

**REPUBLIC OF
THE MARSHALL ISLANDS**



**RULES FOR MARINE ADMINISTRATIVE AND
ADJUDICATORY PROCEEDINGS**

OFFICE OF THE MARITIME ADMINISTRATOR

NOTICE

This document is not intended to derogate from or substitute for any requirements of the Republic of the Marshall Islands Maritime Act 1990, as amended, or the Republic of the Marshall Islands Maritime Regulations.

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RULES FOR MARINE ADMINISTRATIVE AND ADJUDICATORY PROCEEDINGS

1.0 AUTHORITY AND PURPOSE

1.1 Authority

These Rules are promulgated under the authority of the Republic of the Marshall Islands (“RMI”) Maritime Act 1990 (“Act”), as amended, and the RMI Maritime Regulations (“Regulations”) published in MI-108.

1.2 Purpose

These Rules are intended to implement and enforce the provisions of the Act, the Regulations and International Conventions and Agreements to which the RMI is a party or which it has implemented.

These Rules shall apply to all Marine Administrative and Adjudicatory Proceedings conducted by the Office of the Maritime Administrator (“Administrator”) and/or its duly designated representative(s) involving vessels under the RMI flag and organizations, entities and persons subject to the Act and/or the Regulations.

2.0 DEFINITIONS

“Adjudicatory Board” means a board appointed on a case-by-case basis to conduct a Marine Adjudicatory Proceeding and render a final decision in a Contested Case. The Presiding Officer in any matter before that Adjudicatory Board shall be appointed by the individual who appoints the Adjudicatory Board. An Adjudicatory Board shall be appointed by the Senior Deputy Commissioner located in the Central Office, his designee or the Deputy Commissioner with expertise in and oversight of operations.

“Adjudicatory Hearing Officer” means an individual appointed on a case-by-case basis to conduct an Adjudicatory Proceeding and render a final decision in a Contested Case. An Adjudicatory Hearing Officer shall be appointed by the Senior Deputy Commissioner located in the Central Office, his designee or the Deputy Commissioner with expertise in and oversight of operations. **“Administrative Hearing Officer”** means an individual appointed on a case-by-case basis to conduct a non-judicial Administrative Proceeding regarding alleged violations of the Act, the Regulations and/or International Conventions and Agreements to which RMI is a party or which it has implemented. An Administrative Hearing Officer shall be appointed by the Senior Deputy Commissioner located in the Central Office, his designee or the Deputy Commissioner with expertise in and oversight of operations.

“Administrator” means the RMI Maritime Administrator which is specifically delegated the authority, power and functions under the Act to administer all matters pertaining to vessels of the RMI 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 RMI.

“Central Office” means the Administrator’s office maintained by its designee, Marshall Islands Maritime and Corporate Administrators, Inc., in the United States at Reston, Virginia.

“Contested Case” means an appeal from the decision of an Investigating Officer or a decision of an Investigations Review Board (“IRB”) conducting a Marine Administrative Proceeding.

“Investigations Review Board (IRB)” means a board appointed on a case-by-case basis by the Senior Deputy Commissioner located in the Central Office, his designee or the Deputy Commissioner with expertise in and oversight of investigations or operations, that shall review and make final determinations on issues pertaining to an investigation conducted by the Administrator, where necessary or appropriate. An IRB shall be comprised of individuals who possess the relevant position, knowledge of, experience with and/ or interest in the issue(s) to be reviewed. The Presiding Officer of the IRB shall be appointed by the individual who appoints the IRB.

“Marine Adjudicatory Proceeding” means a judicial proceeding conducted by an Adjudicatory Hearing Officer or an Adjudicatory Board in a Contested Case including, but not limited to, contested investigation findings, contested decisions of Marine Administrative Proceedings and contested suspension or revocation proceedings.

“Marine Administrative Proceeding” means a non-judicial proceeding, including suspension and revocation proceedings, conducted by an Investigating Officer, an Administrative Hearing Officer or an Investigations Review Board regarding alleged violations of the Act, the Regulations and/or International Conventions and Agreements to which the RMI 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 RMI. 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.

“Occurrences” are events that are not classified as a Marine Casualty, a Marine Incident or an Offense, but require investigation by the Administrator. They include any act or a failure to act contrary to the Act, the Regulations and/or any rules made as provided by law and those contained in any International Conventions and Agreements to which the RMI 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, 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 intended acts of armed robbery, piracy, hijacking or terrorism.

