

OIL POLLUTION PREPAREDNESS AND RESPONSE ACT

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PART I
PRELIMINARY

Short title	1. This Act may be cited as the Oil Pollution Preparedness and Response Act.
Commencement	2. (1) This Act shall come into operation on the 1 st January 2001 (2) The Minister may, pursuant to subsection (1), appoint different dates for the coming into operation of different provisions of this Act.
Interpretation	3. In this Act, unless the context otherwise requires- ‘Assistant MRCC officer’ means any non-commissioned officer of the Seychelles Coast Guard. ‘Commanding Officer’ means the senior officer in charge of the Seychelles Coast Guard.

‘IOC’ means the Indian Ocean Commission.

‘Minister’ means the Minister of Environment.

‘MRCC’ means the Marine Rescue Co-ordination Center.

‘National Coordinator ’ means a senior commissioned Coast Guard Officer.

‘National flag’ means the flag of Seychelles.

‘Officer in Charge of the MRCC’ means a commissioned officer of the Seychelles Coast Guard who is appointed by the National Coordinator to be in charge of the MRCC.

‘Officer of the MRCC’ means a commissioned officer of the Coast Guard.

‘Offshore unit’ means any fixed or floating offshore installation or structure engaged in gas or oil exploration, exploitation or production activities, or loading or unloading of oil.

‘Oil’ means petroleum in any form including crude oil, fuel oil, sludge, oil refuse and refined products.

‘Oil pollution incident’ means an occurrence or series of occurrences having the same origin, which results or may result in a discharge of oil and which poses or may pose a threat to the marine environment, or to the coastline or related interest of one or more States, and which requires emergency action or other immediate response.

‘Oil Pollution Preparedness and Response Board’ means the Board by that name established by section 35.

‘Organization’ means the International Maritime Organization.

‘Sea ports and oil handling facilities’ means those facilities which present a risk of an oil pollution incident and includes, inter alia, sea ports, oil terminals, pipelines and other oil handling facilities.

‘Secretary-General’ means the Secretary-General of the Organization

‘Ship’ means a vessel of any type whatsoever operating in the marine environment and includes hydrofoil boats, air cushion vehicles, submersibles, and floating crafts of any type.

Object of
This Act

4. The principal object of this Act is to provide for the preparedness and response to an oil pollution incident.

Application
of the Act

- 5. (1)** Unless expressly provided, this Act shall apply to: -
- (a) Seychelles ships wherever they may be;
 - (b) All other ships while in port or within the territorial waters of, Seychelles;
- (2)** This Act shall not apply to: -
- (a) vessels of the Seychelles Police Navy Patrol;
 - (b) vessels of the Seychelles People's Navy or the Navy of a foreign country;
 - (c) Any other belonging to or under the control of the Government while employed, otherwise than for profit, in the service of the Government.

PART II ADMINISTRATION

Office of the
National
Coordinator

- 6. (1)** The administration of this Act shall be carried out by the National Coordinator's Office.
- (2)** The National Coordinator shall appoint officers to carry out the supervision of this Act.

Power of the
Minister to
the national co-
ordinator

7. The Minister may from time to time give the National Coordinator such general direction, not inconsistent with the provisions of this Act or any regulations made thereunder, on the policy to be pursued in the administration of this Act, as he may consider necessary, and the National Coordinator shall forthwith take such steps as are necessary and expedient to give effect thereto.

Officer of the
MRCC

- 8. (1)** There may be appointed, from the Seychelles Coast Guard for the purpose of this Act, such number of MRCC officers as the National Coordinator considers necessary.
- (2)** An MRCC officer shall exercise his powers and duties under the direction of the officer in Charge of the MRCC.
- (3)** There may be appointed an assistant or assistants to any MRCC officer, either generally for the purposes of this Act or for particular provision of this Act.

(4) Any act done by, to or before a deputy appointed under subsection (3) in exercise or performance or purported exercise or performance of any power, right or duty conferred or imposed by this Act shall have the same effect as if done by, to or before an MRCC officer.

Duties and powers of Inspectors

9. (1) Inspectors of ships and offshore operators shall have the power and shall perform the functions and duties prescribed by the Act.

(2) The function of the inspectors of ships and offshore operators shall be performed under the direction of the Officer in Charge of the MRCC, and in accordance with any directions given by the Minister.

