

Independent Recourse Mechanism

Eligibility Assessment Report

Complaint Sakhalin 2 Phase 2 Calypso

1. On 26 July 2005, the Independent Recourse Mechanism (IRM) of the European Bank for Reconstruction and Development (EBRD) received a complaint relating to the Sakhalin 2 Phase 2 Project (the “Project”). On 28 July 2005, in accordance with paragraph 17 of the IRM Rules of Procedure (“IRM, RP”), the Chief Compliance Officer registered the complaint and designated one of the IRM Experts to assist in making an Eligibility Assessment of the Registered Complaint (the “Complaint”). The Complaint is at Annex 1 to this Report.

Relevant Facts

2. Elements of the Sakhalin 2 Phase 2 project involve the construction of a major Liquefied Natural Gas (LNG) plant, associated gas and oil loading terminals, and construction materials off-loading facilities near Prigorodnoye, Korsakov District, Sakhalin Region. A number of local individuals and local enterprises involved in fishing and fish processing (the “Affected Group”) claim that construction vessel traffic to and from the LNG plant and dredging and other works involved in the construction of the loading and off-loading terminals are restricting safe access of fishermen to their nets, causing damage to nets, and adversely affecting the quality and quantity of fish caught in Aniva Bay. Since May 2004, members of the Affected Group have attempted to enter into a dialogue with the company responsible for construction of the LNG plant and its associated terminals (The Project Sponsor - SEIC) with a view to agreeing appropriate compensation for the disruption allegedly caused to their businesses. It appears that disruption to their businesses has continued unabated since that time.

3. In April 2005, the EBRD conducted a site visit to Sakhalin and met with a representative of the Affected Group making this Complaint. The findings of the site visit are referred to in the relevant parts of this Report.

4. The Complaint sets out the alleged adverse impacts which the Project is having on some of the interests of the Affected Group and suggests that it is seeking the IRM to exercise its problem-solving function with a view to persuading the Project Sponsor to enter into negotiations on the provision of compensation and, if necessary, to act as an intermediary in such negotiations.

Steps Taken to Conduct an Eligibility Assessment

5. Upon registration of the Complaint, the Chief Compliance Officer appointed Mr. Owen McIntyre, who is one of the EBRD’s independent IRM experts, as the Eligibility Assessment Expert on 28 July 2005. Mr. McIntyre, together with the Bank’s Chief Compliance Officer, Enery Quinones, are the IRM Eligibility Assessors. Between 3 and 4 August 2005, the Eligibility Assessment Expert conducted a number of meetings in London with the Chief Compliance Officer and Deputy Chief

Compliance Officer and individual meetings and telephone conversations with relevant EBRD officials. The Eligibility Assessment Expert was provided with background documentation on the Project and was given full access to all relevant documentation through the 'ProjectLink' system.

6. The Office of the Chief Compliance Officer notified the Project Sponsor of the Complaint on 1 August 2005 and subsequently invited it to submit its views and comments so that these could be taken into account by the Eligibility Assessors in the preparation of the Eligibility Assessment Report. The Project Sponsor's response to the Complaint, and to the facts as set out therein, attached as Annex 2, was accordingly forwarded to the Office of the Chief Compliance Officer on 18 August 2005.

7. The Eligibility Assessors were of the opinion that sufficient information had been obtained in this manner to consider the eligibility of the Complaint and they determined that no additional steps, such as a Project site visit or retaining of additional expertise, were warranted at this stage.

Findings

Eligibility for Registration

8. On 28 July 2005, the Chief Compliance Officer determined that the Complaint submitted by the Affected Group was eligible for Registration in accordance with IRM, RP 8, which provides the mandatory contents of a Complaint. The Complaint:

- sets out the date of the Complaint, *i.e.* 20 July 2005;
- provides the name and contact details of each member of the Affected Group;¹
- provides the name and contact details of the two Authorised Representatives of the Affected Group, (Mr. Alexey O. Tyndik and Mr. Dmitriy V. Lisitsyn) and evidence of their power to represent and to act on behalf of the Affected Group in relation to the Complaint;²
- explains, in relation to Mr. Tyndik, who is not locally based, that all members of the Affected Group believe that his participation, as a trained and practicing lawyer, will help to protect their interests.³ It would appear reasonable to assume that both Mr. Tyndik, a Moscow-based Lawyer, and Mr. Lisitsyn, a Sakhalin-based environmentalist, are fluent in the native language of the Affected Group, which one must assume is Russian. This assumption is supported by the fact that the complainants do not claim to be indigenous people and that the Complaint is presented in both English and Russian;
- confirms that each of the Authorised Representatives is empowered to act separately;⁴

¹ These details are contained in the Protocol of the Meeting of the Initiative Group, 20 July 2005, and in the document conferring Power of Attorney, 20 July 2005, attached at Annex 3.

² Document conferring Power of Attorney, 20 July 2005.

³ Complaint, at 1.

⁴ The Complaint states, *ibid.*, at 1, that each 'is authorised to operate on behalf of the Group independently'.

- sets out a summary description of the Project;
- provides a description of how and why the Project has, or is likely to have, a direct adverse and material effect on the common interest of the Affected Group;
- provides a description of the good faith efforts used by the Affected Group to resolve the issue with the Project Sponsor and with the Bank and an explanation of why the Group believes that there is no reasonable prospect of resolving the issue through the continuation of such efforts;
- attaches copies of all material correspondence, notes of meetings and other relevant material supporting the Complaint.

9. Furthermore, in accordance with IRM, RP 9, the Complaint describes the steps the Affected Group expects to be taken by the Bank in order to address the direct adverse and material effect that the Project has, or is likely to have, on the common interest of such group. The Complaint requests the provision of assistance in negotiating a resolution of the dispute between the Affected Group and the Project Sponsor, through the payment of appropriate compensation by the latter [IRM, RP 9 (d)]. It also indicates the steps the Affected Group expects to be taken by the IRM [IRM, RP 9 (e)]. Though the Complaint does not expressly state whether the Affected Group requests a Compliance Review or a Problem-solving Initiative, it is quite clear that, by requesting the IRM ‘to help ... to adjust [the] negotiating process with those employees of SEIC who are authorized to make a decision on compensation of fishery activity losses ... and also, whenever it is possible, to participate in such negotiations as the intermediary if there will arise such a necessity’,⁵ it expects a Problem-solving Initiative. Also, the Affected Group’s declaration that nothing in the present complaint can be regarded as its ‘discontent’ with the actions of the EBRD strongly implies that the Group is not seeking a Compliance Review.⁶

Eligibility for Further Processing

10. Upon registration of a Complaint, the IRM requires the Eligibility Assessors to make an Eligibility Assessment of the Registered Complaint within 30 Business days of the receipt of the Complaint. Eligibility for further processing is determined by IRM, RP 18 and 19.

IRM, Rules of Procedure 18

Does the Complaint relate to a Project [IRM, RP 18 (a)]?

⁵ Complaint, at 5.

⁶ As a matter of policy, it is proposed that, even where the Affected Group expressly or implicitly indicates the steps that it expects to be taken by the IRM, *e.g.* a Compliance Review or Problem-solving Initiative, pursuant to IRM RP 9, the Eligibility Assessors be entitled to reserve the right to examine the Complaint in the light of all available steps and to recommend an alternative step where appropriate. This position would appear to be the only one consistent with IRM RP 22, 23, 25 and 27. On a more practical level, it would help to ensure that an Affected Group does not arbitrarily exclude itself from seeking the assistance of the IRM due to a lack of familiarity with the IRM Rules of Procedure. Notwithstanding, in this case, the Eligibility Assessors saw no evidence to suggest a material violation of a relevant EBRD policy. Hence, the decision that a compliance review is not warranted.

11. IRM, RP 1(x) defines a 'Project' as 'a specific project or technical assistance that is designed to fulfil the Bank's purpose and functions, and in support of which a Bank Operation is outstanding or may reasonably be expected'. In the context of determining eligibility, IRM, RP 18(a)(i) provides that 'the Bank must have provided...a clear indication of its interest in financing the Project...'. The Eligibility Assessors are mindful that the Project has not been finally approved by the Bank nor has the Bank made any commitment to participate in the financing of Sakhalin 2, particularly as concerns a decision to declare the Project 'Fit for Purpose'.

12. In spite of this and in order to give meaning to the application of IRM, RP 18(a)(i), the Eligibility Assessors took account of the time and resources already invested by Bank staff in the Project. In particular, though the Project has not yet passed Final Review by the Bank's Operations Committee, it has passed the Concept Review and Structural Review⁷ stages of approval and Bank staff have now been conducting due diligence for some three years. In the view of the Eligibility Assessors, even though the Bank has not declared the Project 'Fit for Purpose'⁸ the nature of the Bank's involvement so far, constitutes 'a clear indication of its interest...' without necessarily constituting 'a reasonable expectation' of its eventual financing.

Is the Complaint from an Affected Group [IRM, RP 18 (b)]?

