

A REVIEW OF THE MAIN CONVENTIONS AND LEGISLATION ON THE
MARINE ENVIRONMENT AND SEA RESCUE —
LIABILITIES FOR VESSEL SOURCE POLLUTION IN THE GULF OF FINLAND

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ABBREVIATIONS

AIS	Automatic Identification System
AYK	Regional Environmental Centre (alueellinen ympäristökeskus)
CDEM	construction, design, equipment and manning
ECHR	European Convention of Human Rights
EEZ	exclusive economic zone (vaativa talousvyöhyke)
EMSA	European Maritime Safety Agency
EP	European Parliament
EU	European Union
Euratom	European Atomic Energy Community
FBG	Finnish Border Guard
FOC	Flag of Convenience
GOFREP	Mandatory Ship Reporting System under SOLAS Regulation V/11 with shore-based facilities at TALLINN TRAFFIC, HELSINKI TRAFFIC and St. PETERSBURG TRAFFIC (alusliikenteen ilmoittautumisjärjestelmä)
HELCOM	Helsinki Commission – Baltic Marine Environment Protection Commission
HNS	Hazardous and Noxious Substances
IAMSAR	International Aeronautical and Maritime Search and Rescue Manual
ILO	International Labour Organization
IMO	International Maritime Organization
IOPC	International Oil Pollution Compensation foundation
IOPP	International Oil Pollution Prevention certificate
ITF	International Transport Workers' Federation
ISPS	International Ship and Port Facility Security Code
LLMC	International Convention on the Limitation of Liability for Maritime Claims
MOU	Memorandum of Understanding
SafeSeaNet	European Platform for Maritime Data Exchange between Member States' maritime authorities, an on-line/Internet solution based on the distributed database concept
SDR	An international reserve asset, created by the IMF in 1969
SIRENAC	A ship inspection database
SOLAS	Safety of Life at Sea (convention)
STCW	Standards of Training, Certification & Watchkeeping
SYKE	Finnish Environment Institute
VTS	Vessel Traffic Service
YM	(Finnish) Ministry of the Environment (Ympäristöministeriö)

1 INTRODUCTION

In addition to sea rescue and oil pollution prevention, both traffic fluency and safety are regulated by several international treaties, orders, guidelines and EU legislation. International treaties relating to marine traffic are compiled mainly by the International Maritime Organisation (IMO). These conventions come into force after the rules of qualifications have been fulfilled. EU member states have to comply with treaties adopted in the EU. The member states may also observe other conventions than those approved by the EU. (UM kv-sopimukset and YM tiedote 23.1.2008)

The countries on the Gulf of Finland have paid special attention on the marine safety. This has been necessary because of the challenging nature of the area, low-lying coast line, narrowness of the shipping lanes and cross traffic. Oil spill prevention and sea rescue are also challenging because of the highly vulnerable marine environment of the Gulf of Finland. In the year 2010, the volume of oil transported in the Gulf of Finland was about 200 million tons, and this figure is expected to go up to 260 million tons by the year 2015. (UM puhe 26.4.2002; Vihreä Lanka artikkeli 6.10.2000; SYKE puhe 11-12.3.2003; YM tiedote 29.9.2004)

2 INTERNATIONAL MARITIME LAW AND GENERAL NATIONAL LEGISLATION IN FINLAND

Primary sources of international law include general or special international treaties, international custom law and common justice law recognized by civilized countries. Secondary sources are court decisions, articles by researchers or scientific theory. The most important sources of international law are common law principles or regulations binding every State following the course set by international legal cases. Treaties can be classified into two categories based on the number of parties involved: bilateral and multilateral treaties. Bilateral treaties are made between two States, multilateral ones between several States.

International law is incorporated into national law by a monistic or dualistic system. In Finland, treaties are implemented by direct enforcement, without re-writing conventions or standards. Such treaties are published in the Treaty Series of Finland (SopS). (Hakapää 2003, p. 17, 21, 23, 25, 29-30 and Hollo–Parkkari, p. 59-62)

International conventions on the environment often contain obligatory regulations on penalties, and legislation is needed to give them the force of law in Finland. Regulations are not binding without a valid law in Finland. Many treaties under international law do not gain legal force internationally until a certain number of States have ratified or signed them. In addition, it is often required in international maritime law that the merchant fleets of the States having ratified or signed a treaty represent a certain percentage of the gross capacity of the world's merchant marines. (Nordström, p. 140-142)

Finland must comply with adopted international treaties and EU legislation. EU legislation contains directives and regulations relating to the environment. Directives must be transposed within a certain time limit, whereas regulations are often not brought into force singly. (Hakapää 2003, p. 22)

Jurisdiction in a State is divided into the powers of legislation, execution and jurisdiction. A State has full jurisdiction or sovereignty inside its borders (territorial jurisdiction) regarding both physical and judicial people. The territorial jurisdiction also comprises injurious actions within a State's territory, even though the action is not committed in the state. Finnish legislation includes several statutes on the marine environment, pollution, sea rescue and marine safety. (Hakapää 2003, p. 188-189)

2.1 MARINE ENVIRONMENT AND POLLUTION

The liability principle in the international jurisdiction of States is to avoid harmful actions against other States and citizens. The prohibition of pollution is considered a common legal principle of environmental legislation. States must exercise extreme caution to prevent environmental damage through their activities. The Principle of Caution and Carefulness is embodied in Finland in the Environmental Protection Act (4.2.2000/86). The state can be discharged of its responsibility in case of a force majeure, e.g. due to a force of nature, state of war or other emergencies or constraints. The state is liable for compensation in case it violates its international commitments. (Hakapää 2003, p. 244-247, p.252; Hollo–Parkkari, p. 75, 126-128; Timo Koivurova; Molenaar, p. 45-46)

For international conventions and national legislation relating to the marine environment and pollution, see Chart 1. In addition to conventions and legislation showed in the Chart 1, a great number of other legislation and treaties also exists. Acts impairing the quality of the aquatic environment or natural values and other acts causing health hazard are referred to in the Water Act (19.5.1961/264). These apply to the EEZ and territorial seas of Finland. The Environmental Protection Act is enforced in case of possible environmental pollution, excluding pollution from ships referred to in the Act on the Prevention of Pollution from Ships (16.3.1979/300)¹.

