

INTERNATIONAL
OIL POLLUTION
COMPENSATION
FUND

EXECUTIVE COMMITTEE
49th session
Agenda item 3

71FUND/EXC.49/9
10 June 1996

Original: ENGLISH

INCIDENTS INVOLVING THE IOPC FUND

SEA EMPRESS

Note by the Director

1 The incident

1.1 The Liberian registered tanker *Sea Empress* (77 356 GRT) struck a rock at the entrance to Milford Haven harbour in South Wales (United Kingdom) at about 20.00 hours on 15 February 1996. A few minutes later the ship grounded in shallow waters approximately 1 100 metres from St Ann's Head. There was a pilot on board who had joined the ship at about 19.30 hours outside the harbour entrance.

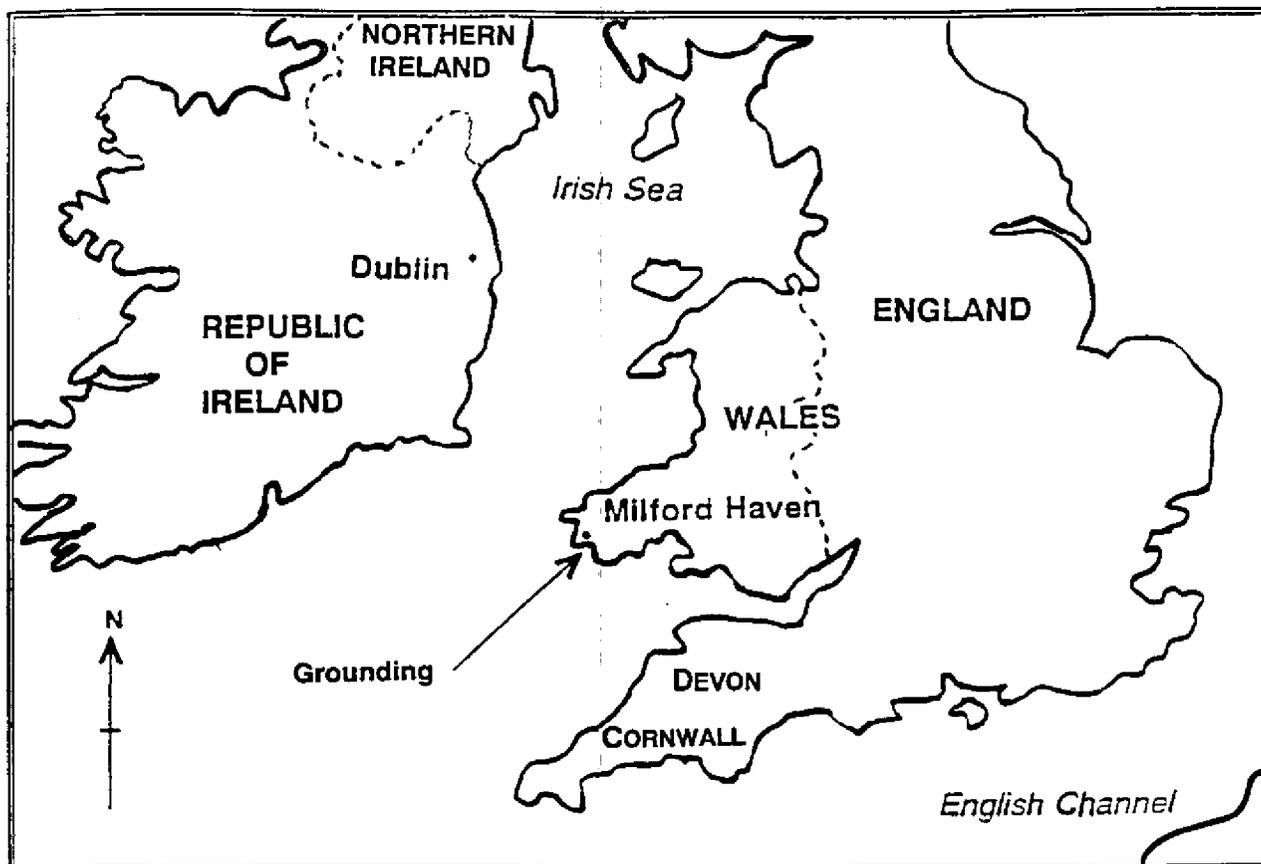
1.2 The ship was carrying a cargo of approximately 131 000 tonnes of Fortes North Sea crude for discharge at the Texaco refinery at Milford Haven.

