



IMO
INTERNATIONAL MARITIME LAW INSTITUTE
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**A LAW TO INCORPORATE
THE INTERNATIONAL CONVENTION FOR
THE PREVENTION OF POLLUTION FROM
SHIPS, 1973, AS MODIFIED BY THE PROTOCOL
OF 1978 (MARPOL) INTO THE LAWS OF
MALAWI AND TO MAKE REGULATIONS FOR
THE EFFECTIVE IMPLEMENTATION OF
ANNEXES I AND II THEREOF**

**Inland Waters Shipping (Prevention of Pollution by Oil and
Noxious Liquid Substances in Bulk) Regulations 2020**

**A Legislation Drafting Project submitted in partial fulfillment of the
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1.0 A BRIEF HISTORY OF MARINE POLLUTION

Shipping is one of the most serious causes of marine pollution from human activities especially as compared to pollution from land based sources.¹ Article 1 (4) of United Nations Convention for the Law of the Sea 1982 (UNCLOS)² defines pollution of marine environment 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"

Pollution of marine environment is not only caused by land based activities but also shipping activities. In relation to shipping, the International Maritime Organisation (IMO) is the United Nations specialised agency devoted to the safety and security of shipping and the prevention of marine and atmospheric pollution by ships.³ It must be pointed out that protection of marine environment was not the original mandate of IMO.⁴ That is why it was only in 1954 that it became the depository of the first Convention for the Prevention of Pollution from Oil 1954 (OILPOL).⁵ From that moment, protection of marine environment has become one of the most important activities of IMO. It has adopted twenty-one treaty instruments which are directly environmental-related.⁶ Its technical body in charge of marine pollution related matters is the Marine Environment Protection Committee (MEPC) which is assisted in its work by a number of subcommittees.⁷

Marine pollution occurs when harmful, or potentially harmful, effects result from the entry into the ocean of chemicals, particles, industrial, agricultural and residential

¹ <www.imo.org/OurWork/Environment/Pages/Default.aspx> (accessed 27 December 2019).

² Adopted 10 December 1982, entered into force 16 November 1994, 168 parties.

UNTC<http://treaties.un.org/Pages/ViewDetailsIII.aspx?src=TREATY&mtdsg_no=XXI-6&chapter=21&temp=mtdsg3&clang=_en> (Accessed 21 July 2020).

³ <www.imo.org/en/About/Pages/Default.aspx> (accessed 27 December 2019).

⁴ *Ibid.*

⁵ Malgosia Fitzmaurice, "The International Convention for the Prevention of Pollution from Ships" in David Attard and others, *The IMLI Manual on International Maritime Law, Marine Environmental Law and Maritime Security Law Vol. III* (Oxford University Press, 2016) 33.

⁶ IMO (n 1).

⁷ *Ibid.*

waste, noise, or the spread of invasive organisms. The main types of pollution which are caused by ships specifically are toxic waste, harmful substances carried in packages, sewage discharging, by the disposal of garbage, air pollution, noise pollution and last but not least, oil pollution.⁸ In 1954 United Kingdom Government organised a conference where OILPOL was recognised. OILPOL provided for oil pollution by ship operations such as cargo tank cleaning and also prohibits the dumping of oily wastes from land and in special areas where the danger to the environment was especially serious.⁹ OILPOL was limited in its application because it merely prohibited the dumping of oily waste within a 50 nautical-mile coastal zone where the danger to the environment was especially acute.¹⁰ Secondly, the prohibition only targeted oil tankers, whilst nontanker vessels were unaffected. In truth, the restriction on tankers was limited because when operating outside of the coastal zones, tanker crews were generally free to discharge oily waste.¹¹ Therefore, there was no complete ban of disposal at sea.

In addition, OILPOL lacked sufficient enforcement controls for coastal and port States. Responsibility was passed to a vessel's flag State to investigate an alleged violation, and if there was sufficient evidence it could elect to initiate proceedings.¹² As the coastal and port States could not monitor oily discharge, coupled with general reluctance by flag States to prosecute alleged offending vessels, OILPOL was not enough in dealing with oil pollution.

The Torrey Canyon accident in 1967, which is recorded as one of the world's most serious oil spills, prompted new discussions on ship safety and the protection of the marine environment. This led to a decision to develop a comprehensive instrument regarding pollution prevention from ships¹³ including further amendments to the 1954 Convention, which were adopted in 1969. This amendment did not make any

⁸<<https://maredu.gunet.gr/modules/document/file.php/MAK265/Dissertations%20in%20English/The%20History%20of%20Marpol.pdf>> (accessed 1 January 2020).

⁹ IMO (n 1).

¹⁰ Alan Khee-Jin Tan, *Vessel Source Marine Pollution: The Law and Politics of International Regulation* (Cambridge University Press 2006) 107.

¹¹*Ibid.*

¹² International Convention for the Prevention of Pollution of the Sea by Oil (adopted on 12 May 1954, entered into force on 26 July 1958) (OILPOL1954) Art X.

¹³*MARPOL, how to do it* (2013 edition, International Maritime Organisation, London, 2013).

adjustments to the compliance and enforcement measures of the Convention. In 1971, OILPOL was amended again, however it was generally felt that an entirely new instrument was required to control pollution of the seas by ships. Finally, in 1973 IMO convened a major conference to discuss the whole problem of marine pollution by ships. It resulted in the adoption of the first ever comprehensive anti-pollution convention, the International Convention for the Prevention of Pollution from Ships 1973 (MARPOL 73).¹⁴ OILPOL was restricted in its application because it dealt only with marine pollution from oil while MARPOL 73 covered all technical aspects of pollution from ships save for the disposal of wastes by dumping. It also applied to all ships.¹⁵ Thus, the shortcomings of OILPOL were the catalyst that brought MARPOL into existence. Its objective was to minimize pollution of the oceans and seas and preserve the marine environment.¹⁶

In 1978 there was another accident involving the Liberian-flagged VLCC Amoco Cadiz tanker which ran aground off the coast of Brittany following a steering gear failure. Over a period of two weeks the entire cargo of 223,000 tonnes of light Iranian and Arabian crude oil and 4,000 tonnes of bunker fuel was released into heavy seas.¹⁷ Much of the oil quickly formed a viscous water-in-oil emulsion, increasing the volume of pollutant by up to five times. By the end of April oil and emulsion had contaminated 320km of the Brittany coastline, and had extended as far east as the Channel Islands.¹⁸ This Amoco Cadiz accident prompted the international conference on Tanker Safety and Pollution Prevention (TSPP) to be conducted in February 1978.¹⁹ This conference modified the 1978 protocol and it became to be known as “the International Convention for the Prevention of Pollution from Ships, 1973 as modified by the protocol of 1978 relating thereto” or in short “MARPOL 73/78”.²⁰ Though there was

¹⁴ Adopted in 1973 (Convention), 1978 (1978 Protocol), 1997 (Protocol - Annex VI), entered into force in 2 October 1983 (Annexes I and II), 158 State Parties. <[www.imo.org/en/About/Conventions/ListOfConventions/Pages/International-Convention-for-the-Prevention-of-Pollution-from-Ships-\(MARPOL\).aspx](http://www.imo.org/en/About/Conventions/ListOfConventions/Pages/International-Convention-for-the-Prevention-of-Pollution-from-Ships-(MARPOL).aspx)> accessed 19 December 2019.

¹⁵ Alan Khee-Jin Tan (n 9)129.

¹⁶IMO (n 1).

¹⁷ <www.itopf.org/in-action/case-studies/case-study/amoco-cadiz-france-1978/> (accessed 27 December 2019).

¹⁸*Ibid.*

¹⁹ MARPOL (n 12).

²⁰ *Ibid.*

the later adoption of the 1997 protocol, it was decided not to add “97” to MARPOL 73/78 but to refer to the Convention just as MARPOL, without any reference to a year.²¹

2.0 MARPOL CONVENTION

MARPOL is the most dominant international marine pollution convention created by the IMO in order to prevent pollution of the marine environment from ships, which may manifest as a result of both accidental and operational causes.²² MARPOL entered into force on 2nd October 1983.²³ It is composed of twenty articles and six annexes. Article 1 provides for the duties of the ratified parties of the Convention and the prevention of pollution of the marine environment caused by harmful substances as a general application.²⁴ As of February, 2020, 158 States are parties to the Convention, being flag States of 99.01% of the world's shipping tonnage.²⁵

2.1 THE SIX ANNEXES TO MARPOL

MARPOL covers all technical aspects of pollution from ships and so far, there are six annexes to the Convention.

Annex I is Regulations for the Prevention of Pollution by Oil. It entered into force on 2 October 1983. It covers prevention of pollution by oil from operational measures as well as from accidental discharges. The 1992 amendments to Annex I made it mandatory for new oil tankers to have double hulls and brought in a phased-in schedule for existing tankers to fit double hulls, which was subsequently revised in 2001 and 2003. Over the years, it has been substantially amended and updated and a brand-new version of the Annex entered into force at the beginning of 2007. It is divided into nine

²¹ *Ibid.*

²² <www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=11&ved=2ahUKEwi0_vr0ruPmAhVFy6QKHxNjAd4QFjAKegQIBRAJ&url=https%3A%2F%2Fwww.osce.org%2Feea%2F31856%3Fdownload%3Dtrue&usg=AOvVaw121Jr1gmMnMUJLVB3C1m8c> (accessed 30 December 2019).

²³ MARPOL (n 12).

²⁴ MARPOL, art.1.

²⁵ “*Status of Treaties*”

<www.imo.org/en/about/conventions/statusofconventions/documents/statusoftreaties.pdf> (accessed 4 February 2020).

chapters with 43 regulations. Chapter one comprises regulations 1 to 5. This chapter contains general information like definitions of words such as crude oil, oily mixture etc.; applicable ships; ships exempted and waivers by the Administration of the contracting Government; exceptions of discharge into sea of substances containing oil approved by the Administration; and equivalents of the ships.

Chapter two, which deals with surveys and certification, contains regulations 6 to 11. It provides for initial, renew, intermediate, annual and additional surveys of every oil tanker of 150 gross tonnage and above, and every other ship of 400 gross tonnage and above; duties of the Administration of the parties such as informing nominated surveyors or recognised organisations to IMO; issuing of International Oil Pollution Prevention Certificate (IOPP) of the ships after an initial survey; issue or endorsement of certificate by another Government; duration and validity of IOPP; and the port state controls on operation requirements.

Chapter three has 6 regulations from 12 to 17. It covers the construction, equipment and control of operational discharge of oil of the ships especially on the requirements for machinery spaces of all ships including tanks for oil residents (sludge) and standard discharge connection on the part of construction of the ships; oil filtering equipment; control of discharge of oil that was prohibited to discharge in and outside special area; the requirements for ships of less than 400 gross tonnage in all areas except the Antarctic area; and segregation of oil and water ballast and carriage of oil in forepeak tanks and oil record book on the part of operational discharge of oil.

Chapter IV covers regulations 18 to 36. It provides for the construction, equipment and control of operational discharge of oil of the ships especially on the requirements for the cargo areas of oil tankers including segregated ballast tanks, double hull and double bottom requirements for oil tankers delivered on or after 6 July 1996, prevention of oil pollution from oil tankers carrying heavy grade oil as cargo, pump-room bottom protection, accidental oil outflow performance, damage assumptions, hypothetical outflow of oil, limitations of size and arrangement of cargo tanks, intact stability, subdivision and damage stability, lop tanks, and pumping, piping and discharge arrangement on the part of construction of the ship; about oil discharge monitoring and control system, oil/water interface detector, crude oil washing

requirements on the part of equipment of ships and about control of discharge of oil, crude oil washing operations and oil book on the part of control of operational discharge of oil.

Chapter V has one regulation which is regulation 37 requiring every oil tanker of 150 gross tonnage and above and every ship of 400 gross tonnage and above to carry on board a shipboard oil pollution emergency plan which is approved by the Administration.

