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## TECHNICAL GUIDELINES ON METHODS OF ASSESSING LOSSES IN THE FISHERIES SECTOR

### GUIDELINES FOR PRESENTING CLAIMS IN THE FISHERIES, MARICULTURE AND FISH PROCESSING SECTORS

#### Note by the Director

<b>Summary:</b>	At its 3rd session held in June 2007, the Administrative Council, acting on behalf of the Assembly, approved the technical guidelines for assessing fisheries sector claims, which were intended to assist the 1992 Fund's worldwide network of fishery experts in assessing claims.  Upon the instructions of the Administrative Council, a simplified version of the guidelines for claimants for presenting claims in the fisheries, mariculture and fish processing sectors has been prepared for consideration by the Assembly
<b>Action to be taken:</b>	The Assembly is invited to:  (a) take note of the information contained in this document; and (b) decide whether to publish the guidelines for claimants.

### **1 Background**

- 1.1 At its 3rd session held in June 2007, the Administrative Council, acting on behalf of the Assembly, approved a revised version of the technical guidelines for assessing fisheries sector claims which are intended to assist the 1992 Fund's worldwide network of fishery experts in assessing claims and instructed the Secretariat to publish this as a Fund document (document 92FUND/AC.3/A/ES.12/14, paragraph 7.11).
- 1.2 The Secretariat has made some minor editorial changes to the text of the technical guidelines approved by the Assembly and it has been translated into French and Spanish. The detailed guidelines, which are some 33 pages long, are being published as a Fund document and will be available on the IOPC Funds' website.

### **2 Guidelines for presenting claims in the fisheries, mariculture and fish processing sector**

- 2.1 At the same session, the Administrative Council instructed the Secretariat to develop a simplified version of the guidelines for claimants in the subsistence fisheries sector and to present it to the Assembly for consideration at its next session (document 92FUND/AC.3/A/ES.12/14, section 7).

- 2.2 The Director engaged a fisheries expert who has worked for the Funds in the past to prepare a simplified set of guidelines which would be easily understandable by claimants in this sector. These guidelines, which are some 9 pages long, are at the Annex.
- 2.3 The Assembly is invited to review the guidelines and to consider whether the Fund should make them available as a Fund publication.

**3 Action to be taken by the Assembly**

The Assembly is invited to:

- (a) take note of the information contained in this document; and
- (b) consider whether to make the simplified guidelines for claimants in the subsistence fisheries sector available as a Fund publication.

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## ANNEX

## DRAFT

# **GUIDELINES FOR PRESENTING CLAIMS IN THE FISHERIES, MARICULTURE AND FISH PROCESSING SECTOR**

### **Preface**

This booklet is written to help those engaged in catching, farming and processing seafood who have suffered losses due to oil pollution caused by an oil tanker to make a claim for compensation. It provides guidelines as to what should be done following an oil spill and what sort of information is needed to make a claim for compensation. However, following these guidelines does not guarantee that all claims will be successful.

### **1      Introduction to the International Oil Pollution Compensation Fund 1992**

#### *What is the Fund?*

- 1.1 The International Oil Pollution Compensation Fund 1992 (which, in this document, is called 'the Fund') is an international body composed of representatives of States which have agreed to two Conventions which cover the payment of compensation to people, businesses or organisations who suffer losses due to pollution caused by persistent heavy oil (not gasoline or other light oils) from oil tankers. The details of how these different Conventions work are complex. More information on these Conventions can be found in the 1992 Fund Claims Manual; details of how to obtain a copy of this Manual are given in Section 12 at the end of this document.

#### *What does the Fund do?*

- 1.2 The aim of the Fund, along with the tanker's insurer (usually known as a Protection and Indemnity Club, or P&I Club), is to provide compensation for losses that happened due to a pollution incident involving an oil tanker, so that the claimant is returned to the same economic position in which he/she would have been if the oil spill had not happened. Ideally, the compensation should exactly balance the loss.

