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REPORT ON EFFICIENCY REVIEW OF CLAIMS HANDLING

Report by the Audit Body

Summary:

In 2002 the Audit Body decided that its initial work would focus on assessing the extent and adequacy of the financial controls in place for claim settlement, and on examining the overall risk framework for the Funds. The next phase would be an examination of the claims settlement procedures, looking closely at the way major claims were handled in order to understand and assess the processes adopted. The last phase of the initial three-year period would be an examination of the efficiency with which the Funds handle and settle claims. In 2005 a review of the claims settlement procedures was carried out by Mr Nigel Macdonald, the outside expert member of the Audit Body, with the aim of enabling the Audit Body to form a view about the efficiency of these procedures. The Audit Body has discussed the report and is of the view that its dissemination to Member States would be useful.

Action to be taken: Information to be noted

1 Introduction

- 1.1 At the first meeting of the Audit Body in 2002 it was agreed that a phased programme of review work would be carried out during the first three-year period of the Audit Body's existence. Regard was had to the fact that the external auditors already paid close attention to the financial controls over the Secretariat costs and expenses and to the balances of funds held.
- 1.2 The Audit Body decided at that meeting that its initial work would focus on assessing the extent and adequacy of the financial controls in place for claim settlement, and examining the overall risk framework for the Funds. The next phase would be to extend the examination of claims handling procedures, by looking closely at the way major claims were being assessed, in order to understand and review the processes adopted. It was agreed that the last phase of the initial three-year period would be an examination of the efficiency with which the Funds handle and settle claims. That planned pattern of work has guided the activities of the Audit Body since then.

- 1.3 At the December 2004 meeting of the Audit Body it was confirmed that in 2005 a review of claims procedures would be carried out enabling the Body to form a view about the efficiency of those procedures. Clearly the nature and scope of such a review needed careful consideration, and meetings were held with the Secretariat to devise an appropriate *modus operandi*. The review was designed to enable the pattern of claims management to be understood and, in particular, the timeliness and costs of claims assessment, in order to be able to form a view as to the underlying efficiency of the process. The Secretariat carried out a significant amount of preparatory work, extracting from files and existing databases suitable data to assist the analysis and review of claims handling. That preliminary work was essential, but it was also extensive and the data it assembled proved invaluable to the efficiency review. The Audit Body would like to express its gratitude to the Secretariat for providing this assistance.
- 1.4 The preparatory work was carried out by the Secretariat during the first three months of 2005. The efficiency review was carried out by Mr Nigel Macdonald, and his report thereon was considered and endorsed (with minor modifications) by the Audit Body at its June 2005 meeting.
- 1.5 The efficiency review was not designed to re-assess individual past claims relating to specific incidents, but rather sought to identify trends and patterns from which lessons for claimants or the Funds might be drawn, looking at a number of different incidents and, where necessary, looking at sample claims within those incidents to understand these matters better.

Selection of categories and specific incidents examined during the review

1. Major incidents: *Sea Empress, Nakhodka, Nissos Amorgos and Erika*
 2. Moderate incidents: *Evoikos, Natuna Sea and Baltic Carrier*
 3. Non-insured incidents: *Pontoon 300, Al Jaziah 1, Kyung Won and Bahrain incident*
 4. Incidents in one country (Republic of Korea): *Keumdong No.5, Yuil No.1, Buyang and Jeong Yang*
- 1.6 As indicated above, the efficiency review focussed on the costs of claims handling and the speed with which claims were assessed, approved and settled. It also looked at the way claims were handled and the management information available to the Secretariat to monitor and control this activity.
- 1.7 This report on the results of the efficiency review is set out under a number of main headings. After explaining some important issues resulting from limitations on the data available it examines the speed with which claims are settled. It does this by considering in detail the factors identified by the review which affect the time taken to handle claims and looks at specific incidents which have given rise to significant delay in claims handling to see what lessons can be and have been learned. The next part of the Report examines the costs involved in claims handling, once again looking in detail at the factors identified by the review that cause such costs to increase substantially in any given incident. Lastly, the Report looks at the management of claims handling. To assist the flow of the document, conclusions are not highlighted in the main body of the Report although recommendations are. However, the final section of the Report re-summarises the main conclusions drawn and repeats the recommendations made.
- 1.8 First it is important to understand the way the review has been planned to overcome the inherent problem that in order to carry out an efficiency review it was necessary to examine trends and patterns of costs and elapsed time in claims handling; these patterns and trends had not previously been the subject of specific focus and so, the underlying data was not readily available.

Data constraints

- 1.9 With regard to the review both of the speed with which claims are settled and of the costs of claims handling it is important to recognise certain inherent data constraints, which had to be addressed and which influenced the way the efficiency review was conducted, so as to understand better the findings of this review.
- 1.10 Historically, the collection of summary claims handling data has not been designed from the outset to enable oversight of the speed with which individual claims are assessed. The claims handling process has been operated in a way designed to ensure that claims are properly assessed in accordance with the Conventions (and the subsequent decisions of the governing bodies with regard to interpretation of those Conventions), and that the Funds deal with matters as quickly as practicable in the circumstances. As claims handling work has proceeded, delays have on occasion been evident to the senior staff members of the Secretariat from their review of the files and they have also kept such matters under their personal oversight through site visits and liaison with the experts employed to carry out the claims assessments. It is clear from our review that on occasion, as a result of such review, the Secretariat has insisted upon changes in process, or additional resources being employed, by the claims experts.
- 1.11 In the same way, once reviewed and approved by the Secretariat, claims handling costs were simply recorded as part of the costs of an incident. Hence these costs were not recorded in a way that assisted subsequent analysis of trends or patterns of those costs^{<1>}. Nor, until recently, were claims handling experts working for the Funds required to attribute their costs to particular claims. Such cost data will obviously assist the Secretariat to monitor such cost patterns in future^{<2>}.
- 1.12 Recognising this fundamental set of data constraints from the outset, the efficiency review was structured so as to take such limitations into account and to seek to overcome them.
- 1.13 The approach adopted was to select the representative sample of incidents already outlined above, with some being major incidents, some being rather smaller ones, some being uninsured incidents and some being chosen to help identify whether practice changed as a result of a succession of incidents in a particular country or area. Once that representative sample of past incidents had been selected, the preliminary work carried out by the Secretariat involved carrying out a thorough re-analysis of the claims handling time for those incidents and the underlying costs.
- 1.14 A summary was prepared by the Secretariat for each of the selected incidents, giving analyses of (or commentary on) the length of time between claims being submitted and subsequently settled,

<1> Specifically, data allowing the overall patterns of timeliness for claims handling to be reviewed had not been collected in respect of past claims, and data allowing the overall costs of external claims assessors to be apportioned or allocated to specific claims did not exist. Hence the way data had been collected did not anticipate that subsequent review would seek to identify patterns of where time has been spent (for example, waiting for the claimant to produce supporting information, or obtaining independent attestation of the claimant's assertions).

<2> In September last year, following a recommendation arising from the Audit Body's review in 2004, the Funds changed their arrangements with claims assessors to require supporting data in respect of billing information, including the requirement that in future they provide sufficient time analysis to allow such costs to be allocated. As a result, review of these matters should become straightforward in future. But in developing and carrying out this claims handling efficiency review of the pattern of timeliness and costs of handling claims, the data available in respect of earlier incidents is more limited.

together with data on claims handling costs, analysed where possible between categories of claims^{<3>}.

2 Various factors affecting the time taken to handle claims

- 2.1 In this section the key factors affecting the time to handle claims is considered in detail, with the aim of identifying significant factors of relevance to this efficiency review.
- 2.2 The preliminary data extraction exercise conducted by the Secretariat in respect of each of the incidents selected included analysis of (or commentary on) the length of time between claims being submitted and subsequently settled. That data was extremely voluminous and on request it was reanalysed and summarised by the Secretariat in graphic form for each incident examined. That further analysis allowed an examination in detail of the underlying patterns of time spent on the different categories of claims of the key incidents selected.
- 2.3 A decision was required, at the outset of the further data analysis exercise, as to which period of claims handling it was most relevant for the efficiency review to focus on. The simplest approach would have been to focus on the time from claim submission to ultimate settlement and payment - clearly the timescale of greatest interest to the individual claimant. An immediate complication in using this simple approach is that in some older incidents, a significant number of claimants made sequential claims in respect of losses relating to subsequent periods, which were treated for assessment (and data record) purposes as being one claim. Plainly to look at the time from initial claim to final payment and closure of such linked or subsequent claims would give a seriously distorted view of the overall time taken by the Funds to deal with claims. It would also make it extremely difficult to identify the underlying factors clearly – for some sequential claims would be handled very quickly and others might be handled much more slowly, (for reasons which would warrant further enquiry), but by focussing on the overall length of time from initial claim to final settlement, the data would not allow such underlying distinctions to be identified.
- 2.4 Another significant issue in deciding the period of analysis is that the timescale from original submission of a claim through to ultimate settlement and payment includes a number of components, such as the time taken to assess the claim, the time taken to approve it (including the Funds' own review and review by insurers, where applicable)^{<4>} and then the time to settle the approved amount with the claimant and then finally to pay the settled claim. If it were to be the case, as seemed quite possible, that time taken for the approval, settlement and payment phases proved to be fairly constant in all or nearly all cases, then it would be most useful to focus the detailed analysis on the time from claim submission to completed assessment, recognising that there would then be a further relatively constant period to be added until that claim might reasonably be expected to have been settled and paid.
- 2.5 The data available was therefore further analysed to establish whether it was possible to identify linked and subsequent claims within the specific incident data bases (where such data bases existed) so as to allow them to be analysed separately, and also to establish whether there was in fact a relatively constant period of time taken in most cases for the approval, settlement and payment phases.

