



International Oil Pollution  
Compensation Funds

<b>Agenda Item 6</b>	IOPC/NOV23/6/2	
<b>Date</b>	01 September 2023	
<b>Original</b>	English	
<b>1992 Fund Assembly</b>	92A28	●
<b>1992 Fund Executive Committee</b>	92EC81	
<b>Supplementary Fund Assembly</b>	SA20	●

## MEASURES ENCOURAGING THE SUBMISSION OF OIL REPORTS

DRAFT RESOLUTIONS AUTHORISING THE DIRECTOR TO ISSUE INVOICES BASED ON ESTIMATES

### Note by the Secretariat

#### **Summary:**

The non-submission of oil reports has been a long-standing issue despite the Secretariat's considerable efforts to engage the Member States concerned. At their October 2019 sessions, the governing bodies instructed the Director to examine, in consultation with the IOPC Funds' joint Audit Body, ways to incentivise the submission of oil reports, including the possibility of invoicing contributors based on estimates if no reports were submitted (document IOPC/OCT19/11/1, paragraph 5.1.17).

At the October 2022 sessions of the governing bodies, the 1992 Fund Administrative Council and Supplementary Fund Assembly noted the views of the IOPC Funds' legal adviser in public international law, Professor Dan Sarooshi K.C., and endorsed the Director's proposal to issue a draft Resolution authorising him to invoice contributors based on estimates when no oil reports have been submitted. The 1992 Fund Administrative Council and Supplementary Fund Assembly also instructed the Director to prepare, in consultation with the Audit Body, such draft Resolution and the relevant consequential amendments to the Internal Regulations (document IOPC/OCT22/11/1, paragraph 6.1.19).

The 1992 Fund Assembly and the Supplementary Fund Assembly are required to adopt separate and distinct Resolutions for the 1992 Fund and the Supplementary Fund, as separate organisations.

This document summarises the reasons the Resolutions are required (section 2) and sets out a number of points to be considered with regards to the content of the Resolutions and the consequential amendments to the Internal Regulations (section 3). Finally, it presents the proposed draft Resolutions for each Fund and the consequential draft amendments to the relevant Internal Regulations relating to the proposed draft Resolutions at Annexes I, II, III and IV.

#### **Action to be taken:**

##### 1992 Fund Assembly

- (a) Noting the information set out in sections 2 and 3 of this document, consider the proposed text of draft Resolution N°13, as set out at Annex I;
- (b) decide whether to adopt the proposed draft Resolution N°13; and, if so,
- (c) decide whether to adopt the consequential amendments to the 1992 Fund Internal Regulations, as set out at Annex II.

Supplementary Fund Assembly

- (a) Noting the information set out in sections 2 and 3 of this document, consider the proposed text of draft Resolution N°5, as set out in Annex III;
- (b) decide whether to adopt the proposed draft Resolution N°5; and, if so,
- (c) decide whether to adopt the consequential amendments to the Supplementary Fund Internal Regulations, as set out in Annex IV.

**1 Introduction**

- 1.1 The 1992 Fund Convention and Supplementary Fund Protocol require that Member States submit annually to the Secretariat reports on oil receipts in respect of individual contributors (oil reports) under Articles 15.1 and 15.2 of the 1992 Fund Convention and Article 13.1 of the Supplementary Fund Protocol.
- 1.2 The governing bodies have expressed concern that the non-submission of oil reports has been a long-standing issue despite the Secretariat's considerable efforts to engage the States in question. At their October 2019 sessions, the governing bodies instructed the Director to examine ways to incentivise the submission of oil reports, including the possibility of invoicing contributors based on estimates if no reports were submitted (document IOPC/OCT19/11/1, paragraph 5.1.17).
- 1.3 At the October 2022 sessions, the 1992 Fund Administrative Council and Supplementary Fund Assembly noted the information contained in document IOPC/OCT22/6/1, which set out the work undertaken by the Secretariat and the Audit Body on this matter throughout 2021 and 2022. They also noted the conclusions drawn by the IOPC Funds' legal adviser in public international law, Professor Dan Sarooshi K.C., in his legal opinion regarding the legal basis under the 1992 Fund Convention for the Assembly to authorise the Director to issue invoices retrospectively in relation to past periods (document IOPC/OCT22/6/1).
- 1.4 At the same sessions, the governing bodies instructed the Director to prepare, in consultation with the Audit Body, a draft Resolution and the relevant draft amendments to the Internal Regulations to enable him to issue invoices to contributors based on estimates if no oil reports were submitted. The draft Resolution and relevant draft amendments to the Internal Regulations were to be presented at a future meeting of the governing bodies in 2023 (document IOPC/OCT22/11/1, paragraph 6.1.19).
- 1.5 Under Article 13.1 of the Supplementary Fund Protocol, reports on contributing oil receipts made to the 1992 Fund under the 1992 Fund Convention shall be deemed to have been made also under the Protocol, however, contributions are levied independently by the 1992 Fund and the Supplementary Fund. Each organisation has its own governing body, Financial Regulations, Internal Regulations, Rules of Procedure and Resolutions, adopted by its Member States. As such, the Audit Body and the Director have prepared separate draft Resolutions for the 1992 Fund and the Supplementary Fund and have drafted the consequential amendments to each organisation's Internal Regulations taking into account the specific requirements of each Fund.

