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POLLUTION

definition

*to make offensive or
harmful to human,
animal or plant life*

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POLLUTION

we will discuss:

- Types of pollution
- Liability and Limitation
- Clean-up and Compensation
- ITOPF

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TYPES OF POLLUTION

- Persistent oil cargo and bunkers
- Non-persistent oil cargo
- Hazardous and noxious substances
- All other cargo
- Sewage
- Garbage
- Ballast Water
- Exhaust gases
- ?

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TYPES OF POLLUTION

- Persistent oil cargo and bunkers
- Non-persistent oil cargo
- Hazardous and noxious substances
- All other cargo
- Sewage
- Garbage
- Ballast Water
- Exhaust gases
- **Noise**

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POLLUTION

Liability and Limitation

Every major development
has followed a major
casualty.

Let us take a look ...

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1967
TORREY CANYON

the problems

- The supertanker
- Title to sue
- Jurisdiction
- Liability
- Compensation
- Limitation of liability

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1967 TORREY CANYON

the answers

Prevention: International Convention for the Prevention of Pollution from Ships 1973/1978 (“Marpol”)

Response: International Convention on Oil Pollution Preparedness and Response 1991 (“OPRC”)

Liability and Limitation: The Civil Liability and Fund Conventions of 1969 and 1992 (“CLC 92”)

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PREVENTION: MARPOL

“A comprehensive regime resulting in the complete elimination of intentional pollution of the marine environment and the minimisation of accidental discharges”



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PREVENTION: MARPOL

Shipboard Oil Pollution Emergency Plan (“SOPEP”)

- for oil tankers over 150gt
- for all ships over 400gt

Shipboard Marine Pollution Emergency Plan (“SMPEP”)

- for chemical tankers over 150gt



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RESPONSE: OPRC

“To encourage States to develop and maintain an adequate capability to deal with oil pollution emergencies and to facilitate international cooperation and mutual assistance in preparing for and responding to major oil pollution incidents”



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1978
AMOCO CADIZ
the problem

CLC 1969 compensation
was wholly inadequate

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1978 AMOCO CADIZ

the answers

“THE POLLUTER PAYS”

- CLC 92: paid by the P&I Clubs
- IOPC Fund: paid by oil importers
- Universal application – except Iran and The United States of America

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CLC 1992

Method

- Ships over 2,000 GRT must carry a CLC Certificate
- P&I Club issues a 'Blue Card' to confirm entry
- Flag State then issues the CLC Certificate

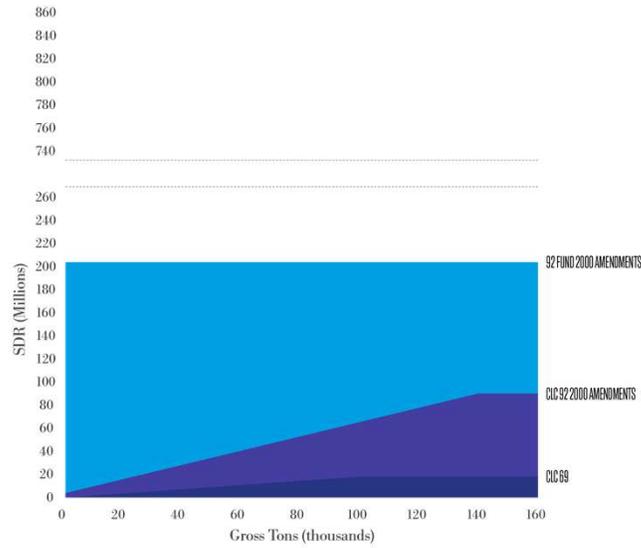
Strict (but limited) liability

Defences:

- Act of God
- Act of War
- Terrorism

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CLC 1992 & IOPC FUND 1992



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1989 EXXON VALDEZ

two significant
outcomes:

- IMO: 'double hull tanker' rule 1992
- USA: Oil Pollution Act 1990

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OIL POLLUTION ACT 1990

- The '**Responsible Party**' is liable for any ship-source oil pollution in US waters
- Strict but limited liability

