To the Members

Dear Sirs

Re: Regulations of the People’s Republic of China on the prevention and control of marine pollution from ships

We refer Members to previous circulars on the Regulations of the People’s Republic of China (PRC) on the Prevention and Control of Marine Pollution from Ships (“the Regulations”) and the postponement of the requirement that owners/operators of (a) any ship carrying polluting and hazardous cargoes in bulk or (b) any other vessel above 10,000 gt enter into a pollution clean up contract with a Maritime Safety Agency (MSA) approved pollution response company before the vessel enters a PRC port.

These requirements were postponed pending additional rules to be issued by the MSA. These Detailed Rules on the Implementation of the Regime of Agreement for Ship Pollution Response have now been issued by the China MSA on 20 May 2011 with an accompanying Notice and mandatory contract which owners/operators must enter into with a clean up contractor as approved by the China MSA. A copy of the mandatory, model contract which includes the different levels of contractors (as contained in Attachment III to the contract) is contained in the Annex to this Circular.

Approved clean up contractors will be categorised by the MSA in accordance with their qualifications and response capabilities and will be assigned level 1, 2, 3 or 4 status. Operators will need to contract with an approved clean up contractor in accordance with the size and type of vessel.

However, the list of clean up contractors approved in each Chinese port has still not been issued by the China MSA. The MSA Notice states that the lists of level 2, 3, and 4 contractors - which will appear on the following dedicated MSA website: www.osp.cn – will be issued by 31 August 2011 with the list of level 1 contractors to be issued during the course of the year. The requirement to contract with an approved clean up contractor will then be enforced in all Chinese ports from 1

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1 The list of approved contractors will also appear on the China MSA website: www.msa.gov.cn
As previously advised, there will therefore be a “grace” period until 1st January next year before enforcement of the requirement to contract with an approved clean up contractor.

We also refer Members to the previous recommendation not to enter into contractual arrangements with a clean up contractor for the purposes of ensuring compliance with the Regulations for the time being, that is, until the list of approved clean up contractors is issued. The International Group is currently reviewing the model contract to determine whether it conforms with the International Group guidelines concerning spill response contracts and a further update to Members with detailed guidance on the contract will be provided in this regard following the completion of the review. The International Group will also consider the development of supplemental clauses for inclusion in the contract since the model contract provides that the operator and clean up contractor may negotiate and include supplemental clauses in the contract if such clauses are not already included.

In the meantime, the International Group can also confirm that the term “operator” for the purposes of concluding and signing the contract with a clean up contractor is defined by the China MSA as the owner, manager or actual operator of a ship. In respect of those operators not domiciled in China, the MSA requires that a branch company, office or agent located in mainland China (not Hong Kong, China or Macau, China) conclude and sign the clean up agreement with the approved contractor.

The clean up contract must be kept on board the ship since it may be necessary to present the agreement to local MSA officials upon entry into port, unless it has been submitted to the local MSA by the ship’s operator in advance of the ship’s entry into port.

Ships entering a Chinese port from 1 January 2012 that have not contracted with an approved, relevant clean up contractor where necessary will be subject to administrative penalties and other possible measures.

Members should note that the abovementioned spill response contract requirements are different to the China MSA’s measures in relation to the discharge of ship’s garbage, residue water waste, oil waste and sludge. Specific reference is made to the Regulations on Administration of the Prevention and Control of Marine Environment Pollution caused by Ships and their Relevant Operations which became effective on 1 February 2011 and requires owners/operators of all vessels to discharge all their waste residues (primarily sludge) at least once at a PRC port, whenever on a voyage to the PRC. Ships which intend to carry out such “Regulated Operations” are required to sign a contractual agreement with a service provider to provide such services. A list of such service providers should be posted in due course on each local MSA’s website. The Shanghai MSA has issued Interim Regulation of Receipt of Ship Pollutants and the list of such providers in Shanghai is posted on the Shanghai MSA website.

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2 [http://msa.gov.cn/Notice/Notice/3f0a2284-4463-4c41-bdef-0412bd8408ad](http://msa.gov.cn/Notice/Notice/3f0a2284-4463-4c41-bdef-0412bd8408ad) - refers only to the Chinese text

3 “Regulated Operations” include tank cleaning operations, collection and disposal of residue oil, oily water, water that contains toxic and harmful substances, garbage, sewage and exhaust gas.
All Clubs in the International Group of P&I Clubs have issued similar circulars.

