

IMPLEMENTATION AND ENFORCEMENT OF IMO INSTRUMENTS AND IMO MEMBER STATE AUDIT SCHEME

Flag, coastal and port States
duties and responsibilities

Verification of compliance

Effectiveness of maritime conventions

Ultimate effectiveness of any convention depends upon States successfully executing the following:

- Becoming a Party to the convention
- Enacting related national legislation
- Implementing
- Enforcing
- Reporting as required

General Principles in legislating

- Reviewing existing legislation
- Actively follow amendments to IMO instruments
- Active participation at IMO to understand, track and monitor issues
- Adequate powers to enforce
- Roles & responsibilities clearly defined – no conflicts
- Involvement of interested parties in legislating process, where appropriate
- Ensure legislation and other preparatory work are completed before a convention comes into force

Member State's legislation

- Different structure of national legislation in Member States
- Often there is a two-tier system, for flexibility and efficiency:
 - Primary legislation - statutes, acts or codes
 - Subsidiary legislation - regulations, orders, decrees and other regulatory issuances

Member State's legislation (cont.)

- Statutes, Acts and Codes - usually passed by Parliament or Legislature
- Subsidiary legislation – usually passed by Ministers or Government agencies, under authority of the "parent Act":
 - Subject to frequent amendments
 - Technical & detailed
 - May incorporate text of IMO resolutions, guidelines, interpretations, amendments to IMO instruments
 - Mandatory IMO codes and guidelines may be given effect by direct reference in subsidiary legislation

Member State's legislation (cont.)

Different methods of transposition of the provisions of treaties', mostly two general models:

- **Specific provisions** giving full effect to requirements of the mandatory IMO instruments in national legislation (*primary*)
- **Direct references** to treaties (as amended) incorporated in national legislation (*primary*)

Note: Penal provisions should be provided in both cases

Legislative Process

Possible sequence

STAGE 1: STUDY CONVENTION & ITS APPLICATIONS (? months)

1. Identify implications & obligations of being a Party
2. Determine manpower, resources & training needs of staff
3. Prepare recommendations
4. Seek Management's approval to start accession process

STAGE 2: ACCESSION & IMPLEMENTATION PLAN (? months)

1. Formation of a Working Group
2. Schedule of preparatory work
3. Identify type of legislation required & time needed to complete legislation
4. Obtain approval for accession & implementation plan

STAGE 3: CONSULTATION, if applicable (? months)

Consult affected industry parties & relevant Govt. agencies & seek their support

Legislative Process (cont.)

STAGE 4: APPROVAL (? months)

1. Prepare & submit to Minister or Cabinet a memo
2. Upon Minister's or Cabinet's approval, inform all relevant parties

STAGE 5: LEGISLATION (? months)

1. Prepare draft legislation and obtain necessary approvals
2. If a bill required (to enact or amend an Act), prepare it and obtain approval of competent Government entities or Cabinet to table a bill at Parliament
3. Ensure legislation ready for promulgation
4. Arrange Gazette notification for bringing legislation into force (if required)

Legislative Process (cont.)

STAGE 6: INSTRUMENT OF ACCESSION (? months)

1. Prepare instrument of accession
2. Deposit instrument of accession with SG of IMO
3. Mandatory reporting to IMO

STAGE 7: NOTIFICATION & SEMINARS (? months)

1. Issue circulars & press releases
2. Liaise with relevant parties to organize seminars/workshops
3. Conduct internal briefings or training for staff
4. Need to update training materials, syllabus etc. for seafarers?

Legislative Process (cont.)

- The same sequence applicable for legislating for each treaty (SOLAS 1974, MARPOL 73/78, LL 66, etc.)
- **Additional guidelines/instructions/procedures** may be necessary to assist in implementation and enforcement, especially:
 - Requirements left to the satisfaction of Administration
 - Instructions to surveyors
 - Procedures for surveys, inspections and issuance of certificates
 - Procedures/criteria for granting of exemptions/equivalents/dispensations
 - etc.

Legislation – State A (cont.)