Chapters VI and VII cover regulations 38 and 39 for the provision of adequate reception facilities for oily mixtures and residues and special requirements for fixed or floating platforms respectively. Chapter VIII provides for the prevention of pollution during transfer of oil cargo between oil tankers at sea. Lastly chapter IX deals with special requirements for the use or carriage of oils in the Antarctic area.

Annex II is Regulations for the Control of Pollution by Noxious Liquid Substances (NLS) in Bulk. It entered into force on 2 October 1983 but took effect on 6 April 1987.²⁶ It details the discharge criteria and measures for the control of pollution by NLS carried in bulk; the discharge of their residues is allowed only to reception facilities. It requires to be recorded in a cargo record book carried on board the ship. It has eight chapters, eighteen regulations and seven appendixes. In May 2019 IMO's MEPC adopted resolution MEPC.315(74), amending regulations 1, 13, appendix IV and appendix VI of MARPOL Annex II concerning cargo residues and tank washings of persistent floating products with a high viscosity and/or high melting point in specific areas. The amendments are expected to be entered into force on 1st January 2021.²⁷

Chapter I has regulations 1 to 5 about general information. It includes definitions and application, exceptions, exemptions and equivalents. Chapter II contains regulation 6 and it provides for categorisation of NLS. Chapter III has regulations 7 to 10 and it

²⁶ *Ibid.*

²⁷ <<https://safety4sea.com/amendments-to-marpol-annex-ii-cargo-residues-and-tank-washings-of-persistent-floating-products/>>(accessed 3 January 2020).

provides for surveys and issuance and indorsement of International Pollution Prevention Certificate for the Carriage of NLS in Bulk and duration and validity of certificate.²⁸ Chapter IV with regulations 11 and 12 deals with design, construction, arrangement and equipment of ships certified to carry NLS in bulk and about pumping, piping, unloading arrangements and slop tanks of the ship.²⁹ Chapter V, which is about operational discharges of residues of NLS, has regulations 13 to 15. It deals with control of discharges, exemption for a prewash, the use of cleaning agents or additives. It also deals with procedures and arrangements in the manual and cargo record books of every ship. Chapters VI, VII and VIII contain regulation 16, 17 and 18 which cover measures of control by port state; shipboard marine pollution emergency plan and about reception facilities respectively.

Appendix I contains guidelines for the categorisation of NLS. Appendix II is a form of cargo record book for ships carrying NLS in bulk. Appendix III is a form of International Pollution Prevention Certificate for the Carriage of NLS in Bulk. Appendix IV is a standard format for the procedures and arrangements manual. Appendix V is assessment of residue quantities in cargo tanks, pumps and associated piping and lastly appendix VI is prewash procedure.

Annex III is Prevention of Pollution by Harmful Substances Carried by Sea in Packaged Form and it entered into force on 1 July 1992. It contains general requirements for the issuing of detailed standards on packing, marking, labelling, documentation, stowage, quantity limitations, exceptions and notifications for preventing pollution by harmful substance.³⁰ Harmful substances are those substances which are identified as marine pollutants in the International Maritime Dangerous Goods (IMDG).³¹ This annex has eight regulations and one appendix.

Annex IV is Prevention of Pollution by Sewage from Ships. It entered into force on 27 September 2003. It contains five chapters, thirteen regulations and one appendix. Chapter I has general information such as definitions, application and exceptions.

²⁸ MARPOL Convention, Annex II, reg.9.

²⁹ *Ibid*, reg.11.

³⁰ [www.imo.org/about/conventions/listofconventions/pages/international-conventions-for-the-prevention-of-pollution-from-ships-\(marpol\).aspx](http://www.imo.org/about/conventions/listofconventions/pages/international-conventions-for-the-prevention-of-pollution-from-ships-(marpol).aspx) > (accessed 4 January 2020).

³¹ *Ibid*.

Chapter II deals with surveys of ships and issuance of certificates. Chapter III covers sewage system and standard discharge connections; discharge of sewage and discharge of sewage from passenger ships. Chapters IV and V provide for reception facilities and port state control respectively. The appendix is a form of international Sewage Pollution Prevention Certificate. Generally, annex IV prohibits the discharge of sewage into the sea unless there is an approved sewage treatment plant or the ship is discharging comminuted and disinfected sewage using an approved system at a distance of more than three nautical miles from the nearest land. Discharge of uncomminuted or disinfected sewage has to be done at a distance of more than twelve nautical miles from the nearest land.

Annex V is Prevention of Pollution by Garbage from Ships. It entered into force on 31 December 1988. It has 10 regulations and one appendix. It deals with different types of garbage such as plastics, food wastes, paper products etc. Ships are prohibited from disposing all plastics, synthetic ropes, synthetic fishing nets, plastic garbage bags and incinerator ashes which may contain toxic or heavy metal residues. It also specifies the distances from land and the manner in which the garbage may be disposed of. In July 2011, IMO adopted extensive amendments to Annex V, which entered into force on 1 January 2013.³² The revised Annex V prohibits the discharge of all garbage into the sea, except as provided otherwise, under specific circumstances. The most important feature of the Annex is the complete ban on the disposal into the sea of all forms of plastics.

Annex VI is Prevention of Air Pollution from Ships. IMO has been working to reduce harmful impacts of shipping on the environment since the 1960s. Annex VI was adopted in 1997 to address air pollution from shipping. This annex entered into force on 19 May 2005 and a revised Annex VI entered into force on 1 January 2013. It is divided into five chapters and 10 appendices.³³ Chapter 1 contains general provisions which cover definitions, exceptions and exemptions, and equivalents; Chapter 2 covers survey and certification and port State control obligations; Chapter 3 addresses more technical requirements. It contains regulations on the control

³² <www.imo.org/en/MediaCentre/PressBriefings/Pages/01-MARPOL-EEDI.aspx#.XixPAiNS-Mo> (accessed 1 January 2020).

³³ *MARPOL* (n 12).

of emissions from ozone-depleting substances (ODS), nitrogen oxides (NO_x), sulphur oxides (SO_x) and particulate matter; emission control areas (ECAs) for NO_x and SO_x and particulate matter; shipboard incineration and reception facilities. Regulation 13 of Chapter 3 incorporates the NO_x Technical Code 2008. Chapter 4 contains regulations on energy efficiency for ships, regulations making mandatory the Energy Efficiency Design Index (EEDI) for new ships, and the Ship Energy Efficiency Management Plan (SEEMP) for all ships, as well as regulations for a data collection system. Chapter 5 deals with verification of compliance with the provisions of the Annex. IMO made regulations to reduce sulphur oxide emissions by introducing a global limit for sulphur content of ships' fuel oil, with tighter restrictions in designated ECAs. According to regulation 14.1 of MARPOL Annex VI, the sulphur content of any fuel oil used on board ships shall not exceed 0.50% m/m on and after 1 January 2020 while according to regulation 14.4 of MARPOL Annex VI, a ship operating within an ECA, the sulphur content of fuel oil used on board that ship shall not exceed 0.10% m/m. The decision to implement a sulphur limit of 0.50% m/m globally outside ECAs on 1 January 2020 was taken by the IMO during its MEPC 70th session in October 2016. Annexes I and II are compulsory while annexes III to VI are optional.

3.0 THE NEED FOR MALAWI TO INCORPORATE MARPOL

Malawi is a landlocked country located in south east Africa. Its total area is 118,483 square kilometres, of which 94,275 square kilometres is land, while 24,208 square kilometres is water. It is bordered by Tanzania, Mozambique, and Zambia and does not have direct access to the Indian Ocean.³⁴

Although Malawi is a landlocked country, it has inland waterways where vessels sail. The main inland waterways of Malawi primarily consist of Lake Malawi. Lake Malawi covers a total area of 22,490 square kilometres.³⁵ It is the third-largest Lake in Africa and is in the top 10 largest lakes in the world list. Lake Malawi flows into the Shire

³⁴ John D.K Saka et.al. "[Malawi](#)," in Hachigonta, Sepo et. al. (ed.), *Southern African Agriculture and Climate Change: A Comprehensive Analysis*, (International Food Policy Research Institute, 2013)111-146.

³⁵ World Resources Institute. *World Resource 1994-95: A Guide to the Global Environment*. Oxford University Press, Washington, D.C., 1994, p.358.

River, which flows from the southern end of the Lake and joins the Zambezi River in Mozambique.³⁶ The importance of this Lake cannot be overemphasized. Apart from fishing, different vessels sail on this Lake transporting goods and ferrying passengers within Malawi and even Tanzania and Mozambique.³⁷

Lake Malawi is a critical resource not only for the people of Malawi but also for the people of Tanzania and Mozambique, who also depend on the Lake. Due to its rich fish population, millions of Malawians rely on the Lake for fish as the common source of proteins.³⁸

In addition, Lake Malawi is very important because it is a source of drinking water. People around the Lake do not have portable water sources like water taps. Instead, they depend on the water from the Lake as its water is fresh.³⁹

The Lake is also used for irrigation. Water in Lake Malawi has huge potential for agriculture development. Habitants along the shores of Lake Malawi in Karonga, Nkhata-bay, Nkhotakota, Salima, and Lower Shire Valley use water from the Lake for irrigation.

As already stated above, Lake Malawi flows into Shire River, this River has falls where hydroelectricity is produced.⁴⁰ Due to highly undiversified sources of power, Malawi depends on the electricity. The fact that 98% of the Electricity Supply Commission of Malawi's (ESCOM) generating capacity power production is dependent on the flow of the Shire River,⁴¹ it is important to take care of the Lake so that it can continue to be electricity generating source.

³⁶Harold D. Nelson and others, *Area Handbook for Malawi* (Library of Congress, 1975)53.

³⁷ <www.globalsecurity.org/military/world/africa/mw-navy.htm> (accessed 28 December 2019).

³⁸ <www.thenewhumanitarian.org/news/2014/11/07/lake-malawi-s-dwindling-fish-stocks-threaten-livelihoods> (accessed 28 December 2019).

³⁹ <www.thewaterchannel.tv/dossiers/livelihoods-from-floods/484-lake-malawi-the-vanishing-blessing> (accessed 28 December 2019).

⁴⁰ <<http://worldlakes.org/lakedetails.asp?lakeid=8350>> (accessed 28 December 2019).

⁴¹ "National Investment Profile. Water for Agriculture and Energy: Malawi" Lilongwe/Rome, (August 2015) 15 <www.fao.org/agwa/docs/NIP_Malawi> (accessed 5 January 2020).

Lake Malawi is also a key tourist attraction. It has a National Park located at the southern end of Lake Malawi. It was inscribed as a UNESCO World Heritage Site in 1984.⁴² It is also very beautiful, and appealing to tourists because of its islands and beaches. Tourists enjoy boat riding, kayaking, scuba diving, sailing, camping, water skiing, trips to the islands, beach football, and many other water activities.⁴³

It is very important to protect Lake Malawi because of the uniqueness of its very makeup. Scientific Studies have shown that Lake Malawi has a flushing ability of 750 years.⁴⁴ This means any spillages or pollution in the Lake will take this long to clean itself through natural processes.

Furthermore, Lake Malawi has more than 1000 distinct fish species than any other lake in the world.⁴⁵ Scholars have confirmed that Lake Malawi makes about 15% of the world's population of rare species of fish and indeed the world's fresh water lakes.⁴⁶ Some scientists believe that the Lake may contain more than 2000 species.⁴⁷ To put this in perspective, the Lake has more types of freshwater fish than Europe and North America combined. 90% of these fishes belong to the family called "Cichlid".⁴⁸ Examples of these cichlid fish species are: *Utaka*, *Copadichromis*, *Otopharynx*, *Mbuna*, *Tropheus*, *Petrotilapia* and *Melanochromis*, *Chambo*, *Oreochromis*, *Usipa*, *Matemba*, *Mlamba*, *Kampango*, *Mcheni* and many more. As a result of this exceptional diversity the Lake is considered a global biodiversity treasure because almost all of the species that it contains occur nowhere else on the planet. Therefore, it is important to protect the Lake from marine pollution so that these species do not become extinct.

⁴² "Lake Malawi National Park" <<https://yichuans.github.io/datasheet/output/site/lake-malawi-national-park/>> (accessed 5 January 2020).

