

Claims procedures for HNS: How they might work



IOPC Funds



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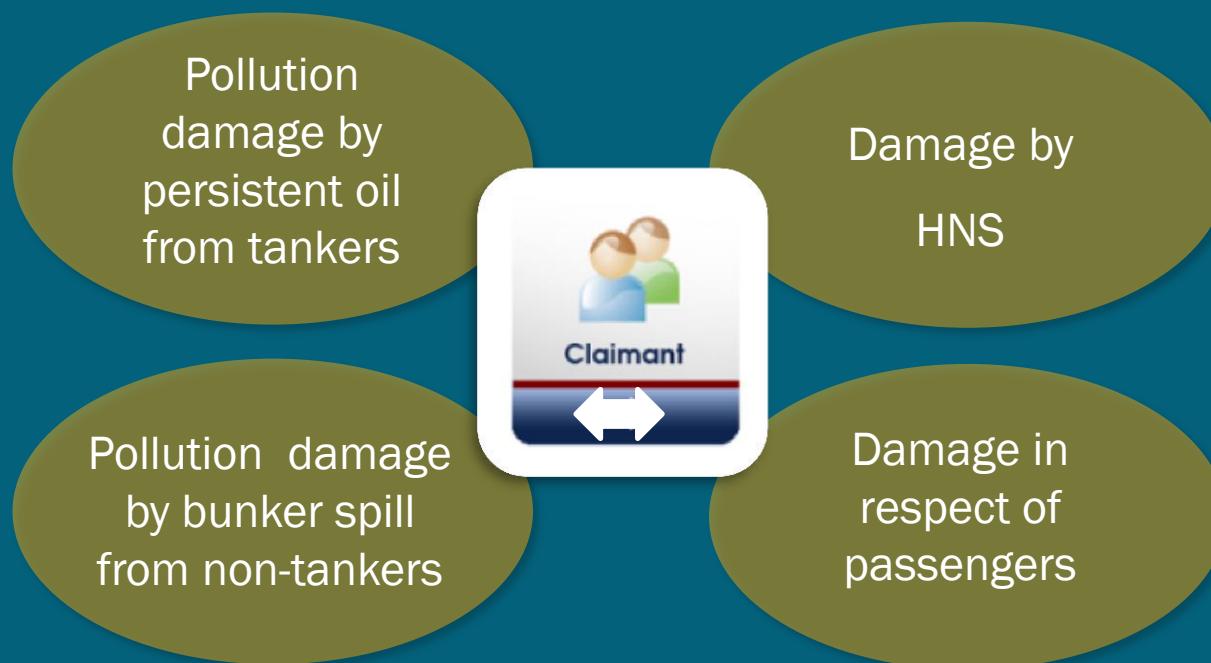
International Oil Pollution Compensation Funds

HNS vs other maritime claims

Will all aspects be covered?



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Maritime conventions for compensation

Which Convention applies?



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- Civil Liability Convention 1992
- Fund Convention 1992 & Supplementary Fund 2003
- Limitation of Liability for Maritime Claims Convention 1976 / 1996
- Athens Convention (Passengers and Luggage) 1974
- Bunkers Convention 2001
- HNS Convention 2010 (not in force)



Protection afforded

Which damage covered by which convention?



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CLC and Fund (1992)

pollution damage from persistent oils from tankers

Bunkers (2001)

pollution damage from fuel and lubricating oils

Athens (1974)

damage suffered by passengers carried on a seagoing vessels

LLMC (1996)

General ship-sourced damage on property and personal injury

HNS (2010)

All damage resulting from the HNS nature of substances listed



Scenario 1

HNS Convention only



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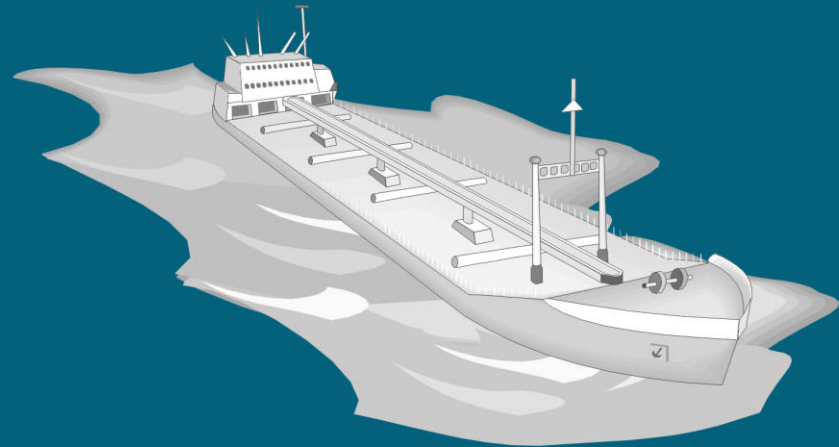
Chemical tanker (15 000 GT) with cargo of benzene ruptures tank during berthing. Some immediate deaths amongst caged fish in port area and possible long term effects to mariculture and human health.