Any questions with regard to the above may be addressed to Catherine Wong in Gard (HK) Limited or Sara Burgess in Gard (UK Limited).

Yours faithfully,

GARD AS

Claes Isacson
Chief Executive Officer
船舶污染清除协议

（样本）

Agreement for Ship Pollution Response

(Sample)
协议样本说明

Introduction to the Sample Agreement

一、为了有效实施船舶污染清除协议管理制度，根据《中华人民共和国船舶污染海洋环境应急防备和应急处置管理规定》第二十九条的规定，制定船舶污染清除协议样本（以下简称本协议）。

1. This Sample Agreement for Ship Pollution Response (hereinafter referred to as “this Agreement”) is formulated in accordance with the provisions of Article 29 of the Regulations of the People’s Republic of China on Emergency Preparedness and Response on Marine Environment Pollution from Ships for the purpose of effectively implementing the regime of agreement for ship pollution response.

二、船舶所有人、船舶管理人或者船舶的实际经营人（甲方）与取得相应资质的船舶污染清除单位（乙方），应当根据《中华人民共和国防治船舶污染海洋环境管理条例》第三十三条以及《中华人民共和国海事局船舶污染清除协议管理制度实施细则》的有关规定，在船舶作业前或者进出港口前签订船舶污染清除协议。

2. The owner, manager or actual operator of a ship (Party A) shall, prior to ship’s operation or entering into or leaving from a port, conclude this Agreement with a qualified ship pollution response organization (Party B) in accordance with Article 33 of the Regulations of the People’s Republic of China on Administration of the Prevention and Control of Marine Environment Pollution from Ships, relevant provisions of the Regulations of the People’s Republic of China on Emergency Preparedness and Response on Marine Environment Pollution from Ships and relevant provisions of the Detailed Rules of Maritime Safety Administration of the People’s Republic of China on the Implementation of the Administration Regime of Agreement for Ship Pollution Response.

三、本协议中的权利义务条款为强制性条款，协议双方不得更改其内容。本协议未尽事项，协议双方可另行补充约定，但不得违反国家有关法律、法规、规章规定以及本协议中甲乙双方的
基本权利义务的约定。本协议的签订不得影响甲乙双方根据有关法律、法规和规章的规定所享有的包括责任限制等在内的权利以及应承担的义务。

3. The articles on rights and obligations of this Agreement are mandatory and both parties shall not change the contents of these articles. For matters not covered in this Agreement, the parties may reach a separate supplementary agreement. In no case should such supplementary agreement violate relevant provisions of laws, regulations and rules as well as stipulations in this Agreement concerning both parties’ fundamental rights and obligations. The conclusion of this Agreement shall not prejudice the rights and obligations that shall be enjoyed or borne by both parties in accordance with relevant laws, regulations and rules, including the right of limitation of liability.

四、对协议文本中括号中需要选择的内容以及空格部位需要填写的内容,双方应当协商确定。对于双方选择的,在中括号以划√方式选定，或者在空格中填写；对于双方不选择的，应在中括号或空格部位打×，以示删除。

4. Choices of options with square brackets and the contents to be filled in blank spaces shall be determined by both parties through negotiation. As for the choices, options shall be chosen by marking a “√” in the square brackets, or filling in the blank spaces. With respect to those that both parties do not apply or choose, a “×” shall be marked in the square brackets or in blank spaces, indicating deletion.

五、协议采用 14 位数字编号（如 01-1001-2011-0001），其中，前两位表示直属海事局代码，第 3 位表示船舶污染清除单位资质等级，分别用 1、2、3、4 对应一、二、三、四级船舶污染清除单位的资质，第 4 至 6 位表示船舶污染清除单位代码，由各直属海事局确定，第 7 至 10 位表示签订协议的年份，第 11 至 14 位表示协议序号，由各船舶污染清除单位确定。

各直属海事局代码分别为：辽宁局 01，天津局 02，河北局 03，山东局 04，江苏局 05，福建局 06，上海局 07，浙江局 08，广东局 09，深圳局 10，广西局 11，海南局 12。

5. The Agreement adopts fourteen numbers as its serial number (such as
01-1001-2011-0001), amongst which the first two numbers represent the code of a MSA directly under the P.R China MSA; the third number represents the qualification level of the ship pollution response organization, 1, 2, 3 and 4 respectively represents level-1, level-2, level-3 and level-4; the fourth to sixth number represents the code of the ship pollution response organization and shall be determined by the MSA directly under the P.R China MSA; the seventh to tenth represents the year in which the Agreement is concluded; the eleventh to the fourteenth represents the sequence number of the Agreement and shall be determined by the ship pollution response organization.