- Detailed technical requirements can be provided in a number of regulations, decrees, orders – subsidiary legislation
- Penalties:
 - may be contained in a general law (not maritime)
 - should be of adequate severity to discourage violations (financial, imprisonment)



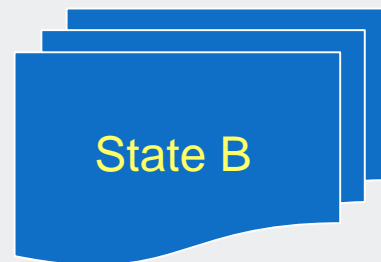
Legislation – State B

- Direct references to treaties included in primary legislation
- National legislation should still contain:
 - Responsibilities of State entities
 - Enforcement provisions
 - Any national interpretations
 - Delegation of authority (if applicable)
 - Penalties



Legislation

- Advantages?
- Drawbacks?



WHO ARE THE ACTORS IN ENSURING COMPLIANCE WITH INTERNATIONAL MARITIME STANDARDS?

- **IMO** has the responsibility to develop technical safety, security and pollution prevention standards related to maritime transport;
- **GOVERNMENTS** have the duty to **implement and enforce** these standards;
- **RECOGNIZED ORGANIZATIONS** have a duty to be impartial and exercise due diligence;
- **SHIPPING COMPANIES** are responsible for applying the same standards to individual ships; and
- **SHIPBOARD PERSONNEL** have the task of putting into operation the various safety and anti-pollution measures applicable to the ship.

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- As part of the ratification process, **Parties** to conventions **have accepted the obligation**, under applicable international law to fully meet their responsibilities and to discharge their obligations as prescribed in the instruments

GOVERNMENTS AND ENFORCEMENT

Flag States

- Have regulatory and enforcement responsibilities under various treaties obligations
 - Establish and maintain an adequate and effective system to exercise control over ships entitled to fly their flag
 - Adopt measures to ensure they comply with the relevant international rules and regulations
- A number of treaties provide latitude to flag States through phrases such as:
 - to the satisfaction of the Administration;
 - equivalency and exemption provisions; and
 - unrestrained powers to delegate statutory work.

IMO HAS NO ENFORCEMENT AND COMPLIANCE MONITORING POWERS

- The IMO Convention does not contain any provision that gives the Organization an enforcement and monitoring role.
- With the drive for greater transparency and accountability, it has often been said that IMO needs teeth to ensure compliance.
- How to achieve that, is emerging gradually.



EVOLUTION OF IMO AUDIT SCHEME

ASSEMBLY 24 – 2005

VOLUNTARY IMO MEMBER STATE AUDIT SCHEME (VIMSAS)

2005 – 2013

Resolution A.974(24) – Framework and Procedures

Resolution A.973(24) – Code for the implementation of mandatory IMO instruments

79 Member States and two Associate Members have volunteered

59 Member State, two Associate Members and five dependent territories audited

ASSEMBLY 26 – 2009

DEVELOPMENT OF THE MANDATORY AUDIT SCHEME

2010 - 2015

Resolution A.1018(26)

Revised Code - IMO Instrument Implementation (III) Code

Amendments to 8 instruments

Revised Framework and Procedures

Auditor's Manual – Circular letter No.3425

ASSEMBLY 28 – 2013

IMO MEMBER STATE AUDIT SCHEME

1 January 2016

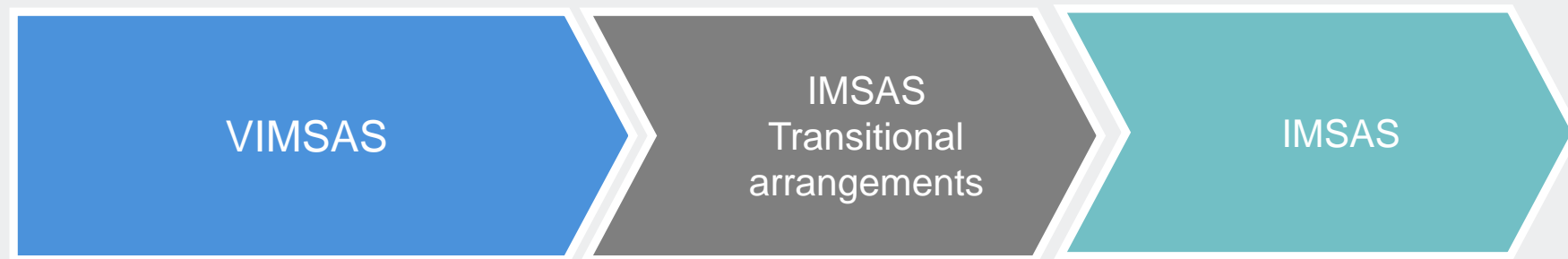
Resolution A.1067(28)
Framework and Procedures for the IMO Member State Audit Scheme