HNS Convention

Shipowner	29.5	million SDR
HNS Fund	220.5	million SDR
Total	250	million

SDR

- Preventive measures,
- Property damage,
- Studies of damage to environment & human health
- Economic loss due to preventive measures & property damage



Scenario 2

HNS, CLC/Fund, Bunker & Athens Conventions



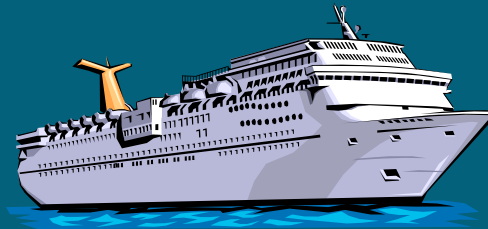
Chemical tanker (20 000 GT) and cruise ship (85 000 GT) collide, killing 5 and injuring 30 passengers and breaching the cruise ship's bunker tanks. The tanker spills some of its cargoes of lube oil & epichlorohydrin, killing 10 more passengers.

CLC/Fund Convention

Shipowner	13.975	million SDR
1992 Fund	189.025	million SDR
Total	203	million SDR

Damage caused by lube oil, including

- Clean up
- Property damage, if any



HNS Convention

Shipowner	37	million SDR
HNS Fund	213	million SDR

Total 250 million SDR

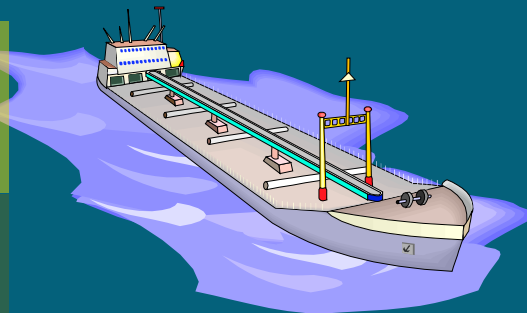
Damage caused by epichlorohydrin, including passenger deaths

Bunker Convention

Shipowner	8.2	million SDR
Total	8.2	million SDR

Damage caused by bunker fuel, including

- Clean up,
- Property damage,
- Consequential economic loss



Athens Convention

No fault

Carrier, 11.25 million SDR
(250 000 SDR per passenger)

With fault

Carrier, 18 million SDR
(400 000 SDR per passenger)

