

## DIVISION III THE HIGH SEAS<sup>1</sup>

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### 1. AUSTRALIA

(a) NAVIGATION ACT 1912-1970, PART VIIA<sup>2</sup>

(b) POLLUTION OF THE SEA BY OIL REGULATIONS, AS AMENDED UP TO 1967<sup>3</sup>

. . .

3. In these Regulations, unless the contrary intention appears:

“Heavy diesel oil” has the same meaning as in the Convention;<sup>4</sup>

“The Act” means the Pollution of the Sea by Oil Act 1960-1965<sup>5</sup>

“The Secretary” means the Secretary to the Department of Shipping and Transport.

. . .

5. (1) This regulation applies in relation to ships registered in Australia, being ships which use oil as fuel, whether for the purpose of propelling the ship or for any other purpose.

(2) Where a ship in relation to which this regulation applies is not so fitted as to prevent the escape of fuel oil or heavy diesel oil into the bilges of the ship into which it is possible for fuel oil or heavy diesel oil to escape, the owner and the master of the ship are each guilty of an offence against this regulation.

(3) It is a defence if the person charged with an offence against this regulation proves that the ship is so fitted as to prevent any of the contents of those bilges from being pumped into the sea without having been treated by a process, being an approved process of separating oil from water, capable of separating oil from the contents of the bilges of the ship effectively, having regard to the maximum rate at which those contents can be discharged into the sea.

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<sup>1</sup> Some of the texts reproduced under DIVISION II and DIVISION IV also contain provisions relating to the high seas.

<sup>2</sup> *Supra* DIVISION I, SUBDIVISION A, Chapter VII, 1.

<sup>3</sup> The Regulations comprise Statutory Rules 1962, No. 90 as amended by subsequent Rules up to No. 82 of 29 June 1967. Text provided by the Permanent Representative of Australia to the United Nations in a note verbale of 3 December 1971.

<sup>4</sup> International Convention for the Prevention of Pollution of the Sea by Oil of 1954 as amended. United Nations, *Treaty Series*, vol. 327, p. 3. Reproduced in ST/LEG/SER.B/15, pp. 787-799.

<sup>5</sup> Reproduced in part in ST/LEG/SER.B/15, pp. 477-479.

6. (1) An oil record book shall be carried in every ship registered in Australia.

(2) An oil record book shall be in accordance with Form 1 or Form 2 in the Second Schedule<sup>1</sup> to these Regulations (whichever is applicable) with provision made for the signature, in accordance with subregulation (5) of this regulation, of each entry made in it.

(3) Where a ship registered in Australia does not carry an oil record book as required by this regulation, the owner and the master of the ship are each guilty of an offence punishable, upon conviction, by a fine not exceeding Five hundred pounds.

(4) The master of a ship shall make the appropriate entries in, or cause the appropriate entries to be made in, the oil record book for the ship whenever an operation or occurrence:

(a) If the ship is a tanker—referred to in Form 1 in the Second Schedule to these Regulations; or

(b) If the ship is not a tanker—referred to in Form 2 in that Schedule, is carried out or occurs.

Penalty: Five hundred pounds.

...

11. (1) Ships included in a class of ships specified in the next succeeding subregulation are exempted from the provisions of the Act.

(2) For the purposes of the last preceding subregulation, the classes of ships are:

(a) Tankers of under 150 tons gross tonnage;

(b) Ships, being ships other than tankers, of under 250 tons gross tonnage;

(c) Ships for the time being engaged in the whaling industry when actually employed on whaling operations; and

(d) Naval ships and ships for the time being used as naval auxiliaries.

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## 2. BRAZIL

LEGISLATIVE DECREE NO. 221 OF 28 FEBRUARY 1967 ON FISHING,  
articles 37 and 38<sup>2</sup>

## 3. CANADA

(a) FISHERIES ACT, 1952, AS AMENDED UP TO 1970, sections 33,  
33A-33D, and 76<sup>3</sup>

(b) OIL AND GAS PRODUCTION AND CONSERVATION ACT, AS AMENDED IN  
1970, sections 2, 3, 12-14, 42-49<sup>4</sup>

<sup>1</sup> Not reproduced here.

<sup>2</sup> *Infra* DIVISION IV, 2 (a).

<sup>3</sup> *Infra* DIVISION IV, 3 (a).

<sup>4</sup> *Supra* DIVISION II, 3 (a).

(c) ARCTIC WATERS POLLUTION PREVENTION ACT, 1970<sup>1</sup>*Preamble*

Whereas Parliament recognizes that recent developments in relation to the exploitation of the natural resources of arctic areas, including the natural resources of the Canadian arctic, and the transportation of those resources to the markets of the world are of potentially great significance to international trade and commerce and to the economy of Canada in particular;

And whereas Parliament at the same time recognizes and is determined to fulfil its obligation to see that the natural resources of the Canadian arctic are developed and exploited and the arctic waters adjacent to the mainland and islands of the Canadian arctic are navigated only in a manner that takes cognizance of Canada's responsibility for the welfare of the Eskimo and other inhabitants of the Canadian arctic and the preservation of the peculiar ecological balance that now exists in the water, ice and land areas of the Canadian arctic;

Now therefore, Her Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows:

...

*Interpretation**2. Definitions*

In this Act:

(a) "Analyst" means a person designated as an analyst pursuant to the *Canada Water Act* or the *Northern Inland Waters Act*;

(b) "Icebreaker" means a ship specially designed and constructed for the purpose of assisting the passage of other ships through ice;

(c) "Owner" in relation to a ship, includes any person having for the time being, either by law or by contract, the same rights as the owner of the ship as regards the possession and use thereof;

(d) "Pilot" means a person licensed as a pilot pursuant to the *Canada Shipping Act*;

(e) "Pollution prevention officer" means a person designated as a pollution prevention officer pursuant to section 14;

(f) "Ship" includes any description of vessel or boat used or designed for use in navigation without regard to method or lack of propulsion;

(g) "Shipping safety control zone" means an area of the arctic waters prescribed as a shipping safety control zone by order of the Governor in Council made under section 11; and

(h) "Waste" means

(i) Any substance that, if added to any waters, would degrade or alter or form part of a process of degradation or alteration of the quality of those waters to an extent that is detrimental to their use by man or by any animal, fish or plant that is useful to man, and

(ii) Any water that contains a substance in such a quantity or concentration, or that has been so treated, processed or changed, by heat

<sup>1</sup> *Statutes of Canada*, 1969-1970, Chap. 47. Assented to on 26 June 1970.

or other means, from a natural state that it would, if added to any waters, degrade or alter or form part of a process of degradation or alteration of the quality of those waters to an extent that is detrimental to their use by man or by any animal, fish or plant that is useful to man.

and without limiting the generality of the foregoing, includes anything that, for the purposes of the *Canada Water Act*, is deemed to be waste.

#### *Application of act*

##### 3. *Application to arctic waters*

(1) Except where otherwise provided, this Act applies to the waters (in this Act referred to as the "arctic waters") adjacent to the mainland and islands of the Canadian arctic within the area enclosed by the sixtieth parallel of north latitude, the one hundred and forty-first meridian of longitude and a line measured seaward from the nearest Canadian land a distance of one hundred nautical miles; except that in the area between the islands of the Canadian arctic and Greenland, where the line of equidistance between the islands of the Canadian arctic and Greenland is less than one hundred nautical miles from the nearest Canadian land, there shall be substituted for the line measured seaward one hundred nautical miles from the nearest Canadian land such line of equidistance.

(2) For greater certainty, the expression "arctic waters" in this Act includes all waters described in subsection (1) and, as this Act applies to or in respect of any person described in paragraph (a) of subsection (1) of section 6, all waters adjacent thereto lying north of the sixtieth parallel of north latitude, the natural resources of whose subjacent submarine areas Her Majesty in right of Canada has the right to dispose of or exploit, whether the waters so described or such adjacent waters are in a frozen or a liquid state, but does not include inland waters.

#### *Deposit of waste*

##### 4.

(1) *Prohibition.* Except as authorized by regulations made under this section, no person or ship shall deposit or permit the deposit of waste of any type in the arctic waters or in any place on the mainland or islands of the Canadian arctic under any conditions where such waste or any other waste that results from the deposit of such waste may enter the arctic waters.

(2) *Application of subsection (1).* Subsection (1) does not apply to the deposit of waste in waters that form part of a water quality management area designated pursuant to the *Canada Water Act* if the waste so deposited is of a type and quantity and is deposited under conditions authorized by regulations made by the Governor in Council under paragraph (a) of subsection (2) of section 16 of that Act with respect to that water quality management area.

(3) *Regulations.* The Governor in Council may make regulations for the purposes of this section prescribing the type and quantity of waste, if any, that may be deposited by any person or ship in the arctic waters or in any

place on the mainland or islands of the Canadian arctic under any conditions where such waste or any other waste that results from the deposit of such waste may enter the arctic waters, and prescribing the conditions under which any such waste may be so deposited.

5.

(1) *Report of deposit of waste or danger thereof.* Any person who:

(a) Has deposited waste in violation of subsection (1) of section 4, or

(b) Carries on any undertaking on the mainland or islands of the Canadian arctic or in the arctic waters that, by reason of any accident or other occurrence, is in danger of causing any deposit of waste described in that subsection otherwise than of a type, in a quantity and under conditions prescribed by regulations made under that section,

shall forthwith report the deposit of waste or the accident or other occurrence to a pollution prevention officer at such location and in such manner as may be prescribed by the Governor in Council.

(2) *Report by master of ship.* The master of any ship that has deposited waste in violation of subsection (1) of section 4, or that is in distress and for that reason is in danger of causing any deposit of waste described in that subsection otherwise than of a type, in a quantity and under conditions prescribed by regulations made under that section, shall forthwith report the deposit of waste or the condition of distress to a pollution prevention officer at such location and in such manner as may be prescribed by the Governor in Council.

6.

(1) *Civil liability resulting from deposit of waste.* The following persons, namely:

(a) Any person who is engaged in exploring for, developing or exploiting any natural resource on any land adjacent to the arctic waters or in any submarine area subjacent to the arctic waters,

(b) Any person who carries on any undertaking on the mainland or islands of the Canadian arctic or in the arctic waters, and

(c) The owner of any ship that navigates within the arctic waters and the owner or owners of the cargo of any such ship,

are respectively liable and, in the case of the owner of a ship and the owner or owners of the cargo thereof, are jointly and severally liable, up to the amount determined in the manner provided by regulations made under section 9 in respect of the activity or undertaking so engaged in or carried on or in respect of that ship, as the case may be,

(d) For all costs and expenses of and incidental to the taking of action described in subsection (2) on the direction of the Governor in Council, and

(e) For all actual loss or damage incurred by other persons resulting from any deposit of waste described in subsection (1) of section 4 that is caused by or is otherwise attributable to that activity or undertaking or that ship, as the case may be.

(2) *Costs and expenses of Her Majesty.* Where the Governor in Council directs any action to be taken by or on behalf of Her Majesty in right of Canada to repair or remedy any condition that results from a deposit of waste

described in subsection (1), or to reduce or mitigate any damage to or destruction of life or property that results or may reasonably be expected to result from such deposit of waste, the costs and expenses of and incidental to the taking of such action, to the extent that such costs and expenses can be established to have been reasonably incurred in the circumstances, are, subject to this section, recoverable by Her Majesty in right of Canada from the person or persons described in paragraph (a), (b) or (c) of that subsection, with costs, in proceedings brought or taken therefor in the name of Her Majesty.

(3) *Procedure for recovery of claims.* All claims pursuant to this section against a person or persons described in paragraph (a), (b) or (c) of subsection (1) may be sued for and recovered in any court of competent jurisdiction in Canada, and all such claims shall rank firstly in favour of persons who have suffered actual loss or damage as provided in paragraph (e) of subsection (1) (which said claims shall among themselves rank *pari passu*) and secondly to meet the costs and expenses described in subsection (2), up to the limit of the amount determined in the manner provided by regulations made under section 9 in respect of the activity or undertaking engaged in or carried on by the person or persons against whom the claims are made, or in respect of the ship of which any such person is the owner or of all or part of whose cargo any such person is the owner.

(4) *Limitation period.* No proceedings in respect of a claim pursuant to this section shall be commenced after two years from the time when the deposit of waste in respect of which the proceedings are brought or taken occurred or first occurred, as the case may be, or could reasonably be expected to have become known to those affected thereby.

7.

(1) *Nature and extent of liability.* The liability of any person pursuant to section 6 is absolute and does not depend upon proof of fault or negligence, except that no person is liable pursuant to that section for any costs, expenses or actual loss or damage incurred by another person whose conduct caused any deposit of waste described in subsection (1) of that section, or whose conduct contributed to any such deposit of waste, to the degree to which his conduct contributed thereto, and nothing in this Act shall be construed as limiting or restricting any right of recourse or indemnity that a person liable pursuant to section 6 may have against any other person.

(2) *Idem.* For the purposes of subsection (1), a reference to any conduct of "another person" includes any wrongful act or omission by that other person or by any person for whose wrongful act or omission that other person is by law responsible.

(3) *Limitation on liability of cargo owner.* Notwithstanding anything in this Act, no person is liable pursuant to section 6, either alone or jointly and severally with any other person or persons, by reason only of his being the owner of all or any part of the cargo of a ship if he can establish that the cargo or part thereof of which he is the owner is of such a nature, or is of such a nature and is carried in such a quantity that, if it and any other cargo of the same nature that is carried by that ship were deposited by that ship in the arctic waters, the deposit thereof would not constitute a violation of subsection (1) of section 4.

8.

(1) *Evidence of financial responsibility to be provided.* The Governor in Council may require:

(a) Any person who engages in exploring for, developing or exploiting any natural resource on any land adjacent to the arctic waters or in any submarine area subjacent to the arctic waters.

(b) Any person who carries on any undertaking on the mainland or islands of the Canadian arctic or in the arctic waters that will or is likely to result in the deposit of waste in the arctic waters or in any place under any conditions where such waste or any other waste that results from the deposit of such waste may enter the arctic waters.

(c) Any person, other than a person described in paragraph (a), who proposes to construct, alter or extend any work or works on the mainland or islands of the Canadian arctic or in the arctic waters that, upon completion thereof, will form all or part of an undertaking described in paragraph (b), or

(d) The owner of any ship that proposes to navigate or that navigates within any shipping safety control zone specified by the Governor in Council and, subject to subsection (3) of section 7, the owner or owners of the cargo of any such ship,

to provide evidence of financial responsibility, in the form of insurance or an indemnity bond satisfactory to the Governor in Council, or in any other form satisfactory to him, in an amount determined in the manner provided by regulations made under section 9.

(2) *Persons entitled to claim against insurance or bond.* Evidence of financial responsibility in the form of insurance or an indemnity bond shall be in a form that will enable any person entitled pursuant to section 6 to claim against the person or persons giving such evidence of financial responsibility to recover directly from the proceeds of such insurance or bond.

9. *Regulations respecting manner of determining limit of liability*

The Governor in Council may make regulations for the purposes of section 6 prescribing, in respect of any activity or undertaking engaged in or carried on by any person or persons described in paragraph (a), (b) or (c) of subsection (1) of section 6, or in respect of any ship of which any such person is the owner or of all or part of whose cargo any such person is the owner, the manner of determining the limit of liability of any such person or persons pursuant to that section, which prescribed manner shall, in the case of the owner of any ship and the owner or owners of the cargo thereof, take into account the size of such ship and the nature and quantity of the cargo carried or to be carried by it.

*Plans and specifications of works*

10.

(1) *Plans and specifications to be provided.* The Governor in Council may require any person who proposes to construct, alter or extend any work or works on the mainland or islands of the Canadian arctic or in the arctic

waters that, upon completion thereof, will form all or part of an undertaking the operation of which will or is likely to result in the deposit of waste of any type in the arctic waters or in any place under any conditions where such waste or any other waste that results from the deposit of such waste may enter the arctic waters, to provide him with a copy of such plans and specifications relating to the work or works as will enable him to determine whether the deposit of waste that will or is likely to occur if the construction, alteration or extension is carried out in accordance therewith would constitute a violation of subsection (1) of section 4.

(2) *Powers of Governor in Council.* If, after reviewing any plans and specifications provided to him under subsection (1) and affording to the person who provided those plans and specifications a reasonable opportunity to be heard, the Governor in Council is of the opinion that the deposit of waste that will or is likely to occur if the construction, alteration or extension is carried out in accordance with such plans and specifications would constitute a violation of subsection (1) of section 4, he may, by order, either

(a) Require such modifications in those plans and specifications as he considers to be necessary, or

(b) Prohibit the carrying out of the construction, alteration or extension.

#### *Shipping safety control zones*

11.

(1) *Prescription of shipping safety control zones.* Subject to subsection (2), the Governor in Council may, by order, prescribe as a shipping safety control zone any area of the arctic waters specified in the order, and may, as he deems necessary, amend any such area.

(2) *Publication of proposed orders.* A copy of each order that the Governor in Council proposes to make under subsection (1) shall be published in the *Canada Gazette*; and no order may be made by the Governor in Council under subsection (1) based upon any such proposal except after the expiration of sixty days following publication of the proposal in the *Canada Gazette*.

12.

(1) *Regulations relating to navigation in shipping safety control zones.* The Governor in Council may make regulations applicable to ships of any class or classes specified therein, prohibiting any ship of that class or of any of those classes from navigating within any shipping safety control zone specified therein

(a) Unless the ship complies with standards prescribed by the regulations relating to

(i) Hull and fuel tank construction, including the strength of materials used therein, the use of double hulls and the subdivision thereof into watertight compartments,

(ii) The construction of machinery and equipment and the electronic and other navigational aids and equipment and telecommunications equipment to be carried and the manner and frequency of maintenance thereof,



- (iii) The nature and construction of propelling power and appliances and fittings for steering and stabilizing,
- (iv) The manning of the ship, including the number of navigating and look-out personnel to be carried who are qualified in a manner prescribed by the regulations,
- (v) With respect to any type of cargo to be carried, the maximum quantity thereof that may be carried, the method of stowage thereof and the nature or type and quantity of supplies and equipment to be carried for use in repairing or remedying any condition that may result from the deposit of any such cargo in the arctic waters,
- (vi) The freeboard to be allowed and the marking of load lines,
- (vii) Quantities of fuel, water and other supplies to be carried, and
- (viii) The maps, charts, tide tables and any other documents or publications relating to navigation in the arctic waters to be carried;

(b) Without the aid of a pilot, or of an ice navigator who is qualified in a manner prescribed by the regulations, at any time or during any period or periods of the year, if any, specified in the regulations, or without icebreaker assistance of a kind prescribed by the regulations; and

(c) During any period or periods of the year, if any, specified in the regulations or when ice conditions of a kind specified in the regulations exist in that zone.

(2) *Orders exempting certain ships.* The Governor in Council may by order exempt from the application of any regulations made under subsection (1) any ship or class of ship that is owned or operated by a sovereign power other than Canada where the Governor in Council is satisfied that appropriate measures have been taken by or under the authority of that sovereign power to ensure the compliance of such ship with, or with standards substantially equivalent to, standards prescribed by regulations made under paragraph (a) of subsection (1) that would otherwise be applicable to it within any shipping safety control zone, and that in all other respects all reasonable precautions have been or will be taken to reduce the danger of any deposit of waste resulting from the navigation of such ship within that shipping safety control zone.

(3) *Certificates evidencing compliance.* The Governor in Council may make regulations providing for the issue to the owner or master of any ship that proposes to navigate within any shipping safety control zone specified therein, of a certificate evidencing, in the absence of any evidence to the contrary, the compliance of such ship with standards prescribed by regulations made under paragraph (a) of subsection (1) that are or would be applicable to it within that shipping safety control zone, and governing the use that may be made of any such certificate and the effect that may be given thereto for the purposes of any provision of this Act.

13.

(1) *Destruction or removal of ships in distress.* Where the Governor in Council has reasonable cause to believe that a ship that is within the arctic waters and is in distress, stranded, wrecked, sunk or abandoned, is depositing waste or is likely to deposit waste in the arctic waters, he may cause the

ship or any cargo or other material on board the ship to be destroyed, if necessary, or to be removed if possible to such place and sold in such manner as he may direct.

(2) *Application of proceeds of sale.* The proceeds from the sale of a ship or any cargo or other material pursuant to subsection (1) shall be applied towards meeting the expenses incurred by the Government of Canada in removing and selling the ship, cargo or other material, and any surplus shall be paid to the owner of that ship, cargo or other material.

#### *Pollution prevention officers*

#### 14.

(1) *Appointment.* The Governor in Council may designate any person as a pollution prevention officer with such of the powers set out in sections 15 and 23 as are specified in the certificate of designation of such person.

(2) *Certificate of designation.* A pollution prevention officer shall be furnished with a certificate of his designation specifying the powers set out in sections 15 and 23 that are vested in him, and a pollution prevention officer, on exercising any such power shall, if so required, produce the certificate to any person in authority who is affected thereby and who requires him to do so.

#### 15. (1) *Powers*

A pollution prevention officer may, at any reasonable time,

(a) Enter any area, place or premises (other than a ship, a private dwelling place or any part of any area, place or premises other than a ship that is designed to be used and is being used as a permanent or temporary private dwelling place) occupied by any person described in paragraph (a) or (b) of subsection (1) of section 8, in which he reasonably believes

(i) There is being or has been carried on any activity that may result in or has resulted in waste, or

(ii) There is any waste

that may be or has been deposited in the arctic waters or on the mainland or islands of the Canadian arctic under any conditions where such waste or any other waste that results from the deposit of such waste may enter the arctic waters in violation of subsection (1) of section 4;

(b) Examine any waste found therein in bulk or open any container found therein that he has reason to believe contains any waste and take samples thereof; and

(c) Require any person in such area, place or premises to produce for inspection or for the purpose of obtaining copies thereof or extracts therefrom, any books or other documents or papers concerning any matter relevant to the administration of this Act or the regulations.

(2) *Powers in relation to works.* A pollution prevention officer may, at any reasonable time,

(a) Enter any area, place or premises (other than a ship, a private dwelling place or any part of any area, place or premises other than a ship that is designed to be used and is being used as a permanent or temporary private

dwelling place) in which any construction, alteration or extension of a work or works described in section 10 is being carried on; and

(b) Conduct such inspections of the work or works being constructed, altered or extended as he deems necessary in order to determine whether any plans and specifications provided to the Governor in Council, and any modifications required by the Governor in Council, are being complied with.

