INTERNATIONAL OIL POLLUTION COMPENSATION FUNDS

Agenda item: 3	IOPC/JUN10/**3/4**	
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1992 Fund Executive Committee	**92EC48**	•
1992 Fund Working Group	**92WG6/1**	

INCIDENTS INVOLVING THE IOPC FUNDS - 1992 FUND

VOLGONEFT 139

Note by the Director

Objective of document:	To inform the 1992 Fund Executive Committee of the latest developments regarding this incident.
Summary of the incident so far:	On 11 November 2007, the Russian-registered tanker *Volgoneft 139* broke in two in the Kerch Strait which links the Sea of Azov and the Black Sea between the Russian Federation and Ukraine. It is believed that between 1 200 and 2 000 tonnes of fuel oil were spilt at the time of the incident. Some 250 kilometres of shoreline both in the Russian Federation and in Ukraine were affected by the oil. The ship was owned by JSC Volgotanker which has since been declared bankrupt by the Commercial Court in Moscow. The shipowner was insured for protection and indemnity by Ingosstrakh (Russian Federation), which does not belong to the International Group of P&I Clubs. It appears that the insurance cover is limited to 3 million SDR (RUB 116.6 million) which is well below the minimum limit under the 1992 Civil Liability Convention (1992 CLC) of 4.51 million SDR. There is therefore an 'insurance gap' of some 1.5 million SDR. In February 2008, the Arbitration Court of Saint Petersburg and Leningrad Region issued a ruling declaring that the limitation fund had been constituted by means of a letter of guarantee for 3 million SDR (RUB 116.6 million). The Court of Cassation and the Supreme Court have confirmed that decision, maintaining that Russian Courts should apply the limits as published in the Russian Official Gazette. The 1992 Fund has submitted pleadings asking the Arbitration Court to reconsider its earlier decision on the shipowner's limitation fund, on the basis that the amendments to the 1992 CLC on the increase of the shipowner's liability limit have now been officially published in the Russian Federation. The insurer has pleaded before the Arbitration Court of Saint Petersburg and Leningrad Region the defence that the spill resulted from a natural phenomenon of an exceptional, inevitable and irresistible character and that the shipowner and his insurer are therefore not liable for the pollution damage caused by the spill. If this defence were to be successful, the 1992 Fund would be liable to pay compensation to victims of the spill from the outset. The Fund's experts have provisionally concluded that the storm of 11 November 2007, although it may have been irresistible in respect of the

	Volgoneft 139, was neither exceptional nor inevitable, in that there had been sufficient opportunities to avoid the vessel being exposed to the storm in the way it had been. Claims totalling RUB 8 533.4 million (£189.89million)[<1>] have been submitted as a result of the incident.
Recent developments:	Substantial progress has been made in the assessment of claims, as set out in section 9. Two claimants have indicated agreement with the assessment and letters have been sent to a number of other claimants communicating the assessment of their claims. The Fund's experts continue the examination of the documentation provided in support of the various claims. In November 2009, the Secretariat and the Fund's experts visited the Kerch Vessel Traffic System (VTS) in Ukraine, where meetings were held with VTS officers regarding the general organisation of the VTS and communications with the *Volgoneft 139* at the time of the incident. In February 2010, the Secretariat and the Fund's experts visited Moscow, Krasnodar and Kavkaz, where they held meetings with the Ministry of Transport, a representative of the owner and the charterer of the *Volgoneft 139*, several local authorities in the Krasnodar area, the VTS in Kavkaz and a claimant in the tourism sector (section 11). Hearings took place in March and April 2010 before the Arbitration Court of Saint Petersburg and Leningrad Region, where the 1992 Fund informed the Court of the developments regarding assessment of claims. The next hearing is scheduled to take place in June 2010.
Action to be taken:	1992 Fund Executive Committee: Consider the Director's proposals set out in paragraph 12.8 and 12.9.

