

COUNCIL
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Agenda item 6

C 108/6/1
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VOLUNTARY IMO MEMBER STATE AUDIT SCHEME

Report of the fifth session of the Joint Working Group on the Member State Audit Scheme

Note by the Secretary-General

SUMMARY

<i>Executive summary:</i>	This document reports on the outcome of the fifth session of the Joint Working Group on the Member State Audit Scheme (JWGMSA 5), held from 2 to 4 April 2012
<i>Strategic direction:</i>	2
<i>High-level action:</i>	2.0.2
<i>Planned output:</i>	2.0.2.1
<i>Action to be taken:</i>	Paragraph 8.1
<i>Related documents:</i>	C 106/8/1, C 106/D; resolutions A.974(24) and A.1018(26); and JWGMSA 5/WP.1

GENERAL

Introduction

1.1 The Joint Working Group on the Voluntary IMO Member State Audit Scheme (hereinafter referred to as "the Group") met from 2 to 4 April 2012, under the chairmanship of Mr. H. Hindborg (Denmark).

2 The Group was attended by delegations from the following Member States:

ARGENTINA	GERMANY
AUSTRALIA	GREECE
BAHAMAS	INDONESIA
BELGIUM	IRAN (ISLAMIC REPUBLIC OF)
BELIZE	JAMAICA
CANADA	JAPAN
CHINA	LIBERIA
DENMARK	MALAYSIA
FRANCE	MARSHALL ISLANDS
GEORGIA	NETHERLANDS

NIGERIA
NORWAY
PANAMA
POLAND
REPUBLIC OF KOREA
RUSSIAN FEDERATION
SINGAPORE
SOUTH AFRICA

SPAIN
SRI LANKA
SWEDEN
SYRIAN ARAB REPUBLIC
TURKEY
UNITED KINGDOM
UNITED STATES

and an observer from:

WORLD MARITIME UNIVERSITY (WMU).

1.3 In accordance with paragraph 4.11 of the Guidelines on the organization and method of work of the Council (Circular letter No.3085), regarding, inter alia, the reports of the Council's working groups, this document is a summary of decisions on the outcome of the work of the Group.

ADOPTION OF THE AGENDA (agenda item 1)

1.4 The Group considered and approved its agenda for the meeting (document JWGMSA 5/1), which was structured in line with the terms of reference as approved by the Council (document C 106/8/1).

1.5 The Group had for its consideration six additional documents as follows: JWGMSA 5/3 (Secretariat) on the review of the Framework for the Scheme in the context of confidentiality and audit reports; JWGMSA 5/4 (Secretariat) on the revision to the pre-audit questionnaire; JWGMSA 5/5 (Secretariat) on the review of the Auditor's Manual; JWGMSA 5/6 (Japan) containing a proposal regarding the need for further consideration towards a rational and cost-effective audit; JWGMSA 5/7 (Secretariat) on number and regional distribution of auditors; and JWGMSA 5/8 (Secretariat) on the outstanding discussion items for the review of the Framework and Procedures for the Scheme.

DECISIONS OF IMO BODIES (agenda item 2)

2 The Group noted the relevant outcome of C 106 and A 27 (document JWGMSA 5/2), as well as the relevant outcome of FSI 20 (agenda items 12 and 13).

REVIEW OF THE FRAMEWORK FOR THE SCHEME (agenda item 3)

Confidentiality and reporting format

3.1 The Group considered the issue of confidentiality in the context of reporting under a mandatory scheme, which had been referred to it for consideration by C 106, together with document C 106/8/2 (Bahamas). In its deliberations on the issue of confidentiality, the Group noted the information on a possible framework for reporting under a mandatory scheme provided in document JWGMSA 5/3 (Secretariat), which included an analysis of the ICAO USOAP reporting model as proposed by the Bahamas. During an extensive discussion on the matter, most delegations were in favour of full transparency with regard to the disclosure of reports from audits. However, there were also concerns expressed by a number of delegations on full disclosure of audit reports. In this regard, they were in favour of retaining a certain degree of confidentiality for Member States.

3.2 In its review of possible reports under a mandatory scheme, the Group agreed to the proposed framework for reporting under a mandatory scheme, as contained in document JWGMSA 5/3 (Secretariat), which is presented in the table below.