⁴³ <<http://justfunfacts.com/interesting-facts-about-lake-malawi/>> (accessed 28 December 2019).

⁴⁴ Harvey Bootsma, and Robert Hecky, *A Comparative Introduction to the Biology and Limnology of the African Great Lakes (2003)* Journal of Great Lakes Research 3.

⁴⁵ "**Lake Malawi is home to unique fish species. Nearly 10% are endangered**" <<http://theconversation.com/lake-malawi-is-home-to-unique-fish-species-nearly-10-are-endangered-110294>> (accessed 30 December 2019).

⁴⁶ *Ibid.*

⁴⁷ *Ibid.*

⁴⁸ "Fish in Lake Malawi and other lakes in Malawi" <http://www.est.ryukoku.ac.jp/est/yuhma/FLM-pamph/> (accessed 3 January 2020).

From the reasons given above, there is great need to protect the Lake from marine pollution so that it can continue being beneficial to humankind. To this end, because Malawi is a Member State of the IMO, a state party to the United Nations Convention on the Law of the Sea 1982 (UNCLOS)⁴⁹ and to MARPOL⁵⁰, it has the obligation to protect and preserve the marine environment⁵¹ and is responsible for the fulfilment of the international obligations concerning the protection and preservation of the marine environment.⁵² Malawi is required to take "all measures . . . that are necessary to prevent, reduce and control pollution of the marine environment from any source"⁵³ including from vessels.⁵⁴ For that purpose Malawi has to enact the necessary laws and regulations.⁵⁵ By being a party to MARPOL, Malawi has an obligation to implement the Convention by promulgating national laws on all forms of pollution prevention of its marine environment.

Pollution and overfishing have long been threatening the pristine nature of Lake Malawi but now a new threat is imminent. This is the transportation of the oil and mineral from the drilling of the oil on Lake Malawi.⁵⁶ The concern is the transportation of the oil. The Malawi Government has awarded exploration licenses to a British based company, Surestream Petroleum and a South African company, SacOil Holdings Limited, to start drilling oil on Lake Malawi.⁵⁷

The granting of the licences to these foreign based companies by the Malawi Government is not a problem per se. It is the concern of how the oil will be transported from the lake to the shore. On successful completion of drilling, the oil will be

⁴⁹ Malawi signed the Convention on 7 December 1984 and ratified it on 28 September 2010.

⁵⁰ Malawi ratified MARPOL Convention on 17 December 2001

<<http://10.2.2.2:2111/usg/NdxICC.htm?IP=10.2.2.2&MA=FC017C024D25&OS=http://www.imo.org%2Fen%2FAbout%2FConventions%2FStatusOfConventions%2FDocuments%2FStatus%2520-%25202019.pdf>> (accessed 1 January 2020).

⁵¹ UNCLOS, art.192.

⁵² *Ibid*, Art. 235 (1).

⁵³ *Ibid*, art. 194.

⁵⁴ *Ibid* Art. 194 (3)(b).

⁵⁵ *Ibid* art. 211 (2).

⁵⁶ "Conservation and threats to the resources of Lake Malawi"

<www.tandfonline.com/doi/citedby/10.1080/05384680.1992.11904004?scroll=top&needAccess=true>(accessed 3 December,2019).

⁵⁷ Lusayo Banda, "Oil is getting Malawi in troubled waters"< www.ejolt.org/2013/09/oil-is-getting-malawi-in-troubled-waters/> (accessed 3 December,2019).

transported to the shore. This will involve using tankers or barges. The fear is that there will be spillage caused by the vessels that will be transporting the oil on Lake Malawi. There is further anxiety that the marine environmental consequences of this project far outweigh its benefits.

Although profits from the oil can theoretically be used to start a fund to invest in the country and bring it to prosperity, the risks associated with transportation of oil on Lake Malawi must be considered. Malawians value Lake Malawi for a number of reasons as stated above. With the oil transportation, there is great apprehension that all the benefits of the Lake will disappear due to the pollution that might be caused by the oil. The biggest risk in transporting the oil would be the spill which would be devastating to the marine life and cleanliness and drinkable quality of water.

There is an obligation on government to ensure the highest possible level of environmental and ecological safety on its inland waterways based on international legal instruments and/or national laws and regulations. In addition, there is need for government to take appropriate action for the implementation of Sustainable Development Goals particularly the provisions in Goal 6: sustainable management of water and sanitation for all.

As a result, civil society organisations succeeded in convincing the Malawi Government to put a halt to the project. This was done because there were no legal frameworks in place to deal with the vice of marine pollution incident by oil spill which can lead to a major disaster in the country's marine environment.

3.1 EXISTING LAWS IN MALAWI FOR THE PROTECTION OF THE MARINE ENVIRONMENT

Currently, there are no existing laws for the protection of the marine environment. Malawi promulgated the Environmental Management Act (No. 23 of 1996) in 1996 which was repealed by the Environmental Management Act, 2016 (No. 19 of 2017). It is an Act to make provisions for the protection and management of the environment; the conservation and sustainable utilization of natural resources. However, this Act

does not provide for the protection of the marine environment. The closest it has come, is only section 60 which prohibits the discharge of hazardous substances or oil or mixture containing oil into land and not marine environment. It makes such discharge an offence and the offender is to pay the costs of removal or restoration of the environment damaged or destroyed as a result of the discharge.

The provision further requires the owner of production or storage facility or motor vehicle from which a discharge occurs to mitigate the impact of the discharge by giving notice to the Government and commencing clean-up operations using the best clean-up techniques.

Lastly, the provision empowers the Authority responsible with the environment to seize the production or storage facility or motor vehicle when the owner fails to mitigate the impact of the discharge. Later, the seized property may be disposed of by a court order in order to meet the costs for the clean-up operations.

The weakness of this provision is that it is referring to land. There is nowhere it is referring to the Lake. The focus of the Act is not on the protection of the marine environment where vessels operate. It is also limited because there are no regulations promulgated for the prevention of the pollution.

Since section 60 does not deal with the protection of the marine environment but land, it can be said that there are no existing laws in Malawi for the protection of the marine environment. Therefore, there is a dire need for the country to domesticate MARPOL Convention. The domestication of MARPOL Convention will help to deal with the possibilities of marine pollution in the wake of transportation of oil by vessels on the Lake. There is need to come up with laws and regulations to regulate the operations and transport requirements so as to prevent pollution by oil and other noxious substance. This oil drilling project cannot commence unless the laws are in place for the regulations of vessels to be used in transporting oil so as to prevent pollution to marine environment.

4.0 SYSTEM OF INCORPORATION OF MARPOL CONVENTION INTO THE DOMESTIC LAW OF MALAWI AND TO PROVIDE REGULATIONS TO IMPLEMENT ANNEX I AND II THEREOF

Malawi parliament enacted the Inland Waters Shipping Act (Chapter: 70:01) which makes provision for the survey, registration, licensing and safety of all vessels used on inland waters of Malawi, for the safety of passengers and cargo, for the competency of masters and crews and for matters incidental thereto, and connected therewith. The Act does not make provisions for the protection of the marine environment although it gives power to the minister to make regulations for the prevention and control of pollution of the marine environment. Section 42 (d) of the Inland Waters Shipping Act provides that:

The Minister may, by notice published in the Gazette—

after consultation with the Minister for the time being responsible for matters of the environment, make regulations for the prevention and control of pollution of the marine environment.

Malawi became a party to MARPOL on 17 December 2001⁵⁸ ratifying Annex I, Annex II, Annex III, Annex IV and Annex V but it has not yet ratified Annex VI. Although Malawi ratified MARPOL, it has not yet domesticated it. Therefore, Malawi is bound to implement the international instruments by domesticating MARPOL and its Annexes.

Since Malawi is only a party to MARPOL annexes I to V, there is need to accede to MARPOL VI. The proposed laws will include MARPOL annexes I to VI because there is need to have a holistic environmental protection. Therefore, an instrument of accession to MARPOL Annex VI will be prepared to accede to it.

The Constitution provides that every international agreement forms part of national laws after an Act of parliament.⁵⁹ There is a need for an Act of parliament to give force

⁵⁸ <<http://10.2.2.2:2111/usg/NdxICC.htm?IP=10.2.2.2&MA=FC017C024D25&OS=http://www.imo.org%2Fen%2FAbout%2FConventions%2FStatusOfConventions%2FDocuments%2FStatus%2520-%25202019.pdf>> (accessed 1 January 2020).

⁵⁹ Section 211(1) of the 1994 Constitution of Malawi.

of law to MARPOL Convention. Since Malawi already has an Act, which is the Inland Waters Shipping Act, it will be amended in order to domesticate MARPOL Convention including all the six annexes.

The draft law will form Part XI of the Act and as a consequence, the numbering of the Act will change to reflect the addition of the new Part XI. This means that Wrecks and Salvage which formed Part XI will now become Part XII; Inquiries and Legal Process become Part XIII; Miscellaneous becomes Part XIV and Part XV will be Repeal and Savings.

Section 42 (d) of the Act, which gives power to the minister to make regulations for the prevention and control of pollution of the marine environment, will be amended and included in the new Part XI.

Furthermore, Part I (Preliminaries) of the Act, which provides for definitions, will be amended in order to insert new definition associated with MARPOL Convention. Some existing definition will be deleted and replaced with new definitions to reflect the changes. For example, the definitions of “existing vessel”, “new vessel”, “vessel” and “master” will be deleted and replaced by new definitions while the definition of “tanker” will be amended by deleting the words “of an inflammable nature.”

Lastly, the Inland Waters Shipping (Prevention of Pollution) Regulations will be drafted. The regulations will domesticate MARPOL Annexes I and II which cover Regulations for the Prevention of Pollution by Oil and Regulations for the Control of Pollution by Noxious Liquid Substances in Bulk respectively. The regulations are intended to regulate inter alia the manner, the conditions subject and areas in which vessel carrying oil and other noxious substance, using Lake Malawi, may and may not discharge oil and noxious liquid substances.

In order to widen scope of application of the laws and regulations, the definition of the term vessel will be broadened so as include crafts, platforms or any other structure that is capable of spilling or carrying oil navigation of Lake Malawi and other inland waters.

5.0 OVERVIEW OF THE DRAFT LAW

Part I (Preliminaries) is amended to include new definitions associated with MARPOL Convention.

Part XI provides for the prevention of pollution of the marine environment. Furthermore, it gives power to the Minister to make regulations for the prevention and control of pollution of the marine environment under section 153. This section will not be found in the parent Act because it has come due to the amendment.

The regulations combine the prevention of pollution by oil and noxious liquid substances. They are divided into seven parts. The regulations have been made under section 153.

Part I is preliminary. This part provides for citation of the Regulations and date of entry into force; interpretation; purpose of the Regulations, application and exemptions as well as categorisation of noxious liquid substances.

Part II covers Surveys such as initial, renewal, intermediate and additional surveys that vessels should comply with. It also covers issuance of duration of certificates; extension of validity of certificates and cancelation of the same. Lastly, it provides for Record Books to be kept on board the vessel such as Oil Record Book and Cargo Record Book.

Part III deals with requirements for control of operational pollution. There are provisions for the control of discharge of oil and noxious liquid substances. It also provides for general exceptions to the discharge of oil or noxious liquid substances. It covers for requirements of oil tankers, vessels other than oil tankers; retention of oil on board; crude oil washing operations; double hull and double bottom requirements; pumping, piping and discharge arrangements; control of discharge of noxious liquid substances; unloading arrangements and prohibition on the carriage and discharge of unassessed liquid substance.

Part IV provides for requirements of offshore installation. Part V covers reporting of discharges. The report is to be made in the event of a discharge or likely discharge.

Part VI covers the shipboard marine pollution emergency plan that is supposed to be carried on board the vessel. It provides for the approval of the plan and the requirements as to this emergency plan.

Lastly, part VII provides for inspection, detention and penalties. It gives power to surveyors to inspect the vessels; circumstances that can cause the vessel to be detained and it provides for offences and penalties on the offenders of the Regulations. The penalties are stiffer to deter the would be offenders.