13. The complainants clearly qualify as an 'Affected Group' within the meaning of IRM, RP 1(a), as they consist of two or more individuals from the 'Impacted Area', as defined under IRM, RP 1(p), each of which have a common interest in safe access to healthy fisheries resources in Aniva Bay. The Affected Group also includes three fishery enterprises with the same common interest. The individuals, together with the enterprises, collectively constitute members of the Affected Group.

14. *Prima facie* evidence of the common interest of these individuals is provided by the fact that they attended the meeting of the 'initiative group' of 20 July 2005 and that they signed the Protocol of this meeting as well as the document conferring power of attorney on the Authorised Representatives. It would appear reasonable to assume that these individuals represent the wide range of social and economic interests that would be adversely affected by damage to, or collapse of the fishing industry in Aniva Bay. Indeed, the significance of the local fishing industry and the potentially wide-ranging impacts on the community of damage to this industry were also made apparent during the recent site visit of potential lenders.⁹

15. At the policy level, it would seem appropriate for the IRM to adopt a broad and inclusive view of the notion of 'common interest' for the purposes of

⁷ The Project passed Structural Review in December 2004; however, given the changes to the Project resulting in new capital cost implications, it may be necessary to undergo Structural Review once more before Final Review.

⁸ See Letter dated 18 August 2005 from SEIC to EBRD Chief Compliance Officer. Also, the eligibility of the Complaint under EBRD's financing of Phase I of SEIC's Project is not at issue and need not be considered, see Letter, *ibid*.

⁹ Site visit of 6-12 April 2005, which reports that at one meeting 125 local people (handing over a petition of 1,000 signatures) expressed anger in relation to, *inter alia*, the Project Sponsor's dredging operations. Similar concerns were raised independently by both Mayor Zlivko and the NGO Sakhalin Watch.

IRM RP 1(a). Such an approach would help to ensure consistency with the EBRD's environmental mandate and policy objectives¹⁰ and with the stated aims of the IRM.¹¹ For the purposes of establishing the common interest of each of the members of the Affected Group, including the three enterprises involved in fishing and in associated services, such as fish processing, it is also useful to have regard to the EBRD's Environmental Policy, which states that:

'In line with its mandate to promote environmentally sound and sustainable development, the term "environment" is used in this Policy in a broad sense to incorporate not only ecological aspects but also ... community issues, such as ...involuntary resettlement ...',¹²

16. In turn, the relevant IFC policy document (IFC OD 4.30),¹³ which sets out EBRD policy on Involuntary Resettlement, includes within its scope 'projects that cause involuntary displacement',¹⁴ which include those in which 'productive assets and income sources are lost'.¹⁵ IFC OD 4.30 goes on to explain that '[S]uch projects may include construction or establishment of ... (b) new towns or ports'.¹⁶ Further, in setting out guidance on 'Valuation of and Compensation for Lost Assets', IFC OD 4.30 refers specifically to certain types of loss, 'such as access to ... (c) fishing'.¹⁷ Similarly, the IFC's *Handbook for Preparing a Resettlement Action Plan*, in its glossary of terms, defines 'economic displacement' as:

'Loss of income streams or means of livelihood resulting from land acquisitions or obstructed access to resources (land, water or forest) resulting from the construction or operation of a project or its associated facilities',¹⁸

and a 'project-affected person as:

'Any person who, as a result of the implementation of a project, loses the right to own, use or otherwise benefit from a built structure, land (residential, agricultural or pasture), annual or perennial crops or trees, or any other fixed or moveable asset, either in full or in part, permanently or temporarily.'¹⁹

¹⁰ Under Article 2(1)(vii) of the Agreement Establishing the European Bank for Reconstruction and Development, the Bank is directed to 'promote in the full range of its activities environmentally sound and sustainable development'. This requirement is restated in paragraph 1 of the EBRD's Environmental Policy of 29 April 2003.

¹¹ The document *Independent Recourse Mechanism: The guide to making a complaint about an EBRD-financed project* (July 2004) provides, at 2, that: 'The IRM aims to strengthen the Bank's accountability and increase the transparency of its decisions in relation to its banking operations. The IRM processes are designed to be user-friendly, efficient and timely.'

¹² EBRD Environmental Policy. 29 April 2003, paragraph 3

¹³ IFC Operational Directive 4.30, 1 June 1990.

¹⁴ *Ibid.*, paragraph 1.

¹⁵ *Ibid.*, paragraph 2.

¹⁶ *Ibid.*, paragraph 2, footnote 4.

¹⁷ *Ibid.*, paragraph 15.

¹⁸ *Handbook for Preparing a Resettlement Action Plan* (IFC, 2002), at ix.

¹⁹ *Ibid.*, at x.

17. Therefore, all members of the Affected Group, including those enterprises involved in fishing and in associated services, would appear to belong to an 'Affected Group' sharing a 'common interest' for the purposes of IRM, RP 18(b).²⁰

Is there evidence of a direct adverse effect on the common interest of the Group [IRM, RP 18(b)]?

18. In its Complaint, the Affected Group alleges that the Project Sponsor's construction activities have resulted in the following direct adverse and material effects on their common interest:²¹

1. that the anticipated restrictions on navigation may amount to an effective prohibition of fishing activities;²²
2. that, even if fishing activities are not prohibited, fishermen face practical difficulties in installing and servicing their nets and in collecting their catch;
3. that the Project Sponsor's construction and shipping operations are likely to disturb fish spawning migrations and lead to a decrease in the fish catch;
4. that members of the Affected Group are experiencing difficulty in selling their products due to concerns among purchasers over the likely deterioration of fish quality due to the construction and operation of the Project Sponsor's facility;
5. the decrease in market value of the Affected Group's assets as a result of the problems listed above; and
6. the early repayment of credit facilities advanced to certain of the Complainants required by their lender due to concerns over the problems listed above.²³

19. For the purposes of establishing that there is *prima facie* evidence that the Project has, or is likely to have, a direct adverse and material effect on such a group's common interest, as required under IRM, RP 18(b), it is useful to have regard to the correspondence supplied by the Affected Group, which, *inter alia*:

- sets out the concerns of purchasers of the Affected Group's fish products in relation to adverse impacts on the quality of fish taken from the relevant sites due to dredging and other construction works;²⁴
- suggests that the Project Sponsor was at one point prepared seriously to discuss the question of compensation (though with Calypso Ltd. alone);²⁵

²⁰ This conclusion is reached despite the alleged assertion of the Project Sponsor that the only party with whom it was required to enter into negotiations with Calypso Ltd., as its fishing sites directly border onto the sites on which the construction works are taking place. See, Protocol of Meeting, 21 May 2004.

²¹ Letter dated 2 June 2004 from SSFP, KFC Ltd. and Calypso Ltd. to SEIC.

²² See, for example, the Letter from Sakhalin Transport Prosecutor's Office to the Chief Federal Inspector for the Sakhalin Oblast dated 2 April 2004, which states that, though there were no legal limitations at that time on navigation in the area where the construction of the LNG plant is taking place, 'in accordance with Russian Federation seafaring legislation, a resolution will have to be adopted on the routes of navigation of tankers in the Aniva Gulf, and along those routes the navigation of small vessels will be prohibited.'

²³ See, Letter from Interprombank to OOO 'Torgovo Promyshlennyi Soyuz' dated 6 February 2004.

²⁴ Letter dated 12 April 2004 from ROK-1 Fishery Plant to TIU (TPS) Ltd.; Letter dated 24 May 2004 from Yokohama Trading Corporation Ltd. to TIU (TPS) Ltd.

- confirms that a fishing net was observed to be in the vicinity of the route of one of the Project Sponsor's contractor's vessels;²⁶
- confirms the likelihood of a conflict of interests arising between the Project Sponsor's construction operations and the fishing activities of Calypso Ltd. and Contract Ltd.;²⁷
- suggests that the Project Sponsor has failed to fulfil all of the terms of its authorisation for the construction work on the submerged cables and pipelines in Aniva Bay, specifically those relating to the preparation of an appraisal report on the results of monitoring of the aquatic medium and biota during the construction works in 2004.²⁸ From the correspondence, it would also appear that the dredging works have not been conducted in accordance with the Project Description contained in the original EIA.²⁹

20. Therefore, it would appear that there is sufficient *prima facie* evidence that the Project has, or is likely to have, a direct adverse and material effect on the Affected Group's common interest.

Has the Group initiated good faith efforts to resolve the issue [IRM, RP 18(c)]?

