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FUND 1992

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INCIDENTS INVOLVING THE 1992 FUND

PRESTIGE

Note by the Director

Summary:

The Bahamas registered tanker *Prestige*, laden with 77 000 tonnes of heavy fuel oil, broke in two off the coast of Galicia (Spain) spilling an unknown but substantial quantity of its cargo. The bow and stern sections, which are lying in some 3 500 metres of water, contain significant quantities of oil. The Spanish authorities are considering various options for removing the oil from the wreck.

A major offshore clean-up operation was carried out using vessels from Spain and nine other European countries. The oil from the *Prestige* affected the Atlantic coast from Vigo in Spain to La Rochelle in France. On-shore clean-up operations have been carried out along about 1 000 km of shoreline. Around 117 000 tonnes of oily waste have been collected in Spain and some 16 500 tonnes in France.

Clean-up costs in Spain, France and Portugal up to the end of April 2003 have been estimated at €276 million (£191 million). In the event that the Spanish authorities decide to remove the oil remaining in the wreck, the costs of these operations could be in the range of €50-200 million (£35-139 million), depending on the method used. Losses in the fisheries and related sectors in Spain, mainly as a result of fishing and harvesting bans imposed by the authorities, have been estimated by the 1992 Fund's experts in the region of €65 million (£45 million). It has not been possible to make any estimation of the likely losses in the tourism sectors in Spain and France.

The shipowner's P & I insurer and the 1992 Fund have established Claims Handling Offices in La Coruña (Spain) and Bordeaux (France). A number of claims have been received by the Office in Spain, whereas only two claims have been presented to the Office in France.

The total amount of the claims arising from the *Prestige* incident will significantly exceed the total amount of compensation available, 135 million Special Drawing Rights corresponding to €171.5 million (£119 million). Pending receipt of information from the Spanish and French Governments on the economic impact of the incident, the Director considers it premature to make any recommendation regarding the level of the Fund's payments.

Action to be taken:

Decide the level of the 1992 Fund's payments.

1 The incident

- 1.1 In November 2002, the Bahamas registered tanker *Prestige* (42 820 GT) was passing the Spanish Atlantic coast on her way from Latvia to Singapore. The ship was carrying 76 972 tonnes of heavy fuel oil.
- 1.2 The *Prestige* was entered with the London Steamship Owners Mutual Insurance Association (London Club).
- 1.3 During the afternoon of 13 November, while some 30 km off Cabo Fisterra (Galicia, Spain) in bad weather, the vessel began listing and leaking oil. It was estimated that the *Prestige* lost up to 1 000 tonnes of oil initially, while drifting powerless towards the Spanish coast. Attempts to connect a towline to the stricken vessel, which was by then drifting dangerously close to Cabo Vilano, were finally successful.
- 1.4 In the early hours of 15 November, while the *Prestige* was being towed north-west to gain more distance from the Spanish coast, a section of shell plating in the vicinity of no. 3 starboard ballast tank was lost. During the afternoon, the captain reported a sudden increase in oil leakage, indicating the failure of internal bulkheads and rupture of cargo tanks. On 19 November the vessel finally broke in two and sank some 260 km west of Vigo (Spain), the bow section at a depth of 3 500 metres and the stern section at a depth of 3 830 metres. The break-up and sinking released additional cargo estimated in the region of 25 000 tonnes. Over the following weeks oil continued to leak from the wreck at a slowly declining rate.
- 1.5 A French remotely operated submersible vehicle (ROV) was used to temporarily seal and plug cracks and holes in the wreck to minimise the escape of oil. The operation appears to have been partially successful in that the amount of oil escaping decreased markedly, as confirmed by regular aerial surveillance undertaken by the Spanish and Portuguese authorities.
- 1.6 Due to the highly persistent nature of the *Prestige's* cargo, released oil drifted for extended periods with winds and currents, travelling great distances. Several 'waves' of shoreline oiling heavily contaminated Galicia (Spain), affecting its coastline between the National Park of Islas Cíes near Vigo to Ferrol by early December. Remobilisation of stranded oil and 'fresh' strandings of increasingly fragmented and weathered oil continued, gradually moving into the Bay of Biscay and affecting the coast of Spain (Galicia, Asturias, Cantabria, Basque Country) and by early January 2003, France (Pyrenées-Atlantiques, Landes, Gironde and Charente Maritime).

