



International Oil Pollution
Compensation Funds

Agenda item 4	IOPC/NOV25/4/4/Rev.1	
Date	13 October 2025	
Original	English	
1992 Fund Assembly	92A30	●
1992 Fund Executive Committee	92EC85	
Supplementary Fund Assembly	SA22	●

DEVELOPMENT OF A GUIDANCE DOCUMENT*

PROCEDURES FOR DETERMINING WHETHER A SHIP FALLS UNDER THE 1992 CIVIL LIABILITY CONVENTION OR THE 2001 BUNKERS CONVENTION

Note by the Director

Summary:

At its May 2023 session, the 1992 Fund Executive Committee requested that the Director explore developing guidance on a standard procedure to determine when a ship ceased to be a 'ship' under the 1992 Civil Liability Convention (1992 CLC). It was also requested that the Director consider an interpretation of the word 'residues' under Article I(1) of the 1992 CLC (document [IOPC/MAY23/9/1](#), paragraphs 3.6.25 and 3.6.33).

The Director held a number of meetings with industry representatives and at the November 2024 sessions of the governing bodies, proposed a footnote to be included in the IOPC Funds' existing publication 'Guidance for Member States – Consideration of the definition of 'ship'' (the Guidance) under section 3, paragraph 3.1(2).

The 1992 Fund Assembly endorsed the text of the footnote for future inclusion in the publication, but decided that the proposal made by one delegation to amend the text of the footnote, and the proposal to insert the footnote also at paragraph 3.1(4) of the Guidance would be considered together with the interpretation of the word 'residues' at a future session (document [IOPC/NOV24/11/1](#), paragraph 4.6.18).

The Director has held further meetings with industry representatives, during which these issues were considered. This document sets out proposed wording on the interpretation of 'residues', and a number of options for alternative wording of the footnote for consideration by the 1992 Fund Assembly.

Action to be taken:

1992 Fund Assembly

- (a) Note the information contained in this document;
- (b) Decide whether to approve the proposed guidance on the interpretation of the term 'residues'; and

* Due to a technical error, the English version of this document has been reissued to correct the paragraph numbering in Section 2.

- (c) Consider the options set out in section 2.5 for possible wording of a footnote to be incorporated into the IOPC Funds' publication 'Guidance for Member States – Consideration of the definition of 'ship'', under Section 3, paragraphs 3.1(2) and 3.1(4), and decide accordingly.

Supplementary Fund Assembly

- (a) Note the information contained in this document; and
- (b) Note the decisions of the 1992 Fund Assembly.

1 Background information

- 1.1 The *Bow Jubail* incident may have implications for the definition of a 'ship' under the 1992 Civil Liability Convention (1992 CLC) (see documents [IOPC/MAY23/3/6](#) and [IOPC/MAY23/3/6/1](#)). It is estimated that 5 000 product tankers are currently in operation, some of which are built to transport both persistent oil and other chemical substances as cargo.
- 1.2 At their May 2023 session, the 1992 Fund Executive Committee requested that the Director explore developing guidance on a standard procedure to determine when a ship ceased to be a 'ship' under the 1992 CLC. It was also requested that the Director consider an interpretation of the word 'residues' under Article I(1) of the 1992 CLC (document [IOPC/MAY23/9/1](#), paragraphs 3.6.25 and 3.6.33).
- 1.3 The Director held a number of meetings with industry representatives and, at the November 2024 sessions of the governing bodies, proposed that the guidance be issued in the form of a footnote in the IOPC Funds' existing publication 'Guidance for Member States – Consideration of the definition of 'ship'', under section 3, paragraph 3.1(2) (document [IOPC/NOV24/4/5](#), paragraph 2.2.2).
- 1.4 The proposed text of the footnote was as follows:
- 'Where a vessel undergoes cleaning and flushing of its cargo tanks, slop tanks, residual oil tank and all associated pumps and pipelines in accordance with Annex I, Chapter 4 of MARPOL 73/78; and any oil, tank washing and/or oily mixture have been discharged or transferred off the vessel, the Master's declaration in the vessel's Oil Record Book will be *prima facie* evidence that the vessel is free of residues.'
- 1.5 The footnote will only be relevant in those cases where a product tanker switches between carrying MARPOL Annex I and MARPOL Annex II cargoes.
- 1.6 During the November 2024 sessions, one delegation raised a concern regarding reference to the 'Master's declaration'. Regulation 36(5) of MARPOL Annex I states that each completed tank cleaning operation only needs to be recorded and signed off by the officer in charge of the operations. The delegation proposed that this should be replaced by 'the Master's and/or officer in charge's declaration' (document [IOPC/NOV24/11/1](#), paragraph 4.6.9).
- 1.7 Several delegations also proposed adding the footnote to paragraph 3.1(4), as well as paragraph 3.1(2) of the Guidance (document [IOPC/NOV24/11/1](#), paragraph 4.6.10 and 4.6.11).

