

 <p>INTERNATIONAL OIL POLLUTION COMPENSATION FUNDS</p>	Agenda item: 3	IOPC/OCT09/3/8/1	
	Original: ENGLISH	7 October 2009	
	1992 Fund Assembly	92A14	
	1992 Fund Executive Committee	92EC46	•
	Supplementary Fund Assembly	SA5	
1971 Fund Administrative Council	71AC24		

INCIDENTS INVOLVING THE 1992 FUND

HEBEI SPIRIT

Note by the Director

Objective of document:	<p>To inform the 1992 Fund Executive Committee of the latest developments in respect of this incident and to invite the Committee to decide on the assessment methodology to be applied to small-scale non-fishery claims and on the level of payments.</p>
Recent developments:	<p><i>Fisheries restrictions</i></p> <p>A number of meetings have taken place between representatives of the Korean Government and the Club and the Fund and their experts to understand the decision making process followed by the Korean Government in deciding the dates for the lifting of the fishing restrictions (section 2).</p> <p><i>Overview of the impact of economic factors on tourism in Korea during 2008</i></p> <p>The experts of the Club and the Fund have reconsidered the impact of increased oil prices and economic downturn in 2008. On the basis of new information available, the Club and the Fund have considered that the impact of those factors is not as significant as originally estimated and will, therefore, not continue applying the 25% deduction to the loss suffered after April 2008. They will also review all the assessments so far where the deduction has been applied (section 3).</p> <p><i>Assessment of small-scale non-fishery claims</i></p> <p>The experts engaged by the 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 (section 4).</p> <p><i>Level of payment</i></p> <p>The most recent estimate of the total amount of the losses caused by the spill is between KRW 542 000 million and KRW 577 000 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 5).</p> <p><u>1992 Fund Executive Committee:</u></p>
Action to be taken:	<p>(a) Decide whether to endorse the Director's intention to assess claims from small-scale business based on the proposed methodology (section 4);</p> <p>(b) Decide whether to maintain the level of payments at 35% (section 5); and</p> <p>(c) Give the Director such other instructions in respect of the handling of this incident as it may deem appropriate.</p>

1 Claim status

As at 5 October 2009, 7 310 claims had been registered in the *Hebei Spirit* Centre on behalf of 44 519 claimants, totalling KRW 1 042 billion. A further 43 364 claims, totalling about KRW 435 billion, are being registered. Nine hundred and twenty seven claims have been assessed. Nine hundred and sixty three claims have been rejected. The Club has made payments totalling KRW 64 069 million to 694 claims. These payments include payments made to the Korean Government totalling KRW 25 105 million in respect of 260 claims paid under the Special Law (cf document IOPC/OCT09/3/8, paragraph 8.3).

Category of claim	Number of claims	Claimed amount (KRW million)	Claims assessed > 0	Assessed amount (KRW million)	Claims rejected	Claims paid	Paid amount (KRW million)
Clean-up and preventive measures	251	193 053	155	60 625	13	117	50 889
Property damage	18	2 819	7	350	1	5	301
Fisheries and mariculture	1 244	684 807	139	9 100	43	131	8 365
Tourism and other economic damage	5 796	159 210	626	6 064	906	441	4 514
Environmental damage	1	2 195	-	-	-	-	-
Total	7 310	1 042 084	927	76 139	963	694	64 069
Total (£ million) ^{<1>}		512		37			31

2 Fishing and harvesting restrictions

- 2.1 Since the publication of document IOPC/OCT09/3/8 on 21 September 2009 a number of meetings have taken place between representatives of the Korean Government and the Club, the 1992 Fund and their experts to understand the decision-making process followed by the Korean Government in deciding the dates for the lifting of the fishing restrictions.
- 2.2 From the substantial information provided by the Korean Government and from the meetings held between the scientific experts of the Korean Government and the Club and the Fund and their experts, the Secretariat has learnt that this was the first time that the Korean Government had established fishing restrictions following an oil spill and no procedure was in place prior to the incident for determining safety standards, seafood sampling and analysis protocols or procedures for the eventual lifting of the restrictions.