¹ *The Act on the Prevention of Pollution from Ships (16.3.1979/300) has been revoked and replaced by the Act on Maritime Environment Protection (29.12.2009/1672) and Act on Oil Damage Prevention (29.12.2009/1673) which came into force on 1st January 2010.*

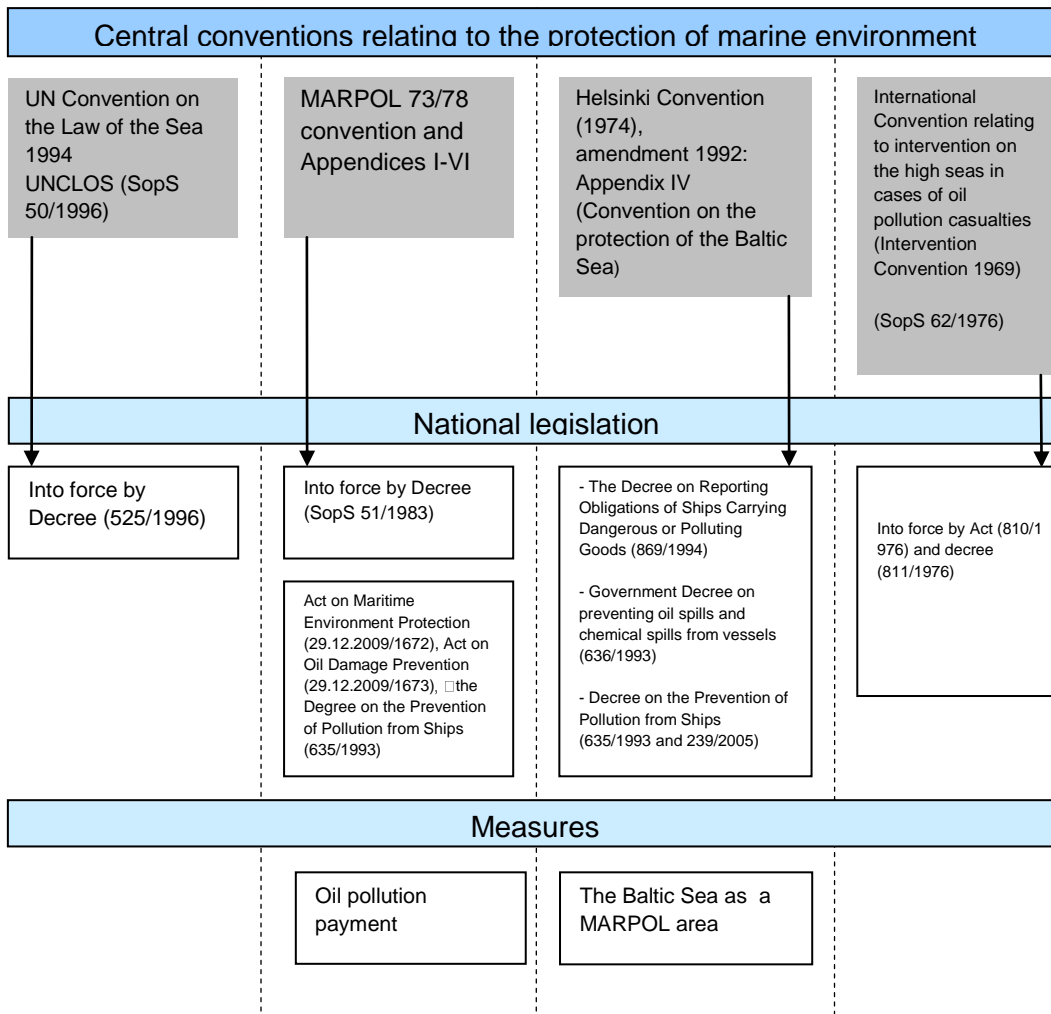


Chart 1 Conventions and national legislation relating to the protection of the marine environment

2.2 SEA RESCUE AND SAFETY

For international conventions and national legislation relating to maritime rescue and safety at sea, see Chart 2. The Chart also includes continuous supervisory activities carried out on grounds of the treaties and legislation. The Memorandums of Understanding (MOUs) facilitate the arrangement of international rescue operations.

