



BERMUDA

MERCHANT SHIPPING (PREVENTION OF OIL POLLUTION)
REGULATIONS 2021

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The Minister responsible for Maritime Administration, in exercise of the powers conferred by section 122 of the Merchant Shipping Act 2002, makes the following Regulations:

PART 1 GENERAL

Citation and transitional provisions

1 (1) These Regulations may be cited as the Merchant Shipping (Prevention of Oil Pollution) Regulations 2021.

(2) Except in circumstances determined by the Minister, an IOPP or BOPP certificate issued or endorsed by an appropriate Certifying Authority under Part 2 of the Merchant Shipping (Prevention of Oil Pollution) Regulations 2010 which is valid immediately before the day on which these Regulations come into force—

- (a) has effect on and after that date as if it were issued or endorsed under these Regulations; and
- (b) subject to these Regulations, continues to be valid until the date of expiry of that certificate.

Interpretation

2 (1) In these Regulations—

“additional survey” means a survey as prescribed in regulation 6.1.5 of Annex I;

“Annex I” means Annex I to the Convention;

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

“Arctic waters” has the meaning given in regulation 46.2 of Annex I;

“Bermuda ship” means a ship which—

- (a) is registered in Bermuda; or
- (b) is not registered under the law of any country but is wholly owned by persons each of whom is—
 - (i) a British citizen, a British Overseas Territories citizen or a British Overseas citizen; or
 - (ii) a body corporate which is established under the laws of Bermuda and has its principal place of business in Bermuda;

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- “BOPP Certificate” means a Bermuda Oil Pollution Prevention Certificate issued by a Certifying Authority in accordance with these Regulations;
- “Certifying Authority” means the Minister or any person authorised by the Minister in accordance with regulation 8;
- “controlled waters” means the areas of sea specified by the Merchant Shipping (Prevention of Pollution) (Limits) Regulations 2021 as waters within which the jurisdiction and rights of Bermuda are exercisable in accordance with Part XII of the United Nations Convention on the Law of the Sea, for the protection and preservation of the marine environment;
- “Convention” means the International Convention for the Prevention of Pollution from Ships;
- “Convention country” means a country which is a Party to the Convention;
- “flag State”, in relation to a ship, means the State whose flag a ship is entitled to fly;
- “GT” means gross registered tonnage and, in the case of a ship which has alternative gross registered tonnages, the larger of those tonnages is to be taken to be the gross registered tonnage;
- “harbour master” includes a dock master, pier master and any person specifically appointed as a harbour authority (within the meaning of section 149(1) of the 2002 Act) for the purpose of enforcing these Regulations;
- “IMO” means the International Maritime Organization;
- “intermediate survey” means a survey as prescribed in regulation 6.1.3 of Annex I;
- “IOPP Certificate” means an International Oil Pollution Prevention Certificate issued in accordance with regulation 7 of Annex I;
- “nautical mile” means an international nautical mile of 1,852 metres;
- “offshore installation” means fixed or floating platforms including drilling rigs, floating production, storage and offloading facilities used for the offshore production and storage of oil, and floating storage units used for the offshore storage of produced oil;
- “Polar Code” means the International Code for Ships Operating in Polar Waters, consisting of an introduction, parts I-A and II-A and parts I-B and II-B as adopted by IMO Resolutions MSC.385(94) and MEPC.264(68);
- “renewal survey” means a survey as prescribed in regulation 6.1.2 of Annex I;
- “RO Code” means the Code for Recognised Organisations adopted by IMO Resolution MEPC.237(65) and incorporated by way of Resolution MEPC.238(65);
- “sea” includes any estuary or arm of the sea;
- “survey” means a survey carried out by a surveyor;

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“surveyor of ships” means a surveyor appointed by a Certifying Authority.

(2) In these Regulations—

(a) the following terms have the meaning given in regulation 1 of Annex I—

- (i) anniversary date;
- (ii) Antarctic area;
- (iii) crude oil;
- (iv) deadweight;
- (v) oil;
- (vi) oil tanker;
- (vii) oily mixture;
- (viii) ppm;
- (ix) special area; and
- (x) tank; and

(b) the words “Administration”, “discharge” and “ship” have the meanings given in article 2 of the Convention.

(3) Any reference to a ship or oil tanker delivered on, before, or after a specified date takes the meaning which corresponds to a ship or oil tanker delivered on, before, or after that specified date in regulation 1.28 of Annex I.

Ambulatory reference

3 (1) Any reference in these Regulations to a specific provision in the Convention, an Annex of that Convention, the Polar Code or the RO Code is to be construed as—

- (a) a reference to the provision in that instrument as modified from time to time; and
- (b) if the instrument is replaced by another instrument, as a reference to the provision in that other instrument.

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

(3) A modification to, or replacement of—

- (a) the Convention by virtue of paragraph (2); or
- (b) the Polar Code by virtue of paragraph (4)(a),

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

(4) For the purposes of paragraph (1) the Polar Code is modified if—

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- (a) amendments to the Introduction and Chapter 2 of Part II-A of that Code are adopted, brought into force and take effect in accordance with article 16 of the Convention as applicable to amendments to an Annex to that Convention; and
 - (b) amendments to Part II-B of that Code are adopted by the Marine Environment Protection Committee in accordance with the rules of procedure which apply to that Committee.
- (5) For the purposes of paragraph (1)—
- (a) Parts 1 and 2 of the RO Code are modified if omissions, additions or other alterations to the text take effect in accordance with Article 16 of the Convention;
 - (b) Part 3 of the RO Code is modified if omissions, additions or other alterations to the text are adopted by a Resolution of the Marine Environment Protection Committee in accordance with the rules of procedure which apply to that Committee; and
 - (c) any modifications referred to in sub-paragraph (a) or (b) adopted by a Resolution of the Marine Safety Committee and the Marine Environment Protection Committee must be identical and come into force, or take effect, at the same time,

and such modification has effect at the time specified in any Resolution described in sub-paragraph (c).

Application

4 (1) Subject to paragraphs (2) and (3), these Regulations and the Convention apply to—

- (a) all Bermuda ships, wherever they may be; and
- (b) all non-Bermuda ships within Bermuda waters.

(2) These Regulations and the Convention do not apply to any—

- (a) warship;
- (b) naval auxiliary; or
- (c) other ship owned or operated by the State and used, for the time being, only on government non-commercial service.

(3) Subject to paragraph (2), regulations 25 and 26 apply to the discharge into the sea from any ship which has caused, or is likely to cause pollution within Bermuda waters or controlled waters.

(4) Subject to paragraph (5), regulations 16, 26.4, 29 to 32, 34 and 36 of Annex I apply to the construction and operation of cargo spaces within ships other than oil tankers where such spaces are constructed for and used to carry oil in bulk of an aggregate capacity of 200 cubic metres or more.

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(5) Where the aggregate capacity of a cargo space referred to in paragraph (4) is less than 1,000 cubic metres, regulation 34.6 of Annex I applies, instead of regulations 29, 31 and 32 of that Annex.

Compliance with Survey and Certification Requirements

5 (1) Subject to any exemption conferred by or under these Regulations, a ship must not be enabled to—

- (a) proceed, or to attempt to proceed to sea; or
- (b) (if it is already at sea), remain at sea,

unless the requirements in paragraph (2) are met.

(2) The requirements are that the ship—

- (a) has been surveyed in accordance with the requirements of these Regulations which apply to that ship; and
- (b) is the subject of a valid IOPP Certificate or, in the case of a ship not engaged in international voyages, a BOPP Certificate.

Exemptions

6 (1) The Minister may exempt a ship which has constructional features which render the application of any of the provisions of—

- (a) Chapters 3 and 4 of Annex I; or
- (b) section 1.2 of part II-A of the Polar Code,

relating to construction or equipment unreasonable or impractical, provided the Minister is satisfied that the construction and equipment of any such ship provides equivalent protection from pollution by oil, having regard to the service for which that ship is intended.

(2) The particulars of any exemption granted under paragraph (1) must be indicated in the IOPP or BOPP certificate issued under regulation 11 or 12.

(3) Subject to paragraph (5), the Minister may exempt any ship or any description of ship from any of the provisions of these Regulations.

(4) An exemption by the Minister is valid only if given in writing and may be—

- (a) given subject to such conditions and limitations as the Minister may specify; and
- (b) altered or cancelled by a notice given in writing by the Minister.

(5) An exemption under paragraph (3) may be granted only if the exemption is compatible with requirements under Annex I.

(6) In this regulation “in writing” includes the provision of such communication by electronic mail, facsimile or similar means which are capable of producing a document containing the text of any communication.

