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## INCIDENTS INVOLVING THE IOPC FUND

### BRAER

Note by the Director

#### **1**     Introduction

1.1     In the morning of 5 January 1993, the Liberian tanker *Braer* (44 989 GRT), laden with approximately 84 000 tonnes of North Sea crude oil, grounded at Garths Ness, Shetland (United Kingdom), and oil began to spill almost immediately. All crew members were rescued by helicopter before the grounding.

1.2     Heavy weather lasted from the time of the incident almost without interruption until 24 January 1993, resulting in the ship breaking up and the cargo and bunkers spilling into the sea. Due to the heavy seas, most of the spilt oil dispersed naturally, and the impact on the shoreline was limited. Oil spray blown ashore by strong winds affected farmland and houses close to the coast.

1.3     On 8 January 1993, the United Kingdom Government imposed an exclusion zone covering an area along the west coast of Shetland which was affected by the oil, prohibiting the capture, harvest and sale of all fish and shellfish species from within the zone. The zone was extended on 27 January. The ban on whitefish was lifted on 23 April 1993, and that on salmon placed into cages within the zone in the spring of 1993 was lifted on 8 December 1993. The ban on certain species of shellfish, namely whelks, lobsters, crabs and velvet crabs, was lifted on 30 September 1994 but remained in force for other species of shellfish. On 9 February 1995 the ban was lifted in respect of all other species of shellfish, with the exception of mussels and Norway lobsters for which the ban remains in force.

1.4     The present document sets out the general situation as regards the settlement of claims and indicates the developments which have taken place since the Executive Committee's 43rd session. The document focuses on those claims that are still pending. Several claims involving questions of principle are submitted to the Committee for consideration.

## **2      Braer Claims Office**

At the end of May 1994, the Braer Claims Office was relocated from Shetland to Aberdeen, since the majority of the claims had been settled and paid. The office in Aberdeen was closed on 14 July 1995, and all claims are now handled by the IOPC Fund Secretariat in London.

## **3      Claims for compensation**

### **3.1      General situation**

As at 3 October 1995, some 1 500 claims for compensation had been paid, wholly or partly, for a total amount of approximately £46 million.

### **3.2      Salmon farms; destruction of salmon**

3.2.1 The destruction of the 1991 salmon intake reared at salmon farms within the exclusion zone, which was completed in May 1993, resulted in compensation payments totalling £7 175 470.

3.2.2 The destruction of the 1992 salmon intake within the exclusion zone was completed in March 1994. Final settlement has been made with all but one of the salmon farms. Payments to date total £13 043 629. The IOPC Fund expects to make a further payment in the region of £40 000 to the remaining farm.

3.2.3 Claims for damage sustained by two salmon farmers other than for destruction of contaminated stock have been examined by the IOPC Fund's experts. These claims relate to loss of growth and increased mortalities that occurred between the time of the incident and the destruction. One of the claims also covers loss of profit through being unable to process salmon in that farm's integral processing plant as a result of the destruction of the farm's stock. Compensation for these losses is expected to amount to some £570 000.

### **3.3      Alleged loss of income suffered by salmon farmers due to reduction in prices**

3.3.1 Shetland salmon farmers have maintained that the price of Shetland farmed salmon sold from outside the exclusion zone, on both the domestic and the export market, was depressed for an extended period of time as a result of the incident. Salmon farmers operating outside the exclusion zone have presented claims for losses resulting from such price depression. On the basis of the analysis presented by the claimants, it appears that the aggregate amount of the claims would be in the region of £2.0 million for losses up to the end of the first quarter of 1994 when prices were considered by the claimants to have returned to normal.

3.3.2 The IOPC Fund's experts have analysed the data provided by the claimants and other information relating to the salmon trade. In the light of the results of this analysis, the Director has accepted that there was a fall in the relative price of Shetland salmon during the months immediately following the *Braer* incident. The extent and duration of the price depression have been analysed by the IOPC Fund's experts. The results of this analysis were presented to the salmon farmers in May 1994. On the basis of the results of this analysis, the IOPC Fund made payments over the summer of 1994 amounting to £311 593 in respect of claims from 27 salmon farms located outside the exclusion zone.

3.3.3 The salmon farmers have not accepted, however, that the IOPC Fund's position reflects the full extent of the damage suffered. In May 1994, the Director informed the salmon farmers that if they maintained their claim for compensation in excess of the amount accepted by the IOPC Fund, they would have to present evidence that the losses resulting from the *Braer* incident exceeded that

amount. The claimants submitted further data on the development of salmon prices in March 1995, and the data has been studied by the IOPC Fund's experts. The experts took the view that the relative position of the price of Shetland salmon had returned to normal in the summer of 1993. In the autumn of 1993 there was a general fall in prices on the European market due to over-production. The claimants argued that the Shetland prices fell more than other prices. The IOPC Fund experts have considered that the evidence produced by the claimants does not demonstrate a link of causation between the price fall in the autumn of 1993 and the contamination resulting from the *Braer* incident. The experts have held a meeting with Shetland Salmon Farmers' Association to explain the position of the IOPC Fund that no further compensation is payable in respect of this item of claim.

### 3.4 Shell fishermen

3.4.1 Compensation totalling £5 632 363 has been paid to a number of fishermen catching various kinds of shellfish who have not been permitted to operate within the exclusion zone and who have been unable for various reasons to operate outside the zone.

3.4.2 As previously mentioned, the fishing ban was lifted in respect of all shellfish species except mussels and Norway lobsters on 9 February 1995. The fishery for Norway lobsters is new in the Shetland area and is subject to a sectoral quota for this species which was allocated to Shetland Fish Producers Organisation for the first time in 1995.

3.4.3 The owners of a number of vessels are receiving compensation for being unable to fish for Norway lobsters within the exclusion zone. This issue is currently under review. Following the review, the total amount of compensation payable to these claimants will be limited in accordance with the prevailing sectoral quota for Norway lobster and the productive potential of the fishery within the exclusion zone.

### 3.5 Mussels

3.5.1 As a result of the imposition of the exclusion zone, the IOPC Fund informed the owners of three mussel farms in the zone that it would be reasonable to destroy their stock at the time of normal harvest. So far a total of £15 589 has been paid in compensation to two of the mussel farmers for the destroyed produce. A claim from the third mussel farmer for £3 749 has yet to be assessed.