Minister may delegate certain powers and duties

10. (1) The Minister may, by notification in the Gazette, delegate to the National Coordinator, to the Officer in Charge of the MRCC or any other officer appointed under this Act and specified in such notification, the exercise of any powers (other than the power to make regulation) or the performance of any duties conferred or imposed on him by or under this Act, subject to such conditions and restrictions as may be specified in such notification.

(2) A delegation in terms of subsection (1) shall not affect the exercise of such powers or the performance of such duties by the Minister.

(3) Every officer purporting to act pursuant to any delegation under this section shall, in the absence of proof to the contrary, be presumed to be acting in accordance with the terms of such delegation.

(4) The provisions of subsection (1) and (2) of this section shall be without prejudice to the provisions of section 4 of the Transfer and Delegation of Statutory Functions Act.

PART III OIL POLLUTION EMERGENCY PLAN

Emergency plan on board ships

11. All ships entitled to fly the national flag shall have on board a shipboard oil pollution emergency plan as required by and in accordance with the provisions adopted by the National Oil Pollution Preparedness and Response Board as set out under section 36(3).

Inspection

12. A ship required to have on board an oil pollution emergency plan in accordance with section (11) is subject, while in a port of Seychelles or at an offshore terminal under the jurisdiction of Seychelles, to inspection by officers duly authorized by the Minister, in accordance with the practices provided for in existing international agreements or its national legislation.

Emergency plan of offshore operators

13. (1) All operators of offshore units under the national jurisdiction shall have an oil pollution emergency plans, which are coordinated with the national system and approved in accordance with procedures established by the National Oil Pollution Preparedness and Response Board.

(2) All authorities or operators in charge of sea ports and oil handling facilities under the jurisdiction of Seychelles shall have an oil pollution emergency plans or similar arrangements which are coordinated with the national system established in accordance with section 19 and approved in accordance with procedures established by the National Oil Pollution Preparedness and Response board.

PART IV OIL POLLUTION REPORTING PROCEDURES

Reporting of an
Incident

14. (1) The master or other person having charge of a ships flying the national flag, and persons having charge of offshore units under the jurisdiction of Seychelles, shall;

(a) report without delay any event on their ship or offshore unit involving a discharge or probable discharge of oil:

(i) in the case of a ship, to the nearest Coastal State;

(ii) in the case of an offshore unit, to the MRCC;

(b) report without delay any observed event at sea involving a discharge of oil or the presence of oil:

(i) in the case of a ship, to the nearest Coastal State;

(ii) in the case of an offshore unit, to the MRCC.

(2) A person or persons having charge of a sea port or oil handling facility shall report without delay any event involving a discharge or probable discharge of oil or the presence of oil to the MRCC.

(3) All maritime inspection vessels or aircraft and other appropriate services or officials shall report without delay any observed event at sea or at a sea port or oil handling facility involving a discharge of oil or the presence of oil to the MRCC or, as the case may be, to the nearest coastal State.

(4) All pilots of civil National aircraft shall report without delay any observed event at sea involving a discharge of oil or the presence of oil to the MRCC or as the case may be to the nearest coastal State.

(5) Reports under subsection (1)(a)(i) shall be made in accordance with the requirements developed by the Organization and based on the guidelines and general principles adopted by the Organization. Reports under subsection (1)(a)(ii), (b), subsection (2) and subsection (3) shall be made in accordance with the guidelines and general principles adopted by the Organization to the extent applicable.

Evaluating of
the report

15. Upon receipt of a report referred to in section 14, or pollution information provided by other sources, the MRCC shall:

- (1) assess the event to determine whether it is an oil pollution incident;
- (2) assess the nature, extent and possible consequences of the oil pollution incident.

Reporting to
States likely
to be affected

16. The MRCC shall without delay, inform all States whose interests are affected or likely to be affected by such oil pollution incident, together with

- (1) details of its assessments and any action it has taken, or intends to take, to deal with the incident, and
- (2) further information as appropriate, until the action taken to respond to the incident has been concluded or until joint action has been decided by such States.

Reporting to
the Organiz-
ation

17. When the severity of such incident so justifies, the MRCC should provide the Organization directly or, as appropriate, through the relevant regional organization or arrangements with the information referred to in section (15)(2) and section (16).

Action taken
upon receipt
of report

18. The MRCC shall take appropriate action as it deems appropriate in the particular situation such action shall be taken in consultation with the National Coordinator and other national or international authority as provided under this Act.

PART V

NATIONAL AND REGIONAL SYSTEM FOR PREPAREDNESS AND RESPONSE

National pre-
preparedness
and Response

19. (1) The Authority for the purposes of this Act shall be the Ministry or Department of the Government under the Ministry having the portfolio responsibility for Defence or corporate body set up under subsection (2), as the case may be.