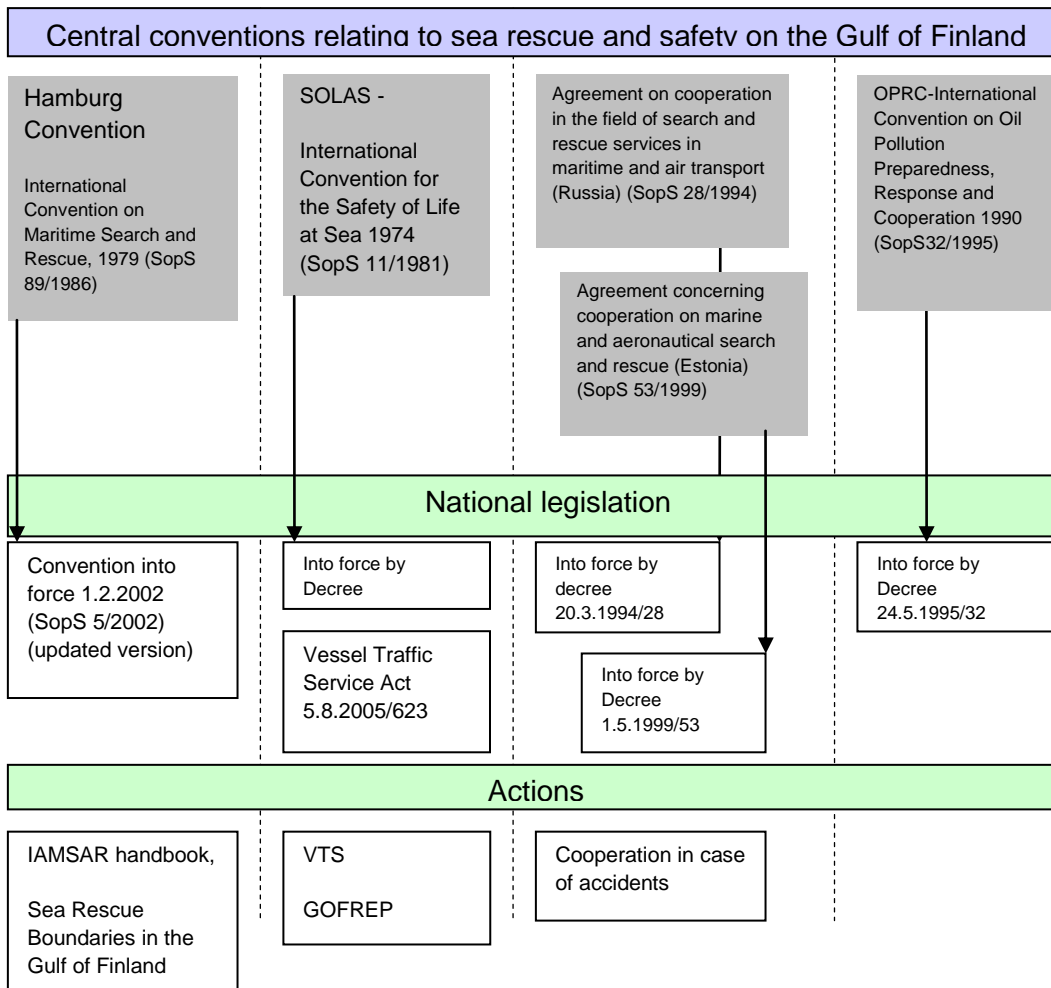


Chart 2 Conventions and national legislation relating to sea rescue and safety

2.2.1 EU LEGISLATION AND OTHER IMPORTANT TREATIES

Accidents at sea, for example the loss of such ships as the Erika on the French coast (1999) and the Prestige on the Spanish coast (2002) have speeded up the development of maritime safety legislation. To improve maritime safety, the European Parliament and Council adopted legislation packages Erika I, Erika II and Erika III. The Erika I package includes e.g. the Directives on ship inspections and surveys (2001/105/EY) and ship safety and pollution prevention (2001/106/EY). The establishment of the Maritime Safety Agency (EMSA) also included a package that maintains the Safe Sea Net service for information about transportation of hazardous substances. (Safeseanet 09/2005 and EMSA esite 08.06.2006)

The Erika II package includes e.g. Directive (2002/59/EY) establishing a Community vessel traffic monitoring and information system. This Directive includes the ships' obligation to report and to use AIS technology. The Erika III package (2005/0242(COD)) includes seven new proposals for directives. The package includes an obligation to insure ships sailing under third-nation flags immediately after arrival in the maritime territory of a member country. In addition, the proposals aim to improve port state

control and ship traffic observation by amending classification society rules and developing a uniform system of accident investigation.

Finland has joined the Paris Memorandum of Understanding on Port State Control (MOU), and so have the EU and Russian shipping authorities. It came into force by a Government Decree on Inspecting Foreign Ships in Finland (1.7.2004/619). The SIRENAC database system was created in association with the Paris MOU. Part of the inspections relating to ship safety and pollution are carried out under the Act on the Control of Vessel Safety (17.3.1995/370) and by paragraphs of the PSC Directive, Directive 2002/84/EC of the European Parliament and the Council. Under the Act on the Control of Vessel Safety, the Finnish Maritime Administration has to supervise compliance with the statutes and regulations. Information relating to the PSC Directive must be disseminated by the competent authorities (the Act on the Control of Vessel Safety, Sections 7-17).

2.3 COMPENSATION AND INSURANCE

Compensation for oil spill damage is based on a strict liability of shipowners, international compensation funds and oil pollution compensations in Finland. In addition to the Fund for the International Oil Pollution Compensation (IOPC), which was established in Brussels in 1971 and modified in London in 1992, the International Oil Pollution Compensation Supplementary Fund was founded in 2003. This package is called the Fund Convention. (EU-lehti 29.04.2004, p. 40)

In Finland, determining the liability for damage was made easier after the administrative payment for oil spill damages in the Finnish EEZ came into force on the 1st of April 2006 (22.12.2005/1163). Under the Act on the Prevention of Pollution from Ships (16.3.1979/300), the Finnish Border Guard (FBG) can order the shipowners or the shipping company to pay compensation (2:19b-r). Responsibilities in case of oil spills are specified in the Maritime Act 10:3-5. This Act also describes the other responsibilities and duties of persons steering and guiding the vessel at the time of an accident (Ch 6-8). Finland is a party to both the Compensation Fund (IOPC) and conventional treaties.

Compensation for accidents claiming lives, resulting in personal injuries and causing freight losses are specified in the Maritime Act Ch 9. The compensation payments are determined based on the International Convention on Limitation of Liability for Maritime Claims (LLMC) 1976, including the amendments of 1996. Amendments to the Maritime Act Ch 9 came into

force on the 13th of May 2004. Both payments are determined in SDR amounts according to the gross weight of the vessel (Maritime Act Ch 9).

