

**CDP 400**

# **Marine Safety Investigations**



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Maritime Administration**

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RULES FOR MARINE SAFETY  
INVESTIGATIONS (CDP-400)

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**COMMONWEALTH OF DOMINICA**  
**OFFICE OF THE DEPUTY MARITIME ADMINISTRATOR**  
**RULES FOR MARINE SAFETY INVESTIGATIONS**

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# COMMONWEALTH OF DOMINICA

## OFFICE OF THE DEPUTY MARITIME ADMINISTRATOR

### RULES FOR MARINE SAFETY INVESTIGATIONS

#### 1.0 AUTHORITY AND PURPOSE

##### 1.1 Authority

These Rules are promulgated under the authority of the Commonwealth of Dominica (“DMA”) Maritime Act 2000 (“Act”), as amended, and the DMA Maritime Regulations (“Regulations”) published in CDP-102. They shall govern the conduct of all marine investigations under the DMA flag. They implement and enforce the Act, the Regulations and relevant International Conventions and Agreements to which DMA is a party or which it has implemented.

##### 1.2 Purpose

The objectives of DMA marine investigations are to promote safety of life and property at sea and to prevent the pollution of the seas by preventing Marine Casualties, Marine Incidents, Offenses or Occurrences in the future.

A marine investigation shall not refrain from fully reporting on causal factors, including possible violations of law and possible faults or failures on the part of vessels and/or personnel. The outcome of an investigation may necessitate Administrative Proceedings or Adjudicatory Proceedings by the Commonwealth of Dominica Maritime Administration that could result in punitive actions, such as the suspension or revocation of a seafarer’s license or certificate and/or the assessment of a monetary penalty against an individual or company, in accordance with all governing laws and regulations.

##### 1.3 Duty to Conduct

The Administration, upon learning of a Marine Casualty, Marine Incident, Offense or Occurrence, shall conduct an investigation, as may be necessary, to determine as closely as possible the cause(s) or any contributing cause(s) of the Marine Casualty or Marine Incident and the circumstances of the Offense or Occurrence, and whether there has been any act of misconduct, inattention to duty or negligence upon the part of any certificated person or violation of law or regulation so that appropriate action may be taken.

Investigations of Marine Casualties or Marine Incidents shall be conducted in accordance with Part I of these Rules. Investigations of Offenses and Occurrences shall be conducted in accordance with Part II of these Rules.

## 2.0 DEFINITIONS

**Administration** means the Commonwealth of Dominica Maritime Administration which is specifically delegated the authority, power and functions under the Act to administer all matters pertaining to vessels of the Commonwealth of Dominica that are subject to the provisions of the Act, promulgate Rules and Regulations to carry out the provisions of the Act and ensure the seaworthiness and proper manning conditions of vessels registered under the laws of the Commonwealth of Dominica.

**Casualty Investigation Code** means the Code of International Standards and Recommended Practices for a Safety Investigation into a Marine Casualty or Marine Incident, as adopted by International Maritime Organization (IMO) Resolution MSC.255(84), and as may be amended from time-to-time.

**Central Office** means the Administration's office, maintained by its designee, Dominica Maritime Registry, Inc., in the United States at Fairhaven, Massachusetts.

**Coastal State** means a State in whose territory, including its Territorial Sea, a Marine Casualty or Marine Incident occurs.

**Exclusive Economic Zone (EEZ)** means the area not extending beyond 200 nautical miles from the baselines from which the breadth of the Territorial Sea is measured, as defined by Article 55 of the United Nations Convention on the Law of the Sea (UNCLOS).

**Flag State** means a State whose flag a ship is entitled to fly.

**High Seas** means all parts of the sea that are not included in the EEZ, in the Territorial Sea or in the internal waters of a State, or in the archipelagic waters of an archipelagic State as defined in Article 86 of UNCLOS.

**IMO** means the International Maritime Organization.

**Interested Party** means an organization, entity or individual, who, as determined by the Marine Safety Investigating State(s), has significant interests, rights or legitimate expectations with respect to the outcome of a Marine Safety Investigation.

**International Safety Management (ISM) Code** means the International Management Code for the Safe Operation of Ships and for Pollution Prevention, as contained in IMO Resolution A.741(18), and as may be amended from time to time.

**Investigating Officer** is a person or the personnel of an entity that is/are qualified and appointed by the Administration to conduct or to participate in an investigation.

**Investigations Oversight Committee (IOC)** shall oversee the structure and operation of investigations and shall provide guidance on the proper functioning thereof to the Administrator or its duly designated representative(s). The IOC shall be made up of the Deputy Maritime Administrator located in the Central Office, the Assistant Deputy Maritime Administrators with expertise in and oversight of Inspections, Registrations, and Marine Personnel and such other members as may be appointed by the Senior Deputy Commissioner located in the Central Office.

**Marine Administrative Proceeding** means a non-judicial proceeding, including suspension and revocation proceedings, conducted by the Administration regarding alleged violations of the Act, the Regulations and /or International Conventions and Agreements to which the Commonwealth of Dominica is a party or which it has implemented.

