



## INCIDENTS INVOLVING THE 1992 FUND

### HEBEI SPIRIT

#### Submitted by the Republic of Korea

<b>Summary:</b>	This document contains information on the pollution caused by the tanker <i>Hebei Spirit</i> off the western coast of the Republic of Korea, and the measures taken by the affected State following the incident.
<b>Action to be taken:</b>	(a) Take note of the information provided; and (b) Consider the proposal set out in paragraphs 9.2.9 and 9.2.10 regarding the formation of a pool of experts.

### 1 Introduction

- 1.1 At 07:06 local time on 7 December 2007, a crane barge *Samsung N°1*, towed by two tugboats (*Samsung T-5*, *Samho T-3*), drifted after the cable linking it to *Samsung T-5* snapped in rough waters. The barge collided with the Hong Kong flag tanker *Hebei Spirit*, anchored about five miles off Taean, waiting for a pilot from Daesan Port. The collision punctured three port side cargo tanks (N°1, N°3 and N°5) of the said vessel, pouring out 12 547kl of crude oil into the sea.
- 1.2 This document outlines the clean-up operations executed, the opening of limitation proceedings by the shipowners, the changes in the fishing ground environment, the measures related to damage compensation and the special measures taken by the Government, so that the Member States may have a better understanding of the incident.

### 2 Clean-up operations

#### 2.1 Progress of clean-up operations

- 2.1.1 Heavy oil slicks covered about 70km of the Taean coastline at the onset of the incident. Clean-up contractors, local residents, volunteers and also various government bodies were mobilised to remove the remaining oil along the coast. In particular, heavy equipment such as fork cranes, pumps and washers were used to remove oil clumps found stuck on embankments/rock surfaces and oil sludge deeply permeated into the pebble/cobble and sandy beaches. Clean-up operations for the entire length of the affected coastline have been finalised.
- 2.1.2 Oil slicks or tarballs reached a total of 101 islands, but expert contractors were mobilised and emergency clean-up operations were finalised by 10 October 2008.

Total amount of resources used and waste oil recovered									
	Human resources & equipment used							Waste oil recovered	
	Personnel (Volunteers)	Vessels (unit)	Helicopters (unit)	HCE* (Unit)	Oil fence (km)	Absorbent (tonne)	Dispersant (kl)	Contaminated residue (tonne )	Waste oil (kl)
Total	2 132 322 (1 226 730)	19 864	346	28 973	46.77	493	298	32 074	4 175

\* HCE: heavy construction equipment

- 2.1.3 The affected coastlines and islands where emergency clean-up operations have been completed are being monitored continuously, and in areas where oil residues have been found, personnel and equipment need to be called out for additional clean-up operations.
- 2.1.4 In March 2009, tarballs were discovered in three places within Uheuido, Shinan County of South Jeolla Province, and tarballs were also found stuck on riggings of nearby laver farms, making the laver turn yellow. In May 2009, tarballs have been discovered and removed in Ssapshido, Boryeong City of South Chungcheong Province.
- 2.1.5 With regards to the tarballs found in Uheuido, Shinan County of South Jeolla Province in March 2009, a joint survey was conducted by the Government, research agencies, the affected local residents and KOMOS, a local surveyor engaged by the Fund. Samples were collected and analysed, and the results found them to have the same oil content as those from the *Hebei Spirit* oil spill.

## 2.2 Progress of payment for private clean-up costs

- 2.2.1 As of the end of May 2009, one year and six months after the incident, assessment and approval of claims for private clean-up costs by the P&I Club and the Fund stand limited to those costs incurred in January and February 2008.
- 2.2.2 The Government reiterates its request to the Fund to carry out a more efficient and prompt assessment process, in light of the fact that private contractors now face severe financial difficulties and also the fact that a considerable portion of the contractor claims relate to rental costs of fishing vessels owned by the affected local residents.
- 2.2.3 In order to initially relieve the financial hardship of the local residents, the local governments and the Korea Environment Management Corporation (KOEM) have made payments in advance of KRW 18.5 billion in total for labour costs and other costs closely related to sustaining the livelihood of the local residents, incurred from January to June 2008.
- 2.2.4 In particular, it should be noted that, with regards to the Government's advance payment of KRW 16.1 billion for private clean-up costs based on the Fund's interim assessment, the Government and the P&I Club signed a reimbursement agreement, under which reimbursement was made in March 2009.