<3> Where one firm or group of experts worked on a number of different categories of claim, as happens quite frequently and especially on the smaller claims, such analysis was not possible.

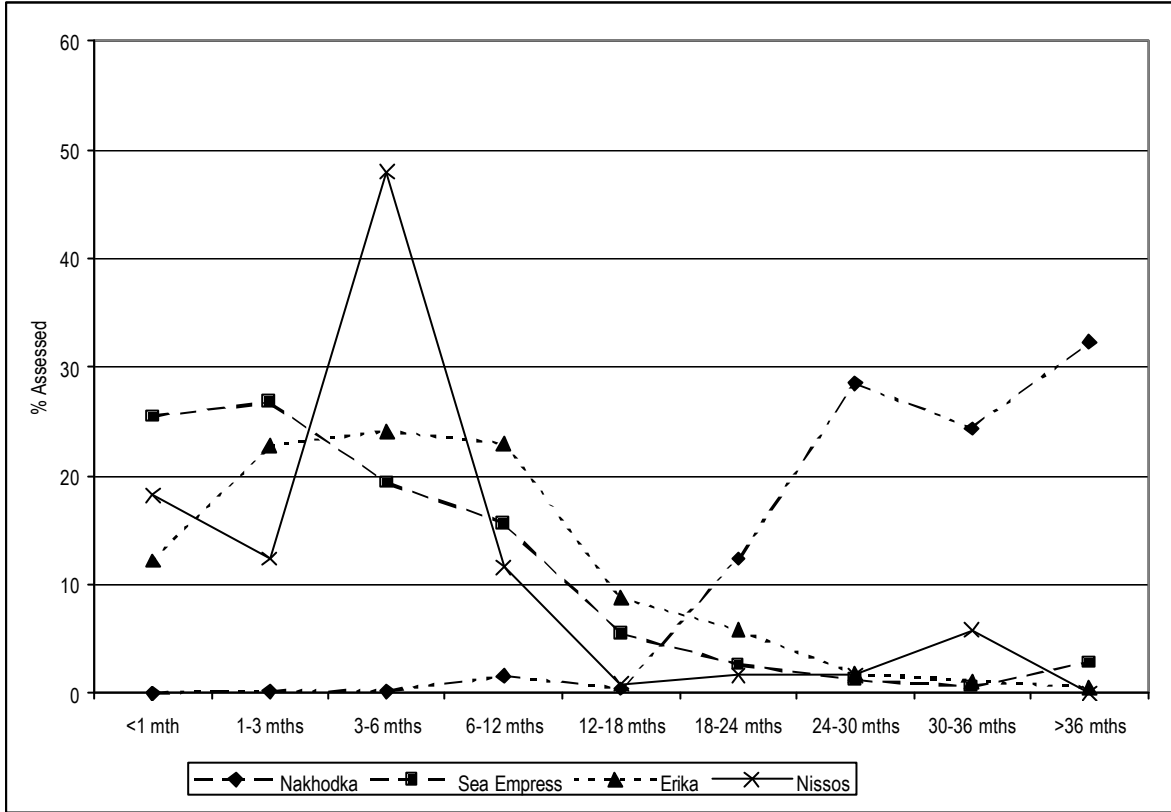
<4> Such review can sometimes require a claim to be returned to the experts for reassessment.

- 2.6 The analysis carried out of the latest available data (principally derived from the *Erika* incident) showed that in nearly every case considered the approval^{<5>}, settlement and payment phases took under 3 months (very occasionally this phase took longer, usually because the approval process required the claim to be reassessed). The Secretariat confirmed that this was a realistic timescale, although it was mentioned that on some occasions the timescale had been significantly shorter, (with approval, settlement and payment being made quite quickly after assessment had been completed) and occasionally it had been longer. It is clear that once claims have been approved and agreed with the claimant, payment is normally very quick. The factors that affect the time for this phase of claims handling are described in detail in Table 3 below.
- 2.7 The further analysis also showed that it was possible to identify linked and subsequent claims within the specific incident databases, which made it possible to consider separately the timescale for assessment taken by those linked claims. As a result of establishing this information, the efficiency review focussed on the time from claim submission to completed assessment, and sought to establish whether there were relevant patterns revealed by the data analysis suggesting typical periods for particular incidents or categories of claims. To assist this further work, graphic analysis of the pattern of time elapsed between submission of claims and completion of assessments was extended to look at the pattern between categories of claim for the major incidents being covered by the efficiency review, as explained above. In some instances tabulations were prepared. The conclusions reached from use of that further analysis are included within this Report but those further tabulations are not, in order to avoid unnecessary length.
- 2.8 The analysis of claims and comparing assessment time proved useful and justified the decision to focus in greater detail on the time taken for claims assessment. It identified some differences between incidents in patterns of elapsed time between submission of claim and assessment. Those differences were then explored further with the Secretariat personnel who had already carried out more detailed review work on the relevant incident, as part of the preliminary data collection exercise. The approach adopted was to seek explanations of the factors giving rise to longer assessment timescales and in some cases this involved examination of files where the explanation was not evident from the summary documentation available. The factors giving rise to unusual delays were explained, and are included in the tables of delay factors set out in Tables 1 to 4 below.
- 2.9 First, however, it is appropriate to look at Figures 1 and 2 which allow comparison of the time taken for claims assessment for the different incidents examined, using the data prepared as part of the efficiency review to allow that comparison to be made.

<5> Except where the source of an oil spill proves untraceable, or the incident is uninsured, the approval process for an assessed claim will involve obtaining the approval of the relevant P&I Club as well as the Funds.

Figure 1

Time taken to assess selected larger incidents



Note describing calculation of the length of time to assessment for incidents shown in Figure 1 above:

Sea Empress: Earliest claim submission date to latest claim assessment date (per claimant)

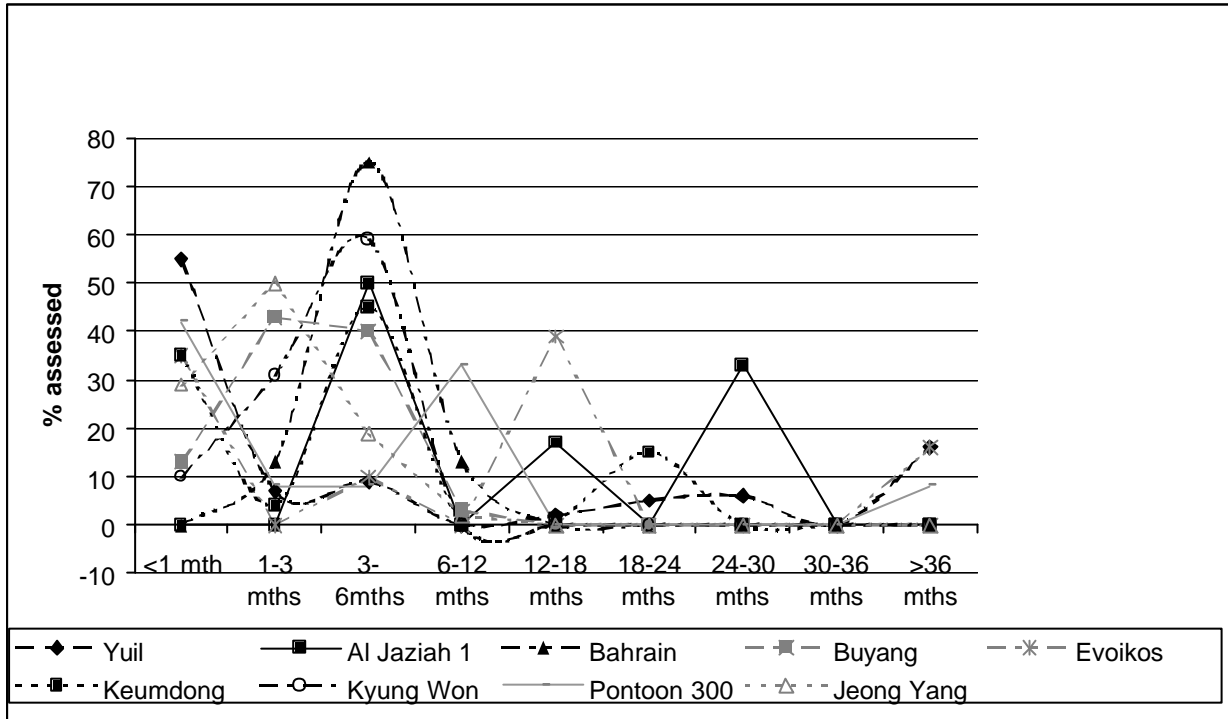
Nakhodka: Earliest claim submission date to latest claim assessment date (per claimant)

Erika: Date of claim submission to date of claim assessment (per claim)

Nissos Amorgos (data for only 57% of these claims was available electronically): Date of claim submission to date of claim assessment per claim

Figure 2

Time taken to assess other selected incidents



2.10 It will be seen immediately that there are considerable similarities in the average time^{<6>} taken for claims assessment to be completed for almost all the incidents examined, and that the typical pattern is for the majority of the claims to be assessed within six months although activity on the remainder continues for some time, with the majority of that remainder being completed within 12 months and only a minority remaining under assessment for more than 18 months. A deeper analysis of the time taken to assess the different categories of claims within each incident shows that the comparative pattern is not very different between the different incidents. However that deeper analysis also shows that there are some factors which are common to most incidents that contribute to delay, and some that arise from the particular circumstances of a specific incident. These matters are discussed more fully in the next section of the Report.

