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**INTERNATIONAL MARITIME**  
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**LEGAL DRAFTING**

**A REGULATION TO INCORPORATE AND  
IMPLEMENT THE 1996 LONDON PROTOCOL TO  
THE CONVENTION ON THE PREVENTION OF  
MARINE POLLUTION BY DUMPING OF WASTES  
AND OTHER MATTER, 1972 INTO THE LAWS OF  
THE FEDERAL REPUBLIC OF NIGERIA**

**A Legislation Drafting Project submitted in partial  
fulfilment of the requirements for the award of the  
Degree of Master of Laws (LL.M.) in International  
Maritime Law at the IMO International Maritime  
Law Institute**

**Submitted By: NATHANIEL  
DAN AHMED (Nigeria)**

**Supervisor: Mr. Murat Sumer**

**Academic Year 2019-2020**

## **DEDICATION**

**This drafting is dedicated to my God  
Almighty.**

## **ACKNOWLEDGEMENT**

**I would like to express my immeasurable gratitude to God Almighty for making it possible for me to attend and complete this programme. A special appreciation to my entire family, friends and well-wishers. Thank you all.**

**A sincere gratitude to my humble and amiable drafting supervisor, Mr. Murat Sumer who took his time to review this drafting, made corrections and helpful recommendations towards making this work come through.**

**A special gesture to the entire management and staff of IMLI; especially Professor David J. Attard, Professor Norman Martinez, Ms. Elda Kazara-Belja, Ms. Ramat Jalloh, Professor Malgosia Fitzmaurice, Dr. Ángeles Jiménez García-Carriazo, Dr. Sanjeet Ruhel and other visiting lecturers.**

**Finally, let me acknowledge my colleagues at IMLI for the bond of love and friendship we shared, God bless love you all.**

## **PART I**

### **EXPLANATORY NOTE**

#### **1. A SYNOPSIS OF THE LONDON CONVENTION AND THE PROTOCOL**

##### **1.1 Environmental Concerns and International Legal Framework**

**Marine Pollution had become a serious global environmental problem in the mid-20th century, particularly due to accidental oil spillages and operational oil discharges into the sea.<sup>1</sup> Consequently, various multilateral conventions were specifically adopted to address this environmental threat.<sup>2</sup> It is, therefore, pertinent to consider the international legal framework developed to tackle the increasing number of marine pollution instances. Emphasis can be given to the Geneva Convention on High Seas, 1958, which called States to draw up regulations to prevent pollution not only by the discharge of oil into the sea by ships or pipelines but also resulting from the exploration and the exploitation of the seabed and its subsoil. Additionally, it obliged States to commit to preventing the dumping of radioactive wastes into the sea.<sup>3</sup>**

**In fact, the International Convention on the Safety of Life at Sea, 1974 (SOLAS 74) and the International Convention for the Prevention of Pollution from Ships, 1973 (MARPOL 73) signified protection of the marine environment and strengthened the requirements relating to the protection of the sea from accidental pollution.<sup>4</sup> A consistent effort to protect the marine**

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<sup>1</sup> IMO, 'London Dumping Convention: The First Decade and Beyond' [1990] <[http://www.imo.org/en/KnowledgeCentre/ReferencesAndArchives/IMO\\_Conferences\\_and\\_Meetings/London\\_Convention/Documents/IMO\\_LDC13INF9.pdf](http://www.imo.org/en/KnowledgeCentre/ReferencesAndArchives/IMO_Conferences_and_Meetings/London_Convention/Documents/IMO_LDC13INF9.pdf)> accessed 10 January 2020.

<sup>2</sup>These are the International Convention of the Prevention of Pollution of the Sea by Oil (London, 12 May 1954, entered into force 26 July 1958) 327 UNTS 3, International Convention relating to the Intervention on High Seas in Cases of Oil Pollution Casualties (Brussels, 29

November 1969, entered into force on 6 May 1975) 970 UNTS 211, Agreement for Cooperation in Dealing with Pollution of the North Sea by Oil (Bonn, , 6 June 1969, entered into force 8 September 1969) 704 UNTS 3, International Convention on the Civil Liability for Oil Pollution Damage (Brussels, 29 November 1969, entered into force 19 June 1975) 973 UNTS 3 and the International Convention on the Establishment of an International Fund for Oil Pollution Damage (Brussels, 18 December 1971, entered into force 16 August 1978) 11 ILM 284.

<sup>3</sup> Convention on the High Seas (Geneva, 29 April 1958, entered into force 30 September 1962) 450 UNTS 11, Art. 25.

<sup>4</sup> Marine Insight, 'Safety of Life at Sea (SOLAS) & Convention for Prevention of Marine Pollution (MARPOL): A General Overview', [2017] <<https://www.marineinsight.com/maritime-law/safety-of-life-at-sea-solas-convention-for-prevention-ofmarine-pollution-marpol-a-general-overview/>> accessed 10 January 2020.

environment can be found in a list of global conventions established since 1972.<sup>5</sup> Besides, 18 regional seas agreements have been adopted under the regional seas programme of the United Nations Environment Programme (UNEP) to protect the marine environment for the areas of the Gulf, Mediterranean Sea, West and Central Africa, East Africa, Red Sea and Gulf of Aden, South-East Pacific, Caribbean region and South Pacific.<sup>6</sup> Moreover, certain regional legal instruments have been operating independently of the UNEP's regional seas programme such as the Paris convention, Helsinki Convention and the Oslo Convention, which were combined to create the OSPAR Convention.<sup>7</sup>

## 1.2 The Inception of London Convention

A premier global instrument among these developments was the Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter, 1972, most commonly known as the London Convention.<sup>8</sup> On 30<sup>th</sup> August 1975, the London Convention entered into force.<sup>9</sup> As at the year 2019, the London Convention has 87 contracting States.<sup>10</sup>

It was the International Working Group on Marine Pollution (IGWMP)<sup>11</sup> that recommended the necessity of an international agreement regulating dumping at sea of wastes.<sup>12</sup> The result of the IGWMP meetings was crystallised into draft texts that were submitted for consideration at the Stockholm Conference on Human Environment held in 1972. This

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<sup>5</sup> These include the Convention on Long Range Transboundary Air Pollution (Geneva, 13 November 1979, entered into force 16 March 1983) 1302 UNTS 217, United Nations Convention on the Law of the Sea (Montego Bay, 10 December 1982, entered into force 16 November 1994) 1833 UNTS 3, Protocol of 1984 to amend the International Convention on Civil Liability for Oil Pollution Damage, 1969 (London, 25 May 1984) 23 ILM 195, and the Basel Convention on the control of the Transboundary Movements of Hazardous Wastes and their Disposal (Basel, 22 March 1989, entered into force on 5 May 1992) 1673 UNTS 57.

<sup>6</sup> United Nations Environment Programme, 'Regional Seas Programmes and other UNEP Activities Relevant to Marine Biodiversity in Areas Beyond National Jurisdiction' [2016] <[http://www.un.org/depts/los/biodiversity/prepcom\\_files/UNEP\\_and\\_BBNJ\\_PrepCom2.pdf](http://www.un.org/depts/los/biodiversity/prepcom_files/UNEP_and_BBNJ_PrepCom2.pdf)> accessed 11 January 2020.

<sup>7</sup> Myron H Nordquist, John Norton Moore and Said Mahmoudi, *the Stockholm Declaration and Law of the Marine Environment* (Kluwer Law International, 2003) 145.

<sup>8</sup> IMO, 'London Convention and Protocol' [2017] <<http://www.imo.org/en/OurWork/Environment/LCLP/Pages/default.aspx>> accessed 10 January 2020.

<sup>9</sup> Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter (London, 29 December 1972, entered into force on 30 August 1975), 1046 UNTS 120.

<sup>10</sup> IMO, 'Status of Treaties' [2017] <<http://www.imo.org/en/About/Conventions/StatusOfConventions/Documents/Status%20of%20Treaties.pdf>> accessed 4 May 2018.

<sup>11</sup> The IGWMP was established by the Preparatory Committee for the Stockholm Conference in 1971. See, 'Report of The First Session of The Intergovernmental Working Committee' (United Nations Conference on the Human Environment, 1971) [http://www.imo.org/en/KnowledgeCentre/ReferencesAndArchives/IMO\\_Conferences\\_and\\_Meetings/London\\_Convention/Related1972StockholmConferenceDocuments/Documents/A%20CONF%2048%20IWGMP%20I%205%20eng.pdf](http://www.imo.org/en/KnowledgeCentre/ReferencesAndArchives/IMO_Conferences_and_Meetings/London_Convention/Related1972StockholmConferenceDocuments/Documents/A%20CONF%2048%20IWGMP%20I%205%20eng.pdf) accessed 4 May 2018.

<sup>12</sup> Ibid.

conference produced the Stockholm Declaration which vested upon the States the duty to protect the oceanic environment by prevention of pollution.<sup>13</sup> Moreover, its Principle gave implied acceptance to the fact that marine environment can be adversely impacted if States exploit resources in a manner endangering others.<sup>14</sup> Therefore Stockholm Declaration entrusted States with the responsibility to avoid damage to the environment of other States in pursuance of exploiting resources.

The Conference recommended that the governments must bring into force as soon as possible an over-all instrument for the control of oceanic dumping.<sup>15</sup> Subsequently, these efforts were supplemented by United Kingdom's recommendation in consultation with the Secretary- General of the United Nations and the London Convention was adopted in November 1972.<sup>16</sup>

### 1.3 [An Overview of the London Convention](#)

The London Convention sets forth a preamble that focuses on the significance of the marine environment and the necessity to implement the best practicable measures to curb the problem of marine environmental pollution. Its objective is to promote the effective control of all sources of marine pollution and to take all practicable steps to prevent pollution of the sea caused by dumping of wastes and other matter.<sup>17</sup> It is pertinent to note that its provisions apply universally, thereby extending to the territorial sea and the high sea.<sup>18</sup> Nevertheless, it also states that its provisions shall not apply to vessels and aircraft that are entitled to sovereign immunity under international law.<sup>19</sup>

Further, to ensure the implementation of its purpose, the London Convention eliminated dumping of certain types of waste, gradually making this regime more restrictive by



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<sup>13</sup> Hans Corell, 'Keynote Address, Conference ON Stockholm Declaration and Law of The Marine Environment' (Stockholm, 2002) <[http://legal.un.org/ola/media/info\\_from\\_lc/LawSea\\_stockholm.pdf](http://legal.un.org/ola/media/info_from_lc/LawSea_stockholm.pdf)> accessed 14 January 2020.

<sup>14</sup> Ibid.

<sup>15</sup> 'Report of The United Nations Conference on The Human Environment' (United Nations, 1972) Recommendation 86 <<http://www.un-documents.net/aconf48-14r1.pdf>> accessed 15 January 2020.

<sup>16</sup> IMO (n 13).