(3) *Powers in relation to ships*. A pollution prevention officer may

(a) Go on board any ship that is within a shipping safety control zone and conduct such inspections thereof as will enable him to determine whether the ship complies with standards prescribed by any regulations made under section 12 that are applicable to it within that shipping safety control zone;

(b) Order any ship that is in or near a shipping safety control zone to proceed outside such zone in such manner as he may direct, to remain outside such zone or to anchor in a place selected by him,

(i) If he suspects, on reasonable grounds, that the ship fails to comply with standards prescribed by any regulations made under section 12 that are or would be applicable to it within that shipping safety control zone,

(ii) If such ship is within the shipping safety control zone or is about to enter the zone in contravention of a regulation made under paragraph (b) or (c) of subsection (1) of section 12, or

(iii) If, by reason of weather, visibility, ice or sea conditions, the condition of the ship or its equipment or the nature or condition of its cargo, he is satisfied that such an order is justified in the interests of safety; and

(c) Where he is informed that a substantial quantity of waste has been deposited in the arctic waters or has entered the arctic waters, or where on reasonable grounds he is satisfied that a grave and imminent danger of a substantial deposit of waste in the arctic waters exists,

(i) Order all ships within a specified area of the arctic waters to report their positions to him, and

(ii) Order any ship to take part in the clean-up of such waste or in any action to control or contain the waste.

#### 16. *Assistance to pollution prevention officer*

The owner or person in charge of any area, place or premises entered pursuant to subsection (1) or (2) of section 15, the master of any ship boarded pursuant to paragraph (a) of subsection (3) of that section and every person found in the area, place or premises or on board the ship shall give a pollution prevention officer all reasonable assistance in his power to enable the pollution prevention officer to carry out his duties and functions under this Act and shall furnish the pollution prevention officer with such information as he may reasonably require.

#### 17.

(1) *Obstruction of pollution prevention officer*. No person shall obstruct or hinder a pollution prevention officer in the carrying out of his duties or functions under this Act.

(2) *False statements* No person shall knowingly make a false or misleading statement, either verbally or in writing, to a pollution prevention officer engaged in carrying out his duties or functions under this Act.

### *Offences*

18.

(1) *Deposit of waste by persons or ships.*

Any person who violates subsection (1) of section 4 and any ship that violates that subsection is guilty of an offence and liable on summary conviction to a fine not exceeding, in the case of a person, five thousand dollars, and in the case of a ship, one hundred thousand dollars.

(2) *Continuing offences.* Where an offence is committed by a person under subsection (1) on more than one day or is continued by him for more than one day, it shall be deemed to be a separate offence for each day on which the offence is committed or continued.

19.

(1) *Additional offences by persons.* Any person who

(a) Fails to make a report to a pollution prevention officer as and when required under subsection (1) of section 5,

(b) Fails to provide the Governor in Council with evidence of financial responsibility as and when required under subsection (1) of section 8,

(c) Fails to provide the Governor in Council with any plans and specifications required of him under subsection (1) of section 10, or

(d) Constructs, alters or extends any work described in subsection (1) of section 10

(i) Otherwise than in accordance with any plans and specifications provided to the Governor in Council in accordance with a requirement made under that subsection, or with any such plans and specifications as required to be modified by any order made under subsection (2) of that section, or

(ii) Contrary to any order made under subsection (2) of that section prohibiting the carrying out of such construction, alteration or extension, is guilty of an offence and is liable on summary conviction to a fine not exceeding twenty-five thousand dollars.

(2) *Additional offences by ships.* Any ship

(a) That navigates within a shipping safety control zone while not complying with standards prescribed by any regulations made under section 12 that are applicable to it within that shipping safety control zone,

(b) That navigates within a shipping safety control zone in contravention of a regulation made under paragraph (b) or (c) of subsection (1) of section 12,

(c) That, having taken on board a pilot in order to comply with a regulation made under paragraph (b) of subsection (1) of section 12, fails to comply with any reasonable direction given to it by the pilot in carrying out his duties,

(d) That fails to comply with any order of a pollution prevention officer under paragraph (b) or (c) of subsection (3) of section 15 that is applicable to it,

(e) The master of which fails to make a report to a pollution prevention officer as and when required under subsection (2) of section 5, or

(f) The master of which or any person on board which violates section 17, is guilty of an offence and is liable on summary conviction to a fine not exceeding twenty-five thousand dollars.

(3) *Obstruction of pollution prevention officer, etc.* Any person, other than the master of a ship or any person on board a ship, who violates section 17 is guilty of an offence punishable on summary conviction.

20.

(1) *Proof of offence by person.* In a prosecution of a person for an offence under subsection (1) of section 18, it is sufficient proof of the offence to establish that it was committed by an employee or agent of the accused whether or not the employee or agent is identified or has been prosecuted for the offence, unless the accused establishes that the offence was committed without his knowledge or consent and that he exercised all due diligence to prevent its commission.

(2) *Proof of offence by ship.* In a prosecution of a ship for an offence under this Act, it is sufficient proof that the ship has committed the offence to establish that the act or neglect that constitutes the offence was committed by the master of or any person on board the ship, other than a pollution prevention officer or a pilot taken on board in compliance with a regulation made under paragraph (b) of subsection (1) of section 12, whether or not the person on board the ship has been identified; and for the purposes of any prosecution of a ship for failing to comply with any order or direction of a pollution prevention officer or a pilot, any order given by such pollution prevention officer or any direction given by such pilot to the master or any person on board the ship shall be deemed to have been given to the ship.

21.

(1) *Certificate of analyst.* Subject to this section, a certificate of an analyst stating that he has analysed or examined a sample submitted to him by a pollution prevention officer and stating the result of his analysis or examination is admissible in evidence in any prosecution for a violation of subsection (1) of section 4 and in the absence of evidence to the contrary is proof of the statements contained in the certificate without proof of the signature or the official character of the person appearing to have signed the certificate.

(2) *Attendance of analyst.* The party against whom a certificate of an analyst is produced pursuant to subsection (1) may, with leave of the court, require the attendance of the analyst for the purposes of cross-examination.

(3) *Notice.* No certificate shall be received in evidence pursuant to subsection (1) unless the party intending to produce it has given to the party against whom it is intended to be produced reasonable notice of such intention together with a copy of the certificate.

22.

(1) *Jurisdiction in relation to offences.* Where any person or ship is charged with having committed an offence under this Act, any court in Canada that would have had cognizance of the offence if it had been committed by a

person within the limits of its ordinary jurisdiction has jurisdiction to try the offence as if it had been so committed.

(2) *Service on ship and appearance at trial.* Where a ship is charged with having committed an offence under this Act, the summons may be served by leaving the same with the master or any officer of the ship or by posting the summons on some conspicuous part of the ship, and the ship may appear by counsel or agent, but if it does not appear, a summary conviction court may, upon proof of service of the summons, proceed *ex parte* to hold the trial.

#### *Seizure and forfeiture*

23.

(1) *Seizure of ship and cargo.* Whenever a pollution prevention officer suspects on reasonable grounds that

(a) Any provision of this Act or the regulations has been contravened by a ship, or

(b) The owner of a ship or the owner or owners of all or part of the cargo thereof has or have committed an offence under paragraph (b) of subsection (1) of section 19,

he may, with the consent of the Governor in Council, seize the ship and its cargo anywhere in the arctic waters or elsewhere in the territorial sea or internal or inland waters of Canada.

(2) *Custody.* Subject to subsection (3) and section 24, a ship and cargo seized under subsection (1) shall be retained in the custody of the pollution prevention officer making the seizure or shall be delivered into the custody of such person as the Governor in Council directs.

(3) *Perishable goods.* Where all or any part of a cargo seized under subsection (1) is perishable, the pollution prevention officer or other person having custody thereof may sell the cargo or the portion thereof that is perishable, as the case may be, and the proceeds of the sale shall be paid to the Receiver General or shall be deposited in a chartered bank to the credit of the Receiver General.

24.

(1) *Court may order forfeiture.* Where a ship is convicted of an offence under this Act, or where the owner of a ship or an owner of all or part of the cargo thereof has been convicted of an offence under paragraph (b) of subsection (1) of section 19, the convicting court may, if the ship and its cargo were seized under subsection (1) of section 23, in addition to any other penalty imposed, order that the ship and cargo or the ship or its cargo or any part thereof be forfeited, and upon the making of such order the ship and cargo or the ship or its cargo or part thereof are or is forfeited to Her Majesty in right of Canada.

(2) *Forfeiture of proceeds of sale.* Where any cargo or part thereof that is ordered to be forfeited under subsection (1) has been sold under subsection (3) of section 23, the proceeds of such sale are, upon the making of such order, forfeited to Her Majesty in right of Canada.

(3) *Redelivery of ship and cargo on bond.* Where a ship and cargo have been seized under subsection (1) of section 23 and proceedings that could

result in an order that the ship and cargo be forfeited have been instituted, the court in or before which the proceedings have been instituted may, with the consent of the Governor in Council, order redelivery thereof to the person from whom they were seized upon security by bond, with two sureties, in an amount and form satisfactory to the Governor in Council, being given to Her Majesty in right of Canada.

(4) *Seized ship, etc. to be returned unless proceedings instituted.* Any ship and cargo seized under subsection (1) of section 23 or the proceeds realized from a sale of any perishable cargo under subsection (3) of that section shall be returned or paid to the person from whom the ship and cargo were seized within thirty days from the seizure thereof unless, prior to the expiration of the thirty days, proceedings are instituted in respect of an offence alleged to have been committed by the ship against this Act or in respect of an offence under paragraph (b) of subsection (1) of section 19 alleged to have been committed by the owner of the ship or an owner of all or part of the cargo thereof.

(5) *Disposal of forfeited ship.* Where proceedings referred to in subsection (4) are instituted and, at the final conclusion of those proceedings, a ship and cargo or ship or cargo or part thereof are or is ordered to be forfeited they or it may, subject to section 25, be disposed of as the Governor in Council directs.

(6) *Return of seized ship, etc. where no forfeiture ordered.* Where a ship and cargo have been seized under subsection (1) of section 23 and proceedings referred to in subsection (4) have been instituted, but the ship and cargo or ship or cargo or part thereof or any proceeds realized from the sale of any part of the cargo are not at the final conclusion of the proceedings ordered to be forfeited, they or it shall be returned or the proceeds shall be paid to the person from whom the ship and cargo were seized, unless there has been a conviction and a fine imposed in which case the ship and cargo or proceeds may be detained until the fine is paid, or the ship and cargo may be sold under execution in satisfaction of the fine, or the proceeds realized from a sale of the cargo or any part thereof may be applied in payment of the fine.

25.

(1) *Protection of persons claiming interest.* The provisions of section 64A of the *Fisheries Act* apply, with such modifications as the circumstances require, in respect of any ship and cargo forfeited under this Act as though the ship and cargo were, respectively, a vessel and goods forfeited under subsection (5) of section 64 of that Act.

(2) *Idem* References to "the Minister" in section 64A of the *Fisheries Act* shall, in applying that section for the purposes of this Act, be read as references to the Governor in Council and the phrase "other than a person convicted of the offence that resulted in the forfeiture or a person in whose possession the vessel, vehicle, article, goods or fish were when seized" shall be deemed to include a reference to the owner of the ship where it is the ship that is convicted of the offence that results in the forfeiture.

(d) CANADA SHIPPING ACT OF 1970<sup>1</sup>, AS AMENDED IN 1971<sup>2</sup>

...

## PART VIII

...

*Radio equipment*401. *Prohibition against navigation without ship stations and operators*

No person shall navigate

(a) In Canadian waters any ship, and

(b) In any waters a Canadian ship,

unless that ship is fitted with a ship station that complies with the requirements prescribed by the regulations for that class of ship and has on board operators in such number and having such qualifications as are prescribed by the regulations.

402. . . .

(2) *Offence and punishment* Every person who contravenes subsection (1) or section 401 is guilty of an offence and liable on summary conviction to a fine not exceeding one thousand dollars or to imprisonment for a term not exceeding six months or to both.

403. *Regulations*

The Governor in Council may make regulations in respect to the following matters:

...

(b) Prescribing the ship stations to be fitted on Canadian ships and on ships other than Canadian ships while navigating in Canadian waters;

(c) To authorize the imposition of a fine not exceeding fifty dollars and costs or three months imprisonment for the contravention of any regulation made under this section and the recovery of any such fine upon summary conviction; and

(d) For the imposing of fines not exceeding fifty dollars and costs on persons found guilty of any breach of any regulation made by the Minister under this Part.

...

485.

(1) *Removal of certain vessels in distress, etc.* Where the Minister has reasonable cause to believe that the cargo or fuel of a vessel that is in distress, stranded, wrecked, sunk or abandoned

(a) Is polluting or is likely to pollute any Canadian waters,

<sup>1</sup> *Revised Statutes of Canada, 1970*, Chapter S-9.

<sup>2</sup> Amended by the Act to Amend the Canada Shipping Act (given Royal Assent on 30 March 1971), *ibid.*, 1970-71-72, Chapter 27. This amending Act repealed Part IX (Pollution of the Water and Air) of the original act, renumbered Part XX thereof as Part XXI and section 727 as section 762, and added a new Part XX reproduced here. For the complete text of the amendments, see *ibid.*, 1970, Chapter 27 (2nd Supp.).



(b) Constitutes or is likely to constitute a danger to waterfowl or marine life, or

(c) Is damaging or is likely to damage coastal property or is interfering or is likely to interfere with the enjoyment thereof,

he may cause the vessel, its cargo or fuel to be destroyed or removed to such place, and sold in such manner, as he may direct.

...

542.

(1) *Investigation into accidents* The Minister may order an investigation to be made by any person or persons into the cause of any accident on any ship, whether attended with loss of life or not.

(2) *Powers of investigation.* For the purposes of investigating the cause of any accident on a ship any person appointed under subsection (1) has and may exercise the powers set out in section 546.

543.

(1) *Regulations.* The Governor in Council may make regulations

(a) Respecting the reporting of shipping casualties by ships in Canadian waters and Canadian ships in any waters;

(b) Respecting the reporting of accidents or dangerous occurrences happening to or on board ships in Canadian waters and Canadian ships in any waters, whether attended with loss of life or not;

(c) Respecting the reporting of deaths on and the disappearance of persons from ships in Canadian waters or Canadian ships in any waters; and

(d) Prescribing the information to be included in any report referred to in paragraph (a), (b) or (c) and the form of that report.

(2) *Offence and punishment.* Every person who contravenes any regulation made under this section is guilty of an offence punishable on summary conviction.

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...

## PART XX. POLLUTION

### *Interpretation*

727.

(1) *Definitions.* In this Part

“Administrator” means the Administrator of the Maritime Pollution Claims Fund appointed pursuant to section 738;

“Analyst” means a person designated as an analyst pursuant to section 731;

“Assessor” means an assessor appointed pursuant to subsection 746 (3);

“Discharge” includes, but not so as to limit its meaning, any spilling, leaking, pumping, pouring, emitting, emptying, throwing or dumping;

“Fisherman” means

- (a) The holder of a commercial fishing licence,
  - (b) A hired hand who derives all or a substantial portion of his income from employment as such on a fishing vessel,
  - (c) A fishing vessel owner who derives all or a substantial portion of his income from the rental of fishing vessels to holders of commercial fishing licences, and
  - (d) A person who derives all or a substantial portion of his income from the handling of fish on shore directly after the landing thereof from fishing vessels,
- but does not include a person engaged in the processing of fish;

“In bulk”, in relation to any pollutant carried on board a ship whether as cargo or otherwise, means in a quantity that exceeds a quantity prescribed by the Governor in Council with respect to that pollutant by any regulation made pursuant to paragraph 730(1) (p);

“Oil” means oil of any kind or in any form and, without limiting the generality of the foregoing, includes petroleum, fuel oil, sludge, oil refuse and oil mixed with wastes but does not include dredged spoil;

“Owner”, in relation to a ship, means the person having for the time being, either by law or by contract, the rights of the owner of the ship as regards the possession and use thereof;

“Pollutant” means

(a) Any substance that, if added to any waters, would degrade or alter or form part of a process of degradation or alteration of the quality of those waters to an extent that is detrimental to their use by man or by any animal, fish or plant that is useful to man, and

(b) Any water that contains a substance in such a quantity or concentration, or that has been so treated, processed or changed, by heat or other means, from a natural state that it would, if added to any waters, degrade or alter or form part of a process of degradation or alteration of the quality of those waters to an extent that is detrimental to their use by man or by any animal, fish or plant that is useful to man,

and without limiting the generality of the foregoing includes oil and any substance or any substance that is part of a class of substances that is prescribed by the Governor in Council, for the purposes of this Part, to be a pollutant;

“Pollution prevention officer” means a person designated as a pollution prevention officer pursuant to section 731.

(2) *Application.* Except where otherwise provided in this Part or in any regulation made thereunder, this Part and any regulations made thereunder apply

(a) To all Canadian waters south of the sixtieth parallel of north latitude;

(b) To all Canadian waters north of the sixtieth parallel of north latitude that are not within a shipping safety control zone prescribed pursuant to the *Arctic Waters Pollution Prevention Act*;<sup>1</sup>

<sup>1</sup> *Supra* (c).

(c) To any fishing zones of Canada prescribed pursuant to the *Territorial Sea and Fishing Zones Act*,<sup>1</sup> and

(d) To all ships in waters described in paragraphs (a) to (c).

*Discharges of pollutants*

728.

(1) *Regulations prohibiting discharge of pollutants.* The Governor in Council may make regulations prohibiting the discharge from ships of any one or more pollutants specified in the regulations, except as thereby authorized for the purposes of this Part, in any waters to which this Part applies and with respect to which those regulations are made applicable.

(2) *Report by master of ship* Where a ship

(a) Has discharged a pollutant, or

(b) Is in danger of discharging a pollutant or causing a discharge of a pollutant,

contrary to any regulation made pursuant to subsection (1), or

(c) Has discharged a pollutant in such circumstances as may be prescribed by regulation,

the master of the ship shall forthwith report the discharge of the pollutant or the danger to a pollution prevention officer, or such other person as the Governor in Council may designate, at such location and in such manner as the Governor in Council prescribes.

729.

(1) *Removal of ships in distress, etc.* Where the Minister has reasonable cause to believe that a ship that is in distress, stranded, wrecked, sunk or abandoned is discharging or is likely to discharge a pollutant into any waters to which this Part applies, he may, or he may authorize any person to, destroy, if necessary, or remove, if possible, and sell or otherwise dispose of the ship, its cargo or other material on board the ship.

730.

(1) *Regulations.* The Governor in Council may make regulations

(a) Prescribing substances and classes of substances that are, for the purposes of this Part, pollutants;

(b) Prescribing for the purposes of subsection 728(2) circumstances in which, the location at which and the manner in which the master of a ship shall report to a pollution prevention officer or other designated person;

(c) Respecting the fitting, maintenance, testing and use of electronic and other navigational equipment on ships carrying pollutants, in addition to that required under any other provision of this Act or the regulations;

(d) Prescribing with respect to ships of any class designated in the regulations

<sup>1</sup> Reproduced in ST/LEG/SER.B/15, pp. 52-54. See also *supra* DIVISION I, SUBDIVISION A, Chapter I, 3 (a), for its amendments.

- (i) The types of pollutants and the maximum quantities thereof that may be carried on board such ships whether as cargo or otherwise,
- (ii) The maximum quantities of any pollutant that may be carried in cargo holds or tanks and in any fuel tanks in such ships, and
- (iii) The method of stowage of the cargo or fuel in such holds and tanks;
- (e) Respecting the supplies and equipment to be carried by and the fittings and installations required on ships carrying pollutants for handling the pollutants and dealing with any discharge thereof;
- (f) Respecting the method of retention of oily or other wastes by ships carrying pollutants;
- (g) Requiring ships in waters to which this Part applies and with respect to which the regulations are made applicable to have on board, maintain and use appropriate charts, tide tables, lists of lights and other nautical publications;
- (h) Respecting the number and qualifications of navigation and engine room personnel, including pilots and lookouts, required to be on duty on ships of any class designated in the regulations in any waters to which this Part applies and with respect to which such regulations are made applicable;
- (i) Prescribing procedures and practices to be followed by persons on board ships in order to ensure safe navigation in waters to which this Part applies;
- (j) Prescribing procedures to be followed when pollutants are loaded or unloaded from a ship in waters to which this Part applies or transferred on board a ship in such waters;
- (k) Prescribing the supplies and equipment to be maintained by the operators of loading and unloading facilities for ships for use in the event of any discharge of a pollutant during the loading or unloading of a ship;
- (l) Respecting the records to be kept on board a ship
  - (i) Of any activities on board the ship in waters to which this Part applies that result in or may result in the discharge of a pollutant in any such waters or into the atmosphere,
  - (ii) Of loadings and unloadings of the ship at any facilities in such waters, and
  - (iii) Of discharges of pollutants by Canadian ships in any waters, which discharges, if made in waters to which this Part applies, would be contrary to any regulation made pursuant to subsection 728(1),
 and prescribing the person or persons by whom such records shall be kept;
- (m) For regulating and preventing the pollution of the air by ships;
- (n) For regulating and preventing the discharge of pollutants by Canadian ships in such waters, other than waters to which this Part applies, as are designated by the Governor in Council;
- (o) Establishing compulsory traffic routes and other shipping traffic controls considered necessary for safe navigation in waters to which this Part applies and with respect to which those regulations are made applicable;
- (p) Prescribing quantities of pollutants for the purposes of the definition "in bulk" in subsection 727(1); and

(q) Designating or prescribing anything that, pursuant to any provision of this Part, is to be designated or prescribed by the Governor in Council.

(2) *Certificates evidencing compliance.* The Governor in Council may make regulations providing for the issue to the owner or master of any ship of a certificate that, in the absence of any evidence to the contrary, is proof of the compliance of such ship with the requirements of this Act and regulations made thereunder relating to construction, fitting and equipping that are applicable to it or would be applicable to it if it were within waters to which this Part applies, and governing the use that may be made of any such certificate and the effect that may be given thereto for the purposes of any provision of this Act.

*Pollution prevention officers and analysts*

731.

(1) *Appointment.* The Minister may designate any person as a pollution prevention officer or an analyst for the purposes of this Part.

(2) *Powers of pollution prevention officers.* A pollution prevention officer has such of the powers set out in sections 732 and 760 as are specified in the certificate of his designation.

...

732.

