

Member Training

1 – 3 October 2013
London

Piracy update – Cover, changing tides and contracting

Sam Kendall-Marsden - Syndicate Director

Alex Gray – Claims Executive

Brett Hosking – Claims Executive

The Standard



Contents

- impact of piracy
- cover
- status update
- East Africa v West Africa
- security
- armed guards



Impact of piracy

Detention	Damage and Destruction	Deprivation
ransom of crew	damage to / loss of the ship	theft of ship
ransom of cargo	death or injury to crew	theft of cargo
ransom of ship	damage to / loss of cargo	use of ship
		hire (BIMCO clause)

Protection & Indemnity cover

- liability for crew claims; rule 3.1.1
- liability to cargo; rule 3.13.1
- general average contributions; rules 3.14 & 3.15
 - extraordinary sacrifice or expenditure
 - intentionally and reasonably
 - common safety for the purpose of preserving from the peril the property involved in the common maritime adventure
 - (sue and labour expense; rule 20)

Protection & Indemnity cover exclusions

- terrorism
- weapons of war
- freight demurrage & defence

Kidnap & Ransom cover

- introduced 2012
- proposal form
- cover
 - ransom and associated
 - loss of hire as per the charterparty terms
 - crew
 - legal expenses
- “Control Risk” expenses



Status update: east vs. west

East

- major trade route
- strategy
- ransom
- combined and coordinated international response
- armed guards and international military assistance
- decreasing risk

West

- key trading area
- violence
- theft rather than ransom
- African response
- unarmed guards and military assistance

Captain Phillips

- Best Management Practice 4 - since August 2011
 - joint industry initiative
 - assist ships to avoid/deter/delay piracy attacks
 - UKMTO and EU NAVFOR endorsed
- 78% drop in piracy off GoA in 2012 v 2011 - IMB report
 - BMP
 - naval presence
 - armed guards

Security beyond BMP

- BMP4
- thorough voyage specific risk assessments
- additional protection - private maritime security companies (PMSCs)
- early 2013:
 - BMP for West Africa
- June 2013:
 - West Africa Code of Conduct

West Africa protection: new models

- no PMSCs / mandatory use of local government forces
- security industry response:
 1. PMSCs unarmed consultants
 2. secure anchorage areas
 - PMSCs work with local security company
 - MOU and operational licence
 - armed patrol boats
 - secure zone around vessel
 - escort service (when berthing)

- BIMCO's GUARDCON – industry standard
- May 2013:
 - BIMCO Documentary Committee to update GUARDCON in response to heightened security concerns in Gulf of Guinea
- IMO general guidance on use of armed PMSCs

Contracting with PMSC: 3 stage process

- due diligence: know your commercial partner
- contract: GUARDCON
- insurance: GUARDCON compliant

- East Africa v West Africa
 - different legal and operational issues
- security
 - comply with BMP, PMSCs not an alternative
- contract / insurance
 - best terms and insurance compliant
- **club available to assist to ensure members do not contract on terms that would prejudice P&I cover**



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Interclub Agreement update

Simon Hart
Claims Executive

- what is the Inter Club Agreement
- security problem
- what are the Inter Club Agreement (2011 Amendments)
- application
- conclusions

What is the Inter Club Agreement?

- the ICA was first formulated and entered into by Clubs in 1970 (the ICA)
- provides a relatively simple mechanism whereby liability for cargo claims arising under can apportioned between Owners and Charterers
- amendments 2011 applicable to C/P's after September 2011

The security problem - 1996 Provision

- could led to the member's claim being unsecured



The security problem - 1996 Provision

- Clause 4(c) of the ICA 1996 requires **“that a claim is properly settled or compromised and paid as a *condition precedent* to any right to recovery or indemnity”**
- **(member) was not entitled to obtain security from the other party the claim had not crystallised in accordance with the requirements of the ICA**
- security could only be obtained once the cargo claim had been properly settled or compromised and paid

The security problem



Inter-Club New York Produce Exchange Agreement 1996 (as amended September 2011)

- “If a party to the charterparty provides security to a person making a Cargo Claim, that party shall be entitled upon demand to acceptable security for an equivalent amount in respect of that Cargo Claim.”
- **written notification** of the Cargo Claim has been given by the party **demanding security to the other party to the charterparty within the relevant period specified in clause (6)**

- the ICA only applies between owners and charterers if they incorporate it into their charters
- ICA 2011 is an Amendment and should be incorporated into a charter entered into after 1 September 2011
- ICA 2011 will not apply to charters entered into prior to this date, even if the claims arise later

- ICA Form of apportioning liability between Owners and Charterers
- new mechanism for security without the need for the claim to crystallise /settle
- recommend 2011 Agreement to all NYPE / Asbatime charter parties after 1 September 2011

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Increased limits under the '96 protocol to the LLMC 76

Rupert Banks
Offshore Claims Executive

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Overview - Who can limit

- ship owners
- charterers
- ship managers
- operators
- salvors

Overview

- claims for which liability can be limited
- loss of life/personal injury
- loss of or damage to property
- delay in carriage of cargo, passengers, and their luggage
- infringement of rights other than contractual rights

Overview

- how is limit of liability calculated
 - tonnage of ship
 - SDRs

Rise in limits - trigger for increased limits

- Pacific Adventurer
- Australian proposal to IMO Legal Committee +147%
- Japanese proposal +45%

Examples - Panamax bulker (35,000 GT)

The Standard



Examples - VLCC (160,000 GT)



Examples - AHTS (3,000 GT)



Implications with regard to bunker spills

Bunker Convention

- limitation linked to LLMC 76 and '96 Protocol
- feeling increased limits not sufficient
- future pressure to lift limits

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Standard London Class

David Williams
Underwriter

Contents

- Standard London Class, an introduction
- class overview
- key statistics
- summary

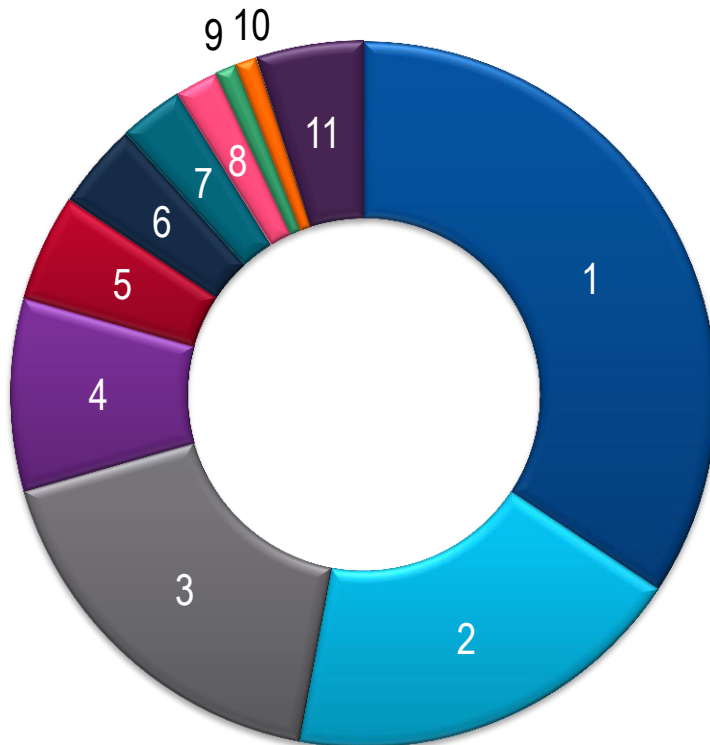
Standard London Class, an introduction

- dedicated small craft facility
 - below 5000 gt
 - ‘European’ managed
- formation
- membership

Class overview

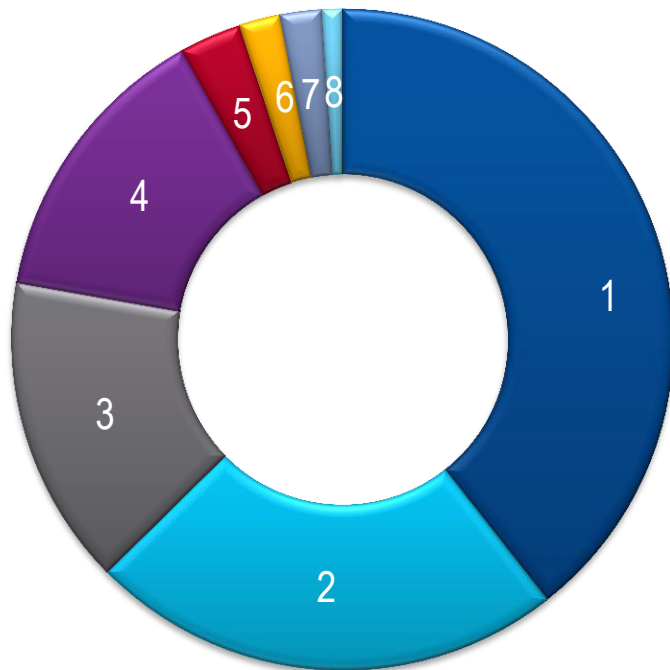
- London Class business:
 - current tonnage insured: 3.06m gt
 - 2013/14 premium income: €13.6m
 - free reserves: 20 February 2013 forecast, unaudited €18.85m

Country of management by owned tonnage



1	Russia	35%
2	The Netherlands	19%
3	Germany	18%
4	Turkey	9%
5	Hungary	4%
6	Belgium	4%
7	Slovakia	3%
8	Baltic States	1%
9	United Kingdom	1%
10	Italy	1%
11	Rest of Europe	5%

