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OIL POLLUTION
COMPENSATION
FUND

EXECUTIVE COMMITTEE
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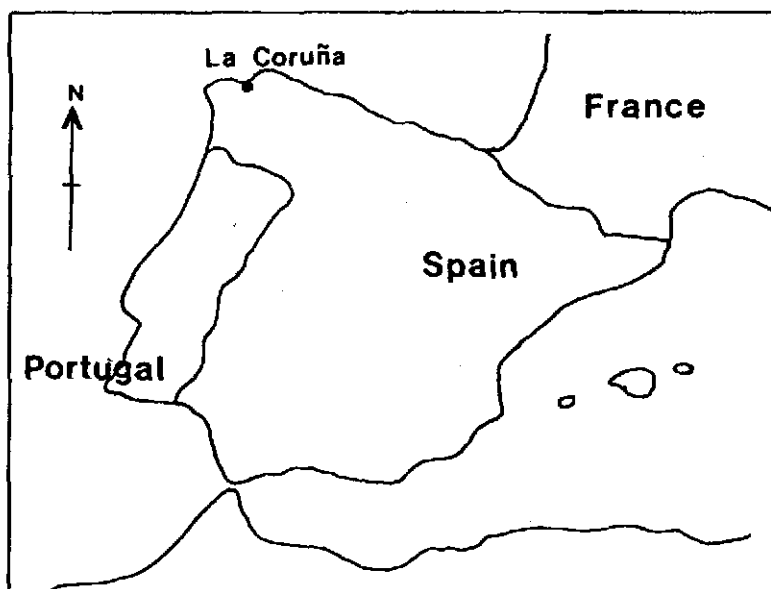
INCIDENTS INVOLVING THE IOPC FUND

AEGEAN SEA

Note by the Director

1 The Incident

1.1 Early in the morning of 3 December 1992, during a heavy gale, the Greek OBO carrier AEGEAN SEA (57 801 GRT) ran aground at Torre de Hercules some 100 metres off the coast while approaching La Coruña harbour in north-western Spain. All 32 crew members were rescued by helicopter after the grounding. The vessel was carrying approximately 80 000 tonnes of crude oil. The vessel broke in



two and burnt fiercely for about 24 hours, whereafter the forward section sank some 50 metres from the coast. The stern section smouldered for several days and remained largely intact, projecting out of the water. Approximately 6 500 tonnes of crude oil and 1 700 tonnes of heavy fuel oil were found in the aft section. This oil was removed by salvors working from the shore. It has been confirmed that no oil remains in the sunken forward section. Whilst the quantity of oil spilled is unknown, it appears that the major part of the cargo was either consumed in the fire on board the vessel or dispersed naturally in the sea.

1.2 Experts from the International Tanker Owners Pollution Federation Limited (ITOPF) were engaged by the shipowner and his P & I insurer, the United Kingdom Mutual Steamship Assurance Association (Bermuda) Ltd (the UK Club), and by the IOPC Fund, and they arrived in La Coruña in the afternoon of the day of the incident.

1.3 Due to the severe weather, little could be done to recover oil at sea but attempts were made to protect sensitive areas using booms deployed from ships and from the shore. However, as a result of the light nature of the oil cargo (Brent Blend Crude) and the vigorous wave action typical of the exposed coast, there was considerable natural dispersion of the oil slicks. The coast is predominantly rocky and heavily indented, with some very large estuaries. Several stretches of shoreline east and north-east of La Coruña were contaminated and Ria de Ferrol was heavily polluted.

1.4 In areas where access from the shore was possible, efforts were made to remove floating oil, using locally-available vacuum trucks, skimmers and pumps. A total quantity of about 5 000m³ of oil/water mixture was collected and delivered to local oil reception facilities for processing. The resources available to the Spanish authorities were sufficient for these operations, given the quantity of oil available for recovery, difficulties of access to the coast and the severe weather conditions. Some additional pumps and portable storage tanks were brought to La Coruña from France and the United Kingdom by the P & I insurer, after consultation with the IOPC Fund.

