



Tonga

# **MARINE POLLUTION PREVENTION ACT**

**Chapter 48.12**

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## MARINE POLLUTION PREVENTION ACT

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## MARINE POLLUTION PREVENTION ACT

### AN ACT TO PROVIDE FOR THE PREVENTION OF AND RESPONSE TO MARINE POLLUTION AND THE DUMPING OF WASTES AND OTHER MATTERS AND TO GIVE EFFECT TO INTERNATIONAL MARINE POLLUTION CONVENTIONS<sup>1</sup>

Commencement [17th June 2005]<sup>2</sup>

## PART I- PRELIMINARY

### 1 Short title, application

- (1) This Act may be cited as the Marine Pollution Prevention Act.
- (2) This Act shall apply to —
  - (a) all vessels in Tongan waters;
  - (b) all Tongan vessels;
  - (c) all aircraft in or over Tongan territory;
  - (d) all Tongan aircraft; and
  - (e) all other potential sources of marine pollution incidents in Tongan territory.

### 2 Interpretation<sup>3</sup>

- (1) In this Act, unless the context otherwise requires —

“**abrasive blasting medium**,” means any substance used to remove paint, rust and other material from metal and timber surfaces using an abrasive blasting technique, including but not restricted to copper slag, garnet, glass and sand;

“**Administration**” means the Ministry responsible for maritime transport;<sup>4</sup>

“**anti-fouling paints or systems**” means paints, coatings or other treatments applied to the hulls of vessels to prevent or minimise marine organisms attaching to and growing on such hulls;

“**Chief Executive Officer**” means the Government chief executive officer responsible for marine and ports;<sup>5</sup>

“**CLC 92**” means the International Convention on Civil Liability for Oil Pollution Damage, 1992;

“**Committee**” means the National Marine Pollution Committee established under section 16;

“**contributing oil**” means —

- (a) any oil carried as cargo by sea and loaded onto or discharged from a vessel in Tongan waters;
- (b) in Part V of this Act, crude oil and fuel oil as defined below —

“**crude oil**” means any liquid hydrocarbon mixture occurring naturally in the earth whether or not treated to render it suitable for transportation. It also includes crude oils from which certain distillate fractions have been removed (sometimes referred to as “**topped crudes**”) or to which certain distillate fractions have been added (sometimes referred to as “**spiked**” or “**reconstituted**” crudes.);

“**fuel oil**” means heavy distillates or residues from crude oil or blends of such materials intended for use as a fuel for the production of heat or power of a quality equivalent to the “American Society for Testing and Materials’ Specification for Number Four Fuel Oil (Designation D 395-69)”, or heavier;

“**contributing oil site**” means any oil transfer site in Tonga or Tongan waters;

“**contributing vessel**” means a vessel that has taken on board fuel oil outside Tonga or Tongan waters;

“**discharge**” means in relation to pollutants, harmful substances or effluents containing such pollutants or substances, any release into the sea howsoever caused from a vessel, platform or place on land and includes any escape, disposal, spilling, leaking, pumping, emitting or emptying, but does not include —

- (a) dumping within the meaning of the London Convention;
- (b) release of pollutants or harmful substances for purposes of legitimate scientific research into pollution abatement or control as permitted by the Administration under section 10; or



- (c) release of pollutants or harmful substances for purposes of combating specific pollution incidents in order to minimise the damage from pollution, as permitted by the Administration under section 10;

“**dumping**” means —

- (a) any deliberate disposal into the sea of wastes or other matter from vessels, aircraft, platforms or other man-made structures at sea;
- (b) any deliberate disposal into the sea of vessels, aircraft, platforms or other man-made structures at sea;
- (c) any storage of waste or other matter in the seabed and the subsoil thereof from vessels, aircraft, platforms or other man-made structures at sea; and
- (d) any abandonment or toppling at site of platforms or other man-made structures at sea, for the sole purpose of deliberate disposal,

but does not include —

- (e) the discharge of wastes or other matter incidental to, or derived from, the normal operation of vessels, aircraft, platforms or other man-made structures at sea and their equipment, other than wastes or other matter transported by or to vessels, aircraft, platforms or other man-made structures at sea operating for the purpose of disposal of such matter or derived from the treatment of such wastes or other matter on such vessels, aircraft, platforms and other man-made structures;
- (f) placement of matter for a purpose other than the mere disposal thereof, provided that such placement is not contrary to the aims of this Act; or
- (g) abandonment in the sea of matter such as cables, pipelines and marine research devices placed for the purpose other than the mere disposal thereof;

and “**to dump**” and “**dumped**” have corresponding meanings;

“**Discharge Permit**” means permission to discharge for purposes of legitimate scientific research or combating specific pollution incidents granted in advance by the Administration under section 10;

“**Dumping Permit**” means permission to dump granted in advance by the Administration under section 53;

“**FUND Convention 92**” means the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1992;

“**92 Fund**” means the international organisation established under FUND Convention 92;

“**garbage**” includes all kinds of food, domestic and operational waste, including plastics, excluding fresh fish and parts thereof, generated during the normal operation of a vessel and liable to be disposed of continuously or

periodically, but does not include oil, noxious liquid substances and other pollutants, or sewage from vessels;

“**harmful substance**” means any substance which, if introduced into the sea, is liable to create hazards to human health, to harm living resources and marine life, to damage amenities or to interfere with other legitimate uses of the sea, and includes any substance subject to control by this Act;

“**HNS Convention**” means the International Convention on Liability and Compensation for Damage in connection with the Carriage of Hazardous and Noxious Substances by Sea, 1996;

“**hull cleaning**” means the cleaning of the hull and other external surfaces of a vessel to remove marine organisms that may be attached to or living on that hull or external surface;

“**incident**” means any occurrence, or series of occurrences having the same origin, which causes a discharge or creates a grave or imminent threat of causing a discharge;

“**incineration at sea**” means the combustion on board a vessel, platform or other man-made structure at sea of wastes or other matter for the purpose of their deliberate disposal by thermal destruction; but does not include the incineration of wastes or other matter on board a vessel, platform or other man-made structure at sea if such wastes or other matter on board a vessel, platform or other man-made structure at sea if such wastes or other matter were generated during the normal operation of the vessel, platform or other man-made structure at sea;

and “**to incinerate**” and “**incinerated**” have corresponding meanings;

“**IMDG Code**” means the International Maritime Dangerous Goods Code published by the International Maritime Organization from time to time;

“**International Fund**” means the “**International Oil Pollution Compensation Fund 1992**” established under the FUND Convention 92;

“**International Maritime Convention**” means a convention relating to the prevention of and response to marine pollution, for the compensation of damage resulting from marine pollution and to maritime safety, including those listed in subsection (2);

“**International Maritime Organization**” means the organisation set up under the International Maritime Organization Convention, 1958 whose task is to develop a comprehensive body of international maritime conventions, codes and recommendations which could be implemented by all members to the conventions;

“**intervention Convention**” means the International Convention Relating to Intervention on the High Seas in Cases of Oil Pollution Casualties (1969) and the Protocol relating to Intervention on the High Seas in Cases of Pollution by Substances Other than Oil, 1973;

“**Lead Agency**” means the national ministry, department, division, authority or agency responsible for assuming overall operational command and co-ordination of the response to a marine pollution incident;

“**London Convention**” means the Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter (1972), as amended by the Protocol of 1996 relating thereto;