6. Codes of MSA directly under the P.R China MSA are as follows: Liaoning MSA: 01, Tianjin MSA: 02, Hebei MSA: 03, Shandong MSA: 04, Jiangsu MSA: 05, Fujian MSA: 06, Shanghai MSA: 07, Zhejiang MSA: 08, Guangdong MSA: 09, Shenzhen MSA: 10, Guangxi MSA: 11, Hainan MSA: 12.
甲方：____________________________
Party A: ____________________________
住所地：____________________________
Domicile: ____________________________
法定代表人：________________________
Legal representative:___________________
联系人：____________________________
Contact person: ______________________
通讯地址：__________________________
Correspondence address:_______________
电话：__________________________传真：__________________________
Telephone:_________________________Fax: _________________________
电子信箱：________________________
E-mail: _____________________________

乙方：____________________________
Party B: ____________________________
资质等级及服务区域：________________
Qualification level and service area:________________
住所地：____________________________
Domicile: ____________________________
法定代表人：________________________
Legal representative:___________________
联系人：____________________________
Contact person: ______________________
通讯地址：__________________________
Correspondence address:_______________
电话：__________________________传真：__________________________
Telephone:_________________________Fax: _________________________
电子信箱：________________________
E-mail: _____________________________
根据《中华人民共和国合同法》、《中华人民共和国海洋环境保护法》、《中华人民共和国防治船舶污染海洋环境管理条例》、《中华人民共和国船舶污染海洋环境应急防备和应急处置管理制度实施细则》（以下简称《细则》）等有关法律、法规和规章的规定，甲乙双方经过友好协商，在真实、充分地表达各自意愿的基础上，达成如下协议，并由双方共同恪守。

In accordance with relevant provisions of the Contract Law of the People’s Republic of China, the Marine Environment Protection Law of the People’s Republic of China, the Regulations of the People’s Republic of China on Administration of the Prevention and Control of Marine Environment Pollution from Ships (hereinafter referred to as “the Regulations”), the Regulations of the People’s Republic of China on Emergency Preparedness and Response on Marine Environment Pollution from Ships (hereinafter referred to as “the Rules”) and the Detailed Rules of Maritime Safety Administration of the People’s Republic of China on the Implementation of the Administration Regime of Agreement for Ship Pollution Response (hereinafter referred to as “the Detailed Rules”) and other laws and regulations, Party A and Party B agree to reach the following agreement after equal consultation and on the basis of truthfully and/or completely expressing respective intentions, and the said agreement shall be abided by both Party A and Party B.

第一条 甲方的权利义务

Article 1 Rights and Obligations of Party A

1. 甲方应当向乙方提供本协议框架下接受服务船舶（以下简称协议船舶，见附录一）的基本信息，并按照双方约定方式和内容，在协议船舶进入乙方服务区域前的___天内，向乙方提供船舶有关动态信息。甲方应当在协议船舶驶离乙方服务区域前___小时，将船舶有关动态信息告知乙方。甲方应当书面确认已收到乙方按照本协议第二条第二款提供的应急待命相关信息。

1. Party A shall provide Party B with basic information of the ships (hereinafter referred to as “the agreed ships”, Appendix I) to receive services under this Agreement, and shall, within ___ days prior to the
agreed ships’ entry into Party B’s service area, inform Party B of the agreed ships’ dynamic information in accordance with the time, way and contents agreed by both parties. Party A shall, __ hours prior to the agreed ships’ departure from Party B’s service area, inform Party B of the agreed ships’ relevant dynamic information. Party A shall confirm in writing the receipt of information on relevant emergency standby provided by Party B in accordance with stipulations of paragraph 2 of Article 2 of this Agreement.

