



INTERNATIONAL
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COMPENSATION
FUND

EXECUTIVE COMMITTEE
42nd session
Agenda item 3

FUND/EXC.42/5/Add.1
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INCIDENTS INVOLVING THE IOPC FUND

BRAER

Note by the Director

1 Etrick Trout Company Ltd & Shetland Sea Farms Ltd

1.1 At its 39th session, the Committee examined a claim for £2 004 867 presented by Shetland Sea Farms Ltd, a company farming salmon within the exclusion zone. It was noted that this company had stated that it had been planning to place smolt in the cages in January and March 1993, that it was contracted to buy smolt at a predetermined price and that it fulfilled the contract but, due to the contamination of the farm, disposed of the fish elsewhere at a loss, and that the claimant also had suffered loss of profit through not growing these fish.

1.2 It was noted that the Shetland Sea Farms Ltd was supplied with smolt by a company on mainland Scotland, that both these companies were members of a group of aquaculture companies with a common majority share holding, and that the company to which the smolt were eventually sold at 50% of the original purchase price also belonged to the same group. It was also noted that the group was controlled by a single individual who was a director of all the companies within the group.

1.3 The Executive Committee considered that, in view of the close link between the three companies involved, it had not been shown that the group of companies had suffered any economic loss in relation to the smolt in question. For this reason, the Executive Committee decided to reject the claim presented by Shetland Sea Farms Ltd (document FUND/EXC.39/8, paragraph 3.2.23).

1.4 Following the 39th session of the Executive Committee, Etrick Trout Company Ltd, the parent company in the group, has submitted further documentation alleging that the group of companies as a whole suffered a loss as a result of the incident amounting to £1 513 020.

1.5 The following information regarding the companies belonging to the Etrick Trout Company Ltd should be noted:

Etrick Trout Company Ltd	Trout farming in mainland Scotland. Company has 8 000 shares, 7 999 of which are held by one individual.
Shetland Sea Farms Ltd	Salmon farming within exclusion zone. 100% of the shares owned by Etrick Trout Company Ltd.
Orkney Sea Farms Ltd	Salmon farming in Orkney. 100% of the shares owned by Etrick Trout Company Ltd.
Summer Isles Salmon Ltd	Salmon farming on the west coast of Scotland. 100% of the shares owned by Etrick Trout Company Ltd.
Terregles Salmon Company Ltd	Salmon smolt production in mainland Scotland. At the time of the <i>Braer</i> incident, 85% of the shares were owned by Etrick Trout Company Ltd whose shareholding has increased since.
Scottish Supplies Ltd	Salmon trading, Scotland. 76% of the shares owned by Etrick Trout Company Ltd.

1.6 Shetland Sea Farms Ltd, which operates a number of sites within the exclusion zone, has produced a written agreement according to which Terregles Salmon Company Ltd was to buy 200 000 smolts in January 1993 and 400 000 in March 1993. It has been alleged that as a result of the *Braer* incident the intake of smolts into Shetland Sea Farms Ltd's sites could not take place in January and March 1993 as allegedly planned. It has been argued that there was only a very limited period during which the smolt could be transferred to sea water. It has also been stated that the majority of the smolt scheduled to go to Shetland Sea Farms Ltd were eventually transferred to Summer Isles Salmon Ltd, and the remainder either died or were given away.

1.7 It has been alleged that overall effects of these events were to cause losses through:

- (a) mortalities at a hatchery operated by Terregles Salmon Company Ltd on mainland Scotland due to the smolts being held for longer than planned;
- (b) donation of some surplus smolts to a river authority;
- (c) higher than normal mortalities due to overcrowding at Summer Isles Salmon Ltd's farm on the west coast of Scotland;
- (d) loss of production as the fish had to be harvested earlier than normal due to overcrowding at Summer Isles Salmon Ltd;
- (e) higher unit production costs at Summer Isles Salmon Ltd compared to Shetland Sea Farms Ltd; and
- (f) loss of profit on reduced production arising from (a), (b), (c) and (d) above.

1.8 The claim was submitted to the Executive Committee for consideration at its 40th session. In view of the complexity of the legal and factual situation, the Committee instructed the Director to investigate the various aspects of this claim and report to the Committee at a later session (document FUND/EXC.40/10, paragraph 3.5.17).

1.9 Since the 40th session of the Committee, the Director has examined further the claim under consideration with the assistance of the IOPC Fund's lawyer and experts. It must be recognised that the legal and factual situation is very complicated. There are still a number of uncertainties which have to be examined in order to enable the Director to make a proper assessment of this claim.

1.10 The Director has made the following assessment of the situation. With respect to the alleged losses arising as a result of the planned intake of smolt in January 1993 not taking place at Shetland Sea Farms Ltd's site within the exclusion zone, the Director is of the opinion that it would not have been prudent to introduce salmon smolts at this time at that site due to elevated hydrocarbon concentrations in the water column. As for the planned March 1993 intake, the IOPC Fund and the Skuld Club wrote to the Shetland Salmon Farmers Association on 5 February 1993 informing them that it would be unreasonable not to stock 1993 salmon smolts as normal from that date, and a copy of this letter was sent to Shetland Sea Farms Ltd. The same point was made in a letter dated 4 March 1993 to all salmon farmers within the zone. It has been alleged that as a result of the destruction arrangements for the 1991 generation salmon not having been implemented at Shetland Sea Farms Ltd's sites until late April 1993, there was insufficient cage space available at these sites in which to place the planned intake of smolt in March 1993.

1.11 In the Director's view the activities of Shetland Sea Farms Ltd form an integral part of the economic activity of the area affected by the *Braer* incident. The Director takes the view that economic loss suffered by that company as a result of the contamination caused by the *Braer* incident is therefore in principle admissible for compensation. It should be noted that Shetland Sea Farms Ltd, as any other claimant, had an obligation to mitigate its loss. The Director considers that, in the particular circumstances of this case, account should also be taken of any benefits derived by other companies in the same group, consequent upon that obligation.

1.12 In the light of the considerations set out above, the Director proposes that he be authorised to enter into negotiations with Shetland Sea Farms Ltd and to settle this claim on the basis of the criteria set out in paragraph 1.11.

2 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 claim under consideration.
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