



INTERNATIONAL  
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COMPENSATION  
FUND

EXECUTIVE COMMITTEE  
36th session  
Agenda item 3

FUND/EXC.36/6/Add.1  
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## INCIDENTS INVOLVING THE IOPC FUND

### TAIKO MARU

Note by the Director

#### 1 Introduction

1.1 Since document FUND/EXC.36/6 was issued, certain developments have taken place in respect of the claims arising out of the TAIKO MARU incident. These developments are set out in the present document, which also contains additional information on certain issues dealt with in that document.

1.2 The IOPC Fund, the shipowner and JPIA have engaged as joint lawyer Captain Y Ogawa (Yoshida & Partners, Tokyo), and as joint surveyors Pegasus Marine Surveys & Consultants Ltd (Tokyo) and General Marine Surveyors & Co Ltd (Kobe).

1.3 The Director and the Legal Officer visited Japan from 20 to 22 September 1993 and held discussions concerning the TAIKO MARU incident with JPIA, and with the above-mentioned lawyer and surveyors.

#### 2 Affected Areas

The oil from the TAIKO MARU spread over a large area and affected some 70 kilometres of coast from Hisanohama to Hitachi. The popular tourist beaches between Toyoma and Onahama and between Obama and Otsu were most severely polluted. Some 5 000m<sup>3</sup> of oily sand had to be removed from these beaches. The fishing ports of Ena and Nakanosaku and their piers and breakwaters were heavily contaminated. The cleaning of the piers and breakwaters was mainly carried out by the use of chemicals. The sea off these two ports is used for collecting abalone and sea urchins, and this area was severely affected by the spill.

### 3 Claims Submitted

#### Clean-Up Operations and Preventive Measures

3.1 Claims relating to clean-up operations and preventive measures have been presented by 21 entities, totalling ¥858 551 665 (£5.4 million).

3.2 One contractor has received provisional payments from JPIA and the IOPC Fund in the amount of ¥30 million (£190 000) and ¥65 494 000 (£415 000) respectively, as set out in paragraph 3.1 of document FUND/EXC.36/6. Another contractor received payment from the IOPC Fund in the amount of ¥25 014 634 (£158 000) in respect of part of his claim (cf paragraph 3.3 of document FUND/EXC.36/6). An advance payment of ¥100 million (£630 000) was made by the IOPC Fund to some fishery associations (cf paragraph 3.6 of document FUND/EXC.36/6).

3.3 The IOPC Fund's surveyors have made a preliminary examination of the above-mentioned claims. They have expressed the preliminary opinion that the operations covered by the claims appear to be reasonable, that the costs appear also – with some exceptions – to be reasonable, and that the claims seem in general to be supported by sufficient documentation in the form of invoices, worksheets, notes etc. The surveyors will make a more detailed examination of all these claims.

3.4 In the Director's view, the claims referred to in paragraph 3.1 do not give rise to any questions of principle, since they relate to clean-up operations and preventive measures. The Executive Committee may wish to consider, therefore, whether it would be prepared to authorise the Director to settle claims falling within this category.

#### Fishery Claims

3.5 Claims for loss of income have been presented by ten fisheries cooperative associations on behalf of their members for a total amount of ¥1 086 019 949 (£6.8 million).

3.6 These claims relate to fishing activities of various kinds. A number of fishermen carry out boat fishing. Some fishermen use very large fixed net arrangements, varying between 200 and 800 metres in length. Most of the fishermen affected by the spill collect abalone, sea urchins and hokkigai shellfish.

3.7 Abalone, sea urchins and hokkigai shellfish are cultivated under controlled conditions before being placed on the sea bed by the fisheries associations. These species are harvested three years later. Abalone and sea urchins are harvested by divers, whereas the hokkigai shellfish are harvested from small boats using metal rakes.

3.8 The fishermen in the area are members of fisheries cooperative associations which represent their members. There are also Federations of Fisheries Cooperative Associations for the two Prefectures in question, which represent all the member associations. Fishing activities in certain areas, including farming and gathering of sea bed products, may only be carried out on the basis of fishing rights registered by the individual fishermen at the competent office in the Prefecture. Fishing rights are under Japanese law deemed to be a property right and the law relating to land is to be applied to such rights. The fishermen holding fishing rights have the exclusive right to carry out fishing activities within the area in respect of specific types of fishing activities, as specified in the registry in accordance with the applicable law.

3.9 The claims presented by the fisheries associations relate mainly to loss of income allegedly resulting from the suspension of fishing during a period of time and to future loss of income due to the fact that the oil spill allegedly destroyed a proportion of the abalone, sea urchins and hokkigai shellfish.