3.5.2 Two of the mussel farmers concerned have maintained that since the *Braer* incident young mussels (known as spat) have not settled on their growing ropes as they would have expected and they attribute their observations to pollution damage arising from the *Braer*. They have further maintained that their mussel growing business would be affected for several years into the future.

3.5.3 In the light of this, the IOPC Fund agreed that its fishery experts should make a limited study of mussel spat settlement in Shetland. This study was carried out in February 1995. Comparing sites inside and outside the polluted area, the experts found that the proportion of mussel spat compared to older mussels was generally similar at sampling sites inside the exclusion zone compared to those outside the zone. The mussel farmers continue to maintain that pollution damage has occurred.

### 3.6 King scallops & queen scallops

3.6.1 The exclusion zone was lifted for king scallops and queen scallops on 9 February 1995. The Shetland inshore fishing fleet reported lower than expected landings of king scallops and queen scallops during the first weeks of fishing in that area after the exclusion zone was lifted for these

species, as well as fewer than expected juveniles amongst catches of both species. The members of the fleet have alleged that this reduction is a result of the *Braer* incident.

3.6.2 It should be noted that there is very little historical data to show the size and condition of the scallop stocks in the area in question prior to the *Braer* incident which could be used for determining whether the stocks had been reduced after the incident.

3.6.3 The Director instructed fisheries experts to make a limited survey of the scallop stocks within the Shetland waters to establish whether it could be demonstrated that damage has been caused to the queen and king scallop stocks as a result of the *Braer* incident.

3.6.4 A diving survey was conducted during the period 21 April - 4 May 1995. The survey involved taking samples at a series of sites, both inside and outside the exclusion zone, to allow comparisons between areas affected by oil and non-affected areas. The density and size distribution of both species were measured. The sites were identified by scallop fishermen, scallop divers and specialist divers of the survey team as being areas where it was likely that these species would normally be found. Thirty-nine sites were sampled, 23 located inside the exclusion zone and 16 outside the zone. Over 3 100 individuals of these species were collected and measured.

3.6.5 The diving survey recorded the density per square metre of both species at all sites. Within the constraints of the survey method used, the survey showed that for king scallops the density inside the exclusion zone was similar to that outside the zone, which would indicate that oil pollution related mortality was unlikely. The density of queen scallops inside the exclusion zone was roughly half of that outside. The IOPC Fund's experts considered that this difference was not shown to be attributable to oil pollution, as the variation in density between groups of sites outside the zone was greater than the variation between the sampled sites outside the zone as a whole and the sampled sites inside the zone as a whole. Furthermore, studies of animal communities living in the sediment in areas known to have higher levels of contamination than sampling sites in the scallop survey (the Burra Haaf area) did not show any abnormalities in the abundance of molluscan species.

3.6.6 The study also examined the population structure of both species in Shetland waters by measuring the size of each individual specimen. The age of the samples collected of both species was then determined from published information on size-age relationships. The study showed that the age profiles in the populations of both species were broadly similar inside and outside the zone. The experts considered that, had significant population related mortalities occurred, it was likely that an imbalance in population structure would have been observed in the survey. For queen scallops, sufficient numbers of young specimens were found to suggest that the reproductive processes had been similar inside and outside of the zone since the incident. For king scallops very few specimens that would have settled after the incident were found either inside or outside the zone.

3.6.7 Shetland Fishermen's Association has criticised the survey, stating that the sampling method was inappropriate, the sampling sites were badly selected, the data was analysed incorrectly and the wrong conclusions were drawn. These points have been discussed at a recent meeting between the Association, the IOPC Fund and the fisheries experts, and the experts are examining the points raised.

3.6.8 Members of Shetland Fishermen's Association, working in conjunction with biologists at the North Atlantic Fisheries College in Shetland, have made their own studies of the population of queen scallops since the exclusion zone was lifted in respect of this species. The study involved measurement of the results of fishing for queen scallops inside the zone in August 1995. The measurements of the fishermen's catches of queen scallops in this area at the time of the survey were 33% or less of the levels that would have been expected by the fishermen concerned. The study also showed that for that fisherman who kept detailed records, catch per unit effort in 1995 was lower than in any year since he started fishing in 1979. It is noted in the study that Scottish Office specialists, who carried out routine king scallop stock assessment work in 1995, did not notice any

obvious abnormalities in stocks to the south-east of Shetland. The report of these studies has been made available to the IOPC Fund recently and is being examined by the Fund's fisheries experts.

3.6.9 The Director takes the view that a claim for loss of income suffered by the fishermen who normally catch king scallops and queen scallops in the area formerly covered by the exclusion zone would be admissible in principle only if the claimants demonstrate that there was actually a reduction in stocks and that such a reduction was a result of the oil pollution resulting from the *Braer* incident. It would not be sufficient in his view for the claimants to indicate that this damage could have been caused by the oil pollution.

### 3.7 Herring roe

3.7.1 Roe-in herring fishing generates substantial income to Shetland when herring which are caught shortly before spawning are exported whole to Japan where the roe is considered a delicacy.

3.7.2 According to data made available to the IOPC Fund by Shetland Fishermen's Association, there had been a significant reduction in the sales of herring roe caught in Shetland waters in 1993, compared with preceding years. The total yearly sales of roe-in herring for the period 1988-1992 was 7 985, 1 520, 7 760, 1 950 and 6 150 tonnes, respectively. Corresponding figures for the post *Braer* years 1993 to 1995 were 30 tonnes, 500 tonnes and approximately 1 000 tonnes, respectively. Shetland Fishermen's Association has maintained that the failure of the 1993 roe-in herring fishing was attributable to the *Braer* incident, and has expressed fears that there may be long-term damage to the locally spawning stock.

3.7.3 It should be noted that in recent years there has been a change in fishing operations, with a reduction in purse seining (the method by which most roe-in herring is caught) and an increase in trawling. This change, combined with a reduction in the price difference between roe-in herring and normal herring, has led to a decline in the quantity of roe herring landings particularly in 1995.

3.7.4 Some fishermen have maintained that *Braer* oil had settled on the habitual spawning grounds of herring in the waters around southern Shetland. After discussions with technical experts the Director commissioned a sediment sampling programme in the areas identified by local fishermen as the normal herring spawning grounds. In 1994 samples were collected from 39 stations around the south of Shetland and in the vicinity of Fair Isle. The collected samples were frozen and sent to the Torry Food Science Laboratory (Aberdeen) for analysis. The results of the analysis show that hydrocarbon concentrations in the samples taken from known spawning grounds were at background levels at all but one station. At this station, located close to Sumburgh airport, the concentrations of sedimentary hydrocarbons were slightly over background level. A subsequent "fingerprinting analysis" of this sample demonstrated clearly that the oil it contained was not of the type carried as cargo by the *Braer* (so-called Gullfaks crude).