2 Clean-up operations

Spain

- 2.1 A response to the pollution created by the incident was immediately initiated in Galicia by the Spanish Maritime Safety Agency (Sociedad de Salvamento y Seguridad Marítima, SASEMAR). Coordination was ensured by the Madrid offices of the Sub-Director General for Maritime Safety and Pollution Control while a command structure was set up in La Coruña by local SASEMAR staff.
- 2.2 Both the central Government's Department of Coastal Protection (Dirección General de Costas) and the autonomous regional government (Xunta de Galicia) became involved in shoreline protection and clean-up as well as managing coastal resources such as fisheries and national parks. At a later stage the regional governments of Asturias, Cantabria and Basque Country also became involved in clean-up operations. The Spanish Government has appointed a Commissioner to coordinate all activities relating to the incident.
- 2.3 Extensive aerial surveillance to monitor spilled oil was carried out by a multitude of agencies and is still continuing. Already on 14 November, the competent authorities in France, the Netherlands and the United Kingdom as well as the European Commission were asked for assistance in the

form of anti-pollution equipment and vessels. The first vessels arrived two days later and the fleet gradually increased to more than 15 ships from 10 countries.

- 2.4 The biggest problems encountered by the vessels and their crews were the severe weather conditions and the highly viscous nature of the oil. While the weather forced the fleet to remain in harbour for extended periods of time, the oil continued to emulsify and weather on the sea surface. This made it increasingly difficult to pump the oil. Only a few vessels managed to successfully recover significant quantities of oil after it had been at sea for a number of weeks. In addition to increasing viscosity, floating oil fragmented into countless patches of ever-decreasing size. This caused problems with detection from the air and hence the guidance of vessels to locate recoverable oil. In addition, offshore tuna boats and trawlers, mussel farming vessels with grabs and small fishing boats were used along different parts of the Spanish and French coasts.
- 2.5 From the very beginning of the incident, shoreline protection was attempted through booming. Coordinated initially by SASEMAR and carried out by contractors and fishing cooperatives, increasing quantities of boom were placed on stand-by and deployed in the many rias along the Spanish coast.
- 2.6 The part of the Galician coast initially affected is characterised by kilometres of steep exposed cliffs and inaccessible pocket beaches and coves. The coastlines of Asturias, Cantabria and Basque Country are similar in character. Shoreline clean-up was initially limited to the stretches of sandy beaches and rocky foreshores. Military personnel, fishery associations and volunteers, supported by machinery to transport oily waste from the sites, undertook the predominantly manual work. Pumping stations using portable pumps and vacuum trucks were put in operation on the foreshore where bulk oil had collected in accessible points.
- 2.7 Pumping the heavily weathered oil became more and more difficult and finally impossible. Instead, various methods of mechanical recovery using bucket grabs and front-end loaders were used to recover thick oil accumulations immediately nearshore in addition to the numerous small vessels mentioned above.
- 2.8 When small fragments of oil and tarballs repeatedly impacted large stretches of sandy shorelines along the northern coast of Spain, beach cleaning machines were used. In other places sand was sieved through screens to remove oil fragments. Natural cleaning through the scouring action of the sea during winter storms has also taken place and its effects can only now begin to be judged as the weather improves. However secondary cleaning is already being undertaken by means of pressure washing in affected areas.
- 2.9 By late April 2003, some 27 000 tonnes of liquid waste (oil/water mixtures) had been collected with vessels in Galicia; 26 000 tonnes from Basque Country and Cantabria; and almost 1 000 tonnes from Asturias. The corresponding figures for solid waste collected by late April are 55 000 tonnes from Galicia; 4 500 tonnes from Basque Country and Cantabria; and 3 500 tonnes from Asturias. Thus the total quantity of waste collected in Spain so far is 117 000 tonnes.