“**marine casualty**” means a collision, grounding or stranding of a vessel or vessels or other incident of navigation, or other occurrence on board a vessel, or external to it resulting in material damage or imminent threat of material damage to a vessel or cargo;

“**marine pollution incident**” means the actual or probable discharge of any pollutant or other harmful substance from any vessel, platform or place on land;

“**MARPOL 73/78**” means the International Convention for the Prevention of Pollution from Ships (1973) as modified by the Protocol of 1978 relating thereto;

“**master**” means the person in charge of a vessel at any one time;

“**Minister**” means the Minister responsible for marine and ports;<sup>6</sup>

“**NATPLAN**” means the National Marine Spill Contingency Plan as referred in section 17;

“**non-indigenous harmful aquatic organisms or pathogens**” means any species of aquatic microbe, plant or animal whose natural biogeographical range does not include Tongan waters and which, if introduced into Tongan waters, has the potential to create hazards to human health, to harm living resources and marine life, to damage or impair facilities and amenities or to interfere with other legitimate uses of the sea;

“**noxious liquid substances**” means any substance referred to in Appendix II of Annex II of MARPOL 73/78;

“**occupier**” in relation to a place on land that has no other occupier, means the owner thereof;

“**oil**” means —

- (a) petroleum in any form including crude oil, fuel oil, sludge, oil, refuse and refined products (other than petrochemicals which are subject to the provisions of Annex II of MARPOL 73/78) and, without limiting the generality of the foregoing, includes the substances listed in Appendix I to Annex I of MARPOL 73/78;
- (b) in Part V of this Act, any persistent hydrocarbon mineral oil such as crude oil, fuel oil, heavy diesel oil and lubricating oil, whether carried on board a ship as cargo or in the bunkers of such ship;

“**oil pipeline**” means any pipeline constructed or used to convey oil;

“**oil tanker**” means a ship constructed or adapted primarily to carry oil in bulk in its cargo spaces and includes combination carriers and any “**chemical tanker**” as defined in Annex II of MARPOL 73/78 when it is carrying a cargo or part cargo of oil in bulk;

“**oil transfer site**” means any land, site, building, structure or facility (whether on land or above the seabed) that is used to transfer oil, or at or from which oil is transferred to or from a vessel or offshore installation;

“**oily mixture**” means a mixture with any oil content;

“**OPRC Convention**” means the International Convention on Oil Pollution Preparedness, Response and Co-operation, 1990;

“**owner**” —

- (a) in relation to any vessel means —
- (i) in the case of a registered vessel, the registered owner or owners;
  - (ii) in the case of an unregistered vessel, the person owning the vessel;
  - (iii) in the case of a vessel owned by a State, the person registered as the operator of the vessel;
  - (iv) any charterer, manager, or operator of the vessel or any other person for the time being responsible for the navigation or management of the vessel;
  - (v) any agent in Tonga of the owner, charterer, manager, or operator; and
  - (vi) any other person interested in or in possession of the vessel, including any salvor in possession of the vessel, and any employee or agent of any salvor in possession of the vessel;
- (b) in relation to any platform means —
- (i) the owner or manager or licensee for the time being of the platform or structure, or any agent or employee, or any person in charge of operations connected therewith; and
  - (ii) any person having a right or privilege or license to explore the seabed and subsoil and to exploit the natural resources thereof in connection with which the platform or structure is or has been or is to be used;
- (c) for Part V of this Act, means the person or persons registered as the owner of the ship or, in the absence of registration, the person or persons owning the ship. However, in the case of a ship owned by a State and operated by a company which in that State is registered as the ship’s operator, owner shall mean such company;

“**PACPLAN**” means the Pacific Islands Regional Marine Spill Contingency Plan as referred to in section 18;

“**POLFUND**” means the National Marine Pollution Fund established under section 21;

“**person**” means any individual or partnership or any public or private body, whether corporate or not, including a State or any of its constituent subdivisions;

“**place on land**” means any place on dry land, or on any dry, inter-tidal or submerged reef, or any place connected with dry land or a reef;

“**platform**” means any man-made fixed or floating offshore structure used for any purpose whatsoever;

“**pollutant**” includes oil and oily mixtures, noxious liquid substances, harmful packaged substances, sewage and garbage as defined by MARPOL 73/78 and any water contaminated by any such substance, and any other substance when added to any waters has the effect of contaminating those waters so as to make them unclean, noxious or impure or detrimental to the health, safety or welfare of any person, or poisonous or harmful to marine life;

“**pollution damage**” means —

- (a) loss or damage caused outside a vessel by contamination resulting from the escape or discharge of a pollution from the vessel, wherever such escape or discharge may occur, provided that compensation for impairment of the environment other than losses of profit from such impairment shall be limited to costs of reasonable measures of reinstatement actually undertaken or to be undertaken;
- (b) in Part V of this Act, loss or damage caused outside a vessel by contamination resulting from the escape or discharge of oil from the vessel, wherever such escape or discharge may occur, provided that compensation for impairment of the environment other than losses of profit from such impairment shall be limited to costs of reasonable measures of reinstatement actually under-taken or to be undertaken;
- (c) the costs of preventative measures and further loss or damage caused by preventive measures;

“**preventive measures**” mean any reasonable measures taken by any person after a pollution incident has occurred to prevent or minimise pollution damage;

“**reception facilities**” mean facilities for enabling vessels using a port to discharge or deposit oil, oily mixtures, noxious liquid substances, sewage or garbage from those vessels;

“**related interests**” include interests directly affected or threatened, including, but not limited to maritime, coastal, port or estuarine activities, fisheries activities, tourist attractions, public health and welfare, and the conservation of living marine resources and of wildlife;

“**sea**” means all areas of the ocean below highest astronomical tide and includes any estuary, tidal area and lagoon;

“**sewage**”, in relation to vessels, includes —

- (a) drainage and other wastes from any form of toilets, urinals and toilet scuppers;
- (b) drainage from medical premises, including dispensaries and sick bays, by way of wash basins, wash tubs and scuppers located in such premises;
- (c) drainage from spaces containing living animals; and
- (d) other waste waters when mixed with the drainage mentioned in the foregoing provisions of this definition;

“**ship**”, in Part V of this Act, means any seagoing vessel and seaborne craft of any type whatsoever constructed or adapted for the carriage of oil in bulk as cargo, provided that a ship capable of carrying oil and other cargoes shall be regarded as a ship only when it is actually carrying oil in bulk as cargo and during any voyage following such carriage, unless it is proved that it has no residues of such carriage of oil in bulk aboard;

“**ship repair facility**” means any place on land, in the inter-tidal zone and in Tongan waters where vessels are repaired and maintained, including cleaning, scraping and painting;

“**special areas**” means the Mediterranean Sea, Baltic Sea, Black Sea, Red Sea, the “**Gulf**” area, the Gulf of Aden and Antarctica;

“**SPREP**” means the South Pacific Regional Environment Programme;

“**SPREP Convention**” means the Convention for the Protection of the Natural Resources and Environment of the South Pacific Region, 1990 and related protocols;

“**SPREP Dumping Protocol**” means the Protocol on the Prevention of Pollution of the South Pacific by Dumping (a protocol of the SPREP Convention);

“**SPREP Pollution Emergencies Protocol**” means the Protocol Concerning Co-operation in Combating Pollution Emergencies in the South Pacific Region (a protocol of the SPREP Convention);

“**synthetic fishing nets**” includes synthetic material used in the repair of such nets;

“**Tongan aircraft**” means an aircraft that is registered, or required to be registered, in Tonga;

“**Tongan vessel**” means a vessel owned in Tonga, or a vessel registered or required to be registered, under the Shipping Act (or equivalent), or any other vessel based in Tonga and operating under the authority of the Government;

“**transfer**” in relation to oil or any pollutant means the conveyance in bulk from the vessel to a place on land or vice versa, or from one vessel to another, or the internal transfer from tank to tank within the vessel;

“**vessel**” means a water craft of any type whatsoever operating in the marine environment and includes submersibles, displacement and non-displacement craft, hydrofoils, air-cushioned vehicles and fixed or floating platforms without regard to the method of or lack of propulsion; and

“**wastes or other matter**” means material and substances of any kind, form or description.

