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INCIDENTS INVOLVING THE 1971 FUND

SEA EMPRESS

Note by the Director

1 Introduction

1.1 This document sets out the situation as regards claims for compensation arising from the *Sea Empress* incident which occurred on 15 February 1996 in the entrance to Milford Haven in South Wales (United Kingdom). With respect to the incident, the impact of the spill, the clean-up operations and the effects on fishery and tourism, reference is made to document 71FUND/EXC.52/7.

1.2 The document contains a summary of the findings set out in the report into the grounding and subsequent salvage of the *Sea Empress* issued by the Marine Accident Investigation Branch (MAIB) of the United Kingdom Department of Transport and of those set out in the Report of the Bureau of Maritime Affairs of the Republic of Liberia.

1.3 The document also deals with the level of the 1971 Fund's payments and with some claims for compensation which the Director considers should be referred to the Executive Committee for decision.

2 Effects on fisheries

2.1 On 28 February 1996, the Welsh Office imposed an Order under the Food Environmental Protection Act prohibiting the landing of fishery and aquaculture products taken from a designated zone from St David's Head to the Gower Peninsula, and extending 10 - 30 kilometres offshore. On 20 March 1996 a statutory ban was also imposed by the Welsh Office on salmon and migratory trout in all freshwater rivers and streams which flow into the sea between the Gower Peninsula and St David's Head. The Ministry of Agriculture, Fisheries and Food monitored the levels of oil contamination in coastal waters and in animal tissues within the designated zone.

2.2 Fin fish were found to have little or no contamination, and the ban on salmon and migratory trout was lifted on 3 May 1996 and on other fin fish species on 21 May 1996. Certain shellfish, notably bivalve molluscs (such as cockles and mussels) which live in the intertidal zone and were directly oiled in some locations, were

more heavily contaminated and recovered more slowly. Other shellfish living on the sea bottom, notably crustaceans (such as lobsters and crabs) and whelks, showed only slightly elevated hydrocarbon levels in some locations shortly after the spill. The ban on the exploitation of shellfish in the intertidal zone was lifted in two areas (for the Burry Inlet on 3 July 1996 and for the Three Rivers area on 12 September 1996). The ban on fishing whelks and crustaceans was lifted on 30 August 1996 for the whole of the designated zone, with the exception of Milford Haven itself. The restrictions were thereafter reduced in stages. All remaining fishing and shellfish harvesting restrictions were lifted on 12 September 1997.

3 Clean-up operations

3.1 Salvage operations were co-ordinated jointly by the Milford Haven Port Authority and the Marine Pollution Control Unit (MPCU) of the Department of Transport. MPCU was also responsible for directing offshore pollution response operations. A Joint Response Centre (JRC) was opened in Milford Haven on 16 February 1996 by MPCU and Dyfed County Council for the purpose of co-ordinating shoreline clean-up. The JRC used the facilities of the Milford Haven Port Authority and was managed by a team consisting of representatives of central and local authorities, conservation agencies and the oil industry.

3.2 The JRC was maintained to manage the remaining clean-up work. From the end of July 1996 the number of people involved was reduced, and meetings of the JRC became increasingly less frequent.

3.3 A survey of the affected coastline was completed in April 1997. No significant clean-up operations were planned after the end of May 1997. A small work force of between five and ten men has been maintained over the summer period to work on the amenity beaches and monitor the coastline. Occasionally there is some contamination in the form of tar balls, and clean-up is carried out when necessary.

3.4 On 16 September 1997 it was decided that the JRC should be closed with effect from 5 October 1997. As a result of this decision the work force of between five and ten men referred to in paragraph 3.3 will return to normal duties.

4 Claims situation

4.1 General situation

4.1.1 As at 23 September 1997, 888 claimants had presented claims for compensation to the Claims Handling Office, set up in Milford Haven by the 1971 Fund and the shipowner's insurer, Assuranceforeningen Skuld (the Skuld Club).