1 Summary of incident

Ship	*Volgoneft 139*
Date of incident	11.11.07
Place of incident	Kerch Strait, between the Sea of Azov and the Black Sea, Russian Federation and Ukraine
Cause of incident	Breaking
Quantity of oil spilled	Between 1 200 and 2 000 tonnes of fuel oil
Area affected	Taman Peninsula, Tuzla Spit and Chushka Spit, Russian Federation and Ukraine
Flag State of ship	Russian Federation
Gross tonnage (GT)	3 463 GT
P&I insurer	Ingosstrakh
P&I cover	3 million SDR or RUB 116.6 million (£3.1 million)
CLC Limit	4.51 million SDR or RUB 175.3 million (£4.6 million)
CLC & Fund Limit	203 million SDR or RUB 7 892.6 million (£207.5 million)
STOPIA/TOPIA applicable	No
Claims for compensation so far	RUB 8 533.4 million (£189.89 million)

[<1>] In this document conversion of currencies has been made on the basis of the exchange rate as at 21 May 2010 (1 SDR = £1.0223, 1 RUB = £0.0223).

2 The incident

2.1 On 11 November 2007, the Russian-registered tanker *Volgoneft 139* (3 463 GT, built in 1978) broke in two in the Kerch Strait linking the Sea of Azov and the Black Sea between the Russian Federation and Ukraine. The tanker was at anchor when a severe storm caused rough seas with heavy swell. The aft part of the vessel remained afloat and using the casualty's own engines, the captain managed to beach it on a nearby sand bank. The crew were then rescued and taken to the nearby port of Kavkaz (Russian Federation). The fore part remained afloat at anchor for a while and then sank.

2.2 The tanker was loaded with 4 077 tonnes of heavy fuel oil. It is understood that between 1 200 and 2 000 tonnes of fuel oil were spilt. Following removal of 913 tonnes of heavy fuel oil, the aft section was towed to Kavkaz. A month after the incident, the fore part was temporarily raised and 1 200 tonnes of a mixture of oil and water from tanks one and two were recovered. In August 2008 the fore part of the wreck was raised again and towed to the port of Kavkaz to prevent further pollution.

3 Clean-up operations and response

For details on the clean-up operations and the response to the incident, reference is made to the IOPC Funds' Annual Report 2008, page 116.

4 1992 Civil Liability and Fund Conventions

The Russian Federation is a Party to the 1992 Civil Liability and Fund Conventions. Ukraine deposited an instrument of ratification to the 1992 Civil Liability Convention (1992 CLC) with the Secretary-General of IMO on 28 November 2007 but this Convention did not enter into force in Ukraine until November 2008 and therefore is not applicable to this incident. Ukraine has not acceded to, or ratified, the 1992 Fund Convention.

5 The shipowner and its insurer

5.1 The *Volgoneft 139* was owned by JSC Volgotanker. In March 2008, JSC Volgotanker was declared bankrupt by the Commercial Court in Moscow.

5.2 The *Volgoneft 139* was insured by Ingosstrakh for 3 million SDR (£3.1 million), ie the minimum limit of liability under the 1992 CLC prior to November 2003. The minimum limit under the 1992 CLC after November 2003 is however 4.51 million SDR (£4.6 million). There is therefore an 'insurance gap' of some 1.5 million SDR (£1.5 million).

5.3 The *Volgoneft 139* was not insured by a P&I Club belonging to the International Group of P&I Clubs and was therefore not covered by the Small Tanker Oil Pollution Indemnification Agreement (STOPIA) 2006.

6 Initial contacts between the Russian authorities and the Secretariat

For details regarding visits to the Russian Federation by the Secretariat and contacts between the Russian authorities and the Secretariat during 2007 and 2008, reference is made to the Annual Report 2008, pages 117-118.

7 Limitation proceedings and the 'insurance gap'

7.1 In February 2008, the Fund received a notification from the Arbitration Court of Saint Petersburg and Leningrad Region of proceedings brought by a Russian clean-up contractor against the shipowner, the P&I insurer and the 1992 Fund. A number of other claimants have also brought proceedings in the same court (cf section 9).

