

Resolution N°5 — Authorisation for the Director to issue invoices to contributors based on estimated oil receipts, including retrospectively, where no reports have been submitted

(November 2023)

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 sessions 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 Protocol 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

SUPPLEMENTARY FUND RESOLUTION N°5

- 3 -

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.
-