IMO – mandatory scheme	Disclosure	Remarks
Final report	Subject to Member State's authorization	1) Includes the summary of corrective actions and root causes, after they have been submitted by the Member State audited 2) Restricted distribution could be considered
Executive summary report	[Automatic release][Subject to Member State's authorization prior to the audit]	1) To be published at the stage when the final report from the audit has been agreed 2) Restricted distribution could be considered
States' comments on the progress of implementation of corrective action plan	[Automatic release][Subject to Member State's authorization prior to the audit]	1) Subsequent submissions, as the implementation of corrective action plan progresses 2) Restricted distribution could be considered
Consolidated audit summary report (CASR)	IMO meeting document	1) Assembly or Council document (anonymous)

3.3 With regard to the status of disclosure of particular documents, the Group agreed that the executive summary report, as amended, which is set out in the annex to this document, and a State's comments on the progress of implementation of its corrective action plan should be disclosed.

3.4 The majority of the Group were of the opinion that the disclosure of the executive summary report and a State's comments should be automatic and made public. Other delegations were of the view that the disclosure of the foregoing should be subject to the audited Member State's authorization. Furthermore, to whom the report should be disclosed, i.e. public or Member States only, is an issue to be considered.

3.5 In this regard, the MSC and MEPC are invited to consider the above outcome, along with the draft executive summary report, in their consideration of the issue of confidentiality in the context of the mandatory instruments under their purview, as requested by C 106, and advise the Council accordingly.

Scope of the audit under STCW 1978

3.6 With regards to the scope of the audit related to STCW 1978, the Group noted that MSC 88 had instructed the STW Sub-Committee to provide its recommendation on the need to include requirements in the Convention for its provisions to be audited under a mandatory audit scheme and the use of the IMO Instruments Implementation Code (III Code) as the mandatory audit standard. The Group also noted that STW 43 is expected to discuss those issues and the outcome therefrom will be reported to the MSC, prior to the next meeting of the Group.

Amendments to the Framework for the Scheme

3.7 Based on the outcome of the Group's deliberations on the issue of confidentiality and the proposed reporting format for the mandatory scheme, paragraphs 6.3.2, 6.3.3, 6.3.4 and 8.3.6 of the Framework were amended accordingly.

3.8 Paragraph 5.1.1 of the Framework, which contains the text related to the audit standard, was amended to include only the reference to audit standard.

REVIEW OF THE PROCEDURES FOR THE SCHEME (agenda item 4)***Principles to be followed by the Secretary-General in developing the audit schedule***

4.1 The Group reviewed the principles to be followed by the Secretary-General in determining the audit schedule. Based on the relevant outcome of FSI 20, the Group included an audit cycle of seven years and audit follow-up in the Procedures for the Scheme (see paragraph 4.6) and agreed to remove this principle from the set of principles, previously proposed in document JWGMSA 4/WP.1, paragraph 2.9.3. Consequently, the set of principles now includes the following:

- .1 The audit schedule should be determined from a random drawing of the names of Member States, who have not completed an audit under the voluntary Scheme. This should be followed by those Member States that have completed a voluntary audit in the order in which they were audited.
- .2 The Secretary-General will notify each Member State of the projected date of its audit as soon as possible but not less than 18 months in advance.
- .3 Any request to postpone a scheduled audit by a Member State, due to extraordinary circumstances, should be submitted in writing at least six months prior to the audit due date and should be considered and determined by the Council.

4.2 The Group recommended that the Council approves these principles, in order for the audit schedule to be developed by the end of 2013 or mid-2014, taking into account the possible entry into force dates of proposed amendments to the mandatory instruments to make the III Code and auditing mandatory as developed by FSI 20.

