

 <p>INTERNATIONAL OIL POLLUTION COMPENSATION FUNDS</p>	<b>Agenda item: 3</b>		IOPC/JUN10/3/5/2*		
	Original: ENGLISH		31 March 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 – COMPREHENSIVE UNDERSTANDING AND COMMENTS ON THE FISHERIES RESTRICTION

Submitted by the Republic of Korea

<b>Summary:</b>	This document contains information and ROK's opinions of discussion between the Korean Government and the Secretariat on the reasonableness of the period of fisheries restriction.
<b>Action to be taken:</b>	<u>1992 Fund Executive Committee:</u>  The Executive Committee is invited to take note of the information provided and make a supplementary decision on the fisheries restriction issue, so as to facilitate prompt compensation for the victims of the <i>Hebei Spirit</i> incident.

#### 1 **Background**

- 1.1 After the occurrence of the *Hebei Spirit* oil spill incident on 7 December 2007, the Korean Government announced the fisheries restriction to prevent sales of contaminated fisheries products and to ensure their safety for the sake of public health.
- 1.2 The fisheries restriction was lifted in stages from April 2008 to September 2008 based on the results of scientific studies conducted by Korean research agencies and the experts' views as well as due consideration given to the varying characteristics of fishery types and clean-up progress by region.
- 1.3 The IOPC Funds requested information related to the fisheries restriction to which the Korean Government responded, providing the required information, and thereafter, the two parties held a number of meetings during which the Korean Government explained its decision-making process for deciding when to re-open fisheries activities based on the information provided.
- 1.4 At the 45th session of the 1992 Fund Executive Committee held in June 2009, the Director of the IOPC Funds presented his view in document 92FUND/EXC.45/6/Add.1, based on the opinion of the Fund's experts, that the fisheries restriction was unnecessarily prolonged when there existed scientific grounds to re-open fisheries activities. However, the Director's document failed to present relevant evidence.
- 1.5 In the discussions that followed, the Korean Government requested that the two parties, the Korean Government and the Fund, should continue to work together to reach an agreement on the reasonableness of the fisheries restriction period, and most delegations at the meeting expressed the same opinion.

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\* Following the postponement of the April 2010 meetings of the IOPC Funds, document IOPC/APR10/3/5/2 has been reissued for the June 2010 meetings. The only amendment to this document is the revision of the document number.

- 1.6 There was much debate on the summary of the discussion by the Chairman of the Executive Committee, to which the Korean delegation expressed a different opinion. However, the Executive Committee endorsed the Director's view that fisheries claims should be assessed based on conclusive scientific information available to the Fund, and instructed the Director to continue to hold discussions with the Korean Government and resolve the difference of opinion (document 92FUND/EXC.45./8, paragraph 3.4.21)
- 1.7 Thereafter, the Secretariat and the Korean Government held many meetings, at times with input from the experts. Unfortunately, the two parties' recognition of the conditions at the time of the incident, including clean-up progress, were basically different and an agreement could not be reached.
- 1.8 At the 46th session of the Executive Committee held in October 2009, the Director presented in document IOPC/OCT09/3/8/1, section 2, 'Safe dates for re-opening the fisheries' as decided by the Fund's experts. The Korean delegation presented the reasonableness of the Korean Government's decision with an explanation of the process leading up to the re-opening of fisheries activities, and hoped that the discussions would continue.
- 1.9 Recognising that the difference in views of the two parties on the reasonableness of the fisheries restriction period was larger than expected, and so hoping to establish a common understanding on the conditions at the time of the incident, the Korean Government requested that the Funds share the site survey reports prepared by the ITOPI experts at the time of the incident. However, the Fund responded negatively to this request on the grounds that the reports were internal documents.
- 1.10 Further recognising that it would be difficult to concurrently discuss and agree on all fishery types and regions, as a way to resolve differences in stages, the Korean Government attempted to summarise information on clean-up progress which can be provided with relatively clear evidence. Unfortunately, it only reconfirmed the wide gap of views held by the two parties.
- 1.11 The Korean Government had originally initiated this discussion in the clean-up sector as a starting point to be settled and then to progress onto the other points of dispute. However, with the difference of opinions unresolved at the outset, the Korean Government concluded that discussion on the more controversial points would be unfruitful.
- 1.12 Meanwhile, because the Executive Committee had instructed the Secretariat to make assessments based on conclusive scientific information available, the Secretariat repeatedly requested for additional scientific information and recommended that the Korean Government should submit another document to the Executive Committee if it wished a decision to be made taking into account the conditions at the time of the incident.
- 1.13 With respect to the Secretariat's position and consideration of a potential ruling to be made by the Korean Court as well as the unrelenting suffering of the affected fishermen, the Korean Government has decided that it is high time to promptly conclude this issue.
- 1.14 As such, based on the Fund documents presented up to now and the discussions held with the Fund, the Korean Government wishes to explain the decision-making process leading up to the re-opening of fisheries activities and to explain why there exists a difference of opinions. The Korean Government invites Member States to take note of the information provided here so that they may have an accurate understanding of the fisheries restriction and reach a reasonable decision.

