

 <p><b>INTERNATIONAL OIL POLLUTION COMPENSATION FUNDS</b></p>	<b>Agenda item: 3</b>		IOPC/JUN10/3/5
	Original: ENGLISH		16 June 2010
	1992 Fund Executive Committee	<b>92EC48</b>	•
	1992 Fund Working Group	<b>92WG6/1</b>	

## INCIDENTS INVOLVING THE IOPC FUNDS - 1992 FUND

### HEBEI SPIRIT

#### Note by the Director

<b>Objective of document:</b>	To inform the 1992 Fund Executive Committee of the latest developments in respect of this incident.
<b>Summary of incident so far:</b>	<p>On 7 December 2007 the <i>Hebei Spirit</i> (146 848 GT) was struck by the crane barge <i>Samsung N°1</i> while at anchor about five miles off Taean on the west coast of the Republic of Korea. About 10 900 tonnes of crude oil escaped into the sea from the <i>Hebei Spirit</i>.</p> <p>The <i>Hebei Spirit</i> is insured for pollution risks by China Shipowners Mutual Insurance Association (China P&amp;I Club) and by Assuranceöreningen Skuld (Gjensidig) (Skuld Club).</p> <p>The losses arising out of this incident are expected to exceed the limitation amount applicable to the <i>Hebei Spirit</i> under the 1992 Civil Liability Convention (1992 CLC), ie 89.8 million SDR (KRW 186.8 billion)<sup>&lt;1&gt;</sup>.</p> <p>The Skuld Club and the 1992 Fund have opened a Claims Office, the <i>Hebei Spirit</i> Centre (HSC), in Seoul to assist claimants in the presentation of their claims for compensation and have appointed a number of Korean and international experts to assess claims in the property damage, clean up, fisheries/mariculture and tourism sectors.</p> <p><i>Level of payments</i></p> <p>In June 2008, the 1992 Fund Executive Committee, in view of the increased uncertainty as to the total amount of the admissible claims, decided to reduce the level of payments to 35% of the established claims. In October 2008, March, June and October 2009 the Executive Committee decided to maintain the level of the Fund's payments at 35% of the established claims.</p> <p>In July 2008, the shipowner, the Skuld Club and the Korean Government (Ministry of Land, Transport and Maritime Affairs (MLTM)) concluded a Second</p>

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The liability of the owner of the *Hebei Spirit* has not yet been established by the Limitation Court. The Skuld Club is basing its calculation of the limitation amount on the exchange rate of 6 November 2008, the date on which the Letter of Undertaking was deposited into the Limitation Court. In this document conversion of currencies has been made on the basis of the exchange rate as at 1 June 2010, £1 = KRW 1 759.37 and 1 SDR = £1.0112).

Cooperation Agreement, under which the Skuld Club undertook to pay claimants 100% of the assessed amounts up to the shipowner's limit of liability under the 1992 CLC (section 8).

*Assessment of small-scale non-fishery claims*

The experts engaged by the Skuld Club and the Fund have developed a methodology for the assessment of claims in the non-fishery sector in cases where there is very little or no supporting evidence provided. In October 2009, the 1992 Fund Executive Committee endorsed the Director's decision to assess small claims in the non-fishery sector according to this methodology on a trial basis. The Skuld Club and the Fund have been assessing these claims based on the methodology developed (section 9.1).

*Fisheries restrictions*

The Korean Government established a number of fisheries restrictions in the weeks following the incident. The restrictions began to be lifted in April 2008. The last restrictions were lifted in September 2008.

In June 2009, the 1992 Fund Executive Committee decided that the assessment of claims in the fisheries sector should be based on conclusive scientific information available to the Fund and instructed the Director to continue to have bilateral consultations with the Republic of Korea with a view to resolving the remaining differences of opinion as soon as possible (section 10).

*Criminal proceedings*

In April 2009, the Korean Supreme Court annulled the Court of Appeal's decision to imprison the crew members of the *Hebei Spirit* and they were allowed to leave the Republic of Korea. The Supreme Court however upheld the decision to imprison the Masters of one of the towing tugs and of the crane barge and confirmed the fines imposed by the Court of Appeal (section 12).

*Limitation proceedings by the owner of the Hebei Spirit*

In February 2009, the Limitation Court rendered an order for the commencement of the limitation proceedings by the owner of the *Hebei Spirit* and decided that claims against the limitation fund of the *Hebei Spirit* should be registered with the Court by 8 May 2009.

One hundred and twenty six thousand three hundred and sixteen claims totalling KRW 3 597 billion (£2 billion) have been submitted to the limitation proceedings. The Limitation Court has appointed a court administrator to deal with the claims and has indicated its intention to monitor on a regular basis the progress of the registration and assessment of claims by the Skuld Club and the Fund (section 12.2).

*Limitation proceedings by Samsung Heavy Industries (SHI)*

In March 2009, the Limitation Court rendered an order for the commencement of the limitation proceedings of SHI, the bareboat charterer of the two towing tugs and of the crane barge and set the limitation fund, together with legal interests, at an amount of KRW 5 600 million (£3.2 million). The Limitation Court also decided that claims against the limitation fund should be registered with the Court by 19 June 2009. A number of claimants have appealed against the decision of the Limitation Court (section 12.2).

*Recourse action*

In January 2009, the owner and insurers of the *Hebei Spirit* and the 1992 Fund commenced recourse action against Samsung C&T and SHI, the owner and operator/bareboat charterer of the two towing tugs, the anchor boat and the crane barge, in the Court of Ningbo in the People's Republic of China combined with an attachment of SHI's shares in two shipyards in China as security (section 13).

**Recent developments:***Claims situation*

As at 1 June 2010, 19 025 claims totalling KRW 1 978 720 million (£1 125 million) had been registered, including 228 group claims, together representing 98 839 claimants. One thousand eight hundred and fifty-six claims have been assessed at a total of KRW 114 424 million (£65 million). Four thousand three hundred and seven claims have been rejected. The Skuld Club has made payments to 1 654 claimants totalling KRW 102 516 million (£58 million). The remaining claims are being assessed or additional information has been requested from the claimants. A further 8 000 claims are being registered. Further claims are expected (section 9).

*Fisheries restrictions*

A meeting took place in May 2010 in Seoul between representatives of the Korean Government, the Skuld Club and the Fund to discuss the conclusions reached by the Skuld Club's and Fund's experts on the basis of the data provided by the Korean Government and the document submitted by the Korean government to the cancelled April meeting of the 1992 Fund Executive Committee<sup><2></sup>. The differences of opinion between the Skuld Club and the Fund and the Korean Government have not been resolved (section 10).

*Limitation proceedings by the owner of the Hebei Spirit*

A number of claimants appealed to the Supreme Court of Korea against the decision for the commencement of the limitation proceedings by the owner of the *Hebei Spirit*. This appeal was dismissed on 26 November 2009 and consequently the Limitation Court's decision for the commencement of the proceedings became final (section 12.2).

*Limitation proceedings by SHI*

On 20 January 2010, the Court of Appeal dismissed the appeal against the commencement of the limitation proceedings of SHI. The claimants appealed to the Supreme Court (section 12.2).

*Recourse action*

In September 2009, proceedings were served on both Samsung C&T and SHI, but both have filed applications objecting to the jurisdiction of the Court of Ningbo and, in the case of SHI, objecting to the attachment. Submissions in response to the applications have been lodged on behalf of the 1992 Fund and the decision of the Court of Ningbo on all applications is expected in 2010.

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Due to severe disruption to international flights as a result of volcanic ash spreading across the United Kingdom from Iceland, the meetings of the IOPC Funds, which were due to be held from Wednesday 21 to Friday 23 April 2010, were cancelled.

