

[Legal Notice No. 66]

SHIPPING (MARINE POLLUTION) REGULATIONS 2011

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[Legal Notice No. 67]

SHIPPING ACT 1998
(No 5 of 1998)

SHIPPING (MARINE POLLUTION) REGULATIONS 2011

IN exercise of the powers conferred upon me by section 220 of the Shipping Act 1998 and also by section 25 of the Maritime Safety Administration Act 2009, I, do hereby make these Regulations -

PART 1 - PRELIMINARY

1.

These Regulations may be cited as the Shipping (Marine Pollution) Interpretation.

Citation
2.

(1)

In these Regulations, unless the context otherwise requires -

Interpretation

“abrasive blasting medium” means a substance used to remove paint, rust and other materials from metal and timber surfaces an abrasive blasting technique, including but not restricted to copper slag, garnet, glass and sand;

“Administration” means the Solomon Islands Maritime Safety Administration established under the Maritime Safety Administration Act 2009;

“Anti-fouling Convention” means the International Convention on the Control of Harmful Anti-fouling Systems on Vessel 2001;

“anti-fouling systems” means a coating, surface treatment, surface or device that is used on a vessel to control or prevent attachment of unwanted organisms;

“ballast water” means water with its suspended matter taken on board a ship to control trim, list, draught, stability or stresses of the ship;

“Bunkers Convention” means the International Convention on Civil Liability for Bunker Oil Pollution Damage, 2001;

“CLC 92” means the International Convention on Civil Liability for Oil Pollution Damage, 1992;

“Committee” means the Marine Pollution Advisory Committee established under regulation 20(1);

“Convention to which these Regulation apply” means a Convention listed in regulation 4(1), and includes any other international marine pollution convention, protocol, agreement or arrangement added to the list in accordance with regulation 4(2), and “applicable Convention” has the same meaning;

“Crude oil” means a liquid hydrocaribon mixture occurring naturally in the earth whether or not treated to render it suitable for transportation, and includes crude oils from which certain distillate fractions have been removed (sometimes referred to as “topped crudes”), or to which certain distillate fractions have been added (sometimes referred to as “spiked” or “reconstituted crudes”);

“Director” has the same meaning as is given in the Maritime Safety Administration Act 2009;

“discharge” means in relation to pollutants, harmful substances or effluents containing such pollutants or substances, a release into the sea howsoever caused from a vessel, platform or place on land and includes an escape, disposal, spilling, leaking, pumping, emitting or emptying, but does not include -

- (a) dumping within the meaning of the London Convention; or
 - (b) release of pollutants or harmful substances for purposes of pollution abatement or control, or for purposes of combating speific pollution ‘ incidents, as permitted by the Director under regulation 14;
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“dumping” means -

- (a) a deliberate disposal into the sea of wastes or other matter from vessels, aircraft, platforms or other man-made structures at sea; and
- (b) a deliberate disposal into the sea of vessels, aircraft, platforms or other man-made structures at sea; and
- (c) storage of wastes or other matter in the seabed and the subsoil thereof from vessels, aircraft, platforms or other man-made structures at sea; or
- (d) abandonment or toppling at site of platforms or other man-made structures at sea, for the sole purpose of deliberate disposal;

but does not include -

- (i) the discharge of wastes or other matter incidental to, or derived from, the normal operation of vessels, aircraft, platforms or other man-made structures at sea and their equipment, other than wastes or other matter transported by or to vessels, aircraft, platforms or other man-made structures at sea operating for the purpose of disposal of such matter or derived from the treatment of such wastes or other matter on such vessels, aircraft, platforms and other man-made structures;
 - (ii) placement of matter or things for a purpose other than their disposal; or
 - (iii) abandonment in the sea of matter such as cables, pipelines and marine research devices placed for the purpose other than the mere disposal thereto;
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“Discharge Permit” means permission to discharge for purposes of combating specific pollution incidents granted in advance by the Director under regulation 14;

“fuel oil” means heavy distillates or residues from crude oil or blends of such materials intended for use as a fuel for the production of heat or power of a quality equivalent to the “American Society for Testing and Materials’ Specification for Number Four Fuel Oil (Designation D 396-69)”, or heavier;

“FUND Convention 92” means the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1992;

“FUND 92” means the international organisation established under FUND Convention 92;

“garbage” includes all kinds of food, domestic and operational waste, including plastics, excluding fresh fish and parts of fresh fish, generated during the normal operation of a vessel and liable to be disposed of continuously or periodically, but does not include oil, noxious liquid substances and other pollutants, or sewage from vessels;

“harmful substance” means a substance which, if introduced into the sea, is liable to create hazards to human health, to harm living resources and marine life, to damage amenities or to interfere with other legitimate uses of the sea, and without affecting the general application of this definition, includes a substance deemed by these Regulations and any other law, and by a Code of Practice approved under these Regulations, to be a harmful substance in the context of the marine environment;

“HNS Convention” means the International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea, 1996;

“HNS Protocol” means the Protocol on Preparedness, Response and Co-operation to Pollution Incidents by Hazardous and Noxious Substances, 2000 (HNS Protocol), which is a Protocol to the OPRC Convention;

“hull scraping and cleaning” means the scraping and cleaning of the hull and other external surfaces of a vessel to remove marine organisms that may be attached to or living on that hull or external surface;

“incident” means any occurrence, or series of occurrences having the same origin, which causes a discharge or creates a grave or imminent threat of causing a discharge;

“incineration at sea” means the combustion on board a vessel, platform or other man-made structure at sea of wastes or other matter for the purpose of their deliberate disposal by thermal destruction; but does not include the incineration of wastes or other matter on board a vessel, platform or other man-made structure at sea if such wastes or other matter were generated during the normal operation of the vessel, platform or other man-made structure at sea -

and “to incinerate” and “incinerated” have corresponding meanings;

“IMDG Code” means the International Maritime Dangerous Goods Code published by the International Maritime Organisation from time to time;

“International Fund” means the “International Oil Pollution Compensation Fund 1992; established under FUND Convention 92;

“International Maritime Convention” means a convention relating to the prevention of and response to marine pollution, for the compensation of damage resulting from marine pollution and to maritime safety, including those listed in regulation 4;

“International Maritime Organisation” means the organisation set up under the International Maritime Organisation Convention, 1958 whose task is to develop a comprehensive body of international maritime conventions, codes and recommendations which could be implemented by all members to the conventions;

“INTERVENTION Convention” means the International Convention Relating to Intervention on the High Seas in Cases of Oil Pollution Casualties (1969) and the Protocol relating to Intervention on the High Seas in Cases of Pollution by Substances Other than Oil, 1973;

“London Convention” means the Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter (1972), as amended by the Protocol of 1996 relating thereto;

“marine casualty” means a collision, grounding or stranding of a vessel or vessels or other incident of navigation, or other occurrence on board a vessel, or external to it resulting in material damage or imminent threat of material damage to a vessel or cargo;

“marine pollution incident” means the actual or probable discharge of a pollutant or other harmful substance from a vessel or a platform or a place on land;

“MARPOL 73/78” means the International Convention for the Prevention of Pollution from Vessels (1973) as modified by the Protocol of 1978 relating thereto;

“master” means the person-in-charge of a vessel at any time;

“NATPLAN” means National Marine Spill Contingency Plan as referred in regulation 21;

“non-indigenous harmful aquatic organisms or pathogens” means any species of aquatic microbe, plant or animal whose natural biogeographical range does not include Solomon Islands waters and which, if introduced into Solomon Islands waters, has the potential to create hazards to human health, to harm living resources and marine life, to damage or impair facilities and amenities or to interfere with other legitimate uses of the sea, and includes exotic invasive species;

“noxious liquid substances” means a substance referred to in Appendix II of Annex II of MARPOL 73/78;

“occupier”, means the occupant of land or premises or building, and if the land or premises or building is unoccupied or the occupier is unknown or cannot be found, includes the owner of the land or premises or building or the owner of an interest in the land or premises or building;

“oil” means -

- (a) petroleum in any form including crude oil, fuel oil, sludge, oil refuse and refined products (other than petrochemicals which are subject to the provisions of Annex III of MARPOL 73/78) and, without limiting the generality of the foregoing, includes the substances listed in Appendix I to Annex I of MARPOL 73/78; and
- (b) includes an persistent hydrocarbon mineral oil such as crude oil, fuel oil, heavy diesel oil and lubricating oil, whether carried on board a vessel as cargo or in the bunkers of such vessel;

“oil tanker” means a vessel constructed or adapted for the carriage of oil in bulk as cargo and includes combination carriers and a chemical tanker as defined in Annex II of MARPOL 73/78 when it is carrying oil in bulk as cargo and during a voyage following such carriage of oil in bulk aboard;