(1) *Powers of pollution prevention officer.* A pollution prevention officer may

(a) Require any ship that is within waters to which this Part applies or that is about to enter any such waters to provide him with information concerning the condition of the ship, its machinery and equipment, the nature and quantity of its cargo and fuel and the manner in which and the locations in which the cargo and fuel of the ship are stowed and any other information that he considers appropriate for the administration of this Part;

(b) Go on board any ship that is within waters to which this Part applies and that he suspects on reasonable grounds is bound for a place in Canada and conduct such inspections of the ship as will enable him to determine whether the ship complies with any regulations made under this Part that are applicable to the ship;

(c) Order any ship to proceed out of waters to which this Part applies by such route and in such manner as he may direct, to remain outside such waters or to proceed to and moor, anchor or remain for a reasonable time specified by him and in a place selected by him that is within waters to which this Part applies,

- (i) If he suspects, on reasonable grounds, that the ship fails to comply with any regulation made under this Part that is or may be applicable to it; or
- (ii) If, by reason of weather, visibility, ice or sea conditions, the condition of the ship or any of its equipment, or any deficiency in its complement or the nature and condition of its cargo, he is satisfied that such an order is justified to prevent the discharge of a pollutant;

(d) Order any ship that he suspects on reasonable grounds is carrying a pollutant to proceed through any waters to which this Part applies by a route prescribed by him and at a rate of speed not in excess of a rate prescribed by him; and

(e) Where he is informed that a substantial quantity of a pollutant has been discharged in waters to which this Part applies or has entered waters to which this Part applies, or where on reasonable grounds he is satisfied that a grave and imminent danger of a substantial discharge of a pollutant in waters to which this Part applies exists,

(i) Order all ships within a specified area in waters to which this Part applies to report their positions to him, and

(ii) Order any ship to take part in the clean up of such pollutant or in any action to control or contain the pollutant.

(2) *Compensation.* Compensation shall be paid by the Crown for the services of any ship that has complied with an order issued under subparagraph (1) (e) (ii).

733.

(1) *Assistance to pollution prevention officer.* The master of any ship boarded pursuant to paragraph 732(1) (b) and every person on board the ship shall give a pollution prevention officer all reasonable assistance in his power to enable the pollution prevention officer to carry out his duties and functions under this Part and shall furnish the pollution prevention officer with such information as he may reasonably require.

(2) *Obstruction of pollution prevention officer.* No person shall obstruct or hinder a pollution prevention officer in the carrying out of his duties or functions under this Part.

(3) *False statements.* No person shall knowingly make a false or misleading statement, either verbally or in writing, to a pollution prevention officer engaged in carrying out his duties and functions under this Part.

#### *Civil liability*

734.

(1) *Civil liability resulting from discharge of pollutant.* Subject to section 735,

(a) The owner of a ship that carries a pollutant in bulk, or

(b) The owner of a ship that carries a pollutant in bulk and the owner or owners of that pollutant, if the ship is of a class prescribed by the Governor in Council as a class to which this paragraph applies,

in a case described in paragraph (a) is liable or, in a case described in paragraph (b) are jointly and severally liable

(c) For the costs and expenses of and incidental to the taking of any action authorized by the Governor in Council to repair or remedy any condition that results from the discharge of a pollutant in waters to which this Part applies that is caused by or is otherwise attributable to that ship, or to reduce or mitigate any damage to or destruction of life or property that results from or may reasonably be expected to result from such discharge, to the extent

that such costs and expenses can be established to have been reasonably incurred in the circumstances, and

(d) For all actual loss or damage incurred by Her Majesty in right of Canada or a province or any other person resulting from the discharge of a pollutant into waters to which this Part applies that is caused by or is otherwise attributable to that ship,

and such costs and expenses and actual loss or damage are recoverable, with costs, in the case of costs and expenses referred to in paragraph (c), by the person authorized by the Governor in Council to take the action or if that person is the Minister, by Her Majesty in right of Canada, and, in case of actual loss or damage referred to in paragraph (d), by Her Majesty in right of Canada or a province or the other person that incurred that loss or damage.

(2) *Costs and expenses of preventive action.* Where the Minister, pursuant to subsection 729(1), takes or authorizes the taking of any action to destroy or remove a ship or to destroy or remove the cargo or other material on board a ship, the owner of the ship is liable or, if the ship carries a pollutant in bulk and is of a class prescribed by the Governor in Council as a class to which paragraph (1) (b) applies, the owner of the ship and the owner or owners of the pollutant are jointly and severally liable, for the costs and expenses of and incidental to the taking of such action, to the extent that such costs and expenses can be established to have been reasonably incurred in the circumstances, and such costs and expenses are recoverable, with costs, by the person so authorized to take action or, if the action was taken by the Minister, by Her Majesty in right of Canada.

(3) *Procedure for recovery of claims.* All claims pursuant to this section may be sued for and recovered in the Admiralty Court.

(4) *Limitation period.* No proceedings in respect of a claim pursuant to this section shall be commenced after two years

(a) From the time when the destruction or removal of the ship or the cargo or other material on board the ship was authorized; or

(b) From the time when the discharge of a pollutant in respect of which the proceedings are brought or taken occurred or first occurred, as the case may be, or could reasonably be expected to have become known to those affected thereby.

(5) *Throwing overboard of dangerous goods.* Subsection 450(5) does not apply to relieve the master or owner of a ship from liability, either civil or criminal or both, under this Part except where the consent of the Minister to the throwing of dangerous goods overboard in accordance with that subsection has been given and such goods are thrown overboard in accordance with any terms and conditions on which such consent was given.

735.

(1) *Limitations liability.* The liability of any person pursuant to section 734 does not depend upon proof of fault or negligence but no person is liable pursuant to that section for any costs or expenses described in paragraph (1) (c) of that section or actual loss or damage described in paragraph (1) (d) of that section incurred by another person where he establishes that

(a) The conduct of that other person caused the discharge of the pollutant that gave rise to the liability or contributed to such discharge, to the degree to which his conduct contributed thereto, or

(b) The discharge of the pollutant that gave rise to the liability was wholly caused by

- (i) An act of war, hostilities, civil war, insurrection or a natural phenomenon of an exceptional, inevitable and irresistible character,
- (ii) An act or omission done with intent to cause damage by a person other than any person for whose wrongful act or omission he is by law responsible, or
- (iii) The negligence or wrongful act or omission of any person or government in the installation or maintenance of lights or other navigational aids,

and nothing in this Part shall be construed as limiting or restricting any right of recourse that a person liable pursuant to section 734 may have against any other person.

(2) *Idem.* For the purposes of subsection (1), a reference to the conduct of another person includes any wrongful act or omission by that other person or by any person for whose wrongful act or omission that other person is by law responsible.

(3) *Exemption from liability of certain persons.* The Minister may, by order, exempt from liability under subsection 734(1) any owner of a pollutant that is carried by a ship of a class to which paragraph (b) of that subsection applies, if such owner establishes to the satisfaction of the Minister that the pollutant of which he is the owner is of such a nature and quantity that, if it were discharged by the ship in waters to which this Part applies, the discharge would not constitute a contravention of any regulation made pursuant to subsection 728(1).

(4) *Amount directly recoverable.* Notwithstanding any other provision of this Act, the aggregate amount recoverable directly from

(a) The owner of a ship, or

(b) The owner of a ship that carries a pollutant in bulk and the owner or owners of that pollutant,

as the case may be, in respect of each separate incident that gives rise to civil liability under section 734 is,

(c) Where the incident occurs without actual fault or privity on the part of the person or persons described in paragraph (a) or (b), the lesser of

- (i) 2,000 gold francs for each ton of the ship's tonnage, and
- (ii) 210,000,000 gold francs, and

(d) Where the incident occurs with actual fault or privity on the part of the person or persons described in paragraph (a) or (b), an amount determined without reference to paragraph (c),

and where the aggregate of all settlements and judgements in respect of any such incident exceeds the aggregate amount so recoverable directly from the person or persons described in paragraph (a) or (b), the amount of such excess may be recovered out of the Fund in the manner provided in this Part.



736.

(1) *Evidence of financial responsibility to be provided.* Evidence of financial responsibility in the form of insurance or an indemnity bond, or any other evidence of financial responsibility satisfactory to the Minister, shall be provided by

(a) The owner of any ship that carries a pollutant in bulk to or from any place in Canada, or

(b) Subject to subsection 735(3), the owner of any ship that carries a pollutant in bulk to or from any place in Canada and the owner or owners of that pollutant, if the ship is of a class prescribed by the Governor in Council as a class to which paragraph 734(1) (b) applies,

in an amount not less than the aggregate amount recoverable directly from the person or persons described in paragraph (a) or (b), as the case may be, determined in accordance with paragraph 735(4) (c), and such evidence shall be provided,

(c) In the case of a ship that carries a pollutant to any place in Canada from any place outside waters to which this Part applies, before it enters such waters, and

(d) In the case of a ship that carries a pollutant from any place in Canada, before it leaves the facility where such pollutant is loaded.

(2) *Persons entitled to claim against insurance or bond.* Evidence of financial responsibility in the form of insurance or an indemnity bond shall be in a form that will enable any person entitled pursuant to section 734 to claim against the person or persons giving such evidence of financial responsibility to recover directly from the proceeds of such insurance or bond.

...

### *Offences*

752. *Discharge of pollutants by persons or ships*

Any person who and any ship that discharges a pollutant in contravention of any regulation made pursuant to section 728 is guilty of an offence and liable on summary conviction to a fine not exceeding one hundred thousand dollars.

753.

(1) *Additional offences by person.* Any person who

(a) Fails to make a report as and when required under subsection 728(2) or as and when required under any regulation made for the purposes of that subsection, or

(b) Fails to provide evidence of financial responsibility as and when required under subsection 736(1)

is guilty of an offence and liable on summary conviction to a fine not exceeding one hundred thousand dollars.

(2) *Idem* Any person who violates subsection 733(2) or (3) is guilty of an offence punishable on summary conviction.

754.

(1) *Additional offences by ships.* Any ship that fails to comply with any reasonable requirement of a pollution prevention officer made under paragraph 732(1) (a) or with any order or direction of a pollution prevention officer given under paragraph 732(1) (c) (d) or (e) is guilty of an offence and liable on summary conviction to a fine not exceeding one hundred thousand dollars.

(2) *Failure to carry certificate.* Any ship in respect of which a certificate may be issued pursuant to regulations made under subsection 730(2) and that enters or proceeds within any waters to which this Part applies without having such a certificate on board is guilty of an offence and liable on summary conviction to a fine not exceeding one hundred thousand dollars.

755. *Additional offences by persons or ships*

Any person who and any ship that contravenes any regulation made under any of paragraphs 730 (1) (c) to (o) that is applicable to him or it is guilty of an offence and liable on summary conviction to a fine not exceeding one hundred thousand dollars.

756.

(1) *Evasion of payment.* Every person who wilfully, in any manner, evades or attempts to evade payment of any amount payable under subsection 748 (1) is guilty of an offence and liable on summary conviction to a fine not exceeding five thousand dollars.

(2) *Idem.* Any person who fails to file an information return, as and when required by any regulation made under paragraph 749 (b), containing substantially the information required to be included therein is guilty of an offence and liable on summary conviction to a fine not exceeding one hundred dollars for each day of such default.

757. *Proof of offence by ship*

In a prosecution of a ship for an offence under this Part, it is sufficient proof that the ship has committed the offence to establish that the act or neglect that constitutes the offence was committed by the master of or any person on board the ship, other than a pollution prevention officer, whether or not the person on board the ship has been identified; and for the purposes of any prosecution of a ship for failing to comply with any requirement, order or direction of a pollution prevention officer, any requirement made or order or direction given by such pollution prevention officer of or to the master or any person on board the ship shall be deemed to have been made of or given to the ship.

...

### *Seizure*

760.

(1) *Seizure of ship and pollutant.* Whenever a pollution prevention officer suspects on reasonable grounds that

(a) Any provision of this Part or of any regulation made thereunder has been contravened by a ship, or

(b) The owner of a ship or the owner or owners of all or part of the pollutant that is carried thereon has or have committed an offence under paragraph 753 (1) (b),

he may, with the consent of the Minister, seize the ship, and any pollutant that is carried thereon, anywhere in waters to which this Part applies or to which the *Arctic Waters Pollution Prevention Act* applies.

(2) *Custody.* Subject to subsection (3) and section 761, a ship and any pollutant seized under subsection (1) shall be retained in the custody of the pollution prevention officer making the seizure or shall be delivered into the custody of such person as the Minister directs.

(3) *Perishable goods.* Where all or any pollutant seized under subsection (1) is perishable, the pollution prevention officer or other person having custody thereof may sell the pollutant or the portion thereof that is perishable, as the case may be, and the proceeds of the sale shall be paid to the Receiver General or shall be deposited in a chartered bank to the credit of the Receiver General.

761.

(1) *Seized ship, etc. to be returned unless proceedings instituted.* Any ship and any pollutant seized under subsection 760(1) and the proceeds realized from a sale of any perishable pollutant under subsection 760(3) shall be returned or paid to the person from whom the ship and pollutant were seized within thirty days from the seizure thereof unless, prior to the expiration of the thirty days, proceedings are instituted in respect of an offence alleged to have been committed by the ship against this Part or in respect of an offence under paragraph 753(1) (b) alleged to have been committed by the owner of the ship or an owner or owners of all or part of any pollutant that is carried thereon.

(2) *Redelivery of ship and pollutant on posting of security.* Where a ship and any pollutant are seized under subsection 760(1), any court in or before which proceedings referred to in subsection (1) of this section may be instituted may, with the consent of the Minister, order redelivery thereof to the person from whom they were seized if security for payment of the maximum fine that might be imposed as a result of any such proceedings and costs thereof is given to Her Majesty in right of Canada.

...

#### 4. DENMARK

(a) ACT NO. 290 OF 7 JUNE 1972 ON MEASURES AGAINST POLLUTION OF THE SEA BY SUBSTANCES OTHER THAN OIL<sup>1</sup>

*Section 1.* For the purpose of this Act "dumping" means any disposal of substances or materials into the sea by discharge, emptying or sinking from or together with vessels, aircraft and other sea-going or airborne means of transport and floating or fixed platforms.

<sup>1</sup> English text provided by the Ministry of Foreign Affairs of Denmark in a note verbale of 5 January 1973.

Dumping is not: (1) disposal of substances or materials derived from the normal operation of means of transport, platforms or their equipment; and (2) the placing in the sea of substances and materials for a purpose other than the mere disposal thereof.

*Section 2.* The Act applies to the following means of transport and platforms:

(1) Means of transport which are Danish-owned or located in or above Danish territorial waters;

(2) Platforms which are Danish-owned or located in Danish territorial waters or in Danish territory of the Continental Shelf.

*Section 3.* It is prohibited to dump substances or materials

(1) Within Danish territorial waters;

(2) Within those parts of the Atlantic and Arctic Oceans and their dependent seas, including harbour areas, which lie north of 36° north latitude and between 42° west longitude and 51° east longitude, excluding the Mediterranean Sea and its dependent seas as far as the point of intersection of the parallel of 36° north latitude and the meridian of 5° 36' west longitude;

(3) Within that part of the Atlantic Ocean which lies north of 59° north latitude and between 44° west longitude and 42° west longitude.

*Section 4.* In other ocean territories the dumping of substances or materials listed in Annexes 1 and 2 is prohibited.

*Section 5.* The Minister for Environmental Protection or his agent may authorise dumping irrespective of the prohibitions laid down in sections 3 and 4. Dumping outside Danish territorial waters may also be authorized by the competent authorities of any country which has acceded to the international Convention on Prevention of Pollution of the Sea by Dumping from Vessels and Aircraft.

*Subsection 2.* Dumping of substances and materials listed in Annexes 1 and 2 may be authorised only in specific individual instances and for substances and materials listed in Annex 1 only in very special circumstances. Dumping of substances and materials not listed in the Annexes to this Act or of waste with only negligible quantities of the substances and materials listed in Annex 2 may be authorised without limit as to time, number or extent of dumpings.

*Subsection 3.* Dumping of waste containing insignificant quantities of the substances and materials listed in Annex 1 may be authorised even in the absence of special circumstances provided the substances or materials have not been added to the waste for the purpose of disposal.

*Section 6.* The prohibitions laid down in sections 3 and 4 do not apply to dumping made for the purpose of saving human life or out of consideration for the safety of the means of transport or of the platform.

*Section 7.* It is prohibited in Denmark for the purpose of dumping to release substances and materials for transportation and to carry and load such substances and materials. This does not apply where dumping has been authorised or where the relevant substances and materials are not listed in Annexes 1 and 2 and are intended for dumping outside the territories specified in section 3.

*Section 8.* Owners, users or operators of means of transport and owners or users of platforms must report to the Minister for Environmental Protection or any other authority designated by the Minister any dumping made by them and requiring authorisation or made under the provisions of section 6. The report must be filed not later than one week after the dumping.

Subsection 2. The report must state:

- (1) Time and place of dumping;
- (2) Nature and extent of the dumped substances or materials;
- (3) Dumping procedure;
- (4) Name of the authority issuing the authorisation;
- (5) Date of authorisation.

Subsection 3. If the dumping was made under the provisions of section 6 the report must state the reason and mention the circumstances which necessitated the dumping.

*Section 9.* The police, the defence and the fisheries inspection supervise the compliance with the provisions of this Act and the precepts issued under this Act.

Subsection 2. The defence and the fisheries inspection are invested with police authority while discharging supervisory functions.

Subsection 3. Police authority may be exercised towards foreign, sea-going vessels passing through Danish territorial waters only where violation of the provisions of this Act and of the precepts issued under this Act has taken place or is expected to take place within Danish territory.

*Section 10.* The Minister for Environmental Protection is empowered to establish provisions on prohibitions against dumping of substances or materials other than those listed in Annexes 1 and 2 outside the territories indicated in subsections 1 and 2 of section 3, or to establish divergent provisions on dumping outside these territories.

Subsection 2. The Minister is further empowered to amend Annexes 1 and 2.

*Section 11.* Upon recommendation by the Council mentioned in section 9 of the Act on Measures Against Pollution of the Sea by Oil, the Minister for Environmental Protection may establish provisions on prohibitions against discharge and emptying into the sea from means of transport and platforms, as described in section 2, of substances and materials derived from the normal operation of means of transport, platforms or their equipment.

*Section 12.* Violation of sections 3, 4, 7 and 8 are punishable by fine, ordinary imprisonment or, in aggravating circumstances, by jail term of up to one year.

Subsection 2. In precepts issued pursuant to sections 10(1) and 11, punishment may be provided as either fine or ordinary imprisonment or as fine, ordinary imprisonment or, in aggravating circumstances, jail term of up to one year for violations of the provisions of the precepts.

Subsection 3. In the case of violations committed by limited liability companies, co-operatives or the like, the company as such shall be held liable to pay the fine.

...

#### ANNEX I

##### SUBSTANCES AND MATERIALS FOR WHICH DUMPING AUTHORISATION WILL BE GIVEN ONLY IN VERY SPECIAL CIRCUMSTANCES

1. Organic halogenous compounds and substances which may form such substances in the marine environment, excluding substances which are non-toxic or will rapidly be converted in the sea to substances which are biologically harmless.
2. Organic silicone compounds and substances which may form such compounds in the marine environment, excluding substances which are non-toxic or will rapidly be converted in the sea to substances which are biologically harmless.
3. Substances which have been closely defined by the Minister for Environmental Protection and which may supposedly be carcinogenic.
4. Mercury and mercury compounds.
5. Cadmium and cadmium compounds.
6. Non-degradable plastics and other non-degradable synthetic materials which can float on the sea and which may seriously inconvenience fisheries, navigation or other legitimate uses of the sea or may reduce the recreational value of the sea.

#### ANNEX 2

##### SUBSTANCES AND MATERIALS FOR WHICH DUMPING AUTHORISATION WILL BE GIVEN ONLY IN SPECIFIC INDIVIDUAL INSTANCES

1. Arsenic, lead, copper, zinc and compounds thereof, cyanides and fluorides, and pesticides and their byproducts not listed in Annex 1.
2. Substances which may cause a disagreeable taste in fish, shellfish and molluscs, thereby reducing their commercial value.
3. Containers, metal waste, tar-like substances which may sink to the bottom and other voluminous waste which may seriously inconvenience fisheries or navigation.
4. Substances which, although not toxic *per se*, may be noxious to the marine environment because of the quantity in which they are dumped or because they may to a substantial degree reduce the recreational value of the sea.

##### (b) ACT NO. 289 OF 7 JUNE 1972 AMENDING THE ACTION MEASURES AGAINST POLLUTION OF THE SEA BY OIL AND OTHER MATERIALS<sup>1</sup>

*Section 1.* In the Act on Measures Against Pollution of the Sea by Oil and Other Materials, cf. Government Order No. 124 of April 7, 1967, amended by Act No. 49 of February 3, 1971, the following amendments shall apply:

1. The title of the Act shall be: "Act on Measures Against Pollution of the Sea by Oil."
2. Section 10 a shall be deleted.
3. Section 11 shall read:

<sup>1</sup> English text provided by the Ministry of Foreign Affairs of Denmark in a note verbale of 5 January 1973.

Section 11. Violation of this Act is punishable by fine, ordinary imprisonment or, in aggravating circumstances, by jail term up to one year.

Subsection 2. In precepts issued pursuant to this Act, punishment may be provided as either fine or ordinary imprisonment or as fine, ordinary imprisonment or, in aggravating circumstances, jail term of up to one year for violations of the provisions of the precepts.

Subsection 3. In the case of violations committed by limited liability companies, co-operatives or the like the company as such shall be held liable to pay the fine.

...

(c) NOTICE OF 18 JANUARY 1972 ISSUED BY THE MINISTRY OF POLLUTION CONTROL PROHIBITING THE DUMPING OF CERTAIN MATERIALS FROM SHIPS<sup>1</sup>

Pursuant to article 10 *a* of the Act concerning measures to prevent pollution of the sea by oil and other materials (cf. Statute Notice No. 124 of 7 April 1967, as amended by Act No. 49 of 3 February 1971) it is hereby provided that:

*Article 1*

1. It shall be unlawful to dump in the sea from Danish ships any materials loaded on board with a view to dumping, which contain substances that could have harmful effects on marine animal or plant life. The prohibition shall, in particular, apply to the dumping of

- (1) Persistent organic halogen compounds and
- (2) Compounds of toxic metals.

2. It shall also be unlawful to dump from Danish ships any materials that could cause serious inconvenience to navigation and fisheries and other lawful uses of the sea.

3. Annexes 1 and 2 of this Notice contain examples of substances and materials subject to the prohibition in paragraphs 1 and 2.

*Article 2*

It shall be unlawful to dump harmful substances of the kind specified in article 1 from any ship in Danish territorial waters.

*Article 3*

The Minister for Pollution Control may, upon request, permit dumping of materials containing substances of the kind referred to in article 1, paragraph 1. Permits to dump materials containing substances of the kind listed in annex 1 are not likely to be granted.

*Article 4*

Offences against the provisions set forth in this Notice shall be punishable by a fine.

...

<sup>1</sup> Entered into force on 1 February 1972 in accordance with article 5. Text provided by the Ministry of Foreign Affairs of Denmark in a note verbale of 5 January 1973. Translation by the Secretariat of the United Nations.

