



INTERNATIONAL  
OIL POLLUTION  
COMPENSATION  
FUNDS

<b>Agenda item: 8</b>	IOPC/OCT14/8/2/1	
Original: ENGLISH	19 September 2014	
1992 Fund Assembly	<b>92A19</b>	
1992 Fund Executive Committee	<b>92EC62</b>	
Supplementary Fund Assembly	<b>SA10</b>	
1971 Fund Administrative Council	<b>71AC33</b>	•

## WINDING UP OF THE 1971 FUND

### FINANCIAL SITUATION OF THE 1971 FUND AS AT 5 SEPTEMBER 2014

#### Note by the Secretariat

<b>Summary:</b>	This document, which is an addendum to document IOPC/OCT14/8/2, addresses the financial situation of the 1971 Fund as at 5 September 2014.
<b>Action to be taken:</b>	<u>1971 Fund Administrative Council</u>
	Information to be noted.

#### 1 Financial situation

- 1.1 As at 31 December 2013, the balance available to the 1971 Fund was £4 673 361. The estimated balance available to the 1971 Fund at 31 December 2014 is £1 873 376. Details are as follows:

General Fund/Major Claims Fund (MCF)	Balance as at 31/12/ 13 (£)	Payments made 01/01/14 to 04/09/14 (£)	Estimated expenses from 05/09/14 to 31/12/14 (£)	Estimated total expenses in 2014 (£)	Estimated balance available at 31/12/14 (£)
General Fund	2 532 090	(72 620)	(1 417 000)	1 489 620	1 042 470
<i>Vistabella</i> MCF	(37 809)	(107 515)	0	107 515	(145 324)
<i>Nissos Amorgos</i> MCF	2 179 080	(202 850)	(1 000 000)	1 202 850	976 230
<b>Total</b>	<b>4 673 361</b>	<b>(382 985)</b>	<b>(2 417 000)</b>	<b>2 799 985</b>	<b>1 873 376</b>

#### 1.2 Vistabella Major Claims Fund

Payments relating to the *Vistabella* Major Claims Fund are being made from the General Fund by way of loans in accordance with the 1971 Fund's Financial Regulation 7.1(c)(iv). No further expenses are envisaged and the Major Claims Fund is to be closed in 2014 with the General Fund absorbing the deficit.

#### 1.3 Nissos Amorgos Major Claims Fund

It is estimated that the balance available in the *Nissos Amorgos* Major Claims Fund at the end of 2014 will be some £975 000. Expenses payable in the last four months of 2014 in respect of defending the 1971 Fund against legal action brought by the Assuranceforeningen Gard P&I Club are estimated at some £1 million.

#### 1.4 General Fund expenses to 31 December 2014

It is estimated that the balance available in the General Fund at the end of 2014 will be some £900 000 (£1 042 470 less £145 324) including the *Vistabella* Major Claims Fund loans and interest. The main expenses to be paid from the General Fund are in respect of the *Iliad* incident and the fees payable to the 1992 Fund.

#### 1.5 Iliad incident

As set out in document IOPC/OCT14/8/2, the Director is continuing to have discussions with the North of England P&I Club in relation to a global settlement. The estimated expenses from the General Fund include a possible settlement amount of €1 million (£800 000) in respect of this incident.

#### 1.6 Fees payable to 1992 Fund

1.6.1 At its October 2013 session, the governing bodies decided on the management fee of £240 000 for the calendar year 2014. In document IOPC/OCT14/9/1 – Supplementary Budget for 2014, the Director has proposed an additional fee of £240 000 in recognition of the substantial additional time spent by the Director and Secretariat staff in matters dealing with the winding up of the 1971 Fund and in respect of defending the 1971 Fund against legal action brought by the Assuranceforeningen Gard P&I Club.

1.6.2 Other payments payable from the General Fund include the external audit fees for both the 2013 and 2014 Financial Statements; costs of transferring the 1971 Fund archives into electronic form; the cost payable to the International Maritime Organization (IMO) for holding a one-day meeting of former 1971 Fund Member States to approve the final Financial Statements of the 1971 Fund; and other costs such as legal and travel costs associated with the winding up of the 1971 Fund.

### **2 Contributors in arrears**

#### 2.1 Contributions due from the Russian Federation of £43 000

2.1.1 At a meeting in February 2014, the Director raised the concern expressed by the 1971 Fund Administrative Council in respect of the contributions of £43 000 due from the Russian Federation with the Permanent Delegation of the Russian Federation to IMO.

2.1.2 In March 2014, the Director also met with the Deputy Director of the Ministry of Transport of the Russian Federation and requested his help in resolving this issue. At the meeting, the Deputy Director stated that he would do his utmost to resolve this issue.

2.1.3 The Administrative Council will recall that the 1971 Fund has taken legal actions against the two contributors in arrears in the national courts of the Russian Federation. In both cases the Highest Arbitration Court found in favour of the contributors. The Russian Government was a third party in the legal proceedings.

2.1.4 The Director continues to liaise with the authorities in the Russian Federation with the aim to resolve the matter of the outstanding contributions before the October 2014 meeting.

### **3 Contributors with credit balances**

3.1 As at 5 September 2014, an amount of some £33 700 is due to contributors and is held in the “contributors’ account” for ten contributors. These funds would need to be reimbursed to the contributors from the General Fund. However, should the freezing order remain in force by the time of the October 2014 session of the Administrative Council, the Council will have to decide in October 2014 how the remaining assets of the 1971 Fund should be dealt with.

3.2 The amount due to contributors is shown annually in the 1971 Fund’s Financial Statements.

#### **4 Director's considerations**

- 4.1 It is anticipated that the 1971 Fund will have some £1.8 million available by 31 December 2014.
- 4.2 In light of pending litigation in respect of the *Nissos Amorgos* incident and the risk that the 1971 Fund might have to defend legal proceedings against it in the United Kingdom in respect of the *Plate Princess* incident, the Director estimates that the amount available will last until the spring of 2015.
- 4.3 The Director is of the view that the 1971 Fund has met its obligations under the 1971 Fund Convention and that the pending litigation is in respect of claims which are inadmissible for compensation.
- 4.4 The Director therefore recommends that the 1971 Fund Administrative Council decide to dissolve the 1971 Fund with effect from 31 December 2014 since, were the 1971 Fund to remain in existence after the spring of 2015, the Council would have to levy contributions to fund the legal proceedings in respect of claims which are inadmissible or allow the 1971 Fund to become insolvent which would not be desirable.
- 4.5 The Director also recommends that the 1971 Fund pays the Gard Club the amount of US\$344 090 in settlement of the 1971 Fund's contribution to the joint costs incurred in respect of the *Nissos Amorgos* incident.
- 4.6 The Director further recommends that, since the freezing order imposed by the English Court on the 1971 Fund is likely to remain in force until the end of 2014, the Administrative Council decide that any remaining balances belonging to the 1971 Fund are not returned to contributors but any balance, if this is appropriate, be deposited in Court, stating that it is the express will of the 1971 Fund Administrative Council that it be distributed equally amongst the World Maritime University, the International Maritime Law Institute and the International Maritime Safety, Security and Environment Academy.

#### **5 Action to be taken**

##### 1971 Fund Administrative Council

The 1971 Fund Administrative Council is invited to take note of the information contained in this document.

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