**2 The need to draft Resolutions to authorise the Director to issue invoices based on estimates if no oil reports are submitted**

- 2.1 At the October 2022 sessions of the governing bodies, the Director stressed the fundamental importance of the reporting obligation to the effectiveness of the entire IOPC Funds system. He also noted that, in general, Member States complied with their obligations, that the Secretariat made significant efforts to pursue the submission of oil reports and that non-compliance was at low and manageable levels. He also noted, however, that the failure by some Member States, as well as by some contributors, to abide by their obligations was not fair to those complying with the Conventions.

2.2 At the same sessions, the Director expressed his view that a Resolution enabling him to issue invoices based on estimates if no oil reports were submitted would constitute an important tool to encourage the prompt and correct reporting of contributing oil and would provide an enhanced degree of protection against possible legal challenges by contributors for any invoices issued based on estimated oil receipts. In addition, issuing invoices based on oil receipts would provide a more tangible measure of the cost resulting from the non-submission of oil reports (document IOPC/OCT22/11/1, paragraphs 6.1.7 and 6.1.8).

### **3 Considerations to be noted**

*1992 Fund draft Resolution N°13 and Supplementary Fund draft Resolution N°5 to authorise the Director to issue invoices based on estimates if no oil reports are submitted*

3.1 These draft Resolutions have been prepared taking into account the concerns of Member States, the issues discussed by the Secretariat and the Audit Body over several meetings, and the legal advice provided to the 1992 Fund by Professor Sarooshi K.C. In addition, Dr Rosalie Balkin AO, former Assistant Secretary-General and Director of Legal Affairs and External Relations Division of the IMO was invited, in her capacity as the IOPC Fund's legal adviser in matters of public international law, to assist the Secretariat and the Audit Body, in the preparation of draft Resolution N°13 and draft Resolution N°5 and the relevant draft amendments to the Internal Regulations set out at the Annexes to this document.

3.2 Professor Sarooshi K.C. concluded in the legal advice provided to the 1992 Fund, that there was a firm legal basis under the 1992 Fund Convention for the Director to issue, and for the Assembly to authorise the Director to issue, invoices to contributors based on estimated oil receipts; and to do so retrospectively in relation to past periods, despite the lack of a specific reference to this effect in the Convention (document IOPC/OCT22/11/1, paragraph 6.1.6)<sup><1></sup>.

3.3 Draft 1992 Fund Resolution N°13 builds on previous Resolutions and reiterates the duties and obligations of States Parties to the 1992 Fund Convention and urges them to fulfil those obligations under Articles 13.2, 15.1 and 15.2 of the Convention to provide reports in a timely manner and to take action to ensure the payment of contributions. Significantly, the authorisation given to the Director to issue invoices on the basis of estimated oil receipts, including retrospectively in relation to past periods, is confined to situations where States Parties fail or omit to provide such reports.

3.4 Draft Supplementary Fund Resolution N°5 builds on the 1992 Fund draft Resolution N°13 and reiterates the duties and obligations of States Parties to the Supplementary Fund Protocol and urges them to fulfil their obligations under Article 13.1 of the Supplementary Fund Protocol, to provide reports in a timely manner and to take action to ensure payment of contributions. In this connection, it should be noted that Article 13.1 takes into account that communications to the Director of the 1992 Fund under Article 15.2 of the 1992 Fund Convention shall be deemed to have been made also under the Supplementary Fund Protocol.