7.2 In February 2008, in the context of these proceedings, the Court issued a ruling declaring that the shipowner's limitation fund had been constituted by means of an Ingosstrakh letter of guarantee for RUB 116 636 700 equivalent to 3 million SDR.

7.3 In April 2008, the 1992 Fund appealed against the Court's ruling. In its pleadings the 1992 Fund argued that the current limit of the shipowner's liability under the 1992 CLC is 4.51 million SDR (£4.6 million) and that, under the Russian constitution, international conventions to which the Russian Federation is party take precedence over Russian internal law and that therefore the Court's ruling establishing the shipowner's limitation fund at only 3 million SDR (£3.1 million) should be amended.

7.4 In May 2008, the Court of Appeal rendered a decision dismissing the 1992 Fund's request and confirming the interim ruling by the Arbitration Court of Saint Petersburg and Leningrad Region.

7.5 The 1992 Fund appealed to the Second Appeal Court (Court of Cassation).

7.6 In September 2008 the Court of Cassation rendered a decision dismissing the 1992 Fund's appeal. In its reasoning, the Court of Cassation considered that, since Russian law still provided that the shipowner's limit of liability under the 1992 CLC was, in the case of the *Volgoneft 139,* RUB 116 636 700 equivalent to 3 million SDR (£3.1 million), it was for Russian courts to apply the limits of liability as published in the Russian Official Gazette.

7.7 The 1992 Fund appealed to the Supreme Court in Moscow, since the Court's decision was in clear contravention of the 1992 CLC as amended with effect from 1 November 2003.

7.8 In December 2008 the Supreme Court confirmed the decision by the Court of Cassation.

7.9 Hearings took place in December 2008 and March, June, September and December 2009 before the Arbitration Court of Saint Petersburg and Leningrad Region where the Court agreed to postpone its consideration of the merits of the claims until the 1992 Fund and the claimants had had time to discuss the merits and quantum of the claims.

7.10 The Fund also used the hearings to ask the Court to reconsider its earlier decision on the shipowner's limitation fund, on the ground that the amendments to the limits of the amount available under the 1992 Civil Liability and Fund Conventions had been officially published in the Russian Federation in October 2008 and that therefore the amended limits were now officially part of Russian national law. The Court stated that it would take a decision on the issue of the increase of the limitation fund when it rendered its judgement on the merits of the claims.

7.11 A hearing took place in March 2010, at which the Fund was granted more time to continue the assessment of claims. At the hearing the Court decided to bring the Ministry of Transport as a third party in the proceedings since it could assist the Court and the parties to resolve the 'insurance gap' issue.

7.12 At a hearing in April 2010 the Fund presented its assessment of the claims submitted so far. The Court decided to adjourn the hearing until June 2010, to allow the parties to reach agreements on the quantum of the claims

8 Cause of the incident

8.1 Ingosstrakh has submitted a defence in the Arbitration Court of Saint Petersburg and Leningrad Region arguing that the incident was wholly caused by a natural phenomenon of an exceptional, inevitable and irresistible character and that therefore no liability should be attached to the owner of the *Volgoneft 139* (Article III.2(a) of the 1992 CLC). If this argument were to be accepted by the Court, the shipowner and its insurer would be exonerated from liability and the 1992 Fund would have to pay compensation to the victims of the spill from the outset (Article 4.1(a) of the 1992 Fund Convention).

8.2 The 1992 Fund appointed a team of experts to examine the weather conditions in the area and the circumstances at the time of the incident to determine the validity of the shipowner's defence. The experts visited the area where the incident took place and inspected the aft part of the wreck in the port of Kavkaz.

Preliminary conclusions

8.3 For details regarding the preliminary conclusions reached by the 1992 Fund's experts, reference is made to the Annual Report 2008, pages 119-122. In summary the conclusion of the experts is as follows:

(i) The storm of 11 November 2007 was not exceptional since there are records of similar and comparable storms being experienced in the region four times in the past 20 years.