3.7.5 The Scottish Office Agriculture and Fisheries Department has since January 1993 implemented a programme to monitor the distribution of sedimentary hydrocarbons in the waters around the Shetlands. Data from this source pertaining to the herring spawning grounds are sparse, since the sampling effort has been concentrated in more heavily contaminated areas. A preliminary review of these data confirms that even in the early months of 1993 the extensive herring spawning grounds south of Shetland and towards Fair Isle were not contaminated by oil. However, some samples taken from known herring spawning grounds between Sumburgh and Mousa, and to the east of Mousa (off the east coast of south Shetland), did contain hydrocarbons in excess of background levels during the first quarter of 1993.

3.7.6 In summary, the results of sediment studies provide no evidence of the presence of *Braer* oil on herring spawning grounds between Sumburgh and Fair Isle at any time after the spill. The studies do show the presence of oil in above-background levels in 1993 on herring spawning grounds

between Sumburgh and Mousa, with contamination much reduced in concentration and area in 1994. The oil found in this area in 1994 did not originate from the *Braer's* cargo.

3.7.7 Shetland Fishermen's Association has suggested recently that the oil found in the Sumburgh/Mousa sediments may have been bunker oil originating from the *Braer* which, having different physical properties from the cargo oil, would have been subject to different transport processes. This possibility is at present being investigated by the IOPC Fund's experts. It is anticipated that the results of this investigation will establish whether, and if so to what degree, any oil from the *Braer* contributed to poor production of roe-in herring from the Shetlands in 1993 and 1994.

### 3.8 Burra Haaf

3.8.1 The owners of four small whitefish catching vessels (of less than 20 metres length) which normally fish with seine nets in an area to the west of the island of Burra, known as the Burra Haaf, have submitted claims for compensation for loss of income due to the persistent reduction of catches from this area. As reported to the Executive Committee at its 42nd session (document FUND/EXC.42/5, paragraph 3.9), the IOPC Fund and its fishery experts examined in great detail the claimants' fishing records from the year 1991. Following the demonstration of a clear decline in post-spill catches and income, and in view of the high concentration of hydrocarbons persisting in the Burra Haaf sediments, the Director took the view that there was a link of causation between the contamination resulting from the *Braer* incident and this decline in catches. Compensation totalling £275 607 was paid to these claimants in respect of losses sustained until the end of June 1995.

3.8.2 The owners of two larger seine net vessels (of around 20 metres length), who were alleged to have been partially dependent on fishing in the Burra Haaf, also submitted claims for compensation up to the end of 1993, when both vessels were decommissioned. A detailed examination of the fishing records of these vessels for the years 1992 and 1993 confirmed that losses had been sustained after the exclusion zone had been lifted. For this reason, the owners of these vessels have been paid compensation for losses incurred during the remainder of 1993 for a total amount of £61 090.

3.8.3 The owners of a further four vessels, who were also alleged to have been partially dependent on fishing in the Burra Haaf, have more recently notified the IOPC Fund of their intention to submit claims for compensation. Of these vessels, three are combination seiner/traulers with a length of more than 20 metres. These vessels have more powerful engines and are more versatile than the six craft mentioned above, and they should thus have been more able to mitigate losses which might have resulted from the low productivity of the Burra Haaf area by fishing elsewhere. Examination of their fishing records revealed no evidence of economic loss resulting from the *Braer* oil spill. These claims could therefore not be accepted, if they were formally submitted. A prospective claim in respect of the fourth vessel, a small seiner/traulter of around 13 metres length, is under consideration.

3.8.4 A detailed study of the distribution of *Braer* oil in the Burra Haaf sediments was undertaken by the Scottish Office during the period 1993-1995, supplemented by sediment sampling commissioned by the IOPC Fund in 1994. The results of these surveys have recently been analysed by scientists of the Scottish Office Agriculture and Fisheries Department (SOAFD). On the basis of this analysis, SOAFD has predicted that the concentration of hydrocarbons in the surface sediments of the Burra Haaf area will have been reduced by natural degenerative processes to within background levels by about the year 2000, although below the sediment surface, at depths of 6 to 10 centimetres, the concentration of hydrocarbons is declining more slowly, and may remain elevated for a longer period.

3.8.5 Catches of commercial fish species from the Burra Haaf area remain depressed in comparison with those from other Shetland fishing grounds. Although the precise mechanisms through which fish populations are repelled by high concentrations of hydrocarbons in the Burra Haaf sediments are not understood, it is reasonable to expect that the seine net fishery will have returned to normality by the

time that concentrations of hydrocarbons in the surface sediments have been reduced to background levels.

3.8.6 The Executive Committee is invited to consider two alternative methods for compensating losses sustained by the owners of the four vessels mentioned in paragraph 3.8.1, which continue to be affected by the scarcity of fish in the Burra Haaf area, and which, by virtue of their small size, have very limited opportunities to mitigate their losses by fishing on more distant fishing grounds or by using alternative fishing methods.

3.8.7 The first option would be to pay the owners of these four vessels, as a full and final settlement, a lump sum equivalent to the projected total of future losses. These losses would be estimated from a knowledge of the present losses and the assumption that the decline in catches will fall on a linear scale and that the catches will return to normal by the time sedimentary hydrocarbon concentrations return to background levels, ie in the year 2000. The Director is given to understand that the vessel owners concerned are likely to agree to full and final settlements calculated on this basis.

3.8.8 The other option would be to continue to assess and compensate losses in respect of these four vessels on a twice-yearly basis, with payments made in arrears. This option has the advantage of accuracy, but would on the other hand result in these claims being pending, possibly for many years.

3.8.9 Either of these methods could be applied to the remaining small vessel referred to in paragraph 3.8.2, if it is established that the owner has suffered any loss as a result of the *Braer* oil spill.

### 3.9 Loss of quotas

3.9.1 Shetland Fish Producers Organisation has presented a claim relating to loss of fishing quotas in respect of whitefish (haddock and whiting) and nephrops (Norway lobster).

