

*For Ronald.*

**EXPLANATORY NOTE****GUYANA SHIPPING (MARINE POLLUTION) ACT, 2009.****PART I****I. INTRODUCTION**

Pollution of the marine environment is defined in Article 1(4) of United Nations Law of the Sea Convention (UNCLOS), as:

the introduction by man, directly or indirectly, of substances or energy into the marine environment, including estuaries, which results, or is likely to result in such deleterious effects as harm to living resources and marine life, hazards to human health, hindrance to marine activities, including fishing and other legitimate uses of the sea, impairment of quality for use of sea water and reduction of amenities.

According to the statistics compiled by the Group of Experts on the Scientific Aspects of Marine Pollution (GESAMP) in 1993, the major causes of marine pollution consisted of 44 percent land based discharge, 33 percent atmospheric inputs, 12 percent marine transport, ten percent dumping and 1 percent oil exploration and production.

Oil pollution of the marine environment as an international concern came to prominence in the 1960's. A series of incidents such as the blow out to oil wells in the Ekofisk Field in the North Sea in 1977 and the IXTOC I in Campeche, Mexico and accidents to the oil tankers Torrey Canyon off Land's End in 1967, Amoco Cadiz off Brittany in 1978 and later on the Exxon Valdez incident in Alaska in 1989; served to alert policy makers, Legislators and the general public to the problem of marine pollution.

**i. Ship Source Pollution**

Pollution from ships may be categorized as accidental or operational. As the description suggests, accidental pollution occurs as a result of accidents. Oil as well as other noxious cargoes such as chemicals, liquid gases and radioactive matter carried by ships may enter the marine environment as a result of accidents, such as strandings, collisions and explosions. The growing number of ships and the construction and use of larger ships make the result of any such accident all the more serious.<sup>1</sup>

There is only so much that can be humanly done to avoid these accidents. There are however, measures that may be taken to minimize the amount of pollution that could result should an accident occur.

The other form of marine pollution, and more amenable to regulation and control is operational pollution. Operational pollution is that which results as ships go about their normal activities.

Ships which are powered by oil burning diesel engines (which are the vast majority) may discharge oil with their bilge water and the fumes which are emitted from their funnels will eventually return to the sea.<sup>2</sup>

Some ships may also use their fuel tanks for ballast water and may subsequently discharge this oily ballast water into the sea. All ships, however propelled, will pollute the sea if they dispose of garbage overboard or discharge their sewage into the sea.<sup>3</sup>

The greatest amount of pollution from ships, however, comes from their cargoes. Oil, which is transported most extensively by sea, often used to be deliberately discharged at

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<sup>1</sup> Churchill and Lowe; *The Law of the Sea*, 3<sup>rd</sup> edition, Manchester University Press, London, 1999, p. 329.

<sup>2</sup> Ibid.

<sup>3</sup> Ibid.

sea, most notably when seawater which had been pumped into the tanks of an empty oil tanker to clean them out or served as ballast water, were pumped out into the sea.

## **ii. The Response of the International Community.**

The magnitude of the problem warranted a response from the international community, which came in the form of a number of global and regional conventions.

The conventional treatment of ship source pollution can be broadly categorized as the regulatory conventions and the liability and compensation conventions.

Those conventions which may be regarded as the regulatory conventions in the context of ship source pollution are:

- The International Convention for the Prevention of Pollution from Ships, 1973/1978 (MARPOL 73/78 ).
- The International Convention for the Control of Harmful Anti-fouling Ships, 2001 (AFS 2001).
- International Convention for the Control and Management of Ships Ballast Water and Sediments, 2004. (BWM 2004).

The compensation and liability may be regarded as comprising the following conventions:

- The 1969 International Convention on Civil Liability for Oil Pollution Damage and its Protocols (the CLC 1969).
- The International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1971 (Fund Convention)

- The International Convention on Civil Liability for Bunker Oil Pollution Damage, 2001 (Bunkers 2001).

## **II. THE INTERNATIONAL REGULATORY FRAMEWORK FOR SHIP SOURCE POLLUTION**

### **1. The United Nations Convention on the Law of the Sea (UNCLOS), 1982.**

Article 192 of UNCLOS imposes a basic obligation upon States to protect and preserve the marine environment.

Article 194 imposes a duty upon a State to take measures to prevent, reduce and control pollution of the marine environment. States, whether individually or jointly as appropriate are required to use the best practicable means at their disposal, in accordance with their capabilities to achieve this end.

Specific to vessel source pollution and according to Article 194 (3) (a) States are required to take measures to minimize as far as possible pollution from vessels and to implement measures to prevent accidents, deal with emergencies, the safety of operation at sea, regulating discharges and regulating the design, construction, equipment operation and manning of vessels.

Article 211 requires States to establish international rules and standards to prevent, control and reduce marine pollution and such laws and regulations are to have the same effect as generally accepted international rules and standards established through the competent international organization.

## 2. The International Convention for the Prevention of Pollution from Ships, 1973, (MARPOL 73/78)

### a. Background

MARPOL 73/78 embodies the attempt by the international community to implement standards to reduce or eliminate intentional (operational) pollution.

The Torrey Canyon accident in 1967 raised questions about the measures that were then in place in order to deal with pollution from shipping. In response to an enquiry about the incident, the IMO convened an international conference in 1973, during which the International Convention for the Prevention of Pollution from Ships (MARPOL 73/78) was adopted.

MARPOL 73/78 is one of the most important international marine environmental conventions. It was designed to minimize pollution of the seas through dumping, oil and exhaust pollution. Its stated objective is to preserve the marine environment through the complete elimination of pollution by oil and other harmful substances and the minimization of accidental discharge of such substances.

MARPOL 73/78 incorporated much of the pre-existing *International Convention for the Prevention of Pollution of the Sea by Oil, 1957* (OILPOL).

By 1978, the Convention was still a long way from receiving the necessary number of ratifications to enter into force. This was so primarily because of the considerable economic costs and technical difficulties faced by countries in complying with its provisions.<sup>4</sup>

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<sup>4</sup> Ibid at p 340.

In an effort to speed up ratification and in response to a series of tanker accidents in 1997, a Protocol to the Convention was adopted at the IMO's Conference on Tanker Safety and Pollution Prevention, held in February 1978. The effect of the Protocol was to provide that a State could become a party only to Annex I. Annex II would become binding until three years after the entry into force of the Protocol or such longer period as may be decided by the Parties to the Protocol.<sup>5</sup> Since the 1973 Convention had not yet come into force, it was absorbed by the 1978 Protocol; hence it is referred to as MARPOL 73/78.

MARPOL 73/78 has six annexes which set out detailed pollution standards. These are:

- Annex I – Oil;
- Annex II - Noxious Liquid Substances carried in Bulk;
- Annex III - Harmful Substances carried in Packaged Form (1 July 1992);
- Annex IV - Sewage (27 September 2003);
- Annex V - Garbage (31 December 1988); and
- Annex VI - Air Pollution (19 May 2005).<sup>6</sup>

The acceptance of Annexes 1 and II are obligatory for a State wishing to become a party to MARPOL 73/78.

#### **b. The General Provisions of MARPOL 73/78**

Article 1 imposes the general obligation of the State to give effect to the provisions of the Convention and the relevant annexes to which it is party.

Article 2 contains several important definitions which frame the context within which the Convention is to operate.

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<sup>5</sup> Ibid.

<sup>6</sup> Incorporated in the proposed draft in Parts II- VII respectively.

Article 3 sets out the scope of application of the Convention and provides that it applies to all vessels flying the flag of a State party or operating under its authority. The convention specifies that it does not derogate from the sovereign rights for exploration or exploitation of resources and excludes all state ships in non- commercial governmental service.

Articles 4, 5 and 6 set out, inter alia, the jurisdictional capabilities of a State Party in respect of violations under the Convention.

***(i) Jurisdiction of the Flag State***

- Legislative jurisdiction

Article 4 (1) requires the Flag State to prohibit contraventions of the Convention and to prescribe sanctions for breaches wherever they may occur.

- Enforcement jurisdiction

The Flag State once it has been notified of any breach and is satisfied that there is enough evidence to support such a case, the State may institute legal proceedings according to its domestic laws.

***(ii) Jurisdiction of the Coastal State***

- Legislative jurisdiction

Article 4(2) of MARPOL 73/78 requires the State Party to prohibit violations and establish sanctions for any violation of the Convention that occurs within its jurisdiction, including its ports.

- Enforcement jurisdiction



MARPOL 73/78 requires in Article 4(2) that a coastal State may either cause proceedings to be taken or to furnish information and evidence regarding the violation to the flag State administration of the ship involved.<sup>7</sup>

If a foreign vessel is voluntarily in a port of an affected State, that State may institute proceedings for any violation of the Convention.<sup>8</sup> The same applies where a foreign vessel is navigating through the territorial sea or the EEZ of a coastal State and the latter has clear grounds for believing that a violation of the Convention has occurred.

If a coastal State institutes proceedings against a foreign vessel, it must notify the Flag State and the International Maritime Organization (IMO) of any measures or proceedings taken against the offender, except for violations occurring within the territorial sea, only proceedings need be reported.<sup>9</sup>

### ***(iii) Jurisdiction of the Port State***

- Legislative jurisdiction

According to Article 4(2), States must prohibit violations to the Convention and provide the corresponding sanctions for violations within their ports. The State must notify the IMO if conditions for the entry into ports require the adoption of measures under the Convention.<sup>10</sup>

- Enforcement Jurisdiction

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<sup>7</sup> MARPOL 73/78, How to do It, International Maritime Organization, 2003, p 20.

<sup>8</sup> Ibid.

<sup>9</sup> Ibid, p. 21.

<sup>10</sup> Ibid.

A port State can exercise enforcement jurisdiction to ensure compliance and detect violations.

Under Article 5, ships are required to hold certificates pursuant to the annexes and Port State Control Officers have the right to inspect all such Certificates and where non compliance is detected the Port State may require the defect to be remedied before the vessel is allowed to set sail. The Port State also has a duty to report to the Flag State the steps required to be taken or else it may initiate proceedings under its own law. Under Article 5(1) a certificate issued by any State Party to the Convention is to be recognized by another State Party, and each must so provide in its respective domestic legislation.

Pursuant to Article 6 the Port State may inspect a ship for the purpose of verifying whether the vessel has discharged any harmful substances in violation of the regulations under MARPOL 73/78. A port State may also conduct inspections at the request of another State Party, to ascertain whether the ship has discharged harmful substances. However, the requesting party must supply sufficient evidence to support this belief.

**(iv) *Undue Delay***

Article 7 provides that a State in the exercise of its jurisdiction under is not to cause undue delay to the relevant ship and preserves a right of action against the State for damages for any loss occasioned by the unnecessary delay.

**(v) *Reporting Obligations***

Under Article 8 States are required to put in place reporting and notification procedures in respect of incidents involving harmful substances, in keeping with the provisions of Protocol I to the Convention.

Article 9 deals with the interaction of MARPOL 73/78 with other conventions and specifically provides that it does not affect the position of State parties under UNCLOS nor does it affect the jurisdictional rights of the coastal or flag state under international law.

Article 10 sets out the dispute resolution mechanism; it requires parties to submit disputes to arbitration pursuant to Protocol II to the Convention.

Article 11 requires the parties to communicate to the IMO legislation incorporating MARPOL 73/78, a list of NGO's dealing with MARPOL 73/78 related matters, samples of certificates, a list and details of reception facilities, reports which provide evidence of the application of MARPOL 73/78 and annual statistical reports to the IMO.

Under Article 12, States are obligated to investigate marine casualties occurring to its ships which may result in harm to the marine environment.<sup>11</sup> The report of the findings must be communicated to the IMO.

Article 13 deals with the ratification process and Articles 15, 16, 17, 18, 19 and 20 deal with entry into force provisions, amending procedures, technical cooperation, denunciation, confirming the IMO as the depository and finally, languages and official translations.

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<sup>11</sup> In this regard see Part X of the proposed draft.

**c. The Annexes to MARPOL 73/78.**

***i. Annex I – Prevention of Pollution from Oil***

Annex I entered into force on 2 October 1983. It contains detailed and complex regulations to deal with pollution from oil and is applicable to tankers of 140 GT and vessels over 400 GT. Considered below are the some of the main provisions of Annex I.

**a. Discharge Criteria<sup>12</sup>**

Annex I sets out strict discharge criteria. Although oil discharge criteria were set out in the 1969 amendments to OILPOL 1954, the total amount of oil that may be discharged by new vessels is 1/30,000 and by existing vessels 1/15,000.00 from tanker cargo tanks. The geographical area for such discharge is strictly regulated.

**i. Operational discharges are allowed only if the following conditions are met:**

- Discharge must not exceed 1/15,000 of the total carrying capacity of the vessel.
- The rate of discharge must not exceed 60 liters per mile.
- No discharge of oil from cargo spaces within 50 miles of the nearest land.

**ii. Control of discharge of oil from cargo tank areas of oil tankers:**

- Within 50 NM from land – No discharge except clean or segregated ballast (as for Special Area)

- Within Special Area – No discharge except clean or segregated ballast (regulations 10 (2) (a), 10 (3) (a) )
  - Outside Special Area and more 50 nautical miles from land (regulation 9(1) 9a)
    - Tanker is in route
    - Rate of discharge 30 liters per nautical mile
    - Quantity of discharge does not exceed 1/15,000 or 1/30,000
    - Tanker has an oil discharge monitoring system and slop tank arrangement as required by regulation 15 of Annex 1.
- iii. Control of discharge of oil from machinery spaces of all ships:
- Anywhere outside the Special Area – No discharge except when:
    - Vessel is in route
    - Oil content of the effluent is 15 ppm or less
    - Ship has oil discharge monitoring system and oily-water separator as required by regulation 16 of Annex 1
    - For oil tankers, bilge water does not originate from cargo pump room or is mixed with oil cargo residue.
  - More than 12 nautical miles from land - No discharge except when:
    - Vessel is in route
    - Oil content is 100 ppm or less
    - Vessel has oily-water separator of a design approved by the Administration

b. Special Areas

The discharge of any oil from tanker cargo tanks is completely prohibited in a number of Special Areas which are considered particularly vulnerable to pollution (regulation 10 (2) (a)).

All vessels may however, discharge oily waters originating from machinery spaces in the special areas provided certain criteria are met. These include that the oil content of the water is below 15 ppm and that an automatic shut-off or stopping device is fitted (regulation 10 (3) (b)).<sup>13</sup>

The special areas under MARPOL 73/78 are:

- Mediterranean Sea
- The Black Sea
- The Baltic Sea
- The Red Sea
- The Gulf Areas
- Gulf of Aden
- Sea of Oman
- North West European Waters
- Antarctic Area

c. Reception Facilities

In accordance with regulation 12, all parties to MARPOL 73/78 are required to provide adequate facilities for the reception of residues and oily mixtures at oil loading terminals,

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<sup>13</sup> Gold, Edgar: Gard Handbook on the Protection of the Marine Environment, 3<sup>rd</sup> edition, GARD AS, 2006 at p 208. (hereinafter Gard)

repair ports etc.<sup>14</sup> This provision is causing much difficulty, particularly in developing countries, which are experiencing tremendous difficulty in financing the construction of such facilities.<sup>15</sup>

d. Equipment

- Tankers

Tankers must be fitted with the necessary equipment for the Load on Top (LOT) system and should be fitted with the necessary equipment for the retention of oily residues on board until they can be transferred to onshore reception facilities. Equipment required include slop tanks, oily water separating and filtering systems, oil content metres, oil discharge monitoring, and control systems, sludge tanks and suitable pumping and piping arrangements.<sup>16</sup>

- Vessels

All vessels over 400 GT, including vessels other than tankers must be equipped with oily water separating or filtering systems for the discharge of machinery space bilges.

e. Oil Record Book

All ships must carry a comprehensive Oil Record Book in which all operations involving oil are recorded. This book can be inspected by any State that is party to MARPOL 73/78.

***ii. The 1978 MARPOL 73/78 Protocol - Additions to Annex I***

The 1978 Protocol made some important additions to Annex I. These include:

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<sup>14</sup> See Part IX of proposed draft.

<sup>15</sup> Ibid.

<sup>16</sup> Ibid, p 209.

a. Segregated Ballast Tanks (SBTs)- which are required to be fitted on all new tankers over 20,000 DWT rather than above 70,000 DWT as set out under MARPOL 73/78. It should be noted that all oil tankers that were contracted for building after 6 July 1995, had to be fitted with a double hull. From the same date oil tankers that do not comply with Regulations 13 and 13 E of Annex I must either be fitted with a double hull, have a 30 percent empty wing tank space or have a 30 percent of the cargo tank area covered by a double bottom.<sup>17</sup>

SBTs must be protectively located, i.e. they must be positioned in such a way to protect the cargo tanks if the ship were to be stranded or involved in a collision.

b. Crude Oil Washing (COW) - is accepted as an alternative to SBTs on existing tankers over 40,000 DWT. With the COW system the cargo tanks are washed with the cargo itself. The solvent action of the crude provides a very effective cleaning mechanism.<sup>18</sup> The dangers of explosions associated with the COW system was addressed in the Protocol to SOLAS 1974<sup>19</sup>, adopted at the same conference as the 1978 Protocol, requires that an Inert Gas System (IGS) must always be used during COW operations.

c. Dedicated Clean Ballast Tanks – for pre-MARPOL 73/78 product tankers and for all pre- MARPOL 73/78 existing crude oil tankers, this presents a third alternative. The Clean Ballast Tanks (CBT) system dedicates certain tanks solely for ballast purposes. It is a cost effective measure for older vessels as it allows existing tanks, piping and pumping to be used.

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<sup>17</sup> Ibid at p 210.

<sup>18</sup> Ibid.

<sup>19</sup> The International Convention on the Safety of Life at Sea, 1974, as amended.



- d. Survey requirements - Classification survey requirements include:
- are include an initial survey before the vessel enters service or before an International Oil Pollution Prevention Certificate (IOPP) is issued;
  - renewal surveys at intervals not exceeding five years;
  - a minimum of one intermediate survey during the IOPP validity period; and
  - annual surveys
- e. Exemptions - Tankers that operate solely on specific trades between ports with adequate reception facilities are exempted from the SBT, COW and CBT provisions.
- f. Important amendments – In 2001 a new global time table was set for the phasing out of the single hull tanker. Initially, the deadline of the phasing out of all single hull tankers was set at the year 2015. However, in 2003 the timetable was revised and the final phasing out date for single hull carriers is the year 2010.

***iii. Annex II- Pollution from Noxious Liquid Substances***

The regulations of Annex II contain specific discharge criteria and measures for the control of pollution by noxious liquid substances in bulk.<sup>20</sup> Some 250 substances were evaluated and included in the list appended to the Convention. The discharge of their residues is allowed only to reception facilities until certain concentrations and conditions (which vary with the category of substances) are complied with.

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<sup>20</sup> See Part III of the proposed draft.

Annex II defines chemical tankers as vessels primarily constructed or adapted to carry cargoes of noxious liquid substances in bulk. This definition also includes an oil tanker as defined under MARPOL 73/78 Annex I, when carrying full or part cargoes of liquid noxious substances in bulk. A distinction is made between chemical tankers and other ships carrying certain types of noxious substances in bulk. There is a further distinction between self-propelled and non-propelled vessels. This relates to the speed underway at which discharges are permitted to be made under circumstances.<sup>21</sup>

a. Substance Categories

MARPOL 73/78 Annex II grades “noxious liquid substances carried in bulk” (NLS) into four categories graded A to D, according to the hazard they present to marine resources, human health or amenities.

- *Category A* – considered hazardous to human and aquatic life and highly toxic to aquatic life.
- *Category B* – produce tainting of seafood and are slightly to moderately toxic to aquatic life.
- *Category C*- substances slightly toxic to aquatic life
- *Category D*- substances non-toxic to aquatic life which may have a nuisance effect on amenities.

The Annex also listed “other liquid substances” deemed to fall outside Categories A, B, C or D and therefore representing no harm when discharged into the sea from tank cleaning or ballasting operations. These substances include coconut oil, ethyl alcohol, molasses, olive oil and wine.<sup>22</sup>

In January 2007 a revised Annex II came into operation and it introduced four new categories graded X to Z and other substances falling outside of those categories.<sup>23</sup>

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<sup>21</sup> Supra fn. 14 at p. 212.

<sup>22</sup> <[http://www.imo.org/Environment/mainframe.asp?topic\\_id=236](http://www.imo.org/Environment/mainframe.asp?topic_id=236)>

<sup>23</sup> <[http://www.imo.org/Environment/mainframe.asp?topic\\_id=236](http://www.imo.org/Environment/mainframe.asp?topic_id=236)>

- *Category X* – NLS which if discharged into the sea from tank cleaning or deballasting operations, are deemed to present a major hazard to either marine resources or human health and therefore justify prohibition of the discharge into the marine environment.
- *Category Y* – NLS which if discharged into the sea from tank cleaning or deballasting operations, are deemed to present a hazard to either marine resources or human health or cause harm to amenities or other legitimate uses of the sea and therefore justify a limitation on the quality and quantity of the discharge into the marine environment.
- *Category Z* – NLS which if discharged into the sea from tank cleaning or deballasting operations, are deemed to present a minor hazard to either marine resources or human health and therefore justify a less stringent restrictions on the quality and quantity of the discharge into the marine environment.

b. Discharge Criteria

Annex II sets out criteria for the discharge of residues. Discharge should only be into reception facilities provided at ports, unless certain conditions are met.

The discharge criteria for substances in Categories A, B and C, are as follows:

- i. Ships must be underway at a speed not exceeding 7 knots if self propelled or 4 knots if non- self propelled.
- ii. Discharges must be made below the waterline.
- iii. Discharges must be made at a distance no less than 12 miles from the nearest land and in a depth not exceeding 25 metres.
- iv. Discharges must be made in accordance with regulations developed by the flag State which must be made in accordance with standards developed by the IMO.

- v. Concentration and rate of discharge of effluents has to be such that the concentration of the substance in the wake of the ship shall not exceed a percentage of parts per million (ppm) in accordance with the provisions of Annex II.

c. Safety Regulations

States that are party to MARPOL 73/78 are required to issue detailed requirements for the design, construction and operation of chemical tankers. Such requirements must at least contain all the provisions of the International Code for the Construction and Equipment of Ships Carrying Dangerous Chemicals in Bulk (IBC Code).

d. Cargo Record Book

Tankers carrying noxious liquid substances in bulk must carry on board at all times an approved Procedures and Arrangements Manual, in which all discharges concerning Annex II substances must be recorded. All discharges of residues and tank washings must comply with the standards for procedures and arrangements of such substances.

Annex II provides the shipping industry with new minimum standards for this type of cargo. Although this part of the shipping industry has good history of safety, the spectre of a major accident involving a chemical tanker is very real. The spill of a relatively minor amount of highly toxic material may have much more serious effects than a major oil spill.<sup>24</sup>

*iv. Annex III: Pollution by Harmful Substances in Packaged Form*<sup>25</sup>

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<sup>24</sup> Gard; p. 216.

<sup>25</sup> See Part IV of proposed draft.

The main element of the substances covered by Annex III is that they are carried in packaged form. Such packaged form usually refers to freight containers, portable tanks, road tankers, rail wagons etc. As a result, spillage is not caused through tank cleaning, ballasting operations or cargo tank residues, but through the negligent handling and improper packaging during loading, carriage or discharge or through an accident.

Annex III identifies harmful substances by any of the following criteria:

- Bioaccumulated to a significant extent and known to produce a hazard to aquatic life or to human health;
- Bioaccumulated with attendant risk to aquatic organisms or to human health, with a short retention of the order of one week or less; or
- Highly toxic to aquatic life.

a. Prohibitions.

Harmful substances are prohibited to be carried at sea except in accordance with the provisions of Annex III. (Regulation 1 (2)).

b. Packaging.

Annex III requires that packaging of harmful substances carried at sea must be adequate to minimize any hazard to the marine environment, as having regard to the specific content.

c. Empty Receptacles

Annex III assumes that containers used to carry harmful material can carry such material unless adequate precautions have been taken to ensure that no harmful residues are contained in such receptacles. (Regulation 1(4)).

d. Marks and Labels.

Annex III requires the proper marking and labeling of all packages indicating the hazard of the substance and its chemical or technical name (Regulation 3).

e. Documentation

Documentation covering details for the substances being carried are to be available for inspection by port authorities and other such bodies (Regulation 4).

v. *Annex IV: Pollution by Sewage from Ships.*<sup>26</sup>

The basic requirement of Annex IV is that ships are not permitted to discharge sewage within 4 miles from the nearest land unless it is fitted with an approved sewage treatment system.

a. Discharge Criteria.

- i. No discharge of sewage is allowed within 3 nautical miles from the nearest land unless from an approved treatment plant. (Regulation 3 (1)(a)(i) and 8(1) (b).
- ii. Between 3 and 12 nautical miles from land no discharge is allowed except as in i. above and from an approved system for comminuting and disinfecting sewage meeting regulations 3(1)(a)(ii) and 8(1) (a).
- iii. Discharge from either i. or ii. above or sewage which is uncomminuted or disinfected when the ship is proceeding at not less than 4 knots and at the rate of discharge approved by the Administration.

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<sup>26</sup> See Part V of proposed draft.

b. Matters covered by the Regulations to Annex IV.

- Treatment Plant- the fitting of an approved sewage plant is required (Regulation 3).
- Disinfection Plants –The fitting of a system to disinfect and comminute sewage as approved by the administration is required (Regulation 3).
- Holding Tanks- Annex IV requires that a tanks suitable for the size and type of the vessel to be fitted for the reception of sewage. (Regulations 1 and 4).
- Discharge Lines- special dedicated lines for the discharge of sewage must be fitted or available. (Regulation 3)
- Certification- the Flag State is required to issue an International Sewage Pollution Prevention Certificate that indicates that the relevant vessel complies with the provisions of Annex IV.
- Reception Facilities- Reception facilities are required at all ports. Like Annex I of MARPOL 73/78 this is not yet in place in most State Parties because of the inability to finance these facilities.

c. Amendments to Annex IV

The 2004 amendments to Annex IV came into force on 1 August 2005 and extend the revised Annex IV to new ships of 400 GT and above, engaged in international voyages or which are certified to carry more than 15 persons.

vi. *Annex V- Prevention of Pollution by Garbage from Ships.*<sup>27</sup>

According to Annex V garbage includes all types of victual, domestic and operational waste (excluding fish waste) generated during the normal operations of the vessel.

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<sup>27</sup> See Part VI of proposed draft.

a. Prohibitions.

The disposal of all plastic substances including synthetic fishing ropes and nets is prohibited. Although this prohibition goes a long way in reducing the level of plastic pollution, particularly evident in semi- enclosed areas. However the overall success of this matter depends on how quickly biodegradable packaging could be developed.

b. Discharge Criteria.

- i. Not less than 3 nautical miles for garbage that has passed through a comminuter or grinder;
- ii. Not less than 12 nautical miles for Garbage that has not passed through a comminuter or grinder;
- iii. Garbage that may not float may be discharged not less than 25 nautical miles from land;
- iv. Within Special Areas the disposal of garbage is prohibited with the exception of food wastes which must be disposed at least 12 nautical miles from land. (Regulations 1 and 3); and
- v. In respect of offshore installations, discharge is prohibited within the 500 metres safety zone, unless passed through a comminuter or grinder.

c. Record Keeping

Annex V also sets out requirements for garbage management, record keeping, signage, placards, etc. All vessels over 400 GT are required to keep a Garbage Record Book. (Regulation 9).

d. Reception Facilities



Coastal States are required to provide adequate reception facilities in ports. This has caused similar problems to those for sewage as States have been slow in complying or have provided inadequate facilities. (Regulation 7).

*vii. Annex VI- Prevention of Air Pollution from Ships*

Pollution from ships no longer simply covers those pollutants that are operationally or accidentally discharged directly into the sea.<sup>28</sup>

The requirements of Annex VI are in keeping with the Montreal Protocol of 1987, as amended in London in 1990. The Montreal Protocol is an international environmental treaty concluded under the auspices of the United Nation, under which nations agreed to cut chlorofluorocarbons (CFC) consumption and production in order to protect the ozone layer.<sup>29</sup>

a. General Provisions

Annex VI consists of three chapters and a number of appendices:

- Chapter I- General;
- Chapter II- Survey, Certification and Means of Control ;and
- Chapter III- Requirements for Control of Emissions from Ships

The Appendices to Annex VI include:

- the required form of the International Air Pollution Prevention Certificate;

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<sup>28</sup> Gard; p 234.

<sup>29</sup> Ibid.

- criteria and procedures for designation of SO<sub>x</sub> (Sulphur Oxide) emission control areas;
- approval and operating limits for ship incinerators;
- test cycles and weighting factors for verification of compliance of marine diesel engines with the NO<sub>x</sub> (Nitrogen Oxides) limits; and
- the required surveys and inspections.

b. Limits

Annex VI sets limits on sulphur oxide and nitrogen oxide emissions from vessel exhausts and prohibit deliberate emissions of ozone depleting substances. This includes a global cap of 4.5 percent m/m on the sulphur content of fuel. Annex VI contains provisions allowing for special SO<sub>x</sub> Emissions Control Areas (SECA) to be established with more stringent control on sulphur emissions. In such areas, the sulphur content of fuel oil used on board ships must not exceed 1.5 percent m/m. Alternatively, ships must be fitted with an exhaust gas cleaning system or use any other technological method to limit SO<sub>x</sub> emissions.

c. Prohibitions

Annex VI prohibits deliberate emissions of ozone depleting substances, including halons and chlorofluorocarbons (CFCs). New installations containing ozone depleting substances are prohibited on all ships. However, new installations containing hydro-chlorofluorocarbons (HCFCs) are permitted until 1 January, 2020. Annex VI sets limits on emissions of nitrogen oxides (NO<sub>x</sub>) from diesel engines. A mandatory NO<sub>x</sub> Technical Code developed by the IMO, defines how this is to be done. The incineration on-board ship of certain products, such as contaminated packaging materials and polychlorinated biphenyls (PCBs) is also prohibited.