## **2 Procedures for re-opening fisheries activities (decision-making process)**

- 2.1 The Director explains in detail the Korean Government's procedures for re-opening fisheries activities (decision-making process) in documents 92FUND/EXC.45./6/Add.1, section 2 and IOPC/OCT09/3/8/1, section 2. However, the parts of information provided in these documents are misleading, and therefore, the Korean Government wishes to provide clarifications and additional explanations where needed.

- 2.2 On 7 December 2007, the Korean Government announced the fisheries restriction, and requested the Korea Ocean Research & Development Institute (KORDI) and National Fisheries Research and Development Institute (NFRDI), the two main Korean scientific agencies, to study and monitor the affected marine environment. KORDI and NFRDI defined general sampling zones in the affected areas and took initial sampling from 11 to 23 December 2007, which continued thereafter on a monthly or quarterly basis.
- 2.3 The number of samples collected by KORDI in the initial study period reached as many as 145 seawater (intertidal 72, subtidal 73), 91 sediments (intertidal 21, subtidal 70), 40 intertidal bivalve mollusc (oyster 30, clam 10), and 24 fish samples. NFRDI also collected from 25 seawater, 21 sediments, and 6 bivalve mollusc samples.
- 2.4 Meanwhile, as the soldiers, policemen, civil servants and volunteers from across the nation were at sea and on land for clean-up operations, on 22 December 2007, one of the Fisheries Cooperatives (Nammyeon Suhyup) suggested that the fisheries safety inspection for fisheries activities resume, citing the request of fishermen facing immediate problems with their livelihood. Nammyeon Suhyup's suggestion served as a turning point for the Korean Government to define a set of procedures to re-open fisheries activities, which was notified to all relevant agencies in the affected areas on 27 December 2007.
- 2.5 The Secretariat's document (IOPC/OCT09/3/8/1, paragraph 2.3) states the following:
- 'In January 2008, a fisheries cooperative requested the lifting of the fisheries restrictions in accordance with the procedure detailed in December 2007. A meeting was held between the central government and the fisheries association to discuss the lifting of the restrictions but no decision was taken on whether to re-open that fishery.'
- This is incorrect.
- 2.6 Furthermore, the Director states in document 92FUND/EXC.45/6/Add.1 paragraph 2.2:
- 'there was no guarantee that the fishing communities or cooperatives would request or agree to lift a restriction at the earliest reasonable time.'
- This is also incorrect.
- 2.7 The Korean Government provided a detailed explanation on the process of the fisheries resumption along with a written document (in the English language) submitted to the Secretariat in May 2009. Contrarily, however, the Secretariat mixed the order of progress in its document, which misleads the Member States to the possibility that the Korean Government intentionally disregarded the suggestion made by Nammyeon Suhyup to resume fisheries safety inspection.
- 2.8 Since the end of January 2008, Korean authorities and relevant parties held meetings to discuss the re-opening issue. However, it was only from the meeting held on 21 February 2008 and thereafter that the scientific guidelines (determined by scientific study results) by which fisheries resumption would be decided started to be discussed.
- 2.9 Scientific analysis, in general across many nations, requires 15 to 20 samples each time and sample batches are needed for several stages of the analysis; a total of which takes two weeks for results to be obtained. If a number of trained experts are engaged in different stages, then as many as 50 samples may be analysed each time. However, considering simply the initial number of samplings alone, it would have been physically impossible to obtain the scientific analysis results any sooner.
- 2.10 At a relevant domestic meeting held in March 2008, the results of the scientific study were announced, and the re-opening of boat fisheries was discussed. However, the Shipowners' Association of Taean County pointed out, based on the results of an independent examination the oily smell and accounted shellfish death was accountable to the tar residue uncovered by dredging at the bottom of the sea, and

accordingly made a request for an accuracy study. On 4 April 2008, related agencies including ITOF conducted a joint sampling survey.

- 2.11 In April 2008, the sampling results were presented at a meeting of the government authorities and relevant parties, and a plan was drafted for re-opening fisheries activities. Thereafter, on 18 April 2008, the Korean Government notified the re-opening of boat fisheries but excluded areas where clean up was ongoing. This was the first order of fishery resumption and the remaining restrictions were lifted based on the results of clean-up operation in stages.

### **3 Safe dates to re-open fisheries proposed by the Fund**

- 3.1 The Director, stated in document IOPC/OCT09/3/8/1, paragraph 2.4, that the experts of the Club and the Fund decided the fisheries restrictions could have been safely lifted based on the information provided by the Korean Government. The experts' viewpoints are explained as follows and summarised in Table 1 at Annex I.