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OIL POLLUTION ACT 1990

- Applies to all ships in the USA's EEZ (200nm)
 - Licensing, manning + equipment requirements
 - Strict liability on owner, operator or bareboat charterer
- Pollution Response
 - National Response Team ("NRT")
 - Environmental Protection Agency ("EPA")
- Liabilities include:
 - Removal costs under the National Contingency Plan, and
 - Compensation, including damage to natural resources

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OPA 90 - PREPAREDNESS

OPA 90 requires pre-approved:

- Vessel Response Plans ("VRPS")
- Contracts with approved Clean-up Contractors ("OSRO")
- Qualified Individual ("QI")

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USA – INDIVIDUAL STATES

- Individual states may impose additional liabilities and response requirements
- California, Washington and Alaska have done so

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OPA 90: NON-TANKER LIMITATION

'vessels other than tankers'

\$1,100 per gross ton or \$939,800,
whichever is greater

example

50,000 GT cargo vessel

$50,000 \times \$1,100 = \$55,000,000$

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OPA 90: NON-TANKER LIMITATION - WEF 12 NOV 2019

'vessels other than tankers'

\$1,200 per gross ton or **\$997,100**,
whichever is greater

example

50,000 GT cargo vessel

$$50,000 \times \$1,200 = \mathbf{\$60,000,000}$$

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OPA 90: TANKER LIMITATION

double hull tanker

3,000 GT or smaller:
\$2,200 per gross ton or
\$4,699,200, whichever is
greater

Larger than 3,000 GT:
\$2,200 per gross ton or
\$18,796,800 whichever is
greater

example

50,000 GT tanker

$$50,000 \times \$2,200 = \mathbf{\$110,000,000}$$

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OPA 90: TANKER LIMITATION – **WEF 12 NOVEMBER 2019**

double hull tanker

3,000 GT or smaller:

\$2,300 per gross ton or
\$4,985,900, whichever is
greater

Larger than 3,000 GT:

\$2,300 per gross ton or
\$19,943,400 whichever is
greater

example

50,000 GT tanker
 $50,000 \times \$2,300 = \$115,000,000$

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Braer: 1993
85,000mt crude oil



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1993:
BRAER AND ERIKA

the problem

Raised serious doubts on
the levels of available
compensation

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**1993:
BRAER AND ERIKA**

the answer (1)

- New, minimum CLC limit of SDR 4.51 million
- CLC maximum increased to SDR 89.77 million
- The Fund increased to SDR 203 million
- New “Supplementary Fund” up to SDR 750 million.
- Cover includes the voyage immediately following any loaded passage

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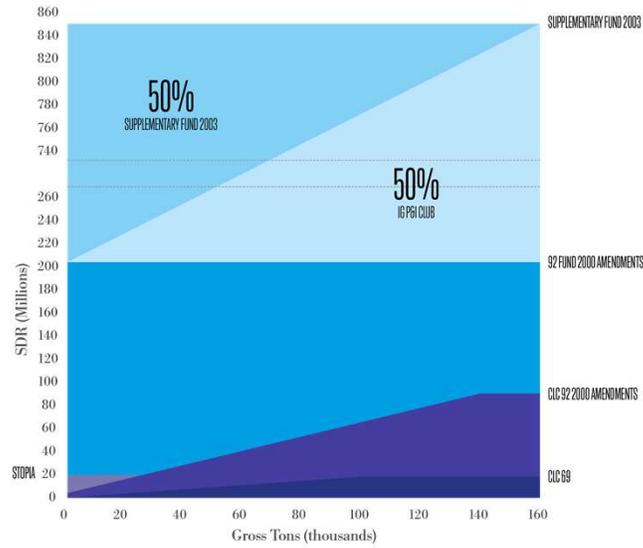
**1993:
BRAER AND ERIKA**

the answer (2)

- **STOPIA 2006** (Small Tanker Oil Pollution Indemnification Agreement)
 - Minimum CLC limit increased to SDR 20 million
- **TOPIA 2006** (Tanker Oil Pollution Indemnification Agreement)
 - P&I Clubs contribute 50% to claims on the Supplementary Fund