3 Focus on elapsed time between submission of claim and completed assessment

3.1 Overall certain factors that caused delay in claims assessment became evident immediately. Where claimants had submitted inflated claims, expecting some reduction as a result of negotiation, but with the underlying assumption that the more they claimed the more they would receive, those claims took far longer to assess and process than did claims which had been prepared from the outset with recognition by the claimant of the role and procedures of the Funds. Inflated claims, collectively, cause provisional estimates of total amount payable as a result of an incident to be overstated, and so can trigger pro-rata limitations that must be set at a lower level

^{<6>} The underlying analysis used for these tables averages the time taken to assess *all* claims for each particular incident, rather than attempting to show the data pattern for each category of claim on each incident, which would result in a graphic presentation which would be unreadable. Nevertheless this more detailed review was carried out for each incident as part of the efficiency review, and the conclusions of that deeper analysis are referred to above, which supported the decision to use average information for Figures 1 and 2 in order to show the clearest, and most informative overall picture.

than might otherwise be the case where inflated claims are not widespread. So they not only cause delay in claims handling, they also can contribute directly to lower payments being made.

The IOPC Funds are not an insurance company

- 3.2 Claimants seldom grasp the fundamental difference between the IOPC Funds and an insurance company. Claimants' experience of insurance claims, either personal or through received knowledge, often leads them to believe that the more they claim the more they will receive, because they expect a negotiation process of some type in which their claim will be reduced as a part of the settlement process. They see insurance companies as having the simple objective of trying to minimise their claims expenses, by the application of judgemental criteria (and on some occasions delay) and so anticipate that it is in their interest to maximise their opening claim position for the anticipated negotiation.
- 3.3 Claimants usually fail to understand that the Funds will assess, settle and pay 100% of a properly established claim, (subject only to total claims amounts not exceeding Fund limits) and hence that the claim assessment criteria, derived from the Conventions (and the subsequent decisions of Assembly and of the Executive Committee with regard to interpretation of those Conventions) are determinative of the way the Funds assess claims.
- 3.4 It follows that where a claimant submits an inflated claim, unsupported by independent and verifiable documentation (such as previous trading records in the case of economic loss claims), the underlying factors within the claim that need to be explained further will be notified to the claimant, usually for the supporting evidence to be submitted. Claimants will be aware from these queries that their assertions have been, in effect, challenged and will know that it will be hard if not impossible to provide or obtain good supporting evidence. In the circumstances the claimant will often be unwilling to resubmit a completely revised claim and will instead delay or offer such limited collateral evidence as can be obtained, often supported by assertion and argument. That process causes delay (and as will be seen in the following main section of this Report, claims handling costs to increase). Ultimately, the exchange of correspondence and the lengthening delay, coupled with the realisation by the claimant that the Funds are not seeking to negotiate but to apply defined criteria, usually leads ultimately to an assessment being made which can be agreed. Sometimes, however, the claimant resorts to litigation, and of course litigation is sometimes pursued by claimants whose claims are not considered by the Funds to be inflated, but are rejected on the grounds that they are inadmissible in principle^{<7>}.
- 3.5 The Funds' experience is that lawyers representing claimants or groups of claimants often impede claims' assessment by advising their clients not to cooperate with the Funds but to seek redress directly through the Courts, and this pattern has been seen in previous review work carried out on behalf of the Audit Body.
- 3.6 Whichever route is followed ultimately by the claimant, it is clear that inflated claims involve much more delay (and cost) in claims handling than claims where the claimants (or their advisor) have clearly recognised from the outset the framework which the Funds apply, and has sought to submit a claim which demonstrably meets those criteria.

<7> The Conventions set out a framework for the way in which the Funds should respond to claims for damage caused by oil spills, but the Conventions are not prescriptive, allowing for the development and evolution of practice. An important role of the Assembly and of the Executive Committee is to provide considered interpretation of those Conventions allowing some evolution of practice within the framework they provide. As a consequence the Funds' claims criteria are not set out in the Conventions, but are a (carefully considered) interpretation of them; it follows that other interpretations might also be possible. On occasion lawyers acting for claimants form the view that the national courts of the country affected would interpret the Conventions in a more favourable way for the claimant and so encourage them to resort to litigation.

Complex economic loss claims

- 3.7 Claims for economic loss often take much longer to assess than claims for cost recovery. This is because assessment involves a great deal of work to test the underlying assumptions behind the claims (including evaluating the linkage of the incident to the claimed loss) as well as checking the accuracy of the detailed underlying calculations themselves and consideration of whether the claims satisfy the other admissibility criteria. In a significant number of cases it is also necessary to visit the businesses affected. Further, economic loss claims are likely, by their nature, to be submitted only some time after the incident, once the extent of loss has become clear and can be quantified.
- 3.8 An important factor contributing to delay in assessment of some large economic loss claims is the need for the Funds' assessors to obtain some comparative data against which the claimants' assertions can be tested. When a business is already facing serious trading difficulties or a steady decline in demand at the time an incident occurs, it is sometimes temptingly easy for claimants to assert that but for the incident they would have been very successful. It is vital for the Funds' assessors to obtain sufficient knowledge of the overall trends in that sector to be able to make an informed judgement as to the adverse effects which are directly attributable to the incident, and such data is unlikely to come from the claimant. It can take a substantial amount of time to obtain such comparative data.
- 3.9 Other factors applicable to all or most incidents became evident and are listed in the table set out below. But the review of individual incidents was also concerned to identify factors that were unusual or unique to specific incidents.
- 3.10 It will be seen from Figure 1 above that the most significant difference in the pattern of elapsed time related to the *Nakhodka* incident, where an assessment period of almost 30 months had elapsed before significant claims assessment activity had been completed. That time period was significantly longer than the typical pattern on the other incidents reviewed.
- 3.11 As part of the preparatory work for this review the Secretariat had already provided a copy of an eight-page document entitled 'Lessons learned from the *Nakhodka* incident' dated 1 September 2003, which was submitted to the Executive Committee of the 1992 Fund and the Administrative Council of the 1971 Fund for their October 2003 sessions^{<8>}. That document had been prepared as a result of a request by the Japanese delegation to the Executive Committee of the 1992 Fund which wanted to ensure that any relevant lessons could be learned so that the speed and efficacy of the claims handling process could be improved for future incidents.
- 3.12 The overall review of claims handling costs had identified that the percentage of claims handling costs to claims settled and paid for the *Nakhodka* incident was slightly higher than the typical cost for other claims, but not so much so as to suggest that the time spent on each claim was significantly higher than in other incidents. This made it particularly important to gain an understanding of the causes of the longer than normal elapsed time. The specific circumstances of the claims handling arrangements for that incident were therefore considered and certain factors, unique to that incident, then became clear.
- 3.13 This was the first major incident in Japan involving a P&I Club outside that country as well as being one of the largest incidents experienced by the Funds. That meant that claimants in that country, Government and the Funds could not apply experience gained from other similar incidents to speed the process or to anticipate the particular demands and challenges that this large incident created. With hindsight it can also be seen that there was insufficient claims assessment

capacity in the arrangements set up to handle clean-up costs and fishery claims, largely because there was a relatively small number of marine surveyors in Japan with the relevant experience to carry out this type of work. That factor alone contributed significantly to delays (but not additional costs) in the completion of the claims assessment process. Further, there was no local independent source of established claims assessment expertise to draw on for the assessment of tourism claims.

- 3.14 All the local claims handling arrangements, although overseen by independent external assessors, were led by the head of the Funds' Claims Handling Office (the staff of which also served as the Funds' external claims assessors) who required a meticulous approach to the claims assessment process to be applied and documented. He sought approval for all key actions from the Funds' lawyer located in Japan, and as a result the Funds' lawyer came to exercise a considerable amount of control over the claims assessment process. Conscious of the fact that the claims assessment work carried out in Japan was to be reviewed subsequently by International Tanker Owners Pollution Federation Limited (ITOPF) as well as by the Funds, the local assessors and the Funds' lawyer, were naturally anxious to demonstrate that the assessment had been carried out with full regard to the Funds' claims criteria. This created some additional costs but also some considerable delay because the approach followed was strongly influenced by the wish to demonstrate the fullest possible level of compliance with those criteria. A further complication was that detailed submissions providing data in support of the claims were received from claimants, but frequently they were not in a format that made review quick or simple, and they needed to be summarised and translated into English before the assessment could be completed and forwarded for approval.
- 3.15 Although claims from individuals (typically fishing and tourism related claims) were dealt with as a priority, it still took many months before claims had reached the stage where assessment had been completed. One consequence of the priority given to those claims was that the very sizeable government claims were addressed somewhat later, and this part of the task proved very demanding because the data in the claims submissions was not presented in a form that made review and assessment easy. Further, with regard to the government related claims, under Japanese national law, once claims have been filed in court it becomes very difficult for government bodies to reach an out of court settlement without first obtaining a decision by the court.
- 3.16 Useful lessons were learned by the Funds from the way this incident was managed and these are summarised in the document entitled 'Lessons learned from the *Nakhodka* incident' referred to above. It is evident from the review of later incidents that those lessons have indeed been applied.