(2) Subject to subsection (3), the Minister may by order published in the Gazette constitute an Authority which shall be a body corporate, with such name and for carrying out such of the powers and functions under this Act as may be specified in that order.

(3) The Minister, in the exercise of the powers under subsection (2), may constitute different Authorities as bodies corporate for carrying out different powers and different functions under the Act as may be specified in the order constituting such Authorities.

(4) An order made under subsection (2) or subsection (3) may provide for:-

- (a) any matter relating to the assets, capital funds, finance, administration and management of the Authority constituted by such order;
- (b) any matter necessary for better carrying out the function of the Authority.

(5) The Functions of the MRCC are to:-

- (i) implement policies and programs in pursuance of the National objectives on the Oil Pollution Preparedness and Response;
- (ii) co-ordinate the activities of other agencies concerned with oil pollution preparedness and response
 - (a) under this Act; or ;
 - (b) under any other law for the time being in force which is relatable to the object of this Act;
- (iii) commission research and sponsor studies on oil pollution preparedness and response;
- (iv) identify areas in which any activity shall not be carried out or shall be carried out subject to certain safeguards;
- (v) evolve procedures and safeguards for the prevention of accidents which may cause oil pollution and remedial measures for such accidents;
- (vi) collect and disseminate information in respect of matters relating to oil pollution preparedness and response;
- (vii) co-ordinate action required in a state of oil pollution emergency or any other situation, which may pose a serious threat to the environment with regards to oil pollution;

- (viii) prepare manuals, codes or guidelines relating to oil pollution preparedness and response and for the prevention, control and abatement of oil pollution and;
- (ix) carry out such other matters as the minister may assign for the purpose of securing the effective implementation of the provisions of this Act.

(6) The MRCC shall be responsible to the Minister for carrying out the functions under this Act and for the discharge of any other function that may be assigned to it by the Minister.

(7) The MRCC may establish as and when deemed necessary, such Technical or Advisory Committee or Committees as it thinks fit, to advise on matters pertaining to the scientific and technical aspects of oil pollution preparedness and response and its management.

(8) The MRCC shall not, in any matter relating to public health under the Public Health Act, exercise its functions under this Act, except in consultation with the Ministry responsible for health and in accordance with the advice of that Ministry of Health.

(9) Subject to subsection (8), the MRCC shall not, in any matter that is under the control or supervision of any Ministry, Government Department or Public Authority, act except with prior consultation with that Ministry, Department or body.

(10) Any matter that cannot be resolved by prior consultation under subsection (9) shall be referred to the President whose decision shall be final.

(11) The Authority shall be entitled to request foreign assistance through the mechanisms that are laid down by the Ministry of Foreign Affairs.

National contin-
gency plan

20. (1) The MRCC in accordance with Schedule 1 shall draft the national contingency plan for preparedness and response which includes the

organizational relationship of the various bodies involved, whether public or private, taking into account guidelines developed by the Organization.

(2) The national contingency plan shall be amended as and when it is necessary by the competent authority.

Regional Pre-
paredness

21. (1) Implementation of I.O.C. agreements shall be further to proper consultation with the oil and shipping industries, port authorities and other relevant entities of the Seychelles.

(2) The Minister may, with the Minister of Foreign Affairs, sign agreement with IOC member States in respect of oil pollution preparedness and response, to establish;

- (a) a minimum level of pre-positioned oil spill combating equipment, commensurate with the risk involved, and programs for its use;
- (b) a program of exercises for oil pollution response organizations and training of relevant personnel;
- (c) detailed plans and communication capabilities for responding to an oil pollution incident. Such capabilities should be continuously available; and
- (d) a mechanism or arrangement to co-ordinate the response to an oil pollution incident with, if appropriate, the capabilities to mobilize the necessary resources.

(3) The MRCC shall through the IOC or other local or regional organization established ensure that current information is provided to the Organization concerning :

- (a) the location, telecommunication data and, if applicable, areas of responsibility of authority and entities referred to in section 19;
- (b) information concerning pollution response equipment and expertise in disciplines related to oil pollution response and marine salvage which may be made to other States, upon request; and
- (c) its national contingency plan.

PART VI INTERNATIONAL CO-OPERATION

Identification of financial source

22. (1) The MRCC may, subject to its capabilities and the availability of relevant resources, provide advisory services, technical support and equipment for the purpose of responding to an oil pollution incident, when the severity of such incident so justifies, upon the request of any State affected.