**Marine Casualty** means an event or a sequence of events that has occurred directly in connection with the operation of a vessel documented under the Act or a ship operating in the navigable waters of the

Commonwealth of Dominica Marine Casualties include:

- a. the death of, or serious injury to, a person;
- b. the loss of a person from a ship;
- 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 or an allision;
- f. material damage to the marine infrastructure external to a ship, that could seriously endanger the safety of that ship, its occupants, another ship, property or any other person(s); and
- g. severe damage to the environment, or the potential for severe damage to the environment, brought about by a ship or ships.

It 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 operation of a ship that endangered or, if not corrected, would endanger the safety of that ship, its occupants, another ship, property, any other person(s) or the environment. A Marine Incident includes “hazardous incidents” and “near misses.” A Marine Incident 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 or other Occurrence.

**Marine Safety Investigation** means an investigation into a Marine Casualty or Marine Incident conducted with the objective of preventing the occurrence of similar Marine Casualties and Marine Incidents in the future. The investigation includes the collection and analysis of evidence, the identification of causal factors and the issuance of findings, conclusions and safety recommendations as appropriate.

**Marine Safety Investigation Authority** means a State authority responsible for conducting investigations under the Casualty Investigation Code. The Marine Safety Investigation Authority for the RMI is the Administrator or its duly designated representative(s).

**Marine Safety Investigation Report** is a report that contains the elements for such a report detailed in Section 2.12 of the Casualty Investigation Code, as amended.

**Marine Safety Investigating State** means the Flag State or, where relevant, the State or States that take the responsibility for the conduct of a Marine Safety Investigation as mutually agreed in accordance with the Casualty Investigation Code.



**Marine Safety Record** means the following types of evidence collected for a Marine Safety Investigation:

- a. all statements and testimony taken for the purpose of a Marine Safety Investigation;
- b. all records maintained by any vessel involved in a Marine Casualty or Marine Incident;
- c. all communications between persons pertaining to the operation of a ship;
- d. all medical or private information regarding persons involved in the Marine Casualty or Marine Incident;
- e. all records of the analysis of information or evidential material acquired in the course of a Marine Safety Investigation; and
- f. information from a ship's voyage data recorder or other automatically recorded data.

**MARPOL** means the International Convention for the Prevention of Pollution from Ships, as amended.

**Material damage** means:

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

**Occurrences** are events that are not classified as a Marine Casualty, a Marine Incident or an Offense, but require investigation by the Administration. They include any act or failure to act contrary to the Act, the Regulations or any rules made as provided by law and those contained in any International Conventions and Agreements to which the Commonwealth of Dominica is a party or which it has implemented. They include, but are not limited to:

- a. contraventions, including legitimate complaints of authorities and administrations;
- b. labor issues, including non-compliance with the Maritime Labor Convention, 2006 (MLC, 2006); crew competence and performance; legitimate complaints of seafarers; fraud, forgery, misrepresentation or attempted bribery associated with applications for maritime certificates or documents; crew abandonment by vessel owner or operator and repatriation;
- c. embargoes, treaties, tax, tariffs and trade issues;
- d. consular issues, diplomatic notes, protests and sanctions;
- e. reports of ship arrests;
- f. phantom ships; and
- g. acts or attempted acts of armed robbery, piracy, hijacking or terrorism.

**Offenses** means any causes and/or grounds for suspension or revocation of a Certificate of Competence, Certificate of Endorsement or Special Qualification. These causes may include, but are not limited to:

- a. incompetence;

- b. unjustified failure to report on board at such times and dates as may be specified by a Master;
- c. physical or mental disability;
- d. theft, embezzlement or willful destruction of any part of a vessel, its cargo or stores;
- e. habitual drunkenness, intoxication, quarreling, fighting or assault;
- f. serious insubordination, willful disobedience or willful refusal to perform assigned duties;
- g. revolt, mutiny or desertion;
- h. possession of dangerous weapons, narcotics or contraband;
- i. intentional concealment from a shipowner or Master, at or prior to engagement under Shipping Articles, of a condition which has resulted in sickness or injury;
- j. assistance to stowaways;
- k. willful failure to comply with the provisions of the Act or the Regulations;
- l. willful violation of the laws of the Commonwealth of Dominica or applicable local laws;
- m. falsification or fraudulent duplication of seafarer certification;
- n. criminal conduct;
- o. violation of any national or international rule or regulation; or
- p. other conduct incompatible with proper performance of duties and obligations in service on board a vessel.

**Organization** means the International Maritime Organization (IMO).

**Party** means an organization, entity or individual that is:

- a. the holder of any license, certificate or other document issued by the Commonwealth of Dominica Maritime Administration involved in the matter under investigation or the subject of Marine Administrative or Adjudicatory Proceedings;
- b. the shipowner or operator of a Commonwealth of Dominica vessel involved in the matter under investigation or the subject of Marine Administrative or Adjudicatory Proceedings;
- c. the shipowner or operator of a non-Dominica vessel involved in the matter under investigation or the subject of Marine Administrative or Adjudicatory Proceedings;
- d. alleged to have been injured or damaged as the result of the matter under investigation or the subject of Marine Administrative or Adjudicatory Proceedings.