## ANNEX I

EXAMPLES OF SUBSTANCES AND MATERIALS, WHICH ARE SUBJECT TO THE PROHIBITION IN ARTICLE I OF THE NOTICE AND FOR WHICH A DUMPING PERMIT IS NOT LIKELY TO BE GRANTED

- A. *Persistent pollutants which become concentrated in animals and plants.* (Waste from the production of the substances listed under item A may, in many cases, contain by-products of similar composition.)
1. *Halogenated hydrocarbons* (e.g. chlorinated hydrocarbons):
    - (1) DDT (Dichloro-diphenyl-trichloroethane), lindane, dieldrin, aldrin and endrin.
    - (2) Aliphatic chlorinated hydrocarbons. (Waste from the manufacture of PVC).
    - (3) PCBs (polychlorinated biphenyls). (Used as cooling agents in transformers and condensers, under such names as askarel and pyrelene 1499.)
    - (4) Polychlorinated dibenzo-paradoxines. (Occur as by-products in the manufacture of pentachlorophenol and dichlorophenoxyacetic acids (herbatox, etc.).)
    - (5) By-products of teflon.
    - (6) Chlorobenzenes.
  2. *Other examples*  
 Cresols.  
 Naphthylamines.  
 Silicons.
- B. *The elements mercury and cadmium and their compounds.* (The examples given below are intended to make it possible to identify the elements either with the help of the chemical symbols or the underlined part of the names of the substances.<sup>1</sup> Where mercuric sulfide is mentioned, the same classification also applies to such compounds as mercuric cyanide and/or other compounds of mercury. Similarly, such compounds as cadmium nitrate and cadmium chloride are also subject to the prohibition, even if they are not specifically listed.)
- Mercury.  
 . . .  
 Cadmium.  
 . . .
- C. *Durable plastics, fishing tackle, cordage, packing materials etc.*, which can cause serious inconvenience to navigation and fisheries and other lawful uses of the sea.

## ANNEX 2

EXAMPLES OF SUBSTANCES WHICH ARE SUBJECT TO THE PROHIBITION IN ARTICLE I OF THE NOTICE AND FOR WHICH A DUMPING PERMIT MAY BE GRANTED IN CERTAIN CASES

- A. *Other highly toxic elements and their compounds.* (The examples listed below are intended to make it possible to identify the elements either with the help of the chemical symbols or the underlined part of the names of the substances<sup>1</sup>. Where sodium arsenite is mentioned, the same classification also applies to such compounds of arsenic. Similarly, such compounds as copper nitrate, antimony trichloride, tetraethyl lead and beryllium lactate are also subject to the prohibition, even if they are not specifically listed. The cyanide group is included, although cyanide is not an element.)

<sup>1</sup> The chemical symbols and the names of substances are omitted.



Antimony.  
 . . .  
 Arsenic.  
 . . .  
 Beryllium.  
 . . .  
 Lead.  
 . . .  
 Copper.  
 . . .  
 Cobalt.  
 . . .  
 Chromium.  
 . . .  
 Nickel.  
 . . .  
 Selenium.  
 . . .  
 Thallium.  
 . . .  
 Tin.  
 . . .  
 Titanium.  
 . . .  
 Vanadium.  
 . . .  
 Zinc.  
 . . .  
 Cyanides.  
 . . .

**B. Alkaloids.**  
 Strychnine.  
 Brucine.  
 LSD.

## 5. FIJI

CONTINENTAL SHELF ACT, 1970, section 9<sup>1</sup>

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<sup>1</sup> *Supra* DIVISION II, 6 (a).

## 6. JAPAN

### MARINE POLLUTION PREVENTION LAW, 1970<sup>1</sup>

#### CHAPTER I

##### *General provisions*

##### *Article 1. Purpose*

The purpose of this Law is to prevent marine pollution by controlling the discharge to the ocean of oil and wastes from a ship and an offshore facility, by securing appropriate disposal of waste oil and by taking measures for the prevention of marine pollution, thereby contributing to the preservation of the marine environment.

##### *Article 2. Prevention of marine pollution*

Every person shall endeavour oneself not to pollute the ocean by the discharge of oil or wastes and by other acts.

...

#### CHAPTER II

##### *Control of discharge of oil from a ship*

##### *Article 4. Prohibition of discharge of oil from a ship*

1. No one shall discharge oil from a ship on the sea areas. However, this provision shall not apply to the discharge of oil that falls under any of the following subparagraphs:

- (1) The discharge of oil for the purpose of securing the safety of a ship, preventing damage to a ship or cargo, or saving human life;
- (2) The discharge of such oil as that was discharged due to damage to a ship or by other unavoidable reasons and when all the possible measures to prevent the continuous discharge of oil were taken.

2. The provisions of the preceding paragraph proper shall not apply to the discharge of oil (in case of a tanker, the discharge of bilge only) that falls under all of the following subparagraphs:

- (1) The discharge takes place while the ship is proceeding en route;
- (2) The instantaneous rate of discharge (meaning the rate of discharge of oil in litres per hour at any instant divided by the speed of the ship in knots at the same instant; hereinafter the same shall apply) of oil content (meaning crude oil, heavy oil as provided by the Ministry of Transport Ordinance referred to in subparagraph (1) of the preced-

<sup>1</sup> Law No. 136 of 1970. Entered into force on 24 June 1971, except Articles 4, 5 and 8 as well as Chapters III and IV, which came into force on 25 June 1972, in accordance with Article 1 of the Supplementary Provisions attached to the Law. The Law for the Prevention of Pollution of the Sea by Oil from Ships (Law No. 127 of 1966) was repealed by Article 2 of the Supplementary Provisions. English text provided by the Permanent Representative of Japan to the United Nations in a note verbale of 11 February 1972.

ing article or lubricating oil contained in the discharged oil; hereinafter the same shall apply) does not exceed 60 litres per nautical mile;

- (3) The oil content is less than 100 parts per 1,000,000 parts of the discharged oil;
3. The provision of paragraph 1 proper shall not apply to the discharge of bilge from a ship other than a tanker which is less than 300 tons gross tonnage.
4. The discharge of oil falling under any subparagraph of paragraph 2 and the discharge of bilge mentioned in the preceding paragraph shall be made as far from land as practicable.
5. The provision of paragraph 1 proper shall not apply to the discharge of ballast water (including cleaning water of the cargo hold; hereinafter the same shall apply in this paragraph) that falls under all of the following subparagraph and the discharge of ballast water from the cleaned cargo hold of a tanker and its degree of cleaning conforms to the standards provided by the Ministry of Transport Ordinance:
  - (1) The discharge takes place while the ship is proceeding en route;
  - (2) The instantaneous rate of discharge of oil does not exceed 60 litres per nautical mile;
  - (3) The total quantity of oil discharge on a ballast voyage (meaning the period from the commencement of loading of ballast water into the cargo hold of the ship to the completion of the discharge of such ballast water) does not exceed 1/15,000 of the total cargo-carrying capacity;
  - (4) The discharge is made in the sea areas beyond 50 nautical miles from the base-line (the base-line from which the territorial sea of the territory in question is established in accordance with the Geneva Convention on the Territorial Sea and the Contiguous Zone, 1958).
6. The provisions of paragraph 1 proper shall not apply to the discharge of oil from a ship for the time being engaged in the whaling industry when actually employed on whaling operations.

*Article 5. Device for prevention of discharge of oil*

The owner of a ship (in case of co-ownership of the ship, the ship's husband; in case of a lease of the ship, the lessee of a ship; hereinafter the same shall apply) shall, as provided by the Ministry of Transport Ordinance, provide on board a ship (excluding ships that produce no bilge) a device for prevention of leakage to the bottom of oil existing on board or for storage or disposal of bilge on board (hereinafter referred to as the "bilge discharge prevention device").

*Article 6. Oil pollution supervisor*

1. The owner of a ship shall, for each ship prescribed by the Ministry of Transport Ordinance, designate one of ship's officers who go on board the ship as an oil pollution supervisor to have him assist the master (in case where any person other than the master executes the master's duties for the master; that person; hereinafter the same shall apply) and supervise over the business concerning the prevention of inadequate discharge of oil from the ship.

2. The oil pollution supervisor shall be a person with experiences of operation concerning handling of oil or other requirements as provided by the Ministry of Transport Ordinance.

...

*Article 8. Oil record book*

1. The master of a ship (in case of a ship navigation exclusively under tow or pushed by other ship (hereinafter referred to as the "towed ship"), the owner of a ship; the same shall apply in the following paragraph and paragraph 3) shall provide an oil record book on board (in case of a towed ship, at the office of the owner of a ship who administers the ship concerned; the same shall apply in paragraph 3). However, this shall not apply to ships other than a tanker which produces no bilge.

2. The oil pollution supervisor (in case of a ship in which such oil pollution supervisor has not been designated, the master of a ship) shall, when the discharge of oil or other operations concerning handling of oil on board as provided by the Ministry of Transport Ordinance is taken place, make entry in the oil record book in accordance with the Ministry of Transport Ordinance.

3. The master of a ship shall keep the oil record book on board for two years from the day on which the last entry was made.

4. In addition to those provisions prescribed in the three preceding paragraphs, necessary matters concerning the oil record book such as the form of the oil record book shall be provided by the Ministry of Transport Ordinance.

*Article 9. Exceptions*

1. The provisions from article 5 to the preceding article inclusive shall not apply to ships, other than tankers, of less than 300 tons gross tonnage.

2. The provisions of articles 6 and 7 shall not apply to ships other than Japanese ships (meaning Japanese ships provided for in article 1 of the Ship Law (Law No. 46 of 1899)).

CHAPTER III

*Control of discharge of wastes from a ship*

*Article 10. Prohibition of discharge of wastes from a ship*

1. No one shall discharge wastes from a ship on the sea areas. However, this shall not apply to the discharge of wastes that falls under any of the following subparagraphs:

- (1) The discharge of wastes for the purpose of securing the safety of a ship, preventing damage to a ship or cargo, or saving human life;
- (2) The discharge of such wastes as that were discharged due to damage to a ship or by other unavoidable reasons and when all the possible measures to prevent the continuous discharge of wastes were taken.

2. The provision of the preceding paragraph proper shall not apply to the discharge of wastes that falls under any of the following subparagraphs:

- (1) The discharge of refuse, excrements, sewage or other similar wastes that arise from daily life of seamen and other persons on board the ship concerned. . . .

...

## CHAPTER IV

*Control of discharge of oil and wastes from an offshore facility**Article 18. Prohibition of discharge of oil and wastes from an offshore facility*

1. No one shall discharge oil or wastes from an offshore facility. However this provision shall not apply to the discharge of oil or wastes that fall under any of the following subparagraphs:

- (1) The discharge of oil or wastes for the purpose of securing the safety or preventing damage of an offshore facility, or saving human life;
- (2) Such discharge of oil or wastes as when oil or wastes were discharged due to damage of an offshore facility or by other unavoidable reasons and all the possible measures to prevent the continuous discharge of oil or wastes were taken.

2. The provision of the preceeding paragraph proper shall not apply to the discharge of oil or wastes that falls under any of the following subparagraphs:

- (1) The discharge of refuse, excrements, sewage or other similar wastes that arise from daily life of persons in an offshore facility. . . .

. . .

## CHAPTER VI

*Measures for the prevention of marine pollution and the removal of marine pollution**Article 38. Removal of oil discharged in large quantity*

1. When oil (only when its oily content is of such density as may be provided by the Ministry of Transport Ordinance or of higher density) is discharged (hereinafter referred to as "the discharge of oil in large quantity") in such quantity as may be provided by the Ministry of Transport Ordinance, or more, the following persons shall immediately report to the nearest local office of the Maritime Safety Agency, in accordance with the provisions of the Ministry of Transport Ordinance, of the time, date and place of the discharge of oil, quantity and conditions of dispersion of the discharged oil, and the ship that has carried the discharged oil or the offshore facility and other facility (including such facility on land) that has kept the discharged oil in custody; however, the same shall not apply in case it is recognized that there is no fear of the discharged oil being dispersed beyond such extent as may be provided by the Ministry of Transport Ordinance:

- (1) The master of the ship that has carried the discharged oil or supervisor of the facility that has kept the discharged oil under custody;
- (2) Any person other than those aboard the ship mentioned in the preceding subparagraph or who are employees of the facility referred to therein, who has committed acts that caused the discharge of oil (in case such person is aboard the ship, the master of the ship).

2. Any person who has discovered oil having dispersed beyond such extent as may be provided by the Ministry of Transport Ordinance under the proviso

of the preceding paragraph shall report, without delay, to the nearest local office of the Maritime Safety Agency.

*Article 39.*

1. When the discharge of oil in large quantity is made, any person mentioned in each subparagraph of paragraph 1 of the preceding article shall, in accordance with the provisions as may be provided by the Ministry of Transport Ordinance, immediately take emergency measures to prevent the dispersion of the discharged oil and the subsequent discharge of oil, and to remove the discharged oil (hereinafter referred to as "removal of the discharged oil").

2. When the discharge of oil in large quantity is made, the following persons shall immediately take necessary measures, in accordance with the Ministry of Transport Ordinance, for removal of the discharged oil. However, the same shall not apply in case a person referred to in the preceding article has taken measures in accordance with the provisions of the preceding paragraph and such measures are recognized to be sufficient to remove the discharged oil:

- (1) The owner of a ship as prescribed in paragraph 1, subparagraph (1), of the preceding article;
- (2) The owner of a facility as provided in paragraph 1, subparagraph (1), of the preceding article;
- (3) The employer, other than those persons referred to in the preceding two subparagraphs, of a person who has committed in the course of his employment an act that caused the discharge of oil (if such person is a crew member of a ship, the owner of the ship).

3. In a case referred to in the preceding paragraph, the Commandant of the Maritime Safety Agency may order the persons mentioned in any subparagraph of that paragraph to take measures pursuant to the provisions of the same paragraph when it is recognized that such persons have not taken measures that they should take in accordance with the provisions of that paragraph.

4. When the discharge of oil in large quantity is made from a ship in or near a port, the following persons shall endeavour to assist such persons as provided in paragraphs 1 and 2 in implementation of the measures that these persons shall take, or to take necessary measures in cooperation with these persons for removal of the discharged oil:

- (1) The consignor in case the port is a port of shipment of the discharged oil;
- (2) The consignee in case the port is a port of landing of the discharged oil;
- (3) The supervisor of the mooring facility in case the discharge of oil is made during mooring of the ship.

*Article 40. Removal of wastes and other materials*

The Commandant of the Maritime Safety Agency may, when the ocean is polluted by the discharged wastes and other materials (excluding oil; hereinafter the same shall apply in this article), and such pollution entails or is feared to entail a notable impediment to the preservation of the marine environment and when it is recognized that the prevention of such pollution is urgently required, order the person who is recognized to have discharged the wastes

and other materials that caused pollution to take necessary measures to prevent pollution inclusive of the removal of such wastes and other materials.

*Article 41. Burden of expenditures required for the measures taken by the commandant of the maritime safety agency*

1. The Commandant of the Maritime Safety Agency may, when any person who shall undertake measures in accordance with the provisions of paragraphs 1 to 3 of article 39 and the preceding article does not undertake measures or the Commandant of the Maritime Safety Agency deems to be difficult to prevent marine pollution solely by measures undertaken by such person, undertake himself measures for removal of the discharged oil, wastes and other materials and other necessary measures for the prevention of marine pollution. He may have the expenditures so incurred for such measures borne, in accordance with the Ministry of Transport Ordinance, by the owner of the ship that carried the discharged oil, wastes and other materials or the owner of an offshore facility or other facility (including facility on land) to such extent as may be provided by the Ministry of Transport Ordinance. However, the same shall not apply in case the discharge of oil, wastes and other materials are made due to an abnormal natural disaster and other causes as may be provided by the Ministry of Transport Ordinance.

...

4. In the case of paragraph 1 the owner of a ship or the supervisor of a facility under the same paragraph may have recourse as to the expenditures borne in accordance with the provisions of the same paragraph against any person who is liable for the discharge of oil, wastes and other materials.

*Article 42. Disposal of properties for the purpose of removal of significant marine pollution by oil*

The Commandant of the Maritime Safety Agency may, when significantly large quantity of oil is discharged along the coastal waters of this country resulting in significant marine pollution, and such pollution entails a notable impediment to preservation of the marine environment, injures human health, inflicts heavy damage upon properties or makes business activities difficult or when there is fear that these impediments may arise, dispose, only to the extent as may be necessary for removal of the discharged oil, of properties existent in the waters around the place where the discharged oil is afloat, including destruction of the ship that carried the discharged oil and burning up of the discharged oil so long as it is urgently required to undertake measures to remove the discharged oil in order to prevent such impediments.

...

## CHAPTER VIII

### *Penal provisions*

*Article 55*

Any person who falls under any of the following subparagraphs shall be liable to a penal servitude not exceeding six months or a fine not exceeding 200,000 yen:

- (1) A person who has discharged oil in violation of the provisions of paragraph 1 of article 4;

- (2) A person who has discharged wastes in violation of the provisions of paragraph 1 of article 10;
- (3) A person who has discharged oil or wastes in violation of the provisions of paragraph 1 of article 18;
- ...
- (6) A person who has violated the provisions of paragraph 1 of article 39;
- (7) A person who has violated the order made in accordance with the provisions of paragraph 3 of article 39 or article 40;
- ...

*Article 57*

Any person who falls under any of the following subparagraphs shall be liable to a fine not exceeding 100,000 yen:

- (1) A person who has put a ship to navigation in violation of the provisions of article 5;
- (2) A person who has violated the provisions of paragraph 1 of article 6, article 7 or article 27;
- (3) A person who has violated the order made in accordance with the provisions of paragraph 1 of article 33;
- (4) A person who has not made a report in accordance with the provisions of paragraph 1 of article 38, or who has made a false report.

*Article 58*

Any person who falls under any of the following subparagraphs shall be liable to a fine not exceeding 50,000 yen:

- (1) A person who has violated the provisions of paragraph 1 or paragraph 3 of article 8 or paragraph 1 or paragraph 3 of article 16;
- (2) A person who has not made entry in the oil record book of the matters that shall be entered in accordance with paragraph 2 of article 8 or paragraph 2 of article 16, or who has made a false entry therein;
- ...

## 7. MADAGASCAR

LOI N° 70-016 DU 15 JUILLET 1970 PORTANT RÉGLEMENTATION MARITIME DES INSTALLATIONS ET AUTRES DISPOSITIFS SUR LE PLATEAU CONTINENTAL, articles 22 et 34<sup>1</sup>

## 8. MALTA

CONTINENTAL SHELF ACT, 1966, sections 4, 6-9<sup>2</sup>

<sup>1</sup> *Supra* DIVISION II, 12 (b).

<sup>2</sup> *Ibid.*, 14.



## 9. NETHERLANDS

- (a) POLLUTION OF SURFACE WATER ACT, 13 NOVEMBER 1969, sections 1, 25-28 and 35<sup>1</sup>
- (b) PENAL CODE, AS AMENDED IN 1969, sections 173a and 173b<sup>2</sup>
- (c) POLLUTION OF NATIONAL WATERS IMPLEMENTATION DECREE, 5 NOVEMBER 1970, sections 1, 2, 6, 10 and 11<sup>3</sup>

## 10. NEW ZEALAND

- (a) OIL IN NAVIGABLE WATERS (RECORDS, TRANSFER, AND ENFORCEMENT OF CONVENTION) REGULATIONS 1971<sup>4</sup>

### 2. Interpretation

In these regulations, unless the context otherwise requires:

“Convention” means the International Convention for the Prevention of Pollution of the Sea by Oil 1954<sup>5</sup> as amended in 1962, or any subsequent Convention;

“Ship” has the same meaning as in the Shipping and Seamen Act 1952;

“Surveyor of ships” means a surveyor of ships appointed or recognised as such under section 13 of the Shipping and Seamen Act 1952;

Other expressions defined in the Oil in Navigable Waters Act 1965<sup>6</sup> shall have the meaning so defined.

### 3. Duty to keep records

(1) Subject to the provisions of subclauses (2) and (3) of this regulation, records shall be kept by the master of every New Zealand ship in an oil record book in respect of the following matters:

(a) Of any occasion on which oil or a mixture containing oil is discharged from the ship for the purpose of securing the safety of any ship, or of preventing damage to any ship or cargo or of saving life;

(b) Of any occasion on which oil or a mixture containing oil is found to be escaping, or to have escaped, from the ship in consequence of damage to the ship or by reason of leakage;

(c) Of the carrying out, on board or in connection with the ship, of such operations as may be prescribed, being operations relating to:

<sup>1</sup> *Supra* DIVISION I, SUBDIVISION A, Chapter VII, 7 (a).

<sup>2</sup> *Supra* DIVISION I, SUBDIVISION A, Chapter VII, 7 (b).

<sup>3</sup> *Ibid.*, 7 (c).

<sup>4</sup> 1971/104; 3 May 1971. Entered into force on 1 September 1971. Text provided by the Minister of Foreign Affairs of New Zealand in a note verbale of 8 November 1971.

<sup>5</sup> United Nations, *Treaty Series*, vol. 327, p. 3. The Convention as amended in 1962 is reproduced in ST/LEG/SER.B/15, pp. 787-799.

<sup>6</sup> Reproduced in part *ibid.*, pp. 502-505.

- (i) The ballasting of oil tanks (whether cargo or bunker fuel tanks) and the discharge of ballast from, and the cleaning of, such tanks; or
- (ii) The separation of oil from water, or from other substances, in any mixture containing oil; or
- (iii) The disposal of any oil or water, or any other substance, arising from operations relating to any of the matters specified in subparagraphs (i) and (ii) of this paragraph; or
- (iv) The disposal of any other oil residues or sediments.

(2) The master of every New Zealand ship (not being a tanker) of 250 tons gross tonnage or over shall keep a record in an oil record book, in the form set out in the First Schedule to these regulations of the matters specified in paragraphs (a) and (b) of subclause (1) of this regulation, and in the form set out in the Second Schedule to these regulations of the matters specified in paragraph (c) of that subclause.

(3) The master of every New Zealand ship, being a tanker, shall keep a record in an oil record book, in the form set out in the First Schedule to these regulations of the matters specified in paragraphs (a) and (b) of subclause (1) of this regulation and in the form set out in the Third Schedule to these regulations of the matters specified in paragraph (c) of that subclause.

#### 4. *Transfer records*

(1) Subject to the provisions of subclause (2) of this regulation, the master of every ship of 250 tons gross tonnage or over and of every tanker, whether registered or not and of whatever nationality, shall keep in the oil record book a record of the particulars specified in regulation 5 hereof relating to the transfer of oil to and from the vessel while it is within the territorial sea or internal waters of New Zealand.

(2) In the case of the transfer of oil to a barge, the records shall be kept by the person supplying the oil and in the case of the transfer of oil from the barge the record shall be kept by the person to whom the oil is delivered.

#### 5. *Particulars to be shown in transfer records*

(1) The record which, by regulation 4 of these regulations, is required to be kept shall show clearly the following particulars:

- (a) The name and port of registry (if any) of the ship or barge;
- (b) The date and time of transfer;
- (c) The place of transfer;
- (d) The amount and description of oil transferred;
- (e) From what ship, barge, or place on land, and to what ship, barge, or place, the oil was transferred.