Availability of resources

4.3 In a detailed discussion on the issue of resources, both for auditors and the Secretariat, it was stressed that the assurance of consistency of audits under the mandatory scheme is of the utmost importance for its effectiveness. In order to address the issue of the availability of qualified auditors and possible mechanisms to enhance the consistency of audits under a mandatory scheme, the Group identified a number of options and recommended that the Council request the Secretariat to undertake the following:

- .1 develop and implement a training course for audit team leaders for a mandatory scheme;
- .2 continue implementing the current model course for the training of VIMSAS auditors, with any necessary amendments for a mandatory scheme;

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- .3 plan for the provision of additional assistance to audit teams in drafting and finalization of audit reports, which should include keeping the notes and records from audits, in accordance with the present practice and the Procedures, and developing an electronic tool to support the preparation and review of audit reports, including the corrective action plans;
 - .4 consider using a more flexible risk-based approach in determining the number of auditors participating in audit teams, which should take into account factors such as the size of the maritime administration, number of entities to be audited and geographical size of the Member State;
 - .5 continue using audits as opportunities to train new auditors and audit team leaders, as there are only up to 20 audits left, at this stage, to be carried out under the voluntary Scheme, and these audits should be used, as much as possible, for training purposes;
 - .6 continue holding auditors' meetings, which could be arranged regionally, in order to make them cost-effective; and
 - .7 prepare a circular letter to Member States, describing the issue of the lack of sufficient qualified auditors for the mandatory scheme, together with the procedures for nominating auditors and inviting them to nominate auditors.

4.4 With regard to the Secretariat's resources, the Group noted information on the recent restructuring of the Member State Audit Service, which could enable the Secretariat to use some additional, however very limited, internal resources. Recognizing that the issue of the resources for the Secretariat will depend on the option to be used for audits under the mandatory scheme, the Group identified the following options:

- .1 to continue the same practice of putting together audit teams, comprising auditors from Member States only;
- .2 to recruit full time auditors and audit team leaders, including the possibility of secondment from Member States, as staff members of the Secretariat; and
- .3 a combination of options under 1 and 2, to put together audit teams, with two qualified auditors from Member States and one qualified auditor from the Secretariat, depending on the size of the team.

4.5 Option 1 was considered to be lacking consistency in the implementation of audits and options 2 and 3 would have budgetary consequences for the Organization. The Group, however, did not have available all necessary information at this session to fully consider the pros and cons of the options identified.

Frequency of audits

4.6 Taking into account the relevant outcome of FSI 20, and in particular the draft amendments to the mandatory instruments, which no longer include an audit cycle, the Group considered the frequency of audits and included provisions on the audit cycle of seven years in the Procedures for the Scheme.

4.7 The Group, whilst recognizing that there could be various ways of dealing with an audit follow-up, and noting in particular the proposal contained in document JWGMSA 5/6 (Japan) to improve the cost-effectiveness of the audit, especially on the issues related to the order, frequency and resources for the audit, accepted that audit follow-up should be further discussed, including document-based audits and subsequent audits in a future second phase.

Technical assistance under a mandatory scheme

4.8 Taking into account the proposals contained in documents JWGMSA 5/6 (Japan) and C 106/8/3 (Republic of Korea), the Group considered the issue of technical assistance and possible mechanisms for a sound process of technical assistance to those States that may need it before the conduct of audit under a mandatory scheme. The Group agreed that the audit process, as set out in appendix 5 to the Procedures, should not be amended, and recommended that the proposed working group for the review of CASRs at FSI 21 and the Technical Co-operation Committee should consider technical assistance programmes in the context of Member States' capacity-building for participation in a mandatory scheme.

Confidentiality and reporting format

4.9 Based on the outcome of the Group's deliberations on the issue of confidentiality and the proposed reporting format for the mandatory scheme (paragraphs 3.1 to 3.5), the following areas of the Procedures for the Scheme were considered and amended accordingly: paragraph 7.2.2 (audit interim report), sections 7.3 (audit final report), 7.4 (audit summary report) and 10 (records), appendix 1 (Model Memorandum of Cooperation), appendix 3 (Sequence of activities) and appendix 5 (Audit process).

4.10 The Group further amended section 7.4 of the Procedure to define the procedure and contents of the executive summary report and developed new sections 7.6 and 7.7, dealing with the State's comments on the progress of implementation of corrective action plan, and feedback from the Member State, respectively. A new appendix 5 has been attached to the Procedures, setting out the model for the executive summary report, and the previous appendix 5 (Audit process) has been renumbered as appendix 6. The Group agreed that the executive summary report should include a summary of findings relating to the Member State's adherence to the audit standard and implementation of the applicable IMO instruments, while the inclusion of observations, corrective action plan and root causes should be subject to the Member State's approval.

