

 <p>INTERNATIONAL OIL POLLUTION COMPENSATION FUNDS</p>	Agenda item: 3		IOPC/MAR11/3/7/1	
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	1992 Fund Assembly			92AES15
	1992 Fund Executive Committee			92EC51 •
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	1971 Fund Administrative Council			71AC26
	1992 Fund Working Group			92WG6/2

INCIDENTS INVOLVING THE IOPC FUNDS – 1992 FUND

HEBEI SPIRIT

Submitted by the Republic of Korea

Summary:	This document contains information on the status of compensation for damages incurred by the <i>Hebei Spirit</i> incident off the west coast of the Republic of Korea and the measures taken by the Korean Government following the incident.
Action to be taken:	<u>1992 Fund Executive Committee:</u> Information to be noted.

1 Introduction

- 1.1 This document is submitted in order to enhance the overall understanding of Member States regarding the status of compensation for and the measures taken by the Korean Government against damages incurred by the *Hebei Spirit* oil spill incident which took place off the west coast of the Republic of Korea on 7 December 2007, following the collision between a crane barge and the M/T *Hebei Spirit*, resulting in a spill of 12 547kl of crude oil.
- 1.2 Clean-up operations were carried out by local residents, the Korea Coast Guard, the military, Korea Marine Environment Management Corporation (KOEM), and private clean-up companies, along with more than 1.2 million volunteers who helped to progress prompt clean-up and thereby significantly contributed to the prevention of additional damages.

2 Compensation under International Conventions and the Special Law

- 2.1 The 1992 Civil Liability Convention (1992 CLC) and 1992 Fund Convention apply to this incident, prescribing the maximum limited liability of the shipowner (P&I Club) to be 89.8 million SDR, and that of the 1992 Fund to be 203 million SDR inclusive of the shipowner's liability. The 40th session of the Executive Committee, held in March 2008, set the 1992 Fund's limited liability amount at KRW 321.6 billion.
- 2.2 Meanwhile, the 'Special Law for the Support to Residents Suffering Damages from the M/T *Hebei Spirit* Oil Spill Incident and Restoration of Marine Environment' (the Special Law) enacted in March 2008 immediately following the incident, stipulates that the Korean Government will make payments for any assessed amount in excess of the amount available for compensation under the 1992 Civil Liability and Fund Conventions.
- 2.3 Accordingly, the victims of this incident will now be compensated in full for loss established based on the Fund's assessment.

3 Compensational measures

3.1 Claimant trend

3.1.1 As at the end of February 2011, three years and three months after the incident, out of a total 28 197 claims (127 415 claimants) that were registered at the *Hebei Spirit* Centre (HSC: the Claims Office established by the P&I Club/shipowner and the 1992 Fund), only 10 467 claims (37% of total claims) or 18 869 claimants (14.8% of individual claimants) have been assessed.

3.1.2 Figure 1 below shows the development of claims in terms of how many have been claimed, assessed, and paid (including advance payments by the Korean Government).

* Figure 1: Development of claims (number of claims)

	2008	1Q-09	2Q-09	3Q-09	4Q-09	1Q-10	2Q-10	3Q-10	4Q-10	28-2-11
Claimed	2 608	3 511	5 459	6 968	11 365	15 580	18 868	25 477	28 147	28 197
Assessed	224	769	1 424	1 859	2 388	4 659	6 065	7 534	9 676	10 467
Paid	70	147	344	671	977	1 231	1 701	1 933	2 038	2 109
Paid amount (hundred million KRW)	366	396	535	675	784	1 021	1 075	1 152	1 181	1 196

3.1.3 As communicated repeatedly through information sharing documents by the Korean Government, still the greater number of claims has not been compensated and accordingly many victims continue to appeal about having reached their economic and psychological stress limitations due to the extension of actual compensation.