“Offenses” means any of the causes for revocation specified in Regulation 1.04.4 and/or in Section 830 of the Act that may result, upon proof of such cause(s) and/or grounds in the suspension or revocation of a seafarer’s 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. 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 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 Republic 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.

“Party” means an organization, entity or individual that is:

- a. the holder of any license, certificate or other document issued by RMI involved in the matter under investigation or the subject of Marine Administrative or Adjudicatory Proceedings;
- b. the shipowner or operator of an RMI vessel involved in the matter under investigation or the subject of Marine Administrative or Adjudicatory Proceedings;
- c. the shipowner or operator of a non-RMI vessel involved in the matter under investigation or the subject of Marine Administrative or Adjudicatory Proceedings; or
- 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 Adjudicatory Proceeding.

“Proceeding” means, generically, a Marine Administrative or Adjudicatory Proceeding.

“Recorder” means the individual appointed by the Presiding Officer to facilitate the administration of a Marine Administrative or Adjudicatory Proceeding per the terms of these Rules.

“Serious 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.

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

3.0 HEARING OFFICERS/BOARDS

3.1 Qualifications

Marine Administrative Proceedings may be conducted by:

- a. persons with authority conferred upon them by the Senior Deputy Commissioner located in the Central Office, his designee or the Deputy Commissioner with expertise in and oversight of operations;
- b. an Investigating Officer or Administrative Hearing Officer appointed by the Senior Deputy Commissioner located in the Central Office, his designee or the Deputy Commissioner with expertise in and oversight of operations; or

- c. a duly appointed Investigations Review Board.

An Assessor or Assessors may be appointed by the Senior Deputy Commissioner located in the Central Office, his designee, the Deputy Commissioner with expertise in and oversight of operations or a Presiding Officer to aid the Presiding Officer in technical matters. The Assessor(s) must not have participated in any way in the matters being reviewed.

Marine Adjudicatory Proceedings may be conducted by:

- a. persons with authority conferred upon them by the Senior Deputy Commissioner located in the Central Office, his designee or the Deputy Commissioner with expertise in and oversight of operations;
- b. an Adjudicatory Hearing Officer appointed by the Senior Deputy Commissioner located in the Central Office, his designee or the Deputy Commissioner with expertise in and oversight of operations; or
- c. a duly appointed Adjudicatory Board.

An Assessor or Assessors may be appointed by the Senior Deputy Commissioner located in the Central Office, his designee, the Deputy Commissioner with expertise in and oversight of operations or a Presiding Officer to aid the Presiding Officer in technical matters. The Assessor(s) must not have participated in any way in the predicate Marine Administrative Proceeding or Investigation from which the Marine Adjudicatory Proceeding has arisen.

3.2 Powers of Presiding Officers

A Presiding Officer conducting a Marine Administrative or Adjudicatory Proceeding under these Rules shall have power to:

- a. administer oaths;
- b. require persons having knowledge of the subject matter to attend the Proceeding or answer written questions, require the production of relevant evidence, including, but not limited to, books, papers, documents and records;
- c. rule upon the nature and admissibility of evidence; and
- d. board and inspect vessels and their appurtenances and inspect the scene of a Marine Casualty, Marine Incident, Occurrence or Offense.

A Presiding Officer shall exercise all power necessary or appropriate to ensure the orderly, impartial and effective conduct of the Proceeding and the development of all relevant and material facts.

A Presiding Officer, at his or her discretion, may admit the public, interested persons or their representatives and/or interested States by official representatives or observers to attendance at any Marine Administrative or Adjudicatory Proceeding; he or she may, where matters of confidentiality or questions of public security arise, preclude such attendance at his or her discretion.

A Presiding Officer may, at his or her discretion, put or permit to be put to witnesses such questions pertinent to the subject of the inquiry as may be offered by interested persons, States or their representatives. Parties shall be permitted to put such questions to any witnesses.

A Presiding Officer may, at his or her discretion, permit Parties to produce and introduce relevant evidence or testimony of witnesses and may permit Parties to argue any relevant contentions, either orally or by way of written submission(s).