“oily mixture” means a mixture with any oil content;

“OPRC Convention” means the International Convention on Oil Pollution Preparedness, Response and Co-operation, 1990;

“owner” means -

(a) in relation to a vessel -

- (i) the registered owner of owners, if the vessel is a registered vessel;
- (ii) the person owning the vessel, if the vessel is an unregistered vessel;
- (iii) the person or agency registered as the operator of the vessel, if the vessel is owned by the Government;

and includes -

- (iv) a charterer, manager, or operator of the vessel or any other person for the time being responsible for the navigation or management of the vessel;
- (v) an agent in Solomon Islands of the owner, charterer, manager, or operator; and
- (vi) any other person interested in or in possession of the vessel, including a salvor in possession of the vessel, and an employee or agent of a salvor in possession of the vessel; and

(b) in relation to platform -

- (i) the owner or manager or licensee for the time being of the platform or structure, or an agent or employee, or a person-in-charge of operations connected therewith; and
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- (ii) a person having a right or privilege or license to explore the seabed and subsoil and to exploit the natural resources thereof in connection with which the platform or structure is or has been or is to be used;

“place on land” means a place on dry land, or on a dry, inter-tidal or submerged reef, or a place connected with dry land or a reef;

“platform” means a man-made fixed or floating offshore structure used for any purpose whatsoever;

“POLFUND” means the National Marine Pollution Fund established by law;

“pollutant” includes oil and oily mixtures, noxious liquid substances, harmful packaged substances, sewage and garbage as defined by MARPOL 73/78 and any water contaminated by any such substance, and any other substance which added to any waters has the effect of contaminating those waters so as to make them unclean, noxious or impure or detrimental to the health, safety or welfare of any person, or poisonous or harmful to marine life;

“pollution damage” includes -

- (a) all loss or damage caused outside a vessel by contamination resulting from the escape or discharge of a pollutant from the vessel, wherever such escape or discharge may occur, provided that compensation for impairment of the environment other than losses of profit from such impairment shall be limited to costs of reasonable measures of reinstatement actually undertaken or to be undertaken;
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- (b) all loss or damage caused outside a vessel by contamination resulting from the escape or discharge of oil from the vessel, wherever such escape or discharge may occur, provided that compensation for impairment of the environment other than losses of profit from such impairment shall be limited to costs of reasonable measures of reinstatement actually undertaken or to be undertaken; and
- (c) the costs of preventative measures and further loss or damage caused by preventive measures;

“preventive measures” means any reasonable measures taken by a person after a pollution incident has occurred to prevent or minimise pollution damage;

“reception facilities” means facilities for enabling vessels using a port to discharge or deposit oil, oil mixtures, noxious liquid substances, sewage or garbage from those vessels;

“related interests” include interests directly affected or threatened, including, but not limited to maritime, coastal, port or estuarine activities, fisheries activities, tourist attractions, public health and welfare, and the conservation of living marine resources and of wildlife;

“sea” means all areas of water below highest astronomical tide and includes the ocean and an estuary, tidal area and lagoon;

“sewage”, in relation to vessels, includes -

- (a) drainage and other wastes from any form of toilets, urinals and toilet scuppers;
 - (b) drainage from medical premises, including dispensaries and sick bays, by way of wash basins, wash tubs and scuppers located in such premises;
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- (c) drainage from spaces containing living animals; and
- (d) other waste waters when mixed with the drainage mentioned in the foregoing provisions of this definition;

“ship repair facility” means a place on land, in the inter-tidal zone and in Solomon Islands waters where vessels are repaired and maintained, including cleaning, scraping and painting;

“Solomon Islands vessel” means a vessel owned in Solomon Islands or a vessel registered or required to be registered under the Act, or any other vessel based in Solomon Islands and operating under the authority of the Government;

“Solomon Islands waters” includes the internal waters of Solomon Islands, the territorial sea of Solomon Islands, the contiguous zone of Solomon Islands and the waters of the Exclusive Economic Zone of Solomon Islands as provided for in any law;

“SPREP” means the South Pacific Regional Environment Programme;

“SPREP Convention” means the Convention for the Protection of the Natural Resources and Environment of the South Pacific Region, 1990 and its related Protocols;

“SPREP Dumping Protocol” means the Protocol on the Prevention of Pollution of the South Pacific by Dumping (a protocol of the SPREP Convention);

“SPREP Pollution Emergencies Protocol” means the Protocol Concerning Cooperation in Combating Pollution Emergencies in the South Pacific Region (a protocol of the SPREP Convention);

“synthetic fishing nets” includes synthetic material used in the repair of such nets;

“transfer” in relation to oil or a pollutant means the conveyance in bulk from the vessel to a place on land or vice versa, or from one vessel to another, or the internal transfer from tank to tank within the vessel;

“Waigani Convention” means the Convention to Ban the Importation into Forum Island Countries of Hazardous and Radioactive Wastes and to Control the Transboundary Movement and Management of Hazardous Wastes within the South Pacific Region’ (Waigani Convention), Waigani, 1995; and

“wastes or other matter” means material and substances of any kind, form or description.

(2) All words and phrases used in these Regulations shall have the same meaning as is given to them in an applicable convention, unless the context otherwise requires.

Government vessels
bound by these
Regulations

3. (1) Subject to the provisions of these Regulations, the Government is bound by these Regulations.

(2) The provisions of these Regulations shall apply to vessels belonging to or operated by the Government, and any of its agencies.

(3) The provisions of these Regulations shall not apply to -

- (a) warships of another State; or
 - (b) aircraft being used as an aircraft of another State.
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4. (1) For the purposes of these Regulations the following are the international marine pollution conventions to which these Regulations apply -

Application of
international marine
pollution conven-
tions

- (a) The Convention for the Protection of the Natural Resources and Environment of the South Pacific Region, 1990 (SPREP Convention) and its Protocol for the Prevention of Pollution of the South Pacific by Dumping (SPREP Dumping Protocol) and Protocol concerning Cooperation in Combating Pollution Emergencies in the South Pacific Region (SPREP Pollution Emergencies Protocol);
 - (b) The Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter (1972) as amended by the Protocol of 1996 relating thereto (London Convention);
 - (c) The International Convention for the Prevention of Pollution from Vessel (1973) as amended by the Protocol of 1978 relating thereto (MARPOL 73/78);
 - (d) The International Convention on Civil Liability for Oil Pollution Damage, 1992 (CLC 92);
 - (e) The International Convention on Liability and Compensation for Damage in connection with the Carriage of Hazardous and Noxious Substances by Sea, 1996 (HNS Convention);
 - (f) The International Convention on Oil Pollution Preparedness, Response and Co-operation, 1990 (OPRC Convention);
 - (g) The International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1992 (FUND 92);
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- (h) The International Convention relating to Intervention on the High Seas in Cases of Oil Pollution Casualties (1969) and the Protocol relating to Intervention on the High Seas in Cases of Pollution by Substances Other than Oil, 1973 (INTERVENTION Convention);
- (i) The Protocol on Preparedness, Response and Co-operation to Pollution Incidents by Hazardous and Noxious Substances, 2000 (HNS Protocol);
- (j) The International Convention on Civil Liability for Bunker Oil Pollution Damage, 2001 (Bunkers Convention); and
- (k) International Convention on the Control of Harmful Anti-fouling Systems on Ships, 2001 (Anti-fouling Convention).

(2) Subject to these Regulations, any other law and any reservation that Solomon Islands has made under a Convention to which these Regulations apply, all obligations, duties, legal processes and rights provided for under the Conventions to which these Regulations apply (and including any Protocols, Annexes, Appendices and Addenda to them from time to time) shall have the force of law in Solomon Islands, and may be applied or enforced by any legal process available under the laws of Solomon Islands.

(3) The contravention of an obligation or duty arising under a Convention to which these Regulations apply shall constitute an offence under section 219 of the Shipping Act.

(4) Subject to any provision of these Regulations in relation to the exercise of specific powers and responsibilities, the Minister shall have the power to take any action that may be taken by State Parties under the Conventions to which these Regulations apply.

(5) The Administration shall have the principal responsibility for implementing the Conventions to which these Regulations apply, and shall ensure that other Ministries and agencies having responsibilities in relation to the protection and management of the marine environment are involved in the actions that are taken by the Administration under the authority of these Regulations.

(6) In the event of an inconsistency between the provisions of a Convention to which these Regulations apply and a provision of these Regulations, these Regulations shall apply.

