

The repression of violations of the MARPOL 73/78 Convention

The remit of the Maritime Prefect – Atlantic

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Over the past few months, the French media have hyped a number of spectacular operations involving the port of Brest and vessels that have been re-routed there as they have been suspected of having breached the ban on oil discharge as provided in the French Code of Criminal Procedure.

There are clearly several ways of organising the repression of unlawful discharges at sea by vessels. Some have said that it has been a question of obstinacy that goes hand in hand with the diabolical ingenuity that only landlubbers are capable of using in order to pester seamen. Others say that it is only fair because of the awful spills that our country has suffered from. On a more serious note and with due regard to the round table discussion we've had and the presentations this afternoon, may I resituate the repression of unlawful oil discharges at sea (by vessels) in a more relevant context including the measures we can take to mitigate pollution that seriously deteriorates our coastlines.

Furthermore, please do not expect me to pass comment on the relevance or the severity of repression. The policy of repression is dealt with by the law courts as they deem fit and proper. The PPO (Public Prosecutor's Office) defines criminal policy in this regard and the Maritime Prefect is responsible for implementing measures that will produce results and enforce repression. In this instance, as with other matters, the Maritime Prefect exerts a role conferred on him by a recent piece of legislation, namely the decree dated 6 February 2004 requiring him to co-ordinate the measures required to mitigate unlawful activities.

And again, before going to the nexus of today's subject, may I remind you that we are only going to tackle the repression of deliberate spills and not accidental ones, such as the Erika or the Prestige that are governed by different rules.

1. Violations of MARPOL regulations

To begin with, what do these violations involve and what do deliberate unlawful spills entail ? We need to refer to the MARPOL Convention that came into force in France in 1983 in order to understand how the origin of these spills has been incriminated. Even if the public is very often surprised by this, we need to point out that MARPOL does not ban operational discharges, meaning that such operations are part of a vessel's normal routine. But MARPOL does define the conditions governing such discharges.

In French law, these standards were integrated into the Environmental Code articles L.128-10 to L.128-31 and cover all vessels flying the French flag everywhere in addition to covering foreign flags in French territorial waters and the EEZ.

The Environmental Code refers to MARPOL and defines " Special Areas " inside which no-one and no vessel can discharge anything into the sea because such areas are considered to be very sensitive components of the marine environment. The English Channel is a case in point and is indeed a " Special Area " where oil discharges are not allowed.

2. The repression framework for deliberate spills

Were we to seek a decision that has clearly improved the efficiency of government intervention, it would definitely be the piece of legislation that was passed on 3 May 2001 and that conferred on the County Court in Brest a remit to deal with maritime matters and instituted a new Tribunal called the Special Coastal Maritime Court that has jurisdiction over deliberate spills in territorial waters along France's Atlantic seaboard including all the way up to Mount Saint Michael in the English Channel and the bill passed on 15 April 2003 that extended the jurisdiction of the court to cover deliberate spills in the French EEZ.

It has been thanks to this extension of jurisdiction and the powers that go with it that 14 vessels have been re-routed over the past 18 months. Previously, deliberate spills by foreign vessels (by far the most frequent occurrences in the area) in the French EEZ came under the jurisdiction of the Paris County Court. Despite the determination of officials and magistrates, cases took quite some time to come to court and even when they were heard, it was hard to find evidence and the ship's master almost never came to court which only served to reduce the number of convictions. When people were convicted, they hardly ever paid the fine but since jurisdiction has been handed over to the Brest County Court, matters have been improved.

3. Repressive measures for deliberate spills

As organised at present at the request of the Prosecutor's Office in Brest, repressive measures have one strategic objective, namely to enable a positive and efficient trial and are clearly designed to serve the judiciary. Tactically, these measures consist of re-routing an offending vessel to a French port so as to impound it and secure a financial guarantee in addition to ensuring that the vessel can be inspected immediately and notifying the Captain of the date his case will come to trial. This means that the Prosecutor's Office will have assurances that the fine will be paid and that the enquiry will be sound which will help to convince magistrates and the fact that the Captain has been notified of the date for the hearing means that the ruling will be based on the adversarial concept, meaning that the Captain cannot ignore the fact that he has been tried and convicted and the ruling of the court will therefore be enforceable immediately.

