



OP NOTICE TO SHIPPING No. N-9-2009

Marine Accident Investigations





January 1, 2009

OP NOTICE TO SHIPPING No. N-9-2009

To: Steamship Agents, Owners and Operators

Subject: Marine Accident Investigations

1. Effective Date and Cancellation

This Notice is effective on the date of issue and cancels OP Notice to Shipping No. N-9-2008. The content of this Notice remains the same as in the previous year, except for changes in items 3 and 4 of the standards of conduct during marine accident investigations.

A revised Notice will be issued in January of each year or when otherwise required.

2. Purpose and Scope

The purpose of this Notice is to remind all concerned of existing legal requirements regarding the investigation of marine accidents occurring at the Panama Canal and the claims against the Authority that arise from said accidents.

3. Legal Mandate of the Board of Inspectors

a. The Republic of Panama's Law No. 19 of June 11, 1997, whereby the Authority is organized, establishes the Board of Inspectors. This law requires that, before the Authority may consider any claim for damages arising out of a vessel accident, the Board of Inspectors shall conduct an investigation into the incident prior to the vessel's departure from Canal waters. Owners and operators who elect to proceed to sea before said investigation is completed will forfeit future recourse against the Authority.

b. In determining when a vessel has departed from Canal waters within the framework of the statute requiring investigations of marine accidents prior to departure, the definition of the term "Canal Waters" contained in the Regulation on Navigation in Panama Canal Waters (*ACP Navigation Regulations*), Article 8, is applicable. A map of the pertinent areas is attached.

c. Form 4327, "Notice of Effect of Departing Without Investigation," attached herein, states the legal consequences of departing Canal waters without an investigation by the Board of Inspectors.

d. The Panama Canal Authority Board of Directors approved the addition of Article 4.A to the Regulation on Navigation in Panama Canal Waters (*ACP Navigation Regulations*), which reads as follows:

"Article 4.A: The Authority may deny the departure of any vessel which has caused damages to the Canal, its personnel, equipment, property or facilities, or which violates any Canal navigation safety rule, until such time as she has posted a suitable payment warranty, to the Canal Administration's satisfaction. To ensure enforcement of this rule, the Authority may require the assistance of the Public Force. The cost of this assistance shall be charged to the vessel, and shall be included in the warranty."

4. Standards of Conduct during Marine Accident Investigations

a. This section serves as a reminder of the standards of conduct required of the parties in interest who participate in marine accident investigations conducted by the ACP Board of Inspectors.

b. Articles 60 through 62 of Law No.19 of June 11, 1997, Organic Law of the Panama Canal Authority, authorizes the Board of Inspectors to conduct investigations of serious marine accidents occurring in Panama Canal waters. These investigations include a hearing whereby vessels and the Panama Canal Authority (ACP) participate as parties in interest with the right to obtain counsel of their own choosing, testify on their own behalf, call, examine and cross-examine witnesses and introduce relevant evidence into the record.

c. Investigative hearings may be adversarial in nature and, accordingly, the Board understands that confrontations amongst parties in interest may arise. Nevertheless, the Board expects parties in interest to show respect for constituted authority, as well as the rights of others, and is prepared to ensure that the proceedings are conducted efficiently

and with appropriate decorum. The following standards of conduct are designed to achieve these goals.

STANDARDS OF CONDUCT DURING MARINE ACCIDENT INVESTIGATIONS

1. The Board of Inspectors expects all parties in interest, including legal and lay counsel, to act ethically and in good faith, with integrity and respect for duly constituted authority and the rights of others.

2. In the interest of maintaining order, the Board may exclude from any investigative hearing parties in interest, witnesses or other persons who refuse to comply with directions by the Board, practice dilatory tactics, behave in an unethical manner, act in bad faith, or engage in *ex-parte* communication, as prohibited by paragraphs 3 and 4 of these standards. If deemed necessary, the Board may request a recess during an investigative hearing to allow for the replacement of legal or lay counsel.

3. All verbal communication by a party in interest with the Chairman or member of the Board relating to the merits of an investigation without advance notice to the attorneys or legal representatives of all parties in interest is prohibited.

4. All written correspondence between a party in interest and the Chairman or member of the Board relating to the merits of an investigation must be provided to the attorneys or legal representatives of all parties in interest.