**Presiding Officer** means the lead official conducting either a Marine Administrative or an Adjudicatory Proceeding.

**Serious Injury** means an injury resulting in incapacitation where the injured party is unable to function normally for more than 72 hours.

**Severe Damage to the Environment** means damage to the environment which, as evaluated by the State(s) affected, or the Flag State, as appropriate, 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 recognized under international law); or
- d. where the consequences of a Marine Casualty or a Marine Incident caused or threatened 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 casualty, nationals of that State lost their lives or sustained 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 the breadth of sea up to a limit not exceeding twelve (12) nautical miles as measured from the baseline of a State, as defined by Section 2 of Part II of the United Nations Convention on the Law of the Sea (UNCLOS).

**Very Serious Casualties** are casualties which involve the total loss of a ship, loss of life, except for death due to natural causes, or severe pollution.

# **PART I – MARINE SAFETY INVESTIGATIONS**

## **3.0 COOPERATION OF SHIPOWNERS, OPERATORS AND SEAFARERS**

### **3.1 Notification and Reporting Requirements**

The owner, charterer, manager, operator, Master, agent or person in charge of a vessel registered under the Act involved in a Marine Casualty or Marine Incident shall immediately notify the Administration of the Marine Casualty or Marine Incident by the fastest means possible, including fax, email or telephone.

Promptly after initial notification, the owner, charterer, manager, operator, Master or person in charge of a vessel involved in a Marine Casualty or Marine Incident that results in one or more of the criteria below shall forward, as appropriate, a Report of *Marine Casualty or Marine Incident* (Form CDVR-5010), a Report of *Personal Injury or Loss* (Form CDVR-5011), and/or a Report of *Piracy and Armed Robbery Against Ships* (Form CDVR-5015) to the Administration or to a representative who is authorized to act for and on behalf of the Administration. The report(s) must be signed by the Master or highest available officer or ship's representative. Statements of crew members who witnessed the Marine Casualty or Marine Incident should be provided with the report(s). All statements should be signed or otherwise acknowledged by the witness. Unless necessary to pursue and support prosecutions, statements are not required to be submitted with a *Report of Piracy and Armed Robbery Against Vessels (CDVR-5015)*. Information required to be submitted for specific types of Marine Casualties and Marine Incidents is provided in Marine Safety Circular 13-03.

A report must be filed whenever the Marine Casualty or Marine Incident involves any of the following:

- a. material damage affecting the seaworthiness of a vessel;
- b. collision, allision, stranding, grounding, abandonment or loss of a vessel;
- c. severe damage to the environment;
- d. fire or explosion;
- e. loss of life;
- f. injury causing any person(s) to remain incapacitated for a period in excess of 72 hours, including occupational accidents and occupational injuries and diseases, which may not be limited to accidents or incidents involving a vessel;
- g. acts or attempted acts of piracy, robbery, hijacking or terrorism; or
- h. State action in response to the contravention of or non-compliance with any International Conventions and Agreements to which the Commonwealth of Dominica is a party or which it has implemented.

### **3.2 Cooperation in Investigations**

#### **3.2.1 Owners and Operators**

It is the duty of all owners and operators of vessels registered under the Act to cooperate with the Administration or a representative authorized to act for or on behalf of the Administration in the investigation of a Marine Casualty or a Marine Incident. Such cooperation includes: being interviewed; testifying orally or in writing; producing, when called upon, witnesses in their employ

and relevant books, papers, documents and other Marine Safety Records in their possession; and permitting the Administration or its duly designated representative(s) to board and examine vessels and their appurtenances.

### 3.2.2 Shipboard Certificated Personnel

It is the duty of all holders of certificates of competence or other certification issued to mariners by the Commonwealth of Dominica to cooperate with the Administration, or a duly designated representative authorized to act for and on behalf of the Administration, in Marine Safety Investigation of a Marine Casualty or Marine Incident. Such cooperation includes: being interviewed; testifying orally or in writing; producing, when called upon, relevant books, papers, documents and other Marine Safety Records in their possession; and permitting the Maritime Administration or its duly designated representative(s) to board and examine vessels and their appurtenances.

### 3.2.3 Administration

When a Marine Safety Investigation is commenced, the Administration may, as it deems appropriate, inform the Master, the owner, and/or the agent of the ship involved in the Marine Casualty or Marine Incident of:

- a. the Marine Casualty or Marine Incident under investigation;
- b. the time and place at which the Marine Safety Investigation will commence;
- c. the name and contact details of the Marine Safety Investigation Authority(ies);
- d. the relevant details of the Commonwealth of Dominica law under which the Marine Safety Investigation is being conducted;
- e. the rights and obligations of the parties subject to the Marine Safety Investigation; and
- f. the rights and obligations of the State or States conducting the Marine Safety Investigation under the Commonwealth of Dominica law, regulation, and rules.