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Equivalents

7 (1) Subject to paragraph (2), any fitting, material, appliance or apparatus may be fitted in a ship as an alternative to one that complies with Annex I if it has been approved by the Minister and—

- (a) the owner or master of the ship has made an application to the Minister for permission to fit the fitting, material, appliance or apparatus, to the ship;
- (b) a surveyor—
 - (i) is satisfied that the fitting, material, appliance or apparatus is at least as effective as that required by Annex I; and
 - (ii) has endorsed the application to the Minister to that effect; and
- (c) the fitting, material, appliance or apparatus is fitted to the ship in accordance with any conditions or limitations set out in the approval and is used and operated in accordance with any such conditions or limitations.

(2) Paragraph (1) does not permit the substitution of operational methods to control the discharge of oil as being equivalent to the design and construction features prescribed by Annex I.

(3) For the purposes of these Regulations a fitting, material, appliance or apparatus fitted to a ship as an alternative to any of the requirements in Annex I meets the requirements of Annex I, provided it has been approved in accordance with the procedure specified in paragraph (1).

Authorisation of Certifying Authorities

8 A person authorised by the Minister as a Certifying Authority must be authorised in accordance with—

- (a) the Convention; and
- (b) the RO Code.

PART 2

SURVEYS, CERTIFICATES AND OIL RECORD BOOK

Surveys

9 (1) This regulation applies to—

- (a) a Bermuda oil tanker of 150 GT and above; and
- (b) a Bermuda ship of 400 GT and above which is not an oil tanker.

(2) A ship to which this regulation applies, which is engaged in international voyages must be subjected to the surveys described in paragraph (4).

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(3) A ship to which this regulation applies, which is not engaged in international voyages must be subjected to the surveys described in paragraph (4)(a), (b) and (e).

(4) The surveys are—

- (a) an initial survey, as prescribed in regulation 6.1.1 of Annex I, which must be completed before a ship is put in service or before an IOPP or BOPP Certificate is first issued in respect of that ship;
- (b) a renewal survey, which must be completed within five years of the issue of an IOPP or BOPP certificate, and at intervals not exceeding five years thereafter;
- (c) an intermediate survey, which must be completed either—
 - (i) no more than three months before or after the second anniversary date of the issue of an IOPP certificate; or
 - (ii) no more than three months before or after the third anniversary date of the issue of an IOPP certificate,and any such survey takes the place in that year of an annual survey described in sub-paragraph (d);
- (d) an annual survey, which must be completed no more than three months before or after the anniversary date of the issue of an IOPP certificate, except where an intermediate survey described in sub-paragraph (c) has been completed within that period; and
- (e) an additional survey (either general or partial), which must be completed either—
 - (i) after a repair resulting from investigations prescribed in regulation 10(5); or
 - (ii) when an important repair or renewal is made to the ship.

(5) For the purposes of paragraph (4)(e)(ii), an important repair or renewal is a repair or renewal which is required to be effected in order to—

- (a) address a defect which substantially affects the integrity of the ship or the efficiency or completeness of the equipment of the ship; or
- (b) ensure compliance with the requirements of Annex I.

(6) In case of a dispute as to whether a repair or renewal effected or intended to be effected in respect of a ship is an important repair or renewal for the purposes of paragraph (4)(e)(ii), the owner or master of a ship may serve a written request upon the Minister, seeking advice.

(7) A repair or renewal is to be regarded as not being an important repair or renewal for those purposes, unless the Minister advises to the contrary within twenty-one days of receipt of a request under paragraph (6).

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Responsibilities of owner and master

10 (1) The owner and master of a ship must ensure the condition of the ship and its equipment is maintained to conform—

- (a) in the case of a Bermuda ship, or any ship surveyed in accordance with these Regulations, with these Regulations; or
- (b) in the case of any other ship, with the requirements of Annex I,

so as to ensure that the ship, in all respects, will remain fit to proceed to sea without presenting an unreasonable threat of harm to the marine environment.

(2) After completion of any survey described in regulation 9 the owner and master of a ship must ensure that no change is made in the structure, equipment, systems, fittings, arrangements or material subject to that survey, except by direct replacement, without the approval of—

- (a) the Certifying Authority; or
- (b) the Administration of the Convention country which carried out the survey in respect of that ship.

(3) Whenever—

- (a) an accident occurs to a ship; or
- (b) a defect is discovered in a ship,

which substantially affects the integrity of the ship or the efficiency or completeness of the equipment of the ship as required under these Regulations, the owner and master of the ship must comply with the requirements in paragraph (4).

(4) The requirements are that—

- (a) the accident or defect is reported at the earliest opportunity, to the Certifying Authority that issued the IOPP or BOPP certificate in respect of that ship;
- (b) in the case of a Bermuda ship which is in a port outside Bermuda, the accident or defect is also reported at the earliest opportunity, to the appropriate maritime authorities in the country in which the port is situated; and
- (c) if the ship is a non-Bermuda ship in a port in Bermuda, the accident or defect is reported to the Minister.

(5) Whenever an accident or defect is reported to a Certifying Authority in accordance with paragraph (4)(a), that Certifying Authority must—

- (a) cause an investigation to be initiated to determine whether or not an additional survey and any repair is necessary; and
- (b) if it considers that an additional survey or repair is necessary, cause that survey or repair to be carried out.

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(6) Whenever an accident or defect is reported to a Certifying Authority in accordance with paragraph (4)(a) and the ship in question is in a port outside Bermuda, the Certifying Authority must take all appropriate steps to ascertain that the requirement in paragraph (4)(b) has been complied with.

(7) In paragraph (2) “direct replacement” means direct replacement of equipment and fittings, with equipment and fittings that conform with the requirements under Annex I, which apply to that ship.

Issue and endorsement of IOPP Certificates

11 (1) This regulation applies to—

- (a) an oil tanker of 150 GT and above; and
- (b) a ship of 400 GT and above which is not an oil tanker,

which is engaged in international voyages.

(2) Subject to the payment of any fee due under the Merchant Shipping (Fees) Regulations 2012, following completion of an initial or renewal survey, a Certifying Authority must issue an IOPP Certificate in respect of any ship described in paragraph (1), if that Certifying Authority is satisfied that the requirements of Annex I are being complied with in respect of that ship.

(3) Where a Certifying Authority is satisfied, following completion of an intermediate or annual survey, that the requirements of Annex I are being complied with, that Certifying Authority must endorse the IOPP Certificate in respect of that ship, to that effect.

(4) The Minister may request a contracting State—

- (a) to survey a ship to which this regulation applies; and
- (b) to—
 - (i) issue, or authorise the issue of; or
 - (ii) endorse, or authorise the endorsement of,

an IOPP Certificate in respect of that ship, in accordance with the requirements of Annex I, if the contracting State is satisfied that the ship complies with the relevant requirements of Annex I.

(5) Where an IOPP Certificate is issued under paragraph (4)—

- (a) the Minister is to be treated as the Certifying Authority in relation to it; and
- (b) any reference in these Regulations to the Certifying Authority that issued the certificate is to be treated as a reference to the Minister.

(6) The Minister may, at the request of the Administration of a Convention country, carry out a survey of a ship registered in that country and if satisfied that the requirements of Annex I are complied with—

- (a) issue an IOPP Certificate in respect of that ship; or

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(b) endorse such a certificate in accordance with the requirements of Annex I.

(7) The Minister must, as soon as possible after issuing or endorsing a certificate under paragraph (6), send to the requesting Administration—

(a) a copy of a certificate issued or endorsed in accordance with paragraph (6); and

(b) a copy of the corresponding survey report.

(8) A certificate issued or endorsed in accordance with paragraph (6)—

(a) must include a statement to the effect that it has been issued or endorsed at the request of the Administration of a Convention country; and

(b) has the same force and must receive the same recognition as a certificate issued by the requesting Administration.

(9) An IOPP certificate issued or endorsed in accordance with this regulation must be in the form prescribed in Appendix II to Annex I, including the Supplements.

(10) An IOPP Certificate must not be issued in respect of a ship entitled to fly the flag of a State which is not a Convention country.

(11) In this regulation “contracting State” means a State which has consented to be bound by the Convention.

Issue of BOPP certificates

12 (1) This regulation applies to—

(a) an oil tanker of 150 GT and above; and

(b) a ship of 400 GT and above which is not an oil tanker,

which is not engaged in international voyages.

(2) Subject to the payment of any fee due under the Merchant Shipping (Fees) Regulations 2012, following completion of an initial or renewal survey, a Certifying Authority must issue a BOPP Certificate in respect of any ship described in paragraph (1), if that Certifying Authority is satisfied that the requirements of Annex I are complied with in respect of that ship.