(ii) It was not inevitable that the *Volgoneft 139* would be caught in the storm since there were timely forecasts of the storm and conditions were accurately predicted, so that there had been sufficient opportunities to avoid the vessel being exposed to the storm in the way it had been.

(iii) The storm of 11 November 2007 was irresistible insofar as the *Volgoneft 139* was concerned as the conditions associated with the storm were in excess of the vessel's design criteria.

Administrative proceedings before Arbitration Court of Krasnodar

8.4 Shortly after the incident the Russian authorities imposed an administrative sanction on the shipowner for having caused pollution damage in breach of Russian law and imposed a fine of RUB 40 000. The shipowner appealed against the fine before the Arbitration Court of Krasnodar.

8.5 In February 2008, the Arbitration Court of Krasnodar decided to reject the appeal and confirmed the sanction. In its reasoning the Court stated that no evidence had been provided to the Court that the storm of 11 November 2007 had a special or abnormal character. The Court stated that the incident was not unavoidable and that the Master had not taken all possible measures to avoid the breaking of the vessel and the pollution.

8.6 It can be inferred from this decision that the Court in Krasnodar considered that this was not a case of *force majeure*.

Arbitration Court of Saint Petersburg and Leningrad Region

8.7 At a hearing in September 2009 (cf paragraph 7.9), the Arbitration Court of Saint Petersburg and Leningrad Region noted that the majority of the claimants represented in the proceedings did not agree with Ingosstrakh's position in respect of the storm. The Court stated that its preliminary view was that the storm did not seem to be something exceptional or unavoidable and that it was a normal maritime risk which shipowners should always take into account.

Conclusion of the 1992 Fund's experts after the visit to the Kerch and Kavkaz VTS

8.8 To fully understand the circumstances of the incident the Secretariat and the Fund's experts visited the Kerch Vessel Traffic System (VTS) in Ukraine in November 2009 and the VTS in Kavkaz, Russian Federation, in February 2010.

8.9 On the basis of the additional information made available during the visits, the Fund's experts have broadly confirmed their preliminary conclusions (cf paragraph 8.3) that the storm of 11 November 2007 was not exceptional. They concluded that it was not inevitable that the *Volgoneft 139* would be caught in the storm, since there had been sufficient opportunities to avoid the vessel being exposed to the storm in the way it had been. The experts also confirmed their initial view that the *Volgoneft 139* should not have been in the area at the time of the incident, since the conditions associated with the storm were in excess of the vessel's design criteria.

8.10 However, whereas the Fund's experts' initial view was that the Kerch Strait anchorage was considered as a commercial port, the experts now understand that the Strait is not operated as a port. During the visits to the VTS in Kerch and in Kavkas, the experts learned that none of the Port Authorities had powers to close the anchorage in case of a storm warning or to direct vessels to vacate the anchorage. It is therefore the conclusion of the experts that it was the responsibility of the master and the shipowner to take action to avoid the casualty.