#### *How is money raised to pay compensation?*

- 1.3 The owners of oil tankers are generally covered against damages caused by oil pollution through their own insurance up to a certain amount of money, depending on the size of the tanker. It is this money that is used to pay the first compensation after an oil spill.
- 1.4 In addition, money is paid into the Fund mainly by oil companies in Member States according to how much oil they import by sea each year; all companies who import more than 150 000 tonnes of oil by sea in any year must contribute to the Fund. This money in the Fund is then used when the amount available from the tanker's own insurance is not enough to cover the total costs of the pollution incident.

#### *When does the Fund come into play?*

- 1.5 The owners of the tanker from which the oil was spilt are responsible for paying for the damage caused, usually through their P&I Club. However, the maximum amount they have to pay can be limited (according to the size of the tanker) under one of the Conventions mentioned earlier and, once this amount has been paid, the Fund is responsible for any extra payments. Often the insurance is enough to cover all the costs and the money from the Fund is not needed. However, in a very large

spill it is possible that not even the money available from the Fund to pay compensation for that particular spill will be enough to cover all valid compensation claims; in this case, and it is very rare, each successful claimant will be paid a proportion of their assessed claim until all the money available from the Fund is allocated.

- 1.6 If the incident which caused the pollution was a natural disaster, or if it was solely caused intentionally by somebody else or by faulty lights or navigation aids, then the tanker owner is not responsible and the Fund will come into play immediately. Also, if the tanker owner cannot meet his liability, the Fund will pay compensation.
- 1.7 The Fund will not pay compensation if the pollution was caused by an act of war or hostilities or if the spill was from a warship. Nor will they pay if it cannot be proved that the damage was caused by an oil tanker. The Fund cannot pay compensation for damage that occurred on the high seas, or outside of the territorial waters or Exclusive Economic Zone of its Member States.
- 1.8 Whether the compensation comes from the insurers or the Fund, the process of making a claim is much the same. The Fund and the P&I Clubs often work closely together, particularly on large oil spills. In many cases the Fund will act on behalf of the ship's insurer to assess compensation claims.

## **2 Who can claim?**

- 2.1 Anybody in one of the Member States of the Fund who has suffered losses due to oil pollution caused by an oil tanker can claim compensation for these losses, but, in this document, only claims from the fisheries sector (fish catching, fish farming or mariculture and other businesses related to fishing) are considered.
- 2.2 For a claim to be successful, the person who is making the claim (the claimant) must be able to show that he/she has suffered a financial loss due to the pollution and that this loss has a close link to contamination due to oil. Factors that would be looked at include:
  - Is the business in an area which was directly contaminated by oil? For example, if you are a fisherman, is the contamination in the area where you usually fish? If you operate a fish farm, did the oil actually reach your farm?
  - How much do you depend on the area which was contaminated? If you fish, could you fish somewhere else that was not contaminated by the oil? If the fishing is not so good in another area, or if it costs you more to fish there (for example, extra fuel for the boat) then these extra costs can be compensated.
  - If you are a fish merchant or processor, can you get supplies of fish from other areas? Any extra costs that you pay to reduce your losses can be compensated.
  - Does your business form an important part of the economy of the area affected by oil? Do you employ people from the area, or is your business located in the contaminated area?
- 2.3 Basically, the further away from an oil spill that you normally operate, the less the chance is that you will receive compensation.
- 2.4 People or businesses that rely on fishing for all or part of their income are entitled to make a claim for economic loss. If you fish for sport and the presence of oil pollution stops you fishing, then you will not have made an economic loss due to the oil and you cannot claim, but if your business involves taking other people fishing for sport, then you might make a loss and can claim.
- 2.5 If you work for somebody else, such as being employed in a fish factory, then your employer would usually pay you your salary and make a claim for full economic loss. Depending on your employer's circumstances, payment of your salary might be delayed in part or whole until the compensation is paid. In the case that your employer claims for full economic loss, the Fund will normally only

compensate him fully if he is prepared to sign an agreement that he will actually pay you your salary if he has not already done so.

- 2.6 If you are part of the crew of a fishing vessel, you should normally be able to rely on the owner of the vessel to submit a claim for loss of the boat's earnings. He will be asked to sign an agreement that he will pay you once compensation has been paid to him.
- 2.7 If you are the owner of a fishing vessel, then you must make it clear when you claim whether or not your claim includes losses made by your crew, and if it does, you should list who they are.
- 2.8 If you belong to an organisation such as a fishing co-operative or trade union, then these bodies can make a claim on behalf of all of their members. States and local authorities might sometimes make a claim for losses in the fisheries sector too. Whoever makes the claim on your behalf and for your losses and no matter how many claims you make, you will only qualify for compensation for the actual losses that you suffered.