Process followed by the Korean Government to lift the fishing restrictions

- 2.3 The Fund understands that the process followed by the Korean Government to lift the fishing restrictions was the following:
- The Government instructed the Korean Ocean Research and Development Institute (KORDI) and the National Fisheries Research and Development Institute (NFRDI), two leading scientific organisations in Korea, to carry out environmental and seafood monitoring, including the sampling of water, sediment and marine organisms in the months following the incident.
 - A comprehensive list of sampling locations was chosen and samples were taken at either monthly or quarterly intervals by KORDI and NFRDI. In some locations, pre-existing quarterly monitoring frequencies were continued, leading to different frequencies at which sampling events in different locations took place.

^{<1>} Conversion of currencies has been made on the basis of the exchange rates as at 24 August 2009 (£1 = KRW 2 035.17 and 1 SDR = £1.0512).

- In December 2007, the Korean Government issued a notice to all fisheries cooperatives in the affected areas, detailing the procedure to be followed for requesting the re-opening of the fisheries in their area of activity.
- In January 2008, a fishery 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.
- In late February 2008, a meeting was organised among the agencies involved to discuss results and to establish a seafood safety standard for the Republic of Korea. As a result of the meeting, a Korean seafood safety standard for polycyclic aromatic hydrocarbons (PAHs) was determined. Using methodology commonly used in the EU and USA, the toxicity of a number of key PAHs was ranked and related to the compound considered most detrimental to human health, Benzo(a)pyrene (BaP). In order to compare samples containing mixtures of PAHs, the BaP equivalent (BaPE) was calculated, allowing direct comparison between samples. International standards tend to allow a BaPE of 10 parts per billion (ppb) as safe threshold level, however, due to the higher consumption of seafood in the Republic of Korea and lower average body weights, this safe level was adjusted downwards to 3.35ppb, introducing an additional safety margin.
- Between December 2007 and April 2008, the Korean Government organised a number of meetings with local authorities and interested parties to discuss fisheries restrictions, although no decision as to the scientific criteria to be applied to determine the actual lifting of the restrictions was considered before the meeting in February 2008 referred to above. It is understood that at a meeting in March 2008 there had been discussion as to whether to lift the restrictions for boat fisheries, but that, following a request from one shipowners' association in Taean county to conduct sampling of the seafloor with dredge nets, it was decided to postpone any decision on lifting the restrictions on all fisheries to a subsequent meeting after that specific sampling took place.
- In April 2008, in a meeting attended by both KORDI and NFRDI as well as representatives of other scientific institutions and of the central and local governments the results of the sampling were presented to the authorities and a plan was drawn up for the lifting of the restrictions on fisheries. Following the meeting, the Korean Government announced the lifting of the restrictions on a number of fisheries for areas where clean-up operations had been completed; the Korean Government implemented them a few days later. The remainder of the restrictions were lifted after consultation with the local authorities and the fishing communities and once all parties reached an agreement as to whether to lift the restriction in a particular area, as described in document 92FUND/EXC.45/6/Add.1, paragraph 2.1.2.

Safe dates for the re-opening of the fisheries

- 2.4 On the basis of the information supplied by the Korean Government to date, the Club's and the Fund's experts have determined reasonable dates when the fisheries restrictions could have been safely lifted. Their review is 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. The results of the review are described below and are summarised in the following table:

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	Dec	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec				
All of Taean County except Mohang, Chellipo and Gaemok harbours.	Boat fisheries	Euihang-ri (Shimnipo)	12					9																								
		Mandae (Garorim bay)	16						9																							
		Mohang	17									24																				
Mohang, Cheollipo and Gaemok harbours	Boat Fisheries	Cheolipo									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																			
		Mongsanpo P								10																						
		Magumpo B								10																						
		Kkochji B								10																						
Geunso, Garorim and Cheonso bays	Village fisheries, divers and hand gatherers	Geunso bay (Jungsanpo Port)							19																							
		Geunso bay (Padon)	27						19																							
		Garorim bay (Naeri)	18							10																						
		Garorim bay (Donaeri)	27							10																						
		Garorim bay (Beolimal)								10																						
		Garorim bay (Ung ist.)								10																						
		Garorim bay (Jungwang-ri)								10																						
		Garorim bay (Ho1-ri)								10																						
		Garorim bay (Eoeun-ri)								10																						
		Garorim bay (Naeri-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	Kuginamuog B											13																			
		Samok B.												13																		
Sowon-myeon & Wonbuk-myeon (except Soegeunjin Bay).	Village fisheries, divers and hand gatherers	Taeon power station				no data																										
		Hakampo B				no data																										
		Guryepo B																														
		Sinduri B				no data																										
		Gureumpo B																														
		Euihang-ri (Shimnipo)																														
		Banggiogol B (Baegnipo B)																														
		Chunripo B (cheollipo B)																														
		Manripo B (Mallipo B)																														
		Mohang P																														
		Padori B																														
Sogeuinjin Bay	Village fisheries, divers and hand gatherers	Sinduri (mouth of the bay)				no data																										
		Euihangri (Gaemok)		4																												
	Village fisheries, divers and hand gatherers	Gauido isl.							10																							
		Gauido isl.								10																						
		Nachido isl.								10																						
		Olpasudo isl.								10																						
		Naepasudo isl.								10																						
		Oido isl.								10																						
Boryeong isl.	Boat fisheries	Every islands						18																								
		Hodo isl.							18																							
	Village fisheries, divers and hand gatherers	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																									
Oeyeondo isl.							18																									
Daechyeongdo isl.							18																									
Jeollabuk do (polluted offshore islands only)	Boat fisheries							18																								
Hand gatherers				</																												

- 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 the collation, interpretation and dissemination of results, subsequent decision making and the communication and implementation thereof.
- 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 the landing harbours as well as ongoing shoreline clean-up operations with the potential to remobilise oil into the water column were considered. 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 assessments 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.

Meetings with the Korean authorities in September 2009

- 2.5 A meeting took place in early September 2009 in Seoul between representatives of the Korean Government, the Club and the Fund and the Club's and Fund's experts, to discuss the methods of analysis and conclusions reached regarding technically-reasonable dates for lifting the fishing restrictions. While the information provided by the Korean authorities was used as the basis of the work undertaken, the government requested time to study the conclusions reached by the Club and the Fund and to provide further details to be taken into account where appropriate.
- 2.6 A follow-up meeting took place in London at the end of September between the Fund, the Club's and the Fund's experts, representatives of the Korean Government and KORDI and NFRDI, ie the research institutes charged by the Korean Government with sampling and analysis. During the meeting the Korean Government provided a chronological summary of the decision-making process in relation to sampling operations as well as a table identifying the length of clean-up efforts in the affected areas in detail. The information provided had largely been previously submitted under different cover and had already been considered in the Fund's analysis.
- 2.7 At the meeting in London, the Korean Government expressed the view that, although they did not disagree with the approach taken by the Club and the Fund to assess business interruption in principle, consideration should be given to the specific circumstances of the incident. In particular, the limitations of laboratory capacity for sample analysis and delays occurring in association with the development of suitable protocols and policy decisions at government level were mentioned, as well as a few divergences in the assessment of the ongoing pollution risk and reasonable clean-up requirements in a limited number of specific geographical areas.
- 2.8 The representatives of the Korean Government and the Fund agreed to meet again to further discuss the summary information provided during the meeting.

Director's considerations

- 2.9 The Director takes the view that based on the information available to date, most of which was provided by the Korean authorities, it is clear that the fishing restrictions in most cases were extended beyond the period which could have been considered reasonable on technical and scientific grounds. Therefore, in the Director's view, any losses suffered by fishermen after a point in time where the Korean Government could reasonably have had the opportunity to lift the restrictions, on the basis of conclusive scientific information indicating that the contamination was back to below the applicable safety criteria set out in paragraph 2.3, should not be considered due to the contamination caused by the incident and should not in principle be considered admissible for compensation.

