



INTERNATIONAL
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IMPROVING THE ACCURACY AND TIMELINESS OF SUBMISSION OF OIL REPORTS AND THE COLLECTION OF CONTRIBUTIONS

Note by the Audit Body

Summary:

This document reports to Member States on work done by the Audit Body in response to specific requests by the governing bodies in respect of possible improvements to the accuracy and timeliness of the submission of oil reports and the collection of contributions.

The Audit Body expresses its gratitude to the Secretariat for assisting it in its review and for helping to develop with it the plans for these proposed new initiatives. Some of the new initiatives involve little additional cost for the Secretariat, and they are already underway by the Secretariat which is fully supportive of them.

Other new procedures, which the Secretariat is able and willing to introduce, will involve some additional costs (which have been taken into account within the budget which the Secretariat is presenting to the governing bodies). The Audit Body considers that the proposed improvements have the potential to improve significantly the present unsatisfactory position with regard to the accuracy and timeliness of submission of oil reports and the collection of contributions. More importantly, perhaps, the proposed new measures have the potential to provide the ability to confirm the accuracy of oil reports for the benefit of all contracting states. Accordingly the Audit Body recommends that the proposed new procedures be introduced for an initial period of three years, and then be reviewed to allow Member States to decide in 2014 whether they result in sufficient improvement to make continuance of them worthwhile thereafter.

The Audit Body has also carried out a detailed review of certain past measures as instructed by the governing bodies in past years, in order to monitor and report back on the effectiveness of those measures and to make recommendations for further measures as may be warranted. Whilst it has noted some welcome improvement, and concludes that those past measures should remain in place subject to further review in future, it has not found evidence that these measures have yet had significant effect in improving the unsatisfactory position that they were introduced to help resolve.

Action to be taken:

1992 Fund Assembly

- (a) to take note of the information contained in this document; and
- (b) to give such instructions in respect of matters dealt with in this document as they may deem appropriate.

Supplementary Fund Assembly and 1971 Fund Administrative Council

Information to be noted.

1 Introduction

- 1.1 The obligations of Member States to report their receipts of contributing oil (oil reports) and for oil receivers in those States to pay their contributions in a timely manner are fundamental to the effective functioning of the IOPC Funds' Conventions.
- 1.2 The governing bodies have for many years expressed concerns that a number of Member States and oil receivers have not met their obligations under the Conventions with respect to oil reports and contributions. The issues of the non-submission of oil reports and outstanding contributions, two separate and distinct issues, have been the focus of considerable efforts by the Secretariat to engage the States concerned.
- 1.3 In 2007 and 2008, the Audit Body was instructed by the governing bodies to consider the issue of the non-submission of oil reports. In 2009, the Audit Body was instructed by the governing bodies to examine the issue of outstanding contributions. The resulting work by the Audit Body resulted in two specific measures, and the Audit Body was directed to monitor and report back in due course on the effectiveness of those measures and to make recommendations for further measures as may be warranted.
- 1.4 In October 2010 the governing bodies asked the Audit Body to study procedures in various Member States with a view to identifying the best practice for collating and validating information for inclusion in oil reports (document IOPC/OCT10/11/1, paragraph 5.6.5).
- 1.5 This report to the governing bodies is prepared in response to those instructions and makes specific recommendations as well as reporting on progress. The Audit Body has received the fullest possible support and co-operation from the Secretariat in carrying out this work. In particular it records its gratitude to Thomas Liebert, Head of External Relations and Conference Department and Katrin Park and Christine Galvin of his Department as well as to Jose Maura, Acting Director, and Ranjit Pillai, Head of Finance and Administration.
- 1.6 The Audit Body's review of the effectiveness of recent measures approved by the governing bodies concludes that although they have not yet had significant effect in improving the unsatisfactory position which has been the subject of concern for some years, the policy measures introduced remain appropriate and should stay in place. However the Audit Body recommends that other and further measures to remedy the situation should also be considered. One of those recommendations, described below, would enable the Secretariat to take a significantly more proactive approach both to validating oil reports submitted and in providing assistance to Member States to meet their obligation to submit oil reports.
- 1.7 The remainder of this paper is divided into three sections, as follows:
 - Section 2 deals with a proposal which outlines a new approach to validating and confirming oil reports and will provide, if adopted, a means by which the Secretariat and the governing bodies can, to a very great extent, monitor the accuracy of oil reports and, equally importantly, provide assistance to States which currently have some difficulty in completing their reports;
 - Section 3 provides an update on the evaluation of effectiveness of recent policy initiatives on outstanding contributions and on outstanding oil reports and deferment of compensation payments; and
 - Section 4 contains conclusions and recommendations.