4. The legal framework for repressive measures

The Public Prosecutor's Office in Brest has been using an armamentarium of legal provisions so as to ensure a successful outcome for trials and in order to re-route offending vessels. In particular it has been using article 5 of the bill dated 15 July 1994 concerning the powers of State to supervise shipping. According to article 5, the captain of a vessel or aeroplane belonging to the State can order a vessel to re-route on request from a qualified authority of the judiciary. In actual practice, the PPO (Public Prosecutor's Office) approaches the Maritime Prefect and there are two essential reasons for this. First of all, the entity that reported the spill may no longer be in the area and it is therefore up to the Maritime Prefect to organise the notification process for the re-routing which is generally done by radio contact with another vessel or aeroplane and then confirmed by an Inmarsat message delivered by the relevant MSRC (French CROSS). After which and even if the offender complies with instructions, the PPO requests the Maritime Prefect (French PréMar) to provide surveillance and escort services at high sea until the vessel reaches the port it has been re-routed to. But if the offending vessel were to refuse to comply with instructions, the PréMar is empowered to use coercion and force if necessary.

5. Evidence

Indisputable evidence of a spill does not exist, of course, but there are rules that have been tried and tested over time. Currently the gold standard is digital photography that does a very good job of evidencing silvery sheen, typical of oil spills. In the French EEZ in the Bay of Biscay, the maximum oil content in the ship's discharge while en route is 15 ppm. But experiments conducted by a working group of the Bonn Agreement have shown that the naked eye cannot see oil contents lower than 100 ppm. The simple fact of seeing a silvery sheen in the water on a digital photo is enough to indicate that the oil content is higher than 15 ppm. Then again, the substance has to be a hydrocarbon because palm oil, for instance, can be discharged at sea. Accordingly, interpretation manuals for visual sightings have been drafted by a working group of the Bonn Agreement and officials are given relevant training so as to enable them to see the difference between hydrocarbon silvery sheens and less reprehensible discharges.

Why is it that no-one takes samples any more from the slicks, as they used to ten years ago ? Because there is a great temptation to want to identify the oil in the ship's wake as being the same as the one on board and thereby show the ship's master incontrovertible scientific evidence. There are, as it turns out, a number of difficulties the first of which is to have the appropriate resources to take a sample from the slick. An aircraft of course cannot do the job and even if you were to have a helicopter available to send out, the downwash from the rotor blades disperses the slick and the oil you are seeking to sample. A surface vessel could probably do the sampling providing the slick is big enough to spot and is amenable to sampling. But once that has been done, a sample has to be taken on board. But the question is where, on board ? Where will the self same oil as the one sampled at sea be found on board ? Since we know that most slicks contain various kinds of oil residues, we rapidly come to the conclusion that taking a sample at all costs can be risky. Then of course the Captain may seek to dump all his slops and residues before sampling can take place in a bid to foil the sampling process such that the oil sampled at sea will be inexistent on board. That is why sampling is rarely done nowadays and even when it is, the main reason is for the purposes of organising the response job and not for providing evidence in court.

In point of fact, since the courts now recognise photography as evidence ever since the ruling that was handed down in the case of the *TRAQUAIR* , by the Court of Appeal in Rennes in 1995, much of the evidence is now based on photos taken by aircraft and corroborated of course by other means such as the declarations of the Captain or the crew, video films, the judicial enquiry or technical inspections on board.