3 THE GULF OF FINLAND AS A MARINE TRAFFIC ENVIRONMENT

Marine zones are divided into internal waters, territorial waters, island waters (only in island states), extra zones, exclusive economic zones (EEZ), environment protection zones, the open sea, continental shelf and the bottom of deep-sea. Territorial waters consist of internal and external waters (territorial sea). Internal waters include the closest area to the coastline of the Coastal State. Territorial sea (external waters) is adjacent to the internal waters. (Munawwar, p. 15, 148, 151 and Hakapää 2003, p. 325)

The states on the Gulf of Finland (Estonia, Finland and Russia) rule over their territorial waters and are able to intervene in activities carried out in this area, both on water and in the air space. (Hakapää 2003, p. 326, 330, 338-351, 374)

3.1 SPECIAL CHARACTERISTICS OF THE GULF OF FINLAND

In the figure (FBG) (Figure 1), territorial waters are shown as a blue continuous line. The red marks inside the territorial waters are shipping lanes. Safe shipping areas are marked as blue areas on the map. The blue dotted lines in the territorial waters of Finland are boundary lines of the internal waters. The international marine area and high seas are between the blue continuous lines, or in the middle of the Gulf of Finland. The EEZ is not shown on the map, but it lies between the territorial waters and the high seas. The EEZ is not included in the territorial waters. (RVL esitys 2006)

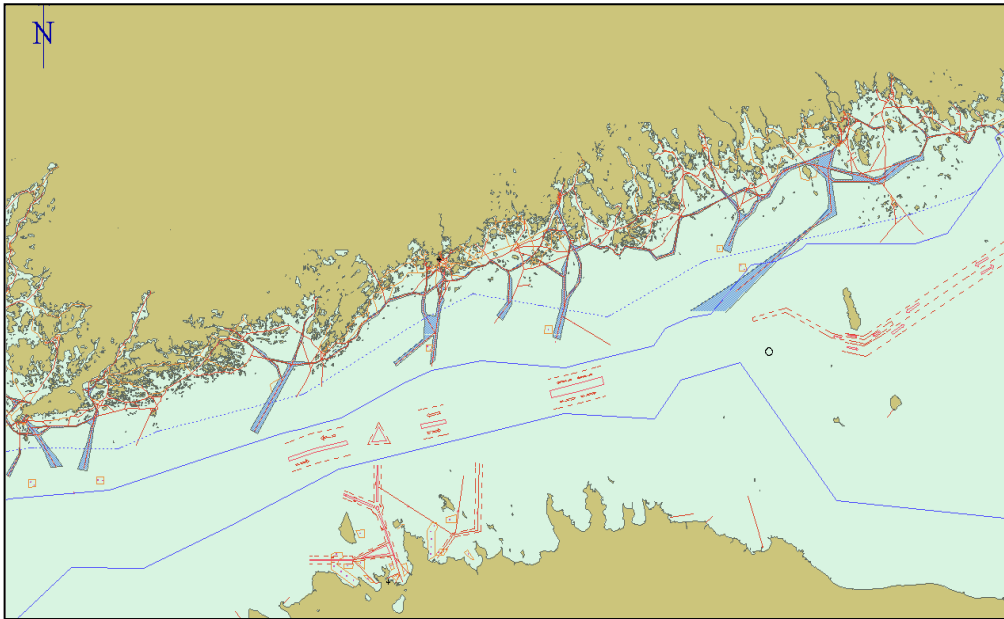


Figure by the Finnish Border Guard (FBG)

Figure 1 Boundary lines of areas in the Gulf of Finland.

3.1.1 RESPONSIBILITIES FOR SEA RESCUE AT THE TIME OF AN ACCIDENT

The Finnish Boarder Guard (FBG) shall take charge of accidents that occur in the territorial seas of Finland. The leading sea rescue authority shall ensure the planning of the rescue mission, lead the search and rescue operations and provide education. Sea rescue includes the search and rescue of people in danger at sea, first aid and radio communications. The duties do not include rescuing people on land, in ports, on islands or in internal waters, or salvage. (Sisäasiainministeriö MPL, p.75 and Suuronnettomuusopas, p.291)

In addition to the FBG, rescue operations are managed by the Emergency Response Centre, the Finnish Meteorological Institute, regional rescue services, the Finnish Maritime Administration, the Finnish Institute of Marine Research, the police, the Finnish Defence Forces, the Customs, social affairs and health authorities and environmental authorities (Act on Sea Rescue 1:3). The FBG cooperates with other organs, such as the Red Cross Finland, Crisis Management Organization and voluntary sea rescuers.

Within the Finnish territory, responsibility for oil prevention is assumed by the regional rescue services, Regional State Administrative Agencies (AVI) and, in challenging areas and accidents

demanding international liaisoning, SYKE shall be in charge of the oil spill prevention. SYKE is also in charge of oil spill prevention on high seas.

At the time of an accident, rescue is of primary importance. At the scene of the accident, the master of the vessel shall lead the evacuation and rescue operation from the ship. In the Gulf of Finland, the rescue operation is headed by the Search and Rescue Mission Coordinator (SMC) from the Border Guard (FBG). The FBG will assign tasks to other organizations via the Maritime Rescue Coordination Centre (MRCC).

The Search and Rescue Mission Coordinator (SMC) is in charge of the rescue operation at the scene of the accident. If required, the SMC will receive the support referred to in the Act on Sea Rescue Section 5a, and planning and operational assistance from the executive team of the MRCC, or in major accidents or dangerous situations, from the extended executive team. (Decree on Sea Rescue 12 §)

The Chart 3 shows the main sea rescue authorities and the tasks performed by them at the scene of an accident. The master of the vessel will primarily liaison with the SMC.