21. In relation to the requirement under IRM, RP 18(c) that the Affected Group has initiated good faith efforts to resolve the issue with the Bank and other Relevant Parties, it is significant that members of the Group have held joint meetings with the Project Sponsor on 21 May 2004³⁰ and 18 June 2004,³¹ setting out their grievances in detail, and that they have supplied the Project Sponsor with all the information requested on the negative economic impacts of the construction works on their businesses.³² Members of the Affected Group have continued to correspond with the Project Sponsor throughout 2005 expressing their frustration at the lack of progress on negotiations to resolve the issue³³ and explaining their concerns over safety³⁴ and the impact of construction operations on their fishing activities.³⁵ In addition, a member

²⁵ Letter dated 30 June 2004 from SEIC to TIU (TPS) Ltd. See also, Letter from SEIC to Sakhalinrybvod dated 24 October 2003, which concedes that construction of the LNG plant will impact on the activities of a number of enterprises and expresses SEIC's intention to compensate the losses of the fishing industry in accordance with the requirements of Russian legislation.

²⁶ Letter dated 2 September 2004 from SEIC to Calypso Ltd.

²⁷ Letter dated 19 November 2004 from SEIC to FSE "Sakhalinrybvod"; Letter dated 16 May 2005 from SEIC to Calypso Ltd; Letter dated 18 July 2005 from SEIC to Calypso Ltd. See also, Letter from SEIC to Sakhalinrybvod dated 24 October 2003.

²⁸ Letter dated 15 March 2005 from FSE "Sakhalinrybvod" to the Chief Federal State Establishment "TSUREN"

²⁹ See EIA, vol. 5, Chapter 2, at 2-19. See also, Letter from the Administration of Korsakov District to the Federal Service for the Supervision in the Sphere of Nature Use dated 29 March 2005, which states that 'Sakhalin Energy is conducting its activities in breach of environmental legislation, and that the Administration has asked the Prosecutor's Office to start a criminal investigation into the activities of Sakhalin Energy.'

³⁰ Protocol of the Joint Meeting, 21 May 2004.

³¹ Protocol of the Joint Meeting, 18 June 2004.

³² Letter dated 2 June 2004 from SSFP, KFC Ltd. and Calypso Ltd. to SEIC.

³³ Letter dated 12 May 2005 from SSFP, KFC Ltd. and Calypso Ltd. to SEIC; Letter dated 21 June 2005 from SSFP to SEIC; Letter dated 11 July 2005 from Calypso Ltd. to SEIC.

³⁴ Letter dated 28 June 2005 from Calypso Ltd. to SEIC; Letter dated 4 July from Calypso Ltd. to SEIC.

³⁵ Letter dated 11 July 2005 from Calypso Ltd. to SEIC.

of the Affected Group met with a representative of the EBRD's Environment Department during the Potential Lender Site Visit to Sakhalin, to outline the negative economic impacts of construction on their businesses.³⁶

22. Further, the members of the Affected Group presented a letter outlining their grievances to the President of EBRD during the EBRD Annual Meeting on 19 May 2005. It is also worth noting that other agencies appear to have made good faith efforts to ensure that the dispute might be equitably resolved. For example, Sakhalinrybvod recommended to the Head of the relevant Federal State Institution that the latter institution impose various conditions (including the payment of compensation to certain members of the Affected Group) when granting a licence to the Project Sponsor permitting the laying of underwater cables and pipelines in Aniva Bay.³⁷

23. Nevertheless, the Project Sponsor (i.e., SEIC) contends that, with respect to the individuals (natural persons) that form part of the Affected Group, it has not received any communication with respect to the issue described in the Complaint. SEIC is therefore of the opinion that none of the individuals have made any good faith efforts to resolve the issue with SEIC'.³⁸ However, it is quite clear that the Project Sponsor's Grievance Procedure, the mechanism by which one would normally expect affected individuals to communicate their grievances to the Project Sponsor, has not been publicised by the Project Sponsor's Community Liaison Officers and has not anyway operated for some time.³⁹

24. Evidence of communication with the individuals has not been furnished and, in the view of the Eligibility Assessors, neither is such evidence required. It is unclear whether the protocol of the meeting of the initiative group (the Affected Group) of 20 July 2005, listing the members of the group, or any similar document, was forwarded to the Project Sponsor. However, it is likely that the individuals comprising members of the Affected Group are either employees of the fisheries enterprises concerned or are in some other way directly affected by the commercial activities of these enterprises (*e.g.* those involved in associated services, such as maintaining boats or nets). As such, they would no doubt have reasonably assumed that these enterprises, or their representative who communicated with the Project Sponsor, did so on their behalf. At any rate, questions over the eligibility, or otherwise, of a number of the individuals among the Affected Group does not affect the overall eligibility of the Complaint. It would be more practically appropriate and equitable if the position of such individuals could be reconsidered in the course of any Problem-solving Initiative that may be undertaken.

25. In relation to the Project Sponsor's contention that Contract Ltd. is ineligible 'because it has not made good faith efforts to directly resolve the issue with SEIC',⁴⁰ it should be noted that for the purpose of assessing eligibility of the Complaint, each Complainant is not required under IRM, RP 18(c) to make good faith efforts to

³⁶ Site visit of 6-12 April 2005.

³⁷ Letter from Sakhalinrybvod to Head of Federal State Institution 'Central department for fisheries expertise and norms for protection and reproduction of fish stocks' dated 15 March 2005.

³⁸ Letter dated 18 August 2005 from SEIC to EBRD Chief Compliance Officer.

³⁹ Site visit of 6-12 April 2005.

⁴⁰ Letter dated 18 August 2005 from SEIC to EBRD Chief Compliance Officer.

‘directly’ resolve the issue with the Bank and other relevant parties, and the Project Sponsor itself acknowledges that Contract Ltd. had corresponded with Sakhalinrybvod outlining its current licence area and the potential impact of loss of fishery grounds, and expressing its dissent in relation to voluntary abandonment.⁴¹ Also, it is clear that as early as November 2004, the Project Sponsor was aware of and concerned about the overlap of its area of operations with the licensed fishery area of Contract Ltd.⁴²

Is there a reasonable prospect of resolving the issue through the continuation of such efforts [IRM, RP 18(c)]?

26. In relation to the requirement under IRM, RP 18(c) that there is no reasonable prospect of resolving the issue through the continuation of such efforts, it is useful to note the apparent lack of meaningful correspondence between SEIC and the Affected Group during the course of this dispute. While correspondence from June 2004 questions some of the data provided by the Affected Group⁴³ and correspondence from July 2004 denies the claim that SEIC’s contractors damaged nets,⁴⁴ the only subsequent correspondence (copied in the Complaint) from SEIC either requests that all nets, boats, *etc.* are kept out of the site allocated to SEIC⁴⁵ or that the Affected Group relocate their nets under a proposal from the SEIC’s sub-contractor.⁴⁶

27. In determining whether there is a reasonable prospect of resolving the issue through continuation of such efforts, it was noted that no officer in the company had been designated as responsible for handling of this dispute and that the absence of such an officer with clear responsibility for liaising with the Affected Group appears to have been a source of considerable frustration for the Affected Group.⁴⁷ This has had a particularly serious negative impact on any likelihood of resolution of the dispute due to the fact that the company’s Grievance Procedure does not appear to have been working effectively for some time.⁴⁸ Indeed, in relation to this specific Complaint, it appears that Calypso Ltd. was never told about the existence of the Community Liaison Officers or of the Grievance Procedure, nor were they identified as stakeholders in the company’s (draft) Resettlement Action Plan (RAP).⁴⁹

28. It might be argued, in the context of the requirement under IRM, RP 18(c) that there should be no reasonable prospect of resolving the issue through the continuation of previously initiated efforts, that this Complaint is somewhat premature on account of the fact that neither the Project Sponsor’s Resettlement Action Plan nor the EBRD’s Environmental Appraisal Process has yet been finalised. However, it is the view of the Eligibility Assessors that given the nature of the Complaint and the

⁴¹ *Ibid.*

⁴² See Letter dated 19 November 2004 from SEIC to Sakhalinrybvod.

⁴³ Letter dated 30 June 2004 from SEIC to TIU (TPS) Ltd.

⁴⁴ Letter dated 2 September 2004 from SEIC to Calypso Ltd.

⁴⁵ Letter dated 16 May 2005 from SEIC to Calypso Ltd.

⁴⁶ Letter dated 18 July 2005 from SEIC to Calypso Ltd.

⁴⁷ See, for example, Letter dated 21 June 2005 from SSFP to SEIC.

⁴⁸ Site visit of 6-12 April 2005, at which it was observed that the grievance mechanism stopped being used some time ago and that complaints have not been logged centrally or tracked since, pending the introduction of a new database. It is noted that the Community Liaison Officers have not been informing people about the existence of the Grievance procedure.

⁴⁹ *Ibid.*

remedy sought by the Affected Group, that the IRM's Problem-solving function could usefully operate in tandem with, and exercise a positive influence on, efforts to complete each of these processes with a view to securing a mutually acceptable accommodation.

29. In relation to the Project Sponsor's belief that there is a reasonable prospect of resolving the issues with Contract Ltd. through further dialogue,⁵⁰ the Project Sponsor's belief in such a prospect should not preclude a finding of eligibility on behalf of Contract Ltd. Of course, further dialogue between the Project Sponsor and Contract Ltd. should be encouraged, and if they manage to resolve these issues through such dialogue the need to include Contract Ltd. in any Problem-solving Initiative would be obviated.