3 Overview of the impact of economic factors on tourism in Korea during 2008

- 3.1 On the basis of the initially available information regarding the actual impact of fuel costs and the economic recession on tourism revenues in the affected areas, the Club and the Fund had provisionally applied a deduction of 25% to any loss of revenue suffered by businesses in the tourism sector after April 2008, subject to revision once further information would become available (cf document IOPC/OCT09/3/8, paragraph 10.6.3).
- 3.2 Since then, the Club's and the Fund's experts have examined a number of surveys provided by the Korean Government on economic trends in 2008. On the basis of these surveys, it was clear that tourism and day visitor traffic declined by about 18.9% as a result of fuel price increases and/or other economic factors in 2008. However, the experts have recently obtained an additional reliable survey report published by the Korean Tourism Organisation in May 2009, which indicates that the average amount spent by tourists and day visitors rose by circa 18.6%, due to changes in the demographic mix of visitors. This offsets the percentage decline in visitor numbers. The findings of this survey were also supported by a report on tourism in Korea produced by a reputable international market organisation. The increase in average spends was likely to be due to an increase in the number of wealthier visitors, who would normally have chosen an overseas destination, but as a result of the effects of increased fuel costs and the general economic downturn changed their holiday plans in favour of a destination in Korea.
- 3.3 The results of this survey also indicate that some businesses, especially small traditional style guest houses, known as *minbaks*, and motels, lost revenue for reasons other than the *Hebei Spirit* incident, such as changing cultural trends. However some businesses, such as petrol/service stations and higher quality pensions and restaurants, would probably have generated higher levels of revenue in 2008 than in 2007.
- 3.4 According to the survey mentioned in paragraph 3.2 above, overall average spends have remained constant, but average tourism business revenues, excluding transport, would appear, on a national level, to have declined by more than 15%. However, the survey report also shows that there was an increase in accommodation revenues, with the indication that revenues grew in higher quality accommodation, but declined at the lower quality end of the market. To apply any factor of reduction would therefore require that it be applied at different levels both for different types of business and also within different business sectors. Unfortunately neither the survey report nor the information provided by the Korean Government so far provides sufficient detail to enable the application of varying factors to these businesses.
- 3.5 On the basis of the new information available, the Club and the Fund have considered that the impact of those factors is not as significant as originally estimated, and will therefore not continue applying the 25% deduction to the loss suffered after April 2008. They will also review all the assessments so far where the deduction has been applied.

4 Assessment of claims from small-scale businesses

- 4.1 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 Claims Manual, December 2008 edition, section 1.5).
- 4.2 However, the Fund 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 may still have suffered losses as a result of the pollution.

- 4.3 Most of these small-scale businesses are *minbaks*, which are owner-occupied buildings with rooms let to guests on demand. In some cases this will include the owner's own accommodation when necessary. Much, but not all, of this accommodation is available all year round, but the business tends to be highly seasonal, peaking during the summer season and at specific weekends during the year. An analysis of claims arising from this incident shows that, on average, *minbaks* generate more than half of their annual revenue during the peak holiday season. In addition, the owners can concentrate on other activities for much of their time because, this type of accommodation being fairly basic, its upkeep does not require significant efforts. These patterns of seasonality both limit the revenues available and make the business attractive to people seeking a second or even third income.
- 4.4 In the Republic of Korea small businesses generating less than KRW 24 million per annum are not required to file any returns for VAT purposes or to keep accounts and, as a result, most keep either very limited or no records of revenues and/or costs. The Club's and the Fund's experts have been considering various ways to assess such claims where information is very poor or non-existent, however their efforts have been slowed significantly by the extremely limited number of claimants which have so far submitted sufficient supporting information.
- 4.5 The review of claims in the tourism sector to date has allowed the experts to create a pool of claims with reliable information. This pool, which now totals 274 accommodation claims, contains information generated from the analysis of individual, verifiable business log books and will continue to be updated and expanded as further claims are reviewed. The information includes 241 *minbak* rooms.
- 4.6 The methodology proposed is based on individual interviews with each claimant, to review the facilities offered and the trading patterns of the business. A number of factors that affect the performance of an accommodation operation will be considered when assessing these claims, namely: location, external appearance, product quality, price and capacity. The information obtained will be compared with the average level of revenue per room per *minbak* in the affected area, as calculated on the basis of the data obtained from a pool of quality data.
- 4.7 The methodology is heavily dependent on direct observation of the business, and on a sufficiently large pool of reliable information against which to assess the results of the direct observation. For this reason, it will have to be applied on a case-by-case basis and, considering that over 800 claims that fall within the criteria described in paragraph 4.4 have been submitted so far, it will be time-consuming.
- 4.8 The Director considers that, although this methodology is still being developed, it has the potential in principle to assist the Fund to assess small-scale accommodation claims submitted with little or no supporting information where the Fund believes there was a loss. The Director further considers that, because of the underlying uncertainties still inherent in the methodology, in particular in relation to the dimension of the data pool used as reference, such an approach could only be used on a case-by-case basis and only after direct contact with the claimant and survey of the business, to ensure that genuine claims are compensated in a fair and equitable manner.
- 4.9 The Director intends to apply this methodology on a trial basis, in order to gain experience with it and further develop the pool of reliable data. After that, he will determine whether it can be considered a sufficiently reliable method for assessing losses suffered by similar small-scale business where little or no supporting information is available.