NAVIRES POURSUIVIS PENALEMENT PAR TGI BREST POUR POLLUTION


| Navires | Pavillon | Types | Date infraction | Nature de l'infraction | Date déroutement | Agent verbalisateur | Montant caution demandée en euros | Condamnation 1ère instance | Date jugement 1er instance et APPEL | Condamnation par Cour d'appel |
|---------------------------------|-------------------------|------------------|-----------------|--|--|---------------------|-----------------------------------|----------------------------|--|--|
| VOLTAIRE N° IMO 810960 | Libéria | Porte-conteneurs | 22/05/03 | Pollution de sillage : 2 km X 50m en ZEE | Navire non dérouté. Capitaine entendu lors de son escale au Havre | Marine nationale | 200 000,00 | 100 000,00 | Audience le 30/09/2003 - Délibéré le 18/11/2003 - Appel de la défense le 25/11/2003 | Audience à la 3ème chambre de Cour d'appel de Rennes le 16 décembre 2004 à 14h00 |
| DOBRUDJA N° IMO 8513247 | Bulgarie | Cargo | 30/07/03 | Pollution de sillage : 4,5 km X 700m en ZEE | 30/07/03 à Brest | Marine nationale | 300 000,00 | 200 000,00 | Audience le 18/11/2003 - Délibéré le 16/12/2003 - Appel de la défense le 23/12/2003 | Audience à la 3ème chambre de Cour d'appel de Rennes le 13 janvier 2005 à 14h00 |
| PANTOKRATORAS N° IMO 8109060 | Chypre | Cargo | 19/12/03 | Pollution de sillage : 37 km X 100 m en ZEE | 27/01/04 à Brest | Douanes françaises | 500 000,00 | 350 000,00 | Audience le 25-05-04 à 13h30 Délibéré le 29 juin 2004 Aucun appel dans les 10 jours suivant le délibéré. | Le jugement est définitif et exécutoire. |
| NICOLAS M. N° IMO 7433452 | St Vincent et Grenadine | Minéralier | 21/12/03 | Pollution de sillage : 2,5 km X 50m en ZEE | 22/12/03 à Brest | Douanes françaises | 250 000,00 | 150 000,00 | Audience le 20-04-04 à 13h30 Délibéré le 18 mai 2004 Aucun appel dans les 10 jours suivant le délibéré. | Le jugement est définitif et exécutoire. |

| Navires | Pavillon | Types | Date infraction | Nature de l'infraction | Date déroulement | Agent verbalisateur | Montant caution demandée en euros | Condamnation 1ère instance | Date jugement 1er instance et APPEL | Condamnation par Cour d'appel |
|----------------------------------|------------|--------|-----------------|---|------------------|---------------------|-----------------------------------|--|---|--|
| NOVA HOLLANDIA N° IMO 8223397 | Malte | Cargo | 21/01/04 | Pollution de sillage : 18 km/200 m en ZEE | 21/01/04 à Brest | Marine nationale | 250 000,00 | RELAXE | -Audience le 18-05-04 à 13h30 -Délibéré le 15 juin 2004 -Appel du parquet le 16 juin 2004 | Date audience à la Cour d'appel de Rennes non encore fixée |
| GITTA KOSAN N° IMO 8817693 | Ile de Man | LPG | 28/01/04 | Pollution de sillage : 18 km X 50 m en ZEE | 28/01/04 à Brest | Douanes françaises | 250 000,00 | Audience prévue le 25-05-04 à 16h30 reportée au 25-01-05 à 13h30 | | |
| ARROYOFRIO DOS N° IMO 8325468 | Portugal | RO-RO | 02/03/04 | Pollution de sillage : 10 km X 100 mètres en ZEE | 02/03/04 à Brest | Marine nationale | 250 000,00 | 200 000,00 | Audience le 29-06-04 à 13h30 délibéré le 20 juillet à 10h00 Appel de la défense interjeté le 27/07 | Date audience à la Cour d'appel de Rennes non encore fixée |
| MORITZ SCHULTE N° IMO 9220794 | Ile de Man | Gazier | 01/06/04 | Pollution de sillage de 16,5 km X 50 mètres en ZEE | 02/06/04 à Brest | Marine nationale | 300 000,00 | Audience le 12/10/04 à 13h30 | | |
| GAZ VENEZIA N° IMO 9013701 | Panama | Gazier | 04/06/04 | Pollution de sillage de 13,5 km X 60 mètres en ZEE | 04/06/04 à Brest | Douanes françaises | 300 000,00 | Audience le 09/11/04 à 13h30 | | |