<sup>17</sup> Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter (London, 29 December 1972, entered into force 30 August 1975), 1046 UNTS 120, Preamble para 1, 6 and 7 (London Convention).

<sup>18</sup> London Convention, Art. III.

<sup>19</sup> Ibid, Art. VII (4).

**promoting sound waste management and pollution prevention.<sup>20</sup> Moreover, it instils flexibility in the implementation of its provisions by encouraging and compelling Contracting Parties to individually and collectively exercise control on the pollution of the marine environment along with taking practicable steps to prevent marine pollution.<sup>21</sup> The measures to be taken individually have been spelt out to be within the scientific, technical and economic capabilities of each Contracting Party.<sup>22</sup>**

**Essentially, ‘Dumping’ was defined under the 1972 London Convention as:**

- (i) Any deliberate disposal at sea of wastes or other matter from vessels, aircrafts, platforms or other man-made structures at sea;
- (ii) Any deliberate disposal at sea of vessels, aircrafts, platforms or other man-made structure at sea.<sup>23</sup>

**However, this definition excludes the disposal of wastes caused by ‘normal’ operational discharges from vessels, aircrafts, platforms or other man-made structures at sea.<sup>24</sup> Furthermore, an exclusion has also been made for any matter placed for the purpose other than for mere disposal not contravening the aims of the Convention. Adding to this, the eighth consultative meeting clarified that no party to the Convention should undertake the disposal of wastes unless proven to be technically feasible and environmentally acceptable as well as in compliance the standards and mechanisms established by the consultative meeting for such disposal.<sup>25</sup>**

Further, Annex I of the London Convention defines “**Incineration at sea**” to mean:

**“the deliberate combustion of wastes or other matter on marine incineration facilities for the purpose of their thermal destruction.”<sup>26</sup>**

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<sup>20</sup> IMO, 'The London Convention and Protocol: Their Role and Contribution to Protection of The Marine Environment' <<http://www.imo.org/en/OurWork/Environment/LCLP/Documents/22780LDC%20Leaflet%20without%20,40%20Anniv%20logo2012Web1pdf>> accessed 14 January 2020.

<sup>21</sup> London Convention, Art. I.

<sup>22</sup> Ibid., Art. II.

<sup>23</sup> Ibid., Art. III.

<sup>24</sup> Ibid., Art. III (1) (b) (i).

<sup>25</sup> Greenpeace International, 'Briefing on Radioactive Waste Dumping at Sea' [1989]  
<<http://www.skeptictank.org/treasure/GP4/NUKP51.TXT>> accessed 14 January 2020.

<sup>26</sup> London Convention, Annex I (10) (d) (ii).

**This definition has also excluded activities incidental to the normal operation of vessels, platforms or other man-made structures from its scope. Incineration at sea of industrial waste, as defined in paragraph II below, and sewage sludge is prohibited. The incineration at sea of any other wastes or other matter requires the issuance of a special permit.**

**Additionally, the London Convention provides three lists of substances in its Annexes which are regulated by Article IV. The ‘black list’ which contains list of prohibited substances i.e. substances that are highly hazardous are provided in Annex I of the London Convention. Annex II includes the ‘grey list’ which contains materials and substances that require special care. Finally, the ‘white list’ can be found in Annex III which contains materials and substances requiring ‘prior general permit’ before being dumped into the sea.**

**Besides, exceptions have been drawn under Article V which highlights the circumstances wherein disposal of the prohibited substances can be permitted. Furthermore, in an emergency case of unacceptable risk to human life where no other option is feasible, a special emergency permit can be obtained for the dumping of materials or substances included in the blacklist.<sup>27</sup>**

**The other key features of the London Convention includes; the obligation of Contracting Parties to designate appropriate authorities for the purpose of issuance of permits,<sup>28</sup> encouragement to the Contracting Parties to not only enter into regional agreements and to seek cooperation with the parties to such regional agreements,<sup>29</sup> but also to support personnel training as well as the supply of the necessary equipment and facilities for research and monitoring.<sup>30</sup> Additionally, Article XII obliges the Contracting Parties to pledge towards the protection of the marine**

**environment from oil and other noxious substances, wastes from operating vessels, radioactive pollutants, chemical and biological warfare agents and seabed activity wastes.<sup>31</sup>**

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<sup>27</sup> Ibid., Art. V (2).

<sup>28</sup> Ibid., Art. VI.

<sup>29</sup> Ibid., Art. VIII.

<sup>30</sup> Ibid., Art. IX.

<sup>31</sup> Guidance on the national implementation of the 1996 protocol to the London convention 1972 (adopted in 2001) 1996 London convention page 2.

**It is also significant to observe that all the provisions of the 1972 London Convention were specified to have a non-prejudicial nature in their application through the development and codification of the Law of the Sea under the auspices of the United Nations Conference of the Law of the Sea.<sup>32</sup>**

#### **1.4 Development of the 1996 Protocol to the London Convention of 1972**

**Despite an existing international legal framework to protect the marine environment against pollution, dumping of wastes and other matters at sea, there was a persistent lack of cooperation between regional and global agreements. This lacuna was identified and it necessitated a need for an improved Convention. To strengthen the effectiveness of the London Convention, the Task Team 2000 Report was approved in the consultative meeting held in 1984 as a valuable guide to implement the long-term goals of the Convention.<sup>33</sup>**

**Besides, a further development to the London Convention in the form of the 1996 Protocol to the London Convention was impacted by the Rio Declaration. Rio Declaration was a significant addition to the Stockholm Declaration at the United Nations Conference on Environment and Development. It enunciated the precautionary approach in its Principle 15 by stating that:**

**‘In order to protect the environment, the precautionary approach shall be widely applied by States according to their capabilities. Where there are threats of serious or irreversible damage, lack of full scientific certainty shall not be used as a reason for postponing cost-effective measures to prevent environmental degradation.’<sup>34</sup>**

#### **1.5 Overview of the 1996 Protocol in Line with the London Convention**

**In a move to modernize and eventually improve the 1972 London Convention, the 1996 Protocol to the London Convention (London Protocol) was adopted in 1996.<sup>35</sup> It came into**

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<sup>32</sup> London convention, Article XIII.

<sup>33</sup>IMO, 'Report of The Eighth Consultative Meeting' [IMO, 1984] <[http://www.imo.org/en/KnowledgeCentre/ReferencesAndArchives/IMO\\_Conferences\\_and\\_Meetings/London\\_Convention/LCandLDCReports/Documents/Report%20of%20LDC%208%20February%201984.pdf](http://www.imo.org/en/KnowledgeCentre/ReferencesAndArchives/IMO_Conferences_and_Meetings/London_Convention/LCandLDCReports/Documents/Report%20of%20LDC%208%20February%201984.pdf)> accessed 14 January 2020.

<sup>34</sup> Rio Declaration on Environment and Development, (United Nations conference on Environment and Development, Rio De Janeiro, 3-14 June 1992) <<http://www.un.org/documents/ga/conf151/aconf15126-1annex1.htm>> accessed 16 January 2020.

<sup>35</sup> IMO (n 8).

force on 24 March 2006<sup>36</sup> and has since then been subjected to three amendments, wherein the first amendment occurred in 2006, the second in 2009, the third in 2013.<sup>37</sup>

The London Protocol outlines a comprehensive waste management regime greatly emphasizing on marine protection and it is characterized to be more restrictive than the London Convention.<sup>38</sup> Its features are as follows:

a. Objectives

The objectives of the London Protocol is to protect and preserve the marine environment from all sources of pollution and oblige the contracting parties to take effective measures to prevent, reduce and where practical eliminate marine pollution caused by dumping or incineration at sea.<sup>39</sup> However, it also places at the discretion of the Contracting Parties to either apply the provisions of the London Protocol or to adopt “other permitting and regulatory measures to control the deliberate disposal of wastes or other matter” where such disposal would amount to dumping or incineration at sea in accordance with the definition stipulated in this Protocol.<sup>40</sup>

For the purpose of meeting its objectives, the London Protocol specifically considers the United Nations Convention on the Law of the Sea, 1982, the Rio Declaration on Environment and Development and Agenda 21.<sup>41</sup>

b. Application

The application of the London Protocol to the vessels or aircraft has been divided into three groups under Article 10 (1) as follows:

- i. Vessels and aircraft registered in its territory or flying its flag.

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<sup>36</sup> IMO (n 21).

<sup>37</sup> These amendments are: Amendment to the London Protocol to regulate the placement of matter for ocean fertilization and other marine



geoengineering engineering activities; Amendment to Article 6 of the London Protocol and Amendment to include CO2 sequestration in sub-seabed geological formations in Annex 1 to the London Protocol. See, 'List of Amendments to the London Protocol' (IMO, 2016) <<http://www.imo.org/en/OurWork/Environment/LCLP/Documents/List%20of%20amendments%20to%20the%20London%20Protocol.pdf>> accessed 16 January 2020.

<sup>38</sup> D Attard and M Fitzmaurice, *The IMLI Manual on International Maritime Law (Vol III, Oxford University Press, 2016)* 82.

<sup>39</sup> 42 1996 Protocol to the Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter, 1972 (London 7 November 1996, entered into force on 24 March 2006) 36 ILM 1(London Protocol).

<sup>40</sup> *Ibid.*

<sup>41</sup> London Protocol, Preamble Para. 6.

- ii. Vessels and aircraft loading in its territory the wastes or other matter which are to be dumped or incinerated at sea; and
- iii. Vessels, aircraft and platforms or other man-made structures believed to be engaged in dumping or incineration at sea in areas within which it is entitled to exercise jurisdiction in accordance with international law.

**However much like the London Convention, the Protocol expresses non-application to the vessels and aircrafts entitled to sovereign immunity under international law.<sup>42</sup> Nevertheless, it not only obliges the Contracting Parties to ensure the adoption of appropriate measures for such vessels and aircraft to act in a manner consistent with its object and purpose but also to declare or express, at any time, consent to apply its provisions.<sup>43</sup>**

**Besides, despite specifying that nothing in the London Protocol shall relate to internal waters, the application of its provisions can extend to even internal waters at the discretion of the Contracting Parties.<sup>44</sup>**

c. Definitions

**The London Protocol elaborates on the definition of ‘Dumping’ enunciated in the London Convention. It not only includes ‘any storage of wastes or other matter in the seabed or subsoil’ but also ‘any abandonment or toppling at site of platforms or other man-made structures at sea for the sole purpose of deliberate disposal.’<sup>45</sup> It further enlists exclusions to this definition which, notably, are on the same lines as specified under the London Convention.<sup>46</sup> The London Protocol also borrows the definition of ‘incineration at sea’ from the London Convention.<sup>47</sup>**

d. General obligations

**The general obligations of the contracting parties are set out in Article 3 which introduces the ‘precautionary’ approach and the ‘polluter pays**

**principle'. It emphasises that the Contracting Parties shall undertake actions that are devoid of such nature that is likely to transform one**

<sup>42</sup> Ibid., Art. 10 (4).