5 Level of payments

- 5.1 Since document 92FUND/EXC.45/6/Add.1 was issued, the Director has obtained the most up-to-date information on the estimated total exposure of the 1992 Fund. The revised estimated figures are set out below:

5.2 Clean-up

- 5.2.1 The estimate has been increased to take into consideration the total amount of the claims submitted so far, both by private companies and government agencies. There are several reasons for this increase but it primarily stems from a greater understanding of the potential costs incurred by regional and other government organisations. A number of local authorities have submitted significant claims for the costs of command and control of shoreline response and for support to the large numbers of volunteers. Further claims are also expected from central government departments for claims-related to command and control operations. The revised estimate also 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.
- 5.2.2 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 195 000 million.

5.3 Fisheries and aquaculture

- 5.3.1 The total estimated losses in the fisheries, aquaculture and ancillary industries sector are now estimated to be KRW 149 260 million, a reduction of some KRW 60 000 million from the estimate in June 2009.

Capture fisheries

- 5.3.2 The losses to capture fisheries have been estimated at KRW 60 060 million. 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 section 2).
- 5.3.3 It should be noted however, that the Fund has so far received some 75 000 claims from hand gatherers and other artisanal and subsistence fishermen and women divers totalling KRW 820 000 million, which are in the process of being registered (cf document IOPC/OCT09/3/8, section 10.2). The great majority of these claims have been submitted with no or very poor supporting information. It is therefore impossible at this stage to estimate, with any useful degree of certainty what the total amount assessed may be in the future, even though the Club and the Fund, in cooperation with the Korean Government, are determining the extent to which these claimants have actually suffered admissible losses, so as to make the assessment process as efficient as possible. A significant proportion of these claims is unlikely to be admissible unless sufficient supporting information is made available. In view of the nature of these activities, however, it will most probably be very difficult for many of the claimants involved to provide such supporting information. For this reason these claims have not, for the time being, been taken into account for the purpose of estimating the total amount of capture fisheries damage.

Aquaculture

- 5.3.4 When analysing the possible losses in the aquaculture sector, the Club's and Fund's experts have mainly considered the information on business revenues in the area, as well as the physical contamination in the facilities and the actual claims submitted so far. In estimating the losses to the aquaculture sector in the affected areas, the experts considered that there was some evidence that many aquaculture businesses had struggled to return to normal business levels although it was still unclear whether that was caused by the pollution resulting from the *Hebei Spirit* incident or by other circumstances.

- 5.3.5 Based on the information available, the losses to the aquaculture sector arising from the *Hebei Spirit* incident have been estimated at up to KRW 66 900 million. The estimates for this sector have decreased significantly since the claims by illegal aquaculture facilities have been disregarded following 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). However, in making decisions regarding the level of payments on this basis, some caution has to be exercised since claimants may well disagree with the position taken by the Fund and contest it in court, in which case there is a possibility that the Korean courts could take a different view on this issue.

Ancillary industries

- 5.3.6 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 22 300 million. The losses in this sector have been estimated on the basis of the length of the official fishing restrictions and would therefore be lower if the losses were to be quantified using a shorter period of business interruption.