## 3.3 The Occurrence Site

Where possible, the owner, charterer, manager, operator, Master, agent, person in charge of a vessel and all shipboard personnel shall leave the site of the Marine Casualty or Marine Incident unchanged until it has been inspected as part of the investigation. Where this is not possible, such as with the need to make essential and immediate repairs following serious structural damage or damage to accommodation spaces, the scene should be documented by photographs, audio-visual recordings, sketches or any other relevant means available, with the objective of preserving vital evidence and facilitating the establishment of the circumstances of the Marine Casualty or Marine Incident at a later date.

Damaged or failed equipment, machinery and/or components and other forensic evidence should be kept in a secure location to await the arrival of the Investigating Officer, who may require detailed technical or scientific examination of such objects.

## 3.4 Voyage Data Recorder (VDR)

### 3.4.1 Ownership and Responsibilities

The vessel owner, in all circumstances and at all times, shall own the VDR and its recorded information. The owner or operator of a vessel documented in the Commonwealth of Dominica shall maintain on board and make available all material and instructions necessary to recover the

recorded information from a VDR.

The Investigating Officer conducting the investigation shall arrange downloading and readout of VDR information, including the audio recordings, and keep the vessel owner or operator fully informed. Notwithstanding, the Master shall preserve the data and assist with downloading and readout when it is not practicable for the Investigating Officer to immediately (within 12 hours) attend the vessel.

#### 3.4.2 Removal of VDR from Vessel

Masters and Investigating Officers shall make every effort to ensure that a VDR hard drive is not removed from a vessel by State authorities without first notifying and obtaining the agreement of the Administration and leaving a full copy of the drive or the recorded VDR information onboard the vessel.

#### 3.4.3 Disclosure

VDR information, including the audio recordings, is part of the Marine Safety Record. As such, it shall be preserved and maintained solely for investigative purposes and will only be disclosed in accordance with section 6.0, below.

### 3.5 Retention of Voyage Records

The persons in charge of any vessel involved in a Marine Casualty or Marine Incident shall retain for two (2) years, or until otherwise instructed by the Administration, the complete records of the voyage during which the Marine Casualty or Marine Incident occurred, as well as any other material, including VDR information and other automatically recorded data, which might reasonably be of assistance for investigating and determining the cause(s) and scope of the Marine Casualty or Marine Incident, and said persons shall make all such records and materials available, upon request, to the Administration or an Investigating Officer.

## 4.0 MARINE SAFETY INVESTIGATIONS

### 4.1 Requirements

- 4.1.1 A Marine Safety Investigation shall be conducted in accordance with the Casualty Investigation Code, the International Convention for the Safety of Life at Sea (SOLAS), 1974, MARPOL, the MLC, 2006, UNCLOS, the International Load Lines Convention, 1966 as amended by the Protocols of 1988, the Convention on the International Maritime Organization and related Guidelines, all as from time-to-time amended or revised.
- 4.1.2 A Marine Safety Investigation shall be conducted and completed by the Administration for:
  - a. every instance where a ship documented in the Commonwealth of Dominica is involved in a Very Serious Marine Casualty or where the Commonwealth of Dominica is otherwise conducting a Marine Safety Investigation as a Substantially Interested State; and
  - b. other Marine Casualties and Marine Incidents of a ship documented in the Commonwealth of Dominica if, based on a preliminary investigation (see section 4.3, below), it is considered likely that the investigation will provide information that can be used to prevent similar Marine Casualties and Marine Incidents in the future.
- 4.1.3 A Marine Safety Investigation shall, to the extent possible, identify immediate and basic or root causal factors, as well as failures that may be present in the error chain of events, taking into consideration the total conduct of the operation from policy through implementation.

4.1.4 A Marine Safety Investigation shall commence as soon as reasonably practicable so as not to compromise or jeopardize evidence or delay a ship unnecessarily.

4.1.5 Any person or persons that interfere with the conduct of a Marine Safety Investigation may be subject to fines and penalties under the Commonwealth of Dominica law.

## **4.2 Cooperation between States**

### **4.2.1 Cooperation**

- a. The Administration shall cooperate with the Marine Safety Investigating State(s) to the extent practicable; and, if assuming the role of the Marine Safety Investigating State, shall provide for the participation of a Substantially Interested State(s) in the investigation of a Marine Casualty or Marine Incident to the extent practicable and allowable under the Commonwealth of Dominica's laws and regulations.
- b. An Investigating Officer of a Substantially Interested State carrying out a Marine Safety Investigation shall be entitled to board a ship, interview the Master and crew and any other persons involved in the Marine Casualty or Marine Incident and acquire evidential material, except that original documents, equipment and VDR information shall be handled in accordance with section 5.2.1, below.
- c. Nothing shall limit the rights of States to conduct their own separate Marine Safety Investigations under the Casualty Investigation Code and other International Conventions and Agreements, including the Commonwealth of Dominica Maritime Administration.

