



INTERNATIONAL
OIL POLLUTION
COMPENSATION
FUND 1971

EXECUTIVE COMMITTEE
50th session
Agenda item 3

71FUND/EXC.50/12
1 October 1996

Original: ENGLISH

INCIDENTS INVOLVING THE 1971 FUND

SEA EMPRESS

Note by the Director

1 The Incident

1.1 At about 20.00 hours on 15 February 1996, the Liberian registered tanker Sea Empress (77 356 GRT), laden with more than 130 000 tonnes of Forties Blend crude oil intended for the Texaco refinery, ran aground in the entrance to Milford Haven harbour in South Wales (United Kingdom). There was a pilot on board who had joined the tanker at about 19.30 hours outside the harbour entrance.

1.2 It was established immediately after the grounding that four cargo tanks and several ballast tanks had been ruptured. The captain reported an initial loss of around 6 000 tonnes of crude oil. Although quickly refloated, the tanker listed badly and was anchored in that position to await another tanker into which oil could be transferred.

1.3 On 16 February the shipowner entered into a salvage contract 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.

1.4 During strong winds in the night of 16 February, the Sea Empress grounded again with further leakage of oil. The ship was refloated at high tide on 17 February but went aground that evening off St Ann's Head, causing a fresh release of oil and vapour. In continued strong winds, the tanker went aground again in the morning of 18 February, but with no reported loss of oil at that time. Oil was lost, however, at each subsequent low tide, with the largest releases probably occurring around midday and midnight on 19 February (the latter being estimated at 30 000 tonnes). By the afternoon of 19 February it was believed that only three tanks remained intact.

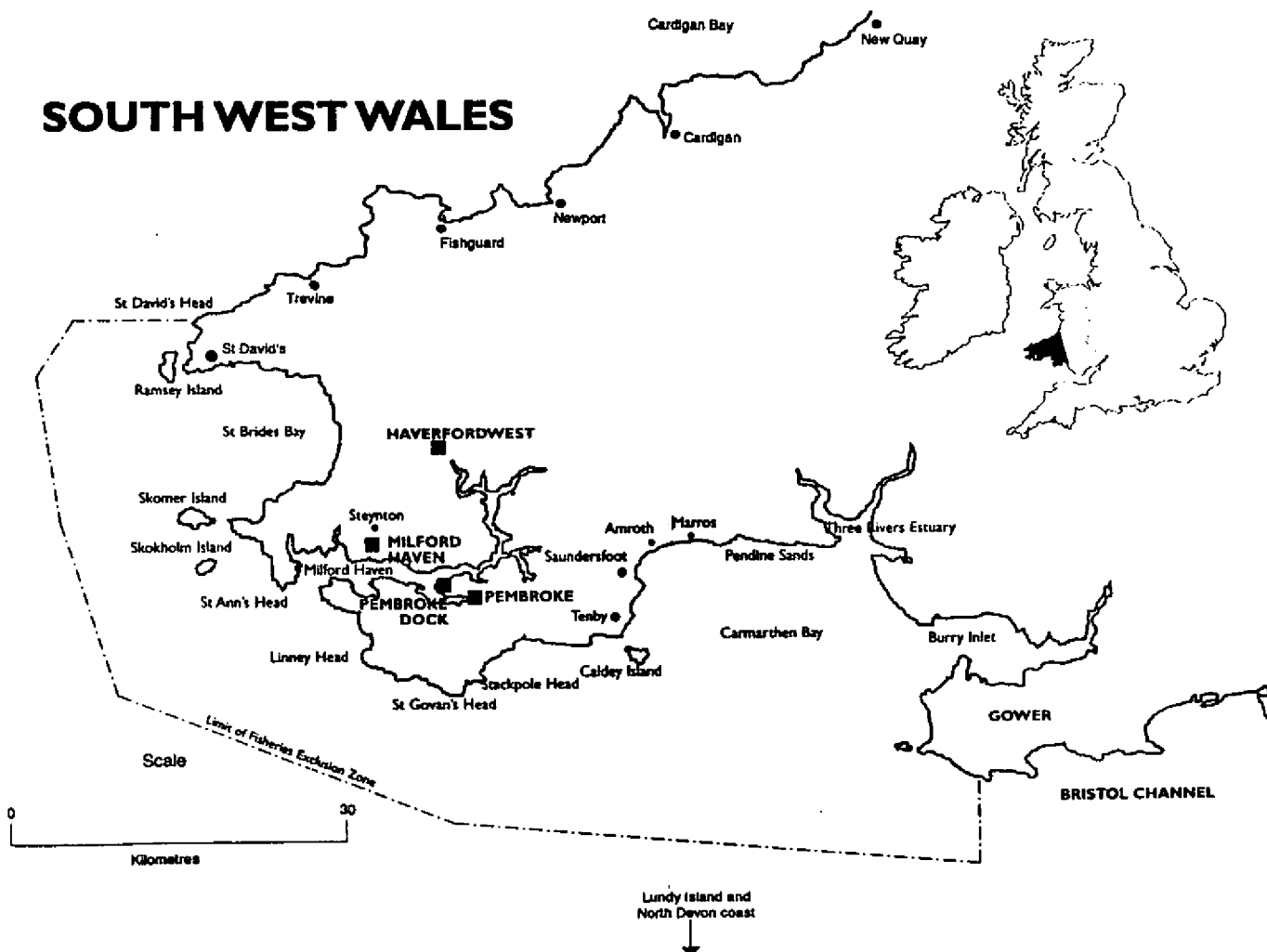
1.5 The *Sea Empress* was finally refloated on the high tide in the evening of 21 February and moved to a jetty in Milford Haven. The greatest release of heavy fuel oil occurred that evening while the tanker was alongside the jetty. Steps were taken to remove fuel oil from ruptured tanks, and 500 tonnes of bunkers were transferred to another vessel at the jetty. Between 24 February and 3 March the remaining cargo, some 58 000 tonnes, was discharged and delivered to the Texaco refinery.