<sup>43</sup> Ibid., Art. 10 (4) & 10 (5).

<sup>44</sup> Ibid., Art. 7.

<sup>45</sup> Ibid., Art. 4(1).

<sup>46</sup> Ibid., Art. 4 (2).

<sup>47</sup> Ibid., Art. 5.

**type of pollution into another or transfer the damage, directly or indirectly, from one environment to another.<sup>48</sup> Despite this provision, the London Protocol clarifies that for the purpose of meeting its objectives none of its provisions shall be interpreted to prevent the Contracting Parties from individually or jointly taking more stringent measures which are compliant with international law.<sup>49</sup>**

**e. Prohibitions**

**The London Protocol prohibits the dumping of wastes or other matter except for those specified under Annex I.<sup>50</sup> Which clarifies this provision by further asserting the requirement for a permit in order to dump the wastes or other matter specified under Annex I along with stating that nothing in the Protocol shall be interpreted as preventing any Contracting Party from prohibiting the dumping of wastes or other matter specified in Annex I.<sup>51</sup>**

**Additionally, the London Protocol also lays down a prohibition over incineration at sea of wastes or other matter, which was permitted in certain circumstances in the London Convention.<sup>52</sup> The prohibition has also been cast over export of wastes or other matter to other countries for the purposes of dumping or incineration at sea.<sup>53</sup>**

**f. Exceptions**

**Article 8 of the London Protocol draws exceptions to the application of the London Convention in circumstances rendering it necessary to secure the safety of human life or vessels, aircraft, platforms or other man-made structures at sea in cases of force majeure caused by stress of weather or in any case which constitutes a danger to human life or a real threat to vessels, aircraft, platforms or other man-made structures at sea.<sup>54</sup> The Protocol further states that for the purposes of dumping or incineration at sea in**

**these exceptional circumstances, a permit may be issued by the Contracting Party.<sup>55</sup>**

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<sup>48</sup> Ibid., Art. 3 (3).

<sup>49</sup> Ibid., Art. 3 (4).

<sup>50</sup> Ibid., Art. 4 (1).

<sup>51</sup> Ibid., Art. 4 (2).

<sup>52</sup> Ibid., Art. 5.

<sup>53</sup> Ibid., Art. 6.

<sup>54</sup> Ibid., Art. 8 (1).

<sup>55</sup> Ibid., Art. 8 (2).

g. Issuance of permits and reporting

**The London Protocol directs each Contracting Party to designate appropriate authority or authorities for the purpose of issuance of permits in accordance with its provisions, keep records of the nature and quantities of all wastes or matter for which dumping permits have been issued and monitor, individually or in collaboration with other Contracting Parties and competent international organizations, the condition of the sea, for the purposes of this Protocol.<sup>56</sup>**

**Moreover, for the purpose of issuance of permits, the appropriate authority or authorities have been directed to comply with the requirements of Article 4 along with relevant additional criteria, measures or requirements.<sup>57</sup> Additionally, each Contracting Party has been vested with the obligation to report the information specified under Article 9 paragraph 4 to the International Maritime Organisation (IMO).**

h. Enforcement and compliance

**The London Protocol directs each Contracting Party to not only take appropriate punitive and preventive measures for acts contrary to its provisions but also to agree to cooperate in the procedural development for the effective implementation of the Protocol in areas beyond the jurisdiction of the State.<sup>58</sup> Furthermore, it asserts the establishment of necessary procedures and mechanisms for the assessment and promotion of compliance with this Protocol not later than two years after the entry into force of this Protocol.<sup>59</sup> It states that the same shall be developed through the meeting of the Contracting Parties that allows full and open exchange of information as well as advice, assistance or cooperation to Contracting Parties and non-Contracting Parties.<sup>60</sup>**

i. Cooperation and research

**The London Protocol emphasises on cooperation on regional, technical and international level. Such cooperation is with a view to eliminate pollution caused by dumping or incineration at sea of wastes or other matter and to develop harmonised procedures to be**

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<sup>56</sup> Ibid., Art. 9 (1).

<sup>57</sup> Ibid., Art. 9 (3).

<sup>58</sup> Ibid., Art. 10 (2) and 10 (3).

<sup>59</sup> Ibid., Art. 11 (1).

<sup>60</sup> Ibid., Art. 11 (2).

followed by the Contracting Parties.<sup>61</sup> This is also with the objective of waste minimisation and clean production processes along with access to and transfer of environmentally sound technologies as well as corresponding know-how.<sup>62</sup> In addition to these provisions, the London Protocol directs the Contracting Parties to take appropriate measures for the promotion and facilitation of scientific and technical research for serving its objects.<sup>63</sup>

j. Annexes

The London Protocol consists of three annexes which forms an integral part of it.<sup>64</sup> While Annex 1 focuses on wastes or other matter that may be considered for dumping, Annex 2 elaborates on the assessment of wastes or other matter that may be considered for dumping. Lastly, in application of Article 16 of the 1996 London Protocol Annex 3 provides for the arbitral procedure.<sup>65</sup>

k. Procedural Provisions

The London Protocol includes provisions for development of procedures regarding liability arising from dumping or incineration at sea of wastes or other matter,<sup>66</sup> settlement of disputes regarding the interpretation or application of the Protocol,<sup>67</sup> meetings of Contracting Parties,<sup>68</sup> duties of the IMO,<sup>69</sup> amendment of the protocol<sup>70</sup> and the annexes<sup>71</sup> as well as the signature, ratification, acceptance, approval and accession of the Protocol.<sup>72</sup> Also, it includes provisions relating to the entry into force of the Protocol,<sup>73</sup> the transitional period,<sup>74</sup> withdrawal<sup>75</sup> and depositary.<sup>76</sup>

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<sup>61</sup> Ibid., Article 12.

<sup>62</sup> Ibid., Article 13.

<sup>63</sup> Ibid., Article 14(1).

<sup>64</sup> Ibid., Article 20.

<sup>65</sup> Ibid, Annex 3.

<sup>66</sup> Ibid., Article 15.



<sup>67</sup> Ibid., Article 16.

<sup>68</sup> Ibid., Article 18.

<sup>69</sup> Ibid., Article 19.

<sup>70</sup> Ibid., Article 21.

<sup>71</sup> Ibid., Article 22.

<sup>72</sup> Ibid., Article 24.

<sup>73</sup> Ibid., Article 25.

<sup>74</sup> Ibid., Article 26.

<sup>75</sup> Ibid., Article 27.

<sup>76</sup> Ibid., Article 28.

**It is pertinent to take note that the London Protocol explicitly emphasises that it will supersede the London Convention as between Contracting Parties to this Protocol which are also parties to the London Convention.<sup>77</sup>**

**Therefore, it can be observed that the London Protocol is more elaborate and effective for implementation than the London Convention. This clarifies that it was designed to replace the London Convention.<sup>78</sup>**

## **2. SIGNIFICANT FEATURES AND ADVANTAGES OF THE 1996 LONDON PROTOCOL WHEN COMPARED WITH THE 1972 LONDON CONVENTION**

**The 1996 London Protocol reflects a more modern and comprehensive agreement on protecting the marine environment from dumping activities when compared with the 1972 London Convention and the Protocol also reflects the broader aims to protect the environment in general. Some of the key distinctive features which makes the 1996 London Protocol more advantageous are discussed below.**

### **2.1 Precautionary approach**

**The 1996 Protocol introduces<sup>79</sup> what is known as the "precautionary approach" as a general obligation. This requires that "appropriate preventative measures are taken when there is reason to believe that wastes or other matter introduced into the marine environment are likely to cause harm even when there is no conclusive evidence to prove a causal relation between inputs and their effects." The article also states that "the polluter should, in principle, bear the cost of pollution" and it emphasizes that Contracting Parties should ensure that the Protocol should not simply result in pollution being transferred from one part of the environment to another.**

**The 1972 Convention permits dumping to be carried out provided certain**

**conditions are met, according to the hazards to the marine environment presented by the materials themselves. The 1972 Convention includes a "black list" of materials which may not be dumped at all.**

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<sup>77</sup> Ibid., Article 23.

<sup>78</sup> P Sands and J Peel, *Principles of International Environmental Law* (3rd edn, Cambridge University Press, 2012) 366.

<sup>79</sup> London Protocol Art. 3.

**The 1996 Protocol is more restrictive. It states<sup>80</sup> that Contracting Parties "shall prohibit the dumping of any wastes or other matter with the exception of those listed".<sup>81</sup> These materials include:**

- a. Dredged material.
- b. Sewage sludge.
- c. Fish waste, or material resulting from industrial fish processing operations.
- d. Vessels and platforms or other man-made structures at sea.
- e. Inert, inorganic geological material.
- f. Organic material of natural origin.

**Bulky items primarily comprising iron, steel, concrete and similar harmless materials, for which the concern is physical impact, and limited to those circumstances where such wastes are generated at locations, such as small islands with isolated communities, having no practicable access to disposal options other than dumping.**

## **2.2 Geographical coverage**

**The 1996 Protocol's geographical coverage is wider, as it also governs storage of wastes in the seabed, as well as the abandonment or topping of offshore installations.<sup>82</sup> Although the internal waters of a State are excluded from the dumping provisions under both the Convention and Protocol, Parties to the Protocol have the option to apply its rules to their internal waters if they wish.<sup>83</sup>**

## **2.3 Linkages with other international agreements**

**The Protocol contains better linkages with other international environmental agreements which have been developed since 1972, for instance, through its ban on export of wastes for dumping purposes<sup>84</sup> in relation to the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal.**

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<sup>80</sup> Ibid., Art. 4.

<sup>81</sup> Ibid., Annex I.

<sup>82</sup> Ibid., Art. 1.

<sup>83</sup> Ibid., Art. 7.

<sup>84</sup> Ibid., Art. 6.

## 2.4 Assessment of wastes

**The 1996 Protocol is more pragmatic in its orientation towards commonly generated wastes rather than contaminants. It is, therefore, clearer in what is and what is not permitted for dumping at sea, making it easier for Administrations to apply. Key provisions of the step- wise assessment procedure is included in to the Protocol.<sup>85</sup> All permits and permit conditions have to comply with these provisions. The Convention only referred to consideration of comparable factors listed in its Annex III, without showing how these fit together.**

## 2.5 Compliance promotion

**The Protocol places more emphasis on compliance than the Convention. The Protocol requires the Meeting of Contracting Parties,<sup>86</sup> no less than two years after the Protocol's entry into force, to establish those procedures and mechanisms necessary to assess and promote compliance with the Protocol. The meeting may then offer advice, assistance or co-operation to Contracting Parties and non-Contracting Parties. The 1996 Protocol includes a transitional period provision<sup>87</sup> assisting new Parties towards gradually achieving full compliance over a maximum period of five years, subject to certain conditions.**

## 2.6 Technical co-operation and assistance

**The technical co-operation and assistance requires Contracting Parties, through collaboration with the IMO and in co-ordination with other relevant international organizations, to promote bilateral and multilateral support for the prevention, reduction and, where practicable, elimination of pollution caused by dumping as provided for in the Protocol, to those Contracting Parties that request it.<sup>88</sup>**

## 2.7 Administrative arrangements

**The tasks of the Meeting of Contracting Parties and duties of IMO are better described in the Protocol than in the Convention. Unlike the original treaty, the Protocol clearly establishes**

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<sup>85</sup> Ibid., Annex 2.