3.5 Another significant factor to be taken into account when authorising the Director to issue such invoices is that, whereas in the past, it had been decided that it was not practicable to determine the quantities of oil receipts on the basis of information then available to the 1992 Fund, the current situation is different as the quality and reliability of available information from a variety of sources has greatly improved.

3.6 Draft 1992 Fund Resolution N°13 and draft Supplementary Fund Resolution N°5 further provide that, whenever the Director issues such invoices, he or she is obliged to report such action to the 1992 Fund

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<1> Professor Dan Sarooshi K.C., legal opinions, *'The legality of the 1992 Fund levying contributions on the basis of estimated oil receipts and the potential enforcement of unpaid contributions by domestic legal action'*, paragraph 5 and *'The legality of the 1992 Fund issuing retrospective invoices relating to oil estimates and contributions levied in relation to past periods'*, pages 2 and 3, paragraph 4 (document IOPC/OCT22/6/1, Annex I and II).

Assembly or the Supplementary Fund Assembly, thereby ensuring full accountability on the part of the Director and setting in motion the oversight of the 1992 Fund Assembly or the Supplementary Fund Assembly. It also directs the Audit Body to monitor the effectiveness of such actions and to report to the Assembly on its findings, including any recommendations it may have for further measures.

- 3.7 Draft 1992 Fund Resolution N°13 and draft Supplementary Fund Resolution N°5 also instruct the Director to prepare the relevant draft amendments to the Internal Regulations, thereby establishing the required legal basis for such amendments.

*Summary of the relevant draft amendments to Internal Regulation 4 on 'Reports on Contributing Oil Receipts'*

- 3.8 Internal Regulation 4 of both the 1992 and Supplementary Fund entitled "Reports on Contributing Oil Receipts" requires amendments as these Regulations do not currently cover the estimation of oil receipts. Accordingly, new Internal Regulations 4.4*bis* have been drafted to cover this specific situation, which provide the necessary legal basis for the Director to issue invoices based on estimated oil receipts in situations where a State Party is in breach of its obligations under Articles 13.2, 15.1 and 15.2 of the 1992 Fund Convention and Article 13.1 of the Supplementary Fund Protocol. Significantly, the Director's powers to issue an invoice based on estimated oil receipts are limited to this situation. However, the power of the Director is, notably, not confined to the current reporting period but extends to past periods in which no reports were received.
- 3.9 In addition, a small consequential amendment is also needed in respect of both the 1992 and Supplementary Fund Internal Regulations 4.8 to include revisions to estimated quantities of contributing oil made in accordance with the new Internal Regulations 4.4*bis*. The rest of Internal Regulations 4.8 remains as is and does not require any further amendment.
- 3.10 Furthermore, Internal Regulation 4.10 of the Supplementary Fund, which refers to the Supplementary Fund Member State obligation to pay contributions pursuant to Article 14.2 of the Supplementary Fund Protocol, has been updated to include estimated quantities of contributing oil made in accordance with the new Internal Regulation 4.4*bis*.

#### **4 Action to be taken**

##### **4.1 1992 Fund Assembly**

The 1992 Fund Assembly is invited:

- (a) to consider the proposed text of draft Resolution N°13, as set out at Annex I, noting the information set out in sections 2 and 3 of this document;
- (b) to decide whether to adopt the proposed draft Resolution N°13; and, if so,
- (c) to decide whether to adopt the consequential amendments to the 1992 Fund Internal Regulations, as set out at Annex II.

##### **4.2 Supplementary Fund Assembly**

The Supplementary Fund Assembly is invited:

- (a) to consider the proposed text of draft Resolution N°5, as set out at Annex III, noting the information set out in sections 2 and 3 of this document;
- (b) to decide whether to adopt the proposed draft Resolution N°5; and, if so,

- (c) to decide whether to adopt the consequential amendments to the Supplementary Fund Internal Regulations, as set out at Annex IV.