1.6 An underwater survey showed that the *Sea Empress* had suffered extensive structural damage.

1.7 The *Sea Empress* was towed out of Milford Haven on 27 March and was placed in a dry dock in Belfast on 2 April. A further small quantity of fuel oil was lost at the start of and during the voyage.

1.8 It is estimated that approximately 72 000 tonnes of crude oil and 360 tonnes of heavy fuel oil were released as a result of the incident.

1.9 The *Sea Empress* was entered in Assuranceforeningen Skuld (Skuld Club).



2 Impact of the spill

2.1 South West Wales has a coastline of great scenic interest and scientific importance. Around 200 km of coastline were affected by the spill. A large part of the affected coast falls within the Pembrokeshire Coast National Park. The area includes one of the United Kingdom's three Marine Nature Reserves,

2.2 The coastline within Milford Haven was heavily oiled, and outside the Haven much of the oil moved south and then eastwards parallel to the south coast of Pembrokeshire, affecting this coastline as far as Pendine Sands in Carmarthen Bay. Some oil reached Skomer Island north west of the Haven, but no oil was observed north of St David's Head. Lundy Island in the Bristol Channel received light oiling, and some pellets of oil reached the Irish coast. No oiling of the coast of mainland Devon and Cornwall was reported.

3 Clean-up operations

3.1 Overall management of the response to the incident was provided by 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 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.

3.2 Experts from the International Tanker Owners Pollution Federation Ltd were engaged by the Skuld Club and the 1971 Fund to monitor the clean-up operation.

3.3 The response to oil pollution at sea included the aerial application of dispersants as well as 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 recovery operations. Close to the shore fishing boats, working in pairs with oil containment booms, assisted in the oil recovery operations. In all some 7 300m³ of oil and water mixtures were recovered at sea.

3.4 Between 17 and 25 February 445 tonnes of chemical dispersants were used to break up the oil into dispersed droplets in order to reduce the risk to the coastline and to birds at sea. Dispersants were not used within one kilometre of the shoreline so as to avoid shallow water where the dispersed oil would be less readily diluted.

3.5 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.

3.6 The oil affected an area consisting of a wide variety of shoreline types including sand, shingle and cobble beaches, rocky shorelines and cliffs. Clean-up of the contaminated beaches involved the collection of liquid oil using vacuum trucks and the manual removal of oiled beach material. Dispersants were used to remove weathered oil from rocks next to selected beaches where amenity value was judged to take priority.

3.7 The work on beaches and accessible rocky shorelines to remove major accumulations of oil was completed by the middle of March. The main recreational beaches were cleaned by early April, although minor re-oiling occurred throughout the summer, and cleaning operations will continue into October. At the height of the clean-up activity about 600 people were employed.

3.8 While the clean-up of sandy beaches was completed very promptly, small teams of clean-up workers were held in readiness throughout the holiday season to ensure that amenity beaches were kept thoroughly clean and that any re-oiling was dealt with rapidly. The re-appearance of oil on these beaches

through the summer was the result of sand movement exposing oil which had not previously been removed or the release of oil from inaccessible shorelines from which the oil could not be removed. Manpower levels were maintained at about 200 from April to June, falling to less than 150 during July. Operations to clean rocky and cobble shorelines have required a greater effort. These operations were made difficult by the movement of sand alternately exposing and obscuring oiled rocks. Through August some 50 people were involved in the clean-up operations, and during September only about 20 persons were retained for the rapid response teams removing tar balls from amenity beaches.