9 Claims for compensation

9.1 The table below summarises the claims situation as at 7 May 2010:

Category	Claimant	Claim RUB	Assessed RUB	Status
Clean-up	Ministry of Emergencies	4.3 million	-	No supporting documentation submitted
Clean-up	Regional Government	112.3 million	52.9 million	Preliminary assessment. Advanced assessment is being completed. No documentation provided in respect of one of the claims
Clean-up	Local Government	388.3 million	1.9 million	Agreement reached with one claimant. Proposal letter sent to one claimant. One claim being assessed. No documentation provided in support of two claims
Clean-up	Port of Kerch (Ukraine)	15.3 million	-	Being assessed by expert. Ukraine was not party to the 1992 CLC at the time of the incident and not member of the 1992 Fund. Preventive measures carried out in Ukraine for the purpose of preventing pollution damage in the Russian Federation might be admissible
Clean-up	Contractor	63.9 million	50.8 million	Proposal letter sent to claimant and claimant has agreed with the assessment
Clean-up	Shipowner	27.7 million	-	Further documentation and increased revised claim provided. Under consideration by expert
Clean-up	Charterer	9.4 million	-	Further information submitted by claimant. Under consideration by expert.
Fisheries	Private Industry	22.4 million	-	Two claims being assessed. No supporting documentation provided in respect of two other claims
Tourism	Private Industry	21.5 million	-	Being assessed by expert
Environmental restoration	Regional Government	1 819.6 million	-	Letter sent to claimant asking for more information
Environmental monitoring	Federal Agency	0.6 million	0.4 million	Experts reviewing further information provided by claimants
Environmental damage	Federal Agency	6 048.1 million	-	No supporting documentation submitted. Claim calculated on basis of 'Metodika'
TOTAL		**8 533.4 million (£189.89 million)**	**106 million (£2.36 million)**	

9.2 The Regional Government has submitted claims for costs incurred in clean-up operations (RUB 112.3 million,) and environmental restoration (RUB 1 819.6 million,). Some of these claims for clean-up operations have been provisionally assessed in the amount of RUB 52.9 million but are being re-assessed on the basis of additional supporting documentation provided to the Fund. No supporting information has been submitted in respect of one of the clean-up claims. The claim for environmental restoration lacks the information necessary for its assessment and a letter with the Fund's queries has been sent to the claimant.

9.3 A claim submitted by a local authority in the affected area, totalling RUB 1.1 million, has been assessed as claimed. Another claim submitted by the same local authority, totalling RUB 853 560 in relation to clean up costs, has been assessed at RUB 805 618. A letter explaining the assessment has

been sent to the claimant. At a hearing in the Arbitration Court of Saint Petersburg and Leningrad Region in March 2010 (cf paragraph 7.11) the local authority submitted a further claim against the shipowner/its insurer and the Fund, totalling some RUB 386 million, in connection with costs incurred in clean-up and preventive measures.

9.4 A Russian clean-up contractor has submitted a claim for the amount of RUB 63.9 million for the cost of clean-up operations, discharging oil from the aft part of the tanker, towage of the aft part to Kavkaz (Russian Federation) and removal of the oil from the sunken fore part. The claim has been assessed in the amount of RUB 50.8 million and the claimant has agreed with the assessment.

9.5 The Federal service on the supervision in the sphere of the use of nature (Rosprirodnadzor) has submitted a claim, totalling RUB 600 000, for costs incurred in environmental monitoring, which has been provisionally assessed in the amount of RUB 400 000. A meeting took place in London in May 2010 between the Fund and representatives of Rosprirodnadzor at which the claimants provided further information in support of their claim. The experts are studying the further information provided. Rosprirodnadzor has also submitted a claim, totalling RUB 6 048.1 million, for environmental damage based on an abstract model ('Metodika') (cf section 10), not admissible under the 1992 Conventions. At the meeting held in London in May 2010 the representatives of Rosprirodnadzor explained that they considered that only their claim for costs incurred as a result of the incident was admissible under the Conventions. They also explained that the claim based on 'Metodika' was based on Russian National law, that they understood that it was not admissible under the Conventions and that they expected that the claim would be rejected by the Court.

9.6 Assessment is progressing in respect of the other claims submitted where supporting documentation is available.

10 Metodika claim

10.1 At a meeting in May 2008 the Russian authorities informed the 1992 Fund that Rosprirodnadzor had submitted a claim for environmental damage for some RUB 6 048.1 million (£134.58 million). This claim is based on the quantity of oil spilled, multiplied by an amount of Roubles per ton ('Metodika'). The Secretariat informed the Russian authorities that a claim based on an abstract quantification of damages calculated in accordance with a theoretical model was in contravention of Article I.6 of the 1992 CLC and therefore not admissible for compensation, but that the 1992 Fund was prepared to examine the activities undertaken by Rosprirodnadzor to determine if and to what extent they qualified for compensation under the Conventions.