<sup>86</sup> Ibid., Art. 11.

<sup>87</sup> Ibid., Art. 26.

<sup>88</sup> Ibid., Art. 13.

the depositary duties of the IMO Secretary-General and spells out the Secretariat duties necessary for the administration of the Protocol.<sup>89</sup>

The Protocol includes arrangements for the settlement of disputes between Parties in its,<sup>90</sup> whereas the 1978 amendments to the Convention on the same issue never entered into force. Amendments to the Articles to the Protocol shall enter into force "on the 60th day after two-thirds of Contracting Parties shall have deposited an instrument of acceptance of the amendment with the Organization" (IMO). Amendments to the annexes are adopted through a tacit acceptance procedure under which they will enter into force not later than 100 days after being adopted. The amendments will bind all Contracting Parties except those which have explicitly expressed their non-acceptance.

## 2.8 Incineration of wastes at sea

Incineration of wastes at sea was initially permitted under the 1972 Convention, but this practice was ended in 1991 and is specifically prohibited by the 1996 Protocol.<sup>91</sup> Incineration at sea of industrial waste and sewage sludge had already been prohibited under the 1993 amendments to the 1972 Convention.

## 3. NECESSITY FOR THE IMPLEMENTATION OF THE 1996 LONDON PROTOCOL IN NIGERIA

The Nigerian maritime sector covers a coastline of about 870 kilometre stretching from Benin Republic to Cameroon and an Exclusive Economic Zone of about 315,950 square kilometres. Its inland waterways measure 3,000 kilometres. The Nigerian maritime sector is richly endowed with vast natural resources such as extensive coastline, aquatic animals including fish, oil and gas deposits, bitumen etc which is very critical to the economic



**development and growth of Nigeria and it is second only to the oil and gas sector in terms of foreign exchange earnings.**

**Like all coastal and port countries in the world, Nigeria experiences the problem of marine pollution, illegal dumping of wastes and other matters at sea. Like some other petroleum**

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<sup>89</sup> Ibid., Art. 18.

<sup>90</sup> Ibid., Annex 3.

<sup>91</sup> Ibid., Art. 5.

**producing nations, Nigeria's marine pollution challenge is exacerbated by oil and gas exploration and production.**

**However, it is worthwhile to acknowledge that there is need for Nigeria to update its current regulatory framework and laws on marine pollution, illegal dumping of wastes and other matters at sea by implementation and full enforcement of the 1996 London Protocol, which is from its content an improved and a more comprehensive version, when compared with the 1972 London Convention. The implementation of the London Protocol in Nigeria will help to deal with the increasing degradation of our marine environment, especially when caused by pollution, dumping of waste and other matters.**

### **3.1 Benefits Nigeria will Derive from the ratification and Implementation of the London Protocol**

**Some of the major benefits Nigerian will derive from the ratification and implementation of the London Protocol are provided below:-**

- a. The London Protocol has greater protection of the marine environment, in part due to the introduction of the “precautionary approach to environmental protection”.
- b. The London Protocol is clearer than the Convention about what is and what is not permitted for dumping.
- c. The London Protocol brings more pragmatic orientation towards commonly generated wastes, rather than contaminants.
- d. It brings continuity through application of the same technical waste assessment standards and procedures as are used by the Convention.
- e. The implementation of provisions of the London Protocol being less burdensome and cost-intensive for national competent Authorities because most dumping activities are prohibited.
- f. Environmental protection in Nigeria’s internal waters and a level playing field with other Protocol Parties who are also obliged to take similar measures.
- g. It brings the opportunity to benefit from and shape amendments to address emerging

marine pollution issues under the London Protocol because the Convention is no longer being amended. GESAMP stands for the Joint Group of Experts on the Scientific Aspects of Marine Environmental Protection.

### 3.2 Existing Laws on Sea Pollution, Dumping of Waste and Other Matters in Nigeria

**The government of Nigeria has over the years been providing the legal framework (principal and subsidiary legislations) for the control and mitigation of oil pollution and dumping of waste within Nigerian territorial sea. Some of which include:**

- The Constitution of the Federal Republic of Nigeria (1999)
- Nigerian Maritime Administration and Safety Agency Act, 2007
- Merchant Shipping Act 2007
- Federal Environmental Protection Agency Act
- Federal Environmental protection Agency Act Cap 131 LFN 1990.
- Harmful Waste Cap 165 LFN 1990.
- Oil Pollution Act (OPC) 1990.
- National Environmental Protection Management of Solid and Hazardous Waste Regulation 1991 (FEPA)
- National Environmental Standards and Regulations Enforcement Agency Act
- Environmental Impact Assessment Act
- Territorial Waters Act
- The Endangered Species Act
- Harmful Waste Act.

#### 3.2.1 The Constitution of the Federal Republic of Nigeria, 1999 CAP C20 LFN, 2004

**Section 20 of the 1999 Constitution<sup>92</sup> provides that:**

**“The State shall protect and improve the environment and safeguard the water, air, land, forest and wildlife of Nigeria”.**

**Section 17(2) (d)<sup>93</sup> of the Constitution complements the above provision by stating that:**

**“Exploitation of human or natural resources in any form whatsoever for reasons other than the good of the community shall be prevented”.**

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<sup>92</sup> Constitution of the Federal Republic of Nigeria 1999, Cap C 20 LFN 2004.

<sup>93</sup> Ibid.

### 3.2.2 The Merchant Shipping Act, 2007

**The Nigeria Merchant Shipping Act regulates liability for oil pollution damage in S. 336 and 337<sup>94</sup> and further provides for prevention and containment of the pollution of the sea by oil. It also exercises control of pollution from ships and offshore platforms. It is pertinent to note that the Nigeria Maritime Administration and Safety Agency is the Agency empowered to regulate pollution and waste dumping in the Maritime Zones of Nigeria.**

### 3.2.3 The Nigerian Maritime Administration and Safety Agency Act 2007

S.3 NIMASA Act 2007 provides for the establishment of the Agency with main objective of among others regulate and promote maritime safety, security and marine pollution. S.44 empowers the Agency to:

- (1) The Agency may make such regulations with the approval off the Minister and not inconsistent with this Act for such provisions as it considered appropriate in relation to:
  - (a) the dumping of ship and shore generated waste in Nigerian waters.
  - (b) removal of wrecks which constitute navigation risks, and which is a threat to the marine environment.
- (2) In making such regulations, the Agency shall consider the need to give effect to provisions which are contained in any international convention agreement which Nigeria is a party.

### 3.2.4 Oil in Navigable Water Act (1968)<sup>95</sup>

**The Act is in fact the first law that deals specifically and solely with the industrial waste generated by oil production. It is concerned with the discharge of oil from ships. But it has been argued that the enforcement of this legislation has been watered down by several loopholes in its provisions through which offenders may wriggle through.**

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<sup>94</sup> Part XXIII Merchant Shipping Act, 2007 LFN 2004.

<sup>95</sup> Cap 06, Laws of the Federation of Nigeria, 2004.

### 3.2.5 National Oil Spill Detection and Response Agency Act<sup>96</sup>

**The agency at the forefront of response to oil spill incidents is the National Oil Spill Detection and Response Agency (NOSDRA). Section 1 (1) states that NOSDRA is the federal agency with the statutory responsibility for preparedness, detection and response to all oil spillages in Nigeria. However, in many cases, it is observed that oil spill investigations are usually led by oil companies' personnel and NOSDRA does not initiate oil spill investigations. The agency is thus seen to be dependent on the company involved in an oil spill incident, whether it involves conveying NOSDRA staff to oil spill sites or supplying technical data about spills.**

#### 4. INCORPORATION OF THE 1996 LONDON PROTOCOL TO THE CONVENTION ON THE PREVENTION OF MARINE POLLUTION BY DUMPING OF WASTES AND OTHER MATTER, 1972 INTO THE LAWS OF THE FEDERAL REPUBLIC OF NIGERIA

**Since Nigeria has already ratified 1996 London Protocol to the Convention on the Prevention of Marine Convention by Dumping of Wastes and Other Matters, 1972, there is need to incorporate the provisions of Protocol into the existing laws of the Federal Republic of Nigeria.**

**Generally, the Constitution of the Federal Republic of Nigeria empowers the executive arm of Government (President and Ministers) to make Regulations on matters if it will not be inconsistent with the provisions of the Constitution or an Act of the National Assembly. Accordingly, S. 335 (1) & (3) and S.434 of the Nigerian Merchant Shipping Act, 2007 specifically empowers the Minister of Transportation in Nigeria to make Regulations on matters affecting marine pollution, dumping of waste within Nigerian territorial sea. Accordingly, for this draft Regulation which incorporates the 1996 London Protocol to become effective in Nigeria, the**



**Minister of Transportation needs to first sign the Regulations and officially gazetted same into the laws of the Federal Republic of Nigeria.**

**Also, S.44 of the NIMASA Act 2007 empowers the Nigerian Maritime Administration and Safety Agency to regulate and promote maritime safety, security, pollution, wreck removal and dumping of waste within Nigerian territorial sea. The Marine Environment (Sea**

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<sup>96</sup> National Oil Spill Detection and Response Agency (Establishment) Act, No. 15, 2006.