- (a) The Fund's viewpoints are based on the chemical analytical results obtained by Korean agencies on seafood safety and the shoreline clean-up duration, particularly for fisheries near the coast and in the intertidal zone.
- (b) The information shown in Annex I is predominantly based on the results of chemical analyses of marine organisms, water and ongoing clean-up operations in the various areas. When analysing the sampling data submitted by the Korean Government, the Club's and the Fund's experts have used the newly established Korean safety standard for seafood as described above, ie a BaPE standard of 3.35ppb. (The International standard varies according to nations, but high seafood consumption and low weight were reflected in this Korean case.)
- (c) The results of the analyses show that BaPE concentrations in organisms caught by boat fisheries following the incident never exceeded the Korean standard and BaPE levels of other samples caught near shore or in the intertidal zone were elevated for a very short period, and no measurements exceeded the Korean standard after January 2008.
- (d) When determining reasonable dates for re-opening the fisheries, allowance was made for the time required for preparation and analysis of samples, as well as collation, interpretation and dissemination of results, subsequent decision-making and communication and implementation thereof.'
- (e) The extent of ongoing shoreline clean up at various sites was taken into account since fishing activities would not be expected to go ahead in still significantly polluted shorelines, even if no seafood contamination was present. For boat fisheries for example, seawater quality in landing harbours as well as ongoing shoreline clean-up operations with potential to remobilise oil into the water columns were considered.
- (f) The clean-up periods used for this purpose were based on the technical assessment of the Club's and the Fund's experts regarding reasonable clean-up operations. Since detailed assessment of clean up, claims for the period from March to June 2009 are still ongoing, some of these dates may change slightly for specific locations if new information becomes available.

- 3.2 Meanwhile, in reference to market reaction as noted in document IOPC/OCT09/11/1, paragraphs 3.8.9 and 3.8.10, one delegation asked whether the Secretariat had considered losses caused by factors other than technical and scientific grounds, such as market reaction.

- 3.3 The Secretariat responded that the dates indicated in Annex I only referred to re-opening dates from a scientific point of view, and further explained that possible losses caused by market reaction was a separate matter which would have to be considered when assessing claims.

- 3.4 Based on the above information and discussions with the Fund up to the present, it is the Korean Government's understanding that the Fund's experts are not considering market reaction as a relevant factor, that the Korean chemical analytical results are applied in the case of boat fisheries (excluding several areas mentioned in paragraph 3.1(e)), and that shoreline clean-up duration is applied in the case of other fisheries near shore of the intertidal zone.

#### **4 Safe dates for boat fisheries based on chemical analytical results**

- 4.1 Based on the information provided in section 3 and discussions up to the present, the Korean Government presents its view on the difference of opinions with the Fund.
- 4.2 The Fund's experts presented in Annex I the safe dates for re-opening boat fisheries as the end of January 2008, on grounds noted in paragraphs 3.1(b) to 3.1(d), ie that the Korean chemical analytical results were low and no measurements exceeded the Korean standard after January 2008.
- 4.3 However, the important fact, as noted in the above section 2, is actually the timing of when the scientific analytical results started to come out (February 2008). It is therefore difficult to understand how the Fund's experts could assert the re-opening of fisheries at the end of January 2008.
- 4.4 It is the Korean Government's understanding that in review of the past discussions held with the Fund, its experts asserted the re-opening at the end of January 2008 with knowledge of all the facts and results of a composite report issued a year after the onset of the incident. This may be comparable to showing up with a stock chart and asking a stock fund manager after the fact why he did not buy the stocks whose prices peaked.
- 4.5 To the Korean Government's assertion that it was impossible physically to lift the fisheries restrictions considering the scientific analysis period at the end of January 2008, the Fund's experts responded in past discussions that it is not reasonable because if the samples were many, a selected few biota samples could have been analysed and/or the Korean Government could have cooperated with other agencies.
- 4.6 Generally, including the National Oceanic and Atmospheric Administration (NOAA), scientists confirm the fisheries safety based on the results of scientific analysis not only by specific biota sample information but also by comprehensive information of seawater, sediment and habitat etc. (refer to NOAA Report, 'Managing Seafood *safety after an Oil Spill*', November 2002).
- 4.7 In addition, as noted in paragraph 3.1(d), the Fund's experts assert that allowance was provided for scientific analyses, governmental decision-making and implementation thereof when deciding reasonable re-opening dates.
- 4.8 Like the Fund's assertion, calculating backwards from the end of January, because it takes a minimum two weeks to carry out the scientific analyses and obtain the results (even if only a selected few samples are analysed), and a minimum two weeks for decision-making and communication considered thereof, the sampling data considered would have to be ones obtained immediately after the onset of the incident of 7 December 2007.
- 4.9 Sampling data of the boat fisheries took place during this period was, as noted in paragraph 2.2, only from studies conducted between 11 to 23 December 2007 on the four types of migratory fish of one station (Euihyangli) and two types of fish of four stations offshore.
- 4.10 That is, the Fund's experts argue that the safe re-opening dates were based solely on the results that BaPE concentration in the sampling of the six fish types (boat fisheries) fell below the Korean seafood safety standard, and these are the conclusive scientific information decided by the 45th session of the Executive Committee.
- 4.11 However, sampling was taken while clean up at sea was in full operation (officially terminated on 8 January 2008). This raises the question on whether it is scientifically or technically reasonable to

