

POLLUTION DAMAGE LIABILITY AND COMPENSATION ISSUES RELATED TO OFFSHORE ACTIVITIES

Valdas Langas

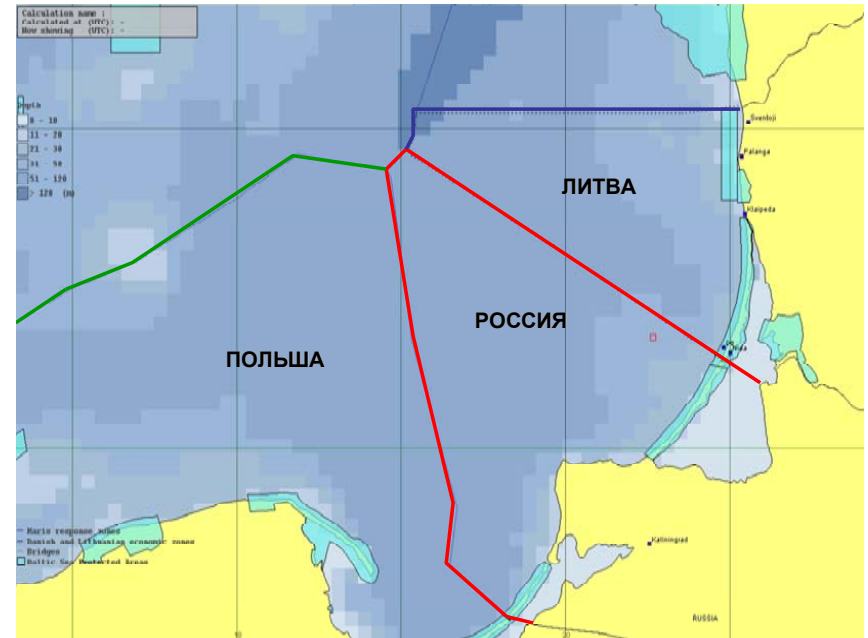
vlangas@hotmail.com

Coastal Research and Planning Institute,

Klaipėda University

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OVERAL VIEW OF THE LUKOIL COMPANY (RUSSIA) OIL PLATFORM D-6 IN THE SE OF THE BALTIC SEA AND AREAS OF RESPONSIBILITY-RESPONSE REGIONS



POST EIA OF OFFSHORE PLATFORM D-6

Post EIA report of the platform D6 was prepared both by experts from RF (Kaliningrad region) and LR in 2006.

Report recommendations

1. Review the marine oil spills response plans and supplement them with additional recourses, **location of response** means should be as close as possible to the location of the D6. Based on the potential threat to the Curonian Spit, **to identify resources needs** for the clean-up of the seacoast area.
2. To establish **prompt notification** and provision of adequate response to incidents. To this end to accelerate the process signing of a bilateral intergovernmental response agreement. (*Agreement signed in October 2009*).
3. RF and LR should coordinate their actions and **exchange information** on implemented / planned antipollution measures for D-6 platform/ oil pipeline and response capacities at sea and coastal area (plans, techniques, etc.)
4. RF and LR should schedule and carry out **joint offshore and shoreline response trainings**
5. **RF and LR should agree** on the techniques and methods of identification of oil washed ashore or floating in the sea, as well as **on the methods and procedures for compensating the damage caused by such contamination**

POST EIA OF OFFSHORE PLATFORM D-6

Report recommendations

6. RF and LR should **select and agree on the criteria of sensitivity** of the sea and the coastal areas and map out the investigated area of the sea and the coast-sensitivity mapping;
7. RF and LR should refer back to the issue of a **dispersant application** after a decision on a possibility to apply dispersants in the Baltic Sea is taken within the framework of HELCOM Convention;
8. RF and LR should **exchange their satellite monitoring** data in order to detect and fight pollution and to assess the environmental status;
9. For more comprehensive assessment of the degree of contamination of the Curonian Spit RF and LR should **continue working on oil drift modelling** and, at the same time, give more focus on oil behaviour under severe (extreme) hydrometeorological conditions;
10. A joint Russian-Lithuanian Commission on the Environmental Protection should set a deadline for the execution of the above-listed recommendations.