2 Proposals for collating and validating information for inclusion in oil reports

Best practice in collating and submitting oil reports

- 2.1 As requested by the governing bodies in 2010, the Audit Body, with assistance from the Secretariat, has studied procedures in various Member States with a view to identifying the best practice for collating and validating information for inclusion in oil reports.
- 2.2 In carrying out this work the Audit Body asked a representative sample of different Member States who meet their obligations under the Conventions to share the practical experience they had gained from validating data. By collecting this experience in this way it was anticipated that a distillation of best practice could be achieved, which could then be made available to all Member States in due course. Further comments on the scope for assisting Member States in these matters are set out below in paragraphs 2.4 to 2.7.
- 2.3 The representative sample was made up of Member States of a range both in size and geographic location. All were written to with an explanation of the purpose of the Audit Body's task, and invited to help by sharing what they do to validate oil report data. The Audit Body is grateful to Australia, Canada, Japan, Malaysia, Morocco and the United Kingdom for assisting it in this way. Two other Member States were unable to participate.
- 2.4 It became clear to the Audit Body in carrying out this review that the person responsible within individual Member States, both in industry and in the Administration, for the preparation, validation and submission of oil reports is often subject to quite frequent change. As a result it is often the case that the individual with that responsibility is unfamiliar with the requirements and that this, combined with pressure of other work, can be a major factor in the delay in submission of oil reports. Accordingly the Audit Body explored with the Secretariat what scope might exist for developing comprehensive and up-to-date guidance for Member States covering their obligations under the Conventions, and the practicality of making this guidance available, either in hard copy or on the Funds' website. The Audit Body and the Secretariat agreed that this guidance should be in written format supported by diagrams and flowcharts explaining the required process. The aim is to ensure that whoever has the task of preparing oil reports in any particular Administration could easily access helpful and up-to-date guidance to enable them to discharge their responsibility in an effective manner. This work is additional to the initiative already taken by the Secretariat with the recent introduction of online oil reporting procedures and is seen as complementary to it.
- 2.5 Since these matters were agreed, the Secretariat has been developing the new guidance documentation in parallel with the online reporting system (ORS) to ensure that Member States have access to the most up-to-date information and procedures and also to ensure that there is no confusion between these online processes and the submission by other means, for those Administrations that choose not to submit online. The expected completion date for the relevant phase of the ORS is October 2011 and the Secretariat will finalise the combined guidance documentation thereafter.
- 2.6 The distillation of best practice resulting from the representative sample of different Member States referred to in paragraph 2.3 above will be incorporated in that guidance. Specifically it will help the Secretariat to make recommendations for the validation of oil data and will help in the creation of a flowchart/table to explain the oil reporting process to all Member States. Because this specific task was requested by the governing bodies, the Secretariat has prepared a flowchart attached at Annex II, presenting the feedback from the participating Member States. The resulting analysis of the main validation processes used is also summarised at Annex III.
- 2.7 As this combined work is already underway by the Secretariat, which is fully supportive of the initiative, the Audit Body brings no specific recommendations to the governing bodies in respect of it other than to commend this work and provide its full endorsement.

Use of independent sources to validate and assist with reporting of oil imports

- 2.8 In carrying out its work the Audit Body's review considered wider issues as well, and a significant new recommendation results. The Audit Body fully recognises that the obligation to submit oil reports does not lie with the Secretariat but with Member States, but has explored with the Secretariat whether there was scope for it to help Member States to submit timely, accurate data. The Audit Body therefore explored with the Secretariat whether there might be data sources that might help Member States to validate their submissions, and in doing so identified the existence of some detailed commercial databases which might allow such validation. The Audit Body concluded that because access to such databases is expensive, and is only available to those who subscribe to such services, it was not realistic to recommend that each Member State should so subscribe in order to obtain data that would assist it with validation.
- 2.9 The Audit Body did, however, ask the Secretariat to explore the possibility of the IOPC Funds paying a subscription, and thus allowing the Secretariat itself to become a licensed user able to extract the relevant data in relation to each Member State and then using that information as a validation tool for oil reports. The Audit Body recognised that there would certainly be additional cost if this were to be done, not just for the subscription to the database, but also for the clerical work involved in extracting or analysing the relevant data for each Member State, but the Audit Body considered that if this possibility existed, it should explore it thoroughly. It did so because it concluded that if this approach proved practical (in terms of feasibility as well as cost), and if Member States were willing to support the costs of adding this proactive approach by the Secretariat, it had the potential to 'change the dynamic' of the existing, oil report methodology significantly.
- 2.10 Choice of data provider
- 2.10.1 In researching this approach the Secretariat identified and considered two leading companies offering database services. Following that research, it was concluded that Lloyd's List Intelligence offered the most comprehensive and appropriate package for this project. It offers a global perspective and specialised view of the shipping industry, and the Audit Body concluded that its data would have more relevance for each individual country as well as showing impressive capabilities for allowing the collation of relevant shipping information.
- 2.10.2 By way of background for Member States unfamiliar with the services offered by Lloyd's List Intelligence, its database utilises a large number of sources, including the world's largest Automatic Identification System (AIS) network with 1 400 locations covered by land based AIS receivers deployed globally to provide live coverage of over 6 900 ports and terminals in 132 countries. Its key data suppliers are listed below:
- 1 400 locations covered by land based AIS receivers
 - Satellite AIS reports from Orbcomm
 - APEX (Analysis of Petroleum Exports) system (a database that provides details of laden movements for crude oil vessels greater than 10 000 DWT and for oil products over 60 000 DWT)
 - 700 Lloyd's Agents and Sub-Agents
 - Classification Societies (IACS and non-IACS members)
 - Flag Registries
 - P&I Clubs
 - Shipowners
 - Port Authorities
 - Ship Brokers
 - Insurers
 - Coastguards and search and rescue centres
 - Government and pan government suppliers