5.4 Tourism and other economic losses

- 5.4.1 In March 2008, the total tourism losses as a result of the *Hebei Spirit* incident were estimated at around KRW 200 billion. Given that these estimates were made almost 18 months ago, the Fund had hoped to be able to revise the estimate when the claim situation had become clearer and more information on the actual revenues of the affected tourism businesses had become available.

- 5.4.2 Although almost 5 800 tourism related and miscellaneous claims have been registered so far, contacts with claimant committees and county officials in the affected areas have indicated that a total of some 18 000 claims could be submitted. It has also not been possible to provide any firm estimate of losses in this sector based on the claims assessed so far, since more than half of the over 1 500 claims assessed so far have been rejected for lack of supporting information. In addition, the majority of the claims which have been submitted are for a short period, ie, December 2007 to the end of March 2008. For most businesses this is a quiet trading season and therefore the use of the assessment levels for this period may lead to an under-estimation of claims for subsequent periods.

- 5.4.3 Although, based on the information made available so far, there seem to be indications that the final level of the losses will be less than anticipated earlier, the number of claims received to date from this sector is still not sufficient to predict, with any useful degree of certainty, what the total amount of losses in the future may be. Therefore at this time the June 2009 estimate that the total losses in the tourism sector will be in the range of KRW 198 billion to KRW 233 billion should be retained.

5.5 Director's considerations

- 5.5.1 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 March 2009 (KRW billion)	Estimated losses June 2009 (KRW billion)	Estimated losses October 2009 (KRW billion)	Estimated losses October 2009 (£ million)
Clean-up	163.3	173	195	95
Fisheries and mariculture	206	209	149	73
Tourism	198-233	198-233	198-233	97-114
Total	567.3-602.3	580-615	542-577	265-282

- 5.5.2 The total amount available for compensation under the 1992 Conventions is 203 million SDR or KRW 321 618.9 million (£158 million) (cf document 92FUND/EXC.45/6, paragraph 7.4).

- 5.5.3 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. This percentage was maintained by the Executive Committee at its October 2008, March 2009 and June 2009 sessions (cf Annual Report 2008, pages 127-128 and documents 92FUND/EXC.44/10, paragraph 3.5.7 and 92FUND/EXC.45/8, paragraph 3.4.25).
- 5.5.4 Although it would seem to follow from the analysis by the Club's and the Fund's experts of the total losses under the various headings of claims that 35% is still a sufficiently safe level of payments to protect the 1992 Fund against a possible overpayment situation, the Director would like, in order to have complete transparency regarding this important and sensitive issue, to point out the following:
- In previous incidents, the normal practice for the 1992 Fund has been to determine an appropriate level of payments 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 (or known to be 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, however, 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 *Hebei Spirit* Centre so far is KRW 1 042 billion (£512 million) and further claims totalling about KRW 435 billion (£228.6 million) are being registered at the moment (cf section 1). Applying these figures, with the usual safety margin for the Fund, would mean an appropriate level of payment at about 15%.
 - 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 (£1 742 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%.
 - When considering these figures and their possible use, however, it has to be noted that, on the basis of the information available, many claims submitted in the limitation proceedings appear to be for losses which are not admissible under the 1992 Conventions. It should also be noted 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.
 - Taking into account the various facts and considerations set out above, it is clear that a balance will have to be struck between the need to protect the Fund against a possible overpayment situation and the need to be realistic and make sure that the international regime based on the 1992 Conventions is actually and properly fulfilling its role for the benefit of the international community in general and victims of oil pollution damage in particular.

- 5.5.5 On the basis of all 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 sufficient protection against a possible overpayment situation, even though determining the level of payment on claims submitted (and expected to be submitted), as the Fund has done in previous cases, would lead to a different percentage.
- 5.5.6 The Director therefore proposes to maintain the level of payments at 35% of the amount of the loss or damage as assessed by the Fund's experts and that this percentage should be reviewed at the 1992 Fund Executive Committee's next session.

6 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 endorse the Director's intention to assess claims from small-scale businesses based on the proposed methodology (section 4);
 - (c) to decide whether to maintain the level of payments at 35% (section 5); and
 - (d) to give the Director such other instructions in respect of the handling of this incident as it may deem appropriate.
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