3.9 The Joint Response Centre has been maintained to manage the remaining clean-up work. From the end of July the number of people involved was reduced and meetings were held only three times a week rather than daily.

3.10 Approximately 18 000 tonnes of oil/water mixtures and 13 000 tonnes of oily beach material and other wastes were collected during the clean-up operations. The liquid waste was transported to the Texaco refinery at Milford Haven where some 2 150 tonnes of oil were separated from the oil/water mixtures. Of the solid waste, 8 400 tonnes of oily sand were disposed of at the Texaco refinery by land farming, and a further 4 600 tonnes at licensed landfill sites in Wales and England. In addition, the processing of the oily water mixtures received by the Texaco refinery have generated an estimated 3 500 tonnes of oily sludge which will also require disposal, most probable by land farming at the refinery.

3.11 On 1 April 1996 the responsibility for shoreline clean-up was transferred from Dyfed County Council and the three district councils affected to the newly formed local authorities of Pembrokeshire County Council and Carmarthenshire County Council, following a reorganisation of local government.

3.12 It is estimated that the clean-up costs incurred by the MPCU, local authorities, Texaco and various contractors had reached over £18 million by the end of September 1996.

3.13 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, established that the source of the tar balls was the *Sea Empress* spill. An expert from ITOPF 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.

4 Effects on fisheries

4.1 Initially the two main concerns of the authorities were to establish the size of the area affected by the oil and to determine whether fish and shellfish had been contaminated and if so to what extent. Research vessels were used to map concentrations of oil in water and sediment, and over 500 samples of fish and shellfish have been analysed for hydrocarbon content.

4.2 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 were 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.

4.3 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 have been affected by the spill.

4.4 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.

4.5 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 continuously monitored the levels of oil contamination in coastal waters and in animal tissues within the designated zone. ITOPF and fishery experts engaged by the Skuld Club and the 1971 Fund have been in regular contact with the authorities concerning the monitoring.

4.6 Fin fish were found to have little or no contamination, and the ban on salmon and migratory trout was lifted on 3 May and on other fin fish species on 21 May. Certain shellfish, notably bivalve molluscs (such as cockles and mussels), which live in the intertidal zone and were directly oiled in some locations were more heavily contaminated and are recovering more slowly. Other shellfish living on the sea bottom, notably crustaceans (such as lobsters and crabs) and whelks, showed only slightly elevated hydrocarbon levels in some locations shortly after the spill. These hydrocarbon levels have since then declined. The ban on the exploitation of shellfish in the inter-tidal zone was lifted in two areas, the Burry Inlet on 3 July and the Three Rivers area on 12 September. However, as of 30 September the ban remains in force for inter-tidal species in the remaining part of the designated zone. The ban on fishing whelks and crustacea was lifted on 30 August for the whole of the designated zone, with the exception of Milford Haven itself.

4.7 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.

5 Effects on tourism industry

5.1 Tourism is an important industry in Pembrokeshire, with the total tourism expenditure estimated at between £150 and £175 million in 1995. The tourism industry in Pembrokeshire consists of a range of small hotels, guest houses, caravan parks and cottages as well as restaurants, shops, visitor attractions and activities such as boat trips.

5.2 The Pembrokeshire Coast National Park, the only Coastal National Park in Britain, includes some 400 kilometres of coastline. Many of the tourist resorts and villages are linked by the 300 km long Pembrokeshire Coastal Path, which is designated as a National Trail.

5.3 The incident has had an impact on the tourism economy, although it is too early to estimate the magnitude of the losses. Many operators reported a sharp drop in levels of accommodation enquiries and bookings for the period immediately following the incident. It appears that the impact of the incident has been less during the peak tourism season of July and August 1996.

6 Effects on wildlife

6.1 More than 6 900 oiled birds of at least 28 species were recovered. Of these, a little more than half were recovered dead. Of the total number recovered, 66% were common scoter and 28% guillemots and razorbills. Most of the birds were found along the south coast of Pembrokeshire and adjacent Carmarthenshire. The Royal Society for the Prevention of Cruelty to Animals (RSPCA) set up an emergency facility for live oiled birds. This facility handled more than 3 100 birds, of which some 2 500 were common scoter. More than 2 000 birds (60%) were cleaned and released. Released birds were ringed for future identification.