1.3 It was established immediately after the grounding that four cargo tanks and several ballast tanks had been ruptured and that a significant quantity of oil had been spilled.

1.4 The shipowner entered into a salvage contract on 16 February with Smit Tak Bv, Cory Towage Ltd and Klyne Tugs Ltd under Lloyds Open Form 1995. Harbour tugs were on site almost immediately after the grounding, and larger tugs arrived on 16 February.

1.5 During the following days, in continuing heavy weather, the *Sea Empress* was refloated and regrounded on a number of occasions. Other cargo and ballast tanks were damaged, and further quantities of oil were spilled. By the afternoon of 19 February it was believed that only three tanks remained intact. On 21 February the salvors succeeded in refloating the ship which was then towed to a berth in Milford Haven.

1.6 Oil continued to leak from the ship. Steps were taken to remove fuel oil from ruptured tanks, and 500 tonnes of bunkers were transferred to another vessel. Between 24 February and 3 March the remaining cargo, some 58 000 tonnes, was discharged and delivered to the Texaco refinery.



- 1.7 It is estimated that some 73 000 tonnes of oil were spilled as a result of the incident.
- 1.8 An underwater survey showed that the *Sea Empress* had suffered extensive structural damage. The ship was towed out from Milford Haven on 27 March and was delivered to a shipyard in Belfast.
- 1.9 The *Sea Empress* is owned by Alegrete Shipping Co Inc.
- 1.10 The *Sea Empress* is entered in Assuranceforeningen Skuld (Skuld Club).

2 Clean-up operations

2.1 Overall management of the response to the incident was provided through Milford Haven Port Authority with a management team consisting of central and local authorities, environmental protection agencies and oil industry representatives. The co-ordination of marine activities, including salvage and offshore pollution response, was undertaken by the Marine Pollution Control Unit (MPCU) of the United Kingdom Department of Transport. For the purpose of co-ordinating the shoreline clean-up operation, a Joint Response Centre (JRC) was opened in Milford Haven on 16 February by MPCU and Dyfed County Council. The JRC used the facilities of the Milford Haven Port Authority.

2.2 The response to oil pollution at sea included the aerial application of dispersants as well as the mechanical oil containment and recovery operations using booms and skimmers deployed from various vessels. Two vessels from France and two from the Netherlands also took part in offshore oil recovery operations.

2.3 The quantities of floating oil gradually diminished during ten days of calm weather in early March and the offshore oil recovery operations ceased in mid-March. A period of bad weather with a south-easterly gale and rough seas had the effect of scouring beaches and providing some natural cleaning along rocky sections of the oiled coastline.

2.4 The oil affected some 150 kilometres of coastline, consisting of both sandy beaches and cliffs. A large part of the affected coast falls within the Pembrokeshire Coast National Park. Clean-up of the contaminated beaches involved the collection of liquid oil using vacuum trucks, the flushing of rocky areas and the manual removal of oiled beach material. At the height of the clean-up activity about 600 people were employed. The work on beaches and accessible rocky shorelines to remove major accumulations of oil was completed by the middle of March. The work then concentrated on the final cleaning of amenity areas.

2.5 A great proportion of the affected coastline is used for leisure and recreational purposes. Many of the coves are associated with tourist facilities, such as caravan parks with access to the shoreline. While the clean-up of sandy beaches was completed very promptly, small quantities of tar balls are still being released from other parts of the coastline and coming ashore on some of the sandy beaches. This necessitates a continuing low level of effort to keep these beaches clean. Operations to clear rocky and cobbled shorelines have required a greater effort. Manpower levels have been maintained at about 200 - 250 people. These operations have been made more difficult by the movement of sand alternately exposing and obscuring oiled rocks. In addition, the commencement of the holiday season has made it necessary to clean the amenity shorelines thoroughly. Clean-up operations are expected to be drawn to a close by early July, but it is anticipated that small teams will be held in readiness throughout the summer season to remove oil which might appear on beaches either as a result of sand movement or released from inaccessible shorelines from which the oil could not be removed.