(3) A BOPP certificate issued in accordance with this regulation must be in the form prescribed in Appendix II to Annex I, including the Supplements, subject to the modifications in paragraph (4).

(4) The modifications are that—

(a) references to an “IOPP Certificate” are substituted by a reference to a “BOPP Certificate”; and

(b) provisions relating to the “endorsement for annual and intermediate surveys”, or an “annual or intermediate survey in accordance with regulation 10.8.3” are omitted.

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Duration and validity of certificates

13 (1) Subject to paragraphs (2) to (6), an IOPP or BOPP Certificate must be issued for a period specified by the Certifying Authority which must not exceed five years.

(2) Where a renewal survey is completed within a period of three months before the date of expiry of an IOPP or BOPP Certificate, the new certificate is valid from the date of completion of the renewal survey, to a date not exceeding five years from the date of expiry of the existing certificate.

(3) Where a renewal survey is completed after the date on which an IOPP or BOPP certificate expires, the new certificate is valid from the date of completion of the renewal survey for a period not exceeding five years from the date of expiry of the IOPP or BOPP certificate.

(4) When a renewal survey is completed more than three months before the expiry date of an IOPP or BOPP certificate, the new certificate is valid from the date of completion of the renewal survey, for a period not exceeding five years from that date.

(5) If an intermediate or annual survey is completed before the period prescribed in regulation 9(4)(c) or (d)—

- (a) the anniversary date shown on the IOPP certificate must be amended by endorsement to a date not more than three months later than the date on which the survey was completed;
- (b) the subsequent intermediate or annual survey must be completed at the intervals prescribed in regulation 9(4)(c) or (d) using the anniversary date as amended in accordance with sub-paragraph (a); and
- (c) the expiry date of the IOPP certificate may remain unchanged provided one or more intermediate or annual surveys, as the case may be, are completed so that the maximum intervals between surveys as prescribed in regulation 9(4) are not exceeded.

(6) An IOPP or BOPP certificate ceases to be valid—

- (a) if relevant surveys are not completed within the periods prescribed in regulation 9(4);
- (b) if the IOPP certificate is not endorsed following an intermediate or annual survey; or
- (c) upon transfer of the ship to the flag of another State.

Extension of validity of certificates

14 (1) If an IOPP certificate is issued for a period of validity of less than five years, the Certifying Authority which issued the certificate may extend the period of validity of that certificate to a maximum of five years, provided annual and intermediate surveys have been completed as appropriate.

(2) Where a renewal survey has been completed, but the IOPP or BOPP certificate in respect of that survey cannot be issued or placed on board the ship before the date on

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which the existing certificate is due to expire, the Certifying Authority may endorse the existing certificate as being valid for a period not exceeding five months from the date on which that existing certificate is due to expire.

(3) Where—

- (a) a renewal survey has not been completed before the date on which an IOPP or BOPP certificate expires; and
- (b) on the date of expiry, the ship is not in the port in which the survey is due to be carried out,

the Certifying Authority that issued the existing IOPP or BOPP certificate may extend the period of validity of that certificate, for a period not exceeding three months if it appears to the Certifying Authority that it is proper and reasonable to do so solely for the purpose of enabling the ship to complete the voyage to its port of survey.

(4) A ship in respect of which a certificate has been extended under paragraph (3) must not, following its arrival in the port in which it is to be surveyed, be enabled by virtue of that extension, to leave that port before a new certificate is issued.

(5) A certificate issued following completion of the renewal survey in the circumstances described in paragraph (3) may be issued for a period not exceeding five years from the date of expiry of the existing certificate, before the extension was granted.

(6) Where no other extension has been granted under this regulation, the Certifying Authority which issued an IOPP or BOPP certificate in respect of a ship used solely on short voyages may extend the validity of that certificate, for a period not exceeding one month from the date of expiry.

(7) A certificate issued following completion of the renewal survey in the circumstances described in paragraph (6), may be issued for a period not exceeding five years from the date of expiry of the existing certificate, before the extension was granted.

(8) An extension of validity under paragraph (3) or (6) must be disregarded for the purposes of determining the date of expiry of an existing IOPP or BOPP Certificate under regulation 13(2) or (3).

(9) In the circumstances described in paragraph (10), a Certificate issued following a renewal survey which is completed—

- (a) after the expiry of an IOPP or BOPP certificate; or
- (b) during the period of an extension granted under paragraph (3) or (6),

may be issued as being valid to a date not exceeding five years from the date of completion of that renewal survey.

(10) The circumstances are where the owner of the ship—

- (a) submits a request to the Certifying Authority for the new period of certification to begin on the date of the completion of the relevant renewal survey;

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- (b) satisfies the Certifying Authority that the owner is justified in making such a request; and
 - (c) complies with any reasonable additional survey requirements which the Certifying Authority may impose.
- (11) In this regulation “short voyage” means a voyage which—
- (a) does not exceed 1,000 nautical miles between the last port of call in the country in which the voyage begins and the last port of call in the voyage, before beginning any return voyage; and
 - (b) on any return voyage does not exceed 1,000 nautical miles between the port of call in which the ship begins its return voyage and the first port of call in the country in which the voyage began,

and for the purposes of this definition, no account is to be taken of any deviation by a ship from its intended voyage due solely to stress of weather or any other circumstances that neither the master nor the owner nor the charterer (if any) of the ship could have prevented or forestalled.

Miscellaneous provisions relating to certificates

15 (1) The Minister may cancel an IOPP or BOPP certificate issued in respect of a Bermuda ship where the Minister has reason to believe that—

- (a) the certificate was issued on false or erroneous information; or
- (b) since the completion of any survey required by these Regulations, the equipment or machinery of the ship has sustained damage or is otherwise deficient.

(2) The Minister may require that an IOPP or BOPP certificate issued in respect of a Bermuda ship, and which has expired or which has been cancelled, is to be surrendered to the Minister.

(3) In relation to a Bermuda ship, a person must not—

- (a) intentionally alter an IOPP or BOPP certificate;
- (b) intentionally make a false IOPP or BOPP certificate;
- (c) knowingly or recklessly provide false information in connection with a survey required under these Regulations;
- (d) with intent to deceive, use, lend, or allow to be used by another, an IOPP or BOPP certificate; or
- (e) fail to surrender an IOPP or BOPP certificate when required to do so under paragraph (2).

(4) The owner and the master of a Bermuda ship in respect of which an IOPP or BOPP certificate has been issued must ensure that the certificate is readily available on board the ship for inspection at all times.

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Procedure to be adopted when a ship is deficient

16 (1) Where the Certifying Authority determines that the condition of a Bermuda ship or its equipment—

- (a) does not correspond with the particulars of the IOPP or BOPP certificate issued in respect of that ship; or
- (b) is such that the ship is not fit to proceed to sea without presenting an unreasonable threat of harm to the marine environment,

the Certifying Authority must inform the owner or master, of the corrective action which must be taken and give notice to the Minister.

(2) If the corrective action required under paragraph (1) is not taken within the period specified by the Certifying Authority (which must be a reasonable period), the Certifying Authority must withdraw the IOPP or BOPP Certificate in respect of that ship and immediately notify—

- (a) the owner or master of the ship; and
- (b) the Minister.

(3) Where paragraph (2) applies in respect of a ship which is in a port of a Convention country other than Bermuda, the Certifying Authority must also notify the appropriate authorities of the country in which the port is situated.

(4) Where a ship of a Convention country other than Bermuda is in a Bermuda port, and the Certifying Authority determines that it is necessary to withdraw the IOPP Certificate in respect of that ship, the Certifying Authority must notify the Minister.

(5) Where notification has been received under paragraph (4), the Minister must take such steps as are necessary to ensure that the ship will not sail until it can proceed to sea, or leave the port for the purposes of proceeding to the nearest appropriate repair yard, without presenting an unreasonable threat of harm to the marine environment.

Arbitration

17 (1) If an applicant is dissatisfied for any reason, with the outcome of a survey carried out in respect of a Bermuda ship by virtue of these Regulations, the applicant may serve a written notice on the responsible person within twenty-one days of receiving notification of that outcome—

- (a) stating that there is a dispute between them; and
- (b) requesting that the dispute be referred to a single arbitrator.

(2) Except where paragraph (3) applies, an arbitrator referred to in paragraph (1) must be appointed by agreement between the applicant and the responsible person.

