

 <b>INTERNATIONAL OIL POLLUTION COMPENSATION FUNDS</b>	<b>Agenda item: 5</b>		<b>IOPC/JUN10/3/5/3</b>	
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	1992 Fund Executive Committee		<b>92EC48</b>	●
	1992 Fund Working Group		<b>92WG6/1</b>	

## INCIDENTS INVOLVING THE IOPC FUNDS – 1992 FUND

### HEBEI SPIRIT

#### General Guidelines for Establishing Reasonable Fishery Restriction Period

#### Submitted by the Republic of Korea

<b>Summary:</b>	This document contains a proposal for the production of general guidelines to establish a reasonable fishery restriction period, who should draft such guidelines and the details that should be included
<b>Action to be taken:</b>	<u>1992 Fund Executive Committee:</u>  The Executive Committee is invited to take note of the information provided to prevent dispute on the fishery restriction period and to facilitate prompt and fair compensation.

#### 1 Why it is needed (Background)

- 1.1 Fishery product safety becomes a major issue of interest in case of oil spill incidents, regardless of the magnitude of damage incurred. Public interest, of course, increases all the more when the media continues to highlight the repercussions of any grand-scale oil spill incident, such as the recent one in the Bay of Mexico. Consequently, fisheries activities are greatly affected, whether actual, or the possibility of, contamination exists or not.
- 1.2 For this reason, and recognising that conditions will differ depending on the type of oil spill incident and nation involved, fisheries activities may be restricted by the relevant government or by the local fisherman of his/her own accord as a preventive measure for fishery product safety and sustaining market trust.
- 1.3 It should be noted that the duration of this fishery restriction period, whether instructed or undertaken, may serve as the base point for calculating compensation for damages incurred. Therefore, different views on the reasonableness of the restriction period between the relevant government or victims and the Fund may give rise to troubling disputes.
- 1.4 Establishing a reasonable fishery restriction period may turn out to be a critical issue in settling damage compensation. However, it will not be easy to apply a specific set of guidelines to the diverse scales of oil spill incident and various characteristics of the affected marine environment.
- 1.5 With regards to deciding a reasonable fishery restriction period for the Hebei Spirit incident, the Fund's experts explained how they made reference to a report by the National Oceanic and Atmospheric Administration (NOAA), US, entitled 'Managing Seafood Safety after an Oil Spill' (Ruth Yender, Jacqueline Michel and Christine Lord, November 2002), and provided a copy of that report to the Korean Government.
- 1.6 NOAA's report points out that standards for fishery product contamination that are applicable internationally or federally to its States do not yet exist. Furthermore, US fishery product officials

have cited random drafting and its application of standards as the reason for the difficulty involved with managing fishery products after an oil spill incident.

- 1.7 A reasonable fishery restriction period should be based on scientific facts and study results; so that non-scientists, such as the local fishermen, do not have grounds for rendering a decision on fishery product safety. Therefore, if the local fishermen kept from re-engaging in fisheries activities for a certain period, which was not accepted by the Fund's experts, any loss incurred as a result would have to be borne by the local fishermen themselves. The case could be taken to court and ultimately won, but the whole process would take much time and extended suffering would have to be endured.
- 1.8 Also, it is naturally expected that time will be taken to reach a conclusion on the re-opening of the fisheries, if that conclusion is based on scientific study results that satisfactorily rule out any uncertainties. The greater the amount of scientific data that is compiled, the more time is needed.
- 1.9 However, in this instance also, if the Fund's experts contend that fisheries activities should have been resumed for the purpose of minimising loss, even when based on only a minimum count of facts, then any loss incurred as a result would have to be borne by the local fishermen. Again, the Court may rule in the victims' favour and award compensation, but the extended time taken would have aggravated their suffering, and have given rise to conflict between the victims and the government that ordered the fisheries restriction.
- 1.10 As such, the Korean Government believes that a set of generalised guidelines and procedures (with recognition of the expected difficulties with the specific details due to the various scales of oil spill incident and characteristics of the marine environment) for declaring a fisheries restriction and for re-opening the fisheries, may be a feasible solution.
- 1.11 Difference in views over the fishery restriction period is deemed as a structural issue and will continue to exist, as the Fund's experts are without guidelines to refer to from the onset of an incident and cannot clearly state their position. The experts presently apply their own standards/procedures and render assessments only after the fisheries restriction and resumption instructions have been made.
- 1.12 It is, therefore, deemed that a set of guidelines established by the Fund's experts, at the least, is needed by Member States when instructing fisheries restriction and resumption measures following oil spill incidents, so as to ensure fair and prompt compensation to the victims.

