



ADMISSIBILITY OF CLAIMS RELATING TO SUBSISTENCE FISHING

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

Note by the Director

Summary:

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 Director proposes that a small working group comprising representatives of interested delegations should be set up to review the draft Guidelines and make a recommendation to the Assembly on whether, and if so, in what form these Guidelines should be published. The Director has also given consideration to a proposal made by a number of delegations that a more concise version should be prepared for the benefit of claimants and their representatives, but he considers that there is no need for such a concise version.

Action to be taken:

Decide on whether to establish a working group to review the draft Guidelines and whether the 1992 Fund should prepare draft concise Guidelines for claimants in the fisheries, mariculture and fisheries sectors.

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 Fund's 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 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).

3 Further consideration by the Director

- 3.1 As regards the draft Technical Guidelines, the Director remains of the view that there is merit in publishing them in one form or other, but that in view of the size of the document, which runs to some 150 pages of A5 pages, and the technical nature of the contents, it would be impracticable for the 1992 Fund Assembly itself to review the text in detail. The Director therefore proposes that the 1992 Fund Assembly should establish a small working group comprising representatives of interested delegations and observer delegations to review the draft for the purpose of making a recommendation to the Assembly on whether, and if so, in what form the Technical Guidelines should be published.
- 3.2 As regards the proposed Guidelines for claimants referred to in paragraph 2.3 above, the 1992 Fund Assembly will, at its 9th session, be invited to consider a draft of a revised Claims Manual intended to be more informative and easier to read than the current version of the Manual. Included in the revised version is a section dealing specifically with claims in the fisheries, mariculture and fish processing sectors, including subsistence fisheries. The draft revised Manual also contains more detailed information for claimants in the commercial fisheries sector on the submission of claims for compensation. In the light of the additional information provided to claimants in the proposed revised Manual, the Director is of the view that there is no need to produce more specific Guidelines for claimants in a further publication. The Assembly is therefore invited to decide whether or not the Fund should develop further Guidelines to claimants in the fisheries, mariculture and processing sectors.

4 **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 establish a working group to review the draft Technical Guidelines intended 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;
 - (c) to decide whether the 1992 Fund should prepare draft concise Guidelines for claimants in the fisheries, mariculture and fisheries sectors; and
 - (d) to give the Director such other instructions in respect of the issues dealt with in this document as it may deem appropriate.
-