



## ADMISSIBILITY OF CLAIMS RELATING TO SUBSISTENCE FISHING

### TECHNICAL GUIDELINES TO ASSIST EXPERTS IN THE ASSESSMENT OF CLAIMS IN THE FISHERIES, MARICULTURE AND FISH PROCESSING SECTORS, INCLUDING SUBSISTENCE AND SMALL-SCALE OPERATIONS LACKING EVIDENCE OF EARNINGS.

#### Note by the Director

<b>Summary:</b>	Draft Technical Guidelines on methods of assessing losses in the fisheries, mariculture and fish processing sectors, which are intended to assist the 1992 Fund's world-wide network of fishery experts in assessing claims, have been prepared. The Assembly established a correspondence group to review the draft Guidelines and to report to the Assembly with a recommendation on whether they should be published, and if so, in what form. The Assembly also decided that the group should address the need for more concise guidelines for claimants. Eight 1992 Fund Member States delegations and one observer delegation volunteered to join the correspondence group, but only five respondents have submitted their comments to date. The replies received so far are analysed.
<b>Action to be taken:</b>	Decide whether to continue to seek the views of interested delegations on the draft Technical Guidelines for experts for the purpose of making a recommendation to the Assembly on whether, and if so, in what form the Guidelines should be published and whether more precise guidelines should be produced for claimants.

#### 1 **Introduction**

- 1.1 At its February 1999 session the 1971 Fund Executive Committee considered the question of claims in respect of subsistence fishing, ie fishing carried out by individual fishermen mainly for the purpose of providing food for their families. The Committee instructed the Director to study further the admissibility of claims relating to subsistence fishing, in consultation with the Fund's experts and the Food and Agriculture Organization (FAO), and to consider whether Guidelines on the admissibility of such claims should be developed (document 71FUND/EXC.60/17, paragraph 5.6).
- 1.2 A key feature of claims for compensation in respect of small-scale fishing activities, including subsistence fishing, is that they are rarely supported by evidence as to normal levels of income

against which to assess claims. In order to assist the 1992 Fund in dealing with such claims in the future the Director engaged a firm of fishery specialists to prepare technical guidelines on methods of assessing losses in fisheries, aquaculture and processing sectors where evidence is likely to be limited or totally lacking.

- 1.3 The Guidelines were aimed primarily at the claims staff of the IOPC Funds' Secretariat and the shipowners' insurers as well as their experts working in the field and local claims office staff. One of the benefits of the Guidelines would be that they would enable the 1992 Fund to extend its current network of fishery specialists to include those who are not familiar with the compensation Conventions and the Fund's policy on claims assessment.

## **2 Previous consideration by the Assembly**

- 2.1 At its October 2003 session the 1992 Fund Assembly considered a proposal by the Director that the authors of the Guidelines should be requested to publish a limited number of copies of the Guidelines, making it clear in the foreword that although they had been inspired by the 1992 Fund, the document had not been approved by the Fund and was not a Fund publication. The Director further proposed that the Guidelines could be made available to fishery experts appointed by the Fund and the P&I insurers to assist them in their assessment of claims, particularly in cases where the experts had limited experience in assessing claims for pollution damage.
- 2.2 Some delegations stated that although the Technical Guidelines might be useful for the work of the Fund, it was not possible for the Member States to authorise the publication of the Guidelines by either the Fund or the authors without first having had an opportunity to review them.
- 2.3 A number of delegations supported the 1992 Fund producing concise Guidelines for claimants in the fisheries, mariculture and processing sectors and considered that these might best be reviewed by a working group, although not the working group currently looking at the revision of the 1992 Conventions.
- 2.4 In view of time constraints the Assembly decided to instruct the Director to submit a revised proposal to the next session of the Assembly, taking into account the above observations (document 92FUND/A.8/30, paragraph 28.8).
- 2.5 At its October 2004 session the Assembly decided to establish a correspondence group comprising representatives of interested delegations to review the draft Guidelines and to report to the Assembly with a recommendation on whether they should be published, and if so, in what form. The Assembly also decided that the correspondence group should address the need for more precise guidelines for claimants and report to the Assembly in due course. The Chairman invited those delegations that wished to participate in the correspondence group to provide the Secretariat with their e-mail addresses (document 92FUND/A.9/31, paragraphs 24.7 and 24.8).

## **3 Views expressed by the correspondence group**

- 3.1 Eight 1992 Fund Member States delegations and one observer delegation volunteered to join the correspondence group and were sent copies of the draft Guidelines in January 2005. However, to date the Secretariat has only received comments from five respondents, four Member States delegations and the observer delegation. The opinions of the respondents that have submitted comments are divided.
- 3.2 Two delegations considered that the Guidelines should not be published, but instead included in the IOPC Funds' internal reference materials for use of technical experts appointed by the Funds and the P&I Clubs. Those delegations were also of the view that there was no need for separate guidelines for claimants. However, both delegations made the point that they did not hold strong views and were prepared to go along with the majority of the correspondence group.

- 3.3 The other two delegations and the observer delegation favoured publication of the Guidelines in one form or another, but felt that the current draft was far too long and that it could be reduced to 30 – 40 pages without detracting from the content. All three respondents considered that there would be benefit in producing guidelines for claimants, but two were of the opinion that if their proposal for shortening the current Guidelines were adopted, the Guidelines could serve both experts and claimants. The point was made by the observer delegation that no significant improvement in dealing with claims by artisanal and subsistence fishermen could be gained by attempting to tailor a publication for the specific purpose of educating this sector.

#### **4 Consideration by the Director**

- 4.1 The Director is grateful to those respondents that have provided comments on the draft Guidelines, some of whom also provided valuable and detailed editorial suggestions. However, in view of the fact that only just over 50% of the respondents have submitted comments to date, and that the views of those that did not respond were divided, he does not feel that there is a clear consensus as to the way forward. The Director therefore puts forward two options for the Assembly's consideration.
- 4.2 The first option would be to continue to seek the views of interested delegations as to whether, and if so, in what form the Guidelines should be published and whether more precise guidelines should be produced for claimants, including those who expressed an interest but have so far not provided any input.
- 4.3 The second option would be simply to include the draft Guidelines in the Funds' internal reference materials for use by their experts. This would not, in the Director's view, preclude in the future giving further consideration to producing guidelines for claimants in the light of claims experience using the revised, more detailed Claims Manual approved in October 2004.
- 4.4 The Director favours the second option. If this were to be adopted, the Director would review the situation in a few years time in the light of the experience of the new Claims Manual.

#### **5 Action to be taken by the Assembly**

The Assembly is invited:

- (a) to take note of the information contained in this document;
  - (b) to decide whether to continue to seek the views of interested delegations on the draft Technical Guidelines for experts for the purpose of making a recommendation to the Assembly on whether, and if so, in what form the Guidelines should be published and whether more precise guidelines should be produced for claimants; and
  - (c) to give the Director such other instructions in respect of the issues dealt with in this document as it may deem appropriate.
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