## **2 Who should draft the guidelines**

- 2.1 In the letters exchanged with the Korean Government on the issue of the fisheries restriction and re-opening of the fisheries, the Director claims that the Government should have had in place appropriate guidelines and procedures for monitoring the safety of fishery products prior to the incident, and that it was logical to assume that such guidelines were established at least prior to instructing the fisheries restriction. However, as noted in 1.6, international standards for fishery product contamination are still non-existent and deemed difficult to establish.
- 2.2 This last point (that is, international standards being non-existent) also means that even if a certain nation owned guidelines and procedures and ordered fisheries restriction and resumption accordingly, they become meaningless if the Fund's experts decide not to accept them in the assessment process. The Fund's experts are the ones that ultimately recognise the fisheries restriction period, and as such, they should be the party to present the guidelines.
- 2.3 The Korean Government believes that the Fund's experts have the most relevant experience in and information on handling oil spill incidents. During the many discussions held on the fisheries restriction issue pertaining to the *Hebei Spirit* incident, the Fund's experts have very clearly stated their views which could be presented as draft guidelines.

## **3 Details that should be included and/or considered in the guidelines**

- 3.1 The Korean Government suggests that the following factors should be considered in establishing the guidelines.

- 3.2 In order to minimise the losses incurred as a result of the oil spill, the fisheries restriction period should be given as short as possible. For that purpose, scientific studies should be conducted and their results should be obtained as quickly as possible to decide the period, but it is important to note that scientific analysis will take considerable time. As such, there is a need to reduce as much as possible the types and amount of sampling for fishery product safety assessment.
- 3.3 This (that is, types and amount of sampling needed) is where the Korean scientists and Fund's experts failed to reach an agreement. Specifically for instance, the Korean scientists explained that it generally takes two weeks to conduct a scientific analysis and accordingly, much time was needed to confirm the safety of fishery products; to which the Fund's experts maintained its position that a swift assessment is possible with a few key samples.
- 3.4 In reference, NOAA's report mentions 'rapid screening methods of analysis' with limited samples, but at the same time points out that these methods have limitations in that possible harm to the human body cannot be determined. As such, the generalised guidelines should cover the types and range of sampling.
- 3.5 The Director, in the letters exchanged with the Korean Government, claims that the samples should be clearly divided according to whether they are for the purposes of environmental monitoring or fishery product safety assessment, but does not mention which specific items/criteria should be classified in which ways.
- 3.6 In the fishery restriction and re-opening process, the local fishermen asked what would happen if they resumed fisheries activities but the products would not sell because of unfounded consumer mistrust.
- 3.7 If problems did not occur after re-opening the fisheries, that would be very fortunate. However, if fisheries were re-opened, in order to minimise loss, but uncertainties existed, that in turn could lead to a major distrust of the market, no sales, and a much bigger loss than expected.
- 3.8 In addition, noting the considerable time it takes for compensation to be paid, the victims may be forced to endure additional suffering. As such, it should be clearly stated in the generalised guidelines that the Fund will compensate in case of problems incurred after the re-opening of fisheries.

#### **4 Conclusion and suggestion**

- 4.1 Based on the above, the Korean Government believes that there is a need to have a set of generalised guidelines drafted by the Fund's and the Club's experts so as to assist the Member States in establishing reasonable fishery restriction periods.
- 4.2 Such guidelines will help to prevent unnecessary disputes between the relevant Member State and the Fund's experts regarding a reasonable fishery restriction period, and will ensure compensation to be made fairly and promptly. Furthermore, the Executive Committee may also apply the guidelines in future relevant cases for rendering a sound decision according to the international conventions and existing Fund policies.

#### **5 Action to be taken**

##### 1992 Fund Executive Committee

The Executive Committee is invited:

- (a) to take note of the information provided in this document; and
  - (b) to consider the proposal to instruct the Director to have the Fund's experts prepare and present a report, which suggests a set of general guidelines, including safety assessments for fishery products, to establish a reasonable fishery restriction period after an oil spill incident.
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