Ship type entered, owned tonnage



1	Short sea – dry	39%
2	Dry barge	24%
3	Tank barge	15%
4	Short sea – wet	14%
5	Tugs, pushboats	3%
6	Passenger	2%
7	Work	2%
8	Specialist	1%

Summary

London class

- experience
- dedicated underwriting /claims team
- flexible approach

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International Group of P&I Clubs

Current and future issues for the International Group and Clubs

www.igpandi.org

The International Group

Current and future issues and challenges include:

- Increased claims severity
- Reinsurance pricing and capacity
- Competition (Anti-trust) legislation and regulations
- Piracy
- Sanctions measures impacting on insurance cover
- Increased regulatory compliance – financial guarantees
- Cargo liquefaction
- Chinese Spill Response requirements (SPROs)
- Increasingly stringent solvency/regulatory compliance requirements



The International Group

Increased claims severity

- Large claims becoming significantly more expensive
- Very significant escalation in ROW costs
- Very significant escalation in SCOPIC costs
- Cost drivers predominantly fortuitous
- Advances in technology will increase ROW and removal of bunkers burden on clubs







The International Group



The International Group



The International Group

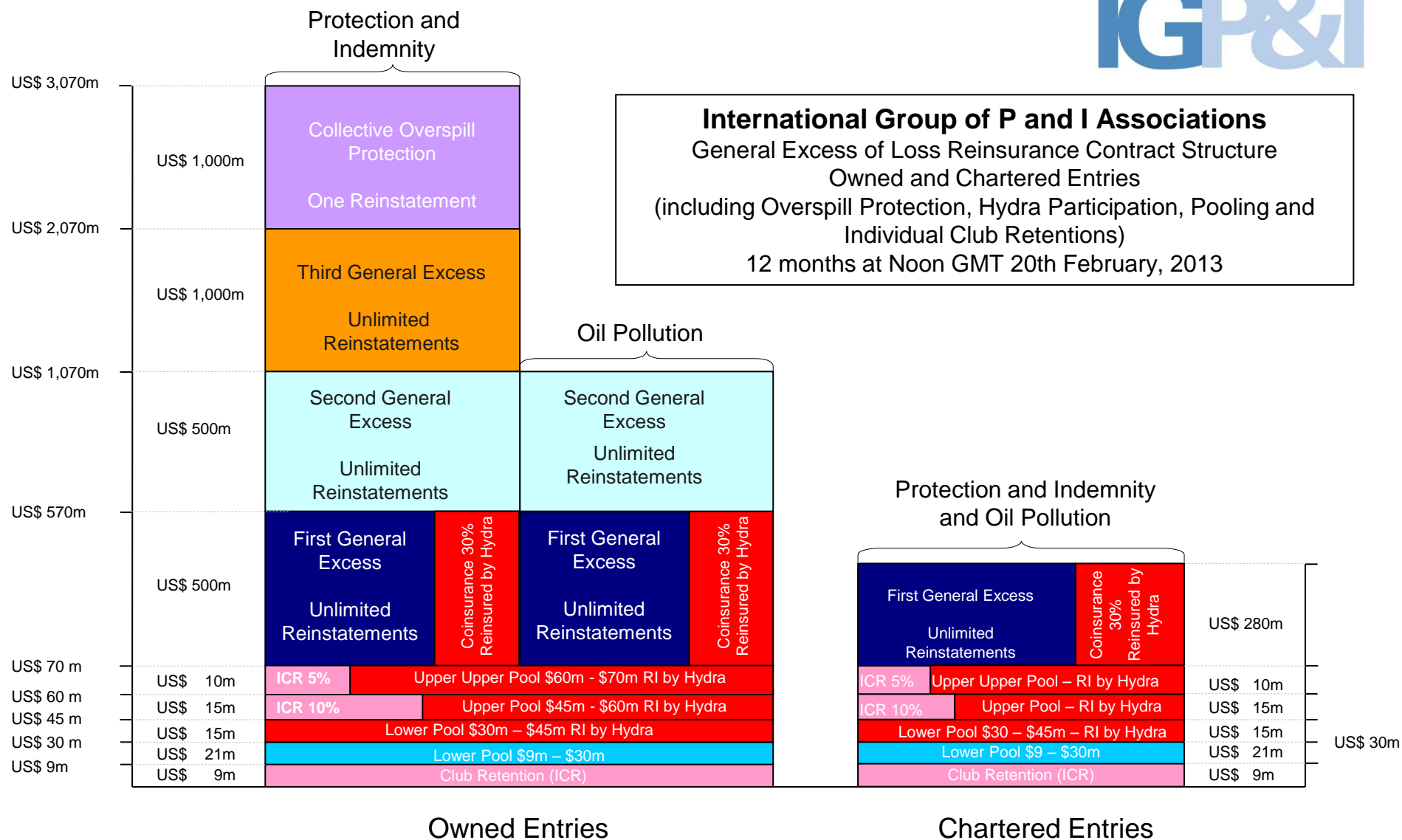


The International Group

Reinsurance Capacity/Security/Pricing

- Over 90 participating reinsurers worldwide
- Security guidelines limit participation per layer and overall
- Minimum credit rating agency requirements for participants A- stable
- ROW impact on reinsurer's appetite/terms
- Sanctions impact on reinsurers ability to pay
- Potential “knock-on” capacity/pricing issues following major non-marine events





The International Group

EU competition regulations

- Two ten year exemptions granted 1985 and 1999
- New EC investigation announced August 2010
- No specific complaint/s – could the system be improved
- Focus on quotation procedures/release calls/reinsurance
- Investigation closed August 2012
- Ever present threat of a new challenge



The International Group

Piracy

- Continuing problem in GoA/HoA/Indian Ocean
- Escalation in West Africa
- Usual P&I risks arising from piracy incidents covered
- Ransom not covered
- Increasing support for use of armed guards
- Coordination with industry and governments on Best Maritime Practices



Sanctions

- Increasing US/EU regulatory focus on sanctions measures prohibiting finance and insurance arrangements.
- Latest EU measures target oil/petrochemical exports from Iran and prohibit trade by EU shipowners and insurance cover for both EU and non-EU shipowners
- Very significant impact on shipowners and insurers and unlikely to abate
- In the context of P&I cover, significant risk of unintended collateral damage to third parties

The International Group

Increased regulatory compliance – financial guarantees:

Entry into force of the 2002 Athens Protocol on 23 April 2014

- Increased limits of liability and financial security
- Shipowner liability limit for death/ PI 250,000 SDR per passenger (approx US\$ 380,000) or 400,000 SDR (approx US\$ 608,000) where fault or neglect involved
- Contracting States at 31.07.13: Albania, Belgium, Belize, Denmark, Latvia, Netherlands, Palau, St Kitts and Nevis, Serbia, Syria.
- Read across with existing EU law – PLR



The International Group

Increased regulatory compliance – financial guarantees:

Entry into force of the 2007 Nairobi Wreck Removal Convention:

- 8 Contracting States at 31.07.13: UK, Germany, India, Bulgaria, Iran, Morocco, Nigeria, Palau.
- 10 States required to trigger 12 month entry into force period
- Compensation based on applicable national or international regime e.g. LLMC (but note LLMC opt out for wreck removal claims)
- Unlimited liability in some jurisdictions
- Financial guarantees. Significantly increased administrative burden; 100,000 blue cards to be issued each year?



Cargo liquefaction

- Concerns re carriage of Iron ore fines (IOF) Industry co-operation with IOF mining interests
- New IMSBC Code IOF schedule to be agreed
- IMO DSC 18 meeting
- Concerns re carriage of nickel ore cargoes from Indonesia
- Recent losses



Chinese Spill Response Requirements

- Requirements to have a contract with a China MSA approved Spill Response Organisation (SPRO)
- Apply to nearly every ship entering a Chinese port, since 1 January 2013
- Approx. 100 approved SPROs
- IG contract wording
- SPRO tariffs reviewed by ITOPF



The International Group

Solvency/regulatory compliance requirements:

- Solvency II
- Other national solvency / capital requirements regulation
- National regulation of foreign insurers
e.g. Canada, Australia, New Zealand and China
- All clubs affected but requirements vary