- (2) The following International Maritime Conventions, including any Protocols, Annexes, Appendices and Addenda, are incorporated into and have the force of law in Tonga —
- (a) Convention for the Protection of the Natural Resources and Environment of the South Pacific Region, 1990 (SPREP Convention) and its Protocol for the Prevention of Pollution of the South Pacific by Dumping (SPREP Dumping Protocol) and Protocol concerning co-operation in Combating Pollution Emergencies in the South Pacific Region (SPREP Pollution Emergencies Protocol);
  - (b) Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter (1972) as amended by the Protocol of 1996 relating thereto (London Convention);
  - (c) International Convention for the Prevention of Pollution from Ships (1973) as amended by the Protocol of 1978 relating thereto (MARPOL 73/78);
  - (d) International Convention on Civil Liability for Oil Pollution Damage, 1992 (CLC 92);
  - (e) International Convention on Liability and Compensation for Damage in connection with the Carriage of Hazardous and Noxious Substances by Sea, 1996 (HNS Convention);
  - (f) International Convention on Oil Pollution Preparedness, Response and Co-operation, 1990 (OPRC Convention);
  - (g) International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1992 (FUND 92); and
  - (h) International Convention relating to Intervention on the High Seas in Cases of Oil Pollution Casualties (1969) and the Protocol relating to Intervention on the High Seas in Cases of Pollution by Substances Other than Oil, 1973 (INTERVENTION Convention).

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## PART II- MARINE POLLUTION PREVENTION

### 3 Design of vessels and pollution prevention equipment

All vessels to which MARPOL 73/78 applies shall comply with the design and pollution prevention equipment provisions contained therein, except that existing vessels which do not comply, shall be allowed to continue to operate under such conditions and for such duration as the Chief Executive Officer may determine.

### 4 Operation of vessels

All vessels to which MARPOL 73/78 applies shall be operated in compliance with the provisions contained therein, except that existing vessels which do not comply with MARPOL 73/78 shall be allowed to continue to operate under such conditions and for such duration as the Chief Executive Officer may determine.

### 5 Discharge of pollutants

- (1) No pollutant or harmful substance, including but not limited to oil, plastics, synthetic ropes and synthetic fishing nets may be discharged from a vessel, platform or place on land into Tongan waters or from a Tongan vessel into any waters.
- (2) If any pollutant or harmful substance is discharged into Tongan waters —
  - (a) from any vessel, the owner and master;
  - (b) from any place on land, the occupier;
  - (c) from any apparatus used for transferring a pollutant to or from any vessel, the person in charge of the apparatus;
  - (d) from any platform, the owner and master or person in charge; or
  - (e) as a result of operations for the exploration of the seabed or subsoil or the exploitation of the natural resources thereof, the owner and the person conducting the operations, or the person in charge of the operations,

commits an offence and shall on conviction be liable to a fine not exceeding \$250,000 or 10 years imprisonment, and, in addition shall, subject to the provisions of this Act concerning limitation of liability, be liable to pay for the total costs of any clean up operation necessary to restore the environment to its original condition.

- (3) This section shall not apply to a discharge —
  - (a) necessary for the purpose of securing the safety of a vessel or saving life at sea, providing that the discharge was necessary and reasonable in the circumstances;



- (b) resulting from damage to a vessel or its equipment —
  - (i) provided that all reasonable precautions have been taken after the occurrence of the damage or discovery of the discharge for the purpose of preventing or minimising the discharge; and
  - (ii) except if the owner or the master acted either with intent to cause damage, or recklessly and with knowledge that damage would probably result; or
- (c) for purposes of —
  - (i) legitimate scientific research into pollution abatement or control; or
  - (ii) combating specific pollution incidents in order to minimise the damage from pollution,

as permitted by the Administration in accordance with section 10.

- (4) This section shall not apply to the discharge into the sea of oil, oily mixtures, noxious liquid substances, sewage and garbage as allowed under MARPOL 73/78, including —
  - (a) for an oil tanker if —
    - (i) the oil tanker is not in a special area;
    - (ii) the oil tanker is more than 50 nautical miles from the nearest land;
    - (iii) the oil tanker is proceeding en route;
    - (iv) the instantaneous rate of discharge of oil content does not exceed 30 litres per nautical mile;
    - (v) the total quantity of oil discharged into the sea does not exceed for existing oil tankers 1/15,000 of the total quantity of the particular cargo of which the residue formed a part, and for new tankers 1/30,000 of the total quantity of the particular cargo of which the residue formed a part; and
    - (vi) the oil tanker has in operation an oil discharge monitoring and control system and a slop tank arrangement as required by Regulation 15 of Annex I of MARPOL 73/78 (Retention on board);
  - (b) for a vessel of 400 tons gross tonnage and above other than an oil tanker and from machinery space bilges, excluding cargo pump-room bilges of an oil tanker unless mixed with oil cargo residue —
    - (i) the vessel is not within a special area;
    - (ii) the ship is proceeding en route;
    - (iii) the oil content of the effluent without dilution does not exceed 15 parts per million; and

- (iv) the ship has in operation equipment as required by Regulation 16 of Annex I of MARPOL 73/78 (oil discharge monitoring and control system and oil filtering equipment);
- (c) in respect of garbage the discharge of which is allowed from all vessels, but shall be made as far as practicable from the nearest land, but in any case is prohibited if the distance from the nearest land is less than —
  - (i) 25 nautical miles for dunnage, lining and packing materials which will float;
  - (ii) 12 nautical miles for food wastes and all other garbage including paper products, rags, glass, metal, bottles, crockery and similar refuse,

except for all plastics, the discharge of which is prohibited from all vessels everywhere.

## **6 Discharge of ballast water**

- (1) No ballast water containing non-indigenous harmful aquatic organisms and/or pathogens shall be discharged from a vessel into Tongan waters.
- (2) If any ballast water containing non-indigenous harmful aquatic organisms and/or pathogens is discharged from any vessel into Tongan waters, the owner and master commits an offence and shall on conviction be liable to a fine not exceeding \$150,000.
- (3) The master of a vessel that discharges ballast water in Tongan waters shall comply with any voluntary or mandatory ballast water management requirements issued by the International Maritime Organization in force at the time of the discharge.
- (4) The master of a vessel that intends to discharge ballast water in Tongan waters shall, prior to such discharge, complete and submit to the Chief Executive Officer a Ballast Water Reporting Form in the form approved for that purpose.
- (5) It shall be a defence to show that all reasonable measures to comply with any voluntary or mandatory ballast water management requirements issued by the International Maritime Organization in force at the time were taken to ensure that no ballast water containing non-indigenous harmful aquatic organisms or pathogens were discharged from a vessel into Tongan waters.