In February 2010, the Fund signed an agreement with the owner, Skuld Club and China P&I Club ('ship's interests') in connection with the recourse action, under which the Fund and the ship interests will continue their separate actions in the Ningbo Maritime Court, sharing the costs of the recourse actions and enjoying the proceeds of any recovery by Court judgement or settlement on a 50/50 basis (section 13).

*Level of payments*

The most recent estimate of the total amount of the losses caused by the spill is around KRW 453 100 million (£262 million). The Director proposes to maintain the level of the Fund's payments at 35%, to be reviewed at the next session of the 1992 Fund Executive Committee (section 14).

**Action to be taken:** 1992 Fund Executive Committee:

Decide whether to maintain the level of payments at 35% (section 14).

## 1 Summary of incident

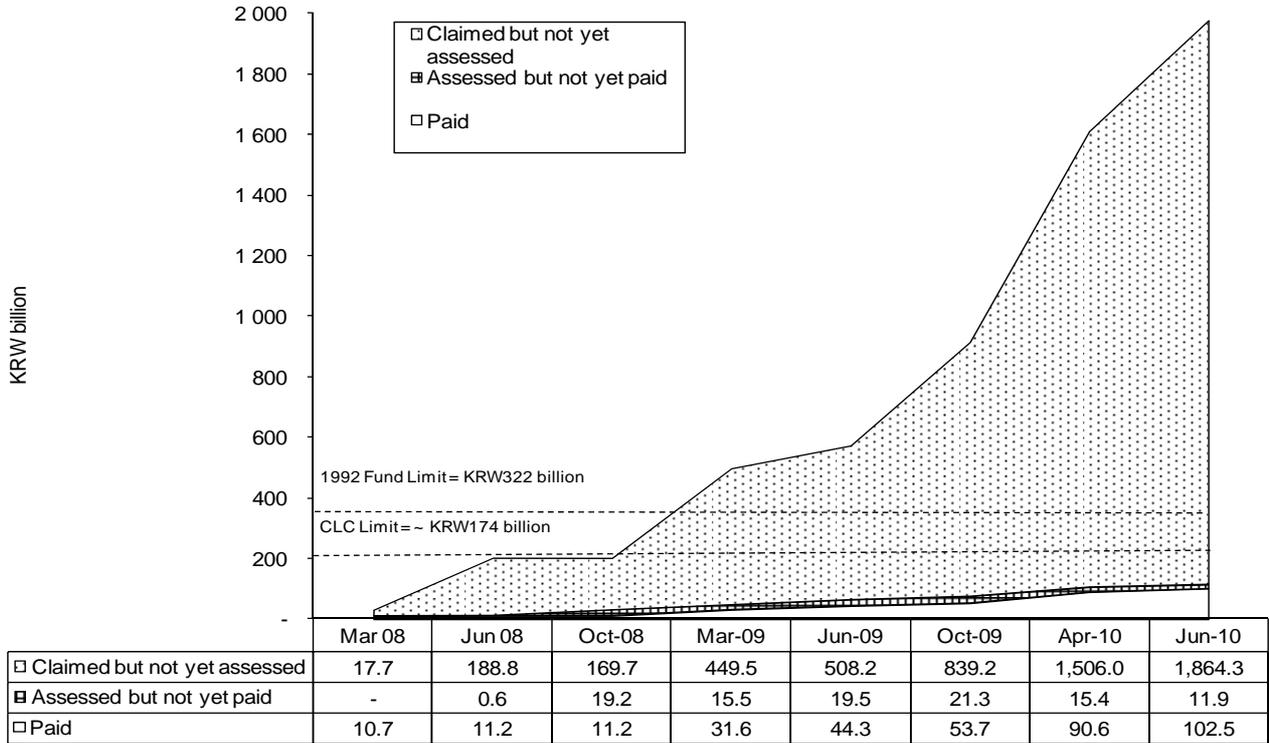
Ship	<i>Hebei Spirit</i>					
Date of incident	07.12.07					
Place of incident	Taeon, Republic of Korea					
Cause of incident	Collision					
Quantity of oil spilled	Approximately 10 900 tonnes of crude oil					
Area affected	The three southerly provinces on the west coast of the Republic of Korea					
Flag State of ship	China (Hong Kong Special Administrative Region)					
Gross tonnage (GT)	146 848 GT					
P&I insurer	China Shipowners Mutual Insurance Association (China P&I) /Assuranceforeningen Skuld (Gjensidig) (Skuld Club)					
CLC Limit	89.8 million SDR (approximately KRW 186.8 billion)					
STOPIA/TOPIA applicable	No					
1992 Fund Limit	KRW 321 619 million					
Compensation (KRW million):	Claimed but not yet assessed		Assessed but not yet paid <sup>&lt;3&gt;</sup>		Paid	
	No. claims	Amount (KRW)	No. claims	Amount (KRW)	No. claims	Amount (KRW)
Clean up/preventive measures	56	105 505	50	9 459	165	78 790
Property damage	11	2 603	5	94	6	345
Fisheries/mariculture	5 638	1 468 548	429	1 005	145	9 342
Tourism and other economic damage	7 067	285 476	4 114	1 348	1 338	14 037
Environmental damage	1	2 195	-	-	-	-
<b>TOTAL</b>	<b>12 773</b>	<b>1 864 327</b>	<b>4 598</b>	<b>11 906</b>	<b>1 654</b>	<b>102 516</b>
<b>Total (£ million)</b>		<b>1 059.6</b>		<b>6.8</b>		<b>58.3</b>
Notes	Further claims are expected.					

<sup><3></sup> The number of assessed claims includes rejections.

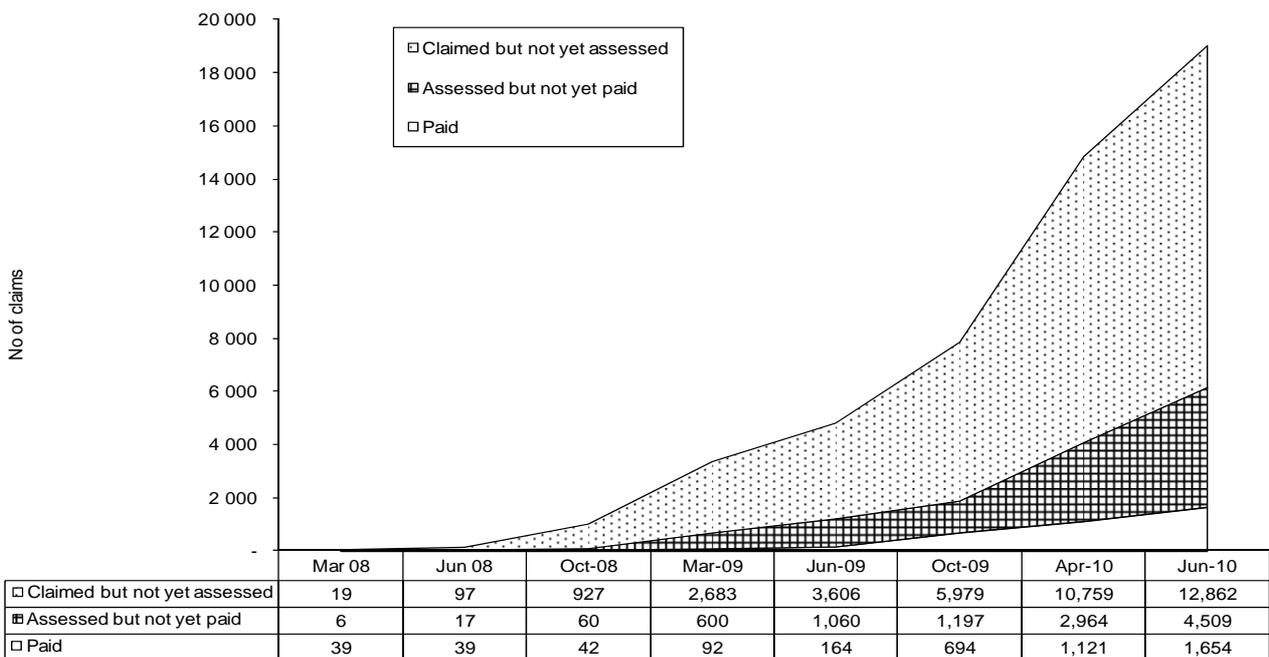
**2 Development of claims**

In past documents, this section presented in graphic form the development of the incident in terms of exposure of the Fund, and amounts assessed and paid. Figure 1 below accurately reflects this. Since the Director also considers it important to provide insight into the development of the incident in terms of volumes of claims processed by the Skuld Club and the 1992 Fund, an additional Figure 2 which reflects this has also been inserted below:

**Fig.1 – Development of claims (KRW billion)**



**Fig.2 – Development of claims (number of claims)**



### **3 The incident**

The *Hebei Spirit* (146 848 GT) was struck by the crane barge *Samsung N<sup>o</sup>1* while at anchor about five miles off Taean on the west coast of the Republic of Korea. The crane barge was being towed by two tugs (*Samsung T-5* and *Samho T-3*) when the tow line broke. As a result of the collision an estimated total of 10 900 tonnes of crude oil (a mix of Iranian Heavy, Upper Zakum and Kuwait Export) escaped into the sea. Details of the incident, impact of the spill and clean-up operations can be found in the IOPC Funds' Annual Report 2008, pages 125-127.

### **4 Claims handling**

- 4.1 The Skuld Club and the Fund appointed a number of Korean and international surveyors to monitor the clean-up operations and investigate the potential impact of the pollution on fisheries, mariculture and tourism activities. A total of 73 experts are currently working on the assessment of claims.
- 4.2 The Skuld Club and the Fund opened a Claims Office, the *Hebei Spirit* Centre (HSC) in Seoul to assist claimants in the presentation of their claims for compensation. The office became fully operational on 22 January 2008. HSC has a manager and four supporting staff members. Two more temporary personnel are employed to facilitate the registration of the thousands of claims which have been received in the office.

### **5 The 1992 Civil Liability and Fund Conventions**

- 5.1 At the time of the incident, the Republic of Korea was a Party to the 1992 Civil Liability Convention (1992 CLC) and a Member State of the 1992 Fund, but not a Member State of the Supplementary Fund. As a consequence, since it is almost certain that the total amount of damages will exceed the limitation amount applicable under the 1992 CLC, the 1992 Fund will be liable to pay compensation to the victims of the spill.
- 5.2 The tonnage of the *Hebei Spirit* (146 848 GT) is in excess of 140 000 GT. The limitation amount applicable is therefore the maximum under the 1992 CLC, namely 89.8 million SDR. The limit of liability of the shipowner has not yet been established by the Limitation Court. The shipowner and the Skuld Club are basing their calculation of the limitation amount on the exchange rate of the date on which the Letter of Undertaking was deposited into the Limitation Court, ie 6 November 2009. The conversion rate on the basis of the rate applicable to that date gives 89.8 SDR = KRW 186 826 630 900.
- 5.3 The amount available for compensation under the 1992 CLC and Fund Convention is 203 million SDR. The conversion on the basis of the rate applicable to this incident gives 203 million SDR = KRW 321 618 990 000 (cf Annual Report 2008, page 127).

### **6 Level of payments**

- 6.1 In June 2008, the 1992 Fund Executive Committee, in view of the increased uncertainty as to the total amount of the admissible claims, decided to reduce the level of payments to 35% of the established claims. In October 2008, March, June and October 2009, the Executive Committee decided to maintain the level of the Fund's payments at 35% of the established claims.
- 6.2 The latest estimate on the total amount of the losses arising as a result of the incident and the level of payments proposed by the Director is contained in section 14 of this document.

### **7 Actions by the Korean Government**

#### **7.1 Hardship payments made by the Korean Government**

The Korean Government has informed the Fund that payments totalling KRW 117.2 billion

(£58 million) have been made to residents in the affected areas and that these payments were made as donations to the affected residents. The payments therefore did not constitute payment of compensation of pollution damage and would not fall within the scope of Article 9.3 of the 1992 Fund Convention.

## 7.2 Payments made by local authorities

The governments of Taean County, Gunsan City and Boryeong City have made payments totalling KRW 4 411 million to 14 claimants in the clean-up sector in respect of the cost of villagers' labour in January and February 2008, corresponding to the difference between the amount claimed and the amount assessed. Further payments totalling KRW 9 569 million have been made by the same local authorities, Sinan County, and Muan County to 20 claimants for similar costs incurred during the period March to June 2008 corresponding to the amounts claimed against the Skuld Club and Fund. Payments totalling KRW 23.5 million have been made by Yeonggwang County to one claimant for villagers' labour costs incurred during the period after August 2008. These local authorities have submitted claims in respect of these payments.

## 7.3 Special Law for the support of the victims of the *Hebei Spirit* oil pollution incident

7.3.1 In June 2008, the Korean Government informed the 1992 Fund Executive Committee that a special law for the support of the victims of the *Hebei Spirit* incident had been approved by the National Assembly in March 2008. A description of the contents of the Special Law can be found in the Annual Report 2008, page 128.

7.3.2 As at 1 June 2010, the Korean Government had made payments totalling KRW 31 448 million to 373 claimants in the clean-up, tourism and fisheries and aquaculture sectors based on assessments provided by the Skuld Club and Fund and has claimed for part of these payments. The Skuld Club has paid the Government KRW 27 285 million in respect of 357 of these claims.

7.3.3 The Korean Government has, under the Special Law, set up a scheme to provide loans to victims of pollution damage for an amount fixed in advance if they have submitted a claim to the Skuld Club and the Fund but have not received an offer of compensation within six months. As at 1 June 2010, the Korean Government had granted 6 559 loans totalling KRW 17 040 million to 5 950 claimants.

## 7.4 Other loans granted by the Korean Government

As a measure to assist victims of pollution damage, the Korean Government has also granted loans totalling KRW 4 000 million to 44 clean-up contractors. It is understood that these loans will be refunded by the clean-up contractors and will not be claimed from the Skuld Club and Fund.

## 7.5 Korean Government's decision to 'stand last in the queue'

7.5.1 At the June 2008 session of the 1992 Fund Executive Committee, the Korean Government informed the Committee of its decision to 'stand last in the queue' in respect of compensation for clean-up costs and other expenses incurred by the central and local governments.

7.5.2 In March 2010, the Korean Government informed the Fund that the amounts for which the Government intended to 'stand last in the queue' would total some KRW 88 900 million (£50.5 million) corresponding to costs incurred by the Government in respect of clean up and preventive measures, environmental studies, restoration, marketing campaigns, tax relief and other expenses incurred to deal with the pollution and that this figure was likely to increase as the Government continued to pay costs to regenerate the local economy and promote consumer spending.

7.5.3 The Skuld Club and Fund maintain frequent contacts with the Korean Government to ensure a coordinated system for the exchange of information regarding compensation in order to avoid duplication of payments.