Resolution A.1068(28)
Transition from the Voluntary IMO Member State Audit Scheme to IMO Member State Audit Scheme

Resolution A.1070(28) IMO Instrument Implementation (III) Code

Resolutions A.1083 (28), A.1084 (28) and A.1085 (28)

Audit standard



2006 – 2013
Code on the
implementation of
IMO instruments

Framework and
Procedures - res.
A.974(24)

Resolution
A.1070(28) Dec 2013 – 2015
IMO Instruments
Implementation (III)
Code

Framework and
Procedures - res.
A.1067(28)

Resolution
A.1070(28) 2016 – ...
IMO Instruments
Implementation
(III) Code

Framework and
Procedures - res.
A.1067(28)

INSTITUTIONALIZATION OF THE AUDIT SCHEME

- Amendments to:

SOLAS 1974	resolution MSC.366(93)
MARPOL	resolution MEPC.246(66) – annexes I - V resolution MEPC.247(66) – annex VI
STCW 1978	resolution MSC.373(93) [resolution MSC.374(93) - STCW Code]
LL 66	resolution A.1083(28)
LL PROT 1988	resolution MSC.375(93)
Tonnage 1969	resolution A.1084(28)
COLREG 1972	resolution A.1085(28)

Majority of amendments entered into force in January 2016, making the auditing of Member States using the III Code mandatory.

Supporting reference document

- Resolution A.1105(29) - 2015 Non-exhaustive list of obligations under instruments relevant to the IMO Instruments Implementation Code (to be kept under review):

Annex 1:	OBLIGATIONS OF CONTRACTING GOVERNMENTS/PARTIES
Annex 2:	SPECIFIC FLAG STATE OBLIGATIONS
Annex 3:	SPECIFIC COASTAL STATE OBLIGATIONS
Annex 4:	SPECIFIC PORT STATE OBLIGATIONS
Annex 5:	INSTRUMENTS MADE MANDATORY UNDER IMO CONVENTIONS
Annex 6:	SUMMARY OF AMENDMENTS TO MANDATORY INSTRUMENTS REFLECTED IN THE NON-EXHAUSTIVE LIST OF OBLIGATIONS (ANNEXES 1 TO 4)
Annex 7:	AMENDMENTS TO IMO INSTRUMENTS EXPECTED TO BE ACCEPTED AND TO ENTER INTO FORCE BETWEEN 1 JANUARY 2016 AND 1 JULY 2016

MANDATORY IMO INSTRUMENTS

9 instruments included in the scope of the scheme:

- SOLAS 1974
- SOLAS PROTOCOL 1988
- MARPOL 73/78
- MARPOL PROTOCOL 1997
- STCW 1978
- LOAD LINES 1966 (LL66)
- LL 66 PROT 1988
- TONNAGE 1969
- COLREG 1972

Framework and procedures for the IMO Member State Audit Scheme

- Purpose of the Framework:
 - To describe the objectives, principles, scope, responsibilities and capacity-building aspect of the IMO Member State audit, which together constitute the strategy for the audit scheme.
- The Framework is supported by the Procedures and the IMO Instruments Implementation Code (IIC Code)

