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OIL POLLUTION
COMPENSATION
FUND

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Agenda item 3

FUND/EXC.40/6
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INCIDENTS INVOLVING THE IOPC FUND

BRAER

Note by the Director

1 The Incident

1.1 On the morning of 5 January 1993, the Liberian tanker BRAER (44 989 GRT), laden with approximately 84 000 tonnes of North Sea crude oil, suffered machinery failure south of the Shetland Islands (United Kingdom). The vessel grounded at Garths Ness, and oil began to escape almost immediately thereafter. All crew members were rescued by helicopter before the grounding.

1.2 Due to the heavy seas, most of the spilt oil dispersed naturally, and the impact on the shoreline was limited. Strong winds blew oil spray ashore and this oil affected farmland and property close to the coast.

1.3 Some oil moved towards the northwest and affected the western coast of Shetland up to some 30 kilometres from the grounding site. The heavy weather made defensive booming impractical, nor was it feasible to take any measures to protect the salmon farms along the west coast, apart from deploying sorbent booms around some salmon cages.

1.4 On 8 January 1993, the United Kingdom Government imposed a fishing exclusion zone covering an area along the west coast of Shetland which was affected by the oil, which prevented the capture, harvest and sale of all fish and shellfish species from within the zone. This zone was extended on 27 January. The ban on whitefish was lifted on 23 April 1993, and the ban on salmon which was placed into cages within the zone in the spring of 1993 was lifted on 8 December 1993. The ban remains in force for shellfish.

2 Braer Claims Office

2.1 On 8 January 1993 the shipowner's P & I insurer (Assuranceföreningen Skuld (Skuld Club)) and the IOPC Fund established a joint office in Lerwick (Shetland), known as the BRAER Claims Office, to assist claimants in their presentation of claims and to handle claims which are submitted.

2.2 The Committee was informed at its 39th session that the Braer Claims Office in Lerwick was to close at the end of May 1994, in view of the fact that the major part of the claims had been settled and paid, and after consultation with the United Kingdom Government and the Shetland Islands Council. The Braer Claims Office was relocated to the offices of Seaforth Marine Services Ltd in Aberdeen. A small office has been maintained in Lerwick where cheques may be collected and receipts signed.

2.3 Claims are being submitted to the office in Aberdeen and staff of the Braer Claims Office travel to Shetland when required.

3 Claims for Compensation

3.1 As at 20 September 1994, some 1 126 claims had been approved, wholly or partly, for a total amount of approximately £33 million.

3.2 The present document contains information on the claims and groups of claims in respect of which there have been significant developments since the Executive Committee's 39th session. As for other claims, reference is made to document FUND/EXC.38/5.

4 Salmon Farms

1992 Salmon Intake

4.1 The Executive Committee was informed, at its 39th session, that agreements had been reached for the outright slaughter of the 1992 salmon intake with all salmon farms within the exclusion zone. The conditions of these agreements are outlined in paragraph 6.6 of document FUND/EXC.38/5. The disposal of the 1992 salmon intake within the exclusion zone was completed on 24 March 1994.

4.2 Final settlement has been made with all but two of the salmon farms in respect of the slaughter and disposal of the 1992 salmon intake inside the exclusion zone. Total payments to date amount to £11 424 138, and it is expected that further payments in the region of £1.1 million will be made in the near future.

4.3 It should be noted that compensation was paid in respect of the 1991 intake for a total amount of £7 175 470.

5 Tourism

5.1 Shetland Islands Tourism, an organisation of tourism related businesses, has submitted a proposal for a marketing campaign to counteract the negative effect of the BRAER incident on tourism. It has been maintained that, while the reduction in the number of tourists to the island during 1993 has been partly offset by the number of business visitors generated by the BRAER incident, the underlying number of tourists has declined. Shetland Islands Tourism has estimated a loss of tourist revenue of approximately £2.1 million for 1993. The claimant has asserted that, due to the declining number of tourists and reduced number of BRAER related visitors, it is expected that the tourist industry will suffer a loss in the region of £3.8 million during 1994.

5.2 The IOPC Fund and the Skuld Club have engaged a company of specialist tourism advisers to make an assessment of whether or not the Shetland Islands tourist industry had suffered economic

losses during 1993 as a result of the incident, and whether it is likely that further losses will be sustained in the future if special marketing activities are not carried out.