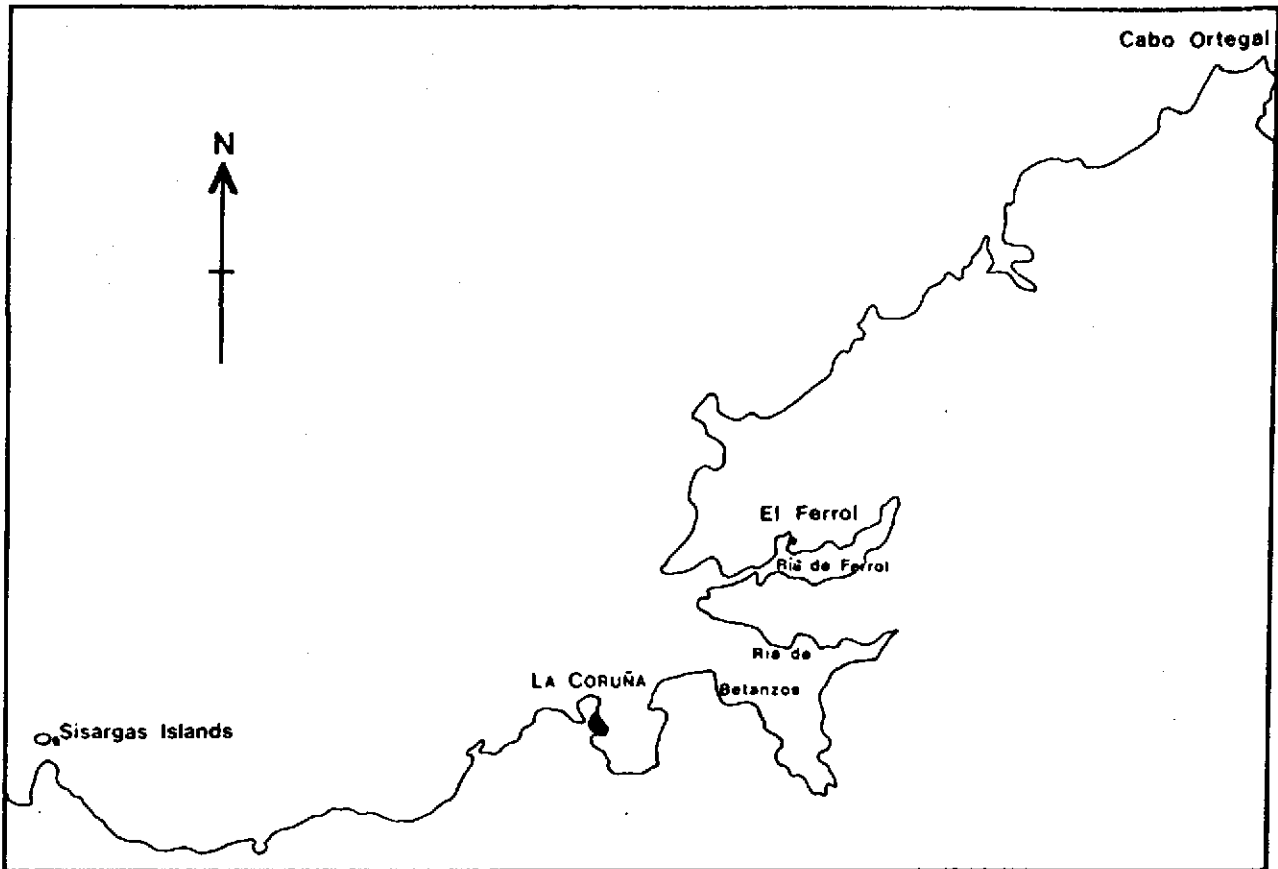
1.5 The cleaning of polluted beaches commenced in late December 1992, using manual methods to remove an estimated quantity of 1 200m³ of oiled sand and contaminated debris. This material has been delivered to a disposal contractor for treatment. Following incineration, oily sand will be used in the production of bricks.

1.6 In addition to the exposed beaches, the more sheltered Ria de Ferrol, which contains mudflats and saltmarshes, was polluted. Given the sensitivity of the environment to physical damage, particular care had to be taken to select appropriate clean-up techniques. Work in the estuary started in January 1993 and involved the manual removal of oily beach material and debris, and the washing of rocks and manmade surfaces. To date approximately 900 tonnes of material have been transported to a disposal contractor for treatment.