assert safe re-opening dates based on sampling data collected at a time when no one could predict the after effects of the incident.

- 4.12 The Korean Government believes the reasonableness of a certain action should be assessed based on the conditions and information of the time at which the action takes place, not after the fact when the results of the action have already become known. It is simply illogical to apply any scientific results obtained later than the action itself when assessing its reasonableness. Unfortunately, it seems that the Fund's experts have chosen to do just that.

## **5 Safe dates for other fisheries based on shoreline clean-up duration**

- 5.1 With respect to fisheries in the intertidal zone near the shore, as noted in paragraph 3.1(e), the Fund's experts present safe re-opening dates in the Table by region and based on the technical assessments of reasonable clean up.

- 5.2 As provided in Table 2 at Annex II, the Korean Government summarised the shared clean-up information and divided the clean-up periods into those conducted by experts and volunteers. The Fund, however, delivered its opinion as follows:

- (a) The Fund presented Annex I considering not only the site surveys and reports of the Fund's reviewers, but also the level of clean-up operation jointly studied with clean-up companies and local authorities that are found to be reasonable under the Fund Convention; and
- (b) With respect to clean-up duration, the Fund only reviews technically reasonable clean-up activities as shown in Annex I. Meanwhile, Annex II indicates duration of clean-up operations actually implemented by various contractors and/or local authorities.

- 5.3 In consideration of the Fund's position noted above, it is the Korean Government's understanding that only activities up to the dates indicated in Annex I are recognised as technically reasonable. And the Korean Government also understands that in the period past the dates of Annex I, as reasonable clean up would have been terminated and regardless of oily findings, it should have decided to re-open fisheries activities.

- 5.4 On the question of the Korean Government as to whether it is possible to resume fisheries activities in the situation where numerous volunteers across the nation (they are consumers of fisheries products) were operating clean-up activities in shore, the Secretariat responded 'it is a question of appreciation and politic, not of technical assessment. And they think rock cleaning/polishing would be considered cosmetic rather than technically required.'

- 5.5 The Korean Government understands in a sense that the reasonableness of clean-up operations would be considered by the Fund when making payments for shoreline clean-up costs. However, the Korean Government questions the reasonableness of the Fund's position that fisheries should be re-opened in areas where oil continued to be found and clean-up was ongoing, citing that it was not technically reasonable.

## **6 Re-opening dates with respect to market reaction to the incident**

- 6.1 As noted in paragraphs 3.2 and 3.3, the Secretariat explains that loss incurred by market reaction is a separate matter to be considered when assessing claims.

- 6.2 The Korean Government understands that market reaction is a matter of consumer trust across all the affected areas. Therefore, it is difficult to understand how market reaction would be reflected on an individual claim basis.

## **7 Korean Government's opinions**

7.1 The position of the Director endorsed at the 45th session of the Executive Committee is noted in document 92FUND/EXC.45/6/Add.1 paragraph 2.4 that;

'any losses allegedly suffered by fishermen after a point in time where the Korean Government could reasonably have had the opportunity to lift the restrictions on basis of conclusive scientific information indicating that the level of contamination was back within safe levels, should not be considered due to the contamination caused by the incident.'

7.2 However, as noted in this document, as the point at which the Korean Government could reasonably lift the fisheries restriction based on scientific information was much later than the date presented by the Secretariat, the Korean Government cannot but question the reasonableness of the Fund's position.

7.3 The Korean Government has reached the conclusion that if the issue continues to stand as is, then it can only be settled in court; and after discussing this issue with relevant experts and legal counsels, was advised that a lawsuit seems unfavourable to the Fund based on the legal theory, precedents and experiences (but that the results of a lawsuit is always unpredictable).

7.4 Therefore, based on the legal advice received, the Korean Government would like to point out that the Fund's standing position, aside from the fact that the victims of the said incident will continue to suffer greatly if the issue is not settled in a short time, may lead to significant amounts of unnecessary legal costs for the Fund and the Club.

7.5 The Korean Government, as a Member State of the IOPC Funds, also wishes to note that if the Fund's standing interpretation of 'conclusive scientific information available' were to apply to all incidents in the future, that may cause controversial debates and unnecessarily prolong the compensation process.