## 8 Cooperation Agreements between the shipowner/Skuld Club, KMPRC and MOMAF

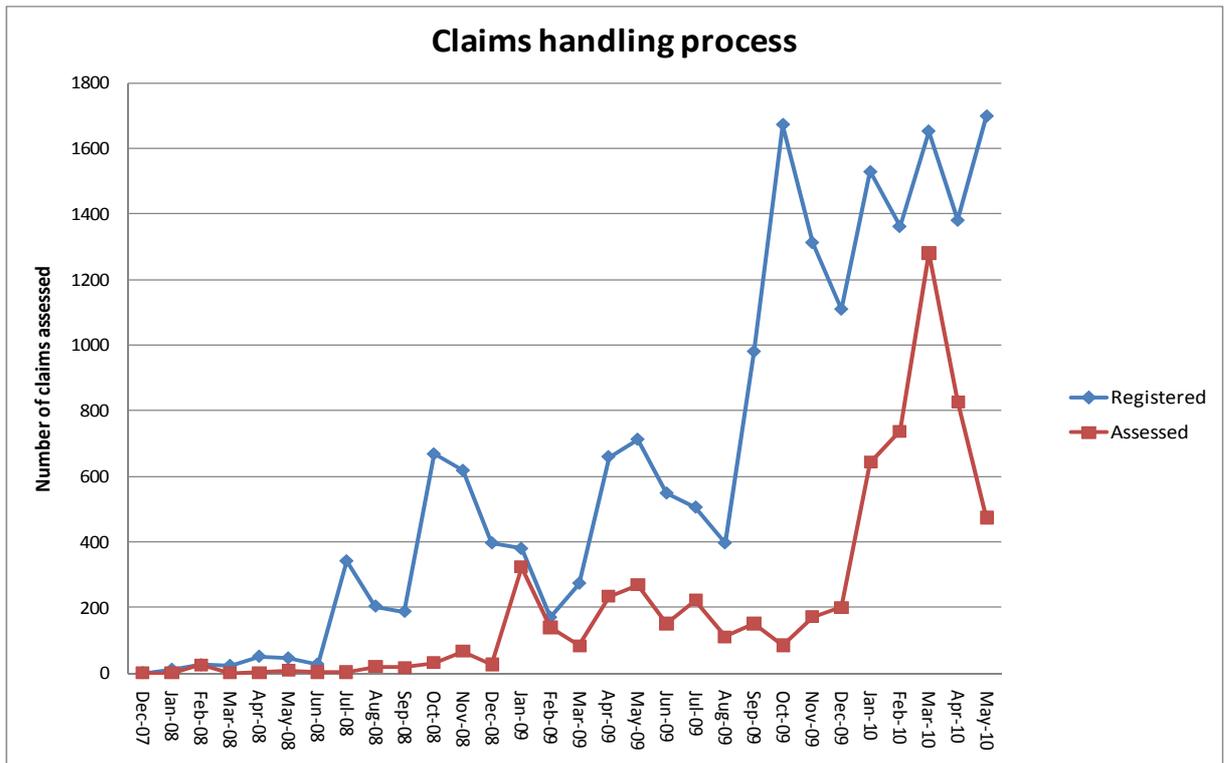
- 8.1 In January 2008, a First Cooperation Agreement on compensation matters was concluded between the shipowner, Skuld Club, Korean Marine Pollution Response Corporation (KMPRC) and the Korean Government (Ministry of Maritime Affairs and Fisheries (MOMAF)). The 1992 Fund was consulted during the negotiations but is not a party to the Agreement. Details of the First Cooperation Agreement can be found in the Annual Report 2008, page 129.
- 8.2 In July 2008, a Second Cooperation Agreement was concluded between the shipowner, Skuld Club and the Korean Government (Ministry of Land, Transport and Maritime Affairs (MLTM)), which had incorporated part of the functions of MOMAF). Details of the Second Cooperation Agreement can be found in the Annual Report 2008, page 129.

## 9 Claims for compensation

- 9.1 The table below provides an update of the claims registered in the HSC as at 1 June 2010:

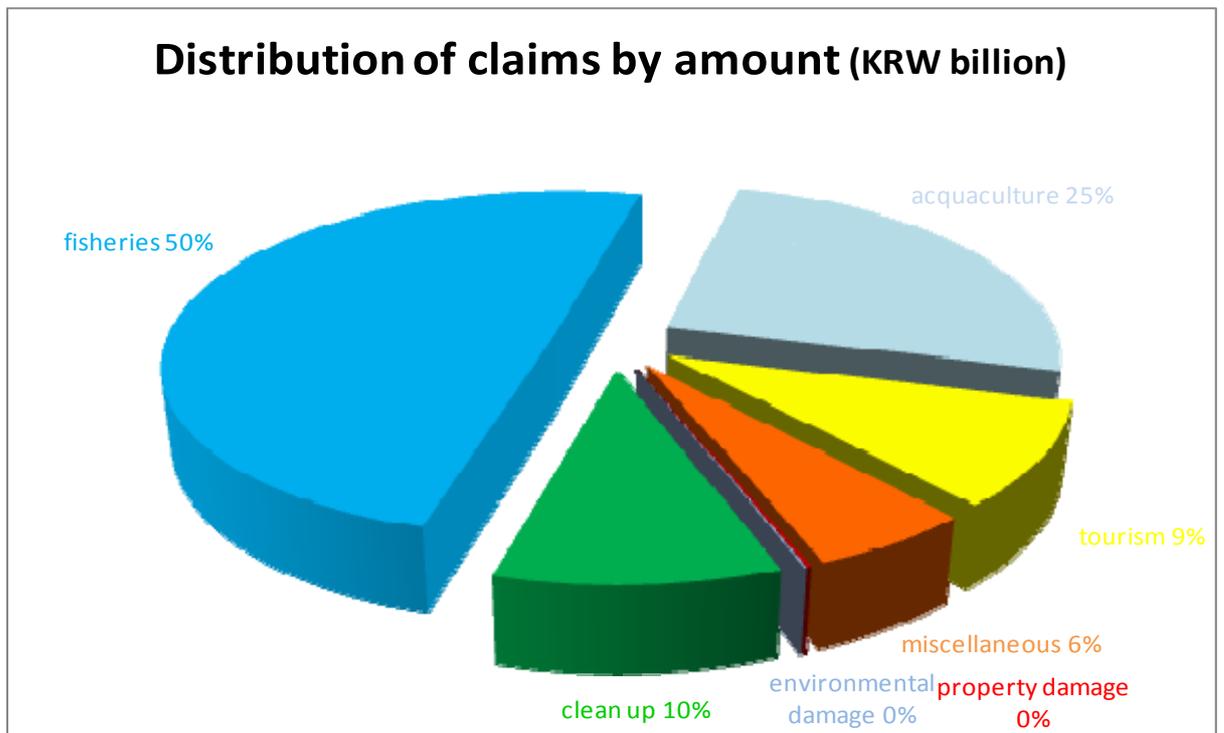
Category of claim	Number of claims	Claimed amount (KRW million)	Claims assessed > 0	Assessed amount (KRW million)	Claims paid	Paid amount (KRW million)	Claims rejected
Clean up and preventive measures	271	193 725	200	88 250	165	78 790	15
Property damage	22	3 042	7	439	6	345	4
Fisheries and mariculture	6 212	1 478 896	202	10 348	145	9 342	372
Tourism and other economic damage	12 519	300 862	1 447	15 387	1 338	14 039	3 912
Environmental damage	1	2 195	-	-	-	-	4
<b>Total</b>	<b>19 025</b>	<b>1 978 720</b>	<b>1 856</b>	<b>114 424</b>	<b>1 654</b>	<b>102 516</b>	<b>4 307</b>
<b>Total (£ million)</b>		<b>1 125</b>		<b>65</b>		<b>58</b>	