...

#### 6. *Duty to retain records*

The records required to be kept in accordance with regulations 3 and 4 of these regulations shall be kept in the ship for a period of two years after the date on which the last entry was made: provided that in the case of a ship which is unmanned or under tow the records shall be kept at the principal office in New Zealand of the owners of the ship.

### 7. *Production of records*

Without prejudice to any powers exercisable by surveyors of ships otherwise than by virtue of these regulations, every surveyor of ships is hereby designated as a person empowered to go on board any ship to which the Convention applies, while the ship is within a harbour in New Zealand, and to require production of any records required to be kept in accordance with the Convention and these regulations.

...

(b) [OIL IN NAVIGABLE WATERS (PROHIBITED SEA AREAS) REGULATIONS 1971]<sup>1</sup>

(c) OIL IN NAVIGABLE WATERS (SHIPS' EQUIPMENT) REGULATIONS 1971<sup>2</sup>

...

### 3. *New Zealand ships to be fitted to prevent escape of oil into bilges*

(1) Every New Zealand ship which uses oil as fuel for propulsion or for any other purpose shall be fitted with such equipment as will prevent the escape of oil into the bilges of the ship, unless effective means are provided to prevent the contents of the bilges from being discharged in contravention of the Oil in Navigable Waters Act 1965<sup>3</sup>

(2) For the purpose of this regulation the term "effective" means a process, approved by a person appointed by the Minister, of separating oil from the contents of the bilges.

### 4. *Requirements where bunker fuel tanks used for ballast water*

Subject to the provisions of regulation 5 hereof,

(a) Every New Zealand ship, not being a tanker, which has a gross tonnage of 250 tons or more and which uses its bunker fuel tanks for ballast water shall be properly fitted with equipment for the purpose of preventing discharges of oil and mixtures containing oil into the sea, in contravention of the Oil in Navigable Waters Act 1965:

(b) All such equipment shall comply with the requirements specified in the Schedule<sup>4</sup> to these regulations.

### 5. *Existing ships*

Where at the date of the coming into force of these regulations a ship to which regulation 4 hereof applies is already fitted with equipment for the purpose mentioned in the said regulation 4 it shall be sufficient for the purpose of these regulations if the equipment:

<sup>1</sup> 1971/102; 3 May 1971. The Regulations prescribe "prohibited sea areas" for the purposes of the Oil in Navigable Waters Act 1965, reproduced in ST/LEG/SER.B/15, pp. 502-505, as the "prohibited zones" appearing in Annex A to the International Convention for the Prevention of Pollution of the Sea by Oil, 1954, as amended. For the text of the Annex, see *ibid.*, pp. 795-797.

<sup>2</sup> 1971/105; 3 May 1971. Entered into force on 1 September 1972. Text provided by the Minister of Foreign Affairs of New Zealand in a note verbale of 8 November 1971.

<sup>3</sup> Reproduced in ST/LEG/SER.B/15, pp. 502-505.

<sup>4</sup> The Schedule is not reproduced here.

(a) Complies with the requirements specified in paragraphs (a), (b), and (c) of the Schedule to these regulations; and

(b) Is of a type which will separate mixtures of residual fuel oil of specific gravity of not less than .95 (at 60° F) and fresh water, so that the oil content of the water after treatment in the separator does not exceed 100 parts per million:

Provided that, if at any time after the said date any ship that was so fitted at the said date is fitted with new equipment for the purpose of preventing discharges of oil and mixtures containing oil into the sea, whether the new equipment is in substitution for or in addition to the equipment already so fitted in the ship, the said new equipment shall comply with all the requirements specified in the said schedule.

## 11. NORWAY

ROYAL DECREE OF 21 JUNE 1970, ESTABLISHING PROVISIONAL RULES CONCERNING EXPLORATION FOR CERTAIN SUBMARINE RESOURCES OTHER THAN PETROLEUM ON THE NORWEGIAN CONTINENTAL SHELF, ETC., section 12<sup>1</sup>

## 12. SINGAPORE

PREVENTION OF POLLUTION OF THE SEA ACT, 1971<sup>2</sup>

### PART I

#### *Preliminary*

#### 2. Interpretation

(1) In this Act, unless the context otherwise requires

“Appointed authority” means the Director of Marine, the Port of Singapore Authority and any person appointed by the Minister for the purposes of sections 13, 14, 15 and 16 of this Act;

“Convention of 1954” means the International Convention for the Prevention of Pollution of the Sea by Oil, 1954,<sup>3</sup> done at London on the 12th day of May, 1954, and the amendments made thereto and includes any Convention replacing the Convention of 1954;

<sup>1</sup> *Supra* DIVISION II, 16 (b).

<sup>2</sup> Act No. 3 of 1971; 11 January 1971. Assented to by the President on 25 January 1971. *Government Gazette, Acts Supplement*, No. 18; 12 February 1971. The Act, except section 13, has come into operation, according to the information provided by the Permanent Mission of Singapore to the United Nations in a note verbale of 26 June 1972.

<sup>3</sup> United Nations, *Treaty Series*, vol. 327, p. 3. The Convention as amended in 1962 is reproduced in ST/LEG/SER.B/15, pp. 787-799.

“Director” means the Director of Marine appointed under section 9 of the Merchant Shipping Ordinance and includes the Deputy Director of Marine appointed under the said section;

“Master” includes every person, except a pilot, having command or charge of any ship;

“Mixture containing oil” means a mixture with an oil content of one hundred parts or more in one million parts of the mixture;

“Occupier”, in relation to any place on land if it has no occupier, means the owner thereof and, in relation to a railway wagon or road vehicle, means the person in charge of the wagon or road vehicle and not the occupier of the land on which the wagon or vehicle stands;

“Oil” means oil of any description and includes spirit produced from oil of any description, and also includes coal tar;

“Oil reception facilities” has the same meaning as is assigned to it in section 8 of this Act;

“Oil residues” means any waste material consisting of, or arising from, oil or a mixture containing oil;

“Owner”, in relation to a vessel, means the person registered as the owner of the vessel or, in the absence of registration, the person owning the vessel: provided that in the case of a vessel owned by a State and operated by a company which in that State is registered as the vessel’s operator, “owner” shall include such State;

“Place on land” includes anything resting on the bed or shore of the sea, or of any Singapore waters, and also includes anything afloat (other than a vessel) if it is anchored or attached to the bed or shore of the sea or of any Singapore waters;

...

“Proper authority”, for the purposes of subsection (6) of section 5 of this Act, means the Director of Marine or the Port of Singapore Authority;

“Ship” includes every description of vessel used in navigation not propelled by oars;

“Singapore ship” means a ship registered under Part XIV of the Merchant Shipping Ordinance;

“Singapore waters” means the following waters, that is to say

- (a) The whole of the sea within the seaward limits of the territorial waters of Singapore; and
- (b) All other waters (including inland waters) which are within these limits and are subject to the ebb and flow of the ordinary tides;

“Substance of a dangerous or obnoxious nature” includes any substance which the Minister may, by notification published in the *Gazette*, declare to be deemed to be a substance of a dangerous or obnoxious nature, as the case may be, for the purposes of this Act;

“Surveyor of ships” means a surveyor of ships appointed under section 11 of the Merchant Shipping Ordinance;

“Trade effluent” means the solid or liquid waste of any trade, business or manufacture;

“Vessel” includes any ship or boat or any other description of vessel used in navigation.

(2) For the purpose of any provision of this Act relating to the discharge of oil, a mixture containing oil, refuse, garbage, waste matter or substance of a dangerous or obnoxious nature from a vessel, any floating craft other than a vessel which is attached to a vessel shall be treated as part of the vessel.

(3) Any reference in any provision of this Act to a mixture containing oil shall be construed as a reference to any mixture of oil with water or with any substance.

(4) Any reference in this Act to the discharge of oil, a mixture containing oil, refuse, garbage, waste matter, substance of a dangerous or obnoxious nature or trade effluent to its being discharged from a vessel, place or thing, except where the reference is to its being discharged for a specific purpose, includes a reference to the escape of the oil, mixture containing oil, refuse, garbage, waste matter, substance of a dangerous or obnoxious nature or trade effluent, as the case may be, to its escaping from that vessel, place or thing.

(5) Any power in this Act to test any equipment on board a vessel shall be construed as including a power to require persons on board the vessel to carry out such work as may be requisite for the purpose of the equipment; and any provision of this Act as to submitting equipment for testing shall be construed accordingly.

## PART II

### *Criminal liability for polluting the sea*

#### *3. Discharge of oil into the sea*

(1) If any oil or mixture containing oil is discharged from a Singapore ship into any part of the sea outside the territorial limits of Singapore, the owner, the agent or the master of such ship shall, subject to the provisions of this Act, be guilty of an offence under this Act and shall be liable on conviction to a fine of not less than five hundred dollars and not exceeding twenty thousand dollars or to imprisonment for a term not exceeding two years or to both such fine and imprisonment.

(2) The Minister may make regulations to exempt any Singapore ship from the operation of subsection (1) of this section, either absolutely or subject to any prescribed conditions, and either generally or as respects particular classes of ships, or in relation to particular descriptions of oil or mixture containing oil or to the discharge of oil or mixture containing oil in prescribed circumstances, or in relation to particular areas of the sea.

#### *4. Discharge of oil into Singapore waters*

If any oil or mixture containing oil is discharged into Singapore waters from any vessel, or from any place on land, or from any apparatus used for transferring oil from or to any vessel (whether to or from a place on land or to or from another vessel):

(a) If the discharge is from a vessel, the owner, the master or the agent of the vessel; or

(b) If the discharge is from a place on land, the occupier of that place or if the discharge is caused by the act of another person who is in that place without the permission (express or implied) of the occupier, that person; or

(c) If the discharge is from apparatus used for transferring oil from or to a vessel, the person in charge of the apparatus, shall be guilty of an offence under this Act and shall be liable on conviction to a fine of not less than five hundred dollars and not more than twenty thousand dollars or to imprisonment for a term not exceeding two years or to both such fine and imprisonment.

### 5. *Special defences*

(1) Where a person is charged with an offence under section 3 of this Act, or is charged with an offence under section 4 of this Act as the owner, the master or the agent of a vessel, it shall be a defence to prove that the oil or mixture containing oil in question was discharged for the purpose of securing the safety of any vessel, or preventing damage to any vessel or cargo, or of saving life: Provided that a defence under this subsection shall not have effect if the court is satisfied that the discharge of the oil or mixture containing oil was not necessary for the purpose alleged in the defence or was not a reasonable step to take in the circumstances.

(2) Where a person is charged with an offence under section 3 of this Act, or is charged with an offence under section 4 of this Act as the owner, the agent or the master of a vessel, it shall also be a defence to prove

(a) That the oil or mixture containing oil escaped in consequence of damage to the vessel, and that as soon as practicable after the damage occurred all reasonable steps were taken for preventing or (if it could not be prevented) for stopping or reducing the escape of the oil or mixture containing oil; or

(b) That the oil or mixture containing oil escaped by reason of leakage, that the leakage was not due to any want of reasonable care, and that as soon as practicable after the escape was discovered all reasonable steps were taken for stopping or reducing it.

(3) Where a person is charged with an offence under section 4 of this Act as the occupier of a place on land, or as the person in charge of any apparatus, from which the oil or mixture containing oil is alleged to have escaped, it shall be a defence to prove that the escape of the oil or mixture was not due to any want of reasonable care, and that as soon as practicable after the escape was discovered all reasonable steps were taken for stopping or reducing it.

(4) Without prejudice to the provisions of subsection (3) of this section, it shall be a defence for the occupier of a place on land, who is charged with an offence under section 4 of this Act, to prove that the discharge was caused by the act of a person who was in that place without the permission (express or implied) of the occupier.

(5) Where a person is charged with an offence under section 4 of this Act in respect of the discharge of a mixture containing oil from a place on land, it shall (without prejudice to any other defence under this section) be a defence to prove:

(a) That the oil was contained in an effluent produced by operations for the refining of oil;

(b) That it was not reasonably practicable to dispose of the effluent otherwise than by discharging it into Singapore waters; and

(c) That all reasonably practicable steps had been taken for eliminating oil from the effluent:

provided that a defence under this subsection shall not have effect if it is proved that, at the time to which the charge relates, the surface of the waters into which the mixture was discharged from the place in question, or land adjacent to those waters, was fouled by oil, unless the court is satisfied that the fouling was not caused, or contributed to, by oil contained in any effluent discharged at or before that time from that place.

(6) Where any oil or mixture containing oil is discharged in consequence of the removal of sunk, stranded or abandoned vessels by the proper authority in exercise of any power conferred by any written law, and apart from this subsection the proper authority exercising the power, or a person employed by or acting on behalf of the proper authority, would be guilty of an offence under section 4 of this Act, in respect of that discharge, the proper authority or person shall not be convicted of that offence unless it is shown that the proper authority or that person failed to take such steps (if any) as were reasonable in the circumstances for preventing, stopping or reducing the discharge.

#### 6. *Refuse, etc., discharged from vessels*

If any refuse, garbage, waste matter, substance of a dangerous or obnoxious nature or trade effluent is discharged from any vessel into Singapore waters, the owner, the master or the agent of the vessel shall be guilty of an offence under this Act and shall be liable on conviction to a fine not exceeding ten thousand dollars or to imprisonment for a term not exceeding two years or to both such fine and imprisonment.

#### 7. *Person throwing rubbish, etc., into Singapore waters*

Any person who puts, throws, casts or deposits into Singapore waters, or causes to be put, thrown, cast or deposited thereinto, any oil, mixture containing oil, refuse, garbage, waste matter, carcase, substance of a dangerous or obnoxious nature, or trade effluent, shall be guilty of an offence under this Act and shall be liable on conviction to a fine not exceeding ten thousand dollars or to imprisonment for a term not exceeding two years or to both such fine and imprisonment.

### PART III

#### *Preventive measures against pollution of the sea*

#### 8. *Facilities for disposal of oil residues, etc.*

(1) The Port of Singapore Authority shall have power to provide facilities for enabling vessels using the port to discharge or deposit oil residues, refuse, waste matter and garbage (hereinafter in this Act referred to as "oil reception



facilities’’). The power of the Port of Singapore Authority to provide oil reception facilities shall include power:

- (a) To join with any person in providing them;
  - (b) To arrange for the provision of such facilities by any other person;
- and
- (c) To require every vessel in Singapore waters to make use of such facilities.
- (2) Any oil reception facilities provided by the Port of Singapore Authority may be rendered outside and within the limits of the port.
- (3) The port of Singapore Authority may, with the approval of the Minister, prescribe regulations in respect of every matter relating to the provision of oil reception facilities. Without prejudice to the generality of the foregoing provisions, such regulations may provide:
- (a) For fees to be levied for the use of oil reception facilities;
  - (b) For the conditions upon which vessels may make use of the oil reception facilities; and
  - (c) That a contravention thereof shall be punishable by a fine not exceeding five thousand dollars or with imprisonment for a term not exceeding two years or with both such fine and imprisonment.

#### 9. *Equipment in ships to prevent oil pollution*

(1) For the purpose of preventing or reducing the discharge of oil or mixture containing oil into the sea, the Minister may make regulations requiring all ships in Singapore waters to be fitted with such equipment, and to comply with such other requirements, as may be prescribed.

(2) Without prejudice to the generality of subsection (1) of this section, where any regulations made thereunder require ships to be fitted with equipment of a prescribed description, the regulations may provide that equipment of that description:

- (a) Shall not be installed in a ship to which the regulations apply unless it is of a type tested and approved by a person appointed by the Minister;
- (b) While installed in such a ship, shall not be treated as satisfying the requirements of the regulations unless, at such times as may be specified in the regulations, it is submitted for testing and approval by a person so appointed.

(3) The Minister may appoint persons to carry out tests for the purposes of any regulations made under this section and, in respect of the carrying out of such tests, may charge such fees as may be prescribed by the regulations.

(4) Every surveyor of ships shall be taken to be a person appointed by the Minister to carry out tests for the purposes of any regulations made under this section, in so far as they relate to tests required in accordance with paragraph (b) of subsection (2) of this section.

(5) If, in the case of any ship, the provisions of any regulations made under this section which apply to that ship are contravened, the owner, the master or the agent of the ship shall be guilty of an offence under this Act and shall be liable on conviction to a fine not exceeding five thousand dollars.

10. *Keeping of oil record books*

(1) The Minister may make regulations requiring oil record books to be carried in all ships in Singapore waters and requiring the master of any such ship to record in the oil record book carried by it

(a) The carrying out, on board or in connection with the ship, of such of the following operations as may be prescribed, that is to say, operations relating to:

- (i) The loading of oil cargo;
- (ii) The transfer of oil cargo during a voyage;
- (iii) The discharge of oil cargo;
- (iv) The ballasting of oil tanks (whether cargo or bunker fuel tanks) and the discharge of ballast from, and cleaning of, such tanks;
- (v) The separation of oil from water, or from other substances, in any mixture containing oil;
- (vi) The disposal of any oil or water, or any other substance, arising from operations relating to any matters specified in this subsection; or
- (vii) The disposal of any other oil residue;

(b) Any occasion on which oil or a mixture containing oil is discharged from the ship for the purpose of securing the safety of any vessel, or of preventing damage to any vessel or cargo, or of saving lives; and

(c) Any occasion on which oil or mixture containing oil is found to be escaping, or to have escaped, from the ship in consequence of damage to the ship, or by reason of leakage.

(2) The Minister may make regulations requiring the keeping of records relating to the transfer of oil to and from vessels while they are in Singapore waters.

(3) The requirements of any regulations made under subsection (2) of this section shall be in addition to the requirements of any regulations made under subsection (1) of this section.

(4) Any records requiring to be kept by regulations made under subsection (2) of this section shall, unless the vessel is a barge, be kept by the master of the vessel and shall, if the vessel is a barge, be kept, in so far as they relate to the transfer of oil to the barge, by the person supplying the oil and, in so far as they relate to the transfer of oil from the barge, by the person to whom the oil is delivered.

(5) Regulations made under this section requiring the carrying of oil record books or the keeping of records may:

(a) Prescribe the form of the oil record books or records and the nature of the entries to be made in them;

(b) Require the person providing or keeping the books or records to retain them for a prescribed period;

(c) Require that person, at the end of the prescribed period, to transmit the books or records to a place or person determined by or under the regulations; and

(d) Provide for the custody or disposal of the books or records after their transmission to such a place or person.

(6) If any ship fails to carry such an oil record book as is required to carry under this section, the owner, the agent or the master shall be guilty of an offence under this Act and shall be liable on conviction to a fine not exceeding five thousand dollars.

(7) Any person who fails to comply with any requirements imposed by or under this section shall be guilty of an offence under this Act and shall be liable on conviction to a fine not exceeding five thousand dollars.

(8) Any person who makes an entry in any oil record book carried or record kept under this section which is to his knowledge false or misleading in any material particular shall be guilty of an offence under this Act and shall be liable on conviction to a fine not exceeding ten thousand dollars or to imprisonment for a term not exceeding one year or to both such fine and imprisonment.

(9) In any proceedings under this Act:

(a) Any oil record book carried or record kept in pursuance of regulations made under this section shall be admissible as evidence of the facts stated in it;

(b) Any copy of an entry in such an oil record book or record which is certified by the master of the ship in which the book is carried or by the person by whom the record is required to be kept to be a true copy of the entry shall be admissible as evidence of the facts stated in the entry;

(c) Any document purporting to be an oil record book carried or record kept in pursuance of regulations made under this section, or purporting to be such a certified copy as is mentioned in paragraph (b) of this subsection shall, unless the contrary is proved, be presumed to be such a book, record or copy, as the case may be.

#### 11. *Restrictions on transfer of oil at night*

(1) No oil shall be transferred between the hours of 6 p.m. and 6 a.m. to or from a vessel in Singapore waters unless the requisite notice has been given in accordance with this section.

(2) For the purposes of this section, a general notice may be given to the Director and the Port Master that transfers of oil between the hours of 6 p.m. and 6 a.m. will be frequently carried out at a place in the port within a period specified in the notice; and if such a notice is given it shall be the requisite notice for the purposes of this section as regards transfers of oil at that place within the period specified in the notice: provided that the period specified in such a notice shall not extend beyond the end of the period of twelve months beginning with the date on which the notice is given.

(3) Subject to the provisions of subsection (2) of this section, the requisite notice for the purposes of this section shall be a notice given to the Director and the Port Master not less than three hours nor more than ninety-six hours before the transfer of oil begins.

(4) If any oil is transferred to or from a vessel in contravention of this section, the master of the vessel, and, if the oil is transferred from or to a place on land, the occupier of that place shall be guilty of an offence under

this Act and shall be liable on conviction to a fine not exceeding five thousand dollars.

12. *Duty to report discharges of oil into Singapore waters*

If any oil or mixture containing oil:

(a) Is discharged from a vessel into Singapore waters for the purposes of securing the safety of the vessel, or of preventing damage to the vessel or her cargo, or of saving life;

(b) Is found to be escaping, or to have escaped into Singapore waters from a vessel in consequence of damage to the vessel, or by reason of leakage; or

(c) Is found to be escaping, or to have escaped, into Singapore waters from a place on land,

the owner, the master or the agent of the vessel, or the occupier of the place on land, as the case may be, shall forthwith report the occurrence to the Director and the Port Master, stating, in the case of a report by the owner, the master or the agent of a vessel, whether it falls within paragraph (a) or (b) of this section, and, if he fails to do so, shall be guilty of an offence under this Act and shall be liable on conviction to a fine not exceeding five thousand dollars.

PART IV

*Miscellaneous provisions.*

13. *Recovery of costs of removing oil*

If any oil, mixture containing oil, refuse, garbage, waste matter, substance of a dangerous or obnoxious nature, or trade effluent is discharged from any vessel, or two or more vessels:

(a) Into Singapore waters; or

(b) Into the sea outside the territorial limits of Singapore and such oil, mixture containing oil, refuse, garbage, waste matter, substance of a dangerous or obnoxious nature, or trade effluent subsequently flows or drifts into Singapore waters,

the owner of the vessel shall be liable, or the owners of all the vessels concerned shall be jointly and severally liable (as the case may be), to pay for the costs incurred by the appointed authority in removing or eliminating the oil, mixture containing oil, garbage, waste matter, substance of a dangerous or obnoxious nature, or trade effluent.

14. *Recovery of costs from operator of apparatus*

If any oil or mixture containing oil is discharged into Singapore waters from any apparatus used for transferring oil from or to any vessel (whether to or from a place on land or to or from a vessel) the person in charge of the apparatus and the employer of that person shall be jointly or severally liable to pay the costs incurred by the appointed authority in removing or eliminating the oil or mixture containing oil.

