maritime, traffic, environment protection, water affairs, rescue and salvage, fire fighting, shipping, petrochemical, meteorology, marine, fishery, medical and health, legal affairs, information assurance, and work safety, etc.

Work injuries happened to the above personnel during emergency response actions shall be dealt with in accordance with relevant laws and regulations of the State concerning work injury.

**(I) Proof materials for claim of charges for personnel**

The claimant shall provide corresponding evidential materials to prove the name and qualification of the worker as well as the content, time and effect of work. Main evidential materials include:

1. List of names of emergency response personnel as well as their training certifications

The claimant shall provide the list of names of emergency response personnel as well as the emergency response operators, on-site commanders and senior commanders' training certifications, etc that meet relevant regulations and technical standards of the State.

2. Attendance sheets of emergency response personnel and records for situation of work

The claimant shall provide attendance statistics sheet of emergency response personnel and records for situation of work done, to prove the content of work, duration of operation done by various participating emergency response personnel. Such attendance statistics sheet shall specify contents in detail on when the emergency response personnel arrived at the scene of the accident, when they started works such as collecting residual oil on the surface of sea and beaches, cleaning oil pollution and transporting oil pollution wastes, what equipments, materials and supplies were used, when the emergency response work ended, as well as the effect of operation, etc.

### 3. Documents proving the effect of work

The claimant shall work report, text, image and video materials, to prove the content, time and effect of work done workers.

## **VI. Charges for surveillance and monitoring**

Charges for surveillance and monitoring mean costs incurred claimant for monitoring by ships, planes and satellite remote sensing as well as for projects of spilled oil drifting, spread model prediction, oily water sampling, appraisal for spilled oil and monitoring of water quality, etc during emergency response.

**(I) Proof materials for claim of charges for surveillance and monitoring:**

The claimant must provide of vessel-caused pollution accident emergency commanding organization's order requiring it to conduct surveillance and monitoring work, the time, area of scope and frequency of surveillance, breakdown of personnel and equipments mobilized, working records, breakdown of costs as well as invoices, etc.

1. Where a ship was mobilized for surveillance, the claimant shall provide the name of the ship, the logbook of the ship and the way for surveillance as well as the surveillance result thereon, etc. Where a plane was mobilized for surveillance, the claimant shall provide the type of the plane, the flight time, the flying range and the surveillance result, etc.
2. Where remote sensing satellite was mobilized for surveillance, materials such as the unit supplying satellite images, the type, specification, quantity and time section of satellite images, the personnel analyzing satellite images, equipment used, work time, analysis report, the breakdown of cost as well as invoices, etc shall be provided.
3. Where oil spill mathematical model was used to forecast the drifting

trajectory of oil spilled, materials such the quantity of simulating, the report of forecasting result as well as the breakdown of costs and invoices, etc shall be provided.

4. In the event of sampling appraisal for spilled oil and monitoring for water quality, the claimant shall provide materials such as the type and time of monitoring, the point for monitoring, the method and frequency of monitoring, number of samples for various monitoring, monitoring report as well as breakdown of costs and invoices, etc.

## **VII. Charges for protection of wildlife**

Charges for protection of animals and plants are costs incurred to the claimant for preventive measures adopted to prevent oil pollution from impairing wildlife, or incurred to the claimant for action of cleaning and salvaging wildlife that have been polluted.

the claimant must provide proof materials indicating that it has the capability for such work, the order of relevant governmental competent departments whereby relevant governmental competent departments requires or recognizes the claimant to carry out action of cleaning and salvaging wildlife, the duration and area in which the claimant carried out action of cleaning and salvaging wildlife, list of personnel, equipments and materials mobilized for cleaning and salvaging, work record,

breakdown of costs and invoices, etc.

The claimant shall keep records for the whole process of the emergency response action, including the manpower and other emergency response resources it inputted as well as the decision-making processes in various stages of the emergency response, and shall provide written materials for the above records, or instead, the claimant may provide documents such as assessment report issued by professional institute for the content and effect of work done.

