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INCIDENTS INVOLVING THE IOPC FUND

SEA EMPRESS

Note by the Director

1 Claims for compensation

1.1 As at 21 June 1996, 323 claims for compensation have been submitted to the Claims Handling Office in Milford Haven.

1.2 Claims have been approved for payment by the Skuld Club and the Director for a total of £1 781 212. Payments have been made by the Skuld Club to 179 claimants, totalling £1 728 516. Cheques for a further £52 696 are awaiting collection by the claimants. Most of these payments correspond to 75% of the approved amounts. However, payments up to 100% of the approved amounts have been made by the Club in a number of cases, where the amount of compensation was small or the claimant has been able to demonstrate that a payment of more than 75% was necessary to avoid immediate financial hardship.

2 Claims for pure economic loss; fish processing and marketing companies

2.1 As a result of further examination by the IOPC Fund's experts, the following additional information has become available in respect of the claims for pure economic loss presented by fish processing and marketing companies. The information has been extracted from the respective claimants' account or has been obtained during discussions between the experts and the claimant. On the basis of this information the Director has considered whether, in his view, these claims fulfill the criteria for admissibility laid down by the Executive Committee.

2.2 Shellfish processor in Newquay (Wales)

2.2.1 This claimant is a company which is based in Newquay (Wales) some 80 kilometres by road to the north of the area covered by the fishing ban. Since May 1995 this company has processed whelks originating from inside this area.

2.2.2 As a result of the expansion of the whelk fishery in the Milford Haven area in 1995, during the winter of 1995-96 the company extended its processing plant, representing an investment of some £85 000.

2.2.3 The accounts for the period May 1995 - April 1996 have shown that whelk processing related to approximately 54% of the business on an annual basis, and the crab processing equalled 44%. However, crab processing was carried out only during the autumn. As regards the whelk processing, 62% of the production related to whelks originating within the area covered by the fishing ban.

2.2.4 Already before the *Sea Empress* incident, the claimant had made efforts to obtain a supply of whelks from just outside the area which became covered by the fishing ban. There are undoubtedly sources of supply from further outside the area.

2.2.5 The claimant's supply of whelks from inside the area during the period from August 1995 comes from the single fish trader in Newport (Wales) referred to in paragraph 2.4 below. This trader buys whelks landed by 11 of the 22 fishing boats carrying out whelk fishing in the area. The claimant processes the whelks for this trader on a contractual basis.

2.2.6 The Director makes the following analyses in respect of this claim. The claimant operates a whelk processing which obtains its raw material from the area. The factory is located close to the area covered by the fishing ban. It is in fact the factory closest to that area, and there is no such factory within the area. The claim would therefore, in the Director's view, fulfill the criterion of geographic proximity between the claimant's activity and the contamination. The claimant is also highly dependent on the supplies from the affected area. The claimant has only limited possibilities to obtain supply from other sources. The claimant's business should, in the Director's view, be considered to form an integral part of the economic activities in the area. For these reasons, the Director takes the view that there is a reasonable degree of proximity between the contamination and the alleged loss and that this claim is admissible in principle.

2.3 Shellfish marketing company in Cornwall

2.3.1 The claimant is a company which is operated from Saltash in Cornwall, some 400 kilometres from Milford Haven. It is located close to Plymouth, one of the two major ports for export of shellfish to European markets. The company sells live shellfish mainly for export to Spain. The company receives its supply from three sources, from Fishguard (Wales) 50 kilometres outside the area covered by the fishing bans, Weymouth (Dorset, England) 320 kilometres by road east of Milford Haven and a fish trader in Neyland (Milford Haven).

2.3.2 During the period June 1995 - 13 February 1996, 57% of the company's supply came from fishermen within the area covered by the fishing bans, 25% from fishermen outside the area and 18% were merchant supplies from outside the area.