## **7 Hull scraping and cleaning**

- (1) The scraping and cleaning of the hulls and other external surfaces of vessels in a manner that may result in the introduction of non-indigenous harmful aquatic organisms or pathogens into Tongan waters is prohibited.

- (2) Any person who breaches this section commits an offence and shall on conviction be liable to a fine not exceeding \$150,000.

## **8 Anti-fouling paints**

- (1) The use and application of anti-fouling paints or systems which contain organotin compounds on vessels less than 30 metres in length in Tongan waters is prohibited.
- (2) The owner or master of any vessel less than 30 metres in length using anti-fouling paints or systems containing organotin compounds in Tongan waters and any person that applies anti-fouling systems containing organotin compounds to a vessel in Tonga commits an offence and shall on conviction be liable to a fine not exceeding \$50,000.

## **9 Ship facilities**

- (1) The discharge, disposal and escape of hull scrapings, paints and paint residues, abrasive blasting mediums and any other pollutant or harmful substance and any effluent containing such pollutants or harmful substances into Tongan waters from ship repair facilities is prohibited.
- (2) All ship repair facilities shall have in place systems for the effective containment and recovery of all hull scrapings, paints and paint residues, abrasive blasting mediums and any other pollutant or harmful substance and any effluent containing such pollutants or harmful substances for proper reuse, recycling, treatment and/or disposal in Government approved waste management facilities on-shore.
- (3) The owner or operator of a ship repair facility who breaches this section commits an offence and shall on conviction be liable to a fine not exceeding \$50,000.

## **10 Discharge Permits**

- (1) A person wishing to discharge a pollutant or harmful substance for the purpose of legitimate scientific research or to combat a specific pollution incident shall apply in writing to the Chief Executive Officer for a Discharge Permit. In applying for a Discharge Permit, the person shall provide the Chief Executive Officer with the following information in writing —
  - (a) the identity and full contact details of the person responsible for the proposed discharge;
  - (b) the reasons for the proposed discharge;
  - (c) the likely benefits of the proposed discharge;
  - (d) the location of the proposed discharge;

- (e) the nature of the pollutant or harmful substance proposed to be discharged (including their correct technical names, IMDG Code Classification and UN number, if applicable), and its chemical composition and physical and chemical properties and biological toxicity;
  - (f) the quantity or volume of pollutant or harmful substance proposed to be discharged;
  - (g) the proposed method of discharge;
  - (h) the details of the measures to be used to control, mitigate and monitor the environment impacts of the discharge;
  - (i) documentary evidence of financial ability to meet the total cost of any clean up operation necessary to restore the environment to its original condition.
- (2) In assessing an application for a Discharge Permit, the Chief Executive Officer shall take the following into consideration —
- (a) the protection of human life, health and safety;
  - (b) the environment impacts that are likely to occur from the proposed discharge versus the environment impacts that are likely to occur if the proposed discharge is not permitted;
  - (c) the views of the National Marine Pollution Committee referred to in section 16, the local government and the local community.
- (3) In issuing a Discharge Permit the Chief Executive Officer may impose whatever condition he sees fit, including a requirement for the permit holder to pay the total costs of any clean up operation necessary to restore the environment to its original condition.
- (4) The holder of a Discharge Permit who fails to comply with the conditions therein commits an offence and shall on conviction be liable to a fine not exceeding \$10,000 or to a term of imprisonment not exceeding one year.

## **11 Waste reception facilities in ports**

- (1) The Chief Executive Officer may regulate for the provision of waste reception facilities at Tongan ports to enable vessels to discharge waste oil or oily residues or sewage, or deposit garbage, from those vessels.
- (2) Such facilities need not be provided where reception of a vessel's waste may cause unacceptable environmental impacts in Tongan territory.
- (3) Any waste reception facilities provided shall be adequate to meet the needs of vessels without causing undue delay.
- (4) The cost of providing and operating these waste reception facilities, may be covered by the Marine Pollution Levy as outlined in section 25 or a general port charge, irrespective of use.

- (5) Nothing in this section shall be construed as requiring the Chief Executive Officer to allow water which contains pollutants that have not been subjected to an effective process for separating the pollutant from the water to be discharged into any waste reception facilities provided by or arranged by the Chief Executive Officer.

## 12 Duty to report discharges

- (1) If any pollutant or harmful substance is discharged into Tongan waters from a vessel, platform or a place on land, the owner, master or person in charge of the vessel or platform, or the occupier of the place on land shall immediately and by the quickest available means report the occurrence to the Chief Executive Officer.
- (2) The report required to be made under subsection (1) shall contain the following information —
- (a) the time of the discharge;
  - (b) position of the discharge, including latitude and longitude, if possible;
  - (c) the event to which the discharge is directly attributable;
  - (d) the precise source of the discharge;
  - (e) the weather and sea conditions at the time of the discharge and at the time when the report was made;
  - (f) where oil has been discharged, the quantity and description of each type of oil that was discharged;
  - (g) the quantity and description of each type of oil remaining on board;
  - (h) where a pollutant other than oil has been discharged, the quantity and description of each type of pollutant discharged (including their correct technical names, IMDG Code Classification and UN number, if applicable);
  - (i) the quantity and description of each type of pollutant other than oil remaining on board;
  - (j) where garbage or sewage has been discharged, the quantity, description and concentration that was discharged;
  - (k) the types, quantity and condition of the rest of the cargo carried;
  - (l) the existence of any slick and the direction and speed of its movement; and
  - (m) the measures that have been taken —
    - (i) to stop or reduce the discharge;
    - (ii) to contain the pollutant and prevent its spread;
    - (iii) to remove the pollutant from the sea or to disperse it; and

- (iv) to minimise damage or the possibility of damage resulting from the discharge;
  - (n) the identity and full contact details of the person making the report.
- (3) If any vessel becomes stranded, wrecked or is abandoned in Tongan waters or if a Tongan vessel becomes stranded, wrecked or is abandoned in any waters, then the owner or master or person in charge shall immediately and by the quickest available means report the occurrence to the Chief Executive Officer, giving —
- (a) full details of the vessel and damage sustained;
  - (b) the types, quantity and condition of the cargo carried;
  - (c) a complete list of all pollutants carried, including the types, quantity and condition;
  - (d) if a discharge has occurred, the details required in subsection (3) above;
  - (e) the identity and full contact details of the person making the report.
- (4) Every person, who —
- (a) fails to reasonably comply with any provision of this section; or
  - (b) makes a report containing any information that to his knowledge is false or misleading,

commits an offence and shall on conviction be liable to a fine not exceeding \$10,000.