4.1.2 Claims have been approved for a total of £12 182 192. Payments have been made to 566 claimants totalling £9 207 995. Of this amount, £6 838 382 has been paid by the Skuld Club and £2 369 613 by the 1971 Fund. Cheques for a further £104 932 are awaiting collection by the claimants. Most of the payments correspond to 75% of the amounts approved by the Club and the Fund. However, payments of up to 100% of the approved amounts have been made by the Club in a number of cases where the amount of compensation was small or where the claimant has been able to demonstrate that a payment of more than 75% was necessary to avoid immediate financial hardship.

4.2 Claims for clean-up operations

4.2.1 Developments in respect of claims for clean-up operations since the Executive Committee's 54th session are set out below. Reference is also made to paragraph 2.2 of document 71FUND/EXC.53/5 and paragraph 2.2 of document 71FUND/EXC.54/3.

4.2.2 Devon County Council submitted a claim for £8 979 which was assessed at £5 823. An interim payment of 75% of the assessed amount was made.

4.2.3 Pembrokeshire County Council submitted an interim claim for £1 094 094 in respect of costs incurred by Preseli Pembrokeshire District Council and South Pembrokeshire District Council prior to the local authority re-organisation on 1 April 1996. Pembrokeshire County Council also submitted claims for the period April-November 1996, amounting to £3 895 292. On the basis of the documentation presented so far, the experts engaged by the Skuld Club and the 1971 Fund have assessed the claims for the period April-August 1996 at £2 511 699. Payments corresponding to 75% of the assessed amounts, totalling £1 883 737, have been made to the Council. The claims for the period September-November 1996 are being examined. The

Council has notified the 1971 Fund and the Skuld Club that it will submit claims totalling £122 377 for the period December 1996 - March 1997. The Council has also presented a claim for interest of £299 659.

4.2.4 Carmarthenshire County Council has submitted a claim for £918 561 on behalf of five district councils for clean-up operations carried out before 31 March 1996. The County Council has also presented a claim for £353 407 relating to clean-up operations carried out after that date. These claims are being examined.

4.2.5 The Environment Agency has submitted a claim for £401 868 relating to costs incurred by the National Rivers Authority for personnel, transport and the hire of equipment. No supporting documentation has been provided, and a number of queries have been raised with the claimant.

4.2.6 The French Government has claimed compensation for FFfr1 491 337 (£161 000) in respect of two vessels which assisted in the clean-up operations. As a result of an examination of this claim carried out by the 1971 Fund's and the Skuld Club's experts, the French Government has been invited to give additional information in respect of some items of the claim.

4.3 Property claims

Two hundred and fifty-five claims have been submitted in respect of damage to property. Claims have been approved for a total of £274 564, and most of them have been paid in full by the Skuld Club.

4.4 Fishery claims

4.4.1 Claims have been presented by 161 fishermen for loss of income as a result of the fishing bans. Some of these fishermen are involved in catching white fish, but the majority are catching whelks and crustaceans. Some of the claims include damage to nets and the loss of pots. Claims from 124 claimants have been approved for a total of £5 449 345. Payments totalling £4 194 047 have been made in respect of these claims.

4.4.2 Claims from ten fishermen for lost fishing gear have been approved at £40 387. Payments totalling £14 470 have been made in respect of these claims.

4.4.3 Fourteen claims relating to fishing gear allegedly lost or damaged as a result of the clean-up operations have been rejected. Some of these claimants were unable to show that they had any fishing gear in the water immediately before the spill, since they had not been fishing at the time. Others alleged that they had lost pots in areas where no clean-up operations or other activities relating to the oil spill were carried out.

4.4.4 A claim was presented by one oyster farmer whose stock was contaminated as a result of the spill and who was prevented from selling oysters due to the fishing ban. Payments totalling £83 869 were made to this claimant corresponding to 75% of the losses resulting from the destruction of the part of the stock that would normally have been harvested and sold each month since the incident. By February 1997, the entire stock in the water at the time of the incident had been destroyed.

4.4.5 Fourteen fish and shellfish processing companies and merchants have claimed compensation for losses suffered as a result of having been deprived of raw material due to the fishing ban. Of these, two companies trade in white fish, three in whelks and five in crustaceans, whereas two trade in cockles, and two in cockles and mussels. So far interim payments totalling £1 148 464 have been made to ten of these companies.