International Group of P&I Clubs

www.igpandi.org

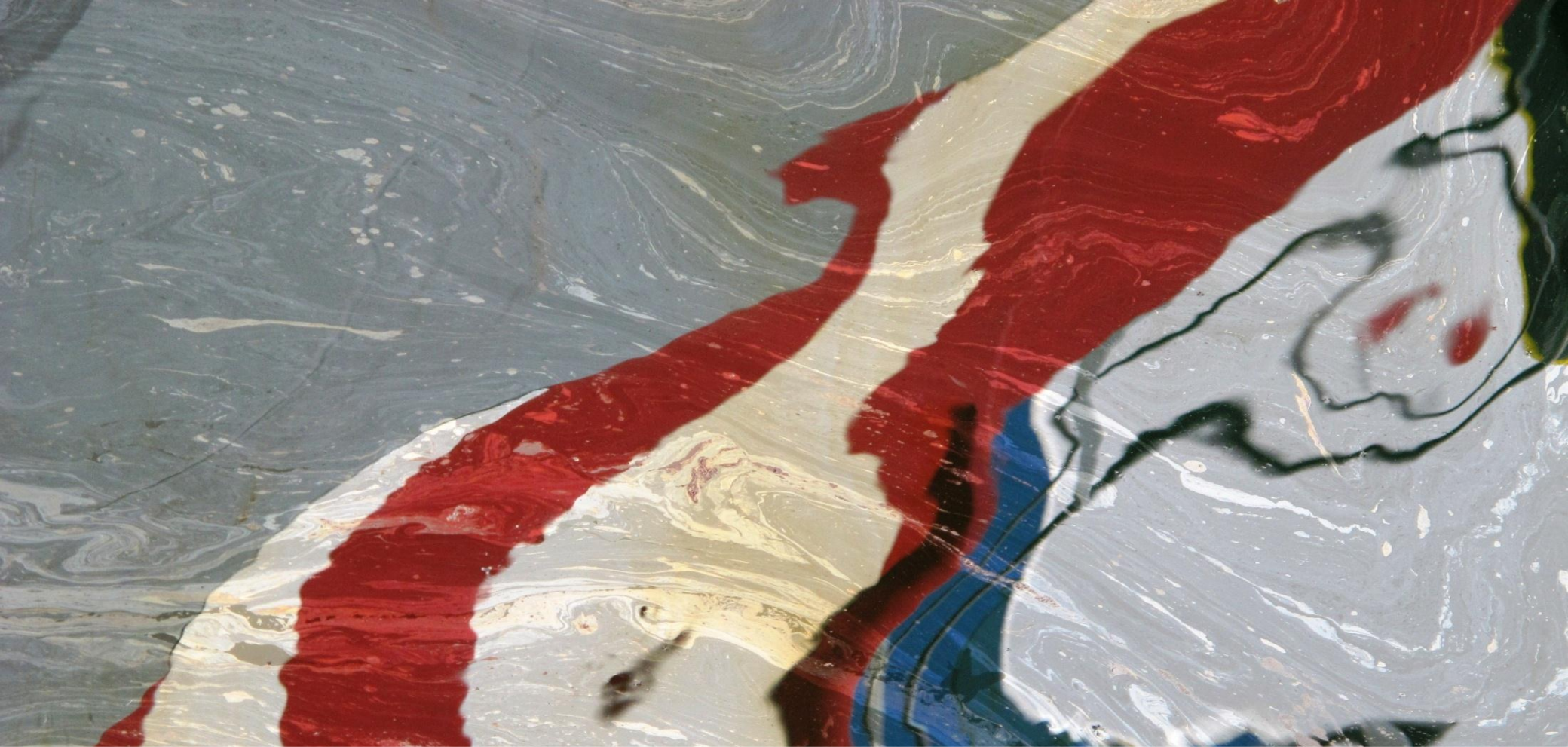
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THE ROLE OF ITOPF

STANDARD CLUB, LONDON, 3RD OCTOBER 2013

Henk Renken, Technical Adviser



- ITOPF established in 1968 as a not-for-profit organisation
- Primarily funded by the shipping industry (via P&I Clubs)
- Main role: impartial advice on marine spills of oil and HNS
- Based in London but provides a global service





- Teekay Corporation (Chair)
- ITOPF Ltd.
- Vela International Marine Ltd
- Transpetro
- Seagroup Inc
- Thomas Miller P&I Ltd
- BW Maritime Pte Ltd
- Sovcomflot
- Triandros Corporation
- Assuranceforeningen Skuld
- ExxonMobil Global Mar Trans
- Japan Shipowners' Mutual P&I
- Valles Steamship Company Ltd
- Shell Int Trading & Shipping Co
- Keystone Shipping Co
- Stolt-Nielsen Trans Group BV
- NYK Line
- BP Shipping Ltd
- Reederei F Laeisz GmbH
- A P Møller - Maersk A/S
- Nippon Oil Tanker Corporation
- Stena Bulk AB
- Chevron Shipping Company
- Steamship Ins Mgt Services Ltd

- 6,307 Tanker owners and bareboat charterers
- Approx. 10,900 tankers, barges & combination carriers (~338 million GT)
- > 97% of the world's bulk oil, chemical and gas carrier tonnage



- Owners of other types of ship given associate status since 1999
- 658 million GT of non-tanker shipping (> 90% world fleet)





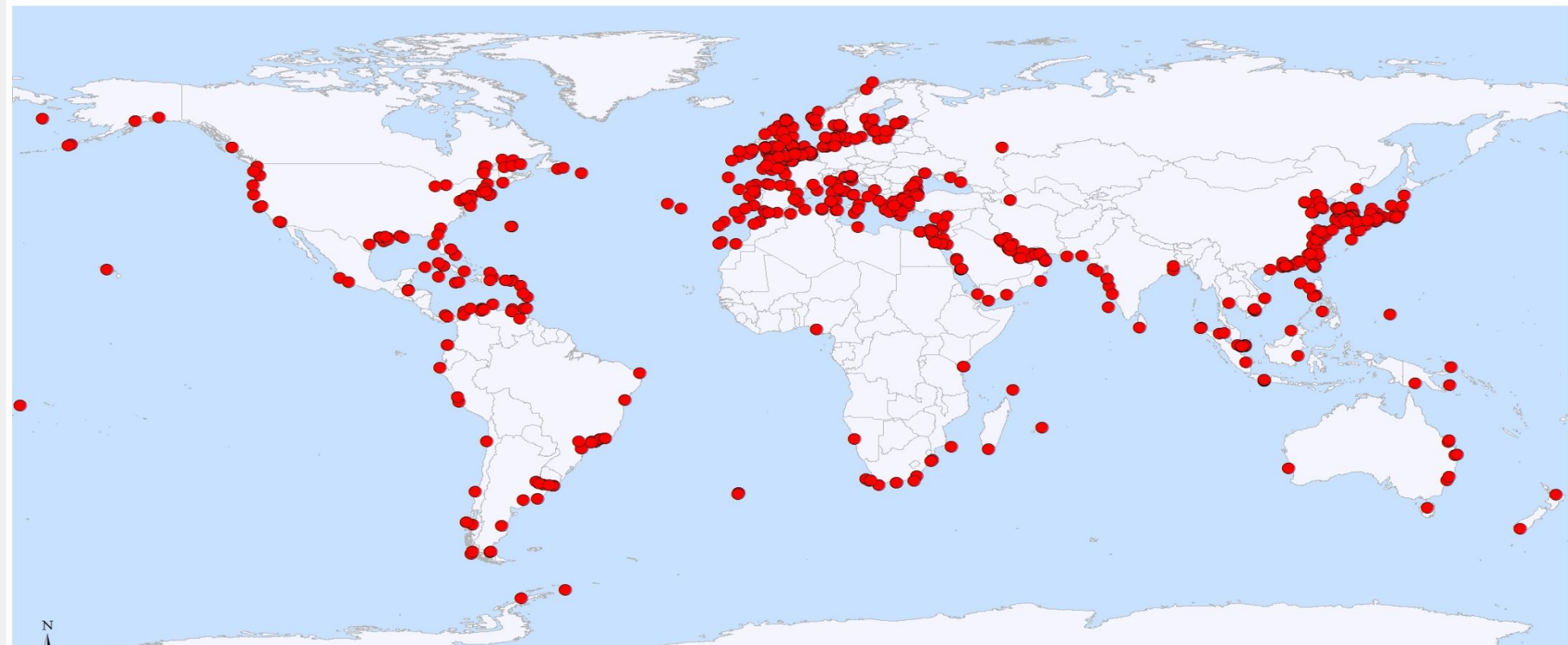
MEMBER DUES = $0.57 \text{ p.GT}^{-1} \equiv 40\%$



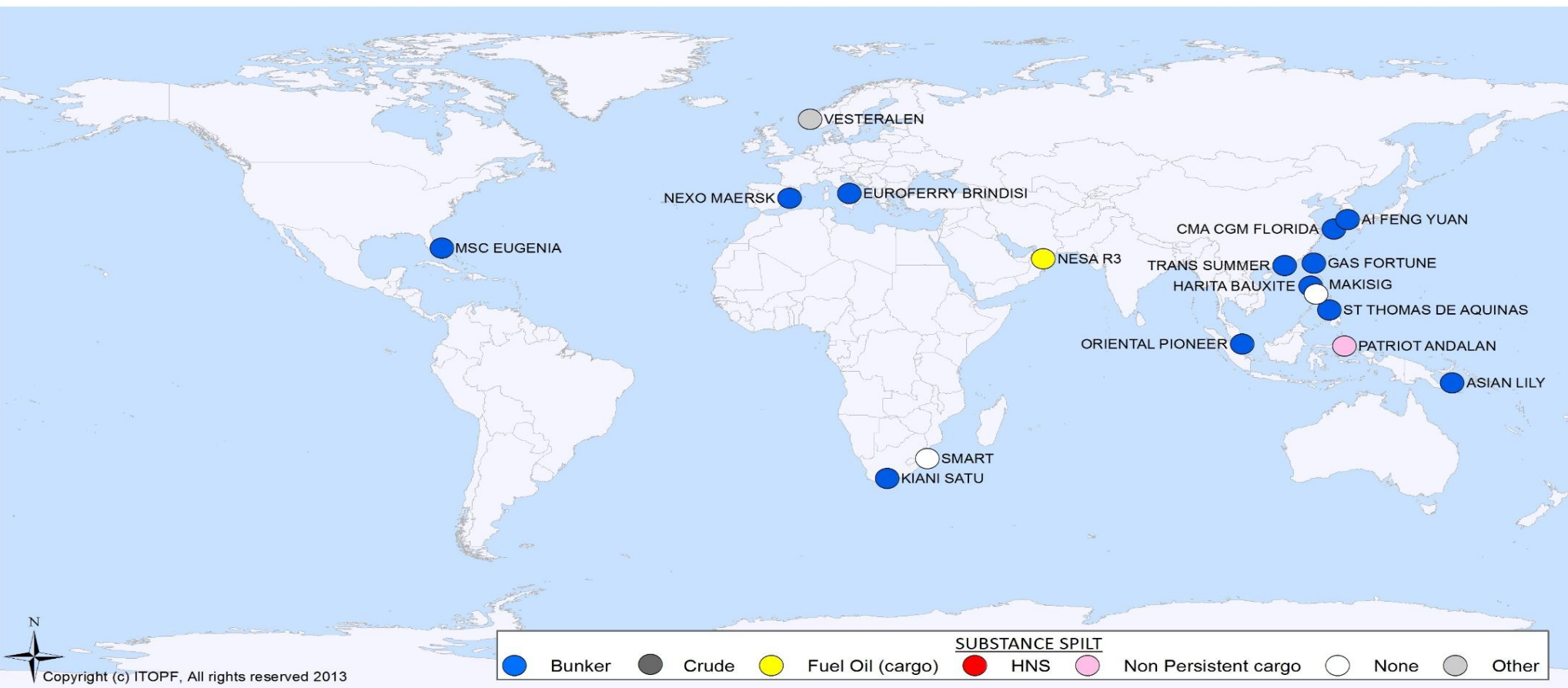
ASSOCIATE DUES = $0.41 \text{ p.GT}^{-1} \equiv 60\%$