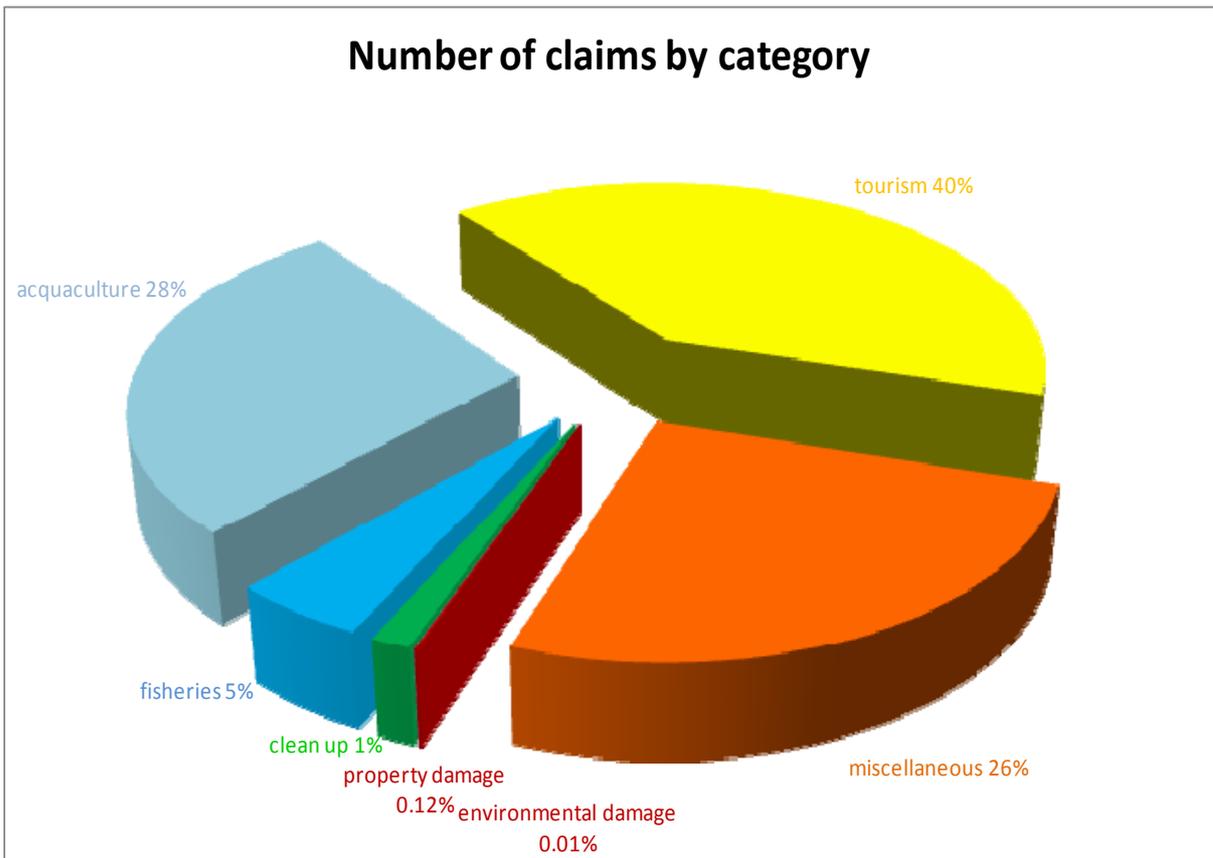
- 9.2 As at 1 June 2010, 19 025 claims had been submitted on behalf of 117 636 claimants. Of the claims registered in the HSC, 228 claims had been submitted by fishery cooperatives or committees on behalf of 98 839 small-scale fishermen affected by the oil spill.
- 9.3 The remaining 18 797 claims, mostly in aquaculture and tourism sectors, had been registered and are being assessed individually.
- 9.4 Six thousand one hundred and sixty three claims had been assessed. Of these, 4 307 had been rejected. A total of 1 654 claims, totalling KRW 102 516 million have been paid by the Skuld Club. These payments also include a number of subrogated claims submitted by the Korean Government.
- 9.5 The graph below shows the number of claims registered and assessed each month since the incident occurred. It can be seen that the rate at which claims have been assessed has broadly kept in step with the rate at which claims are received. The peaks in registration in October 2008 and October 2009 correspond to increases in the staffing of the HSC. The peak in assessment of claims in March and April 2010 relates to a great number of similar claims being rejected in that period on the grounds that there was no link of causation between the contamination and the loss.



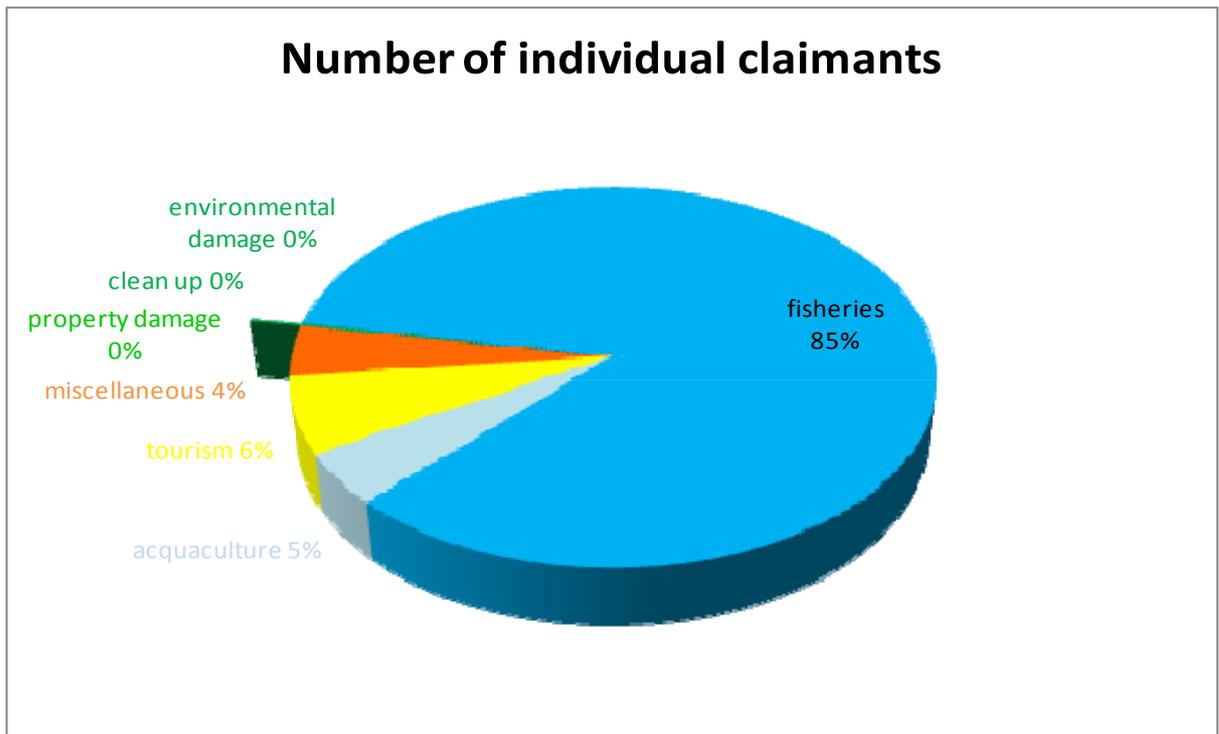
9.6 Some 8 000 claims are in the process of being registered. Further claims are expected.

9.7 The graphs below show the distribution of claims between the various categories, both in terms of number of claims and in terms of amount claimed.