**vii. *Summary of MARPOL 73/78***

As a modern environmental code MARPOL 73/78 requires an almost totally new operational attitude from all levels of the industry. The Convention enjoys universal support and provides legislative uniformity for the shipping industry. If properly implemented MARPOL 73/78 will greatly assist in achieving cleaner oceans and safer ships and will be of benefit not only to all in the shipping industry but also the global marine environment.<sup>30</sup>

**3. The International Convention for the Control of Harmful Anti-fouling Ships, 2001 (AFS 2001).<sup>31</sup>**

**a. Background**

While MARPOL 73/78 is a comprehensive anti-pollution regime, there are some recent issues of environmental pollution that the Convention has not addressed. One such issue relates to antifouling systems which are widely used in shipping.<sup>32</sup>

Anti-fouling systems are used to coat the bottoms of ships and the immersed parts of certain types of offshore installations to prevent sea life such as fungae and molluscs from adhering to its hull. In ships the attachment of sea life to the hull of the ship decreases speed and increases gas consumption.

The Convention for the Control of Harmful Anti-fouling Systems on Ships, AFS 2001, was the culmination of the tasks set out in Article 17 of Agenda 21 developed by the 1992 Rio Summit.

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<sup>30</sup> Ibid.

<sup>31</sup> See Part XI of the proposed draft.

<sup>32</sup> Gard; p. 240.

Chapter 17 exhorts States to take measures to reduce pollution from organotins compounds used in anti-fouling systems. As was recommended by the 21<sup>st</sup> session of the IMO Assembly, the Conference agreed to an effective implementation date of 1 January 2003 for a ban on the application of these systems.

The harmful effects of organotin compounds were recognized by the IMO since 1989. In 1990 IMO's Marine Environment Protection Committee (MEPC) adopted a resolution recommending that States adopt measures to eliminate the use of anti-fouling paint containing organotins- tributyltin (TBT) on non-aluminum vessels of less than 25 metres in length, and the use of antifouling paints with a leaching rate of more than four micrograms of TBT per day.<sup>33</sup>

In November 1999, the IMO adopted an Assembly resolution that called upon the MEPC to develop a global, legally binding instrument to address the harmful effects of anti-fouling systems used on ships. The resolution called for a global prohibition on the application of organotins compounds which act as biocides in anti-fouling systems on ships by 1 January 2003, and a complete ban by 1 January 2008. The AFS Convention came into force on 17 September 2008.

b. Definitions.

The Convention defines anti-fouling systems as “a coating, paint surface treatment, surface or device that is used on a ship to control or prevent the attachment of unwanted organisms”.

c. Prohibitions

Under the Convention, State Parties are required to prohibit and/or restrict the use of harmful anti-fouling systems on ships flying their flag, ships not flying their flags but under their authority, as well as ships entering a port, shipyard or offshore terminal of a contracting State.

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<sup>33</sup> Ibid.

Ships of 400 GT and above engaged in international voyages, excluding fixed or floating platforms, FSUs and, FPSOs, will be required to undergo an initial survey before the ship is put into service or before the International Anti-fouling System Certificate is issued for the first time and whenever the anti-fouling systems are replaced or changed.

Ships of 24 metres or more in length but less than 400 GT engaged in international excluding fixed or floating platforms, floating storage units (FSUs) and, floating storage production and offloading unit (FPSOs), will have to carry a Declaration on Anti-fouling Systems which is to be signed by the owner or authorized agent. The declaration should be accompanied by the appropriate documentation such as a paint receipt or a contractor invoice.

d. Annex I

Annex I to the Convention lists the Anti-fouling Systems which are prohibited or controlled and which will be updated as is necessary. Annex I states that as of 1 January, 2003, ships shall not apply or reapply organotin compounds that act as biocides in antifouling systems.

From 1 January 2008, all ships including fixed and floating platforms shall not be permitted to have such compound on their hulls or external parts and surfaces or if they do, they are required to have a coating that forms a barrier against such compounds leaching from the underlying non compliant anti-fouling systems.

e. Exemptions

The Convention will not apply to any warship, naval auxiliary or other ships owned or operated by the State, and used only on government non-commercial service.

4. **International Convention for the Control and Management of Ships Ballast Water and Sediments, 2004. (BWM 2004)** <sup>34</sup>

a. Background

The problem of harmful aquatic organisms in ballast water was first raised in the 1988. Since then the MPEC, together with the Maritime Safety Committee and other IMO technical sub-committees, have been dealing with the issue focusing first on guidelines and then on developing a new convention.

In November 1993 the IMO adopted Guidelines for Preventing the Introduction of Unwanted Organisms and Pathogens from Ships Ballast Water and Sediment Discharges which were based on the earlier guidelines.

In November 1997 the IMO adopted the Guidelines for the Control and Management of Ships Ballast Water to Minimize the Transfer of Harmful Aquatic Organisms and Pathogens.

This eventually led to the conclusion of the International Convention for the Control and Management of Ships Ballast Water and Sediments, 2004.

b. General Obligations

Under Article 2 the contracting states undertake to give full and complete effect to the provisions of the Convention and the Annex thereto, in order to prevent, minimize and ultimately eliminate the transfer of harmful aquatic organisms and pathogens through the control and management of ships ballast water and sediments.

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<sup>34</sup> See Part XII of the proposed draft.

The contracting states are allowed to take more stringent measures in respect to the prevention, reduction or elimination of the transfer of harmful aquatic organisms and pathogens through the control and management of ships ballast water and sediments, consistent with international law.

States are also required to ensure that ballast water management practices do not cause greater harm than they prevent, to their environment, human health, property or resources, or those of other states.

c. Scope of application

Article 3 of the Convention provides that it applies to ships which fly the flag of a state party and ships not entitled to fly the flag of state party but which operates under the authority of the party.

The Convention does not apply to any warship, naval auxiliary or other ship owned or operated by the State and used for non commercial purposes. Furthermore, the Convention does not apply to:

- Ships not designed to carry ballast water
- Ships operating in internal waters, unless the state party expressly makes the Convention applicable.
- Permanent ballast water in sealed tanks on ships, which are not subject to discharge

d. Reception Facilities

Under Article 5 of BWM 2004 contracting states are required to ensure that all ports and terminals where cleaning or repair of ballast tanks occurs have adequate reception facilities for the reception of sediments.

e. Research and Monitoring

Article 6 of the Convention requires that parties whether individually or jointly promote and facilitate scientific and technical research on ballast water management and to monitor the effects of ballast water management in waters under their jurisdiction.

f. Surveys, Certification and Inspection.

Article 7 requires that parties ensure that flags under their authority or flying their flags which are subject to surveys and certification are compliant. The system of surveys and inspections will result in the issuance of a Ballast Water Management Certificate.

Port state control authorities are given the right to carry out inspections under Article 9, to verify that the ship has a valid certificate, inspect the Ballast Water Book and/ or sample the ballast water.

Article 12 requires that parties must take all reasonable precautions to avoid a ship being unduly detained or delayed.

g. Jurisdiction

Articles 8, 9, 10 and 11 set out the legislative and enforcement jurisdiction of States under the Convention. Article 8 requires States to implement legislation prohibiting violations of the Convention and prescribing sanctions therefor.



In terms of enforcement States have the option of commencing proceedings in accordance with its domestic legislation or furnish the Flag State with the information and evidence concerning the violation.<sup>35</sup>

The Flag State or the Port State is authorized under the Convention to take measures to warn, detain, or exclude the offending ship.<sup>36</sup>

Article 11 requires the Coastal State or the Port State to notify the Flag State of any control actions taken against a ship for contraventions under the Convention.

h. Technical Assistance

Under Article 13 the parties undertake, either directly or through the IMO or other international body, to provide support for states that request technical assistance for the training of personnel. States are also required to cooperate to ensure the availability of relevant technology, equipment and facilities and to undertake other action that would assist in the implementation of the Convention.

i. Communication of Information

Under Article 14 the Parties are required to communicate to the IMO information on the laws it has implemented in keeping with the Convention, the availability and location of reception facilities and the information that will be required of ships which are suspected of contravention of the Conventions.

Articles 15, 16, 17, 18, 19, 20 and 21 deal with dispute resolutions, the relationship of the convention to international law and other agreements, signature, ratification acceptance approval accession, entry into force, amendments and denunciation respectively.

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<sup>35</sup> Article 8 (2).

<sup>36</sup> Article 10 (2).

j. The Annex to the Convention

The Convention has one accompanying annex which is divided into five sections, A- E. Each Section contains detailed provisions relating to the management and control of ballast water.

- Section A -General Provisions
- Section B- Management and Control Requirements for Ships
- Section C- Special Requirements in Certain Areas
- Section D- Standards for Ballast Water Management
- Section E- Survey and Certification Requirements for Ballast Water Management

Some of the provisions of the various sections are complex so that the main provisions or at least those which will be included in the Principal Act are examined.

Section A includes the requirements that the discharge of ballast water shall only be conducted in accordance with the provisions of the Annex.

Under section B, ships are required to carry on board a Ballast Water Management Plan which has to be approved by the Flag State.<sup>37</sup> The plan is to include a detailed description of the action to be taken to implement the ballast water management requirements and supplemental practices.<sup>38</sup>

In addition ships must have a Ballast Water Record Book, to record when ballast water is taken on board, circulated or treated and discharged into the sea. It should also record

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<sup>37</sup> Regulation B-1.

<sup>38</sup> Gard; p. 244.

when ballast water is discharged into a reception facility as well as accidental or other exceptional discharges of ballast water.<sup>39</sup>

k. Specific technical requirements for ballast water management.

The Regulations to the Convention set out certain detailed criteria for ballast water management. These are as follows:

- Ships constructed before 2009 with a ballast water capacity of between 1500 and 5000 cubic metres must conduct ballast water management that at least meet the ballast water performance standards until 2014. After this time it has to meet the standard imposed by the Convention.<sup>40</sup>
- Ships constructed before 2009 with a ballast water capacity of less than 1500 or greater than 5000 cubic metres must conduct ballast water management that at least meets the ballast water exchange standards or the ballast water performance standards until 2016. After this time it shall meet the requirements of the Convention.
- Ships constructed in or after 2009 with a ballast water capacity of less than 5000 cubic metres must conduct ballast water management that meets the standards of the Convention.
- Ships constructed after 2009 but before 2012, with a ballast water capacity of 5000 cubic metres or more must conduct ballast water management that at least meets the standard of the Convention until and after 2016.<sup>41</sup>
- Ships constructed after in or after 2012 with ballast water capacity of 5000 cubic metres or more are required to conduct ballast water management that at least meets the Convention's ballast water performance standard.

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<sup>39</sup> Regulation B-2.

<sup>40</sup> Gard; p. 245

<sup>41</sup> Regulations D-1 or D-2.

Other methods of ballast water management may be accepted as alternatives to the ballast water exchange standards and the ballast water performance standards, provided that such methods provide at least the same protection to the environment, human health, property and resources; and such standards should be approved by the IMO's MPEC.<sup>42</sup>

l. The use of ballast water exchange.

The Convention requires that all ships using ballast water exchange are also required to meet the following requirements:

- Whenever possible, conduct ballast water exchanges at least 200 nautical miles from the nearest land at a water depth of at least 200 metres, taking into account the guidelines developed by the IMO.<sup>43</sup>
- In cases where the ship is unable to conduct ballast water exchange as above, this should take place as far from the nearest land as possible and in all cases at least 50 nautical miles from the nearest land and in water depth of at least 200 metres.
- Where neither of the foregoing requirements may be met, other areas may be designed where ships can conduct ballast water exchanges. All ships are required to remove and dispose of sediments from spaces designated to carry ballast water in accordance with the provisions of the ship's ballast water management plan.<sup>44</sup>

m. The Ballast Water Exchange Standard

Ships performing ballast water exchange are required to do so with an efficiency of 95 percent volumetric exchange of ballast water and for ships exchanging ballast water by the pumping method, pumping through three times the volume of each ballast water tank shall be considered to meet the standards prescribed.<sup>45</sup>

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<sup>42</sup> Gard; p. 245.

<sup>43</sup> Ibid, 246.

<sup>44</sup> Ibid.

<sup>45</sup> Ibid.

n. The Ballast Water Performance Standard

Under the Convention, the IMO is required to periodically review the Ballast Water Performance Standard, taking into account a number of criteria including; safety considerations, environmental acceptability, practicability, cost effectiveness and biological effectiveness. The review should include a determination of whether appropriate technologies are available to achieve the standard of the criteria outlined above and the socio- economic effects on developing countries.

o. Ballast Water Management Approval

Ballast Water Management Systems must be approved by the flag state administration in accordance with the IMO Guidelines.<sup>46</sup> These include systems that use chemical or biocides; or use organisms or biological mechanisms; or that alter the chemical or physical characteristics of the ballast water.<sup>47</sup>

p. Testing and evaluation

Ships engaged in testing and evaluation of promising ballast water treatment technologies may be given a five year leeway period before having to comply with the regulations of the Convention.<sup>48</sup>

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<sup>46</sup> Regulation D-3

<sup>47</sup> Gard; p. 248.

<sup>48</sup> Regulation D-4.

## **II. THE LIABILITY AND COMPENSATION FOR POLLUTION DAMAGE FROM VESSEL SOURCE POLLUTION.**

The traditional system of liability for claims arising from maritime incidents which had evolved over many years was not considered suitable for damage to the marine environment from ship source pollution.<sup>49</sup>

Before 1969, no specific liability regime for ship source pollution existed; there were only some general national laws such as port regulations and rules related to the law of nuisance.<sup>50</sup>

The Torrey Canyon disaster in 1967 proved to be a major turning point in the development of a liability regime. The incident served to underscore the fact that coastal states could be severely damaged by a major pollution incident and yet had little recourse to recover a substantial proportion of their losses.

The traditional principles had not been designed to respond to a major incident of marine pollution, thus the need was recognized for acceptable international instruments to address the problem.

The results of the IMO deliberations in 1969 were two unique conventions. They were drafted by the organization's newly formed Legal Committee and adopted at diplomatic conferences held in Brussels in November 1969 and December 1971; the Civil Liability Convention of 1969 and the 1971 Fund Convention.

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<sup>49</sup> Gard: p. 558.

<sup>50</sup> Ibid.

## **1. The 1969 International Convention on Civil Liability for Oil Pollution Damage and its Protocols (the CLC 1969).<sup>51</sup>**

### **a. Overview**

The CLC 1969 and its protocols and amendments, provides a uniform set of international rules and procedures for determining liability and as a consequence, provide compensation to those who have suffered damage caused by the escape of oil from ships.<sup>52</sup>

The principal features of the Convention include:

- The channelling of liability to the shipowner;
- The strict liability of the shipowner;
- The right to limit liability;
- The definition of covered pollution damage; and
- The requirement for compulsory insurance linked with the right of a direct action against the insurer.

The CLC 1969 was revised by Protocols in 1976, 1984 and 1992 and an amendment in 2000.

- The 1976 Protocol- which came into force in 1981 changed the standard of monetary calculation from the gold standard to the Special Drawing Rights (SDR) of the International Monetary Fund

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<sup>51</sup> See Part XIII of the proposed draft.

<sup>52</sup> Gard; p. 560.

- The 1984 Protocol- was an attempt to raise the limits of liability and to extend the jurisdiction under the Convention to the EEZ, however the Protocol never entered into force.
- The 1992 Protocol- mirrored the attempt under the failed 1984 Protocol but this time the venture was met with success. The 1992 Protocol entered into force in 1996. The Protocol substantially raised the limits of liability, but also based the liability on the gross tonnage of the vessel.
- The 2000 Amendments- further raised the limitation amounts available under the CLC 1969. The amendments came into force on 1 November 2003 under the IMO tacit acceptance procedure.

b. Scope of Application

The CLC is applicable only to damage caused within the territorial sea and the EEZ of the State Party and to tankers carrying persistent oil in bulk. Under the original 1969 Convention, only pollution from oil carried in bulk as cargo, or spills from bunker oil carried by laden tankers is covered. Under the 1992 Protocol, however, pollution from a vessel's bunker is covered in addition to persistent oil carried as cargo, provided the bunker oil originates from a laden tanker or a convention vessel in ballast and where there are residues of the previous oil cargo on-board.

c. Pollutants covered

The CLC applies to pollution damage caused by persistent oil originating from ships constructed or adapted to carry oil in bulk as cargo.

Oil is defined in the Convention as any persistent oil such as crude, fuel, heavy, diesel, or lubricating oil.



d. Pollution damage covered

The Convention covers the pollution damage which is as a result of the escape or discharge of oil, including the costs of preventive measures taken to prevent or minimize pollution damage.<sup>53</sup> Actual pollution damage, according to the Convention is:

- (i) Loss or damage caused outside the ship by contamination resulting from the escape or discharge of oil from a ship, wherever such discharge may occur, provided that compensation for impairment of the environment other than loss of profit from such impairment shall be limited to costs of reasonable measures of reinstatement actually taken or to be taken.
- (ii) The costs of preventive measures and further loss caused by preventive measures.

Generally all quantifiable claims for damages are accepted, and this includes any economic loss suffered.

Furthermore, claims for environmental damage that do not constitute an economic loss are recoverable only to the extent that they relate to reasonable reinstatement measures taken or to be undertaken.<sup>54</sup>

e. Channelling of liability

As mentioned earlier one of the principal features of the CLC is the channelling of liability directly to the ship owner. This means that other service providers such as charterers, ship managers, salvors, etc. are protected from liability unless the damage resulted from their personal act or omission, committed with the intent to cause such damage or recklessly and with knowledge that such damage may probably result.

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<sup>53</sup> Articles 1(6) and III ( 1).

<sup>54</sup> Gard; p. 568.

The shipowner is also required to take out compulsory insurance coverage, since he is the only party that will be held liable in the event of an incident of pollution.

f. Basis of Liability

The standard of liability of the shipowner is strict and the only exceptions available are where the shipowner proves that the damage:

- i. resulted from an act of war and hostilities;
- ii. resulted from a natural phenomenon of an exceptional and irresistible character;
- iii. was wholly caused by an act or omission of a third party, done with intent to cause damage; or
- iv. was wholly caused by the negligence or unlawful act of a government or other authority responsible for the maintenance of lights and other navigational aids in the exercise of that function.<sup>55</sup>

Notwithstanding the foregoing, a malicious act or omission, or negligence on the part of the party suffering pollution damage, may wholly or partly exonerate the shipowner from liability.<sup>56</sup>

Where the escape of oil occurs from two ships the liability of the shipowners is joint and several.<sup>57</sup>

g. Limitation of liability

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<sup>55</sup> See Article III (1) and (II).

<sup>56</sup> Ibid, at (3).

<sup>57</sup> Article IV.



- i. Compulsory insurance.

Certificates must be issued by the Flag State confirming that such insurance coverage exists and such certificates must be carried at all times.<sup>60</sup>

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## **2. The International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1971 (Fund Convention).<sup>61</sup>**

### **a. Overview**

The Fund Convention arose out of the inability of the CLC regime to adequately deal with all the legal, financial and other questions raised during the discussions that resulted in the 1969 CLC.

In response to the widely varying positions on the issue of strict liability, a compromise proposal was suggested which involved the establishment of an international compensation fund, to be subscribed to by all the cargo interests. The fund was to perform the dual purpose of being available to relieve shipowners of the burden of unlimited liability and at the same time ensure that victims of pollution damage had recourse to additional compensation where compensation obtained under the CLC was inadequate or unobtainable. The Convention was adopted at a conference held in Brussels in 1971.

### **b. The Protocols to the Convention.**

- The 1976 Protocol- which came into force in 1994 changed the standard of monetary calculation from the gold standard to the Special Drawing Rights (SDR) of the International Monetary Fund.
- The 1984 Protocol- was intended to raise the limits of liability of the 1971 FUND but was not accepted and was superseded by the 1992 Protocol.
- The 1992 Protocol- the main purpose of the 1992 Protocol was to modify the entry into force requirements of the Convention and increase the limits of liability

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<sup>61</sup>See Part XIV of the proposed draft.

available. The Protocol also extended the geographical scope of the Convention in making it applicable to the EEZ of the State Parties. From 16 May 1998, the parties to the 1971 Convention ceased to be party to the original 1971 Convention, due to a mechanism set out in the 1992 Protocol for the compulsory denunciation of the 1971 FUND.<sup>62</sup>

- The 2000 Protocol- was developed to ensure orderliness in termination of the old regime and to ensure that the fund would be able to meet its obligations. The old 1971 regime ceased to be in force on 24 May 2002, when the number of states fell below 25. Therefore the FUND 1971 Convention will not apply to incidents occurring after May 2002. The 2000 Protocol also raised the limits of liability by about 50 percent.
- The 2003 Protocol- was a reaction to the Prestige incident off the coast of Spain which resulted in significant damage to the French and Spanish coasts. It became apparent that the compensation available under the existing regime would be wholly inadequate to cover the damage suffered. The European Union pressed strongly for an increase in the existing limits. The 2003 Protocol was designed to supplement both the CLC and the FUND regimes. It was open on an optional basis, and raised the limits of compensation to approximately 750 million SDR.

c. FUND membership and administration.

The FUND 1971 set up an International Oil Pollution Compensation Fund (IOPC Fund) which is managed by an intergovernmental organisation and secretariat based in London.<sup>63</sup> The IOPC Fund has an Assembly consisting of all member States, as well as an Executive Committee and a Secretariat, which is headed by a Director.<sup>64</sup>

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<sup>62</sup> Gard; p. 575.

<sup>63</sup> Gard; p. 572

d. FUND contributions.

The FUND is financed by contributions from any party who has received in the relevant calendar year, in excess of 150,000 tons of “contributing oil” in ports or terminals of a State Party, after carriage by sea.

The levy of contributions is based upon the submission by State Parties of reports on oil receipts in respect of individual contributors within their respective jurisdictions.

The contributions payable are paid directly to the IOPC Fund by the contributors, since the Government is not responsible for such payments, unless they have agreed to be so responsible.

e. Scope of Application.

The Convention and its Protocols have as their primary purpose:

- The provision of compensation for pollution damage to the extent that the CLC 1969 and its Protocols are inadequate.
- To supplement compensation available under the CLC 1969 and the FUND 1971 Convention and their protocols and amendments with a third tier of compensation.<sup>65</sup>

With the exception of a few cases the FUND is liable to pay compensation for the victims of oil pollution damage who are unable to obtain adequate or any compensation from the shipowner or his guarantor under the CLC 1969 for the following reasons:

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<sup>64</sup> Ibid.

<sup>65</sup> Gard; p. 574.

- (i.) no liability arises under the CLC 1969 as the shipowner is protected by one or more of the CLC exemptions.
- (ii.) the shipowner is financially unable to meet the CLC obligations and the available insurance coverage is insufficient.
- (iii.) The damage exceeds the shipowners CLC liability.

f. Geographical application

Initially, compensation was only payable for pollution damage suffered within the territory including the territorial sea. The 1992 FUND Protocol extended the scope of application to the EEZ of a State Party. The FUND is also obliged to pay compensation in respect of measures taken by a State Party outside its territory.

g. FUND limits of liability.

As a result of the various amendments to the original convention, the limits of liability have been significantly increased. Under the original 1971 Convention, the compensation limit available from the shipowner and the FUND was 30 million SDR. Furthermore, under certain circumstances the maximum liability of the FUND may be increased to 60 million SDR.

The 1992 FUND Protocol established a new limit of 135 million SDR. However if three IOPC member states receive more than 600 million tons of oil per annum, the maximum limit could be raised to 200 million SDR.<sup>66</sup>

The 2000 Amendments further raised the limits of to 203 million and the special SDR 200 million limit was raised to 300.74 million SDR.

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<sup>66</sup> Ibid.



The 2003 Protocol once again raised the limits through a voluntary, supplementary system to a combined total of 750 million SDR

h. The Supplementary FUND.

The 2003 Supplementary Protocol came into force on 3 March, 2005. This new level of compensation was reached on the basis of a compromise that is, the shipowners would agree on a voluntary basis to increase the limit of liability for small tankers to a new minimum of 20 million SDR for States that have ratified the Supplementary Protocol.

This voluntary increase is governed by the STOPIA agreement- the Small Tanker Oil Pollution Indemnification Agreement. If an oil spill occurs and causes damage to a State that is party to the Supplementary Fund Protocol and the can limit liability in respect of such damage under CLC 1992 for an amount less than 20 million SDR, STOPIA ensures that the FUND will be indemnified for the difference between that limit of liability and the amount of damage or 20 million SDR, whichever is the lesser.<sup>67</sup>

The agreement has the effect of substituting the minimum limit of liability under the CLC 1992 of 4.5 million SDR for tankers not exceeding 5000 GT with a minimum limit of 20 SDR million for tankers not exceeding 29,584. Neither the relevant vessel's flag nor cargo ownership is relevant, as long as the amount of compensation for damage payable exceeds the CLC 1992 limit, STOPIA will be effective, even if there is no claim upon the Supplementary Fund.

There is also a further scheme which provides additional funding for oil pollution in states which are parties to the 2003 Protocol. This relates to the Tanker Oil Pollution

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<sup>67</sup> Ibid.

Agreement (TOPIA) that is designed to provide a mechanism for shipowners to pay an increased contribution to the funding of the Supplementary Fund.<sup>68</sup>

Under TOPIA shipowners agree to indemnify the FUND for 50 percent of its liability to pay compensation under the Supplementary Protocol. The TOPIA contributions are likely to be significant, since the maximum liability of the Supplementary Fund is 750 million SDR.

### **3. The International Convention on Civil Liability for Bunker Oil Pollution Damage, 2001 (Bunkers 2001)<sup>69</sup>**

#### **a. Overview**

The Bunker Convention was adopted by the IMO in 2001, with aim of ensuring the availability of adequate, prompt and effective compensation to persons who suffer damage caused by bunker oil pollution from ships other than oil tankers.

The existing compensation regime provided by the CLC and FUND Conventions did not cover liability for pollution from non- tankers. This was a source of concern to many coastal states as the potential of pollution from bunker oil spills had risen sharply with the increasing amounts of bunkers carried by larger vessels. Furthermore, the persistent character of many bunker oils carries an additional pollution damage risk.<sup>70</sup>

#### **b. Scope**

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<sup>68</sup> Gard; p. 580.

<sup>69</sup> See Part XV of the proposed draft.

<sup>70</sup> Gard; p. 589.

The Convention provides a free standing instrument covering pollution damage only, and is modeled on the CLC system. It is designed to ensure that adequate, prompt and effective compensation is available to parties who suffer damage caused by oil spills, when carried as fuel on- board vessels over 1000 GT.<sup>71</sup>

The Convention defines pollution damage<sup>72</sup> as:

- Loss or damage caused outside the ship by contamination resulting from the escape or discharge of bunker oil from the ship, wherever such discharge may occur, provided that compensation for the impairment of the of the environment other than loss of profit from such impairment shall be limited to a reasonable measures of reinstatement actually undertaken or to be undertaken; and
- The costs of preventative measures and further loss or damage caused by such preventative measures.

Furthermore, the Convention covers pollution damage in the territory, the territorial sea or the exclusive economic zone of state parties.

c. Liability of the Shipowner

Liability for pollution from bunkers is placed on the shipowner, including the registered owner, bareboat charter, operator or manager of the polluting ship.<sup>73</sup>

The shipowner is strictly liable up to the limits established by Article 6 of the Convention for pollution damage unless the damage was caused by an act of war or hostilities, the act

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<sup>71</sup> Ibid.

<sup>72</sup> Article1(9).

<sup>73</sup> Article 1.

or omission of a third party, or the negligent or wrongful act of an authority in failing to provide navigational aids.<sup>74</sup>

Where there is more than one person liable, the liability shall be joint and several and if the shipowner proves that the pollution damage resulted wholly or partially either from an act or omission done with the intent to cause damage by the person who has suffered damage or from the negligence of that person, the shipowner may be exonerated wholly or partly from liability to that person.<sup>75</sup>

d. Exceptions<sup>76</sup>

The Convention does not apply to pollution damage covered by the CLC Convention, nor does it apply to government or naval ships, unless so decided by the state party. The Convention does not apply to government ships on non-commercial services.

e. Limits of Liability

Bunker pollution claims are subject to the existing limitation prescribed by any national legislation or any international regime such as the LLMC 1976 as amended.<sup>77</sup>

f. Compulsory Insurance and the Direct Action

One of the primary requirements of the Convention is the need for the registered owner to maintain compulsory insurance cover.<sup>78</sup>

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<sup>74</sup> Article 3.

<sup>75</sup> Ibid.

<sup>76</sup> Article 4.

<sup>77</sup> Article 6.

<sup>78</sup> Article 7.