699 incidents attended in 97 countries

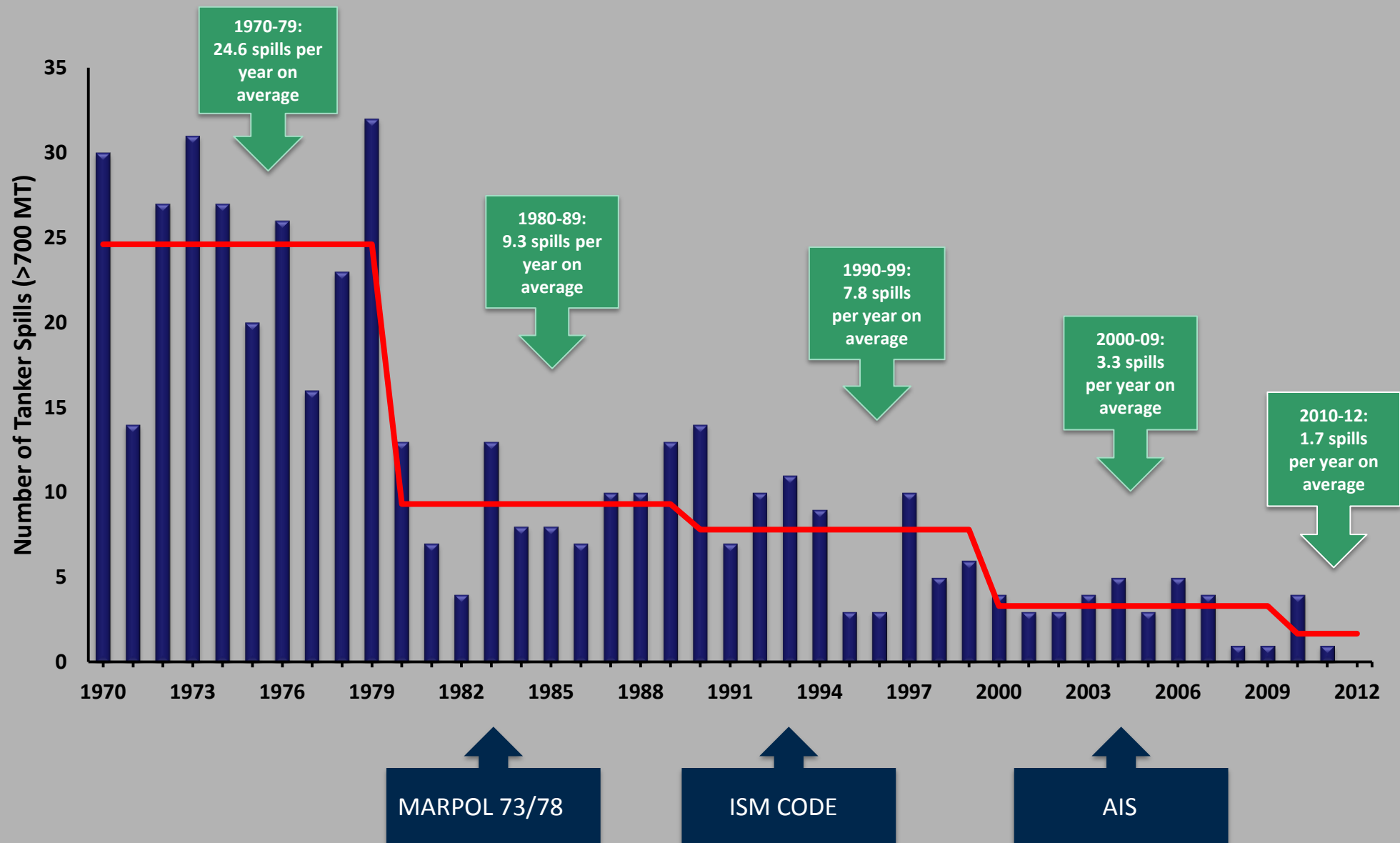


32 Staff with 14 technical advisers
Worldwide network of contacts
In-house technical library and databases

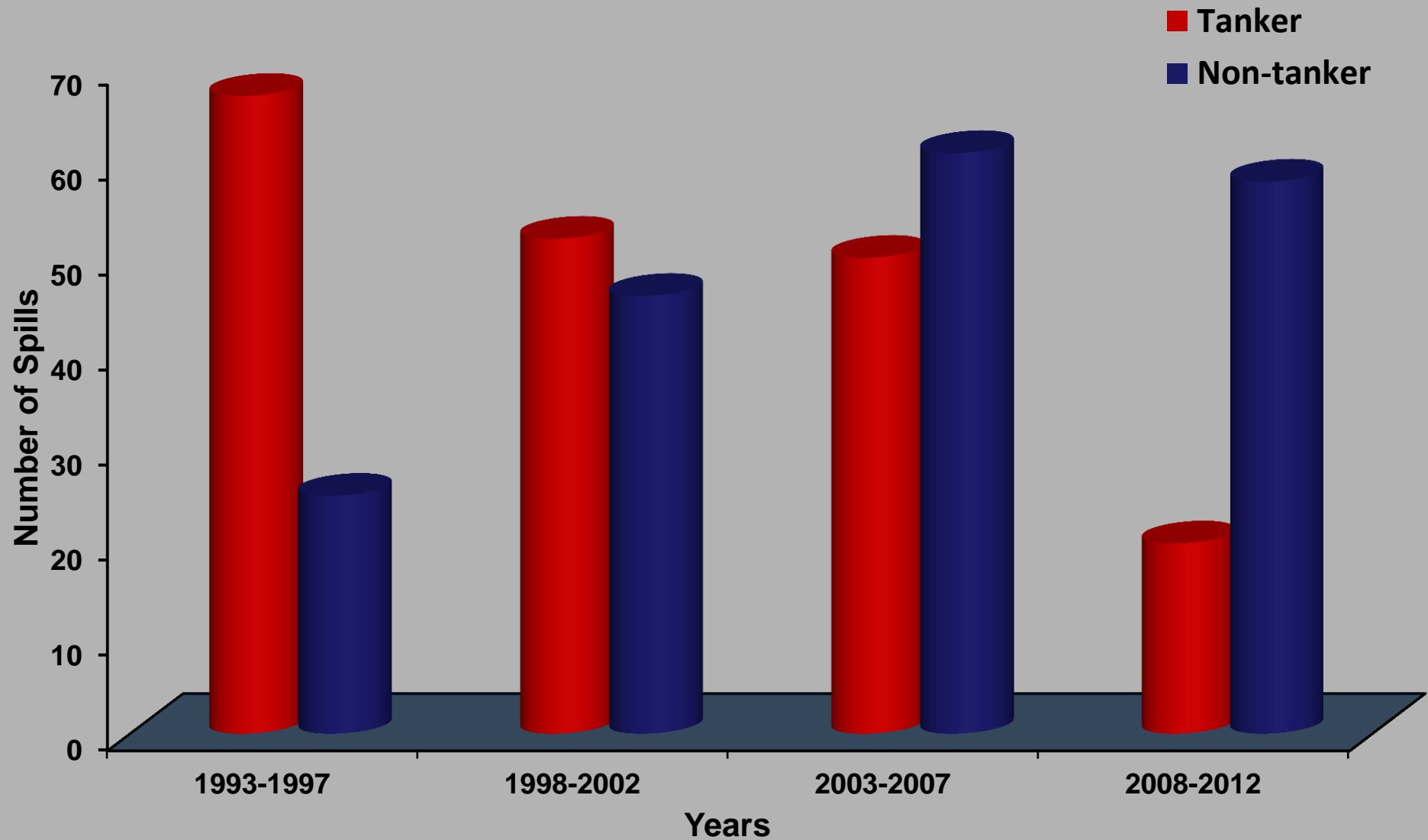


• **17 INCIDENTS**

GLOBAL TRENDS: MAJOR TANKER SPILLS



TANKER VS NON TANKER SPILLS



YEAR	VESSEL NAME	COUNTRY
2000	IEVOLI SUN	France
2001	NORMA	Brazil
2002	JOLLY RUBINO	South Africa
2002	ACCORD	China
2003	FU SHAN HAI	Denmark
2003	TASMAN SPIRIT	Pakistan
2004	BOW MARINER	USA
2004	VICUNA	Brazil
2005	KASCO	Vietnam
2005	GG CHEMIST	China
2005	SAMHO BROTHER	Taiwan
2006	ECE	France
2006	EASLINE TIANJIN	South Korea
2006	KEW BRIDGE	India
2007	GOLDEN SKY	Latvia
2007	MSC NAPOLI	United Kingdom
2007	HUI RONG	China
2007	EASTERN BRIGHT	South Korea
2009	PACIFIC ADVENTURER	Australia
2010	MSC CHITRA	India
2010	YM URANUS	France
2011	HALDOZ	Spain
2012	STOLT VALOR	Saudi Arabia
2012	BUNGA ALPINIA	Malaysia