5.3 The report of the tourism advisers and the tourism claims will be dealt with in an addendum to this document.

6 Loss of Income Suffered by Fish Producers Due to Reduction in Prices

Whitefish

6.1 Whitefish producers on Shetland have maintained that following the BRAER incident there was a loss of confidence on the part of whitefish buyers which caused a drop in the first sale price and a reduced demand. They have indicated that they intend to claim compensation for the losses incurred as a result thereof. The claimants have stated that, in their view, the quantum of the losses should be assessed by comparing the average monthly prices of fish sold at market on Shetland with the corresponding prices paid at Aberdeen and Peterhead in Scotland. Statistical models have been developed by the claimants to predict for each species what the price should have been had the incident not occurred.

6.2 The technical experts appointed by the IOPC Fund have taken the view that the method used by the claimants was in principle reasonable, except that the method does not identify the "BRAER effect" as distinct from all other prevailing market influences. The IOPC Fund's experts have used identical data to that used by the claimants but applied different assumptions to the same statistical methods in order to take account of other market influencing factors. Agreement has been reached between the IOPC Fund and representatives of the fishermen on the results of the analysis of the price information for the period up to October 1993, for the seven most important species, in terms of quantities landed, out of the eight species under consideration.

6.3 The IOPC Fund's experts and those of the claimants have so far not been able to determine the extent of the price damage in respect of haddock as a result of the BRAER incident. Discussions are, however, continuing.

Salmon

6.4 Shetland Salmon Farmers' Association has maintained that the price of Shetland farmed salmon sold from outside the exclusion zone, both on the domestic and export market, is still depressed as a result of the incident. A number of claims have been presented by salmon farmers operating outside the exclusion zone for losses resulting from such price depression.

6.5 The data provided by the Association has been analysed by the IOPC Fund's experts. In the light of the results of this analysis, the Director accepts that there was a fall in the relative price of Shetland salmon during the months immediately following the incident. The quantum and duration of the price depression have been analysed by the IOPC Fund's experts, and on the basis of the results of this analysis, the Director has approved payments amounting to £311 592.82 in respect of claims from 27 salmon farms located outside the exclusion zone. The claimants do not accept however that the IOPC Fund's position reflects the full extent of the damage that their clients have suffered. The discussions are continuing between the IOPC Fund's experts and those of the claimants in respect of this matter.

7 Shell Fishermen

7.1 Compensation has been paid to a number of shell fishermen who have been unable to operate within the exclusion zone and who are unable for various reasons to operate outside the zone.

7.2 The Shetland Fishermen's Association has informed the IOPC Fund that the areas outside the exclusion zone have been overfished and has maintained that the scallop stocks have been particularly over-exploited. The Association has suggested that the prospect of being able to claim compensation may be encouraging the expansion of the fleet. Pursuant to a decision taken at a meeting of its Committee on 6 August 1994, the Association made a formal request to the IOPC Fund that the Fund should not accept claims for compensation in respect of shellfishing boats which had joined the Shetland fleet after the date of the meeting, ie 6 August 1994. The Association has expressed the view that this would afford some protection to the shellfish stocks, particularly scallops, around the Shetland Islands.

7.3 In August 1994 after consultation with the Skuld Club, fishery experts appointed by the IOPC Fund and the Fund's lawyers, the Director replied to the request of the Shetland Fishermen's Association. The Director acknowledged that the discontinuance of compensation payments to owners of some shellfishing boats which joined the fleet in recent months may have the effect of reducing the alleged "over-exploitation" of the shellfish stocks outside the exclusion zone, as the Association had proposed. Further, the Director stated that he was of the view that it would not be unreasonable to choose a cut-off date from when it was clear that the exclusion zone would remain in force for some considerable time. The Director, therefore, decided that compensation should not be paid to shell fishermen whose boats had joined the Shetland fleet after the anniversary of the incident, ie 5 January 1994.