Definitions

4.11 The following definitions were dealt with:

- .1 Audit scope – noting that the scope of the audit is sufficiently defined in the Framework for the Scheme and should be consistent with the amendments to the relevant IMO instruments to which a State is a party and the audit standard, the Group agreed that there is no need to include the definition of the audit scope in the Procedures.
- .2 finding (paragraph 3.8) – taking into account that all the requirements of the III Code, except recommendations clearly indicated therein, will be made mandatory, the Group agreed that that the term "finding" be used for non-compliance with a mandatory requirement of the applicable IMO instruments and the audit standard and redrafted the definition accordingly. An observation will continue to be used in relation to a non-mandatory provision of the audit standard. Based on the outcome of

the Group's deliberations, the following areas of the Procedures were amended: paragraphs 3.5, 3.7, 3.9, 3.10, 3.12 and 7.2.2.5.1, appendix 4 (Model appendix forms for audit reports) and appendix 6 (Audit process).

- .3 Audit follow-up (paragraph 3.6) – the definition has been developed and paragraphs 9.1 to 9.3 of the Procedures have been amended, pending further consideration of the new proposed text, and appendix 6 (Audit process).

Corrective action plan

4.12 Paragraph 8.3 has been amended, taking into account that no recommendation, based on the audit findings and observations, will be issued by an audit team.

Other

4.13 Paragraphs 4.4.1.3, 6.5.1 and 8.1 of the Procedures, as well as appendix 1 (Model Memorandum of Cooperation), were amended to include only the reference to the audit standard.

4.14 The Group requested the Secretariat to develop, for its next session, a flow chart detailing the various steps of the audit process and the interrelationship of activities.

Appendix 1 – Model Memorandum of Cooperation

4.15 Based on the deliberations as outlined above, the Group inserted relevant amendments to the Model Memorandum of Co-operation (MOC). The Group further requested the Secretariat to look into those situations where national law may require that a Member State should also sign a copy of the MOC in the official language of the State. The Group briefly discussed whether a policy should be developed on language(s) to be used for the conduct of audits under a mandatory scheme, but did not pursue the matter further at this stage.

Appendix 2 – Pre-audit questionnaire

4.16 The Group considered the draft revised pre-audit questionnaire (PAQ), as annexed to document JWGMSA 5/4 and amended it as set out in appendix 2 to the Procedures.

4.17 The Group further requested the Secretariat to insert in the draft revised PAQ a section on the number, location and type of ports.

Appendix 3 – Sequence of activities

4.18 Based on the deliberations as outlined above, the Group requested the Secretariat to update the content of appendix 3.

Appendix 4 – Model appendix forms for audit reports

4.19 The contents of Forms A and B were discussed and minor changes were made, as set out in appendix 4 to the Procedures.

REVISION OF THE AUDITOR'S MANUAL (agenda item 5)

5.1 The Group considered the draft revised Auditor's Manual as annexed to document JWGMSA 5/5 and, whilst generally accepting the content of the manual, identified a number of areas to be considered in detail and invited submissions to its next session on the revision of the manual.

UPDATING THE WORK PLAN FOR THE COMPLETION OF THE FOREGOING TASKS (agenda item 6)

6.1 The Group recognized that further progress should be made on the text contained in the Framework and Procedures for the Scheme and the Auditor's Manual, pending relevant outcome of other IMO bodies (MSC, MEPC, Council and STW), in order to:

- .1 finalize the Framework and Procedures for the Scheme;
- .2 further review the model appendix forms for audit reports (appendix 4 to the Procedures for the Scheme);
- .3 finalize the Auditor's Manual; and
- .4 prepare related draft Assembly resolutions.

6.2 In this regard, the Group recommended to the Council that its next session should be held immediately after FSI 21 in 2013 for the duration of three days under its existing terms of reference.

6.3 Draft revised Framework and Procedures for the Scheme is attached in the annex to document JWGMSA 5/WP.1 for further consideration by the Group.

ANY OTHER BUSINESS (agenda item 7)

7.1 The Group requested the Secretariat to update, as necessary, references and terms used in the draft revised Framework and Procedures for the Scheme, as well as in the draft revised Auditor's Manual, to be consistent with those used in the draft III Code and draft amendments to relevant IMO instruments, after their approval by MEPC 64 and MSC 91.