3.1.4 Relevant ministers and local authority governors attended the second Special Committee Meeting led by the Prime Minister on 21 January 2011 and discussed the status of compensation and related issues, at which time the progress of the 1992 Fund compensation was flagged with considerable concern.

3.1.5 The 1992 Fund consulted with the Korean Government on various occasions and stated its plan to complete most of the assessments by year-end, and the Korean Government request that the Fund progress with assessments as planned without delay and make every possible effort to carry out compensation even faster.

3.2 Fisheries claims

3.2.1 According to the data received through the HSC, as at the end of February 2011, only ten (0.9%) out of the 1 078 capture fisheries claims (the actual number of claimants was 100 296) had been assessed. With respect to aquaculture claims, 2 352 (24.4%) claims out of 9 633 claims had been assessed and 1 955 claims had been rejected: only 198 claims were compensated.

3.2.2 The Korean Government continues to work with the 1992 Fund on ways to enable prompt compensation, yet cannot but point out that assessment results for fisheries claims are not being presented as anticipated. Moreover, the fisheries claimants, knowing that most of the site surveys have taken place, are expressing serious doubt about the efficiency of the Fund's internal approval procedures. If needed, the Fund may have to hire additional experts to promptly progress with compensation.

3.2.3 Meanwhile as noted at the 48th session of the Executive Committee (document IOPC/JUN10/6/1, paragraph 3.5.32), although not fully satisfied with the Director's proposal on the reasonable dates for lifting the fisheries restriction, the Korean Government respected the decision rendered by the 1992 Fund Executive Committee which reflected the Director's proposal, so as to swiftly progress with compensation. At the same time, however, it should be noted that the claimants retain the right to file a case in court if they are not satisfied with the 1992 Fund's assessment results.

3.3 Tourism claims

3.3.1 As at the end of February 2011, 10 143 claims were registered, out of which 5 617 claims had been assessed by the 1992 Fund. However, 4 526 claims were still waiting for assessment results.

3.3.2 Tourism claimants continue to disagree with the 1992 Fund on the period for which compensation is applicable, of which the cut-off date was determined as September 2008 by the Secretariat. As Figure 2 in paragraph 3.3.4 describes, the number of tourists nationwide steadily increased after 2007; the number of tourists to Cheungnam-do, which include Taean County and 15 other cities/counties, decreased in 2008 the year following the incident but turned around in 2009. However, the number of tourists to Taean County dropped severely in 2008 to 1/5 of the tourist number in 2007, and continued to remain low even in 2009, two years since the incident, at 2/3 of the tourist number in 2007.

3.3.3 Taean County of Cheungnam-do, the area most affected by the incident, is a popular tourist destination renowned for its beautiful natural landscape and accessibility from the metropolitan area. The local residents, however, underline the fact that the tourist number has not returned to the pre-incident level, despite the increasing trend of tourists across the nation and to the Cheungnam region. Therefore, they conclude that the incident had a major impact on the recovery of Taean's tourist number.

3.3.4 In consideration of the credible official statistics provided by the Korean Government, the cut-off date of 30 September 2008 set by the 1992 Fund should be reconsidered.

* Figure 2: Tourist statistics (official statistics provided by the Ministry of Culture, Sports and Tourism)

Year	Nationwide total		Cheungnam-do total		Taean County total	
	Number of tourists	Compared to 2007	Number of tourists	Compared to 2007	Number of tourists	Compared to 2007
2006	679 277 185		85 700 667		20 627 493	
2007	686 583 017	-	86 579 170	-	20 880 787	-
2008	738 534 182	8%	75 353 088	-13%	4 854 325	-77%
2009	734 107 320	7%	89 632 694	3.5%	14 704 320	-30%

3.3.5 In reference, the Korean Government has already delivered the relevant data to the Secretariat for review in January 2011.

4 Contestation

4.1 Investigation into the incident

4.1.1 Both parties involved in the collision objected to the first administrative judgement by the Incheon Maritime Safety Tribunal (4 September 2008) and also the second judgement by the Korean Maritime Safety Tribunal (4 December 2008) pertaining to the collision and oil spill incident. The parties' appeal (9 January 2009) is currently pending in the Supreme Court of the Republic of Korea.

