

ALON

Ocean Wave

Issue 1 2013

Topics of interest relating to the Philippine Maritime Industry and Shipping

Filipino Seafarers – High Risk Area Gulf of Aden and ship owners contractual liability under the Employment Contract POEA.

GULF of ADEN

Governing Board Resolution 09-2011

Governing Board Resolution 12-2012

Following several enquires from ship owners as to whether there is still a high risk area and what are the POEA rules and guidelines applicable we have produced the following graphical diagrams and application of the POEA Governing Board Resolutions (GBR)



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Filipino Seafarers – High Risk Area Gulf of Aden and ship owners contractual liability under the Employment Contract POEA.

The POEA has issued several directives, these come under Memorandum Circulars (MC) and Governing Board Resolutions of the POEA. The latest one in effect in regards to the Gulf Of Aden is Governing Board Resolution (GBR) 09 Series of 2011 it encompasses and supersedes previous MC (memorandum Circulars) and GBR (governing Board Resolutions). We have created visuals to go with the board resolutions and references are by colour coded arrows.

The current POEA contract in force is that effective from November 2010, the contract states;

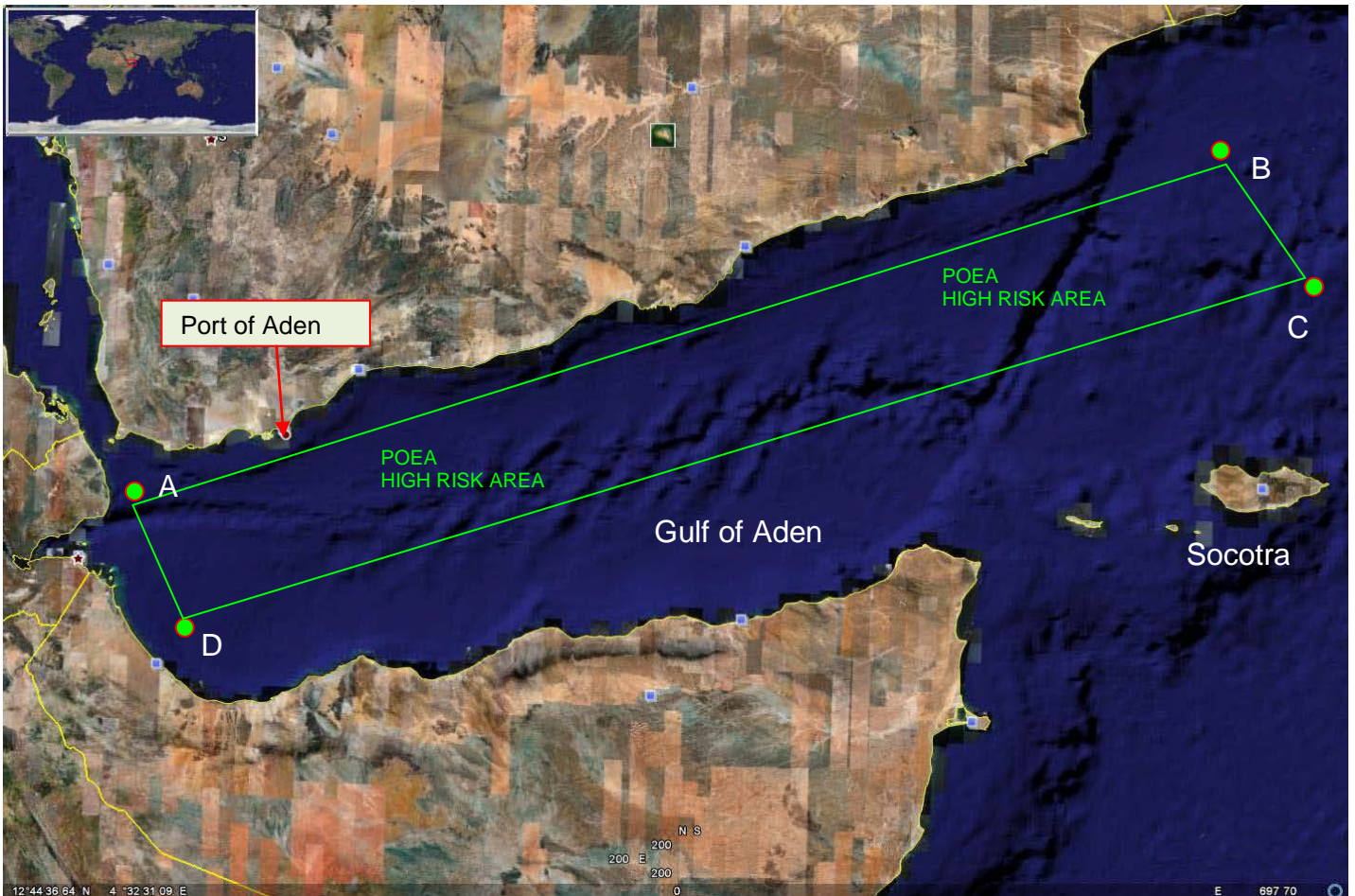
SECTION 21. WAR AND WARLIKE OPERATIONS ALLOWANCE

- A. *The POEA shall be the sole authority to determine whether the ship is within a war risk trading area. It shall also determine the amount of premium pay to which the seafarer shall be entitled to when sailing in that war-risk trading area.*
- B. *The seafarer when sailing within a war-risk trading area shall be entitled to such premium pay as the POEA may determine through appropriate periodic issuances.*
- C. *If at the time of the signing of the contract, an area is declared a war or war-risk trading area and the seafarer binds himself in writing to sail into that area, the agreement shall be properly appended to the Contract for verification and approval by the Philippine Overseas Employment Administration (POEA). The seafarer shall comply with the agreement or shall bear his cost of repatriation when he opts not to sail into a war or war-risk trading area.*
- D. *If a war or warlike operations should arise during the term of this Contract in any country within the vessel's trading area, the seafarer may sail with the ship within and out of the trading area if required by the Master.*

If a scanned copy of Governing Board Resolution 09-2011 or 12-2012 as it appears from the POEA is required please email mis@pandiman.com or andymalpass@pandiman.net