3.9.2 The Scottish Office allocates the United Kingdom fish quotas amongst various fish producer organisations. In respect of Shetland, this organisation is Shetland Fish Producers Organisation (SFPO). Each organisation receives a quota based on the actual catch of its member vessels during the preceding three years. The Shetland sectoral quotas for 1995 are therefore based on the actual catches of member vessels during 1992, 1993 and 1994. Each organisation endeavours to catch its allocated quota in full, so that it can maintain this quota for coming years.

3.9.3 If the United Kingdom quota is not caught in full, any producer organisation which has caught its allocation may apply for an additional quota allocation. If such an application is granted and the additional quota is caught, the organisation would improve its actual catch record for the year in question, which in its turn would result in that organisation being allocated an increased quota for the following year.

3.9.4 Fishing for whitefish within the exclusion zone was prohibited during the period 7 January - 24 April 1993. SFPO has stated that as a result, the total catch of whitefish for its members was reduced for 1993. The United Kingdom organisations did not catch their full quota allocations of haddock and whitefish in the North Sea in 1993. Although the members of SFPO caught their full quotas of haddock and whitefish, SFPO has argued that this was achieved at a later date than would otherwise have been the case, which reduced SFPO's chance of obtaining an additional quota allocation. It has been stated that by almost exhausting its quota well before the end of the year, an organisation would increase its chance of persuading the Scottish Office to allocate additional quota to it. The Organisation has maintained that in 1993, as a result of the *Braer* incident, SFPO was not able to use fully the possibility of obtaining additional quota, and in order to compensate for this loss, SFPO has purchased whitefish quota for a total cost of £720 000.

3.9.5 The catch of Norway lobsters by the members SFPO was, according to the Organisation, significantly lower in 1993 as well as in 1994 and 1995 than it would have been but for the existence of the exclusion zone which is still in force for this species.

3.9.6 The Norway lobster fishery in the North Sea was subject to sectoral quotas for the first time in 1993, and SFPO was allocated its first Norway lobster quota in 1995. This quota was based on the actual catches during the years 1992, 1993 and 1994 by vessels owned by SFPO members. SFPO has maintained that the Shetland Norway lobster fishery was only beginning to develop in 1993, and that the continued ban on fishing for this species within the exclusion zone has prevented the accumulation of a track record, thereby reducing the sectoral quota for 1995 and future years. SFPO has argued that it would have no alternative but to purchase additional Norway lobster quota in order to secure a reasonable allocation in future years.

3.9.7 SFPO has informed the Director that it has requested that the Scottish Office should, in view of the exceptional circumstances due to the *Braer* oil spill, discount the *Braer* impact on catches and restore quotas to the levels which they would have had but for the *Braer* incident. According to SFPO, the Scottish Office has not been prepared to do this. SFPO has maintained that it has no alternative but to continue to purchase quota. SFPO has stated that the cost of such purchases would be met by the organisation from levies on its members, and that in this way, the members would incur an economic loss as a result of the *Braer* incident. SFPO has argued that the cost of purchasing quota should be compensated by the IOPC Fund.

3.9.8 The Director is of the opinion that the alleged losses incurred by the members of SFPO are a result of the administrative system for allocating fishery quotas. In his view, these losses cannot be considered as damage caused by contamination and a claim for the recovery of these costs would therefore not be admissible.

3.10 Mackerel: alleged loss of income suffered by pelagic fishermen due to a reduction in mackerel prices

3.10.1 Shetland Fishermen's Association has maintained that nine pelagic fishermen suffered losses resulting from the depression of mackerel prices during the early months of 1993 as a result of the *Braer* incident. The analysis presented by the claimants examined the historical development of mackerel prices in Shetland and at Peterhead (Scotland) over the years 1991 to 1993, on the basis of data supplied by the Scottish Office which describe monthly landings and landed values. This analysis indicated that prices were depressed during the months January to March 1993, from which it was implied that losses to vessel owners totalled approximately £177 000.

3.10.2 The IOPC Fund's experts have analysed the data presented by the claimants, as well as comparable data from other Scottish ports, and have conducted a more detailed study into Shetland's mackerel fishery during the first quarter of 1993. The experts concluded that, because of special circumstances relating to the marketing of mackerel, which is not sold by auction but at fixed prices to a restricted number of sales outlets, it was not possible to establish reliable price relationships between the different ports of landing, neither was it valid to predict Shetland's prices on this basis. They took the view that mackerel prices were acutely depressed in January 1993 as a result of factors which were not related to the *Braer* incident. During this month extreme weather conditions forced a number of vessels to land mackerel in Shetland rather than selling it to the klondyker fleet which was located in Ullapool, on the Scottish west coast. In consequence, the volume of landings exceeded onshore processing capacity, resulting in an unusually high proportion of the catch being sold for fishmeal, at a low price. The experts concluded that the volume and prices of mackerel sales were otherwise normal during 1993, and that the pelagic fishermen had not therefore suffered any loss as a result of the *Braer* incident.

3.10.3 Shetland Fishermen's Association has accepted the experts' views in part, but has maintained that as a result of market resistance generated by the *Braer* incident, the major Shetland mackerel



processor, Shetland Catch Ltd, bought less mackerel during January 1993 than would otherwise have been the case, and therefore contributed to the depression of mackerel prices by increasing the proportion of fish sold for meal.

3.10.4 In a re-examination of this issue the IOPC Fund's experts have considered in great detail the pattern of mackerel landings in the Shetland in January 1993, and also the processing capacity of Shetland Catch Ltd. They have found that during this period the company's daily purchases of mackerel fell only slightly short of the theoretical maximum which could be processed. They did not accept, therefore, that the *Braer* incident had influenced the purchasing policy of Shetland Catch Ltd in a way which had an impact on mackerel prices during 1993. However, a second fish processing company, Whalsay Fish Processors Ltd, which occasionally processes mackerel, lost an order for 262 tonnes of hand cut mackerel fillets, equivalent to 546 tonnes of fresh mackerel, in circumstances which have been established as having resulted from the *Braer* incident. It has been established that this order would have been fulfilled during January 1993 by the processing of fresh mackerel bought from the claimants. Whalsay Fish Processors Ltd was paid £85 459 by the IOPC Fund in compensation for loss of profit on the lost order. Thus, 546 tonnes of mackerel which would have been purchased at the currently prevailing price of £108 per tonne to fulfill the order lost by Whalsay Fish Processors Ltd, was instead sold for fish meal at a price of £40 per tonne. To this extent the Director agrees that a loss was sustained by the pelagic fishermen as a result of a *Braer* impact on mackerel prices. The extent of the loss is being assessed by the IOPC Fund's experts. It is estimated that the loss will be in the region of £35 000.