| Navires | Pavillon | Types | Date infraction | Nature de l'infraction | Date déroulement | Agent verbalisateur | Montant caution demandée en euros | Condamnation 1ère instance | Date jugement 1er instance et APPEL | Condamnation par Cour d'appel |
|-------------------------------------|-------------------------|------------------|-----------------|---|--|---------------------|-----------------------------------|------------------------------|-------------------------------------|-------------------------------|
| CAPTAIN DIAMANTIS N° IMO 9212242 | Grèce | vraquier | 07/07/04 | Pollution de sillage de 3 km X 30 mètres en ZEE | Refus d'optempérer en attente d'un nouveau passage pour le dérouter | Marine nationale | | | | |
| OPDR CASABLANCA N° IMO 9155420 | Iles Canaries | Porte-conteneurs | 12/07/04 | Pollution de sillage de 6,5 km X 40 mètres en ZEE | En raison Brest 2004, dérouter le 12/07/04 au Havre, son port de destination | Douanes françaises | 300 000,00 | Audience le 18/01/05 à 13h30 | | |
| SILVER PEARL N° IMO 7334785 | St Vincent et Grenadine | Cargo | 30/08/04 | Pollution de sillage de 21 km X 30 mètres en ZEE | 30/08/2004 vers port de Bayonne où il arrive le 31/08 | Marine nationale | 250 000,00 | Audience le 01/02/05 à 13h30 | | |
| ATLANTIC HERO N° IMO 8917821 | Panama | Pétrôlier | 10/09/04 | Pollution de sillage de 11 km X 40 mètres en ZEE | Décision de dérouter sur le port du Havre, sa destination, y arrive le 11/09 à 23h00 | Marine nationale | 300 000,00 | Audience le 22/02/05 à 13h30 | | |
| ATLANTIS CHARM N° IMO 8105753 | Chypre | vraquier | 16/09/04 | Pollution de sillage de 15 km X 25 mètres en ZEE | 16/09/04 à Brest où il arrive le 17/09 à 8h30 | Marine nationale | 200 000,00 | Audience le 15/03/05 à 14h30 | | |

| Navires | Pavillon | Types | Date infraction | Nature de l'infraction | Date déroulement | Agent verbalisateur | Montant caution demandée en euros | Condamnation 1ère instance | Date jugement 1er instance et APPEL | Condamnation par Cour d'appel |
|-----------------------------|----------|------------------|-----------------|---|--|---------------------|-----------------------------------|------------------------------|-------------------------------------|-------------------------------|
| MSC RHONE N° IMO 7900699 | Panama | Porte conteneurs | 21/09/04 | Pollution de sillage de 31km X 300 mètres en ZEE | 21/09/04 à Brest où il arrive le 22/09 à 13h30 | Marine nationale | 450 000,00 | Audience le 05/04/05 à 14h30 | | |
| ZUARA N° IMO 8602386 | Malte | Cargo | 01/10/04 | Pollution de sillage de 55,7km X 40 mètres en ZEE | 01/10/04 à Brest | Douanes françaises | 500 000,00 | Audience le 12/04/05 à 14h30 | | |