(3) In default of agreement between the applicant and the responsible person, the arbitrator is such person as may be appointed by the President or Vice President of the Bermuda Branch of the Chartered Institute of Arbitrators following a request made by—

- (a) a party, after giving notice to the other party; or

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- (b) the parties jointly.
- (4) No person is to be an arbitrator under this regulation unless that person is—
 - (a) a person who holds a certificate to act as—
 - (i) a master or chief mate on a seagoing ship of 3,000 GT or more, in accordance with Regulation II/2 of Chapter 2 of the Annex to the STCW Convention; or
 - (ii) a chief engineer officer or second engineer officer on a seagoing ship powered by main propulsion machinery of 3,000kW propulsion power or more, in accordance with Regulation III/2 of Chapter 3 of the Annex to the STCW Convention;
 - (b) a person who holds a certificate of competency equivalent to a certificate referred to in sub-paragraph (a);
 - (c) a naval architect;
 - (d) a qualified person;
 - (e) a person with special experience in shipping matters or of activities carried on in ports; or
 - (f) a member of the Chartered Institute of Arbitrators.
- (5) An arbitrator appointed under this regulation has the powers of an inspector conferred by section 220 of the 2002 Act.
- (6) The rules for arbitration set out in UK Merchant Shipping Notice M1613 shall apply unless alternative procedures are agreed between the applicant and the responsible person, before the commencement of arbitration proceedings.
- (7) In this regulation—
 - “applicant” means a person who makes an application for a survey required by these Regulations;
 - “Merchant Shipping Notice” means a Notice described as such and issued by the Chief Marine Surveyor, or the equivalent UK Merchant Shipping Notice, as applicable;
 - “qualified person” means a person who is qualified to be appointed to a high judicial office in Bermuda;
 - “responsible person” means—
 - (a) the Certifying Authority responsible under regulation 11 or 12 for the issue of the certificate in connection with which a survey required by these Regulations is carried out; or
 - (b) in the case of a dispute relating to a relevant additional survey required by regulation 9(4)(e), the Certifying Authority which issued the appropriate certificate in respect of the ship;

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“STCW Convention” means the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers.

Prohibition on non-Bermuda ships proceeding to sea

18 A ship which is not a Bermuda ship and which, by virtue of regulation 7 of Annex I, is required to be issued with an IOPP certificate must not be enabled to proceed to sea from a port in Bermuda, unless—

- (a) a contracting State has issued, and where appropriate, endorsed an IOPP certificate in respect of that ship and that certificate (and, where appropriate, that endorsement) is still valid;
- (b) the Government of a State which is not a contracting State has issued, and where appropriate, endorsed an IOPP certificate in respect of that ship, which is deemed by the Certifying Authority to have the same force as a certificate issued in accordance with the requirements of Annex I and that certificate (and, where appropriate, that endorsement) is still valid;
- (c) a surveyor of ships—
 - (i) has carried out a survey of the ship as if regulation 9(4)(a) applied to that ship; and
 - (ii) is satisfied that the ship can proceed to sea without presenting an unreasonable threat of harm to the marine environment; or
- (d) a person having power to detain the ship—
 - (i) is satisfied that the ship can proceed to sea for the purpose of proceeding to the nearest appropriate repair yard without presenting an unreasonable threat of harm to the marine environment; and
 - (ii) has permitted the ship to proceed.

Oil Record Book

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

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

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

(4) The relevant Part of the Oil Record Book must be completed in accordance with the requirements in paragraph (5).

(5) The requirements are that—

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- (a) Part I must be completed, on a tank-to-tank basis if appropriate, whenever any of the machinery space operations listed in regulation 17.2 of Annex I, take place in the ship; and
 - (b) Part II must be completed, on a tank-to-tank basis if appropriate, whenever any of the cargo or ballast operations listed in regulation 36.2 or 3 of Annex I take place in the ship.
- (6) In the event of a discharge of oil or oily mixture as referred to in regulation 17.3 or 36.4 of Annex I, or in the event of accidental or other exceptional discharge of oil not excepted by those regulations, a record must be made in that part of the Oil Record Book which is relevant to the source of the discharge about the circumstances of, and the reasons for the discharge.
- (7) Each operation referred to in paragraph (5) must be fully recorded without delay in the Oil Record Book and all entries in the book appropriate to that operation must be completed.
- (8) Once an operation recorded under paragraph (7) is complete, the entry in the Oil Record Book for that operation must be signed-off by the officer or officers in charge of that operation, and each completed page must be signed by the master.
- (9) Any failure of the—
- (a) oil filtering equipment must be recorded in the Oil Record Book Part I; and
 - (b) oil discharge monitoring and control system must be recorded in the Oil Record Book Part II.
- (10) The Oil Record Book must be kept in such a place as to be readily available for inspection at all reasonable times and, other than in the case of unmanned ships under tow, must be kept on board the ship.
- (11) The Oil Record Book must be preserved for a period of three years after the last entry has been made.
- (12) The Minister, or a person authorised by the Certifying Authority, may—
- (a) inspect the Oil Record Book on board a ship which is in a port or offshore terminal;
 - (b) make a copy of any entry in the Oil Record Book; and
 - (c) require the master of the ship to certify that the copy is a true copy of any such entry.
- (13) A copy of an entry described in paragraph (12)(c) is admissible in any judicial proceedings as evidence of the facts stated in that entry.
- (14) The inspection of an Oil Record Book and the taking of a certified copy of any entry as described in paragraph (12) must be performed as expeditiously as possible without causing the ship to be unduly delayed.

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(15) In this regulation “filtering equipment” means filters or any combination of separators and filters which are designed to produce effluent containing not more than 15 ppm of oil.

PART 3

REQUIREMENTS FOR CONTROL OF OPERATIONAL POLLUTION—CONTROL OF
DISCHARGE OF OIL

General exceptions

20 (1) Regulations 25, 26, and paragraph 1.1.1 of part II-A of the Polar Code do not apply to—

- (a) the discharge into the sea of oil or oily mixture necessary for the purpose of securing the safety of a ship or saving life at sea;
- (b) the discharge, other than a discharge from an excepted ship, into the sea of oil or oily mixture resulting from damage to a ship or its equipment, provided that—
 - (i) all reasonable precautions were taken after the occurrence of the damage, or the discovery of the discharge, to prevent or minimise that discharge; and
 - (ii) the owner or the master did not act either with intent to cause damage, or recklessly and with knowledge that damage would probably result; or
- (c) any approved discharge into the sea of substances containing oil which is being used for the purpose of combating specific pollution incidents in order to minimise the damage from pollution.

(2) For the purposes of paragraph (1)(c) “approved” means approved by the Government in whose jurisdiction the discharge is expected to be made.

Exceptions for damage to a ship or its equipment in internal or controlled waters

21 Regulations 24 and 25 do not apply to any discharge of oil or oily mixture from an excepted ship into a part of the sea which is within Bermuda or its controlled waters, which results from damage to a ship or its equipment if—

- (a) the damage was caused by a person who was not connected with the excepted ship’s business and who was acting—
 - (i) with intent;
 - (ii) recklessly; or
 - (iii) with serious negligence;
- (b) all reasonable precautions were taken after the damage, or discovery of the discharge, to prevent or minimise the discharge; and

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- (c) neither the owner nor the master of the excepted ship acted—
 - (i) with intent to cause damage; or
 - (ii) recklessly and with knowledge that damage would probably result.

Exceptions for damage to a ship or its equipment in other waters

22 (1) Regulations 24 and 25 do not apply to any discharge of oil or oily mixture from a Bermuda excepted ship into a part of the sea outside Bermuda or its controlled waters, which results from damage to a ship or its equipment, if—

- (a) the damage was caused by a person who was not connected with Bermuda, the Bermuda excepted ship's business and who was acting—
 - (i) with intent;
 - (ii) recklessly; or
 - (iii) with serious negligence;
- (b) all reasonable precautions were taken after the damage, or discovery of the discharge, to prevent or minimise the discharge; and
- (c) neither the owner nor the master of the Bermuda excepted ship acted—
 - (i) with intent to cause damage; or
 - (ii) recklessly and with knowledge that damage would probably result.

(2) Regulations 24 and 25 do not apply to any discharge of oil or oily mixture from a non-Bermuda excepted ship into a part of the sea outside Bermuda or its controlled waters which results from damage to a ship or its equipment, if—

- (a) all reasonable precautions were taken after the damage, or discovery of the discharge, to prevent or minimise the discharge; or
- (b) neither the owner nor the master of the excepted ship acted—
 - (i) with intent to cause damage; or
 - (ii) recklessly and with knowledge that damage would probably result.

Definitions for the purposes of regulations 20 to 22

23 (1) In regulations 20 to 22—

“Bermuda excepted ship” means an excepted ship which is a Bermuda ship;

“excepted ship” means a seagoing vessel of any type operating in the marine environment and includes hydrofoil boats, air-cushion vehicles, submersibles and floating craft but excludes a structure which is a fixed or floating platform;

“non-Bermuda excepted ship” means an excepted ship which is not a Bermuda excepted ship.