## **8 Suggestions for the Executive Committee**

Based on the factors and explanations presented in this document, the Korean Government suggests that a supplementary decision to the one made by the 45th Executive Committee is called for particularly on the following points:

- (1) The 45th session of the Executive Committee had instructed the Director that the assessment of claims in the fisheries sector (especially in deciding the period of fisheries restriction) should be based on 'conclusive scientific information available' to the Fund. However, this information should be practically available at the time of its application, and should be reliable and appropriate to have the experts reach a conclusion.
- (2) The difficulties in re-opening fisheries activities should be considered, especially when there exist traces of oil and clean up is actually ongoing even after the time of termination of clean-up activities from a technical point of view.
- (3) Also, any loss incurred by market reaction should be considered in the assessment of fisheries claims, because loss is an issue of consumer trust that has an impact across all the affected areas rather than on a single individual claim.

## **9 Action to be taken**

### 1992 Fund Executive Committee

The Executive Committee is invited to take note of the information provided and make a supplementary decision on the fisheries restriction issue.

# Annex I

## Table 1 - Technically safe dates for the re-opening of the fisheries

		2007												2008											
Area	Fishery	Sampling area	Dec	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec										
		Legend: <span style="color: red;">BaPE above KORDI guideline</span> <span style="color: green;">BaPE below KORDI guideline</span> <span style="color: blue;">Technically reasonable restriction</span> <span style="color: orange;">Government restriction</span>																							
All of Taean County except Mohang, Chellipo and Gaemok harbours.	Boat fisheries	Euihang-ri (Shimnipo)	12					9																	
		Mandae (Garorim bay)	16					9																	
Mohang, Cheollipo and Gaemok harbours	Boat Fisheries	Mohang	17								24														
		Cheollipo									24														
		Gaemok										24													
Same as the Boat Fisheries; whole of Taean county except Mohang, Chellipo and Gaemok harbours.	Dredge Net (for bivalves)							22			27														
Geunheung-myeon, Anmyeon and Nammyeon and Gonam-myeon (excludes the off-shore islands). See separate notes below for Geunso, Garorim and all of Cheonso bays.	Village fisheries, divers and hand gatherers	Jisan-ri	27							10															
		Woncheong-ri		4						10															
		Galeumee B										13													
		Yeonpo B										13													
		Mongsampo P									10														
		Magumpo B									10														
Geunso, Garorim and Cheonso bays	Village fisheries, divers and hand gatherers	Kkochij B								10															
		Geunso bay (Jungsanpo Port)								19															
		Geunso bay (Padon)	27						19																
		Garorim bay (Naen)	18								10														
		Garorim bay (Donaen)	27								10														
		Garorim bay (Beomal)									10														
		Garorim bay (Ung isl.)									10														
		Garorim bay (Jungwang-ri)									10														
		Garorim bay (Ho1-ri)									10														
		Garorim bay (Eoeun-ri)									10														
		Garorim bay (Naen-3gu)									10														
		Garorim bay (Mandae)									10														
		Cheonso bay (Naam isl.)									10														
Cheonso bay (Gom isl.)									10																
Cheonso bay (Yeongmok Port)									10																
Western coast of Iwon.	Village fisheries, divers and hand gatherers	Kuginamugol B										13													
		Samok B.				no data						13													
Sowon-myeon & Wonbuk-myeon (except Soegeunjin Bay).	Village fisheries, divers and hand gatherers	Taeon power station				no data								3											
		Hakampo B				no data								3											
		Guryepo B													3										
		Sinduri B				no data									3										
		Gureumpo B													3										
		Euihang-ri (Shimnipo)													3										
		Bangjuog B (Baegnipo B)													3										
		Chunripo B (cheollipo B)													3										
		Manripo B (Mallipo B)													3										
		Mohang P													3										
		Padon B													3										
Sogeuinjin Bay	Village fisheries, divers and hand gatherers	Sinduri (mouth of the bay)				no data								3											
		Euihangri (Gaemok)		4											3										
	Village fisheries, divers and hand gatherers	Gaeuido isl.								10															
		Geoado isl.								10															
		Nachido isl.									10														
		Oipasudo isl.									10														
		Naepasudo isl.									10														
		Oido isl.									10														
Boryeong isl.	Village fisheries, divers and hand gatherers	Every islands						18																	
		Hodo isl.						18																	
		Modo isl.						18																	
		Nokdo isl.						18																	
		Daehwasado isl.						18																	
		Sohwasado isl.						18																	
		Chudo isl.						18																	
		Junggilsando isl.						18																	
		Sokgilsando isl.						18																	
		Daegilsando isl.						18																	
		Myeongdeokdo isl.						18																	
		Wonsando isl.						18																	
		Sapsido isl.						18																	
		Godaedo isl.						18																	
		Janggodo isl.						18																	
		Machado isl.						18																	
		Oigodo isl.						18																	
		Gireuman isl.						18																	
		Bulmodo isl.						18																	
Deyeondo isl.						18																			
Daechongdo isl.						18																			
Jeollabuk do (polluted offshore islands only)	Boat fisheries														18										
	Hand gatherers														18										
Jeollanam do (polluted offshore islands only)	Boat fisheries														18										
	Hand gatherers														18										
Incheon Metropolitan City	All fisheries													Outside pollution area											
Gyeonggi-do	All fisheries													Outside pollution area											