1.8 The 1992 Fund Assembly endorsed the text of the footnote for future inclusion in the publication, but decided that the following should be considered further (document [IOPC/NOV24/11/1](#), paragraph 4.6.18):

- (i) the proposal to add the footnote to paragraph 3.1(4) of the Guidance;
- (ii) the interpretation of the word 'residues'; and
- (iii) the proposal to amend the text of the footnote.

2 Guidance on the standard procedure to determine when a ship ceases to be a 'ship' under the 1992 CLC

2.1 Since the November 2024 sessions of the governing bodies, the Director has held further meetings with industry representatives to discuss the issues listed in paragraph 1.7.

2.2 The industry representatives and the Director agree that it would be sensible for the footnote to apply to paragraph 3.1(4), as well as paragraph 3.1(2).

2.3 Interpretation of 'residues'

2.3.1 At the May 2023 sessions of the governing bodies, it was proposed that the Director consider an interpretation of the word 'residues' under Article I(1) of the 1992 CLC, to ensure that there was a common understanding among Member States of the meaning of 'no residues of such carriage of oil' in that Article.

2.3.2 The Director has investigated whether any definition or interpretation of 'residues' was considered by the 1984 Diplomatic Conference, but there does not appear to have been any definitive discussion on the word at the time of drafting the 1992 CLC.

2.3.3 Following the discussions with industry representatives and in light of the comments made by delegations at the November 2024 sessions, the Director proposes the following wording on the interpretation of 'residues':

'For the purposes of the 1992 CLC, 'residues' are the remnants of a persistent oil cargo of a quantity that represents a material pollution risk. Tank cleaning conducted in accordance with Annex I, Chapter 4 of MARPOL 73/78 will remove residues, and any corresponding material pollution risk.'

2.3.4 The Director would also like to propose that this wording is added to the start of the footnote that will be included in the Guidance.

2.4 The text of the footnote

2.4.1 Since the November 2024 sessions of the governing bodies, the Director has also discussed with industry representatives the suggestion that the reference to the 'Master's declaration' should be replaced by 'the Master's and/or officer in charge's declaration'. This change would reflect Regulation 36(5) of MARPOL Annex I which states that each completed tank cleaning operation only needs to be recorded and signed off by the officer in charge of the operations.

2.4.2 The Master's declaration referred to in the footnote would be made in section 'O' of Part II of the Oil Record Book (ORB) where additional operational procedures and general remarks can be made on a non-mandatory basis, in addition to the mandatory entries in the ORB required under MARPOL. While the officer in charge signs and dates each completed operation in the ORB and the Master is required to countersign each completed page or group of electronic entries, it is envisaged that the Master makes the declaration in 'O'. As such the Director considers that including 'and/or officer in charge' may introduce some ambiguity over who is ultimately responsible for the declaration.

2.4.3 However, since the November 2024 sessions of the governing bodies the Oil Companies International Marine Forum (OCIMF) has expressed the following concerns with regards to the reference to the 'Master's declaration':

- The 'Master's declaration' referred to in the draft footnote does not make any reference to being made in section 'O' of Part II of the Oil Record Book.
- The footnote should reflect the current requirements under MARPOL and not effectively add to those requirements, without very carefully considering the consequences.
- Including a requirement that is not mandatory under MARPOL within the footnote without further explanation could make the 'Master's declaration' obligatory when recording and signing for operations in the Oil Record Book.
- Courts in Member States should not require additional steps to persuade them to accept the established procedure for recording and signing for operations within the Oil Record Book.

2.4.4 The International Group of P&I Associations (International Group) and the International Chamber of Shipping (ICS) continue to support the reference to the 'Master's declaration' for the following reasons:

- States were broadly supportive of the wording of the footnote at the November 2024 sessions.
- Annex I, Chapter 4, Appendix III, Part II, Item O of MARPOL 73/78 allows for additional procedures and general remarks. The procedure described in the footnote as presented to the November 2024 sessions proposes utilising Item O of the ORB to provide additional evidence of completion of the mandatory MARPOL requirements by means of a Master's declaration to that effect entered in O. It is intended to be a purely evidential step to support the mandatory entries already made in the ORB in accordance with the requirements under MARPOL. It is not a mandatory requirement but if the guidance in the footnote is followed this additional step would assist in meeting the evidentiary burden of demonstrating the ship is free of residues.
- The organisations' respective members did not consider the additional entry in 'O' by the Master a significant burden.

