



INTERNATIONAL  
OIL POLLUTION  
COMPENSATION  
FUND 1971

EXECUTIVE COMMITTEE  
62nd session  
Agenda item 3

71FUND/EXC.62/8  
30 September 1999

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## INCIDENTS INVOLVING THE 1971 FUND

### NAKHODKA

Note by the Director

<b>Summary:</b>	Claims have been received for a total of ¥34 758 million (£204 million). The 1971 Fund has so far paid ¥7 540 million (£38.3 million) in compensation.
<b>Action to be taken:</b>	Decide on the level of the 1971 Fund's payments.

#### 1 Introduction

1.1 On 2 January 1997, the Russian tanker *Nakhodka* (13 159 GRT), proceeding from Shanghai (China) to Petropavlovsk (Russian Federation) with a cargo of 19 000 tonnes of medium fuel oil, broke up in heavy seas some 100 kilometres north-east of the Oki islands (Japan). The tanker broke into two sections, resulting in a spill of some 6 200 tonnes of oil. The stern section sank soon after the incident, with an estimated 10 000 tonnes of cargo on board. The upturned bow section, which may have contained up to 2 800 tonnes of cargo, drifted towards the coast and grounded on rocks some 200 metres from the shore, near the town of Mikuni in Fukui Prefecture. Following the grounding of the bow section, a substantial quantity of oil was released, causing heavy contamination of the adjacent shoreline.

1.2 The incident and the clean-up operations were described in some detail in document 71FUND/EXC.55/8.

#### 2 Claims handling

2.1 The 1971 and 1992 Funds, the shipowner and his P & I insurer, the United Kingdom Mutual Steamship Assurance Association (Bermuda) Ltd (UK Club), established jointly a Claims Handling Office in Kobe. The office has at present a staff of seven surveyors, two accountants and ten support staff.

2.2 In the months to come, priority will be given to the following groups of claimants: fishermen for loss of earnings, Prefectures and electricity power plants for the cost of clean-up operations and businesses in the tourism sector.

### 3 Claims for compensation

#### 3.1 Summary of claims situation

3.1.1 As at 30 September 1999, 455 claims totalling ¥34 758 million (£204 million)<sup><1></sup> had been received. The claims situation is summarised in the table reproduced in the Annex.

3.1.2 In paragraphs 3.2 - 3.6 information is given on those groups of claims where developments have taken place since the Executive Committee's 61st session.

3.1.3 The shipowner/UK Club have made payments totalling US\$867 593 (£560 000). It is expected that they will make a further payment of ¥65 889 134 (£387 000) shortly to a contractor who provided equipment for the clean-up operations.

3.1.4 The total payments made to claimants amounted to ¥7 635 million (£38.8 million) as at 30 September 1999, including the payments made by the shipowner/UK Club. It is expected that further payments of some ¥1 000 million (£5.9 million) will be made during October 1999.

#### 3.2 Clean-up operations

3.2.1 Claims from the Japan Marine Disaster Prevention Centre (JMDPC) and 54 sub-contractors engaged in clean-up operations under the JMDPC umbrella (items (a) and (b) in the annexed table) have been submitted for ¥8 322 million (£48.8 million). These claims include costs for the disposal of oily wastes.

3.2.2 In April 1999, the 1971 Fund made a payment of ¥672 million (£3.5 million) to JMDPC in respect of the operations carried out by a number of sub-contractors.

3.2.3 During June 1999, final agreements were reached with JMDPC on a number of items relating to various sub-contractors (other than those referred to in paragraph 3.2.2) including those who carried out waste disposal. These items, which were claimed for a total of ¥363 million (£2.1 million), were settled at ¥281 million (£1.6 million). In September 1999 the 1971 Fund paid ¥87 million (£496 000).

3.2.4 The total amount paid to JMDPC stands at ¥3 427 million (£17.7 million).

3.2.5 In September 1999 the IOPC Funds and the UK Club's experts made a provisional assessment of a claim relating to the cost of transferring oil from the *Nakhodka* to small vessels carried out by a sub-contractor under JMDPC. The assessed amount is ¥827 million (£4.9 million) compared to the claimed amount of ¥932 million (£5.5 million). It is expected that the 1971 Fund will shortly make a provisional payment of ¥400 million (£2.3 million).