## 3 Investigation into the incident

- 3.1 Both parties of the tugboats and the *Hebei Spirit* tanker appealed the finding of the Court of First Instance (Incheon Marine Safety Tribunal) regarding the cause of the incident, which was announced on 4 September 2008, and re-filed the case at the Korea Marine Safety Tribunal.
- 3.2 Thereafter, the Korea Marine Safety Tribunal held a total of 11 trials during the period 22 October to 4 December 2008, during which seamen of the tugboats and the tanker as well as witnesses were interrogated. The second verdict was announced on 4 December 2008.

3.3 Again, both parties of the tugboats and the tanker appealed the decision of the Korea Marine Safety Tribunal, and now the case is pending at the Supreme Court. It may take several months before the Supreme Court makes a ruling.

3.4 The final verdict of the incident will be determined after the Supreme Court announces a ruling based on the results of its examination.

#### **4 Opening of limitation proceedings**

##### **4.1 Opening of limitation proceedings by the owner of the *Hebei Spirit***

4.1.1 As at 9 February 2009, the ROK Limitation Court decided to accept the shipowner's application to open limitation proceedings, which was submitted on 15 January 2008.

4.1.2 Accordingly, the shipowner's liability for damage compensation has been limited to 89.77 million SDR, which is the maximum insured amount of the shipowner involved according to Korean domestic laws and the 1992 Civil Liability Convention (1992 CLC).

4.1.3 In accordance with the Limitation Order, claims against the owners of the *Hebei Spirit* had to be registered by 8 May 2009 and the ROK Limitation Court confirmed the total number of claims filed by that date as 125 888.

4.1.4 With the filing of claims in the Limitation Court closed, as announced, the ROK Limitation Court must complete its claims investigation by 5 June 2009. However, as it is deemed realistically impossible to meet that deadline, the investigation closing date will very likely be postponed so that the investigation may be carried out continuously.

##### **4.2 Opening of limitation proceedings by Samsung Heavy Industries, the owner of the crane barge and the tugboats**

4.2.1 As at 23 March 2009, the ROK Court (Seoul Central District Court) decided to accept the application to open limitation proceedings submitted by Samsung Heavy Industries (SHI) on 5 December 2008.

4.2.2 Accordingly, SHI's liability for damage compensation has been limited to 2.3 million SDR, which is the maximum insured amount according to Korean domestic laws (commercial law).

4.2.3 Immediately after the ROK Court commenced the limitation proceedings of SHI, the Government, as well as the affected local residents, filed for an appeal. It is understood that the P&I Club and the Fund have not chosen to take this course of action in the ROK, and proceeded with recourse actions in the Ningbo Maritime Court in China.

#### **5 Changes in the fishing ground environment**

##### **5.1 Scallops dying in great numbers**

5.1.1 A year has passed since the oil spill incident took place, and at a glance, the affected regions appear to have recovered normal conditions as before the incident. However, fishery damage caused by the oil spill incident is still suspected, supported by the recent confirmation (5 January 2009) that great numbers of natural scallops were found dead in the nearby fishing grounds of Seonamdan, Gaeuido, Geunheung-myeon, Taean County.

5.1.2 The affected local fishermen have asserted that scallops have died as a result of the oil spill incident. On 3 February 2008 the Government formed a joint investigation team comprising public and private sectors, to take a sample collection of the scallops in question and have the National Fisheries R&D Institute (NFRDI) and the Korea Ocean R&D Institute (KORDI) jointly identify the cause of death. The results found that the drastic environmental changes caused by the oil spill from the *Hebei Spirit* could have weakened the physiological function of the scallops and caused their death.

5.1.3 The local fishermen have contended that other types of shellfish have been affected as well, including abalone, comb pen shell and arc shell that have been found with black spots and contracted muscle. They persistently seek an explanation for the cause of the recent phenomena, and as such, the ROK asks the Fund for its full cooperation.