Analysis of differences in elapsed time within claims categories in individual incidents

- 3.17 As already indicated, the *Nakhodka* was not the only incident where the underlying elapsed time pattern was explored in greater detail. On request, the Secretariat extracted data in respect of some smaller incidents covering elapsed time between submission of claims and completion of assessment. However in these smaller incidents, the number of claims was also much smaller, and there was a risk that using averages of elapsed time for these smaller groups of claims might obscure more telling differences within the individual categories of claims. For these smaller incidents therefore, graphic projection of an average elapsed time for sub-categories of claim was not considered useful. Accordingly the Secretariat was asked to provide tabulated analysis allowing enquiry into a sample covering any wide variations of elapsed time between individual claims falling into each category.
- 3.18 In each case examined, it was possible to identify clear reasons why considerable time had elapsed between original receipt of a claim and the completion of assessment of that claim.
- 3.19 It appears that in some cases fears by the P&I Club that the Funds might attempt to break the shipowner's right to limit his liability and to take recourse actions against the shipowner and the

Club had the effect of adversely affecting the Club's willingness to make prompt settlement of claims once the assessment process had been completed, which contributed to a delay in the claims settlement.

- 3.20 In the boxes set out below, the main factors that can give rise to delay between the occurrence of an incident, and the final settlement of claims, are summarised.

Table 1

Factors causing the potential for delay up to time when the Funds, or their representative have received a properly completed claim form.
Time taken to establish the location to which claims should be notified, (including, where relevant, time taken in setting up a local Claims Office)
Recruitment and training of Claims Office staff and claims assessors
Availability of suitable Claims Forms, including translation in to the claimant's language
Claimants' (and potential claimants') lack of familiarity with claims assessment procedures, and the principles that a valid claim must follow to meet Funds' criteria
Incomplete information provided by claimants on Claim Forms or forms not being properly signed by the person on whose behalf the claim is made
Claimants' lack of literacy or education and the need to establish a suitable proxy arrangement for submission of Claims

Table 2

Factors causing the potential for delay during the assessment process
Time taken by experts to get established in the process they apply, including the application of the Funds' admissibility criteria and procedures.
Time taken by the expert to manage their workload, where the claims assessment activity for the Funds is not the only responsibility held by that expert.
Information that the Expert requires over and above that found in the Claim Form and attachments, necessitating one or more further enquiries of the claimant
Enquiries raised by Expert because of inconsistencies identified in the data supplied with the Claim Form
Claimant unable to obtain, or see how to obtain, supporting information in response to request from Expert

Input of Claim Form into database at Local Claims Office (or at Funds in London) before claim is allocated to specific experts for assessment. (This potential time delay is most common at the early stage of responding to an incident).

Where expert considers that tax data (or other externally verifiable data) will or may provide relevant information to assist in making his/her assessment, there may be significant delay until such data is available. The sources of such data will vary with country and the trading environment affected.

Influence that claimants' advisors, or their lawyers, may have on the way claimants decide to respond to the assessment process

Claimants may decide to amend their claim and submit a revised claim (rather than to withdraw it and submit a new one). Inevitably this will cause delay.

When fraud is suspected, or substantial overstatement of a claim becomes evident, or claimants decide that they do not wish to continue with a claim, the claimant will usually 'go silent'. Such claims may be left until the three-year time bar period is over so that they will lapse with the passage of time.

Table 3

Potential for delay in procedures after the assessment has been completed

Completed assessments and the expert's draft letter for the Funds to send to the claimant (if the assessment is accepted and approved by the Funds) must be checked by the local Claims Office before being sent in for that approval process.

The Funds and/or the P&I Club may reject or query the expert's assessment and require it to be looked at again.

The approach taken by the Funds and the P&I Club with regard to a particular assessment may differ.

The P&I Club and the Funds may take significantly different timescales to approve a particular claim. ITOPF itself has to manage its own workload, which can also cause delays at the approval stage when they are handling several incidents

Anxiety of the P&I Club that the Funds may take recourse action against it or the shipowner may slow down the procedure for obtaining the Club's approval.

Claimant may refuse to accept a settlement offer

Table 4

Language issues
<p>If there is a language issue for claimants, it will fall into one of two simple categories. Either they use one of the three Funds languages (English, French and Spanish) or they do not.</p> <p>If the claimants do not use one of the Funds three languages, all communications will need to be translated</p> <p>If the expert works in the same language as the claimant, the process will be much faster than where the expert's communications with the claimant have to be translated.</p> <p>Where experts are carrying out their work in a language other than English, French or Spanish, translation of their recommendations and findings and important underlying supporting documentation will be required. Further, the relevant P&I Club may not be able to examine documents in French or Spanish, necessitating translation into English.</p>

- 3.21 The Funds have taken a number of steps designed to reduce the potential for delay. For example different Claims Forms tailored to specific claims categories have been prepared and are in use. A revised Claims Manual has been issued very recently, containing guidance and examples designed to help assessors and claimants know what the relevant criteria are and how to submit claims with sufficient information to speed the assessment process. It is understood that the Funds have also given consideration as to the most appropriate other ways to communicate to claimants more details about the claims handling criteria.
- 3.22 Training materials for staff and assessors have been developed and used and sometimes training workshops for experts have been arranged. It has long been the practice for the Funds to explain to groups of claimants the process and approach that the Funds follow, in order to assist them approach the task of preparing and submitting Claims Forms, and reacting to subsequent communications from the Funds in as informed a way as possible. Experience has been gained and is applied in the selection and appointment of claims handling experts, and in the identification of suitable sources for independent external evidence that can be used by the experts to help assess claims. The Funds write to remind claimants where further information has been sought, if a long period elapses without a response.
- 3.23 **It is recommended that the factors that can cause or contribute to delay for each current incident be kept under regular review, so that action can be taken where appropriate by the Funds to minimise that delay, even where the Funds itself is not the cause. The recommendations below in the section 'The management of claims handling' concerning improved management information should help focus such initiatives in future.**
- 3.24 **The *Nakhodka* incident showed that it was extremely useful to carry out a formal internal review once an incident is substantially completed to seek to identify what lessons might be learned for future application, and to document those findings so that they can be disseminated as appropriate – as had been done in respect of several previous major cases. This approach is therefore recommended for all major incidents in future.**

- 3.25 One further observation is considered relevant here. The Audit Body doubts that claimants, or the governments of the countries where an incident has occurred, will appreciate the full range of factors that can cause delay that the above tables identify. As noted above, the Secretariat has taken a significant number of initiatives designed to reduce delays and assist communication to claimants about the role and function of the Funds. Doubtless further opportunities and initiatives will be identified to enhance this effort in future. But it seems clear to the Audit Body that governments also have a role to play in helping to communicate about the role and function of the Funds and about the factors that can speed claims assessment or cause delay. It is hoped that Tables 1 to 4 above will assist governments in that communication role, and hence that they will not be seen as a listing of factors of relevance only to the Funds and the Secretariat.

Interim payments

- 3.26 It is clear from the incidents reviewed that notwithstanding the provisions of the Conventions and of the admissibility criteria derived from those Conventions and from subsequent decisions of the Executive Committee as reflected in the Claims Manual, the Funds are sensitive to the circumstances of individuals affected, particularly where their livelihoods have been put at risk. There have been a number of cases where interim payments have been made, despite the fact that it had not proved possible to complete a claim assessment by that time, in order to alleviate such hardship.
- 3.27 It was noted during the review that there have also been cases where interim payments have been made in respect of some very large claims, where the quantum of the claim has not been finally assessed but where it has already become evident that a substantial part of the claim is valid and where continued delay in making any payment is causing considerable friction between claimant and the Funds or difficulty for the claimants and political problems in the country affected. Some of those situations have related to costs borne by agencies of government.
- 3.28 On occasion such interim payments have taken place where a pro rata reduction of payments in respect of an agreed settlement has been made by the Funds because the aggregate amount of the established claims is expected to exceed Fund limits. In some cases where such interim payments have been made, particularly to large entities, subsequent progress with submission of remaining documentation has been slower than in the period before the interim payment. In other cases, however, this pattern is not evident. It may well be that in those cases where delay has occurred a significant part of the incentive to complete the claims submission according to the Funds' criteria has been removed by the combination of interim payment and the recognition by the claimant that further significant payment is unlikely even if the required documentation were presented in full. On the other hand interim payments can be taken by the recipient as an indication of the Funds' acceptance of the fundamentals of their claim and provide encouragement to help the Funds complete the assessment process.
- 3.29 There is a balance to be struck here between putting pressure on the claimant by withholding any payment until submitted documentation is complete, and reducing so significantly the incentive to submit complete documentation as a result of a generous payment on account that the efforts of the claimant in reaching closure subsequently are much weakened. Clearly personal hardship cases may well require the Funds to adopt a basis which risks removing that subsequent incentive to complete the submission of documentation, but it is not clear that such considerations would normally apply to governments or their agencies.