Report **recommendations approved** by joint Russian-Lithuanian Commission on the Environmental Protection in 2007 06 15

ESTIMATED AMOUNT OF OIL SPILLS

Amount of oil spills:

- Operational leakages from platform – can vary from some to hundreds kilograms
- Pipeline failure – 2 331 m³ (1 925 ton)
- Well blowout - 9 600 m³ (7 872 ton)

Main pollution/environmental damage liability and compensation international legal instruments

Global instruments:

- United Nations Convention on the Law of the Sea, 1982;

IMO Conventions

- 1969 International Convention on Civil Liability for Oil Pollution Damage (1969 CLC) and the 1971 International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage (1971 Fund Convention);
- 1996 International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea (HNS 96);
- 2001 International Convention on Civil Liability for Bunker Oil Pollution Damage (BUNKERS CONVENTION 2001);

Regional instruments:

- Directive 2004/35/CE of the European Parliament and of the Council of 21 April 2004 on environmental liability with regard to the prevention and remedying of environmental damage

UNCLOS CONVENTION

United Nations Convention on the Law of the Sea, 1982

Article 194 and 235 oblige states to carry out following main pollution prevention and pollution damage compensation measures:

- to take, jointly or individually all necessary measures **to prevent pollution of the marine environment from all sources** (from land-based sources, off-shore installations, ships, through the atmosphere or by dumping and for preventing accidents;
- to take all measures to ensure that pollution arising from incidents under their jurisdiction **does not to cause pollution and does not spread to other States**;
- ***to ensure that recourse is available in accordance with their legal system for prompt and adequate compensation in respect of damage caused by pollution of the marine environment by natural and juridical persons under their jurisdiction***;
- for the assurance of prompt and adequate compensation in respect of damage caused by pollution, ***States shall cooperate in the implementation of existing international law and the further development of international law relating to responsibility and liability for the assessment of and compensation for damage and the settlement of related disputes, as well as development of criteria and procedures for payment of adequate compensation, such as compulsory insurance or compensation funds***

IMO CONVENTIONS

The main categories of pollution damage claims covered by the compensation system are:

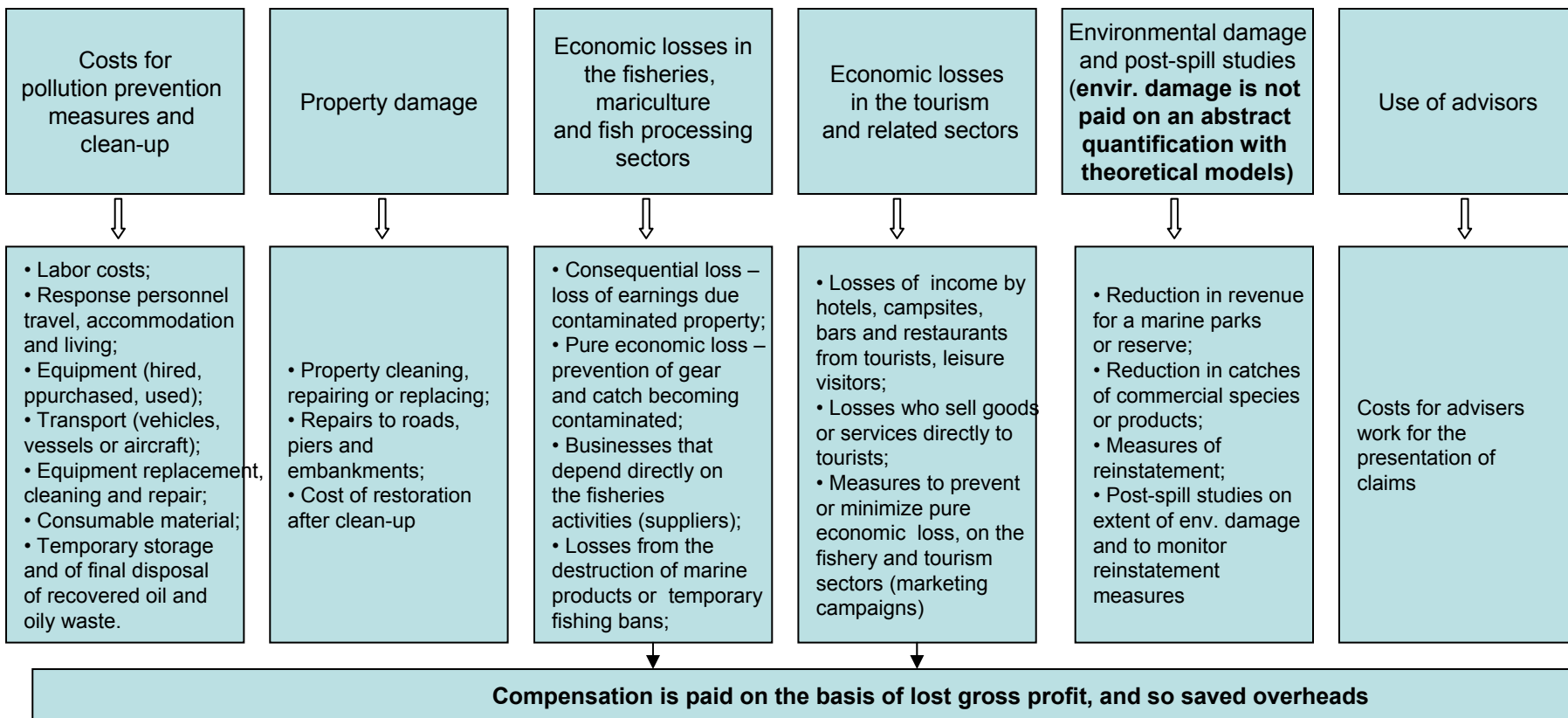
- pollution prevention measures and clean-up;
- property damage;
- economic losses in the fisheries, mariculture and fish processing sectors;
- economic losses in the tourism and related sectors;
- environmental damage and post-spill studies;
- loss of life or personal injury