INSTRUMENT OF ACCESSION TO MARPOL ANNEX VI

(To be deposited with the Secretary-General of IMO, London)

WHEREAS the International Convention for the Prevention of Pollution from Ships, 1973, was adopted at London on 2 November 1973 by the International Conference on Marine Pollution, 1973,

AND WHEREAS the Protocol of 1978 relating to the International Convention for the Prevention of Pollution from Ships, 1973, was adopted at London on 17 February 1978 by the International Conference on Tanker Safety and Pollution Prevention, 1978,

AND WHEREAS the Republic of Malawi, being a State entitled to become a party to the said Convention as amended by the said Protocol by virtue of articles 13 and IV respectively,

NOW THEREFORE the Government of the Republic of Malawi, having considered and approved the said instruments, hereby formally declares its accession to the Convention Annex VI, as amended by the Protocol.

IN WITNESS WHEREOF I Dr. Lazarus McCarthy Chakwera, President of the Republic of Malawi, have signed this Instrument of Accession and affixed the official seal.

DONE at Lilongwe this 7th day of July, two thousand and twenty.

[Seal]

[Signature]

Dr. Lazarus McCarthy Chakwera
[President of the Republic of Malawi]

INLAND WATERS SHIPPING (AMENDMENT) ACT 2020
(CAP. 71:01)

PART I

PRELIMINARY

Interpretation

2. In this Act, unless the context otherwise requires—

“accident” means an unplanned event that results in harm to people or damage to property or to the environment;

“Administration” means the Government, Department or Agency having responsibility for maritime and inland waters matters;

“authorised officer” means the Director of Marine or any person appointed and authorised to act as authorised officer under and in compliance with this Act and any authorised officer appointed and empowered under any other regulations in Malawi such as, without limitation, marine police, to implement all or part of the provisions of this Act and regulations made under this Act;

“damage to the environment” means a substantial physical damage to human health or to marine life or resources in coastal or inland waters or areas adjacent thereto, caused by pollution, contamination, fire, explosion or similar major incidents;

“Department of Marine Services” means the Department at the Ministry in charge of the regulation of marine transport services, the provision of maritime training and the provision of administrative and general support services to shipping;

“Director” means the Director of the Department of Marine Services;

“discharge” means, in relation to harmful substances or effluents containing such substances, any release howsoever caused from a vessel and includes any escape, disposal, spilling, leaking, pumping, emitting or emptying and includes the release of harmful substances directly arising from the exploration, exploitation and associated offshore processing of sea-bed mineral resources but does not include release of harmful substances for purposes of legitimate

scientific research into pollution abatement or control and for the purpose of this Act discharge shall include emission;

“emission” means any release of substances into the atmosphere or sea or Inland waters;

"examiner" means a person designated by the Director of Marine to conduct examinations;

“existing vessel” means a vessel (i) the keel of which was laid before the commencement date of this Act and (ii) that has not been substantially altered or substantially reconstructed after the commencement date of this Act;

“harmful substance” means any substance which, if introduced into the sea or inland waters or the atmosphere, is liable to create hazards to human health, to harm living resources, such as plant, and marine life, to damage amenities or to interfere with other legitimate uses of the sea or inland waters and to damage environment;

“IMO” means the International Maritime Organisation;

“intentional damage” means damage which —

- (a) arose in circumstances where the master, the operator or the owner of the vessel—
 - (i) acted with intent to cause the damage; or
 - (ii) acted recklessly and with knowledge that the damage would probably result; or
- (b) arose as a result of the gross negligence of the master, the operator or the owner of the vessel;

“International Conventions” means any international convention to which Malawi is a party such as, without limitation, the IMO Conventions;

“MARPOL Convention” means any international convention relating to prevention of pollution from vessels to which Malawi is party including the International Convention for the Prevention of Pollution from Ships (MARPOL), 1973, as modified by the 1978 and 1997 Protocols and as it may be amended from time to time, and

any international convention replacing in whole or part the MARPOL Convention, to which Malawi is or shall be a party;

“master” means the person, except the pilot, having command or in charge of a vessel when she is on or in close proximity to the water and in relation to a fishing vessel, means the skipper;

“Minister” means the Minister of Transport and Public Works;

“new vessel” means a vessel (i) the keel of which was laid on or after the commencement date and (ii) any existing vessel that has been substantially altered or that has been substantially reconstructed, on or after the commencement of this Act;

"oil" means petroleum in any form including crude oil, fuel oil, diesel oil, lubricant oil, sludge, oil refuse and refined products and, without limiting the generality of the foregoing, includes the substances listed in Appendix I to Annex I to the MARPOL Convention;

“oil facility” means any structure, group of structures, equipment, or device which is used for one or more of the following purposes—exploring for, drilling for, producing, storing, handling, transferring, processing, or transporting oil;

“pollution” means the introduction, directly or indirectly, by human activity, of waste into inland waters or the sea which results or is likely to result in deleterious effects including harm to living resources and marine ecosystems, hazards to human health, hindrance to marine activities, including fishing and other legitimate uses of inland waters or the sea, impairment of quality for use of inland waters or sea water and reduction of amenities;

"pollution damage" means loss or damage caused outside a vessel by contamination resulting from the discharge of Harmful substance from a vessel, wherever the discharge may occur, and includes the cost of preventive measures and further loss or damage caused by preventive measures, but does not include any loss or damage attributable to any impairment of the environment except to the

extent that such loss or damage consists of any loss of profits or the cost of any reasonable measures of reinstatement actually taken or to be taken;

"preventive measures" means any reasonable measures taken by any person, after pollution incident has occurred, for the purposes of minimising pollution and reducing losses and damages resulting from pollution and removing all or part of Harmful substance and reinstating the contaminated environment;

"reception facilities", in relation to a port, means facilities for enabling vessels using the port to discharge or deposit oil residue, waste and garbage;

"tanker" means a cargo vessel constructed or adapted for the carriage in bulk of liquid cargoes;

"vessel" means a boat, ship, or craft constructed or under construction, designed, used or capable of being used solely or partly for navigation in, on, through or immediately above water, without regard to method or lack of propulsion, such as, without limitation, a passenger vessel, a cargo vessel, a fishing vessel, a pleasure craft, a drilling rig, a production platform, a sea plane, a tanker, an offshore installation and includes any vessel, lighter, tug, barge, structure or launch, however propelled, used or intended for use in navigation or mining;

PART XI

PREVENTION OF MARINE POLLUTION

Marine pollution regulation

- 153.** (1) The Minister may make regulations for the prevention and control of pollution of the marine environment by vessels.
- (2) Without prejudice to the generality of subsection (1), the regulations shall give full effect to any provision of the International Conventions relating to preservation of environment and pollution to which Malawi is a party such as the MARPOL Convention and its six annexes.

General principle of prohibition

154. Unless otherwise provided in regulations made under this Act, the discharge of Harmful substance and the dumping of any kind of waste into inland waters, including ports, and into lands and the atmosphere nearby inland waters is prohibited.

Offences and penalties

155.-(1) Any violation of the requirements of the MARPOL Convention, the Act and/or regulations made under this Act is an offence and sanctions shall be established therefore according to Malawi laws and regulations.

(2) The owner and the master of the vessel who does not comply with the requirements of MARPOL Convention, the Act and/or regulations shall be each liable for an offence and upon conviction liable to a fine.

(3) If the Administration is informed of such a violation and is satisfied that sufficient evidence is available to enable proceedings to be brought in respect of the alleged violation, it shall cause such proceedings to be taken as soon as possible.

Exemptions

156.-(1) The following discharge of Harmful substance shall not be regarded as a violation of the prohibition referred to under section 154.

(a) the discharge resulting from an act of war, hostilities, civil war, insurrection or an exceptional, inevitable and irresistible natural phenomenon; or

(b) the discharge resulting from the occurrence of a force majeure event; or

(c) the discharge was made for the purposes of securing the safety of a vessel, preventing damage to a vessel or saving of life in inland waters as long as there exists no alternative action having less pollution impact and provided that all reasonable measures have been taken to prevent or minimise such discharge;

(d) the discharge resulting from damage to a vessel or unavoidable leakage, provided that all reasonable precautions have been taken after the occurrence of the damage or discovery of the leakage for the purpose of preventing or minimising the escape; or

- (e) the discharge was due wholly to anything done or left undone by another person, not being a servant or agent or employee, or representative of the owner or under the control or responsibility of the owner or agent, with intent to do damage; or
- (f) the discharge was due wholly to the negligence or wrongful act of a government or other authority in exercising its function of maintaining lights or other aids to navigation for the maintenance of which it was responsible; or
- (g) the harmful substance was discharged by reason of leakage, and neither such leakage nor any delay in discovering it was due to any lack of reasonable care, and as soon as practicable after the escape was discovered, all reasonable steps were taken for stopping or reducing it,

**Information
regarding
pollution**

157. –(1) The master of a vessel shall immediately report to the Department of Marine Services any pollution incident involving the vessel, or that is witnessed or observed, within inland waters.

(2) Any person responsible for causing a pollution incident, or who witnesses or observes such an incident, shall immediately report the incident to the Department of Marine Services.

INLAND WATERS SHIPPING (PREVENTION OF POLLUTION BY OIL AND NOXIOUS LIQUID SUBSTANCES IN BULK) REGULATIONS 2020

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**INLAND WATERS SHIPPING (AMENDMENT) ACT 2020
(CAP. 71:01)**

**INLAND WATERS SHIPPING (PREVENTION OF POLLUTION BY OIL AND
NOXIOUS LIQUID SUBSTANCES IN BULK) REGULATIONS 2020**

IN EXERCISE of the powers conferred by **section 153** of the Inland Waters Shipping (Amendment) Act 2020, I, Mohammed Sidik Mia, Minister of Transport and Public Works make the following Regulations –

PART I

PRELIMINARY

- | | |
|----------------|---|
| Citation | <p>1. These Regulations may be cited as the Inland Waters Shipping (Prevention of Pollution by Oil and Noxious Liquid Substances in Bulk) Regulations 2020 and come into force on 1st August 2020.</p> |
| Interpretation | <p>2. In these Regulations, unless defined in the Act and unless the context otherwise requires, the following terms and expressions shall have the following meanings-</p> <p>“Act” means the Inland Waters Shipping Act;</p> <p>“Administration” in relation to a vessel, means the government of any place outside Malawi whose flag the vessel is entitled to fly;</p> <p>“additional survey” means a survey as prescribed in regulation 6.1.5 of Annex I or regulation 8.1.5 of Annex II;</p> <p>“Annex I” means Annex I to the Convention (which sets out regulations for the prevention of pollution by oil), as from time to time revised or amended by any revision or amendment that applies to Malawi;</p> <p>“Annex II” means Annex II to the Convention (which sets out regulations for the prevention of pollution by oil), as from time to time revised or amended by any revision or amendment that applies to Malawi;</p> |

“anniversary date” in relation to a specified Certificate in force in respect of a vessel, means the day and month of each year which corresponds to the date of expiry of the Certificate;

“annual survey” means a survey as prescribed in regulation 6.1.4 of Annex I or regulation 8.1.4 of Annex II;

“BCH Code” means the Code for the Construction and Equipment of Ships Carrying Dangerous Chemicals in Bulk published by the IMO, and amended by IMO Resolutions MEPC.249(66) and MSC.376(93);

“Certificate” means Oil Pollution Prevention Certificate or Noxious Liquid Substance Pollution Prevention Certificate, as the case may be;

“chemical tanker” means a cargo vessel constructed or adapted for the carriage in bulk of any liquid substance listed in Chapter 17 of the IBC Code, but does not include an offshore support vessel or a gas carrier;

“Convention” means the International Convention for the Prevention of Pollution from Ships;

“crude oil” means any liquid hydrocarbon mixture occurring naturally in the earth, whether or not treated to render it suitable for transportation, and includes—

(a) crude oil from which certain distillate fractions may have been removed; and

(b) crude oil to which certain distillate fractions may have been added;

crude oil tanker means an oil tanker engaged in the trade of carrying crude oil;