France

- 2.10 The French authorities took over the co-ordination of the at sea recovery operations in early January 2003. A fleet of 16 vessels, including specialist recovery vessels from France, Germany, Netherlands, Norway and Spain was still operating in the Bay of Biscay on 27 January, despite the limited quantities of oil available for recovery. By mid-April most of the specialised recovery vessels had been stood down although about 20 small fishing boats were engaged to recover floating oil close inshore and to collect oil stranded on sandbanks in the entrance to the Arcachon Basin.
- 2.11 Most of the shorelines affected in France are composed of hard-packed sand, which are relatively easy to clean, both manually and mechanically. In mid-January around 900 people were working to the south of the river Gironde and a further 100 people to the north of the river. However, by the end of February the total number had reduced to around 100.

- 2.12 By late April 2003, about 1 500 tonnes of liquid waste had been recovered by fishing vessels, whilst some 15 000 tonnes of solid waste had been collected from French shorelines.

3 Impact of the spill

Spain

- 3.1 The coastline of Galicia, which is one of the richest fishing areas in Europe, has been most adversely affected by the incident. The impact has been lighter in Asturias, Cantabria and Basque Country. Fisheries exclusion zones were put in place shortly after the incident banning virtually all fishing along about 90% of the coastline and extending 8-10 miles offshore. These bans caused widespread economic impact to thousands of people engaged in fishing and related activities. Some of the bans covered areas unaffected by oil from the *Prestige*.
- 3.2 Fishing bans were also imposed in Asturias, Cantabria and Basque Country, although some of them were on a limited scale and did not affect all species and all types of fishing. Furthermore, fishing activity in these regions is less economically important during the period November to April due to seasonal factors and closures related to stock management. By mid-April 2003 most of the fishing bans had been lifted although some fishing and shellfish harvesting bans still remain in Galicia.
- 3.3 The fishing bans did not cover aquaculture, even though this sector has been affected by pollution. There is a major turbot farming industry using onshore tanks supplied with seawater abstracted via sub-surface intakes. In Galicia a number of important farms are located in heavily polluted areas, although most have taken measures to prevent oil entering the rearing tanks so that they can continue to operate. However, despite these efforts stocks were destroyed at one of the smaller farms on the order of the health authorities.
- 3.4 The major aquaculture activity in Galicia is the rearing of mussels on rafts. Although no mussel rafts appear to have been directly affected by oil, a downturn in demand has been reported.
- 3.5 Although the rearing of molluscs in private parks in intertidal areas was not subject to closures, some areas were physically oiled and owners have reported that depuration plants are refusing to accept their products, effectively closing their markets.
- 3.6 A number of depuration plants and aquariums, which rely on a regular supply of clean seawater, were closed either as a result of actual or perceived contamination of their intakes or due to limited supplies of marine products arising from the fishing bans. Stocks at some plants and aquaria are reported to have suffered mortality as result of these measures.
- 3.7 The coasts of Galicia, Asturias, Cantabria and Basque Country are attractive tourist destinations for those seeking outdoor activities and high quality seafood. The affected region is particularly popular with the domestic market but does not have a high profile with overseas tourists compared with other parts of mainland Spain.