### **4.2.2 Notification**

- a. The Administration shall notify any Substantially Interested State(s) as soon as reasonably practicable when a Marine Casualty involving a ship documented in the Dominica Maritime Administration occurs:
  - i. On the High Seas or in an EEZ; or
  - ii. Within the territory, including the Territorial Sea, of a State.
- b. Notification shall not be delayed due to the lack of complete information.
- c. Notification shall contain as much of the following information as is readily available.
  - i. The name of the ship and its Flag State;
  - ii. The IMO ship identification number;
  - iii. The nature of the Marine Casualty;
  - iv. The location of the Marine Casualty;
  - v. Time and date of the Marine Casualty;
  - vi. The number of any seriously injured or deceased persons;
  - vii. Consequences of the Marine Casualty to individuals, property, and the environment; and
  - viii. The identification of any other ship involved.

### **4.2.3 Marine Safety Investigating State**

The Commonwealth of Dominica shall consult with any Substantially Interested State(s) in an effort to seek agreement on which State(s) will be the Marine Safety Investigating State(s), in accordance with a requirement or a recommendation to investigate under the Casualty Investigation Code.

Once an agreement to cooperate in a Marine Safety Investigation is reached in principle by the Substantially Interested State(s), the agreement should be rendered in writing, prior to the commencement of an investigation, through a Letter of Agreement or similar document. Substantially Interested States may, by written mutual agreement, join an investigation either immediately or at a later stage.

If an agreement cannot be reached, then the existing obligations and rights of the Commonwealth of Dominica or any Substantially Interested State to conduct its own Marine Safety Investigation shall remain with the respective States.

#### 4.2.4 Parallel Investigations

When separate Marine Safety Investigations are undertaken they should run in parallel. The Administrator shall seek, where possible, to coordinate the timing of its investigations with those of either the Marine Safety Investigating State or other Substantially Interested State(s) to avoid conflicting demands upon witnesses and to provide for reasonable access to evidence.

### 4.3 Investigation Process

Upon learning of a Marine Casualty or a Marine Incident, a preliminary investigation shall be conducted by the Administration or its duly designated representative(s) so that the Marine Casualty or Marine Incident may be evaluated and categorized to provide for subsequent, appropriate action to be taken by the Administration in accordance with the Act and/or the Regulations and CDP-501, the Flag State Inspection Program.

The guidance and methodologies set forth in IMO Resolution A.884(21), as amended, or other investigation methodologies or processes as determined appropriate by the Administration, shall be applied, as appropriate, to the investigation of Marine Casualties and Marine Incidents.

## 5.0 POWERS AND DUTIES

### 5.1 Administration

#### 5.1.1 General

The Administration shall provide the IMO with detailed contact information regarding a Marine Safety Investigation of a Marine Casualty or a Marine Incident involving a Commonwealth of Dominica vessel or a vessel within the territory, including the Territorial Seas, of the Commonwealth of Dominica.

#### 5.1.2 Investigations Oversight Committee (IOC)

The IOC shall oversee the structure and operation of investigations and shall provide guidance on the proper functioning thereof to the flag State, owning company, or operating company of the vessel of interest or its duly designated representative(s).

#### 5.1.3 Organization and Staffing

The Deputy Maritime Administrator or Assistant Deputy Maritime Administrator with expertise in and oversight of investigations, and associated staff, shall at all times retain the full powers and duties of an Investigating Officer and shall be responsible for supervising and/or conducting all Commonwealth of Dominica Marine Safety Investigations.

The Deputy Maritime Administrator or a representative who is authorized to act for and on behalf of the Administration by the Deputy Maritime Administrator located in the Central Office may



appoint an Investigating Officer for the purpose of conducting a Marine Safety Investigation and confer upon the investigator such authority as deemed necessary to effectuate the investigation.

To assist the Investigating Officer, the Deputy Maritime Administrator located in the Central Office, the Assistant Deputy Maritime Administrator with expertise in and oversight of investigations, may appoint trained and experienced individuals, organizations or agencies with the appropriate expertise for technical advice or other assistance as necessary and authorized by the Deputy Maritime Administrator.

## 5.2 Investigating Officers

The Investigating Officer carrying out a Commonwealth of Dominica Marine Safety Investigation shall be impartial and objective. The Investigating Officer shall report on the results of a Marine Safety Investigation without direction or interference from any persons or organizations that may be affected by its outcome.

An Investigating Officer shall ensure the complete development of all pertinent facts, establish to the best of his or her ability the cause(s) of any casualty or incident and make such findings, conclusions and recommendations in his or her report as will in his or her best judgment aid in preventing a recurrence of a similar Marine Casualty or Marine Incident. The Investigating Officer may, at any stage of the Marine Safety Investigation, recommend interim safety measures.