### **3 What should you do if there is oil pollution?**

- 3.1 Firstly, don't panic. Oil pollution usually looks very bad but it is not as poisonous to fish and marine life as most people think. It is very likely that things will return to near normal within a few weeks or months. The Fund has a well-tested means of compensating you for your losses, though it may take a little time for money to get through to you.
- 3.2 You are responsible for your business, whether it is fishing, mariculture or any other business related to these activities, and it is your responsibility to keep your losses as low as possible. The Fund will find it difficult to pay full compensation if you stop business completely when in fact there are other ways of operating. This might mean fishing in another area, working in some other job (such as cleaning up the oil) or getting supplies of fish from other, unaffected areas. The Fund can compensate for the difference between what you would normally expect to earn and what you actually do earn.

#### *Fishermen*

- 3.3 It is important that you keep records of what you do and what has happened. It is very useful to know exactly when the oil arrived in your area, what the weather conditions were and what you did when it arrived. If you are able to fish somewhere else, keep a record of how much you catch and how much extra it costs you to fish there. Once the oil has gone from your normal fishing grounds, then you should try to return to fishing there straight away.
- 3.4 If you have fishing gear left in the sea (nets, traps etc.) then you should get them back as soon as it safe to do so without causing them to become contaminated. If they do become contaminated by oil, then keep them until they have been inspected by somebody representing the Fund, or at least try to take clear photographs showing the extent of damage.
- 3.5 Sometimes the Government or local authority will impose a ban on fishing in the polluted area. You must be aware that such a ban is not automatically recognised by the Fund and the authorities must be able to justify their decision. If the Fund thinks that it is reasonable that fishing should start again, it may only pay compensation up to this point in time, even if there is still a ban on fishing. Representatives of the Fund or the P&I Club will always make clear their position on a fishing ban. Do not hesitate to contact them on this matter.
- 3.6 It is very rare for oil spills to kill wild fish, but if you think this has happened, then please contact a representative of the Fund or P&I Club so that a joint survey can be carried out.

### *Mariculture operators*

- 3.7 You must decide what action, if any, you can take to protect your business. For instance, if there is oil on the surface of your fishponds or cages, it may be best to stop feeding your fish for a few days so that they don't come to the surface. You might want to use booms or similar methods to stop the oil from reaching your farm. Alternatively you may choose to harvest your stock early, before the oil reaches your facility.
- 3.8 If you decide to destroy your stock, then payment of compensation will depend on many factors including:
- Was the stock contaminated?
  - If it was, would the contamination disappear before the normal time when you would harvest the stock and would you be able to sell it?
  - Would keeping contaminated stock in your ponds or cages stop you from growing more?
- 3.9 Only you can decide, but any action you take should be reasonable and should be aimed at taking the best action possible to keep your damage to a minimum. Keep good records of your actions and why you thought it was reasonable to take them. The Fund is prepared to pay compensation for losses that become unavoidable and where you have operated prudently given the information and resources reasonably available at the time. If you are in doubt as to what you should do, then you, your association or representative should talk to a representative of the Fund before taking any major actions. It is up to you whether you follow their advice. Following their advice does not guarantee you compensation, but it will certainly help in the assessment of your claim.

### *Other fishing businesses (processing, marketing, supply etc.)*

- 3.10 It is important that you keep good records of what you do during the time your business is affected. Keep a close watch on the area of pollution and the extent to which your normal supplies are affected. You may want to try and get supplies of fish from somewhere else – if this costs you more than from your usual source, you can claim compensation for the difference but you must have evidence of this.
- 3.11 It is important that you do not allow fish that have been in contact with oil to be sold. Often the Government or local authority will arrange for fish to be tested to see if they have been tainted by oil. You should arrange to get the results of these tests.