15. *Recovery of costs from occupier of land*

(1) If any oil or mixture containing oil is discharged into Singapore waters from any place on land, the occupier of that place shall, subject to the provisions of subsection (2) of this section, be liable to pay for the costs incurred by the appointed authority in removing or eliminating the oil or mixture containing oil.

(2) The occupier of a place shall be exempted from the liability to pay for the costs incurred by the appointed authority in removing or eliminating the oil or mixture containing oil if he proves that the discharge of the oil or mixture containing oil was caused by the act of a person who was in that place without the permission (express or implied) of the occupier.

16. *Recovery of costs from person responsible for the pollution*

Any person who puts, throws, casts or deposits into Singapore waters, or causes to be put, thrown, cast or deposited thereunto any oil, mixture containing oil, refuse, garbage, waste matter, substance of a dangerous or obnoxious nature, or trade effluent, shall be liable to pay for the costs incurred by the appointed authority in removing or eliminating the same.

17. *Power to detain vessels*

Notwithstanding any proceedings which may be instituted under section 4 or 6 of this Act, the Director or the Port Master may detain any vessel if the Director or the Port Master has reasonable cause to believe that any oil, mixture containing oil, refuse, garbage, waste matter or substance of a dangerous or obnoxious nature, or trade effluent has been discharged from the vessel:

(a) Into Singapore waters; or

(b) Into the sea, outside the territorial limits of Singapore and such oil, mixture containing oil, refuse, garbage, waste matter, substance of a dangerous or obnoxious nature, or trade effluent subsequently flows or drifts into Singapore waters,

and the vessel may be so detained until the owner of the vessel deposits with the Government a sum of money or furnishes such security which would, in the opinion of the Director or the Port Master, be adequate to meet the owner's liability for the costs incurred in removing the oil, mixture containing oil, refuse, garbage, waste matter, substance of a dangerous or obnoxious nature, or trade effluent from Singapore waters.

18. *Detained vessel proceeding to sea*

(1) If any vessel is detained under section 17 of this Act and the vessel proceeds to sea before it is released by the competent authority, the master of the vessel, and also the owner thereof and any person who sends the vessel to sea, if that owner or person is party or privy to the act of sending the vessel to sea, shall be guilty of an offence under this Act and shall be liable on conviction to a fine not exceeding ten thousand dollars or to imprisonment for a term not exceeding two years or to both such fine and imprisonment.

(2) Any person authorised under this Act to detain a vessel may, if he thinks it necessary, place a police guard on board.

19. *Sale of vessel*

Where the owner, the master or the agent of a vessel has been convicted of an offence under the provisions of this Act and any fine imposed under this Act is not paid at the time ordered by the court, the court shall, in addition to any powers for enforcing payment, have power to direct the amount remaining unpaid to be levied by distress and sale of the vessel, her tackle, furniture and apparel.

20. *Court for trial of offences*

Any offence under this Act may be tried by a District Court or by a Magistrate's Court and such Court shall, notwithstanding the provisions of the Criminal Procedure Code and any other written law, have jurisdiction to impose the maximum penalty provided for by this Act.

22. *Application to naval ships and Government vessels*

(1) The provisions of this Act do not apply to vessels belonging to the naval, military or air forces of Singapore or of any other country.

(2) Subject to the provisions of subsection (1) of this section, the provisions of this Act shall apply to all ships belonging to or in the employment of the Government, and in such application the word "Director" shall be read for "owner".

23. *Exemptions*

(1) The Minister may exempt any ship trading or proceeding to or from a port or place outside Singapore waters from the provisions of sections 9 and 10 of this Act.

(2) Any exemption granted by the Minister under the provisions of this section may be granted subject to such conditions as the Minister thinks fit; the exemption shall not have effect unless those conditions are complied with.

24. *Power of arrest*

(1) The Director, the Port Master or a police officer may arrest without warrant any person who has committed or whom he reasonably believes to have committed an offence against this Act or any regulations made thereunder and take him before a Magistrate's Court or a District Court, as the case may be, to be dealt with according to law.

(2) Any article concerning, by or for which an offence has been committed may be seized and taken to a police station, unless given up sooner by order of a Magistrate's Court or a District Court, until the charge is decided in due course of law.

25. *Delegation of powers*

(1) The Director may appoint so many other officers as he may think fit for the purpose of carrying out all or any of the powers conferred on the Director by or under this Act.

(2) Every officer so appointed by the Director may go on board any ship at any time and inspect the same or any part thereof, or any of the machinery, equipment or articles on board thereof to which the provisions of this Act or any of the regulations made thereunder apply.

## 26. *Protection from personal liability*

No matter or thing done by the Minister, the Director, or the Port Master and no matter or thing done by any officer employed in the administration of this Act or other person acting under the direction of the Minister, the Director or the Port Master shall, if the matter or thing was done *bona fide* for the purpose of executing this Act or any of the regulations made thereunder, subject them or any of them personally to any action, liability, claim or demand whatsoever.

## 27. *Regulations*

(1) The Minister may make such regulations as appear to him necessary or expedient for the purposes of carrying out the provisions of this Act.

(2) Without prejudice to the generality of subsection (1) of this section, the Minister may by such regulations:

(a) Require persons carrying on any trade, business or manufacture to instal such equipment as may be prescribed by the Minister for the purpose of eliminating any oil in any trade effluent and for preventing or reducing the discharge of any trade effluent into Singapore waters;

(b) Require oil refineries carrying on business in Singapore to store such detergents and equipment as are prescribed by the Minister to deal with any pollution of Singapore waters;

(c) Prescribe for measures as appear to the Minister to be necessary for the prevention of pollution of Singapore waters by any oil, mixture containing oil, substance of a dangerous or obnoxious nature, trade effluent, or any other substance; and

(d) Prescribe such measures as appear to the Minister to be necessary for giving effect to the Convention of 1954.

(3) Any regulations made under this Act may provide that a contravention thereof shall be punishable by a fine not exceeding five thousand dollars or with imprisonment for a term not exceeding two years or with both such fine and imprisonment.

...

## 13. SPAIN

(a) ORDER OF THE COUNCIL OF MINISTERS OF 1 JUNE 1963 ESTABLISHING THE RULES TO BE FOLLOWED IN ORDER TO PREVENT POLLUTION OF THE SEA BY OIL<sup>1</sup>

*Article 1.* Enterprises established in Spanish territory which operate oil refineries, asphalt factories or similar industries in which crude oil or petroliferous products are handled must install in the ports where they possess loading terminals, within 18 months from the date of publication of this Order in the *Boletín Oficial del Estado*, fixed or floating facilities adequate for the reception of residues from the cleaning of the cargo tanks or tankers loading therein.

<sup>1</sup> *Boletín Oficial del Estado*, No. 135. Translation by the Secretariat of the United Nations.

Such facilities must be of sufficient capacity to receive, without causing major delay to ships, the mixture of petroliferous products and water resulting from the cleaning of their cargo tanks when the major bulk of the water has already been separated from the mixture aboard ship.

*Article 2.* Enterprises established in Spanish territory which are suppliers of heavy fuels (fuel oil and heavy diesel oil) must submit to the Technical Sub-Commission of the National Commission for the Prevention of Pollution of the Sea by Oil, within three months from the date of publication of this Order in the *Boletín Oficial del Estado*, a survey of the implications of the obligation to collect residues from the bunker fuel tanks of ships supplied by them and of appropriate measures. Once such measures have been endorsed by the aforementioned Technical Sub-Commission and approved by the Under-Secretary of State for the Merchant Marine, as Chairman of the National Commission, the said enterprises shall be allowed a period of 18 months to put them into effect.

*Article 3.* Spanish docks and shipyards where tankers are repaired must install, within 18 months from the date of publication of this Order in the *Boletín Oficial del Estado*, fixed or floating facilities capable of receiving residues from the cleaning of the cargo tanks of tankers being repaired therein.

Similar fixed or floating facilities must be installed by individuals or bodies corporate engaged in shipbreaking.

*Article 4.* The enterprises of the kind referred to in articles 1, 2 and 3 of this Ministerial Order shall be exempt from the obligation to install the equipment mentioned if there exist in the ports concerned residue-receiving installations of the required capacity belonging to the Harbour Board (*Juntas de obras del Puerto*) or other public bodies or private enterprises.

(b) ORDER OF THE COUNCIL OF MINISTERS OF 1 JUNE 1963 ESTABLISHING THE RULES TO BE FOLLOWED IN THE BUILDING OF NEW SHIPS IN ORDER TO PREVENT POLLUTION OF THE SEA BY OIL,<sup>1</sup> AS AMENDED IN 1968<sup>2</sup>

*Article 1.* All tankers of 20,000 tons or more gross tonnage for which the building contract is signed on or after 1 January 1964 shall be fitted with a tank of sufficient capacity to receive residues from the cleaning of their cargo tanks after the bulk of the water has been separated from the mixture of water and petroliferous products.

The said tank shall be connected to a covered discharge line through which its contents may be pumped to suitable receiving installations in port.

*Article 2.* All ships, whether or not tankers, of 20,000 tons or more gross tonnage for which the building contract is signed on or after 1 January 1964 shall be fitted with a tank of sufficient capacity to receive residues and water polluted by residues from the fuel tanks, where the latter are also used for

<sup>1</sup> *Boletín Oficial del Estado*, No. 135, of 6 June 1963.

<sup>2</sup> The amendment, which relates only to Article 3, was made by the Order of the Council of Ministers of 23 January 1968 abolishing the requirement that separators of bilge-water and ballast water must operate automatically (*ibid.*, No. 24, 1968). Translation of the text as amended made by the Secretariat of the United Nations.



the carriage of ballast, after the bulk of the water has been separated from the mixture.

*Article 3.* All ships of 500 tons or more gross tonnage which are contracted for subsequent to 1 January 1964 shall comply with the following specifications:

1. It shall be capable of separating mixtures of water and oil to a point where the oil content of the water does not exceed 100 parts per million.
2. It shall be able to treat effectively any mixture of oil and water which the ship might normally contain.
3. It shall operate satisfactorily in all normal shipping conditions.

Water having an oil content of less than one part per 10,000 may be discharged into the sea; oil derived from the separation process outside of the prohibited zones specified in the Convention or shall be deposited in a tank for subsequent discharge into the receiving installations in port.

Types of separator shall be approved by the Office of the Under-Secretary of State for the Merchant Marine, and all separators shall be inspected by the Inspectorate General of Merchant Shipping in the builder's yard or on board the ship.

(c) ORDER OF THE MINISTRY OF COMMERCE OF 24 SEPTEMBER 1963 LAYING DOWN RULES PROHIBITING THE DISCHARGE INTO THE SEA OF RESIDUES FROM THE CLEANING OF SHIPS' BUNKER FUEL TANKS, AS AMENDED BY THE ORDER OF 30 DECEMBER 1963<sup>1</sup>

In the light of the amendments to the International Convention for the Prevention of Pollution of the Sea by Oil, 1954<sup>2</sup> adopted by the International Conference held in London in 1962,

The Ministry orders as follows:

*Article 1.* Spanish tankers of more than 150 tons gross tonnage shall be prohibited from discharging into the sea, at a distance of less than 50 miles from the coast, the contents of their ballast tanks or residues from the cleaning thereof when they contain persistent petroliferous products, that is to say, crude oil, fuel oil, heavy diesel oil and lubricating oil.

The prohibited zone shall extend for a distance of 100 miles from the Spanish coasts of the Iberian Peninsula, from Cape Creus to Cape Finisterre and the Cantabrian Sea, north of the line which beginning at Finisterre, passes through the point 46° north, 20° west. The prohibited zone shall also extend for a distance of 100 miles from the coasts of the Canary Islands and the Balearic Islands.

*Article 2.* The aforementioned ships shall be prohibited from discharging into the sea, at a distance of less than six miles from the coast, the contents of their ballast tanks or residues derived from the cleaning thereof when they contain non-persistent petroliferous products, that is to say, light diesel oil, gas oil, kerosene and gasoline.

<sup>1</sup> *Boletín Oficial del Estado*, No. 237; No. 22/1964. Entered into force on 1 January 1964 in accordance with Article 6. Translation by the Secretariat of the United Nations.

<sup>2</sup> United Nations, *Treaty Series*, vol. 327, p. 3. The Convention as amended is reproduced in ST/LEG/SER.B/15, pp. 789-799.

*Article 3.* All Spanish ships of more than 500 tons shall be prohibited from discharging into the sea, in the zones specified in article 1, residues from the cleaning of their fuel tanks or ballast water, if such tanks are used alternatively for the carriage of fuel and ballast.

This prohibition shall not apply to ships which discharge polluted water from the said tanks after treating it with a separator or other system duly approved by the Office of the Under-Secretary of State for the Merchant Marine, the oily residue being retained for subsequent use aboard or for discharge outside the prohibited zones.

*Article 4.* All Spanish ships of more than 500 tons shall be prohibited from discharging bilge-water containing persistent petroliferous products in the zones specified in article 1, with the exception of water which is discharged after being treated with a separator or other device approved by the Office of the Under-Secretary of State for the Merchant Marine.

*Article 5.* All tankers of more than 150 tons, and ships other than tankers of more than 500 tons which use oil fuel, shall carry an Oil Record Book (conforming to the official model attached)<sup>1</sup> duly stamped by the maritime authorities (*Comandancias de Marina*), in which shall be scrupulously noted operations of ballasting, unballasting, cleaning of tanks, discharge of residues and accidental releases of cargo, fuel or ballast.

...

(d) ORDER OF THE COUNCIL OF MINISTERS OF 27 MAY 1967 LAYING DOWN RULES PROHIBITING THE DISCHARGE INTO THE SEA OF PETROLIFEROUS PRODUCTS OR POLLUTED RESIDUES FROM FACTORIES AND INDUSTRIES OF ALL KINDS<sup>2</sup>

*Article 1.* Factories and industries of all kinds are hereby prohibited from discharging into the sea petroliferous products or residues containing petroliferous substances, whether persistent (that is to say, crude oil, fuel oil, heavy diesel oil and lubricating oil or non-persistent (for instance, light diesel oil, gas oil, kerosene and gasoline)).

*Article 2.* Applications for permission to discharge into the sea, which shall be processed by the Ministry of Public Works, must envisage an appropriate system or procedure to prevent pollution of the sea by the above-mentioned products; in order to be approved, such system or procedure shall require the endorsement of the Office of the Under-Secretary of State for the Merchant Marine.

...

<sup>1</sup> The model is not reproduced here.

<sup>2</sup> *Boletín Oficial del Estado*, No. 130. Translation by the Secretariat of the United Nations.

(e) ORDER OF THE MINISTRY OF COMMERCE OF 28 JULY 1969 CONCERNING  
THE ESTABLISHMENT OF MEASURES FOR DEALING WITH OIL SPILLS<sup>1</sup>

*Article 1.* All tankers carrying persistent petroliferous products, that is to say, those referred to in the International Convention for the Prevention of Pollution of the Sea by Oil<sup>2</sup> (*Boletín Oficial del Estado*, No. 258/1967), must be fitted with mechanical devices for removing oil from the surface of the sea.

Such device must be connected to the ship's intake pipes so that the oil taken up may be deposited in its tanks.

Tankers of more than 25,000 tons dead weight must also be equipped with side hydrants in the pumping chamber connected to the intake pipe of the appropriate pumps and situated at a sufficient height to enable those pumps to draw from the surface of the sea.

*Article 2.* Oil refineries, factories supplying fuel to ships and commercial installations which possess on-shore terminals for piping persistent oil to and from ships must have available, ready for immediate use, mechanical devices for removing oil from the sea which can be connected to the pipes for pumping into the tanks of the refinery, factory or installation.

(f) ORDER OF THE COUNCIL OF MINISTERS OF 27 MAY 1971 RELATING TO  
MEASURES FOR DEALING WITH MARINE POLLUTION<sup>3</sup>

1. Oil refineries, petrochemical factories and liquid-fuel supply stations possessing terminals for the loading and unloading of oil in port or in coastal waters shall be provided with at least one vessel appropriately equipped to throw upon the surface of the water the mixtures of detergents and dispersants approved by the Office of the Under-Secretary of State for the Merchant Marine.

2. The vessel referred to in the preceding paragraph shall be so equipped that the mixture can be sprayed through perforated pipes arranged like outriggers on both sides of the vessel. The detergents or dispersants shall be mixed with water in the appropriate proportions, either in tanks from which the mixture shall be pumped to the sprayers or by means of eductors at the outlet or intake point of the pump whereby the amount of detergents or dispersants to be used can be controlled, having been drawn directly from their container.

3. The measures referred to in paragraphs 1 and 2 must be tested and operational within not more than four months from the date of publication of this Order in the *Boletín Oficial del Estado*.

<sup>1</sup> *Boletín Oficial del Estado*, No. 199. Translation by the Secretariat of the United Nations.

<sup>2</sup> United Nations, *Treaty Series*, vol. 327, p. 3. Reproduced in ST/LEG/SER.B/15, pp. 787-799.

<sup>3</sup> *Boletín Oficial del Estado*, No. 131, 2 June 1971, p. 8815. Translation by the Secretariat of the United Nations.

## 14. SUDAN

### MARITIME ACT 1961<sup>1</sup>

#### CHAPTER I

##### *Preliminary*

...

##### 3. *Application*

(1) Save as otherwise provided in this Act, this Act applies to all sea-going Sudanese ships of not less than 100 tons gross, wherever they may be, and to foreign ships (other than non-commercial ships belonging to any foreign state), lying or proceeding within the territorial waters of the Sudan.

...

#### CHAPTER V

##### 22. *Nationality and Flag of Ships*

(1) Every Sudanese ship shall fly the National Flag in accordance with the rules of usage of the aforesaid Flag, as may be prescribed by the Minister under the National Flag and Foreign States Flag Act, 1959.

(2) No owner or master of a Sudanese ship shall knowingly do or permit any act with intent to conceal the Sudanese nationality or the identity of the ship.

(3) No person in authority on a foreign ship shall fly or permit to be flown the Sudanese national flag or do or permit any other act with such intent to conceal the foreign nationality or the identity of the ship.

##### 23.

The Port authorities shall not grant clearance to any foreign ship until its master has declared its nationality and may detain any such ship attempting to leave port without such clearance.

...

#### CHAPTER X

##### *Safety and seaworthiness of ships*

##### 35. *Life-saving appliances*

The Minister may make regulations concerning the provision on board ship of:

(a) Life-saving appliances.

(b) Fire-fighting appliances.

(c) Radio, radar and electronic equipment,

(d) Signalling equipment,

(e) Any other equipment necessary or desirable for securing the safety of the ship.

<sup>1</sup> Act No. 23. Text provided by the Permanent Mission of the Sudan to the United Nations in a note verbale of 28 August 1972.

36. *Safety certificates*

The Minister may make regulations:

- (a) Requiring every ship to which this Act applies to obtain an official certificate of safety before proceeding to sea;
- (b) Providing for the survey of ships by surveyors prior to and with a view to the issue of such certificates;
- (c) Prescribing standards of manning, construction, and equipment to be satisfied before the issue of such certificates.

37. *Recognition of foreign safety certificates*

If the Minister is satisfied:

(a) That a certificate of safety, similar to a certificate of safety issued under this Act, which has been issued under the relevant laws of any foreign state, is not so issued in respect of a ship meeting standards of manning, construction and equipment not inferior to those required under the preceding Section, or

(b) That a ship in respect of which such a certificate has been issued is in all the circumstances adequately manned, constructed, and equipped, the Minister may accept such certificate, during the period of its currency, as a valid certificate of safety for the purposes of the preceding Section.

38. *Prohibition on going to sea without safety certificate*

No ship required to have a certificate of safety under this Act shall go to sea unless it has a valid certificate of safety.

...

## 15. THAILAND

PETROLEUM ACT OF 26 MARCH 1971, section 75<sup>1</sup>

## 16. UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND

(a) [OIL IN NAVIGABLE WATERS ACT 1971]<sup>2</sup>

<sup>1</sup> *Supra* DIVISION I, SUBDIVISION A, Chapter IX, 15.

<sup>2</sup> 1971, Chapter 21; 8 April 1971. Repealed by the Prevention of Oil Pollution Act 1971, *infra* (b).

(b) PREVENTION OF OIL POLLUTION ACT 1971<sup>1</sup>*General provisions for preventing oil pollution*1. *Discharge of certain oils into sea outside territorial waters*

(1) If any oil to which this section applies or any mixture containing such oil is discharged from a ship registered in the United Kingdom into any part of the sea outside the territorial waters of the United Kingdom, the owner or master of the ship shall, subject to the provisions of this Act, be guilty of an offence.

(2) This section applies:

(a) To crude oil, fuel oil and lubricating oil; and

(b) To heavy diesel oil, as defined by regulations made under this section by the Secretary of State;

and shall also apply to any other description of oil which may be specified by regulations made by the Secretary of State, having regard to the provisions of any Convention accepted by Her Majesty's Government in the United Kingdom in so far as it relates to the prevention of pollution of the sea by oil, or having regard to the persistent character of oil of that description and the likelihood that it would cause pollution if discharged from a ship into any part of the sea outside the territorial waters of the United Kingdom.

(3) Regulations made by the Secretary of State may make exceptions from the operation of subsection (1) of this section, either generally or with respect to particular classes of ships, particular descriptions of oil or mixtures containing oil or the discharge of oil or mixtures in particular circumstances or into particular areas of the sea, and may do so either absolutely or subject to any specified conditions.

(4) A person guilty of an offence under this section shall be liable on summary conviction to a fine not exceeding £50,000 or on conviction on indictment to a fine.

2. *Discharge of oil into United Kingdom waters*

(1) If any oil or mixture containing oil is discharged as mentioned in the following paragraphs into waters to which this section applies, then, subject to the provisions of this Act, the following shall be guilty of an offence, that is to say:

(a) If the discharge is from a vessel, the owner or master of the vessel, unless he proves that the discharge took place and was caused as mentioned in paragraph (b) of this subsection;

(b) If the discharge is from a vessel but takes place in the course of a transfer of oil to or from another vessel or a place on land and is caused by the act or omission of any person in charge of any apparatus in that order

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<sup>1</sup> 1971 Chapter 60; 27 July 1971. Entered into force on 1 March 1973 in accordance with Section 2 of the Prevention of Oil Pollution Act 1971 (Commencement) Order 1973 (*Statutory Instruments*, 1973 No. 203 (C.6); 12 February 1973). This Act was enacted to consolidate the Oil in Navigable Waters Acts 1955, 1963 (reproduced in part in ST/LEG/SER.B/15, pp. 520-530) and 1971 and Section 5 of the Continental Shelf Act 1964 (*ibid.*, pp. 445-447), repealing, *inter alia*, all these acts and the section.

vessel or that place, the owner or master of that other vessel or, as the case may be, the occupier of that place;

(c) If the discharge is from a place on land, the occupier of that place, unless he proves that the discharge was caused as mentioned in paragraph (d) of this subsection;

(d) If the discharge is from a place on land and is caused by the act of a person who is in that place without the permission (express or implied) of the occupier, that person;

(e) If the discharge takes place otherwise than as mentioned in the preceding paragraphs and is the result of any operations for the exploration of the sea-bed and subsoil or the exploitation of their natural resources, the person carrying on the operations.

