



**INTERNATIONAL
OIL POLLUTION
COMPENSATION
FUNDS 1971 AND
1992**

EXECUTIVE COMMITTEE
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INCIDENTS INVOLVING THE 1971/1992 FUNDS

NAKHODKA

Note by the Director

Summary:	The IOPC Funds have completed their assessment of the claims by the JMDPC totalling ¥3 336 million (£17 million) in respect of the construction and removal of the causeway. The claim has been assessed at ¥2 043 million (£10.4 million).
Action to be taken:	To consider the assessment of the claim in respect of the causeway.

1 Claims relating to construction and removal of a causeway

- 1.1 It will be recalled that the upturned bow section of the *Nakhodka*, which may have contained 2 800 tonnes of cargo, grounded on the rocks some 200 metres from the shore. A Japanese salvage company was contracted by the shipowner to remove the oil remaining in the bow section, but the operations were hampered by adverse swell and weather conditions. The Japanese authorities took over the operation, using the services of two salvage companies. Some 2 830 m³ of oil/water mixture was removed through these operations.
- 1.2 Due to concerns that the on-water operations might fail as a result of the adverse conditions, the Japanese authorities ordered the construction of a temporary causeway to the grounded bow section. The causeway was intended to allow road tankers to be brought close to the wreck, thereby facilitating the removal of the oil.
- 1.3 The causeway extended 175 metres from the shore. A large crane was assembled at its seaward end with a sufficiently long arm to reach the bow section. Some 380 m³ of oil/water mixture was removed from the bow section via the causeway compared with 2 450 m³ removed by at-sea operations.
- 1.4 JMDPC submitted claims totalling ¥3 336 million (£17 million) for the costs in respect of the causeway operation. The majority of the costs related to the construction and removal of the causeway itself.

- 1.5 At the June 2001 sessions of the IOPC Funds' governing bodies, the Japanese delegation stated that the claims relating to the causeway were being discussed between the IOPC Funds, the shipowner's insurer and the Japanese Government, and that whilst not wishing to go into any detail, pointed out that the Japanese Coast Guard had made the decision to construct the causeway after taking into consideration the unpredictable and severe weather conditions in the Sea of Japan in winter and other difficulties which were encountered at the time.
- 1.6 Several delegations stated that the shipowner's insurer and the IOPC Funds should make every effort to settle these claims and emphasised the importance of the IOPC Funds keeping an open mind about claims of this type. Some delegations also made the point that the high amount of the claims should not influence the way in which they were treated by the IOPC Funds, although the Funds should exercise great care in the assessment of such big claims.
- 1.7 Some delegations stated that it was important for the IOPC Funds not to consider the building of the causeway as unreasonable with the benefit of hindsight, since this could discourage national authorities from taking innovative preventive measures in future cases.
- 1.8 The claims by JMDPC have been assessed against the criteria for admissibility laid down by the Assemblies, ie whether and up to what point the construction of the causeway was reasonable from an objective technical point of view.
- 1.9 Meetings were held in September and October 2001 and in January and March 2002 between the Japanese Government, on the one hand, and the IOPC Funds and the UK Club, on the other. At these meetings the technical aspects of the causeway claims were discussed in detail. The meetings also addressed the issue as to whether the claims fulfilled the criteria for admissibility laid down by the governing bodies of the IOPC Funds.
- 1.10 Further discussions concerning these claims were held during the week commencing 22 April 2002.
- 1.11 The decision by JMDPC to proceed with the construction of the causeway was taken after examining historical records of sea conditions between 1985 and 1993 off the coast of Fukui Prefecture. JMDPC was advised that salvage operations at sea could only take place in wave conditions of less than one metre, and that during the months of January and February such conditions could only be expected for about three days per month. JMDPC was also advised that the oil removal operations via the causeway could be carried out in wave conditions of less than two metres, and that these conditions could be expected for about 20 days per month during January and February. The construction companies estimated that the causeway would require 15 working days to complete at a cost of ¥1 000 million (£5 million). In the event it took 27 days to complete the work.
- 1.12 In the examination of the claims it was noted that on occasions both the at-sea operations and the causeway operations required the assistance of divers who were only able to work when waves were less than one metre. Both operations were therefore subjected to the same restrictions with regard to sea conditions and the extra potential days said to have been available for causeway operations were not as great as indicated by JMDPC. However, it was acknowledged that down time due to bad weather was greater for the at-sea operations due to the fact that the salvage vessels had to return to Fukui port on these occasions which involved demobilisation/remobilisation times of several hours, compared with the causeway operations which could be suspended and resumed very quickly.
- 1.13 It was also noted from the chronology of events that the construction of the causeway proved less straightforward than had been anticipated, and that significant sections were washed away on 22, 26 and 29 January 1997. The Director considered that JMDPC should have reappraised their decision to construct the causeway in light of these set-backs, since it should have become

apparent that the construction companies had underestimated both the time to complete the causeway and the costs involved.

- 1.14 It was further noted that following the damage to the causeway on 26 January only 709 m³ out of a total of 2 830 m³ had been removed from the bow section by the at-sea operation. Furthermore, it was noted that JMDPC decided to modify the causeway design following the damage on 26 January. However, the Director considered that following the damage to the causeway on 29 January the construction work should have been terminated, and the claim has therefore been assessed on the basis of the construction costs that would have been incurred up to that date and the subsequent removal costs.
- 1.15 In order to assess the claims the Funds engaged Japanese civil engineering experts to estimate the costs of construction up to and including 29 January 1997 and the subsequent removal costs after that date. The experts estimated the costs on the basis of information recorded in the daily work reports on the quantities of foundation stones, wave-absorbing blocks and other materials used in the construction of the causeway up to 29 January 1997. The claim in respect of the construction and removal of the causeway was assessed at ¥1 587million (£8.1 million), which represents 68% of the total construction and removal costs. In the assessment of the other components of the claim, ie oil removal operations via the causeway, subsequent clean-up of the site and JMDPC's own expenses, the Director assessed these amounts for a total of ¥393 million (£2 million). For these reasons the Director considers that the claims should be accepted for ¥2 043 million (£10.4 million), including interest, compared with the claimed amount of ¥3 336 million (£17 million).

2 Action to be taken by the governing bodies

The governing bodies are invited:

- (a) to take note of the information contained in this document; and
 - (b) to consider the assessment by the IOPC Funds of the claims by JMDPC in respect of the construction and removal of the causeway.
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