1.7 A comprehensive fishing ban was imposed from the outset in the affected sea area comprising near-shore waters and the shoreline between Sisargas Islands and Cabo Ortegal. The gathering of clams, cockles, sea urchins and goose barnacles, which are the species of greatest commercial importance, was prohibited. There is extensive mussel raft cultivation in Ria de Betanzos, and although physical contamination of these rafts by oil was slight, tainting of mussels occurred. There are also other mariculture facilities in the area, namely turbot and salmon farms, and clam and mussel purification plants. The farms have been slightly affected by tainting, and the purification plants have been closed for several months. An expert from a French research organisation, the Centre de Documentation de Recherche et d'Experimentations sur les Pollutions Accidentelles des Eaux (CEDRE), is assisting ITOPF in its assessment of the impact on fisheries and aquaculture.

2 Claims Handling

2.1 The procedure for the handling of claims was discussed at an early stage between the Spanish authorities, the UK Club and the IOPC Fund. On 25 January 1993, an Agreement was concluded between the Spanish Government, the Government of the Region of Galicia, the shipowner, the UK Club and the IOPC Fund, setting out the procedure for co-operation in the handling of claims.



2.2 The Spanish authorities have set up a public office in La Coruña which gives information to potential claimants concerning the procedure for presenting claims and hands out claims forms provided by the UK Club and the IOPC Fund to claimants.

2.3 After consultation with the Spanish Government and the Government of the Region of Galicia, the shipowner, the UK Club and the IOPC Fund have established a joint office in La Coruña which receives and handles claims for compensation. This office works closely with the Spanish authorities and the claimants in order to facilitate the handling of the claims.

2.4 The procedures for handling claims were reviewed in La Coruña on 27 and 28 April 1993 between the Director, representatives of the shipowner and the UK Club, on the one hand, and representatives of the Spanish Government, the Government of the Region of Galicia, the City of La Coruña as well as representatives of fishermen and mussel farmers, on the other.

3 Situation In Respect of Claims

3.1 General Situation

As at 15 May 1993, 232 claims have been received totalling Pts 1 547 476 478 (£8.7 million). Forty-three claims have been approved for a total amount of Pts 34 919 109 (£197 000). No claims have been paid so far, but it is expected that payments will start in the week of 17 May 1993.

3.2 Clean-up Operations and Preventive Measures

3.2.1 The Spanish Government, the Government of the Region of Galicia and the City of La Coruña incurred costs for clean-up operations and preventive measures. So far, only the Government of the Region of Galicia has presented a claim which totals Pts 140 497 515 (£793 800). Preliminary discussions concerning these claims have been held with the respective authorities.

3.2.2 Both clean-up operations at sea and shoreline clean-up were carried out to some extent by contractors engaged by the authorities. It has been agreed that these contractors may submit claims in respect of these operations directly to the shipowner and the IOPC Fund. Claims have been received from 17 contractors, totalling Pts 647 355 703 (£3.7 million).

3.2.3 The Executive Committee may wish to consider whether and, if so, to what extent it is prepared to authorise the Director to make final settlements of claims relating to clean-up operations and preventive measures.

3.3 Damage to Property

3.3.1 Claims have been submitted by 122 persons in respect of costs incurred for cleaning houses which were contaminated by wind-blown oil emanating from the AEGEAN SEA. Twelve such claims have been approved by the Director, pursuant to Internal Regulation 8.4.1, for a total amount of Pts 1 307 000 (£7 400).

3.3.2 A number of claims have been received in respect of contamination of yachts. So far, 23 such claims have been approved by the Director, pursuant to Internal Regulation 8.4.1, for a total amount of Pts 558 000 (£3 150).

3.3.3 Claims have also been submitted in respect of contamination of fishing nets, loss of lobster pots and damage to vegetables allegedly contaminated by oily smoke.

3.3.4 The Director proposes that he should be authorised to make final settlement of all claims relating to damage to property.