4 **Costs**

- 4.1 Although the conclusions and recommendations resulting from the review of the speed with which claims are settled and the factors that affect the time taken to handle claims have been dealt with first in this Report, this was not the first aspect of the efficiency review carried out. To begin the

efficiency review, the claims handling cost data provided by the Secretariat was further analysed to the maximum extent possible so as to allow comparison of cost patterns between the various incidents selected. A summary of that analysis is set out in Table 5 below. Costs were examined first because it did not appear that such a comparative review had been carried out previously by the Secretariat and the review sought to identify whether the costs of claims handling for the incidents selected appeared to be excessive or unreasonable. Had this been the case, the review would have focussed immediately and to the maximum extent possible on this issue, even if that meant that correspondingly less time would then have been available to examine the factors affecting the time to handle claims. It will be seen from what is said below that these costs did not appear to be excessive or unreasonable, and although some incidents gave rise to significantly higher costs than others, there were sound explanations for these variations.

- 4.2 In deciding what costs to include in the category of claims handling costs, the review focussed on controllable costs and hence on payments to claims assessors or the provision of services relevant to claims assessments^{<9>}. Legal costs were excluded, because when a claimant decides to take a matter to litigation, the costs that result are far less controllable by the Funds. It was concluded that the costs of external experts associated with claims assessment or the provision of services relevant to claims assessments provided the most relevant benchmark for the efficiency review comparison.

<9> The issue of whether to include travel costs incurred by the Secretariat in relation to specific incidents within claims handling costs was specifically considered. The Funds identify such costs as they are incurred each year and it would have been possible to add these costs to the claims handling costs. After review of travel costs relating to the larger incidents, however, it was decided not to include this category of costs. Whilst travel costs are material in the context of the Secretariat's overall outgoings, (which are of course subject to audit by the National Audit Office in the normal way) they do not represent a significant element in respect of the cost of responding to larger incidents. For very small incidents they could be, and this could distort the comparisons unduly. Further, travel costs will include some elements that are related to initial scoping of the incident, an element will be related to the overall management of the Funds' activities including liaison with governments affected and for a number of incidents some later costs – on occasion a material proportion of the overall travel costs - will relate to progress in the management and resolution of legal issues. For these collective reasons Secretariat travel costs have been excluded from the data used for the efficiency review.

Table 5

Costs Comparison				
Incident		Claims handling costs	Total amounts assessed/ payments made	Claims handling costs as % of assessed amounts
<i>Nakhodka</i>		£7 688 872	£137 400 000	5.60%
<i>Erika</i>		£2 651 667	£65 300 000	*19.37%
<i>Sea Empress</i>		£2 574 034	£33 922 136	7.59%
<i>Yuil No 1</i>		£773 000	£19 000 000	4.07%
<i>Keumdong No 5</i>		£834 000	£14 553 630	5.73%
<i>Nissos Amorgos</i>		£1 002 000	£13 600 000	7.37%
<i>Evoikos</i>	handled by Club	ITOPF	£6 980 000	No details%
<i>Baltic Carrier</i>	largely handled by Club	£185 000	£6 931 760	2.67%
<i>Natuna Sea</i>	handled by Club	£115 000	£6 300 000	1.83%
<i>Kyung Won</i>		£134 000	£2 523 000	5.31%
<i>Jeong Yang</i>		£198 000	£2 036 000	9.72%
<i>Al Jaziah 1</i>		£55 200	£1 100 000	5.02%
<i>Buyang</i>		£79 000	£1 065 000	7.42%
<i>Pontoon 300</i>		£158 000	£958 000 (but paid at 75%)	*16.49%
<i>Incident in Bahrain</i>		£17 000	£635 000	2.68%

* Note: the factors underlying these higher percentages (and other variations in this listing from the typical level of around 5%) are discussed further in the body of the Report

- 4.3 Certain patterns immediately became clear^{<10>}. Overall, claims handling costs appeared to be reasonable, and where higher than normal costs had been incurred, the causes were identifiable and explainable. Table 5, prepared as part of the review, shows that the Funds' claims handling costs tend to work out at around 5% or slightly higher of the total amounts paid following

^{<10>} In order to find relevant comparators, costs of claims handling were considered against more than one benchmark. The measure of costs against tonne of oil spilt proved to be of little value, and the measure of costs against kilometres of coastline affected, whilst less volatile, still provided no really useful comparator. Clearly the nature of incidents varies significantly, sometimes affecting areas where a large amount of economic activity occurs, sometimes not, and sometimes affecting shorelines that are particularly expensive to clean up. The most useful measure appears to be a comparison of claims handling cost with the ultimate costs of settlement amounts of those claims.

settlement of claims^{<11>}. There are of course ranges of figures, higher and lower than this general cost pattern, and the comments below highlight the most significant factors identified.

- 4.4 Claims handling costs are inevitably directly affected by the amount of time, and the complexity, of the assessment process. It is self evident therefore that there can be no specific cost percentage figure which is 'right' but it is useful to seek to identify a general guide figure above and below which variations are examined in greater depth.

Factors affecting the cost of assessing claims

- 4.5 In the following section the key factors which directly affect the cost of claims handling are highlighted. Because the time taken to assess claims is a critical factor in the cost of assessing those claims, there is inevitably a good deal of overlap between the factors identified in the previous main section of the Report and those mentioned in this section, although their purpose is different. However, the two main sections do also identify some different factors affecting costs, or time to settle claims.
- 4.6 The type of claims vary, not merely by reference to the category of claim (losses suffered by fishermen, costs of clean-up etc) but also by reference to their underlying nature. Some claims are essentially for recovery of costs incurred as a result of the incident in question, others for economic loss suffered by claimants following the incident. The claims assessment process and its typical complexity will differ depending on the underlying nature of the claim involved.
- 4.7 For example claims for clean-up costs and property damage usually seek to recover claimed outgoings, where the claims assessment must look at the reasonableness of the claim, the link between the incident and the claimed costs, the linkage of those costs to the technical actions taken and the reasonableness of those actions, as well as considering other criteria set out in the Claims Manual. The claim itself will usually be a clerical collation of the claimed disbursements involved. On occasion such claims can be enormously complex, as happens where a government has many agencies involved in a clean up operation, but such complex claims form a small part, numerically, of the total number of claims received. Most cost recovery claims from individuals tend to be relatively simple and hence are less costly to deal with. The review showed that it is quite possible for simple claims of this type to be assessed in less than a month from receipt of a completed claim, where the claimant has clearly complied with the Funds' claims assessment criteria^{<12>}.
- 4.8 As mentioned briefly in the preceding main section of this Report, the tasks involved in preparing and assessing a claim for economic loss almost always involve complexity, because calculations of the otherwise expected revenues and costs must be undertaken. Economic loss claims will be,

<11> It can be argued that the more relevant test is the claims handling cost in relation to amounts *claimed*, rather than claims handling costs in relation to total amounts paid following settlement of claims. Undoubtedly some increased claims handling cost is incurred in assessing inflated claims, and instances were seen where large claims had been completely rejected, resulting in those costs being considered for the purpose of this review against the (obviously smaller amount of) total of claims accepted and paid. In such circumstances considering claims handling cost as a percentage of amounts claimed has obvious attractions. It was also noted that the proportion of amounts claimed to amounts settled and paid seemed to vary over different incidents, and there are clearly complex factors involved in these differences. The approach used for the efficiency review of expressing claims handling costs as a percentage of the amounts that have been assessed, settled and paid (because they comply with the Funds' admissibility criteria) has been adopted because it appears to offer the most useful guide for comparison purposes.

<12> As explained later in this report, once an assessment is completed further time will be required to approve the claim, settle it with the claimants and then pay the claimant, which must be added to the time taken to assess the claim.

by definition, based on assumptions that must be carefully considered by the assessors, as well as the accuracy of the calculations themselves, who will also consider the link between the incident and the claimed costs and other criteria set out in the Claims Manual. It follows that it will usually take some time for a claimant to prepare and submit an economic loss claim and that assessment of that claim will usually be more costly (as well as taking longer to assess) than a cost recovery claim, particularly where the underlying claims are complex. As already mentioned above it will also often be the case that some considerable time needs to elapse after the incident has occurred before the claimant can quantify the economic loss that appears to have stemmed from the effects of the incident. The most significant example of the additional cost of handling claims for economic loss in the various cases examined was the *Erika* incident where more than half the total number of claims came from the tourism sector.

- 4.9 Claims handling costs for the main block of fishery related claims resulting from the *Erika* incident (1 003 in all, and separate from 529 small claims arising from shellfish gatherers affected, from mariculture and oyster farming and from more than 300 claims for cleaning up fishing boats) were, at 5.7% of total amounts paid to date, in line with the typical level of claims handling costs for the other incidents reviewed.
- 4.10 All of the *Erika* tourism claims involved the assessment of economic losses allegedly suffered by entities in the tourism sector as a result of the incident. For the reasons already explained above, such claims are expensive to assess. Because there were so many tourism claims in the *Erika* incident, 3 680 in all, the overall claims handling cost, as a percentage of the settlement amount for this incident, was much higher than for other incidents examined.
- 4.11 These claims which averaged approximately £25 000 each (although ranging from quite small claims to a few very large ones) involved a great deal of work to test the underlying assumptions behind the claims (including evaluating as a result the linkage of the incident to the claimed loss) as well as checking the accuracy of the detailed underlying calculations themselves and consideration of whether the claims satisfied the other criteria in the Claims Manual. In a significant number of cases visits to the businesses affected were considered necessary. This category of claims was finally settled for an average of £13 320 each, although again it must be recognised that like the claim amounts, the range of settlement amounts behind this average figure is very much wider. The claims assessment cost in this case averaged £2 430 each or some 18.7% of the total amount finally settled.
- 4.12 Because the small claims settled by 529 shellfish gatherers averaged only £1 109 each and 319 settled claims for cleaning up fishing boats averaged only £2 275 each, the average claims handling costs for dealing with these claims of £1 089 each meant that the average claims assessment costs for this relatively small category of claims was as high as 48.5%. As a result of this factor and the high cost of handling so many tourism claims, the overall average cost of claims assessment for the *Erika* incident at 19.37% overall was much higher than the 5.7% element mentioned above relating to the main fishery related and boat clean-up claims.
- 4.13 It should be added that claims handling for the *Erika* incident has not yet been finally completed, in that assessment of the French Government claims (deferred in priority by that government's choice along with the claims by TotalFinaElf (the charterer of the *Erika*), until all other claims had been resolved) is yet to be completed. When it is, the overall costs of claims arising from the incident will increase but the claims handling costs are unlikely to rise significantly. Hence it is very likely that when the incident is finally closed, the percentage of claims handling costs to settlement costs for the *Erika* incident will be significantly lower than the figure mentioned in this Report.