**Convention on Civil Liability for Oil Pollution Damage 1992, as amended
Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage
(Oil pollution by tankers)**

Pollution damage:

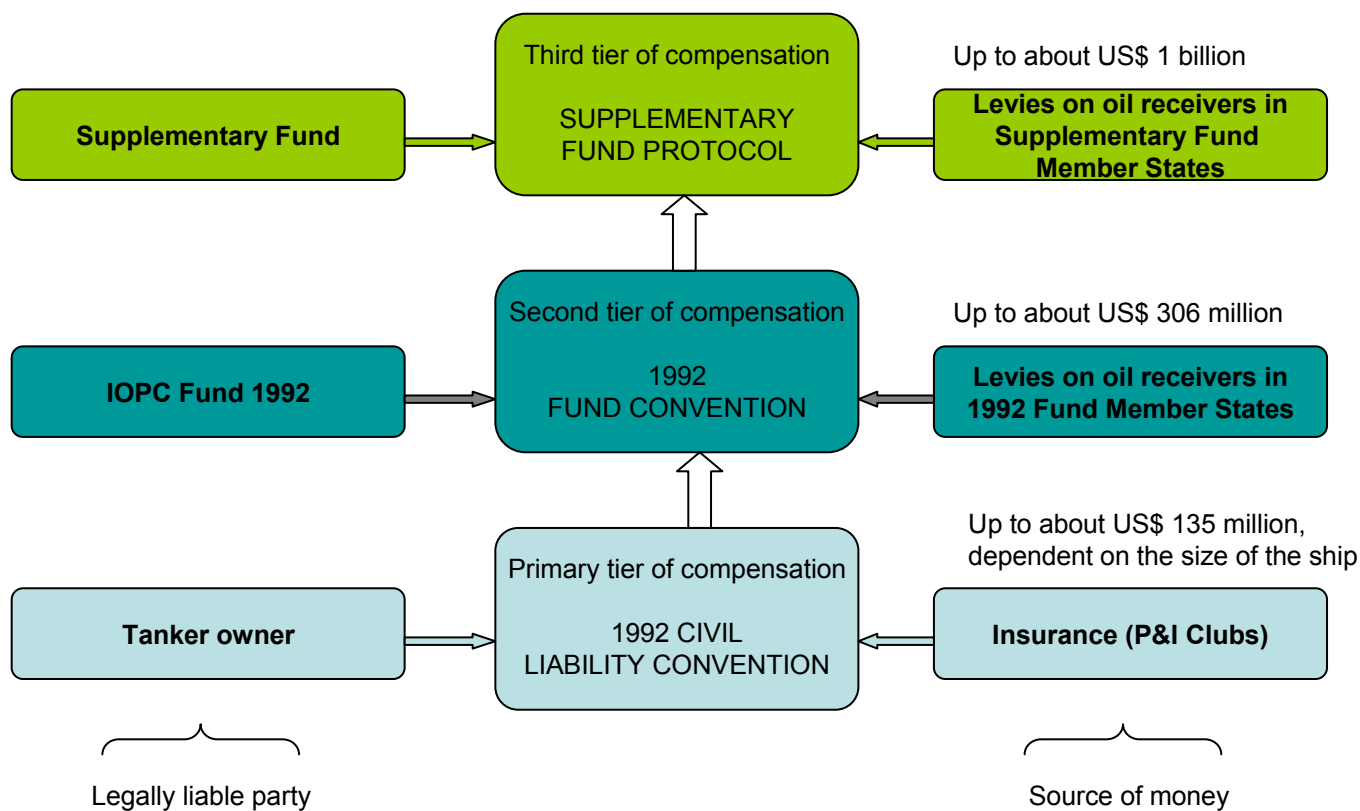
- loss or damage caused outside the ship by contamination resulting from discharge or escape of oil;
- loss of profit from impairment of (damage to) the environment;
- reasonable measures of reinstatement of the environment; and
- (reasonable) preventive measures including further losses and damage caused by those measures.