3.10 These claims are being examined by the surveyors. A preliminary examination revealed that the amounts claimed are in many cases excessive. Special attention will be given to the claims relating to the alleged loss due to increased mortality of certain species.

3.11 The IOPC Fund has in a number of previous cases accepted claims relating to loss of income suffered by fishermen in Japan. For this reason, the Executive Committee may wish to consider whether it would be prepared to authorise the Director to settle all claims falling within this category.

#### **4 Further Claims**

4.1 Claims in respect of clean-up operations, which are expected to be in the region of ¥80 million (£510 000), will be presented by the Maritime Safety Agency, Fukushima Prefecture and the City of Iwaki. It is not expected that these claims will give rise to any questions of principle. The Executive Committee may therefore wish to consider whether it would be prepared to authorise the Director to settle these claims.

4.2 It is possible that claims will be submitted by a power station and a chemical factory in respect of costs for cleaning their water intakes, which were contaminated. These claims are estimated at a total of some ¥10 million (£65 000). The Executive Committee may wish to consider whether it would be prepared to authorise the Director to make final settlement of these claims.

4.3 It is possible that some hotels, restaurants and other tourist related businesses located at or close to the polluted beaches will claim compensation for loss of income. It is unlikely that these claims will be significant. The Executive Committee decided, at its 35th session, that claims of this kind arising out of the HAVEN incident which fulfilled certain criteria were admissible in principle (document FUND/EXC.35/10, paragraphs 3.2.4 - 3.2.9). The Executive Committee may wish to consider whether it would be prepared to authorise the Director to settle similar claims arising out of the TAIKO MARU incident.

4.4 As mentioned in paragraph 3.11 of document FUND/EXC.36/6, claims may be submitted by ten fish processing factories in the region which allegedly incurred losses as a result of the fishing being suspended for a period of time. The Director takes the view that these claims, if any, should be submitted to the Executive Committee for consideration.

4.5 It is likely that a shop providing diving equipment to fishermen who collect sea urchins will present a claim for loss of earnings as a result of the incident. At its 35th session, the Executive Committee considered similar claims arising out of the HAVEN and AEGEAN SEA incidents and took some decisions of principle in respect of such claims (document FUND/EXC.35/10, paragraphs 3.2.4, 3.2.9 and 3.3.15). The Executive Committee may wish to consider whether it would be prepared to authorise the Director to make final settlement of this claim, in the light of the criteria thus established by the Committee.

4.6 Meisei University will submit a claim in the region of ¥3 million (£19 000) in respect of costs for cleaning two polluted yachts. The Director proposes that the Executive Committee should authorise him to settle this claim.

#### **5 Payment of Compensation**

5.1 The IOPC Fund faces claims for compensation for significant amounts in respect of the AEGEAN SEA, BRAER and TAIKO MARU incidents which occurred after the 15th session of the Assembly and could therefore not have been taken into account when, at that session, the Assembly took the decision on the levy of the 1992 annual contributions, due by 1 February 1993. The 1993 annual contributions, which will be decided by the Assembly at its 16th session, will not be due until early 1994.

5.2 The IOPC Fund will not be able to make any large payments of claims arising out of the TAIKO MARU incident before the 1993 annual contributions are received. The Director considers, however, that it is important that payments of these claims can be made promptly. After discussions between the Director and JPIA, which has already paid an amount approximately equal to the limitation amount applicable to the TAIKO MARU, JPIA has agreed to make further payments of accepted claims on the understanding that the IOPC Fund will reimburse JPIA when the 1993 annual contributions have been received. JPIA will subrogate the rights of the claimants against the IOPC Fund.

## **6 Action to be Taken by the Executive Committee**

The Executive Committee is invited to:

- (a) take note of the information contained in this document;
  - (b) consider to what extent it would be prepared to authorise the Director to settle the claims in respect of:
    - (i) clean-up operations (paragraphs 3.1-3.4);
    - (ii) losses suffered by fishermen (paragraphs 3.5-3.11);
    - (iii) Marine Safety Agency, Fukushima Prefecture and City of Iwaki (paragraph 4.1);
    - (iv) cleaning of the water intakes of a power station and a chemical factory (paragraph 4.2);
    - (v) hotels, restaurants and other tourist related businesses (paragraph 4.3);
    - (vi) shop providing diving equipment (paragraph 4.5);
    - (vii) Meisei University for cleaning of two yachts (paragraph 4.6); and
  - (c) give the Director such instructions in respect of his handling of this incident as the Committee may deem appropriate.
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