

INTERNATIONAL
OIL POLLUTION
COMPENSATION
FUND

EXECUTIVE COMMITTEE
34th session
Agenda item 3

FUND/EXC.34/5
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INCIDENTS INVOLVING THE IOPC FUND

BRAER

Note by the Director

1 The Incident

1.1 Early in the morning of 5 January 1993, the Liberian tanker BRAER (44 989 GRT), laden with approximately 84 000 tonnes of North Sea crude oil, suffered a total machinery failure south of Sumburgh Head, the southern-most point of the Shetland Islands (United Kingdom). The weather conditions were severe at the time, with 40–50 knot winds and heavy seas. At around 11.00 am the vessel grounded at Garths Ness, and oil began to escape almost immediately thereafter. All crew members were rescued by helicopter before the grounding.

1.2 Experts from the International Tanker Owners Pollution Federation Limited (ITOPF) were engaged by the shipowner and his P & I insurer (Assuranceforeningen Skuld, the Skuld Club) and the IOPC Fund, and one of its experts arrived in Shetland on the afternoon of the day of the incident.

1.3 The United Kingdom Government, in co-operation with the Shetland Islands Council, immediately activated its contingency plans through the Marine Pollution Control Unit (MPCU) of the Department of Transport. A joint response centre was set up at Sumburgh Airport on Shetland. A number of dispersant spraying aircraft were mobilised. The severe weather conditions prevented any large scale spraying of dispersants and made any recovery operations at sea impossible. The limited spraying of dispersants proved nevertheless in general to be effective and contributed to the dispersion of the surface oil. Local people initially expressed concern about a possible health risk to inhabitants as a result of dispersants being blown inland, but the health authorities confirmed that there were no such risks.

1.4 Severe weather conditions with gale to hurricane force winds and heavy seas continued practically without interruption until 24 January 1993, resulting in the ship breaking up and the cargo oil and bunker oil escaping into the sea. An inspection of the wreck carried out by divers on 24 January showed that there was no cargo left on board and that most of the 1 600 tonnes of heavy

fuel oil had escaped. It cannot be ruled out, however, that some fuel oil remains in the wreck. A further diving survey of the wreck will therefore take place in the spring when the weather will permit a more detailed inspection.

1.5 Due to the heavy seas, most of the spilt oil dispersed naturally close to the grounding site. In spite of the large quantities spilt, very little oil was observed on the surface of the sea, apart from sheens, and the impact on the shoreline was very limited. Strong winds blew oil vapours ashore and the oil affected grassland and houses on the southern part of Shetland.

1.6 The coast near the grounding site is rocky and heavily indented with numerous coves, bays and sea lochs. Some oil moved towards the northwest and affected the western coast of Shetland up to some 30 kilometres from the grounding site. Two sheltered sea lochs, one on the east coast and one on the west coast, both important bird habitats, were closed off by booms and sandbags. The severe weather made further defensive booming impossible. It was thus not feasible to take any measures to protect the salmon farms along the west coast, apart from deploying sorbent booms around salmon cages.

1.7 The sea around the Shetland Islands is of great importance for fishing and aquaculture, especially in the form of industrial salmon farming. There are some 55 salmon farms around the Islands.

1.8 On 8 January 1993, the United Kingdom Government imposed a fishing exclusion zone in respect of an area along the west coast of Shetland which was affected by the oil. This zone was extended on 27 January. Some 16 sites for salmon farming are located within that zone. The authorities have been carrying out an extensive programme of analyzing the water quality and the effects of the oil on the fish. The results of these analyses have not yet allowed the authorities to lift the ban on fishing in that zone.

1.9 At an early stage the shipowner engaged Smit Tak International to salvage the ship and cargo, but the bad weather prevented any salvage operations. The IOPC Fund followed the activities of Smit Tak International through experts from Murray Fenton & Associates.