VICUNA – BRAZIL (NOV 2004)



MSC CHITRA – INDIA (AUG 2010)

• **24 incidents attended since 2000**



- Role varies depending on the requirements and preparedness
- Provide technical advice to government, responders & victims
- Promote effective response, joint assessments & co-operation
- Monitor spill response & investigate damage to resources
- Arrange additional expertise & equipment to be brought in



- **18 INCIDENTS**



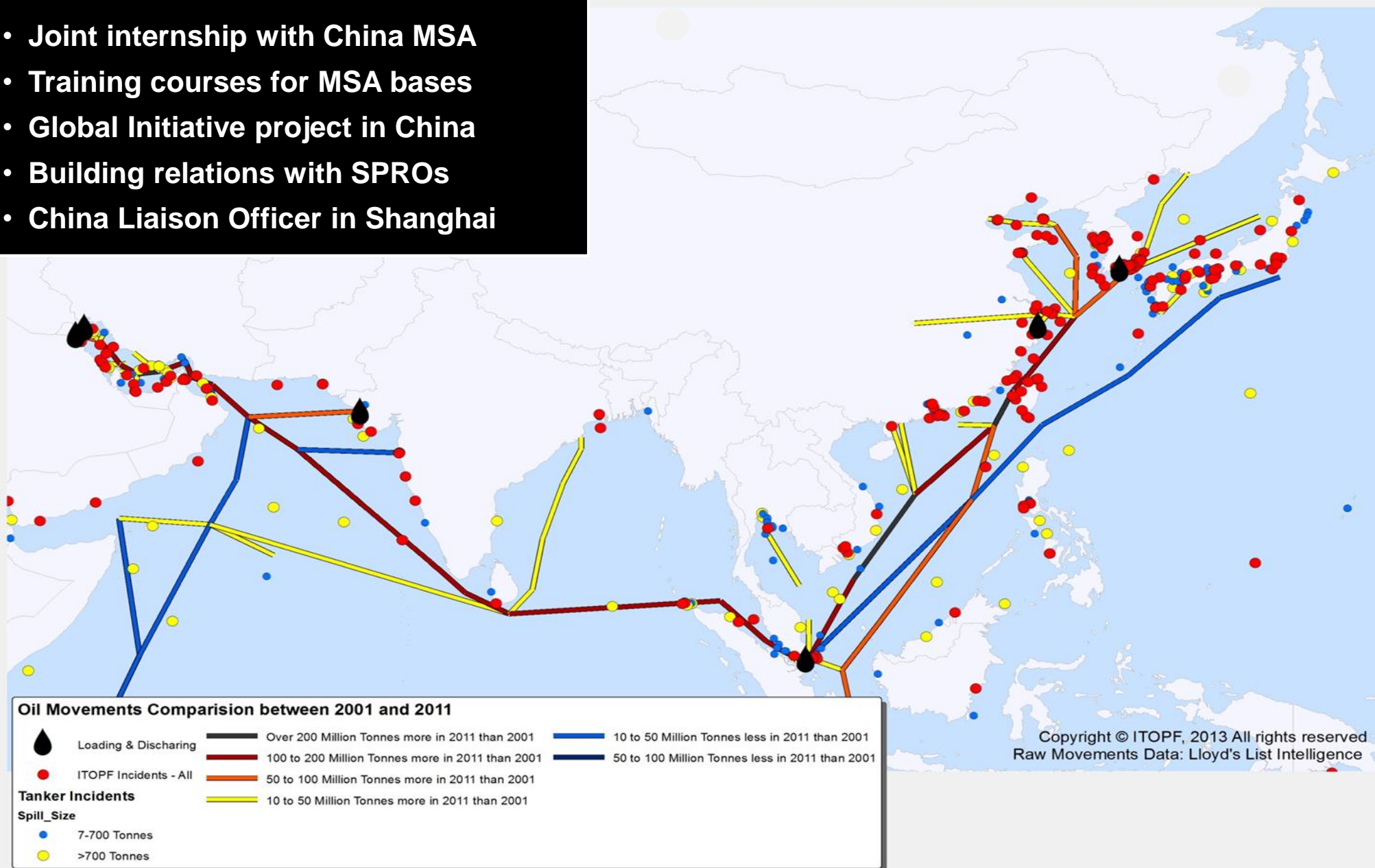
- 18 INCIDENTS



OVERALL AIM OF ITOPF? ... TO PROMOTE EFFECTIVE SPILL RESPONSE

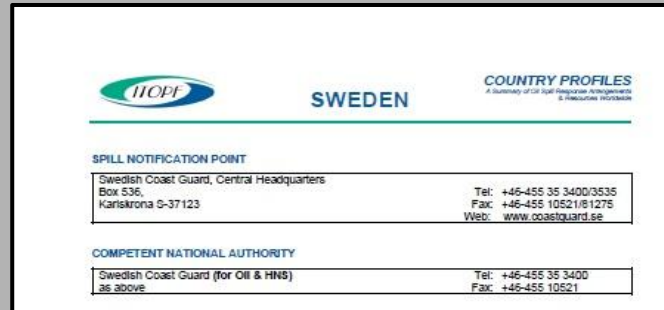
- Advise governments & industry on contingency planning
- Organise and participate in training courses, seminars & workshops
- Assist government and industry with oil spill exercises and drills
- Technical discussions with IMO, IOPC fund and Industry Groups

- Joint internship with China MSA
- Training courses for MSA bases
- Global Initiative project in China
- Building relations with SPROs
- China Liaison Officer in Shanghai





- Increased risk of spills in the Arctic due to increased traffic along NSR (10x in 2 yrs)
- Spill response is very challenging in Arctic waters (tracking, techniques & logistics)
- ITOPF is official adviser to the Arctic Council 'Task Force' on oil spill response issues
- Internal ITOPF Arctic Response Working Group advises P&I Clubs & members



ENTS
d (SCG), an independent civil authority un
dealing with spills of oil and other harmful su
ware lakes.

25 stations along the coastline, divided into
operational command is undertaken by the
and may be assumed by Central Headqu

shorelines, municipal harbours and some pri
(SRV). This is delegated to the relevant
g clean-up. In major incidents, a respon
response or affected authorities. Coordin
tact between the relevant Commanders.

veloped a national contingency plan and the
ases.

mechanical recovery methods. The use of dis
from the Swedish Coast Guard would be re

has a sizeable fleet of oil recovery vessel
sa. Additional resources comprising booms
distributed amongst 6 coastal sites. The Co
role sensors. Sweden does not maintain
old any dispersant stockpiles.



- Website and WebGIS - www.itopf.com
- ITOPF publications
- Country Profiles
- Databases with spill statistics
- Comprehensive technical library



THANK YOU

STANDARD CLUB, LONDON, 3RD OCTOBER 2013

Henk Renken, Technical Adviser



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**STANDARD CLUB
MEMBER TRAINING EVENT
OCTOBER 2013**

**POLLUTION UPDATE –
CURRENT LEGAL ISSUES**

Colin de la Rue

**BUNKER POLLUTION
and
LIMITATION OF LIABILITY**

New Carissa



Selendang Ayu





Cosco Busan

International Convention on Civil Liability for Pollution from Ships' Bunkers 2001

- Similarities to international tanker regime:
 - Strict liability regime
 - Compulsory insurance and certification
 - Limitation

Bunkers Convention

Main features

- Differences:
 - Linkage to 1976 Limitation Convention
 - No second-tier fund
 - Political problems where claims are capped