4.1.2 However, the shipowner (P&I Club) of the M/T *Hebei Spirit* withdrew its appeal in January 2011 citing issues of witness attendance and legal costs.

- 4.1.3 The final verdict of the administrative judgement on the incident will be determined by the Supreme Court's ruling.
- 4.2 Limitation proceedings
- 4.2.1 The Seosan Branch of the Daejeon District Court decided to open the limitation proceedings filed by the shipowner on 9 February 2009, to which some claimants filed an appeal which was dismissed by the Supreme Court. At present, the total number of claims filed in the Limitation Court is approximately 127 000 (KRW 3.9 trillion), a slight increase (by 1 000 claims, KRW 0.1 trillion) from the figure reported at the last meeting of the 1992 Fund Executive Committee in October 2010.
- 4.2.2 The court will consider the progress of the 1992 Fund's compensation and is expected to proceed with the investigation of these claims on 29 November 2011. Moreover, if objections are raised to the damage amount presented by the legal representative at the time of the investigation, the assessment ruling will be rendered at the end of 2012. The court is presently collaborating with the P&I Club to form an expert group for the investigation of the claims filed at the Limitation Court.
- 4.2.3 Meanwhile, the competent courts decided to open the limitation proceedings filed by the tugboats' fleet, but the claimants' representatives and the Korean Government have appealed that decision to the Supreme Court.

5 Special measures taken by the Korean Government

5.1 Measures to stabilise the local residents' livelihoods

- 5.1.1 The Korean Government provided KRW 117.2 billion as emergency hardship payments to support the livelihoods of the affected local residents. In order to aid the recovery of the local economy, the Government also carried out a public work program and offered other financial support, such as a reduction or exemption of national/local taxes and deferment of public insurance premiums.
- 5.1.2 In addition, the Government provided KRW 27.3 billion as a special loan to resume fishing activities, which helped to stabilise the fishermen's livelihoods and normalise fishery operations.

5.2 Support based on the Special Law

- 5.2.1 The Special Law prescribes that in case the amount assessed (approved) by the 1992 Fund is in excess of the amount available under the 1992 Fund Convention, the Korean Government will make payments for the exceeding amount. As such, the Korean Government and the P&I Club concluded the Second Cooperation Agreement by which the P&I Club makes direct payments of the full amount assessed by the Fund to the claimants.
- 5.2.2 Under the Special Law, when a claimant who has received the assessment results from the 1992 Fund applies for an advance payment to the Korean Government, the Government makes payment for the full amount assessed on condition of exercising its subrogation right to the particular claim at a later time. As at February 2011, a total of 408 applications (KRW 33 billion) submitted by claimants was paid out, which is an increase of 35 applications (KRW 0.4 billion) compared to the tally in September 2010.
- 5.2.3 Also, the Special Law stipulates that when a claimant, who has not received the assessment results from the 1992 Fund within six months of filing a claim, applies for a loan to the Korean Government, the Government extends an interest-free loan in the range of KRW 1.5 to 8.5 million per person. The total number of loans executed was 20 431 (KRW 49.8 billion) as at February 2011, which showed a steep rise throughout the past year but drastically fell in December 2010. Loan applications are not expected to rush in anytime in the near future.