**Dumping) Regulation (the 1972 London Convention), empowers the Nigerian Maritime Administration and Safety Agency to execute the provisions of the Regulation on waste dumping within Nigeria territorial sea. The Agency is empowered to receive application and issue licence for dumping, ensures compliance with the permit issued, collect fees for permit issued, issues penalty for defaulters, settlement of dispute relating to dumping, carry out regular inspection to avoid illegal dumping. The Agency reports to the Minister of Transportation issues related to dumping of waste.**

#### **4.1 An Overview of the Proposed Marine Pollution by Dumping of Wastes and Other Matter Regulations 2020**

**In the light of the observations made above, the Regulations, drafted thereafter will be titled the ‘Marine Pollution by Dumping of Wastes and Other Matter, Regulations 2020’. The Regulations is divided into seven parts with two Annexes and four forms appended to them to serve the objects as enunciated therein.**

**Part I deals with the general provisions of short title, objectives, commencement, application and the requisite definitions under the Regulations. Part II makes provisions on prohibitions, incineration at sea of waste or other matters. Part III codifies the procedure of application and issuance of permits, refusal to grant permit, renewal of permit, suspension of permit and compliance with terms and conditions of grant to permit. Part IV enumerates the issues of fees and charges on dumping of waste at sea. Part V deals with false statement given by applicants, penalties for issuance of false statement and court jurisdiction on settlement of disputes. Part VI codifies subjects on reports to the Minister, Powers to carryout Inspection, appointment of an Inspection Officer, Responsibilities of the**

**Nigerian Maritime Administration and Safety Agency (the Agency) and responsibilities of the Federal Government of Nigeria. Part VII deals with issues on offences and liabilities, appeals and citation. Finally, the Annexes and Forms appended to the Regulations supplement the application of the chapters and the provisions made therein.**

## **PART II**

### **DRAFT MARINE POLLUTION BY DUMPING OF WASTES AND OTHER MATTER REGULATIONS 2020**



#### **ARRANGEMENT OF REGULATIONS**

***Regulation:***

**PART I: PRELIMINARY**

1. Short title.
2. Objectives.
3. Application.
4. Definition.

**PART II: PROHIBITION AND PROCEDURE FOR DUMPING OR  
INCINERATION ATSEA**

5. Prohibitions.
6. Incineration.
7. Export of waste.
8. Exceptions.

**PART III: ISSUANCE OF PERMITS**

9. Application and issuance of permits.
10. Refusal to grant permit.
11. Renewal of permit.
12. suspension of permit.

13. Compliance with conditions of permit.

#### **PART IV: FEES**

14. Fees.

#### **PART V: PENALTIES AND SETTLEMENT OF DISPUTES**

15. False statements.

16. Penalties

17. Jurisdiction and settlement of disputes

#### **PART VI: ENFORCEMENT MEASURES**

18. Report to the Minister.

19. Powers of inspection.

20. Appointment of Inspection Officers.

21. Powers of the Inspection Officer.

22. Responsibilities of the Agency.

23. Responsibilities of the Federal Government.

#### **PART VII: MISCELLANEOUS**

24. Offences and liabilities.

25. Appeal.

26. Citation.

#### **ANNEXES AND FORMS**

**MARINE POLLUTION BY DUMPING OF WASTES AND OTHER  
MATTER**

**REGULATIONS 2020**

	[..... day of .....2020]	Commencement
	<p><b>Whereas considering relevant international agreements and Nigeria having ratified the 1996 London Protocol to the Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter, 1972:</b></p> <p><b>In exercise of the powers conferred on me by Sections 335 (1) &amp; (3) and Section 434 of the Merchant Shipping Act, 2007 and all other powers enabling me in that behalf, I, ....., Honourable Minister of Transport, hereby make the following Regulations.</b></p>	
	<p>PART I</p> <p>PRELIMINARY</p>	
	<p>Short title and commencement:</p> <p>1) These Regulation shall be called the Marine Pollution by Dumping of Wastes and Other Matter Regulations, 2020.</p> <p>2) They shall come into force on the date of their publication in the Official Gazette.</p>	Short Title and Commencement
1.	<p>The objectives of these Regulations are to:</p> <p>a) give effect in Nigeria to the 1996 London Protocol on the Convention on Prevention of Marine Pollution by Dumping of Wastes and other matters,</p> <p>b) take effective measures to prevent, reduce and where practicable eliminate pollution caused by dumping or incineration at sea of wastes or other matter; and</p> <p>c) set out detailed Regulation and operational guidelines for issuance of dumping permits and hierarchy of waste management options, with inspection regime and penalties clearly defined.</p>	Objectives
2.	<p>Application:</p> <p>1) These Regulation shall apply to the dumping of wastes and other matter as</p>	Application

	<p>specified in the Annexes to these Regulation to:-</p> <ul style="list-style-type: none"> <li>(i) all ships and aircraft registered in the territory of Nigeria or flying the Nigeria flag,</li> <li>(ii) all ships and aircraft loading in the territory of Nigeria the wastes or other matter which are to be dumped or incinerated at sea; and</li> <li>(iii) all ships, aircraft and platforms or other man-made structures believed to be engaged in dumping or incineration at sea in areas within which Nigeria is entitled to exercise jurisdiction in accordance with international law.</li> </ul> <p>2) Subject to such appropriate measures adopted in a manner consistent with these Regulation, these Regulation shall not apply to vessels and aircraft entitled to sovereign immunity under international law.</p>	
3.	<p>In these Regulations, unless the context otherwise indicates-</p> <p>"Agency" means the Nigerian Maritime Administration and Safety Agency (NIMASA) established pursuant to NIMASA Act 2007 LFN 2004.</p> <p>“Commander” in relation to an aircraft, means the member of the flight crew designated as commander of that aircraft by the operator of it or, failing such a person, the person who is for the time being the pilot in command of the aircraft.</p> <p>“Contracting State” means a State who has signed, ratified or acceded to the 1996 Protocol (as amended) to the Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter, 1972.</p> <p>“London Convention” means the Convention on the Prevention of Marine Pollution by Dumping of Wastes and other Matter, 1972; and includes any subsequent amendment or protocol to, or revision of, that convention accepted or ratified by Nigeria.</p> <p>"Dumping" means:-</p> <ul style="list-style-type: none"> <li>a) any deliberate disposal into the sea of wastes or other matter from vessels, aircraft, platforms or other man-made structures at sea;</li> </ul>	Definition

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

"Dumping" does not include-

- a) the disposal into the sea of wastes or other matter incidental to, or derived from the normal operations of vessels, aircraft, platforms or other man-made structures at sea and their equipment, other than wastes or other matter transported by or to vessels, aircraft, platforms or other man-made structures at sea, operating for the purpose of disposal of such matter or derived from the treatment of such wastes or other matter on such vessels, aircraft, platforms or other man-made structures;
- b) placement of matter for a purpose other than the mere disposal thereof, provided that such placement is not contrary to the aims of the Protocol referred to in the Annexes to these Regulations; and
- c) abandonment in the sea of matter (e.g. cables, pipelines and marine research devices) placed for a purpose other than the mere disposal thereof.

The disposal or storage of wastes or other matter directly arising from, or related to the exploration, exploitation and associated offshore processing of seabed mineral resources is not covered by the provisions of this Protocol.

“Export”, with its grammatical variations and cognate expressions, means taking out of Nigeria to a place outside Nigeria.

“Form” means a form appended to these Regulation.

"Incineration at sea" means the combustion on board a vessel, platform or other man-made structure at sea of wastes or other matter for the purpose of their deliberate disposal by thermal destruction.



"Incineration at sea" does not include the incineration of wastes or other matter on board a vessel, platform, or other man-made structure at sea if such wastes or other matter were generated during the normal operation of that vessel, platform or other man-made structure at sea.

"Minister" means the Federal Minister for the time being charge with responsibility for matters relating to maritime transport.

"Organization" means the International Maritime Organization.

"Permit" means permission granted in advance and in accordance with relevant measures adopted pursuant to these regulations.

"Pollution" means the introduction, directly or indirectly, by human activity, of wastes or other matter into the sea which results or is likely to result in such deleterious effects as harm to living resources and marine ecosystems, 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.

"Protocol" means the 1996 London Protocol to the Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter, 1972.

"Regulation" means the Marine Pollution by Dumping of Wastes and Other Matter Regulations, 2020.

"Annex" means an Annex appended to these Regulation.

"Sea" means all marine waters other than the internal waters of States, as well as the seabed and the subsoil thereof; it does not include sub-seabed repositories accessed only from land.

"Vessels and aircraft" mean waterborne or airborne craft of any type whatsoever and this expression includes air-cushioned craft and floating craft, whether self-propelled or not.

"Wastes or other matter" means material and substance of any kind, form or description that has been used and is no longer required or wanted.

PART II PROHIBITION AND PROCEDURE FOR DUMPING OR INCINERATION AT SEA OF WASTES OR OTHER MATTER		
4.	<p>Save as is otherwise mentioned in these Regulations, the following are prohibited-</p> <ul style="list-style-type: none"> <li>a) the dumping of wastes or other matters with the exception of those listed in the Annex to these Regulations;</li> <li>b) the dumping of wastes or other matters listed in the Annex to these Regulations without a permit issued under these Regulations;</li> <li>c) the incineration at sea of wastes or other matters; and</li> <li>d) the export of wastes or other matters to other countries for dumping or incineration at sea.</li> </ul>	Prohibitions
5.	<p>Incineration at Sea:-</p> <p>Incineration at sea of wastes or other matter shall be prohibited</p>	Incineration
6.	<p>Export of Wastes or Other Matter:-</p> <p>No person shall export wastes or other matter to other countries for dumping or incineration at sea.</p>	Export of Waste
7 (1)	<p>Notwithstanding the provisions of regulation 4 of these Regulations, the dumping or incineration of wastes or other matters shall be permitted-</p> <ul style="list-style-type: none"> <li>a) where it is necessary or expedient to secure the safety of human life or. vessels, aircraft, platforms or other man-made structures at sea in cases of force majeure caused by stress of weather;</li> <li>b) in any case which constitutes danger to human life or a real threat to vessels, aircraft, platforms or other man-made structures at sea;</li> <li>c) dumping or incineration appears to be the only way of averting threat of danger to human life, vessels, aircraft, platform or other man-made structures; or</li> <li>d) there is every probability that the damage consequent upon such dumping will be less than would otherwise have occurred.</li> </ul>	Exemptions

7 (2)	The onus of proving the exception contemplated in sub-regulation (1) of this regulation shall be upon the master or owner of the ship.	
7 (3)	The Agency may issue a permit as an exception to regulation 3 of these Regulations in emergencies as contemplated under sub-regulation 1 of this regulation, and regulation 5 (1), provided it has, before doing so, consulted with the International Maritime Organization and any other country or countries that are likely to be affected, and in doing so, may follow any recommendations as may be made by the Organisation as far as is practicable.	
	<p>PART III</p> <p>ISSUANCE OF PERMITS</p>	
8 (1)	<p>The Agency may on application and payment of prescribed fee and after taking into account those factors that the Agency consider as being applicable in consideration of granting a permit to dump wastes, grant:—</p> <ul style="list-style-type: none"> <li>a) a special permit authorizing the- <ul style="list-style-type: none"> <li>i. dumping of waste; and</li> <li>ii. disposal at sea; on such conditions as the Agency may deem appropriate</li> </ul> </li> <li>b) a general permit authorizing the dumping, on such conditions as the Agency may deem appropriate.</li> </ul> <p>(2) The Agency shall issue permits in accordance with sub-regulation (1) of this regulation in respect of wastes or other matter intended for dumping or, incineration at sea-</p> <ul style="list-style-type: none"> <li>a) loaded within Nigeria; and</li> <li>b) loaded onto a vessel or aircraft registered in Nigeria when the loading occurs in the territory of a State not a Contracting Party to the Protocol.</li> </ul> <p>(3) Where dumping has taken place in pursuance of any exception, exemption or qualification contemplated in regulation 4(1) of these Regulations, the master of the vessel or the pilot of the aircraft or the person in charge of the platform or other man-made structure in question shall forthwith report such dumping to the Agency setting</p>	<p>Application and Issuance of Permits</p>