4.4.6 Claims have been received from seven fishermen for £111 810 relating to allegedly reduced catches of whitefish and squid. Five of these fishermen are based in North Devon and two in Swansea, areas of the Bristol Channel which were not affected by the oil from the *Sea Empress*. The claims are being examined by the experts engaged by the Skuld Club and the 1971 Fund.

4.5 Claims from the tourism industry or related businesses

4.5.1 Claims have been received from 398 operators in the tourism industry, such as hotels, bed and breakfast businesses, caravan parks, shops and restaurants, as well as from a sailing school, a water sports centre, a diving school and a small number of angling shops. The majority of claims are from small businesses providing bed and breakfast or self-catering accommodation. Claims from 227 operators in this

category have been approved for a total of £1 217 183, and payments for a total of £843 602 have been made. A number of claims are being examined.

4.5.2 It will be recalled that the Executive Committee has rejected a number of claims in the tourism sector, since they did not fulfill the criteria for admissibility laid down by the Assembly and the Executive Committee. Reference is made in particular to the decisions taken at the Committee's 53rd session (document 71FUND/EXC.53/12, paragraphs 3.5.15-3.5.33). The Director has rejected 76 claims in this sector, since the claimants had not shown that they had suffered any economic loss as a result of the *Sea Empress* incident.

5 Level of payment of claims

5.1 Decisions by the Executive Committee at its 48th - 54th sessions

5.1.1 The Executive Committee decided at its 48th session to limit the Director's authority to make payments to 75% of the damage actually suffered by the respective claimant, since the total amount of the claims arising out of the *Sea Empress* incident might exceed the total amount of compensation available under the 1969 Civil Liability Convention and the 1971 Fund Convention. At its 49th, 50th, 52nd and 53rd sessions the Committee decided that the 1971 Fund's payments should, for the time being, remain limited to 75% of the damage actually suffered by the claimant (documents FUND/EXC.48/6, paragraph 3.4.7, FUND/EXC.49/12, paragraph 3.8.21, 71FUND/EXC.50/17, paragraph 3.12.16, 71FUND/EXC.52/11, paragraph 3.6.22 and 71FUND/EXC.53/12, paragraph 3.5.8).

5.1.2 The level of payments was again considered by the Executive Committee at its 54th session. The discussion was based on an estimate by the Director of the total amount of claims arising from the incident (document 71FUND/EXC.54/10, paragraph 3.2.7) and a note presented by the United Kingdom delegation (document 71FUND/EXC.54/3/1) which contained two estimates of the total amount of the claims, one low estimate of £32 million and one high estimate of £41 million. The Committee took note of the information contained in paragraph 3.4 of document 71FUND/EXC.54/3 as to the possibilities for the victims of the *Sea Empress* incident of obtaining compensation under the Contract Regarding a Supplement to Tanker Liability for Oil Pollution (CRISTAL).

5.1.3 The discussions at the 54th session are summarised in paragraphs 3.2.11-3.2.17 of document 71FUND/EXC.54/10.

5.1.4 The Executive Committee concluded at its 54th session that there remained a considerable degree of uncertainty as to the total amount of the claims, particularly since more than 18 months remained in which claims could be submitted against the 1971 Fund. For this reason, the Committee decided to maintain the level of 75% for the 1971 Fund's payments (document 71FUND/EXC.54/10, paragraphs 3.2.18).

5.1.5 The Executive Committee instructed the Director to endeavour to get as much information as possible on the amount of outstanding and potential claims so as to enable the Committee to reconsider the level of payment at its 55th session. He was also instructed to pursue discussions with Cristal Ltd for the purpose of arriving at a practical solution to the problem of notification of claims under CRISTAL (document 71FUND/EXC.54/10, paragraph 3.2.19).

5.2 Director's considerations

The Director is endeavouring to obtain more accurate figures as to the total amount of the claims. He is also pursuing the discussions with Cristal Ltd concerning certain issues of relevance to the 1971 Fund's decision as to the level of its payments. The Director will present any information on these points in an addendum to this document.