9.8 The significant difference between the number of claims and the amount claimed for the fisheries sector is due to the fact that the vast majority of the individual claims in the fisheries sector have been submitted as part of group claims. The graph below shows the distribution of individual claimants by category.



*Small scale non-fisheries related claims*

- 9.9 Many tourism claims are poorly documented and would in normal circumstances be rejected. The experts have informed the Fund that one of the reasons for this poor documentation is that small businesses with annual revenue below KRW 24 million are exempt from VAT and business tax and keep either very limited or no records of revenues and/or costs. The Fund is aware that many of these businesses may have suffered losses as a result of the pollution but it is, however, very difficult to determine the amounts.
- 9.10 The current policy of the 1992 Fund is that a claimant is entitled to compensation only to the extent that he or she has suffered a quantifiable economic loss and there is a sufficiently close link of causation between the loss and the contamination resulting from the spill, provided that the claimant proves the amount of his or her expense, loss or damage by producing appropriate documents or other evidence (cf 1992 Fund's Claims Manual, December 2008 edition, section 1.5).
- 9.11 However, the Director believes, on the basis of the advice by the Club's and Fund's experts, that many small-scale businesses located in the areas affected by the contamination caused by the *Hebei Spirit* and which have not so far been able to prove their losses, have probably suffered losses as a result of the pollution.
- 9.12 In October 2009 the Director presented to the 1992 Fund Executive Committee a methodology developed by the Club's and Fund's experts for assessing small non-fisheries claims in case the claimant is not able to prove his/her losses. Details of this methodology can be found in document IOPC/OCT09/3/8/1, section 4. The 1992 Fund Executive Committee endorsed the Director's intention to apply this methodology on a trial basis, in order to gain experience with it and further develop the pool of reliable data.
- 9.13 As at 1 June 2010, about 46% of the small-scale business claims submitted had been assessed using the methodology described above. The others are being assessed. Further claims from small scale businesses are expected.
- 9.14 The Director intends to present the results of the application of this methodology once all small-scale claims, for which the methodology is suitable, have been assessed.

*Claims for losses with regard to activities not affected by the contamination caused by the incident*

- 9.15 The Club's and the Fund's tourism experts went to the Republic of Korea from the very early stages of the incident to explain the admissibility criteria adopted by the international regime to assess claims for economic losses in non-fisheries sectors. The experts met with several representatives of tourism business associations, as well as local authorities and members of the public. The Club and the Fund also participated in a number of such meetings to clarify the admissibility criteria and to explain what type of information would be required to substantiate claims for compensation.
- 9.16 There seems, however, to have been a lack of communication between the local authorities and the representatives of the claimants, on the one hand, and the claimants themselves, on the other. In most cases, these claimants genuinely believe they are entitled to receive compensation merely by virtue of the incident having occurred.
- 9.17 As a result, large numbers of claims have been received which are not admissible in principle. Claims have been received from, inter alia, scrap merchants, network-marketing distributors, suppliers of building materials (timber; piping; windows frames etc), clairvoyants, subscription newspaper distributors, sign makers and printers, car dealerships etc. In addition, a number of claims have been submitted by non-existent businesses, or businesses which had ceased trading before the incident.
- 9.18 Claims have also been submitted by businesses which are located outside the area affected by the pollution. These claims are poorly documented and in most cases a link of causation between any downturn they might have suffered and the pollution caused by the *Hebei Spirit* incident has not been

proven and is indeed very unlikely.

9.19 In some areas, economic activities had been declining for a much longer period, due to changes in the tourism patterns on the west coast of the Republic of Korea. However, since the decline was gradual, there does not seem to have been a widespread awareness of this decline until the incident. When the incident occurred, many of the residents running businesses in these areas noticed business dwindle, but did not connect it to the general economic decline in the area and the general economic depression of the following months. They did therefore submit claims for economic losses to the Club and the Fund despite there not being a sufficiently close link of causation between the pollution and the downturn they suffered.

9.20 Further claims from both affected and non-affected areas are expected to be received in the near future.

## **10 Fisheries restrictions**

10.1 Following the incident, the Korean Government established a number of fisheries restrictions. The restrictions began to be lifted in some areas in April 2008. The last restrictions were lifted in September 2008. Details of the process followed by the Korean Government to lift the restrictions can be found in document IOPC/OCT09/3/8/1, paragraph 2.3.

10.2 Examination of the data provided by the Korean Government regarding the basis on which the fisheries restrictions were imposed and lifted indicated that, on the basis of the scientific and technical information available, all of the fisheries should reasonably have been reopened before the actual date when the restrictions were lifted.

10.3 In June 2009, the 1992 Fund Executive Committee decided that the assessment of claims in the fisheries sector should be based on conclusive scientific information available to the Fund. Therefore, any losses suffered by fishermen after a point in time when the Korean Government could have reasonably had the opportunity to lift the restrictions should not be considered due to the contamination caused by the incident and should, in principle, not be considered admissible for compensation.

10.4 A number of meetings took place in September 2009 in Seoul and in London between representatives of the Korean Government, the Skuld Club and the Fund to discuss the conclusions reached by the Skuld Club's and Fund's experts on the basis of the data provided by the Korean Government. At the meetings, the Korean Government requested time to study the conclusions reached by the Club and the Fund.

10.5 In October 2009, the Secretariat presented to the 1992 Fund Executive Committee the result of a review of the reasonable dates when fisheries restrictions could have been safely lifted. The review was based on the results of the chemical analyses conducted by Korean organisations to address seafood safety, as well as on the duration of shoreline clean-up operations, in particular for those types of fisheries conducted near shore and in the intertidal areas. Details of the review can be found in document IOPC/OCT09/3/8/1, paragraph 2.4.

10.6 A meeting took place in May 2010 in Seoul between representatives of the Korean Government, the Skuld Club and the Fund to discuss the conclusions reached by the Club's and Fund's experts on the basis of the data provided by the Korean Government and the document originally submitted by the Korean Government to the cancelled April 2010 meeting of the Executive Committee. The differences of opinion between the Skuld Club and the Fund and the Korean Government have not been resolved.

10.7 The Secretariat and the Korean Government have continued their consultations with a view to resolving the remaining differences. In the meantime, however, in order not to lose time, the Skuld Club and the Fund are assessing claims from fishermen affected by the fisheries restrictions in accordance with the Executive Committee decision, ie using the dates as set out in document IOPC/OCT09/3/8/1, paragraph 2.4.

## **11 Investigations into the cause of the incident**

### **11.1 Investigation in the Republic of Korea**

An investigation into the cause of the incident was initiated soon after the incident by the Incheon District Maritime Safety Tribunal in the Republic of Korea. Details of the results of the investigation, and of the decisions taken by the Incheon Maritime Safety Tribunal in September 2008 and by the Central Maritime Safety Tribunal in December 2008 can be found in document 92FUND/EXC.42/11/Add.1, section 1 and document 92FUND/EXC.44/7, paragraph 12.1.4 respectively.

### **11.2 Investigation in China (Hong Kong Special Administrative Region) (China (HKSAR))**

An investigation into the cause of the incident has also been initiated by the ship's Flag State administration in China (HKSAR). The result of the investigation has not yet been published.

## **12 Legal proceedings**

### **12.1 Criminal proceedings**

#### *Court of First Instance and Court of Appeal*

- 12.1.1 Details of the criminal proceedings against the Masters of the crane barge and the two tugs and the Master and Chief Officer of the *Hebei Spirit* in the Court of First Instance and Court of Appeal can be found in the Annual Report 2008, pages 130-131.