## **4 What losses are covered?**

### *Property damage*

- 4.1 You can claim compensation for damage to fishing and mariculture gear or other equipment caused by contamination by oil from the spill. The compensation can be for cleaning or repair of equipment or, if it is too dirty to be cleaned, for it to be replaced. You can also claim compensation for cleaning of contaminated boats and rafts, but usually not for painting them as the oil rarely causes damage to paint. If possible, store damaged items that need to be replaced until they have been inspected by a representative of the Fund / P&I Club. You should keep receipts or invoices for any new equipment you buy or for any materials used for cleaning contaminated property.

### *Consequential loss*

- 4.2 These are losses caused as a result of contamination to your property. If your fishing gear or business equipment has been contaminated by oil then you can claim for the money you lose through not being able to use the gear until it has been cleaned or replaced. However, it is your responsibility to get back to normal as quickly as possible, and the Fund may only pay for what they consider to be a reasonable period of time for you to resume normal business. Remember, the Fund will only

compensate for loss of profit, and this will be calculated as the value of your normal catches less the amount you would normally spend on such things as fuel and bait.

#### *Pure economic loss*

- 4.3 Even if your fishing or mariculture gear or business equipment has not been contaminated by oil, you might not be able to go about your normal business. For instance, if the sea is covered with oil on your normal fishing grounds and you cannot go somewhere else to fish, then you can claim compensation for the money you would have made if the pollution had not happened. If nobody will buy your produce because they believe it is tainted by oil, then you can claim for this, though it is not always easy to prove. Or, if you are a fish seller and you cannot get fish to sell because nobody is catching it, then you can claim compensation for the lost profit. However, there has to be a close link between the oil pollution and your losses.
- 4.4 You may be able to claim for actions which will prevent further economic losses. For instance, if you were finding it difficult to sell your fish because people thought it might be contaminated by oil, then the reasonable costs of a marketing campaign to reassure the public might be paid by the Fund. You should talk to a representative of the Fund or the P&I Club before going ahead with this kind of action.

#### *Preventive measures*

- 4.5 In some circumstances you can claim for reasonable measures you might take to prevent oil causing damage. For instance, you might use a boom at the entrance to a harbour to stop oil coming in and contaminating boats or to prevent oil from reaching a fish farm. You could claim for the costs of this action.

#### *Use of advisers*

- 4.6 You might need some professional help in making a claim for compensation. In some cases you can claim compensation for reasonable costs of work done by an adviser. As part of its assessment of your claim, the Fund will look at the need for such advice or help, how well it was carried out, how long it took and how much it cost.
- 4.7 Remember, in all of this, the actions that you take and your claim for compensation must be reasonable and realistic. The Fund cannot compensate for any activity outside of the law, such as catches greater than that allowed by applicable regulations, fishing in closed areas or damage to illegal fishing gear.

### **5 What claims can be compensated?**

- 5.1 All claims must satisfy the following points:
  - Claims will only be paid for losses caused by contamination from oil from an oil tanker.
  - There must be a close link between the contamination and your losses.
  - All claims should relate to measures that are reasonable and justified.
  - Compensation will only be paid for an economic loss that can be measured.
  - You must prove how much you have lost and must provide information to support this.
  - The expense, loss or damage must already have taken place. Claims for future losses cannot be considered.
  - Compensation will only be paid where the fisherman, mariculture operator or associated business operates within the relevant legislation.
- 5.2 However, there is some flexibility in the assessment of claims depending on the particular circumstances of the claimant. If you have suffered a loss you should make a claim even if you cannot provide much evidence to prove it.

## **6 When to make a claim**

- 6.1 Compensation can only be paid for losses or damages that have already happened. If your fishing gear or equipment has been contaminated by oil, then it is safe to make a claim straight away after it happened unless there is a chance that more damage might occur. But if you are claiming for loss of earnings due, for example, to not being able to go fishing, then there is no point in making this claim only a few days after the spill happened as you can only claim for those few days and not for possible future losses. It is best to wait a few weeks and see how things turn out – the incident may be over by then and you can make one claim for all your losses. But if it looks like the pollution may affect you for a long time, it may be worth putting in a claim on a regular basis, such as every month or every three months.
- 6.2 You should try to submit your claim as soon as possible. If, however, you are not able to do so or you are considering making a claim at a later stage, you should consult the Claims Manual (see Section II) for further information.
- 6.3 When you have made a claim, but have not come to an agreement with the Fund within three years of the damage taking place, you must protect your rights in court before the third anniversary of the damage taking place, otherwise you will lose them.