10.2 It appears from discussions with the Russian authorities that the claim for environmental damage has been submitted in court to comply with national legislation and cannot be withdrawn without prior authorisation from the Ministry of Natural Resources. However, the claimants accept that the claim is not admissible under the 1992 Conventions and that it is likely to be rejected by the Court. The Russian central Government has, upon a petition by the Ministry of Transport, requested the Ministry of Natural Resources to withdraw the 'Metodika' claim.

11 Meetings between the Russian authorities and the Secretariat

11.1 During 2009, a number of meetings were held in London and Moscow between the Russian authorities, the Secretariat and the Fund's experts to facilitate the exchange of information and to monitor the progress of claims. For details on the meetings in Moscow and Krasnodar in August 2009 reference is made to document IOPC/OCT09/3/7, section 11.

Meetings in Kiev and Kerch (Ukraine) in November 2009

11.2 The Secretariat and the Fund's experts had planned to visit Moscow, Kavkaz (Russian Federation) and Kerch (Ukraine) in November 2009. Since no visas were obtained in time for the visit to the Russian Federation, it was decided to accept the offer of a claimant to hold the meeting in Kiev (Ukraine).

11.3 The Secretariat and the Fund's experts also visited the Kerch VTS where a number of questions were put to the officers in the VTS regarding the general organisation of the VTS and communications with the *Volgoneft 139* at the time of the incident (cf paragraphs 8.8-8.9).

Meetings in Moscow, Krasnodar and Kavkaz in February 2010

11.4 The Secretariat and the Fund's experts visited Moscow, Krasnodar and the VTS in Kavkaz in February 2010, where they held meetings with the Ministry of Transport, a representative of the Owner and the charterer of the *Volgoneft 139*, several local authorities in the Krasnodar area, the VTS in Kavkaz and a claimant in the tourism sector.

11.5 At the meeting with the Ministry of Transport, a possible solution to the 'insurance gap' was discussed. Part of the cost of the clean-up operations carried out by the Krasnodar Regional Administration and by a local authority had been funded by the Ministry of Finance and a further request for funds has been submitted by those administrations to the Ministry of Finance. If the Ministry of Finance were to pay these further clean up costs and submit a claim to the 1992 Fund and if the assessment of this claim were to cover the insurance gap of approximately RUB 59 million, the Government could decide to waive its compensation rights to cover the 'insurance gap'. It was stressed that this possible solution would involve the Ministry of Finance submitting the claim and the Fund examining the supporting documentation, with the assessed amount having to reach at least the amount of the 'insurance gap'. The representative of the Ministry of Transport undertook to consider this possible solution.

11.6 Concerning the issue of 'Metodika', the Ministry of Transport's representative explained that the Minister of Transport had written to the Deputy Prime Minister of the Russian Federation who had, in its turn, written to the Minister of Natural Resources. The Secretariat was given a copy of the reply from the Minister of Natural Resources to the Deputy Prime Minister. In his letter, the Minister of Natural Resources accepted that a 'theoretical' claim under 'Metodika' was not acceptable under the international Conventions and that the Russian Government had the obligation to comply with these Conventions but, at the same time, states that there was no need to withdraw the claim since it was expected that the Court would reject it. The Ministry of Natural Resources also accepted that only the claim for the actual losses incurred by them as a result of the spill in amount of RUB 578 347, which is in conformity with the 1992 CLC and Fund regime, should be considered. In the letter it was also explained that there was no need to amend Russian internal law on 'Metodika' since it applied to internal cases, not to pollution cases where the international conventions applied. The Ministry of Transport's representative explained that Rosprirodnadzor, on behalf of the Ministry of Natural Resources, had a claim against the Fund for the actual costs incurred and that they expected that the judge in the Arbitration Court of Saint Petersburg and Leningrad Region would reject the 'Metodika' claim. The representative also explained that to resolve this issue he had prepared a draft letter from the Minister of Transport to the Prime Minister of the Russian Federation and that the Minister of Transport was considering the text.