2.11 Usefulness and limitations of the system

- 2.11.1 To test this approach the Secretariat asked for a sample report from a Member State (Australia), which was then used to validate the 2010 oil receipts of that State. Attached to the data report received from Lloyd's List Intelligence is a detailed spreadsheet known as a pivot table which can be used to filter and analyse the data, and that pivot table therefore provides a powerful tool for further analysis as necessary. The information obtained from Lloyd's List Intelligence provided extremely useful data for checking purposes in the sample examined although some differences were found that the Secretariat and the Member State have explored and clarified. At the end of this investigation and analysis, it emerged that the Australian reports for 2010 and the Lloyd's List Intelligence information showed a discrepancy of 2.83%, well within what would normally be expected to be an acceptable variation for such a complex reporting process. In the case of circumstances where oil reports had not been submitted already by a Member State, the data would also have been useful to the Secretariat in communicating to the Member State about the likely quantities and landing points of contributing oil. Thus, for the sample examined, the Audit Body and the Secretariat concluded that having access to the Lloyd's List Intelligence data would prove extremely useful.
- 2.11.2 The Secretariat has also considered whether there are any obvious limitations, from the Fund's perspective, to the data that would be available from the Lloyd's List Intelligence system. Although the data supplied by Lloyd's List Intelligence covers a large percentage of Member States and their reporting data, and the data is extremely helpful as described above, there are some residual limitations to the system, which the Secretariat will wish to overcome, in some cases with the assistance of additional information from Lloyd's List Intelligence. Those limitations identified are summarised below:
- One such issue is the detection of cabotage or contributing oil received by other means, using this system. The Secretariat is currently identifying, using its 2009 oil reports, States in which this type of shipment of oil occurs and will compare this data to the data supplied by Lloyd's List Intelligence.
 - Another issue is the transshipment of oil within a Member State. This issue is being addressed by introducing specific filtering of information in the data supplied by Lloyd's List Intelligence to highlight domestic trade based on movements between ports.
 - A further issue is the tracking of crude and oil products carried in smaller tankers (ie below 60 000 DWT for oil products and 10 000 DWT for crude oil). Lloyd's List Intelligence is working on a bespoke tracking system to monitor the smaller product tankers and thus bridge this information gap although the Secretariat recognises that it will not be able to cover 100% of all movements worldwide.
- 2.11.3 Notwithstanding these limitations, which mean that access to the Lloyd's List Intelligence cannot be seen as a panacea for every possible issue, the Audit Body and the Secretariat consider that if the Funds were to have access to the data it would allow a step change improvement in the ability of the Secretariat to monitor the accuracy of oil reports, and that it would enable the Secretariat to stimulate the submission of oil reports where they had not been submitted on time through possession of relevant data which could be used to question and probe as well as to assist those Member States involved. The data would also allow the Funds to improve significantly their ability to assess whether non-submission of specific oil reports was likely to affect the overall rate of levy materially. The Secretariat is currently exploring ways to fully take advantage of the data.

2.11.4 The Audit Body believes that these further measures, involving access to the Lloyd's List Intelligence data together with enhanced monitoring procedures by the Secretariat using that data, have the potential to improve the present unsatisfactory situation significantly. The cost implications are included within the 1992 Fund Budget for 2012 (cf document IOPC/OCT11/9/2/1). The Audit Body notes those increased costs but considers that the likely benefits would considerably outweigh them and recommends that Member States should approve the introduction of these new measures on a trial basis for a period of three years, reviewing the position again in October 2014. The Audit Body would be able to carry out a review of the effectiveness of these further measures, reporting to Member States at that time.

3 Evaluation of effectiveness of recent policy initiatives on outstanding contributions and on outstanding oil reports and deferment of compensation payments

3.1 In October 2008, with respect to the non-submission of oil reports, the Audit Body recommended, and the 1992 Fund Assembly adopted, a policy measure that provided that "where 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 would be assessed for admissibility but payment would be deferred until the reporting deficiency was rectified"^{<1>}.

3.2 On 16 October 2009, pursuant to a recommendation of the Audit Body, the governing bodies adopted Resolution N° 11 on Measures in Respect of Contributions^{<2>}. Essentially the Resolution:

- endorsed current measures by the Director for following up on arrears of contributions;
- called on receivers of contributing oil to comply with their obligations under the Convention;
- urged associations representing receivers of contributing oil to engage proactively in ensuring that obligations by industry members are met and to report to the Director on the measures taken;
- further urged State Parties to ensure that they have taken all necessary measures to implement effectively their obligations;
- requested that State Parties report to the Director the means by which they have implemented their obligations; and
- called specifically on State Parties with contributors in arrears to report to the Director the means by which they have implemented their obligations and any steps they have taken to ensure payment of outstanding contributions.

3.3 The 2009 Resolution also directed the Audit Body to:

- (1) monitor the effectiveness of the actions prescribed by the Resolution in respect of outstanding contributions;
- (2) monitor the effectiveness of the 1992 Fund policy on outstanding oil reports and deferment of compensation payments, adopted by the 1992 Fund Assembly at its October 2008 session; and
- (3) report to the 1992 Fund Assembly and Supplementary Fund Assembly on its findings, including recommendations for further measures as may be warranted.