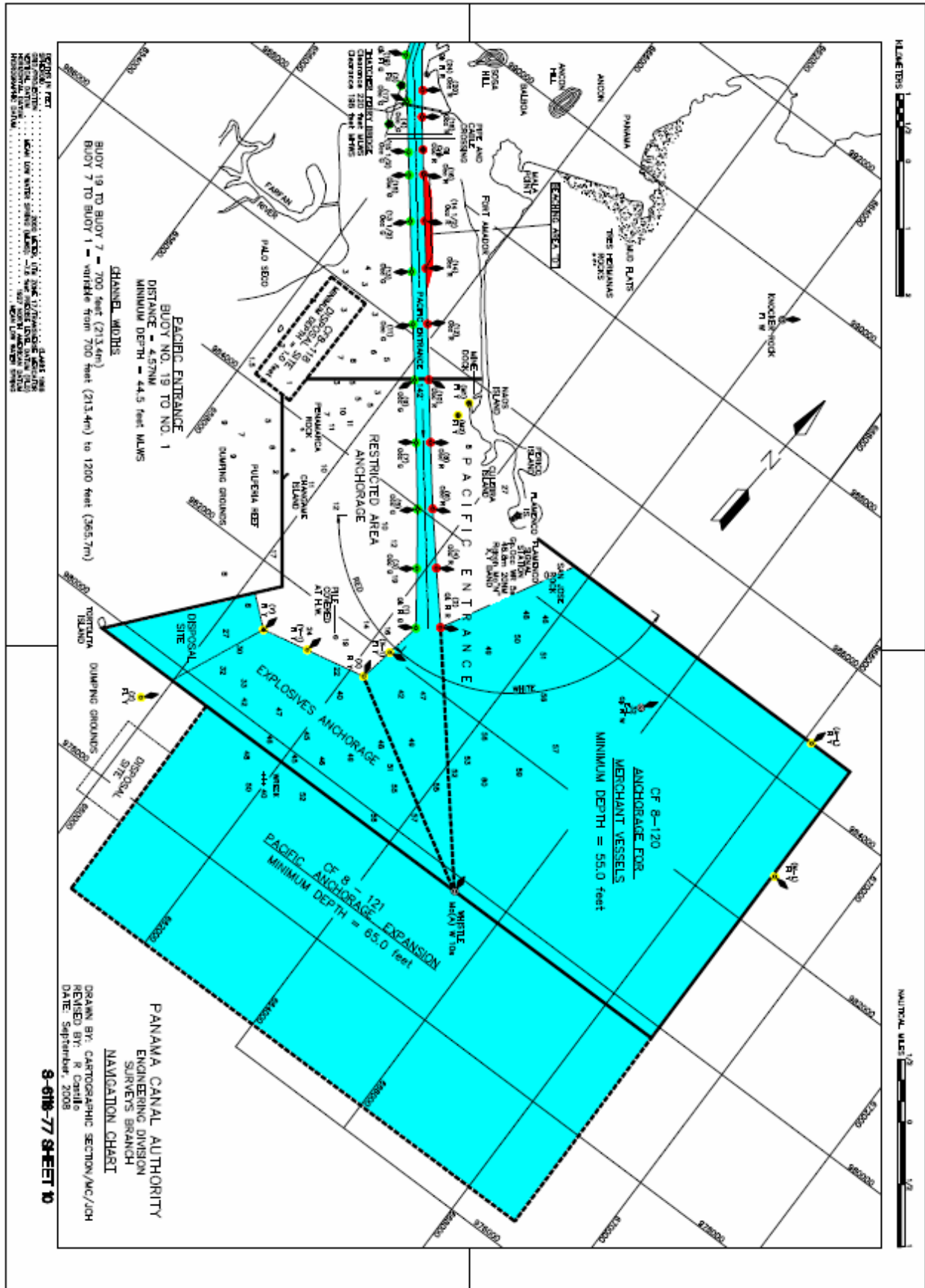
5. Should a party in interest continuously exhibit unbecoming conduct, despite being admonished by the Board and being asked to cease and desist, the Board may ban said party in interest from future investigative hearings. In such cases, the Board will notify said individual, in writing, of his decision and the duration thereof.