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THE SUPPLEMENTARY FUND, STOPIA AND TOPIA



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THE BUNKER CONVENTION 2001

- Applies unless CLC applies
- Liability and defences the same as CLC 92
- Limitation under applicable national or international law eg. LLMC 1976 Convention



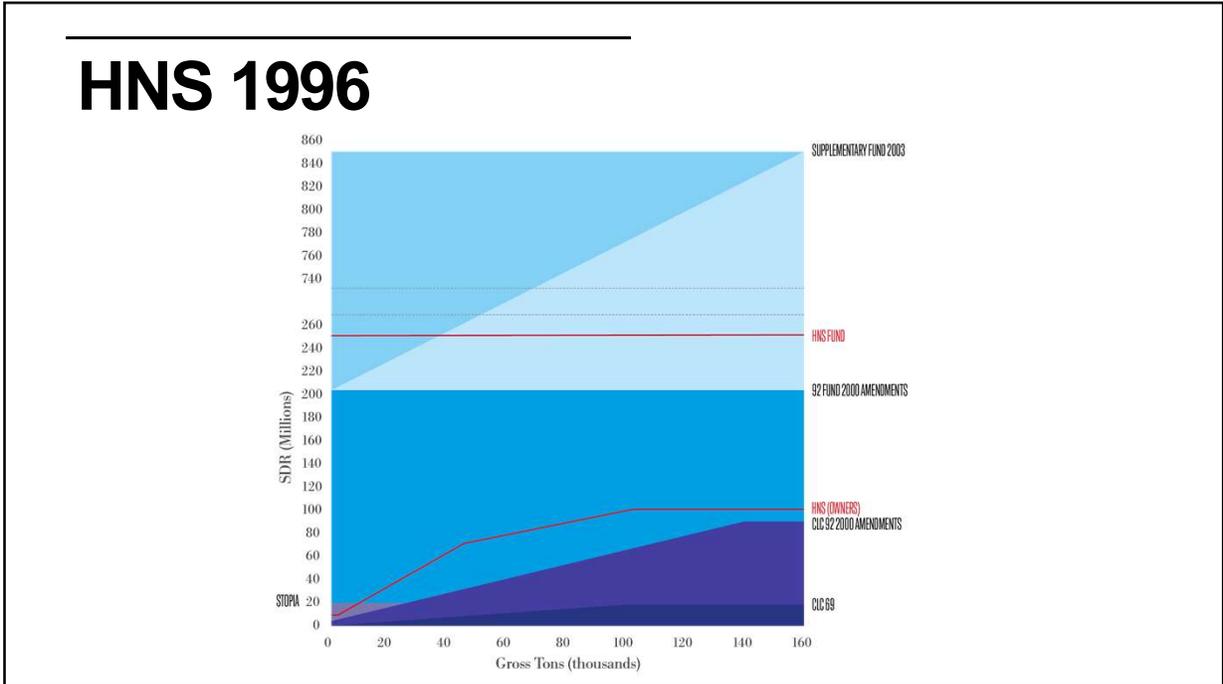
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HAZARDOUS AND NOXIOUS SUBSTANCES CONVENTION 1996

- Based on CLC and Fund Conventions
- Shipowner liable for first tier
- HNS Fund pays second tier to maximum of 250 million SDR
- **Not yet in force**



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2002: PRESTIGE

2003: TASMAN SPIRIT

2007: HEIBI SPIRIT

the low point

Three major casualties:

- Poor casualty management
- National and international law ignored
- Criminalisation