## 5.2 Drastic decrease in fish catch

5.2.1 It has been confirmed that the scale of catch in the Taean fishing grounds has drastically decreased since the onset of the incident. Compared to the previous year, the drop was particularly noticeable with arthropods (shrimp type, prawn) and molluscs (poulp squid, baby octopus) that inhabit in sand and mud.

5.2.2 In the case of Nam-myeon Fisheries Cooperative in Taean County, the average January production of baby octopus prior to the incident (years 2003 to 2007) was 25 tonnes. However, after the incident, the 2009 figure was eight tonnes, which is a reduction by 68%, and the local fishermen are crying out with difficulties in maintaining their livelihood and requesting that the Government take action.

5.2.3 Also, during the period from January to April 2009, the amounts of red crabs sold through the Fisheries Cooperatives were reduced by 27% in Boryeong City and 35% in Taean County compared to the average amounts of the previous two years 2007 and 2008.

5.2.4 As such, we seek the Fund's cooperation to examine the cause of catch reduction and take into consideration when assessing the oil pollution damage.

## 6 Measures related to damage compensation

### 6.1 Establishing a set of criteria for selection of genuine hand-gatherers

6.1.1 In order to realise reasonable and due compensation for subsistence fishermen (hand-gatherers), the Government, local authorities and representatives of affected local fishermen held consultations, and finalised an interview list of hand-gatherers that had acquired a notification certificate after the incident. The list was submitted to the Fund via the *Hebei Spirit* Centre (Seoul) of the 1992 Fund.

6.1.2 It has been arranged that after hand-gatherers individually submit their claims to the Fund via the *Hebei Spirit* Centre (HSC), the Fund will conduct interviews in the following order: first, all fishermen who acquired a certificate prior to the incident; then fishermen who acquired a certificate after the incident; then those selected by government criteria; and then individual claimants grouped by Village Committee. Unfortunately, hand-gatherers account for nearly 80 000 out of an approximate total of 120 000 claims, and it will take a long time to finish with all the interviews and process payments. The hand-gatherers, in the meanwhile, will have to continue enduring financial difficulties, and as a result, prompt assessment and compensation are requested of the Fund.

### 6.2 Claims and compensation from the non-fishing sector

6.2.1 As at the end of April 2009, the number of reports of tourism damage in the non-fisheries sector was recorded to be approximately 16 000, about 13% of the total 120 000. As at 6 May 2009, out of the 16 000, 3 351 had been submitted as claims to the HSC and 843 had been assessed. However, 566 (67% of the 843 assessed) were rejected, which raises deep concern as to whether proper compensation can be received.

6.2.2 The claims seem to have been rejected on the grounds of insufficient objective supporting documents, which is the pre-condition for receiving proper compensation. However, if the current standards continue to be applied without taking into consideration the traditional business transactions and reality of the ROK, a great number of claims will be rejected, including *bona fide*

claimants who will end up becoming innocent victims.

- 6.2.3 With regards to small businesses that have difficulty presenting complete sets of supporting documents, the ROK asks the Fund's Member States and the Secretariat to positively review the various other methods to prove damage. The Government and the affected local residents are studying alternatives by considering the special geographical/economical characteristics and industry structure of the affected region(s), and the traditional business practices.
- 6.2.4 At the last session of the Executive Committee in March 2009, the Government proposed the income estimation method as an alternative way of proving damage. The Government is encouraging the affected local residents to apply this method as they prepare and submit their claims, and hopes to continue collaboration with the *HSC* on deciding which specific brackets may be applicable.
- 6.2.5 In this way, the many small businesses that actually suffered losses will be able to receive reasonable compensation, and we ask the Fund's cooperation to this end.

## **7 Special measures taken by the Government**

### **7.1 Measures to stabilise the livelihood of the affected local residents**

- 7.1.1 The Government provided KRW 117.2 billion as emergency hardship payments to help stabilise the livelihood of the affected local residents. In order to help relieve their financial difficulties and regenerate the local economy, the Government is also carrying out a public work program costing KRW 15.3 billion. Furthermore, other financial support has been offered, such as reduction or exemption of national/local taxes and deferment of medical insurance premiums.
- 7.1.2 Aside from the aforementioned measures, in particular for the affected local fishermen, the Government also relieved some of the financial burden associated with the fishery loans, which are not the Government loans under the special law, by reducing and exempting interest accrued for one to two years (annual rate 3%), which is about KRW 3.2 billion in total. In addition, the Government furnished KRW 25 billion for one to two years as a special fund to resume fishing activities, which helped to stabilise the fishermen's livelihood and normalise fishery operations.