“deadweight” (DW) means the difference in tonnes between the displacement of a vessel in water of a relative density of 1.025 at the load waterline corresponding to the assigned summer freeboard and the lightweight of the vessel;

“Director” means the Director of Department of Marine Services;

“discharge” means, in relation to Harmful substances or effluents containing such substances, any release howsoever caused from a vessel and includes any escape, disposal, spilling, leaking, pumping, emitting or emptying. Discharge includes the release of Harmful substances directly arising from the exploration, exploitation and associated offshore processing of sea-bed mineral resources. Discharge does not include release of Harmful substances for purposes of legitimate scientific research into pollution abatement or control. For the purpose of these Regulations discharge shall also include emission;

filtering equipment means filters or any combination of separators and filters which are designed to produce effluent containing not more than 15 ppm of oil;

“gas carrier” means a cargo vessel —

(a) for which a certificate certifying compliance with the IGC Code (an International Certificate of Fitness for the Carriage of Liquefied Gases in Bulk) is in force;

(b) which is constructed or adapted for the carriage in bulk of any substance listed in Chapter 19 of the IGC Code and identified in that list by an asterisk; and

(c) which is not intended for, or engaged in, the carriage of any other noxious liquid substance in bulk;

“GT” means gross registered tonnage and, in the case of a vessel which has alternative gross registered tonnages, the larger of those tonnages is to be taken to be the gross registered tonnage;

“IBC Code” means the International Code for the Construction and Equipment of Ships Carrying Dangerous Chemicals in Bulk published by the IMO;

“harmful substance” means any substance which, if introduced into the inland waters, is liable to create hazards to human health, to harm living resources and marine life, to damage amenities or to interfere with other legitimate uses of the inland waters, and includes oil;

“IBC Code” means the International Code for the Construction and Equipment of Ships Carrying Dangerous Chemicals in Bulk

published by the IMO, as from time to time revised or amended by any revision or amendment that applies to Malawi

“IGC Code” means the International Code for the Construction and Equipment of Ships Carrying Liquefied Gases in Bulk published by the IMO;

“IMO” means the International Maritime Organization;

“in bulk” means directly and without any intermediate form of containment in a tank forming an integral part of, or permanently located in, or on, a vessel;

“initial survey” means a survey as prescribed in regulation 6.1.1 of Annex I or regulation 8.1.1 of Annex II;

“intermediate survey” means a survey as prescribed in regulation 6.1.3 of Annex I or regulation 8.1.3 of Annex II;

“Malawi vessel” means a vessel which is registered in Malawi;

“Malawi NLS vessel” means an NLS vessel which is a Malawi vessel.

“NLS” means noxious liquid substances;

“NLS tanker” means an NLS tanker as defined by Annex II to the International Convention for the Prevention of Pollution from Ships, 1973, including its protocols and appendices, as from time to time revised or amended by any revision or amendment that applies to Malawi;

“NLS vessel” means a vessel intended for, or engaged in, the carriage of noxious liquid substances in bulk;

“noxious liquid substance” shall have the meaning ascribed to this expression under Annex II of the MARPOL Convention;

“offshore installation” means fixed or floating platforms including drilling rigs, floating production, storage and offloading facilities used for the offshore production and storage of oil or noxious liquid substances, and floating storage units used for the offshore storage of produced oil;

“oil” means petroleum in any form including crude oil, fuel oil, diesel oil, lubricant oil, sludge, oil refuse and refined products

and, without limiting the generality of the foregoing, includes the substances listed in appendix I to Annex I to the MARPOL Convention;

“Oil facility” means any structure, group of structures, equipment, or device which is used for one or more of the following purposes— exploring for, drilling for, producing, storing, handling, transferring, processing, or transporting oil;

“oil fuel” means any oil used as fuel in connection with the propulsion and auxiliary machinery of the vessel in which such oil is carried;

“Oil handling facility” means a facility, including an oil terminal, that is used in the loading or unloading of petroleum in any form, including crude oil, fuel oil, sludge, oil refuse and refined products, to or from vessels;

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

“oil tanker” means a vessel constructed or adapted primarily to carry oil in bulk in its cargo spaces and includes a combination carrier, an NLS tanker and a gas carrier (when carrying a cargo or part cargo of oil in bulk);

“ppm” means parts of oil per million parts of water by volume;

“renewal survey” means a survey as prescribed in regulation 6.1.2 of Annex I or regulation 8.1.2 of Annex II;

“RO Code” means the Code for Recognised Organizations adopted by IMO Resolution MEPC.237(65) and incorporate by way of Resolution MEPC.238(65)(7);

“Shipboard Marine Pollution Emergency Plan” has the meaning given in regulation 37(3) of Annex I or regulation 17(3) of Annex II;

“slop tank” means a tank specifically designed for the collection of tank drainings, tank washings and other oily mixtures;

“surveyor of vessel” means a surveyor appointed by the Director, and “survey” means a survey carried out by a surveyor;

“tank” means an enclosed space which is formed by the permanent structure of a vessel and which is designed for the carriage of liquid in bulk;

“wing tank” means any tank adjacent to the side shell plating.

Ambulatory
reference

3.-(1) Any reference in these Regulations to a specific provision in the Convention, Annex II, the BCH Code, the IBC Code, the IGC Code, the RO Code or the OSV Guidelines is to be construed as—

(a) a reference to the provision in that instrument as modified from time to time; and

(b) a reference, if the instrument is replaced by another instrument, to the provision in that other instrument.

(2) For the purposes of paragraph (1) the Convention is modified if omissions, additions or other alterations to the text take effect in accordance with Article 16 of the Convention.

(4) For the purposes of paragraph (1)—

(a) Parts 1 and 2 of the RO Code are modified if omissions, additions or other alterations to the text take effect in accordance with Article 16 of the Convention;

(b) Part 3 of the RO Code is modified if omissions, additions or other alterations to the text are adopted by a Resolution of the Marine Environment Protection Committee in accordance with the rules of procedure which apply to that Committee; and

(c) any modifications referred to in sub-paragraph (a) or (b) adopted by a Resolution of the Maritime Safety Committee and the Marine Environment Protection Committee must be identical and come into force, or take effect, at the same time.

(5) A modification to, or replacement of—

(a) the Convention by virtue of paragraph (2); or

(b) the RO Code by virtue of paragraph (4)(a),

has effect at the time that such modification or replacement comes into force in accordance with Article 16(8) of the Convention.

(6) For the purposes of paragraph (1) the BCH Code, the IBC Code, the IGC Code or the OSV Guidelines are modified if omissions, additions or other alterations to the text take effect in accordance with a Resolution of either the Marine Environment Protection Committee or the Maritime Safety Committee of the IMO.

(7) A modification of the BCH Code, the IBC Code, the IGC Code, the RO Code or the OSV Guidelines has effect at the time specified in any Resolution described in paragraph (3)(b), (4)(c) or (6).

(8) No modification or replacement of a reference to an instrument by virtue of paragraph (1) affects any rights or liabilities arising before the date on which the modification or replacement has effect.

Purpose

4. (1) The purpose of these Regulations is to regulate the prevention of pollution by vessels in inland waters, land and the atmosphere nearby inland waters.

(2) For the purposes of these Regulations, 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; but any measures taken after the first of them shall be deemed to have been taken after the discharge.

Application and exemptions

- 5.-(1) Unless expressly provided otherwise, these Regulations apply to—
(a) Malawi vessels; and
(b) non-Malawi vessels while they are within the waters of Malawi.

(2) These Regulations do not apply to any warship, naval auxiliary or other ship owned or operated by a Government and used, for the time being, only on government non-commercial service.

(3) Any type of Malawi vessel whose constructional features are such as to render the application of any of the provisions of Regulations relating to construction and equipment unreasonable or impracticable may be exempted by the Director from those provisions, provided that the construction and equipment of that vessel provides equivalent protection against pollution by oil and noxious liquid substances, having regard to the service for which it is intended. Particulars of any such exemption granted by the Director shall be indicated in the Certificate.

(4) The Director may grant exemptions from all or any of the provisions of these Regulations (as may be specified in the exemption) for classes of cases or individual cases on such terms (if any) as he may so specify and may, subject to giving reasonable notice, alter or cancel any such exemption.

Equivalents

6.— (1) The Director may permit any fitting, material, appliance or apparatus to be fitted in a vessel as an alternative to that required by these Regulations if such fitting, material, appliance or apparatus is at least as effective as that required by these Regulations, but shall not permit the substitution of operational methods to control the discharge of oil as being equivalent to those design and construction features which are prescribed by these Regulations.

(2)(a) As a requirement under paragraph (1), the owner or master of the vessel shall make an application to the Director for permission to fit the fitting, material, appliance or apparatus to the vessel;

(b) If a surveyor is satisfied that the fitting, material, appliance or apparatus is at least as effective as that required by Annex I or Annex II, the Director shall endorse the application to that effect; and

(c) the fitting, material, appliance or apparatus will be fitted to the vessel in accordance with any conditions or limitations set out in the approval and will be used and operated in accordance with any such conditions or limitations.

Categorisation
of Noxious Liquid
Substances

7.- Any liquid substance, other than oil, offered for transport in bulk shall be evaluated and classified into one of the four categories, X, Y, Z or OS as listed in either chapter 17 or 18 of the IBC Code.

PART II

SURVEYS, CERTIFICATES AND RECORD BOOKS

Initial survey
and renewal
survey

8. (1) The owner of an oil tanker of 150 GT and above, any vessel of 400 GT and above or NLS vessels shall cause the same to be surveyed before the vessel is put into service or before a Certificate in respect of the vessel is issued for the first time, and thereafter at intervals not exceeding five years by a surveyor. Any application for a survey shall be accompanied by any information relating to the vessel as the Director may require for the purposes of the survey.

(2) The Director shall upon receipt of an application for survey and any fee payable on such application cause the vessel to be surveyed by a surveyor.

(3) The surveyor shall survey the vessel and satisfy himself that its structure, equipment, systems, fittings, arrangements and material are in accordance with the requirements of these Regulations and that the equipment and associated pump and piping systems, including oil and noxious liquid substances discharge monitoring and control systems, washing systems and oil filtering equipment are in good working order.

(4) The surveyor, if satisfied on the survey that he may properly do so, shall forward to the Director a declaration of survey containing such particulars of the vessel as are required by the Director to enable the Director to issue the Certificate in respect of the vessel.

(5) The owner of a vessel referred to in paragraph (1) is regarded as having complied with that paragraph if the owner causes the vessel to be subject to—

(a) an initial survey by the Department of Marine Services—

(i) before the vessel is put into service; or

(ii) before a Certificate in respect of the vessel is issued for the first time; and

(b) a renewal survey by the Department of Marine Services, at intervals not exceeding 5 years.

Annual survey

9. (1) Subject to paragraph (2), the owner of every Malawi vessel in respect of which a Certificate has been issued shall, so long as the Certificate remains in force, cause the vessel to be subject to an annual survey, which shall be carried out within three months before or after the anniversary date of the Certificate.

(2) If an intermediate survey of the vessel has been carried out under regulation 10(1) in a particular year, the annual survey of the vessel under paragraph (1) for that year is not required to be carried out.

(3) The Director shall upon receipt of an application for survey and any prescribed fee payable on such application cause the vessel to be surveyed by a surveyor.

(4) The surveyor must survey the vessel to ensure that the requirements in Regulation 6 of Annex I or Regulation 8 of Annex II concerning an annual survey are complied with.

(5) On completion of the survey in accordance with the requirements of the preceding paragraph the surveyor shall, where he is so satisfied, endorse the Certificate to that effect.

(6) If, in a particular year, the owner of a vessel referred to in paragraph (1) causes the vessel to be subject to an annual survey by the Department of Marine Services within 3 months before or after the anniversary date of the Certificate, that paragraph (as read with paragraph (2)) is regarded as having been complied with by the owner for that year.