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## ANNEX I

### Draft Resolution N°13 of the 1992 Fund

Adopted on [date]

#### **Authorisation for the Director to issue invoices to contributors based on estimated oil receipts, including retrospectively, where no reports have been submitted**

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** that the IOPC Funds' governing bodies have expressed significant concern that a number of States Parties have not complied with this specific obligation to submit oil reports and that this has been a long-standing issue despite considerable efforts on the part of the Secretariat to engage the States Parties concerned,

**REITERATING** 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 out of 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,

**CONSIDERING** that the failure or omission by some States Parties, as well as by some contributors, to abide by their obligations to submit oil reports places an unfair burden on those States Parties and contributors which do comply with these obligations,

**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,

**NOTING FURTHER** that, whereas in the past it had been decided that it was not practicable to determine the quantities of oil receipts of individual contributors on the basis of information available to the 1992 Fund but that, since then, the quality and reliability of available information from a variety of sources has improved significantly,

**RECALLING FURTHER** the governing bodies' instruction to the Director at their October 2019 sessions to examine ways to incentivise the submission of oil reports, including the possibility of invoicing contributors on the basis of estimated oil receipts if no oil reports are submitted,

**RECALLING ALSO** the governing bodies' instruction to the Director at their October 2022 sessions to prepare, in consultation with the Audit Body, a draft Resolution and the relevant draft amendments

to the Internal Regulations to enable him to issue invoices to contributors based on estimates if no oil reports were submitted,

**CONSIDERING FURTHER** that, while no specific reference exists, nevertheless there is a clear and firm legal basis pursuant to Article 12.2 read with Article 13.3 of the 1992 Fund Convention for the Director to issue, and for the 1992 Fund Assembly to authorise the Director to issue, invoices on the basis of estimated oil receipts if no oil reports are submitted, including retrospectively in relation to past periods,

**BEING OF THE VIEW** that this Resolution would further strengthen the Director's ability to take action against States Parties which have not complied with their legal obligations under the Convention by issuing invoices on the basis of estimated oil receipts if no oil reports are submitted, including retrospectively in relation to past periods, and would provide support for the Director's action in the event that a legal challenge were to be pursued in a national court,

**BELIEVING** that this Resolution would constitute an important tool to encourage the prompt and accurate reporting of contributing oil,

**BELIEVING MOREOVER** that this Resolution would be a clear expression by States Parties of the fundamental importance of the reporting obligation to the entire International Oil Pollution Compensation Funds system,

**AFFIRMING** that the Secretariat would continue its efforts to assist States Parties to fully implement the Convention including with respect to their reporting obligations,

**MINDFUL ALSO** of Resolution N°12 of the 1992 Fund—Measures in respect of outstanding oil reports and outstanding contributions (April 2016),

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 manner and to ensure payment of contributions;
5. **REMINDS** States Parties of the option expressed 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 States 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. **AUTHORISES** the Director, in the event that no oil reports are submitted by States Parties in breach of their obligations under Articles 13.2, 15.1 and 15.2 of the 1992 Fund Convention, to issue invoices on the basis of estimated oil receipts to persons who are liable to contribute to the 1992 Fund pursuant to Article 10 of the 1992 Fund Convention, including retrospectively in relation to past periods;
8. **INSTRUCTS** the Director, whenever invoices are issued in accordance with paragraph 7 above, to:
  - (a) inform the relevant State Parties of the fact that and the basis on which such invoices have been issued,
  - (b) report fully at each regular session of the 1992 Fund Assembly on the issue of any such invoices in the previous twelve-month period including the basis on which they have been issued, and
  - (c) include in such reports an account of what actions by way of response, if any, have been taken by those States Parties and/or receivers of contributing oil to whom the invoices have been issued;
9. **FURTHER INSTRUCTS** the Director to prepare the relevant draft amendments to the Internal Regulations to enable the Director to issue invoices on the basis of estimated oil receipts including retrospectively in relation to past periods, in the event that the oil reports referred to in paragraphs 4, 6 and 7 above have not been submitted;
10. **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.

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ANNEX II

Draft amendments proposed to the 1992 Fund Internal Regulations  
consequent on the adoption of Resolution N°13 by the 1992 Fund Assembly