### **7.2 Support based on decisions by the Special Committee**

- 7.2.1 According to the decision rendered by the Special Committee (comprising the Prime Minister as the chairman, 12 Ministers and the Governors of relevant provinces), the Government has made advance payments for about KRW 20.4 billion, the amount requested by claimants that received the Fund's assessment results.
- 7.2.2 Out of the KRW 20.4 billion, KRW 16.1 billion, which covers the private clean-up costs, was reimbursed by the P&I Club as noted in paragraph 2.2.4. The Government has submitted subrogated claims for the remaining KRW 4.3 billion for 56 tourism claims to the P&I Club and the Fund.
- 7.2.3 Applications for the Government's advance payments are expected to increase continuously.
- 7.2.4 With the aim of further enhancing the close collaboration with the P&I Club, the Government has concluded the Second Cooperation Agreement and the Memorandum of Agreement (MOA) to avoid double payments. Further details are set out in previous documents submitted to the Committee (cf documents 92FUND/EXC.42/11, Note by the Director and 92FUND/EXC.44/7/1, submitted by the ROK Government).
- 7.2.5 To enable prompt compensation payments for the victims, at the June 2008 session of the Executive Committee, the Government announced its decision to stand last in the queue (SLQ) in receiving compensation for clean up and recovery costs incurred by the central and local governments in accordance with the decision made by the Special Committee.

### 7.3 Information sharing network to facilitate compensation

- 7.3.1 The HS (*Hebei Spirit*) Compensation Support System has been set up and put into operation since 1 April 2009. This is a web-based system established to facilitate the execution of the loan and advance payment policies of the Government according to the Special Law as well as to prevent double payments of compensation that may arise as the Government makes advance payments.
- 7.3.2 This system is designed to enable the central and local governments, the *Hebei Spirit* Centre (HSC) and relevant financial agencies to retrieve or input needed information, which includes claims information provided by the Centre and data on government loans and advance payments. In line with arrangements made with the Fund, information sharing continues to be carried out smoothly.
- 7.3.3 The Government positively recognises the Fund's efforts to revamp its claims handling database system, which is mainly aimed to expedite registration of batch claims, which include a number of individual claims such as hand-gatherers, and to facilitate establishment of pledge on claims as loans are made by the Government. Relevant Village Committees (comprising representatives of local residents) will be asked to ensure that claims are prepared and presented in line with the new system at the request of the HSC. The Government will support the HSC to adopt the system despite complaints arising among Village Committees due to the additional paperwork involved with submitting new spread sheets and POAs.

### 7.4 Governmental measures for the fishing sector

- 7.4.1 Immediately after the onset of the *Hebei Spirit* incident, on the same day (7 December 2007), the Government restricted all harvest and capture of marine products from the affected areas, in order to protect the public health against any potential negative effects from sales and distribution of contaminated fisheries products harmful to the human body. As of 18 April 2008, in consideration of the progress of the clean-up operations undertaken in the affected areas, and the results of the marine environment study and fisheries product safety test, the Government resumed capture fishery activities for the first time. Thereafter, since 3 September 2008, all types of fishery operations were resumed in all the affected waters and coasts.
- 7.4.2 In addition, in order to prevent secondary pollution, the removal of oyster cultivation facilities started in May 2008, executed with KRW 12.61 billion of the Government's budget, and was completed by 24 July 2008 prior to the opening of the summer beaches, thereby helping to minimise damage in the tourism sector.
- 7.4.3 In order to restore the contaminated fishing grounds as early as possible, the Government is working with experts from the National Fisheries Research and Development Institute (NFRDI) to survey the status of contamination in the affected areas and draw up a restoration plan with a government budget of KRW 1 billion, under which the first project was completed in 2008, and the second project is currently ongoing during 2009.
- 7.4.4 Furthermore, a supplementary budget of KRW 2 billion has been earmarked for fish restoration in the affected fishing grounds, based on which environment improvement projects are carried out such as tilling and dredging of the fishing grounds.

