

This circular summarises the IOPC Funds' updated guidance for member states on the definition of "ship" under the 1992 Civil Liability Convention, highlights the Bow Jubail case that led to these changes, and provides guidance for tankers switching between MARPOL Annex I and Annex II cargoes.

IOPC Funds Amended Guidance for Member States on the definition of 'ship' under the 1992 Civil Liability Convention (1992 CLC)

At the November 2025 Sessions of the IOPC Funds' Governing Bodies, the Executive Committee of the IOPC Funds approved a new footnote for inclusion in the IOPC Funds' publication '*Guidance for Member States – Consideration of the definition of 'ship' under the 1992 Civil Liability Convention*'. The footnote sets out guidance on a standard procedure for determining when a ship which can serve as a qualifying ship under both the 1992 CLC and the 2001 Bunkers Convention, ceases to be a "ship" under the 1992 CLC.

This Circular provides Members with an overview of the reason for the change and guidance for tankers that switch between MARPOL Annex I¹ and MARPOL Annex II cargoes.

Legal framework

Overview of compensation regime for oil pollution damage from tankers carrying persistent oil

The 1992 CLC, 1992 Fund Convention and 2003 Supplementary Fund Protocol establish a liability regime for pollution damage caused by spills of persistent oil from tankers, which occur in the territory or exclusive economic zone of a State Party to the respective Convention.

The 1992 CLC governs liability for oil pollution damage under which the registered owner is held strictly liable for pollution damage caused by the escape or discharge of persistent oil from the ship. In return for this strict liability, the registered owner is able to limit its liability based on the size of the ship up to a maximum of 89,770,000 Special Drawing Rights (SDR).

Above this limit, the 1992 Fund Convention establishes a regime for compensating victims where the 1992 CLC is either not available or inadequate up to a maximum of 203 million SDR. The Supplementary Fund provides additional compensation beyond the amount available under the 1992 Fund, giving a total amount of compensation for each

¹ Not all MARPOL Annex I cargoes are persistent hydrocarbon mineral oils for the purposes of the 1992 CLC or 2001 Bunkers Convention, but to avoid uncertainty about whether a cargo is persistent or non-persistent, we recommend following this guidance when switching between any MARPOL Annex I and Annex II cargoes.

incident of 750 million SDR. Both these layers are financed by levies on the receivers of oil in contracting states.

When is a tanker a “ship” under the 1992 CLC

Article 1(1) of the 1992 CLC defines a “ship” as:

“any sea-going vessel and seaborne craft of any type whatsoever constructed or adapted for the carriage of oil in bulk as cargo, provided that a ship capable of carrying oil and other cargoes shall be regarded as a ship only when it is actually carrying oil in bulk as cargo and during any voyage following such carriage unless it is proved that it has no residues of such carriage of oil in bulk aboard.”

Article 1(5) of the 1992 CLC defines “oil” as:

“any persistent hydrocarbon mineral oil such as crude oil, fuel oil, heavy diesel oil and lubricating oil, whether carried on board a ship as cargo or in the bunkers of such a ship.”

This means that the 1992 CLC covers not only spills of cargo, but also bunker oil from laden tankers. In addition, it can cover spills of bunker oil from an unladen tanker where on the previous voyage the tanker had been carrying oil in bulk as cargo and it cannot be proven that there are no residues of the carriage of that oil remaining on board. It is this later scenario that arose in the case of the *Bow Jubail*.

The Bow Jubail

The incident

On 23 June 2018, the oil and chemical tanker, *Bow Jubail*, was in ballast when it made contact with a jetty in the Port of Rotterdam spilling approximately 217 tonnes of bunker oil. Although the vessel was unladen at the time, during the previous voyage from Houston to Rotterdam via Antwerp the *Bow Jubail* had been carrying persistent oil in bulk as cargo. After discharging the persistent oil cargo, the vessel had undergone a MARPOL pre-wash and the slops were discharged into a waste reception facility, as well as two commercial washes to ensure the vessel met the cleanliness standards required to load the next cargo.

The shipowner filed a request with the Rotterdam District Court to limit its liability in accordance with the Convention on Limitation of Liability for Maritime Claims (LLMC), as per the 2001 Bunkers Convention. However, the court rejected this application and the decision was upheld by the Court of Appeal, on the basis the shipowner had failed to sufficiently prove the *Bow Jubail* was free of residues at the time of the incident.

In effect, this meant the 1992 CLC applied under which the shipowner's limit of liability was approximately 1.6 million SDR higher than the limit under the LLMC. In addition, given the pollution damage exceeded the shipowner's limit of liability, additional compensation was also available under the 1992 Fund Convention.