**Les opérations de répression aux
infractions à MARPOL 7378 : l'action du
préfet maritime de l'Atlantique**



**TM CAPTAIN DIAMANTS / 07 JUILLET 04/ 0713Z
VIGIMER / 24F / F50 / XE
POSITION 4559N-00758W**

MARPOL : convention de Londres du 2 novembre 1973

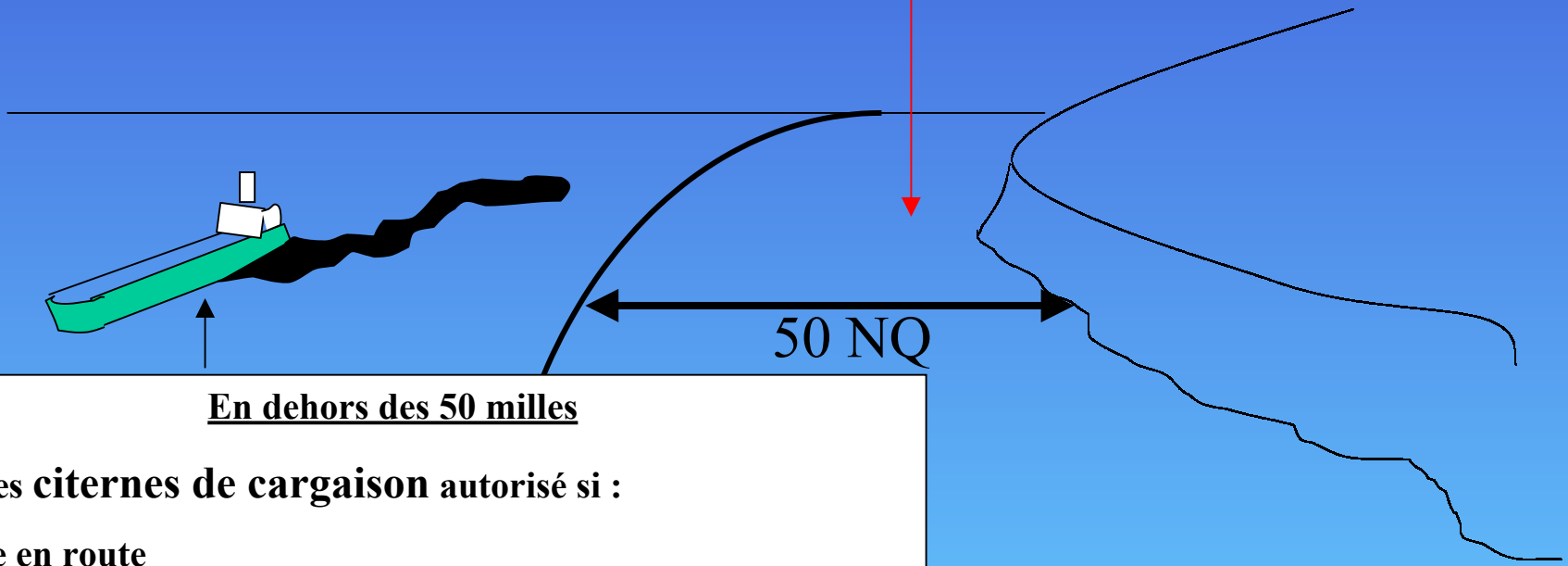


MARPOL 73/78

Annexe I – Règle 9 – les pétroliers

Dans les 50 milles

A partir de la côte :
interdiction de tout rejet
provenant des citernes de
cargaison