IMO Instruments Implementation Code

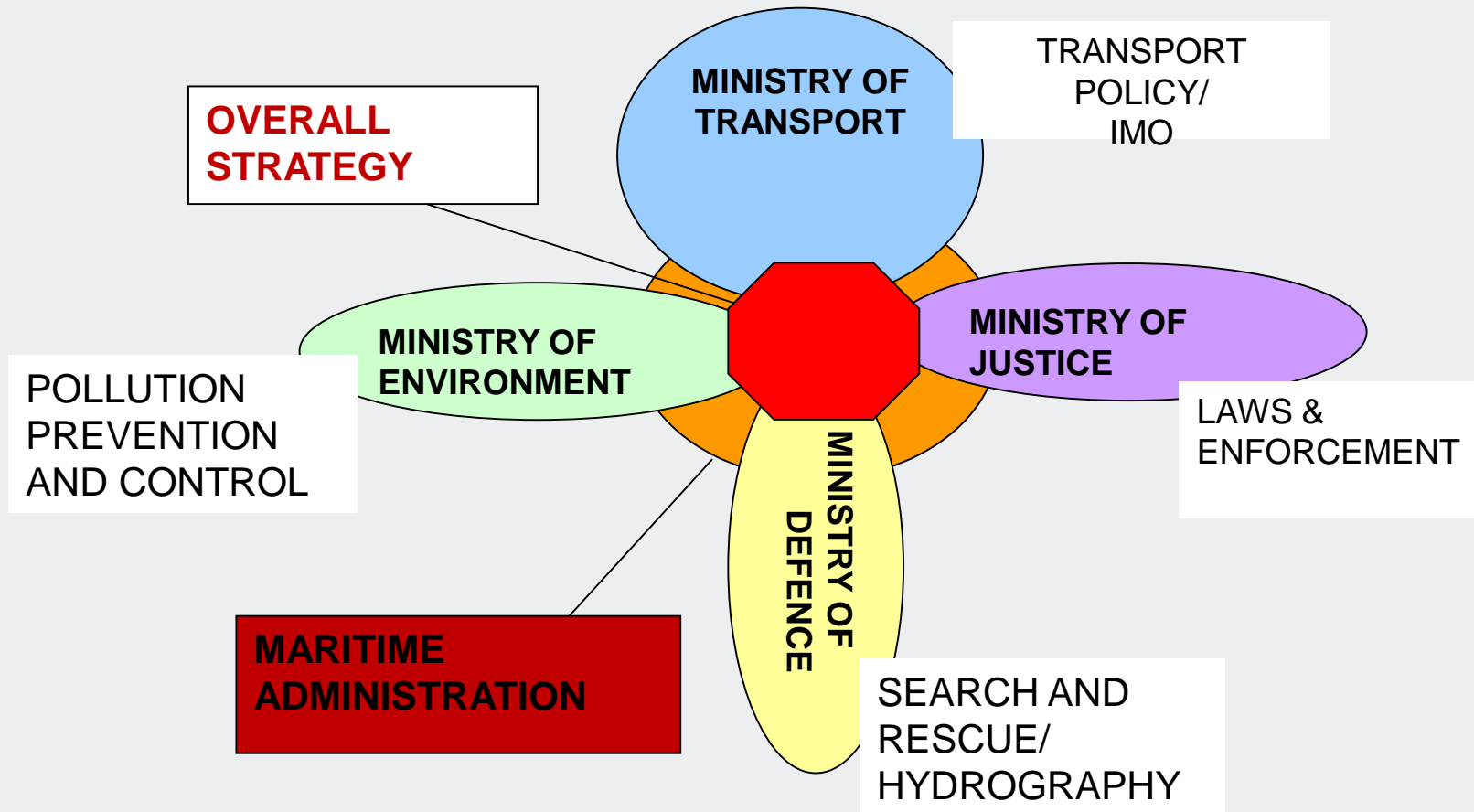
- Assembly resolution A.1070(28)
- Objective of the III Code:
 - Enhance global maritime safety and protection of the marine environment
 - Assist States in the implementation of instruments of the Organization
- Audit standard
- Guidelines for Member States

Strategy: para 3

A State is recommended to:

- Develop an overall strategy to ensure that its international obligations and responsibilities are met;
- Establish a methodology to monitor and assess that the strategy ensures effective implementation and enforcement of relevant international mandatory instruments; and
- Continuously review the strategy to achieve, maintain and improve the overall organizational performance and capability

