



**MARITIME (MARINE CASUALTY AND INCIDENT INVESTIGATION)  
RULES, 2014 NO.1**

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155/14

18 December 2014

301

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**CONTENTS**

- 1) Title and commencement
- 2) Interpretation
- 3) Purpose
- 4) Investigation authority
- 5) Notification
- 6) Requirement to investigate very serious marine casualties
- 7) Agreement to conduct a marine casualty investigation
- 8) Powers of an investigator
- 9) Collection of evidence
- 10) Parallel investigations
- 11) Cooperation
- 12) Investigation not to be subject to external direction
- 13) Obtaining evidence from seafarers
- 14) Draft Marine Safety Investigation Reports
- 15) Final Marine Safety Investigation Report
- 16) Protection of witnesses and involved parties

Schedule 1



## MARITIME (MARINE CASUALTY AND INCIDENT INVESTIGATION) RULES, 2014 NO.1

---

155/14

18 December 2014

302

---

**1. Short title and commencement** – (1) These Rules may be cited as the Maritime Transport (Casualties Investigation) Rules 2014.

- (1) These Rules will come into force on the day after notice of their making is given in the Gazette.

**2. Interpretation** – In these Rules, unless the context otherwise requires,

**“agent”** means any person, natural or legal, engaged on behalf of the owner, charterer or operator of a ship, or the owner of the cargo, in providing shipping services, including managing arrangements for the ship being the subject of a marine safety investigation;

**“a causal factor”** means any action, omission, event or condition, without which:

- (a) the marine casualty or marine incident would not have occurred; or
- (b) adverse consequences associated with the marine casualty or marine incident would probably not have occurred or have been as serious; or
- (c) another action, omission, event or condition with an outcome in (a) or (b), would probably not occurred

**“coastal state”** means a State in whose internal waters, archipelagic waters or territorial seas a marine casualty or marine incident occurs;

**“exclusive economic zone”** means the exclusive economic zone as defined by the Territorial Seas and Exclusive Economic Zone Act 1977 under Cook Islands laws.

**“flag State”** means a State whose flag a ship is entitled to fly;

**“high seas”** means the waters defined under the United Nations Convention on the Law of the Sea (UNCLOS)

**“International Safety Management (ISM) Code”** means the International Management Code for the Safe Operation of Ships and for Pollution Prevention as adopted by the Organisation by Resolution A.741 (18) as amended;

**“marine casualty”** means an event, or a sequence of events, that has resulted in any of the following which has occurred directly in connection with the operations of a ship:

- (a) the death of or serious injury to, a person;
- (b) the loss of a person from a ship



## MARITIME (MARINE CASUALTY AND INCIDENT INVESTIGATION) RULES, 2014 NO.1

155/14

18 December 2014

303

- (c) the loss, presumed loss or abandonment of a ship;
- (d) material damage to a ship;
- (e) the stranding or disabling of a ship, or the involvement of a ship in a collision;

(f) Material damage to marine infrastructure external to a ship, that could seriously endanger the safety of the ship, another ship or an individual; or

(g) Severe damage to the environment, or the potential for severe damage to the environment, brought about by the damage of a ship or ships,

but does not include a deliberate act or omission, with the intention to cause harm to the safety of a ship, an individual or the environment;

**“marine incident”** means an event, or sequence of events, other than a marine casualty, which has occurred directly in connection with the operations of a ship that endangers, or, if not corrected, would endanger the safety of the ship, its occupants or any other person or the environment – but does not include a deliberate act or omission, with the intention to cause harm to the safety of a ship, an individual or the environment;

**“marine safety investigation”** means a report that contains:

- (a) a summary outlining the basic facts of the marine casualty or marine incident and stating whether any deaths, injuries or pollution occurred as a result;
- (b) the identity of the flag State, owners, operators, the company as identified in the safety management certificate, and the classification society, subject to any Cook Islands laws concerning privacy;
- (c) where relevant the details of the dimensions and engines of the ship involved, together with a description of the crew, work routine and other matters, such as time served on the ship;
- (d) a narrative detailing the circumstances of the marine casualty or marine incident;
- (e) analysis and comment on the causal factors including any mechanical, human and organisational factors
- (f) a discussion of the marine safety investigations findings, including the identification of safety issues, and the marine safety investigation’s conclusions; and
- (g) where appropriate, recommendations with a view to preventing future marine casualties and marine incidents;