Damage caused by collision

- passenger deaths & injuries

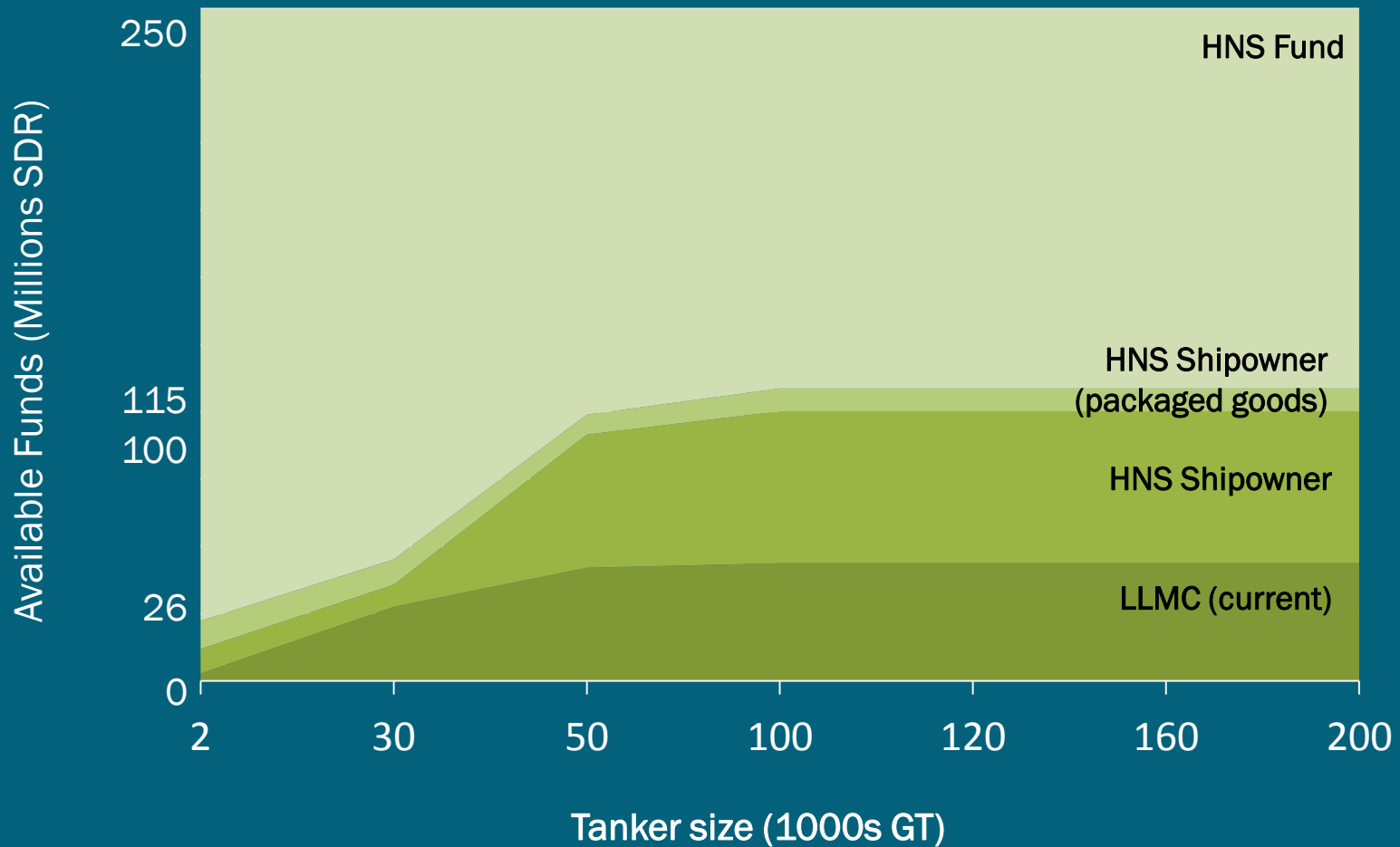
Legal framework

Liability limits

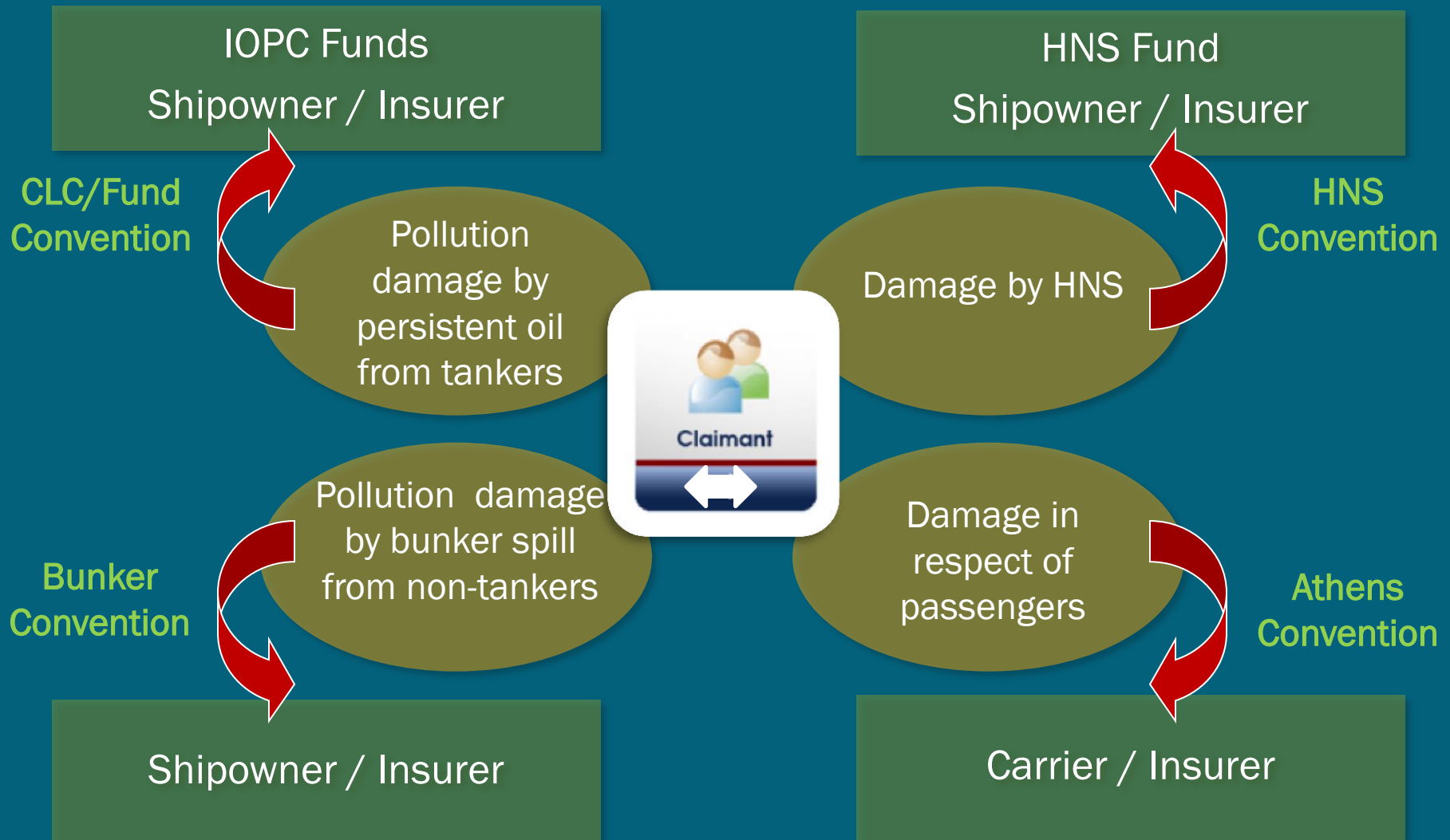


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Example: A chemical tanker of 20 000 GT spills HNS