2.6 The Joint Response Centre has been maintained for the management of the remaining clean-up work.

2.7 Approximately 14 000 tonnes of oil/water mixtures and 8 500 tonnes of oily beach material and other wastes have been collected during the clean-up operations. The liquid waste was transported to the Texaco refinery at Milford Haven where some 2 500 tonnes of oil were separated from the oil/water mixtures. An estimated further 3 500 tonnes of oily sludge were generated during the processing of the oil/water mixtures which will also require disposal. Of the solid waste 5 500 tonnes of oily sand were disposed of at the Texaco refinery, and a further 3 000 tonnes were disposed of at licensed landfill sites in Wales and England.

2.8 On 1 April 1996 the responsibility for shoreline clean-up was transferred to the new Pembrokeshire County Council and Carmarthenshire County Council, following a reorganisation of local government.

2.9 It is estimated that the clean-up costs incurred by the MPCU, local authorities, Texaco and various contractors had reached over £13 million by the end of May 1996.

2.10 On 14 and 15 March reports were received from the Republic of Ireland of tar balls stranding on many beaches along 100 kilometres of the south east coast. Results of chemical analysis, together with other evidence, establish that the source of the tar balls was the *Sea Empress* spill. An expert from ITOFF visited the polluted beaches and monitored the response activity. Clean-up of the contaminated beaches, which was carried out by the local authorities, involved the manual removal of oiled beach material and the disposal in licensed landfill sites. This clean-up was completed by the end of March, but some further limited cleaning was undertaken in April following minor re-oiling. There have been no reports of any further pollution.

3 Impact of the spill

3.1 Inshore fishermen in the affected area decided to impose a voluntary ban on fishing between St David's Head and West Helwick Buoy from 21 February 1996, initially for four days.

3.2 On 28 February, the Welsh Office imposed a Food Protection Order prohibiting the landing of fishery and aquaculture products taken from a designated zone from St David's Head to the Gower Peninsula, and extending 10 - 30 kilometres offshore. On 20 March a statutory ban was also imposed by the Welsh Office on salmon and migratory trout in all freshwater rivers and streams which flow into the sea

between the Gower Peninsula and St David's Head. The Ministry of Agriculture, Fisheries and Food together with the Environment Agency are monitoring the levels of oil contamination in coastal waters and in animal tissues within the designated zone. The fishery experts engaged by the Skuld Club and the IOPC Fund have been in regular contact with the authorities concerning the monitoring.

3.3 The ban on salmon and migratory trout was lifted on 3 May 1996 and on other species of fin fish on 21 May 1996. The ban remains in force in respect of shellfish, including crustaceans, and certain edible marine plants.

3.4 There is diverse inshore fishing activity carried out from several ports in Milford Haven and the surrounding area by small vessels of up to 15 metres in length. Many fishermen operating these vessels are affected by the incident. There is also hand-gathering of shellfish in the intertidal zone. The total value of annual landings from inshore fishery and shellfish gathering in south west Wales in 1995 has been estimated at £6 million.

3.5 There are also offshore fishing activities based in Milford Haven employing much larger vessels. Since the majority of these vessels operate in areas remote from the oil spill and sell their catches in distant European markets, it is unlikely that they will be affected by the spill.

3.6 The temporary closure of the river fisheries for salmon and migratory trout may have affected those entities which have a right to fish in the rivers covered by the ban.

3.7 An oyster farm in one of the estuaries in the upper reaches of Milford Haven was affected by the incident.

3.8 The incident may have an impact on tourism in the area.

3.9 According to statistics compiled by the Countryside Council for Wales, about 3 500 bird corpses were recovered as a result of the incident, and a further 3 600 live oiled birds were captured and taken for cleaning and rehabilitation. The Royal Society for the Prevention of Cruelty to Animals (RSPCA) has quoted a survival rate of 60% for cleaned birds, averaged over all species.

