



International Oil Pollution
Compensation Funds

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| 1992 Fund Executive Committee | 92EC80 | |
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ANY OTHER BUSINESS

APPLICATION OF 1992 FUND RESOLUTION N°12 IN RESPECT OF THE *BOW JUBAIL* INCIDENT

Note by the Secretariat

Summary:

The 1992 Fund Executive Committee will be invited at its 80th session to authorise payments of compensation in respect of losses arising from the *Bow Jubail* incident, which occurred in the Port of Rotterdam, the Netherlands in 2018.

At the October 2022 session of the 1992 Fund Assembly, it was reported that the Netherlands had only partially submitted oil reports for 2021, with reports outstanding for some large contributors. In addition, it was reported that oil reports were outstanding from two contributors in Bonaire and Sint Eustatius for more than one year.

In April 2016, the 1992 Fund Assembly adopted Resolution N°12, “Measures in respect of outstanding oil reports and outstanding contributions”. Under that Resolution, the 1992 Fund Assembly shall determine whether payment of a claim submitted by an Administration of a State with outstanding oil reports for two years or more, should be deferred pending rectification of the reporting deficiency.

Action to be taken: 1992 Fund Assembly

- (a) Take note of the information contained in this document, specifically relating to the outstanding oil reports from two contributors in Bonaire and Sint Eustatius; and
- (b) Decide, in the event that the 1992 Fund Executive Committee were to authorise the Director to make payments of compensation, whether to apply Resolution N°12 in respect of the *Bow Jubail* incident.

1 Background information

- 1.1 The 1992 Fund Executive Committee will be invited at its 80th session to authorise payments of compensation in respect of losses arising from the *Bow Jubail* incident, which occurred in the Port of Rotterdam, the Netherlands in 2018 (document IOPC/MAY23/3/6/1).
- 1.2 At the October 2022 session of the 1992 Fund Assembly, it was reported that the Netherlands had only partially submitted oil reports for 2021, with reports outstanding for some large contributors.

- 1.3 In addition, it was noted that reports from two contributors in Sint Eustatius and Bonaire were outstanding for the years 2004 to 2009 and 2019 to 2021. It was noted that, in total, the Kingdom of the Netherlands had nine years of outstanding reports from two contributors in overseas territories.
- 1.4 The Secretariat has engaged regularly with the relevant contributors and with the representative of the Netherlands to IOPC Funds meetings in an effort to resolve this matter. At the October 2022 session of the 1992 Fund Assembly, the delegation of the Netherlands provided an update on the progress that had been made with regard to their reports. That delegation informed the governing bodies that they were working with the competent authority to complete the submission of oil reports for 2021. The delegation assured the governing bodies that they would continue working to fulfil their reporting obligation under the 1992 Fund Convention.
- 1.5 As at 22 May 2023, with the exception of one contributor in Bonaire and Sint Eustatius, all oil reports from the Netherlands for the years 2021 and 2022 have been submitted. Reports from Bonaire and Sint Eustatius remain outstanding for 2004 to 2009 for two contributors, and for 2019 to 2021 for one contributor.

2 Resolution N°12 - Measures in respect of outstanding oil reports and outstanding contributions

- 2.1 In April 2016, the 1992 Fund Assembly adopted Resolution N°12, “Measures in respect of outstanding oil reports and outstanding contributions”, as contained in the Annex.
- 2.2 Paragraph 8 of that Resolution states that the 1992 Fund Assembly:
- “DECIDES that it shall make a determination as to those States that are responsible for two or more oil reports in arrears, in which event any claim submitted by the Administration of those States, including a claim submitted by a public authority working directly on the response or recovery for the pollution incident on behalf of those States, will be assessed for admissibility, but actual payment will be deferred pending rectification of the reporting deficiency;”
- 2.3 Since the Netherlands has outstanding oil reports for more than two years, under this Resolution, the 1992 Fund Assembly will be required to determine whether any claims submitted by the Administration of the Netherlands in respect of the *Bow Jubail* incident, should be deferred pending rectification of the reporting deficiency.

3 Director’s considerations

- 3.1 The Director notes that the Government of the Netherlands is expected to submit a claim for compensation to the 1992 Fund in respect of the *Bow Jubail* incident. He also notes that the Netherlands has outstanding oil reports and that under Resolution N°12, the 1992 Fund Assembly may decide that payment of such a claim should be deferred pending rectification of the reporting deficiency.
- 3.2 The Director recognises the efforts being made by the oil reporting authorities in the Netherlands to obtain the outstanding oil reports and he wishes to express his appreciation for their ongoing cooperation.
- 3.3 The Director notes that this is the first occasion that an incident has occurred to which Resolution N°12 would be applicable. Bearing in mind the increased focus of the governing bodies on the importance of submission of oil reports, the Director is of the view that Resolution N°12 should be applied in this case.

4 Action to be taken

1992 Fund Assembly

The 1992 Fund Assembly is invited to:

- (a) Take note of the information contained in this document, specifically relating to the outstanding oil reports for Bonaire and Sint Eustatius; and
- (b) Decide, in the event that the 1992 Fund Executive Committee were to authorise the Director to make payments of compensation, whether to apply Resolution N°12 in respect of the *Bow Jubail* incident.