Relationship between conventions



HNS Claims procedure

General considerations



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- No established claims guidelines/procedure
- HNS Assembly to decide after entry into force
- Practices of the CLC/Fund regime to be used as model wherever possible
 - Clean-up operations and preventive measures
 - Property damage
 - Economic losses
- More problematic for other claims
 - Death and personal injury
 - Environmental damage
- Potential issue with timing to assess claims
 - 10 years time bar
 - Difficulty to prove damage for personal injury claims in some cases

Main types of claim



- Loss of life and personal injuries
- Clean-up operations and preventive measures
- Property damage
- Economic losses caused by the contamination of the environment
- Environmental damage
 - Costs of reasonable measures for reinstatement

Admissibility

Criteria fundamentals

- Loss must be due directly to the contamination ('link of causation')
- Costs should be reasonable and justifiable
- Expenses must actually be incurred (or to be incurred)
- Claim assessment
 - ✓ Did actions take place?
 - ✓ Were actions reasonable?
 - ✓ Were losses actually incurred?
 - ✓ Does the claim reflect actions? Losses ?
 - ✓ Do the sums add up?





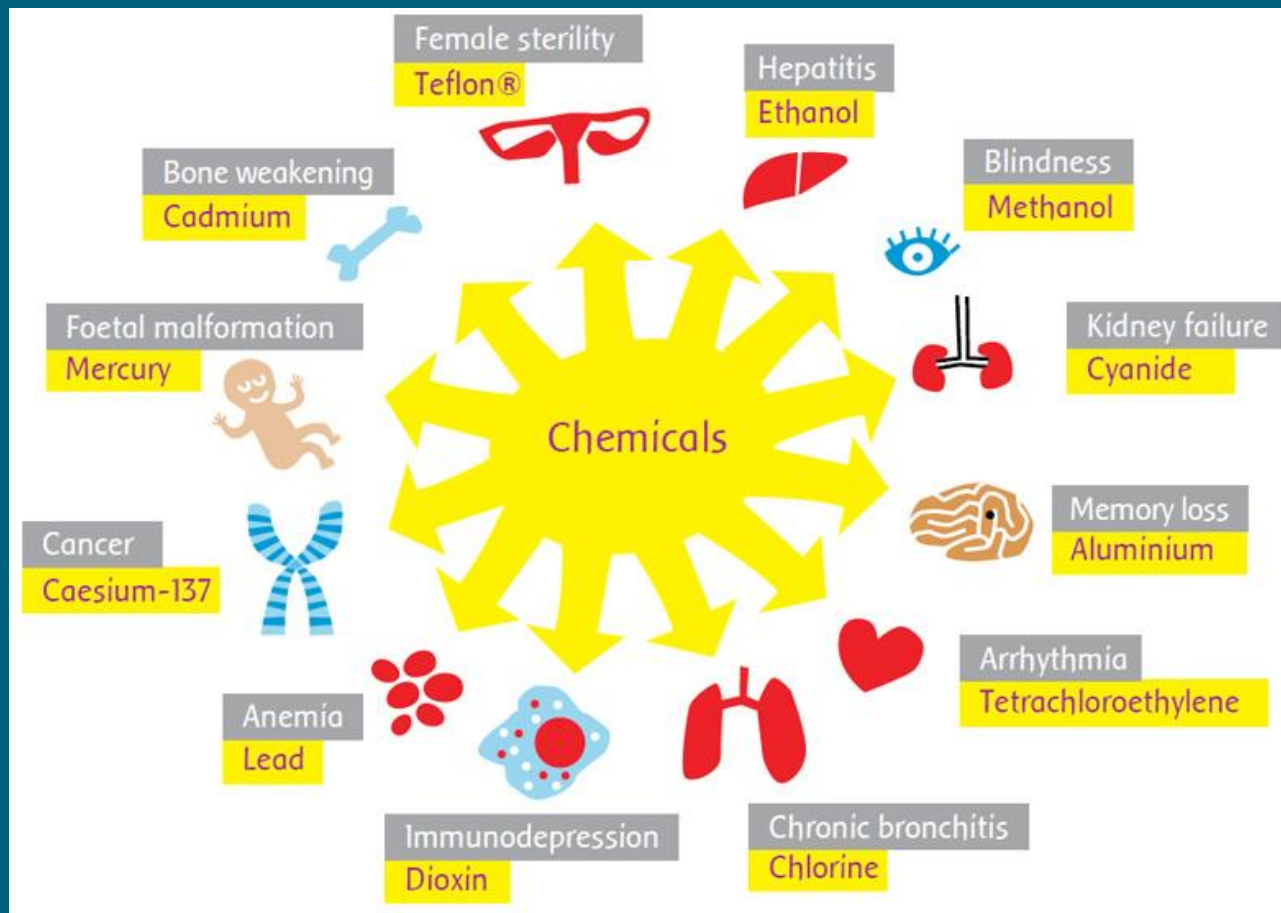
- Article 37.1 & 37.2
 - ✓ ‘Rights to compensation shall be extinguished unless’
 - ✓ ‘Action is brought within **3 years** from date of damage; or’
 - ✓ ‘In no case shall an action be brought after **10 years** from the date of the incident’
- Same limit against shipowner and HNS Fund