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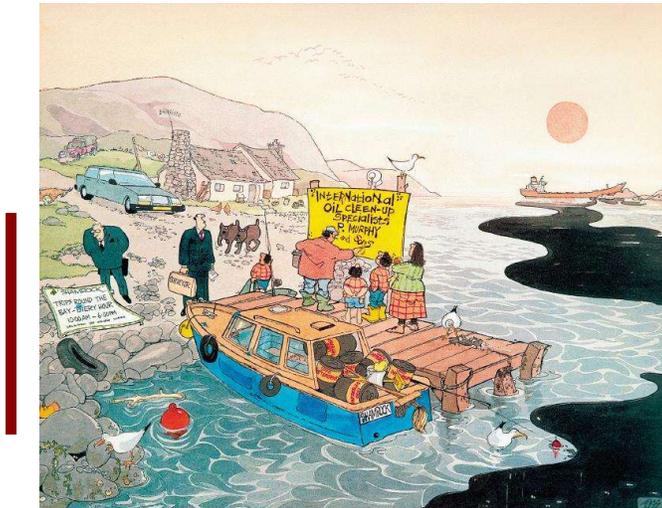
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POLLUTION

claims and
compensation



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CLEAN UP



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CLEAN UP

SCOPIC

In order to encourage salvors to minimise pollution, P&I will indemnify:

- Special Compensation under Article 14 of the Salvage Convention
- SCOPIC awarded under LOF 2000 onwards

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COMPENSATION



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COMPENSATION

CLC and the IOPC
Fund have common
definitions of
admissible claims

- Direct, physical damage to property
- Economic losses which are the direct result of pollution damage: e.g. closed fishing grounds
- Environmental reinstatement and restoration

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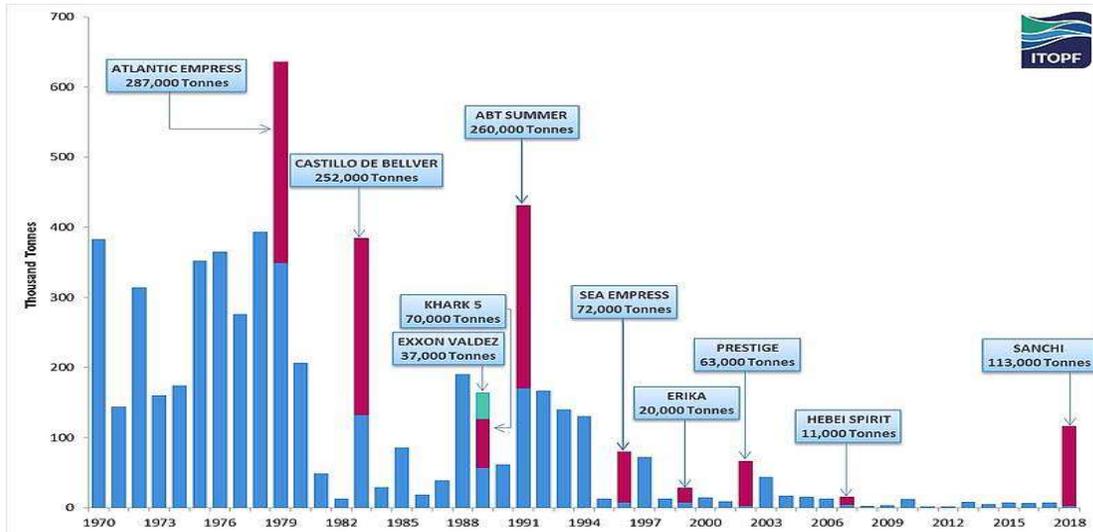
POLLUTION

Indemnities and
recoveries

- Charterers
 - Unsafe Port claim
 - Focus on the Master
- “Other Ship”
 - Collision claim
- Third parties
 - Port Authority
 - Pilot

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THE GOOD NEWS (1)



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THE GOOD NEWS (2)

OVER **100** YEARS P&I EXPERIENCE - EXPERT CLAIMS HANDLERS

COLLEAGUES FROM P&I, LOSS PREVENTION AND UNDERWRITING



5 MASTER MARINERS



13 LAWYERS

RESOURCES & GUIDANCE



IN 2017:

97 POLLUTION CLAIMS

138 POLLUTION ENQUIRIES

POLLUTION ENQUIRY GROUP

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EXPERTS ACROSS FOUR OFFICES
GIVING ADVICE UPON: REGULATIONS, CONTRACT REVIEWS AND CHARTERPARTY CLAUSES