Another requirement is the provision of a direct action which would allow a claimant to bring an action for compensation directly against the insurer.<sup>79</sup>

The Convention requires vessels over 1000 GT to maintain insurance or other financial security such as a bank guarantee or similar instrument to cover the liability of the registered owner. The amount of coverage should be in an amount equal to the limits of liability prescribed under the national legislation, but in all cases not exceeding an amount calculated in accordance with the LLMC 1976, as amended.

g. The Resolutions to the Convention

The Diplomatic Conference of the IMO that concluded the convention also concluded three resolutions connected to the new Convention. These addressed:

- i. Limitation of liability- this resolution urges states to accept the 1996 Protocol to the Limitation of Liability Convention that increases the liability limit from those available under the 1976 Convention;
- ii. Promotion of technical cooperation- this resolution urges member states to assist in the implementation of technical requirements of the Bunkers Convention 2001, through the provision of technical assistance for the assessment of the implications of ratifying or accepting the Convention, the development of national legislation to give effect to the Convention and the training of personnel; and
- iii. Protection of persons taking measures to prevent or minimize the effects of oil pollution- urging States to consider the need to introduce legal provisions for the protection of such persons. The Resolution suggests that persons taking measures to prevent or minimize the effects of oil pollution should only incur

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<sup>79</sup> Article 7 (10).

liability where the liability in question resulted from their personal act or omission committed with the intent to cause such damage or recklessly and with such knowledge that damage would probably result. Since the Bunker Convention does not provide for the channeling of liability to the ship owner, the resolution was considered necessary to protect persons such as salvors or any other person taking preventative measures. The use of the construction in Article 7 of the HNS Convention is recommended in this regard.

## **PART II.**

### **THE DOMESTIC REGIME FOR SHIP SOURCE POLLUTION**

#### **1. National Regulation of Marine Pollution.**

The general participation by Guyana in the adoption of international conventions in relation to maritime matters is poor, *a fortiori*, the domestication of conventions specific to marine pollution.

To date Guyana has only adopted the following Conventions

- MARPOL 73/78 Annexes 1-6;
- The CLC convention of 1969; and
- The Fund Convention of 1971

As a subscriber to the dualist ideology, international conventions can only be domesticated by an Act of Parliament. To date, Guyana has not promulgated any legislation incorporating any of the international conventions relating to the regulation of marine pollution, into domestic law with the result that notwithstanding the adoption of these instruments, they still are of no effect.

Furthermore, Guyana is yet to adopt the following instruments which were examined in Part I:

- The Anti- Fouling Systems Convention of 2001
- The Ballast Water Convention
- The CLC Protocols
- The FUND Protocols
- The Bunkers Convention of 2001

## **2. The importance of a regulatory regime for ship source pollution.**

As it stands there is no legislative framework in place to regulate ship source pollution. There is no liability and compensation regime in place in case of oil pollution damage; the general principles of law such as nuisance would be the only recourse available to a claimant who has suffered loss or damage in this regard.

As has been seen, the inadequacies of these principles in addressing liability and compensation were indeed the very reasons which led to the development of the liability conventions.

Furthermore, it would appear that should a pollution catastrophe occur, the cost of cleanup and reinstatement would have to borne by the Government as it is unlikely that

any compensation awarded by the court would, first, be adequate or secondly, be awarded promptly.

The fact that Guyana is about to embark upon the exploration and exploitation of its offshore oil resources means a concomitant increase in marine traffic and therefore an increase in operational pollution and an increase in the risk of accidents occurring.

### **3. The way forward.**

With all of the foregoing in mind, it is therefore imperative that Guyana implements a legal regime to address the full spectrum of vessel source pollution is therefore of utmost necessity.

In order to accomplish this, Guyana must first adopt the following conventions;

- The Anti- Fouling Systems Convention of 2001;
- The Ballast Water Convention;
- The CLC Protocols;
- The FUND Protocols;
- The Bunkers Convention of 2001;

Once these conventions are ratified, the next step would be to draft the implementing legislation.

### **4. Important Considerations**

There are several issues to be considered when domesticating the various Conventions.



*i. Denunciation of the CLC 1969 and FUND 1971*

In order to adhere to the 1992 regime, denunciation of the CLC 1969 and the FUND 1971 is compulsory. It is therefore important, that the Ministry of Foreign Affairs, which is the Ministry responsible for such matters, take the necessary steps to denounce these two conventions.

*ii. Adoption of the LLMC Protocol, 1996.*

The limits of liability under the Bunkers Convention are tied to the limits set out in the Limitation of Liability for Maritime Claims Convention. While Guyana is party to the 1976 LLMC it has not adopted the Protocol of 1996.

**5. Potential Impacts.***i. MARPOL 78/73 and the requirement of reception facilities.*

One of the important considerations when incorporating MARPOL 73/78 is the duty imposed upon States under the convention to ensure the provision of **reception facilities** at the various international ports within its territory. The expenditure involved in the provision of those facilities has proven to be a deterrent to compliance, particularly in the case of developing States.

For example in the Wider Caribbean Region (WCR), of which Guyana is part, an IMO / World Bank Study indicated that port reception facilities in the WCR are non-existent or inadequate at best; 10 ports did not permit offloading of solid wastes and the 13 that did permit offloading did not have sufficient facilities to deal with the waste.<sup>80</sup>

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<sup>80</sup> Sheehy, Benedict C; International Marine Environment Law: A Case Study in the Wider Caribbean Region, bepress Legal Series, 2003, Paper 109, at p 19. Online available at [http://works.bepress.com/benedict\\_sheehy/6](http://works.bepress.com/benedict_sheehy/6).

The costs of providing such reception facilities could be offset, however, through the imposition of waste reception levies for the use of such facilities.

**ii. *The FUND 1971 and the Supplementary Fund Protocol, 2003.***

As discussed previously, the Supplementary Fund Protocol was adopted because the levels of compensation available were not always sufficient. The Supplementary Fund is financed by oil receivers, separate and apart from those contributions already payable under the FUND regime. This raises the issue of additional costs to oil receivers and the possibility of such costs being passed on to the consumer, unless the Government decides to undertake such expenditure. This also may in any event lead to taxation to offset such expenditure. With these considerations in mind therefore, it is recommended that the Supplementary Fund Protocol of 2003 should not be domesticated at this time.

**iii. *Training of personnel***

There will also have to be training of personnel to ensure competence in monitoring and compliance and in the conduct of the relevant investigations, etc. in this regard it may be possible to seek technical assistance from the regional body the Caribbean Environment Programme (the CEP); which is responsible for the administration of the Regional Seas Agreement Programme in the Wider Caribbean Region. Assistance may also be sought from the IMO.

### **PART III**

#### **THE LEGISLATIVE PROCESS**

The manner in which proposed legislation is passed is governed by Articles 170 and 171 of the Constitution of Guyana.

According to **Article 170**, when a piece of legislation is first presented in the Parliament it is called a Bill. The power of the Parliament to pass legislation is to be exercised by way of Bills passed through the Assembly and assented to by the President.

The Bill is presented by the relevant subject Minister for debate in the National Assembly. When the Bill is presented to the President for assent he must indicate whether or not he gives or withholds his assent. Where the President withholds his assent he must return the Bill to the Speaker and that Bill shall not be returned to the President unless a

two thirds majority of the Assembly decides that such Bill should be returned to the President for assent.

Where the National Assembly resolves that the Bill be returned to the President, the President must give his assent within 21 days, unless he sooner dissolves Parliament.

A Bill shall not become law unless it has been duly passed and assented to in accordance with the provisions of the Constitution.

According to **Article 171**, any member of the National Assembly may present a Bill before the National Assembly on matters of urgent public importance. Such a Bill is subject to the same procedure outlined in Article 170.

Both of these Articles are supplemented by the Rules and Procedures of the National Assembly.

#### **i. Legislative Drafting Style**

In Guyana, irrespective of what Government Ministry prepares the relevant piece of legislation, it must be sent to the Attorney General's Chamber for final review and amendments before being laid before Parliament.

In terms of legislative drafting style, when incorporating an international convention, the provisions of the relevant convention are not simply transferred verbatim into domesticating legislation. There is an effort to maintain uniformity of language with the wider *corpus* of law.

Furthermore, not every provision is included in the principal act. Due to the constraints on the time of the Parliament, detailed and technical provisions are usually left to be the subject of Regulations to be developed by the relevant subject Minister.

For example in the instant case, the technical and detailed regulations that comprise Annex I ,II,III,IV, V and VI of MARPOL 73/78 as amended, can be reproduced as regulations to the principal act.

As regards the implementing legislation for MARPOL 73/78 for example, the approach that would be taken would be to give effect to the Convention, prohibit violations; provide sanctions; give power to the relevant authority to take proceedings, to notify the concerned parties, to inspect ships, to monitor compliance, provide for certification and other documentary requirements; provide for the investigation of casualties and incidents of pollution and to ensure the provision of adequate reception facilities.

## **ii. The Guyana Shipping (Marine Pollution Act) 2009.**

Guyana's only piece shipping legislation is the Guyana Shipping Act of 1998, therefore in the interest of uniformity the draft is titled the *Guyana Shipping (Marine Pollution Act) 2009*.

Notwithstanding the fact that Guyana has not ratified several important treaties as regards vessel source pollution, it is intended to domesticate the following conventions:

- The Anti- Fouling Systems Convention of 2001;
- The Ballast Water Convention;
- The Bunkers Convention of 2001;
- The CLC Protocols (except the Supplementary Fund Protocol of 2003);
- The FUND Protocols; and

- MARPOL 73/78 and its 6 Annexes.

The commencement provision will ensure that while these laws are “on the books” they will come into effect by way of Ministerial Order once the instruments have been acceded to and the attendant preparations are made. Indeed it is not unreasonable to suggest that part of a country’s preparation for accession to any international convention, is the preparation of the laws incorporating the relevant convention.

The overall intention is to design a comprehensive, modern legal regime to address the issue of vessel source pollution in Guyana. This certainly is to be preferred to piecemeal legislation, the disadvantages of which are well known.

**a. Structure of the proposed legislation.**

The proposed legislation comprises 133 sections in 16 Parts, as follows:

- Part I – Preliminary provisions.
- Part II – Prevention of Pollution by Oil, which incorporates the provisions of Annex I of MARPOL.
- Part III – Prevention of Pollution by Noxious Liquid Substances, which incorporates Annex II of MARPOL.
- Part IV- Prevention of Pollution by Harmful Packaged Substances which incorporates Annex III.

- Part V – Prevention of Pollution by Sewage, which incorporates Annex IV of MARPOL.
- Part VI – Prevention of Pollution from Garbage which incorporates Annex V.
- Part VII – Prevention of Air Pollution by Ships; which incorporates the provisions of Annex VI of MARPOL.
- Part VIII – Prevention of Pollution from Offshore Installations; this part essentially distills those provisions of MARPOL which are applicable to offshore installations and places them in one part.
- Part IX – Waste Reception Facilities; which address the obligation of states under MARPOL to ensure the provision of waste reception facilities.
- Part X – Shipping Casualties; provides for the obligations imposed by Article 12 of MARPOL on States to investigate shipping casualties.
- Part XI – Prevention of Pollution by Anti- Fouling Systems on Ships; incorporates the provisions of the AFS Convention.
- Part XII – Ballast Water Management in Ships; incorporates the provisions of the Ballast Water Management Convention.

- Part XIII – Civil Liability for Oil Pollution; incorporates the provisions of the 1992 CLC regime, with the limits of liability that obtain up to the year 2000.
- Part XIV – International Oil Pollution Compensation Fund; incorporates the provisions of the 1992 Fund regime.
- Part XV – Pollution from Bunker Oil Carried by Ships; incorporates the provisions of the Bunkers Convention.
- Part XVI – Miscellaneous, administrative and enforcement provisions.

**b. Prosecution of Offences under the Act**

Offences against the Act are to be prosecuted summarily in order to ensure the expediency of proceedings and in keeping with the duty under the Conventions not to cause undue delay to vessels.

**c. Penalties**

The penalties provided utilize the ceiling method whereby a maximum is placed on the amount of the monetary or custodial penalty. This would allow the court the latitude of adjusting the penalty to meet the circumstances of the case. (\$USD 1 = GYD 200).

**DRAFT**  
***Guyana Shipping (Marine Pollution) Bill***



## ARRANGEMENT OF SECTIONS

### PART I

#### *Preliminary*

##### SECTION

1. Short title
2. Interpretation.
3. Commencement
4. Application of this Act
5. Conventions to have the force of law in Guyana

### PART II

#### *Prevention of Pollution by Oil*

6. Discharge of oil prohibited.
7. Discharge of oil from pipelines and exploration areas.
8. Construction of vessels and pollution prevention equipment.
9. Restriction on transfer of oil at night.
10. Duty to report discharge of oil into waters of a port.
11. Notices.
12. Oil Record Book.
13. Surveys and Inspections.
14. Issue of International Oil Pollution Prevention (IOPP) Certificate.
15. Carriage of valid certificate.
16. Duration of Certificate.
17. Shipboard Oil Pollution Emergency Plan.
18. Power to require discharge.

### PART III

#### *Prevention of Pollution by Noxious Liquid Substances*

19. Application of this Part to mixture of oil and liquid substance.
20. Categories of noxious liquid substances.
21. Discharge of noxious liquid substances prohibited.
22. Construction of vessels and pollution prevention equipment.
23. Procedures and Arrangements Manual and Cargo Record Book.
24. Surveys and inspections.
25. Issue of International Pollution Prevention (IPP) Certificate for the Carriage of Noxious Liquid Substances in Bulk.
26. Carriage of Valid Certificate.
27. Duration of Certificate.

28. Shipboard Marine Pollution Plan.(SMPEP)

#### **PART IV**

##### ***Prevention of Pollution by Harmful Packaged Substances***

29. Interpretation.  
30. Discharge of harmful substances prohibited.  
31. Packing marking, labeling and storing.  
32. Harmful Substances Manifest and other documentation.

#### **PART V**

##### ***Prevention of Pollution by Sewage***

33. Application of this Part.  
34. Discharge of sewage prohibited.  
35. Surveys and inspections.  
36. Issue of International Sewage Pollution Certificate.  
37. Carriage of valid Certificate.  
38. Duration of Certificate.  
39. Vessels in ports and marinas

#### **PART VI**

##### ***Prevention of Pollution by Garbage***

40. Application of this Part.  
41. Discharge of garbage prohibited.  
42. Notices.  
43. Garbage Management Plan.  
44. Garbage Record Book.

#### **PART VII**

##### ***Prevention of Air Pollution from Ships***

45. Interpretation  
46. Deliberate emissions of ozone depleting substances prohibited.  
47. Fuel oil quality.  
48. Carriage of bunker delivery note compulsory.  
49. Duties of local fuel oil suppliers  
50. Shipboard incineration prohibited.  
51. Application of this Part to offshore installations.  
52. Surveys and inspections.  
53. Issue of International Air Pollution Prevention (IAPP) Certificate.  
54. Carriage of Valid Certificate  
55. Duration of Certificate.  
56. Power to make Regulations.

**PART VIII*****Prevention of Pollution from Offshore Installations***

- 57. Purpose and application of this Part.
- 58. Discharge of pollutants prohibited.
- 59. Discharge prevention, control and containment.
- 60. Notices, record books and management plans.
- 61. Anti -fouling systems.

**PART IX*****Waste Reception Facilities***

- 62. Purpose and application of this Part.
- 63. Interpretation.
- 64. Port authority to provide waste reception facilities.
- 65. Recovery of costs and Waste Reception Levies.
- 66. Responsible waste management.
- 67. Offences.

**PART X*****Shipping Casualties***

- 68. Shipping casualties.
- 69. Right to recover in respect of unreasonable loss or damage.
- 70. Offences in relation to section 63.
- 71. Service of directions under section 63.
- 72. Application of sections 63 to 66 to certain foreign vessels

**PART XI*****Prevention of Pollution by Anti-fouling Systems***

- 73. Purpose and application of this Part.
- 74. Control on anti-fouling systems.
- 75. Surveys, Anti-fouling Systems Certificate (AFS Certificate) and Anti-fouling Systems Declaration (AFS declaration).

**PART XII*****Ballast Water Management in Ships***

- 76. Interpretation.
- 77. Purpose and application of this Part.
- 78. Discharge of Ballast Water restricted.
- 79. Ballast Water Management.
- 80. Conduct of Ballast Water Exchange.
- 81. Carriage of Ballast Water Management Plan.
- 82. Ballast Water Record Book.
- 83. Surveys and inspections.
- 84. Issue of International Ballast Water Management Certificate (BWM Certificate)
- 85. Carriage of valid Certificate.
- 86. Duration of Certificate.
- 87. Notice to Mariners.

### **PART XIII**

#### ***Civil Liability for Oil Pollution***

- 88. Purpose and application of this Part.
- 89. Liability for oil pollution.
- 90. Exemptions from liability under section 84.
- 91. Restriction of liability for oil pollution.
- 92. Limitation of liability under section 84.
- 93. Limitation actions.
- 94. Restriction on enforcement of claims after establishment of limitation fund.
- 95. Concurrent liabilities of owners and other persons.
- 96. Actions for compensation.
- 97. Extinguishment of claims.
- 98. Insurance compulsory.
- 99. Regulations in respect of issuing of Certificate.
- 100. Rights of third parties against insurers.
- 101. Jurisdiction.
- 102. Government vessels
- 103. Liability for cost of preventive measures where section 61 does not apply.
- 104. Saving for recourse actions.

### **PART XIV**

#### ***International Oil Pollution Compensation Fund***

- 105. Interpretation.
- 106. Contributions by importers of oil and other persons.
- 107. Power to obtain information.
- 108. Liability of the Fund.
- 109. Jurisdiction.
- 110. Extinguishment of claims.
- 111. Subrogation and rights of recourse.
- 112. Supplementary provisions as to proceedings involving the Fund.

**PART XV*****Pollution from Bunker Oil Carried by Ships***

- 113. Purpose and Application of this Part.
- 114. Liability for oil pollution damage.
- 115. Actions for compensation.
- 116. Limitation of liability.
- 117. Compulsory insurance or financial security.
- 118. Extinguishment of claims.
- 119. Jurisdiction.
- 120. Exemptions.

**PART XVI*****Miscellaneous, administration and enforcement***

- 121. Administration, enforcement and prosecution.
- 122. Duty to report discharge.
- 123. Appointment of Inspectors.
- 124. Boarding of vessels by inspectors.
- 125. Access to premises and offshore installations.
- 126. Functions of inspectors.
- 127. Powers of arrest of inspectors.
- 128. Evidence.
- 129. Regulations.
- 130. Offences and penalties.
- 131. Recovery of fines by distress.
- 132. Detention of vessels.
- 133. Time limit for prosecution proceedings.

FIRST SCHEDULE

SECOND SCHEDULE

THIRD SCHEDULE

**GUYANA SHIPPING (MARINE POLLUTION) ACT**

*An Act to make provision concerning pollution of navigable waters by ships and offshore installations, to provide for civil liability for oil pollution and to give effect to certain international conventions relating to marine pollution and prevention and for matters connected therewith and incidental thereto.*

**PART I**  
***Preliminary*****1. Short Title**

This Act may be cited as the *Guyana Shipping (Marine Pollution) Act*.

**2. Commencement**

This Act shall come into operation on such date as the Minister may by order appoint and different dates may be appointed for different parts or provisions of the Act.

### 3. Interpretation

In this Act unless otherwise required –

**"1992 Civil Liability Convention"** means the *Protocol of 1992 to amend the International Convention on Civil Liability for Oil Pollution Damage, 1969*; as affected by any amendment other than an amendment not accepted by Guyana which has been made and has come into force in accordance with the relevant provisions of the 92 CLC Convention;

**"1992 Fund Convention"** means the *Protocol of 1992 to amend the International Convention on the establishment of an International Fund for Compensation for Oil Pollution Damage, 1971*; as affected by any amendment other than an amendment not accepted by Guyana which has been made and has come into force in accordance with the relevant provisions of the 92 Fund Convention;

**"AFS Convention"** means the **International Convention on the Control of Harmful Anti-fouling Systems on Ships, 2001**; as affected by any amendment other than an amendment not accepted by Guyana, which has been made and has come into force in accordance with the relevant provisions of the Convention;

**"Authority"** means the Maritime Administration established by the Guyana Shipping Act of 1998;

**"Approved Surveyor"** means an individual approved by the Authority to undertake surveys of ships in accordance with the provisions of this Act;

**"Ballast Water Convention"** means the Ballast Water Management Convention of 2004;

**"Bunkers Convention"** means the *International Convention on Civil Liability for Bunker Oil Pollution Damage, 2001*; as affected by any amendment other than an amendment not accepted by Guyana which has been made and has come into force in accordance with the relevant provisions of the Convention;

**"discharge"** means in relation to any pollutant or effluents containing pollutants -

- (a) any release into Guyana waters from any vessel or any offshore installation; and
- (b) any release into the sea beyond Guyana waters from any Guyanese vessel or any Guyana offshore installation;

howsoever caused, and includes any escape, disposal, spilling, leaking, pumping, jettisoning, throwing overboard, emitting or emptying; but does not include -

- (i) any discharge from an offshore installation that is duly authorized under the *Environmental Protection Act of 1996*; and
- (ii) dumping within the meaning of the London Protocol.

**"fishing gear"** means any equipment used to catch fish or other marine life including

- (a) nets, lines, traps and hooks, and any associated equipment such as;
- (b) ropes, floats, buoys, markers, weights and anchors, as well as;
- (c) packaging materials for bait and catch, and includes nets, ropes and other equipment made from plastics and other synthetic materials as well as non-synthetic materials;

**"FSU"** means floating storage unit;

**"FSPO"** means floating storage, production and offloading unit;

**"garbage"** means all kinds of victual, domestic and operational waste, including;

- (a) all forms of plastics,
- (b) dunnage,
- (c) cargo-lining and packing material; and
- (d) other waste, generated during the normal, day-to-day operation of a vessel; as well as;
- (e) fishing gear; and excluding;
  - (i) oil, noxious liquid substances, harmful substances in packaged form and sewage as defined in this Act; and



- (ii) fresh fish and parts thereof;

**"Gross tonnage"** means gross tonnage calculated in accordance with the tonnage measurement regulations contained in Annex 1 of the **International Convention on Tonnage Measurement of Ships, 1969**;

**"Guyana"** means the Cooperative Republic of Guyana;

**"Guyana offshore installation"** means an offshore installation registered in Guyana or owned by a Guyanese citizen or owned or partially owned by the Government or owned by a company, corporation or other entity with its principal office being located in Guyana;

**"Guyanese vessel"** means a vessel that is -

- (a) registered or required to be registered under the *Guyana Shipping Act of 1998*; and
- (b) owned or partially owned by either -
  - (i) a citizen of Guyana; or
  - (ii) a Corporation established under and subject to the laws of Guyana;

and "Guyana oil tanker" has a corresponding meaning in relation to an oil tanker.

**"Guyana waters"** includes the internal waters and the territorial sea as defined in the *Maritime Boundaries Act 1977*,

**"harbour master"** includes a dock master or a pier master

**"harmful substance"** means a substance which is identified as a marine pollutant in the International Maritime Dangerous Goods (IMDG) Code;

**"IMDG Code"** means the **International Maritime Dangerous Goods Code** published by the International Maritime Organization from time to time;

**"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;

**"inspector"** means a person appointed as an inspector under 123 (1);

**"International Maritime Organization"** means the organization established by the **International Maritime Organization Convention, 1958**;

**"London Protocol"** means the **1996 Protocol to the Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter, 1972** as affected by any amendment other than an amendment not accepted by Guyana, which has been made and has come into force in accordance with the relevant provisions of the Protocol;

**"marine pollution"** means the introduction by humans, directly or indirectly, of substances or energy into Guyana waters or the sea beyond Guyana waters; which results or is likely to result in such deleterious effects as harm to living resources and aquatic life, hazards to human health, hindrance to aquatic activities, including fishing and other legitimate uses of the sea or other waters, impairment of quality for use of the sea or any water and reduction of amenities; and "pollution" has a corresponding meaning;

**"MARPOL"** means the **International Convention for the Prevention of Pollution from Ships, 1973**; as amended by the Protocol of 1978 and as affected by any amendment other than an amendment not accepted by Guyana, which has been made and has come into force in accordance with the relevant provisions of the Convention;

**"master"** includes any lawfully having person having for the time being command or charge of a vessel;

**"Minister"** means the Minister responsible for maritime transport;

**"Government"** means the Government of Guyana;

**"noxious liquid substances"** means any substance referred to in Regulation 1. 10 of Annex II of MARPOL;

**"offshore installation"** means any man-made fixed or floating offshore structure used for any purpose whatsoever; and includes but is not limited to pipelines, rigs and platforms and transfer, storage and loading facilities associated with offshore oil, gas and mineral exploration, extraction, production, storage and transport;

**"oil"** means 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 II of MARPOL) and, without limiting the generality of the foregoing, includes the substances listed in Appendix I to Annex I of MARPOL;

**"oil tanker"** means a ship constructed or adapted for the carriage of oil in bulk as cargo and includes combination carriers and any chemical tanker as defined in Annex II of MARPOL when it is carrying oil in bulk as cargo and during any voyage following such carriage unless it is proved that it has no residues of such carriage of oil in bulk aboard;

**"oily mixture"** means a mixture with any oil content;

**"owner"** in relation to a vessel means a registered owner under the *Guyana Shipping Act 1998* and includes a demise or bareboat charterer, and relation to any offshore installation -

- (i) the owner or operator or manager or licensee for the time being of the offshore installation, or any agent or employee, or any person in charge of operations connected therewith; and
- (ii) any 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 offshore installation is or has been or is to be used;

and in relation to any port facility the registered owner, lessee or operator of the facility or the registered owner or lessee of the land on which the facility is located;

**"packaged form"** means a form of containment specified for harmful substances in the IMDG Code;

**"port"** means any place which is for the time being appointed to be a port under the Customs Act;

**"pollutant"** includes oil, oily mixtures, oil residues, noxious liquid substances, harmful substances, sewage and garbage as defined by MARPOL, and any water contaminated by any such substance, and any other substance which added to the sea or any other waters results or is likely to result in such deleterious effects as harm to living resources and aquatic life, hazards to human health, hindrance to aquatic activities, including fishing and other

legitimate uses of the sea or any waters, impairment of quality for use of any waters and reduction of amenities; and "pollution" has a corresponding meaning;

**"Recognized Organization"** means an organization approved by the Authority to undertake surveys and certifications of ships under sections 13, 14, 24, 25 and 43;

**"sewage"** in relation to vessels and offshore installations 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;
- (c) drainage from spaces containing living animals; and

other waste waters when mixed with the drainage mentioned in the foregoing provisions of this definition;

**"ship"** means any waterborne vessel and craft of any size and type whatsoever and includes displacement and non-displacement craft, hydrofoil boats, air-cushion vehicles, submersibles, fixed or floating platforms, FSUs and FSPOs without regard to the method of or lack of propulsion;

**"ship building facility"** means any place on land, in the inter-tidal zone and in Guyana waters where vessels are constructed;

**"ship repair facility"** means any place on land, in the inter-tidal zone and in Guyana waters where vessels are repaired and maintained, including cleaning, scraping and painting;

**"special area"** means a sea area where for recognized technical reasons in relation to its oceanographic and ecological condition and to the particular character of its traffic the adoption of special mandatory methods for the prevention of sea pollution is required, and which is designated as a special area under Regulation 1.11 of Annex I of MARPOL;

**"transfer"** in relation to oil or any pollutant means the conveyance in bulk from a vessel to a place on land or vice versa, or from one vessel to another,

or the internal transfer from tank to tank within a vessel, or from an offshore installation to a vessel or vice versa, or from one offshore installation to another; and

"vessel" has the same meaning as "ship".

#### **4. Application of this Act**

This Act applies to any vessel in Guyana waters and any Guyanese vessel wherever it may be, except as otherwise provided.

#### **5. Conventions to have the force of law in Guyana**

The following International Conventions, including any Protocols, Annexes, Appendices, Addenda and Amendments, other than a Protocol, Annex, Appendix, Addenda or Amendment not accepted by Guyana, which has been made and has come into force in accordance with the relevant provisions of the Convention; are the International Conventions to which this Act applies and which through this Act are to have the force of law in Guyana –

- (a) AFS Convention;
  - (b) Ballast Water Convention;
  - (c) Bunkers Convention;
  - (d) MARPOL Convention;
  - (e) The 1992 Civil Liability Convention; and
  - (f) The 1992 Fund Convention.
- (2) Regulations made under this Act may –
- (a) add or delete from the list of Conventions in subsection (1) and any Convention added may be implemented, enforced or otherwise applied in Guyana in accordance with this Act and any regulations made hereunder;
  - (b) make provision for any aspect of the application or enforcement of a Convention to which this Act applies; or
  - (c) modify the application of any Convention to which this Act applies to meet the needs and circumstances of Guyana.

## **PART II**

### ***Prevention of Pollution by Oil.***

#### **6. Discharge of oil prohibited**

(1) Subject to subsections (4) to (8) the discharge of oil, oily mixtures or oil residues from any vessel is prohibited.

(2) If any oil, oily mixture or oil residues are discharged from any vessel in contravention of the provisions of this section –

- (a) the owner of the vessel;
- (b) the master of the vessel; and
- (c) any other member of the vessel's crew whose act caused or contributed to the discharge, unless the member was complying with an instruction from the master or someone authorized by the master to give the instruction; and/or
- (d) in the case where another vessel caused or contributed to the discharge, such as through collision with the vessel from which the discharge occurred, the owner and master of the other vessel;

each commit an offence and shall each be liable upon summary conviction to a fine not exceeding ten million dollars or a term of imprisonment not exceeding five years.