Type of personal injuries

Examples of pathologies due to chronic intoxication



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(Source: Cedre)

Lack of criteria



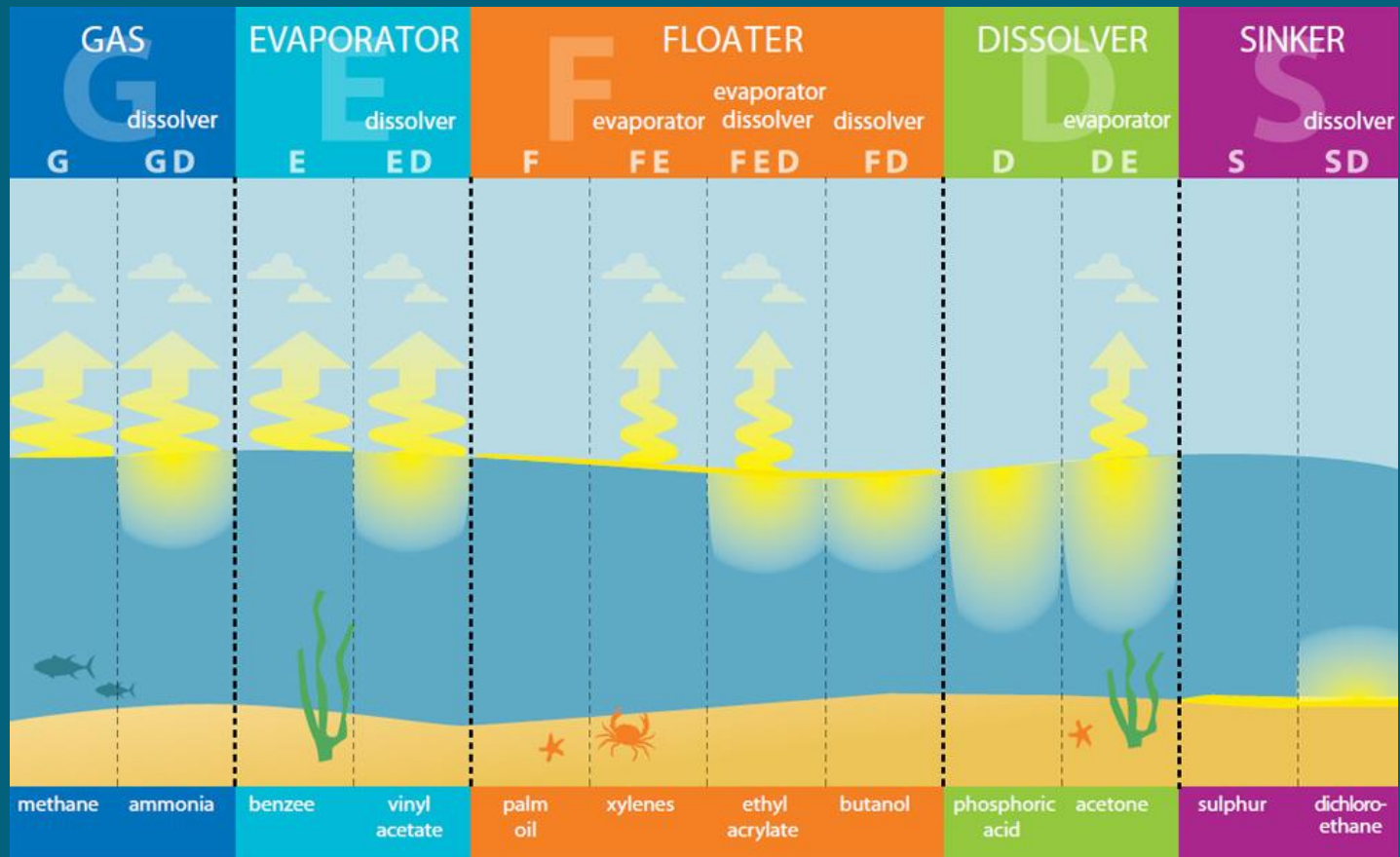
- No clear guidelines available as yet
- Comparison possible with LLMC provisions (1996) as amended in 2012
 - special account for loss or life or personal injury
 - from SDR 3M to some SDR 130M for ship of 160,000GT
- The HNS limits don't differentiate between types of claims
 - up to SDR 100M to 115M limit for shipowner overall
 - up to SDR 250M for the HNS Fund overall
 - death and personal injury have priority over other claims if they represent 2/3 or more of the total amount claimed
- Doesn't apply to claims from contracts of carriage
- Set of guidelines to be developed by the first HNS Assembly