#### *Supreme Court*

- 12.1.2 In April 2009, the Korean Supreme Court overturned the decision by the Court of Appeal, which had held that the Masters of one of the towing tugs and of the crane barge and the Master and Chief Officer of the *Hebei Spirit* were liable for the destruction of the *Hebei Spirit*, and sent back the case to the Court of Appeal for a retrial. The Supreme Court in its judgement also annulled the Court of Appeal's decision to imprison the crew members of the *Hebei Spirit*. The Supreme Court, however, upheld the decision to imprison the Masters of one of the towing tugs and of the crane barge and confirmed the fines imposed by the Court of Appeal.

- 12.1.3 In June 2009, the Master and Chief Officer of the *Hebei Spirit* were released from arrest and left the Republic of Korea.

### **12.2 Civil proceedings**

#### *Limitation proceedings by the owner of the Hebei Spirit*

- 12.2.1 In February 2008, the owner of the *Hebei Spirit* made an application to commence limitation proceedings before the Seosan Branch of the Daejeon District Court (Limitation Court).
- 12.2.2 In February 2009, the Limitation Court rendered an order for the commencement of the limitation proceedings.
- 12.2.3 In February 2009, a number of claimants appealed to the Court of Appeal against the decision of the Limitation Court to commence limitation proceedings. In July 2009 the appeal was dismissed. A number of claimants appealed to the Supreme Court.
- 12.2.4 On 26 November 2009 the Supreme Court dismissed the appeal and consequently the Limitation Court's decision for the commencement of the limitation proceedings for the owner of the *Hebei Spirit* became final.

- 12.2.5 One hundred and twenty six thousand three hundred and sixteen claims totalling KRW 3 597 billion (£2.1 billion) have since been submitted to the Limitation Court. In August 2009 the Limitation Court indicated that it would not accept further claims. The claimants would, however, still have time to modify the amount of their claim until such time as the Limitation Court would complete the assessment of the claims.
- 12.2.6 The Limitation Court appointed a court administrator to deal with the claims and indicated its intention that the Court Administrator review the assessments by the Club's and the Fund's experts and by the claimants' experts rather than appoint his own experts. To this end, the Limitation Court is monitoring on a regular basis the Club's and Fund's progress in the registration and assessment of claims.
- 12.2.7 The 1992 Fund's Korean lawyer is following the developments in the limitation proceedings.

*Limitation proceedings by SHI*

- 12.2.8 In December 2008, SHI, the bareboat charterer of the two towing tugs and of the crane barge filed a petition requesting the Limitation Court to issue an order granting the right to limit its liability in the amount of 2.2 million SDR (£2.3 million).
- 12.2.9 In March 2009, the Limitation Court rendered the order for the commencement of the limitation proceedings and set the limitation fund, together with legal interests, at an amount of KRW 5 600 million (£2.7 million). The Limitation Court also decided that claims against the limitation fund should be registered with the Court by 19 June 2009.
- 12.2.10 In June 2009, a number of claimants appealed to the Court of Appeal against the decision of the Limitation Court to grant to SHI the right to limit its liability.
- 12.2.11 On 20 January 2010, the appeal filed by the claimants against the decision of the Limitation Court was dismissed by the Court of Appeal, which confirmed the Limitation Court's decision. The claimants appealed to the Supreme Court and the case is pending.

**13 Recourse action against Samsung C&T and SHI**

- 13.1 Details of the recourse action by the owner and the insurers of the *Hebei Spirit* (ship's interests) and the Fund against Samsung C&T and SHI can be found in document 92FUND/EXC.44/7, section 13.3.
- 13.2 At its session in March 2009, the 1992 Fund Executive Committee endorsed the decision taken by the Director in January 2009 to commence recourse action against Samsung C&T and SHI in the Ningbo Maritime Court in the People's Republic of China at the same time as the owner and the insurers of the *Hebei Spirit*. The Committee also decided that the Fund should continue the recourse action. Details on the decision of the Committee can be found in document 92FUND/EXC.44/10, paragraphs 3.5.28 and 3.5.29.
- 13.3 In February 2010, the Fund signed an agreement with the ship's interests in connection with the recourse action under which the Fund and the ship's interests will continue their separate actions in the Ningbo Maritime Court, sharing the costs of the recourse actions and enjoying the proceeds of any recovery by court judgement or settlement on a 50/50 basis.
- 13.4 In accordance with the agreement, the Fund has paid US\$3 million to the Skuld Club, corresponding to half of the costs incurred by the Club in collecting evidence for the recourse action. In February 2010, the Fund also paid the Club for the cost of the security of US\$20 million provided by the Club in relation to the attachment of SHI's shares in the shipyards in the People's Republic of China (cf document 92FUND/EXC.44/7, paragraph 13.3.31).
- 13.5 In September 2009, proceedings were served on both Samsung C&T and SHI. Both have filed

applications objecting to the jurisdiction of the Court of Ningbo and, in the case of SHI, objecting to the attachment. Submissions in response to the applications have been lodged on behalf of the Fund and the decision of the Court of Ningbo on all applications is expected in the first half of 2010.

#### 14 Level of payments

Since document IOPC/OCT09/3/8/1 was issued, the Director has continued to collect the most up-to-date information on the estimated total exposure of the Fund. The revised estimated figures are set out in the following paragraphs:

##### 14.1 Clean up

14.1.1 The estimate has been reduced slightly to take into account the increased understanding of the total levels of claims and of the losses assessed so far. The revised estimate takes into consideration the assessed amount of the claims settled so far, as well as the claims for property damage related to clean-up operations that have been submitted so far.

14.1.2 The revised estimate of the expected admissible costs for the at-sea and onshore clean-up, consequent disposal of waste and for environmental restoration and monitoring as a result of the incident totals KRW 186 870 million (£110.8 million).

##### 14.2 Fisheries and aquaculture

14.2.1 The total estimated losses in the fisheries, aquaculture and ancillary industries sector have been slightly increased to around KRW 166 150 million (£94.5 million).

14.2.2 Previous global estimates had been based on official historical fisheries landings data with a number of assumptions about what actually happened. For this updated estimate, the experts engaged by the Club and Fund have reviewed the significant number of claims already received and considered the likely level of established losses based on the assessment of the claims already submitted and those likely to follow and comparing the results with the available official statistics.

14.2.3 Differences between this estimate and the previous one are due to a better understanding of the likely losses in certain categories of aquaculture loss (fin fish, seaweed, aquaculture property damage), and in the capture fisheries sector based on the review of the claims submitted and a comparison of the data obtained during the assessment process with the official estimates existing for the fisheries and aquaculture sectors.

##### *Capture fisheries*

14.2.4 The losses to capture fisheries have now been estimated at KRW 67 530 million (£38.4 million), a slight increase compared to October 2009. Given that a vast amount of claims have already been submitted, the Club's and Fund's experts have used the information obtained through the individual surveys already carried out to prepare a more accurate estimate of the overall losses in this sector.

14.2.5 This estimate is based on the impact of the spill on the fishery sector if the fishing restrictions imposed by the authorities were to be accepted and would therefore be lower if the estimate was based on the business interruption periods applying the dates determined by the Fund on the basis of technical reasonableness (cf document IOPC/OCT09/3/8/1, paragraph 2.4).

*Aquaculture*

- 14.2.6 In the most recent analysis of the expected losses in the aquaculture sector, the Club's and Fund's experts have mainly considered the number and type of claims submitted so far, as well as the result of the assessments carried out until now. Where the two sources of information above were not sufficient to carry out a meaningful estimate, official government statistics on business revenues in the area, as well as data concerning the physical contamination in the facilities were also utilised.
- 14.2.7 Based on the information available, the losses to the aquaculture sector arising from the *Hebei Spirit* incident have been estimated at about KRW 81 550 million (£46.4 million), which is higher than in October 2009. The estimates for this sector have taken into consideration the 1992 Fund Executive Committee's decision to reject in principle claims submitted by fishermen not in possession of a valid license or permit where such license or permit was legally required (cf document 92FUND/EXC/45/8, paragraph 3.4.11).