### **VIII. Charges for logistic support**

Charges for logistic support mean costs of logistic support nature incurred to the claimant during emergency response, such as cost for emergency communications (satellite phone calls, mobile phone calls and faxes), and cost for catering, accommodations, traffic and disposable personal protective equipments as well as necessary medical cost, etc..

the claimant shall provide evidential materials such as breakdown of costs and invoices, etc.

### **IX. Charges for other directly related items**

Charges for other directly related items mean other directly related costs

which cannot be covered in the above various costs but incurred to the claimant for implementation of orders from vessel-caused pollution accident emergency commanding organization,

The claimant shall provide evidential materials such as breakdown of costs and invoices, etc.

Where a claimant applies with the Fund to compensate or recompense for the above various costs for emergency response, it shall submit corresponding forms and relevant proof documents or other evidential materials (for formats please refer to Appendix V).

#### **Chapter IV Manual for submission of claims of costs for controlling or eliminating pollution**

Costs for controlling or eliminating pollution are costs incurred for reasonable measures of preventing, controlling or eliminating pollution adopted by the claimant beyond the order of the vessel-caused oil accident emergency commanding for the purpose of preventing or reducing damages. For example, costs incurred to an operator of a sea-water bathing spot, upon finding that there is ship oil spill near its spot, organizes, by itself, to eliminate oil pollution on the beach or deploys oil booms to prevent oil pollution from polluting the beach operated by it. .



The Fund will not compensate or recompense for costs incurred for foreseeable ineffective measures. For example, use oil disperse agents for solid or semisolid oils, and deploy oil booms in relatively quick flowing waters.

Costs incurred for controlling or eliminating oil pollution shall not be much higher than the expected benefits, consideration shall be given in combination with actual situation. For example, costs incurred for over-cleaning action taken for untraversed rocky coast after eliminating plenty of oil pollution will be difficult to be recognized for obtaining compensation or recompense, as natural cleaning of sea waves might be more effective.

Costs for controlling or eliminating pollution also include charges for use of ships, planes, professional equipments, charges for consumables, charges for disposing of wastes, charges for personnel, charges for surveillance and monitoring, charges for logistic support and charges for other directly related items, etc., classification of these cost is basically the same with costs for emergency response (for charges for specific items, please refer to Chapter III). The main difference between costs for controlling or eliminating pollution and the costs for emergency response is that the costs for controlling or eliminating pollution are costs incurred to aggrieved parties of vessel-caused oil pollution damage for adopting

reasonable measures, by themselves without receiving orders from the vessel-caused pollution accident emergency commanding organization, to prevent, control or eliminate oil pollution, mainly aiming at protecting properties of their own.

During the process of controlling or eliminating pollution, the claimant shall record in detail the items incurring costs, the specific amount incurred, the time when such cost incurred and the place where such costs incurred, etc., the claimant may also take photos and videos to reflect actions its took, so as to help the investigation and assessment personnel of the Settlement Center to learn about the specific action of measures controlling or eliminating oil pollution as well as the reason for taking these action.

Where a clamant applies with the Fund to compensate or recompense for costs for controlling or eliminating pollution, it shall submit corresponding forms and relevant proof documents or other evidential materials (for formats, please refer to Appendix V).

## **Chapter V Manual for submission of claims of direct economic losses to fishery and tourism etc sectors**

Direct economic losses to fishery and tourism etc sectors are reduction of actual value of properties, having direct causation relation with the

vessel-caused oil pollution accident, sustained by claimants engaged in fishery and tourism etc sectors.

Direct economic losses to fishery and tourism etc sectors that may be compensated or recompensed from the Fund mainly include the damages to and losses of facilities and equipments for living and production, the reduction of actual value of properties such as aquatic products as well as direct economic loss to other sectors.