### 7.5 Provision of information on fishing restrictions to enable smooth and prompt assessment of fishery claims

- 7.5.1 Responding to the Fund's request at the 41st session of the Executive Committee (23-27 June 2008) for documents on the governmental measures to resume fisheries operation in order to review their validity and use them as reference during the assessment process, the Government delivered to the Fund, via the HSC, sets of documents including official notification of measures undertaken for the restriction and resumption of fisheries operations, and fisheries product safety (18 August 2008); official notification of study conducted on fisheries product safety and measures undertaken for the resumption of fisheries operations (12 September 2008); data on oil

pollution status in the affected areas (22 September 2008); and data on the progress of the resumption of fisheries operations (20 October 2008).

- 7.5.2 Further responding to the Fund's request again at the 44th session of the Executive Committee (25-27 March 2009) for documents related to the resumption of fisheries operations, specifically on marine environment monitoring, fisheries product contamination, and the measures undertaken by the Government, sets of documents were delivered to an ITOPF technical expert during his visit to Korea on 22 April 2009 with an explanation provided. Apart from this request, the results of two studies, namely 'An elaborate study of the Taeon fishing grounds and restoration project' conducted by the National Fisheries Research and Development Institute (NFRDI) and 'A study of the impact on the marine environment and restoration of the ecosystem' conducted by the Korea Ocean Research and Development Institute (KORDI), were delivered to the Fund via KOMOS, its designated local surveyor.
- 7.5.3 The ITOPF technical expert noted that given the large volume of documents provided, most of which had not been translated into English, there would be certain difficulties in understanding the details, which could cause delays with claims assessment. With the aim of facilitating the assessment process, the Government provided summaries of the documents and English translations of the vitally important parts, and paid a visit to the Fund and ITOPF offices in London to deliver and explain these materials from 26-28 May 2009.
- 7.6 Measures to improve tainted image of affected regions
- 7.6.1 To make tourism more attractive in the affected areas, the central Government held an open water swimming contest in July 2008, hosted by the Ministry of Land, Transport and Maritime Affairs (MLTM), and in December 2008, 'Volunteer Games' in remembrance of the first anniversary of the oil spill incident and a sea fishing contest, also hosted by MLTM. Local governments of Taeon County and affected areas also held various other events.
- 7.6.2 Particularly from 24 April to 20 May of 2009, an international flower exposition under the theme of 'Flowers, Seas and Dreams' was successfully held in Anmyeondo, Taeon County, which recorded about two million visitors.
- 7.6.3 Also, as a way of permanently regenerating the regional economy hit by the oil spill incident, marine tourism is promoted by projects to enhance the 'brand image of the West Coast'. The first project, including 'Wetland Sports Festival' among various events, is planned for July to September of 2009 in Taeon and other affected areas, and these events will be supported and promoted to represent respective local regions.
- 7.6.4 Meanwhile, the central Government supports events held voluntarily by the private sector to assist the affected areas. The 'Taeon Beach Golf Tournament', travelling around 18 Taeon beaches, is due to be held in June 2009 and is a fine example of such an event.
- 7.6.5 Finally, the monthly newsletter 'Updates on oil spill damage compensation' has been published by MLTM since January 2009 in order to strengthen communication between the public and private sectors and boost support for the affected local residents.

## **8 Environmental restoration activities and prospects**

- 8.1 The first annual report on the results of the marine pollution impact assessment (December 2007 to December 2008) was published in mid-March 2009. Based on these results and the collected views of the local residents, special environmental zones will be designated (during June 2009). Also, a special plan will be drafted to restore the marine environment (July 2009) in consultation with relevant government bodies (Ministry of Land, Transport and Maritime Affairs, Ministry of Environment, Ministry of Food, Agriculture, Forestry and Fisheries and relevant local governments of the affected areas).

8.2 According to the special plan, monitoring of ecosystems and restoration projects will be carried out. Such efforts are expected to return the marine environment and the ecosystem back to normal conditions as before the oil spill incident, and to thereby help to regenerate the local economy.