2. Party A shall keep this Agreement onboard the agreed ships, and make sure that relevant staffs onboard the ships are familiar with the contents of this Agreement and the contents of Pollution Response Operation Plan formulated by Party B.

3. Party A shall cooperate with Party B to carry out ship pollution emergency response exercises as required by the Detailed Rules.

4. Party A shall, when a pollution accident happens to the agreed ship, inform Party B immediately and organize to carry out the pollution control and cleanup action. Party A shall, after the termination of such actions, cooperate with Party B to carry out the evaluation on such actions.

第二条 乙方的权利义务

Article 2 Rights and Obligations of Party B

1. Party B shall possess relevant qualification approved by Maritime Safety Administration (MSA), and maintains its corresponding capability of pollution response.
2、乙方应当书面确认已经收到甲方按照第一条第一款约定提供的协议船舶的基本信息和动态信息，并按照双方约定的时间、方式和内容将乙方应急待命的相关信息告知甲方。

2. Party B shall confirm in writing the receipt of the agreed ships’ relevant basic information and dynamic information provided by Party A in accordance with stipulation of paragraph 1 of Article 1, and inform Party A of information on relevant emergency standby provided by Party B in accordance with the time, way, and contents agreed by both parties.

3、乙方应当在接收到协议船舶驶入服务区域的通知后，保证应急船舶、设备和人员处于待命状态。接到甲方协议船舶驶离服务区域的通知后，乙方可取消待命。

3. Party B shall, upon receiving the notice concerning the agreed ships’ entry into the service area, make sure that the emergency ships, facilities and staffs are standby. After receiving the notice that the agreed ships of Party A have departed from the service area, Party B may cancel such standby status.

4、乙方应当在签订本协议时，将其制定的污染清除作业方案中英文文本向甲方提供。

4. Party B shall, when concluding this Agreement, provide Party A with a Chinese and/or English version of the Pollution Response Operation Plan formulated by Party B.

5、协议船舶发生污染事故时，乙方应当在甲方的组织下开展污染控制和清除行动。乙方应当在行动结束后，配合甲方开展污染清除行动评估。

5. Once a pollution accident happens to the agreed ships, Party B shall, under the command of Party A, carry out pollution control and cleanup actions. And shall, after the completion of the cleanup operation, cooperate with Party A to conduct the evaluation on such actions.

第三条 费用

Article 3 fees and expenses

1、甲方应按照双方约定的收费标准（见附录二）和支付方式向乙方支付船舶污染清除协议费用，用于应急防备的合理支
出。

1. Party A shall pay Party B the ship pollution response agreement fees in accordance the rates (appendix II) and mode of payment agreed by both parties for the purposes of compensating Party B the incurred reasonable cost of emergency preparation.

2. If Party B carries out pollution control and cleanup actions in accordance with this Agreement after a pollution accident happens, Party A shall pay Party B the actual and reasonable expenses incurred in such actions.

3. When a pollution control and cleanup action lasts more than ___ working days, to ensure the smooth performance of the actions by Party B, Party B may demand Party A to pay an interim sum every ___ working days for the actions that has been carried out by Party B. This interim payment shall be remitted to the account appointed by Party B within ___ working days after Party B issues the invoice to Party B and such interim payment should be deducted from the final invoice.

4. Upon terminating the pollution control and cleanup actions, Party B shall present to Party A a breakdown and preliminary evidence for the expenses incurred. Party A shall timely pay the undisputed sum and provide an appropriate security for the sum in dispute.
第四条 联络人

**Article 4 Contact Person**

1. 甲乙双方应当指定联络人，并确保联络人在根据本协议开展应急防备和应急处置过程中保持联系和沟通。乙方提供的联系电话应当为应急联系电话，并保持值守状态。

   1. Both parties shall make arrangement for their own contact persons, and ensure that such contact persons can keep in touch with each other in the course of the emergency preparedness and response as per this Agreement. The telephone number provided by Party B shall be an emergency number, and the number shall be kept attended.

2. 两方任何一方需要变更联络人或联系方式的，应当及时书面通知另一方，在得到对方确认后，方可变更。

   2. Where any Party of the two parties needs to change its contact person or the contact person’s contact detail, such party shall inform the other party by a written notice in a timely manner and no alteration shall be made until receiving the other party’s notice for confirmation.