Original Version	Amended Version
<p style="text-align: center;"><u>Regulation 4</u></p> <p style="text-align: center;"><i>Reports on Contributing Oil Receipts</i></p> <p>4.1 Each Member State shall forward annually to the Director reports on contributing oil receipts, using the form annexed to these Internal Regulations or the form on the Online Reporting System (ORS). The reports shall reach the Director not later than 30 April each year. They shall specify the names and addresses of all persons who, in the preceding calendar year, received within the territory of the Member State concerned oil in respect of which contributions are liable to be paid in accordance with Article 10 of the 1992 Fund Convention, together with details of the quantities of contributing oil received by all such persons during that year.</p> <p>4.2 The reports shall be completed by the contributors concerned, taking into account the explanatory notes attached to the form or on the ORS referred to in Internal Regulation 4.1. The reports shall be signed by a competent officer of the entity which received the oil and by a Government official. If the reports are forwarded to the Director using the ORS, the Member State shall ensure that the reports are <i>prima facie</i> evidence in that State.</p> <p>4.3 Each State in respect of which the Convention enters into force after 30 April of any year shall, on or before the date of entry into force of the 1992 Fund Convention for that State, submit a report in the terms stipulated in this Internal Regulation in respect of contributing oil received within its territory during the preceding calendar year.</p> <p>4.4 If no person in a Member State has received contributing oil in sufficient quantities for a report to be submitted, the State shall notify the Director accordingly.</p> <p>4.4bis [New regulation to be added].</p>	<p style="text-align: center;"><u>Regulation 4</u></p> <p style="text-align: center;"><i>Reports on Contributing Oil Receipts</i></p> <p>4.1 [Text Unchanged]</p> <p>4.2 [Text Unchanged]</p> <p>4.3 [Text Unchanged]</p> <p>4.4 [Text Unchanged]</p> <p>4.4bis <u>In situations where a Member State fails or omits to submit a report on contributing oil receipts in accordance with Internal Regulation 4.1-4.3 above in breach of its obligations under Articles 13.2, 15.1 and 15.2 of the 1992 Fund Convention, the Director may make an estimate of oil received within the territory of the Member State concerned in respect of which contributions are liable to be paid pursuant to Article 10 of the 1992 Fund Convention. The Director may issue an invoice for such</u></p>

<p>4.5 The Director shall, not later than 15 January of each year, invite Member States to submit the reports referred to in Internal Regulation 4.1.</p> <p>4.6 The Director shall provide Member States with a list of the States in respect of which the 1992 Fund Convention was in force on 1 January of that year, with an indication of the date on which the 1992 Fund Convention entered into force for any State during the course of the previous year. The Director shall also notify Member States of the date on which the 1992 Fund Convention ceased to be in force for any State during the course of that year.</p> <p>4.7 The Director shall ascertain whether, as a result of the coming into force of the 1992 Fund Convention for a State during the course of any given year, some quantities of contributing oil have been reported to the 1992 Fund under Internal Regulation 4.1 by more than one State. Where any such double reporting is found, the Director shall amend the reports submitted by the Member States concerned accordingly and inform these States.</p> <p>4.8 Where amendments are made to the quantities of contributing oil reported in accordance with Internal Regulation 4.1, whether or not as a consequence of action on the part of the Director under Internal Regulation 4.7, the Director shall recalculate the annual contributions for the contributors whose reported quantities have been amended in accordance with Article 12 of the 1992 Fund Convention utilising the amended quantities. If invoices have already been sent to the contributors concerned, corrected invoices shall be issued. Where the contributions have been paid on the basis of the original invoices, any differences between the contributions paid or invoiced and the recalculated contributions shall be taken into account in preparing the invoices for the persons concerned for the next year in respect of which annual contributions are raised. If no contributions are due from that person in the following year, the Director shall inform the contributor of his or her right to reimbursement of the balance on his or her account.</p> <p>4.9 Where, pursuant to Article 14 of the 1992 Fund Convention, a Member State assumes itself the obligations of any person who is liable to contribute to the 1992 Fund in respect of oil received within the territory of that State, such a State shall, when submitting its reports on contributing oil received, specify therein the names and addresses of the</p>	<p><u>contributions based on the estimate of contributing oil, including retrospectively in relation to past periods.</u></p> <p>4.5 [Text Unchanged]</p> <p>4.6 [Text Unchanged]</p> <p>4.7 [Text Unchanged]</p> <p>4.8 Where amendments are made to the quantities of contributing oil reported in accordance with Internal Regulation 4.1 <u>or estimated in accordance with Internal Regulation 4.4bis</u>, whether or not as a consequence of action on the part of the Director under Internal Regulation 4.7, the Director shall recalculate the annual contributions for the contributors whose reported quantities have been amended in accordance with Article 12 of the 1992 Fund Convention utilising the amended quantities. If invoices have already been sent to the contributors concerned, corrected invoices shall be issued. Where the contributions have been paid on the basis of the original invoices, any differences between the contributions paid or invoiced and the recalculated contributions shall be taken into account in preparing the invoices for the persons concerned for the next year in respect of which annual contributions are raised. If no contributions are due from that person in the following year, the Director shall inform the contributor of his or her right to reimbursement of the balance on his or her account.</p> <p>4.9 [Text Unchanged]</p>
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persons in respect of which the State assumes such obligation and the quantities of contributing oil received by such persons.	
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## ANNEX III