(2) This section applies to the following waters, that is to say:

(a) The whole of the sea within the seaward limits of the territorial waters of the United Kingdom; and

(b) All other waters (including inland waters) which are within those limits and are navigable by sea-going ships.

(3) In this Act "place on land" includes anything resting on the bed or shore of the sea, or of any other waters to which this section applies, and also includes anything afloat (other than a vessel) if it is anchored or attached to the bed or shore of the sea or of any such waters; and "occupier", in relation to any such thing as is mentioned in the preceding provisions of this subsection, if it has no occupier, means the owner thereof, and, in relation to a railway wagon or road vehicle, means the person in charge of the wagon or vehicle and not the occupier of the land on which the wagon or vehicle stands.

(4) A person guilty of an offence under this section shall be liable on summary conviction to a fine not exceeding £50,000 or on conviction on indictment to a fine.

### *3. Discharge of certain oils from pipe-lines or as the result of exploration etc. in designated areas*

(1) If any oil to which section 1 of this Act applies, or any mixture containing such oil, is discharged into any part of the sea:

(a) From a pipe-line; or

(b) (Otherwise than from a ship) as the result of any operation for the exploration of the sea-bed and subsoil or the exploitation of their natural resources in a designated area,

then, subject to the following provisions of this Act, the owner of the pipe-line or, as the case may be, the person carrying on the operations shall be guilty of an offence unless the discharge was from a place in his occupation and he proves that it was due to the act of a person who was there without his permission (express or implied).

(2) In this section "designated area" means an area for the time being designated by an Order made under section 1 of the Continental Shelf Act 1964.

(3) A person guilty of an offence under this section shall be liable on summary conviction to a fine not exceeding £50,000 or on conviction on indictment to a fine.

#### 4. *Equipment in ships to prevent oil pollution*

(1) For the purpose of preventing or reducing discharges of oil and mixtures containing oil into the sea, the Secretary of State may make regulations requiring ships registered in the United Kingdom to be fitted with such equipment and to comply with such other requirements as may be specified in the regulations.

(2) Without prejudice to the generality of subsection (1) of this section, where any regulations made thereunder require ships to be fitted with equipment of a specified description, the regulations may provide that equipment of that description:

(a) Shall not be installed in a ship to which the regulations apply unless it is of a type tested and approved by a person appointed by the Secretary of State;

(b) While installed in such a ship, shall not be treated as satisfying the requirements of the regulations unless, at such times as may be specified in the regulations, it is submitted for testing and approval by a person so appointed.

(3) The Secretary of State may appoint persons to carry out tests for the purposes of any regulations made under this section, and, in respect of the carrying out of such tests, may charge such fees as, with the approval of the Treasury, may be prescribed by the regulations.

(4) Every surveyor of ships shall be taken to be a person appointed by the Secretary of State to carry out tests for the purposes of any regulations made under this section, in so far as they relate to tests required in accordance with paragraph (b) of subsection (2) of this section.

(5) If, in the case of any ship, the provisions of any regulations made under this section which apply to that ship are contravened, the owner or master of the ship shall be guilty of an offence.

(6) A person guilty of an offence under this section shall be liable on summary conviction to a fine not exceeding £1,000 or on conviction on indictment to a fine.

#### 5. *Defences of owner or master charged with offence under s. 1 or s. 2*

(1) Where a person is charged with an offence under section 1 of this Act, or is charged with an offence under section 2 of this Act as the owner or master of a vessel, it shall be a defence to prove that the oil or mixture was discharged for the purpose of securing the safety of any vessel, or of preventing damage to any vessel or cargo, or of saving life, unless the court is satisfied that the discharge of the oil or mixture was not necessary for that purpose or was not a reasonable step to take in the circumstances.

(2) Where a person is charged as mentioned in subsection (1) of this section, it shall also be a defence to prove:

(a) That the oil or mixture escaped in consequence of damage to the vessel, and that as soon as practicable after the damage occurred all reasonable steps were taken for preventing, or (if it could not be prevented) for stopping or reducing, the escape of the oil or mixture, or



(b) That the oil or mixture escaped by reason of leakage, that neither the leakage nor any delay in discovering it was due to any want of reasonable care, and that as soon as practicable after the escape was discovered all reasonable steps were taken for stopping or reducing it.

6. *Defences of other persons charged with offences under s. 2 or s. 3*

(1) Where a person is charged, in respect of the escape of any oil or mixture containing oil, with an offence under section 2 or 3 of this Act:

- (a) As the occupier of a place on land; or
- (b) As a person carrying on operations for the exploration of the sea-bed and subsoil or the exploitation of their natural resources; or
- (c) As the owner of a pipe-line,

it shall be a defence to prove that neither the escape nor any delay in discovering it was due to any want of reasonable care and that as soon as practicable after it was discovered all reasonable steps were taken for stopping or reducing it.

(2) Where a person is charged with an offence under section 2 of this Act in respect of the discharge of a mixture containing oil from a place on land, it shall also, subject to subsection (3) of this section, be a defence to prove:

- (a) That the oil was contained in an effluent produced by operations for the refining of oil;
- (b) That it was not reasonably practicable to dispose of the effluent otherwise than by discharging it into waters to which that section applies; and
- (c) That all reasonably practicable steps had been taken for eliminating oil from the effluent.

(3) If it is proved that, at a time to which the charge relates, the surface of the waters into which the mixture was discharged from the place on land, or land adjacent to those waters, was fouled by oil, subsection (2) of this section shall not apply unless the court is satisfied that the fouling was not caused, or contributed to, by oil contained in any effluent discharged at or before that time from that place.

7. *Protection of acts done in exercise of certain powers of harbour authorities etc.*

(1) *Where any oil, or mixture containing oil, is discharged in consequence of:*

- (a) The exercise of any power conferred by sections 530 to 532 of the Merchant Shipping Act 1894 (which relate to the removal of wrecks by harbour, conservancy and lighthouse authorities); or
  - (b) The exercise, for the purpose of preventing an obstruction or danger to navigation, of any power to dispose of sunk, stranded or abandoned vessels which is exercisable by a harbour authority under any local enactment;
- and apart from this subsection the authority exercising the power, or a person employed by or acting on behalf of the authority, would be guilty of an offence under section 1 or section 2 of this Act in respect of that discharge, the authority or person shall not be convicted of that offence unless it is shown that they

or he failed to take such steps (if any) as were reasonable in the circumstances for preventing, stopping or reducing the discharge.

(2) Subsection (1) of this section shall apply to the exercise of any power conferred by section 13 of the Dockyard Ports Regulation Act 1865 (which relates to the removal of obstructions to dockyard ports) as it applies to the exercise of any such power as is mentioned in paragraph (a) of that subsection, and shall, as so applying, have effect as if references to the authority exercising the power were references to the Queen's harbour master for the port in question.

#### 8. *Discharge of certain ballast water into harbours*

(1) A harbour authority may appoint a place within their jurisdiction where the ballast water of vessels in which a cargo of petroleum-spirit has been carried may be discharged into the waters of the harbour, at such times, and subject to such conditions, as the authority may determine; and, where a place is so appointed, the discharge of ballast water from such a vessel shall not constitute an offence under section 2 of this Act, if the ballast water is discharged at that place, and at a time and in accordance with the conditions so determined, and the ballast water contains no oil other than petroleum-spirit.

(2) In this Act:

“Harbour authority” means a person or body of persons empowered by an enactment to make charges in respect of vessels entering a harbour in the United Kingdom or using facilities therein;

“Harbour in the United Kingdom” means a port, estuary, haven, dock, or other place which fulfils the following conditions, that is to say,

(a) That it contains waters to which section 2 of this Act applies, and

(b) That a person or body of persons is empowered by an enactment to make charges in respect of vessels entering that place or using facilities therein.

In this subsection “enactment” includes a local enactment, and “charges” means any charges with the exception of light dues, local light dues and any other charges payable in respect of lighthouses, buoys or beacons, and of charges in respect of pilotage.

#### 9. *Facilities in harbour for disposal of oil residues*

(1) The powers exercisable by a harbour authority in respect of any harbour in the United Kingdom shall include power to provide facilities for enabling vessels using the harbour to discharge or deposit oil residues (in this Act referred to as “oil reception facilities”).

...

#### 10. *Restrictions on transfer of oil at night*

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

(2) A general notice may be given to the harbour master of a harbour that transfers of oil between sunset and sunrise will be frequently carried

out at a place in the harbour within such period, not ending later than twelve months after the date on which the notice is given, as is specified in the notice; and if such a notice is given it shall be the requisite notice for the purposes of this section as regards transfers of oil at that place within the period specified in the notice.

(3) Subject to subsection (2) of this section, the requisite notice for the purposes of this section shall be a notice given to the harbour master not less than three hours nor more than ninety-six hours before the transfer of oil begins.

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

(5) If any oil is transferred to or from a vessel in contravention of this section, the master of the vessel, and, if the oil is transferred from or to a place on land, the occupier of that place, shall be liable on summary conviction to a fine not exceeding £100.

#### 11. *Duty to report discharge of oil into waters of harbours*

(1) If any oil or mixture containing oil:

(a) Is discharged from a vessel into the waters of a harbour in the United Kingdom; or

(b) Is found to be escaping or to have escaped from a vessel into any such waters; or

(c) Is found to be escaping or to have escaped into any such waters from a place on land;

the owner or master of the vessel, or the occupier of the place on land, as the case may be, shall forthwith report the occurrence to the harbour master, or, if the harbour has no harbour master, to the harbour authority.

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

(3) If a person fails to make a report as required by this section he shall be liable on summary conviction to a fine not exceeding £200.

### *Shipping casualties*

#### 12. *Shipping casualties*

(1) The powers conferred by this section shall be exercisable where:

(a) An accident has occurred to or in a ship; and

(b) In the opinion of the Secretary of State oil from the ship will or may cause pollution on a large scale in the United Kingdom or in the waters in or adjacent to the United Kingdom up to the seaward limits of territorial waters; and

(c) In the opinion of the Secretary of State the use of the powers conferred by this section is urgently needed.

(2) For the purpose of preventing or reducing oil pollution, or the risk of oil pollution, the Secretary of State may give directions as respects the ship or its cargo:

(a) To the owner of the ship, or to any person in possession of the ship; or

(b) To the master of the ship; or

(c) To any salvor in possession of the ship, or to any person who is the servant or agent of any salvor in possession of the ship, and who is in charge of the salvage operation.

(3) Directions under subsection (2) of this section may require the person to whom they are given to take, or refrain from taking, any action of any kind whatsoever, and without prejudice to the generality of the preceding provisions of this subsection the directions may require:

(a) That the ship is to be, or is not to be, moved, or is to be moved to a specified place, or is to be removed from a specified area or locality; or

(b) That the ship is not to be moved to a specified place or area, or over a specified route; or

(c) That any oil or other cargo is to be, or is not to be, unloaded or discharged; or

(d) That specified salvage measures are to be, or are not to be, taken.

(4) If in the opinion of the Secretary of State the powers conferred by subsection (2) of this section are, or have proved to be, inadequate for the purpose, the Secretary of State may, for the purpose of preventing or reducing oil pollution, or the risk of oil pollution, take, as respects the ship or its cargo, any action of any kind whatsoever, and without prejudice to the generality of the preceding provisions of this subsection the Secretary of State may:

(a) Take any such action as he has power to require to be taken by a direction under this section;

(b) Undertake operations for the sinking or destruction of the ship, or any part of it, of a kind which is not within the means of any person to whom he can give directions;

(c) Undertake operations which involve the taking over of control of the ship.

(5) The powers of the Secretary of State under subsection (4) of this section shall also be exercisable by such persons as may be authorised in that behalf by the Secretary of State.

(6) Every person concerned with compliance with directions given, or with action taken, under this section shall use his best endeavours to avoid any risk to human life.

(7) The provisions of this section and of section 16 of this Act are without prejudice to any rights or powers of Her Majesty's Government in the United Kingdom exercisable apart from those sections whether under international law or otherwise.

(8) It is hereby declared that any action taken as respects a ship which is under arrest or as respects the cargo of such a ship, being action duly

taken in pursuance of a direction given under this section, or being any action taken under subsection (4) or (5) of this section:

(a) Does not constitute contempt of court; and

(b) Does not in any circumstances make the Admiralty Marshal liable in any civil proceedings.

(9) In this section, unless the context otherwise requires:

“Accident” includes the loss, stranding, abandonment of or damage to a ship; and

“Specified”, in relation to a direction under this section, means specified by the direction;

and the reference in subsection (8) of this section to the Admiralty Marshal includes a reference to the Admiralty Marshal of the Supreme Court of Northern Ireland.

### 13. *Right to recover in respect of unreasonable loss or damage*

(1) If any action duly taken by a person in pursuance of a direction given to him under section 12 of this Act, or any action taken under subsection (4) or (5) of that section

(a) Was not reasonably necessary to prevent or reduce oil pollution, or risk of oil pollution; or

(b) Was such that the good it did or was likely to do was disproportionately less than the expense incurred, or damage suffered, as a result of the action, a person incurring expense or suffering damage as a result of, or by himself taking, the action shall be entitled to recover compensation from the Secretary of State.

(2) In considering whether subsection (1) of this section applies account shall be taken of:

(a) The extent and risk of oil pollution if the action had not been taken;

(b) The likelihood of the action being effective; and

(c) The extent of the damage which has been caused by the action.

(3) Any reference in this section to the taking of any action includes a reference to a compliance with a direction not to take some specified action.

(4) The Admiralty jurisdiction of the High Court, of the Court of Session and of the Supreme Court of Northern Ireland shall include jurisdiction to hear and determine any claim arising under this section.

### 14. *Offences in relation to s. 12*

(1) If the person to whom a direction is duly given under section 12 of this Act contravenes, or fails to comply with, any requirement of the direction, he shall be guilty of an offence.

(2) If a person wilfully obstructs any person who is

(a) Acting on behalf of the Secretary of State in connection with the giving or service of a direction under section 12 of this Act;

(b) Acting in compliance with a direction under that section; or

(c) Acting under subsection (4) or (5) of that section; he shall be guilty of an offence.

(3) In proceedings for an offence under subsection (1) of this section, it shall be a defence for the accused to prove that he has used all due diligence to ensure compliance with the direction, or that he had reasonable cause for believing that compliance with the direction would have involved a serious risk to human life.

(4) A person guilty of an offence under this section shall be liable on summary conviction to a fine not exceeding £50,000, or on conviction on indictment to a fine.

15. *Service of directions under s. 12*

(1) If the Secretary of State is satisfied that a company or other body is not one to whom section 412 or section 437 of the Companies Act 1948 (service of notices) applies so as to authorise the service of a direction on that body under either of those sections, he may give a direction under section 12 of this Act:

(a) To that body, as the owner of, or the person in possession of, a ship, by serving the direction on the master of the ship; or

(b) To that body, as a salvor, by serving the direction on the person in charge of the salvage operations.

(2) For the purpose of giving or serving a direction under section 12 of this Act to or on any person on a ship, a person acting on behalf of the Secretary of State shall have the right to go on board the ship.

(3) In the application of subsection (1) of this section to Northern Ireland, for references to sections 412 and 437 of the Companies Act 1948 there shall be substituted references to sections 361 and 385 of the Companies Act (Northern Ireland) 1960.

16. *Application of ss. 12 to 15 to certain foreign and other ships*

(1) Her Majesty may by Order in Council provide that sections 12 to 15 of this Act, together with any other provisions of this Act, shall apply to a ship:

(a) Which is not a ship registered in the United Kingdom; and

(b) Which is for the time being outside the territorial waters of the United Kingdom;

in such cases and circumstances as may be specified in the Order, and subject to such exceptions, adaptations and modifications, if any, as may be so specified.

(2) An Order in Council under subsection (1) of this section may contain such transitional and other consequential provisions as appear to Her Majesty to be expedient.

(3) Except as provided by an Order in Council under subsection (1) of this section, no direction under section 12 of this Act shall apply to a ship which is not registered in the United Kingdom and which is for the time being outside the territorial waters of the United Kingdom, and no action shall be taken under subsection (4) or (5) of section 12 of this Act as respects any such ship.

(4) No direction under section 12 of this Act shall apply to any vessel of Her Majesty's navy or to any Government ship (within the meaning of

section 80 of the Merchant Shipping Act 1906) and no action shall be taken under subsection (4) or (5) of that section as respects any such vessel or ship.

### *Enforcement*

#### *17. Oil records*

(1) The Secretary of State may make regulations requiring oil record books to be carried in ships registered in the United Kingdom and requiring the master of any such ship to record in the oil record book carried by it:

(a) The carrying out, on board or in connection with the ship, of such of the following operations as may be prescribed, that is to say, operations relating to:

- (i) The loading of oil cargo, or
- (ii) The transfer of oil cargo during a voyage, or
- (iii) The discharge of oil cargo, or
- (iv) The ballasting of oil tanks (whether cargo or bunker fuel tanks) and the discharge of ballast from, and cleaning of, such tanks, or
- (v) The separation of oil from water, or from other substances, in any mixture containing oil, or
- (vi) The disposal of any oil or water, or any other substance, arising from operations relating to any of the matters specified in the preceding sub-paragraphs, or
- (vii) The disposal of any other oil residues;

(b) Any occasion on which oil or a mixture containing oil is discharged from the ship for the purpose of securing the safety of any vessel, or of preventing damage to any vessel or cargo, or of saving life;

(c) Any occasion on which oil or a mixture containing oil is found to be escaping, or to have escaped, from the ship in consequence of damage to the ship, or by reason of leakage.

(2) The Secretary of State may make regulations requiring the keeping of records relating to the transfer of oil to and from vessels while they are within the seaward limits of the territorial waters of the United Kingdom; and the requirements of any regulations made under this subsection shall be in addition to the requirements of any regulations made under subsection (1) of this section.

(3) Any records required to be kept by regulations made under subsection (2) of this section shall, unless the vessel is a barge, be kept by the master of the vessel, and shall, if the vessel is a barge, be kept, in so far as they relate to the transfer of oil to the barge, by the person supplying the oil and, in so far as they relate to the transfer of oil from the barge, by the person to whom the oil is delivered.

(4) Regulations under this section requiring the carrying of oil record books or the keeping of records may:

(a) Prescribe the form of the oil record books or records and the nature of the entries to be made in them;

(b) Require the person providing or keeping the books or records to retain them for a prescribed period;

(c) Require that person, at the end of the prescribed period, to transmit the books or records to a place or person determined by or under the regulations;

(d) Provide for the custody or disposal of the books or records after their transmission to such a place or person.

(5) If any ship fails to carry such an oil record book as it is required to carry under this section the owner or master shall be liable on summary conviction to a fine not exceeding £500; if any person fails to comply with any requirements imposed on him by or under this section, he shall be liable on summary conviction to a fine not exceeding £500; and if any person makes an entry in any oil record book carried or record kept under this section which is to his knowledge false or misleading in any material particular, he shall be liable on summary conviction to a fine not exceeding £500, or imprisonment for a term not exceeding six months, or both, or on conviction on indictment to a fine or to imprisonment for a term not exceeding two years or both.

(6) In any proceedings under this Act:

(a) Any oil record book carried or record kept in pursuance of regulations made under this section shall be admissible as evidence, and in Scotland shall be sufficient evidence, of the facts stated in it;

(b) Any copy of an entry in such an oil record book or record which is certified by the master of the ship in which the book is carried or by the person by whom the record is required to be kept to be a true copy of the entry shall be admissible as evidence, and in Scotland shall be sufficient evidence, of the facts stated in the entry;

(c) Any document purporting to be an oil record book carried or record kept in pursuance of regulations made under this section, or purporting to be such a certified copy as is mentioned in the preceding paragraph, shall, unless the contrary is proved, be presumed to be such a book, record or copy, as the case may be.

#### 18. *Powers of inspection*

(1) The Secretary of State may appoint any person as an inspector to report to him

(a) Whether the prohibitions, restrictions and obligations imposed by virtue of this Act (including prohibitions so imposed by the creation of offences under any provision of this Act other than section 3) have been complied with;

(b) What measures (other than measures made obligatory by regulations made under section 4 of this Act) have been taken to prevent the escape of oil and mixtures containing oil;

(c) Whether the oil reception facilities provided in harbours are adequate; and any such inspector may be so appointed to report either in a particular case or in a class of cases specified in his appointment.



(2) Every surveyor of ships shall be taken to be a person appointed generally under the preceding subsection to report to the Secretary of State in every kind of case falling within that subsection.

(3) Section 729 of the Merchant Shipping Act 1894 (powers of inspectors) shall apply to persons appointed or taken to be appointed under subsection (1) of this section as it applies to the inspectors referred to in that section and shall, as so applying, have effect as if:

(a) In paragraph (a) of subsection (1) of that section, the reference to a ship included any vessel, and the reference to that Act were a reference to this Act and any regulations made under this Act; and

(b) Any power under that section to inspect premises included power to inspect any apparatus used for transferring oil.

(4) Any power of an inspector, under section 729 as applied by the preceding subsection, to inspect a vessel shall include power to test any equipment with which the vessel is required to be fitted in pursuance of regulations made under section 4 of this Act.

(5) Any power of an inspector, under section 729 as so applied, to require the production of any oil record book required to be carried or records required to be kept in pursuance of regulations made under section 17 of this Act shall include power to copy any entry therein and require the master to certify the copy as a true copy of the entry; and in subsection (3) of section 729, as so applied, the reference to making a declaration shall be construed as a reference to the certification of such a copy.

(6) Without prejudice to any powers exercisable by virtue of the preceding provisions of this section, in the case of a vessel which is for the time being in a harbour in the United Kingdom the harbour master, and any other person appointed by the Secretary of State under this subsection (either generally or in relation to a particular vessel), shall have power:

(a) To go on board and inspect the vessel or any part thereof, or any of the machinery, boats, equipment or articles on board the vessel, for the purpose of ascertaining the circumstances relating to an alleged discharge of oil or a mixture containing oil from the vessel into the waters of the harbour,

(b) To require the production of any oil record book required to be carried or records required to be kept in pursuance of regulations made under section 17 of this Act; and

(c) To copy any entry in any such book or record and require the master to certify the copy as a true copy of the entry.

(7) A person exercising any powers conferred by subsection (6) of this section shall not unnecessarily detain or delay the vessel from proceeding on any voyage.