Behaviour of HNS

Influence on response options



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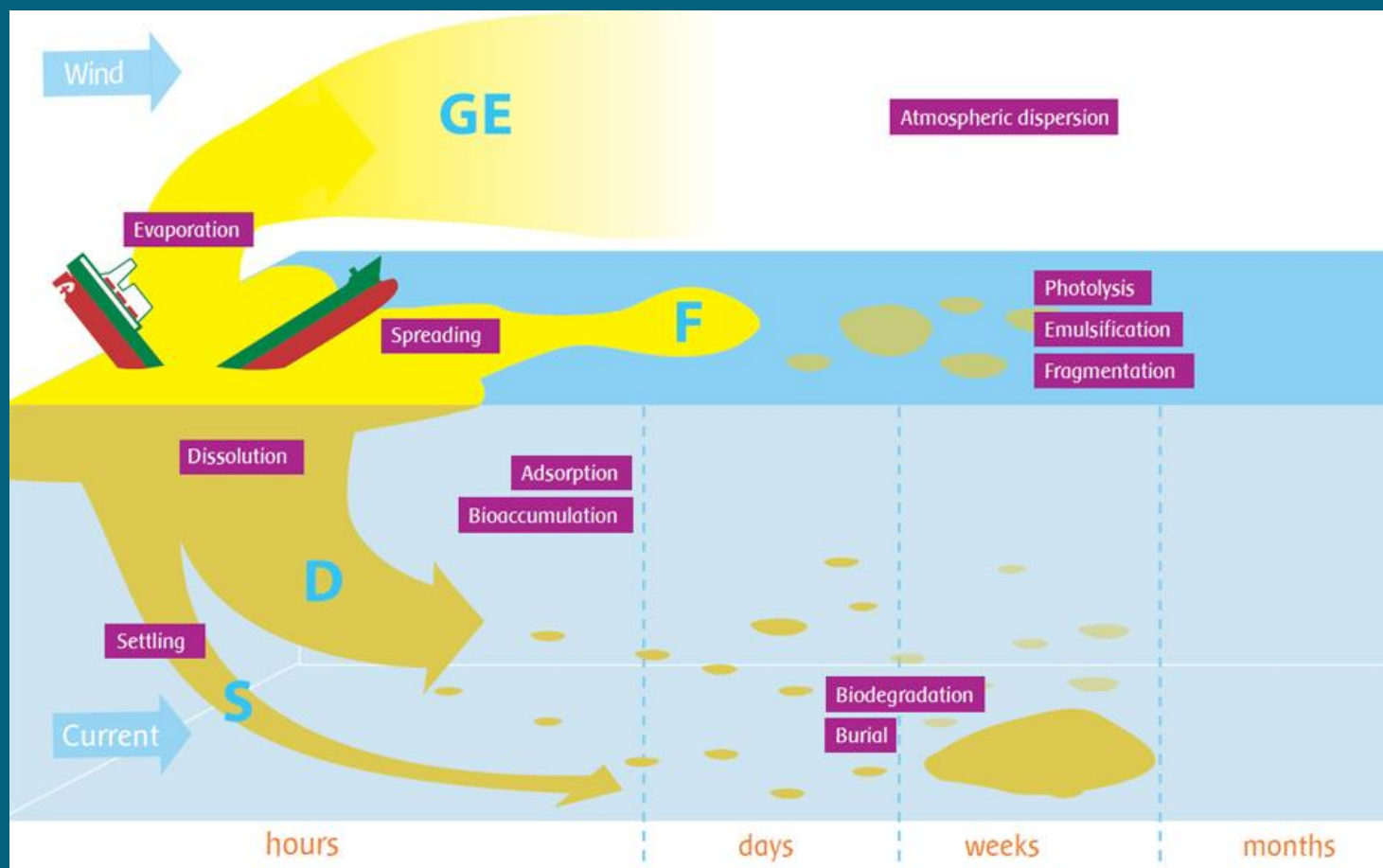
(Source: Cedre)

Fate of HNS in the environment

Influence relevance of response options



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(Source: Cedre)

Cleanup and pollution prevention

Claims

Compensation payable for costs of reasonable measures taken to:

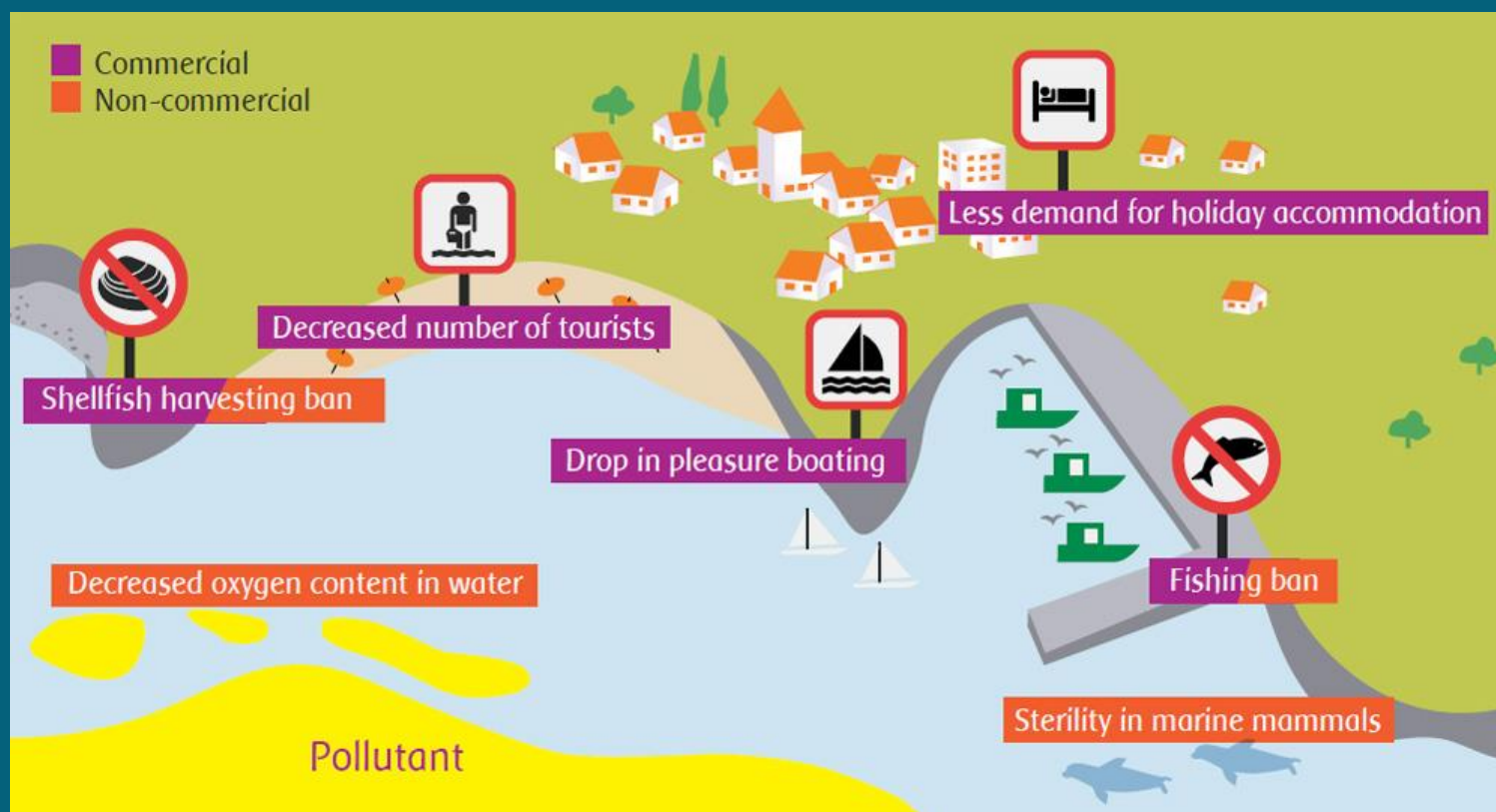
- Salvage
- Combat incident at sea
- Protect resources vulnerable to HNS
- Clean shorelines / coastal installations
- Disposal of waste



Property damage / economic losses



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(Source: Cedre)

Property damage

Compensation payable for **reasonable** costs of

- Cleaning, repairing or replacing property contaminated or destroyed by HNS
e.g. buildings, fishing gear, and mariculture facilities
- Cleaning intakes, machinery and equipment of industrial installations using seawater
e.g. power stations and desalination plants
- Costs of repairs to roads, piers and embankments damaged by heavy vehicles involved in clean-up operation
- Account is taken of age and durability of property replaced and pre-existing conditions



Economic losses

Compensation is payable for:



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Consequential loss

- Loss of earnings by owners of property
e.g. fishermen with contaminated gear or
hotel impacted
- Losses caused to owners of mariculture
facilities
e.g. interruption of feeding, normal stocking
cycles, fishing bans, loss of market
confidence



Pure Economic loss

- Loss of earnings by fishermen who cannot go
fishing
e.g. to protect gears or because of fishing
ban
- Businesses is directly dependent on fishery
and tourism activities
e.g. leisure businesses, retailer, fish
processor



Admissibility Criteria

- Occurrence of an incident is not enough to receive compensation
- Damage or loss should be linked directly to the pollution
- Geographic proximity between the claimant's activity and the contamination
- Claimant's economic dependence on the affected resource
- Alternative source of supply
- Is the business integral part of economic activity in the area