30. In relation to the Project Sponsor's contention that KFC Ltd. is ineligible due to the former's belief that there is a reasonable prospect of resolving the issue,⁵¹ the Project Sponsor's belief in such a prospect should not preclude a finding of eligibility on behalf of the latter. Further, the Project Sponsor's concerns about the lack of evidence substantiating KFC's claim and the likely impacts of the activities of Korsakov Port on the fishing industry⁵² would appear to run to the merits of KFC's claim rather than to its eligibility.

31. In relation to the Project Sponsor's contention that Calypso Ltd. is ineligible due to the former's belief that there is a reasonable prospect of resolving the issue,⁵³ the Project Sponsor's belief in such a prospect should not preclude a finding of eligibility on behalf of the latter.

32. The various matters raised by the Project Sponsor under the heading 'The Request for a Problem-solving Initiative',⁵⁴ refer to such issues, *inter alia*, as the contributory culpability of members of the Affected Group, the adequacy of evidence of damage and of the cause of any damage, the availability and adequacy of baseline data in relation to fish catches, fish health and contamination, port activities attributable to Korsakov Port, poaching and over-fishing, *etc.* and so relate to the merits of any claim made by the Affected Group rather than to the eligibility of the present Complaint.

IRM, Rules of Procedure 19

33. Even where a Complaint fulfils the requirements of IRM, RP 18, a Complaint shall not be eligible for IRM processing if it falls foul of the restrictions of IRM, RP 19.

- The carefully documented and recorded background to the dispute and the efforts of the Affected Group and others to resolve it would suggest that the complaint is neither frivolous nor malicious. [IRM, PR 19 (a)]

⁵⁰ Letter dated 18 August from SEIC to EBRD Chief Compliance Officer.

⁵¹ *Ibid.*

⁵² *Ibid.*

⁵³ *Ibid.*

⁵⁴ *Ibid.*

- As the members of the Affected Group are not engaged in an area of economic activity similar or related to that of the Project Sponsor, it is difficult to see how the primary purpose of the Complaint could be to ‘seek competitive advantage through the disclosure of information or through impeding or delaying the Project or the Bank Operation’. [IRM, PR 19 (b)]
- The Complaint does not relate to procurement matters. [IRM, PR 19 (c)]
- The Complaint does not relate to an allegation of fraud or corruption. [IRM, PR 19 (d)]
- The Complaint does not relate to Article 1 of the Agreement establishing the Bank, the Portfolio Ratio Policy or any other policy specified by the Board for the purposes for IRM, RP 19(e).
- The Complaint does not relate to the adequacy or suitability of EBRD policies. [IRM, PR 19 (f)]
- The Complaint does not relate to matters upon which an Eligibility Assessment report has already been approved by the Board or the President. [IRM, PR 19 (g)]

Conclusion and Recommendation of the Eligibility Assessors

34. In accordance with IRM, RP 27(b)(ii), the Eligibility Assessors recommend to declare the Complaint eligible for further processing, but not warranting a Compliance Review. Furthermore, implementation of this recommendation should be suspended pending the forthcoming decision on whether to declare the Project ‘Fit for Purpose’. Pursuant to IRM, RP 14, the Chief Compliance Officer may take account of any ‘time-sensitive issues relating to the Project’ and consequently provide for an extension of the time period for examining whether a Problem-solving Initiative is warranted (IRM, RP 42).

35. Furthermore, although IRM, RP 22 requires that where ‘the Eligibility Assessors are minded to recommend that a Compliance Review is not warranted ... the Eligibility Assessors shall give the Affected Group an opportunity ... to comment upon the finding that a Compliance Review is not warranted and include such comments in the Eligibility Report’, this provision would appear to be anomalous in a case such as the present Complaint, where it is quite clear that the Affected Group is not seeking a Compliance Review. To give effect to IRM, RP 22 would, in this instance, be time-consuming, confusing and could not in any way further the aims of the IRM as set out in *Independent Recourse Mechanism: The guide to making a complaint about an EBRD-financed project* (July 2004), at 2.

В Независимый орган по
рассмотрению жалоб Европейского
Банка Реконструкции и Развития

To the Independent Recourse Mechanism
Of European Bank for Reconstruction and
Development

Жалоба
(в соответствии с Правилами
процедуры НОРЖ)

Complaint
(as prescribed by the Procedure Rules of
IRM)

Дата составления жалобы –
20 июля 2005 года

Date of complaint's commitment –
July 20th 2005

Затрагиваемая проектом группа:
жители г. Корсаков Сахалинской области
РФ, ФИО и необходимые персональные
данные приведены в Приложении № 1 к
Жалобе, а также рыбодобывающие
предприятия.

The involved group: the inhabitants of
Korsakov city, Sakhalin region, names and
personal data are given in Att. # 1 to the
Complaint, as well as fishery enterprises.

Конфиденциальность: никто из
членов инициативной группы не просит
соблюдать конфиденциальность своих
данных согласно Правилам процедуры
НОРЖ.

Confidentiality: non of the members of
initiative group asks to keep their personal
data confidential in the meaning of
Procedure rules of IRM.

Уполномоченные представители
затрагиваемой проектом группы:

Authorized representatives of the involved
group:

- **Тындик Алексей Олегович:**
Россия, 125047, г. Москва, ул. 1-я
Брестская д. 35 стр. 1, Телефоны:
+7(095)251-5527, +7(095)997-7595,
- **Лисицын Дмитрий Васильевич:**
Россия, 693007, г. Южно-
Сахалинск, Коммунистический пр.,
27а, к. 301 Телефоны: +7(4242)74-
75-18, +7(4242)74-75-19,
+7(4242)74-75-18

- **Alexey O. Tyndik**, Russia, 125047,
Moscow, 1-ya Brestskaya str. 35 bld.
1, Phones +7(095)251-5527,
+7(095)997-7595,
- **Dmitriy V. Lisitsyn**, Russia, 693007,
Yuzhno-Sakhalinsk,
Kommunisticheskiy prp. 27a, room
301, Phones +7(4242)74-75-18,
+7(4242)74-75-19, +7(4242)74-75-18

Каждый из уполномоченных
представителей группы уполномочен
действовать от имени группы
самостоятельно.

Each of the authorized representatives of
the group is authorized to operate on behalf
of the group independently.

Уполномоченный представитель
Тындик Алексей Олегович не
проживает непосредственно в
затрагиваемом проектом районе, однако,
по мнению членов инициативной группы,
его участие будет способствовать
защите прав членов группы, поскольку
никто из членов группы не обладает
специальными юридическими

The authorized representative **Alexey O. Tyndik** does not live permanently in the
region, involved into the given Project, but,
as all members of the Group believe, his
participation will help in protection of their
rights for none of the group members
possess any judicial education.

познаниями

Наименование проекта: «Сахалин 2» – строительство и эксплуатация завода по переработке сжиженного природного газа (СПГ), терминала отгрузки СПГ и нефти в районе с. Пригородное Корсаковского района Сахалинской области.

Description of the Project: “Sakhalin 2” – construction and exploitation of the Liquefied Natural Gas plant (LNG), LNG off-loading terminal and oil off-loading terminal near Prigorodnoye, Korsakov district, Sakhalin region.

Наименование операции ЕБРР: выдача кредита компании «Сахалин Энерджи Инвестмент Компани Лтд.» (далее – компания СЭИК) на завершение работ по второй фазе проекта.

Description of the EBRD operation: granting the credit to “Sakhalin Energy Investment Company Ltd.” (hereafter – SEIC) for commitment the works on the second phase of the project.

Воздействие проекта:

Проект, осуществляемый компанией «Сахалин Энерджи Инвестмент Компани Лтд.» затрагивает общие интересы всех членов группы следующим образом.

Project influence:

Project, operating by “Sakhalin Energy Investment Company Ltd.” does impact the common interests of the group members the following way.

Рыболовные участки, принадлежащие предприятиям ООО «Калипсо», ООО «Корсаковский рыбоконсервный завод» и ООО «Контракт» оказались частично в санитарной зоне строящегося завода по переработке сжиженного природного газа (СПГ), терминала отгрузки СПГ и нефти в районе с. Пригородное. Также имеется частичное пересечение лицензионной акватории компании СЭИК (лицензии на водопользование № ЮСХ 00064 ЦМ6В от 16.09.2004 г. и № ЮСХ 00059 ЦМ3Х от 09.07.2004 г.) с акваториями, входящими в рыбопромысловые участки ООО «Калипсо» и ЗАО «Контракт». Кроме того, весь участок ООО «Калипсо» оказался в зоне грузового района Корсаковского морского порта, которая была расширена по просьбе компании СЭИК для обеспечения законности ее морских операций.