ACTION REQUESTED OF THE COUNCIL

8.1 The Council is invited to note the outcome of the fifth session of the Joint Working Group and, in particular, to:

- .1 decide no later than C 109 on the issue of confidentiality in the context of a mandatory scheme, taking into account the outcome of the MSC's and the MEPC's consideration of the issue of confidentiality in the context of those instruments under their purview, in light of the proposed reporting framework under a mandatory scheme, along with the draft executive summary report (paragraphs 3.1 to 3.5);
- .2 approve the set of principles to be followed by the Secretary-General when considering the audit schedule, which should be developed by mid-2013 (paragraphs 4.1 and 4.2);

- .3 consider the issue of the availability of auditors and request the Secretariat, as recommended (paragraph 4.3);
- .4 approve the holding of the Group's next meeting in 2013 under the existing terms of reference (paragraph 6.2); and
- .5 approve the report in general.

ANNEX
EXECUTIVE SUMMARY REPORT

Name of State	ZENITH
Principal Government entity	Maritime Authority
Other entities involved	Ministry of Environment Hydrographic Office Port authorities Marine police
Period of audit	11 – 20 February 2012
Scope	<ol style="list-style-type: none"> 1. the International Convention for the Safety of Life at Sea, 1974, as amended (SOLAS 1974); 2. the Protocol of 1978 relating to the International Convention for the Safety of Life at Sea, 1974, as amended (SOLAS PROT 1978); 3. the Protocol of 1988 relating to the International Convention for the Safety of Life at Sea, 1974, as amended (SOLAS PROT 1988); 4. the International Convention for the Prevention of Pollution from Ships, 1973, as modified by the Protocol of 1978 relating thereto, as amended (MARPOL 73/78); 5. the Protocol of 1997 to amend the International Convention for the Prevention of Pollution from Ships, as modified by the Protocol of 1978 relating thereto (MARPOL PROT 1997); 6. the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers, 1978, as amended (STCW 1978); 7. the International Convention on Load Lines, 1966 (LL 66); 8. the Protocol of 1988 relating to the International Convention on Load Lines, 1966 (LL PROT 1988); 9. the International Convention on Tonnage Measurement of Ships, 1969 (Tonnage 1969); and 10. the Convention on the International Regulations for Preventing Collisions at Sea, 1972, as amended (COLREG 1972).

Areas	Flag State	X	Coastal State	X	Port State	X
Narrative	<p>During the audit of the maritime administration of Zenith, there were two findings [and one observation] revealed under general responsibilities and obligations of the State, and one finding [and one observation] related to flag State activities, two findings related to coastal State activities and no finding related to port State activities.</p> <p>There were a number of areas of good practices revealed, as well as areas where improvements were possible.</p> <p>The breakdown of findings [and observations] is as shown below.</p>					
General	<p>Finding 1</p> <p>The national legislation was not updated to give full effect to some amendments to mandatory IMO instruments to which the State is a Party (SOLAS 1974, article I; LL 66, article I; and COLREG 1972, article I).</p> <p>Finding 2</p> <p>The State has not communicated to IMO its national legislation enacting the requirements of some conventions (SOLAS 1974, article III; and MARPOL 73/78, article 11).</p> <p>[Observation 1]</p>					
Flag State activities	<p>Finding 3</p> <p>There was evidence that continuous updating of the knowledge of flag State surveyors, appropriate to their specific qualifications, is not followed (Code, part 2, paragraph 35).</p> <p>[Observation 2]</p>					
Coastal State activities	<p>Finding 4</p> <p>It was found that cruise passenger ships visiting the State's ports have no onboard plans for cooperation with the SAR services in emergencies (SOLAS 1974, regulation V/7.3).</p> <p>Finding 5</p> <p>CG pollution investigators are not receiving adequate training to carry out pollution investigation interviews nor do procedures exist to assist them with same (Code, part 2, paragraph 38).</p>					
Port State activities	None					
<p><i>Notation: The findings identified above were obtained from sampling and not all obligations and requirements contained in the instruments were tested during the audit.</i></p>						