4.0 MARINE ADMINISTRATIVE AND ADJUDICATORY PROCEEDINGS

4.1 Marine Administrative Proceedings

A Marine Administrative Proceeding be may be held for the revocation of any RMI certificate of competence, permit, license, or document; where any matter involving a Marine Casualty, Marine Incident, Offense or Occurrence is referred to an IRB by the Senior Deputy Commissioner located in the Central Office; where there is an allegation of violation of the Act, the Regulations and/or any International Conventions and Agreements to which the RMI is a party or which it has implemented; where the investigated Marine Casualty, Marine Incident, Offense or Occurrence is a Very Serious Marine Casualty or that, due to its nature, severity or complexity, cannot be resolved by a routine Marine Investigation in accordance with MI-260, Parts I or II; or when recommended by a Deputy Commissioner with expertise in and oversight of legal issues after review of the evidence in an investigation. Marine Administrative Proceedings may be held for all other matters at the discretion of the Senior Deputy Commissioner located in the Central Office, his designee or the Deputy Commissioner with expertise in and oversight of operations

4.2 Marine Adjudicatory Proceedings

An Adjudicatory Hearing Officer or an Adjudicatory Board may conduct a Marine Adjudicatory Proceeding to render a final decision in a Contested Case, including contested Marine Investigation findings or the contested outcome of a Marine Administrative Proceeding.

4.3 Summary Action

A Marine Administrative or Adjudicatory Proceeding is not required and summary action may be taken when the matter concerns a Marine Incident and the offense is one for which only a monetary penalty is authorized as provided by the Act.

The Senior Deputy Commissioner located in the Central Office, his designee or a Deputy Commissioner with expertise in and oversight of investigations, operations, inspections, seafarers, regulatory affairs or legal issues may, without prior notice, pending a Marine Administrative or Adjudicatory Proceeding, suspend any certificate of competence or document in any matter where the public health, safety or welfare is clearly, imminently and substantially endangered, requiring emergency action, including, but not limited to, involving the seaworthiness of a vessel or the competence of a crew member. Any such summary action must incorporate a statement of the nature of the danger and a finding of a need for emergency action. When summary suspension is ordered pending a Marine Administrative or Adjudicatory Proceeding for revocation or for other matters, such Proceeding shall be promptly instituted and determined.

Any Party against whom any summary action is directed may contest the action and request a Marine Adjudicatory Proceeding.

5.0 PROCEDURE

5.1 Notice

The Presiding Officer shall appoint a Recorder, who shall give written notice to all known Parties to their last known address, including all Substantially Interested State(s), at least 30 days in advance of any Marine Administrative or Adjudicatory Proceeding, specifying: the time, place and nature of the Proceeding; the legal authority and jurisdiction under which the Proceeding is to be held; the particular sections of any statutes, Regulations and/or Rules involved; and a short and plain statement of the matters asserted. If the Administrator is unable to state such matters in detail at the time the notice is served, the initial notice may be limited to a statement of the issues involved. Thereafter, upon application of any Party to the Proceeding, a more definite and detailed statement shall be furnished. Upon direction of the Presiding Officer, notice of the Proceeding may be given by public announcement through the Administrator's website. In any case where the suspension or revocation of any certificate of competence, permit or document is known at the outset to be in issue, a separate written notice to each holder thereof shall also list in detail any allegations or charges then made, including the predicate findings for suspension or revocation.

5.2 Time, Place, and Quorum

The Presiding Officer shall, in the absence of specific direction by the Senior Deputy Commissioner located in the Central Office, his designee or the Deputy Commissioner with expertise in and oversight of operations, set a time and place for any Proceeding and notify the Recorder, who shall notify the other members of the IRB or Adjudicatory Board and all Parties to the Proceeding.

Whenever feasible, any Proceeding under these Rules should be conducted in an office of the Administrator, but it may be conducted elsewhere when necessary or convenient, with the consent of the official ordering the Proceeding. A Proceeding under these rules shall only be conducted in the presence of a quorum, i.e., a simple majority of an Investigations Review Board or an Adjudicatory Board.

5.3 Creating the Record

The Record in a Marine Administrative Proceeding shall include: all evidence provided by the licensee to show compliance with all lawful requirements for the retention of the license; all other evidence provided by the Administrator, licensee or third parties, and all staff memoranda or data submitted to the Presiding Officer, to the members of the IRB, or to the Administrator in connection with consideration of the case. In a case of summary suspension, all evidence considered in making the determination for summary suspension in advance of the revocation proceeding, including any findings that the public health, safety or welfare was clearly, imminently and substantially endangered requiring emergency action, shall be included in the Record.

