

**Comparison of the Oil Pollution Act 1990 and  
the Civil Liability Convention 1992**

*Dear Members:*

Following Comparison of the Oil Pollution Act 1990 and the Civil Liability Convention 1992 for Member reference

Table I	<b>OPA 90</b>	<b>CLC 92</b>
<b>Liabe parties</b>	Owner, operator, bareboat charterer, or a third party whose sole action causing pollution damage	Registered owner (operator, manager, charterer are protected from being sued under the CLC or domestic law unless pollution damage was caused by his willful misconduct – so-called channeling cause)
<b>Complete defense</b>	act of war (must be the sole cause of the spill) act of God (must be the sole cause of the spill)	act of war (no requirement on “sole cause”) act of God (no requirement on “sole cause”)
<b>Conditional defense</b>	Act of a third party, only if RP exercised due care and took precautions against foreseeable act of third party.	act of a third party (must be the sole cause of the spill) government negligence (must be the sole cause of the spill)
<b>Loss of defense</b>	RP loses defense if he fails to 1)report a spill 2)cooperate in response 3)follow USCG orders	No
<b>Limits of liability</b>	3,500/gt for single hull tankers (minimum \$25.845 million for tankers over 3,000 tons and \$7.048 million for small tankers and barges under 3,000 tons) 2,200/gt for non single hull tankers (minimum \$18.796 million for tankers over 3,000 tons and \$4.699 million for small tankers and barges under 3,000 tons) 1,100/gt for nontank vessels (minimum \$939,800)	See details in Table II
<b>Test for breaking limitation</b>	- Gross negligence or willful misconduct; - Violation of a federal safety, construction, operation regulation; or - Failure to 1) report, 2) cooperate; 3) follow USCG Order	“personal act or omission, committed with the intent to cause such damage, or recklessly and with knowledge that such damage would probably result” (commonly considered as a “willful misconduct)
<b>Scope of application</b>	Apply to spills or thereats of spills occurring within EEZ by <b>all types of vessel, all types of oils</b>	Spills or threat of spills occurring within EEZ of a contracting State from <b>a tanker constructed for carrying persistent oil in bulk as cargo</b>
<b>Damages</b>	- Cleanup costs	- Cleanup costs

<b>recoverable</b>	<ul style="list-style-type: none"> <li>- Property damage</li> <li>- Economic loss consequential on property damage</li> <li>- Pure economic loss (eg. From hotel owner etc)</li> <li>- Natural resources damages</li> <li>- Natural resources damages assessment costs</li> <li>- Loss of subsistence use of natural resources</li> </ul>	<ul style="list-style-type: none"> <li>- Property damage</li> <li>- Economic loss consequential on property damage</li> <li>- Pure economic loss (eg. From hotel owner etc)</li> <li>- Reasonable costs of restoring the damaged environment</li> </ul>
<b>Relationship with other law</b>	No preemption over State law (see chart on States laws for details on liability levels)	CLC preempts other law: no claim for compensation for pollution damage may be made against the owner otherwise than in accordance with the CLC. No claim for compensation for pollution damage under this Convention or otherwise may be made against operator, manager, charterer (including bareboat charterer) etc. (Art.III.4)

Notes: Under OPA, a “third party” excludes an employee or agent of the responsible party or a third party whose act or omission occurs in connection with any contractual relationship with the responsible party.

Table II  
MAXIMUM AMOUNTS OF COMPENSATION AVAILABLE UNDER THE CONVENTIONS  
(EXPRESSED IN US\$ MILLIONS, an exchange rate of July 2018:1 SDR=US\$1.408USD)

Tanker's Gross Tonnage	1969 CLC	(1971 Fund)	1992 CLC	1992 Fund	11/2003 CLC	11/2003 Fund	<b>OPA</b>
5,000	0.93	(84.5)	4.2	190.08	6.35	285.82	<b>18.79</b>
25,000	4.68	(84.5)	16.05	190.08	24.11	285.82	<b>55</b>
50,000	9.36	(84.5)	30.8	190.08	46.33	285.82	<b>110</b>
100,000	18.7	(84.5)	56.1	190.08	90.75	285.82	<b>220</b>
140,000	19.7	(84.5)	84.05	190.08	126.39	285.82	<b>308</b>
200,000	19.7	(84.5)	84.05	190.08	126.39	285.82	<b>440</b>

Note: Table II refers to non-single hull tankers given that single hull tankers are phased out as of 01/01/15.

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