(3) This section shall not apply to a discharge of oil, oily mixtures or oil residues –

- (a) necessary for the purpose of securing the safety of a vessel or saving human life, providing that the discharge was necessary and reasonable in the circumstances; or
- (b) resulting from damage to a vessel or its equipment provided that;
  - (i) all reasonable precautions are taken after the occurrence of the damage or discovery of the discharge for the purpose of preventing, stopping or minimizing the discharge; and
  - (ii) the discharge is immediately reported to the Authority in accordance with section 122;

except if the owner or the master acted either with intent to cause damage, or recklessly and with knowledge that damage would probably result, or otherwise failed to maintain, manage and/or operate the vessel in a competent and responsible manner; or

- (c) for purposes of combating specific pollution incidents in order to minimize pollution from such incidents, providing that the

discharge is first approved in writing by the Authority and clearly reduces the pollution from the incident being combated.

(4) This section shall not apply to the discharge of oil or oily mixtures from vessels of gross tonnage 400 and above when the vessel is not in a special area if –

- (a) the vessel is underway;
- (b) the discharge is processed through oil filtering equipment that meets the requirements of Regulation 14 of Annex I of MARPOL;
- (c) the discharge does not originate from cargo pump-room bilges on oil tankers; and
- (d) the discharge, in case of oil tankers, is not mixed with oil cargo residues.

(6) This section shall not apply to the discharge of oil or oily mixtures from vessels of gross tonnage 400 and above when the vessel is in a special area if –

- (a) the vessel is underway;
- (b) the discharge is processed through oil filtering equipment that meets the requirements of Regulation 14.7 of Annex I of MARPOL;
- (c) the oil content of the discharge without dilution does not exceed 15 parts per million;
- (d) the discharge does not originate from cargo pump-room bilges on oil tankers; and
- (e) the discharge in case of oil tankers, is not mixed with oil cargo residues

except in the Antarctic area south of latitude 60°S where no exceptions to the application of this section apply.

(7) This section shall not apply to the discharge of oil or oily mixtures from vessels of gross tonnage less than 400 if –

- (a) the vessel is underway;
- (b) the discharge is processed through equipment of a design approved by the Authority in the case of Guyanese vessels or approved by the flag State in the case of foreign vessels, that ensures that the oil content of the discharge without dilution does not exceed 15 parts per million;
- (c) the oil content of the discharge without dilution does not exceed 15 parts

per million;

- (d) the discharge does not originate from cargo pump-room bilges on oil tankers; and
  - (e) the discharge, in case of oil tankers, is not mixed with oil cargo residues.
- (8) This section shall not apply to the discharge of oil or oily mixtures from the cargo area of an oil tanker if –
- (a) the oil tanker is not in a special area;
  - (b) the oil tanker is more than 50 nautical miles from the nearest land;
  - (c) the oil tanker is underway;
  - (d) the instantaneous rate of discharge of oil content does not exceed 30 litres per nautical mile;
  - (e) the total quantity of oil discharged into the sea does not exceed, for tankers delivered on or before 31 December 1979, 1/15,000 of the total quantity of the particular cargo of which the residue formed a part, and for tankers delivered after 31 December 1979, 1/30,000 of the total quantity of the particular cargo of which the residue formed a part; and
  - (f) the oil tanker has in operation an oil discharge monitoring and control system and a slop tank arrangement as required by Regulations 29 and 31 of Annex I of MARPOL.

## **7. Discharge of oil from pipelines or exploration areas**

- (1) Where oil to which section 6 applies, is discharged into any part of the sea –
- (a) from a pipe-line; or
  - (b) (otherwise than from a ship) as the result of any operation for the exploration of the sea-bed and subsoil or the exploitation of their natural resources in a designated area,

then, subject to the following provisions of this Part, the owner of the pipe-line or, the person carrying on the operations, commits an offence unless the discharge was from a place in his occupation and he proves that it was due to the act of a person who was there without his express or implied permission.



(2) In this section, “designated area” means an area of the sea-bed and subsoil in which a person is authorized by the Government to carry on an operation relating to the exploration for, or exploitation of, natural gas or oil.

(3) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding 20 million dollars.

### **8. Construction of vessels and oil pollution prevention equipment**

(1) Any vessel in Guyana waters and any Guyanese vessel wherever it may be shall comply with the construction, oil pollution prevention equipment and related provisions contained in the following Regulations of Annex I of MARPOL, as applicable to each vessel type and size -

- (a) Regulation 12 regarding tanks for oil residues (sludge) for vessels of 400 gross tonnage and above;
- (b) Regulation 12A regarding oil fuel tank protection for vessels with an aggregate oil fuel capacity of 600 m<sup>3</sup> and above;
- (c) Regulation 13 regarding standard discharge connection;
- (d) Regulation 14 regarding oil filtering equipment for vessels of 400 gross tonnage and above;
- (e) Regulation 18 regarding segregated ballast tanks for oil tankers;
- (f) Regulation 19 regarding double hull and double bottom requirements for oil tankers delivered on or after 6 July 1996;
- (g) Regulation 20 regarding double hull and double bottom requirements for oil tankers delivered before 6 July 1996;
- (h) Regulation 21 regarding prevention of pollution from oil tankers carrying heavy grade oil as cargo;
- (i) Regulation 22 regarding pump-room bottom protection;
- (j) Regulations 23 to 25 regarding accidental oil outflow performance;
- (k) Regulation 26 regarding limitations of size and arrangement of cargo tanks for oil tankers;
- (l) Regulation 27 regarding intact stability for oil tankers;

- (m) Regulation 28 regarding subdivision and damage stability for oil tankers;
- (n) Regulation 29 regarding slops tanks for oil tankers of gross tonnage 150 and above;
- (o) Regulation 30 regarding pumping, piping and discharge arrangements for oil tankers;
- (p) Regulation 31 regarding oil discharge monitoring and control systems;
- (q) Regulation 32 regarding oil/water interface detector for oil tankers of 150 gross tonnage and above; and
- (r) Regulations 33 and 35 regarding crude oil washing systems for crude oil tankers of 20,000 tonnes deadweight and above.

(2) Any Guyanese vessel which does not comply with any applicable provision of subsection (1) at the time of entry into force of this Act, may be allowed to continue to operate subject to approval by the Authority and under such terms and conditions and for such duration as the Authority may approve in writing.

(3) If any vessel to which this section applies does not comply with any provision of this section including any terms and conditions set by the Authority under subsection (2)

—

- (a) the owner of the vessel; and
- (b) the master of the vessel;

each commit an offence and shall each be liable upon summary conviction to a fine not exceeding ten million dollars or a term of imprisonment not exceeding five years.

## **9. Restriction on transfer of oil at night**

(1) No oil shall be transferred between sunset and sunrise to or from a vessel in any port unless the requisite notice has been given in accordance with this section or the transfer is for the purposes of a fire brigade.

(2) A general notice may be given to the harbour master of a port that transfers of oil between sunset and sunrise will be frequently carried out at a place in the port within such period, not ending later than 12 months after the date on which the notice is given, as is specified in the notice; and if such notice is given it shall be the requisite notice for

the purposes of this section as regards transfers of oil at that place within the period specified in the notice.

(3) Subject to subsection (2) the requisite notice for the purposes of this section shall be a notice given to the harbour master not less than 3 hours or more than 96 hours before the transfer of oil begins.

(4) In the case of a port which has no harbour master, references in this section to the harbour master shall be construed as references to the port authority.

(5) Where any oil is transferred to or from a vessel in contravention of this section, the master of the vessel, and, if the oil is transferred from or to a place on land, the occupier of that place commits an offence and is liable on summary conviction to a fine of one million dollars.

#### **10. Duty to report discharge of oil into waters of a port**

(1) Where any oil or mixture –

- (a) is discharged from a vessel into the waters of a port; or
- (b) is found to be escaping or to have escaped from a vessel into any such waters; or
- (c) is found to be escaping or to have escaped into any such water from a place on land,

the owner or master of the vessel, or the occupier of the place on land, as the case may be, shall forthwith report the occurrence to the harbour master, or, if the port has no harbour master, to the port authority, and such person or authority shall report the discharge by the quickest possible means to the Director of Maritime Affairs and to the Minister of Health or his representative.

(2) A report made under subsection (1) of this section by the owner or master of a vessel shall state whether the occurrence falls within paragraph (a) or paragraph (b) of that subsection.

(3) A person who fails to make a report as required by this section commits an offence and is liable on summary conviction to a fine of one million dollars.

#### **11. Notices**

(1) Any vessel of 12 metres or more in length overall that operates in Guyana waters shall display notices in highly visible locations, and where relevant to the vessel, at least in the –

- (a) wheel-house;
- (b) engine room; and
- (c) accommodation area

which notify the crew and passengers, in clear and simple terms, of the requirements of subsections 6(1) and 6(2).

(2) Such notices shall be in a format as approved by the Authority from time to time and shall be written in English and the working language of the vessel's crew.

(3) If any vessel to which this section applies does not comply with any provision of this section –

- (a) the owner of the vessel; and
- (b) the master of the vessel

each commit an offence and shall each be liable upon summary conviction to a fine not exceeding one million dollars.

## **12. Oil Record Book**

(1) An Oil Record Book Part I (Machinery Space Operations), whether as part of the vessel's official log book or otherwise, shall be carried by –

- (a) any Guyanese oil tanker of gross tonnage 150 and above, in the form prescribed;
- (b) any foreign oil tanker of gross tonnage 150 and above that enters a Guyana port or terminal or operates in Guyana waters, in the form specified in Regulation 17 and Appendix III of Annex 1 of MARPOL;
- (c) any Guyanese vessel of gross tonnage 400 and above other than an oil tanker, in the form prescribed; and
- (d) any foreign vessel of gross tonnage 400 and above other than an oil tanker that enters a Guyana port or terminal or operates in Guyana waters, in the form specified in Regulation 17 and Appendix III to Annex 1 of MARPOL.

(2) The master of a vessel referred to subsection (1) shall ensure that the Oil Record Book Part I is maintained and that a record is entered without delay whenever any of the following machinery space operations are carried out –

- (a) ballasting or cleaning of oil fuel tanks;
- (b) discharge of dirty ballast or cleaning water from tanks referred to in subparagraph (a);
- (c) collection and disposal of oily residues (sludge and other oil residues);
- (d) discharge overboard or disposal otherwise of bilge water which has accumulated in machinery spaces;
- (e) bunkering of fuel or bulk lubricating oil; as well as
- (f) any failure of the oil filtering equipment.

(3) An Oil Record Book Part II (Cargo/Ballast Operations), whether as part of the vessel's official log book or otherwise, shall be carried by –

- (a) every Guyanese oil tanker of gross tonnage 150 and above, in the form prescribed; and
- (b) every foreign oil tanker of gross tonnage 150 and above that enters a Guyana port or terminal or operates in Guyana waters, in the form specified in Regulation 36 and Appendix III to Annex I of MARPOL.

(4) The master of all vessels referred to subsection (3) shall ensure that the Oil Record Book Part II is maintained and that a record is entered whenever any of the following machinery space operations are carried out –

- (a) loading of oil cargo;
- (b) internal transfer of oil cargo during a 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; or
  - (j) disposal of residues.
- (5) In the event of any discharge of the kind referred to in section 6(4) to 6(8), whether intentional or accidental, an entry shall be made in the relevant Part of the Oil Record Book stating the circumstances of, and the reason for, the discharge.
- (6) Each operation referred to in subsections (2) and (4) and any discharge referred to in subsection (5) of this section shall be fully recorded without delay in the relevant Part of the Oil Record Book so that all entries in the Book appropriate to that operation are completed. Each entry shall be signed by the officer or officers in charge of the operation concerned and each page shall be signed by the Master of the vessel.
- (7) The entries in the Oil Record Book shall be in an official language of the State whose flag the vessel is entitled to fly, and, for vessels holding an International Oil Pollution Prevention Certificate, at least in English, French or Spanish. The entries in an official national language of the State whose flag the vessel is entitled to fly shall prevail in case of a dispute or discrepancy.
- (8) The Oil Record Book shall be kept in such a place as to be readily available for inspection and, except in the case of unmanned vessels under tow, shall be kept on board the vessel. It shall be retained for a period of three years after the last entry has been made.
- (9) The owner, operator and person in charge of any offshore installation used for the transfer or storage of oil when such installation is in Guyana waters, and the owner, operator and person in charge of any Guyana offshore installation used for the transfer or storage of oil wherever it may be, shall ensure that the offshore installation complies with the provisions of subsections (1) and (2), as far as applicable and with any necessary modifications.
- (10) The Authority or an Inspector appointed under Section 123 may;
- (a) inspect the Oil Record Book on board any vessel or offshore installation to which this section applies while the vessel is in a Guyana port or terminal or the offshore installation is in Guyana waters; and

- (b) make a copy of any entry in that book, and require the master of the vessel or the person in charge of the offshore installation to certify that the copy is a true copy of such an entry.

(11) Any copy made under subparagraph (10)(b), which has been certified by the master of the vessel or the person in charge of the offshore installation as a true copy of an entry in the Oil Record Book, shall be admissible in any judicial proceedings as evidence of the facts stated in the entry.

(12) The inspection of an Oil Record Book and the taking of a certified copy under subsection (10) shall be performed as expeditiously as possible without causing the vessel to be unduly delayed.

(13) If any vessel or offshore installation to which this section applies fails to comply with any provision of this section –

- (a) the owner of the vessel; and
- (b) the master of the vessel; or
- (c) the owner, operator and the person in charge of the offshore installation

each commit an offence and are each liable upon summary conviction to a fine not exceeding five million dollars.

(14) Any person who makes an entry in any records to be kept in accordance with this section which to his or her knowledge is false or misleading, commits an offence, and is liable upon summary conviction to a fine not exceeding one million dollars.

### **13. Surveys and inspections**

(1) Every Guyanese oil tanker of gross tonnage 150 and above, and every other Guyanese vessel of gross tonnage 400 and above; shall be subject to the following surveys –

- (a) an initial survey before the vessel is put into service or before the Certificate required under section 14 is issued for the first time, so as to ensure that the structure, equipment, systems, fittings, arrangements and material fully comply with the requirements of section 8 that are applicable;
- (b) annual or biennial surveys, at the Authority's discretion, to assess -

- (i) whether or not the design, construction, equipment, systems, fittings, arrangements and material fully comply with the requirements of section 8 as applicable; and
- (ii) whether or not the equipment and associated pump and piping systems, including oil discharge monitoring and control systems, crude oil washing systems, oily-water separating equipment and oil filtering systems, fully comply with the requirements of section 8 that are applicable, and are in good working order; and
- (iii) the validity or otherwise of the Certificate issued under section 14.

(2) In addition to the surveys required under subsection (1), the Authority may, at its discretion, also undertake unscheduled inspections of Guyanese vessels to assess compliance with section 8 as applicable, and to assess the validity or otherwise of the Certificate issued under section 14 or required under section 15, and such inspections may also be undertaken of foreign vessels which call at Guyana ports or terminals, under the Authority's Port State Control powers.

(3) Surveys and inspections under this section shall be carried out by officers of the Authority. The Authority may, however, appoint Recognized Organizations and Approved Surveyors to undertake such surveys or inspections on the Authority's behalf, and any Recognized Organizations and Approved Surveyors so appointed shall meet certain qualifications and criteria, as prescribed.

(4) When a survey or inspection carried out under subsection (1) or (2) determines that the condition of the vessel or its equipment –

- (a) does not comply with the provisions of section 8 that are applicable;
- (b) does not correspond substantially with the particulars of the Certificate issued under section 14 or required under section 15; or
- (c) is such that the vessel is not fit to proceed to sea without presenting an unreasonable threat of harm to the marine environment;

in the case where the survey or inspection is undertaken by an Recognized Organization or Approved Surveyor, the Recognized Organization or Approved Surveyor shall report the matter immediately to the Authority, and in all cases the Authority may -

- (i) instruct the owner of the vessel to take corrective action; and/or



- (ii) suspend or withdraw the Certificate issued under section 14; and/or
  - (iii) prohibit the vessel from sailing until such corrective action is taken to the satisfaction of the Authority and/or the Certificate issued under section 14 is re-validated or re-issued.
- (5) After any survey of the vessel under subsection (1) has been completed, no change shall be made to the structure, equipment, systems, fittings, arrangements or material covered by the survey, without the approval of the Authority, except the direct replacement of such equipment and fittings.
- (6) Whenever an accident occurs to a vessel or a defect is discovered which substantially affects the integrity of the vessel or the efficiency or completeness of its equipment covered by section 8, as applicable, the owner or master of the vessel shall report at the earliest opportunity to the Authority, which shall cause investigations to be initiated to determine whether a survey as required by subsection (1) is necessary. If the vessel is in a port of another State, the master or owner shall also report immediately to the appropriate authorities of the port State.
- (7) If any vessel to which this section applies fails to comply with any provisions of this section -
- (a) the owner of the vessel; and
  - (b) the master of the vessel;
- each commit an offence and shall each be liable upon summary conviction to a fine not exceeding five million dollars.

#### **14. Issue of International Oil Pollution Prevention (IOPP) Certificate**

- (1) An International Oil Pollution Prevention (IOPP) Certificate in the form prescribed, shall be issued to any Guyana oil tanker of gross tonnage 150 and above and any other Guyanese vessel of gross tonnage 400 and above, after passing survey in accordance with section 13.
- (2) Such Certificate shall be issued by the Authority or by a recognized Organization only.

#### **15. Carriage of Valid Certificate**

- (1) A current and valid IOPP Certificate approved and issued in accordance with sections 13 and 14 shall be carried by –
- (a) any Guyanese oil tanker of gross tonnage 150 and above; and

- (b) any other Guyanese vessel of gross tonnage 400 and above.
- (2) A current and valid IOPP Certificate in the form specified in Appendix II of Annex I of MARPOL, issued and approved by the flag State or its recognized organization, shall be carried by –
  - (a) any foreign oil tanker of gross tonnage 150 and above; and
  - (b) any other foreign vessel of gross tonnage 400 and above;

that enters a Guyana port or terminal or operates in Guyana waters.

- (3) If any vessel to which this section applies fails to comply with any provisions of this section –
  - (a) the owner of the vessel; and
  - (b) the master of the vessel;

each commit an offence and shall each be liable upon summary conviction to a fine not exceeding five million dollars.

#### **16. Duration of Certificate**

- (1) An IOPP Certificate issued under section 14 shall be issued for a period specified by the Authority, which shall not exceed four years from the date of issue.
- (2) An IOPP Certificate issued under section 14 shall cease to be valid if significant alterations have taken place in the construction, equipment, systems, fittings, arrangements or material required without the sanction of the Authority, except the direct replacement of such equipment or fittings, or if intermediate surveys as specified by the Authority under subparagraph (b) of section 11(1) are not carried out.
- (3) An IOPP Certificate issued under section 14 shall also cease to be valid upon transfer of the vessel to the flag of another State or upon change of ownership of the vessel.

#### **17. Shipboard Oil Pollution Emergency Plan (SOPEP)**

- (1) A Shipboard Oil Pollution Emergency Plan (SOPEP) shall be carried by –
  - (a) any Guyanese vessel carrying 2,000 litres or more of oil as fuel and/or

cargo;

- (b) any foreign oil tanker of gross tonnage 150 and above which enters a Guyana port or terminal or operates in Guyana waters; and
  - (c) any other foreign vessel of gross tonnage 400 and above which enters a Guyana port or terminal or operates in Guyana waters.
- (2) The plans required under subsection (1) shall be approved by the Authority in the case of a Guyanese vessel and approved by the flag State in the case of a foreign vessel.
- (3) The plans required under subsection (1) shall be in accordance with guidelines developed by the International Maritime Organization, as prescribed, and written in English and a working language or languages understood by the master and officers of the vessel.
- (4) In the case of vessels to which Part III also applies, the plan required under subsection (1) may be combined with the Shipboard Marine Pollution Emergency Plan required by Part III, in which case, the title of such a plan shall be "Shipboard Marine Pollution Emergency Plan (SMPEP)".
- (5) If any vessel to which this section applies fails to comply with any provisions of this section -
- (a) the owner of the vessel; and
  - (b) and the master of the vessel;

each commit an offence and shall each be liable upon summary conviction to a fine not exceeding five million dollars.

## **18. Power to require discharge.**

(1) The Authority or an Inspector appointed under section 123 may require the owner or master of a ship, by written notice given to the owner or master, as the case may be, to cause a specified quantity of oil or of an oily mixture to be discharged within a specified period from the ship to a specified facility that is suitable to receive that quantity of the oil or oily mixture if the officer has reason to believe that retention of the oil or oily mixture would create a risk of discharge from the ship into the sea.

(2) If any vessel to which this section applies fails to comply with any provisions of this section –

- (a) the owner of the vessel; and
- (b) the master of the vessel;

each commit an offence and shall each be liable upon summary conviction to a fine not exceeding five million dollars.

### **PART III**

#### ***Prevention of Pollution by Noxious Liquid Substances.***

#### **19. Application of this Part to mixture of oil and liquid substance**

Where a mixture contains oil and a liquid substance or oil and liquid substances, Part II and this Part apply in relation to the mixture.

#### **20. Categories of noxious liquid substances**

The Minister may, by order, prescribe that a particular substance shall be considered a substance to which Regulation 1.10 of Annex II of MARPOL shall apply.

#### **21. Discharge of noxious liquid substances prohibited**

(1) Subject to subsections (2) and (5) the discharge of noxious liquid substances from any vessel is prohibited.

(2) The discharge of residues of noxious liquid substances which remain in a vessel's cargo tanks after unloading or the discharge of ballast water, tank washings or other mixtures containing such substances may only be undertaken in full compliance with Regulation 13 of Annex II of MARPOL.

(3) If any noxious liquid substances are discharged from any vessel in contravention of the provisions of this section –

- (a) the owner of the vessel;
- (b) the master of the vessel; and
- (c) any other member of the vessel's crew whose act caused or contributed to the discharge, unless the member was complying with an instruction from the master or someone authorized by the master to give the instruction; and/or
- (d) in the case where another vessel caused or contributed to the discharge, such as through collision with the vessel from which the discharge occurred, the owner and master of the other vessel;

each commit an offence and shall each be liable upon summary conviction to a fine not exceeding ten million dollars or to a term of imprisonment not exceeding five years.

- (4) This section shall not apply to a discharge of noxious liquid substances –
- (a) necessary for the purpose of securing the safety of a vessel or saving human life, providing that the discharge was necessary and reasonable in the circumstances; or
  - (b) resulting from damage to a vessel or its equipment provided that –
    - (i) all reasonable precautions are taken after the occurrence of the damage or discovery of the discharge for the purpose of preventing, stopping or minimizing the discharge; and
    - (ii) the discharge is immediately reported to the Authority in accordance with Section 122;

except if the owner or the master acted either with intent to cause damage, or recklessly and with knowledge that damage would probably result, or otherwise failed to maintain, manage and/or operate the vessel in a competent and responsible manner.

## **22. Construction of vessels and pollution prevention equipment**

(1) Any vessel carrying noxious liquid substances in bulk in Guyana waters and any Guyanese vessel carrying, noxious liquid substances in bulk wherever it may be, shall comply with the construction, pollution prevention equipment and related provisions contained in the following Regulations of Annex II of MARPOL, as applicable to each vessel type and size –

- (a) Regulation 11 regarding design, construction, equipment and operations; and
  - (b) Regulation 12 regarding pumping, piping, unloading arrangements and slops tanks.
- (2) If any vessel to which this section applies does not comply with any provisions of this section -
- (a) the owner of the vessel; and
  - (b) the master of the vessel;

each commit an offence and shall each be liable upon summary conviction to a fine not exceeding ten million dollars or a term of imprisonment not exceeding five years.

## **23. Procedures and Arrangements Manual and Cargo Record Book**

(1) Every vessel to which this Part applies shall have on board a Procedures and

Arrangements Manual for Noxious Liquid Substances (PAM-NLS) which, for a Guyanese vessel shall be in the form prescribed, and, for all other vessels, shall comply with Regulation 14 of Annex II of MARPOL, as applicable.

(2) A Cargo Record Book, whether as part of the vessel's official log book or otherwise, shall be carried on every vessel to which this Part applies, and for Guyanese vessel shall be in the form prescribed, and for all other vessels shall be in the form specified in Appendix 2 to Annex II of MARPOL.

(3) The master of any vessel referred to in subsection (2) shall ensure that the Cargo Record Book is maintained and that a record is entered, on a tank-to-tank basis, whenever any of the following operations with respect to a noxious liquid substance take place in the vessel -

- (a) loading of cargo;
- (b) internal transfer of cargo;
- (c) unloading of cargo;
- (d) mandatory pre-wash in accordance with the ship's Procedures and Arrangements Manual;
- (e) cleaning of cargo tanks except mandatory prewash;
- (f) discharge into the sea of tank washings;
- (g) ballasting of cargo tanks;
- (h) discharge of ballast water from cargo tanks;
- (i) accidental or other exceptional discharge; or
- (j) control by authorized surveyors.

(4) In the event of any discharge of the kind referred to in section 21 subsections (2) and (5), whether intentional or accidental, an entry shall be made in the Cargo Record Book stating the circumstances of, and the reason for, the discharge.

(5) When a surveyor appointed or authorized by the flag State to supervise any operation under this Part has inspected a vessel, then that surveyor shall make an appropriate entry in the Cargo Record Book.

(6) Each operation referred to in subsections (3) and (4) shall be fully recorded without delay in the Cargo Record Book so that all entries in the Book appropriate to that operation are completed. Each entry shall be signed by the officer or officers in charge of the operation concerned and, when the vessel is manned, each page shall be signed by the Master of the vessel.

(7) The entries in the Cargo Record Book shall be in an official language of the State whose flag the vessel is entitled to fly, and, for vessels holding an International Pollution Prevention Certificate for the Carriage of Noxious Liquid Substances in Bulk, in English, French or Spanish. The entries in an official national language of the State whose flag the vessel is entitled to fly shall prevail in case of a dispute or discrepancy.

(8) The Cargo Record Book shall be kept in such a place as to be readily available for inspection and, except in the case of unmanned vessels under tow, shall be kept on board the vessel. It shall be retained for a period of two years after the last entry has been made.

(9) The Authority or an Inspector appointed under Section 123 may –

- (a) inspect the Cargo Record Book on board any vessel to which this section applies while the vessel is in a Guyana port or terminal; and
- (b) make a copy of any entry in that book, and require the master of the vessel to certify that the copy is a true copy of such an entry.

(10) Any copy made under subparagraph (b) of subsection (9), which has been certified by the master of the vessel as a true copy of an entry in the, Cargo Record Book, shall be admissible in any judicial proceedings as evidence of the facts stated in the entry.

(11) The inspection of a Cargo Record Book and the taking of a certified copy under subsection (9) shall be performed as expeditiously as possible without causing the vessel to be unduly delayed.

(12) If any vessel to which this section applies fails to comply with any provision of this section –

- (a) the owner of the vessel, and
- (b) the master of the vessel

each commit an offence and are each liable upon summary conviction to a fine not exceeding five million dollars.

(13) Any person who makes an entry in any records to be kept in accordance with this section which to his or her knowledge is false or misleading commits an offence, and is liable upon summary conviction to a fine not exceeding five million dollars.

## 24. Surveys and inspections

(1) Every Guyanese vessel carrying noxious liquid substances in bulk shall be subject to the following surveys –

- (a) an initial survey before the vessel is put into service or before the Certificate required under sections 25 to 27 is issued for the first time, such as to ensure that the structure, equipment, systems, fittings, arrangements and material fully comply with requirements of section 22 as applicable;
- (b) annual or biennial surveys, at the Authority's discretion, to assess –
  - (i) whether or not the design, construction, equipment, systems, fittings, arrangements and material fully comply with the requirements of section 22 as applicable;
  - (ii) whether or not the equipment and associated pump and piping systems fully comply with the requirements of section 22 as applicable, and are in good working order; and
  - (iii) the validity or otherwise of the Certificate issued under section 25.

(2) In addition to the surveys required under subsection (1), the Authority may, at its discretion, also undertake unscheduled inspections of Guyanese vessels to assess compliance with section 22 as applicable, and to assess the validity or otherwise of the Certificate issued under section 25 or required under section 26, and such inspections may also be undertaken of foreign vessels which call at Guyana ports or terminals, under the Authority's port state control powers.

(3) Surveys and inspections under this section shall be carried out by officers of the Authority. The Authority may, however, appoint Recognized Organizations and Approved Surveyors to undertake such surveys or inspections on the Authority's behalf, and any Recognized Organizations and Approved Surveyors so appointed shall meet certain qualifications and criteria, as prescribed.

(4) When a survey or inspection carried out under subsection (1) or (2) determines that the condition of the vessel or its equipment –

- (a) does not comply with section 22; or
- (b) does not correspond substantially with the particulars of the Certificate issued under section 25 or required under section 26; or



- (c) is such that the vessel is not fit to proceed to sea without presenting an unreasonable threat of harm to the marine environment;

in the case where the survey or inspection is undertaken by an Approved Surveyor or Recognized Organization, the Approved Surveyor or Recognized Organization shall report the matter immediately to the Authority, and in all cases the Authority may –

- (a) suspend or withdraw the Certificate issued under Section 25; and/or
- (b) instruct the owner of the vessel to take corrective action; and/or
- (c) prohibit the vessel from sailing until such corrective action is taken to the satisfaction of the Authority and/or the Certificate issued under Section 25 is re-validated or re-issued.