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(2) In regulations 20 to 22, a reference to a person connected with a ship's business includes—

- (a) a seafarer on the ship;
- (b) the master;
- (c) the owner;
- (d) an owner of cargo carried on the ship; and
- (e) a classification society which has issued a class certificate showing that the ship conforms to the class standards stipulated by that society.

Control of discharge of oil from ships

24 (1) Subject to regulations 20 to 22, and paragraph (2), the discharge into the sea of oil or oily mixture from the machinery space of any ship is prohibited.

(2) Paragraph (1) is subject to the following exceptions—

- (a) in the case of ships of 400 GT and above on a voyage outside special areas except in Arctic waters, when the conditions specified in regulation 15, paragraph 2 of Annex I are satisfied;
- (b) in the case of ships of 400 GT and above on a voyage only part of which is in a special area, when—
 - (i) the discharge is made outside of a special area, except in Arctic waters; and
 - (ii) the conditions specified in regulation 15.2 of Annex I are satisfied;
- (c) in the case of ships of 400 GT and above on a voyage in special areas, when the conditions specified in regulation 15.3 of Annex I are satisfied; and
- (d) in the case of ships of less than 400 GT on a voyage in any area except the Antarctic area and Arctic waters, when the conditions specified in regulation 15.6 of Annex I are satisfied.

(3) Subject to regulation 20, the discharge into the sea in the Antarctic area of oil or oily mixtures from any ship is prohibited and the exceptions referred to in paragraph (2) (c) do not apply.

(4) So far as is reasonably practicable the Minister must, on receipt of a report of visible traces of oil observed on or below the surface of the water in the immediate vicinity of a ship or its wake, launch an investigation to determine whether provisions in this regulation have been contravened.

(5) An investigation launched under paragraph (4) must in particular include an examination of—

- (a) the wind and sea conditions;
- (b) the track and speed of the ship;

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- (c) other possible sources of the visible traces of oil in the relevant vicinity;
and
 - (d) any relevant oil discharge records.
- (6) The discharge into the sea, of—
- (a) chemicals or other substances in quantities or concentrations which are hazardous to the marine environment; or
 - (b) chemicals or other substances introduced for the purpose of circumventing the conditions of discharge specified in regulation 15 of Annex I,

is prohibited.

(7) Oil residues which cannot be discharged into the sea in compliance with regulation 15 of Annex I must be retained on board for subsequent discharge to reception facilities.

Control of discharge of oil from oil tankers

25 (1) Subject to regulations 20 to 22, and paragraphs (2) and (4), the discharge into the sea of oil or oily mixtures from the cargo area of an oil tanker, is prohibited.

(2) Paragraph (1) is subject to the following exceptions—

- (a) in the case of an oil tanker on a voyage outside of a special area except in Arctic waters, when all of the conditions specified in regulation 34.1 of Annex I are satisfied; or
- (b) in the case of a ship on a voyage only part of which is in a special area, when—
 - (i) the discharge is made outside of a special area except in Arctic waters;
and
 - (ii) all of the conditions specified in regulation 34.1 of Annex I are satisfied.

(3) Subject to regulations 20 and 26, and paragraph (4), any discharge into the sea of oil or oily mixture from the cargo area of an oil tanker is prohibited in a special area.

(4) Paragraphs (1) and (3) do not apply to the discharge of clean ballast or segregated ballast.

(5) So far as is reasonably practicable the Minister must, on receipt of a report of visible traces of oil observed on or below the surface of the water in the immediate vicinity of a ship or its wake, launch an investigation to determine whether provisions in this regulation have been contravened.

(6) An investigation launched under paragraph (5) must in particular include an examination of—

- (a) the wind and sea conditions;
- (b) the track and speed of the ship;

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- (c) other possible sources of the visible traces of oil in the relevant vicinity;
and
 - (d) any relevant oil discharge records.
- (7) The discharge into the sea of—
- (a) chemicals or other substances in quantities or concentrations which are hazardous to the marine environment; or
 - (b) chemicals or other substances introduced for the purpose of circumventing the conditions of discharge specified in this regulation,

is prohibited.

(8) Oil residues which cannot be discharged into the sea in compliance with regulation 34 of Annex I must be retained on board the ship for subsequent discharge into reception facilities.

(9) In this regulation “clean ballast” and “segregated ballast” have the meaning given in regulation 1 of Annex I.

Control of discharge of oil in certain special areas

26 (1) An area referred to in paragraph (2) is not a special area for the purposes of regulations 24 and 25 until such date as the IMO—

- (a) establishes, in accordance with regulation 38.6.1. of Annex I, the date from which the requirements of regulations 15 and 34 of that Annex will take effect in respect of the area in question; and
- (b) publishes a notice to that effect on the website of the IMO.

(2) The areas are—

- (a) the Red Sea area;
- (b) the Gulf of Aden area; and
- (c) the Oman area of the Arabian Sea,

as defined in regulation 1.11.4, 1.11.6 and 1.11.9 of Annex I.

(3) Until such time as notification is given under paragraph (1), ships navigating in the areas described in paragraph (2) must comply with the discharge requirements in regulations 24 and 25 as if those areas were not special areas.

Special requirements for the use or carriage of oils in the Antarctic Area

27 (1) With the exception of vessels engaged in ensuring the safety of ships, or in a search and rescue operation, the—

- (a) carriage in bulk as cargo;
- (b) use as ballast; or
- (c) carriage and use as fuel,

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of any of the substances listed in regulation 43.1 of Annex I is prohibited in the Antarctic Area.

(2) When prior operations have included the carriage or use of substances referred to in paragraph (1), the cleaning or flushing of tanks or pipelines is not required.

PART 4
MACHINERY SPACES ON SHIPS

Requirements for Machinery Spaces on all Ships

28 (1) Subject to paragraphs (3) and (4), the—

- (a) construction;
- (b) provision of equipment; and
- (c) operation of the machinery space,

of any ship to which these Regulations apply must comply with such of the requirements referred to in paragraph (2) as apply in relation to the machinery space of a ship of its size and description.

(2) The requirements are those prescribed in the following regulations, of Annex I—

- (a) regulation 12 (tanks for oil residues (sludge));
- (b) regulation 12A, paragraphs 1 to 11 (oil fuel tank protection);
- (c) regulation 13 (standard discharge connection);
- (d) regulation 14, paragraphs 1 to 3, 6 and 7 (oil filtering equipment); and
- (e) regulation 16 (segregation of oil and water ballast and carriage of oil in forepeak tanks).

(3) Ships of less than 400 GT must—

- (a) be equipped, so far as practicable, to retain on board oil or oily mixtures for subsequent discharge into reception facilities; or
- (b) discharge such oil or oily mixtures in accordance with regulation 15.6 of Annex I.

(4) The Minister may waive the requirements specified in regulation 14.1 and 14.2 of Annex I for—

- (a) any ship engaged exclusively on voyages within special areas or Arctic waters; and
- (b) any ship compliant with the provisions of regulation 6 of the Merchant Shipping (High Speed Craft) Regulations 2010 relevant to that ship which is engaged on a scheduled service with a turn-around time not exceeding

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twenty-four hours, including non-passenger or cargo carrying relocation voyages for these ships,
provided the conditions in regulation 14.5.3 of Annex I are satisfied.

PART 5
OIL TANKERS

Requirements for Cargo Areas of Oil Tankers

29 (1) Subject to paragraphs (3) and (4), the—

- (a) construction;
- (b) provision of equipment; and
- (c) operation of the cargo area,

of any oil tanker to which these Regulations apply must comply with such of the requirements referred to in paragraph (2), as apply in relation to the cargo area of an oil tanker of its size and description.

I— (2) The requirements are those prescribed in the following regulations of Annex

- (a) regulation 18 (segregated ballast tanks);
- (b) regulation 19 (double hull and double bottom requirements for oil tankers delivered on or after 6 July 1996);
- (c) regulation 20, paragraphs 1 to 4 and 6 (double hull and double bottom requirements for oil tankers delivered before 6 July 1996);
- (d) regulation 21, paragraphs 1 to 4 (prevention of oil pollution from oil tankers carrying heavy grade oil as cargo);
- (e) regulations 22 to 28 (various requirements for the cargo areas of oil tankers);
- (f) regulation 30 (pumping, piping and discharge arrangement); and
- (g) regulation 33 (crude oil washing requirements).

(3) Regulation 18.6 to 18.8 of Annex I does not apply to an oil tanker delivered on or before 1 June 1982 in the circumstances described in regulation 2.5 of Annex I, subject to the conditions in regulation 2.6 of that Annex.