3.2.6 A claim for ¥2 746 million (£16.2 million) has been received from JMDPC for the participation of members of the National Federation of Fishery Co-operative Associations (NFFCA) (which represents eight Prefecture fishery co-operative associations with some 68 000 members) in the clean-up operations (item (c) in the annexed table). In April 1999 agreement was reached with JMDPC to settle this claim at ¥2 653 million (£15.6 million). The 1971 Fund paid ¥307 million (£1.7 million) in May 1999.

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<1> In this document, conversion of amounts in Yen has been made on the basis of the rate of exchange as at 21 September 1999, ie £1=¥170.4, except in respect of amounts paid where conversion has been made at the rate on the date of payment.

3.2.7 Six electricity companies submitted claims for the cost of deployment of booms and clean-up totalling ¥2 629 million (£15.4 million) (item (f) in the annexed table). In September 1999, the Funds' experts made a provisional assessment of these claims at ¥1 930 million (£11.0 million).

### 3.3 Fishermen's claims for loss of income

3.3.1 Claims for loss of income suffered by fishermen have been presented for ¥5 242 million (£30.8 million) (item (j) in the annexed table).

3.3.2 In December 1998 the IOPC Funds offered to settle a claim submitted by a Prefectural Federation of fishery associations at ¥645 million (£3.8 million), and offered to pay ¥387 million (£2.2 million). The Federation did not accept this offer at that time, since it did not want to be paid before the other Prefectural Federations. However, in May 1999 the Federation decided to accept the offered settlement. The 1971 Fund paid ¥387 million to the Federation in June 1999.

3.3.3 In June and July 1999, agreements were reached on the settlement of claims by two other Prefectural Federations of fishery associations totalling ¥1 462 million (£8.6 million). These claims were settled at ¥394 million (£2.3 million). Payments of ¥236 million (£1.2 million) were made in July 1999.

3.3.4 In August 1999, a claim by another Prefectural Federation of fishery associations for ¥58 million (£340 000) was settled at ¥26 million (£150 000). A payment of ¥16 million (£91 000) will be made shortly.

3.3.5 In March 1999 agreement was reached on a claim for ¥107 million (£630 000) presented by the owners of a fish farm which had been contaminated with oil. The claim was for cleaning expenses, losses due to mortality of fish and reduced price of fish. The claim was settled at ¥102 million (£600 000). In September 1999 the 1971 Fund paid ¥12 million (£70 000).

### 3.4 Fishermen's claim for publicity campaign

At its 61st session, the Executive Committee decided that a claim for ¥48 million (£284 000) by the National Federation of Fishery Co-operative Associations (NFFCA) in respect of the cost of a major publicity campaign aimed at preventing and mitigating losses in sales of fish from the area affected by the spill as a result of bad publicity arising from the *Nakhodka* incident was admissible in principle (document 71FUND/EXC. 61/14, paragraph 4.7.4). This claim was settled at ¥41 million (£239 000). In September 1999, the 1971 Fund paid ¥11 million (£63 000) to the NFFCA.

### 3.5 Tourism

3.5.1 Claims have been received from 347 operators in the tourism sector (item (n) in the annexed table). These claims total ¥3 038 million (£17.8 million).

3.5.2 The assessment of the tourism claims has been carried out by a Japanese company in co-operation with the United Kingdom experts who assessed the tourism claims arising out of the *Braer* and *Sea Empress* incidents. A methodology for the assessment of these claims has been agreed. The Japanese experts had visited all the claimants by the end of November 1998.

3.5.3 So far, the experts have presented reports on the assessment of 200 claims in this category. One hundred and twenty-two claims have been settled at a total of ¥514 million (£3.0 million), and ¥309 million (£1.8 million), has been paid to claimants.

3.5.4 It is expected that the experts will complete their assessments of most of the claims in the tourism sector by the end of 1999.

### 3.6 Miscellaneous

A claim for ¥6.7 million (£39 000) has been submitted in respect of the contamination of an aquarium near Mikuni (item (m) in the annexed table). A provisional payment of ¥3.8 million (£18 000) was made in November 1997. In June 1999, agreement was reached to settle this claim at ¥6.6 million (£38 000), and a further payment of ¥135 000 (£770) was made in September 1999.

### 3.7 Further claims

Further claims are expected. The shipowner is expected to claim for the cost of contracting a salvor to attempt to tow the bow section before it grounded. Claims will also be presented by the shipowner for costs incurred prior to and during the bow lifting operations. Further claims may be presented for loss of income in the fishing and aquaculture industries. There may also be some further claims by businesses in the tourism industry.