Intermediate survey

10. -(1) The owner of every Malawi vessel in respect of which a Certificate has been issued shall so long as the Certificate remains in force cause the vessel to be subject to an intermediate survey during the period of validity of the Certificate. This survey must be carried out—

(a) within the period commencing 3 months before and ending 3 months after the second anniversary date of the Certificate issued in respect of the vessel; or

(b) within the period commencing 3 months before and ending 3 months after the third anniversary date of the Certificate issued in respect of the vessel.

(2) The Director shall upon receipt of an application for a survey and any prescribed fee payable on such application cause the vessel to be surveyed by a surveyor.

(3) The surveyor must survey the vessel to ensure that the requirements in Regulation 6 of Annex I or Regulation 8 of Annex II concerning an intermediate survey are complied with.

(4) On completion of the survey in accordance with the requirements of the preceding paragraph, the surveyor, where he is so satisfied, shall endorse the Certificate to that effect.

(5) The owner of a vessel referred to in paragraph (1) is regarded as having complied with that paragraph if the owner causes the vessel to be subject to an intermediate survey by Department of Marine Services —

(a) within the period commencing 3 months before and ending 3 months after the second anniversary date of the Certificate issued in respect of the vessel; or

(b) within the period commencing 3 months before and ending 3 months after the third anniversary date of the Certificate issued in respect of the vessel.

Additional
survey

11. -(1) The Director may, by written notice to the owner and the master of a vessel, require an additional survey of the vessel to be carried out by a surveyor within a reasonable period specified by the Director.

(2) The Director may exercise the power under paragraph (1) only if—

(a) the Director determines on the basis of an investigation under regulation 13(3) that the survey is necessary;

(b) the Director has reasonable grounds to believe that important repairs or renewals have been made to the vessel after a Certificate has been issued in respect of the vessel;

(c) the Director has reasonable grounds to believe that regulation 13(1) is not complied with in respect of the vessel; or

(d) after a Certificate has been issued in respect of the vessel, alterations have been made to the structure, equipment, systems, fittings, arrangements or material covered by the survey leading to the issue of the Certificate.

(3) On receiving a notice under paragraph (1), the owner and the master of the vessel must cause an additional survey to be carried out.

(4) The additional survey may be general or partial as the Director thinks fit.

(5) If, after having carried out an additional survey of the vessel, the surveyor is satisfied that—

(a) the structure, equipment, systems, fittings, arrangements and material of the vessel which are covered by the survey comply with the applicable requirements; and

(b) where repairs or renewals have been made to the vessel —
(i) such repairs or renewals have been effectively made; and

(ii) the materials used in, and the workmanship of, such repairs or renewals are in all respects satisfactory, the surveyor must make a declaration of survey to that effect and forward the declaration to the Director.

(6) In this regulation, applicable requirements
Means for a vessel in respect of which a Certificate is in force, the requirements under Chapter 2 of Annex I or Chapter 3 of Annex II.

Issue and
duration of
Certificate

12.-(1) The Director must, on receipt of a declaration of survey under regulation 8(4) which relates to a Malawi vessel, issue to the vessel a Certificate;

(2) The Certificate is valid for a period not exceeding 5 years from the date of issue stated in the Certificate.

(3) A Certificate issued in respect of a Malawi vessel which is either an oil tanker of 150 GT and above or a vessel of 400 GT and above or NLS vessel, other than an oil tanker, must be—
(a) kept on board the vessel; and
(b) made available for inspection at all reasonable times.

Duration of Certificate after renewal survey

12A. A new specified Certificate issued in respect of a vessel as a result of a renewal survey under regulation 8 is valid for such period as may be specified in the Certificate in accordance with Regulation 10 of Annex I or Regulation 10 of Annex II.

Extension of validity of Certificate

12B. The Director may extend the validity period of an existing specified Certificate issued in respect of a vessel in accordance with Regulation 10 of Annex I or Regulation 10 of Annex II if—

(a) the Certificate is valid for a period of less than 5 years;

(b) a new specified Certificate cannot be issued or placed on board the vessel before the expiry of the Certificate; or

(c) the vessel is not in the port in which it is to be surveyed when the Certificate expires.

Certificate ceases to be valid

12 C. A specified Certificate issued in respect of a Malawi vessel ceases to be valid if—

(a) without the approval of the Director, a material change has been made to the structure, equipment, systems, fittings, arrangements or material required by these Regulations, other than the direct replacement of such equipment or fittings;

(b) a survey referred to in this Part is not carried out in relation to the vessel within the period specified for the survey in this Part;

(c) the Certificate is not endorsed under regulation 9, or under Regulation 6 of Annex I or Regulation 8 of Annex II, after an annual survey of the vessel is carried out;

(d) the Certificate is not endorsed under regulation 10 or under Regulation 6 of Annex I or Regulation 8 of Annex II, after an intermediate survey of the vessel is carried out; or

(e) the vessel is transferred to the registry of a place outside Malawi.

Cancellation
of Certificate

12D.-(1) The Director may, by written notice to the owner and the master of a Malawi vessel, cancel a specified Certificate issued in respect of the vessel in the circumstances set out in paragraph (2).

(2) The circumstances are that the Director has reasonable grounds to believe that the Certificate was issued, or any endorsement on it was made, on the basis of false or erroneous information.

(3) The Director must give reasons for cancelling the Certificate in the notice under paragraph (1).

(4) On receiving a notice under paragraph (1), the owner of the vessel must deliver the Certificate to the Director immediately.

Responsibilities
of owner and
master

13.-(1) The owner and master of every vessel to which these Regulations apply shall each ensure that the condition of the vessel and its equipment is maintained to comply with these Regulations.

(2) After any survey of a Malawi vessel has been completed, no material change shall be made in the structure, equipment, systems, fittings, arrangements or material subject to such survey without the approval of the Director.

(3) Whenever an accident occurs to a Malawi vessel or a defect is discovered, either of which substantially affects the integrity of a vessel or the efficiency or completeness of its equipment, the master or (if the master fails to do so) the owner shall report at the earliest opportunity to the Director who must cause an investigation to be carried out to determine whether an additional survey under regulation 11 is necessary.

(4) (a) If an accident has occurred or a defect has been discovered in or on any non- Malawi vessel and which is for the time being in the inland waters of Malawi, and the accident or defect is such as to substantially affect the integrity of the vessel or the efficiency or completeness of its equipment, the owner or (if he fails to do so) the master shall report

immediately to the Director and where appropriate to the authority responsible for issuing the Certificate to the vessel;

(b) The owner or (if he fails to do so) the master shall report the results of any investigation or survey initiated by the authority responsible for issuing the Certificate to the vessel to the Director, who may detain the vessel until such a report has been made.

(c) If within a reasonable period the Director is not satisfied that a full and proper report has been made to the authority responsible for issuing a Certificate to the vessel, or that the action taken is sufficient to restore the integrity of the vessel or the efficiency or completeness of its equipment, he may take such steps to ensure that the vessel shall not sail until it can proceed to inland waters without presenting an unreasonable threat of harm to the marine environment.

14.-(1) In any case where the surveyor determines that the condition of a Malawi vessel or its equipment does not correspond substantially with the particulars of the specified Certificate or is such that the vessel is not fit to proceed to inland waters without presenting an unreasonable threat of harm to the marine environment, the surveyor shall advise the owner or master of the corrective action which is required, and shall give notice thereof to the Director.

(2) If such corrective action is not taken within a reasonable period as the surveyor may specify, the surveyor shall, at the end of that time, immediately notify the Director who may, on receipt of such notification, by written notice to the owner and the master of the vessel, require the surrender of the specified Certificate issued in respect of the vessel to the Director.

(3) On receiving a notice under paragraph (2), the owner of the vessel must deliver the Certificate to the Director immediately.

(4) (a) The owner or the master of the vessel may, after the corrective action has been taken, apply to the Director for the return of the specified Certificate.

(b) On receiving an application under paragraph (4)(a), the Director must, if satisfied that the corrective action has been

Procedure
adopted during
corrective
action

taken, by written notice to the applicant, return the Certificate to the applicant.

(5) Where the vessel is in a port outside Malawi and corrective action in accordance with paragraph (2) of this regulation has not been taken, the surveyor shall in addition immediately notify the appropriate authorities of the country in which the port is situated.

Oil Record Book

15.- (1) Every vessel of 400 GT and above, other than an oil tanker, and every oil tanker of 150 GT and above shall be provided with an Oil Record Book Part I (Machinery Space Operations).

(2) Every oil tanker of 150 GT and above shall also be provided with an Oil Record Book Part II (Cargo/Ballast Operations).

(3) The Oil Record Books referred to in paragraphs (1) and (2) must be in the form specified in Appendix III to Annex I.

(4) The Oil Record Book must be completed in accordance with the following requirements-).

(a) Part I must be completed, on a tank-to-tank basis if appropriate, whenever any of the machinery space operations listed in regulation 17.2 of Annex I take place in the vessel; and

(b) Part II must be completed, on a tank-to-tank basis if appropriate, whenever any of the cargo/ ballast operations listed in regulation 36.2 or 3 of Annex I take place in the vessel.

(5) In the event of a discharge of oil or oily mixture as referred to in regulation 17.3 or 36.4 of Annex I, or in the event of accidental or other exceptional discharge of oil not excepted by those regulations, a record must be made in that part of the Oil Record Book which is relevant to the source of the discharge about the circumstances of, and the reasons for, the discharge.

(6) Each operation must be fully recorded without delay in the Oil Record Book and all entries in the book appropriate to that operation must be completed.

(7) Once an operation recorded under paragraph (6) is complete, the entry in the Oil Record Book for that operation

must be signed-off by the officer or officers in charge of that operation, and each completed page must be signed by the master.

(8) Any failure of the—

(a) oil filtering equipment must be recorded in the Oil Record Book Part I; and

(b) oil discharge monitoring and control system must be recorded in the Oil Record Book Part II.

(9) The Oil Record Book must be kept in such a place as to be readily available for inspection at all reasonable times and, other than in the case of unmanned vessels under tow, must be kept on board the vessel.

(10) The Oil Record Book must be preserved for a period of three years after the last entry has been made.

(11) The surveyor, may—

(a) inspect the Oil Record Book on board a vessel which is in a port or offshore terminal;

(b) make a copy of any entry in the Oil Record Book; and

(c) require the master of the vessel to certify that the copy is a true copy of any such entry.

(12) A copy of an entry described in paragraph (11)(c) is admissible in any judicial proceedings as evidence of the facts stated in that entry.

(13) The inspection of an Oil Record Book and the taking of a certified copy of any entry as described in paragraph (11) must be performed as expeditiously as possible without causing the vessel to be unduly delayed.

Cargo
Record Book

16.—(1) Every NLS vessel must be provided with a Cargo Record Book in the form specified in Appendix 2 to Annex II.

(2) Following completion of any operation specified in Appendix 2 to Annex II, that operation must be recorded promptly in the Cargo Record Book.

(3) In the event of—

(a) an accidental discharge of a noxious liquid substance, or of a mixture containing such a substance, from the vessel; or

(b)a discharge made under the provisions of regulation 3 of Annex II,
an entry must be made in the Cargo Record Book stating the circumstances of, and the reason for, the discharge.

(4) Each entry in the Cargo Record Book must be signed by the officer or officers in charge of the relevant operation.

(5) Each page of the Cargo Record Book must be signed by the master of the vessel.

(6) The Cargo Record Book must be kept in such a place as to be readily available for inspection and, except in the case of unmanned vessel under tow, must be kept on board the vessel to which it relates.

(7) A Cargo Record Book must be retained for a period of three years after the last entry has been made.

Procedures
and
Arrangements
Manual

17.—(1) Every NLS vessel must carry on board an approved Procedures and Arrangements Manual.

(2) The Procedures and Arrangements Manual must be in the standard format specified in Appendix 4 to Annex II.

(3) The Procedures and Arrangements Manual must be written in English.