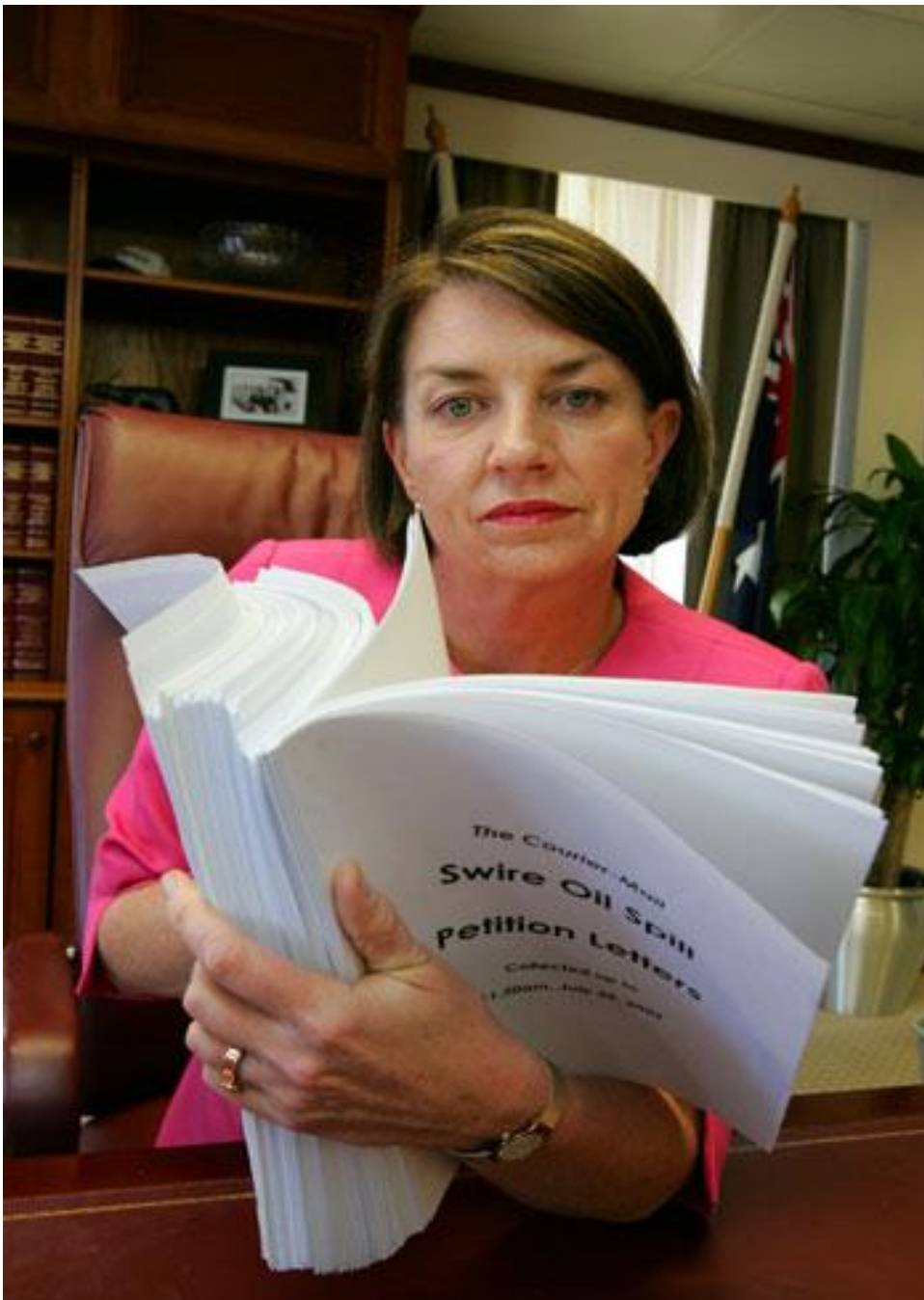
Pacific Adventurer





**Owners' right
of limitation
not disputed**

**Political
pressure on
Owners
from
State and Federal
Governments**





**Substantial extra amounts
paid into charitable trust**



Limitation Convention

Liability limits

Panamax 35,000 gt

1976: US\$9m

1996: US\$21m

2015: US\$32m

Limitation Convention

Liability limits

Panamax 35,000 gt

1976: US\$9m

1996: US\$21m

2015: US\$32m

Capesize 160,000 gt

1976: US\$27m

1996: US\$65m

2015: US\$98m

Full City



Norwegian Maritime Code



Bunker pollution clean-up equated with wreck removal



Limitation Convention

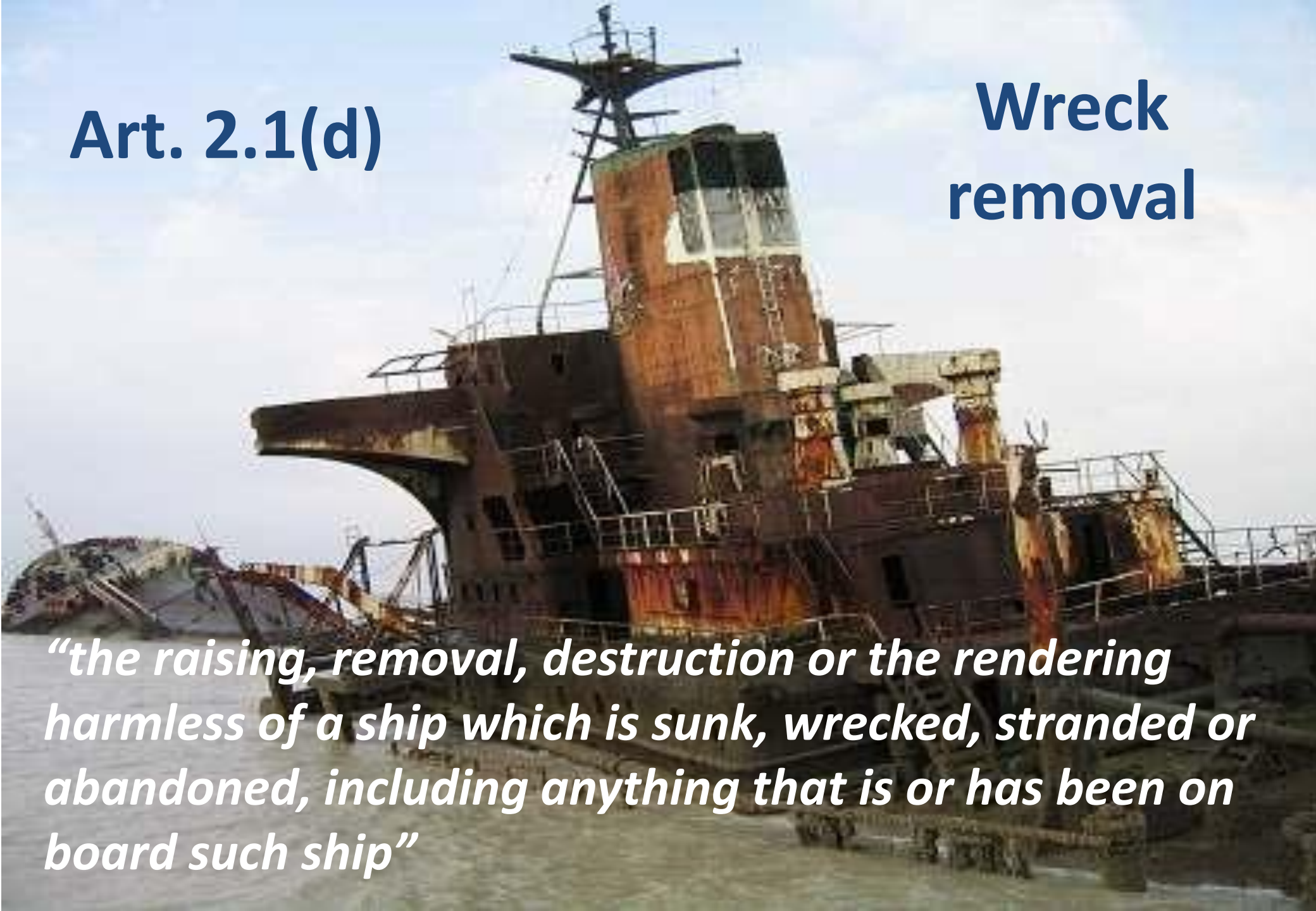
Application to bunker pollution

- Limitation only for claims listed
in Art. 2.1
- No express reference to pollution
- Link with wreck removal

Art. 2.1(d)

**Wreck
removal**

“the raising, removal, destruction or the rendering harmless of a ship which is sunk, wrecked, stranded or abandoned, including anything that is or has been on board such ship”



Limitation Convention

Application to bunker pollution

- Wide interpretation of “property damage” in Art. 2.1(a) –
 - *Aegean Sea* (UK)
 - *APL Sydney* (Australia)
- UK legislation

Limitation Convention

Application to bunker pollution

- Intent of 2001 Conference
- All bunker pollution limitable under LLMC
- Point should be clarified when implementing increases in limits

MARPOL ANNEX V

Disposal of cargo residues

MARPOL

- **International Convention for the Prevention of Pollution from Ships**
- **MARPOL 73/78**

MARPOL

- **Annex I – Oil pollution**
- **Annex II – Noxious liquid substances in bulk**
- **Annex III – Harmful substances carried in packaged form**

MARPOL

- **Annex IV – Sewage from ships**
- **Annex V – Garbage from ships**
- **Annex VI – Air pollution**



ANNEX V

MARPOL

REVISED

Annex V





**Discharge of oily wastes under
MARPOL Annex I**

Oil and petroleum products



Petcoke



A large, curved metal structure, likely the hull of a ship, is being cleaned with high-pressure water. A powerful jet of water is directed at the curved surface, creating a large spray of water droplets. The structure is made of dark, weathered metal with visible rivets and seams. The background is a bright, overexposed area, possibly the sky or a large opening in the ship's structure. The overall scene is industrial and dynamic.

**Hold
washings
from
dry
bulk
cargoes**

SANCTIONS and POLLUTION



IRAN SANCTIONS





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Non-Pool cover

Ian Billington
Offshore Underwriter

- how the club provide non-pool cover
- categories of non-pool risk
- understanding contractual liabilities extension

How the club provides non-pool cover

Standard Club provides protection for non-poolable risks as:

- extension to a pool entry “pool plus” or
- under separate set of rules SOR.

Club arranges a separate reinsurance programme for these risks.