### 3.11 Fish processors claims

3.11.1 Compensation totalling £3 372 389 has been paid to 18 fish processors and associated services for economic loss suffered as a result of being deprived of the supply of fish from the exclusion zone.

3.11.2 Only five claims submitted by fish processors remain outstanding. The remaining issues relate to losses allegedly suffered as a result of a reduction in the processing of herring roe, whitefish from the Burra Haaf area and king and queen scallops during the period 1993-1995. These claims will remain outstanding while discussions continue with the fishermen concerning alleged reduced availability of herring roe and alleged reduced catches of whitefish and scallops.

### 3.12 Tourism claims

3.12.1 Compensation totalling £15 577 has been paid to four claimants in the tourist industry.

3.12.2 Five claims in this category remain outstanding, awaiting further information from the claimants.

### 3.13 P & O Scottish Ferries Ltd

3.13.1 A claim has been submitted for £902 561 by P & O Scottish Ferries Ltd for loss of income from its ferry service from Aberdeen to Shetland as a result of a reduction in the number of tourists visiting the Shetland Islands and a reduction in the volume of freight. The claim is at present under examination.

3.13.2 P & O Scottish Ferries Ltd is a wholly owned subsidiary of the Peninsular and Oriental Steam Navigation Company. It is the only operator of passenger ferries between Shetland and the United Kingdom mainland (Aberdeen), whereas there are also two other companies which operate cargo services to and from Shetland. P & O Scottish Ferries Ltd has its main office in Aberdeen. The principal activity of this company is shipowning and the operation of passenger and freight ferry services as well as package holidays. The company has stated that the principal ferry route operated

by it is Aberdeen-Shetland, that it operates ferry services from Pentland Firth to Orkney and from Aberdeen to Orkney and that it also operates a general haulage business. It has been stated that there are three vessels involved in the Shetland ferry service. The company has informed the Director that its turnover is in excess of £20 million of which a significant proportion is not Shetland related nor was affected by the *Braer*. It appears from the accounts that the 1993 turnover in respect of the Shetland service was approximately £12.3 million.

3.13.3 The first question to consider is whether this claim is admissible in principle, as falling within the definition of "pollution damage" laid down in the Civil Liability Convention and the Fund Convention, ie that it can be considered as damage caused by contamination. It is recalled that the 7th Intersessional Working Group took the view that, in order for a claim to qualify for compensation, the basic criteria should be whether there was a reasonable degree of proximity between the contamination and the loss or damage sustained by the claimant. The Working Group took the view that, when considering whether the criterion of reasonable proximity was fulfilled, the following elements should be taken into account:

- the geographic proximity between the claimant's activity and the contamination
- ▶ the degree to which a claimant was economically dependent on an affected resource
- the extent to which a claimant had alternative sources of supply
- the extent to which a claimant's business formed an integral part of the economic activity within the area affected by the spill

3.13.4 The conclusions of the Intersessional Working Group were endorsed by the Assembly at its 17th session (document FUND/A.17/35, paragraph 26.8).

3.13.5 The Director makes the following analysis. The claimant operated the only passenger ferry line between Shetland and the United Kingdom mainland and also operated cargo services on that route, and these operations had a geographic proximity with the contaminated area. In view of the dependence of the Shetland islanders on this ferry service, it could be argued that this part of the claimant's activity formed an integral part of the Shetland economy. The ferry line to Shetland is a major part of the company's activities and the company had very limited possibilities of minimizing its losses. In these very particular circumstances, the Director takes the view that the claim is admissible in principle. It should be emphasised, however, that, in order to qualify for compensation, the company must show that its ferry services to Shetland as a whole suffered a loss as a result of contamination caused by the *Braer* incident.

### 3.14 Personal injury claims

3.14.1 Thirteen personal injury claims have been submitted to the IOPC Fund and the Skuld Club following the incident for alleged injury, such as respiratory conditions resulting from the inhalation of oil vapour and skin complaints resulting from contact with oil. These claims are as yet unquantified.

3.14.2 One claimant has alleged that he has developed an asthmatic condition as a result of inhaling oil emanating from the *Braer*. He has recently been granted legal aid in order to pursue an action against the shipowner, the Skuld Club and the IOPC Fund. The legal proceedings have not yet commenced.

3.14.3 It will be recalled that, at its 37th session, the Executive Committee considered claims submitted by three individuals who had maintained that their health had suffered as a result of the *Braer* incident, describing the alleged damage as sickness, nausea, symptoms of gastritis, nervous distress, chest pains and aggravated asthma, as well as unspecified health problems due to the inhalation of oil (document FUND/EXC.37/3, paragraph 4.2.10). The Committee took note of the Director's view that, in the light of the discussions at the 1969 International Conference which adopted the Civil Liability Convention, the Convention in principle covered personal injury, provided that such injury was caused by contamination. It was noted that it would be for the claimant to prove that the

alleged damage was actually caused by contamination by the oil escaping from the ship in question and the amount of the loss or damage sustained. It was also noted that, in the view of the Director, the claimants whose claims were then under consideration had not shown that they had actually suffered personal injury caused by contamination by oil from the *Braer* and that, therefore, these claims could not be accepted (document FUND/EXC.37/3, paragraph 4.2.11).

3.14.4 At its 35th session, the Executive Committee took the view that exposure to health risks and anxiety would not fall within the definition of pollution damage and could therefore not be accepted (document FUND/EXC. 35/10, paragraph 3.4.25).

3.14.5 The personal injury claims are being examined by the IOPC Fund's lawyer, in co-operation with the Skuld Club's specialists in this field.

### 3.15 Property damage claims

3.15.1 Some 250 claims totalling £3.4 million have been submitted for damage to asbestos cement tiles or corrugated sheets that are used as roof coverings for homes and agricultural buildings. The claimants have alleged that the damage, which consists of disintegration of the material, is a result of pollution following the *Braer* incident.

3.15.2 The Director has engaged experts to carry out a detailed investigation to determine whether or not oil is capable of affecting these materials in this way. The results of this investigation are expected to be available in the near future.