- 5.2.4 With further reference to loans, the Special Committee Meeting held on 21 January 2011 decided to extend the loan repayment period to within two years (instead of one year) from the date of assessment by the Fund.
- 5.2.5 In addition, the Special Law directs the Korean Government to support those claimants who have actually suffered damages incurred by the incident but who have not received compensation from the 1992 Fund. As such, the Government is reviewing ways to assist 'those who have not been compensated', but expects that some relevant information and support will be needed from the Fund in deciding the recipients and amount of assistance.
- 5.3 Marine environment monitoring and restoration
- 5.3.1 On 2 November 2009, the Government in collaboration with relevant ministries established a special environmental restoration plan to monitor and restore the areas affected by the incident. At the end of last year, the local residents of the affected areas were briefed by the Government on the results of the secondary pollution impact study (April 2009 ~ September 2010), according to which the effects steadily continue to diminish except in some specific areas where no changes have taken place since the early stages of the incident.
- 5.3.2 The Korean Government made one addition to the list of designated coasts and islands where the marine environment or the ecosystem may have been damaged or changed as a result of the incident, and made the announcement on 31 December 2010.
- 5.3.3 According to the special plan, the Korean Government will consistently monitor and evaluate the changes in the marine environment and the ecosystem since the incident, and take necessary measures for environmental restoration.
- 5.4 Measures to improve the tainted image of the affected areas
- 5.4.1 The Korean Government and local authorities carried out various promotional events to improve the local image and boost the tourism and fisheries market of the affected areas, along with other marketing projects to revitalise the local economy. Open Water Swimming and Deep Sea Fishing contests were held in 2010.
- 5.4.2 Promotional events will continue to be held with the government budget in 2011, as tourism activities are not considered to have fully recovered yet.
- 5.5 Measures for the fisheries activities
- 5.5.1 On the day of the incident (7 December 2007), the Korean Government restricted all harvest and capture of marine products from the affected areas, in order to protect the public health against any potential negative effects from sales and distribution of contaminated fishery products. As of 18 April 2008, in consideration of the progress of the clean-up operations undertaken in the affected areas, and the results of the marine environment study and fishery products safety test, the Government initially lifted the restrictions on capture fisheries, and later on 3 September 2008, all types of fishery operations were resumed in all the affected waters and coasts.
- 5.5.2 In order to prevent secondary pollution, the removal of oyster cultivation facilities was started in May 2008 and completed by 24 July 2008 prior to the opening of the recreational beaches in the summer peak season. For the activity, the Korean Government injected KRW 12.61 billion and succeeded in preventing secondary pollution.
- 5.5.3 In order to restore the contaminated fishing grounds as early as possible, the Government works with experts from the National Fisheries Research and Development Institute (NFRDI) to survey the status of contamination in the affected areas and to draw up a restoration plan with a government budget of KRW 1 billion, under which projects have been conducted on a yearly basis for three years since 2008.

- 5.5.4 Furthermore, a 2009 supplementary budget of KRW 2 billion was earmarked for restoration in the affected fishing grounds, based on which environment improvement projects were carried out such as tilling and dredging of the fishing grounds. The Government has a decade plan to supplement KRW 157.7 billion for ten years starting from 2010 for the same purpose. Already in 2010, an additional budget of KRW 21.6 billion was injected, and another KRW 20.5 billion will be secured in 2011.

6 Collaboration with the 1992 Fund

- 6.1 Minor and major issues arise with the progression of compensation, and the Korean Government and the 1992 Fund Secretariat and/or HSC continue to share those issues and work together to find efficient and reasonable solutions.
- 6.2 Since the last Executive Committee Meeting in October 2010, the Acting Director and Claims Managers have visited Korea on several occasions to review developments by the Fund experts and HSC, and to meet with the Korean Government to discuss key issues of compensation, including current status and prospects of compensation, and conditions for increasing the level of payment to 100%.
- 6.3 Also since the last Executive Committee Meeting, the Korean Government and HSC have held two regular meetings and discussed pending issues, such as procedures for compensating group claims and establishing an efficient communication channel with claimants, and shared compensation related information.
- 6.4 This year, in particular, the bulk of claims will be assessed and very specific and individual issues are likely to surface. The Korean Government fully recognises this and seeks to work more closely with the P&I Club and the 1992 Fund.

7 Action to be taken

1992 Fund Executive Committee

The 1992 Fund Executive Committee is invited to take note of the information contained in this document.