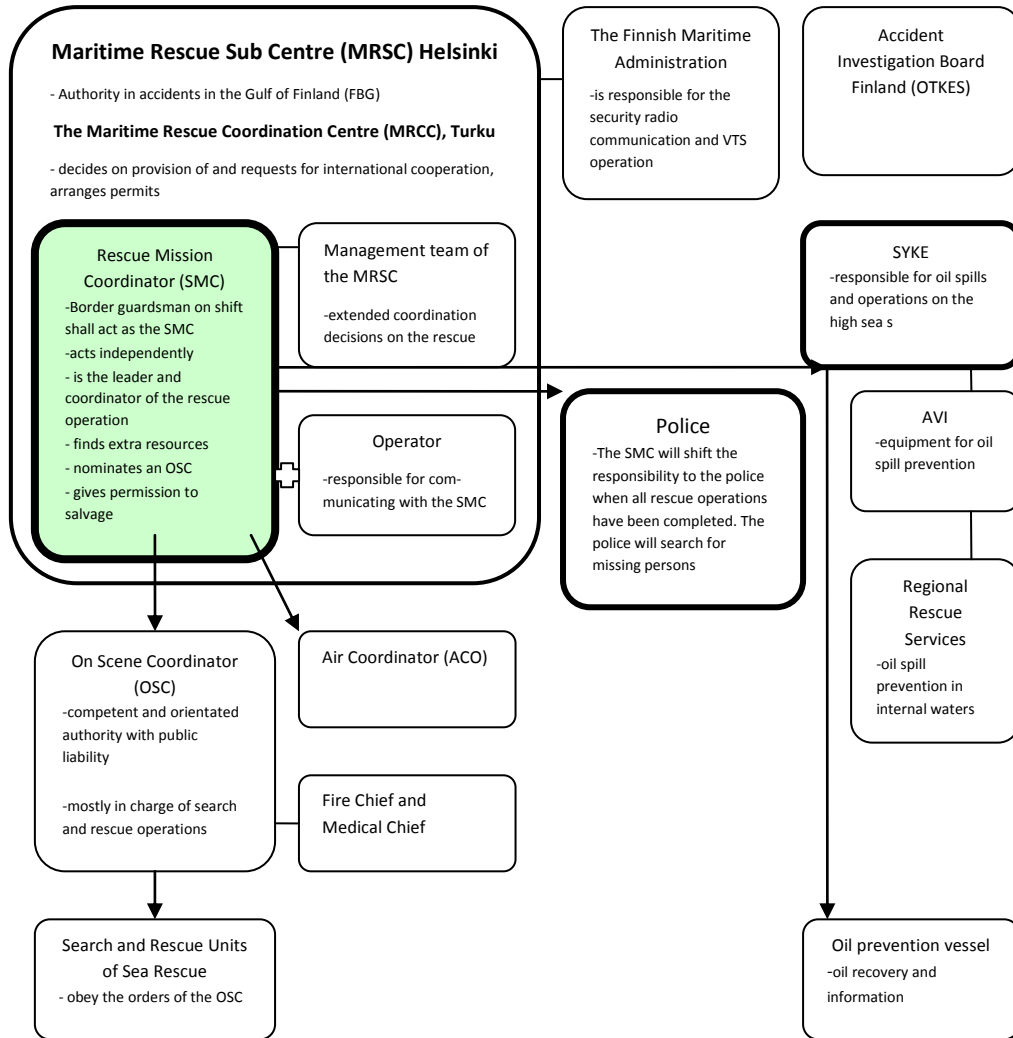


Chart 3 The main tasks and management responsibilities in a rescue mission

The SMC shall select a competent and orientated authority to be in charge of the scene of the accident and flight coordination, usually the chief of the search and rescue operation, or exceptionally another person competent in this task, for example the master of a merchant ship. The responsibility provisions in the Act on Sea Rescue are followed until the rescue mission of a multi-scale accident is finished. The work continues under authorities responsible for preventing oil and chemical spills. A management team is formed if several authorities are involved in the prevention work (Act on Sea Rescue, Section 26). (Act on Sea Rescue 26§, Suuronnettomuusopas, p. 291 and Uudenmaan ja Kaakkois-Suomen YK p. 10-13)

Oil prevention volunteers mainly take part in the clean-up operation. When the salvage company comes to rescue the property, i.e. the cargo and the vessel, the FBG leaves the scene and the police takes charge of the operation. Either a shipping company or an insurance

company will authorise a salvage company to rescue the vessel and the cargo. (Uudenmaan ja Kaakkois-Suomen YK, p. 10-13 and Sisäasiainministeriö MPO, p. 10 and 22)

3.1.2 PREVENTION OF VESSEL SOURCE OIL POLLUTION IN RESCUE OPERATIONS

All parties including the Finnish Border Guard, rescue services, the Finnish Maritime Administration, SYKE and AVI must be involved in the prevention of vessel source oil pollution. The ultimate responsibility rests with the Ministry of the Environment. The next authority in line after the Ministry is SYKE, which nominates a coordinator responsible for oil spill prevention. The coordinator responsible for oil spill prevention nominates the authority in charge of oil spill prevention at sea.

The Maritime Rescue Coordination Centre (MRCC) reports on an accident or other damages to the on-call environment damage service of the Finnish Environment Institute (SYKE). SYKE informs the on-call services of commercial shipping enterprises and naval staff, the Regional State Administrative Agencies (AVI) and the Ministry of the Environment (YM). The authorities with a duty to act in case of vessel source oil pollution and chemical pollution request assistance from the coordinators in charge. The coordinators in charge of an accident take action to prevent the spill even if no official request for assistance is made. (Act on the Prevention of Pollution from Ships 31§ (300/1979) and YM 5.12.2007)

Oil spill prevention is ensured by regional rescue services. Additional assistance for this work and equipment may be requested from Regional State Administrative Agencies (AVI). If the accident occurs on high seas or inside the EEZ, SYKE will take charge of the prevention work. SYKE will also take charge of the prevention if the damage stretches over a wide area, the prevention takes place within the area of several regional rescue services, the accident requires international cooperation or the accident involves chemical damage. (Uudenmaan ja Kaakkois-Suomen YK, p. 3, Kalervo Jolma)

The regional rescue services on the Gulf of Finland are those of Länsi-Uusimaa, Keski-Uusimaa, Helsinki, Itä-Uusimaa and Kymenlaakso. In general, the actual alarm is received by the Maritime Rescue Coordination Centre (MRCC), the Maritime Rescue Sub Centre (MRSC) or the Emergency Response Centre. (Uudenmaan ja Kaakkois-Suomen YK, p. 3)