### 3.16 Fees of claimants' advisers

3.16.1 Claims have been presented for the recovery of fees to be paid by a number of claimants to their advisers. It will be recalled that the issue of the IOPC Fund's obligation to reimburse claimants for such fees was considered by the Executive Committee at its 37th session. The Committee decided that reasonable fees for work done would be considered, but that fees would not be paid on a contingency or percentage basis. The Committee took the view that the question of whether and to what extent fees were payable should be assessed in connection with the examination of a particular claim, taking into account the necessity for the claimant to use expert advice, the usefulness of the work carried out by the expert, the quality of that work, the time needed and the normal rate for work of that kind (document FUND/EXC.37/3, paragraph 4.2.21).

3.16.2 Two firms of claims adjusters had each made agreements with a number of claimants to assist them with the preparation and negotiation of their claims against payment of a fee calculated on the basis of a percentage of the amount of compensation recovered.

3.16.3 The Director informed these firms at an early stage that the IOPC Fund would not agree to reimburse fees on such a basis. The Director has examined, with the assistance of the various experts who dealt with the claims in question, what would constitute a reasonable fee for the work carried out on behalf of each claimant or each group of claimants, on the basis of the criteria laid down by the Executive Committee. As a result of this examination, the Director made offers to pay compensation for the work carried out for the individual clients of these firms in respect of the work performed up to 31 December 1994. One of the firms accepted the offer on behalf of its clients, for a total amount of £171 714 (including expenses), compared with the claimed amount of £208 396 based on a percentage calculation plus expenses. The other firm was offered a total of £149 712 (including expenses) for the work carried out for its clients for the same period, compared with the amount claimed of £326 104 (plus expenses) for the period to 31 May 1994, but this offer was rejected.

### 3.17 Landcatch Ltd: smolt producer

3.17.1 At its 39th session, the Executive Committee considered a claim which had been submitted by Landcatch Ltd ("Landcatch") alleging that it 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). It will be recalled that Landcatch rears smolt principally at Ormsary on the west coast of Scotland, some 500 kilometres from Shetland. The claim was rejected by the Committee (document FUND/EXC.39/8, paragraphs 3.3.14-3.3.18). The reasons for the rejection were as follows:

"The Executive Committee took into account a number of considerations including the following. The Committee was of the opinion that the loss allegedly suffered by Landcatch could not be considered as damage to property rights. The Committee took the view that the loss could not be considered as caused by contamination but was due to the unwillingness of customers to conclude contracts for delivery of smolt and to Landcatch's lack of adequate alternative markets. In the Committee's view the smolt rearing activity of Landcatch was not in reasonable geographical proximity to the area affected by the oil spill from the *Braer*. The Committee was of the opinion that although the smolt provided by Landcatch formed 25-30% of the smolt supplied to the Shetland salmon farmers, the smolt rearing activity of Landcatch did not form an integral part of the economic activity of the area affected by the oil spill."

3.17.2 At Landcatch's request, the claim was re-examined by the Executive Committee at its 40th session. The Committee made the following assessment (document FUND/EXC.40/10, paragraph 3.5.11):

"The Executive Committee took into account a number of considerations including the following. The Committee was of the opinion that the loss allegedly suffered by Landcatch could not be considered as damage to property rights. The Committee noted the arguments advanced by Landcatch that the criterion of geographic proximity must be viewed in the light of the impossibility of Shetland to meet its own requirements for smolt, due to the lack of adequate freshwater on Shetland. Nevertheless, in the Committee's view, Landcatch's smolt-rearing activity was geographically more remote from the contamination than the activities of claimants who had received compensation in the *Braer* case or in previous cases. The Executive Committee did not accept that Landcatch's smolt production should be seen as a joint venture with the Shetland salmon farming industry, as maintained by Landcatch's Counsel. In the view of the Committee, Landcatch should be considered as a supplier of raw material to the Shetland salmon farming industry. Although the Executive Committee noted the point made by the claimant that Landcatch and the Shetland salmon industry were financially inter-dependent, since, according to the claimant, the group of companies to which Landcatch belonged was a major employer and supporter of the Shetland economy, the Committee did not accept that a criterion of economic inter-dependency would be an appropriate test for the admissibility of claims. In addition, the Committee took the view that Landcatch's smolt-rearing activity did not form an integral part of the economic activity of the area. It was noted that Landcatch's Counsel had argued that a test should be whether the claimant's business was so inextricably linked with an operation carried out in polluted waters that the claimant must necessarily be affected by the inability to use those waters, whether this business was affected to a significant degree and whether the claimant had any opportunity to avoid the damage. The Committee did not accept that the concept of "inextricably linked" was an appropriate criterion for admissibility. In the Committee's view, the loss could not be considered as damage caused by contamination but was due to the unwillingness of customers to conclude contracts for the purchase of smolt and to Landcatch's lack of adequate alternative markets."

3.17.3 After having re-examined the issues involved and the arguments advanced by Landcatch, the Executive Committee maintained the view that the claim presented by Landcatch did not fulfill the criteria for admissibility laid down by the Executive Committee and confirmed its decision to reject the claim (document FUND/EXC.40/10, paragraph 3.5.12).

3.17.4 On 7 September 1995, a summons was served on the IOPC Fund, which contained a claim made by Landcatch against the IOPC Fund in the Court of Session, Edinburgh. The claim totalled £1 961 347, calculated as follows:

Smolts culled due to lack of sales: 226 000 smolts @ £1.53 each	£345 780
Reduced selling price of smolts sold in 1993: 1 136 000 smolts x (£1.53 - £1.16)	420 320
Reduced selling price of smolts in 1994 when prices did not resume normal level: 1 600 000 smolts x (£1.53 - £1.13)	640 000
Additional rearing costs incurred in making special arrangements for ongrowing of 260 000 smolt	349 247
Expenses in pursuing claim	<u>206 000</u>
Total	<u>£1 961 347</u>

3.17.5 Landcatch has based its claim on the relevant provisions of the Merchant Shipping Acts 1971 and 1974, which implement the Civil Liability Convention and the Fund Convention in the United Kingdom law. Landcatch has argued that the criteria established by the IOPC Fund for the admissibility of claims are not relevant. If, however, these criteria were relevant, the claim would in the claimant's view satisfy them.

3.17.6 The IOPC Fund lodged its defence pleading on 6 October 1995.

3.17.7 The Director will keep the Executive Committee informed of the developments in the legal proceedings.

### 3.18 Kinloch Damph Ltd: smolt producer

3.18.1 At its 39th session, the Executive Committee considered a claim for £195 011 from a supplier of smolt (Kinloch Damph Ltd) from its installation on mainland Scotland.