POEA defined High Risk Area

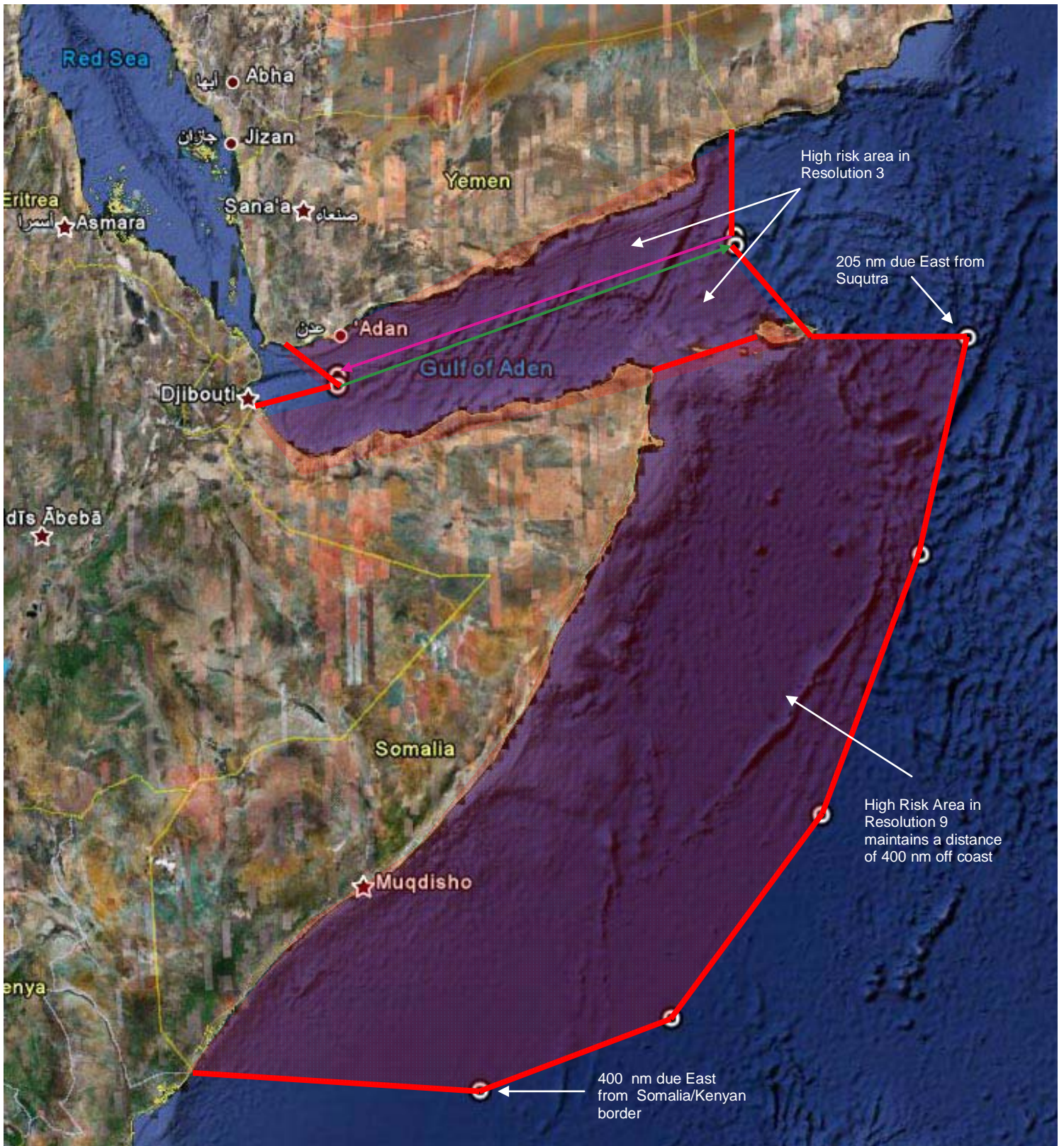


Background map image courtesy of Google Earth



POEA "HIGH RISK" AREA (see green arrow on POEA Governing Board Resolution 9 Below)

A	Lat	12 13 N	Long	33 39 E
B	Lat	15 22 N	Long	53 10 E
C	Lat	14 10 N	Long	54 00 E
D	Lat	11 00 N	Long	44 05 E