Notes:

- \*. Dates in green boxes indicate clean samples, where known
- \*. Unless otherwise indicated, the length of technically reasonable restrictions extends to the end of the month.
- \*. All other dates indicate the date of the lifting of the official bans

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**Annex II**

**Table 2 - Dates for the re-opening of the fisheries by Fund's experts and duration of shoreline clean-up, Government restriction, etc.**

Dates for the re-opening of the fisheries by Fund's experts And Duration of shoreline clean-up, Government restriction, etc.																			
Technically reasonable restriction by Fund's experts																			
Government restriction																			
Duration of clean-up on going by professional marine clean up comp																			
volunteers clean-up on going																			
Area	Fishery	Sampling area	2007					2008					NOTE						
			Dec	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep		Oct	Nov	Dec			
All of Taean County except Sowon, Wonbuk, Iwon-	Boat fisheries						18										Not appear in table 1 proposed by Fund		
Sowon, Wonbuk, Iwon-Myeon except Mohang, Chellipo and Gaemok harbours in Sowon-Myeon.	Boat fisheries	Euihang-ri(Shimnipo)	8						9								High Pressure Washing(Flushing)(JIN MYOUNG, DAE CHANG)		
		Mandae(Garorim bay)	8							9							High Pressure Washing(Flushing)(HAE SUNG)		
Mohang, Cheollipo and Gaemok Harbours	Boat fisheries	Mohang	8				30				9				13		DONG HWA, KNPS(YOUNG HWA), Taean-gun		
		Cheolipo	8						31		24						DAE CHANG, Taean-gun		
		Gaemok	8				30				24							MOO JIN, JIN MYOUNG, KNPS, Taean-gun	
			8								8								
Same as the Boat	Dredge																		
Geunso, and Cheonso bays	Village fisheries, divers and hand gatherers	Geunso bay(Gungsanpo port)		31							19								
		Geunso bay(Padori)		31							19								
		Cheonso bay(Naam isl.)	8													2		YOUNG HWA, KNPS(U WON), Taean-gun Clean-up ongoing	
		Cheonso bay(Gom isl.)		31								19						KG re-opening on 19 May about Cheonsu bay, but Fund's expert indicated on 10 Jun.	
		Cheonso bay(Yeongmok)	8			23						19						DONG SEUNG	
Garorim bay	Village fisheries	Garorim bay(Naeri)		31							10								
		Garorim bay(Donaeri)		31							10								
		Garorim bay(Beomal)		31							10								
		Garorim bay(Ung isl.)		31							10								
		Garorim bay(Jungwang-ri)		31							10								
		Garorim bay(Hoi-ri)		31							10								
		Garorim bay(Boeun-ri)		31							10								
		Garorim bay(Naeri-8gu)		31							10								
		Garorim bay(Mandae)		31							10								
Anmyeon and Nammyeon and Gonam-myeon (excludes the off-shore islands). See separate notes below for Geunso, Garorim and all of Cheonso bays.	Village fisheries	Jinsan-ri		31							16	9					High Pressure Washing(Flushing)		
		Woncheong-ri		31							10						KG are separated by Village fisheries and divers, hand gatherers about this area, but Fund's expert indicated same date and area.		
		Mongsanpo B		31							10						KNPS		
		Magumpo B		31							10						Re-opening of Nam-Myeon and Anmyeon are separated by Village fisheries and divers, hand gatherers, but Fund's expert indicated same date.		
		Kkochji B		31							10						KNPS		
Area	Fishery	Sampling area	Dec	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	NOTE			
Western coast of Iwon and Geunheung Myeon.	Village fisheries, divers and hand	Kuginamgul B					31					13							
		Samok B								30			13						
		Galeumee B											13						
		Yeonpo B											13						
Nam-myeon and Anmyeondo.	Divers	Mandae(Yiwon Breakwater)	8							28							HAE SUNG		
		Jisan-ri		31									13						
		Woncheong-ri		31									13						
		Mongsanpo B		31									13						
		Magumpo B		31									13						
Sowon-myeon & Wonbuk-myeon (except Soeunjin Bay).	Village fisheries, divers and hand gatherers	Kkochji B		31								13					HAE SUNG		
		Taeon power station	8						31			9					SS environment, KNPS		
		Hakampo B	8									9					SS environment, KNPS, Taean-gun		
		Guryepo B	25							31						3			
		Sinduri B	25									15				15			
		Gureumpo B	8								31					3			
		Euihang-ri(Shimnipo)	8									8				2			
		Bangjugol B (Baegnipo B)	8								31					3			
		Chunripo B (Cheollipo B)	8								31					3			
		Manripo B (Mallipo B)	8								31					3			
		Mohang P	8								31					19			
		Pardori B	8								31					3			
		Sogunjin Bay	Village fisheries, divers and hand	Sinduri (mouth of the bay)	25								7			3		DONG YANG, Taean-gun(WOO JIN)	
		Taeon island.	Village fisheries, divers and hand gatherers	Euihang-ri(Gaemok)	8								31				3		MOO JIN, KNPS(U WON), Taean-gun
				Gaeuido isl.	8									30/10					5
Geodo isl.	8					29						10							
Nachido isl.	29											30/10				3			
Oipasudo isl.	29											30/10				3			
Naepasudo isl.	29											30/10				3			
Oido isl.	29											30/10				3			
																		WON KWANG, DONG SEUNG, Taean-gun(WOO JIN)	
																		KOEM, DONG YANG, Taean-gun(WOO JIN)	
																		KOEM and WOO JIN, Taean-gun(WOO JIN)	
																	KOEM, Taean-gun(WOO JIN)		
																	KOEM, KNPS, Taean-gun(WOO JIN)		