### Draft Supplementary Fund Resolution N°5

Adopted on [date]

#### **Authorisation for the Director to issue invoices to contributors based on estimated oil receipts, including retrospectively, where no reports have been submitted**

THE ASSEMBLY OF THE INTERNATIONAL OIL POLLUTION COMPENSATION SUPPLEMENTARY FUND, 2003 (Supplementary Fund)

**RECALLING** that the International Oil Pollution Compensation Supplementary Fund, 2003 (the Supplementary Fund) was established by the Protocol of 2003 to the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1992 (the Supplementary Fund Protocol) in order to ensure that victims of oil pollution damage from ships are compensated in full for their loss or damage in cases where there is a risk that the amount of compensation available under the International Convention on the Establishment of an International Fund for Oil Pollution Damage, 1992 (the 1992 Fund Convention) will be insufficient,

**NOTING** the obligation of States Parties under Article 13.1 of the Supplementary Fund Protocol to communicate to the Director of the Supplementary Fund (the Director) information on oil receipts, provided, however, that communications made to the Director of the 1992 Fund under Article 15.2 of the 1992 Fund Convention (on oil receipts) shall be deemed to have been made also under Article 13.1 of the Supplementary Fund Protocol,

**MINDFUL** that the IOPC Funds' governing bodies have expressed significant concern that a number of States Parties have not complied with this specific obligation to submit oil reports and that this has been a long-standing issue despite considerable efforts on the part of the Secretariat to engage the States Parties concerned,

**REITERATING** the duty of States Parties pursuant to Article 12.1 of the Supplementary Fund Protocol to ensure that any obligation to contribute to the Supplementary Fund arising under the Protocol in respect of oil received within the territory of those States is fulfilled and to this end to take appropriate measures under their law,

**CONSIDERING** that the failure or omission by some States Parties, as well as by some contributors, to abide by their obligations to submit oil reports places an unfair burden on those States Parties and contributors which do comply with these obligations,

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

**NOTING FURTHER** that, whereas in the past it had been decided that it was not practicable to determine the quantities of oil receipts of individual contributors on the basis of available information but that, since then, the quality and reliability of available information from a variety of sources has improved significantly,

**RECALLING FURTHER** the governing bodies' instruction to the Director at their October 2019 sessions to examine ways to incentivise the submission of oil reports, including the possibility of invoicing contributors on the basis of estimated oil receipts if no oil reports are submitted,

**RECALLING ALSO** the governing bodies' instruction to the Director at their October 2022 session to prepare, in consultation with the Audit Body, a draft Resolution and the relevant draft amendments to the Internal Regulations to enable the Director to issue invoices to contributors based on estimates if no oil reports were submitted,

**CONSIDERING FURTHER** that, while no specific reference exists, nevertheless there is a clear and firm legal basis pursuant to Article 12 of the Supplementary Fund Protocol read with Articles 12.2 and 13.3 of the 1992 Fund Convention for the Director to issue, and for the Supplementary Fund Assembly to authorise the Director to issue, invoices on the basis of estimated oil receipts if no oil reports are submitted, including retrospectively in relation to past periods,

**BEING OF THE VIEW** that this Resolution would further strengthen the Director's ability to take action against States Parties which have not complied with their legal obligations under the Supplementary Fund Protocol, by issuing invoices on the basis of estimated oil receipts if no oil reports are submitted, including retrospectively in relation to past periods, and would provide support for the Director's action in the event that a legal challenge were to be pursued in a national court,

**BELIEVING** that this Resolution would constitute an important tool to encourage the prompt and accurate reporting of contributing oil,

**BELIEVING MOREOVER** that this Resolution would be a clear expression by States Parties of the fundamental importance of the reporting obligation to the entire International Oil Pollution Compensation Funds system,

**AFFIRMING** that the Secretariat would continue its efforts to assist States Parties to fully implement the Convention including with respect to their reporting obligations,