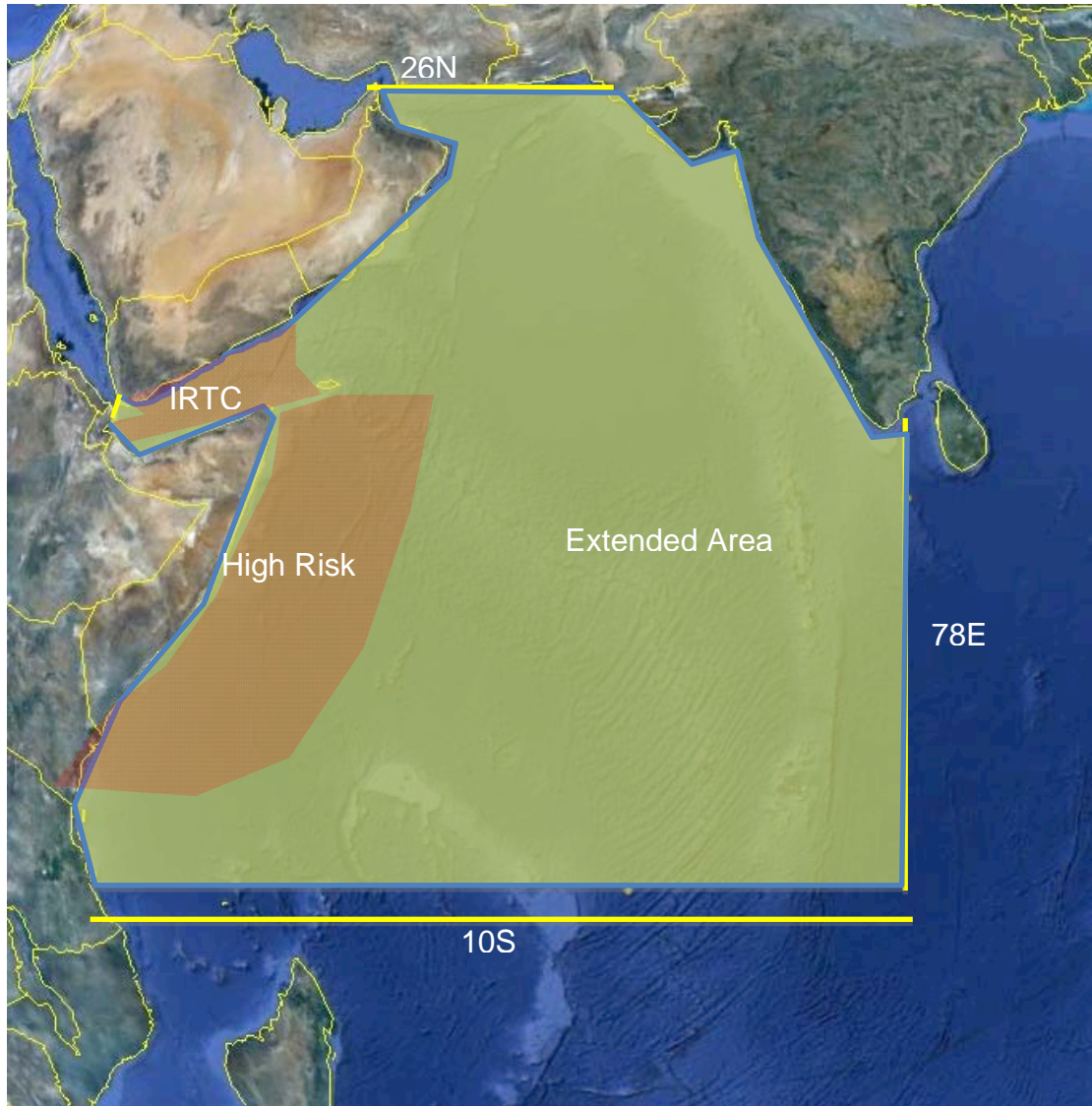


Background map image courtesy of Google Earth

← West Bound IRTC
→ East Bound IRTC



The High Risk Area
GB Res 09 - 2011



Background map image courtesy of Google Earth



The Extended Area
GB Res 09 - 2011



GOVERNING BOARD RESOLUTION NO. 09
Series of 2011

WHEREAS, it is the policy of the State to afford full protection to labor, local and overseas, to protect the rights of workers and to promote their welfare;

WHEREAS, it is the mandate of the Philippine Overseas Employment Administration to ensure the safety and well-being of Overseas Filipino Workers, including seafarers on board ocean-going vessels;

WHEREAS, Governing Board Resolution No. 4, Series of 2008 declared as a "high risk" zone the coordinates within the Gulf of Aden;

Latitude 12° 13' North Longitude 43° 39' East
Latitude 15° 22' North Longitude 53° 10' East

Latitude 11° 00' North Longitude 44° 05' East
Latitude 14° 10' North Longitude 54° 00' East

WHEREAS, the recent piracy incidents that occurred along the Arabian Sea, North Indian Ocean, South Indian Ocean, and its neighboring countries such as Kenya, Tanzania and Mauritania as reported by the International Maritime Bureau, necessitate the urgent need to update the existing high risk zone;

WHEREAS, given continuing pirate attacks on merchant ships despite the presence of a number of international navies, the Joint Negotiating Group (JNG) and International Transport Workers Federation (ITF) agreed on March 25, 2011 in London, United Kingdom to extend the geographical coverage of the International Bargaining Forum (IBF) High Risk Area;

WHEREAS, the Governing Board concerned with the welfare of Filipino seafarers, consulted with the representatives of the manning industry;

