



International Oil Pollution  
Compensation Funds

<b>Agenda Item 5</b>	IOPC/NOV23/5/3/Rev.1 <sup>&lt;1&gt;</sup>	
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<b>Original</b>	English	
<b>1992 Fund Assembly</b>	92A28	●
<b>1992 Fund Executive Committee</b>	92EC81	
<b>Supplementary Fund Assembly</b>	SA20	●

## REPORT ON THE APPLICABILITY OF 1992 FUND RESOLUTION N°12 AND SUPPLEMENTARY FUND RESOLUTION N°3

### Note by the Secretariat

<b>Summary:</b>	<p>The 1992 Fund Assembly and the Supplementary Fund Assembly have repeatedly expressed great concern about Member States who do not fulfil their treaty obligations to submit oil reports and to ensure payment of annual contributions.</p> <p>In an effort to address this ongoing concern, at their April 2016 sessions, the governing bodies adopted 1992 Fund Resolution N°12 — Measures in respect of outstanding oil reports and outstanding contributions, and Supplementary Fund Resolution N°3 — Measures in respect of outstanding contributions (document IOPC/APR16/9/1, paragraphs 6.1.15 and 6.1.16).</p> <p>This document provides information on Member States to which the 1992 Fund Resolution N°12 and Supplementary Fund Resolution N°3 is applicable.</p> <p>As at 25 September 2023, 1992 Fund Resolution N°12 is applicable to 21 Member States, while Supplementary Fund Resolution N°3 is applicable to one Member State.</p>
<b>Action to be taken:</b>	<p><u>1992 Fund Assembly and the Supplementary Fund Assembly</u></p> <p>Information to be noted.</p>

### 1 Introduction

- 1.1 The 1992 Fund Assembly and the Supplementary Fund Assembly have repeatedly expressed great concern about States which do not fulfil their treaty obligations to submit oil reports and to ensure payment of annual contributions. These obligations are crucial for the effective functioning of the international liability and compensation regime. The 1992 Fund and the Supplementary Fund cannot carry out their mandates nor operate effectively without the submission of accurate oil reports or the payment of contributions in a timely manner.
- 1.2 In an effort to address this ongoing concern, at their April 2016 sessions, the governing bodies adopted 1992 Fund Resolution N°12 and Supplementary Fund Resolution N°3, respectively, set out at Annexes I and II.

<sup><1></sup> This document has been reissued due to improve clarity in paragraph 1.4.

- 1.3 Under 1992 Fund Resolution N°12, in the event that a State Party to the 1992 Fund Convention has two or more oil reports in arrears, or has any contributors who are in arrears with their payments for two or more years, any claim submitted by the Administration of that State or a public authority working directly on the response or recovery for the pollution incident on behalf of that State will be assessed for admissibility, but payment will be deferred until the reporting deficiency is rectified.
- 1.4 Furthermore, States that are determined by the 1992 Fund Assembly to be in breach of their obligations under Articles 13.2, 15.1 or 15.2 of the 1992 Fund Convention 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.
- 1.5 Under Resolution N°3, in the event that a State Party to the Supplementary Fund Protocol has any contributors who are in arrears with their payments for two or more years, any claim submitted by the Administration of that State or a public authority working directly on the response or recovery for the pollution incident on behalf of that State will be assessed for admissibility, but payment will be deferred until the reporting deficiency is rectified.

## **2 Current situation regarding the applicability of 1992 Fund Resolution N°12 and Supplementary Fund Resolution N°3**

- 2.1 The importance of this issue was highlighted at the May 2023 session of the 1992 Fund Administrative Council, acting on behalf of the 1992 Fund Assembly, where it was noted that a large majority of delegations had expressed support for the application of Resolution N°12 in respect of the payment of compensation relating to the *Bow Jubail* incident to government authorities in the Netherlands, while oil reports from that State remained outstanding for more than two years (document IOPC/MAY23/9/1, paragraph 8.3.7).
- 2.2 The Director is pleased to confirm that all outstanding oil reports have now been received from the authorities in the Netherlands, therefore Resolution N°12 no longer applies to the Netherlands.
- 2.3 With regards to the current situation, as at 25 September 2023, 1992 Fund Resolution N°12 is applicable to 21 Member States and Supplementary Fund Resolution N°3 is applicable to one Member State as listed at Annex III.