(5) After any survey of the vessel under subsection (1) has been completed, no change shall be made in the structure, equipment, systems, fittings, arrangements or material covered by the survey, without the sanction of the Authority, except the direct replacement of such equipment and fittings.

(6) Whenever an accident occurs to a vessel or a defect is discovered which substantially affects the integrity of the vessel or the efficiency or completeness of its equipment covered by section 22, the owner or master of the vessel shall report at the earliest opportunity to the Authority, which shall cause investigations to be initiated to determine whether a survey as required by subsection (1) is necessary. If the vessel is in a port of another State, the master or owner shall also report immediately to the appropriate authorities of the port State.

(7) If any vessel to which this section applies fails to comply with any provisions of this section –

- (a) the owner of the vessel; and
- (b) the master of the vessel;

each commit an offence and shall each be liable upon summary conviction to a fine not exceeding five million dollars.

## **25. Issue of International Pollution Prevention Certificate for the Carriage of Noxious Liquid Substances in Bulk (NLS Certificate)**

(1) An International Pollution Prevention Certificate for the Carriage of Noxious Liquid Substances in Bulk (NLS Certificate), in the form prescribed, shall be issued, after passing such survey in accordance with section 24, to any Guyanese vessel carrying noxious liquid substances in bulk.

- (2) Such Certificate shall be issued either by the Authority or by a Recognized Organization only.

## **26. Carriage of valid Certificate**

- (1) A current and valid NLS Certificate, issued and approved in accordance with sections 24 and 25, shall be carried by any Guyanese vessel carrying noxious liquid substances in bulk.
- (2) A current and valid NLS Certificate, in the form specified in Appendix 3 of Annex II of MARPOL, issued and approved by the flag State or its recognized organization, shall be carried by any foreign vessel carrying noxious liquid substances in bulk, which enters a Guyana port or terminal or operates in Guyana waters.
- (3) If any vessel to which this section applies fails to comply with any provisions of this section –

- (a) the owner of the vessel; and
- (b) the master of the vessel;

each commit an offence and shall each be liable upon summary conviction to a fine not exceeding five million dollars.

## **27. Duration of Certificate**

- (1) An NLS Certificate issued under section 25 shall be issued for a period specified by the Authority, which shall not exceed four years from the date of issue.
- (2) An NLS Certificate issued under section 25 shall cease to be valid if significant alterations have taken place in the construction, equipment, systems, fittings, arrangements or material required without the sanction of the Authority, except the direct replacement of such equipment or fittings, or if intermediate surveys as specified by the Authority under subparagraph (b) of subsection 24(1) are not carried out.
- (3) An NLS Certificate issued under Section 25 shall also cease to be valid upon transfer of the vessel to the flag of another State or upon change of ownership of the vessel.

## **28. Shipboard Marine Pollution Emergency Plan (SMPEP)**

- (1) A Shipboard Marine Pollution Emergency Plan (SMPEP) shall be carried by any

vessel to which this Part applies.

(2) The plans required under subsection (1) shall be approved by the Authority in the case of a Guyanese vessel and approved by the flag State in the case of a foreign vessel.

(3) The plans required under subsection (1) shall be in accordance with Guidelines developed by the International Maritime Organization, as prescribed, and written in English and a working language or languages understood by the master and officers of the vessel.

(4) In the case of vessels to which Part II also applies, the plan required under subsection (1) may be combined with the Shipboard Oil Pollution Emergency Plan required by Part II, in which case, the title of such a plan shall be "Shipboard Marine Pollution Emergency Plan (SMPEP)".

(5) If any vessel to which this section applies fails to comply with any provisions of this section –

- (a) the owner of the vessel; and
- (b) and the master of the vessel

each commit an offence and shall each be liable upon summary conviction to a fine not exceeding five million dollars.

## PART IV

### *Prevention of Pollution by Harmful Substances in Packaged Form.*

#### **29. Interpretation**

For the purposes of this Part-

**"discharge"** means the jettisoning or throwing overboard of harmful substances in packaged form from a vessel, and includes any loss of harmful substances in Guyana waters or the sea beyond Guyana waters caused by leakage of the substance from its package while the package is still on board.

#### **30. Discharge of harmful substances prohibited**

(1) Subject to subsection (4) the discharge of harmful substances from any vessel is

prohibited.

- (2) If any harmful substance is discharged from any vessel –
- (a) the owner of the vessel;
  - (b) the master of the vessel; and
  - (c) any other member of the vessel's crew whose act caused or contributed to the discharge, unless the member was complying with an instruction from the master or someone authorized by the master to give the instruction; and/or
  - (d) in the case where another vessel caused or contributed to the discharge, such as through collision with the vessel from which the discharge occurred, the owner and master of the other vessel;

each commit an offence and shall each be liable upon summary conviction to a fine not exceeding ten million dollars or a term of imprisonment not exceeding five years.

- (3) This section shall not apply to the discharge of harmful substances –
- (a) necessary for the purpose of securing the safety of a vessel or saving human life, providing that the discharge was necessary and reasonable in the circumstances; or
  - (b) resulting from damage to a vessel or its equipment, provided that -
    - (i) all reasonable precautions are taken after the occurrence of the damage or discovery of the discharge for the purpose of preventing, stopping or minimizing the discharge; and
    - (ii) the discharge is immediately reported to the Authority in accordance with section 122

except if the owner or the master acted either with intent to cause damage, or recklessly and with knowledge that damage would probably result, or otherwise failed to maintain, manage and/or operate the vessel in a competent and responsible manner.

### **31. Packing, marking, labeling & stowage**

- (1) Packages containing harmful substances shall be adequate to minimize the hazard to the marine environment, having regard to their specific contents.
- (2) Packages containing harmful substances shall be durably marked with the

correct technical name (trade names alone shall not be used) and, further, shall be durably marked or labeled "MARINE POLLUTANT".

(3) Such identification shall be supplemented where possible by any other means, for example by use of the relevant United Nations number.

(4) The method of marking the correct technical name and of affixing labels on packages containing a harmful substance shall be such that this information will still be identifiable on packages surviving immersion in the sea for at least three months. In considering suitable marking and labeling, account shall be taken of the durability of the materials used and of the surface of the package.

### **32. Harmful Substances Manifest and other documentation**

(1) In all documents relating to the carriage of harmful substances by sea where such substances are named, the correct technical name of each such substance shall be used (trade names alone shall not be used) and the substance further identified by the addition of the words "MARINE POLLUTANT".

(2) The shipping documents supplied by the shipper shall include, or be accompanied by, a signed certificate or declaration that the shipment offered for carriage is properly packaged and marked and labeled as appropriate and in proper condition for carriage to minimize the hazard to the marine environment.

(3) Each vessel carrying harmful substances shall have a Harmful Substances Manifest, which for Guyanese vessels shall be in the form prescribed, setting forth the harmful substances on board and the location thereof, including a detailed stowage plan which sets out the location of the harmful substances on board. A copy of the Harmful Substances Manifest shall also be retained on shore by the owner of the vessel or his or her representative until the harmful substances are unloaded, and a copy shall be made available to the Authority or its designated agent 48 hours prior to the vessel putting to sea.

(4) When the vessel carries a special list or manifest or a detailed stowage plan, required for the carriage of dangerous goods by the *International Convention for the Safety of Life at Sea, 1974*, as amended, the documents required by this section may be combined with those for dangerous goods. Where documents are combined, a clear distinction shall be made between dangerous goods and harmful substances covered by this Part.

(5) If any vessel to which this section applies does not comply with any provisions of this sections –

- (a) the owner of the vessel; and
- (b) the master of the vessel;

each commit an offence and shall each be liable upon summary conviction to a fine not exceeding 20 million dollars.

**PART V**  
***Prevention of Pollution by Sewage***

**33. Application of this Part**

This Part applies to –

- (a) any vessel in Guyana waters that is of 400 gross tonnage and above;
- (b) any Guyanese vessel of 400 gross tonnage and above wherever it may be;
- (c) any vessel in Guyana waters that is less than 400 gross tonnage which is certified to carry 15 persons or more, and
- (d) any Guyanese vessel less than 400 gross tonnage which is certified to carry 15 persons or more, wherever it may be

and section 35 applies to all vessels of any size.

**34. Discharge of sewage prohibited**

The discharge of sewage from vessels to which this Part applies is prohibited except when –

- (a) the vessel has in operation an approved sewage treatment plant which has been certified by the Authority or its Recognized Organization in the case of a Guyanese vessel, or certified by the flag State or its recognized organization in the case of a foreign vessel, to meet the operational requirements of Regulation 9.1.1 of Annex IV of MARPOL, and the effluent has passed through the plant and shall not produce visible floating solids nor cause discoloration of the surrounding water;
- (b) the vessel is more than 3 nautical miles from the nearest land and the sewage is comminuted and disinfected using a system approved by the Authority or its Recognized Organization in the case of a Guyanese vessel, or approved by the flag State or its recognized organization in the case of a foreign vessel, in accordance with Regulation 9.1.2 of Annex IV to MARPOL;
- (c) the vessel is more than 12 nautical miles from the nearest land, provided that in any case, any sewage that has been stored in holding tanks shall

not be discharged instantaneously, but at a moderate rate when the vessel is enroute and proceeding at not less than 4 knots;

- (d) the discharge of sewage is necessary for the purpose of securing the safety of a vessel and those on board or saving human life; or
- (e) the discharge of sewage resulted from damage to the vessel or its equipment and all reasonable precautions were taken before and after the occurrence of the damage, for the purpose of preventing or minimizing the discharge.

(2) If any sewage is discharged from any vessel to which this Part applies in contravention of the provisions of this section –

- (a) the owner of the vessel; and
- (b) the master of the vessel; and
- (c) any other member of the vessel's crew whose act caused or contributed to the discharge, unless the member was complying with an instruction from the master or someone authorized by the master to give the instruction

each commit an offence and shall each be liable upon summary conviction to a fine not exceeding five million dollars.

### **35. Surveys and inspections**

(1) Every Guyanese vessel to which this Part applies shall be subject to the following surveys –

- (a) an initial survey before the vessel is put into service or before the Certificate required under sections 35 to 37 is issued for the first time, such as to ensure that the structure, equipment, systems, fittings, arrangements and material fully comply with requirements of Annex IV of MARPOL as applicable;
- (b) annual or biennial surveys, at the Authority's discretion, to assess –
  - (i) whether or not the design, construction, equipment, systems, fittings, arrangements and material fully comply with the requirements Annex IV as applicable;
  - (ii) the validity or otherwise of the Certificate issued under Section 36.

(2) In addition to the surveys required under subsection (1), the Authority may, at its discretion, also undertake unscheduled inspections of Guyanese vessels to assess compliance with Annex IV of MARPOL as applicable, and to assess the validity or otherwise of the Certificate issued under section 36 or required under section 37, and such inspections may also be undertaken of foreign vessels which call at a Guyana port or terminal, under the Authority's port state control powers.

(3) Surveys and inspections under this section shall be carried out by officers of the Authority. The Authority may, however, appoint Recognized Organizations and Approved Surveyors to undertake such surveys or inspections on the Authority's behalf, and any Recognized Organizations and Approved Surveyors so appointed shall meet certain qualifications and criteria, as prescribed.

(4) When a survey or inspection carried out under subsection (1) or (2) determines that the condition of the vessel or its equipment –

- (a) does not comply with the requirements of Annex IV of MARPOL as applicable;
- (b) does not correspond substantially with the particulars of the Certificate issued under section 36 or required under section 37; or
- (c) is such that the vessel is not fit to proceed to sea without presenting an unreasonable threat of harm to the marine environment;

in the case where the survey or inspection is undertaken by an Approved Surveyor or Recognized Organization, the Approved Surveyor or Recognized Organization shall report the matter immediately to the Authority, and in all cases the Authority may –

- (a) suspend or withdraw the Certificate issued under section 36; and/or
- (b) instruct the owner of the vessel to take corrective action; and/or
- (c) prohibit the vessel from sailing until such corrective action is taken to the satisfaction of the Authority and/or the Certificate issued under section 36 is re-validated or re-issued.

(5) After any survey of the vessel under subsection (1) has been completed, no change shall be made in the structure, equipment, systems, fittings, arrangements or material covered by the survey, without the sanction of the Authority, except the direct replacement of such equipment and fittings.

(6) Whenever an accident occurs to a vessel or a defect is discovered which substantially affects the integrity of the vessel or the efficiency or completeness of its equipment covered by Annex IV of MARPOL the owner or master of the vessel shall report at the earliest opportunity to the Authority, which shall cause investigations to be initiated to determine whether a survey as required by subsection (1) is necessary. If the vessel is in a port of another State, the master or owner shall



also report immediately to the appropriate authorities of the port State.

(7) If any vessel to which this section applies fails to comply with any provisions of this section –

(a) the owner of the vessel; and

(b) the master of the vessel;

each commit an offence and shall each be liable upon summary conviction to a fine not exceeding five million dollars.

### **36. Issue of International Sewage Pollution Prevention Certificate (ISPP Certificate)**

(1) An International Sewage Pollution Prevention Certificate in the form prescribed, shall be issued, after passing such survey in accordance with section 35, to any Guyanese vessel to which this Part applies.

(2) Such Certificate shall be issued either by the Authority or by a Recognized Organization only.

### **37. Carriage of valid Certificate**

(1) A current and valid ISPP Certificate, issued and approved in accordance with sections 35 and 36, shall be carried by any Guyanese vessel to which this Part applies.

(2) A current and valid ISPP Certificate, in the form specified in the Appendix to Annex IV of MARPOL, issued and approved by the flag State or its recognized organization, shall be carried by any foreign vessel to which this Part applies and which enters a Guyana port or terminal or operates in Guyana waters.

(3) If any vessel to which this section applies fails to comply with any provisions of this section –

(a) the owner of the vessel; and

(b) the master of the vessel;

each commit an offence and shall each be liable upon summary conviction to a fine not exceeding five million dollars.

**38 Duration of Certificate**

- (1) An ISPP Certificate issued under section 36 shall be issued for a period specified by the Authority, which shall not exceed four years from the date of issue.
- (2) An ISPP Certificate issued under section 36 shall cease to be valid if significant alterations have taken place in the construction, equipment, systems, fittings, arrangements or material required without the sanction of the Authority, except the direct replacement of such equipment or fittings, or if intermediate surveys as specified by the Authority under subparagraph (b) of subsection 35(1) are not carried out.
- (3) An ISPP Certificate issued under Section 36 shall also cease to be valid upon transfer of the vessel to the flag of another State or upon change of ownership of the vessel.

**39. Vessels in ports and marinas**

- (1) The discharge of sewage from any vessel while alongside a wharf or jetty or moored or anchored in a port or marina, is prohibited except when the vessel has in operation an approved sewage treatment plant which has been certified by the Authority or its Recognized Organization in the case of a Guyanese vessel, or certified by the flag State or its recognized organization in the case of a foreign vessel, to meet the operational requirements of Regulation 9.1.1 of Annex IV of MARPOL, and the effluent has passed through the plant and shall not produce visible floating solids nor cause discoloration of the surrounding water.
- (2) Vessels in ports and marinas that are not equipped with an approved sewage treatment plant as specified in subsection (1) shall have appropriate arrangements such as holding tanks, shore pump-out arrangements or chemical toilets to ensure compliance with this section.
- (3) If any sewage is discharged from any vessel in contravention of the provisions of this section –
- (a) the owner of the vessel; and
  - (b) the master of the vessel; and
  - (c) any other member of the vessel's crew whose act caused or contributed to the discharge, unless the member was complying with an instruction from the master or someone authorized by the master to give the instruction;

each commit an offence and shall each be liable upon summary conviction to a fine not exceeding five million dollars.

**PART VI**  
***Prevention of Pollution by Garbage***

**40. Application of this Part**

This Part applies to any vessel in Guyana waters and any Guyanese vessel wherever it may be except as otherwise provided in sections 42 to 44.

**41. Discharge of garbage prohibited**

- (1) The discharge of plastics in any form from any vessel is prohibited.
- (2) The discharge of fishing gear in any form, including synthetic nets and lines, from any vessel is prohibited.
- (3) The discharge of dunnage, cargo lining and packing materials from any vessel is prohibited.
- (4) The discharge of all other garbage including food wastes, paper products, rags, glass metal, bottles, crockery, and similar refuse from any vessel is prohibited if the distance from the nearest land is less than 12 nautical miles.
- (5) If any garbage is discharged from any vessel in contravention of the provisions of this section
  - (a) the owner of the vessel;
  - (b) the master of the vessel; and
  - (c) any other member of the vessel's crew whose act caused or contributed to the discharge, unless the member was complying with an instruction from the master or someone authorized by the master to give the instruction;

each commit an offence and shall each be liable upon summary conviction to a fine not exceeding five million dollars.

- (6) This section shall not apply to a discharge of garbage –
  - (a) necessary for the purpose of securing the safety of a vessel or saving human life, providing that the discharge or disposal into the sea was necessary and reasonable in the circumstances; or
  - (b) resulting from damage to a vessel or its equipment, provided that -

- (i) all reasonable precautions are taken after the occurrence of the damage or discovery of the discharge for the purpose of preventing, stopping or minimizing the discharge;
- (ii) the discharge is immediately reported to the Authority in accordance with section 122.

except if the owner or the master acted either with intent to cause damage, or recklessly and with knowledge that damage would probably result, or otherwise failed to maintain, manage and/or operate the vessel in a competent and responsible manner.

(7) This section shall not apply in the case of the accidental loss of fishing gear from a vessel, provided that -

- (a) all reasonable precautions are taken by the owner and master of the vessel to prevent such accidental loss; and
- (b) all reasonable actions are taken by the owner and master of the vessel to find and recover any fishing gear so lost; and
- (c) the loss is reported to the Authority as soon as practicable in accordance with section 122, including reporting the location where the loss occurred.

#### **42. Notices**

(1) Any vessel of 12 meters or more in length overall shall display notices in highly visible locations, and where relevant to the vessel, at least in the -

- (a) wheel-house;
- (b) galley;
- (c) dining area; and
- (d) accommodation area;

which notify the crew and passengers, in clear and simple terms, of the requirements of subsections 41(1) to (5) as applicable.

(2) Such notices shall be in a format as approved by the Authority from time to time and shall be written in English and the working language of the crew of the vessel.

(3) If any vessel to which this section applies does not comply with any provision of this section -

- (a) the owner of the vessel; and
- (b) the master of the vessel;

each commit an offence and shall each be liable upon summary conviction to a fine not exceeding one million dollars.

#### **43. Garbage Management Plan**

(1) A Garbage Management Plan which the crew shall follow shall be carried by -

- (a) any Guyanese vessel of 400 gross tonnage and above, in the form prescribed;
- (b) any Guyanese vessel which is certified to carry 15 persons or more, in the form prescribed;
- (c) any foreign vessel of 400 gross tonnage and above that enters a Guyana port or terminal or operates in Guyana waters;
- (d) any foreign vessel which is certified to carry 15 persons or more that enters a Guyana port or terminal or operates in Guyana waters; and
- (e) any offshore installation that accommodates five persons or more for more than 24 hours when such installation is in Guyana waters.

(2) The plan required by subsection (1) shall provide written procedures for collecting, storing, processing and disposing of garbage, including the use of the equipment on board. It shall also designate the person in charge of carrying out the plan. Such a plan shall be written in English and the working language of the crew.

(3) If any vessel or offshore installation to which this section applies does not comply with any provision of this section -

- (a) the owner of the vessel;
- (b) the master of the vessel; or
- (c) the owner, the operator and the person in charge of the offshore installation;

each commit an offence and shall each be liable upon summary conviction to a fine not exceeding five million dollars.

**44. Garbage Record Book**

(1) A Garbage Record Book, whether as a part of the vessel's official log-book or otherwise, shall be carried by -

- (a) any Guyanese vessel of 400 gross tonnage and above;
- (b) any Guyanese vessel which is certified to carry 15 persons or more; engaged in voyages to ports or terminals under the jurisdiction of another State, in the form prescribed; and
  - (i) any foreign vessel of 400 gross tonnage and above; and
  - (ii) any foreign vessel which is certified to carry 15 persons or more;

which enters a Guyana port or terminal or operates in Guyana waters, in the form specified in the Appendix to Annex V of MARPOL.

(2) The master of all vessels referred to subsection (1) shall ensure that the Garbage Record Book is maintained and that a record is entered whenever a discharge or incineration of garbage occurs in accordance with Regulation 9 of Annex V of MARPOL.

(3) The Garbage Record Book shall be kept on board the vessel and in such a place as to be available for inspection in a reasonable time and shall be preserved for a period of two years after the last entry is made on the record.

(4) The owner, operator and person in charge of an offshore installation that accommodates five persons or more for more than 24 hours when such installation is in Guyana waters, shall ensure that the offshore installation complies with the provisions of subsections (1) to (3), as far as relevant and with any necessary modifications.

(5) The Authority or an Inspector appointed under section 123 may -

- (a) inspect the Garbage Record Book on board any vessel or offshore installation to which this regulation applies while the vessel is in a Guyana port or terminal or the offshore installation is in Guyana waters; and
- (b) make a copy of any entry in that book, and may require the master of the vessel or person in charge of the offshore installation to certify that the copy is a true copy of such an entry.

(6) Any copy so made, which has been certified by the master of the vessel or person in charge of the offshore installation as a true copy of an entry in the

Garbage Record Book, shall be admissible in any judicial proceedings as evidence of the facts stated in the entry.

(7) The inspection of a Garbage Record Book and the taking of a certified copy under subparagraph (b) of subsection (5) shall be performed as expeditiously as possible without causing the vessel to be unduly delayed.

(8) If any vessel or offshore installation to which this section applies fails to comply with any provision of this section -

- (a) the owner of the vessel; and
- (b) the master of the vessel; or
- (c) the owner, the operator and the person in charge of the offshore installation;

each commit an offence and are each liable upon summary conviction to a fine not exceeding five million dollars.

(9) Any person who makes an entry in any records to be kept in accordance with this section which to his or her knowledge is false or misleading commits an offence, and is liable upon summary conviction to a fine not exceeding five million dollars.

## PART VII

### *Prevention of Air Pollution from Ships*

#### **45. Interpretation.**

In this Part –

“**emission**” means any release of substances subject to the control by Annex VI of MARPOL;

“**ozone-depleting substances**” means controlled substances defined in the paragraph 4 of Article 1 of the Montreal Protocol on Substances that Deplete the Ozone Layer, 1987, listed in Annexes A, B, and C or E to the said Protocol in force at the time;

“**sludge oil**” means sludge from the fuel or lubricating oil, separators, waste lubricating oil from main auxiliary machinery or waste oil from bilge water separators, oil filtering equipment or drip trays;

“**shipboard incineration**” means the incineration of wastes or other matter on board a vessel, if such waste or other matter were generated during the normal operation of that vessel;

“**shipboard incinerator**” means a shipboard facility designed for the primary purpose of incineration.

**46. Deliberate emissions of ozone depleting substances prohibited.**

- (1) Subject to subsection (2) the deliberate emission of ozone depleting substances is prohibited.
- (2) This section shall not apply to any emissions-
  - (a) necessary for the purpose of securing the safety a ship or saving of life at sea; or
  - (b) any emission resulting from the damage to the ship or its equipment,
    - (i) provided that all reasonable precautions have been taken after the occurrence of the damage or discovery of the emission for the purpose of preventing the or minimizing the emission; or
    - (ii) except if the owner or master acted either recklessly with intent to cause damage, or recklessly and with knowledge that damage would result
- (3) If any vessel to which this section applies does not comply with any provision of this section -
  - (a) the owner of the vessel; and
  - (b) the master of the vessel;

each commit an offence and shall each be liable upon summary conviction to a fine not exceeding ten million dollars.

**47. Fuel oil quality**

- (1) The use of fuel oil with a sulphur content exceeding 4.5 % m/m is prohibited on board any Guyanese vessel.
- (2) Fuel oil for combustion purposes delivered to and used on board a Guyanese vessel shall meet the following requirements –
  - (a) except as provided for in sub-paragraph (b) –
    - (i) the fuel oil shall be blends of hydrocarbons derived from petroleum refining, this shall not preclude the incorporation of additives intended to increase performance;
    - (ii) the fuel oil shall be free from inorganic acid;
    - (iii) the fuel oil shall not include any added substance which either –
      - (a) jeopardizes the safety of a Guyanese vessel or adversely affects the performance of the machinery ;
      - (b) is harmful to personnel; or
      - (c) contributes to overall additional air pollution; and
  - (b) fuel oil for combustion purposes derived by methods other than petroleum refining shall not –
    - (i) exceed the sulphur content set out in Regulation 14 of Annex VI of MARPOL;



- (ii) cause an engine to exceed the emission limits set out in Regulation 13 (3) (a) of Annex VI of MARPOL.
  - (iii) contain inorganic acid; or
  - (iv) (a) jeopardize the safety of a Guyanese vessel or adversely affects the performance of the machinery;
    - (b) is harmful to personnel; or
    - (c) contributes to overall additional air pollution.
- (3) If any vessel to which this section applies does not comply with any provision of this section -

- (a) the owner of the vessel; and
- (b) the master of the vessel;

each commit an offence and shall each be liable upon summary conviction to a fine not exceeding five million dollars.

#### **48. Carriage of bunker delivery note compulsory**

- (1) A bunker delivery note shall be carried on board every Guyanese vessel which is subject to the provisions of this Part.
- (2) The bunker delivery note shall be –
- (a) kept in such a place as to be readily available for inspection;
  - (b) retained for a period of three years after delivery of fuel oil on board such vessel;
  - (c) in the form specified in Appendix V to Annex VI of MARPOL; and
  - (d) accompanied by a representative sample of the fuel oil delivered and the sample shall be sealed and signed by the suppliers representative and the master or the officer in charge of the bunker operation on completion of the bunkering operations and retained under the vessel's control until the fuel oil is substantially consumed, but in every case for a period of not less than 12 months from the time of delivery.
- (3) If any vessel to which this section applies does not comply with any provision of this section –
- (a) the owner of the vessel; and
  - (b) the master of the vessel;

each commit an offence and shall each be liable upon summary conviction to a fine not exceeding one million dollars.

#### **49. Duties of local fuel oil suppliers**

- (1) The local fuel oil supplier shall –
  - (a) provide the bunker delivery note as required under section 52 and shall certify that the fuel oil delivered meets the requirements set out in section 51; and
  - (b) retain a copy of the bunker delivery note for at least three years for inspections and verification by the Authority.
- (2) Any person who makes an entry in the bunker delivery note which purports that the fuel oil delivered is in compliance with the requirements of section 51, and which entry to his or her knowledge is false or misleading, commits an offence and is liable upon summary conviction to a fine not exceeding five million dollars.

**50. Shipboard incineration prohibited.**

- (1) Subject to subsection (4) shipboard incineration is prohibited except it is done in a shipboard incinerator.
- (2) Shipboard incineration of the following substances are prohibited –
  - (a) cargo residues of material which are contained in Parts II, III and IV of this Act;
  - (b) polychlorinated biphenyls (PCBs);
  - (c) garbage which is the subject of Part VI of this Act, containing more than traces of heavy metal; and
  - (d) refined petroleum products containing halogen compounds.
- (3) Shipboard incineration of polyvinyl chlorides (PVCs) shall be prohibited, except in incinerators which have been approved by the IMO.
- (4) Shipboard incineration of sewage sludge and sludge oil generated during the normal operation of the vessel may take place in the main or auxiliary power plant or boilers, but in any such case shall not take place inside any port, harbour, or estuary within the area of Guyana.
- (5) Every Guyanese vessel with a shipboard incinerator which is subject to this Part shall comply with the requirements of Appendix IV to Annex VI of MARPOL.
- (6) Nothing in this Part shall preclude the development installation and operation of alternative design shipboard thermal waste treatment devices that meet or exceed the requirements of this section.

**51. Application of this part to offshore installations**

- (1) Subject to subsections (2) and (3), every offshore installation operating in the area of Guyana shall comply with the provisions of this Part.
- (2) Emissions directly arising from the exploration, exploitation and associated offshore processing of sea-bed mineral resources are exempt from the provisions of this Part. Such emissions include –
  - (a) emissions resulting from the incineration of substances that are solely and directly the result of the exploration, exploitation and associated offshore processing of sea-bed mineral resources, including but not limited to the flaring of hydrocarbons and the burning of cuttings, muds and /or stimulation fluids during well completion and testing operations, and flaring from upset conditions;
  - (b) the release of gases and volatile compounds entrained in drilling fluid and cuttings;

- (c) emissions associated solely with and directly with the treatment, handling, or storage of sea-bed minerals; and
  - (d) emissions from diesel engines that are solely dedicated to the exploration, exploitation and associated offshore processing of sea-bed mineral resources.
- (3) The requirements of section 47 shall not apply to the use of hydrocarbons which are produced and subsequently used on site as fuel.

## **52. Surveys and inspections**

(1) Every Guyanese gross tonnage 400 and above and every fixed and floating offshore installation and other platforms shall be subject to the following surveys -

- (a) an initial survey before the vessel or offshore installation is put into service or before the Certificate required under section 53 is issued for the first time, so as to ensure that the structure, equipment, systems, fittings, arrangements and material fully comply with the requirements of Annex VI of the MARPOL that are applicable; and
- (b) surveys conducted every four years at the Authority's discretion, to assess -
  - (iv) whether or not the design, construction, equipment, systems, fittings, arrangements and material fully comply with the requirements of Annex VI of MARPOL as applicable; and
  - (v) whether or not the equipment required are in good working order; and
  - (vi) the validity or otherwise of the Certificate issued under section 53.