2.5 Proposed footnote wording

2.5.1 As a consequence of the differing views that emerged from discussions with industry representatives, the Director considers that it would be most equitable to allow Member States the opportunity to review the proposed versions of the wording for the footnote. In each option the proposed text on the interpretation of 'residues' is included in italics so that Member States can consider the complete wording of the footnote.

- 2.5.2 The wording presented to the November 2024 session including the reference to the ‘Master’s declaration’ and which is supported by the International Group and ICS is as follows:

*‘For the purposes of the 1992 CLC, ‘residues’ are the remnants of a persistent oil cargo of a quantity that represents a material pollution risk. Tank cleaning conducted in accordance with Annex I, Chapter 4 of MARPOL 73/78 will remove residues, and any corresponding material pollution risk. Where a vessel undergoes cleaning and flushing of its cargo tanks, slop tanks, residual oil tanks and all associated pumps and pipelines in accordance with Annex I, Chapter 4 of MARPOL 73/78; and any oil, tank washing and/or oily mixture have been discharged or transferred off the vessel, **the Master’s declaration in the vessel’s Oil Record Book** will be *prima facie* evidence that the vessel is free of residues.’*

- 2.5.3 The wording proposed by OCIMF, which excludes the reference to the ‘Master’s declaration’ is as follows:

*‘For the purposes of the 1992 CLC, ‘residues’ are the remnants of a persistent oil cargo of a quantity that represents a material pollution risk. Tank cleaning conducted in accordance with Annex I, Chapter 4 of MARPOL 73/78 will remove residues, and any corresponding material pollution risk. Where a vessel undergoes cleaning and flushing of its cargo tanks, slop tanks, residual oil tanks and all associated pumps and pipelines in accordance with Annex I, Chapter 4 of MARPOL 73/78; and any oil, tank washing and/or oily mixture have been discharged or transferred off the vessel, **and this has been correctly recorded and signed for in the Oil Record Book**, this will be *prima facie* evidence that the vessel is free of residues.’*

- 2.5.4 A compromise wording, which reflects the mandatory MARPOL requirements is as follows:

*‘For the purposes of the 1992 CLC, ‘residues’ are the remnants of a persistent oil cargo of a quantity that represents a material pollution risk. Tank cleaning conducted in accordance with Annex I, Chapter 4 of MARPOL 73/78 will remove residues, and any corresponding material pollution risk. Where a vessel undergoes cleaning and flushing of its cargo tanks, slop tanks, residual oil tanks and all associated pumps and pipelines in accordance with Annex I, Chapter 4 of MARPOL 73/78; and any oil, tank washing and/or oily mixture have been discharged or transferred off the vessel, **the completed Oil Record Book countersigned by the Master**, will be *prima facie* evidence that the vessel is free of residues.’*

3 Director’s considerations

- 3.1 The Director is grateful to the industry representatives involved for their collaboration in developing this footnote.
- 3.2 The Director acknowledges that the wording proposed in the November 2024 sessions had received widespread support from Member States.
- 3.3 The Director is of the view that the reference to the ‘Master’s declaration’ in the footnote is a suggestion and does not create a compulsory requirement under MARPOL.
- 3.4 The Director believes that a court should accept a completed Oil Record Book as evidence that a ship is free from residues. Nevertheless, the purpose of including the reference to the ‘Master’s declaration’ in the footnote is to clarify that an Oil Record Book with the Master’s declaration should serve as *prima facie* evidence that a vessel is free from residues. During court proceedings, this would shift the burden of proof to the party claiming that the ship is not free from residues and that therefore the 1992 CLC is applicable.

3.5 The Director anticipates that an Oil Record Book with the Master's declaration would be more compelling when persuading a court that a vessel does not meet the criteria of a 'ship' under the 1992 CLC and should therefore be referenced in the footnote.

4 Action to be taken

4.1 1992 Fund Assembly

The 1992 Fund Assembly is invited to:

- (a) take note of the information contained in this document;
- (b) decide whether to approve the proposed guidance on the interpretation of the term 'residues';
and
- (c) consider the options set out in section 2.5 for possible wording of a footnote to be incorporated into the IOPC Funds' publication 'Guidance for Member States – Consideration of the definition of 'ship'', under Section 3, paragraphs 3.1(2) and 3.1(4), and decide accordingly.

4.2 Supplementary Fund Assembly

The Supplementary Fund Assembly is invited to:

- (a) take note of the information contained in this document; and
 - (b) take note of the decisions of the 1992 Fund Assembly.
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