Fishery sites, which belong to “Calypso Ltd.”, “KFC Ltd.” and “Contract Ltd.” have appeared to be partly in the sanitary zone of constructing LNG Plant, LNG off-loading terminal and oil off-loading terminal near Prigorodnoye. Also, there is a crossing of SEIC sea area (licenses for water use № ЮСХ 00064 ЦМ6В, September 16, 2004 and № ЮСХ 00059 ЦМ3Х July 09, 2004) with sea areas, included in “Calypso Ltd” and “Contract Ltd” licensed fishing sites. Besides of this, all licensed fishing area of “Calypso Ltd” was included in a cargo zone of Korsakov marine port, which was expanded under a request of SEIC for a legality of their marine transport operations.

Проводимые компанией СЭИК и ее субподрядчиками строительные работы по возведению причалов и дноуглубительные работы:

The construction works on erection of moorings and dredging works, committing by SEIC and its subcontractors:

- Приводят к уничтожению снастей и рыболовецких неводов;

Lead to destruction of tackles and fishing seines;

Не дают возможности движения маломерных рыболовецких судов в акватории строительства;

- Do not give an opportunity of movement of small fishing vessels in water area of construction;

Влекут снижение количества вылавливаемой рыбы, поскольку представляют собой фактор беспокойства для последней;

Attract decrease in quantity of a caught fish as represent themselves the factor of anxiety for the last;

Приводят к загрязнению окружающей среды, негативно влияющему на качество рыбопродукции, что влечет невозможность реализации рыбопродукции.

Lead to the environmental contamination which influences negatively upon the fish products quality that attracts impossibility of the fish products selling.

После окончания строительства завода СПГ и начала его эксплуатации, санитарная зона и вся акватория порта будет закрыта для судоходства на все время эксплуатации завода – 34 года в соответствии с озвученными планами компании СЭИК. Все это время члены заинтересованной группы будут лишены возможности заниматься своим традиционным промыслом, которым они занимались с 1968 года.

After the fulfillment of LNG Plant construction and the beginning of its operation, the sanitary zone and all water area of port shall be restricted for navigation for all time of the Plant operation – 34 years according to the sounded plans of SEIC.

All this time members of the interested group will be deprived an opportunity to be engaged by the traditional craft in which they were engaged since 1968.

Это означает потерю источника заработка для всех членов инициативной группы.

It means loss of a source of earnings for all members of initiative group.

Предпринятые для решения проблемы усилия.

Инициативная группа в лице руководства рыбодобывающих предприятий предпринимала неоднократные попытки договориться с компанией СЭИК о предоставлении справедливой и соразмерной компенсации убытков от потери традиционного промысла. Письменный диалог с компанией СЭИК начался в мае 2004 года.

Efforts made to resolve the problem.

The initiative group on behalf of a management of the fishery enterprises undertook numerous attempts to conclude an agreement with SEIC on granting fair and proportional compensation of damages from loss of a traditional craft.

Written dialogue with company SEIC has begun in May, 2004.

Копии переписки прилагаются к настоящей жалобе.

Copies of correspondence are applied to the present complaint.

До настоящего момента компанией СЭИК не принято никакого решения, диалог фактически прерван, строительные работы активно ведутся непосредственно в период путины и в месте выставления неводов.

Наши обращения к компании СЭИК остаются без ответа.

Несмотря на то, что мы регулярно письменно информируем компанию СЭИК о нашем желании возобновить переговорный процесс, мы не получаем никакого ответа на это предложение с ее стороны. Таким образом, мы не видим для себя более никаких разумных оснований надеяться самостоятельно добиться возобновления переговоров с компанией СЭИК.

Инициативная группа обращалась в ЕБРР с письмом на имя Президента ЕБРР, которое было передано 19 мая 2005 г. на Ежегодном саммите ЕБРР. Мы искренне благодарны г-ну Жану Лемьеру за полученный ответ от 22 июня 2005 г.

Мы признательны ЕБРР за те усилия, которые уже предприняты и предпринимаются с его стороны для устранения неблагоприятных экологических и социальных конфликтов проекта Сахалин 2.

Более того, насколько мы это видим, мы полагаем, что со своей стороны ЕБРР прилагает максимум возможных усилий для решения данной проблемы.

Ничто в настоящей жалобе не может быть рассмотрено как наше недовольство какими-либо уже совершенными действиями ЕБРР.

Цель нашего обращения с настоящей жалобой состоит в том, чтобы в соответствии с Правилами процедуры НОРЖ просить содействия ЕБРР в налаживании переговорного процесса между инициативной группой и

Till the present moment not any decision is made by SEIC, dialogue is actually interrupted, construction works are actively conducted directly during seasonal salmon fishery period and in a place of exhibiting of seines.

Our references to company SEIC remain without answer.

In spite of the fact that on a regular basis we are informing SEIC in writing on our desire to renew negotiating process, we do not receive any reply to this offer from its party. Thus, we do not see for ourselves any more reasonable basis to hope to achieve renewal of negotiations with SEIC independently.

The initiative group has appealed to EBRD President with the letter that was handed during the Annual Meeting on May 19th 2005. We are sincerely grateful to Mr. Jean Lemierre for the reply received on June 22nd 2005.

We are grateful to the European Bank for Reconstruction and Development for those efforts, which are already undertaken and are still committing by its party for elimination of adverse ecological and social conflicts of the Sakhalin 2 project.

Moreover, as much as we see it, we believe, that from its part the European Bank for Reconstruction and Development applies a maximum of possible efforts for the resolving of the given problem.

Nothing in the present complaint can be considered as our discontent with any already undertaken actions of the European Bank for Reconstruction and Development.

The purpose of our reference with the present complaint is that according to Rules of procedure we will ask assistance from the European Bank for Reconstruction and Development in adjustment of negotiating process between initiative group and SEIC.

компанией СЭИК.

Запрашиваемые действия.

Мы просим Независимый орган по рассмотрению жалоб ЕБРР помочь инициативной группе наладить переговорный процесс с теми сотрудниками компании СЭИК, которые полномочны принять решение о компенсации потерь рыбохозяйственной деятельности от строительства завода СПГ, а также, по возможности, участвовать в таких переговорах в качестве посредника, если возникнет такая необходимость.

Язык сообщений.

Инициативная группа в лице уполномоченных представителей полагает приемлемым получать всю корреспонденцию от ЕБРР по рассматриваемой проблеме на английском языке.

Уполномоченные представители обязуются в кратчайшие сроки доводить до сведения всех членов инициативной группы содержание всех полученных сообщений по вопросу настоящей жалобы.

Приложения:

1. Перечень членов инициативной группы;
2. Протокол собрания инициативной группы от 20 июля 2005 г.;
3. Доверенность на уполномоченных представителей группы;
4. Копия переписки, прошитая на 60 л.;
5. Фотоматериалы на 6 л.

The requested measures.

We ask IRM to help the initiative group to adjust negotiating process with those employees of SEIC who are authorized to make a decision on compensation of fishery activity losses from construction of LNG Plant, and also, whenever it is possible, to participate in such negotiations as the intermediary if there will arise such a necessity.

Language for the correspondence.

The initiative group on behalf of the authorized representatives believes comprehensible to receive the correspondence from the European Reconstruction and Development Bank on a considered problem in English.

The authorized representatives undertake to bring to the notice of all members of initiative group the maintenance of all received messages concerning the present complaint in the shortest terms.

Attachments:

1. The list of members of initiative group;
2. The report of assembly of initiative group from July 20th 2005;
3. The power of attorney on the authorized representatives of group;
4. The copy of correspondence stitched on 60 p.;
5. Photographic materials on 6 p.

**Подписи
представителей.**

уполномоченных

Authorized representatives' signatures.

Тындик А.О. (Tyndik A.

Лисицын Д.В. (Lisitsyn D.)

SAKHALIN ENERGY INVESTMENT COMPANY Ltd



BY REGISTERED MAIL AND E-MAIL

Ms Emery Quinones
Chief Compliance Officer
European Bank for Reconstruction & Development
One Exchange Square
London EC2A 2JN

London, 18 August 2005

Dear Ms Quinones,

Eligibility Assessment under the IRM

Further to your letter to David Greer dated August 4th 2005, please find below the comments of Sakhalin Energy Investment Company Ltd ("SEIC") to the registered Complaint filed on 26 July 2005.

SEIC understands that the Affected Group is a group of individuals as specified in attachment 1 of the Complaint as well as three fishery companies: Calypso Ltd., KFC Ltd. and Contract Limited.

SEIC understands that EBRD's IRM is a procedure that consists of two phases. In this letter we address primarily the first phase; the Eligibility Assessment. In addition, we also provide some initial comments on the second phase of the IRM procedure; the request for a Problem-solving Initiative. SEIC reserves the right to submit additional comments in the second phase of the IRM.