## MARITIME (MARINE CASUALTY AND INCIDENT INVESTIGATION) RULES, 2014 NO.1

155/14

18 December 2014

304

***“marine safety investigation authority”*** means the Ministry of Transport in the Cook Islands responsible for conducting investigations in accordance with these Rules;

***“marine safety investigation State(s)”*** means the State or States that take the responsibility for the conduct of the marine safety investigation as mutually agreed in accordance with these Rules;

***“marine safety record”*** means the following types of records collected for a marine safety investigation:

- (a) all statements taken for the purpose of a marine safety investigation;
- (b) all communications between persons pertaining to the operation of the ship;
- (c) all medical or private information regarding persons involved in the marine casualty or marine incident;
- (d) all records of the analysis of information or evidential material acquired in the course of a marine safety investigation;
- (e) information from the voyage data recorder;

***“material damage”*** in relation to a marine casualty means:

- (a) damage that:
  - i. significantly affects the structural integrity, performance or operational characteristics of marine infrastructure or; a ship; and
  - ii. requires major repair or replacement of a major component or components; or
- (b) destruction of the marine infrastructure or ship

***“Organisation”*** means the International Maritime Organisation;

***“parallel investigation”*** refers to an investigation carried out by two or more States on one marine casualty or incident;

***“seafarer”*** means any person who is employed or engaged or works in any capacity on board a ship;



## MARITIME (MARINE CASUALTY AND INCIDENT INVESTIGATION) RULES, 2014 NO.1

155/14

18 December 2014

305

**“serious injury”** means an injury which is sustained by a person, resulting in incapacitation where the person is unable to function normally for more than 72 hours, commencing within seven days from the date when the injury was suffered;

**“severe damage to the environment”** means damage to the environment which, as evaluated by the State(s) affected, produces a major deleterious effect upon the environment’

**“substantially interested State” means a State;**

- (a) which is the flag State of a ship involved in a marine casualty or marine incident; or
- (b) which is the coastal State involved in a marine casualty or marine incident; or
- (c) whose environment was severely or significantly damaged by a marine casualty (including the environment of its waters and territories recognised under international law); or
- (d) where the consequences of a marine casualty or marine incident cause, or threaten, serious harm to that State or to artificial islands, installations, or structures over which it is entitled to exercise jurisdiction; or
- (e) where, as a result of a marine casualty, nationals of that State lost their lives or received serious injuries; or
- (f) that has important information at its disposal that the marine safety investigating State(s) consider useful to the investigation; or
- (g) that for some other reason establishes an interest that is considered significant by the marine safety investigating State(s),

**“territorial sea”** means territorial sea as defined by Territorial Seas and Exclusive Economic Zone Act 1977 under Cook Islands laws.

**“very serious marine casualty”** means a marine casualty involving the total loss of the ship or a death or severe damage to the environment;

**3. Purpose** – The purposes of these Rules are:

- (a) to assist in the prevention of marine casualties and marine incidents;



## MARITIME (MARINE CASUALTY AND INCIDENT INVESTIGATION) RULES, 2014 NO.1

---

155/14

18 December 2014

306

---

- (b) to allow cooperation between States with respect to determination of causes and circumstances arising out of marine casualties or incidents thereof;
- (c) to make independent safety investigations into marine casualties or incidents mandatory; and
- (d) to give legal effect to the Code of the International Standards and Recommended Practices for a Safety Investigation into a Marine Casualty or Marine Incident 2008 under SOLAS Part C, Regulation 21, to which the Cook Islands is a signatory.

These Rules shall be used in conjunction with Part 4 of the Maritime Transport Act 2008.

- 4. **Investigation Authority** – The Cook Islands shall provide the Organisation with detailed contact information of the Marine Safety Authority under the Cook Islands Ministry of Transport carrying out marine safety investigations within the Cook Islands.
- 5. **Notification** – (1) When a marine casualty occurs on the high seas or in an exclusive economic zone, the flag State of a ship, or ships, involved shall notify the other substantially interested States as soon as is reasonably practicable.
  - (2) When a marine casualty occurs within the internal waters, archipelagic waters or the territorial seas of a coastal State, the flag State and the coastal State shall notify each other and between them notify other substantially interested States as soon as is reasonably practicable.
  - (3) Notification shall not be delayed due to lack of complete information.
  - (4) The notification shall contain as much of the information as set out in Schedule 1 as is readily available to the Cook Islands.
- 6. **Requirement to investigate very serious marine casualties** –
  - (1) A marine safety investigation shall be conducted into a very serious marine casualty.