6 Claims submitted to the Executive Committee for consideration

6.1 Claims by Hamdden Ltd and angling clubs

6.1.1 At its 49th session, the Executive Committee noted the information presented by a solicitor representing Hamdden Ltd, a company that sells angling rights, and fourteen angling clubs in south Wales

which intended to present claims for economic loss allegedly suffered as a result of the *Sea Empress* incident.

6.1.2 The solicitor representing the prospective claimants presented the following information (document FUND/EXC.49/9, paragraphs 7.3 and 7.4):

The major part of angling in England and Wales is carried out through angling clubs. These clubs are formed for the purpose of making fishing available to their members to which the individual members would not be able to gain access without the club acquiring the fishing rights.

The clubs as legal entities are either unincorporated associations or limited companies. As a general principle clubs look to raise sufficient income to cover their outgoings and therefore cannot be characterised in any way as profit making organisations.

The clubs acquire the angling rights either by freehold purchase of the bank of the river which by law vests the bed to one half the width of the river in the owner, or by purchase of the fishing rights which can be acquired separately from the land itself. Alternatively the fishing rights are leased or licensed from the land owner.

The clubs finance the acquisition of the fishing rights by the annual subscriptions paid by the members. In many cases the price paid for the fishing rights is less than the full market value which reflects long standing relationships between the club and owners and the benefit to the community in having fishing rights available to local people.

6.1.3 This solicitor indicated that the claims would be made on the following basis:

The claims to be made by angling clubs will reflect, on the one hand, the payment of money for which no benefit has been had and, on the other, income which has been lost. Both the wasted expenditure and the lost income result directly from the closure of the fisheries from 17 March to 3 May, which amounts to 21.86% of the season which closes on 17 October. On the income side of the equation the clubs will have suffered loss of subscriptions, loss of sales of day tickets to casual anglers and loss of other income. Claims will therefore be prepared and presented on the basis of an analysis of the club's accounts. It will be borne in mind that so far as possible the clubs are under a duty to mitigate any loss that they have suffered.

6.1.4 The Executive Committee confirmed its position that claims should not be considered until they had actually been submitted. The Committee decided therefore not to consider the admissibility of these potential claims (document FUND/EXC.49/12, paragraph 3.8.14).

6.1.5 Since the Committee's 49th session, claims for the period 20 March-3 May 1996 have been presented by the above-mentioned company (Hamdden Ltd) and 11 unincorporated associations (angling clubs) which conduct their activities in rivers in Wales covered by the ban on migratory fish imposed by the United Kingdom Government.

Claims for loss of income

6.1.6 Hamdden Ltd and five of the angling clubs have maintained that they have suffered a loss of income as a result of the river fishing ban. The claims for loss of income total £85 183, out of which that of Hamdden Ltd is for £74 064. Both Hamdden Ltd and the angling clubs claim for loss of income from a reduction in the sale of day tickets to casual anglers and/or from 1995 club members not renewing their subscriptions in 1996, both allegedly as a result of the fishing ban. The claim by Hamdden Ltd also covers the loss of income in other fields of business, such as a fishing school, the provision of accommodation and the sale of food and beverages.

6.1.7 It will be recalled that, at its 50th session, the Executive Committee considered a claim for economic loss from an angling club which conducted its activities in the Cleddau River some 20 kilometres northeast of Milford Haven. It was noted that this river was covered by the ban on migratory fish (ie salmon and river trout). It was also noted that the claim for £3 800 related to losses suffered due to a reduction in membership in 1996, allegedly as a result of the *Sea Empress* incident. The Committee took the view that the losses

suffered by the angling club should be considered as damage caused by contamination. It decided, therefore, that this claim was admissible in principle (document 71FUND/EXC.50/17, paragraph 3.12.12).

6.1.8 In the light of the decision by the Executive Committee referred to in paragraph 6.1.7, the Director considers that the claims for loss of income of the types set out in paragraph 6.1.6 above are admissible in principle.

Rod fees and membership fees

6.1.9 Hamdden Ltd has claimed compensation following its decision to make a 20% refund to the 107 anglers to whom the company sold fishing rights ('rod fees') for the 1996 angling season. The refund relates to the period during which the fishing ban was in force. This claim amounts to £12 930.