(2) The MRCC or other authority under this Act may ask the Organization to assist in identifying sources of provisional financing of the cost s referred to in subsection (1).

Measures for the facilitation of responding states

23. In accordance with applicable international agreements, the MRCC or other Authority under this Act shall take necessary legal or administrative measures to facilitate:

to a situation

- (a) the arrival and utilization in and departure from Seychelles of ships, aircraft and other modes of transport engaged in responding to an oil pollution incident or transporting personnel, cargoes, materials and equipment required to deal with such an incident; and
- (b) the expeditious movement into, through, and out of Seychelles of personnel, cargoes, materials and equipment referred to in paragraph (a)

PART VII RESEARCH AND DEVELOPMENT

Research and
development
information
exchange

24. (1) The MRCC or other Authority under this Act shall agree to co-operate directly or, as appropriate, through the Organization or relevant regional organizations or arrangements in the promotion and exchange of results of research and development programmes relating to the enhancement of the state-of-the-art of oil pollution preparedness and response, including technologies and technique for surveillance, containment, recovery, dispersion, clean-up and otherwise minimizing or mitigating the effect of oil pollution, and for restoration.

(2) To this end the MRCC or other Authority undertakes to establish directly or, as appropriate, through the Organization or the IOC, the necessary links between Parties' research institutions.

Organization of
symposia

25. (1) The MRCC or other Authority under this Act shall agree with other Parties to the OPRC Convention to undertake to establish directly or, as appropriate, the holding on a regular basis of international symposia on relevant subjects including technological advances in oil pollution combating techniques and equipment.

(2) The MRCC or other authority under this Act shall agree to encourage, through the Organization or other competent international organizations, the development of standards for compatible oil pollution combating techniques and equipment.

PART VIII TECHNICAL CO-OPERATION

Request for
technical assistance

26. The MRCC undertakes directly or through the Organization and other international bodies, as appropriate, in respect of oil pollution preparedness and response, to request technical assistance from other parties in respect of the following:

- (a) to train personnel;

- (b) to ensure the availability of relevant technology, equipment and facilities.
- (c) to facilitate other measures and arrangements to prepare for and respond to oil pollution incidents; and
- (d) to initiate joint research and development programmes.

Providing technical assistance

27. The MRCC or other authority under this Act shall render technical assistance, as they are capable of doing so to other states that are requesting such assistance in respect of oil pollution preparedness and response.

PART IX BILATERAL AND MULTILATERAL CO-OPERATION IN OIL POLLUTION PREPAREDNESS AND RESPONSE

Bilateral and multilateral agreements

28. The MRCC or other authority under this Act shall endeavour to conclude bilateral or multilateral agreements for oil pollution preparedness and response with other states party to the OPRC convention.

Communication of the agreement

29. A copy of any such bilateral or multilateral agreements made under section (28), shall be communicated to the Organization, which should make them available on request to other parties.

PART X RELATION TO OTHER CONVENTIONS

Other Conventions

30. Nothing in this Act shall be interpreted as altering the rights or obligations of the Republic of Seychelles under any other Conventions that it is a party to, or other international agreement.

PART XI INSTITUTIONAL ARRANGEMENTS

Providing information

31. The MRCC or other authority under this Act shall designate the Organization, subject to the availability of adequate resources to sustain the activity, to perform the following functions and activities:

- (1) To receive, collate and disseminate on request the information provided by Parties and relevant information provided by other sources.

Training

32. Under section (31) the other function will be:

- (1) to promote training in the field of oil pollution preparedness and response
- (2) to promote the holding of international symposia.
- (3) to facilitate co-operation in research and development
- (4) to provide advice to States establishing national or regional response capabilities; and
- (5) to analyse the information provided by Parties and relevant information provided by other sources and provide advice or information to States

Request for financial

33. Under section 31 the other functions of the Organization shall be:

- (1) to facilitate the provision of technical assistance and advice, upon the request of States establishing national or regional response capabilities; and
- (2) to facilitate the provision of technical assistance and advice, upon the request of States faced with major oil pollution incidents.

PART XII **GENERAL**

Oil pollution preparedness and response Board

34. (1) There shall be an Oil Pollution Preparedness and Response Board consisting of such members as the Minister may, from time to time, in writing appoint.

(2) The Minister may, in writing designate any member to be chairman of the Board.

(3) A person appointed under subsection (1)-

(a) subject to subsection (4), holds office for-

(i) three years; or

(ii) such lesser period as may be specified by the Minister in the instrument of appointment; and

(b) is eligible for re-appointment.