All non-poolable risks are written with specified limits of cover – maximum USD 1bn



Categories of non-pool risk

1. specialist nature of vessel and its operations,
2. contractual arrangement under which vessel is engaged,
3. combination of vessel type and contractual terms,
4. breaches of poolable practice,
5. insured peril falls outside of the terms of P&I cover

Pool cover exclusion – specialist operations

Exclusion 5.11 - Liabilities incurred during the course of performing specialist operations including but not limited to:

- dredging, blasting, pile-driving, well stimulation,
- cable or pipe laying, construction, installation or maintenance work,
- core sampling, depositing of soil,
- professional oil spill response or professional oil spill response training



Offshore extensions – specialist operations

Buyback 1 reinstates cover excluded under 5.11 to an agreed limit.

Still excludes liabilities arising as a consequence of:

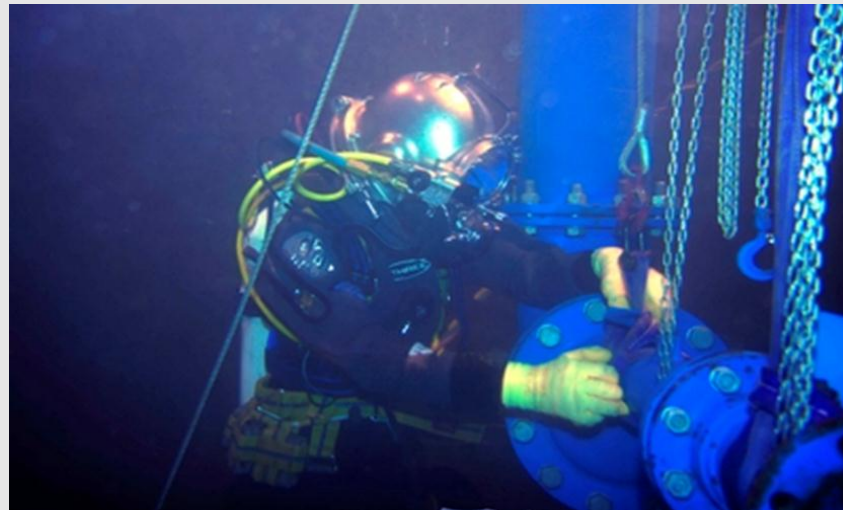
- failure to perform or fitness for purpose or quality of member's work,
- loss of or damage to contract works

Pool Plus	Offshore extensions 1. Specialist Operations	Extended contractual liabilities - offshore	Other non-pool risks
------------------	--	--	----------------------

Pool cover exclusion – submarines and divers

Exclusion 5.14 - Liabilities arising out of:

- operation by the member of submarines, mini submarines, diving bells, or
- activities of professional or commercial divers where the member is responsible for such activities



Offshore extensions - submarines and divers

Submarines

Underwater vehicle extension reinstates P&I cover, to an agreed limit, for claims arising out of operation of underwater vehicles.

Divers

Extension covers liabilities arising out of the activities of professional or commercial divers.

- excludes injury, illness or death of divers where the member's liability arises under a contract and would not have arisen in the absence of such contract

Pool Plus	Offshore extensions	Extended contractual liabilities – offshore	Other non-pool risks
	<ol style="list-style-type: none"> 1. Specialist Operations 2. Underwater vehicles 3. Divers 		

Extended contractual liabilities – removal of wreck

Risks covered clause 3.11 covers liabilities for or incidental to removal of wreck of ship.

Exclusion 3.11(2) adds qualification no recovery unless removal was compulsory by law.

Offshore contracts may impose requirement for wrecks to be removed when interfering with operations. Only covered as a contractual liability extension.

Pool Plus	Offshore extensions 1. Specialist Operations 2. Underwater vehicles 3. Divers	Extended contractual liabilities – offshore Examples: Removal of wreck	Other non-pool risks
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Extended contractual liabilities – heavy lift ships

Exclusion 5.13

Excludes loss of or damage to or wreck removal of cargo carried on a semisubmersible heavy lift ship or other ship designed exclusively for the carriage of heavy lift cargoes, save to the extent that such cargo is being carried under the terms of a contract on Heavycon terms



Extended contractual liabilities – heavy lift ships

Contractual liability extension reinstates cover under terms of entry.

- If entry excludes cargo liability so does contractual extension
- vessels in specialist operations mode require specialist ops buyback
- specialist operations contract works exclusion paramount

Pool Plus	Offshore extensions 1. Specialist Operations 2. Underwater vehicles 3. Divers	Extended contractual liabilities – offshore Examples: Removal of wreck Heavy lift terms	Other non-pool risks
------------------	--	---	----------------------

Extended contractual liabilities – offshore towage

Risks covered clause 3.10.2 - Towage by ship

Knock-for-knock terms required

Other arrangements can only be covered contractual liability extension

Pool Plus	Offshore extensions	Extended contractual liabilities – offshore	Other non-pool risks
	<ol style="list-style-type: none">1. Specialist Operations2. Underwater vehicles3. Divers	<p>Examples: Removal of Wreck Heavy lift terms Towage</p>	

Extended contractual liabilities – unbalanced groups

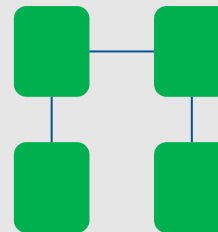
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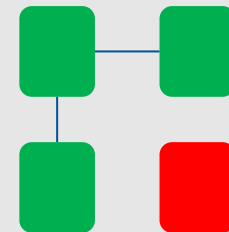
Where acceptable contractual terms are not identified within the rules the benchmark is balanced knock-for-knock .

Non-negligence liabilities outside balanced knock-for-knock are contractual.

Balanced Group



Unbalanced Group



Pool Plus	Offshore extensions 1. Specialist Operations 2. Underwater vehicles 3. Divers	Extended contractual liabilities – offshore Examples: Removal of wreck Heavy lift terms Towage Unbalanced Groups	Other non-pool risks
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Other non-pool risks

Deviation

Charterer's Damage to Hull

Extended Cargo liabilities Through Transport

Salvors

Pool Plus	Offshore extensions 1. Specialist Operations 2. Underwater vehicles 3. Divers	Extended contractual liabilities – offshore Examples: Removal of wreck Heavy lift terms Towage Unbalanced Groups	Other non-pool risks Deviation, DTH, Extended cargo liabilities, Through Transport, Salvors
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“Drilling and Production Operations”

Exclusion 5.12

Absolute exclusion liability arising out of or during drilling or production activities.

Exclusion also applies to accommodation units moored or positioned on site as an integral part of any such operations



Standard Offshore Rules – drilling and production

Drilling and Production units covered under separate rules – Standard Offshore Rules (SOR).

- pollution from the well and cost of control risks are specifically excluded
- cover for all fines is discretionary
- current maximum limits USD 500M for drilling operations USD 1bn for production units

Pool Plus	Offshore extensions 1. Specialist Operations 2. Underwater vehicles 3. Divers	Extended contractual liabilities – offshore Examples: Removal of wreck Heavy lift terms Towage Unbalanced Groups	Other non-pool risks Deviation, DTH, Extended cargo liabilities, Through Transport, Salvors	SOR	Drilling and Production units
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Summary

- consider scope of work/ vessel's operations
- what is the contractual situation
- is extended cover required
- club currently reviews over 550 contracts per year and is here to help you



Member Training

1 – 3 October 2013

London

The Standard



Poolable Risks and Cover

William Robinson
Syndicate Director

Contents

- concept and historical context
- the pooling agreement
- key exclusions
- cover structure

Mutual concept

- risk sharing of similar risks between members
- insurance at cost: claims and expenses = premiums and other revenue
- for IG clubs, also:
 - mutual premium
 - flexible approach to cover (discretion)

- 1719 Bubble Act: virtual monopoly on marine insurance
 - shipowners form mutual associations
- Bubble Act repealed 1824, competition increases...
- 19 century developments
 - 1820's: hull clubs expand cover to include 1/4th collision liability & fixed objects
 - 1846: Fatal Accident Act makes shipowner liable for death/injury
 - 1855: first 'Protection Insurance Club' formed
 - 1870: *Westernhope* casualty: shipowner held liable for cargo losses. Clubs respond to new liability.
 - 1899: first formal pooling agreement between clubs

- 1899 pooling agreement signatories:
 - Britannia, London, Newcastle, UK, Sunderland and Standard
- expanded to the ‘London Group’ and later the ‘International Group’
- since 1999 IGA, the International Group has consisted of 13 principal clubs:
Standard Club and

American	Britannia	Gard	Japan
London	North	Shipowners	Skuld
Steamship	Swedish	UK	West of England

The pooling agreement

- two key documents govern the IG:
 - IGA: the constitution of and framework for the business of the Group, including competition between IG clubs.
 - pooling agreement: the detailed rules and mechanisms for sharing claims among the Group. 2013 pool arrangements address claims above each club's retention (USD 9 million) to upper limit of USD 70 million.
- individual club rules generally reflect key provisions of pooling agreement

Pooling agreement: fundamentals

- key eligibility criteria (clause 3):
 - general requirements and
 - it is not excluded by clause 4 or 5; and
 - the club has paid its retention in respect of the claim
 - NB additional detailed provisions in 3.3 – 3.10.

Excluded risks

Clause 4 / Appendix 4

- war risks
- nuclear risks
- blockade running
- limited liabilitywhere cover has been given by an Association...which exceeds the retention of that Association and is subject to a limit...
- oil pollution risks... where an insured vessel is entered only for the risk of oil pollution...
- sanctions exposure ...any sanction, prohibition or restriction under the United Nations Resolutions or the trade or economic sanctions, laws or regulations of the European Union, United Kingdom or United States of America.