4 Claims handling

4.1 The Skuld Club and the IOPC Fund have together established a Claims Handling Office in Milford Haven. The purpose of that office is to receive claims and forward them to the Skuld Club and the IOPC Fund for examination and approval. That office also assists claimants in the presentation of their claims.

4.2 A number of experts are assisting the IOPC Fund and the Skuld Club to examine various groups of claims, viz those relating to clean-up operations, fishing, tourism, salvage and property damage. The distribution of this work is co-ordinated by the Claims Handling Office.

5 Previous decisions by the Executive Committee

5.1 At its 47th session, the Executive Committee authorised the Director to make final settlements as to the quantum of all claims arising out of this incident, to the extent that the claims did not give rise to questions of principle which had not previously been decided by the Committee. The Committee expressed its concern that the total amount of the established claims arising out of this incident might exceed the total amount of compensation available under the Civil Liability Convention and the Fund Convention. For this reason, the Committee considered it necessary for the IOPC Fund to exercise caution in the payment of claims. In view of the uncertainty as to the total amount of the claims, the Committee decided that the Director was not authorised at that stage to make any payments (document FUND/EXC.47/14, paragraphs 3.10.4 and 3.10.5).

5.2 At its 48th session, the Executive Committee noted that the total amount of the claims arising out of the *Sea Empress* incident might exceed the total amount of compensation available under the Civil Liability Convention and the Fund Convention. The Committee maintained its position that it was necessary, in such cases, to exercise caution in the payment of claims, since under Article 4.5 of the Fund Convention all claimants had to be given equal treatment. In the Committee's view it was necessary to strike a balance between the need to prevent an overpayment situation from arising and the importance of the Fund paying compensation as promptly as possible to victims of oil pollution damage. In view of these considerations, the Committee decided to authorise the Director to make payments for 75% of the quantum of the damage actually suffered by the respective claimants on the basis of the advice of the IOPC Fund's experts at the time when a payment was made (document FUND/EXC.48/6, paragraph 3.4.7).

6 Claims for compensation

6.1 General situation

6.1.1 As at 7 June 1996, 280 claims for compensation had been submitted to the Claims Handling Office.

6.1.2 Claims have been approved for payment by the Skuld Club and the Director for a total of £1 254 513. Payments have been made by the Skuld Club to 156 claimants, totalling £970 761. Cheques for a further £283 752 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.

6.2 Clean-up operations

Pembrokeshire County Council has submitted a claim in respect of the costs of clean-up operations for £785 634. Two charities have claimed compensation for cleaning of birds for £4 962 and £705, respectively. These claims are being examined by the experts employed by the IOPC Fund and the Skuld Club.

6.3 Property claims

6.3.1 As a result of the incident, boats and moorings in the Milford Haven area became contaminated. Thirty-seven claims in respect of such damage have been approved for £27 942, and most of these claims have been paid in full by the Skuld Club.

6.3.2 A number of buildings located close to the affected beaches were contaminated by wind-blown oil. Ten claims relating to such damage have been approved for a total of £9 275. The Skuld Club has paid a total of £7 412 in compensation, corresponding in most cases to 75% of the approved amounts.

6.3.3 Other property claims have been received for damage to the carpets of shops and homes located on the seafront of the most severely polluted areas, for damage to clothing worn and equipment used by personnel involved in the clean up operations and for the replacement of trees and shrubs allegedly damaged by windblown oil. Claims have also been received from persons on whose property roads have been damaged by the passage of heavy vehicles and equipment involved in the clean-up operations. Eleven claims in these categories have been paid for a total of £5 033.

6.4 Fishery claims

6.4.1 Claims have been presented by 106 fishermen for loss of income as a result of the fishing bans. Some of these fishermen are involved in catching white fish, but the majority are catching whelk and crustaceans. Some of the claims relate also to damage to nets and loss of pots.

6.4.2 In this category 88 claims have been approved for a total of £1 020 188. The Skuld Club has paid a total of £781 904, which represents 75% of the approved amounts.