6.1.10 Eight angling clubs have claimed compensation on behalf of their members for the part of their membership fees for the 1996 angling season which relates to the period of the fishing ban. These claims total £15 465.

6.1.11 The solicitor representing these claimants has submitted the following further information in respect of these different claims:

The anglers/members purchased from Hamdden Ltd/the angling clubs the right to fish in certain specified waters for the whole of the 1996 season. These anglers/members lost the opportunity to fish for a part of the period for which they had paid to exercise that right.

The payer of rod fees/member of the angling clubs entered into a contractual relationship with Hamdden Ltd/the angling club by paying an agreed fee in return for the availability of angling for a given period. As a result of the contamination, Hamdden Ltd/the angling clubs were effectively unable to fulfill their part of the contracts in full.

It is accepted that neither in the case of Hamdden Ltd nor in the case of the angling clubs is there a specific contractual term entitling the payer of rod fees or the club member to claim back subscriptions or partial subscriptions paid in the event that fishing is unavailable. However, in common law, the angler/payer of rod fees would be entitled to claim a return of the proportion of his subscription for which he has not had value by virtue of the doctrine of contractual frustration which provides that, where a supervening event not connected with the conduct of the parties makes performance of the contract impossible, the courts will intervene to terminate obligations under that contract.

By virtue of Section 1(2) of the Law Reform (Frustrated Contracts) Act 1943 it is provided that:

"all sums paid or payable to any parties in pursuance of the contract before the time when the parties were not discharged shall in the case of sums so paid, be recoverable from him as money received by him for the use of the party by whom the sums were paid ..."

The Law Reform (Frustrated Contracts) Act 1943 entitles, in these circumstances, the payer of rod fees/the member to claim back from Hamdden Ltd/the angling club the money paid in respect of which Hamdden Ltd/the angling club were unable or partially unable to provide their part of the bargain due to the frustrating event, ie the pollution and subsequent closure of the fishery.

The loss has been suffered. Whether that loss vests rights in Hamdden Ltd and the angling clubs by virtue of the Common Law Doctrine of Frustration or whether it vests rights in the individual purchaser of rod fees and the anglers is posterior to the issue of whether the loss exists and is properly compensatable under the 1971 Fund rules in the first instance.

6.1.12 The Director considers that, with regard to the claim for the reimbursement of rod fees, the question arises as to whether the loss suffered by Hamdden Ltd was the result of the fulfilment of an obligation to reimburse part of the rod fees. The Rules and Regulations issued by Hamdden Ltd provide that "Hamdden Ltd will not be held responsible for any change to the fishing season or further prohibitions beyond their control." In the Director's view, this provision makes it clear that Hamdden Ltd was not under any legal obligation to reimburse the rod fees for the part of the year when the fishing ban was in force. The Director

considers that this provision also precludes the application of the doctrine of frustration of contracts. He also considers that, even in the absence of such a provision, this doctrine would not have been applicable in this case. It should be noted that the individuals concerned were not deprived of the entire benefits of the contracts, since fishing was prohibited during only part of the season. The Director therefore takes the view that Hamdden Ltd is not entitled to compensation for losses suffered as a result of reimbursement of rod fees.

6.1.13 As for the claims submitted by the angling clubs on behalf of their members, the Director considers that the individual members should be considered as the claimants, and that the loss suffered by them is one of loss of enjoyment. In the Director's view, a claim for loss of enjoyment is not admissible for compensation.

Expenses incurred during the period of the river fishing ban

6.1.14 The angling clubs have presented claims totalling £10 576 relating to certain expenses for the period of the fishing ban, namely the lease of fishing rights, insurance premiums, maintenance (repairing river banks and access footpaths, clearing weeds from the rivers, removing rubbish from the bottom of the rivers), bailiff fees, water rates and other standing charges.

6.1.15 The Director is of the view that the costs covered by these claims are not admissible for compensation, since these costs would have been incurred whether or not there had been a fishing ban. He proposes, therefore, that these parts of the claims should be rejected.