(8) If any person fails to comply with any requirement duly made in pursuance of paragraph (b) or paragraph (c) of subsection (6) of this section, he shall be liable on summary conviction to a fine not exceeding £10; and if any person wilfully obstructs a person acting in the exercise of any power conferred by virtue of this section, he shall be liable on summary conviction to a fine not exceeding £100.

### 19. *Prosecutions*

(1) Proceedings for an offence under this Act may, in England or Wales, be brought only:

- (a) By or with the consent of the Attorney General, or
- (b) If the offence is one to which subsection (2) of this section applies, by the harbour authority, or
- (c) Unless the offence is one mentioned in paragraph (b), (c) or (d) of subsection (2) of this section, by the Secretary of State or a person authorised by any general or special direction of the Secretary of State.

(2) This subsection applies to the following offences:

- (a) Any offence under section 2 of this Act which is alleged to have been committed by the discharge of oil, or a mixture containing oil, into the waters of a harbour in the United Kingdom;
- (b) Any offence in relation to such a harbour under section 10 or section 11 of this Act;
- (c) Any offence under section 17 of this Act relating to the keeping of records of the transfer of oil within such a harbour; and
- (d) Any offence under section 18 of this Act in respect of a failure to comply with a requirement of a harbour master, or in respect of obstruction of a harbour master acting in the exercise of any power conferred by virtue of that section.

(3) The preceding provisions of this section shall apply in relation to any part of a dockyard port within the meaning of the Dockyard Ports Regulation Act 1865 as follows, that is to say:

- (a) If that part is comprised in a harbour in the United Kingdom, the reference to the harbour authority shall be construed as including a reference to the Queen's harbour master for the port;
- (b) If that part is not comprised in a harbour in the United Kingdom, the references to such a harbour shall be construed as references to such a dockyard port and the reference to the harbour authority as a reference to the Queen's harbour master for the port.

(4) Where, immediately before the date on which (apart from this subsection) the time for bringing summary proceedings for an offence under this Act would expire, the person to be charged is outside the United Kingdom, the time for bringing the proceedings shall be extended until the end of the period of two months beginning with the date on which he next enters the United Kingdom.

(5) Proceedings for any offence under this Act may (without prejudice to any jurisdiction exercisable apart from this subsection) be taken against a person at any place at which he is for the time being.

(6) If a local fisheries committee constituted by an order made, or having effect as if made, under section 1 of the Sea Fisheries Regulation Act 1966 or any of its officers is authorised in that behalf under subsection (1) of this section, the committee may institute proceedings for any offence under this Act committed within the district of the committee.

(7) The preceding provisions of this section do not apply in relation to an offence under section 3 of this Act, but proceedings for such an offence may:

(a) In England and Wales, be brought only by or with the consent of the Director of Public Prosecutions; and

(b) In Northern Ireland, be brought only by or with the consent of the Attorney General for Northern Ireland;

and any such proceedings may be taken, and the offence may for all incidental purposes be treated as having been committed, in any place in the United Kingdom.

(8) Where a body corporate is guilty of an offence under section 3 of this Act and the offence is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, any director, manager, secretary or other similar officer of the body corporate or any person who was purporting to act in any such capacity he, as well as the body corporate, shall be guilty of the offence and shall be liable to be proceeded against and punished accordingly.

In this subsection, "director" in relation to a body corporate established for the purpose of carrying on under national ownership any industry or part of an industry or undertaking, being a body corporate whose affairs are managed by its members, means a member of that body corporate.

#### 20. *Enforcement and application of fines*

(1) Where a fine imposed by a court in proceedings against the owner or master of a vessel for an offence under this Act is not paid at the time ordered by the court, the court shall, in addition to any other powers for enforcing payment, have power to direct the amount remaining unpaid to be levied by distress or poinding and sale of the vessel, her tackle, furniture and apparel.

(2) Where a person is convicted of an offence under section 1 or section 2 of this Act, and the court imposes a fine in respect of the offence, then if it appears to the court that any person has incurred, or will incur, expenses in removing any pollution, or making good any damage, which is attributable to the offence, the court may order the whole or part of the fine to be paid to that person for or towards defraying those expenses.

#### 21. *Enforcement of Conventions relating to oil pollution*

(1) Her Majesty may by Order in Council empower such persons as may be designated by or under the Order to go on board any Convention ship while the ship is within a harbour in the United Kingdom, and to require production of any oil record book required to be carried in accordance with the Convention.

(2) An Order in Council under this section may, for the purposes of the Order, and with any necessary modifications, apply any of the provisions of this Act relating to the production and inspection of oil record books and the taking of copies of entries therein, and to the admissibility in evidence of such oil record books and copies, including any provisions of the Merchant

Shipping Act 1894 applied by those provisions, and including any penal provisions of this Act in so far as they relate to those matters.

(3) Her Majesty, if satisfied that the government of any country has accepted, or denounced, the Convention, or that the Convention extends, or has ceased to extend, to any territory, may by Order in Council make a declaration to that effect.

(4) In this section "the Convention" means any Convention accepted by Her Majesty's Government in the United Kingdom in so far as it relates to the prevention of pollution of the sea by oil: and "Convention ship" means a ship registered in:

(a) A country the government of which has been declared by an Order in Council under the preceding subsection to have accepted the Convention, and has not been so declared to have denounced it; or

(b) A territory to which it has been so declared that the Convention extends, not being a territory to which it has been so declared that the Convention has ceased to extend.

#### *Miscellaneous and supplementary*

#### *22. Power to apply certain provisions to ships registered outside United Kingdom*

(1) Her Majesty may by Order in Council direct that, subject to such exceptions and modifications as may be specified in the Order, any regulations made under section 4 or section 17(1) of this Act shall apply to ships registered in countries and territories other than the United Kingdom at any time when they are in a harbour in the United Kingdom, or are within the seaward limits of the territorial waters of the United Kingdom while on their way to or from a harbour in the United Kingdom.

(2) An Order in Council under subsection (1) of this section shall not be made so as to impose different requirements in respect of ships of different countries or territories; but if Her Majesty is satisfied, as respects any country or territory, that ships registered there are required, by the law of that country or territory, to comply with provisions which are substantially the same as, or equally effective with, the requirements imposed by virtue of the Order, Her Majesty may by Order in Council direct that those requirements shall not apply to any ship registered in that country or territory if the ship complies with such of those provisions as are applicable thereto under the law of that country or territory.

(3) No regulation shall by virtue of an Order in Council under this section apply to any ship as being within a harbour in the United Kingdom, or on her way to or from such a harbour, if the ship would not have been within the harbour, or, as the case may be, on her way to or from the harbour, but for stress of weather or any other circumstances which neither the master nor the owner nor the charterer (if any) of the ship could have prevented or forestalled.

23. *Power of Secretary of State to grant exemptions*

The Secretary of State may exempt any vessels or classes of vessels from any of the provisions of this Act or of any regulations made thereunder, either absolutely or subject to such conditions as he thinks fit.

24. *Application of Act to Government ships*

(1) The provisions of this Act do not apply to vessels of Her Majesty's navy, nor to Government ships in the service of the Secretary of State while employed for the purposes of Her Majesty's navy.

(2) Subject to subsection (1) of this section and subsection (4) of section 16 of this Act:

(a) Provisions of this Act which are expressed to apply only to ships registered in the United Kingdom apply to Government ships so registered and also to Government ships not so registered but held for the purposes of Her Majesty's Government in the United Kingdom;

(b) Provisions of this Act which are expressed to apply to vessels generally apply to Government ships.

(3) In this section "Government ships" has the same meaning as in section 80 of the Merchant Shipping Act 1906.

25. *Provisions as to Isle of Man, Channel Islands, colonies and dependencies*

(1) Her Majesty may by Order in Council direct that such of the provisions of this Act, other than section 3, or of any enactment for the time being in force amending or replacing them, as may be specified in the Order shall extend, with such exceptions and modifications, if any, as may be specified in the Order, to the Isle of Man, any of the Channel Islands, or any colony.

(2) The Foreign Jurisdiction Act 1890 shall have effect as if the provisions of this Act, other than section 3, were included among the enactments which, by virtue of section 5 of that Act, may be extended by Order in Council to foreign countries in which for the time being Her Majesty has jurisdiction.

(3) Her Majesty may by Order in Council direct that, subject to such exceptions and modifications as may be specified in the Order, the provisions of this Act which (apart from sections 22 and 24 of this Act) apply only to ships registered in the United Kingdom shall apply also to ships registered in any country or territory specified in the Order, being a country or territory to which the provisions of this Act can be extended by virtue of either of the preceding subsections.

...

29. *Interpretation*

(1) In this Act:

"Barge" includes a lighter and any similar vessel;

...

"Oil" means oil of any description and includes spirit produced from oil of any description, and also includes coal tar;

"Oil reception facilities" has the meaning assigned to it by section 9(1) of this Act;

“Oil residues” means any waste consisting of, or arising from, oil or a mixture containing oil;

“Outside the territorial waters of the United Kingdom” means outside the seaward limits of those waters;

“Sea” includes any estuary or arm of the sea;

“Transfer”, in relation to oil, means transfer in bulk.

(2) Any reference in any provision of this Act to a mixture containing oil shall be construed as a reference to any mixture of oil (or, as the case may be, of oil of a description referred to in that provision) with water or with any other substance.

(3) Any reference in the provisions of this Act other than section 11 to the discharge of oil or a mixture containing oil, or to its being discharged, from a vessel, place or thing, except where the reference is to its being discharged for a specified purpose, includes a reference to the escape of the oil or mixture, or (as the case may be) to its escaping, from that vessel, place or thing.

(4) For the purposes of any provision of this Act relating to the discharge of oil or a mixture containing oil from a vessel, any floating craft (other than a vessel) which is attached to a vessel shall be treated as part of the vessel.

(5) Any power conferred by this Act to test any equipment on board a vessel shall be construed as including a power to require persons on board the vessel to carry out such work as may be requisite for the purpose of testing the equipment; and any provision of this Act as to submitting equipment for testing shall be construed accordingly.

### 30. *Provisions as to Northern Ireland*

(1) This Act extends to Northern Ireland and the following provisions of this section shall have effect with respect to the application of this Act to Northern Ireland.

(2) References in section 9 of this Act to the Secretary of State shall be construed as references to the Ministry of Commerce for Northern Ireland (in this section referred to as “the Ministry of Commerce”).

(3) In relation to places on land in Northern Ireland, and to apparatus located in Northern Ireland otherwise than on board a vessel:

(a) Persons appointed by the Secretary of State as inspectors under section 18 of this Act, and surveyors of ships in their capacity as persons so appointed, shall have no powers of entry or inspection; but

(b) Persons appointed by the Ministry of Commerce shall have the like powers as (but for the preceding paragraph) persons appointed by the Secretary of State would have by virtue of that section, and the provisions of that section shall have effect in relation to persons appointed by the Ministry of Commerce as, in England and Wales, they have effect in relation to persons appointed by the Secretary of State.

(4) Subsection (1) of section 19 of this Act shall apply to proceedings in Northern Ireland as it applies to proceedings in England and Wales, but with the substitution, for references to the Attorney General, of references

to the Attorney General for Northern Ireland; except that, in relation to proceedings for an offence under section 2 of this Act:

(a) If the alleged offence relates to the discharge of oil or a mixture containing oil from a vessel in a harbour or inland waterway in Northern Ireland, the references in that subsection to the Secretary of State shall be construed as references to the Secretary of State or the Ministry of Commerce;

(b) If the alleged offence relates to the discharge of oil or a mixture containing oil from a place on land in Northern Ireland, or from apparatus located in Northern Ireland otherwise than on board a vessel, the references in that subsection to the Secretary of State shall be construed as references to the Ministry of Commerce.

...

### 33. *Repeals and savings*

(1) The enactments specified in the Schedule to this Act are hereby repealed to the extent specified in the third column of that Schedule.

(2) In so far as any instrument made or other thing done under any enactment repealed by this Act could have been made or done under any provision of this Act it shall have effect as if made or done under that provision; and references in any such instrument to any such enactment shall be construed as referring to the corresponding provision of this Act or, as the case may be, to this Act.

...

## SCHEDULE

### ENACTMENTS REPEALED

<i>Chapter</i>	<i>Short Title</i>	<i>Extent of Repeal</i>
3 & 4 Eliz.2. c.25.	The Oil in Navigable Waters Act 1955.	The whole Act.
1963 c.28.	The Oil in Navigable Waters Act 1963.	The whole Act.
1964 c.29.	The Continental Shelf Act 1964.	Section 5.
1966 c.38.	The Sea Fisheries Regulation Act 1966.	Section 21(7).
1971 c.21.	The Oil in Navigable Waters Act 1971.	The whole Act.
1971 c.61.	The Mineral Workings (Off-shore Installations) Act 1971.	Section 10(1)(c).

(c) MERCHANT SHIPPING (OIL POLLUTION) ACT 1971<sup>1</sup>1. *Liability for oil pollution*

(1) Where, as a result of any occurrence taking place while a ship is carrying a cargo of persistent oil in bulk, any persistent oil carried by the ship (whether as part of the cargo or otherwise) is discharged or escapes from the ship, the owner of the ship shall be liable, except as otherwise provided by this Act:

(a) For any damage caused in the area of the United Kingdom by contamination resulting from the discharge or escape; and

(b) For the cost of any measures reasonably taken after the discharge or escape for the purpose of preventing or reducing any such damage in the area of the United Kingdom; and

(c) For any damage caused in the area of the United Kingdom by any measures so taken.

(2) Where a person incurs a liability under subsection (1) of this section he shall also be liable for any damage or cost for which he would be liable under that subsection if the references therein to the area of the United Kingdom included the area of any other Convention country.

(3) Where persistent oil is discharged or escapes from two or more ships and:

(a) A liability is incurred under this section by the owner of each of them; but

(b) The damage or cost for which each of the owners would be liable cannot reasonably be separated from that for which the other or others would be liable;

each of the owners shall be liable, jointly with the other or others, for the whole of the damage or cost for which the owners together would be liable under this section.

(4) For the purposes of this Act, where more than one discharge or escape results from the same occurrence or from a series of occurrences having the same origin, they shall be treated as one; but any measures taken after the first of them shall be deemed to have been taken after the discharge or escape.

...

2. *Exceptions from liability under s. 1*

The owner of a ship from which persistent oil has been discharged or has escaped shall not incur any liability under section 1 of this Act if he proves that the discharge or escape:

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

(b) Was due wholly to anything done or left undone by another person, not being a servant or agent of the owner, with intent to do damage; or

<sup>1</sup> 1971 Chapter 59, 27 July 1971. Sections 1 (except subsection (2)), 2, 3, 9, 13 (1), and 14 (1) were brought into operation on 9 September 1971 by the Merchant Shipping (Oil Pollution) Act 1971 (Commencement) Order 1971.



(c) Was due wholly to the negligence or wrongful act of a government or other authority in exercising its function of maintaining lights or other navigational aids for the maintenance of which it was responsible.

### 3: *Restriction of liability for oil pollution*

Where, as a result of any occurrence taking place while a ship is carrying a cargo of persistent oil in bulk, any persistent oil carried by the ship is discharged or escapes then, whether or not the owner incurs a liability under section 1 of this Act,

(a) He shall not be liable otherwise than under that section for any such damage or cost as is mentioned therein; and

(b) No servant or agent of the owner nor any person performing salvage operations with the agreement of the owner shall be liable for any such damage or cost.

### 4. *Limitation of liability under s. 1*

(1) Where the owner of a ship incurs a liability under section 1 of this Act by reason of a discharge or escape which occurred without his actual fault or privity:

(a) Section 503 of the Merchant Shipping Act 1894<sup>1</sup> (limitation of liability) shall not apply in relation to that liability; but

(b) He may limit that liability in accordance with the provisions of this Act, and if he does so his liability (that is to say, the aggregate of his liabilities under section 1 resulting from the discharge or escape) shall not exceed 2,000 gold francs for each ton of the ship's tonnage nor (where that tonnage would result in a greater amount) 210 million gold francs.

...

### 10. *Compulsory insurance against liability for pollution*

(1) Subject to the provisions of this Act relating to Government ships, subsection (2) of this section shall apply to any ship carrying in bulk a cargo of more than 2,000 tons of persistent oil of a description specified in regulations made by the Secretary of State.

(2) The ship shall not enter or leave a port in the United Kingdom or arrive at or leave a terminal in the territorial sea of the United Kingdom nor, if the ship is registered in the United Kingdom, a port in any other country or a terminal in the territorial sea of any other country, unless there is in force a certificate complying with the provisions of subsection (3) of this section and showing that there is in force in respect of the ship a contract of insurance or other security satisfying the requirements of Article VII of the Convention (cover for owner's liability).

(3) The certificate must be:

(a) If the ship is registered in the United Kingdom, a certificate issued by the Secretary of State;

(b) If the ship is registered in a Convention country other than the United Kingdom, a certificate issued by or under the authority of the government of the other Convention country; and

<sup>1</sup> 1894, Chapter 60.

(c) If the ship is registered in a country which is not a Convention country, a certificate issued by the Secretary of State or a certificate recognised for the purposes of this paragraph by regulations made under this section.

(4) The Secretary of State may by regulations provide that certificates in respect of ships registered in any, or any specified, country which is not a Convention country shall, in such circumstances as may be specified in the regulations, be recognised for the purposes of subsection (3)(c) of this section if issued by or under the authority of the government of the country designated in the regulations in that behalf; and the country that may be so designated may be either or both of the following, that is to say:

(a) The country in which the ship is registered; and

(b) Any country specified in the regulations for the purposes of this paragraph.

(5) Any certificate required by this section to be in force in respect of a ship shall be carried in the ship and shall, on demand, be produced by the master to any officer of customs or of the Department of Trade and Industry and, if the ship is registered in the United Kingdom, to any proper officer within the meaning of section 97 (1) of the Merchant Shipping Act 1970.<sup>1</sup>

(6) If a ship enters or leaves, or attempts to enter or leave, a port or arrives at or leaves, or attempts to arrive at or leave, a terminal in contravention of subsection (2) of this section, the master or owner shall be liable on conviction on indictment to a fine, or on summary conviction to a fine not exceeding £35,000.

(7) If a ship fails to carry, or the master of a ship fails to produce, a certificate as required by subsection (5) of this section the master shall be liable on summary conviction to a fine not exceeding £400.

(8) If a ship attempts to leave a port in the United Kingdom in contravention of this section the ship may be detained.

...

## 12. *Rights of third parties against insurers*

(1) Where it is alleged that the owner of a ship has incurred a liability under section 1 of this Act as a result of any discharge or escape of oil occurring while there was in force a contract of insurance or other security to which such a certificate as is mentioned in section 10 of this Act related, proceedings to enforce a claim in respect of the liability may be brought against the person who provided the insurance or other security (in the following provisions of this section referred to as "the insurer").

(2) In any proceedings brought against the insurer by virtue of this section it shall be a defence (in addition to any defence affecting the owner's liability) to prove that the discharge or escape was due to the wilful misconduct of the owner himself.

(3) The insurer may limit his liability in respect of claims made against him by virtue of this section in like manner and to the same extent as the

<sup>1</sup> 1970, Chapter 36.

owner may limit his liability but the insurer may do so whether or not the discharge or escape occurred without the owner's actual fault or privity.

...

#### 14. *Government ships*

(1) Nothing in the preceding provisions of this Act applies in relation to any warship or any ship for the time being used by the government of any State for other than commercial purposes.

(2) In relation to a ship owned by a State and for the time being used for commercial purposes it shall be a sufficient compliance with subsection (2) of section 10 of this Act if there is in force a certificate issued by the government of that State and that any liability for pollution damage as defined in Article I of the Convention will be met up to the limit prescribed by Article V thereof.

(3) Every Convention State shall, for the purposes of any proceedings brought in a court in the United Kingdom to enforce a claim in respect of a liability incurred under section 1 of this Act, be deemed to have submitted to the jurisdiction of that court, and accordingly rules of court may provide for the manner in which such proceedings are to be commenced and carried on; but nothing in this subsection shall authorise the issue of execution, or in Scotland the execution of diligence, against the property of any State.

#### 15. *Liability for cost of preventive measures where s. 1 does not apply*

(1) Where:

(a) After an escape or discharge of persistent oil from a ship, measures are reasonably taken for the purpose of preventing or reducing damage in the area of the United Kingdom which may be caused by contamination resulting from the discharge or escape; and

(b) Any person incurs, or might but for the measures have incurred, a liability, otherwise than under section 1 of this Act, for any such damage; then, notwithstanding that subsection (1) (b) of that section does not apply, he shall be liable for the cost of the measures, whether or not the person taking them does so for the protection of his interests or in the performance of a duty.

...

#### 19. *Meaning of "the Convention," "Convention country" and "Convention State"*

(1) In this Act:

"The Convention" means the International Convention on Civil Liability for Oil Pollution Damage<sup>1</sup> signed in Brussels in 1969;

"Convention country" means a country in respect of which the Convention is in force; and

"Convention State" means a State which is a party to the Convention.

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<sup>1</sup> *Infra* PART II, DIVISION III, SUBDIVISION A, 4.

(d) [OIL IN NAVIGABLE WATERS (PROHIBITED SEA AREAS) (AMENDMENT)  
ORDERS 1972]<sup>1</sup>

**BAHAMAS**

(a) CONTINENTAL SHELF ACT, 1970, section 8<sup>2</sup>

(b) PETROLEUM ACT, 1971, sections 29-31<sup>3</sup>

**BRITISH SOLOMON ISLANDS PROTECTORATE**

CONTINENTAL SHELF ORDINANCE 1970, section 8<sup>4</sup>

**17. UNITED STATES OF AMERICA**

(a) FEDERAL WATER POLLUTION CONTROL ACT, AS AMENDED UP TO 1970,  
sections 11 and 12<sup>5</sup>

(b) UNITED STATES GEOLOGICAL SURVEY OCS ORDER NO. 10 OF 28 MARCH  
1969 REGARDING DRILLING AND OTHER OPERATING PROCEDURES ON  
CONTINENTAL SHELF OFF CALIFORNIA, sections 1, 2, 5 and 6<sup>6</sup>

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<sup>1</sup> *Statutory Instruments*, 1972 Nos. 676 and 1592. These Orders amended the Oil in Navigable Waters (Prohibited Sea Areas) Order 1967, reproduced in ST/LEG/SER.B/15, pp. 535-537, by including amongst the prohibited sea areas specified by that Order the areas of the Red Sea, the Persian Gulf and the Mediterranean, lying within 100 miles from the nearest land along the coasts of Saudi Arabia and Libya.

<sup>2</sup> *Supra* DIVISION II, 25.

<sup>3</sup> *Supra* DIVISION I, SUBDIVISION A, Chapter IX, 16.

<sup>4</sup> *Supra* DIVISION II, 25.

<sup>5</sup> *Supra* DIVISION I, SUBDIVISION A, Chapter VII, 13.

<sup>6</sup> *Supra* DIVISION II, 26 (a).

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