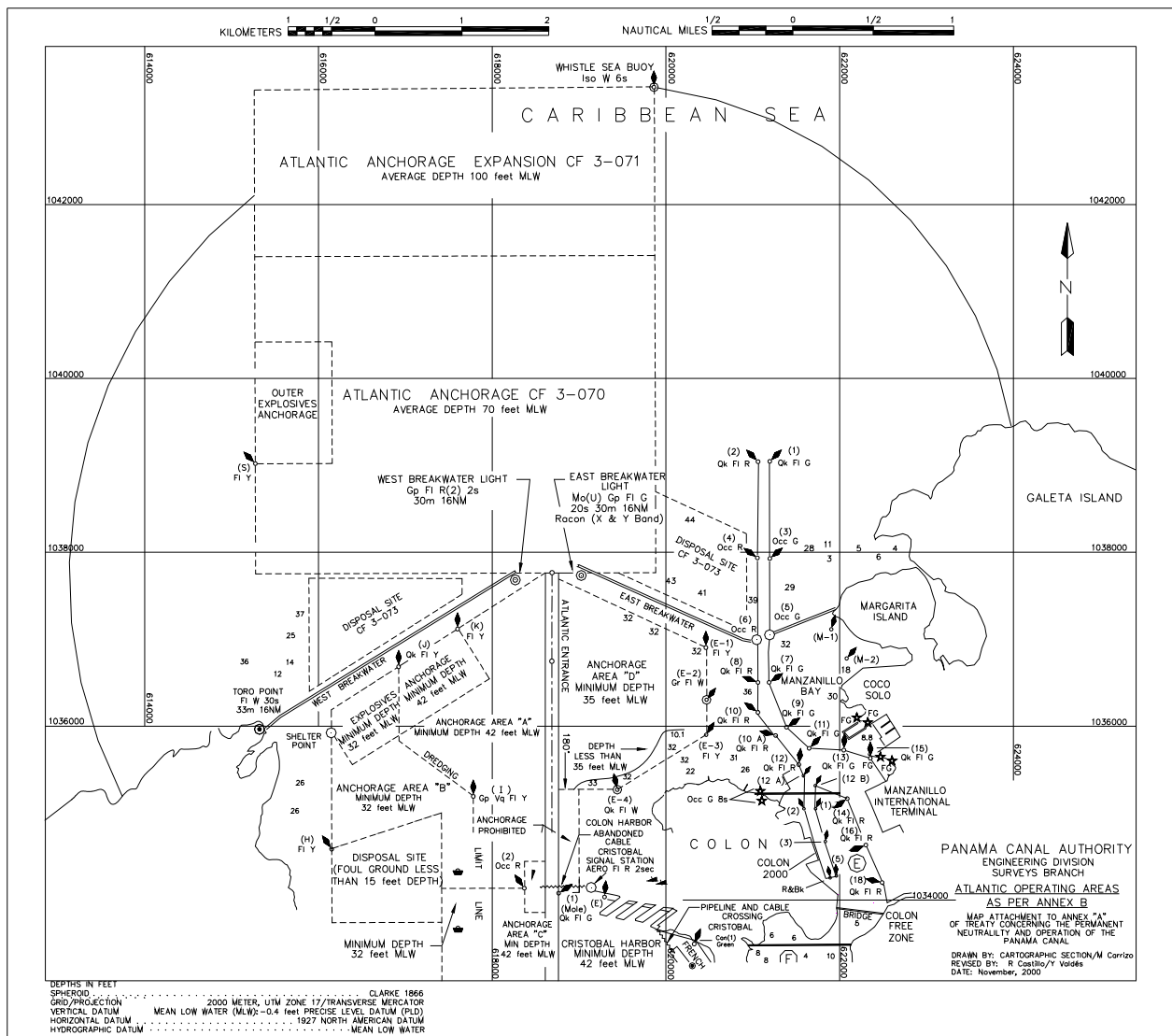
6. Decisions and actions by the Board under this section are final and not subject to appeal.

ORIGINAL SIGNED

Manuel E. Benítez
Executive Vice President of Operations

Enclosures





PANAMA CANAL AUTHORITY

4327 (OPT)

NOTICE OF EFFECT OF DEPARTING WITHOUT INVESTIGATION

On _____ the vessel _____

(SIN _____) or its cargo, crew or passengers, met with an accident or sustained an injury within the Panama Canal

or water adjacent thereto, as follows: _____

(Brief description of accident, including place, circumstances, probable injuries, etc.)

As Master of the vessel involved, you have the right to have this incident investigated by the Board of Inspectors of the Panama Canal Authority. A request that such an investigation be conducted must be made in writing and addressed to the Chairman of the Board.

If you do not wish the incident investigated by the Board, you should be aware that, pursuant to Article 74 of the Panama Canal Authority Organic Law (Law No. 19 of June 11, 1997), a claim for injuries to persons or property, including vessel damage, may not be considered by the Panama Canal Authority, or an action for damages lie thereon, unless prior to the departure from the Panama Canal of the vessel involved:

(1) That an investigation of the accident and the injury caused has been completed according to a procedure that shall include a hearing by the Board of Inspectors of the Authority, as provided in the cited Law.

(2) That all the basis for the claim has been laid before the Authority.

In determining when a vessel has departed from Canal waters within the meaning of the statute requiring investigations of marine accidents prior to departure, the definition of the term "Canal Waters" contained in the ACP Navigation Regulation, Article 8, is applicable. (Copy of the maps showing the two boundary lines is enclosed.)

Should you elect to sail without an investigation, it is requested that you acknowledge receipt of this notice by signing the enclosed copy thereof and return it to a Canal official.

Your cooperation will be appreciated.

Master, _____
(Name of vessel)