3.18.2 The claim was considered on the basis of a document presented by the Director which contained the following information (document FUND/EXC.39/4/Add.1, paragraph 2.1- 2.4):

The claimant has maintained that a quantity of smolt was going to be reared on its behalf under contract by a salmon farmer within the exclusion zone (farm A) and that smolt could not be introduced in March 1993 in the cages allocated as planned, since these cages were still occupied by the 1991 intake of salmon which had not yet been destroyed. The claimant has stated that he sold these smolt at a reduced price to another farm within the exclusion zone (farm B) where cages were available. In addition, the claimant has alleged that he suffered loss of profit through not being able to implement the rearing contract.

There was not any formal contract between the supplier and the company which was to rear the salmon (farm A), but only a very short note of a meeting in December 1993 at which it was agreed that this company would grow 30 000 smolt "as before". There is no evidence of delivery dates, terms, etc. It is recognised that there had been on a previous occasion rearing arrangement between the parties.

It appears that Kinloch Dampf Ltd was due to supply 60 000 smolt to the second farm within the exclusion zone (farm B) at £3 per smolt. In the end, that farm accepted to take 60 000 smolt plus the 30 000 smolt which were allegedly to have been reared by the first farm (farm A) but negotiated a reduction of the price to £2.50 per smolt for all 90 000 smolt.

The claim relates to loss of income for the rearing arrangements (£220 686), some smaller items for increased mortalities and extra fee for holding the fish longer than normal, less the amount of £75 000 resulting from the sale of the fish to farm B.

3.18.3 The Executive Committee took the view that the claim presented by Kinloch Dampf Ltd ("Kinloch") did not fulfill the criteria laid down by the Committee in that the claimant's activities did not form an integral part of the economy of the area affected by the contamination. The Committee decided to reject this claim (document FUND/EXC.39/8, paragraph 3.3.20).

3.18.4 Kinloch has recently requested that the claim be reconsidered by the Executive Committee. It has been stated that, when the claim was originally submitted in May 1993, the criteria relating to the admissibility of claims were not fully appreciated by the claimant and that the particular grounds upon which the claim was rejected had not previously been brought to the claimant's attention.

3.18.5 Kinloch has submitted the following information in support of its claim:

Kinloch had previously contracted with Punds Voe Salmon (farm A above) to transfer 30 000 smolts to on-grow to harvest during the course of early 1993. This was a continuation of a previous successful trading relationship between Kinloch and Punds Voe Salmon. The transfer could not take place, because the cages due to accommodate the smolts were still occupied by the 1991 generation stock being on-grown by Punds Voe Salmon for Kinloch amongst others. These fish were still in the cages as they could not be harvested as projected on the basis that the restrictions were in place as a result of the *Braer* incident.

The smolts were held back in fresh water to await the clearing of the cages, but it became evident that this would not occur within a reasonable period of time bearing in mind that mortalities were beginning to occur. In order to mitigate its loss, Kinloch disposed of the 30 000 smolts elsewhere. These fish were sold to Shetland Salmon Producers Ltd (farm B above) who had already agreed to take 60 000 smolts from Kinloch. As a result of supplying an additional 30 000 smolts the price previously agreed with Shetland Salmon Producers Ltd of £3.00 per fish had to be reduced to £2.50. This still meant an increase of revenue of £45 000 to Kinloch as a result of supplying more fish but at a lower price.

3.18.6 As regards the criteria for admissibility, Kinloch has argued as follows:

(a) Geographic proximity between Kinloch's activities and the contamination

Kinloch was on-growing its salmon in waters directly affected by the oil spill. Its own fish of the 1991 generation were contaminated by the oil in the cages at Punds Voe Salmon (for which it has already been compensated) and the present claim is in respect of fish which were contracted to be introduced into the contaminated water.

The contract for the introduction of this fish into those waters pre-dated the date of the *Braer* incident.

(b) The degree to which Kinloch was economically dependent upon the affected resource

Kinloch's activities on Shetland form an important part of the company's business. 70% of all smolts grown by the company are sold to Shetland. In 1993 sales of salmon through Punds Voe Salmon alone amounted to 12.4% of Kinloch's total sales, and the profit from its involvement with Punds Voe Salmon amounted to 28% of its total pre-tax profits. In 1995 sales of salmon through Punds Voe Salmon are budgeted to account for 23% of Kinloch's total sales, and profits from Punds Voe Salmon will amount to 57% of the company's total pre-tax profits from the sale of salmon. These figures relate to Punds Voe Salmon only and do not include sales and profit from other contracts on Shetland.

Kinloch has put a lot of effort into developing its Shetland market and in particular its activity of on-growing salmon in Shetland (as opposed to simply selling smolts to salmon farmers in Shetland which it also does).

Kinloch first started activities in Shetland in 1989, and intended to have a long term involvement with and commitment to the Shetland salmon farming industry.

The *Braer* had a serious impact upon Kinloch, especially in that the rearing contract negotiated with Punds Voe Salmon in November and December of 1992 (before the *Braer* went aground) represented the largest commitment to Shetland up to that date. The loss of revenue as a result of the *Braer* incident and the circumstances of this claim have severely affected the company's business and its ability in the short term to develop even further its involvement with the Shetland Islands and in particular Punds Voe Salmon.

Kinloch has shown a considerable financial commitment to Shetland and in particular Punds Voe Salmon and as a result of this was financially dependent upon the success of that commitment.

(c) The extent to which Kinloch's business formed an integral part of the economic activity within the area affected by the spill

The facts referred to under (b) above are also relevant in respect of this criterion for admissibility.

During the period 1989-1994 Kinloch's personnel made a number of visits to Shetland in relation to its business on-growing salmon and selling smolts on Shetland.

When Kinloch first started its involvement with Shetland in 1989/1990, it had 300 000 salmon on its mainland site and introduced 25 000 salmon into Shetland. By 1993 those figures stood at over 100 000 salmon on Shetland and only 75 000 on the mainland. There was an intentional shift of emphasis to rearing salmon in Shetland. The *Braer* incident affected the growth of these figures.