**MINDFUL ALSO** of Supplementary Fund Resolution N°3 - Measures in respect of outstanding contributions (April 2016),

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 Supplementary Fund Protocol 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 Article 13.1 of the Supplementary Fund Protocol, in particular, to provide oil reports in a timely manner and to ensure payment of contributions;
5. **REMINDS** States Parties of the option expressed in Article 12.2 of the Supplementary Fund Protocol whereby a State Party may assume the obligation to pay contributions to the Supplementary Fund that are otherwise incumbent on persons pursuant to Article 10.1 of the Protocol;

6. **REQUESTS** those States 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. **AUTHORISES** the Director, in the event that no oil reports are submitted by States Parties in breach of their obligations under Article 13.1 of the Supplementary Fund Protocol, to issue invoices on the basis of estimated oil receipts to persons who are liable to contribute to the Supplementary Fund pursuant to Article 10 of the Supplementary Fund Protocol, including retrospectively in relation to past periods;
8. **INSTRUCTS** the Director, whenever invoices are issued in accordance with paragraph 7 above, to:
  - (a) inform the relevant State Parties of the fact that and the basis on which such invoices have been issued;
  - (b) report fully at each regular session of the Supplementary Fund Assembly on the issue of any such invoices in the previous twelve-month period including the basis on which they have been issued; and
  - (c) include in such reports an account of what actions by way of response, if any, have been taken by those States Parties and/or receivers of contributing oil to whom the invoices have been issued;
9. **FURTHER INSTRUCTS** the Director to prepare the relevant draft amendments to the Internal Regulations to enable the Director to issue invoices on the basis of estimated oil receipts including retrospectively in relation to past periods, in the event that the oil reports referred to in paragraphs 4, 6 and 7 above have not been submitted;
10. **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 Supplementary Fund Assembly on its findings, including recommendations for further measures as may be warranted.

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**ANNEX IV**

**Draft amendments to the Supplementary Fund Internal Regulations  
consequent on the adoption of Resolution N°5 by the Supplementary Fund Assembly**

Original Version	Amended Version
<u>Regulation 4</u>	<u>Regulation 4</u>
<i>Reports on Contributing Oil Receipts</i>	<i>Reports on Contributing Oil Receipts</i>
<p>4.1 Since, under Article 13.1 of the Supplementary Fund Protocol, reports on contributing oil receipts made to the 1992 Fund under the 1992 Fund Convention shall be deemed to have been made also under the Protocol, special reports, using the form annexed to these Internal Regulations or the form on the Online Reporting System (ORS), in respect of the Supplementary Fund shall be forwarded to the Director only in respect of contributing oil received in a Member State by means of transport other than by sea which has previously been received by sea in another State Member of the 1992 Fund but not Member of the Supplementary Fund. Such reports shall specify the names and addresses of all persons who, in the preceding calendar year, received within the territory of the Member State concerned such oil in respect of which contributions are liable to be paid in accordance with Article 10 of the Supplementary Fund Protocol together with details of the quantities of contributing oil received by all such persons during that year.</p> <p>4.2 The special reports shall be completed by the contributors concerned, taking into account the explanatory notes attached to the form or on the ORS referred to in Internal Regulation 4.1. The reports shall be signed by a competent officer of the entity which received the oil and by a Government official. If the reports are forwarded to the Director using the ORS, the Member State shall ensure that the reports are <i>prima facie</i> evidence in that State.</p> <p>4.3 Each State in respect of which the Supplementary Fund Protocol enters into force after 30 April of any year shall, on or before the date of entry into force of the Protocol for that State, submit a special report in the terms stipulated in this Internal Regulation in respect of contributing oil received within its territory during the preceding calendar year.</p> <p>4.4 If no person in a Member State has received contributing oil in sufficient quantities for a special report to be submitted, the State shall notify the Director accordingly.</p> <p>4.4bis [New regulation to be added].</p>	<p>4.1 [Text Unchanged]</p> <p>4.2 [Text Unchanged]</p> <p>4.3 [Text Unchanged]</p> <p>4.4 [Text Unchanged]</p> <p>4.4bis <u>In situations where a Member State fails or omits to submit a report on contributing oil receipts in</u></p>