ADMISSIBLE CLAIMS



The three levels of compensation established by the international Conventions: the owner of the tanker from which the oil is spilled is legally liable for the payment of compensation under the first level; oil receivers in Fund Member States contribute to the second and third level once the tanker owner's applicable limit of liability has been exceeded.

(source: IPIECA)



International Convention on liability and compensation for damage in connection with the carriage of hazardous and noxious substances (HNS) by sea, 1996 (pollution by HNS by ships)

Damage:

- loss of life or personal injury;
- loss of or damage to property outside the ship caused by HNS substances;
- loss or damage by contamination of the environment (loss of profit by such contamination);
- reasonable measures of reinstatement of the environment; and
- (reasonable) preventive measures, including further losses and damage caused by those measures

Costs for
loss of life or
personal injury

ADMISSIBLE CLAIMS

Costs for
pollution prevention
measures and
clean-up

Property damage

Economic losses in
the fisheries,
mariculture
and fish processing
sectors

Economic losses
in the tourism
and related sectors

Environmental damage
and post-spill studies

Use of advisors

- Labor costs;
- Response personnel travel, accommodation and living;
- Equipment (hired, purchased, used);
- Transport (vehicles, vessels or aircraft);
- Equipment replacement, cleaning and repair;
- Consumable material;
- Temporary storage and of final disposal of recovered oil and oily waste.

- Loss of or damage to property due to fire or explosion
- Property cleaning, repairing or replacing;
- Repairs to roads, piers and embankments;
- Cost of restoration after clean-up

- Consequential loss – loss of earnings due contaminated property;
- Pure economic loss – prevention of gear and catch becoming contaminated;
- Businesses that depend directly on the fisheries activities (suppliers);
- Losses from the destruction of marine products or temporary fishing bans;

- Losses of income by hotels, campsites, bars and restaurants from tourists, leisure visitors;
- Losses who sell goods or services directly to tourists;
- Measures to prevent or minimize pure economic loss, on the fishery and tourism sectors (marketing campaigns)

- Reduction in revenue for a marine parks or reserve;
- Reduction in catches of commercial species or products;
- Measures of reinstatement;
- Post-spill studies on extent of env. damage and to monitor reinstatement measures