## **3 Director's considerations**

- 3.1 The Director is concerned that, as referenced in paragraph 2.2 above, there are 22 Member States to which 1992 Fund Resolution N°12 or Supplementary Fund Resolution N°3 is applicable. This affects the IOPC Funds' ability to implement an equitable system of levying contributions to ensure that victims of oil pollution in Member States are compensated in full for their loss or damage.
- 3.2 The Director recalls the obligation of States Parties pursuant to Article 15 of the 1992 Fund Convention and Article 13 of the Supplementary Fund Protocol to submit oil reports, and duty of the States Parties pursuant to Article 13.2 of the 1992 Fund Convention and Article 12.1 of the Supplementary Fund Protocol to ensure that any obligation to contribute to the Funds 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 national law.
- 3.3 The Director urges the States Parties listed at Annex III to fulfil their obligations under Articles 13.2, 15.1 and 15.2 of the 1992 Fund Convention and Articles 12.1 and 13.1 of the Supplementary Fund Protocol, by submitting outstanding oil reports, and ensuring the prompt payment of contributions.

**4 Action to be taken**

1992 Fund Assembly and the Supplementary Fund Assembly

The 1992 Fund Assembly and the Supplementary Fund Assembly are invited to take note of the information contained in this document.

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**1992 Fund Resolution N°12**

**Adopted on 27 April 2016**

**Measures in respect of outstanding oil reports and outstanding contributions**

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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## ANNEX II

### Supplementary Fund Resolution N°3

Adopted on 27 April 2016

#### Measures in respect of outstanding contributions

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 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 Civil Liability for Oil Pollution Damage, 1992 and the International Convention on the Establishment of an International Fund for Oil Pollution Damage, 1992 (the 1992 Fund Convention) will be insufficient,

**MINDFUL**, in order to secure full compensation, of the need to ensure payment of annual contributions to the Supplementary Fund as required by Article 10 of the Supplementary Fund Protocol,

**NOTING** 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,

**AWARE** that, where States Parties are in breach of their obligations under Article 12.1 of the Supplementary Fund Protocol, then those States Parties bear a responsibility to the Supplementary Fund under public international law,

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

**RECALLING** Supplementary Fund Resolution N°2—Measures in respect of Contributions (October 2009),

**RECALLING FURTHER** 1992 Fund Resolution N°11—Measures in respect of Contributions (October 2009),

- 1 **ENDORSES** the current efforts of the Director of the Supplementary Fund (the Director) to follow up on arrears of 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 12.1 of the Supplementary Fund Protocol, in particular, to ensure payment of contributions;
- 5 **REMINDS** States Parties of the option contained in Article 12.2 of the Supplementary Fund Protocol whereby a State Party may at any time declare that it assumes the obligation to make contributions to the Supplementary Fund that are otherwise incumbent on persons pursuant to Article 10.1 of the Protocol;

- 6 **REQUESTS** those State Parties which have contributors that are in arrears with their payments to report to the Director on any steps they have taken to redress the situation;
- 7 **INSTRUCTS** the Director:
  - (a) in consultation with the Audit Body, to examine the reports referred to in paragraph 6 above and to present any recommendations to the Supplementary Fund Assembly;
  - (b) to report at each regular session of the Supplementary Fund Assembly the names of those States 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 found to be in breach of their obligations under Article 12.1 of the Supplementary Fund Protocol for two or more years, in which event any claim submitted by the Administration of those States or 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;
- 9 **INSTRUCTS** the Director to develop guidelines in relation to implementation by States Parties of their obligations under Article 12.1 of the Supplementary Fund Protocol;
- 10 **DIRECTS** the Audit Body to:
  - (a) monitor the effectiveness of the above actions in respect of outstanding contributions; and
  - (b) report to the Supplementary Fund Assembly on its findings, including recommendations for further measures as may be warranted;
- 11 **REVOKES** Supplementary Fund Resolution N°2 and 1992 Fund Resolution N°11 (October 2009) to the extent that these Resolutions affect the Supplementary Fund.

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### ANNEX III

States Parties to the 1992 Fund Convention to which Resolution N°12 is applicable  
(as at 25 September 2023)

State	Oil reports outstanding for >2yrs	Contributions outstanding for >2yrs
1 Albania	•	
2 Argentina	•	•
3 Bahrain	•	
4 Cameroon	•	
5 Curaçao (Kingdom of the Netherlands)	•	•
6 Djibouti	•	•
7 Dominica	•	
8 Dominican Republic	•	
9 Ghana		•
10 Guinea	•	•
11 Iran (Islamic Republic of)		•
12 Liberia	•	
13 Malaysia		•
14 Mauritania	•	
15 Panama	•	•
16 Russian Federation		•
17 Saint Lucia	•	
18 Senegal	•	
19 Sint Maarten (Kingdom of the Netherlands)	•	
20 Syrian Arab Republic	•	
21 Venezuela (Bolivarian Republic of)		•

State Parties to the Supplementary Fund Protocol to which Resolution N°3 is applicable  
(as at 25 September 2023)

State	Contributions outstanding for >2yrs
1 Congo	•