<1> Cf document 92FUND /A.13/13/1.

<2> Cf document IOPC/OCT09/11/1, Annex IV. The full text of Resolution N°11 is provided at Annex I to this document.

3.4 In addition, at their October 2010 sessions, the governing bodies noted that the Audit Body intended to report at the next annual sessions on its monitoring activities in respect of Resolution N°11.

3.5 To this end, this document seeks:

- (1) to evaluate the effectiveness of Resolution N°11 of October 2009 in respect of outstanding contributions; and
- (2) conduct an analysis of any impacts of the policy adopted in October 2008 in relation to the submission of oil reports.

3.6 Objective

3.6.1 At the outset, two considerations are noteworthy. Firstly, in carrying out this task it was important for the Audit Body to work in close cooperation with the Secretariat. Secondly, it is well known (and reflected both in the reports of the Audit Body to the governing bodies and in the Reports by the Director to the governing bodies) that the Secretariat makes, as it has for many years, considerable efforts to pursue the submission of oil reports and outstanding contributions.

3.6.2 It is very clear that those efforts have, over the years, resulted in keeping the level of non-compliance to quite low and manageable levels and that the lack of compliance is not (on current trends) likely to impact materially on the viability of the Funds. However, as noted by the governing bodies, failure by some Member States to fully implement and abide by their obligations under the Conventions, as well as by some contributors, is not fair for those complying if these matters are not actively pursued.

3.6.3 It is also clear that it may be difficult to isolate the impact of the policy decision of October 2008 and Resolution N°11 of October 2009 from the actions of the Secretariat. Nonetheless the Audit Body believes that it is important to consider the situation in respect of non-submission of oil reports and outstanding contributions before and after the respective measures were taken and to review actions taken by Member States and industry associations to address these issues.

3.7 Approach

3.7.1 The Director already reports regularly to the governing bodies on the situation with respect to the submission of oil reports and the remittance of contributions^{<3>}. It is not the intent of this document to replicate the contents of these reports but to rely on these reports as sources. Rather, this assessment focuses on a series of questions set out below.

3.7.2 With respect to the policy measure of October 2008 on the non-submission of oil reports, this document sets out to address two basic questions:

- How many Member States are affected by the policy measure? and
- What is the impact on the assessment of contributions due to the non-submission of reports on contributing oil receipts?

3.7.3 With respect to Resolution N°11 on Measures in Respect of Contributions, this document sets out to examine the responses to three fundamental provisions of the Resolution, namely:

- The extent to which State Parties have reported to the Director on the means by which they have implemented their obligations under the Conventions;
- The extent to which State Parties with contributors in arrears have reported to the Director the means by which they have implemented their obligations under the Conventions; and

<3>

Cf documents IOPC/OCT11/5/1 and IOPC/OCT11/5/2 respectively for oil reports and outstanding contributions.

- The extent to which associations of receivers of contributing oil have reported on their proactive measures as per the Resolution.

3.8 Policy measure on non-submission of oil reports

How many Member States are affected by the policy measure?

3.8.1 As of February 2011, there were 34 Member States with outstanding oil reports. Of these, there were 21 Member States for which there were outstanding oil reports for two or more years^{<4>}.

3.8.2 The policy measure applies to Member States which are two or more years in arrears in the submission of oil reports. Accordingly, the Administrations of twenty-one Member States would be subject to deferral of compensation for any assessed government claims until such time as the deficiency was rectified.

3.8.3 Beyond the question of scope of application, this exercise also examined transactional activity of relevance to the policy measure namely:

- whether there were claims from States with outstanding oil reports prior to the October 2008 measure;
- whether there have been claims from States since October 2008; and
- whether any States have been denied compensation by virtue of the policy decision.

3.8.4 With respect to claims prior to the October 2008 measure, information provided by the Secretariat shows one incident in 2003 for which compensation was paid in 2004 to government agencies of a Member State with outstanding reports and which might have been covered under the 2008 policy measure. The incident was closed in 2004 and understandably, at the time, the nature and affiliation of claimants (ie government) was not subjected to the same test as if the claims were to be examined following the implementation of the October 2008 policy measure.

3.8.5 With respect to the period since the adoption of the policy measure, the Secretariat reports that, as of February 2011, there have been no claims from States with outstanding reports.

3.8.6 However, claims are still pending in the case of a 2007 incident involving a Member State currently with outstanding oil reports. In this case, the Secretariat reports that compensation is not yet authorised due to two unresolved issues: the 'insurance gap' and non-submission of oil reports. If the insurance gap issue were to be resolved, compensation to private claimants could be made but not to government claimants since the policy measure would apply.

What is the impact on the assessment of contributions due to the non-submission of oil reports?

3.8.7 The determination of the quantum of the impact that the non-submission of oil reports has on the assessment of contributions is at best a difficult undertaking and in many cases speculative.

3.8.8 With due consideration of the available information, the Audit Body agrees with the Director's assessment that 'despite the large number of States with outstanding reports, the financial consequences appear to be limited'^{<5>}.