6.2 Monitoring of the oil lost at sea and its effects on the shoreline and marine environment began almost immediately the tanker went aground. In addition, studies are being carried out to evaluate the effectiveness and environmental consequences of the techniques which were used in the various clean-up operations. Much of these activities has been supported financially by the United Kingdom Government which established the Sea Empress Environmental Evaluation Committee (SEEEC) to co-ordinate the work. This Committee published an initial report in July 1996.

7 Claims handling

7.1 The Skuld Club and the 1971 Fund have together established a Claims Handling Office in Milford Haven. The purpose of that office is to receive and assess claims and forward them to the Skuld Club and the Fund for examination and approval. That office also assists claimants in the presentation of their claims.

7.2 A number of experts are assisting the 1971 Fund and the Skuld Club to examine various groups of claims, viz those relating to clean-up operations, salvage, fishing, tourism and property damage. The distribution of this work is co-ordinated by the Claims Handling Office.

8 Decisions by the Executive Committee at its 47th, 48th and 49th sessions

8.1 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 1969 Civil Liability Convention and the 1971 Fund Convention. For this reason, the Committee considered it necessary for the 1971 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 3.10.2 and 3.10.5).

8.2 The Executive Committee noted at its 48th session that the total amount of the claims arising out of the *Sea Empress* incident might exceed the total amount of compensation available under the 1969 Civil Liability Convention and the 1971 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 1971 Fund's experts at the time when a payment was made (document FUND/EXC.48/6, paragraph 3.4.7).

8.3 At its 49th session, the Executive Committee decided that the level of the 1971 Fund's payments should remain limited to 75% of the damage actually suffered by the respective claimants (document FUND/EXC.49/12, paragraph 3.8.21).

9 Claims for compensation

9.1 General situation

9.1.1 As at 30 September 1996, 479 claims for compensation had been submitted to the Claims Handling Office (CHO).

9.1.2 The Skuld Club has made payments to 269 claimants, totalling £4 411 714. Cheques for a further £36 890 are awaiting collection by the claimants. Most of these payments correspond to 75% of the amounts approved by the Club and the Director. 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.

9.2 Claims for clean-up operations

9.2.1 Pembrokeshire County Council (PCC) has submitted an interim claim for £1 091 096 in respect

of costs incurred by Preseli Pembrokeshire District Council and South Pembrokeshire District Council during the period 15 February - 31 March prior to the local authority reorganisation on 1 April 1996. On the basis of the documentation submitted so far, this claim has been assessed by experts on behalf of the Skuld Club and the 1971 Fund at £485 611 for the substantiated items, of which 75% (£364 208) has been paid. Queries were raised in respect of this claim and a further assessment is being carried out in the light of additional information provided by the claimant. PCC have given notice of a further claim of £3 100 000 in respect of expenditure after 1 April 1996. Supporting documentation for costs incurred in April and May has been presented and is being examined.

9.2.2 Devon County Council and two Devon District Councils, North Devon and Torridge, have submitted claims for £8 979, £2 232 and £1 459, respectively. These claims have been assessed by experts at £6 876 in respect of Devon County Council, £1 890 in respect of North Devon District Council and £1 459 in respect of Torridge District Council. Queries were raised in respect of the claim submitted by Devon County Council and this claim will be re-examined in the light of any further information provided by the claimant.

9.2.3 The Environment Agency has submitted a claim for £401 868 for costs incurred by the National Rivers Authority in respect of staff costs, transport and equipment hire. This claim is being examined by the experts engaged by the Skuld Club and the IOPC Fund.

9.2.4 Milford Haven Standing Conference on Anti-Oil Pollution has presented a claim for £1 245 773 in respect of costs incurred for the provision of booms, skimmers and spill response craft in the clean-up operations. Texaco Limited, Gulf Oil Refining Ltd, Elf Oil (UK) Ltd and Milford Haven Port Authority are represented on the Standing Conference which was set up for the purpose of providing a spill response capability within Milford Haven. This claim is being examined by the 1971 Fund's and the Skuld Club's experts.

9.2.5 Two charities have claimed compensation for cleaning of birds for £4 962 and £705, respectively. These claims are being examined by the Fund's and Club's experts.

9.2.6 The Joint Nature Conservation Committee, a government funded body set up to ensure a coordinated approach of the nature conservation bodies in England, Scotland, Wales and Northern Ireland, has submitted a claim for £11 336, and Dyfed Wildlife Trust has presented a claim for £44 235, for costs incurred in cleaning birds. These claims are being examined.