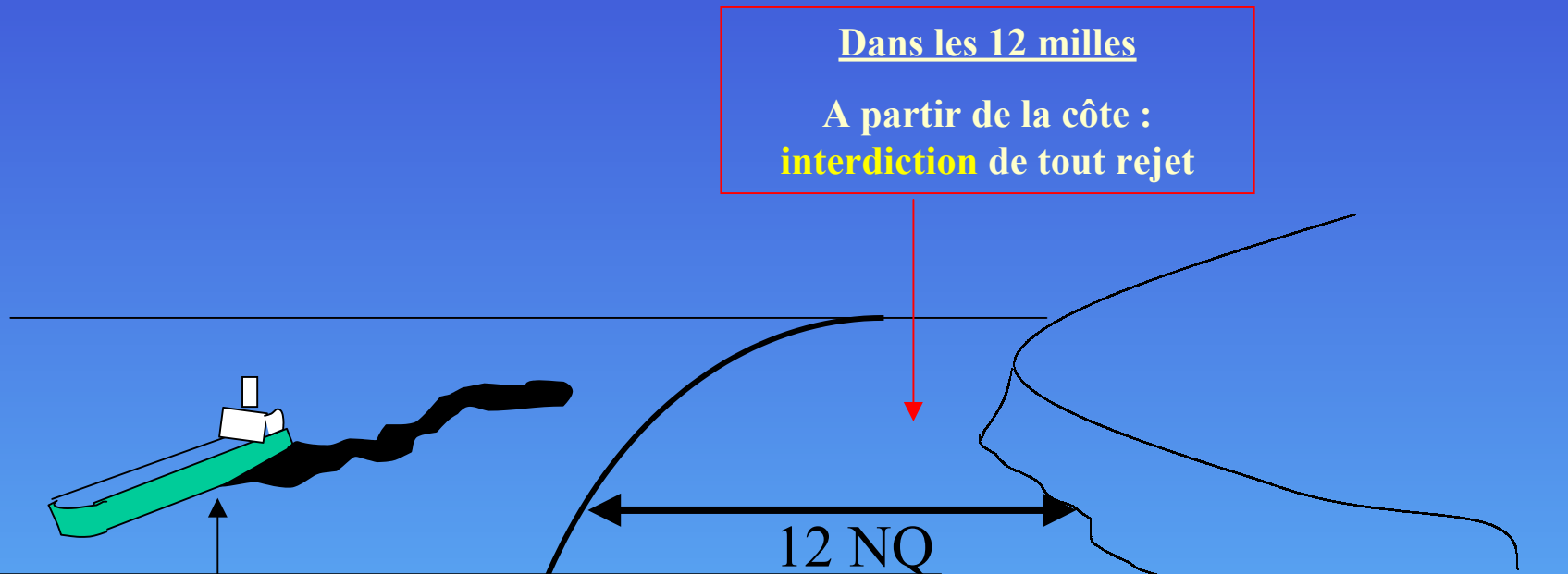
En dehors des 50 milles

Rejet des citernes de cargaison autorisé si :

- Navire en route
- Taux de rejet < 60 litres par mille parcouru
- quantité rejetée < 1 / 30 000 de la cargaison quantité rejetée

MARPOL 73/78

Annexe I – Règle 9 – les autres navires



En dehors des 12 milles

Rejet des cales machines autorisé si :