## **9 Other issues**

### **9.1 Government and the 1992 Fund (*Hebei Spirit* Centre) to hold regular meetings**

9.1.1 To facilitate filing of claims and damage compensation, the ROK Government is holding regular meetings with representatives of the 1992 Fund (*Hebei Spirit* Centre) and working in close consultation with the Fund and the Skuld P&I Club. With the first regular meeting held on 2 July 2008, as at 30 April 2009, a total of 14 meetings have taken place.

9.1.2 The Government hopes that the regular meetings will continue so that the parties involved may consult with one another on matters of information sharing and compensation progress.

### **9.2 Flexible management of experts for prompt registration and assessment of claims**

9.2.1 The 1992 Fund, in consultation with the P&I Club, has opened and operates separately the HSC and the Tourism Claim Review Office to enable prompt settlement of claims, and works with local experts (KOMOS, Hyopsung) as well as ITOPF on claims settlement affairs.

9.2.2 As mentioned in paragraph 7.3.3, the Government highly recognizes the active measures taken by the Fund Secretariat, such as revamping its claims handling database system to enable prompt registration and management of about 80 000 hand-gatherer claims and hiring more staff at the HSC to facilitate claim registration (the additional staff member started working in April 2009 and the HSC now has the capacity to register an average of three hundred claims per week).

9.2.3 However, the fact that 7 919 hand-gatherer claims from the South Chungnam region had been submitted to the Centre by 30 April 2009 but have not even been registered, has created much disappointment among the affected local residents and has become a disturbing issue, despite all the consideration given to the special circumstances of this incident where claims registration had to be temporarily stopped due to the revamping of the Fund's claims handling database system and criteria for registering hand-gatherers was established later than expected.

9.2.4 Also, problems continue to occur as a result of delays in the assessment process. With relatively better supporting documentation and faster than other areas, the Village Committee of Namyon Fisheries Cooperative submitted its claims in November 2008, but six months thereafter, these claims have yet to be assessed.

9.2.5 As the assessment of the Namyon Fisheries Cooperative claims is delayed, a total of 547 loan applications have been registered, (a claimant may apply for a loan if assessment results are not received within six months from the registration date according to the Special Law). Since the Government makes loans, pledges have to be established on relevant claims.

9.2.6 Based on the estimation that tens of thousands of hand-gatherer claims will be registered in the upcoming days, for which loans may be applied if the assessment process is delayed, not only the Government but also the HSC may be facing an increased workload arising from additional legal matters involving pledge establishment.

9.2.7 In light of such circumstances, the Government is positively reviewing its accession to the Supplementary Fund, yet at the same time, cannot but raise queries as to what practical effect may be achieved in the compensation process of another major oil spill like the *Hebei Spirit* incident. Aside from the increased limit of compensation to be applied, the basic process of registration, assessment and payment of claims, which can be difficult and time-consuming, will remain the same, and meanwhile, the pain and suffering of the affected local residents and their complaints about the payment delay against the Government will persist.

- 9.2.8 As such, in the event of a major oil spill incident, such as the *Hebei Spirit* incident, with compensation claims exceeding 100 000 and to which the Supplementary Fund may become applicable, a more effective and swift process of registering and assessing claims is called for.
- 9.2.9 It is accordingly deemed that the Secretariat should form and manage a global pool of claims experts and draw upon this pool whenever necessary, and/or take further steps to complement its plan of action under the regime. At the same time, in the event of a major oil spill incident, the Member States should support the Secretariat and ensure that the hiring of experts and use of budget is executed flexibly for the prompt and systematic settlement of claims.
- 9.2.10 The Government strongly hopes that measures will be taken to set up a complementary action plan, utilising a pool of experts, that can be put into operation quickly, and even possibly be initially adapted to the settlement process of the *Hebei Spirit* incident, where various difficulties arise in relation to registration and assessment delays.

**10 Action to be taken by the Executive Committee**

The Executive Committee is invited:

- (a) to take note of the information contained in this document; and
  - (b) consider the proposal set out in paragraphs 9.2.9 and 9.2.10 regarding the formation of a pool of experts.
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