



## 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

**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 Assembly instructed the Secretariat to prepare more concise guidelines for the use of experts and claimants to be published as a Fund document.

**Action to be taken:**

The Assembly is invited to:

- (a) take note of the information contained in this document;
- (b) review the revised guidelines as set out in document 92FUND/A/ES.12/7/Add.1;
- (c) consider whether the revised guidelines should be published for the use of experts; and
- (d) consider whether the Fund should produce a shortened and simplified version of the guidelines to assist 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 the Funds' 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 1992 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 which was at the time 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 concise 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 24.8 and 24.9).
- 2.6 Of the 11 delegations that volunteered to join the correspondence group (ten Member States' delegations and one observer delegation) the Fund received only six responses. The opinions of the respondents that did provide comments were divided.
- 2.7 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.
- 2.8 The other three 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 four 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.

- 2.9 At its October 2006 session, the Assembly took note of the observations made by the six contributing delegations, as contained in document 92FUND/A.11/22 on the admissibility of claims relating to subsistence fishing.
- 2.10 Some delegations supported the view expressed by the Director that there was no justification in proceeding further with the development of the guidelines for experts or developing more concise guidelines for claimants, and proposed that the guidelines be simply included in the Funds' internal reference materials for use by their experts.
- 2.11 A number of delegations expressed a counter view and stated that it would be a great pity if the useful information included in the guidelines was not made more widely available in the interests of facilitating the assessment of claims by experts. The point was made that although only a small number of correspondents had provided comments on the draft guidelines, of those that had there was a clear majority in favour of publishing them.
- 2.12 The Assembly decided to instruct the Director to publish the guidelines as a Fund document, taking into account the above observations (document 92FUND/A.11/35, paragraph 24.6).

### **3 Consideration by the Director**

- 3.1 The Secretariat has proceeded as instructed to reduce the size of the document in order to make it suitable for a more widespread publication. The revised guidelines will be issued as an addendum to this document (document 92FUND/A/ES.12/7/Add.1).
- 3.2 The revised draft, although smaller in size than the original guidelines, is still considered however to be unsuitable for claimants. In particular it contains a number of topics, such as the global assessment of claims, which are highly technical in nature and which would be of little or no interest or utility to claimants.
- 3.3 The Director is therefore firmly of the view that the publication of the guidelines in a single document with the dual purpose of serving experts and claimants is neither useful nor practical. The needs and expertise of experts and claimants being of a fundamentally different nature, trying to combine the two in a single version of the guidelines would in his view seriously undermine their usefulness for both groups. He therefore proposes that the priority should be to finalise the current revised draft guidelines for publication with a view to the use by experts, and then to focus on preparing a shorter and simpler version for claimants if the Assembly were to so decide.
- 3.4 The Assembly is therefore invited to review the current draft guidelines and to decide whether the Fund should proceed with their publication for the use of experts. The Assembly is further invited to decide whether the Fund should adapt the guidelines for the purpose of assisting claimants.

### **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 review the revised guidelines as set out in document 92FUND/A/ES.12/7/Add.1;
  - (c) to consider whether the revised guidelines should be published for the use of experts; and
  - (d) to consider whether the Fund should produce a significantly shortened and simplified version of the guidelines to assist claimants.
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