(2) In addition to the surveys required under subsection (1), the Authority may, at its discretion, also undertake unscheduled inspections of Guyanese vessels to assess compliance with the requirements of Annex VI of MARPOL as applicable, and to assess the validity or otherwise of the Certificate issued under section 53 or required under section 54, and such inspections may also be undertaken of foreign vessels which call at Guyana ports or terminals, under the Authority's port state control powers.

(3) Surveys and inspections under this section shall be carried out by officers of the Authority. The Authority may, however, appoint Recognized Organizations and Approved Surveyors to undertake such surveys or inspections on the Authority's behalf, and any Recognized Organizations and Approved Surveyors so appointed shall meet certain qualifications and criteria, as prescribed.

(4) When a survey or inspection carried out under subsection (1) or (2) determines that the condition of the vessel or its equipment -

- (a) does not comply with the requirements of Annex VI of MARPOL that are applicable;
- (b) does not correspond substantially with the particulars of the Certificate issued under section 53 or required under section 54; or
- (c) is such that the vessel is not fit to proceed to sea without presenting an unreasonable threat of harm to the marine environment;

in the case where the survey or inspection is undertaken by an Recognized Organization or Approved Surveyor, the Recognized Organization or Approved Surveyor shall report the matter immediately to the Authority, and in all cases the Authority may -

- (iv) suspend or withdraw the Certificate issued under section 53; and/or
- (v) instruct the owner of the vessel to take corrective action; and/or
- (vi) prohibit the vessel from sailing until such corrective action is taken to the satisfaction of the Authority and/or the Certificate issued under section 53 is re-validated or re-issued.

(4) After any survey of the vessel under subsection (1) has been completed, no change shall be made to the structure, equipment, systems, fittings, arrangements or material covered by the survey, without the approval of the Authority, except the direct replacement of such equipment and fittings.

(5) Whenever an accident occurs to a vessel or a defect is discovered which substantially affects the integrity of the vessel or the efficiency or completeness of its equipment covered by Annex VI of MARPOL as applicable, the owner or master of the vessel shall report at the earliest opportunity to the Authority, which shall cause investigations to be initiated to determine whether a survey as required by subsection (1) is necessary. If the vessel is in a port of another State, the master or owner shall also report immediately to the appropriate authorities of the port State.

(6) If any vessel to which this section applies fails to comply with any provisions of this section -

- (a) the owner of the vessel; and
- (b) the master of the vessel;

each commit an offence and shall each be liable upon summary conviction to a fine not exceeding five million dollars.

**53. Issue of International Air Pollution Prevention (IAPP) Certificate**

(1) An International Air Pollution Prevention (IAPP) Certificate in the form prescribed shall be issued to-

- (a) any Guyanese vessel of gross tonnage 400 and above; and
- (b) any platform and drilling rig engaged in voyage, or otherwise, in Guyana waters

after passing the survey in accordance with section 52.

(2) Such Certificate shall be issued by the Authority or by a recognized Organization only.

**54. Carriage of Valid Certificate**

(1) A current and valid IAPP Certificate approved and issued in accordance with sections 52 and 53 shall be carried by –

- (a) any Guyanese vessel of gross tonnage 400 and above; and
- (b) any platform and drilling rig engaged in voyage, or otherwise, in Guyana waters.

(2) A current and valid IAPP Certificate in the form specified in Appendix I of Annex VI of MARPOL, issued and approved by the flag State or its recognized organization, shall be carried by any foreign vessel of gross tonnage 400 and above that enters a Guyana port or terminal or operates in Guyana waters.

(3) If any vessel to which this section applies fails to comply with any provisions of this section -

- (a) the owner of the vessel; and
- (b) the master of the vessel;

each commit an offence and shall each be liable upon summary conviction to a fine not exceeding five million dollars.

**55. Duration of Certificate**

(1) An IAPP Certificate issued under section 53 shall be issued for a period specified by the Authority, which shall not exceed four years from the date of issue.

(2) An IAPP Certificate issued under section 53 shall cease to be valid if significant alterations have taken place in the construction, equipment, systems, fittings, arrangements or material required without the sanction of the Authority, except the direct replacement of such equipment or fittings, or if intermediate surveys as specified by the Authority under subparagraph (b) of section 11(1) are not carried out.

(3) An IAPP Certificate issued under section 53 shall also cease to be valid upon transfer of the vessel to the flag of another State or upon change of ownership of the vessel.

**56. Power to make Regulations**

(1) The Minister may make regulations prescribing the requirements for the control of emissions of nitrogen oxides (NO<sub>x</sub>) from ships.

(2) Without prejudice to the foregoing such regulations shall provide for –

- (a) the class, size or type of engine to which such regulations are applicable; and
- (b) equivalent methods of NO<sub>x</sub> emissions.

**PART VIII*****Prevention of Pollution from Offshore Installations*****57. Purpose and application of this Part**

(1) The purpose of this Part is to prohibit or control the discharge of pollutants from offshore installations.

(2) This Part applies to any offshore installation in Guyana waters and any Guyana offshore installation wherever it may be.

**58. Discharge of pollutants**

(1) The discharge of oil, noxious liquid substances, harmful substances, garbage or other pollutants from any offshore installation is prohibited, except sewage as provided for in subsection (3) and except when the discharge is duly authorized under the

*Environmental Protection Act 1996.*

(2) In the case where a discharge of oil or oily mixture from an offshore installation is authorized under the *Environmental Protection Act 1996*, the oil content of such discharge without dilution shall not exceed 15 parts per million.

(3) The discharge of sewage from any offshore installation is prohibited except when the offshore installation has in operation an approved sewage treatment plant which has been certified by the Authority to meet the operational requirements referred to in Regulation 9. 1.1 of Annex IV of MARPOL, and the sewage has been treated by that plant prior to discharge and the effluent shall not produce visible floating solids nor cause discoloration of the surrounding water.

(4) If any oil, noxious liquid substances, harmful substances, garbage or other pollutant, except sewage as provided for in subsection (2), is discharged from any offshore installation in contravention of the provisions of this section-

- (a) the owner, operator and person in charge of the offshore installation; and
- (b) any other member of the offshore installation's crew whose act caused or contributed to the discharge, unless the member was complying with an instruction from the person in charge or someone authorized by the person in charge to give the instruction; and/or
- (c) in the case where another vessel caused or contributed to the discharge, such as through collision with the offshore installation from which the discharge occurred, the owner and master of the other vessel;

each commit an offence and shall each be liable upon summary conviction to a fine not exceeding ten million dollars or a term of imprisonment not exceeding five years.

(5) If any sewage is discharged from any offshore installation in contravention of subsection (2), the owner, the operator and the person in charge of the offshore installation each commit an offence and shall each be liable upon summary conviction to a fine not exceeding ten million dollars.

(6) This section shall not apply to a discharge of any pollutant –

- (a) necessary for the purpose of securing the safety of the offshore installation or saving human life, providing that the discharge was necessary and reasonable in the circumstances; or
- (a) resulting from damage to an offshore installation or its equipment, provided that -

- (i) all reasonable precautions are taken after the occurrence of the damage or discovery of the discharge for the purpose of preventing, stopping or minimizing the discharge; and
- (ii) the discharge is immediately reported to the Authority in accordance with Section 122;

except if the owner or operator or the person in charge of the offshore installation acted either with intent to cause damage, or recklessly and with knowledge that damage would probably result, or otherwise failed to maintain, manage and/or operate the offshore installation in a competent and responsible manner.

#### **59. Discharge prevention, control and containment**

(1) Any offshore installation engaged in the exploration, exploitation and/or associated offshore processing of seabed mineral resources shall comply with the requirements of Annex I of MARPOL applicable to vessels of 400 gross tonnage and above other than oil tankers, except that they shall be equipped with –

- (a) tanks for oil residues (sludge) as required under Regulation 12 of Annex I of MARPOL;
- (b) oil filtering equipment as required under Regulation 14 of Annex I of MARPOL.

(2) The owner and operator and person in charge of an offshore installation which breaches this section each commit an offence and shall each be liable upon summary conviction to a fine not exceeding twenty million.

#### **60. Notices, record books and management plans**

(1) Any offshore installation that accommodates five persons or more for more than 24 hours shall display notices in highly visible locations which notify the crew and any other personnel onboard, in clear and simple terms, of the requirements of subsections 58(1) and 58(3) as applicable.

(2) Such notices shall be in a format as approved by the Authority from time to time and shall be written in English and the working language of the crew of the offshore installation.

(3) The owner or operator of any offshore installation shall prepare, implement and maintain an Oil Record Book as required under section 12, a Garbage Management Plan as required under section 43 and a Garbage Record Book as required under Section 44, as applicable.

(4) The owner, occupier or operator of an offshore installation which breaches this section commits an offence and shall be liable upon summary conviction to the same



penalties specified in sections 12, 43 and 44 as applicable.

#### **61. Anti-fouling systems**

Any offshore installation to which this Part applies shall comply with Part XI.

### **PART IX** ***Waste Reception Facilities***

#### **62. Purpose and application of this Part**

- (1) The purpose of this Part is to give effect to the provisions relating to ships' waste reception facilities as contained in Annexes I, II, IV, V and VI of MARPOL.
- (2) This Part applies to all port facilities in Guyana.

#### **63. Interpretation**

For the purposes of this Part –

**"port facility"** means any place where vessels regularly moor at a wharf, jetty or other facility for the purposes of loading and/or unloading passengers and/or cargo and/or for refueling and/or provisioning; and

**"reception facility"** means a facility, system, arrangement or method for receiving and responsibly managing waste oil, noxious liquid substances, sewage and/or garbage including waste fishing gear from vessels that use a port facility, and "waste reception facilities and "ships' waste reception facilities" have the same meaning.

#### **64. Port authority to provide waste reception facilities**

- (1) The owner or operator of any port facility in Guyana shall from time to time and not less frequently than triennially, undertake an assessment of the demand for reception facilities for –
  - (a) waste-oil;
  - (b) noxious liquid substances;
  - (c) sewage; and

- (d) garbage, including waste fishing gear
- (e) ozone-depleting substances and equipment containing such substances.

from all vessels that use the port facility.

(2) The owner or operator of any port facility in Guyana shall, if required as indicated by the assessment of demand undertaken under subsection (1), provide waste reception facilities at the port facility that are adequate to meet the demand for such reception facilities, for the types and volumes of wastes as indicated by the assessment; and the determination of 'adequate' shall be based on guidelines issued by the International Maritime Organization at the time

(3) Where there are a number of port facilities located within a broader port area, the owners or operators of each port facility may cooperate –

- (a) in undertaking joint assessments of the demand for reception facilities; and
- (b) in providing joint reception facilities under an integrated waste management plan for the whole port area;

whereunder the owner or operator of each individual port facility shall be responsible for the costs of each element relating to their port facility

(4) In a case where subsection (3) applies, and where there exists an organization which has overall responsibility for administering the broader port area, such as a port authority or corporation, such organization shall coordinate the joint assessments of demand and the development and implementation of the integrated waste management plan for the whole port area.

## **65. Recovery of costs & Waste Reception Levies**

(1) Subject to subsections (2) and (3), the costs of undertaking the assessment of demand required under subsection 64(1) and of providing and operating any reception facilities required under subsection 64(2) shall be met by the owner or operator of the port facility.

(2) Costs incurred by owners or operators of port facilities under subsection (1) may be recovered by a Waste Reception Levy on vessels that use the port facilities, as prescribed.

(3) Waste Reception Levies shall be prescribed per port facility at a level no higher than is necessary to cover the costs incurred under subsection (1), and shall be charged per port entry by vessels, and not per each use of the reception facilities.

- (4) Waste Reception Levies may be collected by the Authority or the owner or operator of each port facility, as prescribed.

#### **66. Responsible waste management**

The owner or operator of any port facility which provides and operates waste reception facilities, shall ensure that all ships' waste collected at the reception facilities is re-used, recycled and/or disposed of in an environmentally responsible manner, and in accordance with the *Environmental Protection Act 1996* and any applicable Government and Municipal waste management policies and plans.

#### **67. Offences**

The owner and operator of any port facility that fails to comply with this Part each commit an offence and shall each be liable upon summary conviction to a fine not exceeding five million dollars.

### **PART X** ***Shipping Casualties***

#### **68. Shipping Casualties**

- (1) In this section, unless the context otherwise requires -

“**accident**” includes the loss, stranding, abandonment of or damage to a vessel; and

“**specified**” in relation to a direction under this section, means specified by the direction.

- (2) The powers conferred by this section shall be exercisable where –

- (a) an accident has occurred to or on a vessel;
- (b) in the opinion of the Minister oil from the vessel will or may cause pollution on a large scale in Guyana waters; and
- (c) in the opinion of the Minister the exercise of the powers conferred by this section is urgently needed.

- (3) For the purpose of preventing or reducing oil pollution, or the risk of oil pollution, the Minister may give directions as respects the vessel or its cargo –

- (a) to the owner of the vessel, or to any person in possession of the vessel;
- (b) to the master of the vessel; or
- (c) to any salvor in possession of the vessel, or to any person who is the servant or agent of any salvor in possession of the vessel, and who is in charge of the salvage operation.

(4) Directions under subsection (3) may require the person to whom they are given to take, or refrain from taking any action of any kind whatsoever, and without prejudice to the generality of the preceding provisions of this subsection the directions may require -

- (a) that the vessel is to be, or is not to be, moved, or is to be moved to a specified place, or is to be removed from a specified area or locality;
- (b) that the vessel is not to be moved to a specified place or area, over a specified route;
- (c) that any oil or other cargo is to be, or is not to be, unloaded or discharged; or
- (d) that specified salvage measures are to be, or not to be taken.

(5) If in the opinion of the Minister the powers conferred by subsection (3) of this section are, or have proved to be, inadequate for the purpose, the Minister may, for the purpose of preventing or reducing oil pollution, or the risk of oil pollution, take, as respects the vessel or its cargo, any action of any kind whatsoever, and without prejudice to the generality of the preceding provisions of the subsection the Minister may -

- (a) take any such action as he has power to require to be taken by a direction under this section;
- (b) undertake operations for the sinking or destruction of the vessel, or any part of it, of a kind which is not within the means of any person to whom he can give directions; or
- (c) undertake operations which involve the taking over or control of the vessel.

(6) The powers of the Minister under subsection (5) shall also be exercisable by those persons as may be authorized in writing in that behalf by the Minister.

(7) Every person concerned with compliance with directions given, or with action taken, under this section shall use his best endeavours to avoid any risk to human life.

(8) The provisions of this section and are without prejudice to any right or powers of the Government exercisable apart from this section whether under international law or otherwise.

(9) Any action taken as respects a vessel which is under arrest or as respects the cargo of such a vessel, being action duly taken in pursuance of a direction given under this section, or being any action taken under subsection (5) or (6) –

- (a) does not constitute contempt of court; and
- (b) does not in any circumstances make a person who arrested the vessel or who has it in charge after arrest, liable in any civil proceedings.

#### **69. Right to recover for unreasonable damage**

(1) Where any action duly taken by a person in pursuance of a direction given to him under section 68, or any action taken under subsection (5) or (6) of that section –

- (a) was not reasonably necessary to prevent or reduce oil pollution, or risk of oil pollution; or
- (b) was such that the good it did or was likely to do was disproportionately less than the expenses incurred, or damage suffered as a result of the action,

a person incurring expenses or suffering damage as a result of, or by himself taking, the action directed shall be entitled to recover compensation from the Government.

(2) In considering whether subsection (1) applies, account shall be taken of –

- (a) the extent and risk of oil pollution if the action had not been taken;
- (b) the likelihood of the action being effective; and
- (c) the extent of the damage which has been caused by the action.

(3) Any reference in this section to the taking of any action includes a reference to a compliance with a direction not to take some specified action.

(4) The Admiralty jurisdiction of the Supreme Court shall include jurisdiction to hear and determine any claim arising under this section.

**70. Offences in relation to section 68.**

- (1) Where a person to whom a direction is duly given under section 68 contravenes any requirement of the direction, he commits an offence.
- (2) A person who willfully obstructs another person who is-
- (a) acting on behalf of the Minister in connection with the giving or service of a direction under section 68;
  - (b) acting in compliance with a direction under section 68; or
  - (c) acting under subsection (5) or (6) of that section, commits an offence.
- (3) In proceedings for an offence under subsection (1) it shall be a defence for the accused to prove that he has used all due diligence to ensure compliance with the direction, or that he had reasonable cause for believing that compliance with the direction, would have involved a serious risk to human life.
- (4) A person who commits an offence under this section shall be liable on summary conviction to a fine not exceeding one million dollars.

**71. Service of directions under section 68.**

- (1) Where the Minister is satisfied that a company or other body is not one to which any provisions of a law relating to the service of notices on a company or other body applies so as to authorize the service of a direction on that body under such provision, he may give a direction under section 69—
- (a) to that body, as the owner of, or the person in possession of a vessel, by serving the direction on the master of the vessel; or
  - (b) to that body, as a salvor, by serving the direction on the person in charge of the salvage operations.
- (2) For the purpose of giving to or serving on any person who is on board a vessel, a direction under section 68, a person acting on behalf of the Minister shall have the right to go on board the vessel.

**72. Application of section 68 to 71 to foreign vessels.**

- (1) The Minister may by order published in the *Official Gazette* provide that sections 68 to 71, together with any other provisions of this Act, shall apply to a vessel -
- (a) which is not a Guyanese vessel; and

- (b) which is for the time being outside the territorial waters of Guyana,
- in such cases and circumstances as may be specified in the order, and subject to such exceptions, adaptations and modifications, if any, as may be so specified.
- (2) An order under subsection (1) may contain such transitional and other consequential provisions as appear to the Minister to be expedient.
- (3) Except as provided by an order under subsection (1), no direction under section 68 shall apply to a vessel which is not a Guyanese vessel and which is for the time being outside the territorial waters of Guyana and no action shall be taken under subsection (5) or (6) of section 68 of this Act in respect of any such vessel.
- (4) No direction under section 68 of this Act shall apply to any Government vessel, and no action shall be taken under subsection (5) or (6) of that section in respect of any such vessel.

## PART XI

### *Prevention of Pollution by Anti-fouling Systems*

#### **73. Purpose and application of this Part**

- (1) The purpose of this Part is to give effect to the AFS Convention.
- (2) This part applies to all vessels except as otherwise provided in section 75 and to any offshore installation and any other man-made structure including any platform, buoy, marker, beacon, pile or any object specifically created for use or placement on or in Guyana waters.
- (3) **"anti-fouling system"** means a coating, paint, surface treatment, surface or device that is used on a ship to control or prevent attachment of unwanted organisms, as defined in the AFS Convention;

#### **74. Controls on anti-fouling systems**

- (1) The application, re-application, installation or use of anti-fouling systems containing organotin compounds that act as biocides is prohibited on -
- (a) any Guyanese vessel;
  - (b) any vessel constructed in a Guyana ship-building facility;
  - (c) any vessel that enters a port, terminal or ship-repair facility of Guyana;

and

- (d) any offshore installation and any other man-made structure including any platform, buoy, marker, beacon, pile or any object specifically created for use or placement on or in Guyana waters.
- (2) The application, re-application, installation or use of harmful anti-fouling systems which are controlled by an amendment to Annex 1 of the AFS Convention is prohibited on -
- (a) any Guyanese vessel;
  - (b) any vessel constructed in a Guyana ship-building facility;
  - (c) any vessel that enters a port, terminal or ship-repair facility of Guyana; and
  - (d) any offshore installation and other man-made structure including any platform, buoy, marker, beacon, pile or any object specifically created for use or placement on or in Guyana waters

except that vessels bearing such an anti-fouling system at the time of any such amendment to Annex 1 of the AFS Convention, may retain the system until the next scheduled renewal of that system, but in no event for a period exceeding 60 months following application.

- (3) If any vessel, offshore installation or other man-made structure including any platform, buoy, marker, beacon, pile or any object specifically created for use or placement on or in Guyana waters fails to comply with the provisions of subsections (1) and (2);

- (a) the owner of the vessel, and
  - (b) the master of the vessel, or
  - (c) the owner, the operator and the person in charge of the offshore installation or other man-made structure,
- each commit an offence and shall each be liable upon summary conviction to a fine not exceeding ten million dollars or a term of imprisonment not exceeding five years.

#### **75. Surveys, Anti-fouling Systems Certificate (AFS Certificate) and Anti-fouling Systems Declaration (AFS Declaration)**

- (1) Any vessel of gross tonnage 400 and above referred to in subsections 73(1) and 73(2) and engaged in international voyages, excluding offshore installations, FSUs and FPSOs, shall be subject to -
- (a) initial survey before the vessel is put into service or before the Antifouling Systems Certificate (AFS Certificate) required under subsection (4) is issued for the first time; and



- (b) a survey when the anti-fouling systems are changed or replaced, with such surveys endorsed on the AFS Certificate issued under subsection (4).
- (2) The survey shall ensure that the vessel's anti-fouling system complies fully with this Part and the AFS Convention.
- (3) Surveys under this section shall be carried out by officers of the Authority. The Authority may, however, appoint Recognized Organizations and Approved Surveyors to undertake such surveys or inspections on the Authority's behalf, and any Recognized Organizations and Approved Surveyors so appointed must meet certain qualifications and criteria, as prescribed.
- (4) Any vessel to which subsection (1) applies shall carry a valid AFS Certificate issued by the Authority or by a Recognized Organization, or by the flag State or its recognized organization. For Guyanese vessels such Certificate shall be in the form prescribed.
- (5) Any vessel of 24 metres or more in length but less than 400 gross tonnage, engaged in international voyages and operating in Guyana waters, shall carry an Anti-fouling Systems Declaration (AFS Declaration), signed by the owner or the owner's authorized agent, and for Guyanese vessels such Declaration shall be in the form prescribed. For all vessels to which this section applies such Declaration shall be accompanied by appropriate documentation to verify its contents including a paint receipt or contractor invoice.
- (6) If any vessel to which this section applies fails to comply with the provisions of this section -
- (b) the owner of the vessel;
- (b) the master of the vessel;

each commit an offence and shall each be liable upon summary conviction to a fine not exceeding five million dollars.

## **PART XII**

### ***Ballast Water Management in Ships***

#### **76. Interpretation.**

In this Part –

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

“**Ballast Water Management**” means mechanical, physical, chemical and biological process either singularly or in combination to remove, render harmless or avoid the uptake of Harmful Aquatic Organisms and Pathogens within Ballast Water and Sediments;

“**Harmful Aquatic Organisms and Pathogens**” means aquatic organisms or pathogens which, if introduced into the sea, including estuaries or into fresh water courses may create hazards to the environment, human health, property or resources, impair biological diversity or interfere with other legitimate uses of such areas;

“**Sediments**” means matter settled out of Ballast Water within a ship; and

“**the Convention**” means the Ballast Water Management Convention.

**77. Purpose and application of this Part.**

- (1) The purpose of this part is to give effect to the Ballast Water Management Convention.
- (2) Subject to subsection (3), this Part applies to any Guyanese vessel wherever it may be.
- (3) This Part shall not apply to –
  - (a) vessels not designed to carry ballast water;
  - (b) vessels operating in the internal waters of Guyana;
  - (c) any warship, naval auxiliary or other vessel owned or operated by the State, and used for the time being, only on government non-commercial service; or
  - (d) permanent Ballast Water in sealed tanks on vessels, that is not subject to discharge.

**78. Discharge of Ballast Water restricted.**

- (1) Except where otherwise expressly provided, the discharge of Ballast Water shall be conducted in accordance with Ballast Water Management plan which shall be prepared in accordance with the provisions of this Part.
- (2) The requirement of subsection (1) shall not apply to –
  - (a) the uptake or discharge of Ballast Water and Sediments necessary for the purpose of ensuring the safety of a vessel in emergency situations or saving life at sea; or
  - (b) the uptake and discharge of Ballast Water and Sediments when being used for the purpose of avoiding or minimizing pollution incidents from the vessel;
  - (c) the discharge of Ballast Water and Sediments from a vessel in the same location where the whole of the Ballast water and Sediments originated; or
  - (d) the accidental discharge or ingress of Ballast Water and Sediments resulting from the damage to a vessel or its equipment, provided that –

- (i) all reasonable precautions have been taken before and after the occurrence of the damage or discovery of the damage or discharge for the purpose of preventing or minimizing the discharge; and
- (ii) unless the owner or the officer in charge willfully or recklessly caused the damage.

#### **79 Ballast Water Management.**

- (1) Every vessel constructed before 2009 –
  - (a) with a Ballast Water Capacity of between 1500 and 5000 cubic metres shall conduct Ballast Water Management that at least meets the standards described in Section A of the *First Schedule* until 2014.
  - (b) with a Ballast Water capacity of less than 1500 or greater than 5000 cubic metres shall conduct Ballast Water Management that at least meets the standard described in Section B of the *First Schedule*.
- (2) Every vessel constructed in or after 2009 but before 2012 with a Ballast Water capacity of 5000 cubic metres or more shall conduct Ballast Water Management that at least meets the standard described in (1) (b).
- (3) Other methods of Ballast Water Management may also be accepted as alternatives to the requirements of subsections (1) and (2) above provided that such methods ensure the at least the same level of protection to the environment, human health, property or resources and are approved by the Marine Environment Protection Committee of the IMO.

#### **80. Conduct of Ballast Water Exchange**

- (1) Every vessel conducting Ballast Water exchange shall whenever possible conduct such exchange at least 200 nautical miles from the nearest land and in water at least 200 metres in depth, taking into account the guidelines developed by the IMO.
- (2) In cases where the vessel is unable to conduct Ballast Water exchange in accordance with subsection (1) such exchange shall be conducted as far from the nearest land as possible, and in all cases at least 50 nautical miles from the nearest land and in water at least 200 metres in depth.
- (3) A vessel conducting Ballast Water exchange shall not be required to comply with subsections (1) and (2) as appropriate if the master reasonably decides that such exchange would threaten the safety and stability of the vessel or its crew because of adverse weather, ship design or stress, equipment failure or any other extraordinary condition.

#### **81. Carriage of Ballast Water Management Plan**

- (1) Each vessel to which this Part applies shall have on board and implement Ballast Water Management Plan, which shall be approved by the Authority which shall take into account the guidelines developed by the IMO.
- (2) The Ballast Water Management Plan shall be specific to each vessel and shall –
  - (a) detail the safety procedures for the vessels and the crew associated with Ballast Water Management;

- (b) provide a detailed description of the actions to be taken to implement the Ballast Water Management requirements and practices;
- (c) detail the procedures for the removal of Sediments from Ballast Water spaces and the disposal of Sediments at sea and to shore;
- (d) include the procedures for coordinating shipboard Ballast Water Management that involves discharge into the sea;
- (e) designate the officer on board in charge of ensuring that the plan is properly implemented; and
- (f) be in the working language of the issuing State and if the language used is not English, the text shall include a translation into English.

## **82. Ballast Water Record Book**

- (1) Every vessel to which this Part applies shall have on board a Ballast Water Record Book, which may be an electronic record system or integrated into another record book or system and which shall contain the information specified in Appendix II of the Ballast Water Management Convention.
- (2) Ballast Water record Book entries shall be maintained for at least a period of two years after the last entry has been made and thereafter shall be kept by the owner for a minimum period of three years.
- (3) The following operations shall be recorded in the Ballast Water Record Book –
  - (a) the discharge of Ballast Water pursuant to section 78; and
  - (b) any accidental or exceptional discharge made and the circumstances of, and the reason for, the discharge.
- (4) Each operation concerning Ballast Water shall be fully recorded without delay in the Ballast Water Record Book. Each entry shall be signed by the officer in charge of the operation concerned and each completed page shall be signed by the master.
- (5) The entries in the Ballast Water Record Book shall be in the working language of the vessel. If the language used is not English, the text shall include a translation into English.
- (6) The Ballast Water Record Book shall be kept readily available for inspection at all reasonable times, and in the case of an unmanned ship under tow, may be kept on the towing ship.
- (7) The Authority or an Inspector appointed under section 123 may –
  - (a) inspect the Ballast Water Record Book on board any vessel to which this section applies while the vessel is in a Guyana port or terminal; and
  - (b) make a copy of any entry in that book, and require the master of the vessel to certify that the copy is a true copy of such an entry.
- (8) Any copy made under subparagraph (b) of subsection (7), which has been certified by the master of the vessel as a true copy of an entry in the Ballast Water Record Book, shall be admissible in any judicial proceedings as evidence of the facts

stated in the entry.

(9) The inspection of a Ballast Water Record Book and the taking of a certified copy under subsection (7) shall be performed as expeditiously as possible without causing the vessel to be unduly delayed.

(10) If any vessel to which this section applies fails to comply with any provision of this section –

- (a) the owner of the vessel, and
- (b) the master of the vessel;

each commit an offence and are each liable upon summary conviction to a fine not exceeding five million dollars.

(11) Any person who makes an entry in any records to be kept in accordance with this section which to his or her knowledge is false or misleading commits an offence, and is liable upon summary conviction to a fine not exceeding five million dollars.