3.4 Boat Fishermen and Shell Fish Gatherers

3.4.1 The Fisheries Council of the Region of Galicia imposed restrictions on fishing from boats in certain areas affected by the oil from the AEGEAN SEA. As the conditions have improved, these restrictions have been gradually removed. With the possible exception of some fishermen, the boat fishing in the area should be back to normal.

3.4.2 Only individuals who have obtained licences may carry out fishing and shellfish gathering in the area. The licences are granted by the Government of the Region of Galicia to the fishermen's unions, the "Cofradías", which then grant licences to individual fishermen.

3.4.3 The fishing restrictions have affected some 3 000 fishermen who catch sardines, anchovies, flat fish, angler fish, bass, bream, groupers, lobsters and crabs. These fishermen belong to 13 Cofradías. Representatives of the Cofradías have indicated that the claims for compensation submitted on behalf of 868 members total Pts 1 843 445 000 (£10.4 million). The IOPC Fund's experts have not yet been able to examine the methods used to calculate the losses allegedly suffered. No supporting documentation has yet been received.

3.4.4 Some 2 350 persons have been granted licences to collect clams, cockles and other shellfish in the affected area, and many of these persons have suffered loss of income as a result of the incident. These persons also belong to the Cofradías referred to above. Representatives of the Cofradías have indicated that the claims for compensation submitted on behalf of their members total Pts 2 805 800 000 (£15.9 million).

3.4.5 The Cofradías have also claimed compensation, indicated provisionally at Pts 209 370 480 (£1.2 million), relating to extra costs incurred by the Cofradías and lost fees from their members. The latter part of the claim has been calculated on the basis of the value of sales allegedly lost for their members. So far, no supporting documents have been presented.

3.4.6 It has been agreed that negotiations should be carried out with the Cofradías rather than with the individual fishermen or shellfish collectors, in order to facilitate prompt settlements.

3.4.7 The IOPC Fund has in other cases (eg the BRAER incident) accepted claims for compensation for pure economic loss suffered by fishermen. For this reason, the Director considers that claims for compensation by fishermen and shellfish gatherers relating to loss of income as a result of contamination caused by the AEGEAN SEA incident are in principle admissible.

3.4.8 It should be emphasised that the claimants will have to quantify the loss sustained. It has been alleged that fishermen and shellfish collectors may suffer losses in coming years as a result of the incident. It is obvious that it may be difficult to assess the quantum of such losses.

3.4.9 The Director submits for consideration by the Executive Committee whether and, if so, to what extent, it is prepared to authorise him to make final settlements of all claims falling within this category.

3.5 On-Land Fish Farms and Purification Plants

3.5.1 In the area affected by the AEGEAN SEA incident there are three on-land fish farms cultivating salmon and turbot. In addition, four purification plants used for shellfish such as mussels, cockles, clams and oysters have been affected. The activities of these farms and purification plants are subject to control of the Government of the Region of Galicia. The farms and plants are supplied with seawater pumped through sub-surface water intakes. The contamination of the water led to an interruption of the activities of these on-land fish farms and purification plants, resulting in economic loss. No claims have been submitted so far.

3.5.2 The Director considers that the losses suffered by the operators of these fish farms and purification plants must be considered as "damage caused by contamination". In the view of the Director, claims in respect of economic loss suffered by these operators are therefore in principle admissible for compensation under the Civil Liability Convention and the Fund Convention.

3.5.3 The Director submits for consideration by the Executive Committee whether and, if so, to what extent, it is prepared to authorise him to make final settlements of all claims falling within this category.

3.6 Near-Shore Aquaculture

3.6.1 In the area affected by the spill, there is an important aquaculture industry, cultivating mussels, salmon, oysters and scallops. It is understood that a number of persons have suffered economic loss as a result of the effects of the AEGEAN SEA incident on their aquaculture activities and that they will claim compensation. The cultivation of mussels is most important, representing 83.7% of the total harvest value in the area.

3.6.2 The mussels are cultivated on ropes of a length of some 10-15 metres hanging from floating rafts. There are about 120 rafts in the affected area, and each of them supports some 500 ropes. The mussels cultivated on each raft vary in size, since there are several seeding periods in a year. Up to four different size categories can be recognised at any one time. Harvesting takes place almost continuously, albeit with peaks at certain times, such as the Christmas period.

