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**INTERIM GUIDELINES TO ASSIST FLAG STATES AND OTHER SUBSTANTIALLY INTERESTED STATES TO ESTABLISH AND MAINTAIN AN EFFECTIVE FRAMEWORK FOR CONSULTATION AND CO-OPERATION IN MARINE CASUALTY INVESTIGATIONS**

1 The Maritime Safety Committee (MSC) at its seventy-sixth session (2 to 13 December 2002), and the Marine Environment Protection Committee, at its forty-eighth session (7 to 11 October 2002), recalling the Code for the Investigation of Marine Casualties and Incidents (resolution A.849(20), as amended by resolution A.884(21)), recognized that the establishment of a framework for consultation and co-operation between flag States and other substantially interested States would enhance co-operation and a common approach to the investigation of such casualties and incidents. The Committees also recognized that arrangements for consultation and co-operation, as highlighted above, should, taking into account the need for urgent action and the possible time constraints involved, be concluded between the States concerned at an early stage so that they are in place before a casualty occurs.

2 Accordingly, the Committees approved the Interim Guidelines to assist flag States and other substantially interested States to establish and maintain an effective framework for consultation and co-operation in marine casualty investigations, set out in the annex, based upon the recommendations made by the Sub-Committee on Flag State Implementation at its tenth session (8 to 12 April 2002). The Committees decided that the aforementioned Interim Guidelines should be issued as soon as possible pending further consideration to incorporate them into the Code for the Investigation of Marine Casualties and Incidents.

3 Member Governments are invited to:

- .1 take the annexed Interim Guidelines into consideration when establishing and maintaining an adequate and effective national system of marine casualty investigations;
- .2 establish an international framework of consultation and co-operation, in particular by concluding bilateral or multilateral agreements with other substantially interested States aiming at facilitating the latter's participation in marine casualty investigations;
- .3 bring the Interim Guidelines to the attention of the relevant authorities responsible for the conduct of marine casualty investigations and other parties concerned; and
- .4 submit to the Sub-Committee on Flag State Implementation information on experience gained in the implementation of the Interim Guidelines which may be relevant for the future upgrading of the present Interim Guidelines.

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## ANNEX

### **INTERIM GUIDELINES TO ASSIST FLAG STATES AND OTHER SUBSTANTIALLY INTERESTED STATES TO ESTABLISH AND MAINTAIN AN EFFECTIVE FRAMEWORK FOR CONSULTATION AND CO-OPERATION IN MARINE CASUALTY INVESTIGATIONS**

#### **1 General**

1.1 These Guidelines are intended to provide flag States and other substantially interested States in a marine casualty investigation with means to establish and maintain measures for the timely and effective co-operation as set out in the Code for the Investigation of Marine Casualties and Incidents and, in particular, in its sections 5 to 9.

1.2 Under the provisions of the United Nations Convention on the Law of the Sea (UNCLOS) and of relevant IMO conventions, flag States and other substantially interested States are responsible for co-operating in the conduct of certain investigations of such casualties and for consulting each other at the earliest opportunity, so as to ensure that the objective of the investigation mentioned in the Code can be accomplished to the maximum extent possible.

1.3 Some Governments have encountered difficulties in fully co-operating and ensuring that within their field of jurisdiction prompt and timely investigations are conducted. Reasons for these difficulties include restrictions of national legislation, the lack of finances, personnel and technical expertise and the lack of necessary internal organizational arrangements, including a clear designation of responsibilities to conclude mutual agreements concerning the conduct of the investigation with other States.

1.4 As specified in section 6 of the Code for the Investigation of Marine Casualties and Incidents, Governments having such difficulties should take into account that flag States should be considered fulfilling their obligations under UNCLOS article 94, section 7 by fully participating in an investigation conducted by another substantially interested State or by obtaining the assistance of any other State to conduct the investigation on their behalf.

1.5 Flag States and other substantially interested States in a marine casualty investigation, in order to establish timely co-operation conforming to these Guidelines, might seek technical assistance if having difficulties in meeting their international responsibilities through IMO in accordance with resolution A.847(20).

#### **2 Preparedness for consultation and co-operation**

2.1 When a marine casualty occurs, the Government of a State which is responsible for co-operation and consultation concerning the investigation of that casualty should comply with the provisions of the Code for the Investigation of Marine Casualties and Incidents.

2.2 To this end a Government should have in place in particular an adequate and effective system and an appropriate national legislation with the ability to:

- .1 identify, in a given case, the substantial interest of other States in the casualty in accordance with the Code and to conclude mutual agreements with these States to co-operate in investigations;

- .2 give marine casualty investigators representing other States within its national legal framework of data protection ready access to all relevant information and evidence such as voyage data recorders and survey records held by the Administration, shipowners, insurers and classification societies;
- .3 give marine casualty investigators representing other States access to relevant personnel such as surveyors, coastguard officers, vessel traffic operators, pilots, ship owners, ship operators, ship managers, officers and crew and other parties, as appropriate;
- .4 start and perform the investigation as soon as practicable to preserve the evidence and avoid any unreasonable delay of the ship; and
- .5 prepare and submit investigation reports according to the Code and the MSC/MEPC circular on Reports on marine casualties and incidents (MSC/Circ.953-MEPC/Circ.372).

### **3 Responsibilities of flag States and other substantially interested States**

3.1 Flag States should take all necessary measures to conform to generally accepted regulations and procedures on the investigation of marine casualties affecting their ships. For this purpose they should ensure that sections 5.3.1 and 7 of the Annex to resolution A.847(20) on Guidelines to assist flag States in the implementation of IMO instruments are complied with.

3.2 Substantially interested States should ensure that they fully co-operate in the conduct of any marine casualty investigation.

3.3 Every State should authorize its body or bodies competent for the investigation of marine casualties to consult and co-operate with the competent bodies of other substantially interested States as soon as possible after a marine casualty.

3.4 Subsequently, every State should authorize its body or bodies competent for the investigation of marine casualties to conclude mutual agreements with substantially interested States on the co-operation in conducting the investigation.

3.5 Every State should ensure that these agreements establish a framework for the timely and effective co-operation as set out in the Code for the Investigation of Marine Casualties and Incidents.

3.6 Every State should ensure that up-to-date information on its body or bodies responsible for the investigation of marine casualties is duly reported to IMO for incorporation in the relevant circular on contact points of responsible national authorities\*. Such information should include postal and e-mail addresses and telephone and telefax numbers.

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\* Refer to the National contact points for safety and pollution prevention (MSC/Circ.1019 - MEPC.6/Circ.7).