INTERNATIONAL
OIL POLLUTION
COMPENSATION
FUND

EXECUTIVE COMMITTEE
39th session
Agenda item 3

FUND/EXC.39/4/Add.2
4 May 1994

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INCIDENTS INVOLVING THE IOPC FUND

BRAER

Note by the Director

1 Norwegian Salmon Trader

1.1 A claim for £138 644 has been presented by a Norwegian salmon trader (a partnership located near Oslo) which is in effect a sales office for the total production of two companies operating salmon farms located within the exclusion zone. The claimant receives a commission of 3% of the sales actually effected. The claimant has stated that its sales in 1991 and 1992 in respect of these two farms amounted to 88% and 90% of its total turnover, respectively. The claim relates to lost commission due to not having been able to sell the salmon from those farms which were destroyed as a result of the BRAER incident. It should be noted that there is no formal link of ownership or directors between the claimant and the above-mentioned salmon farming companies.

1.2 The Director takes the view that this claim does not fulfil the criteria for admissibility of claims for pure economic loss laid down by the Executive Committee, in particular since the claimant's sales business cannot be considered as an integral part of the economic activity of the area affected by the oil spill from the BRAER. He proposes, therefore, that this claim should be rejected.

2 Landcatch Ltd

2.1 Landcatch Ltd has claimed compensation in the amount of £81 295 for an alleged loss of sales commission due to not having been able to sell a certain quantity of the 1991 salmon intake farmed within the exclusion zone which had been destroyed as a result of the BRAER incident. The salmon in question was owned by BP Nutrition (UK) Ltd and reared under contract at a site within the exclusion zone by Shetland Sea Farms Ltd. Compensation for the destroyed fish was paid to BP Nutrition (UK) Ltd. As mentioned in document FUND.EXC.39/4/Add.1, Landcatch Ltd is based on mainland Scotland.

2.2 In the Director's view, Landcatch Ltd's business activity to sell salmon reared within the exclusion zone cannot be considered as an integral part of the economic activity of the area affected by the oil spill from the BRAER. The Director proposes, therefore, that this claim should be rejected.

3 Scotfish Supplies Ltd

3.1 A company in Glasgow on mainland Scotland, Scotfish Supplies Ltd, has submitted a claim for £128 148 relating to alleged loss of sales commission due to not having been able to sell a certain quantity of the 1991 salmon intake farmed within the exclusion zone which had been destroyed as a result of the BRAER incident. The salmon in question was owned by BP Nutrition (UK) Ltd and reared under contract at a site within the exclusion zone operated by Shetland Sea Farms Ltd. Compensation for the destroyed fish was paid to BP Nutrition (UK) Ltd.

3.2 Both Scotfish Supplies Ltd and Shetland Sea Farms Ltd are members of a group of aquaculture companies with a common majority share holding. A single individual who is a director of all the companies within the group controls the group (cf document FUND/EXC.39/4/Add.1, paragraph 3.2).

3.3 Although Scotfish Supplies Ltd is closely linked with the company on Shetland that reared the fish which would have been sold, the claimant's business cannot be considered, in the Director's view, as an integral part of the economic activity of the area affected by the oil spill from the BRAER. The Director proposes, therefore, that this claim should be rejected.

4 Punds Voe Salmon (George L Williamson)

4.1 A claim has been presented by Mr George L Williamson for £17 887 relating to alleged loss of income due to not having been able to harvest, on a contractual basis, certain quantities of the 1992 salmon intake from two salmon farms located within the exclusion zone which had been destroyed as a result of the BRAER incident.

4.2 The claimant carries out salmon farming within the exclusion zone. He has maintained that he normally also undertakes harvesting, on a contractual basis, of salmon reared at other farms within the exclusion zone. He has produced letters from two farms within the zone indicating that he would normally, but for the BRAER incident, have harvested the 1992 salmon kept at their farms.