<p>(4)</p> <p>(5)</p>	<p>out the full details of such dumping.</p> <p>The Agency may refuse or limit a permit to dump wastes or other matter if the Agency determines that appropriate opportunities exist to re-use, recycle or treat the waste without undue risks to human health or the environment or disproportionate costs.</p> <p>Applications to dump wastes or other matters shall demonstrate to the Agency that appropriate consideration has been given to the following hierarchy of waste management options, which implies an order of increasing environmental impact:</p> <ul style="list-style-type: none"> <li>a) re-use;</li> <li>b) off-site recycling;</li> <li>c) destruction of hazardous constituents;</li> <li>d) treatment to reduce or remove the hazardous constituents;</li> <li>e) disposal on land, into air and in water;</li> <li>f) the selection and justification (including an environmental impact assessment) of the proposed dump site; and</li> <li>g) the means and rate of dumping at the proposed dump site.</li> </ul>	
<p>9.</p>	<p>Refusal to grant Permits:-</p> <p>The Agency or any officer designated by the Agency may, for the reasons to be recorded in writing and after giving reasonable opportunity of being heard to the applicant, refuse to grant any permit under this Regulation.</p>	<p>Refusal to Grant Permit</p>
<p>10.</p>	<p>Renewal of Permits:-</p> <p>The Agency or any officer designated by the Agency shall renew the Permit granted under Regulation 5, after examining each case on merits, subject to the following-</p> <ul style="list-style-type: none"> <li>(i) on submission of annual returns by the applicant as prescribed by the Authority;</li> <li>(ii) on steps taken by the applicant, wherever feasible, for reduction and prevention in the dumping of wastes or other matter or the incineration at sea; and</li> <li>(iii) on fulfilment of conditions prescribed in the Permit regarding the opportunities to avoid dumping in favour of environmentally preferable alternatives.</li> </ul>	<p>Renewal of Permit</p>

11.	<p>Suspension or Cancellation of Permits:-</p> <p>a) The Agency may, if in its opinion, the holder of the permit has failed to comply with any of the conditions of the permit or with any provisions of this Regulation and after giving him a reasonable opportunity of being heard and after recording reasons thereof in writing cancel or suspend the permit issued under Regulation 5 for such period as it considers necessary in the public interest.</p> <p>b) Upon suspension or cancellation of the permit, the Agency may give directions to the person whose permit has been suspended or cancelled for the safe storage and management of the wastes and other matter, and such person shall comply with such directions.</p>	Suspension of Permit
12 (a)	<p>The holder of a permit commits an offence against this section where:-</p> <p>a) the holder does an act that constitutes a contravention of a condition imposed in respect of the permit; and</p> <p>b) at the time of that act, the holder knows of the existence of that condition, or is reckless as to the existence of that condition.</p> <p>(b) An offence under this Regulation is punishable, on conviction, by imprisonment for a term of not more than 2 years or a fine of not less than N20,000,000.00, or both.</p> <p>(c) In this section, "act" includes "omission."</p>	Compliance with Conditions of Permit
	<p>PART IV</p> <p>FEES</p>	
13 (1)	<p>The Agency shall prescribe application fees for a Permit to dump wastes in consideration of:-</p> <p>a) the type, composition, properties, toxicity and persistence of the material to be dumped; and</p> <p>b) the quantity, the rate of expected dumping and the period over which the dumping is to take place.</p>	Fees

- (2) A fee for permit to dump waste may be charged by the Agency for a fixed term, or to permit the one-off dumping of materials such as the dumping from initial dredging project in consideration of:-
- a) the type, composition, properties, toxicity and persistence of the material to be dumped; and
  - b) the quantity, and the rate of expected dumping.
- (3) The fee payable under Sub-Regulation (1) of this Regulation shall be:-
- a) non-refundable, irrespective of whether a permit is granted or not;
  - b) paid prior to the application being considered by the Agency.
- (4) Dumping of waste shall not take place until the fee has been paid, and the fee payable under Sub-Regulation (2) of this Regulation shall be-
- a) paid upon being granted the permit to dump;
  - b) valid for a set period of time as specified on the permit to dump; and
  - c) non-refundable, irrespective of whether the dumping takes place or not.
- (5) An annual fee for the dumping of waste permit shall be charged which shall valid for 12 months to permit the dumping of materials up to a specified amount, such as the dumping of maintenance dredging from a port or channel, in consideration of the type, composition, properties, toxicity and persistence of the material to be dumped, the quantity and the rate of expected dumping in the 12 months period.
- (6) The fee referred to in Sub-Regulation (5) of this Regulation shall be:-
- a) payable upon being granted the permit to dump provided that no dumping shall take place until the fee has been paid;
  - b) non-refundable, irrespective of whether the total amount of permitted dumping takes place or not.
- (7) Without prejudice to the provisions of Sub-Regulation (5) of this Regulation, all dumping must cease once the annual permitted amount for dumping has been attained.

(8)	The Agency shall by notice published in the gazette arrange for the scale and Annex of fees and the basis on which they have been calculated, to be published in such a manner as will bring them to the notice of persons likely to be affected.	
	PART V  PENALTIES AND SETTLEMENT OF DISPUTES	
14 (1)	<p>A person who in or in connection with, an application for a permit-</p> <p>a) makes a statement that, to his knowledge, is false or misleading in a material particular; or</p> <p>b) furnishes to an officer or other person on duty in relation to these Regulations a document that, to the knowledge of the first mentioned person, contains information that is false or misleading in a material particular; commits an offence and shall be liable on conviction for a term of imprisonment not exceeding 2 years or a fine of not less than N20,000,000.00 or both.</p>	False Statement
(2)	<p>A person who:-</p> <p>a) makes to an inspector on duty in relation to these Regulations a statement that, to the knowledge of the person, is false or misleading in a material particular; or</p> <p>b) furnishes to an inspector on duty in relation to these Regulations, a document that, to the knowledge of the person, contains information that is false or misleading in a material particular;</p> <p>is guilty of an offence and punishable on conviction for a term of imprisonment not exceeding 2 years or a fine not less than N20,000,000.00 or both.</p>	
15 (1)	Without prejudice to the provisions of Regulation 8 of these Regulations, any person convicted of an offence under these Regulations shall on conviction be liable to imprisonment for a term of not less than six months or to a fine of not less than N20,000,000.00 or both.	Penalties
(2)	In addition to the provisions of Sub-Regulation (1) of this Regulation, where the offence was committed over a period of more than one day, the person shall also be	

	liable on conviction to a fine not less than N1,000,000.00 or to imprisonment for a period not exceeding one month in respect of every day during which the offence continued.	
16 (1)	The Federal High Court shall have jurisdiction over any charges brought against any person alleged to have contravened the provisions of these Regulations within Nigerian waters.	Jurisdiction and Settlement of Disputes
(2)	Where a dispute arises between Nigeria and any other State with respect to the interpretation or application of these Regulations or any provision of the 1996 Protocol to the convention on the Prevention of Marine Pollution by Dumping of Wastes and other Matter 1972, all efforts shall be made to resolve such disputes through mediation, conciliation or other peaceful means.	
(3)	Where there is no settlement within twelve months of the declaration of the dispute, the Agency may request the settlement of the dispute by means of the Arbitral Procedure as set out in Annex 3 to the 1996 Protocol to the Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matters, 1972.	
	PART VI ENFORCEMENT MEASURES	
17 (1)	Within 30 days after the end of each calendar year, the Agency shall furnish with a report regarding the number of permits granted the Minister. under these Regulations showing the- <ul style="list-style-type: none"> <li>a) nature and quantities of all substances or articles- <ul style="list-style-type: none"> <li>i. authorized by such permits to be dumped or disposed off at sea;</li> <li>ii. the dumping of which was reported in accordance with these Regulations;</li> <li>iii. dumped or disposed off at sea in contravention of the provisions of these Regulations; and</li> </ul> </li> <li>b) location, time and method of the dumping or disposal in question.</li> </ul>	Report to the Minister
(2)	Where any person to whom any such permit has been granted is convicted of an offence under these Regulations, the Agency may cancel such permit or amend it by	



	restricting the dumping or disposal authorized by it.	
18 (1)	<p>A person duly authorised by the Agency may:-</p> <p>a) enter upon or board any place, premises, vessel or aircraft on or in which he suspects any substance which may afford evidence of a contravention of these Regulations is kept or loaded, inspect any such substance found on or in such place, premises, vessel or aircraft so entered upon or boarded and open or cause to be opened any article in which he suspects any such substance to be; and</p> <p>b) examine all books and documents on or in any such place, premises, vessel or aircraft which he has reason to believe relate to such substance, make copies of or extracts from such books and documents and demand from the owner or custodian of any such book or document an explanation of any record or entry therein.</p>	Power of Inspection
(2)	<p>Where reasonable suspicion exists that an offence under these Regulations has been committed or attempted or is about to be committed from or in respect of any vessel or aircraft, the inspector may pending any investigation for the purposes of these Regulations-</p> <p>a) require the master or pilot or owner of such vessel or aircraft to move or fly or cause to be moved or flown the vessel or aircraft to any specified harbour or airfield; or</p> <p>b) subject to such conditions as may be prescribed by Regulation, detain such vessel or aircraft.</p>	
(3)	<p>The holder of any office designated under Sub-Regulation (1) of this Regulation who acts under that subsection, shall at the request of any person affected thereby, produce such proof of his identity as may be prescribed by this Regulation.</p>	
(4)	<p>A person authorized to grant clearance to any vessel or aircraft shall not grant clearance to any vessel or aircraft while detained in pursuant to the provisions of this Regulation.</p>	
(5)	<p>Any person who:-</p>	

	<p>a) hinders, obstructs or assaults an inspector or law enforcement agent referred to in sub- Regulation (1); or</p> <p>b) wilfully fails to comply with any lawful demand made by such person or official in the performance of his duties or the exercise of his powers; commits an offence under these Regulations and liable on conviction as prescribed in Regulation 15 of these Regulations.</p>	
19.	<p>Appointment of Enforcement officers:-</p> <p>1) The Authority shall appoint a person to be an enforcement officer for the purposes of the Regulation.</p> <p>2) The Authority shall, in the instrument appointing a person under this section, specify that the powers and duties of the person are subject to such limitations as are specified in the instrument.</p> <p>3) An enforcement officer shall be issued with a certificate of appointment.</p>	Appointment of Enforcement Officers
20 (1)	<p>Powers of the Enforcement Officers:-</p> <p>An enforcement officer may, for the purposes of the Regulation–</p> <p>(i) at any reasonable time enter any place to inspect and board any vehicle, ship, aircraft, or marine structure with or without persons and equipment to assist him in his duties;</p> <p>(ii) open any container and examine and take samples of any substances or articles;</p> <p>(iii) examine equipment and require any person in charge of it to do anything which appears to the enforcement officer to be necessary for facilitating examination; and</p> <p>(iv) require any person to produce any permit, record or other documents which relate to the dumping of wastes or other matter in the sea and which are in his custody or possession;</p> <p>(v) require any person to produce any permit, record or other documents which relate to the incineration at sea and which are in his custody or possession;</p>	Powers of the Enforcement Officers

(vi) require any person on board a ship, aircraft or marine structure to produce any records or other documents which relate to it and which are in his custody or possession; and (vii) take copies of any document produced under sub-Regulation (1) (iv), (1) (v) and (1) (vi).