6.2 Claim by an exporter of processed shellfish

6.2.1 A claim of £1 014 346 for losses as a result of the fishing ban on whelks has been presented by Edwards Associates, an exporter of processed shellfish based in Newport (Wales) approximately 177 kilometres from Milford Haven.

6.2.2 At its 49th session, the Executive Committee considered that there was a reasonable degree of proximity between the contamination caused by the *Sea Empress* incident and the losses allegedly suffered by Edwards Associates and that therefore the claim was admissible in principle (document FUND/EXC.49/12, paragraphs 3.8.12). The losses suffered by Edwards Associates have been assessed on an interim basis by the experts engaged by the 1971 Fund and the Skuld Club at £369 693. Edwards Associates has received interim payments of £277 270, corresponding to 75% of the assessed losses.

6.2.3 One part of Edwards Associates' claim, which concerns loss of sales to some customers, raises a question of principle. The situation can be summarised as follows:

Edwards Associates sells whelks processed by Quay Fresh and Frozen Foods Ltd (a company contracted by Edwards Associates to process whelks) to customers overseas at an agreed price. The claimant has stated that some customers asked Edwards Associates to issue invoices for quantities lower than those actually sold and for prices lower than those paid. It is further stated that these customers paid the invoiced amount and later completed the purchase by way of a supplementary payment for the balance. It appears that the objective of this procedure was to reduce the amount of import duty to be paid by these customers.

Edwards Associates has provided accounts and supporting data which show receipt of payment for the invoices as well as the supplementary payments. These other payments have been received in Edwards Associates' bank account by a variety of routes, including via members of the Edwards family. It has not been possible to reconcile all of these payments with the consignments of frozen whelk shipped. All payments received by Edwards Associates by whatever route have been included in the annual accounts and appear to have been declared to the United Kingdom tax authorities.

It has been stated that the claimant adopted this procedure to the advantage of the customer, without himself obtaining any direct financial benefit.

6.2.4 The losses suffered by Edwards Associates have been assessed by the Skuld Club and the 1971 Fund on an interim basis, on the basis of the prices and quantities actually invoiced.

6.2.5 Edwards Associates has maintained, however, that some of the invoices presented in support of the claim do not give an accurate picture of the prices that Edwards Associates obtained in 1996. The claimant has argued that the claim should be assessed on the basis of the prices and quantities actually agreed with the foreign customers and not on the basis of the invoiced amounts. According to the claimant the practice of under-invoicing ceased during 1996 due to customs investigations in the country concerned.

6.2.6 The experts engaged by the Skuld Club and the 1971 Fund have investigated whelk market prices and have found from information submitted by another shellfish exporter shows that in the relevant part of 1996 whelks were being purchased by buyers in the country concerned at higher prices than those invoiced by Edwards Associates on certain occasions.

6.2.7 The Director makes the following assessment. The claimant has presented invoices showing certain prices and quantities in respect of sales to certain foreign customers. The claimant has maintained that the total amount actually paid for some consignments was higher than the amount set out in the corresponding invoices. The investigations made by the 1971 Fund's and the Skuld Club's experts show that it is likely that the claimant would have obtained higher amounts for some consignments than were actually invoiced. Nevertheless, the Director considers that it would not be appropriate for the 1971 Fund to disregard written evidence of prices obtained in the form of invoices which, on the claimant's own admission, were incorrect in order to enable customers to pay reduced import duty. The Director considers, therefore, that the claim, as regards the lost sales to these customers, should be assessed on the basis of the prices and quantities actually invoiced to these customers during the period of the claim.

6.3 Claim for damage resulting from road traffic accident

6.3.1 A claim for £536 has been presented for the costs incurred in repairing a car which was damaged as a result of a traffic accident in the outskirts of Tenby on 11 March 1996. According to the claimant, the accident occurred because the road was covered with a thin film of oil. It is alleged that a fleet of tractors and agricultural tankers had been carrying oil from the beaches contaminated following the *Sea Empress* incident to a disposal area located about ½ mile away from Tenby beach, and that oil droplets had been building up on the roads over a period of about a fortnight. It is further alleged that there were no warning signs indicating the condition of the road and that the thin film of oil had formed an emulsion with the rain water, creating a slippery surface.

