



INTERNATIONAL
OIL POLLUTION
COMPENSATION
FUND

EXECUTIVE COMMITTEE
35th session
Agenda item 3

FUND/EXC.35/5/Add.2
4 June 1993

Original: ENGLISH

INCIDENTS INVOLVING THE IOPC FUND

BRAER

Note by the Director

1 Introduction

Since document FUND/EXC.35/5/Add.1 was issued, further claims have been received which give rise to questions of principle. These claims are submitted to the Executive Committee for consideration.

2 Loss of Sales Commission

2.1 Shetland Salmon Group Ltd is a sales and marketing confederation of 20 salmon farms on Shetland. The Group is owned on a mutual basis with the profits shared amongst the group members. Two farms within the exclusion zone are members of the Shetland Salmon Group. The Group has an exclusive sales agreement with a company in Aberdeen. It has been stated that, by reducing the number of intermediaries handling the product and by selling to end users, the Group obtains higher prices than would be obtained by selling through agents.

2.2 The Group has maintained that its members are obliged to sell their entire production through the Group to the sales company. In the event that Group members sell their fish through other channels, certain charges and commissions are still payable to the Group and the sales company.

2.3 The claim submitted by Shetland Salmon Group Ltd relates to losses allegedly suffered as a result of the Group being unable to sell, and therefore to earn commission in respect of the 1991 salmon intake which was destroyed from the two above-mentioned farms within the exclusion zone which are members of the Group.

2.4 It should be noted that the price agreed with the salmon farms located in the exclusion zone for the purpose of assessing compensation for the slaughter of the 1991 salmon intake was determined

on the basis of the market price of salmon. The price thus covered any fees, charges or commissions which the salmon farms concerned would have had to pay in the normal course of their business. In the view of the Director, the price agreed covered also commissions and charges payable to Shetland Salmon Group Ltd or the sales company in Aberdeen. The Director takes the view that the loss allegedly suffered by the Group or by the company cannot be considered as damage by contamination. The Director proposes therefore that this claim should be rejected.

3 Loss of Employment

3.1 A claim has been submitted by a person employed by a salmon farm as a salmon feeder. Her employment was terminated on 29 April 1993 as a result of the 1991 salmon intake being destroyed, and in the expectation of the operator of the farm that the 1992 intake would also be destroyed. On that basis, the employer concluded that there would no longer be any fish to feed. The employee has indicated that she has made efforts to find alternative employment but without success.

3.2 The claim amounts to £10 000, which represents one year's salary plus an unspecified amount as compensation for the loss of security of employment and for the loss of job satisfaction.

3.3 This person's former employer, the operator of the salmon farm, has indicated to the IOPC Fund that he would be prepared to re-employ all staff whose employment had been terminated, in the event that the activities of his business were to increase in the future.

3.4 The Director considers that the loss suffered by the above-mentioned salmon feeder was not suffered as a direct result of contamination, but as an indirect consequence of the effects of the oil spill on the activities of the salmon farm where she was employed. The general question raised by this claim is whether an employee made redundant as a result of the activities of his employer having been affected by contamination is admissible under the Civil Liability Convention and the Fund Convention. It would be for the Executive Committee to decide whether losses of an economic kind, ie loss of income, suffered by such persons should be considered as falling within the definition of "pollution damage".

3.5 As regards the items of the claim relating to loss of job security and loss of job satisfaction, the Director takes the view that these items do not constitute a quantifiable economic loss. For this reason, the Director considers that these items should be rejected.

4 Costs Incurred In Relation to Lord Donaldson's Inquiry

4.1 The IOPC Fund has received a number of claims for compensation for costs relating to the submission of evidence to Lord Donaldson's Inquiry (cf document FUND/EXC.35/5, paragraph 5.2).

4.2 The Shetland Fishermen's Association has for example presented such a claim, maintaining that significant time and effort has been spent by the staff of the Association in the preparation and submission of evidence to the Inquiry. The Association took the view that as a professional organisation representing the interests of its members, it was appropriate that the Association should participate in the Inquiry. The Association has argued that it should be compensated for the costs incurred in assisting the Inquiry, which was established as a direct consequence of the BRAER incident.

4.3 The Director recognises that the Inquiry was set up as a consequence of the BRAER incident. It should be noted, however, that the mandate of the Inquiry is to investigate whether further measures are appropriate and feasible to protect the United Kingdom coastline from pollution from merchant shipping. In the view of the Director, the costs incurred for the preparation and submission of evidence to the Inquiry cannot be considered as "damage caused by contamination" and thus not falling within the definition of "pollution damage". The Director takes the view that claims of this kind should therefore be rejected.

5 Salmon Farm Located Outside the Exclusion Zone

5.1 A claim has been submitted by a salmon farm located outside the exclusion zone. The claimant has maintained that, as a result of the BRAER incident, there was a 10% reduction in the price of salmon and has claimed compensation for the losses incurred as a result of this price reduction. It has been alleged by the claimant that the price of Shetland salmon during the period January - March 1993 was 10% lower than the price obtained during the last three months of 1992.

5.2 The Director considers that this claim raises the same question of principle as the claim presented by the salmon farm referred to in paragraphs 3.2, 3.6 and 3.7 of document FUND/EXC.35/5/Add.1.

6 Current Situation in Respect of Claims

As at 28 May 1993, 382 claims had been received. Out of these, 244 had been approved, 4 had been rejected and 134 were being examined. The situation can be summarised as follows:

Type of Claims	Received	Approved	Rejected	Pending	Amounts Approved £
Property (houses etc)	196	102	2	92	146 482.75
Farming (advance hardship)	47	39	1	7	500 426.94
Farming services	5	5	-	-	17 112.92
Farming transport	11	11	-	-	23 255.28
Farming emergency feed (200 crofters & farmers)	20	20	-	-	419 137.86
Fishing (advance hardship)	53	41	-	12	539 441.08
Salmon Farms (advance hardship & 1991 Slaughter Payments)	18	13	-	5	7 776 228.68
Fish Farm (services)	3	3	-	-	93 647.56
Fish Processors	9	3	-	6	120 000.00
Voluntary Groups	18	7	1	10	86 766.92
Tourism	2	-	-	2	0.00
	382	244	4	134	£9 722 499.99

7 Action to be Taken by the Executive Committee

The Executive Committee is invited to:

- (a) take note of the information contained in this document; and
- (b) give the Director such instructions as it may deem appropriate in respect of claims relating to:
 - (i) loss of sales commission (paragraph 2);
 - (ii) loss of employment (paragraph 3);
 - (iii) costs incurred in relation to Lord Donaldson's Enquiry (paragraph 4); and
 - (iv) a salmon farm located outside the exclusion zone (paragraph 5).