Costs for advisers
work for the
presentation of
claims

Compensation is paid on the basis of lost gross profit, and so saved overheads

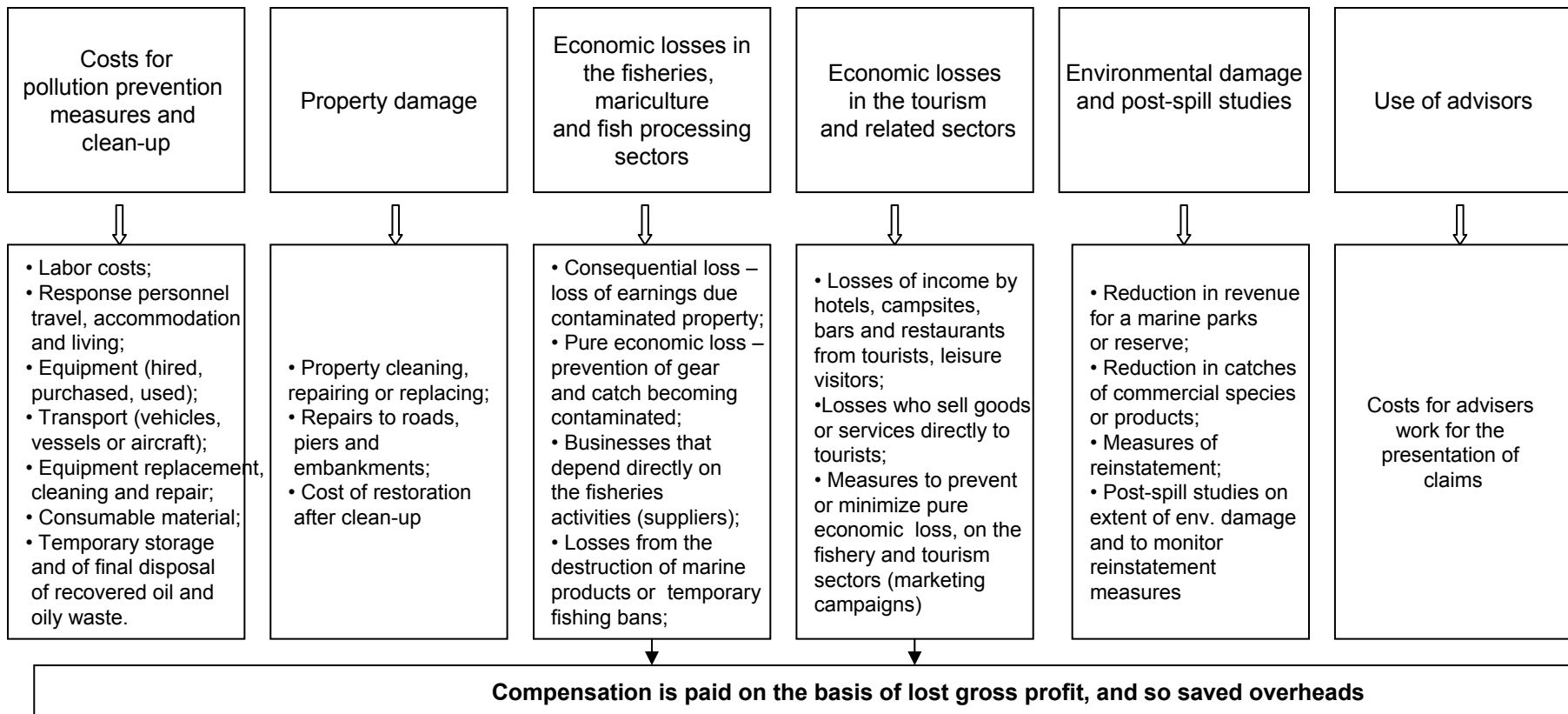
International Convention on Civil Liability for Bunker Oil Pollution Damage, 2001

Pollution by bunker oil (non-tankers)

Pollution damage:

- loss or damage caused outside the ship by contamination resulting from discharge or escape of oil;
- loss of profit from impairment of (damage to) the environment;
- reasonable measures of reinstatement of the environment; and
- (reasonable) preventive measures including further losses and damage caused by those measures..