6.4.3 A claim has been presented by one oyster farm whose stock had been contaminated as a result of the spill and which is prevented from selling its oysters due to the ban. Payments totalling £27 029 have been made to this claimant for losses resulting from the destruction of the part of the stock that would normally have been harvested and sold since the incident.

6.4.4 Claims have been submitted by six shellfish processing companies located in the area covered by the fishing ban. So far payments totalling £50 894 have been made in respect of two of these companies for losses due to their being deprived of their raw material. Claims from the remaining companies are being assessed.

6.5 Small businesses

6.5.1 Claims for compensation have been received from 48 operators of small businesses. Compensation has been paid to 17 such claimants, totalling £90 995. These claimants include a sailing school, a water sport centre, a diving school and angling shops.

6.5.2 There have so far been 39 claims from businesses directly involved in the tourism business. Payments for a total of £34 596 have been made to eight claimants in this category.

7 Claims submitted to the Executive Committee for consideration

7.1 Criteria for the admissibility of claims for pure economic loss

7.1.1 A number of claims have been submitted for pure economic loss, viz loss of earnings sustained by persons whose property has not been contaminated. The majority of these claims do not give rise to any new questions of principle. However, the Director submits the claims set out below to the Executive Committee for consideration as to whether the criteria for admissibility are fulfilled.

7.1.2 The position adopted by the IOPC Fund in respect of the admissibility of claims for pure economic loss can be summarised as follows (cf Report of the 7th Intersessional Working Group, document FUND/A.17/23, paragraphs 7.2.21, 7.2.26, 7.2.29 and 7.2.30):

Claims for pure economic loss are admissible only if they are for loss or damage caused by contamination. The starting point is the pollution, not the incident itself. To qualify for compensation for pure economic loss, there must be a reasonable degree of proximity between the contamination and the loss or damage sustained by the claimant. A claim is not admissible for the *sole* reason that the loss or damage would not have occurred had the oil spill not happened. When considering whether the criterion of reasonable proximity is fulfilled, the following elements are taken into account:

- (a) the geographic proximity between the claimant's activity and the contamination;
- (b) the degree to which a claimant was economically dependent on an affected resource;
- (c) the extent to which a claimant had alternative sources of supply or business opportunities; and
- (d) the extent to which a claimant's business formed an integral part of the economic activity within the area affected by the spill.

7.2 Fish processing and marketing companies

7.2.1 A number of claims have been received from fish processing and marketing companies located outside the area covered by the fishing bans. The companies have maintained that they buy shellfish from within that area for processing and selling in the United Kingdom and for export and that they have been deprived of their raw material as a result of the incident. They are located as follows:

	<u>Place</u>	<u>Distance from area (approximately)</u>	<u>Alleged activity</u>
1	Fishguard, Wales	50 km	Crustacean purchasing, grading and selling
2	Newquay, Wales	65 km	Whelk purchasing, processing and selling
3	Newport, Wales	160 km	Whelk purchasing and selling; processing under contract with the claimant under 2 above
4	Saltash, Cornwall	400 km	Crustacean purchasing, grading and selling

7.2.2 It is likely that a number of companies with similar activities located outside the area covered by the fishing ban, for example in Devon, Liverpool and London (320, 400 and 400 kilometres from the affected area respectively) will submit claims.

7.2.3 The question to be addressed is whether these claimants, or some of them, fulfill the criteria referred to above.

7.2.4 It will be recalled that the Executive Committee has in previous cases taken a number of decisions in respect of claims for pure economic loss. In the *Braer* case the Executive Committee considered claims from fish processors at various locations on Shetland who had been deprived of supply of fish from the exclusion zone imposed by the United Kingdom Government. The Committee recognised that it could be argued that such losses, 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 such losses should be considered as having been caused by contamination, and these claims were therefore considered as admissible in principle (document FUND/EXC.34/9, paragraph 3.3.19).