6.3.2 The claimant has given the following information concerning the accident:

The claimant saw a car braking approximately 50 to 100 metres ahead of him. He then applied the brakes of his car, but this did not have any effect on the speed of his car. The wheels locked and his car slid until it collided with the car in front of him. Both the claimant and the driver of the other car noted that there was no sign of any skid mark, even though the wheels of the claimant's car had locked.

6.3.3 The experts engaged by the 1971 Fund and the Skuld Club to monitor the clean-up operations have stated that there were clean-up operations in Tenby at the time of the road accident and that it is possible that vehicles used in the clean-up operations had passed near the place where the road accident occurred. The experts have pointed out, however, that most of the large road tankers had been using a different route that did not pass through the town but used a road that by-passed it.

6.3.4 It is reported in the minutes of a meeting of the JRC held on 29 February 1997 that a problem was developing in Tenby as a result of the oil on the roads causing slippery surfaces. The minutes also recorded that road cleaning would be arranged by Dyfed County Council and that a road danger warning would be released to the public by the police. It is noted in the minutes of a later meeting that road cleaning along the route used by vehicles transporting collected oily waste had taken place during the period 5 to 7 March 1996.

6.3.5 The Director makes the following assessment. When oil residues are transported by lorry from a polluted beach to a waste disposal site, oil droplets may escape from the lorry and make the road surface slippery. The Director takes the view that if, in such a situation, a collision between two motor vehicles is caused by the slippery surface, the damage to the vehicles should be considered as damage caused by contamination. If the Executive Committee shares this view, the Director will investigate the evidence surrounding the accident to establish whether the claim should be admitted.

7 Investigations into the cause of the incident

7.1 Investigations by the United Kingdom authorities

7.1.1 An investigation into the *Sea Empress* incident was carried out by the Marine Accident Investigation Branch (MAIB) of the United Kingdom Department of Transport. The report of the Chief Inspector of Marine Accidents into the grounding and subsequent salvage of the *Sea Empress* was published on 27 March 1997. The purpose of the investigation was to determine the circumstances and causes of the accident, with the aim of improving the safety of life at sea and avoiding accidents in the future. The report does not attempt to apportion liability, nor to apportion blame.

7.1.2 The MAIB report contains the following summary:

The motor tanker *Sea Empress* loaded with a cargo of 130 018 tonnes of Forties light crude oil grounded off the Middle Channel Rocks in the approaches to Milford Haven at 2007 hours on 15 February 1996. A pilot was on board and the vessel was entering the Haven via the West Channel. Although the main engine was stopped, put astern and both anchors dropped the vessel continued to run ahead and came to rest aground, approximately 5 cables northeast of the initial grounding position. The weather was fine and clear with a west-northwesterly force 4/5 wind.

The vessel is constructed with some side ballast tanks but no double bottom tanks. The starboard side cargo and ballast tanks were ruptured when the vessel first grounded resulting in a heavy trim by the head and a starboard list. A quantity of oil was released from the damaged cargo tanks.

Both the Milford Haven Port Authority's Emergency Plan and the Marine Pollution Control Unit's National Contingency Plan were implemented promptly. Within hours the managers of *Sea Empress* had accepted an offer of assistance from a salvage consortium on the terms of Lloyd's Standard Form of Salvage Agreement, 'No Cure - No Pay' (LOF95).

Sea Empress was manoeuvred into deeper water where she could be anchored and held in position with the aid of the harbour tugs from Milford Haven. This was achieved without further loss of cargo and the intention was to lighten the casualty as soon as possible so as to allow her to enter the Haven and discharge the remainder of her cargo. A suitable lightening vessel was identified and preparations were commenced to ready *Sea Empress* for this operation.

The prediction of gale force winds led to the decision to turn the casualty and re-anchor her so that she would be heading into the wind. This operation was carried out on 17 February while the preparations for lightening were still underway. It was just after this turning operation, and when the weather conditions had already deteriorated, that control of the casualty was lost and she grounded off Saint Ann's Head.