## MARITIME (MARINE CASUALTY AND INCIDENT INVESTIGATION) RULES, 2014 NO.1

155/14

18 December 2014

307

- (2) Subject to any agreement in accordance with Rule 7, the Cook Islands, as the flag State of a ship involved in a very serious marine casualty is responsible for ensuring that a marine safety investigation is conducted and completed in accordance with these Rules.

### **7. Agreement to conduct a marine safety investigation –**

- (1) Where a marine casualty occurs:

- (a) within the internal waters, archipelagic waters or the territorial seas of a coastal State; or
- (b) on the high seas or in the exclusive economic zone involving a vessel registered in the Cook Islands,

the Cook Islands shall seek agreement with other substantially interested State(s) to determine which State(s) will be the marine safety investigating State(s) under these Rules.

- (2) Prior to reaching an agreement, or if an agreement is not reached in accordance with Rule 7. 1, then the existing obligations and rights of the Cook Islands under these Rules, and under other international laws, to conduct a marine safety investigation remains.

- (3) By fully participating in a marine safety investigation conducted by another substantially interested State, the Cook Islands shall be considered to fulfil its obligations under these Rules, SOLAS regulation I/21, and article 94, section 7 of the United Nations Convention on the Law of the Sea.

### **8. Powers of an investigator –** Investigators must be appointed with the following powers:

- (a) to board a ship
- (b) to interview the master or crew of a vessel and any other person involved in the marine casualty; and
- (c) acquire evidential material,

for the purposes of a marine safety investigation, irrespective of where the investigation is conducted.



## MARITIME (MARINE CASUALTY AND INCIDENT INVESTIGATION) RULES, 2014 NO.1

---

155/14

18 December 2014

308

---

### **9. Collection of evidence –**

(1) The investigator must not unnecessarily detain a ship for the collection of evidence from it or have original documents or equipment removed unless this is essential for the purposes of the marine safety investigation.

(2) An investigator carrying out a marine safety investigation must:

(a) make copies of documents where practicable; and

(b) obtain and maintain records of interviews and other evidence collected during a marine safety investigation in a confidential manner.

(3) An investigator must obtain voyage data recorders from the master or agent of a ship under investigation.

(4) An investigator carrying out the marine safety investigation must make effective use of all recorded data including voyage data recorders if fitted.

(5) Where the marine safety investigating authority does not have adequate facilities to read a voyage data recorder, it may request assistance from States with such capability.

### **10. Parallel investigations –**

(1) Where the Cook Islands conduct a marine safety investigation under these Rules, nothing prejudices the right of another substantially interested State to conduct its own separate marine safety investigation.

(2) Where the Cook Islands and other States are conducting parallel marine safety investigations under these Rules, the Cook Islands shall seek to avoid conflicting demands upon witnesses and access to evidence, where possible.

### **11. Cooperation –**

(1) The Cook Islands as a marine safety investigating State shall allow for the participation of the substantially interested States to the extent practicable.

(2) Where an investigation is carried out by another substantially interested State, the Cook Islands shall cooperate to the extent practicable.

### **12. Investigation not to be subject to external direction –**





## MARITIME (MARINE CASUALTY AND INCIDENT INVESTIGATION) RULES, 2014 NO.1

---

155/14

18 December 2014

309

---

- (1) An investigator carrying out a marine safety investigation must be impartial and objective.
- (2) The investigator must prepare reports on the results of a marine safety investigation without direction or interference from any persons who, or organisations which, may be affected by its outcome.

### **13. Obtaining evidence from seafarers –**

Where a marine safety investigation requires a seafarer to provide evidence, the investigator shall:

- (a) inform the seafarer of the nature and basis of the marine safety investigation;
- (b) inform the seafarer of his or her right to legal advice, regarding:
  - i) any potential risk of self incrimination;
  - ii) the right to remain silent;
  - iii) any protection afforded to the seafarer to prevent his or her evidence from being used against him or her;
- (c) allow the seafarer access to legal representation;
- (d) take evidence from the seafarer at the earliest practicable opportunity;
- (e) allow the seafarer to return to his or her ship, or be repatriated at the earliest possible opportunity; and
- (f) uphold the seafarers human rights at all times.