POLLUTION EXPERTISE GROUP

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EXPERTS ACROSS FIVE OFFICES



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INTERNATIONAL TANKER OWNERS' POLLUTION FEDERATION (ITOPF)



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ITOPF

- Primary role: on-site spill response advice
- Available 24 / 7 / 365
- Independent technical advisors
- Not-for-profit
- 90% funded by the IG Clubs
- Established in 1968 – 50+ years
- Based in London – operate globally



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ITOPF - MEMBERSHIP

- ITOPF Members
 - 7,900 tanker owners and bareboat charterers
 - 13,500 tankers, barges, FSUs and FPSOs (426m GT)

- ITOPF Associates
 - Owners of other types of ships (since 1999)
 - All IG Club non-tanker members (792m GT)



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ITOPF - RESOURCES

- Office in London with 34 staff
- Technical team with 12 responders:
 - Scientific or technical background
 - Attendance at 15 – 25 incidents per year
 - More than 800 spills in 100 countries
- In-house databases and technical library



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ITOPF – CONTINGENCY PLANNING

- *“From our experience the key to efficient clean up is a combination of good contingency planning, organisation and control”*
- Training and education
- Contingency plan preparation
- Drills
- Research & development



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ITOPF – INFORMATION, PUBLICATIONS, FILMS (1)

- Technical Information Papers



<http://www.itopf.org/knowledge-resources/documents-guides/technical-information-papers/>

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ITOPF – INFORMATION, PUBLICATIONS, FILMS (2)

- Documents & Guides



<http://www.itopf.org/knowledge-resources/documents-guides/>

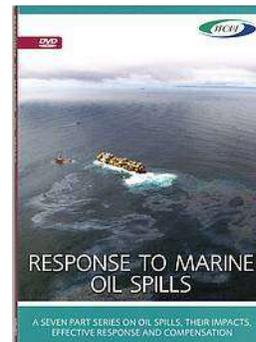
<https://www.itopf.org/knowledge-resources/company-literature/>

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ITOPF – INFORMATION, PUBLICATIONS, FILMS (3)

- Films

- *Introduction to Oil Spills (22 min)*
- *Aerial Surveillance (18 min)*
- *At-Sea Response (24 min)*
- *Shoreline Clean-Up (19 min)*
- *Waste Management (18 min)*
- *Environmental Impacts (18 min)*
- *Oil Spill Compensation (26 min)*



DVD or online: <https://www.itopf.org/knowledge-resources/library/video-library/>

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ITOPF – SPILL RESPONSE ROLE

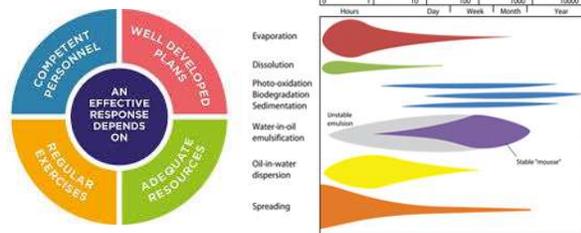
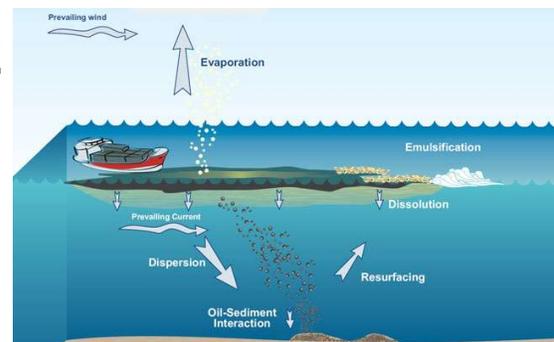
- Provide technical advice to government, responders & victims
- Promote effective response techniques, joint assessments & cooperation
- Monitor spill response & investigate damage to resources
- Help to design and implement post-spill studies / restoration
- Provide technical assessments of claims for compensation



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ITOPF – INITIAL RESPONSE

- Once details received ITOPF will utilise a variety of tools and resources to:
 - Predict oil behaviour, drift and fate.
 - Assess in-country response arrangements and preparedness.