5. (1) These Regulations shall be the principal subsidiary legislation dealing with pollution incidents affecting the marine environment where the source of the pollution is a vessel, and shall apply to - Application of these Regulations and other pollution law

(a) all vessels in Solomon Islands waters; and

(b) all Solomon Islands vessels

(2) In the event that pollution to the marine environment arises from a source which is not a vessel, the provisions of these Regulations shall be applied subject to any other law which makes provision in relation to -

(a) pollution from terrestrial sources;

(b) pollution in the airspace; and

(c) disaster and emergency response

(3) Nothing in this regulation shall affect the validity of a prosecution taken for an offence against these Regulations, and shall not constitute a defence to an offence against these Regulations.

Criminal liability
under these
Regulations

6. Unless otherwise specifically provided for in these Regulations, the following persons may be liable in respect of a contravention of these Regulations which constitutes the commission of an offence -

- (a) where the contravention arises from a vessel - the owner, master, manager or agent of the vessel;
- (b) charterers of a vessel where they, or their servants or agents, exercise any degree of control over the vessel or its cargo, or the course of the voyage of the vessel;
- (c) where the contravention arises from an apparatus used for transferring a pollutant to or from a vessel - the owner or person-in-charge of the apparatus, and the master or owner of the vessel;
- (d) where the contravention arises from a platform - the owner, operator or person-in-charge of the platform;
- (e) where the contravention arises from a place on land - the owner or occupier of the land, or a person who has caused or contributed to the contravention; and
- (f) where the contravention arises from the exploration of the seabed or sub-soil, or any natural resources in the marine environment - the owner or person-in-charge of such exploration.

PART 2 - MARINE POLLUTION PREVENTION

Design of vessels
and pollution
prevention equip-
ment

7. (1) A vessel to which MARPOL 73/78 applies must comply with all of the design and pollution prevention equipment provisions specified in that Convention.

- (2) Subject to subregulation (3), the owner and master of a vessel which contravenes any of the requirements applying to a vessel under subregulation (1) commits an offence and is liable upon conviction -

- (a) if the vessel is in excess of 24 metres - to a fine not exceeding 5000 penalty units, and to imprisonment for a term not exceeding 12 months, or both; or
- (b) if the vessel is 24 metres or less - to a fine not exceeding 2500 penalty units, and to imprisonment for a term not exceeding 6 months, or both.

(3) For a period of 2 years after the commencement of these Regulations, a vessel to which this regulation applies which has operated prior to the commencement of these Regulations and is not in compliance with the requirements of MARPOL 73/78 may be allowed to continue to operate under such conditions and for such duration as the Director may determine, and if such a vessel has this authority and is in compliance with any conditions imposed it shall not contravene these Regulations.

8. (1) A vessel to which MARPOL 73/78 applies must be operated in compliance with the requirements specified in that Convention. Operation of vessel

(2) If a vessel to which this regulations applies contravenes a requirement of MARPOL 73/78, the owner or master commits an offence and is liable upon conviction to -

- (a) if the vessel is in excess 24 metres - to a fine not exceeding 5000 penalty units, and to imprisonment for a term not exceeding 12 months, or both; or
- (b) if the vessel is 24 metres or less - to a fine not exceeding 2500 penalty units, and to imprisonment for a term not exceeding 6 months, or both.

(3) For a period of 2 years after the commencement of these Regulations, a vessel to which this regulation applies which has operated prior to the commencement of these Regulations and is not in compliance with the requirements of MARPOL 73/78 may be allowed to continue to operate under such conditions and for such duration as the Director may authorise in writing, and if such a vessel has the written authority and is in compliance with any conditions imposed it shall not contravene these Regulations.

Discharge of pollutions or harmful substances

9. (1) For the purposes of this Part –

- (a) “existing oil tanker” means a tanker which is not a new tanker;
- (b) “new tanker” means a tanker –
 - (i) for which the building contract was placed, or in the absence of a building contract, the keel or which was laid, or which was at a similar stage of construction, on or after 27th September 2003; or
 - (ii) the delivery of which was 3 years or more after 27th September 2003;
- (c) “pollutant and harmful substance” includes, but is not limited to, any oil, plastics, synthetic ropes and synthetic fishing nets; and
- (d) “special area” means a sea area, identified in accordance with MARPOL 73/78, where for recognised technical reasons in relation to its oceanographical and ecological condition and to the particular character of its traffic the adoption of special mandatory methods for the prevention of sea pollution by oil has been required.

(2) Subject to subregulations (4) and (5) and to regulation 14, no pollutant or harmful substance may be discharged from a vessel, platform or place on land into Solomon Islands waters, or from a Solomon Islands vessel into any waters.

(3) A person who contravenes subregulation (2) commits an offence and

- (a) is liable upon conviction to a fine not exceeding 5000 penalty units or to imprisonment for a term not exceeding 12 months, or both; and

- (b) is liable to pay for the total costs of any clean up operations and all necessary action to restore the environment to its original condition.

(4) It is a defence to an offence against this regulation to prove that the discharge -

- (a) was necessary for the purposes of securing the safety of a vessel or the saving of life at sea (provided that the discharge was necessary and reasonable in the circumstances); or
 - (b) resulted from damage to a vessel or its equipment, and that -
 - (i) the offender took all reasonable precautions after the occurrence of the damage or discovery of the discharge to prevent or minimise the discharge; and
 - (ii) the owner or the master acted with no intent to cause damage, and did not act recklessly with knowledge that damage would probably result; or
 - (c) was for a purpose of -
 - (i) training government officers or other persons who are tasked with functions relating to pollution control as approved by the Director; or
 - (ii) combating specific pollution incidents in order to minimise the damage from pollution, as permitted by a Discharge Permit issued in accordance with regulation 14.
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(5) It shall be a defence to a prosecution under this regulation if the offender can prove that the discharge into the sea was of oil, oily mixtures, noxious liquid substances, sewage and garbage that are allowed under MARPOL 73/78, including -

- (a) discharge by an oil tanker if all of the following criteria apply to the discharge -
 - (i) the oil tanker is not in a special area;
 - (ii) the oil tanker is more than 50 nautical miles from the nearest land;
 - (iii) the oil tanker is proceeding on or along the way;
 - (iv) the instantaneous rate of discharge of oil content does not exceed 30 litres per nautical mile;
 - (v) the total quantity of oil discharged into the sea does not exceed 1/15,000 of the total quantity of the particular cargo of which the residue formed a part in the case of existing oil tankers, and 1/30,000 of the total quantity of the particular cargo of which the residue formed a part in the case of new tankers; and
 - (vi) the oil tanker has in operation an oil discharge monitoring and control system and a slop tank arrangement as required by Regulation 15 of Annex I of MARPOL 73/78 (Retention on board);
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- (b) discharge by a vessel of 500 tons gross tonnage and above (other than an oil tanker) from machinery space bilgas (excluding cargo pump-room bilges of an oil tanker unless mixed with oil cargo residue) if all of the following criteria apply to the discharge -
 - (i) the vessel is not within a special area;
 - (ii) the vessel is proceeding on or along the way;
 - (iii) the oil content of the effluent without dilution does not exceed 15 parts per million; and
 - (iv) the vessel has in operation equipment as required by Regulation 16 of Annex 1 of MARPOL 73/78 (oil discharge monitoring and control system and oil filtering equipment);
- (c) discharge of garbage which shall be allowed from all vessels, if it is made as far as practicable from the nearest land, but in all cases is prohibited if the distance from the nearest land is less than -
 - (i) 25 nautical miles for dunnage, lining and packing materials which will float; and
 - (ii) 12 nautical miles for food wastes and all other garbage including paper products, rags, glass, metal, bottles, crockery and similar refuse.

(6) The exceptions stated in subregulation (5) do not allow the discharge of any plastics, the discharge of which is prohibited from all vessels in all locations.

Discharge of
ballast water

10. (1) No ballast water containing non-indigenous harmful aquatic organisms or pathogens may be discharged from a vessel into Solomon Islands waters.

(2) The master of a vessel that discharges ballast water in Solomon Islands waters must -

- (a) obtain all necessary approvals under the laws applying to quarantine prior to the discharge; and
- (b) comply with all voluntary or mandatory ballast water management requirements issued by the International Maritime Organisation and which are in force at the time of the discharge.

(3) The master of a vessel who intends to discharge ballast water in Solomon Islands waters shall, prior to any discharge, complete and give to the Director notice of the discharge -

- (a) which may be a copy of any form of this nature required to be given under the any law dealing with quarantine; or
- (b) in the form approved by the Director for that purpose.

(4) The Ministry may approve and publish Standards and Codes of Practice relating to the discharge of ballast water, and all discharges must be in accordance with the requirements stated in any approved Standards or Code of Practice.