The Record in a Marine Adjudicatory Proceeding shall include: all pleadings, transcripts of testimony, motions and any interim rulings; evidence introduced into the Record; a statement of matters officially noticed; questions and offers of proof, objections and rulings thereon; proposed findings and conclusions; any decision, opinion or report by the Presiding Officer; and all staff memoranda or data submitted to the Presiding Officer, to an Adjudicatory Hearing Officer, to an Adjudicatory Board or to the Administrator in connection with consideration of the case.

Any Party to a Marine Administrative or Adjudicatory Proceeding may be represented by counsel, may introduce relevant testimony or documentary or other physical evidence into the Record and may question any witness testifying during the Proceeding.

All testimony and oral proceedings in a Marine Adjudicatory Proceeding shall be recorded and any part thereof shall be transcribed on request of any Party at the Party's expense.

5.4 Rules of Evidence; Judicial Notice

The following procedures concerning evidence shall be observed in any Marine Administrative or Adjudicatory Proceeding:

- a. Opportunity shall be afforded to all Parties in the matter to respond and present evidence and argument on all issues involved.
- b. Irrelevant, immaterial or unduly repetitious evidence shall be excluded. The rules of evidence, as applied in cases in the High Court of the Republic, shall be followed. When necessary to ascertain facts not reasonably susceptible of proof under those rules, evidence not admissible thereunder may be admitted (except where precluded by statute) if it is a type commonly relied upon by reasonably prudent men in the conduct of their affairs. Objections to evidentiary offers may be made and shall be noted in the record. Subject to these requirements, when a Marine Administrative or Adjudicatory Proceeding will be expedited and the interests of justice and of the Parties will not be prejudiced, any part of the evidence may be received in written form.
- c. Documentary evidence may be received in the form of copies or excerpts, if the original is not readily available. Upon request and when practical, parties shall be given an opportunity to compare a copy in evidence with the original.
- d. A Party may conduct such examinations and cross-examinations of witnesses as are required for a full and true disclosure of the relevant facts.
- e. A Party who is the subject of an allegation or charge may stipulate in writing to the Presiding Officer stating the Party's consent to have the matter considered as to the Party on the basis of a written submission on the Party's behalf. Such stipulation, if accepted, shall together with the written submission constitute a waiver of any future right to or requirement of a hearing, reserving always the right to a Marine Adjudicatory Proceeding on appeal. The Presiding Officer shall in such case set a reasonable time period for the written submission and any written responses and failure to timely file a written submission or response shall constitute a failure to appear under these Rules. When all submissions and responses have been filed, the Presiding Officer shall proceed with respect to such Party as if the Party had appeared and given his or her evidence at a hearing.
- f. Notice may be taken of judicially cognizable facts. In addition, notice may be taken of generally recognized technical or scientific principles. Matters of law including, but not limited to, the Marshall Islands Revised Code, the provisions of the Act, the Regulations, any relevant International Conventions and Agreements to which the RMI is a party or which it has implemented, these Rules and any Publications of the Administrator may be judicially noticed. Parties shall be notified either before or during a Marine Administrative or Adjudicatory Proceeding or by notice in preliminary reports or otherwise, of the material so noticed, including any staff memoranda or data, and they shall be afforded an opportunity to contest the material so noticed.

5.5 Admissibility of Evidence

The Presiding Officer shall determine the admissibility of all evidence presented during any Marine Administrative or Adjudicatory Proceeding in accordance with §5.4 above.

5.6 Public Statements

At no time shall any RMI representative, other than the Senior Deputy Commissioner located in the Central Office or an RMI representative specifically designated for such purpose by the Administrator issue any public statement relating to any Proceeding other than the date, time, place and subject matter of the Proceeding. All public inquiries and requests for information concerning any Marine Administrative or Adjudicatory Proceeding shall be referred to the Deputy Commissioner with expertise in and oversight of operations or communications or the Senior Deputy Commissioner located in the Central Office.

5.7 Admission to Proceedings

The Presiding Officer may require that any or all proceedings be held in camera. The Presiding Officer may, at his or her discretion, admit interested persons and/or interested States by official representatives or observers to attendance at any proceedings.

5.9 Pre-Proceeding Conference

The Presiding Officer may conduct at least one pre-Proceeding conference, by the communication means of his choosing. All Parties to the Proceeding shall be afforded the opportunity to participate in the pre-proceeding conference.