(4) The Minister may waive the requirements of regulation 28.6 of Annex I for oil tankers listed in regulation 3.6 of that Annex, provided such tankers are loaded in accordance with conditions approved by the Minister, taking into account guidelines developed by the IMO.

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(5) The entry into a port or offshore terminal within the territorial waters of Bermuda is prohibited in respect of a ship operating in accordance with the following provisions in Annex I—

- (a) regulation 20, paragraph 5; or
- (b) regulation 21, paragraph 5 or 6.

(6) The ship-to-ship transfer of heavy grade oil within the territorial waters of Bermuda involving a ship operating in accordance with paragraph (5)(b) is prohibited, unless it is necessary to secure the safety of a ship or to save life at sea.

Retention of oil on board

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

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

- (a) the oil tanker is engaged exclusively in trade between ports or terminals within Bermuda;
- (b) all oily mixtures are retained on board the oil tanker for subsequent discharge into reception facilities; and
- (c) the Minister has determined that adequate facilities are available to receive such oily mixtures.

(3) Regulations 31 and 32 of Annex I do not apply to an oil tanker referred to in paragraph (1) which—

- (a) is an oil tanker delivered on or before 1 June 1982 of 40,000 tonnes deadweight or above solely engaged in specified trades as described in regulation 2.5 of Annex I, provided the conditions specified in regulation 2.6 of that Annex are satisfied; and
- (b) is engaged exclusively on voyages—
 - (i) within special areas;
 - (ii) within Arctic waters; or
 - (iii) within 50 nautical miles from the nearest land outside special areas or Arctic waters and is engaged in—
 - (A) trading between ports or terminals within Bermuda; or
 - (B) restricted voyages of 72 hours or less in duration as determined by the Minister.

(4) Tankers to which paragraph (3)(b)(iii) apply must comply with the following conditions—

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- (a) all oily mixtures must be retained on board for subsequent discharge to reception facilities;
 - (b) in the case of voyages referred to in paragraph (3)(b)(iii)(B), the Minister has determined that adequate reception facilities are available to receive such oily mixtures in the oil loading ports or terminals at which the tanker calls;
 - (c) the IOPP or BOPP Certificate is endorsed to the effect that the ship is engaged exclusively on one or more of the categories of voyage described in paragraph (3)(b); and
 - (d) the quantity, time and port of discharge are recorded in the Oil Record Book.
- (5) In the case of oil tankers of less than 150 GT—
- (a) oil must be retained on board the ship with subsequent discharge of all contaminated washings, to reception facilities; and
 - (b) the total quantity of oil and water used for washing and returned to a storage tank must be—
 - (i) recorded in the Oil Record Book Part II developed by the Minister, for tankers operating in accordance with regulation 34.6 of Annex I; and
 - (ii) discharged into reception facilities, unless adequate arrangements are made to ensure that any effluent which is allowed to be discharged into the sea is effectively monitored to ensure that regulation 34 of Annex I is complied with.
- (6) Subject to paragraph (7), regulations 29, 31 and 32 of Annex I do not apply to oil tankers carrying asphalt or other products subject to these Regulations and Annex I which, through their physical properties, inhibit effective product or water separation and monitoring.
- (7) Where paragraph (6) applies, oil residues must be retained on board with subsequent discharge of all contaminated washings, to reception facilities in order to satisfy the requirements of regulation 34 of Annex I.
- (8) In this regulation “nearest land” has the meaning given in regulation 1 of Annex I.

Crude oil washing operations

31 (1) Every oil tanker operating with crude oil washing systems as required by regulation 33 of Annex I must be provided with an Operations and Equipment Manual describing the system and equipment in detail and specifying the operational procedures to be followed.

- (2) The Operations and Equipment Manual must—
 - (a) be approved by the Minister; and

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- (b) contain all the information set out in the specifications referred to in regulation 33.2 of Annex 1.
- (3) If any alteration is made to the crude oil washing system, the Operations and Equipment Manual must be revised accordingly, and the revision approved by the Minister.
- (4) Sufficient cargo tanks must be crude oil washed prior to each ballast voyage to ensure that, taking into account the tanker's trading pattern and expected weather conditions, ballast water is put only into cargo tanks which have been crude oil washed.
- (5) Except where an oil tanker to which this regulation applies carries crude oil which is not suitable for crude oil washing, the crude oil washing system of a tanker must be operated in accordance with the Operations and Equipment Manual.

PART 6
OFFSHORE INSTALLATIONS

Requirements for Offshore Installations

- 32 (1) Subject to paragraph (2), offshore installations engaged in the exploration, exploitation or associated offshore processing of sea-bed mineral resources must comply with such requirements of these Regulations and Annex I as are applicable to ships (other than oil tankers) of 400 GT and above, except that—
- (a) such installations must be equipped, so far as practicable, with the systems and tanks required by regulations 12 and 14 of Annex I;
 - (b) the master must ensure that a record is kept, in a form approved by the Minister, of all operations involving oil or oily mixture discharges; and
 - (c) subject to regulation 20 of these Regulations, the discharge into the sea of oil or oily mixture is prohibited except when the oil content of the discharge without dilution does not exceed 15 ppm.
- (2) Paragraph (1) does not apply to a fixed or floating production platform engaged in the activities described in paragraph (1) which—
- (a) is located in waters in any area for the time being designated under the Proclamation Establishing the Exclusive Economic Zone for Bermuda 1996; and
 - (b) is not, at the time at which it is so engaged, capable of being propelled through water under its own power.
- (3) For the purposes of paragraph (2), and subject to paragraph (4), a fixed or floating production platform means a platform from which sea-bed mineral resources are extracted from beneath the sea-bed by means of a well, or which is used for the conveyance of sea-bed mineral resources by means of a pipe, and which—
- (a) is fixed to the seabed by means of steel jackets, concrete footings or any other means; or

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- (b) floats on the surface of the sea and is secured to the seabed by means of risers, anchors, or any other means,

but does not include an offshore installation to which paragraph (5) applies.

(4) For the purposes of paragraph (3), a fixed or floating production platform includes—

- (a) a non-production platform converted for use as a production platform for so long as it is so converted;
- (b) a production platform which has ceased production for so long as it is not converted to a non-production platform; and
- (c) production platform which has not come into use,

but does not include a production platform which, for a period of no more than ninety days, extracts sea-bed mineral resources from beneath the sea-bed for the purposes of well testing.

(5) For the purposes of paragraphs (1) to (4), and subject to paragraph (6), references to discharges of oil or oily mixtures are references to machinery space discharges and do not include discharges of production or displacement water, or offshore processing drainage.

(6) In the case of relevant discharges from—

- (a) floating production, storage and offloading facilities; or
- (b) floating storage units,

the Minister must, in assessing compliance with paragraph (1), take account of the Guidelines for the Application of the Revised MARPOL Annex I Requirements to Floating Production, Storage and Offloading Facilities and Floating Storage Units.

(7) For the purposes of paragraph (6), “relevant discharges” means discharges of oil or oily mixtures not discharged through the production stream which are—

- (a) machinery space discharges; or
- (b) discharges of contaminated seawater from operational purposes such as produced oil tank cleaning water, produced oil tank hydrostatic testing water or water from ballasting of a produced oil tank to carry out inspection by rafting.

PART 7

PREVENTION OF POLLUTION ARISING FROM AN OIL POLLUTION INCIDENT

Shipboard oil pollution emergency plan

33 (1) Every—

- (a) oil tanker of 150 GT and above; and

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- (b) ship (other than an oil tanker) of 400 GT and above,
must carry on board a shipboard oil pollution emergency plan approved by the Minister.
- (2) The plan referred to in paragraph (1) must be prepared in accordance with the guidelines for the Development of Shipboard Oil Pollution Emergency Plans adopted by the Marine Environment Protection Committee of the IMO.
- (3) The plan must include—
- (a) the procedure to be followed by the master or other persons having charge of the ship, to report an oil pollution incident, as required by the Merchant Shipping (Vessel Traffic Monitoring and Reporting Requirements) Regulations 2020;
 - (b) the list of persons (including national and local authorities) to be contacted in the event of an oil pollution incident;
 - (c) a detailed description of the action to be taken immediately by persons on board to reduce or control the discharge of oil, following the incident; and
 - (d) the procedures and point of contact on the ship for coordinating shipboard action with national and local authorities, in combating the pollution.
- (4) In the case of ships to which regulation 17 of Annex II of the Convention also applies, such a plan may be combined with the shipboard marine pollution emergency plan for noxious liquid substances required under that regulation.
- (5) Where paragraph (4) applies, the title of the combined plan must be the “Shipboard Marine Pollution Emergency Plan”.
- (6) The owner and master of an oil tanker of 5,000 tonnes deadweight or more must ensure the ship has prompt access to computerised, shore-based damage stability and residual structural strength calculation programmes.
- (7) In this regulation “noxious liquid substance” has the meaning given in regulation 1 of Annex II of the Convention.