Area	Fishery	Sampling area	Dec	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	NOTE				
Boryeong island.	Boat	Every island		31			18													
		Hodo isl					30/18	16					10				High Pressure Washing (Flushing)(SOO IL)			
		Modo isl				24		30/18	6									High Pressure Washing (Flushing)(SOO IL)		
		Nakdo isl						30/18	6					10				High Pressure Washing (Flushing)(SOO IL)		
		Daehwasado isl						30/18	6			23						High Pressure Washing (Flushing)(SOO IL)		
		Sohwasado isl						30/18	6		12							High Pressure Washing (Flushing)(SOO IL)		
		Chudo isl						30/18	6		23							High Pressure Washing (Flushing)(SOO IL)		
		Junggilsando isl						30/18	29									High Pressure Washing (Flushing)(SOO IL)		
		Sokgilsando isl					31	18	29										High Pressure Washing (Flushing)(SOO IL)	
		Daegilsando isl						30/18	16			9							High Pressure Washing (Flushing)(SOO IL)	
		Village fisheries, divers and hand gatherers	Myeongdeokdo isl						30/18	31									High Pressure Washing (Flushing)(SOO IL)	
			Wonsando isl		31				18	28										KOEM
			Sapsido isl	20					30/18						10					High Pressure Washing (Flushing)(MOO SUNG)
			Godaedo isl					31	18	25						2	5			High Pressure Washing (Flushing)(MOO SUNG)
			Janggodo isl						30/18	3			9			2	5			High Pressure Washing (Flushing)(MOO SUNG)
	Machado isl						31	18											High Pressure Washing (Flushing)(MOO SUNG)	
	Oigodo isl							30											High Pressure Washing (Flushing)(MOO SUNG)	
	Gireuman isl							31	18										High Pressure Washing (Flushing)(MOO SUNG)	
	Bulmodo isl							30/18	6						10				High Pressure Washing (Flushing)(MOO SUNG)	
	Oeyeondo isl.			20				30/18											High Pressure Washing (Flushing)(MOO SUNG)	
	Daecheongdo isl.							30/18	30						10				High Pressure Washing (Flushing)(MOO SUNG)	
																			High Pressure Washing (Flushing)(MOO SUNG)	
																			High Pressure Washing (Flushing)(MOO SUNG)	
																			High Pressure Washing (Flushing)(MOO SUNG)	
																			High Pressure Washing (Flushing)(MOO SUNG)	
																		High Pressure Washing (Flushing)(MOO SUNG)		
																		High Pressure Washing (Flushing)(MOO SUNG)		

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## Annex III

### Summary of differences in view of the fisheries restriction issue between the Fund's Secretariat and the Korean Government

#### 1 Background

A comparison table on the key points of dispute is provided as follows (taken from the document submitted by the Korean Government) to enhance the understanding of the Member States of the fisheries restriction issue pertaining to the *Hebei Spirit* incident.

There exists a fundamental difference of views between the Korean Government and the Fund's Secretariat regarding the interpretation and application of 'conclusive scientific information available', which was decided by the 45th session of the Executive Committee (document 92FUND/EXC.45/8, paragraph 3.4.21), and it has been concluded that there is now a need to end this time consuming dispute.