第五条 保密义务

**Article 5 Confidentiality Obligation**

本协议签订后，无论本协议是否失效、终止，甲乙双方应当负有保守对方提供的所有资料、信息秘密的义务。除了海事管理机构等可依法取得该资料、信息的政府主管机关外，甲乙双方不得向其它第三方公开资料、信息内容。

After conclusion of this Agreement, no matter whether this Agreement is in effect or not, or no matter whether this Agreement is terminated, both parties are obliged to keep all the materials and information provided by the other party confidential. Except that such government authorities as the MSA may obtain the said materials and information in accordance with law, both parties shall not make in public the contents of such materials and information.

第六条 生效、变更和终止
Article 6 Entry into Effect, Modification and Termination of Agreement

1. The validity of this Agreement is:

[  ] Fixed term of ______ years (or months);

[  ] ______ voyages of the agreed ships (the time of each voyage shall be determined by separate agreement).

This Agreement shall enter into effect as of signed and stamped by both parties.

2. In case Party A or Party B needs to modify or terminate the Agreement, the other party shall be informed in accordance with the agreed time and way, and such modification or termination shall be confirmed in writing by both parties’ consensus intention through negotiation. However, after the agreed ship(s) has (have) entered into the service area of Party B, neither party shall modify or terminate this Agreement.

3. Where both parties terminate this Agreement, or where this Agreement becomes invalid due to one party’s breach of this Agreement, it shall be reported to MSA immediately.

第七条 违约及侵权责任

Article 7 Liability for Breach of Contract and Tort

1. Any party failing to comply with the terms of this Agreement or in the process of executing this Agreement, shall bear the corresponding liabilities or damages. Where one party breaches this Agreement or where this Agreement becomes invalid due to one party’s breach of this Agreement, it shall be reported to MSA immediately.
1. Where a Party causes any damage or loss to the other Party due to its breach of this Agreement or fault in the course of performing this Agreement, such Party shall, in accordance with this Agreement, bear the liability for breach of contract to the other Party, or be liable to the other Party for infringement of rights in accordance with provisions of relevant laws.

2. Where Party A or Party B causes any damage or loss to a third party due to performance of this Agreement, or where a third party causes any damage or loss to Party A or Party B, the party concerned shall bear corresponding liability in accordance with provisions of relevant laws.

3. Where Party A or Party B fails to perform or completely perform the obligations under this Agreement due to executing the orders or requirements of Ship Pollution Accident Emergency Commanding Organ or MSA, such party may be exempted from undertaking the liability for breach of contract. However, Party A shall, in accordance with the stipulation of Article 3 of this Agreement, pay Party B the expenses incurred for pollution control and cleanup actions that Party B has actually conducted in accordance with this Agreement.

第八条 适用法律及管辖

Article 8 Applicable Law and Jurisdiction

1. Laws of the People’s Republic of China shall be applied to this Agreement and disputes arising from this Agreement.

2. The parties shall negotiate to settle the disputes arising from this Agreement; if no agreement can be reached, the disputes shall be settled in accordance with the following manner:
申请海事管理机构调解；
提交中国海事仲裁委员会,按照申请仲裁时该会现行有效的仲裁规则在__________（地点）进行仲裁；
依法向中华人民共和国有管辖权的法院起诉。

2. Any and all disputes arising from this Agreement shall be solved through both parties’ mutual negotiation; where no resolution is reached after negotiation, such dispute shall be resolved in accordance with the following:
[ ] Submit such dispute to MSA for mediation;
[ ] Submit such dispute to the China Maritime Arbitration Commission for arbitrating at______(location) in accordance with the arbitration rules effective at the time of arbitration;
[ ] Bring an action before a court in the People’s Republic of China that has jurisdiction.

第九条 本协议未尽事项,由双方约定后签订补充协议（见附录三）。

Article 9 With respect to matters not covered in this Agreement, both parties may conclude a supplementary agreement. (Appendix III)

第十条 协议份数

Article 10 Copy of this Agreement

本协议正本一式___份，具有同等法律效力，甲方持___份，乙方持___份，一份由乙方提交当地港口的海事管理机构。

This original Agreement is in______；each copy bears the same legal effect. Party A holds___copy (copies), Party B holds___copy (copies), and a copy shall be submitted the local MSA at the port.