7.2.5 On the other hand, in the *Braer* case the Executive Committee rejected a number of claims for pure economic loss as not fulfilling the above-mentioned criteria. The Committee considered for example a claim from a smolt producing company on the west coast of Scotland, some 500 kilometres from Shetland, which had alleged, inter alia, that a general loss of confidence in the Shetland salmon farming industry in the months following the *Braer* incident had led to a reduction or cancellation of orders for the sale of smolt, as well as a reduction in prices. The Committee rejected this claim for several reasons. In the Committee's view, the company should be considered as a supplier of raw material to the Shetland salmon farming industry. It was considered that the company's smolt-rearing activity did not form an integral part of the economic activity in the affected area. The Committee took the view that the alleged 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 the company's lack of adequate alternative markets (document FUND/EXC.40/10, paragraphs 3.5.11 - 3.5.12). A claim was presented by a company supplying smolt from its installation on mainland Scotland for contract-rearing by a salmon farmer within the exclusion zone. The claim concerned losses allegedly suffered by this company through not having been able to implement the contract. The Committee rejected the claim on the ground that, although the claimant might to some extent be dependent upon its sales of smolt to Shetland, the claimant's activities did not form an integral part of the economy of the area affected by the contamination (documents FUND/EXC.39/8,

paragraphs 3.3.19 and 3.3.20, and FUND/EXC.44/17, paragraphs 3.4.34 – 3.4.36). A claim submitted by a salmon trader, with his place of business in Norway, for lost commission on the sale of produce from two salmon farms within the exclusion zone, was rejected for the same reason (document FUND/EXC.39/8, paragraph 3.3.24). A claim by a fish feed manufacturer in Denmark for alleged losses resulting from reduced sales of fish feed to salmon farmers within the exclusion zone was also rejected on the ground that the claimant's alleged loss was a result of the buyers not fulfilling their contractual obligation. The Committee also took the view that this claimant's activities were not an integral part of the economic activity of the area affected by the spill (document FUND/EXC.36/9, paragraphs 3.4.18 and 3.4.19). A claim presented by a London-based fish trader, who marketed salmon from farms within the exclusion zone, was rejected. The Committee noted that the loss allegedly incurred was not a direct result of contamination but an indirect result of the damage by contamination caused to a certain area of water around the Shetland Islands. The Committee decided that the alleged damage did not fall within the definition of pollution damage (document FUND/EXC. 34/9, paragraph 3.3.27).

7.2.6 As for the claims under consideration in the *Sea Empress* case, the mere fact that a claimant's activities are located slightly outside the area immediately affected by the spill should not, in the Director's view, by itself disqualify the claimant from compensation. On the other hand, the further away from the affected area that the claimant's business is located, the less likelihood there is that the business would form an integral part of the activity of the area. The Director takes the view that the claimants referred to in paragraphs 7.2.1 and 7.2.2 whose activities are located in London, Liverpool, Devon and Cornwall would not fulfill the geographic criteria, ie that the activities should form an integral part of the economic activity of the area affected by the spill. The three claimants whose businesses are located in Wales but outside the affected area would, in the Director's view, be more borderline cases. In respect of these claims, an important factor might be the degree to which the claimant is economically dependent on the affected resource and the extent to which the claimant had alternative sources of supply. These issues are being examined by the IOPC Fund's experts. When this examination has been completed, the IOPC Fund will have to consider in respect of each claim whether or not the criterion of reasonable proximity is fulfilled.

7.3 Angling clubs

7.3.1 The Director has been informed that a number of angling clubs in South Wales will present claims for economic loss allegedly suffered as a result of the *Sea Empress* incident.

7.3.2 The solicitor representing the prospective claimants has presented the following information:

The major part of angling in England and Wales is carried out through angling clubs. These clubs are formed for the purpose of making fishing available to their members to which the individual members would not be able to gain access without the club acquiring the fishing rights.

The clubs as legal entities are either unincorporated associations or limited companies. As a general principle clubs look to raise sufficient income to cover their outgoings and therefore cannot be characterised in any way as profit making organisations.

The clubs acquire the angling rights either by freehold purchase of the bank of the river which by law vests the bed to one half the width of the river in the owner, or by purchase of the fishing rights which can be acquired separately from the land itself. Alternatively the fishing rights are leased or licensed from the land owner.

The clubs finance the acquisition of the fishing rights by the annual subscriptions paid by the members. In many cases the price paid for the fishing rights is less than the full market value which reflects long standing relationships between the club and owners and the benefit to the community in having fishing rights available to local people.