8 Fish Processors Claims for Loss of Supply of Fish

8.1 Claims have been submitted by fish processors relating to economic loss as a result of their having been deprived of a supply of fish from the exclusion zone. At its 34th session, the Executive Committee recognised that it could be argued that the losses suffered by the fish processors, although caused only indirectly by the contamination, were a foreseeable consequence of a major oil spill in the area. The Committee took the view that the losses suffered by these fish processors as a result of their having been deprived of a supply of fish from the exclusion zone should be considered as damage caused by contamination (document FUND/EXC.34/9, paragraph 3.3.19).

8.2 Compensation has so far been paid in respect of 15 claims of the type referred to in paragraph 8.1 above from fish processors for a total amount of £2 430 830.86.

9 Herring Roe

9.1 The roe in herring generates substantial income to Shetland when herring are exported whole to Japan where the roe is considered a delicacy.

9.2 According to data made available to the IOPC Fund, there has been a significant reduction in the catches of herring roe in 1993, compared with preceding years. The Shetland Fishermen's Association has maintained that the failure of the 1993 herring roe fishery was attributable to the BRAER incident.

9.3 Some fishermen have maintained that BRAER oil had settled on the habitual spawning grounds of herring in the waters around Shetland and that this might jeopardise the 1994 herring roe fishery which would begin towards the end of September. After discussions with technical experts the Director commissioned a sediment sampling programme in the areas identified by local fishermen as the normal herring spawning ground. The samples collected during the survey were frozen and sent to the Torry Food Science Laboratory (Aberdeen) for analysis. It is expected that the results will be available in October 1994.

10 Smolt Suppliers

10.1 At its 39th session, the Executive Committee considered claims which had been submitted by three companies (Landcatch Ltd, Kinloch Dampn Ltd and Shetland Sea Farms Ltd) alleging that they had suffered losses as a result of the BRAER incident interrupting the normal stocking of salmon smolt in Shetland waters (document FUND/EXC.39/4/Add.1). The claims were rejected by the Committee (document FUND/EXC.39/8, paragraphs 3.3.14-3.3.23).

10.2 The three companies have requested that their claims be re-examined by the Executive Committee and have presented further information in support of their claims. These claims will be dealt with in an addendum to the present document.

11 P&O Scottish Ferries Ltd

11.1 A claim has been submitted for £902 561 by P&O Scottish Ferries Ltd, the only ferry company operating between Shetland and the United Kingdom mainland (Aberdeen). The claim is for loss of income as a result of a reduction in the number of tourists visiting the Islands and a reduction in the volume of freight. The claim is at present under examination.

12 United Kingdom Government

12.1 In May 1994, the United Kingdom Government submitted a claim for compensation in respect of costs incurred for clean-up operations at sea and on shore, for disposal of oily waste, for monitoring the operations carried out for the purpose of salvaging ship and cargo, and for the cost of carrying out tests on water to establish the extent of hydrocarbon content. The claim is for a total amount of £2 642 310.

12.2 The Government's claim is being examined by the IOPC Fund and the Skuld Club.

13 Shetland Islands Council

Shetland Islands Council submitted an interim claim in the amount of £1 083 000 in March 1994, and a final claim was presented in June 1994 for a further amount of £417 736.64, making a total claim amount of £1 501 444.14. The claim, which covers the costs allegedly incurred by the Council in various respects as a result of the incident, is being examined by the IOPC Fund Secretariat.

14 Impact Assessment Studies

14.1 Following the incident, the Shetland Islands Council commissioned experts to undertake studies of the impact of the incident on various aspects of Shetland life, including agriculture, the environment, the seafood industries, tourism and transport. The reports of these investigations were submitted to the IOPC Fund in March 1994.

14.2 The reports are being studied by the IOPC Fund Secretariat with the assistance of various experts.

14.3 The costs of the studies have been included in the claim of the Shetland Islands Council, together with the cost of the Council's Impact Assessment Team. The total amount claimed in this respect is £376 000.

15 Investigations into the Cause of the Incident

15.1 The United Kingdom Government has carried out an investigation into the cause of the incident through the Marine Accident Investigation Branch of the Department of Transport. A similar investigation has been carried out on behalf of the Government of Liberia through the Commissioner of Maritime Affairs.

15.2 The reports of these investigations were published on 20 January 1994. The Director is examining these reports with the assistance of the IOPC Fund's Scottish lawyer and technical experts.

16 Action to be Taken by the Executive Committee

The Executive Committee is invited to take note of the information contained in the present document.