### **83. Surveys and inspections**

(1) Every vessel of gross tonnage and above to which this part applies, excluding floating platforms, FSUs and FPSOs, shall be subject to the following surveys –

- (a) an initial survey before the vessel is put into service or before the Certificate required under sections 84 to 86 is issued for the first time, such as to ensure that the structure, equipment, systems, fittings, arrangements and material fully comply with requirements of the Ballast Water Management Convention;
- (b) annual or biennial surveys, at the Authority's discretion, to assess –
  - (i) that the Ballast Water Management Plan and any associated structure, equipment, systems, fittings, arrangements and material fully comply with requirements of the Convention;
  - (ii) that the equipment associated with Ballast Water Management fully comply with the provisions of the Annex to the Convention;
  - (ii) the validity or otherwise of the Certificate issued under Section 84.
- (c) an additional survey either general or partial according to the circumstances, to be made after a change, replacement or significant repair has been made so as to ensure that any such change or, replacement or significant repair has been made so that the vessel

complies the requirements of the Convention.

(3) Surveys and inspections under this section shall be carried out by officers of the Authority. The Authority may, however, appoint Recognized Organizations and Approved Surveyors to undertake such surveys or inspections on the Authority's behalf, and any Recognized Organizations and Approved Surveyors so appointed shall meet certain qualifications and criteria, as prescribed.

(4) When a survey or inspection carried out under subsection (1) or (2) determines that the condition of the vessel or its equipment –

- (a) does not comply with the requirements of the Ballast Water Management Convention; or
- (b) does not correspond substantially with the particulars of the Certificate issued under section 84 or required under section 85; or
- (c) is such that the vessel is not fit to proceed to sea without presenting an unreasonable threat of harm to the marine environment, human health, property or resources of adjacent or other States; and

in the case where the survey or inspection is undertaken by an Approved Surveyor or Recognized Organization, the Approved Surveyor or Recognized Organization shall report the matter immediately to the Authority, and in all cases the Authority may -

- (a) suspend or withdraw the Certificate issued under section 84 and/or
- (b) instruct the owner of the vessel to take corrective action; and/or
- (c) prohibit the vessel from sailing until such corrective action is taken to the satisfaction of the Authority and/or the Certificate issued under section 84 is re-validated or re-issued.

(5) After any survey of the vessel under subsection (1) has been completed, no change shall be made in the structure, equipment, systems, fittings, arrangements or material covered by the survey, without the sanction of the Authority, except the direct replacement of such equipment and fittings.

(6) Whenever an accident occurs to a vessel or a defect is discovered which substantially affects the integrity of the vessel or the efficiency or completeness of its equipment covered by section 83 (1) (a), the owner or master of the vessel shall report at the earliest opportunity to the Authority, which shall cause investigations to be initiated to determine whether a survey as required by subsection (1) is necessary. If the vessel is in a port of another State, the master or owner shall also report immediately to the appropriate authorities of the port State.

(7) If any vessel to which this section applies fails to comply with any provisions of this section -

- (a) the owner of the vessel; and
- (b) the master of the vessel;

each commit an offence and shall each be liable upon summary conviction to a fine not exceeding five million dollars.

#### **84. Issue of International Ballast Water Management Certificate (BWM Certificate)**

(1) An International Ballast Water Management Certificate, in the form prescribed, shall be issued, after passing survey in accordance with section 83, to any Guyanese vessel to which the provisions of this Part applies.

(2) Such Certificate shall be issued either by the Authority or by a Recognized Organization only.

#### **85. Carriage of valid Certificate**

(1) A current and valid BWM Certificate, issued and approved in accordance with sections 83 and 84, shall be carried by any Guyanese vessel to which the provisions of this Part applies.

(2) A current and valid BWM Certificate, in the form specified in Appendix I of the Convention, issued and approved by the flag State or its recognized organization, shall be carried by any foreign vessel to which the provisions of this Part applies, which enters a Guyana port or terminal or operates in Guyanese waters.

(3) If any vessel to which this section applies fails to comply with any provisions of this section -

- (a) the owner of the vessel; and
- (b) the master of the vessel;

each commit an offence and shall each be liable upon summary conviction to a fine not exceeding five million dollars.

#### **86. Duration of Certificate**

- (1) A BWM Certificate issued under section 84 shall be issued for a period specified by the Authority, which shall not exceed four years from the date of issue.
- (2) A BWM Certificate issued under section 84 shall cease to be valid if significant alterations have taken place in the construction, equipment, systems, fittings, arrangements or material required without the sanction of the Authority, except the direct replacement of such equipment or fittings, or if intermediate surveys as specified by the Authority under subparagraph (b) of subsection 83 (1) are not carried out.
- (3) A BWM Certificate issued under Section 84 shall also cease to be valid upon transfer of the vessel to the flag of another State or upon change of ownership of the vessel.

#### **87. Notice to Mariners**

- (1) The Authority shall, by notice, notify mariners of areas within Guyana where ships should not uptake Ballast Water.
- (2) Such notices shall include the exact coordinates of the area or areas and where possible the location of any alternative area or areas for uptake of Ballast Water.
- (3) Warnings may be issued for areas –
  - (a) known to contain outbreaks, infestations, or populations of Harmful Aquatic Organisms and Pathogens, which are likely to be of relevance to Ballast Water uptake or discharge;
  - (b) near sewage outfalls; or
  - (c) where tidal flushing is poor or times during which a tidal stream is known to be more turbid.

### **PART XIII**

#### ***Civil Liability for Oil Pollution***

#### **88. Purpose and application of this Part**

- (1) The purpose of this part is to provide for liability, insurance, the recovery of costs and the payment of compensation relating to pollution damage from oil carried in ships; through the implementation of the 1992 Civil Liability Convention, as amended.

- (2) In this part;  
“**area of Guyana**” means the territory of Guyana including the territorial sea and the exclusive economic zone as defined in the *Maritime Boundaries Act 1977*;

“**Liability Convention**” means the International Convention on Civil Liability for Oil Pollution Damage opened for signature at Brussels on the 29th November, 1969; as affected by any amendment other than an amendment not accepted by Guyana which has been made and has come into force in accordance with the relevant provisions of the Convention;



**“Liability Convention country”** means a country to which the Liability Convention applies;

**“oil”** means any persistent hydrocarbon mineral oil such as crude oil, heavy fuel oil, heavy diesel oil and lubricating oil, whether carried on board a vessel as cargo or in the bunkers of such a vessel;

**“vessel”** means any sea-going vessel and seaborne craft of any type whatsoever constructed or adapted for the carriage of oil in bulk as cargo, provided that a vessel carrying oil and other cargoes shall be regarded as a vessel only when it is carrying in oil bulk in cargo and during any voyage following such carriage unless it proved that it has no residues of such carriage of oil in bulk aboard.

#### **89. Liability for oil pollution**

(1) Where, as a result of any occurrence, oil is discharged or escapes from a vessel to which this section applies, then (except as otherwise provided by this Act) the owner of the vessel shall be liable –

- (a) for any damage caused, outside the vessel in the area of Guyana, by contamination resulting from that discharge or escape;
- (b) for the cost of any measures reasonably taken for the purpose of preventing or minimizing any damage so caused in the area of Guyana by contamination resulting from the discharge or escape; and
- (c) for any damage so caused in the area of Guyana by any measures so taken under (b).

(2) When an incident involving two or more vessels occurs and pollution damage results there from, the owners of all the vessels concerned, unless exonerated under section 91, shall be jointly and severally liable for all such damage which is not reasonably separate.

(3) For the purposes of this Act where more than one discharge or escape results from the same occurrence or from a series of occurrences having the same origin, they shall be treated as one, but any measure taken after the first of them shall be deemed to have been taken after the discharge or escape.

#### **90. Exemptions from liability under section 89.**

No liability shall be incurred by the owner of a vessel under section 89 by reason of any discharge or escape of oil from the vessel, or by reason of any relevant threat of contamination, if he proves that the discharge or escape, or the threat of contamination –

- (a) resulted from an act of war, hostilities, civil war, insurrection or an exceptional, inevitable and irresistible natural phenomenon; or
- (b) was due wholly to anything done or omitted to be done by another person, not being a servant or agent of the owner, with intent to do damage; or
- (c) was due wholly to the negligence or wrongful act of a government or other authority in exercising its function of maintaining lights or other navigational aids for the maintenance of which it was responsible.

#### **91. Restriction of liability for oil pollution**

(1) Where, as a result of any occurrence –

- (a) any oil is discharged or escapes from a vessel to which section 89 applies; or
- (b) there arises a relevant threat of contamination, then whether or not the owner of the vessel in question incurs liability under section 89 -
  - (i) he shall not be liable otherwise than under that section for any such damage or cost so mentioned; and
  - (ii) no person to whom this paragraph applies shall be liable for any such damage unless the damage resulted from his personal act or omission, committed recklessly with the intent to cause such damage, or committed recklessly with knowledge that such damage would probably result.

(2) Subsection (1) (b) (ii) shall apply to –

- (a) the servants or agents of the owner of the vessel or the members of the crew;
- (b) the pilot or any other person who, without being a member of the crew, performs services for the vessel;
- (c) any charterer (however described, including a bareboat charterer), manager or operator of the vessel;
- (d) any person performing salvage operations with the consent of the owner or on the instructions of a competent public authority;
- (e) any person taking preventative measures; or

- (f) all servants or agents of persons mentioned in sub-paragraphs (c), (d) and (e).

**92. Limitation of liability under section 89.**

- (1) Where the owner of a vessel incurs a liability under section 89 –
  - (a) he may limit that liability in accordance with the provisions of this Act, and if he so does his liability (that is to say the aggregate of his liability under section 61 resulting from the discharge) shall not exceed
    - (i) 4,510,000 units of account for a vessel not exceeding 5 000 units of tonnage;
    - (ii) for a vessel with a tonnage in excess thereof, for each additional unit of tonnage, 631 units of account in addition to the amount mentioned in sub-paragraph (i)

provided, however, that this aggregate amount shall not in any event exceed 89,770,000 units of account.

- (2) The owner shall not be entitled to limit his liability under this Part if it is proved that the pollution damage resulted from his personal act or omission committed with the intent to cause such damage, or recklessly and with knowledge that such damage would probably result.
- (3) For the purposes of this Part the vessel's tonnage shall be ascertained as follows –
  - (a) gross tonnage shall be calculated in accordance with the tonnage measurements contained in Annex 1 of the *International Convention on Tonnage Measurement, 1969*;
  - (b) if a vessel is not a vessel to which the said Convention applies or is of a description to which no provision is for the time being made by regulations under section 30 of the *Guyana Shipping Act 1998*, its tonnage shall be taken as being 40 per cent of the weight (expressed in tonnes) of oil which the vessel is capable of carrying; and
  - (c) if the tonnage of the vessel cannot be ascertained in accordance with the preceding paragraphs, a surveyor shall, if so directed by the court, certify what, on the evidence specified in the direction, would in his opinion be the tonnage of the vessel if ascertained in accordance with those paragraphs, and the tonnage stated in his certificate shall be taken to be the tonnage of the vessel.

**93. Limitation Actions**

- (1) Where the owner of a vessel is alleged to have incurred a liability under section 89 he may apply to the High Court for the limitation of that liability to an amount determined in accordance with section 92.
- (2) If on an application under this section the Court finds that the applicant has incurred a liability and is entitled to limit it, the Court shall, after determining the limit of the liability and directing payment into court of the amount of that limit-
- (a) determine the amounts that would, apart from the limit, be due in respect of the liability to the several persons making claims in the proceedings; and
  - (b) direct the distribution of the amount paid into court, or so much of it as does not exceed the liability, amongst those persons in proportion to their claims subject to the following provisions of this section.
- (3) No claim shall be admitted in proceedings under this section unless it is made within such time as the Court may direct or such further time as the Court may allow.
- (4) Where the person who incurred the liability has voluntarily made any reasonable sacrifice or taken any other reasonable measures to prevent or reduce damage to which the liability extends or might have extended, he shall be in the same position with respect to any distribution made in proceedings under this section as if he had a claim in respect of the liability equal to the cost of the sacrifice or other measure.
- (5) The Court may, if it thinks fit, postpone the distribution of such part of the amount to be distributed as it deems appropriate having regard to any claims that may later be established before a foreign court.
- (6) A payment into Court of the amount of a limit determined, in pursuance of this section shall be made in dollars and –
- (a) for the purpose of converting such an amount from special drawing rights into dollars one special drawing right shall be treated as equal to such a sum in dollars as the International Monetary Fund has fixed as being the equivalent of one special drawing right for –
    - (i) the day on which the determination is made; or
    - (ii) if no sum has been so fixed for that day, the last day before that day for which the sum was so fixed;
  - (b) a certificate given by or on behalf of the Central Bank stating –

- (i) that a particular sum in dollars has been so fixed for the day on which the determination was made; or
  - (ii) that no sum has been so fixed for that day and that a particular sum in dollars has been so fixed for a day, which is the last day for which a sum was so fixed, before the day on which the determination was made, shall be conclusive evidence of those matters for the purposes of this Act;
- (c) a document purporting to be such a certificate shall in any proceedings be received in evidence and unless the contrary is proved to be deemed to be such a certificate.

**94. Restriction on enforcement of claims after establishment of limitation fund**

Where the High Court has found that a person who has incurred a liability under section 89 is entitled to limit that liability to any amount and he has paid into Court a sum not less than that amount –

- (a) the Court shall order the release of any vessel or other property arrested in connection with a claim in respect of that liability or any security given to prevent or obtain release from such an arrest; and
- (b) no judgment or decree for any such claim shall be enforced, except so far as it is for cost,

if the sum paid into Court, or such part thereof as corresponds to the claim, will be actually available to the claimant or would have been available to him if the proper steps in the proceedings under section 93 had been taken.

**95. Concurrent liabilities of owner and other persons**

Where, as a result of any discharge or escape of oil from a vessel the owner of a vessel incurs a liability under section 89 and any other person incurs a liability, otherwise than under that section, for any such damage or cost as is mentioned in subsection (1) then where –

- (a) the owner has been found, in proceedings under section 88, to be entitled to limit his liability to any amount and has paid into Court a sum not less than that amount; and
- (b) the other person is entitled to limit his liability in connection with the vessel by virtue of the *Guyana Shipping Act 1998*, no proceedings shall be taken against the other person in respect of his liability, and if any such proceedings were commenced before the owner paid the sum

into Court, no further steps shall be taken in the proceedings except in relation to costs.

#### **96. Actions for compensation**

(1) Where an incident has caused pollution damage in the area of Guyana, or when preventive measures have been taken, anywhere, to prevent or minimize such damage, actions for compensation against the owner of the vessel, insurer or other person providing security for the owner of the vessel's liability, may be brought by any person who has suffered such pollution damage, in the High Court, in accordance with this Part and Part XIV.

(2) Reasonable notice of any such action shall be given to the defendant

(3) In a case where compensation sought for pollution damage under subsection (1) exceeds the limits of liability specified in section 92, actions for compensation may be brought by any person who has suffered such pollution damage against the 92 Fund, in the High Court, in accordance with the provisions of Part XIV.

(4) No claim for compensation for pollution damage shall be made against the owner of the vessel or the 92 Fund otherwise than in accordance with this Part and Part XIV.

#### **97. Extinguishment of claims**

No action to enforce a claim in respect of a liability incurred under section 89 shall be entertained by a court in Guyana unless the action is commenced not later than 3 years after the claim arose or later than 6 years after the occurrence or the first of the occurrences resulting in the discharge or escape of oil by reason of which the liability was incurred.

#### **98. Insurance compulsory**

(1) The registered owner of any Guyanese vessel and foreign ship carrying more than 2000 tons of oil in bulk as cargo which calls at any Guyana port or terminal which operates in Guyana waters shall maintain insurance or other financial security which is sufficient to satisfy the requirements of Article VII of the Liability Convention.

(2) An Oil Pollution Insurance Certificate, attesting that insurance or other financial security is in force in accordance with the provisions of this section, shall be issued by the Authority to and be carried by each Guyanese vessel once the Authority has determined that the requirements of subsection (1) have been complied with.

(3) An Oil Pollution Insurance Certificate attesting that insurance or other financial security is in force in accordance with the provisions of this section shall be carried by any foreign vessel which calls at a Guyana port or terminal which operates in Guyana waters.

(4) With respect to a foreign vessel that is registered in a country that is a Liability Convention country, the certificate required under subsection (3) shall be issued or certified by the appropriate authority or authorized institution or organization of the country of the vessel's registry, and with respect to a foreign vessel that is registered in a country that is not a Liability Convention country, it may be issued or certified by the appropriate authority or authorized institution or organization of any country that is a Liability Convention country, provided that the authorized institution or organization has determined that the requirements of subsection (1) have been complied with.

(5) The certificate required under subsections (2) and (3) shall be in the form prescribed in the Annex VII to the Liability Convention and shall contain the following particulars-

- (a) name of vessel;
- (b) name and principal place of business of the registered owner;
- (c) vessel's IMO number;
- (d) type and duration of security;
- (e) name and principal place of business of the insurer or other person giving security; and
- (f) the period of validity of the security

(6) The certificate shall be in the official language of the issuing country. If the language used is not English, the text shall include a translation into English.

(7) The certificate shall be carried on board the vessel and a copy shall be deposited with the authorities that keep the vessel's registry, or if the vessel is registered in a country which is not a Liability Convention country, with the relevant authorities of the country issuing or certifying the certificate.

(8) An insurance or other financial security does not satisfy the requirements of this section if it can cease, for reasons other than the expiry of the period of validity of the insurance or the security specified in the Certificate under subsections (2) and (3), before three months have elapsed from the date on which notice of its termination is given to the authorities referred to in subsection(5) unless the Certificate has been surrendered to these authorities or a new one has been issued under within the said period.

(9) If any –

- (a) Guyanese vessel; or
- (b) any foreign vessel

does not have insurance or other security to the extent specified in subsection (1) and does not carry a valid Certificate as required under this section or otherwise does not comply with the provisions of this section, such ship shall be prohibited from going to sea, and –

- (a) the owner of the ship; and
- (b) the master of the ship; or

each commit an offence and are each liable upon summary conviction to a fine not exceeding ten million dollars or to a term of imprisonment not exceeding five years.

#### **99. Regulations in respect of issuing of Certificate**

(1) The Minister may make regulations –

- (a) prescribing the fee to be paid on an application for a Certificate to be issued by the Authority under section 98 (1) (b); and
- (b) providing for the cancellation and delivery up of such a Certificate in such circumstances as may be prescribed by the regulations.

(2) Where a person required by regulations under subsection (1) (b) to deliver up a Certificate fails to do so he commits an offence and is liable on summary conviction to a fine not exceeding one million dollars.

#### **100. Rights of third parties against insurers.**

(1) Where it is alleged that the owner of a vessel has incurred a liability under section 61 as a result of a discharge or escape of oil occurring while there was in force a contract of insurance or other security to which a certificate as stated in section 98 relates, proceedings to enforce the claim in respect of the liability may be brought against the insurer who provided the insurance or other security.

(2) In proceedings brought against the insurer under this section, it shall be a defence to prove that the discharge, escape or the threat of contamination was due to the willful misconduct of the owner.



(3) The insurer may limit his liability in respect of claims made against him by virtue of this section in like manner and to the same extent as the owner may limit his liability but the insurer may do so whether or not the discharge or escape of oil resulted from anything done or omitted to be done by the owner as mentioned in subsection (3) of section 91.

### **101. Jurisdiction**

(1) The Admiralty jurisdiction of the High Court shall be construed as extending to a claim in respect of a liability incurred under this Part.

(2) Where any persistent oil is discharged from a vessel but does not result in any damage caused by contamination in the area of Guyana and no measures are reasonably taken to prevent or reduce such damage in that area, no court in Guyana shall entertain an action (whether *in rem* or *in personam*) to enforce a claim arising from –

- (a) any damage caused in the area of another Liability Convention country by contamination resulting from the discharge or escape;
- (b) any cost incurred in taking measures to prevent or reduce such damage in the area of such other country; or
- (c) any damage caused by any measures so taken.

### **102. Government vessels**

(1) Nothing in the preceding provisions of this Part shall apply in relation to any Government vessel.

(2) In relation to a vessel owned by a State and for the time being used for commercial purposes it shall be a sufficient compliance with subsection (2) of section 98 if there is in force a certificate issued by the government of that State showing that the vessel is owned by that State and that any liability for pollution damage as defined in Article I of the Liability Convention will be met up to the limit prescribed by Article V of the Convention.

(3) Every Liability Convention country shall, for the purposes of any proceedings brought in a court in Guyana to enforce a claim in respect of a liability incurred under section 84, be deemed to have submitted to the jurisdiction of that court, and accordingly rules of court may provide for the manner in which such proceedings are to be commenced and carried on; but nothing in this subsection shall authorize the issue of execution against the property of any State.

### **103. Liability for preventive measures where section 89 does not apply**

- (1) Where –
- (a) after a discharge or escape of oil from a vessel, measures are reasonably taken for the purpose of preventing or minimizing damage in the area of Guyana which may be caused outside the vessel by contamination resulting from the discharge or escape; and
  - (b) a person incurs, or might have but for the measures incurred, a liability otherwise than under section 89, for the damage, then notwithstanding that subsection (1) (b) of section 89 does not apply, the person shall be liable for the cost of the measures, whether or not the person taking them does so for the protection of his interests or in the performance of a duty.
- (2) Where a person is liable under subsection (1) for the cost of any measures, he shall also be liable for any damage caused in the area of Guyana by those measures.
- (3) For the purposes of section 407 of the *Guyana Shipping Act* any liability incurred under this section shall be deemed to be a liability to damages in respect of such loss, damage or infringement as is mentioned in that section.

#### **104. Saving for recourse action**

Nothing in this Act shall prejudice any claim or the enforcement of any claim that a person incurring a liability under this Act may have against another person in respect of that liability.

### **PART XIV**

#### ***The International Oil Pollution Compensation Fund***

#### **105. Interpretation**

- (1) In this Part

**"Director"** means the Director of the Fund;

**"the Fund"** means the International Fund established by the Fund Convention;

**"Fund Convention"** means the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1971, as amended by the 1976 and 1992 Protocols;

**"Fund Convention country"** means a country in which the Fund Convention is in force;

**"Fund Convention vessel"** means a vessel registered under the law of a Fund Convention country;

**"guarantor"** means any person providing insurance or other financial liability to cover an owner's liability in pursuance of section 98;

(2) For the purposes of this Part a vessel's tonnage shall be gross tonnage calculated in the manner provided in section 409 of the *Guyana Shipping Act 1998*.

(3) For the purposes of this Part where more than one discharge results from the same occurrence or from a series of occurrences having the same origin, they shall be treated as one.

#### **106. Contributions by importers of oil and other persons.**

(1) Annual contributions shall be payable to the Fund in respect of oil carried by sea to ports or terminals in Guyana.

(2) Subsection (1) shall apply whether or not the oil is being imported, and notwithstanding that contributions were payable in respect of carriage of the same oil on a previous voyage.

(3) Contributions shall also be payable to the Fund in respect of oil when first received in any installation in Guyana after having been carried by sea and discharged in a port or terminal in a country which is not a Fund Convention country.

(4) The person liable to pay contributions shall be -

(a) in the case of oil which is being imported into Guyana, the importer; or

(b) in any other case, the person by whom the oil is received.

(5) A person shall not be liable to make contributions in respect of the oil imported or received by him in any year if the oil so imported or received in the year does not exceed 150 000 metric tons.

(6) For the purpose of subsection (5) -

(a) all the members of a group of companies shall be treated as a single person; and

(b) any two or more companies which have been amalgamated into a single company shall be treated as the same person as that single company.

(7) The contributions payable by a person for any year shall -

- (a) be of such amount as may be determined by the Assembly of the Fund under Articles 11 and 12 of the Fund Convention and notified to that person by the Fund;
  - (b) be payable in such installments, becoming due at such times, as may be so notified to him, and if any amount due from him remains unpaid after the date on which it became due, it shall from then on bear interest, at a rate determined from time to time by the said Assembly, until it is paid.
- (8) The Minister may by regulations impose on persons who are or may be liable to pay contributions under this section, obligations to give security for payment to the Minister or to the Fund, and regulations under this subsection –
- (a) may contain such supplemental or incidental provisions as appear to the Minister expedient; and
  - (b) may impose penalties for contravention of the regulations punishment on summary conviction by a fine not exceeding five million dollars.
- (9) In this section and section 102, unless the context otherwise requires –
- “company” means a body incorporated under the laws of Guyana, or of any other country;
- “crude oil” means any liquid hydrocarbon mixture occurring naturally in the earth whether or not to render it suitable for transportation, and includes-
- (i) crude oils from which distillate fractions have been removed; and
  - (ii) crude oils to which distillate fractions have been added,
- “importer” means the person by whom or on whose behalf the oil in question is entered for customs purposes on importation, and “import” shall be construed accordingly;
- “oil” means crude oil and fuel oil; and
- “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.

#### **107. Power to obtain information**

(1) For the purpose of transmitting to the Fund names and addresses of the persons who under section 106 are liable to make contributions to the Fund for any year, and the quantity of oil in respect of which they are so liable, the Minister may by notice require any person engaged in producing, treating, distributing, or transporting oil to furnish such information as may be specified in the notice.

(2) A notice under this section may require a company to give such information as may be required to ascertain whether its liability is affected by subsection (6) of section 106.

(3) A notice under this section may specify the way in which, and the time within which, it is to be complied with.

(4) In proceedings by the Fund against any person to recover any amount due under section 106, particulars contained in any list transmitted by the Minister to the Fund shall, so far as those particulars are based on information obtained under this section, be admissible as evidence of the facts stated in the list, and so far as particulars which are so admissible are based on information given by the person against whom the proceedings are brought, those particulars shall be presumed to be accurate until the contrary is proved.

(5) If a person discloses any information which has been furnished to or obtained by him under this section, or in connection with the execution of this section, he or she, unless the disclosure is made –

- (a) with the consent of the person from whom the information was obtained;
- (b) in connection with the execution of this section; or
- (c) for the purposes of any legal proceedings arising out of this section or of any report of such proceedings,

commits an offence and is liable on summary conviction to a fine not exceeding one million dollars.

(6) A person who –

- (a) refuses or willfully neglects to comply with a notice under this section; or
- (b) in furnishing any information in compliance with a notice under this section, makes any statement which he knows to be false in a material particular, or recklessly makes any statement which is false in a material particular,

commits an offence and is liable on summary conviction to a fine not exceeding ten million dollars or imprisonment for a term of 12 months or to both.

#### **108. Liability of the Fund**

(1) Except as provided in subsection (7) the Fund is liable for pollution damage in Guyana if the person suffering the damage has been unable to obtain full compensation under section 112 –

- (a) because the discharge, or escape of oil from a vessel by reason by which the damage was caused –
  - (i) resulted from an exceptional, inevitable and irresistible phenomenon;
  - (ii) was due wholly to anything done or omitted to be done by another person who is not a servant or agent of the owner with intent to do damage;
  - (iii) was due wholly to the negligence or wrongful act of a government or other authority in exercising its function of maintaining lights or other navigational aids for the maintenance of which it was responsible and because liability is wholly displaced by section 90; or
- (b) because the owner or guarantor liable for the damage cannot meet his obligations in full; or
- (c) because the damage exceeds the liability under section 89 as limited by section 115.

(3) Where an incident has caused pollution damage both in Guyana and in another Liability Convention country references in this section to the provisions of this Part shall include references to the corresponding provisions of the law of any country giving effect to the Liability Convention.

(4) Where proceedings under the Liability Convention for compensation for pollution damage have been brought in a country which is not a Fund Convention country and the Fund is liable for that pollution damage by virtue of subsection (2) (a) of this section, references in this section to the provisions of this Act shall be treated as references to the corresponding provisions of the law of the country in which those proceedings were brought.

(5) For the purposes of this section an owner or guarantor is to be treated as incapable of meeting his obligations if the obligations have not been met after all reasonable steps to pursue the legal remedies available have been taken.

(6) Expenses reasonably incurred, and sacrifices reasonably made, by the owner voluntarily to prevent or minimize pollution damage shall be treated as pollution damage for the purposes of this section, and accordingly he shall be in the same position with

respect to claims against the Fund under this section as if he had a claim in respect of liability under section 107.

(7) The Fund shall incur no obligation under this section if –

- (a) it proves that the pollution damage –
  - (i) resulted from an act of war, hostilities, civil war, or insurrection; or
  - (ii) was caused by oil which has been discharged from a Government vessel; or
- (b) the claimant cannot prove that the damage resulted from an occurrence involving a vessel identified by him, or involving two or more vessels one of which is identified by him.

(8) Where the Fund proves that the pollution damage resulted wholly or partly-

- (a) from an act done or omitted to be done with intent to cause damage by the person who suffered the damage; or
- (b) from the negligence of that person

the Fund may, subject to subsection (10), be exonerated wholly or partly from its obligation to pay compensation to that person, however there shall be no such exoneration of the Fund with regard to preventive measures.

(9) Where liability under section 89 is limited to any extent by subsection (5) of that section, the Fund shall be exonerated to the same extent.

(10) The Fund's liability under this section shall be subject to the limits imposed by paragraphs 4, 5 and 6 of Article 4 of the Fund Convention which imposed an overall liability on the liabilities of the owner and of the Fund and the text of which is set out in the *Second Schedule* to this Act.

(11) Notwithstanding any other law, evidence of any organ of the Fund or of any document in the custody of the Fund, or any entry in extract from such a document, may be given in any legal proceedings by production of a copy certified as a true copy by an official of the Fund; and any document purporting to be such a copy shall be received in evidence without proof of the official position or handwriting of the person signing the certificate.