3.6.3 The experts engaged by the IOPC Fund, the shipowner and the UK Club have held discussions with the competent authorities of the Region of Galicia concerning the situation in respect of the aquaculture products in the affected area. In a Resolution dated 12 April 1993 issued by the Fisheries Council, it is stated that all cultivated produce within a specified area should be destroyed. The above-mentioned experts have advised the IOPC Fund that they are not in agreement with the Council in this regard. However, it was accepted by the IOPC Fund's experts on 16 April 1993 that, with the optimum time for the first of the 1993 mussel seeding drawing near, it was necessary to take steps to limit the consequences of the incident for future production. On the strength of the latest available

test results, which showed that the mussels were still tainted, the experts acknowledged the justification for a sufficient quantity of the largest commercially harvestable size mussels being destroyed to make space for the first of the 1993 mussel seed intake due by May/June 1993. On the other hand, they considered it premature to destroy smaller mussels covered by the above-mentioned resolution, namely salmon, oysters and scallops, in view of the possibility of taint being removed by a process of natural purification. In the event, the Government of the Region of Galicia has not yet implemented any part of its resolution of 12 April.

3.6.4 The problem relating to the extent that the mussels should be destroyed has not been resolved with the Government of the Region of Galicia and with representatives of the mussel farmers. Further studies have been commissioned by the IOPC Fund, the shipowner and the UK Club in order to verify the status of seafood products affected by oil contamination.

3.6.5 At its 34th session, the Executive Committee agreed with the Director that claims for compensation presented with regard to salmon farms located within the Shetland exclusion zone imposed by the United Kingdom Government in respect of losses incurred as a result of contamination of their salmon following the BRAER incident were in principle admissible, since such claims related to damage to property (document FUND/EXC.34/9, paragraph 3.3.17). In the Director's view, claims for pure economic loss suffered by persons carrying out aquaculture in the area affected by the AEGEAN SEA incident are, from a legal point of view, identical with or similar to the salmon farm claims in the BRAER case. For this reason, he considers that economic loss suffered by these persons as a result of the AEGEAN SEA incident is in principle to be compensated, subject to the requirement of the claimant having to prove the quantum of his loss.

3.6.6 The Executive Committee is invited to consider whether it agrees with the Director on this point and, if so, whether and to what extent it is prepared to authorise the Director to make final settlements of claims falling within this category.

3.6.7 Difficulties may arise in respect of the calculation of losses suffered due to the scarcity of reliable data. The Director considers, however, that acceptable formulae could be elaborated by technical experts on the basis of information provided by the Fisheries Council of Galicia, in particular, a stock assessment carried out by the Council in the first week of December 1992, ie immediately after the incident. Particular difficulties may nevertheless arise in the assessment of alleged future losses.

3.7 Fish Shop

3.7.1 The owner of a fish shop in La Coruña has claimed compensation for loss of profit resulting from a reduction in the sale of fish and shellfish for the period December 1992 - February 1993. The owner of the shop allegedly purchases his supplies almost entirely from the fish market in La Coruña.

3.7.2 In view of the position taken by the Executive Committee in respect of claims from fish processors for pure economic loss sustained as a result of the BRAER incident (cf document FUND/EXC.34/9, paragraphs 3.3.19 and 3.3.20), and the position taken by the Director in respect of claims from shops for losses suffered in relation to the HAVEN incident, the Director has taken the view that the claim submitted by the owner of this fish shop is in principle admissible. It goes without saying that the claimant will have to quantify his loss.

3.8 Shops Selling Windsurfing Equipment and Fishing Gear, and Beach Shop, Cafe and Bar

3.8.1 A shop selling windsurfing equipment and a shop selling fishing gear, both located in La Coruña, have claimed compensation for loss of profit during the period December 1992 - February 1993. They have alleged that there was a reduction in sales as a result of the AEGEAN SEA incident because, in respect of the windsurfing shop, the area was not appealing for windsurfers and, in respect of the fishing gear shop, the opportunity to fish was reduced due to the fishing ban.