NOW THEREFORE, the POEA Governing Board, in a meeting duly convened, hereby RESOLVES THE FOLLOWING:

1. To adopt the IBF Circular dated 25 March 2011 on the Revision of the IBF HIGH RISK AREA in the Gulf of Aden and Indian Ocean, WHICH READS AS FOLLOWS:

"Given continuing pirate attacks on merchant ships despite the presence of a number of international navies, the Joint Negotiating Group (JNG) and the International Transport Workers Federation (ITF) agreed in London, United Kingdom to extend the geographical coverage of the IBF High Risk Area and terms and conditions applying in said area as follows:

1. "With effect from 0001Z on 1st April 2011 the Extended Risk Zone is as follows:

"The western border of the Zone runs from the coastline at the border of Djibouti and Somalia to position 11 48 N, 45 E; from 12 OON, 45 E to Mayyun Island in the Bab El Mandeb Straits. The eastern border is set at 78 E, the southern border is set at 10 S and the Northern Border set at 26 N."



Attached is the IBF Extended Risk Zone Map marked as Annex "A"

2. "The IBF constituents have agreed that during a vessel's transit of the Extended Risk Zone protection of seafarers through the provision of increased security measures should be adopted. Such measures must be above the latest Best Management Practice level and may include the provision of personnel or systems which appropriately reduce the vulnerability of a vessel. The sufficiency of such extra security measures should be determined depending on vessel type, size, freeboard during transit and speed, with consulting and seeking advice of respective ITF union(s) where necessary".
3. "The IBF constituents confirm that the adoption of Best Management Practice is required of all vessels operating under IBF agreements as a minimum standard of protection".
4. "Within the Extended Risk Zone the IBF constituents agree to retain the previously designated IBF High Risk Area as it is recognized that the pirate attacks emanate mainly from bases in this region. The Western Border of this High Risk Area runs from the coastline at the border of Djibouti and Somalia to position 11 48 N, 45 E; from 12 00 N, 45 E to Mayyun Island in the Bab El Mandeb Straits. The Eastern Border runs from Rhiy di-Irisal on Suqutra Island to position 14 18 N, 53 E; from 14 30 N, 53 E to the coastline at the border between Yemen and Oman, together with a 400 mile zone off the eastern coast of Somalia, i.e. from Suqutra Island down to the Kenian border in the South".
5. **"During the period of transit of the area designated as the IBF High Risk Area seafarers shall be entitled to compensation amounting to 100% of the basic wage and a doubled compensation payable in case of death and disability. This entitlement should apply on each day of the vessel's stay in the High Risk Area"**.
6. "In the case of vessels that will transit the IBF High Risk Area outside of the east bound and west bound lanes created under the International Recommended Transit Corridor (IRTC), seafarers have the right not to proceed with the passage. In such an event, the seafarer concerned shall be repatriated at the company's cost with benefits accrued until date of return to the port of engagement. This entitlement shall only apply in respect of vessels which are bound to enter the IBF High Risk Area, and will not apply in case of crossing the rest of the Extended Risk Zone".
7. "Vessels may deviate from the International Recommended Transit Corridor (IRTC) lanes without affecting the terms and conditions for the seafarers onboard for collision avoidance purposes only, as long as they are returned to the original lanes as soon as it is safe and practicable to do so".
8. **"During the period of transit of the IBF Extended Risk Zone, outside the area which is designated as High Risk Area, each seafarer shall be entitled to a bonus equal to 100% of the basic wage and a doubled compensation in case of injury or death - on any day during which the vessel he serving on is attacked. The proof of these entitlements shall be subject to a confirmed entry into the ship's log book and a report of attack being lodged with recognized international reporting authorities, such as UK MTO. The maximum period when these entitlements may apply shall not exceed the number of days of the vessel's transit of the IBF Extended Risk Zone outside the area designated as High Risk Area. For the purpose of this article an attack means any unauthorized and**





obvious action taken by a third party in a willful attempt to board or damage the vessel or to harm the crew which leads to the activation of the relevant vessel contingency plans including the alerting of the whole crew".