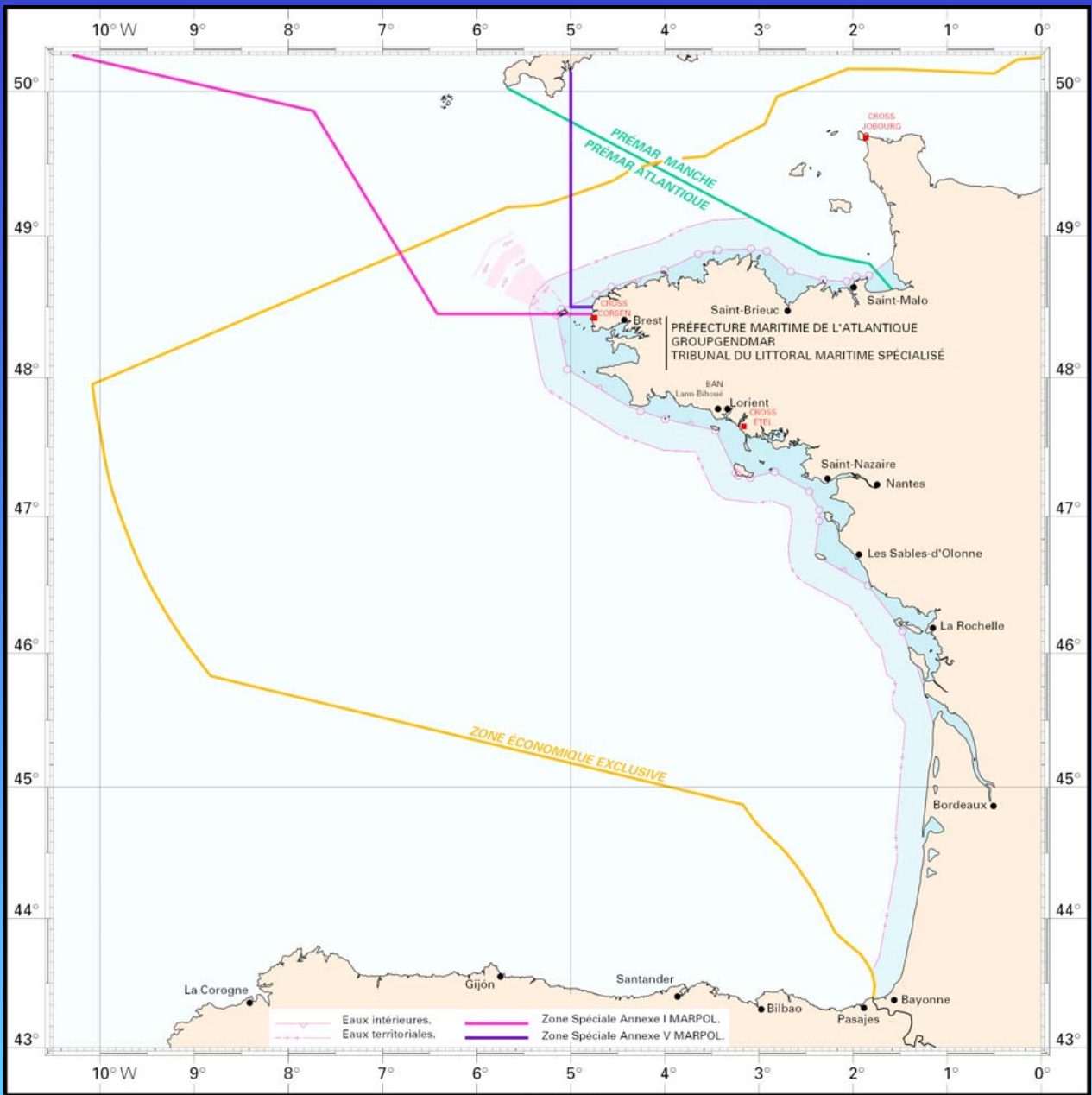
- Navire en route
- Taux de rejet < 15 ppm
- Système de séparation eau / hydrocarbure en marche

Convention MARPOL 73/78



- Annexe I : pollution par hydrocarbures
- Annexe II : pollution par substances liquides nocives
- Annexe III : pollution par substances nocives en colis
- Annexe IV : pollution par les eaux usées des navires
- Annexe V : pollution par les ordures des navires

Zone spéciale Europe du Nord - Annexe I – Règle 10



LES PRINCIPAUX OUTILS DE SURVEILLANCE DES POLLUTIONS



FALCON 50



ATLANTIC 2

POLMAR 2



Un gage d'efficacité : le déroutement des contrevenants



Les preuves

TOUTE TRACE VISIBLE A L'ŒIL NU
CARACTERISE UN REJET A PLUS DE
100 PPM



TM / PO / ARROYOFRIO DOS
4732N 00528 / 021505Z MARS 04 / 160/10KTS/
nappe 5,5NQSD/100M/340°/VIGIMER / 24F



UN FAUX AMI ...

**HUILE DE
PALME**

Les difficultés de la constatation des infractions

Quand le rejet cesse...



Quand il y a doute sur l'auteur de la pollution...



Avez-vous des questions ?

