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INCIDENTS INVOLVING THE IOPC FUND

TAIKO MARU

Note by the Director

1 The Incident

On 31 May 1993, the Japanese coastal tanker TAIKO MARU (699 GRT), carrying 2 062 tonnes of heavy fuel oil as cargo, collided with the Japanese cargo ship KENSHO MARU N°3 (499 GRT) some five kilometres off Shioyazaki, Fukushima (Japan). As a result, two cargo tanks of the TAIKO MARU were ruptured and some 520 tonnes of oil escaped into the sea. The oil remaining on board the TAIKO MARU was transferred to another vessel.

2 Clean-up Operations

2.1 The shipowner and his P & I insurer, the Japan Shipowners' Mutual Protection and Indemnity Association (JPIA), engaged the services of the Japan Maritime Disaster Prevention Center (JMDPC) to carry out clean-up operations in accordance with the directives given by the Maritime Safety Agency. JMDPC engaged a number of contractors to carry out these operations. The shipowner set up a response centre, and he also engaged some contractors to respond to the spill. The operations were monitored by a surveyor employed jointly by JPIA and the IOPC Fund.

2.2 A number of boats were involved in the clean-up operations, but these operations were not effective due to dense fog. 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 along this part of the coast between Obama and Otsu were polluted and were closed for swimming during the period of 20-30 July 1993. Some 5 000m³ 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 carried out mainly 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.

2.3 On shore clean-up operations were carried out by local contractors and fishermen under contract with the JMDPC. The operations consisted of the manual and mechanical removal of stranded oil and contaminated beach sediments. Collected oil and oily waste was transported to a disposal factory for incineration. Most on shore clean-up was completed by mid June 1993.

2.4 Considerable quantities of oil sank to the bottom of the sea. Removal of the submerged oil was carried out by a vessel specially equipped for this purpose. On 27 August 1993, a typhoon caused some of the sunken oil to resurface at various places, and this oil threatened to cause further contamination of the coast. Since clean-up operations were undertaken immediately, however, the pollution damage caused by this oil was minimal.

3 Impact on Fishing Activities

3.1 The fishermen in the area are members of fishery co-operative associations which represent their members. There are also Federations of Fishery Co-operative Associations for the two Prefectures affected by the spill, which represent all the member associations. Fishing activities in certain areas, including the farming and gathering of seabed products, may be carried out only on the basis of fishing rights registered by the individual fishermen at the competent office in the Prefecture. Under Japanese law, fishing rights are deemed to be a property right and the law relating to land is to be applied to such rights. The fishermen who hold fishing rights are entitled to carry out specific types of fishing activities within a certain area, as specified in the registry.

3.2 A number of fishermen carry out boat fishing in the affected area. The oil caused damage to fishing nets and led to the disruption of fishing activities. Four fixed fishing nets, varying between 200 and 800 metres in length, were contaminated, and the fishermen were prevented from fishing until 25 June when the nets had been cleaned.

3.3 Most of the fishermen affected by the spill collect abalone, sea urchins and hokkigai shellfish. These species are cultivated under controlled conditions before being placed on the seabed by the fishery associations. Abalone and sea urchins are harvested by divers, whereas the hokkigai shellfish are harvested from small boats using metal rakes.

3.4 Soon after the incident a committee composed of representatives of the fishery associations, the local authorities and the health authorities decided to suspend the catching of young sardines and abalone and the gathering of sea urchins and shellfish in the affected area. These fishing activities were partly resumed by the end of June or early in July 1993. The lifting of the suspension in respect of hokkigai shellfish was not approved by the respective local health authorities until 6 and 12 August 1993, after analysis of samples showed that there was no remaining contamination of shellfish which previously had been tainted.

4 Claims for Compensation

4.1 Two contractors who had carried out clean-up operations under contract with the JMDPC and the shipowner's response centre, received provisional payments from JPIA and the IOPC Fund in July and August 1993 for ¥95 494 000 (£630 470) and ¥25 014 634 (£165 228), respectively. An advance payment of ¥100 million (£660 050) was made by the IOPC Fund to some fishery associations in respect of participation by over 7 000 of their members in the clean-up operations.

4.2 At its 36th session, the Executive Committee authorised the Director to make final settlements of claims, if presented by the following entities, except to the extent that questions of principle arose in respect of which the Committee had not previously taken a decision (document FUND/EXC.36/10, paragraph 3.5.7) :

- (a) Maritime Safety Agency, Fukushima Prefecture and City of Iwaki in respect of clean-up operations;

- (b) a power station and a chemical factory in respect of costs for cleaning their water intakes;
- (c) hotels, restaurants and other tourist related businesses for loss of income;
- (d) a shop providing diving equipment in respect of loss of income; and
- (e) Meisei University for cleaning two yachts.

4.3 The Executive Committee decided that claims presented by fish processing factories, if any, should be submitted to the Committee for consideration (document FUND/EXC.36/10, paragraph 3.5.8).

4.4 A claim in respect of clean-up operations was presented by the Maritime Safety Agency for ¥4 552 431 (£28 996). This claim was accepted in full by the Director.

4.5 Claims relating to clean-up operations and preventive measures were presented by 25 entities, totalling ¥860 million (£5.6 million), including the costs of the participation of the fishery associations in the clean-up operations (¥172 million). These claims were settled in March 1994 at ¥734 523 078 (£4.8 million) by the Director.

4.6 The operator of a power station submitted a claim for ¥3 706 328 (£24 200) in respect of the cost of cleaning water intakes which had been contaminated. This claim was accepted in full by the Director. Claims in respect of clean-up costs were presented by Fukushima Prefecture and by Iwaki Municipality for ¥56 883 500 (£373 000). The claim by Fukushima Prefecture was settled at ¥25 278 775 (£166 636), whereas the claim by Iwaki Municipality was accepted in full by the Director. A claim was also received in respect of cleaning of oil stained yachts, totalling ¥2 611 860 (£16 636). This claim was accepted in full by the Director.

4.7 Claims for loss of income were presented by ten fishery co-operative associations on behalf of their members for a total amount of ¥1 086 million (£7.1 million). These claims related mainly to loss of income allegedly resulting from the suspension of fishing 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. After lengthy negotiations, these claims were settled in March 1994 at ¥345 391 509 (£2 284 335), mainly for loss of income due to the suspension of fishing. The assessment of these claims was made on the basis of a comparison between the actual income during 1993 and the average of the catches during the years 1990-1992, as evidenced by catch records and accounting books produced by the claimants. The Director did not accept any item relating to future loss of income due to allegedly destroyed products.

4.8 No claims have been presented in respect of hotels, restaurants and other tourist related businesses, or from fish processing factories.

4.9 All claims presented so far were settled and paid by 6 April 1994 for a total amount of ¥1 122 390 175 (£7 565 299). It is very unlikely that there will be any further claims for compensation arising out of this incident.

4.10 The limitation amount applicable to the TAIKO MARU is estimated at ¥29 205 120 (£191 500). The limitation proceedings have not yet been commenced.

5 Investigation into the Cause of the Incident

5.1 In a judgment rendered on 24 March 1994, the competent Marine Court found that the collision was caused by improper navigation on the part of both vessels in the restricted visibility, and that this was a result of the two masters not having given proper instructions to the respective crew.

5.2 The Director is examining whether the IOPC Fund should take recourse action against the owner of the KENSHO MARU N°3. In addition, the Director will investigate whether it could be considered that there was any fault or privity on the part of the owner of the TAIKO MARU which would deprive him of the right to limit his liability.

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 issues set out in paragraphs 5.1-5.2 above.
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