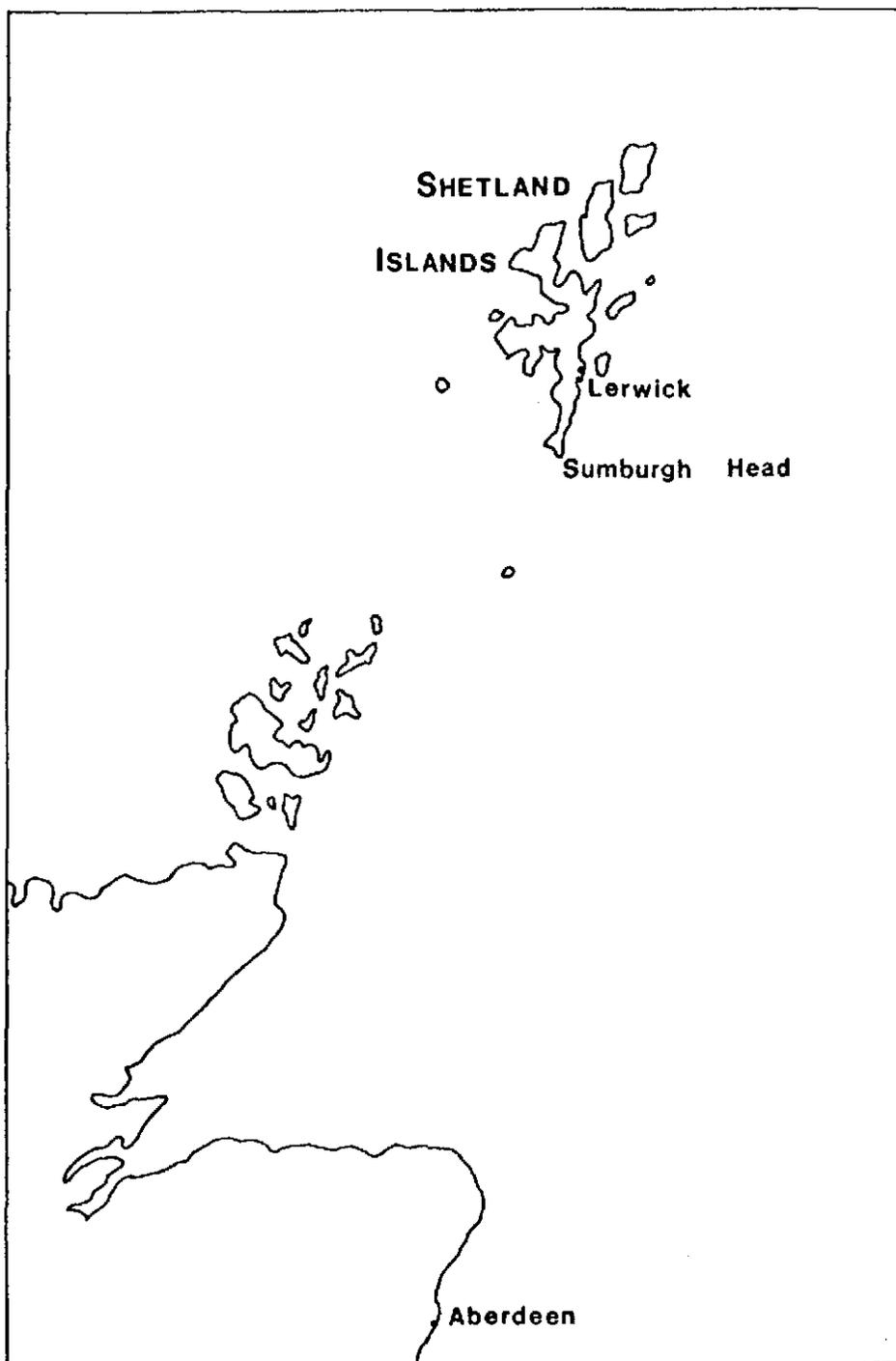
2 Extent of the Pollution Damage

2.1 As mentioned above, oil vapour affected the southern part of Shetland closest to the site of the grounding. The oil contaminated a number of houses. Large areas of farm land, mainly used for sheep grazing, were affected. As a result, some 2 000 sheep had to be moved from their normal grazing land and had to be given special feed. Some crops were also contaminated.