2.3.3 The costs for transporting live shellfish from Pembrokeshire to the English south coast ports is not proportional to the quantity transported. If the claimant had to limit himself to buy smaller quantities from Welsh suppliers outside the area affected by the fishing ban, it is likely that the transport cost per tonne would be at least 50% higher. For this reason, it would be difficult for the claimant's business in its present form to be viable without supplies from within that area.

2.3.4 The company operates a goods vehicle specially constructed for the transport of shellfish in seawater. The maximum time during which live shellfish can be held in such seawater is approximately 18 hours. The company can therefore buy shellfish from other suppliers which are located within such a distance from the ferry ports as this transport system would allow. In the view of the IOPC Fund's experts,

there would therefore be sufficient time to allow the claimant to collect shellfish from any of the other main shellfish landing ports in south-west England (Cornwall, Devon and Dorset). However, in this region competition for shellfish supplies is intense. A new buyer would be expected to pay a higher price to obtain shellfish, which would result in a lower profit margin. Nevertheless, it would be reasonable, in the experts' view, for the claimant to obtain alternative supplies of shellfish to maintain its customers in Spain. It appears that this has not been done.

2.3.5 In the area covered by the fishing bans, some 100 vessels normally fish for shellfish. Of these vessels, seven sell their catches to the claimant, and these sales account for some 10% of the total annual value of the shellfish caught in the area.

2.3.6 As set out in paragraph 7.2.6 of document FUND/EXC.49/9, this claimant does not fulfill the criterion of geographic proximity between the claimant's activity and the contamination. It could be maintained that the claimant's business developed in such a way that the claimant was fairly dependent on supplies from the area. However, it appears that the claimant has had, at least to some extent, alternative sources of supply. The Director considers that the claimant's business does not form an integral part of the economic activity within the area affected by the spill. For these reasons, the Director takes the view that there is not a reasonable degree of proximity between the contamination and the loss allegedly suffered by the claimant and that the claim should therefore be rejected.

2.4 Fish marketing company in Newport (Wales)

2.4.1 The claimant is a company located in Wales, some 180 kilometres from Milford Haven, 86 kilometres outside the area and 160 kilometres from Saundersfoot (the main whelk landing port affected by the fishing bans). The company buys whelks from fishermen, arranges for their processing under contract with the shellfish processor in Newquay (Wales) referred to in paragraph 2.2 above and then exports the finished product, mostly to the Far East.

2.4.2 When the whelk fishery in the Milford Haven area started to develop in March 1995, the company supplied the fishermen with gear and with credit for purchase of boats and gear, and bought the whelks from 11 out of the 22 of the vessels that fished in the affected area. The company invested in developing the infrastructure for this type of fishing in this area (a freezer storage for bait), employed some casual labour and used the services of one of the fishermen as an agent and fishing fleet co-ordinator.

2.4.3 During the period January 1995 - February 1996, of the claimant's turnover 88% related to whelks caught inside the area affected by the fishing bans and 12% of whelks from outside that area.

2.4.4 The claimant pursued alternative sources of supplies in the weeks after the *Sea Empress* incident. This involved encouraging a few large vessels to fish in Cardigan Bay, outside the area. This was in part successful. It should be noted that in trying to obtain supplies from Cardigan Bay the company carried out plans which had been made before the incident. Theoretically the claimant would also have had the opportunity to buy whelks from further afield.

2.4.5 The Director makes the following assessment of the claim. This claimant's business is operated from a location some distance from the area affected by the contamination. It is questionable, therefore, whether the claimant fulfils the criterion of geographic proximity. The claimant is dependent to a high degree on products from the area covered by the fishing bans although it appears that the claimant had at least some possibility of obtaining a supply of whelks from sources outside the area. The claimant has made a significant contribution to the economic activity of the area as a result of his assistance to the fishermen and the development of the infrastructure of the whelk fishery in the area. For these reasons, the Director takes the view that this claim is admissible in principle.