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ITOPF – ROLE ON-SITE

SHIPPING INTERESTS

- Correspondents
- Local P&I office
- Lawyers
- Salvors & SCR
- Local surveyors
- Clean up contractors



OTHER GROUPS

- Media interests
- Environmental groups
- Volunteer groups

TECHNICAL SPECIALISTS

- **ITOPF**
- Government advisors
- International experts

GOVERNMENT INTERESTS

- Lead authority (CG / Navy)
- Environmental authorities
- Fisheries authority
- Local government
- Clean up contractor

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ITOPF – ROLE ON-SITE (1)

- Advising on:
 - Aerial surveillance
 - Shoreline surveys
 - Clean up techniques
 - Waste management



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ITOPF – ROLE ON-SITE (2)

- Advising on:
 - Identifying gaps in resources / expertise
 - Response claims
 - Post-spill monitoring



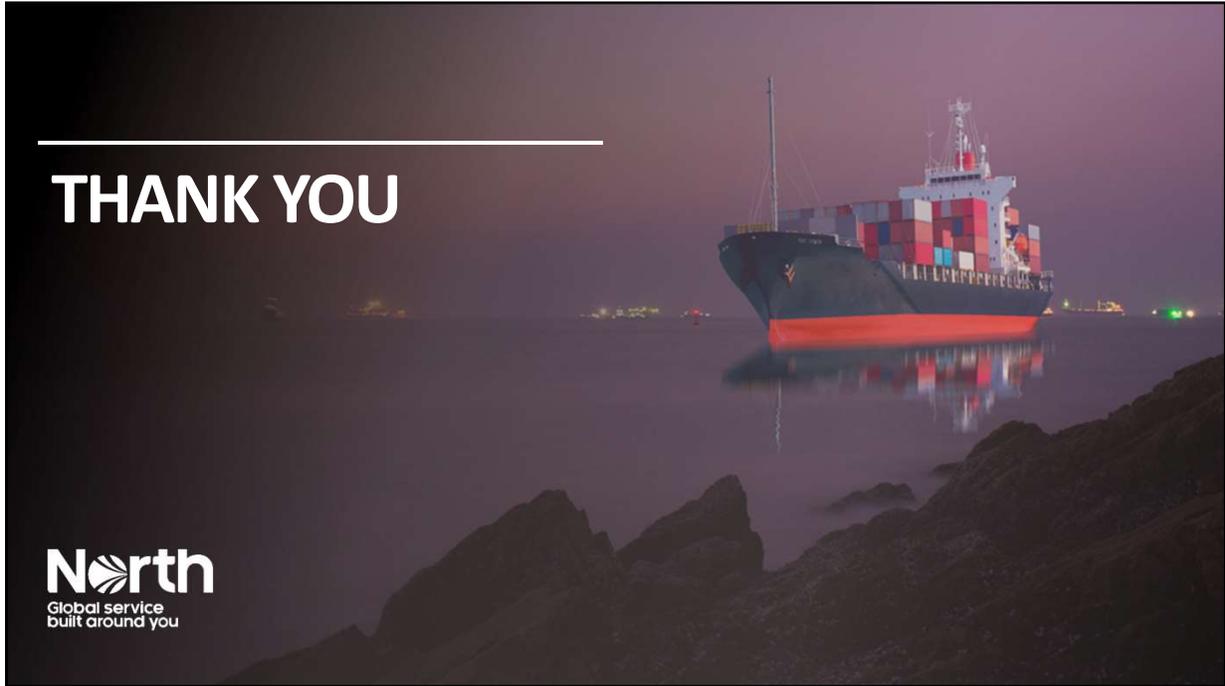
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ITOPF – OTHER AREAS...

- Container ships and container losses
 - On average nearly 2,000 containers lost every year
- Marine debris – macro, micro and nano plastic
 - Significant environmental impacts



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