France

- 3.8 Fisheries impacts in France have been fairly limited. On 5 January 2003 the French authorities imposed a ban on the sale of shellfish, primarily oysters, from the Arcachon Basin due to the presence of oil in the entrance to the Basin. However, on the basis of analyses of samples of seawater, fish and shellfish, which confirmed that the levels of petroleum hydrocarbons were within acceptable limits, the ban was lifted on 15 January.
- 3.9 It is anticipated that the greatest potential impact in France will be on the tourism sector, since the southern Atlantic coast is noted for its sand beaches. It supports second homes, self-catering and residential accommodation and campsites. The scale of the tourism industry in the affected departments is more important than in the departments affected by the *Erika* incident.

Portugal

- 3.10 No oil is reported to have gone ashore in Portugal. There have also been no indications of significant impact on Portuguese fisheries, tourism and other economic resources.

4 Removal of the oil from the wreck

- 4.1 It is believed that the two sunken parts of the *Prestige* contain significant quantities of oil.
- 4.2 The Spanish State set up a Scientific Commission to study the various possibilities for dealing with the wreck. This Commission concluded that there were two possible solutions, namely extraction of the fuel remaining in the wreck by pumping and the confinement of the ship in a structure of concrete or steel.
- 4.3 Additionally, an International Technical Committee was set up under the coordination of the Spanish oil company Repsol YPF. This Committee suggested that there were three methods to consider: filling shuttle bags on the sea bed through pipes let into the wreck's tanks and floating them to the surface; releasing and entrapping the oil in a dome constructed over the wreck for later extraction; and pumping the oil from the ship's tanks to the surface via pipelines.
- 4.4 The International Technical Committee also proposed a program of work involving the commencement of removal of the oil at the end of the summer 2003 using shuttle bags. Concurrently with this operation, design work for the dome solution would be carried out in case the shuttle bag method did not function satisfactorily. The pumping method would also be designed and tested/simulated in case the two other solutions did not work.

5 Claims Handling Offices

- 5.1 In anticipation of a large number of claims, and after consultation with the Spanish Authorities, the London Club and the 1992 Fund established a Claims Handling Office in La Coruña (Spain). The office, which has four staff members, became operational on 20 December 2002.
- 5.2 After consultation with the French Government the 1992 Fund and the London Club established a Claims Office in Bordeaux (France), which opened on 17 March 2003. Two staff members operate this office.

6 Claims for compensation

Spain

- 6.1 The clean-up operations at sea and onshore will result in claims for significant amounts from the Spanish Central and Regional Governments, assisting States, clean-up contractors, equipment suppliers and local authorities. The disposal of the oil will also give rise to large claims. If an operation were carried out to remove the remaining oil from the wreck, this would result in substantial costs.
- 6.2 It is expected that claims from the fishing and aquaculture sector will be very large. Claims can also be anticipated from the tourism sector, although the clean-up of amenity beaches should be completed well before the start of the 2003 tourist season.
- 6.3 As at 28 April 2003 the Claims Handling Office in La Coruña had received 122 claims totalling €139 million (£96 million) as set out in the table overleaf. One of these claims for €131.6 million (£91 million), has been made by a group of 58 associations from Galicia, Asturias and Cantabria representing 13 600 fishermen and shellfish harvesters. The table overleaf provides a breakdown of the different types of claims:

Type of claim	No. of claims	Amount claimed €
Damage to fishing boats, fishing equipment and other structures	60	220 432
Costs of clean-up incurred by municipalities and other organisations	9	2 744 797
Mussel and shellfish producers economic losses	3	1 306 245
Loss of income suffered by boat fishermen and shellfish harvesters	7	131 696 166
Economic losses suffered by processors and sellers of fish and shellfish and other businesses	43	2 977 564
Total	122	€138 945 204
		£96 million

France

- 6.4 As regards France, claims can be expected in respect of clean-up and preventive measures and from the fishery and tourism sectors.
- 6.5 The Claims Handling Office in Bordeaux has received a steady flow of enquiries from potential claimants and claim forms have been distributed as appropriate. The majority of enquiries have come from persons engaged in oyster cultivation and marketing.
- 6.6 By 28 April 2003, only two claims had been received, one from a thalassotherapy business for €144 595 (£100 000) and one from an hotel/restaurant for €113 306 (£78 400). It is expected that a number of claims in the oyster business sector will be submitted shortly.