**I. Damages to and losses of facilities and equipments for living and production**

Application may be submitted to the Fund to compensate or recompense for costs of cleaning, repairing or replacing incurred due to the fact that facilities and equipment for living and production, belonging to the claimant engaged in fishery and tourism etc sectors, are polluted as a result of oils pollution leaked from vessel. For instance, after the end of emergency response action or the end of measures taken by its own to eliminate pollution, costs for reinstating polluted bathing beaches or tourist scenic spots open to public; after the end of emergency response action or the end of measures taken by its own to eliminate pollution, costs to fishery units or individuals for cleaning, repairing and replacing fishing terminal, cultivating farms, fishing boats, fishing nets and fishing gears, contaminated by oil.

Where it is impossible to clean and/or repair the polluted properties,

such as facilities and equipments for living and production, or the cost of cleaning and/or repairing is higher than the current value of such properties, the claimant may apply with the Fund to compensate or recompense for reasonable cost of replacing the same, provided that reasonable deduction shall be made with reference to the proportion between the actual service life and estimated service life of these polluted facilities and equipments.

When a claimant lodges claim application in respect of the above property losses , it shall submit corresponding forms (Appendix VI), and provide evidence to prove the ownership or other rights it held over the damaged properties, the situation of damages to properties, the value of properties before and after oil pollution damage, as well as the situation of costs of property repairing, cleaning and replacing that have incurred actually.

## **II. Reduction of actual value of properties such as aquatic products**

Upon occurrence of vessel-caused oil pollution accident, claimants engaged in aquaculture may apply with the Fund to compensate or recompense for loss of reduction of actual value as a result of death and/or decrease of quality to their aquatic products due to oil pollution leaked from the vessel. Loss of actual value of aquatic

products shall not be determined through theoretical calculation. Instead, such reduction of actual value shall be the normal value of polluted aquatic products by oil pollution deducting their current value.

When a unit or individual engaged in aquaculture lodges claim, it shall submit corresponding forms (Appendix VII), provide lawful and effective cultivation permit certification, and provide evidential materials that could prove the type of its aquaculture operation, the specific quantity of aquatic products polluted by oil pollution, the normal value of aquatic products before the pollution and their current value after the pollution.

Classifying based on the pattern of cultivation, evidential materials of the claimant shall mainly include:

1. In the event of cage culture, the claimant shall prove the place of cage culture, the cultivated species, the number of cages, the time of release of the species and the growth situation of cultivated aquatic products, etc, and shall provide corresponding photos showing the situation of cages and aquatic products polluted by oil pollution.
2. In the event of pond culture (including seeding propagation), the

claimant shall prove the place of pond culture (seeding propagation), the location of water inlet, the circle time of water intake and discharge, self-purification equipments, quantity of seeds input(quantity of parents), cultivated species (propagated species), number of ponds (volume of nursery ponds), the time of release of seeds, the situation of growth of the cultivated (propagated) organisms, etc, and shall provide corresponding photos showing the situation of pond culture equipments/seeding propagation equipments and aquatic products polluted by oil pollution, as well as other evidential materials such as the pumping records of the local pump station.

3. In the event of tidal flat culture, the claimant shall prove the place of tidal flat culture, area of bottom sowing, bottom sown species, bottom sowing density, the situation of growth of the cultivated aquatic products, and shall provide corresponding photos showing the situation of bottom sowing equipments and aquatic products polluted by oil pollution.
  
4. In the event of hanging culture, the claimant shall prove the place of hanging culture, quantity of seeds input for hanging culture, the time of hanging culture, the situation of growth of hanging cultured organisms, the situation of self-purification of hanging cultured organisms, the situation of pollution to the hanging

cultured organisms, change of mouthfeel of the hanging cultured organisms, and shall provide corresponding photos showing the situation of hanging culture equipment and hanging cultured organisms polluted by oil pollution.

Where the claimant entrusts a fishery pollution accident investigation and appraisal specialized technical unit to assess the fishery cultivation loss caused by oils leaked from vessel and issue assessments report thereon, such report may serve as evidence for claim settlement.

Where the aggrieved party of oil pollution engaged in aquaculture cultivation without permit from relevant administrative competent department, the Fund will not compensate or recompense for the reduction of actual value to the its aquatic products due to vessel-caused oil pollution accident, , however, they may apply with the Fund for compensation or recompense to reasonable costs of cleaning, repairing or replace cultivation facilities or fishing facilities.