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Resolution N°12—Measures in respect of outstanding oil reports and outstanding contributions (April 2016)

THE ASSEMBLY OF THE INTERNATIONAL OIL POLLUTION COMPENSATION FUND, 1992 (1992 Fund),

RECALLING that the International Fund for Compensation for Oil Pollution Damage, 1992 (the 1992 Fund) was established by the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1992 (the 1992 Fund Convention) in order to ensure that adequate compensation is available to persons who suffer damage caused by pollution resulting from the escape or discharge of oil from ships,

NOTING the obligation of States Parties pursuant to Article 15 of the 1992 Fund Convention to communicate to the Director of the Fund (the Director), at a time and in the manner provided in the Internal Regulations, the name and address of any person who in respect of those States is liable to contribute to the 1992 Fund pursuant to Article 10 of the 1992 Fund Convention, as well as data on the relevant quantities of contributing oil received by any such person during the preceding calendar year (oil reports),

MINDFUL, in order to secure adequate compensation, of the need to ensure payment of annual contributions to the 1992 Fund as required by Article 10 of the 1992 Fund Convention,

NOTING also the duty of States Parties pursuant to Article 13.2 of the 1992 Fund Convention to ensure that any obligation to contribute to the 1992 Fund arising under the Convention in respect of oil received within the territory of those States is fulfilled and to this end to take appropriate measures under their law,

AWARE THAT, where States Parties are in breach of their obligations under Article 13.2 or Article 15 of the 1992 Fund Convention, then those States Parties bear a responsibility to the 1992 Fund under public international law,

BEARING IN MIND that the 1992 Fund cannot carry out its mandate nor operate effectively unless accurate oil reports and contributions are received in a timely manner,

RECALLING the decision taken in October 2008 by the 1992 Fund Assembly at its 13th session to adopt a policy whereby, in the event that a State is two or more oil reports in arrears, any claim submitted by the Administration of that State or a public authority working directly on the response or recovery from the pollution incident on behalf of that State will be assessed for admissibility but payment will be deferred until the reporting deficiency is rectified,

RECALLING also Resolution N°11—Measures in respect of Contributions (October 2009),

- 1 **ENDORSES** the current efforts of the Director to follow up on arrears of oil reports and contributions;
- 2 **CALLS ON** all receivers of contributing oil to discharge their obligations under the 1992 Fund Convention in a timely manner;
- 3 **URGES** associations representing receivers of contributing oil to engage proactively in ensuring that industry members meet their obligations and to report to the Director on the measures taken in this regard;
- 4 **FURTHER URGES** all States Parties to fulfil their obligations under Articles 13.2, 15.1 and 15.2 of the 1992 Fund Convention, in particular, to provide oil reports in a timely and accurate manner and to ensure payment of contributions;

- 5 **REMINDS** States Parties of the option contained in Article 14.1 of the 1992 Fund Convention whereby a State Party may at any time declare that it assumes the obligation to make contributions to the 1992 Fund that are otherwise incumbent on persons pursuant to Article 10.1 of the Convention;
 - 6 **REQUESTS** those State Parties which have outstanding oil reports or which have contributors that are in arrears with their payments to report to the Director on any steps they have taken to redress these situations;
 - 7 **INSTRUCTS** the Director:
 - (a) in consultation with the Audit Body, to examine the reports referred to in paragraphs 4 and 6 above and to present any recommendations to the 1992 Fund Assembly;
 - (b) to report at each regular session of the 1992 Fund Assembly the names of those States which have not provided oil reports or which have not taken steps to ensure the timely payment of contributions; and
 - (c) to include in such reports an account of what actions, if any, have been taken by the States referred to in sub-paragraph (b) in the previous 12 month period in response to any request made by the Director to rectify the situation;
 - 8 **DECIDES** that it shall make a determination as to those States that are responsible for two or more oil reports in arrears, in which event any claim submitted by the Administration of those States, including a claim submitted by a public authority working directly on the response or recovery for the pollution incident on behalf of those States, will be assessed for admissibility, but actual payment will be deferred pending rectification of the reporting deficiency;
 - 9 **DECIDES ALSO** that it shall make a determination as to those States that are found to be in breach of their obligations under Article 13.2 of the 1992 Fund Convention for two or more years, in which event any claim submitted by the Administration of those States, including a claim submitted by a public authority working directly on the response or recovery for the pollution incident on behalf of those States, will be assessed for admissibility, but actual payment will be deferred pending rectification of the breach;
 - 10 **DECIDES FURTHER** that it shall make a determination as to those States that are found to be in breach of their obligations under Articles 13.2, 15.1 or 15.2 of the 1992 Fund Convention, in which event those States shall not be eligible to nominate candidates for membership of the Audit Body nor to be elected as members of the 1992 Fund Executive Committee;
 - 11 **INSTRUCTS** the Director to develop guidelines in relation to implementation by States Parties of their obligations under Articles 13.2, 15.1 and 15.2 of the 1992 Fund Convention;
 - 12 **DIRECTS** the Audit Body to:
 - (a) monitor the effectiveness of the above actions in respect of outstanding oil reports and outstanding contributions; and
 - (b) report to the 1992 Fund Assembly on its findings, including recommendations for further measures as may be warranted;
 - 13 **REVOKES** Resolution N°11 of the 1992 Fund Assembly (October 2009) to the extent that it affects the 1992 Fund.
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