A pre-Proceeding conference may be used to clarify the issues to be considered, including any substantive or procedural matters, and/or to set a timetable to prepare for or schedule the Proceeding.

5.10 Opening of Proceeding

The Presiding Officer shall open any Proceeding with a statement that it is being conducted pursuant to the provisions of the RMI Administrative Procedure Act (MIRC, Title 6, Chapter 1 (2003) and the authority of the Act, the Regulations and these Rules. The Presiding Officer shall then proceed to state the subject matter of the Proceeding, including any allegation(s) made against any Party. The Administrator, by its official representative, all attending Parties, any interested persons and any interested States (by their official representatives) shall then be called upon to enter their appearances for the Record. Where applicable, the Presiding Officer shall accept into the Record any written submission(s) in lieu of an appearance submitted by a Party.

5.11 Preliminary Matters

After the opening of the Proceeding, any preliminary matters shall be heard and ruled upon. Unless precluded by law, informal disposition may be made of any Marine Administrative or Adjudicatory Proceeding by stipulation, agreed settlement, consent order or default. The Administrator and each Party shall then be afforded an opportunity to make an opening statement of position, including any charges or defenses, and what is intended to be established by the evidence to be submitted.

5.12 Development of Further Evidence

The Presiding Officer shall conduct a full and fair inquiry into the cause(s) of the Marine Casualty or Marine Incident or the circumstances of the alleged Offense or Occurrence, with the purpose of establishing any violation(s) of the Act, the Regulations and/or any International Conventions and Agreements to which the RMI is a party or which it has implemented, and making such recommendations as will aid in preventing recurrence. In the course of the Proceeding, the Presiding Officer shall swear any witnesses and interpreters. The Presiding Officer shall allow the Administrator and each Party to examine and cross-examine any witnesses testifying and shall afford to himself or herself and any member(s) of the IRB or Adjudicatory Board or any Assessor(s) a like opportunity.

5.13 Witnesses

5.13.1 Summons

A Presiding Officer in any Marine Administrative or Adjudicatory Proceeding shall be authorized to issue a summons directed to any individual, entity or organization that compels the party summoned to attend and present testimony and/or to produce documentary or physical evidence. Where the party summoned is within the jurisdiction of the RMI, application may be made to a court of the RMI for an order compelling such witness to attend. Witnesses may be represented by counsel and such counsel may participate in the proceeding on behalf of the witness. In an appropriate case, application may be made to a Court of the RMI for the issuance of letters rogatory addressed to a court of competent jurisdiction outside the Republic, requesting the cooperation of such court in ordering the appearance and the taking of testimony of a witness within its jurisdiction. Where none of the above is applicable, the summons shall be prepared by the Recorder or the Presiding Officer, as appropriate, in the form of an invitation to appear and testify at the Proceeding or to produce documentary or physical evidence upon such terms as are contained in the summons.

The Presiding Officer shall include in any submission to a court of the RMI a request that any summons or letters rogatory require that any individual, entity or organization summoned to attend a Proceeding under these Rules shall disclose in writing to the Recorder or Presiding Officer, at least 15 days before the date of opening of the Proceeding, a list of any documents or physical evidence in his or her possession, custody or control which may bear upon the matter and shall produce, as required by the Recorder or Presiding Officer, a specified number of copies of designated documents at the commencement of the Proceeding. Where a summons is not applicable, the Presiding Officer shall request that any individual, entity or organization produce to the Recorder or Presiding Officer, at least 15 days before the date of opening of the Proceeding, a written list of any documents or physical evidence in his or her possession, custody or control which may bear upon the matter; and produce, as requested by the Recorder or Presiding Officer, a specified number of copies of designated documents at the commencement of the Proceeding

5.13.2 Deposit of Documents

Any witness, whether or not a Party, who is summoned to attend a Marine Administrative or Adjudicatory Proceeding shall, if he or she is the holder of any certificate of competence, permit or other document issued by the RMI, be required by the summons to produce such certificate of competence, permit or document at the Proceeding and shall deposit it with the Presiding Officer, who shall have discretion to return it to the holder at the conclusion of the Marine Administrative or Adjudicatory Proceeding or to remit it to the Recorder for safekeeping pending further consideration or until issuance of a decision. Where the Marine Investigative Report recommends the suspension or revocation of a certificate of competence, permit or document so deposited, the official ordering the investigation may, in

his or her discretion, cause the Recorder to retain the subject certificate of competence, permit or document until receiving the final decision of any Marine Administrative or Adjudicative Proceeding in the matter, including any appeal.