PART 8

POLAR CODE

Application of the Polar Code

- 34 (1) This regulation applies to all ships operating in polar waters.
- (2) The owner or master of a ship to which this regulation applies must ensure the ship complies with—
- (a) the environment-related provisions of the Introduction; and
 - (b) Chapter 1 of part II-A,
- of the Polar Code.

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(3) In ensuring compliance with paragraph (2)(b), consideration must be given to the guidance in part II-B of the Polar Code.

(4) For the purposes of this regulation “polar waters” means the Antarctic area or Arctic waters.

PART 9
ENFORCEMENT

Inspection of ships

35 (1) In so far as sections 219 (powers to inspect ships and their equipment, etc.) and 220 (powers of inspectors in relation to premises and ships) of the 2002 Act apply in relation to a ship to which these Regulations apply, for the purpose of checking compliance with these Regulations, those sections have effect subject to the following modifications.

(2) The powers referred to in paragraph (1) to inspect a ship and its equipment, any part of the ship, any articles on board and any documentation carried in the ship, is limited to—

- (a) verifying that there is on board a valid—
 - (i) IOPP certificate in the form prescribed in Appendix II to Annex I; or
 - (ii) BOPP certificate in the form prescribed in regulation 12(3);
- (b) verifying whether documentation referred to in regulation 18, where applicable, has been issued in respect of the ship and is still valid;
- (c) investigating any operation regulated by these Regulations, if there are clear grounds for believing that the master or the crew are not familiar with essential shipboard procedures for preventing pollution by oil;
- (d) verifying whether oil, oily mixture or oil residue (sludge) has been discharged from the ship in violation of these Regulations;
- (e) inspecting the Oil Record Book; and
- (f) inspecting the Shipboard Oil Pollution Emergency Plan,

except where there are clear grounds for believing that the condition of the ship or its equipment does not correspond substantially with the particulars of the appropriate certificate or other documentation referred to in sub-paragraphs (a), (b), (e) and (f).

(3) The powers referred to in paragraph (1) to go on board a ship may only be exercised if the ship in question is—

- (a) in a port in Bermuda; or
- (b) at an offshore installation in Bermuda waters or controlled waters.

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(4) Where a ship which is not a Bermuda ship is inspected for the purpose of paragraph (2) (d), the person exercising the powers of inspection must ensure that the report of that inspection is sent to—

- (a) the consul or diplomatic representative of the State whose flag the ship is entitled to fly or the appropriate maritime authorities of that State; and
- (b) any other Party to the Convention that requested the inspection.

(5) Where Oil Record Book entries are inspected under paragraph (2)(e), the person exercising the power of inspection may—

- (a) make a copy of any entry in that book; and
- (b) require the master of the ship to certify that the copy is a true copy of the original.

(6) Any copy certified in accordance with paragraph (5) is admissible in any judicial proceeding, as evidence of the facts stated in it.

(7) In this regulation “oil residue (sludge)” has the meaning given in regulation 1 of Annex I.

Investigation of alleged violations by Bermuda ships

36 Upon receiving evidence that a substance has been discharged from a Bermuda ship in violation of these Regulations, the Minister must—

- (a) cause the matter to be investigated;
- (b) inform the IMO of the action taken; and
- (c) where another State has reported the violation, inform that State, of the action taken.

General provisions on detention

37 (1) Where a determination is made of the kind mentioned in regulation 16(1) in relation to a ship, or a surveyor of ships has clear grounds for believing that—

- (a) an IOPP or BOPP certificate is required to have been issued in respect of a ship but has not been issued, or has been issued and is not valid;
- (b) documentation referred to in regulation 18 is required to have been issued in respect of a ship but has not been issued, or has been issued but is not valid;
- (c) the condition of a ship or its equipment does not correspond substantially with the particulars of that certificate or other appropriate documentation;
- (d) the master or crew of a ship are not familiar with essential shipboard procedures relating to the prevention of pollution by oil; or
- (e) an offence under regulation 41 is being committed in respect of the ship, the ship is liable to be detained until a surveyor of ships is satisfied that it

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can proceed to sea without presenting any unreasonable threat of harm to the marine environment.

(2) Notwithstanding paragraph (1), a person having powers to detain a ship may permit a ship which is liable to be detained under that paragraph to proceed to sea for the purposes of proceeding to the nearest appropriate repair yard available.

(3) Where a surveyor of ships has clear grounds for believing that an offence comprising a contravention of any of regulations 24(1) to (3), 24(6) and (7), 25(1) to (3), 25(8), 26, 27, 28(1) to (3), 29(1) to (3), (5) and (6), 30 or 31 has been committed in respect of a ship, the ship is liable to be detained.

(4) The power under this regulation to detain a ship may only be exercised if the ship in question is—

- (a) in a port in Bermuda; or
- (b) at an offshore installation in Bermuda waters or controlled waters.

(5) Section 242 of the 2002 Act (enforcing detention of a ship) applies where a ship is liable to be detained under paragraph (1) or (3), as if—

- (a) references to detention of a ship under the Act were references to detention of the ship in question under paragraph (1) or (3); and
- (b) subsection (7) were omitted.

(6) Where a ship is liable to be detained under paragraph (1) or (3), the person detaining the ship must serve on the master of the ship a detention notice which—

- (a) states the grounds of the detention; and
- (b) requires the terms of the notice to be complied with until the ship is released by any person mentioned in section 242(1) of the 2002 Act.

(7) Where a ship other than a Bermuda ship is detained, the Minister must immediately inform the consul or diplomatic representative of the State whose flag the ship is entitled to fly or the appropriate maritime authorities of that State.

(8) Where a ship is detained under paragraph (3), a person having power to detain the ship must, at the request of the owner, manager, demise charterer or master, immediately release the ship—

- (a) if no proceedings for an offence comprising a contravention of any of regulations 24(1) to (3), 24(6) and (7), 25(1) to (3), 25(8), 26, 27, 28(1) to (3), 29(1) to (3), (5) and (6), 30 or 31 are instituted within the period of seven days beginning with the day on which the ship is detained;
- (b) if proceedings for any such offence having been instituted within that period, are concluded without the owner, manager, demise charterer or master being convicted;
- (c) if either—
 - (i) the sum of \$50,000 is paid to the Minister by way of security; or

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- (ii) security which, in the opinion of the Minister, is satisfactory and is for an amount not less than \$50,000 is given to the Minister,
 - by or on behalf of the owner, manager, demise charterer or master;
 - (d) where the owner, manager, demise charterer or master is convicted of any such offence, if any costs or expenses ordered to be paid by that person, and any fine imposed on that person, have been paid; or
 - (e) the release is ordered by a court or tribunal referred to in Article 292 of the United Nations Convention on the Law of the Sea, and any bond or other financial security ordered by such court or tribunal is posted.
- (9) The Minister must repay any sum paid in pursuance of paragraph (8)(c) or release any security so given—
- (a) if no proceedings for an offence comprising a contravention of any of regulations 24(1) to (3), 24(6) and (7), 25(1) to (3), 25(8), 26, 27, 28(1) to (3), 29(1) to (3), (5) and (6), 30 or 31 are instituted within the period of seven days beginning with the day on which the sum is paid; or
 - (b) if proceedings for any such offence, having been instituted within that period, are concluded without the owner, manager, demise charterer or master being convicted.
- (10) Where a sum has been paid, or security has been given, by any person in pursuance of paragraph (8)(c) and the owner, manager, demise charterer or master is convicted of an offence comprising a contravention of any of regulations 24(1) to (3), 24(6) and (7), 25(1) to (3), 25(8), 26, 27, 28(1) to (3), 29(1) to (3), (5) and (6), 30 or 31, the sum so paid or the amount made available under the security must be applied as follows—
- (a) first, in payment of any costs or expenses ordered by the court to be paid by the owner, manager, demise charterer or master; and
 - (b) next, in payment of any fine imposed by the court,
- and any balance must be repaid to the first-mentioned person.
- (11) Section 144 of the 2002 Act (interpretation of section 143) applies for the purposes of paragraphs (8) to (10) as if—
- (a) references to the master or owner of the ship were references to the owner, manager, demise charterer or master; and
 - (b) references to an offence under section 130 were references to an offence comprising a contravention of any of regulations 24(1) to (3), 24(6) and (7), 25(1) to (3), 25(8), 26 or 27.