<p>4.5 The Director shall, not later than 15 January of each year, invite Member States to submit the special reports referred to in Internal Regulation 4.1.</p> <p>4.6 The Director shall provide Member States with a list of the States in respect of which the Supplementary Fund Protocol was in force on 1 January of that year, with an indication of the date on which the Protocol entered into force for any State during the course of the previous year. The Director shall also notify Member States of the date on which the Protocol ceased to be in force for any State during the course of that year.</p> <p>4.7 The Director shall ascertain whether, as a result of the coming into force of the Supplementary Fund Protocol for a State during the course of any given year, some quantities of contributing oil have been reported to the Supplementary Fund under Internal Regulation 4.1 by more than one State. Where any such double reporting is found, the Director shall amend the reports submitted by the Member States concerned accordingly and inform these States.</p> <p>4.8 Where amendments are made to the quantities of contributing oil reported in accordance with Internal Regulation 4.1, whether or not as a consequence of action on the part of the Director under Internal Regulation 4.7, the Director shall recalculate the annual contributions for the contributors whose reported quantities have been amended in accordance with Article 11 of the Supplementary Fund Protocol utilising the amended quantities. If invoices have already been sent to the contributors concerned, corrected invoices shall be issued. Where the contributions have been paid on the basis of the original invoices, any differences between the contributions paid or invoiced and the recalculated contributions shall be taken into account in preparing the invoices for the persons concerned for the next year in respect of which annual contributions are raised. If no contributions are due from that person in the following year, the Director shall inform the contributor of his or her right to reimbursement of the balance on his or her account.</p>	<p><u>accordance with Internal Regulations 4.1- 4.3 above in breach of its obligations under Article 13.1 of the Supplementary Fund Protocol, the Director may make an estimate of oil received within the territory of the Member State concerned in respect of which contributions are liable to be paid pursuant to Article 10 of the Supplementary Fund Protocol. The Director may issue an invoice for such contributions based on the estimate of contributing oil, including retrospectively in relation to past periods.</u></p> <p>4.5 [Text Unchanged]</p> <p>4.6 [Text Unchanged]</p> <p>4.7 [Text Unchanged]</p> <p>4.8 Where amendments are made to the quantities of contributing oil reported in accordance with Internal Regulation 4.1 <u>or estimated in accordance with Internal Regulation 4.4bis</u>, whether or not as a consequence of action on the part of the Director under Internal Regulation 4.7, the Director shall recalculate the annual contributions for the contributors whose reported quantities have been amended in accordance with Article 11 of the Supplementary Fund Protocol utilising the amended quantities. If invoices have already been sent to the contributors concerned, corrected invoices shall be issued. Where the contributions have been paid on the basis of the original invoices, any differences between the contributions paid or invoiced and the recalculated contributions shall be taken into account in preparing the invoices for the persons concerned for the next year in respect of which annual contributions are raised. If no contributions are due from that person in the following year, the Director shall inform the contributor of his or her</p>
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<p>4.9 Where, pursuant to Article 12.2 of the Supplementary Fund Protocol in conjunction with Article 14 of the 1992 Fund Convention, a Member State assumes itself the obligations of any person who is liable to contribute to the Supplementary Fund in respect of oil received within the territory of that State, such a State shall, when submitting its reports on contributing oil received, specify therein the names and addresses of the persons in respect of which the State assumes such obligation and the quantities of contributing oil received by such persons.</p> <p>4.10 As regards Member States in which the aggregate quantity of contributing oil reported as received in any calendar year is less than 1 million tonnes, the quantity of contributing oil in respect of which a Member State is under obligation to pay contributions pursuant to Article 14.2 of the Supplementary Fund Protocol shall be determined by the Director as the difference between 1 million tonnes and the reported aggregate quantity of contributing oil received in that State. The Director shall inform the State concerned of the result of this calculation.</p>	<p>right to reimbursement of the balance on his or her account.</p> <p>4.9 [Text Unchanged]</p> <p>4.10 As regards Member States in which the aggregate quantity of contributing oil reported as received <u>or estimated in accordance with Internal Regulation 4.4bis</u> in any calendar year is less than 1 million tonnes, the quantity of contributing oil in respect of which a Member State is under obligation to pay contributions pursuant to Article 14.2 of the Supplementary Fund Protocol shall be determined by the Director as the difference between 1 million tonnes and the reported aggregate quantity of contributing oil received in that State <u>or the difference between 1 million tonnes and the aggregate quantity of contributing oil estimated in accordance with Internal Regulation 4.4bis</u>. The Director shall inform the State concerned of the result of this calculation.</p>
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