9.2.7 The National Trust has presented a claim for £37 135 in respect of costs of monitoring contamination of the shoreline within its area of responsibility and some clean-up work. This claim is being examined.

9.3 Property claims

9.3.1 As a result of the incident, boats and moorings in the Milford Haven area became contaminated. Eighty-five claims in respect of such damage have been approved for £68 474, and most of these claims have been paid in full by the Skuld Club.

9.3.2 A number of buildings located close to the affected beaches were contaminated by wind-blown oil. Thirty-three claims relating to such damage have been approved for a total of £17 148. The Skuld Club has paid a total of £13 696 in compensation, in most cases corresponding to 75% of the approved amounts.

9.3.3 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 damaged by windblown oil. In addition, claims have been submitted by persons on whose property roads have been damaged by the passage of heavy vehicles and equipment involved in the clean-up operations. Twenty-nine claims in these categories have been approved for a total of £24 667. The Skuld Club has paid a total of £20 104, in most cases corresponding to 75% of the approved amounts.

9.4 Fishery claims

9.4.1 Claims have been presented by 134 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.

9.4.2 In this category 111 claims have been approved for a total of £4 071 273. The Skuld Club has paid a total of £3 053 455, which represents 75% of the approved amounts.

9.4.3 A claim has been presented by one oyster farm whose stock has been contaminated as a result of the spill and which has been prevented from selling its oysters due to the fishing ban. Payments totalling £60 514 have been made by the Skuld Club to this claimant for 75% of the losses resulting from the destruction of the part of the stock that would normally have been harvested and sold every month since the incident.

9.4.4 Eleven fish and shellfish processing companies have claimed compensation for losses suffered as a result of having been deprived of raw material due to the fishing ban. One company processes white fish, three whelks, three crustaceans, and four cockles from the Bury Inlet area. So far interim payments totalling £647 832 have been made to nine of these companies corresponding to 75% of the interim assessment losses.

9.4.5 The claim from one fish processing company located in Cornwall was rejected by the Executive Committee at its 49th session, since the Committee considered that there was not a reasonable degree of proximity between the contamination and the losses suffered by the claimant (document FUND/EXC.49/12, paragraphs 3.8.9 – 3.8.10).

9.5 Tourism claims

There have so far been claims from 139 operators in tourism and tourism-related businesses such as hotels, bed & breakfast businesses, caravan parks, shops and restaurants at sea-side resorts as well as from a sailing school, a water sports centre, a diving school and angling shops. Payments for a total of £131 452 have been made to 32 claimants in this category, corresponding to 75% of the proven losses for the assessed periods. The remaining claims are being examined.

10 Claims submitted to the Executive Committee for consideration

10.1 The Director intends to refer certain questions of principle to the Executive Committee for consideration in respect of the two groups of claims set out in paragraphs 10.3 – 10.5 below. Details of two issues will be set out in an addendum to this document.

10.2 A number of claims have been presented in respect of alleged losses suffered by various types of businesses in the tourism sector located mainly in Pembrokeshire. The question has arisen as regards the admissibility of a number of these claims.

10.3 It will be recalled that in the *Haven* case the Executive Committee considered, at its 35th session, claims submitted by the owners of hotels, restaurants and shops located along the Italian coast between Genoa and the French border. The Committee laid down certain criteria for the admissibility of claims in the tourism sector (document FUND/EXC.35/10, paragraphs 3.2.4–3.2.9). The Director will submit to the Committee for consideration how these criteria should be applied to certain claims arising out of the *Sea Empress* incident.

10.4 At its 37th session, the Executive Committee considered the admissibility of claims relating to fees paid by claimants to their advisers. 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 would 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).

10.5 The Director will invite the Committee to consider how the principles laid down by it in respect of fees should be applied when claimants have entered into agreements with their advisors to pay them on a contingency fee basis.

11 Level of payment of claims

11.1 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 submitted a document to that session (document FUND/EXC.48/2/1) containing information in this respect, and a document on the same subject to the 49th session (document FUND/EXC.49/9/1).

11.2 As mentioned in paragraph 8.2 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 1969 Civil Liability Convention and the 1971 Fund Convention. At its 49th session the Executive Committee decided that the 1971 Fund's payments should, for the time being, remain limited to 75% of the damage actually suffered by the claimant (document FUND/EXC.49.12, paragraph 3.8.21).

11.3 The Director still feels 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 is 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. 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 1971 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 1971 Fund's experts at the time when payment is made.

12 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, and
 - (c) to give the Director such instructions in relation to other aspects of this incident as it may deem appropriate.
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