## **7 How to make a claim**

- 7.1 For a small pollution incident, claims should generally first be made through the office of the local correspondent or representative of the ship's insurer. If there are a large number of claims, the Fund or the ship's insurer may decide to set up a contact office for receiving claims in a town near to where the spill took place. Details are usually given in the local press. The local office is there to help you to make a claim, to pass on your claim to the Fund and to assist in paying claims once the amount has been assessed by the Fund's experts. The office may hand out claim forms to help you with making a claim. The local office cannot make any decisions as to whether someone will be paid or how much – that is for the Fund to decide in the first instance. Other technical experts who may be sent to assist with the spill, such as staff from the International Tanker Owner's Pollution Federation (ITOPF) and others, are only there to advise on the oil spill and do not decide who should be paid or how much they will receive.
- 7.2 Claims should be made in writing (or by fax or e-mail) and should give as much information as possible in support of your claim.

## **8 What information should you provide?**

- 8.1 The first information you should provide to make a claim is:

- The name and address of the person making the claim, and their representative or adviser (if any);
- The name of the ship involved in the incident;
- The date, place and details of the incident (unless the Fund already knows about this);
- The type of pollution damage that occurred (property damage, economic loss etc.) and how it happened;
- The amount of compensation you are claiming and how you arrived at this figure.

- 8.2 The more details about your business activities and your losses that you can provide to the Fund, the quicker your compensation claim can be assessed. The Fund will find any of the following very useful:
- ***Proof of your involvement in fishing, fish farming or associated business***

For fishermen this can include a fishing licence, membership of a fishing co-operative, association or trade union, boat registration papers in your own name or some other proof

that you are actively involved in the fisheries sector. For mariculture and other businesses, you may have official company documents, or proof of ownership or lease of seabed or land-based property for your business.

- ***Description of how the pollution has affected you***

You should provide a simple description of what you normally do, where and at what times. You should show how you are dependent on the area that was polluted for all or part of your business. This might be evidence of where you live, a fishing licence for the polluted area or some other means of showing that you depend on the polluted area and that you cannot operate anywhere else. Fishing records and charts may also be useful. You should also explain what options were open to you to minimise your losses and how the contamination caused your losses.

- ***Business records, sales notes and receipts***

You should include copies of any business records that you may have, even if you do not have official accounts. These might include fishing log books, sales notes or other evidence of how much fish you catch, receipts for things you buy for your business, such as fish feed, packaging, fuel or ice, and anything else that will make it easier for the Fund to work out how much compensation you might be due. The Fund needs to know how your business worked before the spill happened, so any information that might be useful for this should be included.

- ***Accounts***

If you have trading accounts, a copy of these (for at least three years before the oil spill if possible) should be included with your claim. Monthly details of income and expenses over this three-year period should also be included if you have them. Details of income and expenses during the time of the spill will allow the difference between normal operations and those during the spill to be worked out.

- ***Details of fishing operation or other business***

It is useful if the Fund can understand about your fishing operations – what type of gear you use, where you usually fish, what you catch on a normal day, how much you sell it for, how many days you fish each week and any other details. You should also give some idea of when is the best time of year for different fish and if there are any seasons when you cannot work much due to bad weather or no fish. For mariculture operators, details of your normal stocking, feeding and harvesting patterns should be provided.

- ***Contaminated fishing or mariculture gear***

If any of your fishing gear or other equipment has been contaminated by oil and cannot be cleaned, then you should keep it for inspection by a representative of the Fund or insurers. If it has been damaged but can be cleaned or repaired, then try and take photographs of it before you clean it so that the Fund can work out how much it cost you to clean or repair it. You should keep any receipts or invoices for cleaning or replacement of equipment. In your claim you should make it clear how old the gear was and what its normal life span would be.

- ***Photographs***

If possible, take some photographs of the oil pollution to show how it has affected your business. If you operate a mariculture business, then photographs of the oil in or around your premises would be useful.