### **13 Records**

- (1) The master of every Tongan oil tanker and every oil tanker in Tongan waters of 150 tons gross tonnage and above and every Tongan vessel and every vessel in Tongan waters of 400 tons gross tonnage and above other than an oil tanker shall carry and maintain an Oil Record Book Part 1 (Machinery Space Operations) and enter a record whenever any of the following machinery space operations are carried out —
- (a) ballasting or cleaning of oil fuel tanks;
  - (b) discharge of dirty ballast or cleaning water from tanks referred to in subparagraph (a) above;
  - (c) disposal of oily residues (sludge);
  - (d) discharge overboard or disposal otherwise of bilge water which has accumulated in machinery spaces.
- (2) The master of every Tongan oil tanker and every oil tanker in Tongan waters of 150 tons gross tonnage and above shall also carry and maintain an Oil Record Book Part II (Cargo/Ballast Operations) and shall enter a record whenever any of the following cargo/ballast operations are carried out —
- (a) loading of oil cargo;

- (b) internal transfer of oil cargo during voyage;
  - (c) unloading of oil cargo;
  - (d) ballasting of cargo tanks and dedicated clean ballast tanks;
  - (e) cleaning of cargo tanks including crude oil washing;
  - (f) discharge of ballast except from segregated ballast tanks;
  - (g) discharge of water from slop tanks;
  - (h) closing of all applicable valves or similar devices after slop tank discharge operations;
  - (i) closing of valves necessary for isolation of dedicated clean ballast tanks from cargo and stripping lines after slop tank discharge operations;
  - (j) disposal of residues.
- (3) The Oil Record Book(s) required under subsections (1) and (2); whether as a part of the vessel's official log-book or otherwise, shall be in the Form(s) specified in Regulation 20 and Appendix III of Annex I of MARPOL 73/78.
- (4) The person in charge of a platform when such platform is in Tongan waters, shall comply with the provisions of subsections (1) and (2), as far as applicable and with the necessary modifications.
- (5) The master of a Tongan vessel or a vessel in Tongan waters to which Annex II of MARPOL 73/78 applies, shall carry a Record Book, and shall record the loading or unloading, the transfer and any other operations in respect of pollutants specified in Annex II of MARPOL 73/78, any discharge or escape of such pollutants and the circumstances and reasons relating thereto.
- (6) Every person who fails to comply with any requirement imposed by this section, commits an offence and shall on conviction be liable to a fine not exceeding \$5,000.
- (7) Every person who makes an entry in any records to be kept in accordance with this section which to his knowledge is false or misleading commits an offence, and shall on conviction be liable to a fine not exceeding \$5,000, or to a period of imprisonment not exceeding one year.

## 14 Powers of inspection

- (1) The Minister may appoint, with the approval of Cabinet, any properly trained and qualified person as an inspector to report to the Chief Executive Officer —
- (a) as to whether the provisions of this Act have been complied with;
  - (b) on what measures have been taken to prevent the discharge of pollutants, other than in accordance with the provisions of this Act;
  - (c) as to whether reception facilities provided in ports are adequate to meet the needs of the vessels using them without causing undue delay.

- (2) Every inspector shall have the power to —
- (a) inspect any vessel, platform, place on land, and any apparatus used for the storage, transfer or processing of pollutants, garbage or sewage, as the case may be;
  - (b) test any equipment with which the vessel or platform is required to be fitted in accordance with any International Maritime Convention and any requirement of this Act;
  - (c) require the production of any records required to be kept and shall have the power to copy records and require the person by whom the records are to be kept to certify the copy as a true copy;
  - (d) board the vessel to ascertain the circumstances relating to an alleged discharge of a pollutant from the vessel into Tongan waters or from a Tongan vessel into any waters; and
  - (e) board the vessel and take, or require to be taken, soundings of tanks, spaces, and bilges, and any sample or samples of any pollutant from the vessel for analysis.
- (3) A person exercising any powers conferred by this subsection shall not unnecessarily detain or delay the vessel from proceeding on any voyage.
- (4) Every person who —
- (a) fails to reasonably comply with any requirement of this section; or
  - (b) obstructs a person acting in the exercise of any power conferred by this section,
- commits an offence and shall on conviction be liable to a fine not exceeding \$50,000.

## **PART III- MARINE POLLUTION RESPONSE**

### **15 General application of this Part**

This Part shall be applied with regard to the general principles and provisions of the OPRC Convention and the SPREP Pollution Emergencies Protocol.

### **16 National Marine Pollution Committee**

- (1) The Minister shall establish a National Marine Pollution Committee, to be known as the Committee, to give advice to the Minister on the following matters —
- (a) the development and maintenance of the National Marine Spill Contingency Plan (NATPLAN) required under section 17 and related matters;



- (b) the response to specific marine pollution incidents;
  - (c) the provision and operation of ships' waste reception facilities in Tongan ports, including the need for such facilities;
  - (d) the fixing of the Marine Pollution Levy referred to in section 25 and administration of the National Marine Pollution Fund established under section 21;
  - (e) participation of Tonga in any bilateral and/or multilateral or regional marine spill contingency plan and related arrangements in place at the time;
  - (f) any other matters related to marine pollution as required by the Chief Executive Officer.
- (2) The Minister shall, with the approval of Cabinet, appoint members of the Committee, including a Chairman, which shall comprise, as a minimum —
- (a) the head of the ministry or department responsible for shipping;
  - (b) the head of the ministry or department responsible for finance;
  - (c) the head of the ministry or department responsible for environmental protection;
  - (d) the head of the ministry or department responsible for fisheries or marine resources;
  - (e) the head of the ministry or department responsible for disaster management; or their designated alternates; and
  - (f) representatives from the following —
    - (i) the shipping industry;
    - (ii) the oil industry;
    - (iii) the port administration;
    - (iv) other sectors as deemed necessary by the Minister.
- (3) The Committee may, subject to any written directions of the Minister, regulate its procedure as it thinks fit.
- (4) The Chairman shall submit an Annual Report to the Minister outlining the activities of the Committee and summarising the advice given to the Minister during the previous calendar year, which report shall be tabled by the Minister in Parliament.

## 17 Marine Spill Contingency Plans

- (1) The Chief Executive Officer, with advice from the Committee, shall ensure that a National Marine Spill Contingency Plan (NATPLAN) is developed, implemented, frequently exercised and maintained. Wherever practicable, the NATPLAN shall be consistent with regional guidelines and shall designate the Administration as the Lead Agency.

- (2) All owners and operators of ports and oil and chemical handling and storage facilities shall develop, implement, frequently exercise and maintain site-specific marine spill prevention and contingency plans for their facilities, consistent with the NATPLAN.
- (3) All owners or operators of vessels to which MARPOL 73/78 applies shall develop, implement, frequently exercise and maintain shipboard marine pollution emergency plans consistent with the requirements of MARPOL 73/78.
- (4) The plans required to be developed under this section shall be submitted to the Chief Executive Officer for approval.

## **18 Regional co-operation**

- (1) The Committee shall advise the Minister regarding co-operation with other Pacific Island Countries and Territories in matters relating to the response to marine pollution incidents. Such co-operation should be undertaken in accordance with —
  - (a) any bilateral and/or multilateral/regional marine spill contingency plan and related arrangements in place at the time;
  - (b) the SPREP Pollution Emergencies Protocol;
  - (c) the OPRC Convention.
- (2) Should Tonga require external assistance in response to a marine pollution incident, such assistance may be requested in accordance with the procedures contained in any bilateral and/or multilateral/regional marine spill contingency plan and related arrangements in place at the time.
- (3) Should other Pacific Island Countries and Territories request assistance from Tonga in response to a marine pollution incident, such requests may be considered in accordance with the procedures contained in any bilateral and/or multilateral/regional marine spill contingency plan(s) and related arrangements in place at the time.

## **19 Appointment of On Scene Commander**

- (1) The Chief Executive Officer shall from time to time appoint an On Scene Commander and Deputy On Scene Commander. The latter shall be deemed to be the On Scene Commander if the office of On Scene Commander is vacant or the incumbent is absent.
- (2) The On Scene Commander shall —
  - (a) command, manage and co-ordinate all operations; and
  - (b) control and direct the use of all resources,

in response to any marine pollution incident in Tongan waters or which threatens Tongan waters or territory.