(2) For the purpose of boarding a vehicle, ship, aircraft or marine structure, an enforcement officer may require the person in charge—

(i) to do anything which will facilitate boarding; and

(ii) (ii) in the case of a ship—to stop it.

(3) An enforcement officer may require the attendance of the master of a ship, the commander of an aircraft or the person in charge of any marine structure on board that ship, aircraft or structure and may make any examination and inquiry which appears to him to be necessary.

(4) If, as a result of an examination and inquiry under sub-Regulation (3), the enforcement officer has reason to believe that the ship or aircraft has been loaded in contravention of the Regulation, the ship or aircraft may be detained until the enforcement officer issues a certificate that he is satisfied that the ship or aircraft may proceed without contravention of the Regulation.

(5) On entering or boarding any place or thing liable to inspection under these Regulation an enforcement officer shall, if requested to do so, produce this certificate of appointment.

(6) For the purpose of this section the places and things liable to inspection are—

(i) land (including land submerged at high water springs and buildings on land), vehicles and aircraft in the country;

(ii) ships in ports or at places in the territory of India; and

(iii) ship registered in India, aircraft and marine structures wherever they may be, in which an enforcement officer has reasonable cause to believe that any substances or articles intended to be dumped in the sea are or have been present.

21 (1)	<p>Responsibilities of the Agency:-</p> <p>The Agency shall, for the purposes of the Regulations-</p> <ul style="list-style-type: none"> <li>(i) comply with the requirements of Regulations 4 and Regulations 5;</li> <li>(ii) adopt such additional criteria, measures and requirements in a manner consistent with Regulations 4 and Regulations 5, as it may deem fit;</li> <li>(iii) satisfy itself of the compliance of the provisions of Annex II;</li> <li>(iv) maintain records of the nature and quantities of all wastes or other matter for which dumping permits have been issued and where practicable the quantities actually dumped and the location, time and method of dumping;</li> <li>(v) apply a precautionary approach to environmental protection from dumping of wastes or other matter by implementing appropriate preventive measures to reduce or, where feasible, avoid the potential harm that the wastes or other matter introduced into the marine environment are likely to cause;</li> <li>(vi) prepare an integrated plan for effective implementation of these provisions; and</li> <li>(vii) furnish an annual report prescribed in Form-II of this Regulations to the Federal Government on or before the ..... day of ..... every year.</li> </ul>	Responsibilities of the Agency
22 (1)	<p>Responsibilities of the Federal Government:-</p> <p>The Federal Government shall individually or in collaboration with other Contracting Parties and competent international organizations, monitor the condition of the sea for the purposes of the Protocol.</p>	Responsibility of the Federal Government
(2)	<p>The Federal Government shall be responsible for reporting to the Organisation and where appropriate to the Contracting Parties-</p> <ul style="list-style-type: none"> <li>i. information specified in Regulation 21 (1) (iv) and Regulation 22 (1);</li> <li>ii. the administrative, legislative and enforcement measures adopted to implement the provisions of the Protocol; and</li> </ul>	

<p>(3)</p>	<p>iii. the effectiveness of the measures referred to in Regulation 15 (2) (ii) and any problems encountered in their application.</p> <p>The Federal Government shall endeavour to enhance international, regional and technical cooperation for the purposes of these Regulation in order to-</p> <ul style="list-style-type: none"> <li>i. develop harmonized procedures;</li> <li>ii. train scientific and technical personnel for research, monitoring and enforcement, including as appropriate the supply of necessary equipment and facilities, with a view to strengthening national capabilities; and</li> <li>iii. obtain information, access to and transfer of environmentally sound technologies, corresponding know-how and technical co-operation relating to waste minimization and clean production processes, disposal and treatment of waste and other measures to prevent, reduce and where practicable eliminate pollution caused by dumping</li> </ul>	
	<p>PART VII</p> <p>MISCELLENEOUS</p>	<p>Miscellaneous</p>
<p>23 (1)</p> <p>(2)</p>	<p>Offences and liability:-</p> <p>Any person shall be deemed to be guilty of an offence under the Regulation, if-</p> <ul style="list-style-type: none"> <li>(i) for the purpose of obtaining a permit, knowingly or recklessly- <ul style="list-style-type: none"> <li>a) makes a statement; or</li> <li>b) produces to the prescribed officer, sign or makes use of a document, that is false or misleading in a material particular;</li> </ul> </li> <li>(ii) contravenes any provisions of the Regulation or the Act.</li> </ul> <p>Any person guilty of an offence under the Regulation shall be liable for-</p> <ul style="list-style-type: none"> <li>(i) penalty under section 22 (1) and section 22 (2) of the Act;</li> <li>(ii) financial penalties as levied by the Authority for all damages caused to the environment due to the pollution;</li> <li>(iii) any other costs as the Authority may deem fit.</li> </ul>	<p>Offences and Liabilities</p>

24.	<p>Appeal:-</p> <ol style="list-style-type: none"> <li>1) Any person aggrieved by an order of suspension or cancellation or refusal of permit passed by the Authority may, within a period of thirty days from the date on which the order is communicated to him, prefer an appeal in Form- IV to the Central Government.</li> <li>2) The Central Government may entertain the appeal after expiry of the said period of thirty days, if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time.</li> <li>3) Every appeal filed under this Regulation shall be disposed of within a period of sixty days from the date of its filing</li> </ol>	Appeal
25.	These Regulations may be cited as the Merchant Shipping (Sea Dumping) Regulations, 2020.	Citation.

**MADE at Abuja this ..... day of ....., 2020.**

.....

**.....Rt. Hon. Chibuike Rotimi Amaechi**

**Honourable Minister of Transport**

**These Regulations gives effect in Nigeria to the 1996 London Protocol to the Convention on Prevention of Marine Pollution by Dumping of Wastes and Other Matters and set out detailed rules and operational guidelines for issuance of dumping permits and hierarchy of waste management options,**

**with inspection regime and penalties clearly defined.**

## ANNEX I

### **WASTES OR OTHER MATTER THAT MAY BE CONSIDERED FOR DUMPING**

1. The following wastes or other matter are those that may be considered for dumping pursuant to the provisions of the Regulation:
  - 1) dredged material;
  - 2) sewage sludge;
  - 3) fish waste, or material resulting from industrial fish processing operations;
  - 4) vessels and platforms or other man-made structures at sea;
  - 5) inert, inorganic geological material;
  - 6) organic material of natural origin;
  - 7) bulky items primarily comprising iron, steel, concrete and similarly unarmful materials for which the concern is physical impact, and limited to those circumstances where such wastes are generated at locations, such as small islands with isolated communities, having no practicable access to disposal options other than dumping; and
  - 8) Carbon dioxide streams from carbon dioxide capture processes for sequestration.
  
2. The wastes or other matter listed in paragraphs 1.4 and 1.7 may be considered for dumping, provided that material capable of creating floating debris or otherwise contributing to pollution of the marine environment has been removed to the maximum extent and provided that the material dumped poses no serious obstacle to fishing or navigation.
  
3. Notwithstanding the above and subject to any further notification by the Central Government in this regard, materials listed in paragraphs 1.1 to 1.8 containing levels of radioactivity greater than de minimis (exempt) concentrations as defined by the International Atomic Energy Agency and adopted by the Contracting Parties, shall not be considered eligible for dumping.
  
4. Carbon dioxide streams referred to in paragraph 1.8 may only be considered for dumping, if:



- a) disposal is into a sub-seabed geological formation; and
- b) they consist overwhelmingly of carbon dioxide. They may contain incidental associated substances derived from the source material and the capture and sequestration processes used; and
- c) no wastes or other matter are added for the purpose of disposing of those wastes or other matter.

## **ANNEX II**

### **ASSESSMENT OF WASTES OR OTHER MATTER THAT MAY BE CONSIDERED FOR DUMPING**

#### **GENERAL**

1. The acceptance of dumping under certain circumstances shall not remove the obligations under this Annex to make further attempts to reduce the necessity for dumping.

#### **WASTE PREVENTION AUDIT**

2. The initial stages in assessing alternatives to dumping should, as appropriate, include an evaluation of:
  - 1) types, amounts and relative hazard of wastes generated;
  - 2) details of the production process and the sources of wastes within that process;  
and
  - 3) feasibility of the following waste reduction/prevention techniques:
    - i. product reformulation;
    - ii. clean production technologies;
    - iii. process modification;
    - iv. input substitution; and
    - v. on-site, closed-loop recycling.
3. If the required audit reveals that opportunities exist for waste prevention at source, the application for the permit is expected to include formulation and implementation of a waste prevention strategy, in collaboration with relevant local and national agencies, along with specific waste reduction targets and provision for further waste prevention audits to ensure that these targets are being met.
4. For dredged material and sewage sludge, waste management should be carried out with the intention of identifying and controlling the sources of contamination through implementation of waste prevention strategies and collaboration between the relevant local and national agencies involved with the control of point and nonpoint sources of

**pollution. In cases otherwise, the problems of contaminated dredged material may be addressed by using disposal management techniques at sea or on land.**

#### CONSIDERATION OF WASTE MANAGEMENT OPTIONS

5. Applications to dump wastes or other matter shall demonstrate that appropriate consideration has been given to the following hierarchy of waste management options, which implies an order of increasing environmental impact:
  - (1) re-use;
  - (2) off-site recycling;
  - (3) destruction of hazardous constituents;
  - (4) treatment to reduce or remove the hazardous constituents; and
  - (5) disposal on land, into air and in water.
  
6. permit to dump wastes or other matter shall be refused if the Authority determines that appropriate opportunities exist to re-use, recycle or treat the waste without undue risks to human health or the environment or disproportionate costs. The practical availability of other means of disposal should be considered in the light of a comparative risk assessment involving both dumping and the alternatives.

#### CHEMICAL, PHYSICAL AND BIOLOGICAL PROPERTIES

7. A detailed description and characterization of the waste is an essential precondition for the consideration of alternatives and the basis for a decision as to whether a waste may be dumped. If a waste is so poorly characterized that proper assessment cannot be made of its potential impacts on human health and the environment, that waste shall not be dumped.
  