### 5.2.1 Handling of Original Documents and Equipment

A Commonwealth of Dominica Investigating Officer or an investigator from a Marine Safety Investigating State shall not be permitted to take original documents or equipment off a vessel documented in the Commonwealth of Dominica, unless under exceptional circumstances. Such an exceptional circumstance would be, for example, when a Marine Safety Investigation Authority articulates a legal basis and reason(s) why it is necessary to remove original documents or equipment off a vessel and the Administration agrees. When original record(s)/document(s) are removed they must be replaced by certified copies. If equipment or other evidence is removed, full access should be provided to the Commonwealth of Dominica Investigating Officer. A receipt stating the reason(s) for the removal of original document(s) or equipment must be provided to the ship's Master by the Marine Safety Investigation Authority that took such action. In no case shall the absence of original record(s)/document(s) or equipment on board the ship in such exceptional circumstances be recorded as a deficiency against the ship. Flag State authorization is required prior to a vessel departing a port without required equipment on board.

### 5.2.2. Conducting Interviews

When a Marine Safety Investigation requires a seafarer or other person to provide evidence, the evidence shall be taken at the earliest practical opportunity.

Any Investigating Officer conducting an interview of a seafarer or other person involved in the matter under investigation shall clearly state the purpose of the investigation and of the interview and the possible future use to be made of the information obtained during the interview. Each Investigating Officer shall state the following in advance of any interview:

*I am an Investigating Officer and representative of the Commonwealth of Dominica, the Flag State of this vessel. It is the responsibility of the Flag State to investigate these matters and your cooperation is encouraged in order to help improve safety at sea. You do have the right to legal advice regarding your risks, rights and protections. At the end of the Flag State investigation, any information gathered during the course of the investigation may be disclosed to the owner, operator, any Substantially Interested State and/or to the IMO, amongst others, only at the sole discretion of the Commonwealth of Dominica.*

## **6.0 CONFIDENTIALITY OF INFORMATION AND DISCLOSURE OF RECORDS**

Investigating Officers shall secure all Marine Safety Records and all other evidence collected during the investigation in a manner which prevents access by persons who do not require it for the purposes of the investigation.

Material in a Marine Safety Record shall only be disclosed where it is determined by the Administration that it is necessary or desirable to do so to address immediate safety risks to a vessel, its crew and/or other persons, property or the environment. In determining whether to disclose such information the Administration shall take into account any impact on the future availability of information to a Marine Safety Investigation and what is otherwise permitted by Commonwealth of Dominica law and regulations, as well as Chapter 23 of the Casualty Investigation Code.

Material in a Marine Safety Record shall be included in the final report or its appendices only when pertinent to the analysis of the Marine Casualty or Marine Incident. Material in a Marine Safety Record not included in the final report shall not be disclosed.

When conducting a Marine Safety Investigation, the Administration shall supply information from a Marine Safety Record to a Substantially Interested State only when doing so will not undermine the integrity and credibility of the investigation being conducted. The Administration, if supplying information from the Marine Safety Record of an investigation to another State, may require reassurance that it be kept confidential in accordance with Commonwealth of Dominica laws and regulations, as well as Chapter 23 of the Casualty Investigation Code.

## **7.0 CRIMINAL CONDUCT**

### **7.1 Evidence of Criminal Conduct**

At any time during the course of a Marine Safety Investigation under Part I of these Rules, where it appears to the satisfaction of the Investigating Officer(s) or to the majority of the IOC members, that evidence of criminal conduct under the Act exists, the Deputy Maritime Administrator with expertise in and oversight of investigations or designee, the Presiding Officer of the IOC shall immediately notify the Deputy Maritime Administrator located in the Central Office who shall coordinate with the Attorney General of the Commonwealth of Dominica as necessary in accordance with Commonwealth of Dominica law.

## **8.0 REPORTS AND DECISIONS**

### **8.1 Investigation Reports**

#### **8.1.1 The Preliminary Report**

When an investigation under this Chapter has been delayed due to a failure of production of evidence or other circumstances outside of the Administration's control, the Administration may choose to produce a preliminary report, memorializing any preliminary findings, conclusions and recommendations. A preliminary report may be furnished to the Interested Parties at the Administration's sole discretion.

#### **8.1.2 Draft Report**

When an investigation has been concluded, the Investigating Officer shall submit, as expeditiously as possible, findings, conclusions and recommendations, if any, in a written draft report, along with the investigative file, to the Administration with expertise in and oversight of investigations. The written draft report should conform to any guidance promulgated by the Administration on report content and format.

The Deputy Maritime Administrator or his/her designee with expertise in and oversight of investigations, shall, as quickly as practicable, review the draft report and make recommendations on appropriate action as outlined in section 8.1.3, below.