- (3) During a marine pollution incident, the On Scene Commander is in command of all national assets and resources that are deemed necessary to deal with the incident and has the authority to spend and commit such funds as are reasonable in the circumstances up to the amount contained in the National Marine Pollution Fund established under section 21.
- (4) Any appointments made under this section shall be made by name and on such terms and conditions as the Chief Executive Officer thinks appropriate.

## **20 Marine pollution response equipment**

- (1) The Chief Executive Officer shall arrange for the establishment and maintenance of a national marine pollution response equipment inventory.
- (2) The national marine pollution response equipment inventory shall be a joint government and industry arrangement, with industry comprising the owners and operators of all ports and oil and chemical handling and storage facilities within Tonga and all parties contributing and having access to the equipment. Industry shall provide, maintain and operate the equipment necessary to respond to marine pollution incidents from its facilities.
- (3) In determining equipment needs, the government and industry shall cooperate to ensure compatibility and inter-operability, and that the inventory is the most appropriate for the level of marine pollution risk and local conditions.
- (4) The Chief Executive Officer may require owners or operators of vessels and platforms to carry on board and maintain marine pollution response equipment for, as far as practicable, the containment, recovery or dispersal of any pollutant that may be discharged by the vessel or platform into Tongan waters. The type and quantity of such equipment shall be sufficient to allow an initial response to the pollution incident, as determined by the Chief Executive Officer in consultation with the owner or operator, taking into consideration limitations of the crew and the practicalities of operations at sea. The type and quantity of such equipment shall be specified in the shipboard marine pollution emergency plan required under section 17(3).
- (5) Every person who fails to reasonably comply with any requirement of this section commits an offence and shall on conviction be liable to a fine not exceeding \$10,000.

## **21 National Marine Pollution Fund (POLFUND)**

- (1) The Minister shall establish the Tonga Marine Pollution Fund to be known as POLFUND, which shall be governed and administered by a Board of Trustees, as specified in section 22.

- (2) The marine pollution levies payable under sections 25 and 27 and any other money payable to the POLFUND shall be paid into the fund.
- (3) All money payable to the POLFUND shall be paid to an interest-bearing account established for that purpose by the Trustees.
- (4) All income of the POLFUND shall form part of the fund.
- (5) Monies may be expended from the POLFUND in accordance with section 23.
- (6) The POLFUND shall be audited annually by the Auditor General and the audit report and financial statements of the POLFUND shall be tabled by the Minister in Parliament every financial year.

## **22 POLFUND Trustees**

- (1) The Minister shall appoint from the membership of the Committee, a Board of Trustees to govern and administer the POLFUND.
- (2) The Board of Trustees shall comprise as a minimum, a representative of the Minister, the oil industry and the shipping industry.
- (3) The duties and responsibilities of the Board of Trustees shall include the proper financial management of the POLFUND, the development of appropriate strategies for growth of the POLFUND, and the investment of monies from the POLFUND.

## **23 Application of POLFUND monies**

Subject to the provisions of this Act, the Chief Executive Officer shall apply the POLFUND for the following purposes only —

- (a) to purchase plant, equipment, or any other thing to make preparations for, or to implement, or assist in implementing, any responses to marine pollution incidents;
- (b) to meet the reasonable costs of national marine spill response training and exercises;
- (c) to meet the reasonable costs of the Administration in controlling and cleaning up any marine pollution incident if, and to the extent that, those costs have not been recovered from the person who caused the incident.

## **24 Approval of expenditure from the POLFUND**

- (1) The On Scene Commander shall prepare an annual budget of income and expenditure for the POLFUND in consultation with the Committee to be approved by the Board of Trustees.
- (2) No expenditure shall be made from the POLFUND unless —

- (a) it is provided for in the approved budget; and
- (b) it has been approved in writing by the Board of Trustees,

except that in the event of a marine pollution incident, the On Scene Commander has the authority to spend and commit such funds as are reasonable in the circumstances up to the amount contained in the POLFUND for the initial containment and recovery of the pollutant. Expenditure of funds for subsequent clean-up operations must be approved in writing by resolution of the Board of Trustees.

- (3) For marine pollution incidents from industry facilities the costs of containment, recovery and clean-up of the pollutant and any subsequent restoration of the environment shall be met directly by the owner or operator of the facility without recourse to the POLFUND.

## **25 Marine pollution levies**

- (1) Subject to subsections (2) and (3), the Minister, with the consent of Cabinet, may impose levies for the purposes of funding the POLFUND on the following persons —
  - (a) the owners of contributing vessels;
  - (b) the owners of contributing oil sites.
- (2) No levies shall be imposed under subsection (1) unless the planned expenditures from the POLFUND is reasonable and the levies recommended will enable expenditures to be met without reducing the level of reserves referred to in section 26.
- (3) The Chief Executive Officer shall require returns to be made by the persons by whom any levy is payable.

## **26 Consultation on marine pollution levies**

The Minister shall consult with the Committee, including the oil and shipping industries, on the imposition and the rate of the marine pollution levy and the desirable financial reserve for the POLFUND to maintain.

## **27 Rates and basis of marine pollution levies**

- (1) The Minister may fix different rates of levy in respect of different classes of contributing vessels.
- (2) Any levy on contributing vessels may be calculated as follows —
  - (a) a flat annual rate per gross registered ton of the contributing vessel; or
  - (b) a specified rate in respect of each entry of a contributing vessel into a port in Tonga.

- (3) A levy on contributing oil sites will be a flat rate per ton of oil transferred.

## **28 Incurring of levies**

- (1) Where any marine pollution levy is imposed in respect of a contributing ship, the liability to pay that levy shall arise —
- (a) where the levy is assessed on an annual basis, on the first entry of that vessel into a port in Tonga during the period for which the levy is assessed; and
  - (b) in any other case, on the entry of that vessel into a port in Tonga.
- (2) Where any levy is imposed in respect of a contributing oil site or contributing oil, the liability to pay that levy shall arise on a quarterly basis.
- (3) The Chief Executive Officer may —
- (a) require levies to be paid in advance or otherwise;
  - (b) prescribe dates for the payment of levies;
  - (c) prescribe the periods in respect of which the levies shall be payable;
  - (d) provide for the refund of the whole or any part of a levy paid in advance or otherwise.
- (4) The owners of contributing vessels and contributing oil sites, as the case may be, shall be jointly and severally liable for the payment of the levies.
- (5) A levy shall not apply to a contributing vessel in respect of its entry into a port —
- (a) solely for the purpose of saving or preventing danger to human life, or obtaining medical treatment for any person; or
  - (b) solely because of weather conditions or any other circumstances that the owner or master of the vessel could not have foreseen or prevented.

## **29 Payment of levies**

- (1) Marine pollution levies shall be paid —
- (a) where the levy is assessed on an annual basis, to the Chief Executive Officer;
  - (b) in any other case, to the Chief Executive Officer or to such other person approved by the Chief Executive Officer for the purpose.
- (2) All levies so received shall be paid into the POLFUND.
- (3) A receipt shall be given to any person paying any marine pollution levy.