Supreme Court Judgment

On 31 March 2023, the Supreme Court of the Netherlands delivered its judgment in the *Bow Jubail*, upholding the decisions of the Rotterdam District Court and the Court of Appeal not to grant the shipowner leave to limit its liability under the LLMC and instead applying the 1992 CLC on the basis the owner had failed to prove that the *Bow Jubail* was free of residues from the previous voyage.

This decision highlighted the risk that the definition of “ship” contained in Article 1(1) of the 1992 CLC could be interpreted in a manner quite different from the Executive Committee's established understanding. It was noted that

one reason for this divergent interpretation may have been, as indicated by the Court of Appeal, the absence of an established standard procedure to determine when a ship that switches between carrying MARPOL Annex I and MARPOL Annex II cargoes can be considered free of residues.

Given the concern that the case could have wider implications for the definition of a “ship” under the 1992 CLC, the 1992 Fund Executive Committee requested that the Director of the IOPC Funds develop guidance on a standard procedure to determine when a ship ceases to be a “ship” under the Convention, and also consider an interpretation of the word ‘residues’ in Article 1(1) of the 1992 CLC.

Following these instructions, the Director held a series of meetings with industry representatives, including the International Group, with a view to developing guidance to be incorporated in the form of a footnote in the IOPC Funds’ existing publications. A proposed final version of the footnote, including an interpretation of the term “residues” was submitted to the November 2025 Session of the IOPC Funds’ Governing Bodies.

The footnote

At that meeting the following footnote was approved:

“For the purposes of the 1992 CLC, ‘residues’ are the remnants of a persistent oil cargo of a quantity that represents a material pollution risk. Tank cleaning conducted in accordance with Annex I, Chapter 4 of MARPOL 73/78 will remove residues, and any corresponding material pollution risk. Where a vessel undergoes cleaning and flushing of its cargo tanks, slop tanks, residual oil tanks and all associated pumps and pipelines in accordance with Annex I, Chapter 4 of MARPOL 73/78; and any oil, tank washing and/or oily mixture have been discharged or transferred off the vessel, the completed Oil Record Book countersigned by the Master as required under MARPOL, will be prima facie evidence that the vessel is free of residues.”

This footnote has been inserted in section 3.1(2) and 3.1(4) of the IOPC Funds’ publication ‘Guidance for Member States – Consideration of the definition of ‘ship’ under the 1992 Civil Liability Convention’, which can be found on their website [IOPC FUNDS | IOPC Funds’ Publications](#).

Interpretation of “residues”

The interpretation of the term “residues” in Article 1(1) of the 1992 CLC confirms the common understanding that this does not require proof that no oil whatsoever remains in the tanks, but only that the tanks have been cleaned sufficiently so that they no longer represent a material pollution risk.

Countersigned by the Master

Under MARPOL, the Oil Record Book (ORB) requirements specify that the officer in charge shall sign and date each completed operation, while the Master is required to countersign each completed page.

During the development of the footnote, several suggestions were considered for the procedure, which if followed would act as *prima facie* evidence that the vessel was free of residues. Ultimately, it was concluded that the countersignature of the Master, as required under MARPOL, struck the right balance of providing a clear and robust procedure without creating an additional burden on shipowners.

With respect to the placement of the Master’s countersignature, it was noted that as per the mandatory requirements under MARPOL, the Master should countersign at the bottom of a completed page and not each individual entry in the

ORB. In the event of signing an uncompleted page, it was also noted that it is common practice for the Master to sign at the bottom of the page at the end of a group of operations and score out the empty parts of the page to prevent subsequent entries from being made.

Guidance for Members

Members are advised to take note of this guidance and ensure that crew operating tankers that switch between MARPOL Annex I and Annex II cargoes are aware of and follow this guidance. It should be noted that this guidance does not create a new obligation beyond those that already exist under MARPOL. However, the footnote is a positive development as it provides that, if followed, this procedure will be *prima facie* evidence that the vessel is free of residues. It is hoped that this will assist Members in evidencing that an unladen tanker that carried persistent oil on the previous voyage is free of residues, and allow the shipowner to rely on the limits of liability under the LLMC or other such limitation provisions applicable in the state where the incident occurs in the event of a bunker spill. Nothing in the footnote prevents owners also relying on additional evidence to demonstrate the absence of residues if such evidence is available.

All Clubs in the International Group of P&I Clubs have issued similar circulars.