5.13.3 Testimony by Deposition or Written Questions

For good cause, on his or her own initiative or upon application of any Party, the Presiding Officer may permit the taking of the oral or written testimony of any witness, under oath. Where witness testimony is to be upon oral deposition, the Presiding Officer shall give sufficient advance notice to all Parties. Where the testimony is to be by written questions, the Presiding Officer shall afford counsel for the Administrator, himself or herself, any other Board member(s), any Assessor (s) and each Party an opportunity to formulate and present questions to the witness and the Presiding Officer may, in his or her discretion and subject to these Rules, permit any other legitimately interested individual, entity or State to do likewise.

5.13.4 Order of Appearance and Exclusion

Whenever possible, the first fact witnesses to testify orally shall be those who are also Parties. A fact witness shall, even if a Party, be excluded from the Proceeding during the oral testimony of any other fact witness, until such time as the fact witness has completed his or her oral testimony. A fact witness who has not completed his or her oral testimony at the adjournment of any Proceeding shall be instructed by the Presiding Officer not to discuss his or her testimony with any person prior to retaking the stand.

5.13.5 Oath

Prior to giving any testimony, whether oral or written, the witness shall take or subscribe before the Presiding Officer or some other person authorized in the jurisdiction where the testimony is being taken to administer oaths, an oath in the following form:

“I do solemnly swear (or affirm) that the evidence I am about to give is true in every respect.”

If an interpreter is to be utilized, the interpreter shall take or subscribe before the Presiding Officer or some other person authorized in the jurisdiction where the testimony is to be taken to administer oaths, an oath in the following form:

“I do solemnly swear (or affirm) that I will well and truly and to the best of my ability discharge the duties of interpreter and translate from English into <insert language to be translated>, and from <insert language to be translated> into English such questions and answers as shall be put to the witness or participant and received from the witness or participant in the proceeding now pending, as well as any and all additional statements or utterances produced by the witness or participant.”

5.14 Experts

A Presiding Officer, in proper instances and with the advance approval of the official ordering the Marine Administrative or Adjudicatory Proceeding, may retain experts to give testimony on the basis of relevant evidence and information furnished to them. All expert testimony shall be given under oath if

given orally, but no oath need accompany written evidence prepared and submitted in the Proceeding by experts.

5.15 Medical Examination

Where the medical condition of any person(s) is a material issue, such person(s) may be requested to undergo a medical examination or such examination may be made a condition of his or her standing to lodge an allegation or offer evidence.

5.16 Retention of Physical Evidence

All physical evidence collected in the course of a Marine Investigation or a Marine Administrative or Adjudicatory Proceeding, whether or not referred to or admitted into the Record in the course of a Proceeding, shall be retained at the office of the Administrator ordering the Proceeding until the Senior Deputy Commissioner located in the Central Office, his designee or the Deputy Commissioner with expertise in and oversight of operations has received and acted upon the decision or the Proceeding has been concluded and the time for appeal has expired. If the Administrator has received a copy of a petition for review to the High Court of the RMI, the physical evidence shall be forwarded to the High Court within 60 days of the receipt of the copy of petition for review or within such further time as allowed by the High Court. If an appeal has not then been lodged, such physical evidence shall be returned to its owners if they so desire.

The Administrator shall inventory all physical evidence collected by any practical means and include such inventory in the official Record of the Proceeding before returning such physical evidence to its owners or otherwise disposing of that evidence.

5.17 Failure to Appear

If any duly summoned Party fails to appear, the Proceeding may be conducted as to that Party *in absentia*. Failure of any duly summoned witness to appear may, in the discretion of the Presiding Officer, constitute good cause for a continuation or adjournment of the Proceeding.

5.18 Continuance of Proceeding

The Presiding Officer may, for good cause shown on the Record, either on his or her own initiative or upon the request of the Administrator or a Party, continue any Proceeding from day to day or adjourn such Proceeding to a later date or to a different place by announcement at the Proceeding or by other appropriate notice. In this regard, careful consideration shall be given to the future availability of witnesses and the prompt dispatch of any vessel(s) involved.

5.19 Closing Argument

The Presiding Officer shall, prior to the close of the Proceeding, afford the Administrator and each Party an opportunity to make oral or, in the Presiding Officer's discretion, written argument of any relevant contentions, including submission of proposed findings, conclusions and recommendations. Any or all written arguments may be received only at the discretion of the Presiding Officer and within a period specified by him or her following the close of the Proceeding and the Presiding Officer shall in such case require that copies of same be transmitted to all other participants.