It shall be pointed out that, different from the claim lodged by claimant against shipowner and insurer of the vessel, the Fund does not compensate or recompense for profit loss and indirect economic loss to relevant sectors including fishery sector and tourism sector, for instance, loss of decrease of income sustained by a fisherman as he

cannot go fishing during the period of cleaning or replacing fishing gears due to the fact that his fishing nets were polluted by oil pollution; for another instance, a laundry set up in seaside scenic spot, the hotels around the laundry and tourists are sources of its incomes, the loss of income reduction sustained due to decrease of number of tourists after occurrence of vessel-caused oil pollution damages.

Costs incurred to a claimant for taking reasonable measures to mitigate or prevent direct economic loss shall also fall within the scope of compensation or recompense from the Fund, the claimant may classify such costs as costs for controlling or eliminating oil pollution to lodge claim with the Fund, provided that such costs shall be limited to the amount of direct economic loss so mitigated or prevented.

When a claimant lodges claim application with the Fund in respect of compensation or recompense for direct economic loss to fishery and tourism sectors, it shall submit corresponding application forms and relevant proof documents or other evidences (for formats please referred to Appendix VI and VII).

### **III. Direct economic losses to other sectors**

Direct economic losses to other sectors mean actual losses of value of



properties, having inevitable direct causation relations with the vessel-caused oil pollution accident, sustained by claimants of other sector but not covered in the above I and II.

The claimant shall relevant evidential materials proving the situation of losses it sustained and application forms.

## **Chapter VI Manual for submission of claims of costs for marine ecosystem and natural fishery resources reinstatement measures**

Costs for marine ecosystem and natural fishery resources reinstatement measures are reasonable costs incurred for mature and effective ecosystem and natural fishery resources restoration measures, such as propagation and release measure and habitats restoration etc., adopted under the organizing of competent government department(s) in order to accelerate the restoration process of marine ecological environment and natural fishery resources polluted by oil spilled from the vessel and reduce or mitigate losses caused by pollution, including reasonable costs actually incurred for monitoring, assessment and study and research in order to determine the nature, scope and extent of damages to marine ecosystem and natural fishery resources at preliminary stage.

Generally, the State oceanic administrative department and the State

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fishery administrative department are the claimants for such costs, units or individuals who have implemented reinstatement measures pursuant to orders from these departments may also be the claimants of such costs.

Where a claimant claims costs for ecosystem restoration measure against the Fund, such restoration measure it adopted shall meet the following conditions:

- (I) the restoration measure shall have been implemented already and the geographical place of restoration measure shall be consistent with the place where vessel-caused oil pollution damage occurred;
- (II) The ecosystem restoration measure shall be reasonable; when basic conditions for reinstatement do not reverse, planning population recovery measure for polluted species with relatively short regeneration period; species of propagation and release shall be basically consistent with the species sustaining oil pollution damage, if it is unable for artificially breeding and seeding of the species sustaining oil pollution damage, the species for propagation and release shall be close to the species sustaining oil pollution damage in respect of environment reinstatement function.
- (III) the ecosystem restoration measure shall be technically practicable; for example, there shall be successful experience for artificial

breeding and artificial releasing of species to be reinstated.

- (IV) the ecosystem restoration measure shall have accelerated apparently the recovery process of marine ecosystem and natural fishery resources;
- (V) the ecosystem restoration measure does not cause adverse consequence to other natural resources or economic resources;
- (VI) Costs for the ecosystem restoration measure(s) shall be less than the loss caused to marine ecosystem and natural fishery resources during in the natural recovery period.
- (VII) Ecosystem restoration measure will not cause obvious disturbance to stability of the structure of natural biotic community.

Ecosystem restoration measures adopted by the claimant shall not be compensated or recompensed until they are considered as reasonable and effective.

Where a clamant applies with the Fund to compensate or recompense for ecosystem restoration measures, it shall submit corresponding application forms and relevant proof documents or other materials (for formats please refer to Appendix VIII).