ADMISSIBLE CLAIMS



EU Directive on environmental liability with regard to the prevention and remedying of environmental damage, 2004

Established hazardous occupational activities

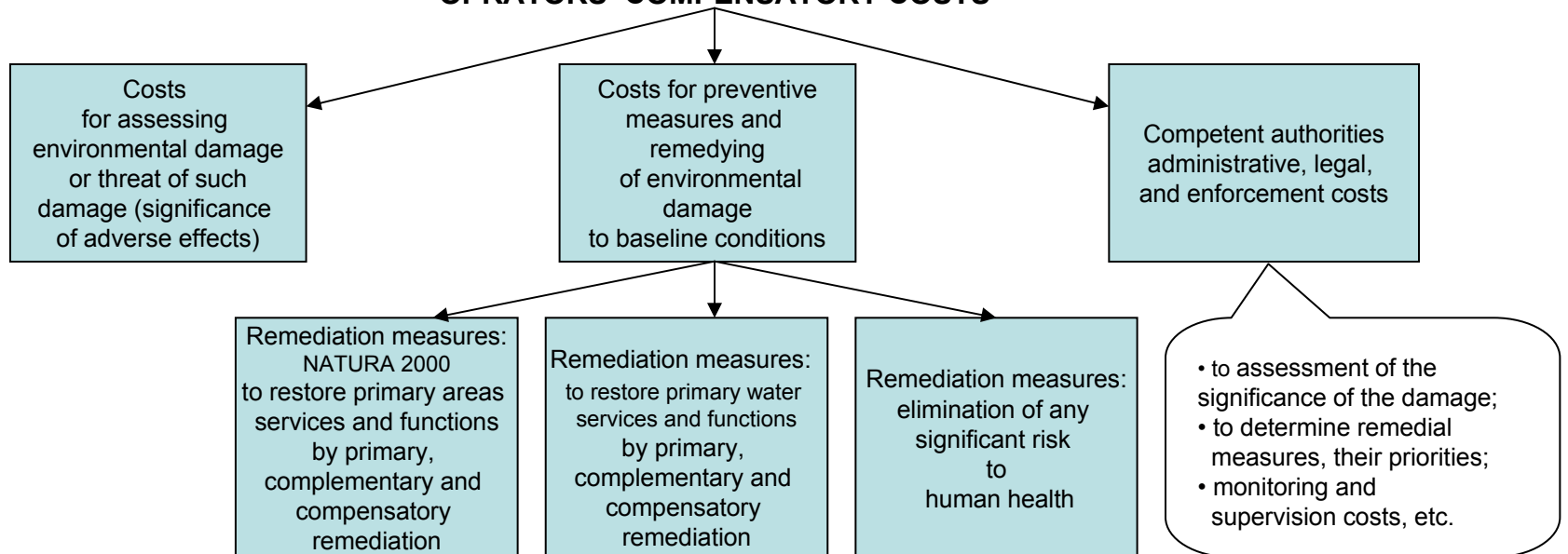
Environmental damage:

- damage (adverse effects) to protected species and natural habitats on reaching or maintaining the favorable conservation status;
- water damage - adverse effects on the ecological, chemical and/or quantitative status;
- land damage - land contamination with a significant risk of human health

Damage:

'damage' means a measurable adverse change in a natural resource (protected species and natural habitats, water and land) or measurable impairment of a natural resource service (functions for the benefit of another natural resource or the public)

OPRATORS' COMPENSATORY COSTS



COMPARISON OF TWO LIABILITY REGIMES

Difference between EU Directive and IMO Conventions:

- EU directive apply to environmental damage caused by **occupational activity** while IMO instruments establish pollution damage compensation system in case of **pollution incident**;
- EU directive does not apply to traditional damage cases - personal injury, damage to private property or to any economic loss in departure from IMO practice;
- The Directive **does not**, like the maritime liability conventions, **provide for any limitation of the liability** for the relevant person(s);
- The Directive does not stipulate any obligation for operators **to maintain insurance or other financial security** on the other hand, for IMO conventions it is mandatory;
- The geographical coverage of the Directive in the maritime zones is unclear, but appears to be limited, as far as 'water damage' is concerned, to damage occurring within a sea area of 1 nautical mile from the baseline.
- There are a number of **exceptions from the scope of the Directive**. These include activities covered by other liability agreements, i.e. IMO liability Conventions, armed conflict or activities which serve national defence;
- EU directive **specify env. damage to specified environmental components**: protected species and natural habitats, water and land, which could be adversely impacted in case of marine pollution incident, while IMO conventions loss of profit from impairment of (damage to) the environment
- This Directive Annex (II) **sets out a common framework to be followed in order to choose the most appropriate measures to ensure the remedying of environmental damage to its baseline conditions** (sets ways for remediation, remediation objectives, combination of actions - options for actions and criteria of reasonable remedial options). **IMO conventions doesn't specify measures to be applied for reinstatement of impaired environment**