7.3.3 This solicitor has indicated that the claims will be made on the following basis:

The claims to be made by angling clubs will reflect on the one hand the payment of money for which no benefit has been had and on the other, income which has been lost. Both the wasted expenditure and the lost income result directly from the closure of the fisheries from 17 March to 3 May, which amounts to 21.86% of the season which closes on 17 October. As well as rent for angling rights there are other items of fixed expenditure, for example rates, payments of water bailiffs and other out of pocket expenses such as advertising closure of the fishery. On the income side of the equation the clubs will have suffered loss of subscriptions, loss of sales of day tickets to casual anglers and loss of other income. Claims will therefore be prepared and presented on the basis of an analysis of the club's accounts. It will be borne in mind that so far as possible the clubs are under a duty to mitigate any loss that they have suffered.

7.3.4 If the individual members of angling clubs were to claim compensation for "loss of enjoyment" because of the fishing ban, such claims would, in the Director's view, not be admissible, since this cannot be considered a quantifiable economic loss. Equally, the members would not be entitled, in his opinion, to compensation for expenses incurred to enable them to fish elsewhere.

7.3.5 It has been argued by the above-mentioned solicitor that compensation should be granted for payments made by the angling clubs in the form of, for example, annual licence fees for which no benefit was derived during the period of the fishing ban. In the Director's view, expenses of this type would have been incurred even if the oil spill had not occurred and whether or not the anglers went fishing, and the clubs have therefore not incurred any economic loss. Such claims should therefore in his view be rejected. However, additional costs which would not have been incurred but for the oil pollution might be admissible for compensation.

7.3.6 It should be recalled that in the *Haven* case the Executive Committee rejected a claim by a yacht owner relating to reimbursement of part of the mooring fees and insurance premiums for the calendar year of the incident. The grounds for rejection were that these costs would have been incurred by the claimant whether or not the incident had occurred, and that there was therefore no link of causation between the contamination and these costs (document FUND/EXC.35/10, paragraph 3.2.14).

7.3.7 The angling clubs may have suffered loss of income, for example in the form of reduced membership fees during the period of the fishing ban. In the Director's view, such losses would in principle be admissible, provided that the losses could be quantified and it could be shown that they were a result of the fishing ban.

7.4 Private owners of river beds or fishing rights

7.4.1 The Director has been informed that claims will also be presented by private owners of river beds or fishing rights.

7.4.2 The above-mentioned solicitor has given the following information:

Some stretches of the relevant rivers will not be let to angling clubs but will be retained by the owner of the river bed or the fishing rights.

In some cases that fishing will be enjoyed in hand, and in these cases the owner will not suffer any economic loss, except to the extent that he has paid rates or other fixed outgoings in relation to the rights during the period when the fishery was closed. In other cases fishing may be made available by the owner to anglers by way of the sale of day tickets or by the renting of e.g. a cottage or caravan with fishing rights attached. Additionally there is the possibility that the angling rights would have been let by the owner for the season or the day but this has not been possible due to the closure of the fishery. If the rights are let, it may be that only a reduced rental has been received due to the non availability of the rights for part of the season.

7.4.3 As regards potential claims of this type, the Director takes the view that the owners in question would not be entitled to compensation for paid rates and fixed outgoings, for the reasons set out in paragraph 7.3.5 above. If, on the other hand, as a result of the fishing ban, owners of such river beds or fishing rights have suffered actual economic losses of the types mentioned (reduction of sales of day tickets, reduction in occupancy of cottages or caravans with fishing rights attached), they would in the Director's opinion in principle be entitled to compensation, provided that they could quantify their losses.

8 Marketing campaign for tourism

8.1 At its 48th session, the Executive Committee took note of a request made by the Wales Tourist Board that the IOPC Fund should contribute £500 000 towards a marketing campaign intended to offset the alleged decline of tourism caused by the *Sea Empress* incident. The Committee also took note of a budget for such a campaign totalling £550 000 submitted by the Board, as set out in document FUND/EXC.48/2/Add.2.