#### 8.1.3 Substantially Interested States

Prior to finalizing a written report and only after legal review, the Deputy Maritime Administrator or his/her designee shall send a copy of the draft report to any Substantially Interested State for comment, if requested by that State. The provision of the draft report shall be conditioned upon the State:

- a. guaranteeing in writing not to circulate, publish or give any third party access to the draft report, or any part thereof, without the express written consent of the Administration, unless such Marine Safety Investigation Reports or documents have already been circulated or published by the Administration; and
- b. affirming in writing that evidence included in the draft report will not be used by the receiving Substantially Interested State in civil or criminal proceedings against a person who gave the evidence; and
- c. affirming in writing that, if the draft report is subpoenaed or otherwise ordered by a court of competent jurisdiction to be produced, the receiving Substantially Interested State will notify the Administration at least ten (10) days in advance of any such scheduled production or any judicial proceeding concerning the propriety of the subpoena or court order.

Substantially Interested States shall submit their comments on the draft report within 30 days or some other mutually agreed period. These comments shall be considered before the final report is prepared. If no comments are received within 30 days, or the mutually agreed period has expired, then the draft report may be finalized.

#### 8.1.4 The Final Report

- a. The accuracy and completeness of the draft report shall be verified by the Deputy Maritime Administrator. The report may then be:
  - adopted with recommendations, if any, as a final report; or
  - returned to the Investigating Officer for further investigation or revision as appropriate.
- b. If returned to the Investigating Officer, all additional information gathered and any further findings, conclusions and / or recommendations, if any, shall be incorporated in the report and placed in and become part of the Marine Safety Record.

#### 8.1.5 Transmission of Final Report to an Interested Party

Upon completion of the investigation, and any additional necessary review and / or approval as determined by the Administration, the final Investigation Report shall be promptly furnished to each Interested Party to the investigation.

In other than suspension, revocation or cancellation cases, where an Administrative Proceeding is likely to follow an investigation, the completed Investigation Report shall not be released. Instead, the completed Investigation Report and all evidence gathered in the course of the investigation shall be turned over to those conducting an Administrative Proceeding under Commonwealth of Dominica Law in conjunction with the Attorney General.

## 8.2 Reopening an Investigation

In exceptional cases and only for good cause, the Deputy Maritime Administrator may order an investigation reopened, in which case the provisions of the Commonwealth of Dominica law, the Regulations and these Rules shall apply as in the case of a new investigation, save that the Supplementary Report shall state that the original investigation had been reopened and shall take into account the original Investigation Report in setting forth any new findings, conclusions or recommendations.

Good cause shall include the presentation of significant new evidence which may materially alter the analysis and conclusions reached. In a case involving Substantially Interested States, the investigation shall be reopened and the new evidence fully assessed and referred to the other Substantially Interested States for appropriate input.

Upon the conclusion of any further investigative proceedings required, a Supplementary Report shall be submitted, together with any accompanying materials.

## 8.3 Reports to IMO

### 8.3.1 General

Reports to be submitted to the IMO shall take the form prescribed by the Administration in accordance with guidance promulgated by the IMO and undergo any necessary review and / or approval as determined by the Administration prior to submission.

### 8.3.2 Interim Report

Should the Administration, during the course of any investigation, be hindered due to the absence of information for any reason(s), which may delay or preclude the submission of a complete and timely report of investigation to IMO as required, the Administration may submit an interim report of known causal factors as they may appear along with recommendations based upon the information then available to satisfy the IMO reporting obligation.

### 8.3.3 Final Report

- a. A Marine Safety Investigation Report shall be submitted to the IMO for:
  - every Very Serious Casualty of a vessel documented in the Commonwealth of Dominica or if the Commonwealth of Dominica has conducted an investigation of a Very Serious Casualty as a Substantially Interested State;
  - other Marine Casualties and Marine Incidents where there are important lessons to be learned which may prevent or lessen the seriousness of such Marine Casualties or Marine Incidents in the future.
- b. When the Commonwealth of Dominica, as a Substantially Interested State, disagrees with all or part of a final Marine Safety Investigation Report prepared by another State, it may submit its own Marine Safety Investigation Report to the IMO.

### 8.3.4 Report Filing

Reports to the IMO shall be filed in a timely manner as quickly as practicable.

Reports to the IMO shall be filed through the Global Integrated Shipping Information System to the extent feasible.

## **8.4 Release of Reports and Information**

No Investigating Officer or any other person involved in a Commonwealth of Dominica Marine Safety Investigation shall release or otherwise make public any testimony, statements, Marine Safety Records, reports, or any other evidence used or referenced in the Marine Safety Investigation Report, unless so instructed by the Administration.

Any final Marine Safety Investigation Report shall not be released until it is approved by the Administration.

The Administration may, in its sole discretion, release for public information or cause to be published any Marine Safety Record, reports, documents, evidentiary matter or official statements pertaining to a Marine Safety Investigation or any portions thereof.

A final Marine Safety Investigation Report submitted to IMO shall be made available to the public and the shipping industry, or an effort shall be undertaken to assist the public and the shipping industry with information necessary to access the report where it is published by another State or organization.

## **8.5 Report Retention**

All Commonwealth of Dominica interim, final or supplemental Marine Safety Investigation Reports shall be retained in the Central Office for a period of five (5) years, unless deemed of historical importance requiring that they be kept for such longer period as determined by the Administration.