(5) The owner or master of an offending vessel commit an offence if -

- (a) any ballast water containing non-indigenous harmful aquatic organisms or pathogens is discharged from an offending vessel into Solomon Islands waters;
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- (b) ballast water is discharged from an offending vessel in Solomon Islands waters in a manner which does not comply with –
 - (i) any of the voluntary or mandatory ballast water management requirements issued by the International Maritime Organisation in force at the time of the discharge; or
 - (ii) any requirement prescribed in approved Standards or Code of Practice approved under subregulation (4);
- (c) no notice of the discharge as required by this regulation is submitted to the Director prior to a discharge of ballast water in Solomon Islands waters; or
- (d) false or misleading particulars are provided in a notice submitted under this regulation -

and are liable upon conviction to a fine not exceeding 5000 penalty units or to imprisonment for a term not exceeding 12 months, or both.

- (6) It is a defence to an offence under subregulation (5)(a) if the owner or master proves that all reasonable measures to comply with any voluntary or mandatory ballast water management requirements issued by the International Maritime Organisation in force at the time were taken to ensure that no ballast water containing non-indigenous harmful aquatic organisms or pathogens were discharged from a vessel into Solomon Islands waters.

11. (1) The scraping and cleaning of the hulls and other external surfaces of vessels must be undertaken in a manner that prevents the introduction of non-indigenous harmful aquatic organisms or pathogens into Solomon Islands waters. Hull scraping and cleaning

(2) The Administration may prepare and publish Standards and Codes of Practice relating to the scraping and cleaning of hulls, and all such activities must be done in accordance with the requirements stated in any approved Standards or Code of Practice.

(3) A person who scrapes or cleans any hull or other external surface of a vessel in a manner -

- (a) which permits the introduction of non-indigenous harmful aquatic organisms or pathogens into Solomon Islands waters;
- (b) which is inconsistent with any requirements applying to the scraping and cleaning of hulls -
 - (i) published by the International Maritime Organisation from time to time; or
 - (ii) as prescribed in Standards or Codes of Practice approved under subregulation (2);
- (c) which contravenes a direction given to the person by an authorised officer of the Administration in relation to the scraping or cleaning of the hull -

commits an offence and is liable upon conviction to a fine not exceeding 5000 penalty units or to a term of imprisonment not exceeding 12 months, or both.

(4) The owner and master of a vessel in relation to which an offence is committed under this regulation shall also be liable for that offence.

12. (1) The Anti-fouling Convention shall apply to all vessels of 24 metres or more in length in Solomon Islands waters. Anti-fouling systems

(2) Vessels of 400 gross tonnage and above engaged in international voyages shall be required to undergo -

- (a) an initial survey and be certified before the vessel is put into service or before the International Anti-fouling System Certificate is issued for the first time; and
- (b) a survey and be certified when the anti-fouling systems are changed or replaced.

(3) Documentary evidence to confirm compliance with subregulation (2) must be provided to the Director as soon as practicable after the certification is made.

(4) Vessels of 24 metres or more in length but less than 400 gross tonnage engaged in international voyages and operating in Solomon Islands waters shall carry a Declaration on Anti-fouling Systems signed by the owner or owner's authorised agent, and the Declaration shall be accompanied by appropriate documentation to verify its contents including a paint receipt or contractor invoice.

(5) The use and application of harmful anti-fouling systems containing organotin compounds and any other prescribed harmful substance on vessels in Solomon Islands waters or a man-made structure is prohibited.

(6) An owner or master who contravenes any provision of the Anti-fouling Convention commits an offence and is liable upon conviction to a fine not exceeding 5000 penalty units or to imprisonment for 6 months, or both.

(7) The owner or master of a Solomon Islands vessel or any vessel in Solomon Islands waters shall not use any harmful anti-fouling system, containing organotin compounds or any other prescribed harmful substance in Solomon Islands waters and a person that applies harmful anti-fouling systems to a vessel or man-made structure in Solomon Islands commits an offence and is liable upon conviction to a fine not exceeding 5000 penalty units, or to imprisonment for 6 months, or both.

(8) For the purposes of this regulation, 'man-made structures' includes any buoy, markers or any object specifically created for use or placement in water.

management of
waste from vessel
repair facilities

13. (1) The discharge, disposal or escape of –
- (a) hull scrapings;
 - (b) paints and paint residues;
 - (c) abrasive blasting mediums;
 - (d) any other pollutant or harmful substance; or
 - (e) any effluent containing such pollutants or harmful substances

into Solomon Islands waters from vessel repair facilities is prohibited.

(2) A vessel repair facility must put in place systems for the effective containment and recovery of all of the substances specified in subregulation (1) for proper re-use, recycling, treatment or disposal in a waste management facilities on-shore that have been approved under any law.

(3) The owner or operator of a ship repair facility who contravenes any prohibition or requirement stated in this regulation commits an offence and is liable upon conviction to a fine not exceeding 5000 penalty units or to imprisonment for a term not exceeding 6 months, or both.

Discharge Permits

14. (1) A person wishing to discharge a pollutant or harmful substance for the purpose associated with responding to a specific pollution incident must apply in writing to the Director for a Discharge Permit, and must provide the following information –

- (a) the identity and full contact details of the person responsible for the proposed discharge;
- (b) the reasons for the proposed discharge;
- (c) the likely benefits of the proposed discharge;
- (d) the location of the proposed discharge;

- (e) the nature of the pollutant or harmful substance proposed to be discharged (including their correct technical names, IMDG Code Classification and UN number, if applicable), and its chemical composition and physical and chemical properties and biological toxicity;
- (f) the quantity or volume of pollutant or harmful substance proposed to be discharged;
- (g) the proposed method of discharged;
- (h) the details of the measures to be used to control, mitigate and monitor the environmental impacts of the discharge; and
- (i) documentary evidence of financial ability to meet the total cost of any clean up operation necessary to restore the environment to its original condition.

(2) In assessing an application for a Discharge Permit, the Director shall consider –

- (a) all potential adverse impacts to human life, health and safety; and
- (b) the environmental impacts that are likely to occur from the proposed discharge is not permitted.

(3) The Director may issue or refuse to issue a Discharge Permit, and may impose conditions in relation to a permit.

(4) It shall be a condition of every Discharge Permit issued under this regulation to any person who is responsible for the pollution incident arising that the permit holder is ~~liable to pay all costs of any clean up operation necessary~~ to restore the environment to its original condition if the environment is affected by a discharge done under a permit.

- (5) A person who –
- (a) provides any information of the nature required under subregulation (1) which is false or misleading;
 - (b) fails to comply with a condition of the Discharge Permit, or with an applicable Standards or Codes of Practice; or
 - (c) undertakes any discharge for a purpose or of a nature that is different from that for which the Discharge Permit is applied of or issued - commits an offence and is liable upon conviction to a fine not exceeding 5000 penalty units or to a term of imprisonment not exceeding 3 months, or both.

waste reception
facilities in ports

15. (1) The Administration may approve and publish Standards and Codes of Practice in relation to the provision of waste reception facilities at Solomon Islands ports to regulate vessels in the discharge of waste oil or oily residues, hazardous and noxious substances and sewage from those vessels, and the disposal of their garbage.

(2) Waste reception facilities shall not provided where a vessel's wastes may cause unacceptable environmental impacts in Solomon Islands.

(3) The full or partial cost of providing and operating these waste reception facilities may be recovered by user fees which may be set –

- (a) by Regulations; or
 - (b) by the Minister if no such Regulations apply; or
 - (c) by any agency which is given responsibility for providing or managing the waste reception facilities.
-

(4) No waste containing pollutantss that have not been first processed by the vessel's oily water separator, or other effective process for separating the pollutant from the water, may be discharged into a waste reception facilities.

(5) The owner and master of a vessel which discharges at a waste reception facility in contravention of subregulation (4) commit ana offence and is liable upon conviction –

- (a) to a fine not exceeding 5000 penalty units or to imprisonment for a term not exceeding 6 months, or both; and
- (b) to pay compensation for any damage done to the facility or the cost of any remedial action that is necessary as a result of the contravention.

16. (1) If any pollutant, harmful substance, non-indigenous harmful aquatic organism or pathogen is discharged into Solomon Islands waters from s vessel, platform or a place on land - Duty to report discharges

- (a) the owner, master or person-in-charge of the vessel or platform; or
- (b) the occupier of the place on land -

must immediately and by the quickest available means report the occurrence to the Director and to the Permanent Secretary responsible for disaster management.