PART III

REQUIREMENTS FOR CONTROL OF OPERATIONAL POLLUTION—CONTROL OF DISCHARGE OF OIL AND NOXIOUS LIQUID SUBSTANCES

General
exceptions

18.- The provisions of regulations 19 and 20 shall not apply to—
(a) any discharge into the inland waters of oil or oily mixture or noxious liquid substances which is necessary for the purpose of securing the safety of a vessel or saving life at sea; or

(b) any discharge into the inland waters of oil or oily mixture or noxious liquid substances which results from damage to a vessel or its equipment—

(i) provided that all reasonable precautions were taken after the occurrence of the damage or discovery of the discharge for the purpose of preventing or minimizing the discharge; and

(ii) unless the owner or the master acted either with intent to cause damage, or recklessly and with knowledge that damage would probably result; or

(c) any discharge into the inland waters of substances containing oil as approved by the Director, when the substances are being used for the purpose of combating specific pollution incidents in order to minimize the damage from pollution. Any such discharge shall be subject to the approval of any Government in whose jurisdiction it is contemplated the discharge will occur.

Vessels other
and machinery
space bilges of
oil tankers

19. (1) Subject to regulation 18 this regulation applies to—

(a) (i) Malawi vessels other than oil tankers; and

(ii) Malawi oil tankers in relation to discharges from their machinery space bilges (unless mixed with oil cargo residue) but excluding cargo pump room bilges, wherever they may be and to—

(b) (i) other vessel other than oil tankers; and

(ii) other oil tankers in relation to discharges from their machinery space bilges (unless mixed with oil cargo residue) but excluding cargo pump room bilges, when they are within the waters of Malawi.

(2) A vessel shall not discharge oil or oily mixture into any part of the inland waters unless all the oil content of the effluent without dilution does not exceed 15 ppm;

(3) No discharge into the inland waters shall contain chemicals or other substances in quantities or concentrations which are hazardous to the marine environment or chemicals or other substances introduced for the purpose of circumventing the conditions of discharge prescribed by this regulation.

(4) Insofar as any oil or oily mixture has not been unloaded as cargo and may not be discharged into the inland waters, it shall be retained on board and shall only be discharged into reception facilities.

Oil tankers

- 20.** (1) Subject to regulation 18 this regulation applies to—
- (a) every Malawi oil tanker; and
 - (b) every other oil tanker when it is within the waters of Malawi.
- (2) an oil tanker shall not discharge any oil or oily mixture into any part of the inland waters.
- (3) No discharge into the inland waters shall contain chemicals or other substances in quantities or concentrations which are hazardous to the marine environment or chemicals or other substances introduced for the purposes of circumventing the conditions of discharge prescribed by this regulation.
- (4) Insofar as any oil or oily mixture has not been unloaded as cargo and may not be discharged into the inland waters, it shall be retained on board and shall only be discharged into reception facilities.

Oil filtering equipment

- 21.** (1) Subject to paragraph (2) of this regulation, every vessel of 400 GT and above shall be fitted with oil filtering equipment complying with paragraph (5).
- (2) A vessel which is stationary need not be fitted with the oil filtering equipment required under paragraph (1) if—
- (a) a holding tank having a volume adequate, to the satisfaction of the Director or an Administration, for the total retention on board of the oily bilge water, is provided on the vessel; and
 - (b) all oily bilge water is retained on board for subsequent discharge to reception facilities.
- (3) Vessels of less than 400 GT shall be equipped so far as practicable and reasonable with installations to ensure the storage of oil or oily mixtures on board and their discharge to reception facilities, or to ensure the discharge of such mixtures is in accordance with regulation 19.
- (4) The oil filtering equipment referred to in paragraph (1) shall be of a design approved by the Director or an Administration as being in accordance with the specification adopted by IMO and shall be such as to ensure that any oily mixture

discharged into the inland waters after passing through the system shall have an oil content which does not exceed 15 ppm.

(5) The oil filtering equipment referred to in paragraphs (1) and (2) may include any combination of a separator, filter or coalescer or may consist of a single unit designed to produce an effluent with an oil content not exceeding 15 ppm.

(6) In this regulation—oily bilge water has the meaning given by Regulation 1 of Annex I.

Retention of
oil on board

22.—(1) Subject to paragraphs (2) to (4), oil tankers of 150 GT and above must comply with the requirements of regulations 29, 31 and 32 of Annex I.

(2) Regulations 29, 31 and 32 of Annex I do not apply to any oil tanker referred to in paragraph (1) which is engaged exclusively on voyages of 72 hours or less in duration and within 50 nautical miles of the nearest land provided that—

(a) the oil tanker is engaged exclusively in trade between ports or terminals within Malawi;

(b) all oily mixtures are retained on board the oil tanker for subsequent discharge into reception facilities; and

(c) the Director has determined that adequate facilities are available to receive such oily mixtures.

(3) In the case of oil tankers of less than 150 GT—

(a) oil must be retained on board the vessel with subsequent discharge of all contaminated washings to reception facilities; and

(b) the total quantity of oil and water used for washing and returned to a storage tank must be—

(i) recorded in the Oil Record Book Part II for tankers operating in accordance with regulation 34.6 of Annex I; and

(ii) discharged into reception facilities unless adequate arrangements are made to ensure that any effluent which is allowed to be discharged into the inland waters is effectively

monitored to ensure that the provisions of regulation 34 of Annex I are complied with.

(4) Oil residues must be retained on board with subsequent discharge of all contaminated washings to reception facilities in order to satisfy the requirements of regulation 34 of Annex I.

Requirements for crude oil washing

23. (1) Every oil tanker operating with crude oil washing systems shall be provided with an Operations and Equipment Manual describing the system and equipment in detail and specifying the operation procedures to be followed. This Manual shall have been approved by the Director and shall contain all the information set out in the specifications adopted by IMO for crude oil washing systems.

(2) If any alteration is made affecting the crude oil washing system the Operations and Equipment Manual shall be revised, and the revision submitted to the Director for his approval.

Double hull and double bottom requirements

24. (1) Every oil tanker of 600 tonnes deadweight and above shall have double hull and double bottom tanks or spaces.

(2) Double bottom tanks or spaces as required by paragraph (1) may be dispensed with, provided that the design of the tanker is such that the cargo and vapour pressure exerted on the bottom shell plating forming a single boundary between the cargo and the inland waters does not exceed the external hydrostatic water pressure.

Pumping, piping and discharge arrangements

25. (1) In every oil tanker, a discharge manifold for connection to reception facilities for the discharge of oil contaminated water shall be located on the open deck on both sides of the vessel.

(2) In every oil tanker of 150 GT and above, pipelines for any discharge to the inland waters oil contaminated water from cargo tank areas shall be led to the open deck or to the vessel's side above the waterline in the deepest ballast condition, or, subject to the approval of the Director, below the waterline—

(a) to enable such discharges below the waterline as are permitted by paragraph (6) of this regulation to be made; and

Control of discharges of Noxious Liquid Substances

(b) where the discharge outlet is located above the departure ballast waterline but not above the waterline in the deepest ballast condition, if so located before 1 January 1981.

26. (1) Subject to the provisions of this regulation, the discharge into the inland waters from any vessel of—

(a) any noxious liquid substance; or

(b) any ballast water, tank washings or other mixture containing a noxious liquid substance, is prohibited.

(2) Subject to paragraph (3), it is permitted for a noxious liquid substance to be discharged into the inland waters from a certificated NLS vessel where—

(a) the vessel is proceeding en route at a speed of at least—

(i) 7 knots in the case of a vessel which is self-propelled; or

(ii) 4 knots in the case of a vessel which is not self-propelled;

(b) the discharge is made below the waterline through one or more underwater discharge outlets at a rate not exceeding the maximum for which the outlet is designed;

(c) the discharge is made—

(i) at a distance of not less than 12 nautical miles from the nearest land; and

(ii) in a depth of water of not less than 25 metres; and

(d) the discharge complies with the conditions and limitations prescribed in regulation 13, paragraphs 1.2 and 4 to 7, of Annex II.

(3) Notwithstanding paragraph (2), any discharge of a noxious liquid substance, or mixture containing such substances, into the inland waters is prohibited.

(4) Any ventilation procedures used to remove cargo residues from a tank must be carried out in accordance with Appendix 7 of Annex II.

(5) Paragraphs (1) and (3) do not apply to the discharge of noxious liquid substances, or ballast water, tank washings or other mixtures containing noxious liquid substances, from a certificated NLS vessel into the inland waters where the discharge—

(a) is necessary to secure the safety of the vessel or for saving life;

(b) results from damage to the vessel or its equipment and—

(i) all reasonable precautions have been taken by the master and owner after the occurrence of the damage or discovery of the discharge for the purpose of preventing or minimising the discharge; and

(ii) the owner or master did not act either with intent to cause damage or act recklessly and with knowledge that damage would probably result; or

(c) has been approved by the Minister for the purpose of combating specific pollution incidents in order to minimize the damage from pollution.

(6) In this Regulation—

“certificated NLS vessel” means—

(a) a Malawian NLS vessel which has a valid relevant NLS Certificate; or

(b) a NLS vessel, other than a Malawi NLS vessel, which has a Certificate that—

(i) was issued, and where appropriate endorsed, in accordance with the requirements of Annex II; and

(ii) (along with any endorsement) is still valid in accordance with those requirements.

Relevant requirements of NLS vessel.

27.(1) In this Part of these Regulations the “relevant requirements” in respect of an NLS vessel means the relevant requirements concerning structure, equipment, systems, fittings, arrangements and materials specified in paragraph (2) in relation to that vessel.

- (2) The relevant requirements are—
- (a) as respects an NLS vessel which is a chemical tanker constructed or adapted before 1st July 1986, as set out in —
- (i) regulation 12.1, 12.5 to 12.11 and Appendix 5 to Annex II; and
 - (ii) Chapters II and III of the BCH Code;
- (b) as respects an NLS vessel which is a chemical tanker constructed or adapted on or after 1st July 1986 and before 1st January 2007, as set out in—
- (i) regulation 12.2, 12.5 to 12.11 and Appendix 5 to Annex II; and
 - (ii) Chapters 2, 3, 5, 6, 7, 8, 9, 10, 11, 12, 13 and 14 of the IBC Code;
- (c) as respects an NLS vessel which is a chemical tanker constructed or adapted on or after 1st January 2007, as set out in—
- (i) regulation 12.3, 12.5, 12.6 and 12.8 to 12.11 and Appendix 5 to Annex II; and
 - (ii) Chapters 2, 3, 5, 6, 7, 8, 9, 10, 11, 12, 13 and 14 of the IBC Code;
- (d) as respects an NLS vessel which is a gas carrier, as set out in Regulation 5.3 of Annex II;
- (e) as respects an NLS vessel which is an offshore support vessel to which the OSV Guidelines apply, as set out in—
- (i) regulation 12.1 (if the vessel is constructed or adapted before 1st July 1986), regulation 12.2 (if the vessel is constructed or adapted on or after 1st July 1986 and before 1st January 2007) or regulation 12.3 (if the vessel is constructed or adapted on or after 1st January 2007) of Annex II;
 - (ii) Appendix 5 to Annex II; and
 - (iii) Chapters 2, 3, 4, 5 and 7 of the OSV Guidelines; and
- (f) as respects any other NLS vessel, as set out in—
- (i) regulation 12.1 (if the vessel is constructed or adapted before 1st July 1986), regulation 12.2 (if the vessel is constructed

or adapted on or after 1st July 1986 and before 1st January 2007) or regulation 12.3 (if the vessel is constructed or adapted on or after 1st January 2007) of Annex II; and

(ii) Appendix 5 to Annex II.

(3) For the purposes of these Regulations a fitting, material, appliance or apparatus fitted to an NLS vessel as an alternative to any of the requirements listed in paragraph (2) meets the relevant requirements providing it has been approved in accordance with the procedure specified in regulation 7.

Pumping,
piping and
unloading
arrangements

28. (1) Every vessel shall be provided with a pumping and piping arrangement to ensure that each tank certified for the carriage of substances in Category X or Y does not retain a quantity of residue in excess of 300 litres in the tank and its associated piping and that each tank certified for the carriage of substances in Category Z does not retain a quantity of residue in excess of 900 litres in the tank and its associated piping.