8. Characterization of the wastes and their constituents shall take into account:-
  - (1) origin, total amount, form and average composition;
  - (2) properties: physical, chemical, biochemical and biological;
  - (3) toxicity;
  - (4) persistence: physical, chemical and biological; and

(5) accumulation and biotransformation in biological materials or sediments.

## ACTION LIST

9. An Action List providing a mechanism for screening candidate wastes and their constituents on the basis of their potential effects on human health and the marine environment shall be developed from time to time where, for the purpose of selecting substances for consideration in the Action List, priority shall be given to toxic, persistent and bio accumulative substances from anthropogenic sources (e.g., cadmium, mercury, organ halogens, petroleum hydrocarbons, and, whenever relevant, arsenic, lead, copper, zinc, beryllium, chromium, nickel and vanadium, organosilicon compounds, cyanides, fluorides and pesticides or their by-products other than organ halogens). Such Action List can also be used as a trigger mechanism for further waste prevention considerations.
  
10. An Action List shall specify an upper level and may also specify a lower level. The upper level should be set so as to avoid acute or chronic effects on human health or on sensitive marine organisms' representative of the marine ecosystem. Application of an Action List will result in three possible categories of waste:
  - 1) wastes which contain specified substances, or which cause biological responses, exceeding the relevant upper level shall not be dumped, unless made acceptable for dumping through the use of management techniques or processes;
  
  - 2) wastes which contain specified substances, or which cause biological responses, below the relevant lower levels should be considered to be of little environmental concern in relation to dumping; and
  
  - 3) wastes which contain specified substances, or which cause biological responses, below the upper level but above the lower level require more detailed assessment before their suitability for dumping can be determined.
  
11. Information required to select a dumpsite shall include:
  - 1) physical, chemical and biological characteristics of the water-column and the seabed;

- 2) location of amenities, values and other uses of the sea in the area under consideration;
- 3) assessment of the constituent fluxes associated with dumping in relation to existing fluxes of substances in the marine environment; and
- 4) economic and operational feasibility.

### ASSESSMENT OF POTENTIAL EFFECTS

12. Assessment of potential effects should lead to a concise statement of the expected consequences of the sea or land disposal options, i.e., the "Impact Hypothesis". It provides a basis for deciding whether to approve or reject the proposed disposal option and for defining environmental monitoring requirements.
13. The assessment for dumping should integrate information on waste characteristics, conditions at the proposed dump-site(s), fluxes, and proposed disposal techniques and specify the potential effects on human health, living resources, amenities and other legitimate uses of the sea. It should define the nature, temporal and spatial scales and duration of expected impacts based on reasonably conservative assumptions.
14. An analysis of each disposal option should be considered in the light of a comparative assessment of the following concerns: human health risks, environmental costs, hazards, (including accidents), economics and exclusion of future uses. If this assessment reveals that adequate information is not available to determine the likely effects of the proposed disposal option then this option should not be considered further. In addition, if the interpretation of the comparative assessment shows the dumping option to be less preferable, a permit for dumping should not be given.
15. Each assessment should conclude with a statement supporting a decision to issue or refuse a permit for dumping.

## MONITORING

16. Monitoring is used to verify that permit conditions are met - compliance monitoring - and that the assumptions made during the permit review and site selection process were correct and sufficient to protect the environment and human health - field monitoring. It is essential that such monitoring programmes have clearly defined objectives.

## PERMIT AND PERMIT CONDITIONS

17. A decision to issue a permit should only be made if all impact evaluations are completed and the monitoring requirements are determined. The provisions of the permit shall ensure, as far as practicable, that environmental disturbance and detriment are minimized and the benefits maximized. Any permit issued shall contain data and information specifying:

- 1) the types and sources of materials to be dumped;
- 2) the location of the dump-site(s);
- 3) the method of dumping; and
- 4) monitoring and reporting requirements.

18. Permits should be reviewed at regular intervals, taking into account the results of monitoring and the objectives of monitoring programmes. Review of monitoring results will indicate whether field programmes need to be continued, revised or terminated and will contribute to informed decisions regarding the continuance, modification or revocation of permits. This provides an important feedback mechanism for the protection of human health and the marine environment.

FORM - I

**APPLICATION REQUIRED FOR GRANT/RENEWAL OF PERMIT FOR  
DUMPING OR INCINERATION AT SEA OF WASTES OR OTHER MATTER**

To be filled by the Applicant

**1.**

- (a) Name and location of the vessels, aircraft and platforms or other man-made structures engaged in dumping or incineration at sea
- (b) Name and designation of the concerned person responsible for vessels, aircraft and platforms or other man-made structures engaged in dumping or incineration at sea
- (c) Tel, Fax and e-mail of the concerned person responsible for vessels, aircraft and platforms or other man-made structures engaged in dumping or incineration at sea
- (d) Authorisation required for (Please tick mark appropriate activity or activities)
  - (i) Dumping
  - (ii) Incineration
- (e) In case of renewal of Permit, previous Permit numbers and dates and provide copies of annual returns of last three years including the compliance reports with respect to the conditions of Prior Environmental Clearance, wherever applicable

**2.**

- (1) Nature and quantity of waste or other matter generated per annum (in metric tonne or kilo litre):
  - (i) origin, total amount, form and average composition
  - (ii) properties: physical, chemical, biochemical and biological
  - (iii) toxicity
  - (iv) persistence: physical, chemical and biological
  - (v) accumulation and biotransformation in biological materials or sediments



- (2) Nature and quantity of waste stored at any time (in metric tonne or kilo litre):
  - (i) origin, total amount, form and average composition
  - (ii) properties: physical, chemical, biochemical and biological
  - (iii) toxicity
  - (iv) persistence: physical, chemical and biological
  - (v) accumulation and biotransformation in biological materials or sediments:
- (3) Details of the production process and the sources of the wastes or other matter including process flow sheet indicating inputs and outputs (raw materials, chemicals, products, by-products, wastes, emissions, waste water etc.) Please attach separate sheets:
3. Mode of waste management:
  - (1) re-use;
  - (2) off-site recycling;
  - (3) destruction of hazardous constituents;
  - (4) treatment to reduce or remove the hazardous constituents; and
  - (5) disposal on land, into air and in water.
4. Details of the dump-site:
  - (1) Location:
  - (2) physical, chemical and biological characteristics of the water column and the seabed:
  - (3) location of amenities, values and other uses of the sea in the area under consideration:
  - (4) assessment of the constituent fluxes associated with dumping in relation to existing fluxes of substances in the marine environment:
  - (5) economic and operational feasibility:
5. Method of dumping:
6. Provide copy of the Emergency Response Plan (ERP) which should address procedures for dealing with emergency situations (viz. Spillage or release or fire) as

**specified in the guidelines of Authority. Such ERP shall comprise the following, but not limited to:**

- Containing and controlling incidents so as to minimise the effects and to limit danger to the persons, environment and property;
  - Implementing the measures necessary to protect persons and the environment;
  - Description of the actions which should be taken to control the conditions at events and to limit their consequences, including a description of the safety equipment and resources available;
  - Arrangements for training staff in the duties which they are expected to perform;
  - Arrangements for informing concerned authorities and emergency services; and
  - Arrangements for providing assistance with off-site mitigatory action.
7. Provide undertaking or declaration to comply with all provisions including the scope of submitting bank guarantee in the event of spillage, leakage or fire while dumping or incineration at sea of wastes and other matter:
  8. Capacity and mode of secured storage within the vessels, aircraft and platforms or other man-made structures engaged in dumping or incineration at sea:
  9. Utilisation within the vessels, aircraft and platforms or other man-made structures engaged in dumping or incineration at sea (provide details):
  10. If not utilised within the vessels, aircraft and platforms or other man-made structures engaged in dumping or incineration at sea, please provide details of what is done with this waste:
  11. Arrangement for transportation of waste or other matter:
  12. Details of the environmental safeguards and environmental facilities provided for safe handling of all the wastes and other matter at point (3) above.

**Signature of the Applicant**

**Designation**

**Date.....**

**Place.....**

## FORM – II

### **FORMAT OF ANNUAL REPORT TO BE SUBMITTED BY THE AGENCY**

1. Location:
2. Name and designation of the officer in charge of dealing with dumping of wastes or other matter and/ or incineration at sea:
3. Quantity and composition of wastes or other matter:
  - (1) Total quantity of wastes generated per day:
  - (2) Total quantity of wastes collected per day:
  - (3) Total quantity of wastes processed for:
4. Area used/to be used for dumping or incineration at sea of wastes or other matter:
5. Total Manpower available on site:
6. Storage facilities:
  - (1) Containers (Capacity):
  - (2) Dumper Placers:
  - (3) Others, please specify:
7. Transportation Facilities:
8. Whether any proposal has been made to improve the practices of management and/ or dumping of wastes or other matter:
9. Whether any proposal has been made to improve the practices incineration at sea:
10. Are any efforts made to call for private firms etc. to attempt for processing of waste utilising technologies:

.....

**Signature of (Member Secretary)**

**Nigerian Maritime Administration and Safety Agency**

**Date:** .....

**Place:** .....

FORM - III

**FORMAT FOR ISSUE OF PERMIT**

**File No.:** \_\_\_\_\_

**Date:** \_\_\_\_\_

**To,** \_\_\_\_\_  
\_\_\_\_\_

**Ref: Your application number** \_\_\_\_\_ **dt.** \_\_\_\_\_

**The Central Pollution Control Board/Pollution Control Committee after examining the proposal hereby permits** \_\_\_\_\_ **having their administrative office at**

\_\_\_\_\_ **for dumping wastes of other matter and/ or incineration at sea at** \_\_\_\_\_ **(location) on the terms and conditions (including the standards to comply) attached to this letter of Permit.**

- 1) The validity of this Permit is till \_\_\_\_\_. After the validity, renewal of Permit is to be sought.
- 2) The Central Pollution Control Board/Pollution Control Committee may, at any time, revoke any of the conditions applicable under the Permit and shall communicate the same in writing.
- 3) Any violation of the provision of the Marine Environment (Sea Dumping) Regulations, 2020 will attract the penal provision of the Nigerian Environmental Protection Agency Act, 1988.

.....

**Signature of (Member Secretary)**

**Nigerian Maritime Administration and**

**Safety Agency Date:**

.....

**Place:** .....

FORM- IV

**APPLICATION FOR FILING APPEAL AGAINST THE REFUSAL/  
CANCELLATION/ SUSPENTION OF PERMIT BY THE AUTHORITY**

1. Name and address of the person making the appeal:
  
2. Number, date of order and address of the authority: (certified copy of which passed the order, against which appeal is being the order be attached) made:
  
3. Ground on which the appeal is being made:
  
4. Relief sought for:
  
5. List of enclosures other than the order referred in point 2 against which the appeal is being filed:

**Signature**.....

**Name and address**.....

**Date:**.....