Portugal

- 6.7 Claims are also expected in respect of clean-up and preventive measures in Portugal

7 Contacts with Governments

- 7.1 The Director, the Deputy Director/Technical Adviser and the Head of the Claims Department have visited Madrid and La Coruña (Galicia) to discuss the situation with representatives of the Spanish Central Government and the Regional Governments of Galicia, Asturias, Cantabria and Basque Country.
- 7.2 The Director and the Head of the Claims Department have held discussions with the Vice-President of the Spanish Government, the Vice-Minister of Finance, the Minister of Agriculture, Fisheries and Food and the State lawyer (Abogado General del Estado) as well as with the Xunta's Minister of Fisheries. It was generally agreed that it was important to avoid the difficulties faced in connection with the *Aegean Sea* incident and that this could only be achieved through a high level of co-operation between the Spanish Government, the Xunta de Galicia, the shipowner's insurer and the 1992 Fund.
- 7.3 Discussions have also been held between the French Government and the Director and the Head of the Claims Department on the handling of claims and related issues.

8 Payments and other financial assistance by the Spanish Authorities

- 8.1 The Spanish authorities have been making payments of some €40 (£26) per day to all those directly affected by the fishing bans. These include shellfish harvesters, inshore fishermen and associated onshore workers with a high dependence on the closed fisheries, such as fish vendors, fishing net repairers and employees of fishing co-operatives, fish markets and ice factories. These payments may eventually be included in subrogated claims by the Spanish authorities under Article 9.3 of the 1992 Fund Convention.
- 8.2 The Spanish Government has also provided aid to other individuals and businesses affected by the oil spill in the form of waivers of social security payments.
- 8.3 The Spanish State has made available to victims of the pollution credit facilities totalling €100 million (£70 million) which may be increased. Loans are provided through the Instituto de Credito Oficial (ICO), a financial agency of the State. The Government Delegation or Sub-delegation in the affected areas determines the amount of a loan, which can only be awarded in respect of property damage and the costs of reinstatement. The Spanish State has requested the 1992 Fund to assist with the valuation of the loss or damage suffered by those seeking loans. As the loss or damage subject of requests for loans will eventually form the basis of claims against the Fund, either directly or in subrogation, the Fund has agreed to assist the Spanish State to carry out such valuations.
- 8.4 As at 28 April 2003, the Claims Handling Office in La Coruña had received requests to assess the losses of 40 loan applicants. The documents submitted have been examined by the Club's and Fund's experts but in the majority of instances it has been necessary to request further information to allow an evaluation to be carried out. Nine applications have however been preliminarily assessed at a total of €89 000 (£62 000).

9 Shipowner's liability

The limitation amount applicable to the *Prestige* under the 1992 Civil Liability Convention is approximately 18.9 million SDR or €24 million (£14.9 million). The shipowner has not yet established the limitation fund.

10 Investigations in Spain into the cause of the incident

- 10.1 A Court in Corcubion in Spain is carrying out an investigation into the cause of the incident in the context of criminal proceedings. The Court is investigating the role of the master of the *Prestige* and of three civil servants who were involved in the decision not to allow the ship into a port of refuge in Spain.
- 10.2 The Permanent Commission of Investigation of Maritime Incidents, under the authority of the Spanish Ministry of Infrastructure and Public Works, is gathering the necessary information to be able to issue a report on the *Prestige* accident. Given the scale of the incident, it will take some time for the investigation to reach its conclusions.
- 10.3 As regards France, an examining magistrate in Brest is carrying out a criminal investigation into the cause of the incident.
- 10.4 The 1992 Fund will be following these investigations through its Spanish and French lawyers.