For the next four days efforts by the salvors to regain control of the casualty were unsuccessful and the casualty went aground again on a number of occasions, both off Middle Channel Rocks and Saint Ann's Head. It was not until 21 February that the casualty was successfully refloated and brought under control. She was then taken to a berth inside the Haven where the remainder of her cargo was discharged.

There was no loss of life or serious injuries.

The cause of the initial grounding has been found to be due to pilot error.

The main factors, apart from the bad weather, which resulted in the salvage operation taking so long, were insufficient tugs of the appropriate power and manoeuvrability, together with a lack of full understanding of the tidal currents in the area.

The initial grounding resulted in approximately 2 500 tonnes of crude oil escaping and about a further 69 300 tonnes was lost to the sea during the period of the salvage operation.

7.1.3 The Report states that the pilot error which caused the initial grounding was due in part to inadequate training and experience in the pilotage of large tankers.

7.2 Investigation by the Republic of Liberia

7.2.1 The Commissioner of Maritime Affairs of the Republic of Liberia has published a report of the investigation into the grounding of the *Sea Empress*. The report states:

Neither before, nor at the time the pilot boarded, did the master and pilot discuss any plan of approach, although IMO Res.285(8) was followed in a broad sense. This however would not have had any effect on subsequent events as the master was not aware of the pilot's inexperience with vessels of this size, and he probably would have taken the pilot's advice that there was no east/west current as the pilot had just come out through the entrance to meet him. The master would have relied on the pilot's experience and logical explanation of his proposed approach.

The pilot had 1 hour and 50 minutes at the time of boarding in order to reach the berth at the Texaco jetty n°1 before low water. The normal passage time is one hour from boarding area. Therefore on this occasion arrival off the berth would have been 50 minutes before low water. The minimum depth at the jetty is 19 metres.

Since he became a Class 2 Pilot in May 1995 the Pilot had piloted 'from sea' only three vessels of over 90 000 tonnes deadweight. *Sea Empress* was the largest ship he had solely piloted. It is apparent that the navigation he used for entering the West Channel and the practice of judging the 'gap' between two sets of leading lights had been done regularly with smaller vessels which may be easier to manoeuvre, and may have quicker responses should a correction in course be required due to changes in tide and wind. Without experience of piloting larger vessels he may have assumed that all vessels could be navigated in this way, not fully taking into account the prevailing conditions of wind and tide.

The course made good since entering the channel was more likely nearer 040° than 025° or 030° as steered and led the vessel over the 15 metre contour. The helmsman's comment about the vessel not steering could be attributed to the water cushion against the rock wall of the channel edge prior to grounding.

It is concluded that the grounding occurred because:

- (a) The pilot made insufficient allowance for the tidal cross current on entering the channel believing that at that time there would be no cross current.
- (b) The pilot did not use the leading lights from his boarding position to ascertain on the run to the channel entrance if there was any cross current.
- (c) There were insufficient control procedures by the harbour/pilot authorities to:
 - (1) monitor the approach of deep draft vessels when entering or leaving the port, and advise the pilot of the vessel if he was off the leading line, and by how much; and
 - (2) monitor closely the annual advancement of junior pilots until they have suitable experience for the tonnage the licence permits and until they become fully qualified Class 1 pilots.

7.2.2 Director's consideration of the reports

The Director is examining, with the assistance of the 1971 Fund's lawyers, the two reports on the investigations into the cause of the *Sea Empress* incident. He will inform the Executive Committee of his conclusions in due course.

8 Action to be taken by the Executive Committee

The Executive Committee is invited:

- (a) to take note of the information contained in this document;
 - (b) to give the Director such instructions as it may deem appropriate in respect of the handling of the claims arising out of this incident;
 - (c) to take a decision on the level of the 1971 Fund's payment (paragraph 5 above);
 - (d) to give the Director such instructions as it may deem appropriate in respect of the admissibility of:
 - (i) claims by Hamdden Ltd and angling clubs (paragraph 6.1);
 - (ii) claim by an exporter of processed shellfish (paragraph 6.2);
 - (iii) claim for damage resulting from a road traffic accident (paragraph 6.3); and
 - (e) to give the Director such instructions in relation to other aspects of this incident as it may deem appropriate.
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