3.8.9 With some notable exceptions, the vast majority of non-respondents are not expected to be major recipients. In the case of Member States that have never submitted reports (eight Member States of the 1992 Fund) the Director's report notes that '...it is expected that few receive oil in significant

<4> In 15 of these 21 cases, oil reports have not been submitted for five or more years.

<5> Cf document IOPC/OCT10/5/1, paragraph 2.12

quantities'^{<6>}. But, while the premise as to the limited financial impact of the non-submission of oil reports is fundamentally sound, it is not without some possible uncertainty as there are no oil reports to confirm this.

- 3.8.10 In its analysis for the Audit Body, the Secretariat estimates that the cumulative impact of the non-submission of oil reports for the assessment of contributions in respect of the General Fund and the Major Claims Funds of the 1992 Fund could reach close to £3 million. Three Member States account for over 96% of this estimate.

Assessment of the policy measure on the non-submission of oil reports

- 3.8.11 Measured in terms of incidents that would be subject to the policy measure, the scope of application of the policy measure is by no means widespread. Only one pending incident involving a Member State would currently be affected by the deferment provisions^{<7>}.
- 3.8.12 However, a broader test lies in the fact that, in the event of an incident, the policy measure would impact the claims of twenty-one Member States or nearly one-fifth of the membership of the 1992 Fund.
- 3.8.13 While there is no evidence at this point that the policy measure has resulted in a significant improvement in the submission of oil reports, it represents a powerful instrument in compelling Member States to meet their obligations under the Convention. It serves as a clear, concrete and unequivocal signal by the governing bodies of the importance of adhering to Convention requirements for the reporting of contributing oil in order to benefit from the compensation provisions of the Fund.

3.9 Resolution regarding outstanding contributions

To what extent have State Parties reported to the Director on the means by which they have implemented their obligations?

- 3.9.1 Paragraph 5 of Resolution N^o11 'Request(s) State Parties to report to the Director the means by which they have implemented their obligations under Article 13, paragraph 2 of the 1992 Fund Convention and Article 12, paragraph 1 of the 2003 Supplementary Fund Protocol'.
- 3.9.2 The implementation of the respective obligations of State Parties as referenced in paragraph 5 cited above is germane to the timely remittance of contributions on two levels: the obligations of Member States and the effective operation of the Funds.
- 3.9.3 As of February 2011, no State Parties to the 1992 Fund Convention and the Supplementary Fund Protocol had reported to the Director specifically with respect to paragraph 5 of the Resolution.
- 3.9.4 However, it is worthwhile to note that the general degree to which State Parties have implemented the 1992 Convention into their national law was the subject of an instruction by the 1992 Fund Assembly to the Director in 2004. By October 2006, of the 98 State Parties contacted by the Director pursuant to this instruction, 54 confirmed that the Conventions had been fully implemented whereas 14 had stated that they had not^{<8>}. On two occasions (most recently January 2011) the Director has followed up with States that had not fully implemented the Conventions and offered assistance (cf document IOPC/OCT11/8/1).

^{<6>} Cf document IOPC/OCT10/5/1, paragraph 2.12

^{<7>} The amounts involved are not insignificant. The 2010 Report on Contributions (document IOPC/OCT10/5/2) indicates that it was decided to raise 2009 contributions of £40 million to the Major Claims Funds for this incident.

^{<8>} Since 2006 the Director has also been made aware of three additional States for which the 1992 Conventions have not been fully or correctly implemented into national law.

To what extent have State Parties with contributions in arrears reported to the Director on the steps taken to ensure payment of outstanding contributions?

3.9.5 Paragraph 6 of Resolution N°11 ‘Call(s) specifically on State Parties with contributors who are in arrears to report to the Director the means by which they have implemented their obligations under Article 13, paragraph 2 of the 1992 Fund Convention and Article 12, paragraph 1 of the 2003 Supplementary Fund Protocol and on any steps they have taken to ensure payment of the outstanding contributions’.

3.9.6 As of February 2011, no State Parties to the 1992 Fund Convention and the Protocol of 2003 had reported to the Director specifically with respect to paragraph 6 of the Resolution.

To what extent have associations representing receivers of contributing oil reported to the Director/Secretariat on their proactive measures in respect of the Resolution?

3.9.7 Paragraph 3 of Resolution N°11 ‘Urge(s) associations representing receivers of contributing oil to engage proactively in ensuring that obligations by industry members are met and to report to the Director/Secretariat on the measures taken.

3.9.8 As of February 2011, no associations had reported on their proactive measures in respect of paragraph 3 of the Resolution.

Assessment of the Resolution regarding outstanding contributions

3.9.9 The chart below summarises the situation with respect to contributions in arrears for the period generally corresponding to that since Resolution N°11 was adopted.

Contributions in Arrears 1992 Fund (General Fund and Major Claims Fund)*
Summary 2009 – 2011

	18 September 2009	17 September 2010	28 February 2011
Number of Member States with contributors in arrears	8	5	5
Number of contributors in arrears	12	9	8
Total number of contributors in Member States with contributions in arrears	48	48	48
Total amount in arrears (in £000)	656	1101	965

* Based on data supplied by the Secretariat

3.9.10 Two basic observations are evident from the data. The number of Member States and contributors in arrears each show a drop since the autumn of 2009. The overall amount of contributions in arrears (based on assessed amounts) is relatively small. According to the Director’s annual Report on Contributions, outstanding contributions in the autumn of 2010 accounted for less than 1% of contributions levied to date for the 1992 Fund^{<9>}.