5.20 Closing the Proceeding

When oral argument, if any, has been concluded and any remaining matters have been disposed of, the Presiding Officer shall declare the Proceeding closed.

5.21 Proposal for Decision

Unless precluded by law, informal disposition may be made of any Proceeding by stipulation, agreed settlement, consent order or default.

When, in any Marine Administrative or Adjudicatory Proceeding, the decision, if adverse to a Party to the Proceeding other than the Administrator, shall not be made final until a proposal for decision is served upon the Parties and an opportunity is afforded to each Party adversely affected to file exceptions and present briefs and oral argument to the officials who are to render the final decision. The proposal for decision shall contain a statement of the reasons therefore and of each issue of fact or law necessary to the proposed decision. The parties, by written stipulation, may waive compliance with this Section.

5.22 Decision and Orders

A final decision or order adverse to a Party in a Contested Case shall be in writing or stated verbatim in the Record. A final decision shall include findings of fact and conclusions of law, separately stated. Findings of fact, if set forth in statutory language, shall be accompanied by a concise and explicit statement of the underlying facts supporting the findings. If, in accordance with these Rules, a Party submits proposed findings of fact, the decision shall include a ruling upon each proposed finding. A copy of the decision or order shall be promptly provided to each Party to the Proceeding.

5.23 Proceedings on Remand.

Where the Senior Deputy Commissioner located in the Central Office, his designee or the Deputy Commissioner with expertise in and oversight of operations remands any matter for further proceedings, all provisions of these Rules shall apply as in the case of a new Proceeding.

6.0 EVIDENCE OF CRIMINAL CONDUCT

If at any time during the course of a Marine Administrative or Adjudicatory Proceeding under these Rules it appears to the satisfaction of an IRB, an Adjudicatory Hearing Officer or an Adjudicatory Board that evidence of criminal conduct under the Marshall Islands Revised Code, the Act, the Regulations and/or any International Convention or Agreement to which the RMI is a party or which it has implemented exists, the Presiding Officer shall immediately notify a Deputy Commissioner with expertise in and oversight of legal issues, who shall coordinate with the Marshall Islands Attorney General as necessary.

Should a Marine Offense or criminal act occur or be occurring in the jurisdiction of a State or territory that is a signatory to the 1988 Suppression of Unlawful Acts Convention and Protocols, the Administrator may waive flag State jurisdiction and allow that State or territory to assert jurisdiction over the case.

Should a Marine Offense or criminal act occur on the high seas, the Administrator shall notify and offer jurisdiction to the State government(s) of the victim(s) and the accused(s). If no State accepts jurisdiction, the Administrator shall refer the matter to the RMI Attorney General for further handling.

The Administrator may waive the Republic's jurisdiction where such waiver is deemed necessary and appropriate to the prosecution of a Marine Offense or criminal act.

7.0 PENALTIES

7.1 Failure to Cooperate

In the event of any RMI shipowner's or its representative's failure to cooperate fully in or attempt to inhibit or obstruct any Proceeding, any or all of the following consequences may result with respect to the RMI vessel directly involved or to any other RMI vessel(s) of the same ownership:

- a. cancellation from the Registry of the RMI;
- b. suspension or revocation of the Certificate of Registry;
- c. refusal to issue a Certificate of Cancellation from the Registry of the RMI or otherwise to give the consent of the RMI to a transfer of ownership or registry;
- d. refusal to accept registration or re-registration in the Registry of the RMI; or
- e. liability for a monetary penalty which shall not exceed US\$50,000.

In the event of failure of holder of a certificate of competence or other certification to cooperate fully in any Proceeding, any or all of the following consequences may result:

- a. suspension or revocation of the certificate of competence or other certification held, in keeping with these rules; and/or
- b. refusal to renew or re-issue any certificate of competence or other certification held, before or after expiration; and/or
- c. liability for a monetary penalty which shall not exceed US\$15,000.

8.0 JUDICIAL REVIEW

A Party who has exhausted all administrative remedies available within the Office of the Maritime Administrator and who is aggrieved by a final decision in a Contested Case, is entitled to judicial review of the decision pursuant to the RMI Administrative Procedures Act (MIRC, Title 6, Chapt. 1, §117 (2003)).