**30 Vessels not entitled to certificate of clearance until levies paid**

- (1) Where any levy is payable in respect of a contributing vessel, the vessel shall not be entitled to leave port until payment is made.
- (2) Any person in respect of whom any decision is taken under this section may appeal against the decision in a court of competent jurisdiction in Tonga.

**31 Offences**

Any person who contravenes or fails to comply with any provision under this Act or any regulation made under this Act commits an offence, and on conviction shall, where no penalty is provided be liable to a fine not exceeding \$50,000 and in the case of a continuing offence, to a fine not exceeding \$5,000 for every day or part of a day during which the offence has continued.

**32 Recovery of levies**

If any person who is liable to pay a levy fails to do so, the amount of the levy may be recovered from that person as a fine.

## **PART IV- MARINE CASUALTIES**

**33 General application of this Part**

This Part shall be applied consistent with the principles and provisions of the INTERVENTION Convention.

**34 Powers of Chief Executive Officer in relation to marine casualties**

- (1) Without prejudice to any rights or powers of the Government exercisable under international law, the powers conferred by this Part shall only be exercised and the measures shall only be taken as a result of —
  - (a) a marine casualty in Tongan waters or on the high seas; or
  - (b) a pollution incident occurring on board a vessel or a platform,where it appears to the Chief Executive Officer necessary to prevent, reduce or eliminate grave and imminent danger from pollution, or threat of pollution, from any pollutant in, or the risk of any such pollution to Tongan waters or to the coast of Tonga or to related interests, following upon a marine casualty or acts related to such a casualty.
- (2) Where it appears to the Chief Executive Officer that as a result of such casualty or incident referred to in subsection (1) a vessel or platform constitutes or is likely to constitute a serious risk of pollution in, or to, Tongan

waters, or to the coast of Tonga, or to related interests, then, for prevention, reduction or elimination of pollution, the Chief Executive Officer may —

- (a) issue any instructions to the master, owner or agent of the vessel, or to any person in charge of any salvage operation in respect of the vessel and an employee or agent of that person, or to the owner, master or any person in charge of conducting operations on any platform, requiring any specified action to be taken or that no specified action be taken with respect to the vessel or its cargo, or to the platform or operations thereon; or
  - (b) take any measures whatsoever with respect to the vessel or its cargo or to the platform or operations thereon whether or not he has issued instructions under paragraph (a).
- (3) In determining what measures should be taken under subsection (2), the Chief Executive Officer shall ensure they are proportionate to the damage, actual or threatened, to Tongan waters or the coast of Tonga or its related interests; and in considering whether the measures are proportionate to the damage, the Chief Executive Officer shall take into account —
- (a) the extent and probability of imminent damage if those measures are not taken;
  - (b) the likelihood of those measures being effective; and
  - (c) the extent of the damage which may be caused by such measures.
- (4) The measures the Chief Executive Officer may direct to be taken or may take himself under paragraph (b) of subsection (2) may include —
- (a) the removal of the vessel or its cargo to another place;
  - (b) the removal of cargo from the vessel;
  - (c) the salvage of the vessel or its cargo, or both;
  - (d) the sinking or destruction of the vessel or the destruction of the cargo, or both;
  - (e) the taking over of control of the vessel.
- (5) In order to carry out any of the measures referred to in subsection (2), the Chief Executive Officer may, after consulting with the owners of the vessel to whose master the instructions are to be given —
- (a) instruct the master of any Tongan vessel, or the master of any other vessel within Tongan waters, to render assistance to any vessel that is or is likely to be a marine casualty; and
  - (b) instruct the master of any Tongan vessel to take on board any equipment, to sail to any place, to render assistance to any vessel assisting a marine casualty or to assist in any operations for the cleaning up, removal, or dispersal of any oil or pollutant, and to obey the instructions of any person authorised by the Chief Executive Officer to exercise control over or responsibility for a marine casualty.



- (6) The Chief Executive Officer shall notify any person mentioned in paragraph (a) of subsection (2), of any measures that the Chief Executive Officer proposes to take under paragraph (b) of that subsection:
- Provided that the Chief Executive Officer may dispense with such notice where in his opinion the urgency of the situation is such that the measures must be taken immediately.
- (7) The powers of the Chief Executive Officer to issue instructions under paragraph (a) of subsection (2) or to take measures under paragraph (b) of that subsection, shall be exercisable by any person duly authorised in writing by the Chief Executive Officer.
- (8) Before taking any measures referred to in subsection (2), the Chief Executive Officer shall consult with any other States affected by the marine casualty, and in particular the Flag State.
- (9) The Chief Executive Officer shall notify without delay the proposed measures to be taken to any persons physical or corporate known to have interests which can reasonably be expected to be affected by those measures.

### 35 Right to compensation

- (1) Where any action taken by any person in accordance with instructions pursuant to paragraph (a) of section 34(2), or any measure taken by the Chief Executive Officer under paragraph (b) of section 34(2) —
- (a) was in excess of that reasonably necessary to prevent, eliminate or reduce pollution or the risk of pollution; or
  - (b) was such that the good of the action or measure taken did or was likely to do was disproportionately less than the expense incurred or the loss or the damage suffered as a result of that action or measure,
- then, a person who has incurred expense or loss or damage as a result of taking that action or measure may recover compensation from the Government.
- (2) Where a claim is brought against the Government for compensation under subsection (1), the Court, in determining whether paragraph (a) or (b) of that subsection apply, shall take into account —
- (a) the extent and probability of imminent pollution damage if the measures had not been taken;
  - (b) the likelihood of the measures taken being effective; and
  - (c) the extent of the damage which has been caused by the measures taken.
- (3) Where any measures have been taken pursuant to section 34 on the high seas and there is a dispute between the Government and the owner of the vessel or Government of the State where the vessel is registered or the Government of the State having any related interests in respect of the following —

- (a) whether such measures were necessary to prevent, reduce or eliminate grave and imminent danger to Tongan waters or the coast of Tonga or related interests from pollution or the threat of pollution by pollutants; or
- (b) whether the measures taken were in excess of that reasonably necessary to prevent, eliminate or reduce pollution or the risk of pollution;
- (c) whether compensation should be paid in accordance with subsection (1); or
- (d) the amount of such compensation,

if settlement by negotiation between the parties has not been possible and if the parties do not otherwise agree, the matter shall be submitted, upon the request of any of the parties, to conciliation, and if that does not succeed, then to arbitration according to the procedures set out in the Annex to the INTERVENTION Convention.

### 36 Offences

- (1) Every person commits an offence who —
  - (a) fails to comply with any instructions issued by the Chief Executive Officer pursuant to section 34 or by any person duly authorised by the Chief Executive Officer;
  - (b) willfully obstructs a person acting in compliance with any instructions issued by the Chief Executive Officer pursuant to section 34 of this Act or by any person duly authorised by the Chief Executive Officer; or
  - (c) willfully obstructs the Chief Executive Officer or any person acting on behalf of the Chief Executive Officer in carrying out any of the powers conferred on the Chief Executive Officer by section 34.
- (2) Every person who commits an offence under this section is liable upon conviction to a fine not exceeding \$10,000 for each day during which the offence has continued.
- (3) In any proceedings for an offence under this section it shall be a defence for a defendant to prove on the balance of probabilities that —
  - (a) the failure to comply with any instructions issued under section 34 of this Act; or
  - (b) the willful obstruction of —
    - (i) any person acting in compliance with such instruction duly issued; or
    - (ii) the Chief Executive Officer or any person acting on behalf of the Chief Executive Officer,

resulted from the need to save life at sea.