3.2 RESPONSIBILITY FOR OWNERSHIP AND STEERING OF THE VESSEL

The ownership forms of vessels have changed from the typical example of one owner and one State that was usual in the beginning of 20th century. Today, a vessel is quite commonly

registered in one State, operated by a management company in another State, it has an international crew and its ownership structure resembles a finance consortium made up from two or more legal persons. (Molenaar, p. 88-89)

3.2.1 RESPONSIBILITIES OF THE OWNER AND SHIPPING COMPANY FOR OIL SPILL DAMAGE

The owner of the vessel has a strict liability for vessel source oil spill damage under the Maritime Act. The owner of the vessel is therefore responsible for the oil damage regardless of whether the accident was caused on purpose or unintentionally. A Finnish or a foreign ship shall have an insurance policy or collateral approved by the authorities if the ship transports over 2,000 tons of oil as loose cargo. (Maritime Law Ch 10 and Hemmo Mika 2001)

The need for insurance depends on the nature of the cargo transported. If the ship is not insured, the owners of the ship must compensate for slight damages by themselves. Larger damages are mostly covered by the compensation funds. In case of several similar accidents, the damage is covered by the owner under the first accident (Maritime Law 10:3). If the owner of the ship has caused the accident by gross carelessness or negligence, the owner has no right to limitation of risk. The owner is liable to indemnify the parties authorized to carry out prevention work. If the party having suffered damages has contributed to developing the oil spill damage, the amount of compensation may be arbitrated (Maritime Law 10:4).

Because the owner is responsible for the oil spill damage and obliged to have insurance cover, the claim for compensation may be directed straight to the insurance company. If the owner has caused the damage on purpose, the insurance company has the right to be discharged from liability (the Maritime Act 10:12). If the accident or prevention work have taken place inside the Finnish EEZ, the action will be brought in a Finnish court in Helsinki. Other oil damage caused by the same reason and issues concerning restriction funds or division criteria will also be heard by the same court (the Maritime Law 21:3a).

The shipping company is responsible for damage caused by the crew or by order of the crew (the Maritime Act 7:1). The shipping company has the right to limitation of risk on casualties or cargo damages caused by operations or rescue activities (the Maritime Act 9:2). The limitation of risk is forfeited if the damage is caused on purpose or by gross negligence (the Maritime Act 9:3-4).

The maritime claim is applied to all ships registered in Finland or in foreign countries (the Maritime Act 4:1) and provided by confiscation. A restriction fund can be set up in the same Finnish court where the action was brought or the confiscation requested (the Maritime Act 9:7). The court shall make a decision on the fund amount and decide if the collateral is adequate (the Maritime Act Law 12:4). The amount of the fund in oil damages has to correspond with the liability of the owner.

3.2.2 RESPONSIBILITIES OF THE MASTER AND THE PILOT

The master is responsible for notifying the Maritime Rescue Coordination Centre (MRCC) Turku, the Maritime Rescue Sub Centre (MRSC) Helsinki or other rescue unit of an accident or risk of emergency without delay (the Maritime Act 6:11-12).

The master of a vessel has full responsibility for the management of the rescue operation on board. See the Chart for the management's responsibilities for a rescue operation (Chart 4).

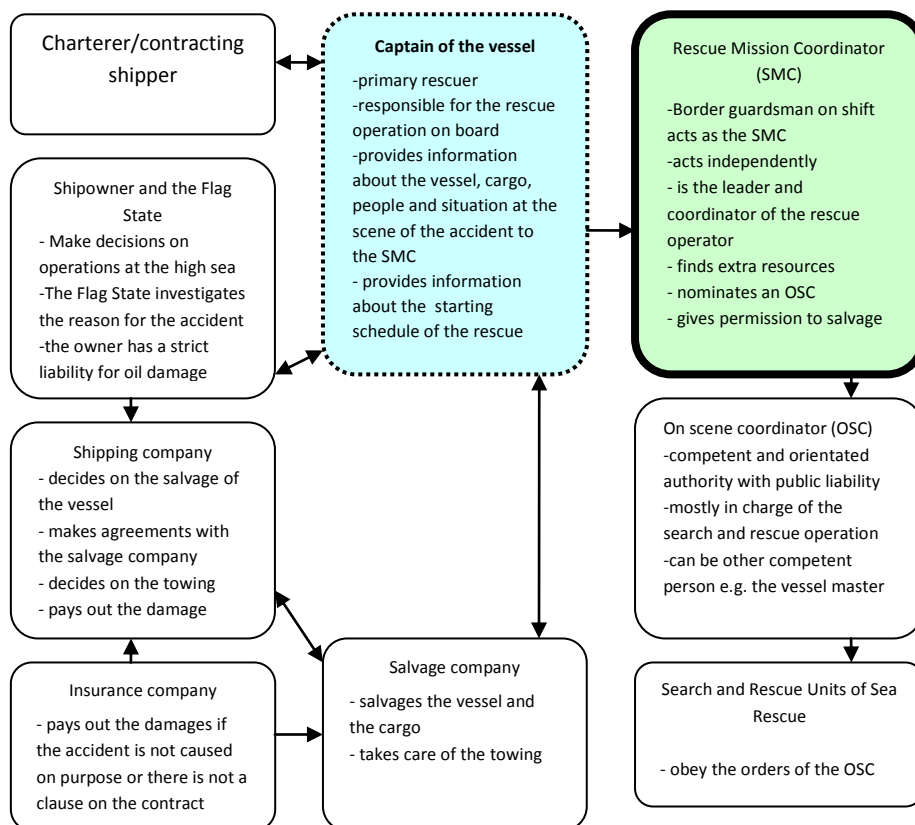


Chart 4 Sea rescue and management of the vessel in the Finnish Search and Rescue Region (SRR)