11 Court actions in Spain

Four hundred and eight claimants who allegedly have suffered losses as a result of the incident have joined the legal proceedings referred to in paragraph 10.1. No details of losses have been provided to the Court. Some of these claimants have submitted claims to the Claims Handling Office in La Coruña.

12 Court actions in France

At the request of a number of communes, the Administrative Court in Bordeaux has appointed experts to establish the extent of the pollution at various locations in the affected area. The court experts have held a number of meetings.

13 Maximum amount available under the 1992 Fund Convention

- 13.1 Under Article 4.4(e) of the 1992 Fund Convention, the maximum amount of compensation payable in respect of the *Prestige* incident under the 1992 Conventions, 135 million Special Drawing Rights (SDR), should be converted into the national currency in question, ie Euro, on the basis of the value of that currency by reference to the SDR on the date of the decision of the Assembly as to the first date of payment of compensation.
- 13.2 At its 2nd session in October 1997, the Assembly decided, in the context of the *Nakhodka* incident, that the conversion of 135 million SDR into national currency should be made on the basis of the value of that currency vis-à-vis the SDR on the date of the Assembly's (or the Executive Committee's) adoption of the Record of Decisions of the session at which the Assembly (or the Executive Committee) took the decision which made payments of claims possible. It was further decided that if the Record of Decisions was not adopted during the session, the date for conversion should be that of the last day of the session (document 92FUND/A.2/29, paragraph 17.2.8). In its decision in the *Nakhodka* case the Assembly explicitly recognised that the Executive Committee would take decisions on the date for conversion. The Executive Committee applied the same principles at its 6th session in February 2000 in connection with the *Erika* incident (document 9FUND/EXC.6/5, paragraph 3.29). At its 5th session in October 2000, the Assembly approved the report of the Executive Committee's session at which this matter was considered (document 92FUND/A.5/28, paragraph 20.2). At its 6th session in October 2001, the Assembly endorsed the position taken by the Committee on this issue (document 92FUND/A.6/28, paragraph 21.4).
- 13.3 Following the same principles in the *Prestige* incident, the Executive Committee decided at its 20th session in February 2003 that the conversion of 135 million SDR into Euros should be made on the basis of the value of that currency vis-à-vis the SDR on the date of the adoption of the Executive Committee's Record of Decisions of that session, ie 7 February 2003 (document 92FUND/EXC.20/7, paragraph 3.4.66).
- 13.4 The rate of exchange on 7 February 2003 was 1 Euro = 0.78707700 SDR. As a result 135 million SDR corresponds to €171 520 703 (£112 million)

14 Level of payments

- 14.1 The Executive Committee considered the level of payments in respect of the *Prestige* incident at its 20th session, held in February 2003 (document 92FUND/EXC.20/7, paragraphs 3.4.42 - 3.4.62).
- 14.2 Unlike in previous cases, the insurer of the *Prestige*, the London Steam-Ship Owners' Mutual Insurance Association Ltd (London Club), has not agreed to make payments up to the shipowner's limitation amount. At the Executive Committee's February 2003 session the representative of the London Club drew the Committee's attention to the advice it had received from its legal advisers in Spain, which indicated that if the Club were to make payments to claimants in line with past practice it was highly likely that these payments would not be taken into account by the Spanish courts when the shipowner set up the limitation fund with the result that the Club could end up paying twice the limitation amount. The London Club representative stated that, despite lengthy discussions between the Club's legal advisers and lawyers representing the Spanish State, the Club was not convinced that a double payment situation could be avoided, which left the Club no alternative but to deposit the limitation fund with a competent court in Spain or France, recognising that this could result in the money becoming unavailable for the payment of claims for several years.