Costs of applying the Conventions, rather than adopting a simpler negotiation approach

- 4.14 There are some incidents which are notified to the Funds, but which – from the outset – appear to be likely to be covered by the insurance arrangements in place for pollution damage arising from the relevant incident. In such cases it is normal for the Funds to agree that the relevant insurers will deal with the claims handling procedures, subject only to the oversight of the Funds, (which the review noted can be highly effective^{<13>}). Once it becomes clear that the Funds are not likely to be called on, the insurers sometimes deal with the claims in a way that may not involve the full application of the claims criteria which the Funds are required to apply under the Conventions.
- 4.15 Of the incidents of this type selected for review, the claims handling costs, (which are thus borne entirely by the insurers in addition to the compensation payments themselves), are well under the 5% level mentioned above, indeed often as little as 2% of the total claims settlement amounts, although it must be borne in mind that ITOPF claims handling assistance is provided to the insurers at no cost apart from incidental disbursements. As a result the 2% figure mentioned is not directly comparable with the Funds' cost level.
- 4.16 Nevertheless, this pattern of lower costs for claims handled directly by insurers reflects the higher costs incurred by the Funds when claims handling and assessment require full compliance with the Conventions.

Other factors affecting cost

- 4.17 In the review of the cost of claims handling for each of the selected incidents, the underlying reasons that had caused claims handling costs to exceed by a significant amount the typical level of around 5% were explored. The key factors already discussed above reflect the main drivers of cost, but the review also noted the following.
- 4.18 Where an incident occurs in a country without strong and independent local claims handling capability some expatriate claims assessment activity has to occur in the location of the incident and it may also be necessary for the Funds to carry out some work elsewhere. Arranging such expatriate expert assessments is relatively expensive, and when the overall cost of the incident is not large, the proportion of claims handling costs to the overall settlement figure can rise appreciably from the typical level. We found one instance in the review, *Pontoon 300*, where this factor explained a notably higher than average claims handling cost as a percentage of claims settled and paid.
- 4.19 Clearly where there are a small number of claims yet local claims handling procedures have had to be set up, then this will make for a higher cost of claims handling per incident. One small incident in the Republic of Korea, the *Buyang*, was identified where this was the key factor in explaining higher than typical costs. In a larger incident, the *Nissos Amorgos*, the same effect was evident, compounded by the fact that the Claims Office established in Venezuela had been run for the first year by an experienced manager whose remuneration reflected the significantly higher rates applicable to professional personnel in Venezuela, yet where the claimants were earning income, and hence had claims, which reflected subsistence levels of income only.
- 4.20 In one other small incident, the *Jeong Yang*, it was found that additional claims assessment costs resulted from considerable further oil clean-up work being required some time after the initial incident as a result of the full extent of damage not being recognised at first, and that further

<13> In one case oversight by the Secretariat identified that the relevant claims handling experts had been instructed by the insurer to settle on terms that were seriously disadvantageous to claimants, and completely at variance with the approach required by the Conventions. The Director intervened, and the instructions from the insurer were changed very significantly as a result.

assessment necessitated close supervision on a day to day basis of the additional clean up work and hence resulted in significant additional claims handling costs.

- 4.21 **There are recommendations in the section below entitled 'The management of claims handling' which relate directly to the ability of the Funds to monitor and control these costs in future. They are therefore not covered here.**

5 The management of claims handling

- 5.1 The Funds are responsible for responding to incidents of very different sizes, in literally all areas of the world. Different types of damage are sustained and the extent to which those affected are literate, and have the ability to quantify their losses they suffer, vary significantly as between incidents. There are many other differences too; among them the differences in the way governments of the countries affected respond, differences in the level of economic activity and many other factors. Hence there is no one standard method for the Funds to apply in managing the claims assessment process that results from an incident. Nevertheless, experience over the years has given rise to a number of valuable lessons, and there has been a significant evolution in the Funds' ability to manage its response to incidents of which the most important was the move during the 1990s to arrange that the Funds have sufficient core competence within the Secretariat to ensure that it is less dependent on the services of outside assessors even in the very largest incidents, although it will rely on such assessors to carry out the main part of the assessment work in all but the smallest cases. It also enables the Secretariat to carry out the function of quality control of assessments without resorting to other independent experts.
- 5.2 Another significant development has been the Funds' recognition that for large incidents it is often efficient, (as well as being extremely helpful to claimants), to establish a local claims office. Such an office allows the Funds to demonstrate proactivity where there are a large number of claimants, which is not possible where claimants have to send their claims to a distant address often located in – for them – a foreign location.
- 5.3 In earlier years the Funds was heavily dependent upon the services of external assessors to carry out this vital function. Management and control at that time centred on oversight by the Secretariat of the claims handling process carried out by those assessors, and on very careful review of the completed assessments before then moving to the approval stage, and seeking approval from insurers, and then moving on to the settlement and payment stage (it has already been mentioned in the earlier part of this Report that the Funds' own approval review sometimes results and resulted in individual claims being returned to the assessors for further work).
- 5.4 The Funds built up their own core claims handling skills in response to the need to be able to carry out such a process of monitoring effectively, as well as to meet the need to be able to carry out a careful review of the completed assessments before they were approved. It is understood that the earliest claims affecting the 1971 Fund tended to be mainly for the costs of clean-up activities and that, as such, ITOPF expertise was normally sufficient.
- 5.5 As the number of incidents increased with the passage of time it became obvious that other categories of claim were arising for which ITOPF did not have sufficient resources or the required assessment expertise. Also the fact that ITOPF is financed by shipowners and insurers made it important for the Funds to be able to demonstrate genuine independence and freedom from any perceived bias. It was quickly recognised by the Secretariat that reliance on finding outside expertise able to handle the different incidents, without the means of challenging or reviewing the conclusions of those external experts, left the Funds in an exposed position. This led to the decision to build up within the Secretariat a core of the relevant claims handling skills, which is the position that now exists and has done for a number of years.

- 5.6 Essentially the management and control process the Secretariat sought to apply with that core resource could be described as just one step removed from 'hands-on' assessment, and involved a process of monitoring the ongoing activities of the assessors as frequently as possible, including visiting them regularly and discussing specific claims and current issues. In part as a result of this past way of working, the Funds have built up a significant pool of knowledge about the abilities and working methods of different assessors, which is of great assistance in deciding which individuals or firms of assessors to retain when an incident occurs. That underlying knowledge of the way the different assessors work also helps the senior staff of the Secretariat to focus their energies effectively when managing the claims handling activity for each incident.
- 5.7 A further significant change in the Secretariat's ability to manage the claims handling process have been the significant developments that have occurred, particularly over the last ten years since the *Sea Empress* incident, in the data collected as claims are assessed and processed through to final settlement and payment. It was already evident that the relatively 'hands-on' approach might work very well for smaller and medium sized incidents, so long as the Funds had on the staff of the Secretariat individuals with sufficient claims handling experience, but that the approach became harder to apply effectively for very large incidents.
- 5.8 There have been very significant developments indeed in the power and usability of the underlying database systems developed by the Funds in response to the more recent large incidents. Following the *Sea Empress* incident the Funds recognised the need for in house IT skills to enable effective management of data internally. Databases that were originally held in local Claims Offices themselves for control purposes, and periodically copied to the Funds have been greatly refined in the light of experience and are now maintained by the Funds rather than by the local Claims Office.
- 5.9 The database systems have been progressively improved and refined, and the system used for the *Erika* (which itself represented a quantum step forward from the previous system) has itself been overtaken by the further development in the system used for the *Prestige* incident. As new claims are notified and movement of documents between claimant and assessors occur and assessment work progresses, those events and changes are recorded in the central database by the local Claims Offices. Those offices also continue to have full access to the stored data, but the existence of the central database, held by the Funds itself, makes it possible for any authorised person to monitor the underlying position at any time, and is clearly a very powerful tool for the Secretariat's overall management role. The power of that information for monitoring and control is illustrated by the following table.

Table 6

The database for the *Prestige* incident can be used to allow very detailed review or investigation of underlying claims handling information. The database includes personal data relating to claimants which it would not be appropriate to include in this Report. The list of contents of certain pages of the database is set out below, illustrating the extent of monitoring and review capability which the new database system operated by the Funds is capable of providing.