Under the Pilotage Act 21.11.2003/940, Finnish pilots shall operate in the territorial waters of Finland for a period of five years (Pilotage Act 5§). The Finnish pilot is subject to criminal liability (Pilotage Act 8§). According to the Tort Liability Act 31.5.1974/412, pure property

damage shall be compensated in full if the damage has been caused in the exercise of public authority (Tort Liability Act 5:1). According to Tort Liability Act 3:5, the State or municipality is not responsible for incorrect piloting, but the indemnity is paid out of the ship or transport insurances. (Hemmo Mika 2001)

3.2.3 RESPONSIBILITIES OF THE CARRIER AND CONTRACTING SHIPPER

Responsibilities of the carrier in case of accidents are laid down in the Maritime Act Chapter 13. The carrier will answer for the cargo in the loading port, during transportation, and in the unloading port. Their responsibility will end when the carrier hands over the cargo to the consignee. As in other cases of responsibility, the carrier is not answerable for losses, disappearance or destruction of the cargo if it is caused by rescue operations, a navigation error or a fire (the Maritime Act 13:24-26). In general, the carrier will not answer for oil spill damages, see responsibilities of the owner. Right to limitation of risk will be forfeited if the accident has been caused on purpose (the Maritime Act 13).

The carrier will also not answer for a subcharterer. If an accident happens to a subcharterer on a certain route, the carrier may be discharged from responsibility. A subcharterer in general has the same responsibility as a carrier. If both are responsible for the incident, they answer for it by joint responsibility (the Maritime Act 13:35-37).

A *contracting shipper* generally has no responsibility to the carrier or subcharterer for damage or accidents, and therefore they are not responsible for damaged goods. A contracting shipper is liable for damages if the incident took place because of dangerous cargo, and the carrier was totally unaware of the contents. The essential document in that case is the Ocean bill of lading, in which such details can be verified as the cargo to be transported, the contracting shipper, consignee, carrier and terms of delivery (the Maritime Act 15:123, 168, 16:120).

3.3 RESPONSIBILITIES OF THE FLAG STATE

There are three principal parties that have jurisdiction over a seafarer: the flag State, the port State and the coastal State. Flag states grant a nationality to a ship at their discretion. The flag State has legislative jurisdiction over a ship and sailors regardless of the ship's location and the nationality of the seafarers. This is often called quasi-territorial jurisdiction. (Fitzpatrick–Anderson, p. 132-134, 135-140)

According to this definition, the ships and sailors have the nationality of a certain flag State. On high seas, the flag State in principle has the sole legislative jurisdiction over the ship. The flag State does not have this type of jurisdiction in the ports and marine zones or territorial sea areas of other countries. The flag State has enforcement jurisdiction in the exclusive economic zones (EEZ's) of other states if there is no contradiction with the rights of the EEZ of a coastal state. The flag States have to follow the regulations of UNCLOS even if the State were not a party to the Convention. Many flag States violate the conventions of the IMO, SOLAS and STCW by criminal or administrative offences. It must be emphasised that the flag States have not only the possibility to enforce the conventions but also an obligation to do so. (Fitzpatrick–Anderson, p. 135-140, 149-153)

3.3.1 POLLUTION AND DAMAGE ON HIGH SEAS AND IN AN EEZ

The UNCLOS convention imposes specific obligations on the flag states. In general, only a flag State has sole legislative jurisdiction over ships that pollute on the high seas. In an emergency and in case of a flagrant violation of pollution regulations, a coastal State has the right to intervene immediately and bring the ship to book for its activities. (Hakapää 1988, p. 254)

Oil spill damages occurring on high seas or elsewhere than in the territorial waters or the EEZ of States that are parties to the convention are paid out. The responsibility can be restricted under the Maritime Act 5:1 if the accident was not caused by a flagrant violation of pollution regulations, negligence or on purpose. Accidents causing environmental damage on high seas are dealt with by SYKE.

A sentence for oil damage passed in a foreign country must be executed without a new maritime hearing in Finland. Operations in Finland (the Helsinki Court of Appeal) are authorized if the country was competent to make a decision in the case and the judgement does not exceed the risk amount of the shipowners. Basic issues concerning the division of assets in a restrictive fund set up in foreign countries have to be solved before execution in Finland (the Maritime Act 22:6-8)

According to UNCLOS Article 230, a sentence of imprisonment is possible for a minor environmental offence. The possibility referred to in Article 230 applies to the area outside internal waters, and it therefore does not apply to such areas as the EEZ. It is enacted in the Criminal Code (CC) 48:10 that a fine only can be imposed for an environmental offence committed in the EEZ by a foreign ship.

Under UNCLOS 230:2 and CC 48, a sentence of imprisonment is also possible for serious and intentional pollution offences committed in internal waters. The Criminal Code can be applied as far as the ship is inside the internal waters of Finland, or the ship is Finnish (CC1:1). It is also assumed in Finland that there is a clear connection between innocent passage and spillage. (Molenaar, p. 478; RL 1:1 and 48; Act on the Prevention of Pollution from Ships 28:3)

3.4 RESPONSIBILITIES OF THE PORT STATE

A port State has full legislative and enforcement jurisdiction over all ships in its ports. It has the right to apply the rules to admittance to its ports and therefore authority to allow or refuse entry to ships. There is no convention that requires a port State to let a ship reach its ports. Ships in distress are an exception in most cases, even if they do not fulfil the conditions. A limit has been set to a port State's jurisdiction. It is only entitled to legislative jurisdiction if the ship has reached the port voluntarily. (Hakapää 1988, p. 246 and Molenaar, p. 90-91 and p. 101-103)