(4) The Minister may-

- (a) at any time;
- (b) Without giving reason; and
- (c) With or without notice,

terminate the appointment of a person appointed under subsection (1).

Procedure of
Board

35. (1) The Board may make regulation with respect to the followings –

- (a) the manner in which the Oil Pollution Preparedness Board shall exercise or perform any of its functions under this Act;
 - (b) The manner in which the business and meetings of the Board shall be conducted;
 - (c) The payment of fees and allowances to, and the reimbursement of expenses of, members of the Board.
- (2) Subject to regulations made pursuant to subsection (1) (b), the Oil Pollution Preparedness and Response Board may determine its own procedures.
- (3) The Board shall make provision for the shipboard Oil Pollution Emergency Plan, and the reporting of an oil pollution incident in accordance with that of the Organization.

PART XIII **ENFORCEMENT**

Enforcement
notice

36. (1) Where the inspector is of the opinion that a ship or offshore unit is contravening, or is likely to contravene any provision of this Act, the Inspector may cause to be served on the ship or offshore unit an enforcement notice-

- (a) stating that the Inspector is of the said opinion;
- (b) specifying the matter constituting the contravention or the matters making it likely that the contravention will arise, as the case may be;
- (c) Specifying the measure that shall be taken to remedy the contravention or eliminate the likelihood of a contravention as the case may be and

(d) Specifying the period within which the measures shall be implemented.

(6) Any ship or offshore unit that fails to comply with an enforcement notice under subsection (1) is guilty of an offence.

Penalty

37. (1) An offence under the provisions of this Act shall be punishable with a fine of not less than SR 50,000 and not exceeding SR 500,000, or imprisonment of not less than 2 years and not exceeding 5 years, or both, as the case may be.

(2) Subject to any special provision of this Act, no conviction for an offence shall be made under this Act in proceedings instituted in Seychelles, unless those proceedings are commenced within two years after the commission of the offence.

(4) Where an offence is committed by-

(a) an agent, the person for whom the agent is acting;

(b) a body corporate, every person who, at the time of the commission of the offence, was concerned in the management of the body corporate or was purporting to act in a managerial capacity,

shall also commit the like offence, unless he proves that the offence was committed without his knowledge or consent and that he took all reasonable steps to prevent the commission of the offence.

(5) notwithstanding subsection (4), where an offence has been committed by a body corporate and it is proved that the offence has been committed with the consent whether express or implied, or the connivance of, or is attributable to any neglect on the part of the director, manager, secretary, or other officer of the body corporate, such director, manager, secretary or other officer shall commit the like offence.

PART XIV **JURISDICTION**

Jurisdiction in
case of
proceedings
under this Act

38. (1) Every offence under this Act shall be deemed to have been committed either in the place in which the same actually was committed or in any place, which the offender may be.

(2) Any proceedings for an offence under this Act may be instituted in the Supreme Court or, subject to the limitations set out in the Criminal Procedure Code, in a Magistrates' court and any other proceedings under this Act, unless

otherwise provided, shall be instituted in the Supreme Court.

Jurisdiction
over ships lying
off coast

39. (1) A court which has jurisdiction in any part of the coast of Seychelles have jurisdiction over any ship being on or lying or passing off that part and over all persons on board the ship, in the same manner as if the ship or persons were within the limits of the original jurisdiction of the court.

(2) The jurisdiction conferred by subsection (1) is in addition to and not in derogation of any jurisdiction or power of the court under any law.

Power to make
regulations

40. (1) The Minister may make regulations under this Act for all such matters as are to be prescribed under this Act and for any other matter that may be deemed necessary in pursuance of the object of this Act, for the proper activities which may be necessary in the event of an immediate response needed to deal with an oil spill.

(2) The Minister may make regulations prescribing

- (a) The commandeering of local fishing vessels for the purpose of aiding in the oil preparedness and response control;
- (b) The commandeering of additional human resources for the effective performance of this Act;
- (c) The manner of doing, and the fees payable in respect of, services required or permitted to be done under this Act;
- (d) Any allowance that will need to be paid to local fishermen volunteering to participate in any activity under this Act;
- (e) The means by which and the conditions subject to which, a ship or class of ships may be exempted from compliance with the Regulations or any provisions of the Regulations.

(3) Regulations made under this section may provide for offence and penalties not exceeding SR 50,000 by way of fine and 2 years by way of imprisonment in respect of those offences.