Page 1 Search or opening screen of claims management handling system. Illustrates that it is possible to search claims data base under claim number, or by status of claim, (with the facility to specify the number of days delay above which the enquirer wishes to identify claims) [see also page 2] or that it is possible to search by various sets of data kept in the database (eg surname, assessor name [see also page 3] or to search by where the claim is (eg Claims Office, Fund, Club or expert(s))

Page 2	Illustrates the alternative status of claims under which searches can be made.
Page 3	Illustrates how the claims can be searched for under different classifications within the database.
Page 3	Illustrates how changes in the Claims Status history, as assessment progresses, are able to be reviewed.
Page 5	Illustrates the predefined list of standard letters that the database can generate at particular stages of the assessment process.
Page 6	Search or opening screen of claims management reporting tool. Illustrates that it is possible to search by claims assessor or by location of claim, or by status (as in page 2 above) or by category of claim (eg fishing, clean-up etc) and within <i>that</i> category by expert, by status, or by days delay. The three 'buttons' at the bottom of the screen, allow first overview of the claims situation (showing numbers of claims, numbers assessed, approved, agreed and payment made and the number of claims rejected and the number of claims being contested). The second 'button' allows oversight of 'satisfaction' levels showing the number of claims approved, and what they have approved at as a percentage of the original claim. This 'button' includes rejected claims and the third 'button' excludes them.
Page 7	Illustrative printout of a report selected, in this case claims at the local Claims Office with a status of 'waiting for further information from the claimant'.
Page 8	Illustrative printout of the 'search screen' for the local Claims Office, which allows search by claim number, category of claim, sub-category, business name, boat name, surname, town, and indeed any field specified
Page 9	Claimants summary screen – illustrating claimant's demographic details. It also shows the claims presented by that claimant (hence allowing for more than one claim) with totals, and the payments made against all claims from that claimant. At the bottom of this page are automatic links to the scanned documents supporting that particular claimants claim(s).
Page 10	Illustrates the underlying demographic information summarised on page 9
Page 11	Illustrates the further business details contained as part of the demographic information summarised on page 9
Page 12	Summarises all third-party payments made to the claimant as a result of the incident (eg relief paid by government agencies or by insurers)
Page 13	Calculates any adjustment needed to the claim as a result of third party receipt by the claimant
Page 14	Illustrates what happens if the highlighted claim data is double-clicked, thus revealing a summary of that claim. The summary shows who the data inputter was (allowing quality control by the Funds subsequently) and shows data on the claims form, date actually received, claims period start date and end date, date sent to expert for assessment and the name of the expert, and the date returned from the expert together with the date of assessment, and the date sent for approval and the approval date. The box at the bottom is used to provide a summary of the key features of the claim, and another box exists for the assessor to use to make their comments. Claims status and

the date when that status was reached are also shown, and the claim category and sub-category, and third party payments received by the claimant. There is also a summary of the amount claimed, and the amount assessed, and the approved amount, the amount agreed with the claimant and the payment made.

Page 15 Illustrates an extension of the claims summary, used where the claimant has more than one business interest, showing the different claims applicable to different interests of the same claimant.

- 5.10 As will have been seen from this Report, data allowing analysis of the overall progress of claims handling for a particular incident, capable of being sub-analysed into categories of claim, and comparison of the relative costs levels for claims handling was not available to the Secretariat until very recently. The review has therefore considered the adequacy, or otherwise, of the information now available to the Secretariat to help it manage the claims handling process.
- 5.11 Essentially the ideal type of management information for claims handling falls into two types; information that allows exploration and focussed enquiry, and information that summarises trends.
- 5.12 The Secretariat needs to be able to see at any time whether the claims handling process is working properly, and to identify significant delays and problems fairly quickly so that remedial action can be taken in time to avoid serious delays building up which would seriously damage the interests of claimants. There are no easy answers as to how this type of information should be collected. In the past, as already explained, the Secretariat relied extensively on close contact with the assessors and upon detailed review of files, along with logs of claims received and claims assessed to provide the necessary knowledge of how the claims handling process was working on any particular incident. Now, however, the power of databases^{<14>} such as that developed by the Funds for the *Prestige* incident allows desk review to monitor trends, identify issues and delays and to initiate enquiry and follow up action by management in a far faster and more effective way.
- 5.13 Such a powerful management tool is extremely useful in focussing oversight and monitoring effort effectively and examination of the 15 pages of material referred to in Table 6 illustrates clearly just how useful such an IT tool can be. It is anticipated that such database techniques will be applied in future to all significant new incidents in which the Funds become involved. **It is therefore recommended that the Secretariat should consider how best to ensure that its arrangements for supervision of claims handling are adjusted to use these new IT capabilities and how effective use of them (and the insights and enquires that result) may best be ensured.**
- 5.14 **It is recommended that a written summary of claims progress on each outstanding incident should be prepared regularly by the Claims Manager (or by the individual to whom responsibility for oversight of specific incidents has been delegated)^{<15>} The written summary should outline briefly the key issues and any concerns, and significant actions taken or enquiries initiated. The summary would be circulated to the senior members of the Secretariat, and would provide both a current overview and, by examination of the pattern of those reports over a period of time, a clear track record of the way in which the claims handling for that incident has evolved.**

<14> The *Prestige* database, itself a development of the database used for the *Erika* incident, has been designed to allow extensive exploration of the data contained within it, in order to assist in monitoring and review as well as to make use of the database by those engaged in managing claims handling on a day-to-day basis much easier.

<15> Clearly very old, inactive incidents which have not yet been 'closed' because of outstanding legal proceedings will not need the same attention each month.

- 5.15 **It is also recommended that the current and cumulative costs of external assessors should be summarised and monitored on that summary, and that the new and greater analysis by assessors of the costs they have billed to the Funds should be incorporated into the database allowing the costs of handling individual claims to be monitored as necessary (it will obviously also be important to ensure that this cost data is reconciled, on an ongoing basis, to the accounting records of the Funds in respect of the amounts paid to each assessor). Travel costs should also be included, so that overall costs of monitoring and supervising the incident as well as of claims assessment can be kept under constant review.**
- 5.16 The Audit Body considers that the combination of this process management and cost data should strengthen the ability of the Secretariat to monitor the efficiency of claims handling and in demonstrating the effectiveness of its control procedures in due course. It should also help the Funds monitor better, for each incident, the way in which claims handling costs arise, and the relationship between those costs and the number and size of specific categories of claims within that incident.
- 5.17 That data may also allow enhanced communication to claimants on the ways in which the delays in claims handling can best be minimised when incidents occur. It may also shed light on whether it would be possible to eliminate or reduce the factors which have the effect of making very early assessment and settlement of claims very difficult if not impossible.
- 5.18 These recommendations are not designed to create an additional burden of bureaucracy, but rather to help the senior staff of the Secretariat to be better informed, regularly, as to progress on all current incidents so that the core claims handling activity of the Secretariat can be managed, and be seen to be managed, in the best possible way. It is recognised that the Executive Committee reviews progress on incidents at each session and that documentation is already produced for that purpose. It is envisaged that the suggested regular written summary of progress and costs data on each outstanding incident might well provide a useful source for the Secretariat to use in preparing documentation for the Executive Committee reviews, supplemented by material on issues requiring further discussion and/or decision. After a period of, say, one year during which the new reporting process might be expected to have 'bedded down', it would be appropriate to review the new procedures to check that they are in fact proving of value to the Secretariat and the Executive Committee in their ongoing monitoring roles.

6 Conclusions and recommendations re -summarised

- 6.1 This summary is prepared for the convenience of the reader. It should be noted that all the recommendations listed in the main Report and re-summarised below have been discussed with the Director.

Overall findings

- 6.2 Considerable assistance has been provided by the Secretariat, both in preparation for this review of the efficiency of claims handling of the Funds, and whilst it was carried out. This is the first review of this type undertaken and it would not have been possible to carry it out without that assistance and the Audit Body expresses its appreciation for it.
- 6.3 The review has identified that claims handling costs vary considerably depending on the underlying circumstances of the incident to which they relate, and particularly with regard to the extent of economic activity affected. That is not a surprising finding, but it has guided deeper analysis of variations in the typical costs of claims handling to help identify the significant factors involved where incidents have proved particularly costly (or alternatively unusually inexpensive) to assess. That deeper analysis involved examination of the underlying circumstances of the incidents in question, and the key factors identified have been summarised in this Report. Overall,

claims handling costs appeared to be reasonable, and where higher than normal costs had been incurred, the causes were identifiable and could be explained. Whilst lessons have clearly been learned from experience gained from earlier incidents, the efficiency review has not identified any new factors or circumstances affecting costs that the Audit Body believes should be brought to the attention of the Executive Committee of the 1992 Fund or the Administrative Council of the 1971 Fund as issues of concern.

- 6.4 Where analysis of the data available showed that significant delay had occurred in claims assessment on particular incidents, the relevant incidents were examined in more detail and the report highlights the factors that emerged. The Report has also summarised in tabular form the main factors that can give rise to delay between the occurrence of an incident and the final payment of claims. It shows that numerous factors can contribute to delay, many but not all of which fall outside the Funds' control or influence. The tabulation may of itself prove of some use in future incidents to assist communication to claimants and their governments illustrating why it is not possible for claims to be dealt with as quickly as claimants might otherwise imagine. Those factors that fall within the Funds' control need ongoing monitoring for every new incident, but the efficiency review did not identify any data which suggested a pattern of tardiness on the part of the Funds in establishing and operating the claims handling procedures. The Report also summarises certain actions already taken by the Funds designed to minimise particular causes of delay in current and future incidents. The Audit Body has no further recommendations on this front, although it considers that further such actions and initiatives may be stimulated in future by the enhanced ongoing monitoring process that the Audit Body has recommended, as re-summarised below under the heading 'The management of claims handling' and the Audit Body considers that exploration of the most effective way of communicating to claimants of the claims handling criteria should continue.