*Ancillary industries*

- 14.2.8 The Club's and the Fund's experts also took into account the possible losses of ancillary industries to fisheries and aquaculture, both upstream (eg gear, fuel and ice) and downstream (eg marketing, processing, distribution) and have estimated their losses at KRW 17 070 million (£9.7 million), slightly lower than in October 2009. Where hard data could be obtained from the assessment of existing claims this has been used; in other cases a proportion of the estimated value of lost catches and crops in the fisheries and aquaculture sectors was used to estimate losses to marketing and processing.

14.3 Tourism and other economic losses

- 14.3.1 In March 2008, the total tourism losses as a result of the *Hebei Spirit* incident were estimated at around KRW 200 billion (£113 million).
- 14.3.2 The initial estimates were based on the average annual performance of different types of businesses, estimated numbers of businesses and estimated cut off dates based on the experience gained from past incidents. Subsequently, these estimates had been expanded to include other non-fishery claims. The information on the tourism industry in the area was gathered from local authorities and trade groups in the area affected by the *Hebei Spirit* incident.
- 14.3.3 Since then it has become evident that the information on existing business in the affected areas provided by the local authorities was inadequate for a number of reasons:
- The existence of a significant number of smaller businesses which are not required to register was not fully included in the local authorities' records. As a consequence, many more claims at lower levels of average revenue were submitted than anticipated.
  - Even business operators trading at a higher level of revenues did in most cases not keep good records of their trade. Whilst the Skuld Club and the Fund have developed a methodology to assess the smaller businesses, which are not required to keep trading data, there are many other cases where businesses, which are required by law to keep a certain level of documentation on their revenues, have failed to provide supporting information regarding the levels of losses claimed.
  - Claims have also been received from a much wider area than first anticipated, which rendered the initial estimates no longer usable.
- 14.3.4 The claims submitted so far to the Skuld Club and the Fund have now reached numbers which are significant enough to allow the experts engaged by the Club and the Fund to integrate the incomplete statistical information available with an analysis of the claims already submitted to provide a more accurate estimate of the likely losses arising out of this incident.

14.3.5 The losses in the tourism sector have now been estimated by calculating the average ratio between the assessed value and claimed amounts by type and size of business and by geographic area. This ratio has then been applied to claims awaiting assessment within the same area. For the claims still being registered or yet to be received, an average assessed loss per business per geographic area has been calculated and then applied to the number of claims per area.

14.3.6 On the basis of the available information and on the assumptions described above, the experts have estimated that the likely total losses in the tourism sector would not exceed KRW 100 billion (£56.8 million). This estimate also takes into account that further claims might be submitted.

#### 14.4 Director's considerations

14.4.1 On the basis of the information set out above, the Director considers that the total amount of the losses arising from the *Hebei Spirit* incident could be estimated as set out in the table below:

Category of loss	Estimated losses June 2009 (KRW billion)	Estimated losses October 2009 (KRW billion)	Estimated losses June 2010 (KRW billion)	Estimated losses June 2010 (£ million)
Clean up	173	195	186.9	110.8
Fisheries and mariculture	209	149	166.2	94.5
Tourism	198-233	198-233	100	56.8
<b>Total</b>	<b>580-615</b>	<b>542-577</b>	<b>453.1</b>	<b>262.1</b>

14.4.2 The total amount available for compensation under the 1992 Conventions is 203 million SDR or KRW 321 618.9 million (cf section 5).

14.4.3 At its June 2008 session, the 1992 Fund Executive Committee decided that, in view of the uncertainty as to the total amount of the potential claims, and in view of the need to ensure equal treatment for all claimants, any payments made by the 1992 Fund should for the time being be limited to 35% of the amount of the damage actually suffered by the respective claimant as assessed by the Fund's experts. The Executive Committee decided to maintain the level of payment at 35% of the amount of the established damages, and to review the situation at its next session in October 2008, as well as in March, June and October 2009 (cf Annual Report 2008, pages 127-128 and documents 92FUND/EXC.44/10, paragraph 3.5.7, 92FUND/EXC.45/8, paragraph 3.4.25, IOPC/OCT09/11/1 paragraph 3.8.27).

14.4.4 Although, on the basis of the analysis by the Skuld Club's and the Fund's experts, it could be argued that there is room to revise the level of payments, the Director would like to point out the following:

- In previous incidents, the normal practice for the 1992 Fund has been to determine an appropriate level of payments solely on the basis of the claims submitted (and expected to be submitted) since these represented the possible potential exposure for the Fund in a worst case scenario.
- In the *Hebei Spirit* incident, however, the level of payment has so far been determined on the basis of the best estimates of the Club's and Fund's experts in respect of the various categories of claims. This was done for practical reasons, since it was clear from a very early stage that the total amount of the admissible losses was going to exceed the amount available for compensation under the 1992 Conventions, but at that stage a sufficient number of claims had not been submitted on which the Fund could base itself for the purpose of determining an appropriate level of payments.

- Since the last session of the 1992 Fund Executive Committee, more information has become available, both regarding the claims actually submitted to the Fund and regarding the claims which are likely to be submitted in the future.
- The total amount of the claims against the Fund registered at the HSC so far is KRW 1 979 billion (£1 125 million) and further claims are still being received. Applying that figure, with the usual safety margin for the Fund, would mean an appropriate level of payment at about 10%.
- If the Fund was to include in its considerations also the claims which are likely to be submitted in the future, it would be appropriate to take the total amount claimed in the limitation proceedings, ie KRW 3 597 billion (£2 015 million) (cf document IOPC/OCT09/3/8, paragraph 13.2.6) as the basis of its calculation. Applying these figures, with the usual safety margin for the Fund, would mean an appropriate level of payment of about 5-6%.
- However, the levels at which claims have been assessed so far are significantly lower than the amounts claimed, which seems to indicate that the assessed losses will be appreciably below the level that was originally estimated. This is in line with the fact that in incidents in the Republic of Korea in the past the total amount of the claims as settled has generally been significantly lower than the amount originally claimed and that the Korean courts have tended to uphold the assessment of losses based on the Fund's criteria for admissibility of claims. Also, on the basis of the information available, many claims submitted to the Skuld Club and the 1992 Fund, as well as in the limitation proceedings, appear to be for losses which are not admissible under the 1992 Civil Liability and Fund Conventions.
- The Korean Government has stated its intention to 'stand last in the queue' for its claims in respect of compensation for clean-up costs and other expenses incurred by the central and local governments (paragraph 7.5.1). The amount for which the Government would 'stand last in the queue' totals some KRW 88 900 million (£50.5 million), which corresponds to about 4.5% of the total amount claimed so far, and would therefore have no significant impact on the Fund's total exposure.

14.4.5 On the basis of all of the information available and the remaining uncertainties, as set out above, and taking into account that the advice of the Club's and Fund's experts is still the most reliable and realistic estimate of the total exposure of the Fund in this case, the Director takes the view that maintaining the level of payment at 35% would continue to provide the Fund with reasonable protection against a possible overpayment situation.

14.4.6 The Director therefore proposes to maintain the level of payments at 35% of the amount of the loss or damage as assessed by the Club's and Fund's experts and that this percentage should be reviewed at the 1992 Fund Executive Committee's next session.

## 15 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 decide whether to maintain the level of payments at 35% (section 14); and
  - (c) to give the Director such instructions in respect of the handling of this incident as it may deem appropriate.
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