Also in concern that the Fund's standing position on this issue, if applied the same or similarly to other future incidents, may give rise to numerous debates and litigations, the Korean Government suggests that a supplementary decision to that of the 45th session of the Executive Committee is very much called for.

#### 2 Summary of differences

Key issue	Secretariat	Korean Government
1. Interpretation of the Committee's decisions	<ul style="list-style-type: none"> <li>• Decision of 45th Committee(Jun.'09): fisheries claims assessment should be based on conclusive scientific information</li> <li>• Presented fisheries re-opening date to 46th Committee(Oct.'09) claiming basis on conclusive scientific information</li> <li>• A new decision should be requested to the Committee if opinions differ to that of Secretariat.</li> </ul>	<ul style="list-style-type: none"> <li>• At the time of the Committee's decision on 'conclusive scientific information', there was no presentation/discussion of the basis of that definition.</li> <li>• There is a need to clarify the interpretation and application of 'conclusive scientific information'.</li> <li>• As such, a supplementary decision is called for by the Committee.</li> </ul>
2. Scientific analysis results and re-opening of fisheries activities (boat fisheries)	<ul style="list-style-type: none"> <li>• Fisheries re-opening: end of Jan. (excluding severely polluted areas)</li> <li>• Based on:               <ol style="list-style-type: none"> <li>1) Scientific analysis results (by Korean agency) of sample collected in Dec. were below standards, also results after end-Jan.'08. * Based on Government's general report issued in Mar.'09</li> <li>2) Fisheries reopening possible at Jan.-end, considering 2 weeks each for scientific analysis results to come out and for Government's decision-making &amp; dissemination</li> </ol> </li> <li>• * In case of too many samples leading to prolonged analysis, then selecting a few key organic samples would enable information available by mid-Jan. (=&gt;This is comparable to arguing why one did not buy stocks after their prices have risen)</li> </ul>	<ul style="list-style-type: none"> <li>• Fisheries re-opening: 18 April (excluding severely polluted areas)</li> <li>• The reasonableness of an action is validated based on the conditions &amp; circumstances and information available at the time of that action.</li> <li>• Therefore, it is illogical to apply the scientific results obtained after the fact (action takes place) to that action; a decision should be made at the time of obtaining the results.</li> <li>• Much time was needed for the analysis itself; scientific results presented only at end-Feb.'08 *Considering the standard analysis capacity(max. 50 samples, 2 weeks period) and sample count(350 only for Dec.), it was physically difficult to present results within Jan. *Comprehensive analysis of seawater, organisms, etc. needed to validate scientific safety (refer to NOAA report)</li> <li>• *Not possible to discuss scientific safety with only analysis results of limited</li> </ul>

		sampling (6 fish types) collected in initial stage (mid-Dec.)
3. Clean-up operations and re-opening of fisheries activities (coastal fisheries)	<ul style="list-style-type: none"> <li>• Reopening of coastal fisheries made by region based on Fund experts' technical evaluation of reasonable clean-up operation.</li> <li>• Even in areas where clean up was on going, fisheries should have resumed after the end of reasonable clean-up period set by Fund experts.</li> <li>• Clean up by volunteers (fisheries product consumers) is not a technical issue but a political one; should be appreciated and considered in the cosmetic sense.</li> </ul>	<ul style="list-style-type: none"> <li>• Reasonable clean-up operation should be those recognized by the Fund; such as rock cleaning of volunteers are sometimes not recognised.</li> <li>• Difficulty did exist in actually re-opening fisheries activities in areas where oil traces were found and clean up (regardless of form) was on going.</li> <li>• Fisheries activities could not be resumed where volunteers from across the nation were still doing clean up (ie Even if resumed, who would buy the fish caught from there, and who would be responsible for undermining the credibility of fishery products of the affected area?)</li> </ul>
4. Market reaction and re-opening of fisheries activities	<ul style="list-style-type: none"> <li>• Loss incurred by market reaction to the incident is a separate issue to be considered in claim assessment (aside from technical &amp; scientific evidence).</li> </ul>	<ul style="list-style-type: none"> <li>• Market reaction is a consumer trust issue that has an impact across all affected areas; it would be unrealistic to deal with this issue separately on a claim-by-claim basis.</li> </ul>
5. Conclusion: supplementary decision needed	<ul style="list-style-type: none"> <li>• Assessment of fisheries claims should be based on conclusive scientific information, on condition that; <ul style="list-style-type: none"> <li>• the information is practically available at the time of its application, and</li> <li>• should be reliable and appropriate to have the experts reach a conclusion.</li> </ul> </li> <li>• Due consideration be given to the fact that reopening of fisheries would have been difficult if oil traces were found and clean-up was actually on-going, even after the end of reasonable clean-up operation from a technical point of view.</li> <li>• Due consideration be given to the fact that loss incurred by market reaction is matter of consumer trust that impacts all the affected areas.</li> </ul>	