4.3 It should be noted that the agreements between the IOPC Fund and the salmon farmers operating within the exclusion zone relating to the destruction of the 1992 intake of salmon contain a provision to the effect that the price used for the calculation of compensation covers all costs which would normally have been incurred in rearing, harvesting and first sale of the fish. The claimant has requested that the two above-mentioned salmon farmers whose 1992 fish he would allegedly have harvested should compensate him for his loss of income, but they have refused to do so.

4.4 In the Director's view the claimant has been prevented from harvesting 1992 intake salmon within the exclusion zone. For this reason, and since his harvesting activity should be considered as an integral part of the fishing activity of the area affected by the oil spill from the BRAER, the Director takes the view that the loss suffered by him, if proven, should be considered as loss caused by contamination. Reference is made to some other claims previously accepted by the Executive Committee in the context of the BRAER incident, namely that of a diver who was unable to carry out his normal underwater maintenance work on nets and cages of salmon farms due to the oil spill since the cages had not been cleared of salmon at the usual time and that of a collector of offal from a fish processing plant within the exclusion zone which had not been operating since the zone was imposed (document FUND/EXC.36/10, paragraphs 3.4.15 (a) and (b) and 3.4.16). For these reasons, the Director proposes that Mr Williamson's claim should be accepted in principle, subject to the claimant substantiating the loss actually sustained.

5 Shetland Salmon Group

5.1 At its 35th session, the Executive Committee examined a claim for £42 205 submitted by Shetland Salmon Group Ltd, a sales and marketing confederation of 20 salmon farms on Shetland (document FUND/EXC.35/10, paragraphs 3.4.32 and 3.4.33).

5.2 It was noted at that session that the Group had an exclusive sales agreement with a company in Aberdeen, that the members of the Group were obliged to sell their entire production through the Group to the sales company, and that the Group maintained that certain charges and commissions were still payable to the Group and the sales company in the event that the members sold their fish through other channels. It was also noted that the claim related to losses allegedly suffered as a result of the Group being unable to sell, and therefore to earn commission in respect of the 1991 intake of salmon from the two farms within the exclusion zone, since this salmon intake was destroyed.

5.3 The Executive Committee took note of the fact that the price agreed with the salmon farms located within the exclusion zone for the purpose of assessing compensation for the slaughter of the 1991 salmon intake had been determined on the basis of the market price of salmon, and that the price thus covered any fees, charges or commissions which the salmon farms would have had to pay in the normal course of their business, including charges and commissions payable to the Shetland Salmon Group or the above-mentioned sales company. In the view of the Executive Committee the losses allegedly suffered by the Group or by the sales company could not be considered as damage by contamination. The Committee decided that the claim should therefore be rejected.

5.4 When this claim was first submitted it was indicated that it was a claim for lost sales commission. The claim has been resubmitted with a more detailed explanation of the company's activities. It has been emphasised that the Shetland Salmon Group is essentially a non-profit making organisation and covers its expenses by way of a levy deducted from members invoiced sales. The Group has mentioned that as the volume of sales can be forecasted fairly accurately in advance (it is known how many smolts were introduced) an appropriate percentage is fixed to cover operating costs. The Group has stated that, as a result of the BRAER incident, the Group's income has been reduced as two of the member's farms are located within the exclusion zone. The point has been made that the 1991 salmon intake of these farms has not been sold through the Group, although the Group has had to pay the sales company its normal fees based on the total quantity expected to have been sold. According to the Group, the shortfall to the Group's income will have to be made good by all the members by way of a separate levy.

5.5 The Director takes the view that the new information presented by the Shetland Salmon Group does not alter the basis for the Executive Committee's decision at its 35th session, ie that the losses suffered by the Group could not be considered as damage by contamination, but by the decision of two of its members not to pay their levy. For this reason, the Director takes the view that the decision to reject the claim should be maintained.

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; and

(b) give the Director such instructions as it may deem appropriate in respect of the claims presented by:

(i) Norwegian Salmon Trader (paragraph 1);
(ii) Landcatch Ltd (paragraph 2);
(iii) Scotfish Supplies Ltd (paragraph 3);
(iv) Punds Voe Salmon (George L Williamson) (paragraph 4); and
(v) Shetland Salmon Group (paragraph 5).