11.7 In Krasnodar the Secretariat and the Fund's experts held meetings with the Krasnodar regional administration and a local authority. Both claimants expressed frustration with not having been paid yet and explained that they were undergoing serious financial hardship. The Secretariat and the Fund's experts also visited the VTS in Kavkaz where questions were asked in order to better understand the procedures in operation at the time of the incident (cf paragraphs 8.8-8.9).

12 Director's considerations

12.1 The Director is pleased to report that the Russian authorities and the claimants are co-operating with the Secretariat and that the Arbitration Court of Saint Petersburg and Leningrad Region is taking this into account. This co-operation has allowed significant progress to be made in the assessment of claims. Settlement agreements with a number of claimants have been reached and the assessment of the other claims is well advanced.

12.2 The difficulty arisen from the claim based on 'Metodika' is close to being resolved since the claimants appear to be willing to agree with a settlement of their claim based on the assessment of the actual

costs incurred and admissible under the 1992 Civil Liability and Fund Conventions. Based on the information provided by the Russian authorities, it is understood that the claim based on 'Metodika' will be rejected by the Court.

12.3 A possible solution for the 'insurance gap' has been suggested as set out in paragraph 11.5. The solution is, however, in the hands of the Russian authorities.

12.4 There seems to be an indication that the Court will not accept Ingosstrakh's defence of *force majeure* but also that the lower CLC limit of 3 million SDR will be maintained. In that case, Ingosstrakh was not likely to pay above that limit. In addition, it seems that Ingosstrakh's assessments are lower than the Fund's assessments. While a solution may eventually be found to the 'insurance gap', it would appear that Ingosstrakh will not make any payments until all the claims have been adjudicated by the Court.

12.5 This incident has unfortunately shown a number of anomalies compared to most cases, and these anomalies have not yet been resolved. However, there are claimants in this incident who have claimed in accordance with the 1992 Conventions and the Fund's criteria, and who have duly cooperated with the Fund, leading to a settlement having been reached with them. In addition, some of these claimants have indicated that they are experiencing financial hardship and it seems that Ingosstrakh will not make any payments until all the claims have been adjudicated by the Court.

12.6 For these reasons, the Director is of the opinion that it could be considered not in line with the Fund's overall mission to continue to withhold payments to claimants referred to in paragraph 12.5. On the other hand, however, he considers it is of utmost importance to adhere to the basic principles of the 1992 Fund and the 1992 Conventions underlying the international regime, in particular in relation to the 'insurance gap' and the 'Metodika' claim.

12.7 Both these issues relate to activities of the (central) Government of the Russian Federation. The 'insurance gap' is the result of a lack of timely implementation of the increase in the limits of liability which entered into force in 2003. The 'Metodika' claim is a claim by Rosprirodnadzor, a Russian Federal agency tasked with the protection of the environment.

12.8 In light of the above, and taking into account in particular that the insurer, Ingostrakh, appears to be unwilling to make any payments to claimants before all the claims have been adjudicated by the Limitation Court, the Director considers that it would be appropriate to authorise him to make payments, but only to those claimants who:

1. Have claimed in accordance with the 1992 Conventions and the Fund's criteria;

2. Have duly cooperated with the Fund, which has lead to a settlement having been reached between them and the Fund; and

3. Are not a (central) government body or agency

.

12.9 The Director therefore proposes that the Executive Committee take such a decision, which would also mean that the Fund would later have to recover from Ingostrakh the amounts paid in compensation, up to the applicable limit. He further proposes that a decision to authorise him to make any other payments will only be taken once a satisfactory solution has been reached for the 'insurance gap' and the 'Metodika' claim.