- ***Extra payments***

You should say if you have received any payments or compensation from the Government or local authorities, or any other income during the spill. Usually, small amounts of money paid to those who take part in the clean-up operation are not taken into consideration when working out compensation, but if, for instance, you have chartered your boat to help with the clean-up operations, then these payments may be deducted from your final compensation.

**9     What if you have poor records or no evidence?**

- 9.1 In some cases, people have very little evidence to show their normal income levels. Don't worry if you are in this position – the Fund has a great deal of experience in working in these situations, and if you have suffered a genuine loss it will be able to work out how much compensation you are due. Assemble whatever limited evidence you can to support your claim and please tell a representative of the Fund if you are having difficulties and your situation will be treated sympathetically. Don't try to 'make up' records, as these will not be accepted. Providing fake documents in support of a compensation claim is a criminal offence.

**10    How are claims assessed?**

- 10.1 The Fund assesses your claim based on the evidence you have provided and information it has gathered relating to your type of fishing or related business. A representative of the Fund may come and discuss your individual business with you so as to better understand your situation and the impact that the pollution has caused. The Fund tries to arrive at a true assessment of your real losses due to the oil pollution and to return you to the economic position in which you would have been if the oil spill had not happened.
- 10.2 The decision on whether to approve or reject a claim lies with the Fund and the P&I Club only, and not with the person who assesses the claim, any technical adviser or any person working in a local claims handling office.

**11    How payments are made**

- 11.1 Once your claim has been assessed by the Fund's experts, you will be told how much compensation they think is fair, based on evidence available from all relevant sources. This will be in writing and it may be directly to yourself or to an organisation such as a co-operative or trade union that has been helping you to make your claim.
- 11.2 Usually an offer is made that is known as *Full and Final*. This means no further claims for losses suffered *during the period covered by the claim* will be considered, and you will be asked to sign an agreement to this effect. You can make further claims if you feel that you have suffered losses after the period to which your first claim relates, and these would be treated as separate claims.
- 11.3 Please be aware that the Fund is likely to have to deal with hundreds or perhaps thousands of compensation claims. Your claim will be assessed as quickly as possible but it may take some time for the Fund to gather and cross-check relevant information necessary to assess the claim, particularly if only sparse information has been submitted in support of your claim.
- 11.4 Sometimes an interim offer can be made, particularly if the Fund believes that you are suffering hardship due to the oil pollution. This could be made before your claim has been fully assessed, and will be for a smaller amount of money; this will be taken off the final payment once that has been assessed.
- 11.5 The Fund's local office, if there is one, will make arrangements for you to be paid. Otherwise the Fund will contact you to make the arrangements. You will be asked to provide some means of identity, such as a passport, an identity card or a voter's card.

- 11.6 If you do not agree with the amount of money that you have been offered, then you should contact the Fund (through the local office if there is one) and let them know the reasons why you think that the offer is not enough. If you have new evidence to support your claim, then send that as well. The Fund may decide to have another look at your claim and make a new offer, or it may decide that the original offer is fair. They may contact you and arrange to discuss the matter in more detail.
- 11.7 If you still do not agree with the amount offered, then you have the right to take legal action through a court in your country. It could be an action against the tanker owner, the P&I Club and the Fund, disputing the assessment of the amount of your losses. It is suggested that you refer to the Claims Manual or your own legal adviser if you wish to take this course of action.

## **12 Contacting the IOPC Fund**

- 12.1 If the Fund establishes a local office following a large oil spill, the contact details for that office will be published through the local media. The contact details of the Secretariat of the Fund are as follows:

IOPC Fund  
23rd Floor  
Portland House  
Bressenden Place  
London SW1E 5PN  
United Kingdom

Telephone      +44 (0)20 7592 7100  
Fax              +44 (0)20 7592 7111  
E-mail          [info@iopcfund.org](mailto:info@iopcfund.org)

- 12.2 Should you need to contact the local office or the Fund Secretariat regarding your claim, it will help if you quote the number of your claim, if you know it.
- 12.3 Copies of the 1992 Fund Claims Manual and other useful documents can be found at the IOPC Fund website at [www.iopcfund.org](http://www.iopcfund.org)