3.9.11 In a broader context, the issue of outstanding contributions constitutes an important issue for the governing bodies and the Secretariat, both in principle and in practice.

<9> Outstanding contributions at 17 September 2010 represented 0.26% (cf document IOPC/OCT10/5/2).

- 3.9.12 The Director and Secretariat pro-actively pursue outstanding contributions through a variety of measures and these are discussed in the Director's annual report on contributions.
- 3.9.13 Resolution N°11 endorsed '...current measures employed by the Director and Secretariat for following up arrears of contributions'.
- 3.9.14 The Resolution also recognised as a fundamental premise '... that the Funds cannot operate effectively and equitably unless oil reports and contributions are received in a timely manner'. In this regard, the Resolution provides a framework for engaging all parties to the Funds in meeting their obligations under the Convention generally, and in respect of oil reports and contributions specifically.
- 3.9.15 The lack of responses to the actions called for in Resolution N°11 is most disconcerting. Still, it is not taken to mean that no action has been taken by concerned parties (Member States, contributors, industry associations).
- 3.9.16 Clearly, the majority of Member States are in compliance, but there remain a number of States that have not properly implemented measures designed to facilitate the operations of the Funds. The lack of information requested by virtue of Resolution N°11 hinders the effective operation and governance of the Funds.

4 Conclusions and recommendations

4.1 Non-submission of oil reports

- 4.1.1 The policy measure with respect to the non-submission of oil reports adopted by the 1992 Fund Assembly in 2008 aimed at improving the Member States' fulfilment of their obligations under the 1992 Fund Convention to report on the amounts of contributing oil received in their respective territories. The purpose of the measure has been partly to persuade those Member States with outstanding reports to rectify the situation and partly to act as a deterrent to other Member States. This objective is founded on the principle of the fundamental importance of the fulfilment of the reporting obligation to the entire IOPC Funds system.
- 4.1.2 The review undertaken by the Audit Body does not show that there has been any dramatic improvement with respect to the submission of oil reports. In other words, there are still a fairly significant number of States for which there are outstanding oil reports.
- 4.1.3 The provision of the policy measure with respect to the deferment of compensation has not yet been applied. The extent to which this will be the case in the near future depends on the developments with respect to the incident indicated in section 4.1 of this document and any new incidents involving States for which there are outstanding oil reports for two or more years.
- 4.1.4 As noted in the document, it would appear that the majority of Member States concerned (ie with outstanding oil reports) do not receive significant amounts of contributing oil. The cumulative impact for the assessment of contributions is estimated to be in the order of £3 million. This amount is not insignificant. One should also take into consideration that these facts are somewhat uncertain and that the failure to comply with such a pivotal obligation as the submission of oil reports might affect how other Member States choose to act in the future.
- 4.1.5 It is difficult, at least with some degree of certainty, to assess what effect the policy measure has had on the submission of oil reports. On the other hand, there is nothing to suggest that the policy measure lacks effect in this regard. In the view of the Audit Body, the policy measure has an important value in that it allows for and is an important expression of the Member States' position on the non-submission of oil reports and its potential implications.
- 4.1.6 This is the first evaluation of the effectiveness of the policy measure. As well, while it was not the intent of the review to delve into why the situation has emerged in the first place, ie why some

Member States fail to fulfil their obligation under the 1992 Fund Convention, it seems reasonable to assume that circumstances may vary as to reasons for not submitting oil reports. There might be a lack of understanding of the requirements of the 1992 Fund Convention. In some cases the non-submission of oil reports might be that oil is not received in quantities exceeding 150 000 tonnes. Alternatively, the reasons may be of an administrative or organisational nature. However, it cannot be ruled out that in some instances, circumstances that are more culpable lie behind the non-submission.

4.1.7 This evaluation does not give reason to repeal or change the policy measure. In addition to the recommendations summarised in paragraph 2.11.4 above, the Audit Body recommends that other measures to remedy the situation be considered. Such measures could comprise continued efforts by the Secretariat to address situations where some Member States face particular problems, and the development of model legislation for the implementation of the 1992 Fund Convention. The Audit Body also recommends a continued evaluation of the policy measure and a regular discussion of the matter in order to clearly demonstrate the attention the Member States pay to the matter.

4.2 Outstanding contributions

4.2.1 Between the autumn of 2009 and the end of February 2011 there has been a drop in the number of Member States with contributors in arrears, which is a most encouraging development.

4.2.2 The amount of contributions in arrears is relatively small and does not pose a threat to the fulfilment of the 1992 Fund's obligations *vis-à-vis* claimants. However, the issue is not only a matter of finance but also of principle. If oil receivers liable to pay contributions are able to neglect this obligation successfully, there is always a risk that others could revert to the same attitude. The potential repercussions of such a development are evident to everyone.