## **8.6 Investigation Expenses**

The owner or operator of a vessel investigated for the purposes of a Marine Safety Investigation shall pay all costs incidental thereto. All such amounts shall be invoiced and collected by the Administration.

# **PART II –MARINE INVESTIGATIONS OF OFFENSES AND OCCURRENCES**

## **1.0 INVESTIGATION PROCESS**

Investigations into suspected, alleged or reported Offenses or Occurrences shall be conducted in accordance with Part II of these Rules.

## **2.0 OFFENSES**

In accordance with Section 190 of the Act, an owner, charterer, manager, operator, Master, agent or person in charge of a vessel shall report to the Administration any instance of an Offense or an Occurrence.

Where an investigation proposes the suspension, revocation or cancellation of any license, certificate, permit or other document, or where any of the Offenses as defined in this Publication are alleged to have occurred, but have not been proved to the satisfaction of the Administration, further investigation shall take place.

## **3.0 CONTRAVENTIONS**

Where a contravention involves issues of a non-routine nature, or there is any question as to the nature of

the contravention, consultation with the Deputy Maritime Administrator or his designee shall be required. Complaints of authorities or other administrations lodged in diplomatic notes shall be forwarded to the Deputy Maritime Administrator or his designee.

#### **4.0 PIRACY, ROBBERY, HIJACKING OR TERRORISM**

In accordance with Section 190 of the Act, the owner, charterer, manager, operator, Master, agent or person in charge of a vessel shall report to the Administration any acts or attempted acts of piracy, robbery, hijacking or terrorism. Reports shall be provided in accordance with CDP-400, Part I, Section 3.1

All investigations into acts or attempted acts of piracy robbery, hijacking, or terrorism shall be conducted in accordance with the provisions of CDP-400, and to the full extent of and in accordance with any other national or international law or regulation and any International Conventions and Agreements to which the Commonwealth of Dominica is a party or which it has implemented.

#### **5.0 LABOR ISSUES**

If the Administration receives a complaint from a seafarer that is not manifestly unfounded or obtains evidence that a ship that flies the Commonwealth of Dominica flag does not conform to the requirements of CDP-800, Dominica Maritime Labour Compliance (or the MLC, 2006), or that there are serious deficiencies in the implementation of measures set out in the Document of Maritime Labour Compliance, the Administration shall undertake to investigate the matter and ensure that action is taken to remedy any deficiencies found.

When an investigation identifies labor-related issues, including crew competence and performance, fraud, forgery, misrepresentation or attempted bribery associated with applications for maritime certificates, such issues shall be referred, as appropriate, to the Deputy Maritime Administrator, whereupon Proceedings shall be conducted in accordance with the Maritime Act and all other applicable national and international laws and regulations.

If a legitimate complaint of a seafarer is established during an investigation, the Assistance Deputy Maritime Administrator with expertise in and oversight of investigations shall forward the complaint and supporting evidence for action to the Deputy Maritime Administrator with expertise in and oversight of seafarer issues. The Deputy Maritime Administrator with expertise in and oversight of seafarer issues or his/her designee shall communicate the complaint to the Company Designated Person or Designated Person Ashore, who shall then be expected to resolve the matter in accordance with the terms and conditions of employment to the satisfaction of both parties. The Administration may act as mediator, in accordance with all governing national and international laws and regulations, in such cases where conciliation cannot be reached within 20 days. Commonwealth of Dominica Policy on handling seafarer complaints may be found in CD-PL 04-13.

#### **6.0 LEGAL ISSUES**

When an investigation identifies or involves a legal issue, including, but not limited to:

- embargoes, treaties, tax, tariffs and trade issues;
- ships without documentation or fraudulent paperwork;
- ship arrest, crew abandonment by vessel owner or operator, repatriation;
- prosecution of offenders; or
- death at sea (other than from natural causes or as a result of a Marine Casualty),

Such issues shall be referred to the Assistance Deputy Maritime Administrator or his/her designee with expertise in and oversight of legal issues for resolution.

## **7.0 OCCURRENCES**

An event that is not classified as a Marine Casualty, a Marine Incident or an Offense and is not specifically identified in sections 3.0 through 6.0, above, shall be investigated by the Deputy Maritime Administrator and either resolved in accordance with established procedures or referred for resolution to the Administration's appropriate designee. Such an event includes an act or a failure to act contrary to the Act or the Regulations, including any rules made as provided by law and those contained in any International Conventions Agreements to which the Commonwealth of Dominica is a party or which it has implemented.

## **8.0 CRIMINAL CONDUCT**

At any time during the course of a Marine Investigation under Part II of these Rules, where it appears to the satisfaction of the Investigating Officer that evidence of criminal conduct under the Act exists, the Investigating Officer shall immediately notify the Deputy Maritime Administrator, who shall coordinate with the Attorney General of the Commonwealth of Dominica as necessary in accordance with Commonwealth of Dominica law.