COMPARISON OF TWO LIABILITY REGIMES

Similarities:

- pollute pay principal;
- need to be one or more identifiable polluters, the damage should be concrete and quantifiable, and a causal link should be established between the damage and the identified polluter(s);
- costs for preventive measures;
- costs for assessing environmental damage
- costs for remedying/reinstatement of environmental damage (EU - in relation to water or protected species or natural habitats, IMO - reasonable reinstatement measures to accelerate natural recovery of environmental damage, re-establish a biological community at damaged site or within the general vicinity of the damaged area)

Review of 2009 RF and LR bilateral agreement on cooperation in response to pollution by oil and other harmful substances in the Baltic Sea

Issues to be bilaterally agreed	Existing bilateral agreement
Cost for assistance	<p><u>Agreement</u>: <i>Requesting Party shall reimburse to the assisting Party the costs of assistance</i></p> <p>no property damage, economic losses, envir. reinstatement etc.</p>
Definition of pollution damage and valuation of damage	<p><u>Agreement</u>: <i>For marine environment pollution damages both Parties shall be liable in accordance with existing international rules and principles. No definition of pollution damage and valuation. There are not international treaties regulating liability and compensation issues. Consequently pollution damage will not be compensated.</i></p>
Damage compensation procedures	<p>Unforeseen in the agreement</p> <p>There is no assurance of the possibility to contact the platform operator/owner or insurer for the prompt and adequate compensation</p>
Settlement of pollution damage claims	<p><u>Agreement</u>: <i>Disputes resulting from the interpretation or application of this Agreement shall be settled by negotiations of competent authorities</i></p> <p>Competence of courts in settlement pollution damage claims not foreseen in the agreement</p>
D6 operator/owner insurance	<p>The platform D6 operator/owner insurance (herewith amount of insurance) or other financial guarantees not foreseen in the agreement.</p>

Issue to be bilaterally agreed - prompt request for assistance. Current situation

Responsible platform D6 authorities
(company Lukoil)



Responsible regional authorities
Baltic Basin Emergency-Rescue Department
(St. Petersburg via port Kaliningrad)



Responsible national authorities
(RF Ministry of Transport)



LT Armed Forces

WITHOUT BILATERAL ARRANGEMENTS ON DAMAGE CONCEPT - OUTCOMES

- oil platform operator may not take the insurance against the oil spill considering its high cost and that the accident may not occur;
- uncertainty what kind of damage/losses should be admissible and compensated;
- uncertainty about whether or not cleanup operations and other incurred expenses will be compensated;
- the response actions to pollution incidents may be delayed because of the operator's reluctance to request assistance

LEGAL BASIS FOR NEGOTIATIONS AND AGREEMENT

UNCLOS Convention

- **to ensure** that recourse is available in accordance with their legal system for **prompt and adequate compensation in respect of damage caused by pollution of the marine environment** by natural and juridical persons under their jurisdiction
- for the assurance of prompt and adequate compensation in respect of damage caused by pollution, **States shall cooperate in** the implementation of existing international law and the further development of international law relating to responsibility and liability **for the assessment of and compensation for damage and the settlement of related disputes, as well as development of criteria and procedures for payment of adequate compensation**, such as compulsory insurance or compensation funds

FURTHER ACTIONS

In order to be paid and response-compensation system work well, the most important provision is unified understanding and interpretation of definitions, i.e. 'damage' concept. Therefore in the bilateral agreement the following key aspects should be included:

- well-defined pollution damage concept and compensation procedures;
- the assurance of the possibility to contact the platform operator/owner for the prompt and adequate compensation or otherwise compensation for damage;
- the establishment the competence of courts in settlement of pollution damage claims;
- request for assistance should be delegated at least to local/regional authorities