(2) Where noxious liquid substances are unloaded from an NLS vessel to a cargo unloading terminal, the master must ensure that any noxious liquid substance in cargo hoses and piping systems of that terminal is not drained back to the vessel.

Prohibition on
the carriage
and discharge
of unassessed
liquid substances

29. (1) The master of a vessel must not enable that vessel to—
(a) proceed to inland waters; or

(b) (if it is already in inland waters) remain in inland waters, if it is carrying in bulk any liquid substance which has not been categorised, provisionally assessed or evaluated in accordance with regulation 6 of Annex II.

(2) The discharge into the inland waters from a vessel of any liquid substance which has not been categorised, provisionally assessed or evaluated in accordance with regulation 6 of Annex II is prohibited.

**PART IV
OFFSHORE INSTALLATIONS**

Requirements
for Offshore
Installations

30. (1) Subject to paragraph (2), offshore installations engaged in the exploration, exploitation or associated offshore processing of sea-bed mineral resources must comply with such requirements of these Regulations and Annex I as are applicable to vessels (other than oil tankers) of 400 GT and above except that—

(a) such installations must be equipped, so far as practicable, with the systems and tanks required by regulations 12 and 14 of Annex I;

(b) the master must ensure that a record is kept, in a form approved by the Minister, of all operations involving oil or oily mixture discharges; and

(c) the discharge into the inland waters of oil or oily mixture is prohibited except when the oil content of the discharge without dilution does not exceed 15 ppm.

**PART V
REPORTING OF DISCHARGES**

Reporting a
discharge

31. (1) This regulation applies to—

(a) all vessel within inland waters of Malawi;

(b) all Malawi vessels within 200 miles of the nearest land;

(c) all Malawi oil tankers when fully or partly laden; and

(d) all Malawi NLS Vessels.

(2) The master of a vessel to which this regulation applies shall make reports in accordance with paragraphs (4) and (6) of this regulation whenever an incident involves any discharge or probable discharge of oil or oily mixtures or noxious liquid substances as a result of damage to the vessel or its equipment or for the purpose of securing the safety of the vessel or saving life at sea. In assessing the probability of a discharge, the master shall take into account—

(a) the nature of the damage, failure or breakdown of the vessel, machinery or equipment;

(b) wind state in the area at the time and place of the incident.

(3) The master may make a report in cases of—

(a) any damage, failure or breakdown which affects the safety of vessel, such as collision, grounding, fire, explosion, structural failure, flooding or cargo shifting; and

(b) any failure or breakdown of machinery or equipment which results in the impairment of the safety of navigation, such as failure or breakdown of steering gear, propulsion plant, electrical generating system or essential shipborne navigational aids.

(4)(a) The master of a vessel proceeding to enter the inland waters of Malawi shall make any report required by this regulation without delay, either directly through the owner or his agent, or through the radio station to the Director, not less than 12 hours prior to the expected arrival of the vessel.

(b) The master of a Malawi vessel more than 200 miles from Malawi shall make any report so required without delay to the nearest neighbouring State which he considers to be most at risk from the actual or potential effects of the incident.

(5) The master's initial report shall contain the following particulars—

(a) name of vessel, call sign, frequency or radio channel kept open;

(b) date and time of incident;

(c) position and extent of any pollution, including, if possible estimated amount and surface area of spill;

(d) present position of vessel (if different from (c));

(e) if discharge is continuing, approximate rate of release;

(f) wind direction and speed, and condition of current or tide affecting spill movement;

(g) weather conditions and lake state in vessel's present position;

- (h) type of oil or noxious liquid substances discharged;
 - (i) types and quantities of oils or noxious liquid substances still on board and whether or not carried as cargo;
 - (j) type of vessel, size, nationality and port of registry;
 - (k) vessel's course, speed and destination, if proceeding on its way;
 - (l) brief description of the incident, including damage sustained and the cause of any discharge;
 - (m) ability to transfer cargo or bunkers;
 - (n) any remedial action taken or intended to deal with any actual or potential pollution or to control the movement of the vessel;
 - (o) forecast of likely movement and effect of pollution with estimated timing; and
 - (p) assistance which has been requested from or which has been provided by other vessels or agencies.
- (6) Following the initial report the master shall make a further report to the authority referred to in paragraph (4), containing the following particulars—
- (a) position of vessel at time of incident, if different from that at the time of the initial report;
 - (b) estimate of the quantities, concentrations and likely conditions of oils or noxious liquid substances —
 - (i) discharged; and
 - (ii) likely to be discharged, from the vessel;
 - (c) vessel's course, speed and destination at time of incident, if different from that at the time of the initial report;
 - (d) all relevant information regarding the condition of the vessel; and
 - (e) telegraphic address of the vessel's operator, charterer and nearest local agent.

PART VI
SHIPBOARD MARINE POLLUTION EMERGENCY PLAN

Approved
emergency plan
to be carried on
board

32. (1) The owner of—
(a) every Malawi oil tanker of 150 GT and above and every other Malawi vessel of 400 GT and above;

(b) every oil tanker of 150 GT and above within the waters of Malawi and every other vessel of 400 GT and above within the waters of Malawi (other than an oil tanker or other vessel mentioned in subparagraph (a));

(c) every NLS vessel shall carry on board a Shipboard Marine Pollution Emergency in this Part referred to as “the plan”) which has been approved by the Director or, in the case of a vessel mentioned in subparagraph (b), by the Administration of the flag state of the vessel or an agent of that Administration authorized for the purpose.

Preparation of
Emergency plan

33. The plan shall be prepared in accordance with such guidelines as may be issued by IMO relating to the development of Shipboard Marine Pollution Emergency.

Requirement
as to
emergency
plan

34. The plan shall consist at least of—
(a) the procedure to be followed by the master and other persons having charge of the vessel in reporting an oil or noxious liquid substances pollution incident as required by the Inland Waters Shipping (Amendment) Act and consistent with the guidelines adopted by IMO for reporting incidents involving dangerous goods, harmful substances and/or marine pollutants;

(b) the list of authorities or persons to be contacted in the event of an oil or noxious liquid substances pollution incident;

(c) a detailed description of the action to be taken immediately by persons on board to reduce or control the discharge of oil or noxious liquid substances following the incident; and

(d) the procedures and point of contact on the vessel for coordinating shipboard action with national and local authorities in combating the pollution.

PART VII
POWERS TO INSPECT, DENY ENTRY, DETENTION AND PENALTIES

Power to inspect Certificate, etc.

35.(1) A vessel shall be subject, in the inland waters of Malawi, to inspection by a surveyor. Any such inspection shall be limited to verifying that there is on board a valid specified Certificate, unless there are clear grounds for believing that the condition of the vessel or its equipment does not correspond substantially with the particulars of that Certificate. In that case, or if the vessel does not carry a valid specified Certificate, the surveyor shall take such steps as he may consider necessary to ensure that the vessel shall not sail until it can proceed to inland waters without presenting an unreasonable threat of harm to the marine environment. The Director may in such a case permit the vessel to leave the inland waters of Malawi for the purposes of proceeding to the nearest appropriate repair yard.

(2) Upon receiving evidence that a particular vessel has discharged oil or an oily mixture or noxious liquid substances contrary to the provisions of these Regulations the Director shall cause the matter to be investigated and shall inform IMO, of the action taken.

(3) The Director may also cause a vessel other than a Malawi vessel to be inspected when she enters the inland waters of Malawi if a request for an investigation is received from any State which is a Party to the Convention together with sufficient evidence that the vessel has discharged oil or an oily mixture or noxious liquid substances in any place. The report of such investigation shall be sent to the State requesting it, the State in which the vessel is registered and to the Director.

Power of surveyors

36 (1) Despite regulation 35, any of the powers conferred by this regulation may be exercised for the purpose of ascertaining whether these Regulations have been or are being complied with.

(2) A surveyor may, at any reasonable time—

(a) board a vessel that is within the inland waters of Malawi; and

(b) take with the surveyor any other person and any equipment or materials required to assist the surveyor.

- (3) After boarding the vessel, the surveyor may—
- (a) inspect the vessel;
 - (b) make any examination and investigation as the surveyor considers necessary;
 - (c) take samples of any article or substance found on the vessel that the surveyor may reasonably require for the inspection, examination or investigation;
 - (d) inspect, seize and remove from the vessel any article or substance in respect of which the surveyor suspects on reasonable grounds that an offence under these Regulations has been committed;
 - (e) detain the article or substance for so long as is necessary—
 - (i) for the inspection, examination or investigation; and
 - (ii) to ensure that it is available for use as evidence in any proceedings for an offence under these Regulations;
 - (f) take any measurements and photographs and make any recordings that the surveyor may reasonably require for the inspection, examination or investigation;
 - (g) require that the vessel or any part of it, or anything on the vessel, is to be left undisturbed (whether generally or in particular respects) for so long as is necessary for the inspection, examination or investigation;
 - (h) require any person who the surveyor reasonably believes is able to give any information relevant to the inspection, examination or investigation—
 - (i) to attend at a place and time specified by the surveyor;
 - (ii) to answer the questions that the surveyor thinks fit to ask;and
 - (iii) to sign a declaration of the truth of the person's answers;
 - (i) require the production of, and inspect and take copies of or of any entry in—
 - (i) any certificates, books or documents that are required to be kept under these Regulations; and

(ii) any other certificates, books or documents that the surveyor considers necessary for the inspection, examination or investigation; and

(j) require any person to afford the surveyor such facilities and assistance with respect to any matters or things within that person's control or in relation to which that person has responsibilities as the surveyor considers necessary to enable the surveyor to exercise any power conferred by this regulation.

(4) If an inspection of a vessel under paragraph (3) reveals a deficiency, the Director may give a direction to the master of the vessel requiring the master to cause the vessel not to proceed to inland waters until the deficiency is rectified.

(5) A master to whom a direction is given under paragraph (4) must—

(a) comply with the direction;

(b) take steps to rectify the deficiency; and

(c) inform the Director once the deficiency is rectified.

(6) If the vessel concerned is a Malawi vessel and the deficiency is not rectified within the period specified by the Director, the Director may by written notice to the owner and the master of the vessel, require the surrender of the specified Certificate issued in respect of the vessel to the Director.

(7) On receiving a notice under paragraph (6), the owner and the master of the vessel must deliver the Certificate concerned to the Director immediately.

(8) The owner or the master of the vessel may, after the deficiency in respect of the vessel has been rectified, apply to the Director for the return of the Certificate concerned.

(9) On receiving an application under paragraph (8), if the Director is satisfied that the deficiency in respect of the vessel has been rectified, the Director must, by written notice to the applicant, return the Certificate concerned to the applicant.

Power to
detain

37. (1) The Director may, if he has reason to believe that a contravention of these Regulations has occurred in respect of

Offences and Penalties

a vessel, detain the vessel and, in the circumstances prescribed in regulation 14(1), shall detain the vessel.

(2) If the Director detains a non- Malawi vessel under paragraph (1), he must immediately inform the consul or diplomatic representative of the State whose flag the vessel is entitled to fly or the appropriate maritime authorities of that State.

38. (1) If any requirement of these Regulations (other than regulation 19 and 20) is not complied with in respect of a vessel, the owner and the master of the vessel each commits an offence and is liable—

(a) on conviction upon indictment, to a fine of K500,000;

(b) on summary conviction, to a fine of K250,000.

(2) If any requirement of regulation 19, or 20 is not complied with in respect of a vessel, the owner and the master of the vessel each commits an offence and is liable—

(a) on conviction upon indictment, to a fine of K5,000,000;

(b) on summary conviction, to a fine of K2, 000,000.

(3) It shall be a defence for a person charged under this regulation to show that he took all reasonable precautions and exercised all due diligence to avoid the commission of the offence.

(4) Where an offence under this regulation is committed, or would, save for the operation of paragraph (3), have been committed, by the owner or the master due to the act or omission of some other person, that other person also commits the offence and may be charged with and convicted of the offence whether or not proceedings are taken against the owner or the master.

Made this day of , 2020.

Mohammed Sidik Mia

Minister of Transport and Public Works

(FILE NO.)