



**INTERNATIONAL
OIL POLLUTION
COMPENSATION
FUND 1971**

EXECUTIVE COMMITTEE
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Agenda item 3

71FUND/EXC.50/4/Add.1
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INCIDENTS INVOLVING THE 1971 FUND

AEGEAN SEA

Note by the Director

1 Meeting with claimants in the fisheries sector

1.1 On 8 October 1996, a meeting was held in Santiago de Compostela between experts of certain claimants in the fishery sector, representatives of the Spanish Government and the Xunta de Galicia, and experts engaged by the UK Club and the 1971 Fund.

1.2 The purpose of the meeting, as agreed between the Director-General of the Merchant Marine and the Director of the 1971 Fund, was to allow the experts engaged by the UK Club and the Fund to assess further documentation provided by the claimants as required by the Criminal Court in the judgement rendered on 30 April 1996, with a view to making progress towards an out-of-court settlement. However, the only further documentation presented was by the Xunta. This documentation comprised additional information concerning shellfish harvesting exploitation plans. The lawyer representing the claimants stated that the boat fishermen were unable to provide the documents requested by the Court, namely catch landing receipts and tax returns. As a result, the Fund's and the Club's experts were not able to assess the losses of the boat fishermen in accordance with the judgement.

1.3 The lawyer representing the claimants stated that he would be prepared to recommend his clients (both boat fishermen and shellfish harvesters) to agree to a full and final settlement for an amount calculated on the basis laid down by the Court in respect of the shellfish harvesters alone. According to the representative of the Xunta, this method gave a figure for the shellfish harvesters in the order of Pts 3 200 million (£16 million), whereas it appears that the claimants arrive at Pts 3 800 million (£19 million). The highest estimate made by the experts engaged by the Club and the 1971 Fund of the real losses suffered by these shellfish harvesters, using the information available to them, is Pts 800 million (£4 million).

1.4 During the meeting a Xunta biologist explained the calculation made by the Xunta. This calculation used the value of the maximum allowed catch per man per day of all species named in the exploitation plans multiplied by the number of allowed harvesting days lost as a result of the ban. It also assumed that each shellfish harvester obtained the maximum allowed catch both from the banks authorised by the Fisheries Council for his own Cofradia's sole use and the so-called free harvesting zone also used by other Cofradias in the same general area.

1.5 The claimants have not provided details of how they reached the figure of Pts 3 800 million (£19 million).

1.6 Although the information in the hands of the experts of the Club and 1971 Fund did not correspond exactly with the data used by the Xunta as to the number of days lost and the number of people involved, the Club's and 1971 Fund's experts recognised that a calculation carried out in the way explained would produce a result of the order of magnitude quoted. In the view of the Club and 1971 Fund, however, such an approach is purely artificial and assumes that the stocks are unlimited, the meteorological conditions are always favourable and the shellfish harvesters physically capable of using all their harvest allowance of all the authorised species every authorised day, changing equipment and site as necessary to achieve this.

1.7 As set out in paragraph 8.6.7 of document 71FUND/EXC.50/4, the 1971 Fund and the Club do not accept that the calculation of the shellfish harvesters' losses should be made using the maximum allowable harvest days and the maximum allowed quantities. During the oral hearing in the Criminal Court and in its appeal against the judgement in this regard, the 1971 Fund pointed out that it is unlikely that these maximum days and quantities could ever be realised and that the approved exploitation plans anticipated far lower total catches. The Executive Committee decided, at its 49th session, that the appeal should be maintained on this point.

1.8 It should be noted that the figures calculated by the claimants and the Xunta are at least four times the highest estimate made by the experts engaged by the UK Club and the 1971 Fund of the losses suffered by these shellfish harvester claimants. This highest estimate is based on official statistics of declared catches plus an allowance for undeclared catches. This allowance was based on advice from Galician fisheries economists at the Universities of Vigo and Santiago.

1.9 It should also be noted that the figure calculated by the Xunta (Pts 3 200 million) equates to an average per harvester of some Pts 1.6 million. The figure of Pts 3 200 million is over three times the loss during the period of the bans that would have been anticipated from declarations of annual income presented by the claimants to the Club and 1971 Fund during earlier discussions.

1.10 Notwithstanding what is stated above, the Director still believes it should be possible to reach agreement with the claimants with regard to the losses suffered by the shellfish harvesters on the basis of the exploitation plans referred to by the Criminal Court. However, he considers that this would be possible only if the claimants accept that the formula of maximum permitted catches per day times the number of authorised days lost, is unrealistic.

1.11 Similarly, the Director believes that an agreement with the claimants represented at the meeting on 8 October 1996 on the boat fishing losses could be possible. However, he considers that progress towards an out-of-court settlement can be made only if the claimants are prepared to provide the documentation requested by the Court and which the Fund believes to be indispensable to a viable assessment of the losses suffered by the boat fishermen. Similar documents have been provided by other claimants in this category.

1.12 In view of the large difference between the calculation made by the Xunta on the basis of the judgement and the amounts of the losses previously assessed by the 1971 Fund and the UK Club's experts, the Spanish Government has requested that the 1971 Fund should make additional payments to these claimants in the fisheries sector.

1.13 As stated above, the Director considers that the judgement of 30 April 1996 provides a basis for further discussions with the claimants. Nevertheless, the evidence provided so far has not enabled the 1971 Fund's and the Club's experts to increase their estimate of the losses actually suffered by these claimants. It should be recalled that the 1971 Fund has appealed against the method of evaluation laid down in the judgement as regards shellfish harvesters. For this reason, the Director considers that he cannot recommend further payments at this stage.

2 Action to be taken by the Executive Committee

The Executive Committee is invited:

- (a) to consider the method for assessment of the claims in the fisheries sector; and
 - (b) to give the Director such instructions as it may deem appropriate in this regard.
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