NEW NORM FOR PARTICIPATING STATE ENTITIES IN A MARITIME ADMINISTRATION



III Code, part 1, paragraph 8

- Initial actions: When a new or amended instrument enters into force for a State, the Government should be in a position to **implement and enforce** its provisions, through appropriate legislation and to provide the necessary implementation and enforcement infrastructure
 - **Ability to promulgate laws:** legal basis for general requirements for registries, inspection of ships, safety and pollution prevention laws applying to ships and associated regulations
 - Legal basis for the enforcement of its national laws and regulations an associated investigative and penal processes
 - Availability of sufficient personnel with maritime expertise to promulgate necessary national laws including reporting as required by the respective conventions

Flag State activities (III Code, part 2)

- **Implementation**
- Delegation of authority to RO
- **Enforcement**
- Flag State surveyors
- Flag State investigations
- Evaluation and review

Implementation

Refers to para 15 - 17 of the III Code

- Use areas listed and match them with specific regulations in the mandatory IMO instruments, covering:
 - Legislation → policies → responsible parties → resources and processes → implementation
- Establish resources and processes capable of administering a safety and environmental protection programme. Such a programme could form part of an internal management system
- Administrative instructions or interpretative national regulations may be needed to implement applicable international rules and regulations

Implementation (cont.)

Refers to para 15 - 17 of the III Code

- Para 16.5 of the III Code – "to the satisfaction of the Administration" - should be addressed in legislation/regulations/policy and procedures
- STCW Convention – to be guided by the restriction established in the Framework. List of questions included in amendments to STCW Code (resolution MSC.374(93))

Enforcement (cont.)

Refers to para 22 - 27 of the III Code

Includes following measures:

1. prohibiting ships flying the flag of the State from sailing until they are in compliance with applicable requirements
2. conducting periodic inspections of its ships in its own ports or, where necessary, in foreign ports
3. ensuring safe manning of ships
4. instituting proceedings, after an investigation, against owners, operators or crews of ships where national laws have been infringed, with application of penalties where appropriate
5. implementing a control and monitoring programme
6. providing appropriate number of qualified personnel to implement and enforce national legislation
7. taking actions after a ship flying the flag of the State has been detained by PSC

Enforcement (cont.)

Refers to para 22 - 27 of the III Code

Enforcement powers should be provided in national legislation and authorization given to officers of the competent entity for, inter alia:

- *boarding and inspecting a ship or her equipment*
- *requiring the production of any book, certificate or document relating to any ship or persons on the ship*
- *detaining a ship*
- *requiring a ship to be taken into a dock to survey the hull*

Enforcement (cont.)

Refers to para 22 - 27 of the III Code

- Enforcement provisions not necessarily rest within maritime laws and regulations
- In some cases, incorporated under civil or criminal law statutes
- Some enforcement actions may rest with another governmental entity that is not directly participating in the audit
- What role, if any, does the maritime authority play in the collection and provision of adequate information to enforcement agencies

Enforcement (cont.)

Prosecution:

1. When breaches of statutory requirements have occurred, it is necessary to consider whether prosecution should take place.
2. Prosecution action will depend on the circumstances and the nature of the breach.

Coastal States

Scope of audit for coastal State activities given in Part 3 (para. 45 - 51) of the III Code as:

- Implementation
- Enforcement
- Evaluation and review

Coastal States – Need for national legislation

- Implementation of national policies through national legislation and guidance:
 - radiocommunication services;
 - meteorological services and warnings;
 - search and rescue services;
 - hydrographic services;
 - ships' routing;
 - ship reporting systems;
 - vessel traffic services; and
 - aids to navigation.

Port State activities

Scope of audit for port State activities given in Part 4 (para. 52 – 63) of the III Code – A.1070(28) as:

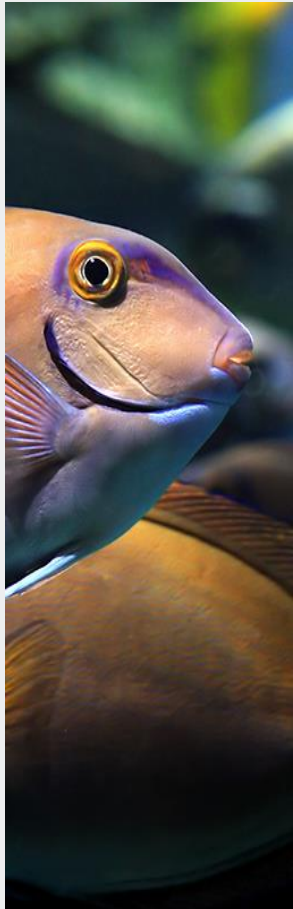
- Implementation
- Enforcement
- Evaluation and review