8.2 The Committee noted the view expressed by the Director that it might be appropriate for the Wales Tourist Board to take measures to reduce the effects of the *Sea Empress* incident on the tourism industry. It was also noted that, since the request had been received only shortly before the session, the Director had not been able to examine, together with the IOPC Fund's experts, whether the proposed measures fulfilled the criteria for admissibility laid down by the IOPC Fund Assembly and Executive Committee, in particular whether these measures were appropriate and would have reasonable prospects of being successful. It was further noted that many of the items included in the proposed campaign did not relate to actual targeted markets but were of a general nature, and that the Director had therefore expressed the view that the cost of carrying out some elements of the planned campaign as presented could not form the basis of an admissible claim.

8.3 The Executive Committee agreed with the Director that if the Wales Tourist Board were to develop further its plan for a marketing campaign, the Director should be prepared to discuss with the Board on a without prejudice basis, with the assistance of the IOPC Fund's experts, whether and to what extent any measures which the Board might wish to take could be considered as fulfilling the criteria for admissibility. The Committee reiterated its position that in principle the IOPC Fund should not consider claims for marketing activities until the activities had been carried out and the results could be assessed (document FUND/EXC.48/6, paragraphs 3.6.3 and 3.6.4). The Committee referred to the discussions on this point in the 7th Intersessional Working Group (document FUND/A.17/23, paragraph 7.2.43).

8.4 On 25 April 1996, the Director and representatives of the Skuld Club met representatives of the Wales Tourist Board. The Director explained the criteria for admissibility of claims relating to measures to prevent or minimise pure economic loss, as set out in paragraph 2.2 of document FUND/EXC.48/2/Add. 2. He also informed the Board of the position taken by the Executive Committee in respect of the Board's request. It was agreed that the Board would discuss the matter with the tourism experts engaged by the IOPC Fund and the Skuld Club, and that the Board would then submit a revised plan for a marketing campaign which would be considered by the Club and the Fund.

8.5 A revised plan was presented by the Board on 5 June 1996, and this plan is being examined by the experts of the IOPC Fund and the Skuld Club.

9 Payments of claims

9.1 As mentioned in paragraph 5.2 above, the Executive Committee decided at its 48th session to limit the Director's authority to make payments to 75% of the damage actually suffered by the respective claimant, since the total amount of the claims arising out of the *Sea Empress* incident might exceed the total amount of compensation available under the Civil Liability Convention and the Fund Convention.

9.2 At the Committee's 48th session, the Director presented an assessment of the level of potential claims (document FUND/EXC.48/2/Add.1, paragraphs 3.2 - 3.16). The United Kingdom delegation presented a document to that session (document FUND/EXC.48/2/1) containing information in this respect.

9.3 In the document presented to the Committee's 48th session, the Director stated that he felt unable to make any accurate estimate of the total amount of the admissible claims arising out of this incident. The main reason for this position was the uncertainty in respect of the level of admissible claims in the tourism sector and, to a lesser extent, of those in the fishing sector.

9.4 The Director feels that the uncertainty referred to in paragraph 9.3 above remains. For this reason, he cannot at this stage be certain that the total amount of the established claims will not exceed the maximum amount available, viz 60 million SDR (£57 million). The Director proposes, therefore, that the IOPC Fund's payments should for the time being remain limited to 75% of the damage suffered by the respective claimants on the basis of the advice of the IOPC Fund's experts at the time when payment is made.

9.5 The Director proposes that the Executive Committee should reassess the situation at its 50th session, to be held in October 1996.

10 Action to be taken by the Executive Committee

The Executive Committee is invited:

- (a) to take note of the information contained in this document;
 - (b) to give the Director such instructions as it may deem appropriate in respect of the handling of the claims arising out of this incident, in particular in respect of claims relating to pure economic loss from:
 - (i) fish processing and marketing companies (paragraph 7.2),
 - (ii) angling clubs (paragraph 7.3); and
 - (iii) private owners of river beds or fishing rights (paragraph 7.4);
 - (c) to give the Director instructions on the payment of claims (paragraph 9); and
 - (d) to give the Director such instructions in relation to other aspects of this incident as it may deem appropriate.
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