(12) For the purpose of giving effect to the provisions of the Fund Convention mentioned in subsection (10) of this section, a court giving judgment against the Fund in proceedings under this section shall notify the Fund, and –

- (a) no steps shall be taken to enforce the judgment unless and until the court gives leave to enforce it;
  - (b) that leave shall not be given unless and until the Fund notifies the court either that the amount of the claim is not to be reduced under the said provisions, or that it is to be reduced to a specified amount; and
  - (c) in the latter case the judgment shall be enforceable only for the reduced amount.
- (13) Any steps taken to obtain payment of an amount or a reduced amount in pursuance of such a judgment as is mentioned in subsection (12) shall be steps to obtain payment in dollars and –
- (a) for the purpose of converting such an amount from special drawing rights into dollars one special drawing right shall be treated as equal to such a sum in dollars as the International Monetary Fund has fixed as being the equivalent of one special drawing right for –
    - (i) the day on which the judgment is given; or
    - (ii) if no sum has been so fixed for that day, the last day before that day for which the sum was so fixed;
  - (b) a certificate by or on behalf of the Central Bank stating
    - (i) that a particular sum in dollars has been so fixed for the day on which the judgment was given; or
    - (ii) that no sum has been so fixed for that day and that a particular sum in dollars has been so fixed for a day which is the last day for which a sum has been so fixed before the day on which the judgment was given, shall be conclusive evidence of those matters for the purposes of this Act;
  - (c) a document purporting to be such a certificate shall, in any proceedings, be received in evidence and, unless the contrary is proved, be deemed to be such a certificate.

#### **109. Jurisdiction**

- (1) The Admiralty jurisdiction of the High Court shall be construed as extending to any claim in respect of a liability falling on the Fund under this Part.
- (2) Where in accordance with rules of court made for the purposes of this subsection the Fund has been given notice of proceedings brought against an owner or guarantor in



respect of liability under section 89, any judgment shall, after it has become final and enforceable, become binding upon the Fund in the sense that the facts and evidence in the judgment may not be disputed by the Fund even if the Fund has not intervened in the proceedings.

(3) Where a person incurs a liability under the law of a Fund Convention country corresponding to Part XIII for damage which is partly in the area of Guyana subsection (2) of this section shall, for the purpose of proceedings under this Part, apply with any necessary modifications to a judgment in proceedings under that law of the said country.

#### **110. Extinguishment of claims**

(1) No action to enforce a claim against the Fund under this Part shall be entertained by a court in Guyana unless –

- (a) the action is commenced; or
- (b) a third party notice of an action to enforce a claim against the owner or his guarantor in respect of the same damage is given to the Fund, not later than three years after the claim against the Fund arose, and in this subsection “third party notice” means a notice of the kind described in subsections (2) and (3) of section 109.

(2) No action to enforce a claim against the Fund under this Part shall be entertained by a court in Guyana unless the action is commenced not later than 6 years after the occurrence or first of the occurrences resulting in the discharge or escape of oil by reason of which the claim against the Fund arose.

#### **111. Subrogation and rights of recourse**

(1) In respect of any sum paid under section 108(1) (b) the Fund shall acquire by subrogation the rights of the recipient against the owner or guarantor.

(2) In respect of any sum paid under paragraph (a) or paragraph (c) of section 108(1) the Fund shall acquire by subrogation any rights of recourse or subrogation which the owner or guarantor or any other person has in respect of his liability for the damage in question.

(3) In respect of any sum paid by a public authority in Guyana as compensation for pollution damage, that authority shall acquire by subrogation any rights which the recipient has against the Fund under this Part.

#### **112. Supplementary provisions as to proceedings involving the Fund.**

- (1) Any proceedings by or against the Fund may either be instituted –
  - (a) by or against the Fund in its own name; or
  - (b) by or against the Director of the Fund as the Fund's representative.
- (2) Evidence of an instrument issued by an organ of the Fund or of a document in the custody of the Fund or any entry in or extract from the document may be given in a legal proceeding by production of a copy certified as a true copy by an official of the Fund.
- (3) A document which purports to be such a copy shall in the proceedings be received in evidence without proof of the official position or handwriting of the person signing the certificate.

## **Part XV**

### ***Pollution Damage from Bunker Oil Carried by Ships.***

#### **113. Purpose and application of this Part**

- (1) The purpose of this part is to give effect of the Bunkers Convention.
- (2) This Part applies –
  - (a) to pollution damage caused by ships other than as provided for in Parts XIII and XIV in the area of Guyana; and
  - (b) to preventive measures whenever taken to prevent or minimize such damage.
- (3) In this Part –

“**area of Guyana**” has the same meaning as in Part XIII.

“**bunker oil**” means any hydrocarbon mineral oil including lubricating oil; used or intended to be used for the operation or propulsion of the ship ; and any residues of such oil as defined in the Bunkers Convention;

“**foreign ship**” means a ship which is not a Guyanese ship;

“**pollution damage**” has the same meaning as in Part XIII;

“**ship**” means any seagoing vessel and seaborne craft of any type;

“**shipowner**” has the same meaning as “ owner” in section 3.

#### **114. Liability for pollution damage**

- (1) Except as provided in subsections (3) and (4), the shipowner at the time of an incident shall be liable for pollution damage caused by any bunker oil on board or originating from the ship, provided, that if an incident consists of a series of occurrences

having the same origin, the liability shall attach at the time of the first of such occurrences.

(2) Where more than one person is liable under subsection (1) their liability shall be joint and several.

(3) No liability for pollution damage shall attach to the shipowner if he proves that the damage –

- (a) resulted from an act of war, hostilities, civil war, insurrection or an exceptional, inevitable and irresistible natural phenomenon;
- (b) was due wholly to anything done or omitted to be done by another person, not being a servant or agent of the owner, with intent to do damage; or
- (c) was due wholly to the negligence or wrongful act of a government or other authority in exercising its function of maintaining lights or other navigational aids for the maintenance of which it was responsible.

(4) Where a shipowner proves that the pollution damage resulted wholly or partially either from an act or omission done with intent to cause damage by the person who suffered the damage or from the negligence of that person, the shipowner may be exonerated wholly or partially from liability to such person.

(5) Subject to subsection (6) no liability for pollution damage shall attach to –

- (a) the servants or agents of the shipowner or the members of the crew;
- (b) the pilot or any other person who, without being a member of the crew, performs services for the ship;
- (c) any person performing salvage operations with the consent of the owner or on the instructions of a competent public authority;
- (d) any person taking preventive measures; or
- (e) the servants or agents of the persons mentioned in (c) and (d)

unless the damage resulted from their personal act or omission, committed with the intent to cause such damage or recklessly and with knowledge that such damage would probably result.

(6) Nothing in this Part shall prejudice any right of recourse of the shipowner which exists independently of this Part.

### **115. Actions for compensation**

(1) Where an incident has caused pollution damage in the area of Guyana, or

when preventive measures have been taken, anywhere, to prevent or minimize such damage, actions for compensation against the owner of the vessel, insurer or other person providing security for the owner of the vessel's liability, may be brought by any person who has suffered such pollution damage, in the High Court, in accordance with this section.

(2) Where the defendant is the insurer or other person providing security for the shipowner's liability, the defendant may invoke the defences available to the shipowner under this Part and the defendant may also invoke the defence that the pollution damage resulted from wilful misconduct of the shipowner.

(3) Reasonable notice of any such action shall be given to the defendant.

(4) No claim for compensation for pollution damage shall be made against the shipowner otherwise than in accordance with this Part.

#### **116. Limitation of liability**

Nothing in this Part shall affect the right of a shipowner and the person or persons providing insurance or other financial security to limit liability under the Convention on Limitation of Liability for Maritime Claims 1976, as amended.

#### **122. Compulsory insurance or financial security**

(1) The registered owner of any Guyanese ship having a gross tonnage greater than 400, and the registered owner of any foreign ship having a gross tonnage of over 1,000 which calls at any Guyana port or terminal which operates in Guyana waters shall maintain insurance or other financial security which is sufficient to cover the liability of the shipowner for pollution damage in the amount equal to the limits of liability calculated in accordance with the convention on Limitation of Liability for Maritime Claims 1976, as amended.

(2) An Oil Pollution Certificate for Bunkers, attesting that insurance or other financial security is in force in accordance with the provisions of this section, shall be issued by the Authority to and be carried by each Guyanese ship having a gross tonnage of greater than 400, after the Authority has determined that the requirements of subsection (1) have been complied with.

(3) An Oil Pollution Certificate for Bunkers attesting that insurance or other financial security is in force in accordance with the provisions of this section shall be carried by any foreign ship having gross tonnage greater than 1,000 which calls at a Guyana port or terminal which operates in Guyana waters.

(4) With respect to a foreign ship that is registered in a state that is a party to the Bunkers Convention, the certificate required under subsection (3) shall be issued or

certified by the appropriate authority or authorized institution or organization of the State of the ship's registry, and with respect to a foreign ship that is registered in a State that is not a party to the Bunkers Convention, it may be issued or certified by the appropriate authority or authorized institution or organization of any State that is a party to the Bunkers Convention, provided that the authorized institution or organization has determined that the requirements of subsection (1) have been complied with.

(5) The certificate required under subsections (2) and (3) shall be in the form prescribed in the Annex to the Bunkers Convention and shall contain the following particulars –

- (a) name of ship;
- (b) name and principal place of business of the registered owner;
- (c) ship's IMO number;
- (d) type and duration of security;
- (e) name and principal place of business of the insurer or other person giving security; and
- (f) the period of validity of the security.

(6) The certificate shall be in the official language of the issuing State. If the language used is not English, the text shall include a translation into English.

(7) The certificate shall be carried on board the ship and a copy shall be deposited with the authorities that keep the ship's registry, or if the ship is not a party to the Bunkers Convention, with the relevant authorities of the State issuing or certifying the certificate.

(8) An insurance or other financial security does not satisfy the requirements of this section if it can cease, for reasons other than the expiry of the period of validity of the insurance or the security specified in the Certificate under subsections (2) and (3), before three months have elapsed from the date on which notice of its termination is given to the authorities referred to in subsection(5) unless the Certificate has been surrendered to these authorities or a new one has been issued under within the said period.

(9) If any –

- (a) Guyanese ship of gross tonnage greater than 400; or
- (b) any foreign ship of gross tonnage greater than 1,000

does not have insurance or other security to the extent specified in subsection (1) and does not carry a valid Certificate as required under this section or otherwise does not comply with the provisions of this section, such ship shall be prohibited from going to sea, then –

- (a) the owner of the ship; and
- (b) the master of the ship; or

each commit an offence and are each liable upon summary conviction to a fine not exceeding ten million dollars or to a term of imprisonment not exceeding five years.

### **118. Extinguishment of claims**

No action to enforce a claim in respect of a liability incurred under section 114 shall be entertained by a court in Guyana unless the action is commenced not later than 3 years after the claim arose or later than 6 years after the occurrence or the first of the occurrences as a result of which the liability was incurred.

### **119. Jurisdiction**

Where any incident has caused pollution damage in the area of Guyana as well as in the territory of another State or States, or preventive measures are reasonably taken to prevent or reduce such damage in that area, no court in Guyana shall entertain an action (whether *in rem* or *in personam*) to enforce a claim arising from –

- (a) any damage caused in the territory of another State which is a party to the Bunkers Convention, by contamination resulting from the incident; or
- (b) any cost incurred in taking measures to prevent or reduce such damage in the area of such other country; or
- (c) any damage caused by any measures so taken.

### **120. Exemptions**

- (1) Nothing in the preceding provisions of this Part shall apply in relation to any Government ship.
- (2) In relation to a vessel owned by a State and for the time being used for commercial purposes it shall be a sufficient compliance with section 122 if there is in force a certificate issued by the government of that State showing that the vessel is owned by that State.
- (3) Every State which is a party to the Bunkers Convention shall, for the purposes of any proceedings brought in a court in Guyana to enforce a claim in respect of a liability

incurred under section 114, be deemed to have submitted to the jurisdiction of that court, and accordingly rules of court may provide for the manner in which such proceedings are to be commenced and carried on; but nothing in this subsection shall authorize the issue of execution against the property of any State.

## **Part XVI**

### ***Miscellaneous, administration and enforcement***

#### **121. Administration, enforcement, prosecution and jurisdiction**

(1) The Authority has primary responsibility for the administration and enforcement of this Act; and any person appointed as an Inspector under this Act in accordance with section 123 may undertake an investigation in relation to an alleged offence under this Act, under the supervision of the Authority.

(2) The Director of the Authority, or his or her delegate, may, after consultation with the Director of Public Prosecutor, institute and conduct prosecutions for offences under this Act.

#### **122. Duty to report discharge**

(1) If any:

- (a) oil, oily mixtures or oil residues;
  - (b) noxious liquid substance;
  - (c) harmful substance, in packaged form or otherwise;
  - (d) garbage, including fishing gear; or
  - (e) any other pollutant;
- (i) is discharged from any vessel or offshore installation in Guyana waters or from any Guyanese vessel or offshore installation wherever it may be; in contravention of the provisions of this Act; or
  - (ii) if any vessel of 15 metres in length or more in Guyana waters or if any Guyana vessel 15 metres in length or more wherever it may be, suffers damage, failure or breakdown, or is involved in a collision, grounding, fire, explosion, structural failure, equipment failure, flooding, cargo shifting or any other incident which results in impairment of safety of navigation or threatens a possible

discharge; or

- (iii) if any offshore installation in Guyana waters or any Guyana offshore installation wherever it may be, suffers damage, failure or breakdown, or is involved in a collision, fire, explosion, structural failure, equipment failure, flooding or any other incident which results in impairment of safety of operation or threatens a possible discharge;

the owner, master or person in charge of the vessel or offshore installation shall, by the fastest means available, and with the highest possible priority report the incident to the Authority, and in the case when the nearest coastal State is not Guyana, also to the relevant authorities in the nearest coastal State, in accordance with the standard Incident Report format contained in the *Third Schedule*.

(2) A report made by a person under subsection (1) is not admissible in evidence against that person, or any other person involved in the incident being reported, in any legal proceedings.

(3) Any person who:

- (a) fails to reasonably comply with any provision of Subsection (1); or
- (b) makes a report containing any information that to his or her knowledge is false or misleading;

commits an offence and is liable upon conviction to a fine not exceeding five million dollars.

### **123. Appointment of inspectors**

(1) The Director of the Authority may, by notice in the *Official Gazette*, appoint any officer of the Authority as an inspector under this Act.

(2) The Authority shall ensure that all persons that are appointed as inspectors receive proper and regular training in order to assist them to carry out their duties and functions in a competent and responsible manner.

(3) Inspectors shall be issued with an identity card by the Authority in a form approved by the Authority.

(4) Where a person in possession of an identity card issued to him under subsection (3) ceases to be an inspector, he shall forthwith return the identity card to the Authority.

(5) Any person who fails to comply with subsection (4) commits an offence and is liable upon conviction to a fine not exceeding one million dollars.



**124. Boarding of vessels etc by inspectors**

(1) Where there are clear grounds for believing that any vessel has violated any provision(s) of this Act, or that there is in or on that vessel, any matter or thing that may afford evidence as to the commission of an offence against this Act; and –

- (a) the vessel is voluntarily within a Guyana port or terminal; or
- (b) the vessel is within the territorial sea of Guyana; or
- (c) the vessel is a Guyanese vessel anywhere;

an inspector may, with such assistance as he thinks necessary, board that vessel for the purposes of exercising the functions of an inspector in accordance with section 126, and may for that purpose, stop and detain that vessel.

(2) Where there are clear grounds for believing that a vessel has violated any provision(s) of this Act –

- (a) while in the exclusive economic zone of Guyana; and
- (b) the vessel is within Guyana waters;

the Authority or an inspector may require the vessel to give information regarding –

- (i) its identity and port of registry;
- (ii) its last and next port of call; and
- (iii) any other relevant information required to establish whether a violation of this Act has occurred.

(3) Where there are clear grounds for believing that a vessel has violated any provision(s) of this Act while in the exclusive economic zone of Guyana, resulting in a substantial discharge causing or threatening significant pollution of the marine environment; and

- (a) the vessel is within Guyana waters; and
- (b) the vessel has refused to give information as outlined under subsection(2) or the information supplied appears to be at variance with the evident factual situation;

an inspector may, with such assistance as he thinks necessary, board that vessel for the purposes of exercising the functions of an inspector in accordance with section 126.

(4) Where there is clear objective evidence that a vessel has violated any provision(s) of this Act while in the exclusive economic zone of Guyana resulting in a discharge causing major damage or threat of major damage to the coastline or resources or related interests of Guyana and the vessel is within Guyana waters, an inspector may, with such

assistance as he thinks necessary, board that vessel for the purposes of exercising the functions of an inspector in accordance with section 126, and may for that purpose, stop and detain that vessel.

(5) An inspector may require any person on board a vessel to which this section applies, whom the inspector finds committing, or whom the inspector suspects on clear reasonable grounds of having committed, an offence against this Act to state his or her full name and usual place of residence.

(6) Subject to subsections (1) to (4), where an inspector believes on clear reasonable grounds that a vessel to which this section applies and that is in Guyana waters has been used or otherwise involved in the commission of an offence against this Act, the inspector may bring, or require the person in charge of the vessel to bring, the vessel to the nearest port in Guyana to which it is safe and practicable to bring the vessel.

(7) An inspector may, for the purposes of this Act, require the person in charge of a vessel to which this section applies, to give information concerning the vessel and its crew and any other person on board the vessel.

(8) Where an inspector boards a vessel to which this section applies, or makes a requirement of a person under this section, the inspector shall produce his or her identity card for inspection by that person and the person in charge of that vessel and, if the inspector fails to do so, he is not authorized to remain, or to require any person assisting him to remain, on board that vessel or to detain that vessel, or to make any requirement of a person.

(9) A person who, without reasonable excuse, fails to comply with a requirement made of him by an inspector under this section commits an offence and is liable upon conviction to a fine not exceeding one million dollars.

## **125. Access to premises and offshore installations**

(1) An inspector may, with the consent of the occupier of any premises, or offshore installation, enter the premises or offshore installation for the purpose of exercising the functions of an inspector in accordance with section 126.

(2) Where an inspector believes on reasonable grounds that there is on the premises or offshore installation any matter or thing that may afford evidence as to the commission of an offence against this Act, the inspector may make application to a magistrate for a warrant authorizing the inspector to enter the premises or offshore installation for the purpose of exercising the functions of an inspector in accordance with section 126.

(3) If, on an application under subsection (2), the magistrate is satisfied, by information on oath or affirmation:

(a) that there are clear reasonable grounds to believe that there is on the

premises or offshore installation to which the application relates any matter or thing that may afford evidence as to the commission of an offence against this Act; and

- (b) that the issue of the warrant is reasonably required for the purposes of this Act;

the magistrate may grant a warrant authorizing the inspector, with such assistance as the inspector thinks necessary, to enter the premises or offshore installation, during such hours of the day or night as the warrant specifies or, if the warrant so specifies, at any time, if necessary by force, for the purpose of exercising the functions of an inspector in accordance with section 126.

- (4) Where an inspector has entered any premises or offshore installation in pursuance of subsection (1) or in pursuance of a warrant granted under subsection (3), he may exercise the functions of an inspector in accordance with section 126.

#### **126. Functions of inspectors**

- (1) The functions of an inspector who boards a vessel under section 124 or enters premises or an offshore installation under section 125 are as follows:

- (a) to assess compliance with this Act;
- (b) to take samples and to search for, and take possession of, any matter or thing that may afford evidence as to the commission of an offence against this Act;
- (c) to search for, inspect, take extracts from and make copies of any document that relates to the requirements of this Act; and
- (d) to undertake Port State Control functions as provided for under the Conventions incorporated under this Act.

- (2) For the purposes of carrying out his or her functions under Subsection (1), an inspector may break open any hold or compartment, or any container or other receptacle, on a vessel or offshore installation or on any premises.

#### **127. Powers of arrest of inspectors**

- (1) An inspector may, without warrant, arrest any person, if the inspector believes on reasonable grounds that the person is committing or has committed an offence against this Act, and where the penalty for that offence includes imprisonment.
- (2) Where an inspector arrests a person under subsection (1), the inspector shall produce his or her identity card for inspection by that person.

(3) Where a person is arrested under subsection (1), an inspector shall forthwith bring the person, or cause him or her to be brought, before the court or other proper authority to be dealt with in accordance with law, except in the case where the person arrested may be the master of a vessel or person in charge of an offshore installation or any other person whose immediate removal might pose a threat to the safe operation of the vessel or offshore installation, in which case such person shall be permitted to carry out any such tasks that are critical to the safe operation of the vessel or offshore installation until such time that they can be satisfactorily relieved.

(4) Nothing in this section prevents the arrest of a person in accordance with any other law.

### 128. Evidence

(1) In any proceedings for an offence against a provision of this Act –

- (a) any record kept or certificate given in pursuance of this Act is admissible as *prima facie* evidence of the facts stated in the record or certificate;
- (b) a copy of an entry in a record, being a copy certified by the person by whom the record is required to be kept to be a true copy of the entry, is admissible as *prima facie* evidence of the facts stated in the entry; and
- (c) a document purporting to be a document kept in pursuance of this Act, or purporting to be such a certified copy as referred to in paragraph (b), shall, unless the contrary is proved, be deemed to be such a record or certified copy, as the case may be.

(2) Where in any proceedings under this Act the place or area in which a vessel is alleged to have been at a particular date and time or during a particular period of time is material to an offence charged, then a place or area stated in a certificate given by an inspector who exercised his or her powers as an Inspector under section 98 and section 100 in relation to the offence charged, shall be *prima facie* evidence, unless the contrary is proved, of the place or area in which the vessel was at the date and time or during the period of time stated.

(3) For the purposes of this section, a document purporting to be a certificate referred to in subsection (2) shall, unless the contrary is proved, be deemed to be such a certificate.

### 129. Regulations

The Minister may make Regulations providing for such matters as are necessary for giving full effect to the provisions of this Act and for its due administration.

**130. Offences and penalties**

(1) Every person who commits an offence against this Act or any regulations made there under for which no penalty is provided elsewhere, shall be liable upon conviction:

- (a) in the case of a corporation to a fine not exceeding ten million dollars;
- (b) in the case of an individual to a fine not exceeding five million dollars or a term of imprisonment not exceeding two years.

(2) Where an offence against this Act is a continuing one and no penalty is provided elsewhere for the continuance thereof, every person who commits that offence shall, in addition to any other liability, be liable upon conviction to a fine not exceeding one hundred thousand for every day during which the offence continues.

**131. Recovery of fines by distress**

Where a Court orders a person convicted of any offence against this Act to pay any fine or other costs and that person is the owner or master of a vessel or offshore installation to which this Act applies and the fine or other costs are not paid within the time and in the manner specified by the conviction or in the Order of the Court, the Court may, in addition to any other power it may have to compel payment, and notwithstanding any other Act, direct the amount remaining unpaid to be levied by distress or by the sale of any vessel, or offshore installation or of any other equipment relating to the offence, as the case requires.

**132. Detention of vessels**

(1) Subject to section 124, where the Authority has clear reasonable grounds to believe that a pollutant has been discharged from a vessel into Guyana waters, it may cause the vessel to be detained in Guyana until the owner or agent of the vessel deposits with the Authority a sum of money, or furnishes such security which would in the opinion of the Authority, subject to the provisions of Parts XIII- XIV, be adequate to meet the owner's liability for the costs of preventing, minimizing and ameliorating any pollution from the discharge.

(2) If any vessel is detained under this section and the vessel proceeds to sea before it is released by the Authority:

- (a) the owner of the vessel; and
- (b) the master of the vessel;

each commit an offence and are each liable upon summary conviction to a fine not

exceeding ten million dollars

### **133. Time limit for prosecution proceedings**

- (1) A proceeding for prosecution for an offence against this Act shall commence:
  - (a) within two years after the commission of the offence; or
  - (b) within two years after the offence comes to the complainant's knowledge, but within three years after the commission of the offence.
- (2) A statement in a complaint for an offence against this Act that the matter of the complaint came to the knowledge of the complainant on a stated day is evidence of when the matter came to the complainant's knowledge.

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## ***FIRST SCHEDULE***

### ***Section 79***

#### ***Regulations D-1 and D-2 of the Ballast Water Management Convention***

#### ***Ballast Water Exchange Standard.***

1. Vessel Performing Ballast Water exchange in accordance with this regulation shall do so with an efficiency of at least 95 percent volumetric exchange of Ballast Water.
2. For ships exchanging the Ballast Water by the pumping through method, pumping through three times the volume of each Ballast Water tank shall be considered to meet the standard described in paragraph 1. Pumping through at less than three times the volume may be accepted provided the ship can demonstrate that at least 95 percent volumetric exchange is met.

#### ***Ballast Water Performance Standard.***

1. Ships conducting Ballast Water Management in accordance with this regulation shall discharge less than 10 viable organisms per cubic metre greater than or equivalent to 50 micrometres in minimum dimension and less than 10 viable organisms per milliliter less than 50 micrometres in minimum dimension and greater than or equal to 10 micrometres in minimum dimension; and discharge of the indicator microbes shall not exceed the specified concentrations described in paragraph 2.
2. Indicator microbes, as human health standard shall include:
  - (a) Toxicogenic *Vibrio cholerae* (O1 and 139) with less than 1 colony forming unit (c.f.u) per 100 millilitres of less c.f.u per 1 gram (wet weight) zooplankton samples;
  - (b) *Escherichia coli* less than 250 c.f.u. per 100 millilitres;
  - (c) Intestinal Enterococci less than 100 c.f.u. per 100 millilitres.

**SECOND SCHEDULE***Section 108 (10)**Overall Limitation on Liability of Fund.**Article 4*

1. The Fund shall pay compensation to any person suffering pollution damage if such person has been unable to obtain full and adequate compensation for an established claim for such damage under the terms of the 1992 Fund Convention, because the total damage exceeds, or there is a risk that it will exceed, the applicable limit of compensation laid down in article 4, paragraph 4, of the 1992 Fund Convention in respect of any one incident.

2. (a) The aggregate amount of compensation payable by the Supplementary Fund under this article shall in respect of any one incident be limited, so that the total sum of that amount together with the amount of compensation actually paid under the 1992 Liability Convention and the 1992 Fund Convention within the scope of application of this Protocol shall not exceed 203,000,000 million units of account.

(b) The amount of 203,000,000 million units of account mentioned in paragraph 2(a) shall be converted into national currency on the basis of the value of that currency by reference to the Special Drawing Right on the date determined by the Assembly of the 1992 Fund for conversion of the maximum amount payable under the 1992 Liability and 1992 Fund Conventions.

3. Where the amount of established claims against the Supplementary Fund exceeds the aggregate amount of compensation payable under paragraph 2, the amount available shall be distributed in such a manner that the proportion between any established claim and the amount of compensation actually recovered by the claimant under this Protocol shall be the same for all claimants.

**THIRD SCHEDULE***Section 122**Standard Incident Report*

Incident Reports made to the Authority in accordance with Section 122 shall be in the format below. This format is consistent with the General Principles for Ship Reporting Systems and Ship Reporting Requirements, including Guidelines for Reporting Incidents Involving Dangerous Goods, Harmful Substances and/or Marine Pollutants, adopted as Resolution A.851(20) by the International Maritime Organization (IMO), and should be followed so far as possible.

(Note: The reference letters in the listing below do not follow the complete alphabetical sequence as certain letters are allocated to information required for other reporting formats).

- a. Name of ship, call sign and flag.
- b. Date and time (UTe, formerly known as GMT) of incident: a 6-digit group giving day of month (first two digits), hours and minutes (last four digits).  
  
Either
- c. Ship's position, giving latitude: a 4-digit group in degrees and minutes suffixed with N (North) or S (South); and longitude: a 5-digit group in degrees and minutes suffixed with E (East) or W (West);  
  
Or
- d. Ship's position by true bearing (first 3 digits) and distance (stated) from a clearly identified landmark.
- e. True course (as a 3-digit group).
- f. Speed (in knots and tenths of a knot as a 3-digit group).
- g. Route information - details of intended track.
- h. Full details of radio stations and frequencies being guarded.
- i.. Time of next report (a 6-digit group as in B).
- j. Draught (a 4-digit group giving draught in metres and centimetres).
- k. Types and quantities of cargo and bunkers on board
- l. Brief details of defects, damage, deficiencies or other limitations. These must include the condition of the ship and the ability to transfer cargo, ballast, or fuel.
- m. Brief details of actual pollution. This should include the type of pollutant, an estimate of the quantity discharged, whether the discharge is continuing, the cause of the discharge and, if possible, an estimate of the movement of the slick.
- n. Weather and sea condition, including wind force and direction and relevant



tidal or current details.

- o. Name, address, telex, facsimile and telephone numbers of the ship's owner or representative (manager or operator of the ship, or their agents).
- p. Details of length, breadth, tonnage and type of ship.
- q. Total number of persons onboard.
- r. Miscellaneous - to include relevant details including, as appropriate:
  - Brief details of incident.
  - Names of other ships involved.
  - Action taken with regard to the discharge and movement of the ship.
  - Assistance or salvage resources which have been requested or provided.
  - Personnel injuries sustained.
  - Whether medical assistance is required.

If no outside assistance is required, this should be clearly stated.

Reports should be transmitted by the quickest available means to the responsible authorities of the nearest coastal State or the Rescue Co-ordination Centre (CRCC) via the appropriate shore radio station. If the ship is within or near to an area for which a ship reporting system has been established, reports should be transmitted to the designated shore station of that system.

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