2.2 The fishing ban has prevented the salmon farms located in the fishing exclusion zone from harvesting their salmon on time, causing significant economic loss. In addition, some 25 fishermen have been prevented from fishing in the area, which has led to loss of income.

2.3 Some firms involved in packing and processing fish normally caught or farmed in the exclusion zone have indicated that they have suffered economic loss as a result of the incident. Persons in the tourist industry have alleged that they have also suffered losses.

2.4 Considering the quantity of oil that was spilled, the effects on wildlife have been limited. Some 1 600 dead sea birds have been collected and some 250 oiled birds have been cleaned. Three dead seals were recovered, whereas 27 oiled seals have been cleaned and are still in captivity recovering from cleaning.



3 Claims for Compensation

3.1 On 8 January 1993 the Skuld Club and the IOPC Fund established a joint office in Lerwick (Shetland), known as the BRAER Claims Office, to assist claimants in their presentation of claims and to handle claims which are submitted. Special claim forms for various kinds of claims have been prepared and handed out on request.

3.2 At the time of drafting this document, 670 claims forms have been distributed. Some 35 claims for compensation have been received, relating mainly to the cost of cleaning houses and loss of income suffered by fishermen. So far, 22 claims have been settled and paid at a total amount of £85 000.

3.3 The shipowner and the Skuld Club, after approval by the Director, have agreed to meet the costs of special feed for sheep which were prevented from grazing. The estimated cost of this feed is £200 000 per month. So far £29 000 has been paid.

3.4 On 22 January 1993, a salmon farmer whose farm is located within the fishing exclusion zone requested an advance payment to mitigate financial hardship. An advance payment of £150 000 was made by the Skuld Club on 28 January.

3.5 The payments made so far have been effected by the Skuld Club, with the approval of the Director. With regard to the settlements, the Director's approval has been given pursuant to Internal Regulation 8.4.1, which authorises him to make final settlement in respect of claims from individuals and small businesses up to an aggregate amount of 10 million (gold) francs or 667 000 SDR (approximately £600 000).

3.6 The United Kingdom Government and the Shetland Islands Council are expected to submit claims for compensation in respect of their operations. There will be a number of claims from salmon farmers. Other industries connected with fishing or tourism may also present claims. Claims may also be submitted by bodies involved in rescuing and cleaning oiled birds, seals and sea otters.

3.7 Some of the claims arising out of this incident give rise to important questions of principle as to their admissibility. These questions will be dealt with in an addendum to this document.

3.8 It is estimated that the limitation amount applicable to the BRAER is approximately £5.5 million.

4 Scottish Office Bridging Fund

4.1 The United Kingdom Government has, through the Scottish Office, set up a Bridging Fund to facilitate rapid payments. This Bridging Fund may, if liquid funds available to the Skuld Club and the IOPC Fund are insufficient to ensure rapid payments, make advance payments to claimants whose claims are considered by the Skuld Club and the IOPC Fund to be admissible in principle under the Civil Liability Convention and the Fund Convention. So far, no payments have been made from the Bridging Fund.

4.2 The procedure for use of the Bridging Fund was discussed at an early stage between the United Kingdom Government and the IOPC Fund.

5 Investigations into the Cause of the Incident

5.1 The United Kingdom Government is carrying out an investigation into the cause of the incident. A similar investigation is being carried out by the Liberian authorities. The IOPC Fund will be following these investigations through its Scottish lawyer and such technical experts as may be necessary.

5.2 The former Master of the Rolls of the United Kingdom Court of Appeal (one of the most senior posts in the United Kingdom judicial system), Lord Donaldson, has been commissioned by the United Kingdom Government to carry out an enquiry to advise on whether any further measures are appropriate and feasible to protect the United Kingdom coastline from pollution from merchant shipping. Lord Donaldson is required to give due consideration to the international and economic implications of any new measures. He has requested written evidence and will be requesting oral evidence.

6 Action to be Taken by the Executive Committee

The Executive Committee is invited to take note of the information contained in this document and give the Director such instructions concerning the handling of this incident as it may deem appropriate.