Power for harbour master to detain

38 (1) Where the harbour master of a harbour in Bermuda has clear grounds for believing that an offence comprising a contravention of any of regulations 24(1) to (3), 24(6) and (7), 25(1) to (3), 25(8), 26, 27, 28(1) to (3), 29(1) to (3), (5) and (6), 30 or 31 has been committed, the harbour master may detain that ship.

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(2) Section 143 (2) and (3) of the 2002 Act (harbour master's power to detain ships for certain offences) applies to a detention under paragraph (1), as it applies to a detention under section 143 (1) of the 2002 Act.

(3) Where a ship is liable to be detained under this regulation, the harbour master detaining the ship must serve on the master of the ship a detention notice which—

- (a) states the grounds for the detention; and
- (b) requires the terms of the notice to be complied with until the ship is released by the harbour authority.

(4) Where a ship is detained under paragraph (1), the harbour master must immediately release the ship—

- (a) if no proceedings for an offence comprising a contravention of any of regulations 24(1) to (3), 24(6) and (7), 25(1) to (3), 25(8), 26, 27, 28(1) to (3), 29(1) to (3), (5) and (6), 30 or 31 are instituted within the period of seven days beginning with the day on which the ship is detained;
- (b) if proceedings for any such offence, having been instituted within that period, are concluded without the owner, manager, demise charterer or master being convicted;
- (c) if either—
 - (i) the sum of \$50,000 is paid to the harbour authority by way of security; or
 - (ii) security which, in the opinion of the harbour authority, is satisfactory and is for an amount not less than \$50,000 is given to the harbour authority,
by or on behalf of the owner, manager, demise charterer or master;
- (d) where the owner, manager, demise charterer or master is convicted of any such offence, if any costs or expenses ordered to be paid by that person, and any fine imposed on that person, have been paid; or
- (e) if the release is ordered by a court or tribunal referred to in article 292 of the United Nations Convention on the Law of the Sea 1982, and any bond or other financial security ordered by such a court or tribunal is posted.

(5) The harbour authority must repay any sum paid in pursuance of paragraph (4) (c) or release any security so given—

- (a) if no proceedings for an offence comprising a contravention of any of regulations 24(1) to (3), 24(6) and (7), 25(1) to (3), 25(8), 26, 27, 28(1) to (3), 29(1) to (3), (5) and (6), 30 or 31 are instituted within the period of seven days beginning with the day on which the sum is paid; or
- (b) if proceedings for any such offence, having been instituted within that period, are concluded without the owner, manager, demise charterer or master being convicted.

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(6) Where a sum has been paid, or security has been given, by any person in pursuance of paragraph (4)(c) and the owner, manager, demise charterer or master is convicted of an offence comprising a contravention of any of regulations 24(1) to (3), 24(6) and (7), 25(1) to (3), 25(8), 26, 27, 28(1) to (3), 29(1) to (3), (5) to (6), 30 or 31, the sum so paid or the amount made available under the security must be applied as follows—

- (a) first, in payment of any costs or expenses ordered by the court to be paid by the owner, manager, demise charterer or master; and
- (b) next, in payment of any fine imposed by the court,

and any balance must be repaid to the first-mentioned person.

(7) Section 144 of the 2002 Act (interpretation of section 143) applies for the purposes of paragraphs (4) to (6) as if—

- (a) references to the master or owner of the ship were references to the owner, manager, demise charterer or master; and
- (b) references to any offence under section 130 were references to an offence comprising a contravention of any of regulations 24(1) to (3), 24(6) and (7), 25(1) to (3), 25(8), 26 or 27.

Duty of harbour master to report deficient ships

39 If the harbour master of a harbour in Bermuda has reason to believe that a ship is about to enter or leave the harbour and does not comply with the requirements of these Regulations, the harbour master must immediately report the matter to the Minister.

Right of appeal and compensation

40 Regulations 11 and 12 of the Merchant Shipping (Port State Control) Regulations 2020 (arbitration and compensation) apply in relation to the exercise of the powers of detention under these Regulations as they apply in relation to the exercise of those powers under regulations 1 to 17, subject to necessary modifications.

Offences

41 (1) Any contravention of—

- (a) regulations 5, 10(1) to (4), 15(2) or (4), 18, 33(6) or 34 is an offence by the owner and by the master of the ship in question;
- (b) regulations 14(4), 19, 24, 25, 26(3), 27, 28, 29, 30, 31, 32 or 33(1) to (3) is an offence by the owner, manager, demise charterer and master of the ship in question; or
- (c) regulation 15(3) is an offence by the person in question.

(2) Any failure by a master to comply with a requirement under regulation 35(5) (b) is an offence.

(3) An offence under paragraph (1) or (2) is punishable on summary conviction, to a fine not exceeding \$10,000 and on conviction on indictment, to a fine of \$50,000.

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Service of documents on foreign companies

42 Section 142 (3) of the 2002 Act (service of documents on foreign companies required or authorised by any statutory provision in connection with proceedings for an offence under section 130 of the 2002 Act) applies to proceedings for an offence under these Regulations as it applies to proceedings for an offence under section 130 as if—

- (a) the reference to section 130 was a reference to these Regulations;
- (b) in the case of an offence in respect of a ship other than an offshore installation, the reference to the owner was a reference to the owner, manager or demise charterer; and
- (c) in the case of an offence in respect of an offshore installation, the reference to—
 - (i) the owner of the ship was a reference to the owner of the offshore installation; and
 - (ii) the master of the ship was a reference to the manager of the offshore installation.

Enforcement and application of fines

43 Section 145 of the 2002 Act (enforcement and application of fines) applies to any fine for an offence comprising a contravention of any of regulations 24 to 34 as if—

- (a) in subsection (1) of that section, the reference to proceedings against the owner or master of a ship for an offence under Chapter III of the 2002 Act were a reference to proceedings against the owner, manager, demise charterer or master, for an offence comprising a contravention of any of regulations 24 to 34; and
- (b) in subsection (2) of that section, the reference to an offence under section 130 were a reference to an offence comprising a contravention of any of regulations 24 to 27.

Restriction on jurisdiction over offences outside Bermuda limits

44 (1) In the case of a contravention of any of regulations 24 to 27 in respect of a ship which is not a Bermuda ship in the internal waters, territorial sea or exclusive economic zone of a foreign State, proceedings in respect of that offence must not be instituted in Bermuda, unless—

- (a) that foreign State, the flag State of the ship in question or a State polluted or threatened with pollution as a result of the offence requests that proceedings be taken; or
- (b) the offence has caused or is likely to cause oil pollution in controlled waters or Bermuda waters.

(2) Where proceedings have been instituted but not concluded, they must be suspended upon the request of the foreign State in question and the Minister must send all

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the evidence, court records and documents relating to the case, together with any sum paid or security given, to the foreign State.

(3) In this regulation—

“exclusive economic zone”, in relation to a foreign state, means the area beyond and adjacent to the territorial sea of that State, but not extending beyond 200 nautical miles from the baselines from which the breadth of the territorial sea is measured; and

“foreign State” means a State other than Bermuda.

Suspension of proceedings at flag State request

45 (1) This regulation applies to proceedings instituted but not concluded in Bermuda in respect of a contravention of any of regulations 24 to 27 committed outside Bermuda waters by a ship which is not a Bermuda ship.

(2) Subject to paragraph (3), any proceedings must be suspended if the court is satisfied that the flag State in question has instituted proceedings corresponding to the proceedings in Bermuda in respect of the contravention of that provision within six months of the institution of the proceedings by Bermuda.

(3) Paragraph (2) does not apply—

- (a) where the contravention of any of regulations 24 to 27 resulted in serious pollution to Bermuda; or
- (b) if the Minister certifies that the flag State in question has repeatedly disregarded its obligation to enforce effectively the requirements of the Convention, in respect of its ships.

(4) Where proceedings instituted by the flag State have been brought to a conclusion, the suspended proceedings must be terminated.

Defences

46 (1) In any proceedings for an offence under these Regulations, it is a defence for the person charged to prove that, that person took all reasonable steps and exercised all due diligence to ensure that the regulation in question was complied with.

(2) Without prejudice to paragraph (1), in any proceedings for an offence comprising a contravention of any of regulations 24 to 27 it is a defence for the person charged to prove that—

- (a) the ship was not a Bermuda ship;
- (b) the discharge took place in waters that were neither controlled waters nor Bermuda waters; and
- (c) the ship was in a port in Bermuda at the time of the institution of the proceedings, by reason only of stress of weather or any other reason beyond the control of the master or owner or any charterer or manager.

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Revocation

47 The Merchant Shipping (Prevention of Oil Pollution) Regulations 2010 are revoked.

Made this 7th day of July 2021

Minister of Transport

[Operative Date: 08 July 2021]