3 Marketing campaign for tourism

3.1 At its 17th session the Assembly endorsed the position taken by the 7th Intersessional Working Group (documents FUND/A.17/35, paragraph 26.8 and FUND/A.17/23) that measures to prevent or

minimise pure economic loss which would fall within the definition of "pollution damage" as interpreted by the IOPC Fund should be considered as preventive measures, provided they fulfilled the following requirements:

- the costs of the proposed measures were reasonable;
- the costs of the measures were not disproportionate to the further damage or loss which they were intended to mitigate;
- the measures were appropriate and offered a reasonable prospect of being successful; and
- in the case of a marketing campaign, the measures related to actual targeted markets.

3.2 The 7th Intersessional Working Group also discussed whether claims of this type should not be accepted by the IOPC Fund until the activities had been carried out and the results could be assessed, or whether the Fund should agree to pay for a proposed programme of such activities. It was noted that the Executive Committee had decided that, in principle, the IOPC Fund should not consider such claims until the activities had been carried out. The Working Group took note of the fact that the claimant in many cases did not have sufficient economic resources to carry out such activities unless the IOPC Fund made funds available and that in respect of one incident the Executive Committee had authorised the Director to make advance payments for marketing campaigns up to a certain maximum amount. It was noted by the Working Group that the Executive Committee had decided that the IOPC Fund should take a cautious approach in respect of advance payments and that the Fund should not take the role of the claimant's bankers (document FUND/A.17/23, paragraph 7.2.43). As already mentioned, the Report of the Working Group was endorsed by the Assembly.

3.3 As mentioned in paragraph 8 of document FUND/EXC.49/9, the Wales Tourist Board presented a revised plan for marketing intended to offset the alleged decline of tourism caused by the *Sea Empress* incident. The total cost of the proposed campaign is £172 000, compared with the amount of £550 000 in respect of the campaign originally proposed (document FUND/EXC.48/2/Add.2).

3.4 The Wales Tourist Board has stated that the tourism industry in Pembrokeshire generates approximately £200 million per year. The Board has also stated that the media images of substantial slicks of oil in the sea, oil-coated wildlife and heavily polluted tourist beaches remain vivid. The Board has maintained that to offset the effects of these images on tourism, and claims for economic loss from tourist businesses, a closely-targeted marketing campaign is required. It has stated that there had been a most serious and abrupt cessation of enquiries and that bookings appeared to have dropped to a quarter since the *Sea Empress* grounding. It has also argued that a successful marketing campaign would rebuild the tourist image as quickly as possible, minimise the economic damage to the tourist industry and minimise the level of compensation claims arising from a loss of business. The Board has mentioned that a number of media initiatives have already taken place and that it needs support for a major reassurance campaign which should be launched as soon as it is certain that the beaches and other tourist attractions are free from oil. Without a major reassurance campaign there is likely, in the Board's view, to be a significant decline in the level of tourism, with a loss of income of the order of £15 million in the local Pembrokeshire economy, some of which will be the subject of compensation claims. Wales Tourist Board has stated that a marketing campaign such as the one outlined below could offset a decline in tourism, with benefit for the IOPC Fund.

3.5 The Wales Tourist Board has outlined the proposed campaign as follows.

(a) Grant aid to the regional tourism company, Tourism South and West Wales, to undertake a targeted marketing campaign with the support of the industry and other interested parties in Pembrokeshire. The campaign costs in total to exceed £100,000.

£40,000

(b) Appointing a specialist PR agency with oil industry experience to handle the immediate post incident negative media coverage. This specialist was retained within days of the incident and was able to galvanize the local interests into an effective positive voice to counter the negative coverage.