Port States – Need for national legislation

- Implementation of policies through national legislation and guidance
- Rights and obligations:
 - provision of reception facilities
 - port State control
 - register of fuel oil suppliers
 - handling of dangerous goods
 - grain loading/unloading
 - etc.
- Enforcement:
 - need to establish processes to administer PSC programme

EXAMPLES OF FINDINGS AND OBSERVATIONS

GENERAL



FD

A number of applicable mandatory IMO instruments and amendments thereto have not been enacted into national law. Furthermore, it was established that amendments were not adopted on a timely basis (SOLAS 1974, article 1(a) and (b); ILL Code, part 1, paragraph 8.1).

Root cause

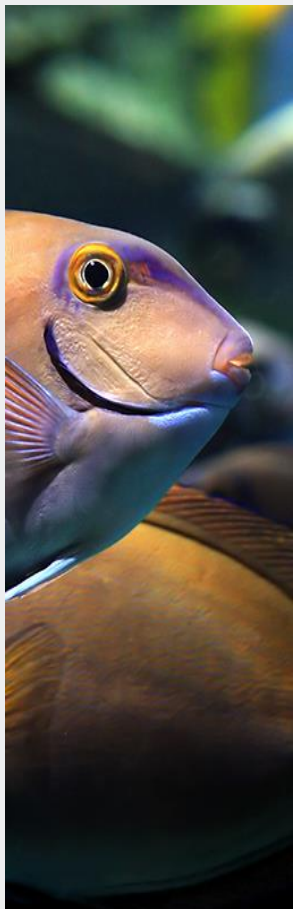
Insufficient resources within the maritime administration in the past caused delays in the updating of the national legislation. In addition, frequent updates/amendments of mandatory IMO instruments creates heavy burden on the maritime administration as the national legal system requires a lengthy process to ratify new conventions and/or amendments to existing legislations.

Corrective action

The maritime administration is in the process to speed up acceptance of IMO instruments into national law. At present,

MARPOL Annexes II, IV, V (amendments) and VI; LL 88 and COLREG amendments are in the process for acceptance into national law. All relevant codes will undergo a simplified legislative procedure and will be incorporated in the State's national legislation. A dedicated person has been designated to systematically follow up on new and amended mandatory IMO instruments and their entry into force dates to ensure their incorporation into national legislation. All mandatory IMO instruments and related amendments are being reviewed, so that the national legislation could be updated by incorporating the instruments or amendments which has not been done as yet. The legal department concurs with technical amendments for which violation does not constitute criminal charges, to be in the form of notices published by the designated inspectorate. In this regard, a prioritized list has been prepared in order to transpose current amendments into national legislation.

GENERAL (cont.)



Observation (OB)

The State did not develop a general strategy for meeting its obligations and responsibilities contained in the mandatory IMO instruments to which it is a Party. Furthermore, there was no overall mechanism to coordinate the different entities involved in the implementation and enforcement of the mandatory IMO instruments and there was no system in place for review and verification of the effectiveness of the State and for continuous improvement of its performance (III Code, part 1, paragraph 3).

Root cause

Although the State had several national and regional maritime safety and pollution prevention strategies, none of these were IMO specific. As the present strategies highlighted the importance of global rules for the maritime sector, especially IMO

conventions and resolutions, no need for a specific IMO strategy had been identified.

Corrective action

The State will prepare a maritime strategy and consider incorporating into it, the commitment to, and the participation in, IMO activities, as well as the review and verification of the implementation and enforcement of the mandatory IMO instruments. The planned completion date is 31 December 2016. As a mechanism for continuous compliance with this requirement, the strategy will be updated, as appropriate, and its implementation will be monitored and evaluated regularly through meetings amongst the different governmental entities and in accordance with the general performance guidance procedure of the Ministry.

Questions



THANK YOU

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