1. ELIGIBILITY ASSESSMENT

Pursuant to Rule 18 a sub 1 of the IRM Rules of Procedure, a Complaint shall be eligible for further processing if the Bank has provided a clear indication of its interest of financing the Project. SEIC disputes that such clear indication has been provided by EBRD. The Project has not been approved by EBRD's Technical Cooperation Committee or passed the Final Review by EBRD's Operations Committee. EBRD has also not declared the Project "Fit for Purpose".

In addition, the Complaint would also not be eligible under EBRD's financing of Phase I of SEIC's Project. The technical completion of Phase I occurred in 2002, but in any event occurred more than twelve months before the filing of the Complaint. Moreover, Phase I of SEIC's Project does not involve any operations in Aniva Bay and could therefore not affect the interests of the Affected Group.

Finally, SEIC does not believe that all members of the Affected Group have made good faith efforts to resolve the issue with SEIC. Where members of the Affected Group have made good faith efforts to resolve the issue with SEIC, SEIC believes that there is a reasonable prospect of resolving these issues through further dialogue.

Postal address:
London
SE1, 7NA
United Kingdom

Visiting address:
York Road
London
United Kingdom

Tel: + 44 (0) 20 7934 5373
Fax: + 44 (0) 20 7934 7924



With respect to the individuals (natural persons) that form part of the Affected Group, SEIC has not received any communication with respect to the issue described in the Complaint from any of these individuals. SEIC is therefore of the opinion that none of the individuals have made good faith efforts to resolve the issue with SEIC.

With respect to the three fishery companies SEIC's position is set out below:

A. Contract Ltd

SEIC does not believe that Contract Ltd ("Contract") is eligible because it has not made good faith efforts to directly resolve the issue with SEIC.

SEIC has no letters or other communication on record directly from Contract with respect to any claims. SEIC has received a letter from FGU SakhRybvod, the regulatory fishery body for the Sakhalin Oblast, dated February 1st 2005 to which a letter from Contract was attached. In the letter from Contract to SakhRybvod, Contract outlines its current licence area, potential impact of loss of fishery grounds and they express dissent against the concept of voluntary abandonment.

SEIC's recent dealings with the Contract have been the positive. SEIC allowed Contract to establish a temporary camp adjacent to its land. This was agreed in a meeting between Mr Pavel Buchnev of SEIC and Mr Pak Bok Man, of Contract on 8th August, 2005. Unfortunately, the Korsakov Land Management Committee refused to accept SEIC's permission.

SEIC will continue the dialogue with Contract. SEIC believes that there is a reasonable prospect of resolving these issues through further dialogue if SEIC receives more information that substantiates Contract's claim.

B. KFC Ltd

KFC Ltd ("KFC") has made efforts to directly resolve the issue with SEIC, and SEIC still believes that there is a reasonable prospect of resolving the issue. For this reason SEIC is of the opinion that KFC is not eligible in its Complaint.

In May 2004 SEIC received a claim for \$13 million from Calypso and that included a loss of profit claim of KFC. KFC's licence area is not next to the area where SEIC is constructing its Project. KFC's licence area is approximately eight kilometres from the Project site. KFC's license area is in the vicinity of the Korsakov Port. SEIC has asked for a further substantiation of the KFC claim. SEIC has observed that there has consistently been a high level of activity and fishing activity in the KFC licence area dating back to Soviet and Japanese times. One would expect that the port activities would have resulted in an impact on the fishing industry. SEIC would like to understand how any impact that the Project has differs from the impact of other industrial and port activities on KFC's business. SEIC expects that further clarification on this point will result in progress to resolve the issue.



C. Calypso Ltd

SEIC has had extensive interactions with Calypso.

SEIC believes there is a reasonable prospect of resolving these issues with Calypso. Only if efforts to resolve the issues by mutual agreement remain fruitless should support by an independent third party, be considered.

2. THE REQUEST FOR A PROBLEM-SOLVING INITIATIVE

SEIC maintains that dialogue with the Affected Group has not reached a stage where resolution of the issue would only be possible through the assistance of an independent party or expert. If at a later point in time discussions with the Affected Group reach a stage where third party mediation would be beneficial, SEIC will evaluate what kind of mediation, if any, it prefers to resolve the issue.

Although SEIC maintains its view that the Affected Group is not eligible under the Rules of Procedure of the IRM, we hereunder set out our preliminary comments to the Complaint should the Eligibility Assessment Expert conclude that the Complaint is eligible.

SEIC has handled claims from the Affected Parties in a correct manner and in accordance with good industry practise. This is also evidenced by the fact that SEIC has already agreed and compensated another fishing company. In December 2003 SEIC agreed compensation with Lenbok Ltd ("Lenbok"), a fishing company that operated in Aniva Bay. The compensation was paid in relation to the loss of its license area. Lenbok operated in the same area of Aniva Bay as Calypso Ltd and Contract Ltd; its license area was in between the licence areas of Calypso and Contract.

In addition, SEIC has paid compensation of approximately \$11 million under an agreement with Russian Federation Federal Fisheries Agency, FGU Sakhalinrybvod, the regulatory fishery body for the Sakhalin Oblast, and SEIC as a compensation for potential fish and marine resources damages. It is intended that this compensation will be used by Sakhalinrybvod to build four new hatcheries on Sakhalin.

None of the claims brought to the attention of SEIC by the Affected Group have been substantiated in sufficient level of detail to justify the payment of compensation. SEIC has not received any evidence of damage suffered by any members of the Affected Group, nor has it been provided with evidence of the cause of any damage. Should any such evidence be provided to SEIC by any members of the Affected Group, SEIC will further discuss the payment of compensation with such members of the Affected Group.

Hereunder SEIC comments on the statements made in the Complaint:



1. The construction works on erection of moorings and dredging works, undertaken by SEIC and its contractors: **“Lead to destruction of tackles and fishing seines”**

An investigation by Korsakov Port showed that there was an incident with Calypso's fishing nets and a vessel connected with the Project. During an investigation by Korsakov Port it was found that Calypso had not followed the requirements for the marking of installed nets, including nighttime signage. The Korsakov Port did not apply any penalties to the owner of the vessel because of this incident. Due to the repeated failure of Calypso Ltd to comply with safe navigation practices the Korsakov Port ordered the removal of all nets prior to the end of the 2004 season.

In 2005 SEIC met with Calypso and various other companies working in Aniva Bay to discuss usage of the area. This demonstrates SEIC's commitment to working with shared area users.

2. The construction works on erection of moorings and dredging works, undertaken by SEIC and its contractors: **“Do not give opportunity of movement of small fishing vessels in the water area of construction”**

SEIC has had a meeting with the Korsakov Port Authority on Thursday 18 August 2005 to discuss the establishment of a safety zone in the area. This establishment of a safety zone may affect the business of fishing companies. Any such affects will be discussed with all interested parties.

3. The construction works on erection of moorings and dredging works, undertaken by SEIC and its contractors: **“Attract decrease in quantity of a caught fish as represent themselves the factor of anxiety for the last”**

We have not received any evidence from Calypso or other member of the Affected Group regarding a decrease in fish catches in Aniva Bay. A number of factors must be considered when assessing this aspect of the Complaint:

The quantity of fish in Aniva bay varies from year to year, this is reflect in the official quota system used to allocate fishing rights to the various users in Aniva Bay;

On August 15th TIA-Ostrova, a publication on Sakhalin Island, quoted Mrs Nina Sklyarova of the Specialist Department of Economic Analysis of the Korsakov Administration as saying that daily fish catches for Korsakov came second highest on the island. In the summer season many organisations had already reached 70% of their yearly quotas. On 1 August 2005 6,444.4 tonnes had been caught compared with a total of 8,866 tonnes caught in 2003 which was considered an excellent season. An extension of the 2005 fishing season has been granted due to the exceptional weather conditions on Sakhalin. This extension will allow the fishing companies to exceed their quotas, and SEIC understands that the companies have asked for increases in their quota. This is a clear indication that fish stock and business conditions in Aniva Bay are healthy.

In December 2003 SEIC agreed compensation with Lenbok, another fishing company operating in Aniva Bay in relation to the loss of its license area. Lenbok operated in the same area of Aniva Bay as Calypso and Contract; its license area was in between the licence areas of Calypso and Contract. After receiving the compensation Lenbok ceased its operations. Thereafter, the amount of quota (and therefore fish) increased as Lenbok's quota was divided amongst the remaining companies. SEIC



argues that any impact assessment of its activities in Aniva Bay should also take into account any positive effects that these activities have on the Affected Group.

As far as SEIC is aware, no claim for compensation has ever been made against the Korsakov Port as a result of port activities impacting the business of KFC. SEIC therefore would like to understand to what extent port activities constitute a disturbance factor for fish.

4. The construction works on erection of moorings and dredging works, undertaken by SEIC and its contractors: **“Lead to the environmental contamination which influences negatively upon the fish products quality that attracts impossibility of the fish products selling.”**

To date there have been no known incidents of Sakhalin Sanitary Committee reporting on the contamination of fish in Aniva Bay due to SEIC's Project activities nor any other factors.