3.4.1 INTERNATIONAL TREATIES AND POSSIBILITIES OF THE PORT STATE TO PREVENT POLLUTION

A port State has the right to make decisions on international standards applied in its ports. The conventions of the IMO, SOLAS and STCW impose no obligations on port states, but under the STCW treaty, the port State has the authority to inspect ships. Both international conventions and national statutes are in place to prevent and intervene in marine pollution. In case of pollution, the rights of a port State will apply, if the ship has reached the port voluntarily and violated international rules and standards on pollution on high seas before arrival. Port States will not be able to intervene if international rules and standards on pollution are not complied with on the ship. Intervention and legislative jurisdiction are possible if the ship presents a risk of damage to the marine environment in the internal waters or the EEZ of a port State. (Hakapää 1988, p.245, Fitzpatrick–Anderson, p. 154-157 and Molenaar, p. 472)

Under UNCLOS Article 218, a port State may undertake investigations and has jurisdiction over a vessel if it has caused pollution in internal waters and/or outside the territorial sea and the EEZ. Intervention is also possible if pollution has occurred in the internal waters, territorial sea or the EEZ of another state, and this state request investigations. A port state has a possibility to intervene if violations have taken place on the ship and the SOLAS and STCW conventions have not been complied with. (Fitzpatrick–Anderson, p. 157-158 and Molenaar, p. 469-470)

3.4.2 PORT STATE CONTROL

Port State control is not exercised in every port State but only in States that have joined one or several MOU (Memorandum of Understanding) agreements. Finland has joined the Paris MOU, which is the widest MOU agreement. The main concern originally was CDEM standard inspections, but today ships are inspected for both pollution and navigational and operational functions. The Ship Safety Control Act (17.3.1995/370) applies to all Finnish merchant ships in and outside the Finnish sea area and to foreign merchant ships in the Finnish sea area. (Molenaar, p. 126-129)

3.5 RESPONSIBILITIES OF THE COASTAL STATE

Under the international maritime law and the MARPOL 73/78 convention, the coastal State has the right to intervene in pollution in internal waters under the national law. A master of a ship causing pollution in the Gulf of Finland may face a national maritime hearing in Russia, Estonia or Finland depending on the port the ship reaches. The maritime trial will then be held in the coastal State. (Hakapää 1988, p. 245 and 251, Molenaar, p. 90-91)

3.5.1 POSSIBILITIES OF THE COASTAL STATE TO PREVENT POLLUTION

A coastal State has several maritime zones: the internal waters, the territorial sea, the contiguous zone, the EEZ, and the continental and archipelagic waters. Legal rights do not extend to the water area above the continental shelf, and the area is either an EEZ or high seas. (Fitzpatrick–Anderson, p. 160-162 and Molenaar, p. 87)

Ice covered areas are universally known as vulnerable sea environments where special regulations and non-discriminatory laws such as UNCLOS Article 234 can be enforced. An unconnected act of UNCLOS (Act of Finland) makes it possible to apply national CDEM standards to foreign ships when there are severe climate, navigation and ice conditions in the area. (Molenaar, p. 419-420)

4 SUMMARY

In addition to sea rescue and oil prevention, both traffic fluency and safety are regulated by legislation, international treaties, orders and guidelines. The most important international treaties relating to the marine environment and pollution are the UNCLOS, MARPOL 73/78 and the Helsinki Convention. The most important treaties relating to sea rescue are the Hamburg Convention, SOLAS and the OPRC conventions, which are given the force of law through Finnish acts and decrees. In addition to these, there is a notable amount of other international treaties, national laws and EU Directives. The most recent EU Directives are included in the Erika III package approved by the European Council in March 2009.

The States on the Gulf of Finland (Estonia, Finland and Russia) are especially interested in safety and environment issues. In addition to conventions and legislation, the national rescue organization, shipping company culture and actions of the master play an important role when it comes to oil spill prevention and accident management. The course of action selected by the States and shipping companies has an important role.

The actions of shipping companies involve classification, insurance, accident notification and accident management. The master is responsible for the entire vessel and the crew, and therefore can influence the activities on board. In addition to instructions given by the shipping company and following the course of action, it is the master's duty to act in the best possible manner to prevent vessel or cargo sourced damage to the environment. One important and preventive action is giving notification of the accident.

Vessels and shipping companies operating continuously in the Gulf of Finland often follow higher standards than those required by the legislation and treaties. They are also aware of the circumstances in the Gulf of Finland. It is therefore essential to pay attention on controlling and managing vessels with a lower security level and shipping companies and classification societies responsible for them. The supervision can be carried out by the flag State, the coastal State and the port State. The flag State, coastal State and port State have an essential role in preventing and dealing with accidents. The flag State has a right to intervene on high seas, the port State has a right to control traffic and ship safety, and the coastal State has a right to intervene in gross pollution.

Oil spill prevention in connection with sea rescue is a demanding operation. It is operation and method that presuppose action. It is regulated by national legislation and internationally

accepted guidelines relating to sea rescue. Vessel source oil pollution prevention is managed by e.g. the Finnish Border Guard, rescue services, SYKE and AVI. The Finnish Border Guard is responsible for accident management and rescue.

A cooperation plan completed in 2007 is followed in the Gulf of Finland: Cooperation plan for vessel source oil and chemical pollution prevention in the Gulf of Finland. The regional rescue services are responsible for the management of accidents in the territorial waters. If the accident occurs in the EEZ or at high seas, SYKE is responsible for its management. Regardless of these instructions, the division of responsibilities between the rescue services and SYKE is not clear. In practice, agreement on operative management is reached once the location, weather conditions and environmental aspects of the accident have been established.

Safety of maritime traffic and oil prevention in the Gulf of Finland play an important role in developing future action. International cooperation between the States on the Gulf of Finland and the Baltic Sea and continuous cooperation between shipping companies are essential. Oil prevention is mainly managed by Finland in the Gulf of Finland. Regardless of long-term cooperation between Estonia and Russia, the administrative, legislative and cultural differences add complications to the practical work. It is therefore important to pay attention to cooperation between shipping companies. It is vital to concentrate on successful actions because of the increasing risk of serious oil spill damage in the Gulf of Finland.

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