3.8.2 The operator of a beach shop, cafe and bar at a beach in Ria de Ares which was lightly polluted has claimed compensation for loss of profit due to a reduction in sales during the period December 1992 – March 1993. It is assumed that the reduction in sales was caused by the fact that the beaches were less appealing to potential customers.

3.8.3 In view of the Director's recommendation that claims relating to pure economic loss suffered by owners of certain shops, bars and restaurants as a result of the HAVEN incident should be considered as admissible in principle, the Director proposes that also the claims presented by the operators of the above-mentioned establishments for losses allegedly suffered as a result of the AEGEAN SEA incident should in principle qualify for compensation to the extent that it is established that the loss was caused by the incident. The operators will also have to prove the quantum of their losses.

3.9 Car Repair Firm

3.9.1 The operator of a car repair firm in the area closed off by the authorities in the period immediately following the incident has claimed compensation in respect of losses suffered as a result of eight days' loss of business.

3.9.2 Although the closure of the area was decided upon by the authorities for public security reasons and to control sightseers, the alleged losses resulted from the AEGEAN SEA incident and could therefore be considered as damage caused by preventive measures. For this reason, the Director considers that the operator of the car repair firm should in principle be entitled to compensation for any substantiated loss of earnings during the above-mentioned eight day closure.

3.10 Fish Porters

3.10.1 Two self-employed persons who normally carry boxes of fish ashore in a port within the affected area have claimed compensation for loss of income, due to the fact that the quantity of fish landed in the port was reduced as a result of the incident.

3.10.2 In view of the position taken by the Executive Committee in respect of the BRAER incident relating to claims presented by fish processors (document FUND/EXC.34/9, paragraphs 3.3.19 and 3.3.20), the Director considers that the losses allegedly suffered by these fish porters should be considered as damage caused by contamination. For this reason, he proposes that these claims be accepted in principle.

3.11 Net Makers

3.11.1 Nine self-employed net makers, carrying out their business in the area affected by the oil spill, have claimed compensation for loss of income totalling Pts 1 561 500 (£8 820). The claimants have maintained that they lost income during 45 days (3 December 1992 – 31 January 1993) as a result of the incident. These net makers normally carry out net repairs for fishermen who were prevented from fishing as a result of the fishing ban.

3.11.2 The losses allegedly suffered by the net makers are not a direct result of the contamination as such but an indirect consequence of their customers not being able to carry out their business in the normal way. For this reason, it can be questioned whether these losses can be considered as caused by contamination. The Director considers, however, that the losses suffered by these net makers are similar to those suffered by the fish porters referred to in paragraph 3.10 above. The Director therefore takes the view that the claims presented by the net makers should be accepted in principle, to the extent that the losses were caused by the oil spill.

3.12 Loss as a Result of Being made Redundant

3.12.1 Twelve persons who were employed at the purification plants referred to in paragraph 3.5.1 have claimed compensation for loss of income for an aggregate amount of Pts 4 037 720 (£22 810), relating to the period 5 December - 5 April 1993. They maintain that they were laid off from 5 December 1992 as a result of the fishing ban bringing their employers' operations to a virtual halt.

3.12.2 Claims have also been presented by 20 persons working at offshore mussel production farms which were closed as a result of the AEGEAN SEA incident. The claims for the period 3 December - 18 March 1993 total Pts 5 814 900 (£32 850).

3.12.3 A claim for Pts 195 592 (£1 105) relating to the period 17 December 1992 - 17 April 1993 has been received from a person who works as a filleter at a plant within the polluted area which packs, salts and exports shellfish. This person has alleged that she was laid off due to a reduction in work at the plant as a result of the AEGEAN SEA incident.

3.12.4 The question of principle is whether losses suffered by persons employed in sea-related activities as a result of their being made redundant in connection with an oil spill fall within the definition of "pollution damage". A major oil spill can have serious consequences for such persons, from both a personal and an economic point of view. The acceptance of claims of this kind would have far-reaching consequences. If such claims were accepted in principle, the question would be for how long a time would compensation be payable, for example in a situation where the employer ceased trading as a result of the incident. It could be maintained that compensation under the Conventions should be limited to the entity carrying out the sea-related activities affected by the oil spill, and that its employees would not be entitled to compensation. On the other hand, it could be argued that the losses suffered by such employees are a foreseeable consequence of a major oil spill. The Executive Committee is invited to take a decision on the interpretation of the definition of "pollution damage" on this point.