Public fishing days have been heavily subscribed on Prigrodnoye Public beach with no reported incidents of the Sanitary Committee stopping fishing activities due to contamination.

In addition, Sakhalin Energy has commissioned extensive baseline and ongoing construction phase monitoring of fish quality. These reports indicate no substantial changes to the marine bio-resources or the environment in Aniva Bay due to the activities of LNG plant construction outside those impacts predicted in our Environmental Impact Assessment.

SEIC understands that customers of KFC have been receiving products from an area that is adjacent to industrial facilities and the Korsakov Port without complaint. SEIC would like to understand how KFC and other members of the Affected Group operate without any impact from the port or its activities.

SEIC's TEO-C includes data on the amount of sewage that is discharged into Aniva Bay daily. At no time has this impacted the view of the purchasing companies of KFC, Calypso and Contract.

Should any evidence of the decline in fish stock become available, SEIC thinks that a further assessment of the quantity and quality of the fish stock should consider the influence of poaching, over fishing and contamination from sources other than SEIC.

5. Cargo Port

Sakhalin Energy has just started the formal approvals process for the cargo handling area for the LNG and OET facilities. We believe it is premature for the Complaint to list that the fishing area for Calypso has formally been included within this area. As with most ports this may result in dual usage areas. These dual usage areas are a usual phenomenon as is evidenced by Korsakov Port where people currently fish in areas that are used by commercial vessels.

6. Sanitary Protection Zone of LNG jetty and OET

It is SEIC's understanding that Sanitary Protection Zones are only applicable for land not aquatory bodies. SEIC expects the Affected Group to further substantiate its position in this respect.



SEIC requests that EBRD's Eligibility Assessors shall recommend that the Complaint is ineligible.
SEIC offers to provide further information should the Eligibility Assessors so request.

Please send any communication in relation to the above to:

Maarten Hillen, Legal Counsel
P/a Shell Centre
London SE1 7NA
United Kingdom

Yours sincerely,

A handwritten signature in blue ink, consisting of several overlapping, fluid strokes, is positioned to the left of the printed name.

M.H.F. Hillen
Legal Counsel
Sakhalin Energy Investment Company Ltd

Протокол собрания инициативной группы от ООО «Калипсо», ООО «Корсаковский рыбоконсервный завод» и ООО «Контракт»

г. Корсаков

«20» июля 2005 г

Собрание началось в 12.00 часов

Присутствовали:

Члены инициативной группы в составе подписантов настоящего Протокола

Приглашенные:

1. Управляющий партнер АБ «МакКорд» Тындик А.О.
2. Председатель Совета РОО «Экологическая вахта Сахалина» Лисицын Д. В.

Повестка дня собрания

1. Обсуждение текущего состояния вопроса о компенсации рыбодобывающим предприятиям Анивского залива потерь от строительства в зоне лова завода СПГ и терминалов отгрузки.

2. Доклад Тындика А.О. и Лисицына Д.В. о возможностях обращения в международные финансовые организации за помощью в разрешении конфликта.

3. Принятие решения об обращении с жалобой в Независимый орган по рассмотрению жалоб Европейского Банка реконструкции и развития.

4. Определение уполномоченных представителей инициативной группы, оформление письменных доверенностей.

С приветственным словом к собравшимся выступила Власенко Нина Михайловна – генеральный директор ООО «Калипсо».

Protocol of meeting of initiative group from Calypso Ltd., "KFC" Ltd. and "Contract" Ltd.

Korsakov city

July 20th 2005

The meeting began at 12.00 p.m.

Were present:

The members of initiative group according to the signatures of the present Protocol

Invited

1. Managing Partner AB "McCord" Alexey O. Tyndik
2. Chairman of Council NGO "Sakhalin Environmental Watch" Dmitriy V. Lisitsyn

Agenda of the meeting

1. The consideration of the present situation of the problem of compensation of losses from LNG Plant and off-loading terminals construction to Aniva Bay fishery enterprises.

2. Report made by Alexey O. Tyndik and Dmitriy V. Lisitsyn about the possibilities to appeal to the international financing organizations.

3. Taking a decision to appeal to Independent Recourse Mechanism of European Bank for Reconstruction and Development.

4. Electing the Authorized representatives of initiative group and formalizing their authorities in written.

The greeting word to the gathered people was said by Vlasenko Nina Mikhailovna – General Director of "Calypso Ltd."

Власенко Н.М. вкратце рассказала членам трудовых коллективов предприятий историю взаимоотношений рыбодобывающих предприятий с компанией СЭИК по вопросу взаимодействия в Анивском заливе.

Vlasenko N.M. has described in brief to the employees of the enterprises the history of the relations between SEIC and fishery companies in their cooperation in Aniva Bay activities.

По завершении своего выступления предоставила слово приглашенным на собрание – Тындику А.О. и Лисицыну Д.В.

On completing the report Alexey Tyndik and Dmitriy Lisitsyn were given the word.

Лисицын Д.В. рассказал собравшимся о накопленном опыте разрешения экологических конфликтов в различных международных нефтяных проектах.

Dmitriy Lisitsyn has told about the existing experience of the resolving the such conflicts in international oil projects.

Тындик А.О. объяснил существующие правовые механизмы обращения населения затронутых проектами регионов за помощью в разрешении конфликтов к международным финансовым институтам.

Alexey Tyndik has described the existing legal procedures of appeal for the inhabitants of involved regions to the international financial institutes for resolving the conflicts

В прениях по итогам выступлений приняли участие члены трудового коллектива.

After the reports various fishermen took part in discussion.

На голосование поставлен вопрос о сборе подписей инициативной группы под обращением к Независимому органу по рассмотрению жалоб ЕБРР с официальной жалобой на бездействие компании СЭИК с целью просить содействия в налаживании переговорного процесса с компанией СЭИК.

The question of appealing to IRM with official complaint for SEIC non-taking any decision upon the matter and with request to help in negotiations with SEIC is set for voting.

Принятые решения:

Decisions made:

1. Определить уполномоченными представителями инициативной группы следующих лиц:
Управляющий партнер АБ «МакКорд» **Тындик Алексей Олегович**
Председатель РОО «Экологическая вахта Сахалина» **Лисицын Дмитрий Васильевич**

1. To establish as the authorized representatives of the Group the following persons:
 - **Alexey O. Tyndik**, managing Partner of Advocates Bureau "MacCord"
 - **Dmitriy V. Lisitsyn**, Chairman of "Sakhalin Environmental Watch" NGO

2. Уполномочить Тындику А.О. и Лисицыну Д.В. подписать

2. To authorize Tyndik A.O. and Lisitsyn D.V. to sign the complaint to Independent

официальную жалобу в НОРЖ ЕБРР с просьбой оказать содействие в переговорном процессе с компанией СЭИК.

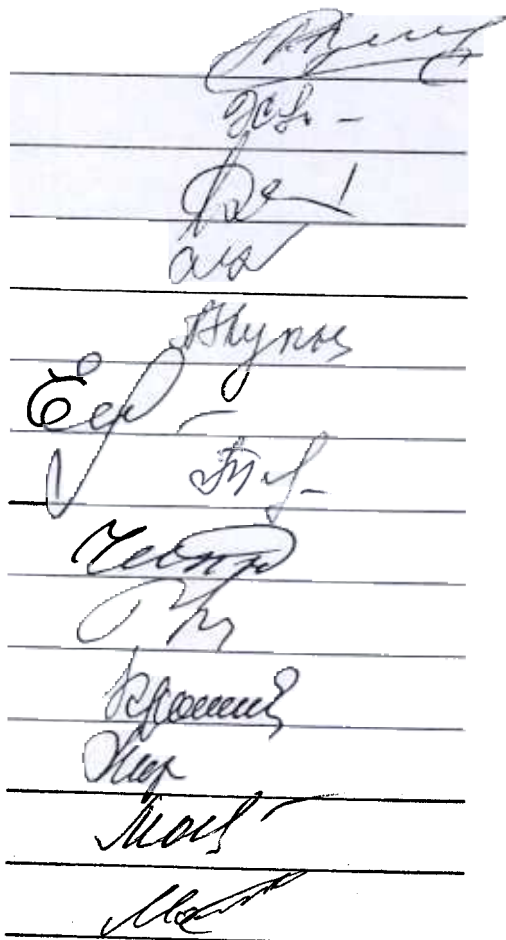
3. Для представления интересов группы перед ЕБРР и компанией СЭИК подписать соответствующую доверенность на уполномоченных представителей.

Власенко Н.М. выступила с завершающим словом, поблагодарила собравшихся за присутствие и пригласила к подписанию итоговых документов – протокола и доверенностей.

На собрании присутствовали корреспонденты средств массовой информации:

Собрание закрыто в 18.00 часов

Подписи членов инициативной группы:



Resource Mechanism on given request to assist in negotiation process with SEIC.