Excluded Losses

Clause 5 / Appendix V

- hull and equipment damage, repairs to the ship
- loss of hire
- salvage of the ship, except
 - life salvage
 - Article 14 / SCOPIC costs
 - GA (but NB detailed provisions)
- charter cancellation
- bad debts
- demurrage
- wilful misconduct
- breach of class/statutory compliance

Pooling agreement appendix 5 cont'd

- contracts and indemnities
- under-insurance
- contracts of carriage
- cargo claims
- specie etc.
- towage (by and of insured vessel)
- specialist operations
- drilling vessels
- waste disposal and sub-sea activities

Appendix 5 continued...

- refugees
- passengers
- non-marine personnel
- salvage operations
- cover for cargo etc.
- pollution charges and general average
- heavy lift
- paperless trading
- fines (specified exceptions e.g customs, immigration, accidental pollution)
- landfills

- *...an insured owner should not assume responsibility, under contract or otherwise, for liability arising or loss resulting from any act or omission for which, under applicable law, the insured owner would not otherwise be liable, or... would otherwise be entitled to exclude or limit liability.*
- effective ‘knock for knock’ agreements poolable
- contracts for services to the insured ship: ‘best endeavours’ regime
- specific exceptions that are poolable:
 - approved helicopter contracts
 - defined Panama canal indemnities
 - STOPIA / TOPIA
- NB non-poolable indemnities to OSRO’s / QI’s, doctors, LNG terminals

- *contracts for carriage by sea on terms less favourable than those of the Hague or Hague Visby Rules...*
- BUT
 - not excluded if the terms of the contract for carriage were mandatory
 - NB through or combined transport guidelines; pure NVOCC not poolable
- *deviation or departure from the contractually agreed voyage or adventure which deprives the insured owner of the right to rely on defences or rights of limitation which would otherwise have been available to him.*
- *misdelivery, delivery without production of bill of lading, ante/post-dated bills of lading, misdescription of cargo with knowledge, failure to arrive/load, ad valorem bills of lading*

- towage by insured vessel:
- ...*liability for loss of or damage to or wreck removal of a vessel or other floating structure towed by an insured vessel or the cargo or other property on such tow... UNLESS*
 - saving or attempting to save life or property at sea
 - is towing under a contract approved by the Association - NB guidelines
- towage of insured vessel. contractual P&I liabilities not poolable unless:
 - customary towage e.g berthing, barges, or
 - LOF / other approved salvage contract, or
 - effective knock for knock regime

- *liabilities, costs and expenses incurred by an insured owner during the course of performing specialist operations*
- BUT loss of life / injury / illness of crew and other personnel, wreck removal, oil pollution remain poolable

- *liabilities, costs and expenses incurred in respect of a drilling vessel or barge or **any other vessel or barge employed to carry out drilling or production operations in connection with oil or gas exploration or production**, including any accommodation unit moored or positioned on site as an integral part of any such operations, to the extent that such liabilities, costs or expenses arise out of or during drilling or production operations.*
- *...the operation by the insured owner of submarines, mini-submarines or diving bells; or ... the activities of professional or commercial divers where the insured owner is responsible for such activities...*

Passengers & non-marine personnel

- cruise credits and similar passenger liabilities **unless** arising from collision, stranding, explosion, fire or similar or 'causing a threat to the life, health or safety of passengers
- passenger liabilities arising:
 - on a shore excursion where a separate contract was entered into by the passenger or where the member has waived his recourse against a sub-contractor
 - during carriage of passengers by air. NB exclusion does not apply to repatriation of injured / sick passengers or post-casualty.
- non-crew on accommodation units, unless under approved contractual risk allocation
- liabilities to guests, visitors and catering crew for permanently moored hotel and restaurant boats.

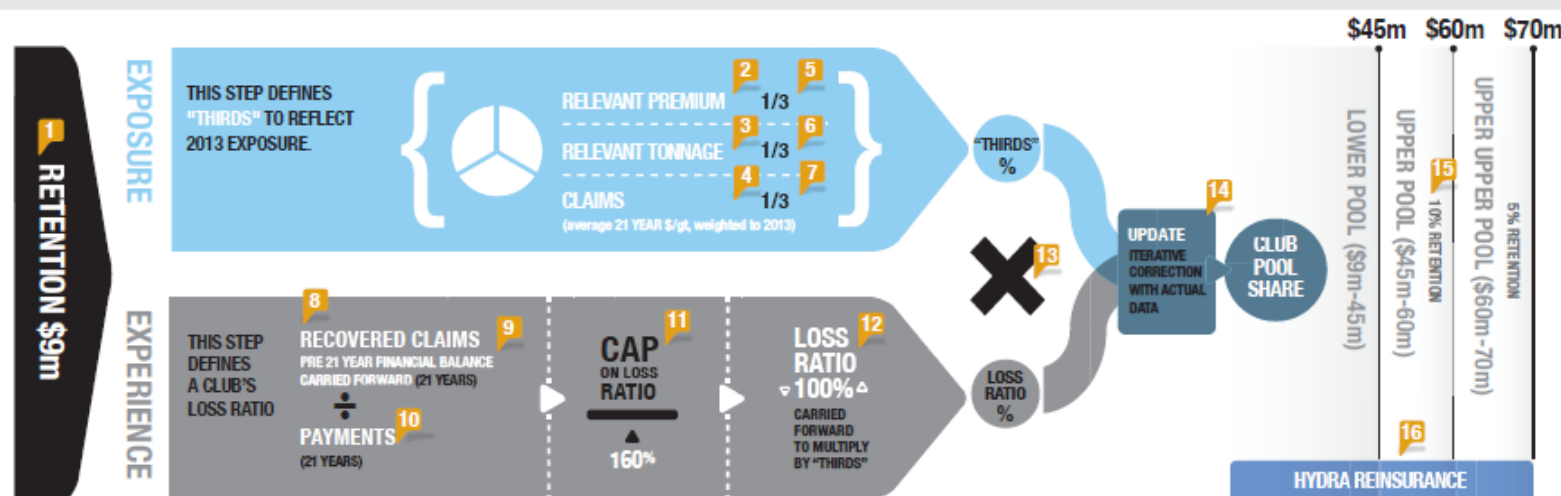
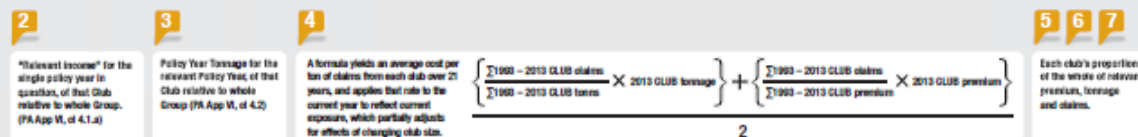
Salvage operations & heavy lift

- *liabilities, costs and expenses arising out of salvage operations conducted by an insured vessel or provided by an insured owner...*
- *loss of or damage to or wreck removal of cargo carried on a semi-submersible heavy lift vessel or any other vessel designed exclusively for the carriage of heavy lift cargo, save to the extent that such cargo is being carried under the terms of a contract on HEAVYCON terms or any other terms approved...*

Cover structure

2013 International Group Policy Year Pool

2013 POLICY YEAR POOL



- 8** Numerator: The sum of a club's recoveries from other clubs since 1993 (21 years for 2013 PY). Note: Pre-2013 used all losses from 1970 cumulatively, resulting in totals so great that one year's additional data has reduced effect on the Loss Ratio.
- 9** The numerator also carries forward any pre-21 year USD balance as the past is not entirely forgotten. Reflected so the loss years beyond 21 would not abruptly alter a loss record.
- 10** Denominator: The sum of payments to other clubs since 1993 (21 years for 2013 PY).
- 11** Cap on LR of 160%. Adjusted Pool Loss Ratio, after cap, relative to 100% (Pool Schedule 1 to App VI).
- 13** Example: 5.25% "ThirDS" multiplied by 10% Loss Ratio (110%) = 5.775% Pool Share.
Example B: 8% "ThirDS" multiplied by 90% loss ratio = 7.2% Pool Share.
- 14** Iterative process of a 1st, 2nd and Final Pool allocation calculations to take into account final tonnage, premium and updated claims information. The Final Pool percentages are set 42 months after the end of a policy year and approved by the HSC.
- 15** A claiming Club bears a retention of 10% of any claim between \$45 - \$90 m, and 5% between \$90 - \$70 m.
- 16** Hydra Reinsurance of Lower Pool, Upper Pool and Upper Upper Pool 1. \$45m to \$90m, composed of \$15m of Lower Pool, \$13.5m of Upper Pool and \$16.5m of Upper Upper Pool.
2. Funding basis: Weighted Tonnage Premium, WTP, which is ship type \$/gt as per Excess of Loss contract. WTP = WTP less laid up returns.
3. Claims settlement is based on club's Pool share.
4. Variance between Funding basis and Settlement basis can leave Hydra cells in deficit.

CALCULATIONS BY INTERNATIONAL GROUP DATA COLLECTION APPORTIONMENT CALCULATION ENGINE (ACE) OPERATED BY THE IG SECRETARIAT

24 JANUARY 2013, CBROWN

- poolable cover extremely wide and flexible
- specific criteria for certain P&I risks
- certain excluded P&I losses, many capable of coverage outside the pool
- involve the club early in contract negotiation process or when considering non-routine activities to ensure the P&I implications are clear and the solution found!

We are here to help.

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