£10,000

- (c) Sponsoring a Western Mail/South Wales Echo tourism supplement to appear before Easter allowing members of the tourism industry in Pembrokeshire to advertise their businesses to South Wales – one of Pembrokeshire's largest day visit and short break markets. The South Wales Echo readership is highly relevant for the caravan and camping sector. £10,000
 - (d) Mailing a specific holiday product offer to 100 000 persons previously having made enquiries to the Board direct marketing activity. Target audience to be profiled according to socioeconomic groupings and to ensure the closest possible match between the product offers and the targeted consumers. £50,000
 - (e) Bringing travel/feature writers from selected United Kingdom national and regional media (with readership profiles to match the product range available in Pembrokeshire) to the county to view the beaches and inland areas. Arranging product offers to coincide with the publication of articles as a mechanism for monitoring response. 40 newspapers, magazines and local radio stations at £200 per day for a two day visit each, before August to cover main season and autumn short break seas. £16,000
 - (f) Even though the importance of the overseas market is low by comparison to the United Kingdom market, Pembrokeshire is one of Wales' most important destinations for the more discerning, high spending overseas tourist. Given the extensive negative media coverage in all of Wales' overseas target markets it is considered appropriate that some reassurance work is done, but that the cost is kept in line with the overall importance of the overseas markets compared with the home market. It is proposed to invite 30 members of the London based Foreign Press Association to visit Pembrokeshire for one day. The countries covered would be Germany, France, Holland, Belgium, Spain, Italy, USA, Canada, Australia, New Zealand. To visit before the end of August for immediate impact. £6,000
 - (g) To set up ISDN (integrated systems digital network) telephone itineraries with local radio stations in targeted markets within the United Kingdom on St David's Day (1 March) to counteract the negative publicity. Target 30 radio stations with the geographical areas of North West, Midlands, Wales and the West, London and the South East. £5,000
 - (h) Delay the launch of the Green Sea Campaign from 1 March to 1 May 1996 and switch location from Anglesey to Tenby. The campaign is a partnership of which the Wales Tourist Board is a member to create 50 European Blue Flag beaches in Wales by the year 2000. Upgrade the Board's input and contribution from that originally planned to generate greater positive media coverage. £5,000
 - (i) Upgrade the quality and quantity of publicity material to promote the Celtic Watersports Festival to be held in Pembrokeshire during August. Direct mail such material to all people known to have made enquiries previously for the Pembrokeshire brochure with a specific product offer. The water sport activities will be centred on Tenby, but will take place around the entire coast of Pembrokeshire. This event is an ideal vehicle for demonstrating both the water and beach quality. £30,000
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- TOTAL = £172,000

3.6 The activities listed under items (a), (b), (c), (g) and (h) above have been undertaken. The total cost for these items is indicated at £70 000.

3.7 As for the activities not yet undertaken, the Wales Tourist Board has stated that the activities listed under items (d), (e), (f) and (i) need to be carried out immediately in order to affect the current situation. These are all short term activities which, if carried out quickly, in the Board's view, would have a measurable impact on the level of tourism to Pembrokeshire for the main season ahead and for the short break and additional holiday season from September to December. The Board has mentioned that work on bringing the media to Pembrokeshire had been ongoing, but highly selective, from the time immediately following the incident. It has maintained that the main effort can only take place now that the beaches have been declared relatively free of oil and the bathing water has been adjudged by the environmental health officer to be safe and that any major activity in media or direct marketing terms prior to that announcement would have posed considerable problems of credibility.

3.8 The experts engaged by the IOPC Fund and the Skuld Club have discussed the revised plan with representatives of the Wales Tourist Board. The experts have requested more information and documentation on a number of points, but so far this information and documentation has not been provided. For this reason, the Director is not yet able to take a position as to the admissibility of the various items of this plan. However, considerable progress has been made as a result of the discussions held between the Wales Tourist Board and these experts. The Director proposes, therefore, that he should be authorised to approve the items of this claim which fulfill the criteria set out in paragraph 3.1 above as and when the activities in question have been carried out.

4 Action to be taken by the Executive Committee

The Executive Committee is invited to:

- (a) take note of the information contained in this document;
 - (b) give the Director such instructions in respect of the claims relating to pure economic loss from fish processing and marketing companies (paragraph 2); and
 - (c) give the Director such instructions in respect of the request made by the Wales Tourist Board that the IOPC Fund should contribute to a tourism marketing campaign (paragraph 3).
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