- 14.3 A number of delegations accepted that the 1992 Fund could not dictate to the London Club that it should make compensation payments without the Club receiving a guarantee that it would not be required to pay double the limitation amount. In those delegations' view, it would therefore be necessary for the Fund to make payments from the outset since the concerns of the victims of pollution damage were paramount. It was noted that if the 1992 Fund were to depart from its previous policy of not paying claims before the insurer had paid up to the limitation amount, the Fund could only pay up to 135 million SDR minus the shipowner's limitation amount under the 1992 Civil Liability Convention.
- 14.4 The Executive Committee considered that it was not possible at that stage to make any meaningful assessment of the magnitude of the total amount of the established claims arising from the *Prestige* incident. The Committee decided that, in view of this uncertainty, the Director's authority to make payments should, for the time being, be limited to provisional payments under Internal Regulation 7.9 (document 92/FUND/EXC.20/7, paragraph 3.4.61).
- 14.5 The Executive Committee noted that it was expected that the claims situation would become clearer by the end of April 2003, prior to the next session. It was further noted that the intentions of the affected States with regard to their own claims and subrogated claims would be known at that time, thus enabling the Committee to make a decision on the appropriate level of payments by the 1992 Fund.
- 14.6 The Director has collected information on the likely levels of claims and his preliminary findings are set out below. It should be noted that the figures presented are intended to reflect potential overall costs and economic losses that might form the basis of claims for compensation and no attempt has been made at this stage to address the question of admissibility against the Fund's criteria. It should be emphasised that these figures are by their nature rough estimates which are not based on actual expenditure or individual losses.

Costs of clean-up and preventive measures

- 14.7 ITOPF, together with the Spanish and French experts engaged by the London Club and the 1992 Fund, have continued to estimate costs in Spain, France and Portugal on the basis of their on-site surveys. Estimates have been made of the costs of manpower and equipment, specialised and non-specialised offshore oil recovery vessels, and aircraft used for aerial surveillance. As at 30 April 2003, the total clean-up costs in Spain and Portugal have been estimated at €255 million (£176 million) and in France have been estimated at €21 million (£15 million).
- 14.8 As indicated in section 4, the Spanish authorities intend to commence a programme of work to remove the oil remaining in the wreck in the summer of 2003 pending a final decision on the most appropriate method. It is estimated that the cost for the oil removal would fall within the range of €50-200 million, the cost level depending on which of the methods referred to in paragraph 4.3 will be used.

Losses in the fisheries aquaculture and related activities

- 14.9 Spanish, French and British fisheries experts appointed by the 1992 Fund and the London Club have estimated potential losses in the fisheries and related sectors in Spain and France.
- 14.10 In Spain the main factors affecting the fishery losses are the bans on fishing and shellfish harvesting that were put in place shortly after the incident in Galicia, and at a later stage in north Spain. As indicated in paragraph 3.2 most of these bans have now been lifted. The experts have estimated losses in Galicia on the basis of auction statistical records of landings by area, species and values in 2001 and weekly landings by species and values during the period mid-November 2001 to the beginning of June 2002. A blanket uplift of 10% has been made to allow for any volume and price changes that may have occurred between the time of the loss and the equivalent period in 2001. Losses in northern Spain have been estimated using data on landings for the region in 1996 as well as some information provided by the regional Administrations and making

adjustments using data for Galicia to take into account price and volume changes, as well as data from the relevant local fisheries administrations.