(2) A report made under subregulation (1) must provide all of the following particulars -

- (a) the time of the discharge;
 - (b) the position of the discharge, including latitude and longitude if possible;
 - (c) the event to which the discharge is directly attributable;
 - (d) the precise source of the discharge;
-

- (e) the weather and sea conditions at the time of the discharge and at the time when the report was made;
 - (f) where oil has been discharged -
 - (i) the quantity and description of each type of oil that was discharged;
and
 - (ii) the quantity and description of each type of oil remaining on board;
 - (g) where a pollutant other than oil has been discharged the quantity and description of each type of pollutant discharged (including their correct technical names, IMDG Code Classification and UN number, if applicable);
 - (h) the quantity and description of each type of pollutant other than oil remaining on board;
 - (i) where garbage or sewage has been discharged, the quantity, description and concentration that was discharged;
 - (j) the types, quantity and condition of other cargo carried or stored;
 - (k) the existence of a slick and the estimated direction and speed of its movement;
 - (l) the measures that have been taken to -
 - (i) stop or reduce the discharge;
 - (ii) contain the pollutant and prevent the spread of it;
 - (iii) remove the pollutant from the sea or to disperse it; and
 - (iv) minimise damage or the possibility of damage resulting from the discharge; and
-
-

- (m) the identity and full contact details of the person making the report.
- (3) If a vessel becomes stranded, wrecked or is abandoned in Solomon Islands waters, or if a Solomon Islands vessel becomes stranded, wrecked or is abandoned in any waters outside Solomon Islands, then the owner, master or person-in-charge must immediately and by the quickest available means report the occurrence to the Director, and shall provide -
- (a) full details of the vessel and damage sustained;
 - (b) the types, quantity and condition of the cargo carried;
 - (c) a complete list of all pollutants carried, including the types, quantity and their condition;
 - (d) if a discharge has occurred, the details required in subregulation (2); and
 - (e) the identity and full contact details of the person making the report.
- (4) A person who -
- (a) fails to comply with any provision of this regulation; or
 - (b) makes a report containing any information that is false, misleading or incomplete -
- commits an offence and is liable upon conviction to a fine not exceeding 5000 penalty units or to imprisonment for a term not exceeding 6 months, or both.
-
-

ords

17. (1) The master of any of the following vessels -

- (a) a Solomon Islands oil tanker; and
- (b) an oil tanker in Solomon Islands waters of 150 tons gross tonnage and above and
- (c) a Solomon Islands vesse; and
- (d) a vessel in Solomon Islands waters of 400 tons gross tonnage and above other than an oil tanker -

must carry and maintain an Oil Record Book Part I (Machinery Space Operations) and enter a record whenever any of the following machinery space operations are carried out -

- (i) ballasting or cleaning of oil fuel tanks;
- (ii) discharge of dirty ballast or cleaning water from tanks referred to in paragraph (a) above;
- (iii) disposal of oily residues (sludge); and
- (iv) discharge overboard or disposal otherwise of bilge water which has accumulated in machinery spaces.

(2) The master of a Solomon Islands oil tanker or of an oil tanker in Solomon Islands waters of 150 tons gross tonnage and above must also carry and maintain an Oil Record Book Part II (Cargo/Ballast Operations) and shall enter a record whenever any of the following cargo/ballast operations are carried out -

- (a) loading of oil cargo;
 - (b) ~~internal transfer of oil cargo during voyage;~~
-

- (c) unloading of oil cargo;
- (d) ballasting of cargo tanks and dedicated clean ballast tanks;
- (e) cleaning of cargo tanks including crude oil washing;
- (f) discharge of ballast except from segregated ballast tanks;
- (g) discharge of water from slop tanks;
- (h) closing of all applicable valves or similar devices after slop tank discharge operations;
- (i) closing of valves necessary for isolation of dedicated clean ballast tanks from cargo and stripping lines after slop tank discharge operations; and
- (j) disposal of residues

(3) The Oil Record Books required under subregulation (1) and (2) whether as a part of the vessel's official log-book or otherwise, must be in the Forms specified in Regulation 20 and Appendix III of Annex I of MARPOL 73/78, or any other form which may supersede those forms.

(4) The person-in-charge of a platform in Solomon Islands waters, must comply with the provisions of subregulations (1) and (2), as far as is applicable and with all necessary modifications.

(5) The master of a Solomon Islands vessel or a vessel in Solomon Islands waters to which Annex II of MARPOL 73/78 applies, must carry a Recorded Book, and shall record -

- (a) the loading or unloading of pollutants specified in that Annex;
- (b) the transfer of pollutants specified in that Annex; and
- (c) any other operations in respect of pollutants specified in that Annex; and

- (d) any discharge or escape of such pollutants and the circumstances and reasons relating to their discharge or escape.

(6) A person who fails to comply with any requirement imposed by this regulation commits an offence and is liable upon conviction to a fine not exceeding 2500 penalty units or to imprisonment for a term not exceeding 1 month, or both.

(7) A person who makes an entry in any records to be kept in accordance with this regulation which is false, misleading or incomplete commits an offence, and is liable upon conviction to a fine not exceeding 1000 penalty units, or to imprisonment for a term not exceeding 6 months, or both.

owers of
pection

18. (1) The Director may by written notice appoint properly trained and qualified persons to be an inspector to investigate and report –

- (a) as to whether the provisions of these Regulations have been complied with;
 - (b) on what measures have been taken to prevent the discharge of pollutants, other than those made in accordance with the provisions of these Regulations;
 - (c) as to whether reception facilities provided in ports are adequate to meet the needs of the vessels using them without causing undue delay; and
 - (d) any other matter associated with the administration of these Regulations and the implementation of the Conventions to which these Regulations apply.
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- (2) An inspector may –
- (a) enter and inspect a vessel, platform, facility, place on land and any apparatus used for the storage, transfer or processing of pollutants, garbage or sewage;
 - (b) test any equipment with which the vessel or platform is required to be fitted in accordance with any International Maritime Convention and any requirement of these Regulations;
 - (c) require the production of any records required to be kept and shall have the power to copy records and require the person by whom the records are to be kept to certify the copy as a true copy;
 - (d) board a vessel or platform to ascertain the circumstances relating to an alleged discharge of a pollutant into Solomon Islands waters or from a Solomon Islands vessel into any waters; and
 - (e) board a vessel and take, or require to be taken, soundings of tanks, spaces, and bilges, and any sample or samples of any pollutant from the vessel for analysis.
- (3) An inspection under this regulation may verify that there is on board all valid certificates as required by these Regulations.
- (4) If the inspector believes that the condition of the vessel or its equipment does not correspond substantially with the particulars of any applicable certificate or if the vessel does not carry a valid certificate, the Director –
- (a) shall take all necessary steps to ensure that the vessel shall not sail until it –
 - (i) ~~it is in compliance with the~~ provisions of these Regulations; and
-
-

- (ii) it can proceed to sea without presenting a threat of harm to the marine environment; or
 - (b) may grant permission for the vessel to leave the port or offshore terminal for the purpose of proceeding to the nearest appropriate repair yard available.
- (5) If the Director denies a foreign vessel entry to a port or offshore terminal, or takes any action against a vessel for the reasons that it does not comply with the provisions of these Regulations, the Director shall immediately inform the consul or diplomatic representative of the State whose flag the vessel is entitled to fly, or if this is not possible, the Maritime Administration of the vessel concerned.
- (6) All powers conferred by this regulation shall be exercised so that a vessel is not unnecessarily detained or delayed in proceeding on any voyage.
- (7) An person who –
- (a) fails to reasonably comply with any requirement of this regulation; or
 - (b) obstructs a person acting in the exercise of a power conferred by this regulation -
- commits an offence and is liable upon conviction to a fine not exceeding 5000 penalty units or to a term of imprisonment for a term not exceeding 12 months, or both.
-
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PART 3 - MARINE POLLUTION RESPONSE

19. (1) The provisions of this Part are to be applied subject to the powers of the National Disaster Council established by the National Disaster Council Act [Cap. 148] when a state of disaster is declared, and subject to any laws dealing with pollution, wastes, environment protection or land management where pollution emanates from a source other than a vessel.

General Application
of this Part

(2) Subregulation (1) does not affect right of the Administration to prosecute contraventions of these Regulations, or the liability of an offender who commits an offence against these Regulations.

(3) This Part shall be applied so as to most effectively implement the general principles and provisions of -

- (a) the OPRC Convention and its HNS Protocol;
- (b) the SPREP Pollution Emergencies Protocol; and
- (c) any other provision of a Convention to which these Regulations apply which relates to responses to marine pollution incidents.