#### 4 Level of payments

##### 4.1 Consideration by the 1971 Fund Executive Committee and Assembly

4.1.1 In view of the uncertainty as to the level of the total amount of the claims, the Executive Committee at its 52nd session decided that the payments to be made by the 1971 Fund should, for the time being, be limited to 60% of the amount of the damage actually suffered by the respective claimants as assessed by the experts engaged by the IOPC Funds and the shipowner/UK Club at the time when the payment was made (document 71FUND/EXC.52/11, paragraph 3.7.14). The Committee decided at later sessions, most recently at its 61st session, that the 60% limit should be maintained (document 71FUND/EXC.61/14, paragraph 4.7.5).

4.1.2 At its 3rd extraordinary session the 1971 Fund Assembly endorsed the Director's view that the 1971 Fund should pay 60% of the damage suffered by each claimant up to a total amount of 60 million SDR, before the 1992 Fund commenced payments of compensation (document 71FUND/A/ES.3/7, paragraph 4.5).

4.1.3 As set out in paragraph 3.1.4, the payments of compensation made so far total ¥7 635 million (£37.8 million). It is expected that further payments of some ¥1 000 million (£5.9 million) will be made during October 1999. As a result of these payments the maximum amount payable under the 1969 Civil Liability Convention and the 1971 Fund Convention, ie 60 million SDR or approximately ¥8 640 million will be reached. Further payments will have to be made by the 1992 Fund.

##### 4.2 Consideration by the 1992 Fund Assembly and Executive Committee

At its 2nd extraordinary session the Assembly of the 1992 Fund decided that the payments to be made by the 1992 Fund should, for the time being, be limited to 60% of the amount of the damage actually suffered by the respective claimants as assessed by the experts engaged by the Funds and the shipowner/his insurer at the time when the payment was made (document 92FUND/A/ES.2/6, paragraph 3.1.16). The 1992 Fund Executive Committee decided at its 3rd session to maintain the 60% limit (document 92FUND/EXC.3/7, paragraph 3.1.5).

##### 4.3 Review of the level of payments

In the light of the continuing uncertainty as to the level of the total amount of the claims arising from the *Nakhodka* incident, the Director is unable to recommend an increase in the percentage of 60% fixed by the Executive Committee.

5 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 review the level of the 1971 Fund's payment of claims (paragraph 4.3) ; and
- (c) to give the Director such instructions as it may deem appropriate in respect of the handling of claims arising from this incident.

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## ANNEX

Claims situation as at 30 September 1999

Category of Claims				Claims submitted			Claims paid		
				Number	Amount		Number	Amount	
					US\$ <sup>&lt;1&gt;</sup>	Yen (million)		US\$ <sup>&lt;1&gt;</sup>	Yen (million)
Clean-up costs	(a)	JMDPC	- Operations carried out by JMDPC	1		268	1		<2> 50
	(b)		- Contractors under JMDPC	54		8 054	48		<2> 3 377
	(c)		- Fishery Co-operative Associations	1		2 746	1		<2> 1 593
	(d)	Japanese Government Agencies		11		1 519	0		0
	(e)	Prefectures and Municipalities		10		6 939	9		<2> 1 443
	(f)	Electricity companies		6		2 629	0		0
	(g)	Other entities		7		205	2		<2> 56
	(h)	EARL		1	542 593	59	1	542 593	<3> 59
	(l)	Russian authorities		2	3 284 322	359	1	325 000	<3> 36
	Sub-total			93		22 778	63		6 614
Loss of income: fishery <sup>&lt;4&gt;</sup>	(j)			9		5 290	5		<2> 708
Causeway construction and removal	(k)	JMDPC		1		2 333	0		0
Removal of oil from ship	(l)	JMDPC and three contractors		4		1 312	0		0
Aquarium	(m)			1		7	1		<2> 4
Tourism	(n)			347		3 038	122		309
TOTAL				455		34 758	191		7 635
						£204 million			£38.8 million

<1> Amounts in US\$ converted into Yen on the basis of the rate of exchange at 1 September 1999

<2> Includes provisional payments

<3> Payments made by the shipowner/UK Club

<4> This category includes the claim for the cost of the publicity campaign referred to in paragraph 3.4