- 14.11 Although bans were not imposed on aquaculture such as the rearing of fish and shellfish, and downstream activities such as the purifying of shellfish in depuration plants and the holding of live shellfish in tanks, some impact on these sectors is likely either as a result of actual or perceived pollution of their water supplies or due to lack of supply of raw materials to the extent that these were affected by shellfish harvesting bans.
- 14.12 The predictions by the fishery experts in February 2003 assumed that there might be an impact on the very large mussel industry as a result of delayed harvesting due to a reduction in demand and other factors. They also included an allowance for reduction in production in 2004 as a result of a possible shortage of seed supply arising from the fishing bans. Although it appears that demand was slow shortly after the incident, the situation improved. Furthermore, the authorities permitted seed collection in early March 2003 and it is understood that the mussel industry had a normal supply of seed.
- 14.13 In the light of their recent findings, the Fund's fishery experts have estimated the total losses in the fisheries, aquaculture and related sectors in Spain in the region of €55 million (£45 million). However, as indicated in paragraph 6.3, claims totalling €132 million (£91 million) in respect of alleged losses of income suffered by fishermen and shellfish harvesters have already been submitted to the Claims Handling Office in La Coruña. Furthermore, it is understood that during the periods covered by the fishing bans, some 20 000 people engaged in fishing, shellfish harvesting and related activities in Galicia received compensation from the authorities totalling €87 million (£60 million).
- 14.14 As regards the fisheries impact in France, it is understood that, although a large exclusion zone for farmed oysters was imposed, it only lasted 10 days. The fishery experts consider that whilst some losses will be claimed these should be small in comparison to those in Spain.

Losses in the tourism sector

- 14.15 The potential impact of the *Prestige* incident on the tourism sector in both Spain and France is impossible to measure at this stage.
- 14.16 In the affected area in Spain, there is a heavy reliance on the domestic market and reservations tend to be left until quite late. It is therefore too early to draw any meaningful conclusions.
- 14.17 In France, those operators in the affected area that are open all year round have already suffered significant reductions in business. Reservations for the summer season are down for all sectors, although this is reflected across France and the rest of Europe possibly as a result of the war in Iraq and the SARS scare in Asia. It is possible that any downturn in the foreign tourism market will be made up with greater numbers of French tourists remaining in France in the 2003 season. With the majority of beaches already opened and limited media coverage in recent weeks, operators on the Aquitaine coast reported trading levels over the Easter holidays comparable to the previous year. Despite these encouraging signs, it will not be possible to draw any firm conclusions until the end of the summer season. However, it seems likely already at this stage that the tourism losses arising from the *Prestige* incident will not be as great as those resulting from the *Erika* incident.

Director's considerations

- 14.18 The Assembly has taken the view that - like the 1971 Fund - the 1992 Fund should exercise caution in the payment of claims if there is a risk that the total amount of the claims arising out of a particular incident might exceed the total amount of compensation available under the 1992 Civil Liability Convention and the 1992 Fund Convention, since under Article 4.5 of the 1992 Fund Convention all claimants have to be given equal treatment. The Assembly has expressed the view that it is necessary to strike a balance between the importance of the 1992 Fund's paying

compensation as promptly as possible to victims of oil pollution damage and the need to avoid an over-payment situation (document 92FUND/A.ES/2/6, paragraph 3.1.14).

- 14.19 The Director has been informed that, in view of the magnitude of the anticipated claims in relation to the amount available for compensation under the 1992 Conventions, discussions had taken place between the Spanish and French Governments on what steps could be taken to facilitate compensation payments by the London Club and the 1992 Fund. The Director understands that these discussions are continuing.
- 14.20 Whilst it is not possible to make any estimate of the total amount of the claims at this stage, it is clear that it will significantly exceed the total amount available under the 1992 Conventions, 135 million SDR or €171.5 million.
- 14.21 The Director has been informed that the Spanish and French Governments will submit information to the Executive Committee on the economic impact of the incident in their respective countries. Pending receipt of this information, the Director considers that it is premature to make a proposal as to the level of the Fund's payments.

15 Funding of compensation payments

An extraordinary session of the Assembly to be held on 8 and 9 May 2003 will be invited to consider whether contributions should be levied for payment during the second half of 2003 to enable the 1992 Fund to make prompt payments of compensation or whether payments should be financed by borrowing from other Major Claims Funds or the General Fund (document 92FUND/A/ES.7/3).

16 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 decide on the level of compensation payments; and
- (c) to give the Director such instructions in respect of the handling of this incident and of claims arising there from as it may deem appropriate.

* * *

ANNEX