4.2.3 The Resolution has sought to encourage industry organisations and Member States to engage proactively in order to solve the issue and to provide information on their efforts. The aim of the latter was to gain best practices *inter alia* from national application of the relevant provisions in the 1992 Fund Convention that could help other Member States to establish a legal framework for a successful pursuit of contributors in arrears or forms for dialogue with relevant industry stakeholders to overcome potential misunderstandings etc. Unfortunately, the lack of responses from Member States and industry organisations prevent the Audit Body from establishing any recommendations concerning sharing best practices.

4.2.4 The Audit Body is not aware of the reason for the lack of responses on the part of Member States and industry organisations.

4.2.5 The extent to which the situation concerning contributions in arrears, as indicated in the information provided by the Secretariat, is attributable to the Resolution is difficult to assess. It is equally difficult to determine if this course will continue.

4.2.6 Nevertheless, it is the firm belief of the Audit Body that the Resolution together with the strenuous and continued efforts by the Secretariat serve to highlight the problem and its potential consequences. Such attention is likely, in the view of the Audit Body, to contribute to a positive development towards prompt and correct payment of contributions.

4.3 Recommendations

The Audit Body accordingly recommends:

- (a) that the Secretariat be requested to subscribe to the Lloyd's List Intelligence database, together with the introduction of monitoring procedures by the Secretariat using that data, for a period of three years. A review by the Audit Body would take place in 2014 to see whether the new measures result in sufficient improvement to make continuance of them worthwhile. The additional cost of these procedures has been taken into account within the budget which the Secretariat is presenting to the governing bodies (cf document IOPC/OCT11/9/2/1);

- (b) that the 1992 Fund policy on outstanding oil reports and deferment of compensation payments, adopted by the 1992 Fund Assembly at its October 2008 session should continue unchanged;
- (c) that other measures to remedy the situation be considered including:
 - continued efforts by the Secretariat to address situations where some Member States face particular problems; and
 - development of model legislation for the implementation of the 1992 Fund Convention, and assisting with best practices and experiences gained by other Member States.
- (d) that continued evaluation of the policy measure and a regular discussion of the matter should occur;
- (e) that Resolution N°11 on Measures in Respect of Contributions adopted by the 1992 Fund Assembly at its October 2009 session should continue to apply;
- (f) that in accordance with the Resolution, the Audit Body should continue its evaluation of the effectiveness of the Resolution and report to the 1992 Fund Assembly and the Supplementary Fund Assembly on its findings no later than October 2014; and
- (g) that the request for information from Member States and industry organisations set out in the Resolution should be re-iterated and that consideration be given by the Secretariat to issuing a letter asking Member States and industry organisations respectively to provide information in accordance with the Resolution within a given timeframe.

5 Action to be taken

1992 Fund Assembly

5.1 The 1992 Fund Assembly is invited:

- (b) to take note of the information contained in this document; and
- (c) to issue such instructions in respect of matters dealt with in this document as they may deem appropriate.

Supplementary Fund Assembly and 1971 Fund Administrative Council

5.2 The Supplementary Fund Assembly and the 1971 Fund Administrative Council are invited to take note of the information contained in this document and of any such instructions in respect of matters dealt with in this document that are given by the 1992 Fund Assembly.

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ANNEX I

Resolution N°11 on Measures in respect of Contributions
adopted on 16 October 2009
by the Administrative Council acting on behalf of the Assembly of the International Oil Pollution
Compensation Fund, 1992 and the
Assembly of the International Oil Pollution Compensation Supplementary Fund, 2003

THE ADMINISTRATIVE COUNCIL ACTING ON BEHALF OF THE ASSEMBLY OF THE INTERNATIONAL OIL POLLUTION COMPENSATION FUND, 1992 (1992 Fund), and

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

NOTING that the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1992 and the Protocol of 2003 to the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1992 were established to pay adequate compensation and to this end contributions are required to fund payment of claims,

RECOGNISING that States Parties in accepting the Conventions have agreed to ensure that contributors fulfil their obligations under Article 13, paragraph 2 of the 1992 Fund Convention and Article 12, paragraph 1 of the 2003 Supplementary Fund Protocol,

RECOGNISING ALSO that the Funds cannot operate effectively and equitably unless oil reports and contributions are received in a timely manner,