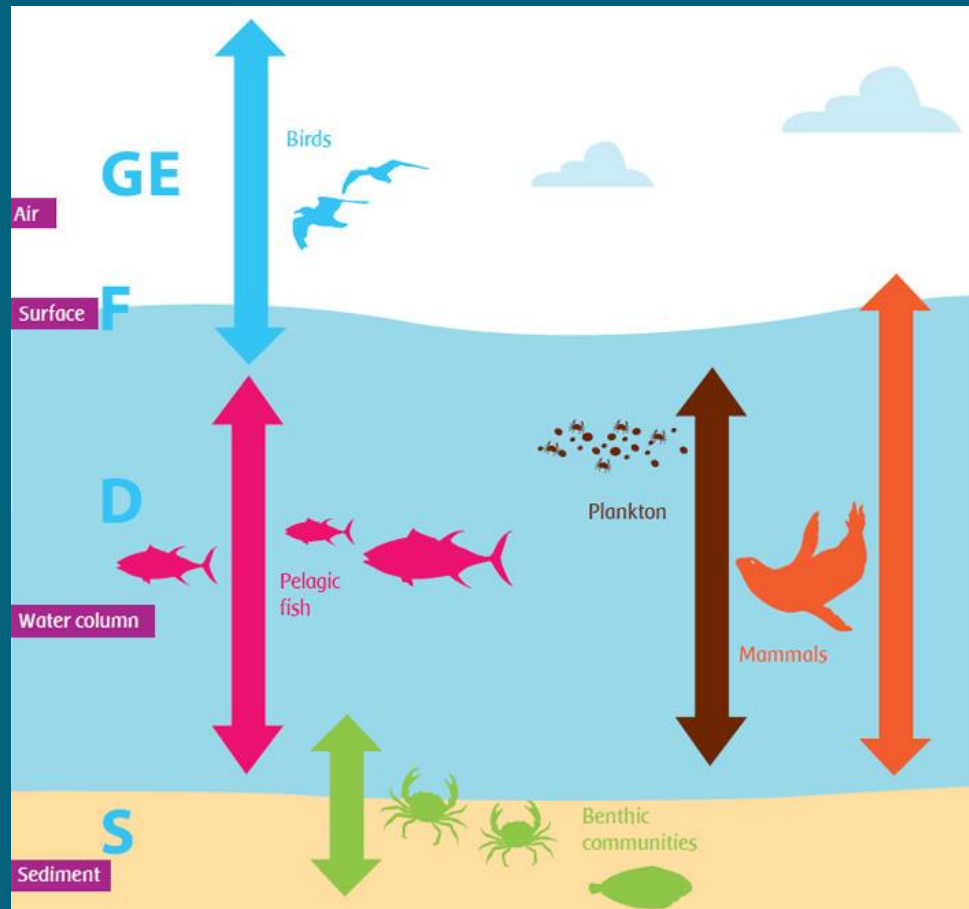


Environmental damage



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- Permanent damage?
- Long-term damage to the marine and coastal environments?



(Source: Cedre)

Environmental damage

Admissible claims



Economic loss which can be quantified in monetary terms

e.g. reduction in revenue for a marine park

Costs of reasonable measures to reinstate contaminated environment

e.g. planting of mangrove samplings, etc.

Provided that measures should

- Accelerate significantly the natural recovery process
- Prevent further damage as a result of incident
- Not result in degradation of other habitats or adverse consequences for other natural or economic resources
- Be technically feasible

Costs should not be out of proportion to extent / duration of damage and benefits likely to be achieved

Admissibility criteria

Reinstatement



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- Likelihood to accelerate significantly the natural process of recovery
- Seeking to prevent further damage
- Not resulting in the degradation of other habitats or in adverse consequences for other natural or economic resources
- Technically feasible
- Costs proportionate to the extent and duration of the damage and the likely benefits

Example: *Cason* incident

Claims

Death and personal injury

23 crew members died

Preventive measures

- Salvage operations
- Recovery of dangerous goods cargoes
- Evacuation
- 15,000 people within 5 km
- Air and water contamination monitoring

Economic losses

Impact on commercial activities in the area

Environmental damage

Environmental monitoring



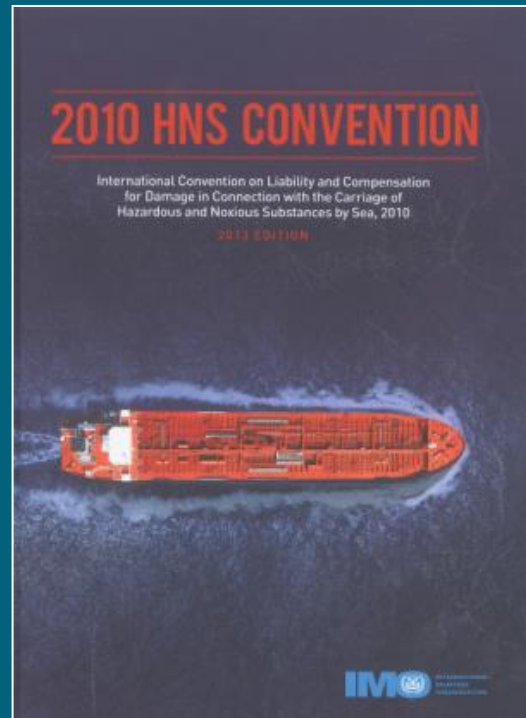
Claims Guidelines?

To be developed



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Political and social considerations are outside the scope of the Conventions





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