20. (1) The Minister may appoint a Marine Pollution Advisory Committee consisting of the following members -

Committees to
Implement these
Regulations

- (a) government representatives from Ministries and agencies which are relevant to the management of the marine environment and the proper management of the POLFUND; and
- (b) industry representatives representing -
 - (i) the Shipping industry;
 - (ii) the oil industry;
 - (iii) port users; and
 - (iv) the fishing industry

(2) The functions of the Marine Pollution Advisory Committee are to -

- (a) develop, review and implement the National Marine Spill Contingency Plan (NATPLAN) required under regulation 21, and related matters;
- (b) assist in the establishment and maintenance of the inventory of marine pollution response equipment under this Part, and its effective utilisation;
- (c) review the provision and operation of waste facilities in Solomon Island's ports and to recommend standards for such facilities;
- (d) ensure the proper administration and utilisation of the monies held in the National Marine Pollution Fund (POLFUND) to meet the objectives of these Regulations and the implementation of the relevant conventions;
- (e) promote the effective participation of Solomon Islands in any bilateral, multilateral and regional marine spill contingency plans and related arrangements; and
- (f) any other matter related to marine pollution as required by the Minister or Cabinet.

(3) The Committee shall meet at such times and places as are nominated by the Minister and may regulate its own procedures as it thinks fit.

(4) The Annual Report prepared by the Administration shall report on the operations and determinations of the Marine Pollution Advisory Committee and an Advisory Committee established under subregulation (5).

(5) For the purposes of preparing for and responding to marine pollution incidents which may be declared to be states of disaster, an Advisory Committee of the National Disaster Council may be established in accordance with any law relating to disaster and emergency management.

21. (1) The Director shall ensure that a National Marine Spill Contingency Plan (NATPLAN) is developed, maintained and implemented. Marine Spill
Contingency Plans

(2) The NATPLAN shall take effect when it is approved by the Minister and must conform to all requirements stipulated in -

- (a) a Convention to which this Part applies; and
- (b) plans prepared and approved under any law relating to disaster and emergency management.

(3) An owner and operator of a port, oil facility or chemical handling and storage facility must develop, maintain and implement site-specific marine spill prevention and contingency plans for their facilities, consistent with the NATPLAN and any requirements applying under any law relating to disaster and emergency management.

(4) An owners or operator of a vessel to which MARPOL 73/78 applies must develop, maintain and implement shipboard marine pollution emergency plans consistent with the requirements of MARPOL 73/78.

(5) The plans required to be developed under this regulation must be submitted to the Director, and if approved by the Minister shall form part of the NATPLAN.

ional
operation

22. (1) The Marine Pollution Advisory Committee shall advise the Administration in relation to any matters that -

- (a) can assist in the effective participation of Solomon Islands in regional and international arrangements relating to the response to marine pollution incidents; and
- (b) most effectively implement the arrangements provided for in the Conventions to which these Regulations apply dealing with response to marine pollution incidents.

(2) The Administration shall ensure that all necessary notifications are given in accordance with the procedures stated in a Convention to which these Regulations apply.

(3) Should Solomon Islands require external assistance in response to a marine pollution incident, such assistance may be requested by the Administration in accordance with the procedures contained in any bilateral, multilateral or regional marine spill contingency plan(s), and related arrangements in place at the time.

(4) If a Pacific Island Country or Territories requests assistance from Solomon Islands in response to a marine pollution incident, such request may be considered by the Administration in accordance with the procedures contained in a bilateral, multilateral or regional marine spill contingency plan, and related arrangements in place at the time.

ppointment of
n-Scene-
ommander

23. (1) The Director shall appoint -

- (a) a suitably qualified officer of the Administration to be the Administration's On-Commander; and
- (b) any other suitably qualified persons to be Deputy On-Scene-Commanders, who shall be deemed to be the On-Scene-Commander if the office of On-Scene-Commander is vacant or the incumbent is absent or is otherwise unavailable to act in relation to any specific marine pollution incident.

- (2) The On-Scene-Commander shall –
- (a) command, manage and co-ordinate all operations relating to the response to marine pollution incidents emanating from vessels; and
 - (b) control and direct the use of all resources allocated to the response to marine pollution incidents emanating from vessels.
- (3) During a marine pollution incident emanating from a vessel, the On-Scene-Commander shall direct the use of assets and resources that are necessary to deal with the incident, and has the authority to spend and commit such funds as are reasonable in the circumstances up to the amount contained in the POLFUND established under law.
- (4) The powers exercisable under this regulation are subject to any directions given to the On-scene Commander under the authority of any law relating to disaster and emergency management if a state of disaster has been declared in relation to the incident.

24. (1) The Director shall arrange for the establishment and maintenance of a national marine pollution response equipment inventory. Marine pollution
response equipment

(2) The national marine pollution response equipment inventory shall be an arrangement involving the Government and the industry comprising the owners and operators of all ports and all oil and chemical handling and storage facilities within Solomon Islands, and all parties contributing and having access to the equipment.

(3) In determining equipment needs, the Government and industry stakeholders shall co-operate to ensure compatibility and inter-operability, and to ensure that the inventory is the most appropriate for all levels of marine pollution risk and for local conditions.

(4) Standards and Code of Practice approved and published by the Minister may -

- (a) require an owner or operator of a vessel or platform to carry on board and maintain marine pollution response equipment for the containment, recovery or dispersal of any pollutant that may be discharged by the vessel or platform into Solomon Islands waters;
- (b) specify the type and quantity of such equipment which shall be sufficient to allow an initial response to the pollution incident taking into consideration limitations of the crew and the practicalities of operations at sea;
- (c) prescribe arrangements for the type and quantity of such equipment to be specified in the shipboard marine pollution emergency plan required under these Regulations; and
- (d) make any other necessary provision relating to marine pollution response equipment in Solomon Islands.

National Marine
Pollution Fund
(POLFUND)

25. (1) The Administration shall facilitate arrangements for the establishment and management of a Fund to be known as the National Marine Pollution Fund (POLFUND) to finance the implementation of the National Marine Spill Contingency Plan (NATPLAN).

(2) The POLFUND shall be constituted and managed in accordance with the laws of Solomon Islands.

PART 4 - MARINE CASUALTIES

General Application
of the Part

26. (1) This Part shall be applied so as to implement the general principles and provisions of the INTERVENTION Convention.

(2) The provisions of this Part shall be in addition to and shall not in any way prejudice any other rights or powers of the Government which are exercisable under international law.

(3) The powers conferred by this Part shall only be exercised and the measures shall only be taken as a result of -

- (a) a marine casualty in Solomon Islands waters or on the High Seas; or
- (b) a pollution incident occurring onboard a vessel, where it appears to the Director necessary to prevent, reduce or eliminate grave and imminent danger from any pollutant -
 - (i) in or to Solomon Islands waters; or
 - (ii) to the coast of Solomon Islands; or
 - (iii) to related interests -

following upon a marine casualty, or acts related to a marine casualty.

27. (1) Where it appears to the Director that as a result of a marine casualty or incident referred to in regulation 26(3) a vessel constitutes or is likely to constitute a risk of pollution then, for prevention, reduction or elimination of the pollution, the Director may -

Powers in relation to marine casualties

- (a) issue any instructions to -
 - (i) the master, owner or agent of the vessel; or
 - (ii) a person-in-charge of any salvage operation in respect of the vessel, and to an employee or agent of that person -

requiring any specified action to be taken or determining that no specified action be taken with respect to the vessel or its cargo; and

- (b) take any measures whatsoever with respect to the vessel or its cargo whether or not the Director has issued instructions under paragraph (a).

(2) In determining what measures should be taken under subregulation (1), the Director shall have regard to –

- (a) the extent and probability of imminent damage if those measures are not taken;
- (b) the likelihood of those measures being effective;
- (c) the extent of the damage which may be caused by such measures; and
- (d) the views of the Solomon Islands Ports Authority and the Ministries responsible for fisheries, disaster management and the environment (if these can be readily obtained in the circumstances).

(3) The measures that the Director may direct to be taken or may take under subregulation (1) shall include –

- (a) the removal to another place of the vessel or its cargo;
- (b) the removal of cargo from the vessel;
- (c) the salvage of the vessel or its cargo, or both;
- (d) the sinking or destruction of the vessel, or the destruction of the cargo, or both; and
- (e) the taking over of control of the vessel

(4) In order to carry out any of the measures referred to in subregulation (1), the Director may, after consulting with the owner of a vessel to whose master the instructions are to be given –

- (a) instruct the master of any Solomon Islands vessel, or the master of any other vessel within Solomon Islands waters, to render assistance to a vessel that is or is likely to be a marine casualty; and
-
-

- (b) instruct the master of a Solomon Islands vessel to –
 - (i) render assistance to any vessel;
 - (ii) take on board any equipment;
 - (iii) sail to any place, to render assistance to a vessel assisting a marine casualty
 - (iv) assist in any operations for the cleaning up, removal, or dispersal of any oil or other pollutant; and
 - (v) obey the instructions of any person authorised by the Director to exercise control over or responsibility for a marine casualty.