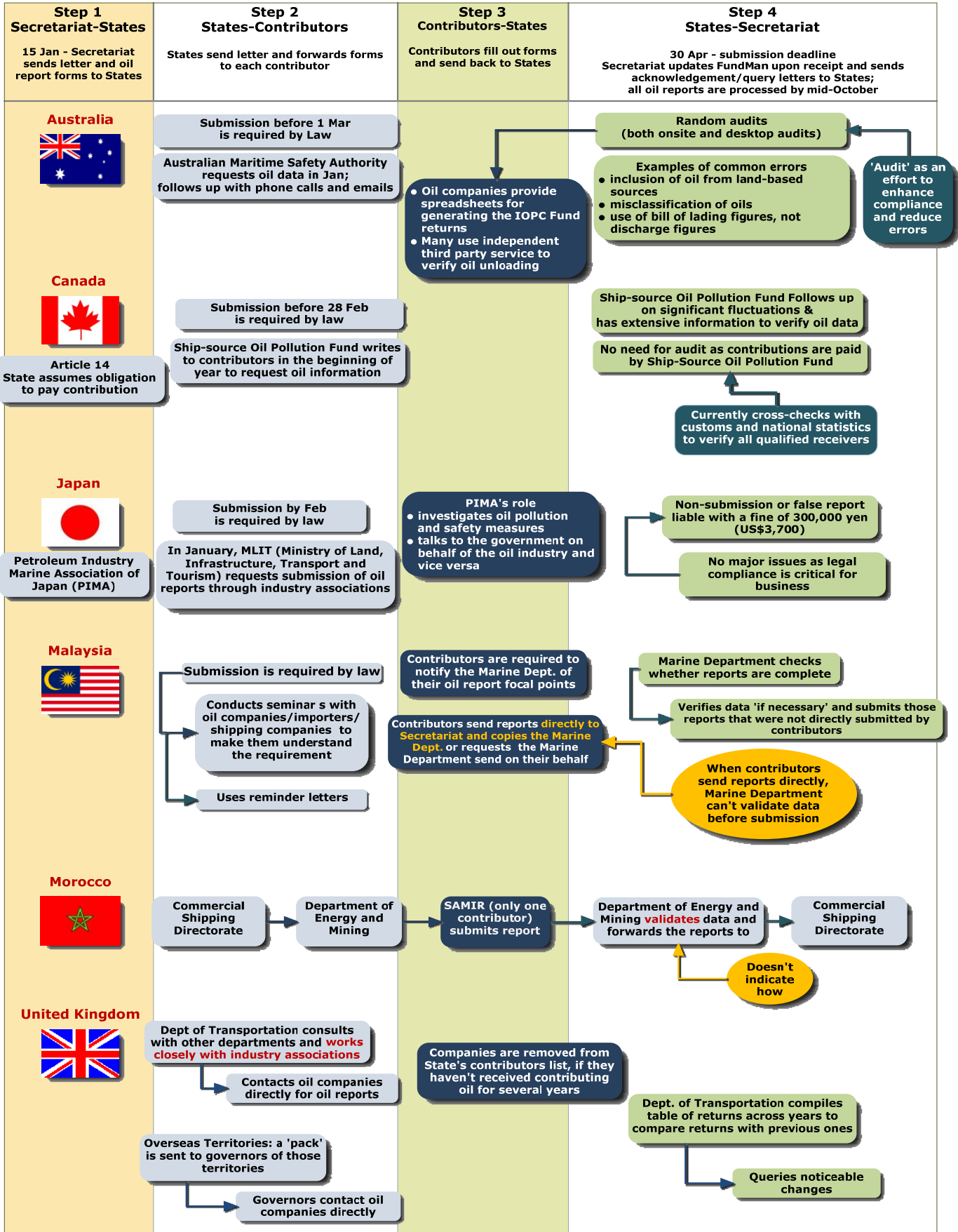
- 1 **ENDORSE** current measures employed by the Director and Secretariat for following up arrears of contributions,
- 2 **CALL ON** all receivers of contributing oil to comply with their obligations under the Conventions,
- 3 **URGE** associations representing receivers of contributing oil to engage proactively in ensuring that obligations by industry members are met and to report to the Director/Secretariat on the measures taken,
- 4 **FURTHER URGE** States Parties to ensure that they have taken all necessary measures to implement effectively their obligations under Article 13, paragraph 2 of the 1992 Fund Convention and Article 12, paragraph 1 of the 2003 Supplementary Fund Protocol, whilst reminding them of the option to make use of Article 14, paragraph 1 of the 1992 Fund Convention and Article 12, paragraph 2 of the 2003 Supplementary Fund Protocol,
- 5 **REQUEST** States Parties to report to the Director the means by which they have implemented their obligations under Article 13, paragraph 2 of the 1992 Fund Convention and Article 12, paragraph 1 of the 2003 Supplementary Fund Protocol, so that, based on the information submitted, the Secretariat, with the assistance of the Audit Body, may summarise such means and report such information to the 1992 Fund Assembly and Supplementary Fund Assembly,
- 6 **CALL SPECIFICALLY ON** States Parties with contributors who are in arrears to report to the Director the means by which they have implemented their obligations under Article 13, paragraph 2 of the 1992 Fund Convention and Article 12, paragraph 1 of the 2003 Supplementary Fund Protocol and on any steps they have taken to ensure payment of the outstanding contributions,
- 7 **ALSO REQUEST** that the Director, in consultation with the State(s) Parties concerned, should consider options for providing, as part of regular reports on outstanding contributions, a list of non-contributing 'persons' (entities) and that such a list be made prominent in reports of the operations of the Funds, subject to any applicable laws,
- 8 **DIRECT** the Audit Body to:
 - (a) monitor the effectiveness of the above actions in respect of outstanding contributions;

- (b) monitor the effectiveness of the new 1992 Fund Policy on Outstanding Oil Reports and Deferment of Compensation Payments, adopted by the 1992 Fund Assembly at its October 2008 session; and
- (c) report to the 1992 Fund Assembly and Supplementary Fund Assembly on its findings, including recommendations for further measures as may be warranted.

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Oil Reporting

Best collation and validation practices



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Oil Reporting Present paper-based procedure