3.13 Ship Agencies

3.13.1 Five ship agencies have claimed compensation for totalling Pts 2 714 875 (£15 340) allegedly lost as a result of the AEGEAN SEA incident, which allegedly led to vessels which had been booked for entry into the port of La Coruña being diverted because the port of La Coruña was closed.

3.13.2 The losses allegedly suffered by the ship agencies are not a direct result of contamination but are an indirect result of the ships in question being diverted from the port of La Coruña. For this reason, it can be questioned whether these losses can be considered as damage by contamination. The Executive Committee is invited to take a decision on the interpretation of the definition of "pollution damage" in this respect.

3.14 Passenger Ferry Operator

3.14.1 An operator of a passenger ferry has alleged that, as a result of the oil pollution caused by the AEGEAN SEA incident, the service between Mugardos and Ferrol had to be suspended for the period 5 - December 1992 when Mugardos harbour was severely oiled and that the service from the latter date to 15 December 1992 was irregular. He has also maintained that the number of passengers carried in January and February 1993 was lower than normal, since the journey by sea was unpleasant due to the oil spill. He has claimed compensation for the losses suffered as a result of this situation.

3.14.2 The Director considers the loss allegedly suffered by the ferry operator should be considered as damage by contamination to the extent that it was caused by the oil spill and that this claim should therefore be accepted in principle.

3.15 Demurrage for Vessel Detained in La Coruña

3.15.1 A claim has been submitted by a Swedish company, being time charterers of a vessel, for demurrage as a result of a vessel being detained in La Coruña from 3 to 5 December 1993 as the port had been closed by the authorities.

3.15.2 The port of La Coruña was closed because of the oil spill. For this reason, the Director considers that the losses allegedly suffered by this time charterer should be considered as damage by contamination. He proposes therefore that the claim should in principle be accepted.

4 Limitation Proceedings

4.1 By decision of 30 December 1992, the Court in La Coruña ordered the shipowner to constitute a limitation fund, fixing the limitation amount at Pts 1 121 219 450 (£6.3 million).

4.2 The limitation fund was constituted on 20 January 1993 by means of a bank guarantee provided by the UK Club on behalf of the shipowner for the amount set by the Court.

5 Investigations Into the Cause of the Incident

5.1 The Court in La Coruña is carrying out an investigation into the cause of the incident in the context of criminal proceedings. The Spanish Government is making an administrative enquiry to establish the cause of the grounding.

5.2 The IOPC Fund will be following these investigations through its Spanish lawyer and such technical experts as may become necessary.

6 Action to be Taken by the Executive Committee

The Executive Committee is invited to:

- (a) take note of the information contained in the present document;
- (b) give the Director such instructions concerning the handling of this incident as it may deem appropriate; and
- (c) give the Director such instructions as it may deem appropriate in respect of claims relating to:
 - (i) clean-up operations and preventive measures (paragraph 3.2);
 - (ii) damage to property (paragraph 3.3);
 - (iii) boat fishermen and shellfish gatherers (paragraph 3.4);
 - (iv) on-land fish farms and purification plants (paragraph 3.5);
 - (v) near-shore aquaculture (paragraph 3.6);
 - (vi) fish shop (paragraph 3.7);
 - (vii) shops selling windsurfing equipment and fishing gear, and beach shop, cafe and bar (paragraph 3.8);
 - (viii) car repair firm (paragraph 3.9);
 - (ix) fish porters (paragraph 3.10);
 - (x) net makers (paragraph 3.11);
 - (xi) loss as a result of being made redundant (paragraph 3.12);
 - (xii) ship agencies (paragraph 3.13);
 - (xiii) passenger ferry operator (paragraph 3.14); and
 - (xiv) demurrage for detained vessel (paragraph 3.15)