(5) The powers of the Director to issue instructions or to take measures under subregulation (1) shall be exercisable by a Persons authorised by the Director –

- (a) in writing; or
- (b) orally and later confirmed in writing, in cases of emergency where the giving of written authority is not practicable.

(6) Before taking any measures under subregulation (1), the Director shall take all available and practicable measures to consult with a State affected by the marine casualty, and in particular the Flag State of the vessel involved.

(7) The Director shall notify a person known to have interests which can reasonably be expected to be affected by the measures that are proposed to be taken under subregulation (1), but a failure to do so does not affect the powers of the Director, or give rise to any liability for non-compliance with this regulation.

ght to compensa-
in

28. (1) A person who has incurred expense, loss or damage as a result of the taking or any action or measure under regulation 27 may seek compensation from the Government only if he or she can prove that the instruction given or measure taken –

- (a) was wholly inappropriate in the circumstances and in excess of any instruction or measure that could have reasonably been given by any reasonable person in the circumstances; or
- (b) had no prospect of preventing, reducing or eliminating the pollution to which it was directed.

(2) A claim made for compensation under subregulation (1) shall be made to the High Court which may take into account any relevant matter in determining whether the criteria stated in subregulation (1) apply.

(3) Nothing in subregulation (2) prevents a claim from being dealt with by conciliation or arbitration provided for under domestic or international law.

(4) Where any measures have been taken pursuant to regulation 27 on the high seas and there is a dispute between the Government and -

- (a) the owner of the vessel; or
- (b) the Government of the State where the vessel is registered; or
- (c) the Government of the State having any related interests s-

and the dispute relates to -

- (i) whether such measures were necessary to prevent, reduce or eliminate grave and imminent danger to Solomon Islands waters or the cost of Solomon Islands or related interests from pollution or the threat of pollution by pollutant; or

- (ii) whether the measures taken were in excess of that reasonably necessary to prevent, eliminate or reduce pollution or the risk of pollution; or
- (iii) whether compensation should be paid in accordance with subregulation (1); or
- (iv) the amount of such compensation -

then, if settlement by negotiation between the parties has not been possible and if the parties do not otherwise agree, the matter shall be submitted, upon the request of any of the parties, to conciliation, and if that does not succeed, then to arbitration according to the procedures set out in the Annex to the INTERVENTION Convention.

29. (1) A person commits an offence if the person – Offences against
this Part

- (a) fails to comply with any instructions issued by the Director pursuant to regulation 27, or by a person duly authorised by the Director; or
- (b) wilfully obstructs a person acting in compliance with any instructions issued by the Director pursuant to regulation 27 or by a person duly authorised by the Director; or
- (c) wilfully obstructs the Director or any person acting on behalf of the Director in carrying out any of the powers conferred on the Director by regulation 27.

(2) A person who commits an offence under subregulation (1) is liable to a fine not exceeding 5000 penalty units, and to an additional fine of 1000 penalty units for each day during which the offence continues.

(3) It is a defence for an offence under subregulation (1) to prove that -

- (a) the failure to comply with any instructions issued under regulation 27; or
- (b) the wilful obstruction of -
 - (i) a person acting in compliance with such instruction duly issued; or
 - (ii) the Director or a person acting on behalf of the Director -

resulted from the need to save life at sea

(4) It is also a defence for an offence under subregulation (1) to prove that all due diligence to comply with any instructions issued by the Director pursuant to regulation 27 or by a person duly authorised by the Director.

protection from
liability

30. Where -

- (a) the Director or a person duly authorised by the Director has taken any measures under regulation 27; or
- (b) a person has taken action or refrained from taking action in accordance with instructions issued under regulation 27 -

then subject to regulation 28, the Director or that person, as the case maybe, shall not incur any civil liability in respect of the instruction given or measures taken.

PART 5 - INSURANCE COVER FOR POLLUTION DAMAGE

requirement for
insurance for pollu-
tion damage

31. (1) This regulation applies to all -

- (a) oil tankers carrying oil in bulk as cargo in Solomon Islands waters;
- (b) vessels carrying hazardous and noxious substances in Solomon Islands waters;

- (c) Solomon Islands vessels having a gross tonnage greater than 500 gross tonnage; and
- (d) any other Solomon Islands vessel, or class of Solomon Islands vessel, that is determined from time to time by the Minister to be a vessel to which this regulation applies.

(2) A vessel to which this regulation applies must be covered by insurance or other financial security in accordance with –

- (a) a Convention to which these Regulations apply; and
- (b) if the vessel is one to which subregulation (1)(c) or (d) applies, any requirement imposed by the Director that is consistent with this regulation.

(3) The insurance cover or other financial security must be in the form of a current –

- (a) policy of insurance;
- (b) bank guarantee;
- (c) certificate issued by an international compensation fund; or
- (d) other appropriate security or cover approved from time to time by the Director

(4) A vessel to which this regulation applies must carry a certificate which certifies that the vessel currently has the required insurance cover or other financial security, and which is issued –

- (a) in accordance with an applicable Convention to which these Regulations apply; and
 - (b) by a competent authority under those Conventions, or by the Director under regulation 32.
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(5) A certificates required to be carried under this regulation shall be in the form required under the applicable Convention to which these Regulations apply, and shall include the following particulars –

- (a) name of the vessel, its distinctive number or letters and its port of registry;
- (b) name and principal place of business of the owner;
- (c) IMO vessel identification number;
- (d) type and duration of security;
- (e) name and principal place of business of insurer or other person giving security and, where appropriate, place of business where the insurance or security is established; and
- (f) period of validity of certificate, which shall not be longer than the period of validity of the insurance or other security.

(6) The certificate must be carried on board the vessel and a copy must be deposited with the authorities that keep the record of the vessel's registry or, if the vessel is not registered in a Contracting State, with the authorities of the State issuing or certifying the certificate.

(7) A Certificate issued or certified under the authority of a Contracting State in accordance with paragraph 2 of Article VII of CLC 92, shall be accepted by Solomon Islands for the purposes of that Convention, and shall be regarded by Solomon Islands as having the same force as certificates issued or certified by them even if issued or certified in respect of a vessel not registered in a Contracting State.

(8) A certificates to which this regulation applies shall be in the official language or languages of the issuing State, and if that language is not English, the text must include a translation into English.

(9) An insurance or other financial security required under this regulation shall not satisfy the requirements of this regulation if it can cease to extend cover for reasons other than the expiry of the period of validity of the insurance or security specified in the certificate under subregulation (2), before 3 months have elapsed from the date on which notice of its termination is given to the authorities referred to in subregulation (6), unless the certificate has been surrendered to those authorities or a new certificate has been issued within that period.

(10) Subregulation (9) shall similarly apply to any modification that results in the insurance or security no longer satisfying the requirements of this regulation.

(11) A claim for compensation for pollution damage may be brought directly against the insurer or other person providing financial security for the owner's liability for pollution damage, and in such cases the defendant –

- (a) may have the benefit of limitations of liability prescribed by law, even if the owner is not entitled to limit his or her liability;
- (b) may invoke a defence which the owner would have been entitled to invoke (other than a defence based upon the bankruptcy or winding up of the owner);
- (c) may invoke the defence that the pollution damage resulted from the wilful misconduct of the owner.
- (d) has the right to require the owner to be joined in the proceedings -

but the defendant shall not have the right to claim any other defence which he or she might have been entitled to invoke in proceedings brought by the owner.

(12) In the case of oil pollution damage any sums provided by insurance or by other financial security maintained in accordance with subregulation (1) shall be available exclusively for the satisfaction of claims under CLC 92.

ue of Certificates
Solomon Islands
sels and bunkers

32. (1) In relation to a Solomon Islands vessel of the nature specified in regulation 31(1), the Administration -

- (a) shall apply all relevant insurance related requirements to Solomon Islands vessels in accordance with all applicable Conventions to which these Regulations apply, and to any additional requirements applying under these Regulations;
- (b) shall ensure that the insurance cover or other financial security relating to the vessel meets the requirements stated in regulation 31(3), (5), (8) and (9); and
- (c) may issue a certificate in the appropriate form and meeting the requirements of the applicable Convention.

(2) No Solomon Islands vessel to which regulation 31 applies may conduct may trade unless -

- (a) it is covered by the required policy of insurance or other financial security as required by this Part; and
- (b) a certificate has been issued under this regulation.

(3) The owner and master of a Solomon Islands vessel which contravenes any of the requirements of subregulation (2) commit an offence and is liable upon conviction to a fine of 5000 penalty units, or to a term of imprisonment for a period of 12 months, or both.