All fish reared on Shetland by Kinloch are sold through Framgord in Lerwick. In addition all fish at Punds Voe Salmon are grown at the expense of Kinloch and therefore all veterinary fees, feed costs, divers fees, drugs, labour and transport costs are met by the company and paid to businesses, companies and individuals on the Shetland Islands. Punds Voe Salmon itself is a Shetlands based company and has benefited considerably from its involvement with Kinloch since 1989. With the

exception of one year (the subject of this claim) Kinloch has contracted with Punds Voe Salmon for the rearing of salmon at the company's expense. To all intents and purposes therefore Kinloch has been a salmon farmer on the Shetlands since 1989. Punds Voe Salmon employ three people all of whom are employed in rearing Kinloch's fish.

In addition Kinloch has had a similar contract to rear salmon with Vaila Salmon. This contract was in 1994. That contract was on exactly the same basis as the contract with Punds Voe Salmon, Kinloch deriving 6% of all its salmon sales from its involvement with Vaila and 9.51% of its profits from its involvement with Vaila in the year end to June 1994.

Other ancillary areas have also benefited from Kinloch's involvement with Punds Voe Salmon and the sale of its smolts to the salmon farmers in the Shetland Islands, such as hotel and car hire businesses as a result of visits by the company's representatives to Shetland.

From the foregoing it is clear that Kinloch has had an involvement with the Shetlands since 1989 and in particular with Punds Voe Salmon. This involvement has developed over the years such that Kinloch is now highly dependent upon its involvement with the Shetlands. This involvement existed before the *Braer* incident.

3.18.7 It should be noted that Kinloch has received compensation for the destruction of the 1991 smolt at Punds Voe Salmon.

3.18.8 The Director makes the following assessment as regards the admissibility of this claim. In his view, Kinloch's smolt breeding activity, which takes place at Strathcarron on mainland Scotland, was more remote from the contamination than the activities of claimants who have received compensation in the *Braer* case and in previous cases. He takes the view that as regards the claim under consideration, Kinloch should be considered as a supplier of raw material to the Shetland salmon farming industry. Although Kinloch may be to an extent dependent upon its sales of smolt to Shetland, in the Director's view Kinloch cannot be considered as forming an integral part of the economic activity of the area affected by the contamination. The Director takes the view that the claim does not fulfill the criteria of admissibility laid down by the Executive Committee and that the claim should therefore be rejected.

### 3.19 Ettrick Trout Co Ltd and Shetland Sea Farms Ltd

3.19.1 At its 42nd session, the Executive Committee considered a claim in the amount of £1 513 020 from Ettrick Trout Co Ltd, the parent company of Shetland Sea Farms Ltd, a salmon farm in the exclusion zone. This claim related to smolt that could not be introduced as planned in January and March 1993 (document FUND/EXC.42/5/Add.1).

3.19.2 The Executive Committee noted that, in the Director's view, the activities of Shetland Sea Farms Ltd formed an integral part of the economic activity of the area affected by the *Braer* incident and that economic loss suffered by that company as a result of the contamination caused by the *Braer* incident was therefore in principle admissible for compensation. The Committee emphasised that Shetland Sea Farms Ltd, as any other claimant, had an obligation to mitigate its loss. The Committee shared the Director's view that, in the particular circumstances of this case, account should also be taken of any benefits derived by other companies in the same group. The Director was authorised to enter into negotiations with Shetland Sea Farms Ltd to settle this claim (document FUND/EXC.42/11, paragraphs 3.4.8 and 3.4.9).

3.19.3 The Director is at present investigating this claim further with the assistance of the IOPC Fund's lawyer and fisheries experts.



### 3.20 Salvage operations and related issues

3.20.1 At an early stage, the shipowner engaged a salvage company (Smit Tak) to try to salvage the vessel and, later, to remove the oil that remained on board during the first days after the grounding. The shipowner has maintained that the operations were carried out to prevent or minimize pollution. The operations of the salvor were carried out under the terms of Lloyd's Open Form 90 (LOF 90).

3.20.2 The shipowner made an advance payment of Dutch Guilders 4 498 079 (£1.8 million) to Smit Tak in respect of his obligation under LOF. The salvor has claimed a further amount of Dutch Guilders 283 790 (£115 000) from the shipowner. The total amount payable is at present under negotiation between the parties to the contract. The IOPC Fund is not involved in these negotiations.

3.20.3 The shipowner has presented a claim for reimbursement of the amount agreed with Smit Tak. This claim gives rise to several issues of principle which have importance beyond the *Braer* case. For example, similar issues have to be considered in respect of a corresponding claim arising out of the *Aegean Sea* incident. Reference is made to a separate document which deals with these issues (document FUND/EXC.44/14).

### 3.21 Public authorities

3.21.1 In May 1994, the United Kingdom Government submitted a claim for compensation for 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. After discussions with the Marine Pollution Control Unit of the Department of Transport, an amount of £1 318 210 has been approved, and further information has been requested in respect of some outstanding items of the claim. An additional claim will be submitted for the expenses of the Scottish Office.

3.21.2 Shetland Islands Council submitted an interim claim for £1 083 707 in March 1994, and a final claim for an additional £417 737 in June 1994, making a total claim of £1 501 444. The claim covers the costs allegedly incurred by the Council as a result of the incident. An interim payment of £295 000 was offered in September 1995. Further questions have been put to the Shetland Islands Council in respect of the outstanding items of the claim.

## 4 Investigations into the cause of the incident

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

4.2 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 lawyer and technical experts.

## 5 Limitation proceedings

5.1 It is expected that the shipowner's P & I insurer (the Skuld Club) will initiate limitation proceedings in the Court of Sessions in Edinburgh in the very near future. The Skuld Club intends to establish the limitation fund by the presentation of a letter of guarantee.

5.2 The limitation amount is estimated at 5 790 000 Special Drawing Rights (£5 437 000).

5.3 The Director is at present considering, with the assistance of the IOPC Fund's Scottish lawyer and technical experts, whether the Fund should challenge the shipowner's 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;*
  - (b) give the Director such instructions as it may deem appropriate in respect of the claims arising out of this incident, in particular in respect of the claims relating to
    - (i) king and queen scallops (paragraph 3.6);
    - (ii) Burra Haaf (paragraph 3.8);
    - (iii) loss of quotas (paragraph 3.9);
    - (iv) P & O Scottish Ferries Ltd (paragraph 3.13);
    - (v) personal injury claims (paragraph 3.14); and
    - (vi) Kinloch Dampf Ltd (paragraph 3.18); and
  - (c) give the Director such instructions in respect of the limitation proceedings and related issues as it considers appropriate.
-