### **14. Draft Marine Safety Investigation Reports –**

(1) Subject to sub-Rules 14(2) and 14(3), where so requested, the marine safety investigating authority of the Cook Islands shall send a copy of a draft report to a substantially interested State to allow that State to comment on the draft report.

(2) The marine safety investigating authority of the Cook Islands is bound to comply with sub-Rule 14(1) where the State receiving the report guarantees not to circulate, nor cause to circulate, or to publish or give access to the draft report, or any part thereof:

(a) without the express consent of the marine safety investigating authority of the Cook Islands; or

(b) unless reports or documents have already been published by the marine safety investigating State(s)

(3) The marine safety investigating authority of the Cook Islands is not bound to comply with paragraph 14(1) if:



**MARITIME (MARINE CASUALTY AND INCIDENT INVESTIGATION)  
RULES, 2014 NO.1**

---

155/14

18 December 2014

310

---

(a) the marine safety investigating authority of the Cook Islands requests that the State receiving the report affirms that evidence included in the draft report will not be admitted in civil or criminal proceedings against a person who gave evidence; and

(b) the State receiving the report refuses to provide such an affirmation.

(4) The marine investigating authority of the Cook Islands is required to;

(a) invite the State receiving the report to submit any comment on the draft report within 30 days of receipt of the report or some other mutually agreed period;

(b) if no comments are received at the expiry of 30 days or the mutually agreed period, finalise the report;

(c) if comments are received, consider those comments and, where the report will have direct impact on the interest of a State, notify that State of the manner in which the comments were addressed; and

(d) finalise the report;

(5) The Cook Islands shall use the most practical means to ensure that the draft report is accurate and complete.

**15. Final Marine Safety Investigation Report –**

(1) The Cook Islands shall submit the final version of a marine safety investigation report to the Organisation:

(a) for every marine safety investigation conducted into a very serious marine casualty; and

(b) for any other marine safety investigation which contains information which may prevent or lessen the seriousness of marine casualties in the future.

(2) The reports referred to in Rule 15(1) shall contain all the relevant information on safety issues and are able to be understood so that safety action can be taken as necessary.

(3) The Cook Islands shall:

(a) make available to the public and the shipping industry the final report; or

(b) assist the public and the shipping industry with details where necessary to access the report, where it is published by another State or the Organisation.



**MARITIME (MARINE CASUALTY AND INCIDENT INVESTIGATION)  
RULES, 2014 NO.1**

---

155/14

18 December 2014

311

---

**16. Protection of witnesses and involved parties –**

(1) If a person is required by law to provide evidence that may incriminate them, for the purposes of a marine safety investigation, the final marine casualty report should, so far as the Cook Islands laws allow, be prevented

from being admissible in evidence in proceedings related to the marine casualty or marine incident that may lead to disciplinary measures, criminal conviction or the determination of civil liability.

(2) A person from whom evidence is sought must be informed about the nature and basis of the investigation. A person from whom evidence is sought must be informed, and allowed access to legal advice, regarding:

- (a) any potential risk that he/she may incriminate himself/herself in any proceedings subsequent to the marine safety investigation;
- (b) any right not to self incriminate or to remain silent;
- (c) any protections afforded to the person to prevent the evidence against him/her if he/she provides the evidence to the marine safety investigation.

**17. Penalty Provisions**

Where subsequent proceedings are deemed necessary by the Administration, the penalty provisions outlined in Maritime Transport Act 2008 Part 5, Offences in Relation to Maritime Activity, may apply.

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**MARITIME (MARINE CASUALTY AND INCIDENT INVESTIGATION)  
RULES, 2014 NO.1**

---

155/14

18 December 2014

312

---

**SCHEDULE 1 – Notification Form and content**

Any Notification Form submitted to the Organisation shall contain, as a minimum as far as is practicable:

1. The name of the ship and its flag State
  2. The IMO ship identification number
  3. The nature of the marine casualty
  4. The location of the marine casualty
  5. Time and date of the marine casualty
  6. The number of any seriously injured or killed persons
  7. Consequences of the marine casualty to individuals, property and the environment
  8. The identification of any other ship involved
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