9. "The IBF constituents believe that, in order to assist the military efforts to counter piracy in this region, all vessels that are subject to a confirmed attack should report to international navies present in the area or other relevant authority, to assist in the deployment of naval resources to appropriate areas, where piracy attacks are occurring".
10. **"Within all of the IBF Extended Risk Zone, including the High Risk Area, the above identified entitlements to double basic pay and double compensation for injury or death will not apply while vessels are alongside a berth, at anchor in secure anchorages off ports or attached to SBM facilities - with exception of Somali waters and ports. It is understood that vessels will have to transit the high risk area in order to proceed to certain ports and as such the bonuses mentioned in above should cease when a vessel is either all secure alongside, brought up to her anchor or fully coupled to a SBM in any port of the IBF Extended Risk Zone, excluding Somalia. Likewise when sailing, the applicability of bonuses etc. should commence when the vessel is all gone", i.e. the last line is let go from a berth, when the anchor is aweigh or a vessel has de-coupled from a SBM".**
11. "This Revision of the IBF High Risk Area remains in force from OOOIZ on 1st April until any further revision or amendment is adopted by the constituents of the International Bargaining Forum".
2. That the rights of the seafarer under paragraph 6 of the above mentioned IBF circular not to proceed with the passage and to be repatriated under company's costs with benefits accrued until the date of return to the port of engagement, shall apply if the information that the ship will transit or will possibly transit, the IBF high risk area outside the east bound and west bound lanes created under the recommended IRTC was not disclosed to the seafarer prior to the deployment, or even if so disclosed, no written agreement by the seafarer to proceed with the passage was entered into prior to the deployment.
3. That POEA shall conduct an extensive information dissemination campaign to be launched for the seafarers and manning agencies deploying to the "high risk" areas.

The provisions herein provided shall apply to all Filipino seafarers effective 28th November 2011.

Done in the City of Manila this 28th day of November 2011.

ROSALINDA DIMAPILIS-BALDOZ
Secretary of Labor and Employment
Chairman of the Governing Board

CARLOS S. CAO, JR.
Vice-Chairperson



Further in order to apply clarification the POEA issued;

GOVERNING BOARD RESOLUTION NO. _Series of 2012

WHEREAS, Governing Board Resolution No. 04 series of 2008 was passed on 07 October 2008, declaring the Gulf of Aden as a high risk zone/ area;

WHEREAS, based on International Bargaining Forum (IBF) and IMEC Circulars, Governing Board Resolution Nos. 03, 05 and 06 series of 2009 were subsequently passed expanding the high risk zones / areas, identified in the said Circulars;

WHEREAS, POEA Memorandum Circular No. 14 series of 2009 was issued providing among others the payment and computation of the double wage and benefits, which include overtime and leave pay due to seafarers on board vessels transiting declared high risk zones/ areas;

WHEREAS, Governing Board Resolution No. 09 series of 2011 was passed adopting mF Circular dated 25 March 2011 on the revision of the IBF high risk area in the Gulf of Aden and Indian Ocean, and providing bonus compensation to seafarers transiting declared high risk zones/ areas equal to 100% of the basic wage and a doubled compensation in case of injury or death- on any day during which the vessel he is serving on is attacked;

WHEREAS, a number of manning agencies raised queries on the payment of double compensation and benefits stated in the aforesaid Resolution, particularly on the coverage of overtime and leave pay in the computation of double compensation and benefits;

WHEREAS, there is a need to clarify the implementation of the double wage and compensation benefits for seafarers transiting high risk zones/ areas, particularly on the inclusion of overtime and leave pay which are covered under POEA Memorandum Circular No. 14 series of 2009, but which are not explicitly provided under Governing Board Resolution No. 09 series of 2011;

NOW THEREFORE, the POEA Governing Board, in a meeting duly convened resolves as it is hereby RESOLVED to clarify that the computation of double wage and compensation benefits for seafarers traversing established high risk zones! areas covers overtime and leave pay.

All previous issuances consistent with this Resolution shall continue to apply. For immediate implementation. Done in the City of Manila this 2nd day October 2012.