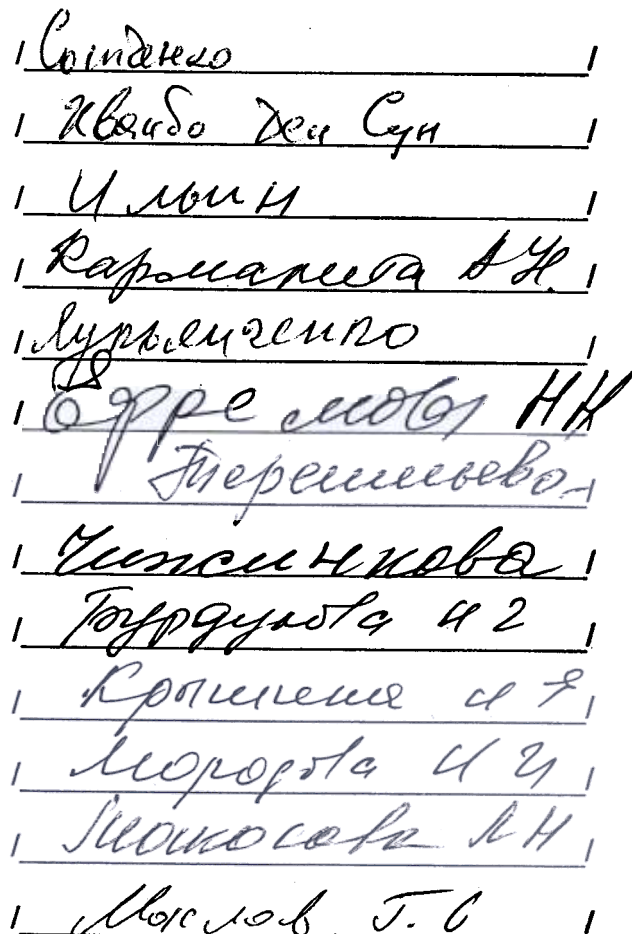
3. For the representing of the interests of initiative group in IRM, EBRD and SEIC – to sing the due power of attorney.

Vlasenko N.M. has completed the meeting and thanked the participants for taking part in it, has invited them to sign the final documents – Protocol and power of attorney.



Mass-media was present at the meeting

The meeting is closed in 18.00.

The members of group signatures:



Рыбнико
Учф-
Учф-
МЗС
Росрыбхоз
Учф-
ВНН-
Директор
Л. Кузнецов



Т. B

А С

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Камаров А. А.

Куликов А. Г.

Роман Е. Г.

Вахтенбер?
Комель
Тооб А.Х.
Хак М.А. Есх
Лак С.К.
Симоненко И.В.
Степаненков М.А.

Тиманов С.Б.
1. Чиркова М.В.
1. Руженко В.В.
1. Чесноков М.И.
1. Шевченко Т.С.
1. Зайцев М.А.

1. Голонгузов Н.А.
1. Власов Н.М.
1. Викришкина Н.С.

1. Mucci B.D.

Дизайн 3.2



Знаю

Будукин Т. А.

Синько С. А.

Хван Серго



Всего прошито, прошнуровано,
пронумеровано и скреплено печатью
13 (тринадцать) листов
«20» сентября 2005 года

Доверенность

Power of attorney

г. Корсаков

Korsakov city

«20» июля 2005 г.

July 20th 2005

ООО «Калипсо», в лице его Генерального Директора – Власенко Н.М.,
ООО «КРКЗ», в лице его Генерального Директора – Займенцева М.А. и
ООО «Контракт», в лице его Генерального Директора – Хвана Ч.Х.

Calypso Ltd., on behalf of its General Director – Vlasenko N.M.,
“KFC” Ltd., on behalf of its General Director – Zaimentzev M.A. and
“Contract” Ltd., of behalf of its General Director – Khvan C.K.

а также члены инициативной группы согласно списку подписей (далее совместно – **Доверители**) доверяют Лисицыну Дмитрию Васильевичу и Тындику Алексею Олеговичу (далее совместно – **Уполномоченные представители**) представлять их интересы и осуществлять следующие действия:

and also the members of the initiative group according to list of signatures (hereafter together – the **Principals**) entrust to Dmitriy V. Lisitsyn and Alexey O. Tindik, (hereafter together – the **Authorized representatives**) to represent their interests and accomplish the following actions:

представлять права и законные интересы **Доверителей** в Независимом органе по рассмотрению в соответствии с Правилами процедуры последнего.

1. to represent the rights and legitimate interests of the Principals in Independent Recourse Mechanism according to the Procedure rules.

2. представлять права и законные интересы **Доверителей** перед «Сахалин Энерджи Инвестмент Компании Лтд.».

2. to represent the rights and legitimate interests of the Principals in “Sakhalin Energy Investment Company Ltd.”

Уполномоченные представители вправе без каких-либо ограничений:

The Authorized representatives have the powers without any exclusions to:

- подписать жалобу в НОРЖ в соответствии с Правилами процедуры последнего;
- вести переговоры от имени **Доверителей** с представителями НОРЖ и ЕБРР, с представителями СЭИК, равно как и любых иных международных организаций и иными лицами, по вопросам, затрагивающим влияние строительства завода СПГ в с. Пригородное, и всех связанных с этим сооружений, на добычу рыбы и морепродуктов в Анивском заливе, наносимого ущерба окружающей среде и его компенсации.
- подписывать и передавать любые документы, лично, по почте, по электронной почте и любым другим

- to sing the complaint to IRM according to the Procedure rules;

- to conduct the negotiations on behalf of the Principals with IRM and EBRD representatives, SEIC representatives, as well as any other international organizations and persons upon the matters of the influence of LNG Plant construction near Prigorodnoye to the fishery activity in Aniva Bay, environmental damage and it's compensation.

to sign and handle any documents, personally or by mail, e-mail as well as any other way.

образом.

принимать на руки любые документы от указанных лиц и организаций, знакомиться со всей документацией, имеющей отношение к затрагиваемому вопросу.

определять размер и условия выплаты компенсации за ущерб, причиненный рыбному промыслу в Анивском заливе строительством и эксплуатацией завода СПГ и отгрузочных терминалов

- все указанные действия Уполномоченные представители вправе совершать как совместно, так и по отдельности, причем любой документ, подписанный одним из уполномоченных представителей считается поданным от имени всей Группы.

совершать иные действия по представлению интересов доверителей в указанных структурах с правом подписи.

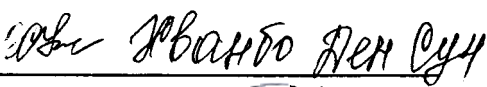



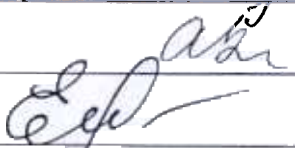
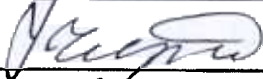

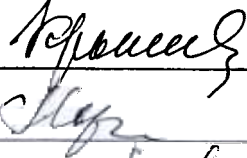
- to obtain all documents from the above mentioned organizations and persons, to transfer the documents, to get acquainted with all documentation related to the problem;
- to estimate the size of condemnation for the damage, caused to the fishery activity in Aniva Bay through LNG Plant and off-loading terminals construction;
- the Authorized representatives have powers to commit all the above mentioned actions together or separately, meanwhile any document signed by one of the Authorized representatives is considered as committed on behalf of all the Principals.
- to accomplish other actions on representing the interests of the Principals in above mentioned structures with the right of signature.

Настоящая доверенность выдана сроком на 3 (три) года.

The present power of attorney is given for the period of 3 (three) years.

Подписи

Signatures




Иванов

а.и.



Красиль

и.и.
Медведев

1 _____
1 Соинденко
1 Шилин
Мухоменов
1 Карманова Н.У.
1 Семенов Н.А.
1 Терешенкова Т.А.
1 Тардунта Н.З.
1 Грошнина С.Р.
1 Морозова Н.У.
1 Терешенкова О.Н.
1 Маносова Н.Н.

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 Г. С. Герасимов
 М. С. Герасимов
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Мел
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Медведов Т. С.
Тончагов А. В.
Тихонов А. С.
Тюхунбаев
Камбаров А. А.
Кемел А. У.
Кемел Б. У.

Вихтенберг.
Концев
Тов А.Х.
Как Мэ Еихи
Как С.К.
Саммоческо и.А.
Степаненко М.А.

1. Терехов. Б.Б.
1. Шершнев М.В.
1. Руженко В.В.
1. Чивикова М.И.

1. Шелкунов П.С.
1. Заблещев М.А.
1. Голосинцев Н.П.
1. Вардишник Н.
1. Биллер В.В.
1. Павлов Д.Р.
1. Жуков А.И.
1. Зинин А.С.

Знаю



Исх

Симько

Власов ИИ



Письма 3.2

Будущее И. А.

Симько С. А.

Хван Гер Хо

Маслов -

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5 (пять) листов
« 20 » июня 2005 года