Conclusions and recommendations relating to the time taken to handle claims

- 6.5 The review has identified numerous factors which can cause delay in claims handling and they are listed in Tables 3 to 6 inclusive in this Report. Two of the most important, however, are highlighted here.
- (a) Claimants seldom grasp the fundamental difference between the Funds and an insurance company. Where claimants submit inflated claims, expecting some reduction as a result of negotiation, but with the underlying assumption that the more they claimed the more they would receive, those claims take far longer to assess and process than claims which had been prepared from the outset with recognition by the claimant of the role and procedures of the Funds.
 - (b) Claims for economic loss often take much longer to assess than claims for cost recovery for reasons explained in some detail in the body of the Report.
 - (c) Lawyers representing claimants or groups of claimants often impede claims assessment by advising their clients not to cooperate with the Funds but to seek redress directly through the courts.
- 6.6 Inflated claims, collectively, cause provisional estimates of total amount payable as a result of an incident to be overstated, and so can trigger pro-rata limitations that must be set at a lower level than might otherwise be the case where inflated claims are not widespread. So they not only cause delay in claims handling, they also can contribute directly to lower payments being made.
- 6.7 The most significant difference in the pattern of elapsed time of all the incidents examined related to the *Nakhodka* incident, where an assessment period of almost 30 months had elapsed before significant claims assessment activity had been completed. The underlying reasons are

summarised in the main body of the Report. It is evident from the review of later incidents that the Funds have learned from this experience and that the resulting lessons have been applied in subsequent incidents.

- 6.8 The *Nakhodka* was not the only incident where the underlying elapsed time pattern was explored in greater detail as part of the efficiency review. Factors identified are explained in the Report and are summarised in Tables 3 to 6.
- 6.9 The Funds have taken a number of steps designed to reduce the potential for delay and other initiatives are being considered. These are outlined in the Report.
- 6.10 **It is recommended that the factors that can cause or contribute to delay for each current incident be kept under regular review, so that action can be taken where appropriate by the Funds to minimise that delay, even where the Funds themselves are not the cause.**
- 6.11 **Improved management information, addressed in the section 'Conclusions and recommendations relating to the management of claims handling' below, should help focus such initiatives in future.**
- 6.12 **The *Nakhodka* incident showed that it was extremely useful to carry out a formal internal review once an incident is substantially completed to seek to identify what lessons might be learned for future application, as has been done in the past in respect of several major incidents, and to document those findings so that they can be disseminated as appropriate. This approach is therefore recommended for all significant incidents in future.**
- 6.13 Governments of countries in which an incident occurs also have a role to play in helping to communicate to claimants and the public in general about the role and function of the Funds and about the factors that can speed claims assessment or cause delay. It is hoped that the tables of factors which can give rise to delay contained in the Report will assist that communication role, and hence that they will not be seen as a listing of factors of relevance only to the Funds and the Secretariat.

Conclusions and recommendations relating to the costs of claims handling

- 6.14 Overall, claims handling costs appeared to be reasonable, and where higher than normal costs had been incurred the causes were identifiable and could be explained. Table 5 in the Report shows that the Funds' claims handling costs tend to work out at around 5% or slightly higher of the total compensation paid following settlement of claims although there are of course ranges of figures, higher and lower than this general cost pattern.
- 6.15 Claims handling costs are inevitably directly affected by the amount of time, and the complexity, of the assessment process. The most significant recurring factors that cause delay (inflated claims and economic loss claims) are also the most significant recurring factors in causing additional claims handling costs.
- 6.16 Table 5 shows that the claims handling costs for the *Erika* incident were abnormally high. This was because more than half the total number of claims came from the tourism sector and were claims for economic loss, mostly for very modest amounts. Claims handling costs for the main block of fishery related claims resulting from the *Erika* incident were consistent with the typical level of costs for the other incidents reviewed.
- 6.17 The level of claims handling costs borne by the Funds is higher than the equivalent pattern of costs for claims handled directly by insurers. This reflects the higher costs incurred by the Funds since their assessment require full compliance with the Conventions.

- 6.18 Where an incident occurs in a country without strong and independent local claims handling capability, costs will be higher than usual because of the need to use expatriate claims assessment capability which is relatively expensive.
- 6.19 Where the overall compensation amount relating to the incident is not large, the proportion of claims handling costs to the overall settlement figure can rise appreciably from the typical level.
- 6.20 Where there are a small number of claims yet local assessors are used, then it is evident that this will cause a higher cost than the normal level.
- 6.21 **There are recommendations in the section below entitled 'The management of claims handling' which relate directly to the ability of the Funds to monitor and control these costs in future. They are therefore not repeated here.**

Conclusions relating to interim payments

- 6.22 Interim payments are made by the Funds in serious hardship cases and in some other occasions. The consequence of making such interim payments can act as a stimulus to the claimant to complete matters or, alternatively, significantly reduce the incentive of a claimant to do so.

Conclusions and recommendations relating to the management of claims handling

- 6.23 There is no one standard method for the Funds to apply in managing the claims assessment process that results from an incident. Nevertheless, experience over the years has given rise to a number of valuable lessons, and there has been a significant evolution in the Funds' ability to manage its response to incidents of which the most important was the move during the 1990s to arrange that the Funds have sufficient core competence within the Secretariat to ensure that it is less dependent on the services of outside assessors even in the very largest incidents, although it will rely on such assessors to carry out the main part of the assessment work in all but the smallest cases.
- 6.24 Another significant development has been the Funds' recognition that for large incidents it is often efficient (as well as being extremely helpful to claimants) to establish a local Claims Office.
- 6.25 The efficiency review was designed to provide insight into the way the claims handling function of the Funds has operated, with a view to identifying any significant trends, lessons or issues that might require further attention.
- 6.26 Historically, the collection of summary claims handling data has not been designed from the outset to enable oversight of the speed with which individual claims are assessed. The focus of the claims handling process has been to ensure that claims are properly assessed in accordance with the Conventions (and the subsequent decisions of the Assembly and of the Executive Committee with regard to interpretation of those Conventions), and that the Funds deal with matters as quickly as practicable in the circumstances.
- 6.27 In the same way, once reviewed and approved by the Secretariat, claims handling costs were simply recorded as part of the costs of an incident. Hence these costs were not recorded in a way that assisted subsequent analysis of trends or patterns of those costs. The recent requirement (following a recommendation of the Audit Body) that claims handling experts working for the Funds attribute their costs to particular claims will obviously assist the Secretariat to monitor such cost patterns in future.

- 6.28 Because data has not been extracted or prepared in the past to enable these issues to be examined in a way which allows detailed comparisons to be drawn, and trends identified, an important aspect of this review has been the demonstration that such analysis and comparative information is useful in itself.
- 6.29 Historically the Secretariat management and control process for claims handling could be described as just one step removed from 'hands-on' assessment. The implications (and some important benefits) of this approach are summarised in the Report. It worked well for smaller and medium sized incidents.
- 6.30 Significant developments have occurred, particularly over the last ten years since the *Sea Empress* incident, in the data collected as claims are assessed and processed through to final settlement and payment. The way large incidents have been handled has stimulated significant developments by the Funds which recognised the need for in-house IT skills to support the database systems developed by the Funds to enable effective management of data internally. Databases that were originally held in local Claims Offices themselves for control purposes, and periodically copied to the Funds have been greatly refined in the light of experience and are now maintained by the Funds rather than by the local Claims Office.
- 6.31 The Report illustrates how the power of those new systems now make it possible for any authorised person to monitor the underlying claims situation of an incident at any time; clearly a very powerful tool for the Secretariat's overall management role.
- 6.32 The review considered the adequacy, or otherwise, of the information now available to the Secretariat to help it manage the claims handling process. The Report explains in some detail the type of information available and the potential opportunities for proactive management that it allows.
- 6.33 **The Audit Body has therefore recommended that the Secretariat should consider how best to ensure that its arrangements for supervision of claims handling are adjusted to use these new IT capabilities and how effective use of them (and the insights and enquiries that result) may best be ensured.**
- 6.34 **The Audit Body has also recommended that a written summary of claims progress on each 'active' outstanding incident should be prepared regularly by the Claims Manager (or by the individual to whom responsibility for oversight of specific incidents has been delegated) which should outline briefly the key issues and any concerns, and significant actions taken or enquiries initiated. The summary would be circulated to the senior members of the Secretariat, and would provide both a current overview and, by examination of the pattern of those reports over a period of time, a clear track record of the way in which the claims handling for that incident has evolved.**
- 6.35 **It is also recommended that the current and cumulative costs of external assessors should be summarised in order to facilitate them being monitored, and that the new and greater analysis by assessors of the costs they have billed to the Funds should be incorporated into the database allowing the costs of handling individual claims to be monitored as necessary (the cost data will need to be reconciled, on an ongoing basis, to the accounting records of the Funds in respect of the amounts paid to each assessor). Travel costs should also be included, so that overall costs of monitoring and supervising the incident as well as of claims assessment can be kept under constant review.**

Closing observation

- 6.36 It is hoped that the conclusions and recommendations of this efficiency review will be of particular interest to the Executive Committee and Assembly of the 1992 Fund, the Administrative Council of the 1971 Fund and the Assembly of the Supplementary Fund.