甲方(盖章): ________________________________
Party A (seal): ________________________________
法定代表人/委托代理人(签名): ________________________________
Legal representative/Entrusted representative: (signature)  ____________

年 月 日

Date:
附录一：
协议船舶名单

<table>
<thead>
<tr>
<th>船名</th>
<th>IMO 编号/船舶呼号</th>
<th>其它需要说明的事项</th>
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<tbody>
<tr>
<td></td>
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</table>

Appendix I:
List of the Agreed Ships

<table>
<thead>
<tr>
<th>Name of vessel</th>
<th>IMO number/ Call sign</th>
<th>Other matters to be Remarked</th>
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附录二：船舶污染清除协议费用
Appendix II Rates on the Ship Pollution Response Agreement

附录三：补充协议（如有）
Appendix III Supplementary Agreement (if any)
### 船舶与船舶污染清除单位签订船舶污染清除协议等级对照表

<table>
<thead>
<tr>
<th>单位等级</th>
<th>船舶类型</th>
<th>进出港口</th>
<th>港外装卸、过驳</th>
<th>进出港口</th>
<th>港外装卸、过驳</th>
<th>进出港口</th>
<th>港外装卸、过驳</th>
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</thead>
<tbody>
<tr>
<td></td>
<td>载运散装油类货物的船舶</td>
<td></td>
<td></td>
<td>载运油类之外的其他散装液体污染危害性货物的船舶</td>
<td></td>
<td>进出港口</td>
<td>港外装卸、过驳</td>
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<td>一级</td>
<td>港区内</td>
<td>1 万总吨以上</td>
<td>20 海里以外</td>
<td>1 万总吨以上</td>
<td>20 海里以外</td>
<td>5 万总吨以上</td>
<td>20 海里以外</td>
</tr>
<tr>
<td>二级</td>
<td>2000 至 1 万总吨</td>
<td>1 万总吨以下</td>
<td>20 海里以内</td>
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<td>3 万至 5 万总吨</td>
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<td>四级</td>
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<td></td>
<td></td>
<td>1 万至 2 万总吨</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

- **船舶类型**：
  - 载运散装油类货物的船舶
  - 载运油类之外的其他散装液体污染危害性货物的船舶
  - 载运非散装液体污染危害性货物的船舶

- **服务**：
  - 港区内
  - 进出港口
  - 港外装卸、过驳

- **区域**：
  - 一级：1 万总吨以上，20 海里以外；5 万总吨以上，20 海里以外
  - 二级：2000 至 1 万总吨，1 万总吨以下，20 海里以内
  - 三级：600 至 2000 总吨
  - 四级：600 总吨以下
## Service Scope and Rating table of Ship Pollution Cleanup Unit

<table>
<thead>
<tr>
<th>Type of vessel</th>
<th>Vessel carrying oil in bulk</th>
<th>Vessel carrying bulk liquid cargo apt to cause pollution damage other than oil</th>
<th>Vessel carrying liquid cargo apt to cause pollution damage not in bulk</th>
</tr>
</thead>
<tbody>
<tr>
<td>Port area</td>
<td>Enter into or depart from a port</td>
<td>Ship-to-ship transfer of, loading or discharging cargo outside a port</td>
<td>Enter into or depart from a port</td>
</tr>
<tr>
<td>Level-1</td>
<td>Above 10,000GT Beyond 20 nautical miles</td>
<td>Above 10,000GT Beyond 20 nautical miles</td>
<td>Above 50,000 GT Beyond 20 nautical miles</td>
</tr>
<tr>
<td>Level-2</td>
<td>2,000 GT to 10,000 GT Below 10,000 GT Below 10,000 GT</td>
<td>Within 20 nautical miles</td>
<td>30,000 GT to 50,000 GT Within 20 nautical miles</td>
</tr>
<tr>
<td>Level-3</td>
<td>600 GT to 2,000 GT</td>
<td>Below 10,000 GT Below 10,000 GT</td>
<td>20,000 GT to 30,000 GT</td>
</tr>
<tr>
<td>Level-4</td>
<td>Below 600 GT</td>
<td>10,000 GT to 20,000 GT</td>
<td></td>
</tr>
</tbody>
</table>