(4) The Administration may approve Codes of Practice relating to bunkers in Solomon Islands and which may require bunkers to have prescribed insurance cover, or any other prescribed financial security, and may prescribe requirements for any matter associated with such a requirement.

33. (1) No vessel to which regulation 31 applies, wherever registered, may enter or leave a Solomon Islands port unless it has current insurance cover or other financial security as required under this Part. Failure to carry the required certificate insurance

(2) The owner and master of a vessel which contravenes subregulation (1) commit an offence and is liable upon conviction to a fine of 5000 penalty units, or to a term of imprisonment for a period of 12 month, or both.

PART 6 - DUMPING AND INCINERATION OF WASTES AT SEA

34. (1) This Part shall be applied in accordance with the requirements, procedures and standards stated in – General Application of this Part

- (a) the London Convention as amended by the Protocol of 1996 to that Convention;
- (b) the Wanigan Convention relating to the dumping and incineration of wastes at sea; and
- (c) the SPREP Dumping Protocol (as amended) made under the SPREP Convention.

(2) The provisions of this Part do not apply to the disposal of garbage from vessels as permitted by MARPOL 73/78 and referred to in regulation 9(5)(c).

(3) The provisions of this Part shall apply to all the internal waters, territorial sea and exclusive economic zone of Solomon Islands, and shall apply to its continental shelf in accordance with the requirements of the SPREP Dumping Protocol.

(4) The provisions of this Part shall not apply to the disposal or storage of wastes or other matter directly arising from, or related to, the exploration and associated off-shore processing of seabed mineral resources as stated in Article 2.3 of the SPREP Dumping Protocol.

(5) Words and phrases used in this Part shall have the same meaning as is given to them in SPREP Dumping Protocol.

(6) The “polluter pays” principle and the precautionary principle shall be applied in the application of this Part as required by section 24 of the Maritime Safety Administration Act 2009.

Permits for the
Dumping of Wastes
at Sea

35. (1) The Ministry responsible for the environment shall have responsibility and authority for the issuing of permits for the dumping of wastes at sea in accordance with the SPREP Dumping Protocol, and shall be the designated authority for the purposes of the Protocol.

(2) An application for permission to dump wastes at sea must be made to the Director of Environment on the form approved for that purpose by the Director of Environment, and must be accompanied by an application fee of \$1,000.

(3) In assessing an application under this regulation, the Director of Environment shall have full regard to the matters stated in Annex II of the SPREP Dumping Protocol, and may require that a Public Environment Report and Environment Impact Assessment be undertaken in accordance with the *Environment Regulations 2008*, and for that purpose the provisions of Part 5 of the *Environment Regulations 2008* shall apply to permits under this Part, with any necessary modifications.

(4) The Director of Environment may reject an application made under this Regulation if there is insufficient time to consider the impacts of the proposed activity, or if insufficient information is provided to permit a proper assessment of the application, and the possible impacts of the proposed activity.

(5) No application may be granted to permit the dumping of wastes other than those prescribed in Annex I of the SPREP Dumping Protocol, or for the incineration of any wastes at sea.

(6) The Director of Environment may approve an application made under this regulation and issue a permit in the approved form.

(7) The Director of Environment may impose on a permit issued under this regulation any conditions that he or she considers appropriate.

(8) It shall be a condition of every permit issued under this Regulation that the holder of the permit -

- (a) comply with any Standards or Code of Practice approved from time to time by the Ministry of Environment, Conservation and Meteorology or by the Administration, or approved under the SPREP Dumping Protocol to be applied by all Parties to the SPREP Convention;
- (b) provide full information in relation to the dumping undertaken under the permit to enable adequate recording, monitoring and reporting upon the nature, timing and effect of the dumping as required by the SPREP Dumping Protocol.

36. wastes are -

- (1) The owner or master of a vessel from or on which
 - (a) dumped at sea otherwise than as permitted by these Regulations; or
 - (b) incinerated at sea -
 commits an offence and is liable upon conviction to a fine not exceeding 5000 penalty units, or to a term of imprisonment not exceeding 12 months, or both.
- (2) The holder of a permit under regulation 35 who -
 - (a) fails to comply with any condition applying to the permit;
 - (b) fails to provide any information relating to the dumping activity when required to do so by the Director of Environment or the Administration; or

Offences relating to disposing of wastes at sea

- (c) dumps any wastes that are not of the type referred to in Annex I of the SPREP Dumping Protocol -

commits an offence and is liable upon conviction to a fine not exceeding 5000 penalty units, or to a term of imprisonment not exceeding 12 months, or both

- (3) A person who exports any wastes or other matter from Solomon Islands to a place within the Protocol area, as defined in the SPREP Dumping Protocol, for the purposes dumping or incineration at sea, commits an offence and is liable upon conviction to a fine not exceeding 5000 penalty units, or to a term of imprisonment not exceeding 12 months, or both.

- (4) It is a defence to an offence under subregulation (1) or (2) if the offender can prove that the action taken -

- (a) was necessary for the safety of human life, or of a vessel, aircraft, platform or other man-made structure; or
- (b) was in response to dangers posed by force majeure caused by stress of weather, or any other cause posing threat to safety; and
 - (i) was required as the only way of averting the threat of danger; and
 - (ii) would result in less damage or injury than which would likely result from the threat or danger.

- (5) In addition to a penalty imposed under this regulation, the court shall order the offender to pay or reimburse all costs arising from the offence, including the costs of investigating the offence and monitoring its impacts, and responding to any environmental damage and rectifying the damage caused.

PART 7 - MISCELLANEOUS PROVISIONS

37. (1) A person who contravenes a requirement, duty or obligation provided for in these Regulations, or under any Standards or Code of Practice approved under these Regulations, for which no offence is stated or no penalty is provided for, commits an offence and is liable upon conviction to a fine not exceeding 5000 penalty units, or to a term of imprisonment for up to 3 months, or both. General offences and penalties

(2) Where an offence against these Regulations continues for a period after the initial contravention and no other penalty is provided elsewhere for the continuance of the offence, any person who commits that offence shall, in addition to any other liability, be liable upon conviction to a fine not exceeding 1000 penalty units for every day during which the offence continues.

38. (1) A Court may direct that a vessel or its equipment be sold, and that the proceeds of sale be applied to the payment of fines and costs awarded against any person convicted of an offence against these Regulations, if - Recovery of fines by distress

- (a) the person ordered to pay the fine or costs is the owner or master of the vessel; and
- (b) that person has failed or refused to pay the fine or costs, or any part of them within the time and in the manner -
 - (i) ordered by the court; or
 - (ii) applying by reason of any relevant law.

(2) The power provided for under subregulation (1) is in addition to any other power that the Court may have to compel payment of the fine or costs.

39. (1) The Minister may approve and publish Standards and Codes of Practice for any purpose for which they are contemplated or required by these Regulations, or which relate to - Standards and Codes of Practice

- (a) design requirements applying to vessels so as to apply the provisions of any applicable Convention to which these Regulations apply;

- (b) pollution prevention equipment which must be carried on board vessels, or which must otherwise be available to respond to a marine pollution incident;
 - (c) operations and operational requirements applying to vessels so as to apply the provisions of any applicable Convention to which these Regulations apply;
 - (d) other measures to prevent the discharge of non-indigenous harmful aquatic organisms or pathogens from ballast waters, or by any other activity;
 - (e) hull scraping and cleaning, and other aspects of vessel cleaning operations;
 - (f) the provision, management and utilisation of waste reception facilities for vessels, and any other matter associated with the discharge or disposal of waste from vessels;
 - (g) the provision, management and utilisation of equipment necessary to respond to marine pollution incidents from any vessel or relevant land-based facility;
 - (h) the consideration and granting of Discharge Permits under regulation 14;
 - (i) duties to report discharges or pollution incidents;
 - (j) duties to keep records for any purpose associated with the implementation of these Regulations, and for the production of such records;
 - (k) procedures for investigations or inspections to be carried out under these Regulations;
 - (l) the preparation and enforcement of any aspect of the NATPLAN;
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- (m) any matter which may facilitate regional cooperation in relation to marine pollution prevention, preparedness or response;
 - (n) the role and functions of the On-scene Commander under these Regulations;
 - (o) the exercise of powers to be exercised in the event of a marine casualty;
 - (p) procedures relating to making or responding to any request for assistance in accordance with any Convention to which these Regulations apply; and
 - (q) requirements relating to the insurance or other financial securities required to be held by Solomon Islands vessels, and other vessels in Solomon Islands waters, and in relation to bunkers.
- (2) All approved Standards and Codes of Practice under these Regulations shall take effect in accordance with a Notice in the *Gazette*.

MADE AT HONIARA this twentieth-third day of September, 2011.

HON. JACKSON FIULAUA
Minster for Infrastructure Development