13 Action to be taken

1992 Fund Executive Committee

The 1992 Fund Executive Committee is invited:

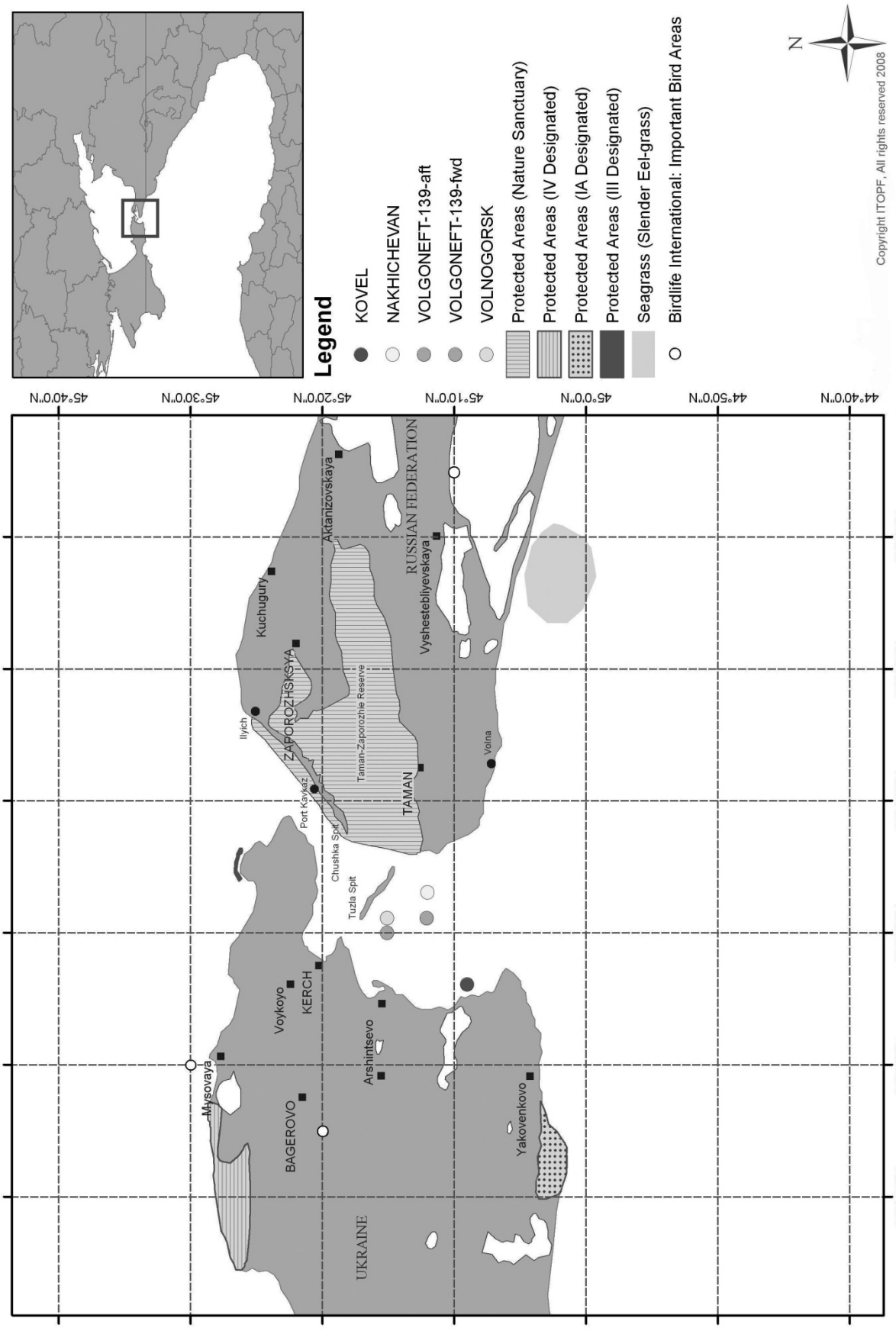
(a) to take note of the information contained in this document;

(b) to consider the Director's proposals set out in paragraph 12.8 and 12.9; and

(c) to give the Director such instructions in respect of the handling of this incident as it may deem appropriate.

* * *

ANNEX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