- (4) In any proceedings for an offence under this section, it shall also be a defence to prove on the balance of probabilities that the person charged with the offence used all due diligence to comply with any instructions issued by the Chief Executive Officer pursuant to section 34 or by any person duly authorised by the Chief Executive Officer.

### **37 Protection from liability**

Where —

- (a) the Chief Executive Officer or any person duly authorised by the Chief Executive Officer has taken any measures pursuant to paragraph (b) of section 34 (2); or
- (b) any person has taken any action or refrained from taking any action in accordance with instructions issued pursuant to paragraph (a) of section 34(2),

then, subject to section 35 the Chief Executive Officer or that person, as the case may be, shall not incur any civil liability in respect thereof.

## **PART V - LIABILITY AND COMPENSATION FOR OIL POLLUTION DAMAGE**

### **38 General application of this Part**

Part V relates to liability and compensation for damage from oil pollution and not other types of pollution, and shall be applied consistent with the principles and provisions of CLC 92 and FUND 92.

### **39 Liability for pollution damage**

- (1) Except as provided in subsections (2) and (3), the owner of a tanker at the time of an incident, or where the incident consists of a series of occurrences, at the time of the first such occurrence, shall be liable for any pollution damage caused by the tanker as a result of the incident.
- (2) No liability for pollution damage shall attach to the owner if he proves that the damage —
  - (a) resulted from an act of war, hostilities, civil war, insurrection or a natural phenomenon of an exceptional, inevitable and irresistible character;
  - (b) was wholly caused by an act or omission done with intent to cause damage by a third party; or

- (c) was wholly caused by the negligence or other wrongful act of any Government or other authority responsible for the maintenance of lights or other navigational aids in the exercise of that function.
- (3) If the owner proves that the pollution damage resulted wholly or partially either from an act or omission done with intent to cause damage by the person who suffered the damage or from the negligence of that person, the owner may be exonerated wholly or partially from his liability to such person.
- (4) No claim for compensation for pollution damage may be made against the owner otherwise than in accordance with this Part. Subject to subsection (5), no claim for compensation for pollution damage under this Part or otherwise may be made against —
- (a) servants or agents of the owner or members of the crew;
  - (b) the pilot or any other person who, without being a member of the crew, performs services for the tanker;
  - (c) any charterer (howsoever described, including a bareboat charterer), manager or operator of the tanker;
  - (d) any person performing salvage operations with the consent of the owner or on the instructions of a competent public authority;
  - (e) any person taking preventive measures;
  - (f) all servants or agents of persons mentioned in sub-paragraphs (c), (d) and (e),
- unless the damage resulted from their personal act or omission, committed with the intent to cause such damage, or recklessly and with knowledge that such damage would probably result.
- (5) Where an incident involving two or more ships occurs and pollution damage results therefrom, the owners of all the ships concerned, unless exonerated under section 39(2), shall be jointly and severally liable for all such damage which is not reasonably separable.
- (6) Nothing in this Part shall prejudice any right of recourse of the owner against third parties.

#### **40 Actions for compensation**

An action for compensation under this Act may be brought in the Supreme Court of Tonga if pollution damage resulting from the incident has been sustained in Tongan territory or if measures have been taken to prevent or minimise such damage.

#### **41 Limitation of liability**

- (1) The owner of a ship shall be entitled to limit his liability under this Part in respect of any one incident to an aggregate amount calculated as follows —

- (a) 3 million units of account for a tanker not exceeding 5,000 units of tonnage;
- (b) for a ship with a tonnage in excess thereof, for each additional unit of tonnage, 420 units of account in addition to the amount mentioned in sub-paragraph (a),

Provided, that this aggregate amount shall not in any event exceed 59.7 million units of account.

- (2) The owner shall not be entitled to limit his liability under this Part if it is proved that the pollution damage resulted from his personal act or omission, committed with the intent to cause such damage, or recklessly that such damage would probably result.
- (3) For the purpose of availing himself of the benefit of the limitation provided for in subsection (1), the owner shall constitute a fund for the total sum representing the limit of his liability with the Court or other competent authority of Tonga in which action is brought under Article IX of CLC 92 or, if no action is brought, with any court or other competent authority in any Contracting State in which an action can be brought under Article IX of CLC 92. The fund can be constituted either by depositing the sum or by producing a bank guarantee or other guarantee in an amount considered adequate by the Court or other competent authority.
- (4) The fund shall be distributed among the claimants in proportion to the amounts of their established claims.
- (5) If before the fund is distributed the owner or any of his servants or agents or any person providing him insurance or other financial security has, as a result of the incident in question, paid compensation for pollution damage, such person shall, up to the amount he has paid, acquire by subrogation the rights which the person so compensated would have enjoyed under this Part.
- (6) The right of subrogation provided for in subsection (5) may also be exercised by a person other than those mentioned therein in respect of any amount of compensation for pollution damage that he may have paid.
- (7) Where the owner or any other person establishes that he may be compelled to pay at a later date in whole or in part any such amount of compensation, with regard to which such person would have enjoyed a right of subrogation under subsection (5) or (6), had the compensation been paid before the fund was distributed, the Court may order that a sufficient sum shall be provisionally set aside to enable such person at such later date to enforce his claim against the fund.
- (8) Claims in respect of expenses reasonably incurred or sacrifices reasonably made by the owner voluntarily to prevent or minimise pollution damage shall rank equally with other claims against the fund.
- (9)

- (a) The “unit of account” referred to in subsection (1) is the Special Drawing Right as defined by the International Monetary Fund. The amounts mentioned in subsection (1) shall be converted into Tongan currency on the basis of the value of that currency by reference to the Special Drawing Right on the date of the constitution of the fund referred to in subsection (3).
  - (b) The value of the Tongan currency, in terms of the Special Drawing Right shall be calculated in accordance with the method of valuation applied by the International Monetary Fund in effect on the date in question for its operations and transactions.
  - (c) Order calculations of the “unit of account” to local currencies shall be in accordance with Article V 9(a)-(c) of CLC 92, paragraphs (a) to (c).
- (10) For the purpose of this section the ship’s tonnage shall be the gross tonnage calculated in accordance with the tonnage measurement regulations contained in Annex 1 of the International Convention on Tonnage Measurement of Ships 1969.
- (11) The insurer or other person providing financial security shall be entitled to constitute a fund in accordance with this section on the same conditions and having the same effect as if it were constituted by the owner. Such a fund may be constituted even if, under the provisions of subsection (2), the owner is not entitled to limit his liability, but its constitution shall in that case not prejudice the rights of any claimant against the owner.

#### **42 Rights of owner on constitution of fund**

- (1) Where the owner, after an incident, has constituted a fund in accordance with section 39(3) and is entitled to limit his liability —
- (a) no person having a claim for pollution damage arising out of that incident shall be entitled to exercise any right against any other assets of the owner in respect of such claim;
  - (b) the Court shall order the release of any ship or other property belonging to the owner which has been arrested in respect of a claim for marine pollution damage arising out of that incident, and shall similarly release any bail or other security furnished to avoid such arrest.
- (2) The foregoing shall only apply if the claimant has access to the Court administering the fund and the fund is actually available in respect of his claim.

#### **43 Requirement for insurance**

- (1) The owner of a ship registered in a Contracting State and carrying more than 2,000 tons of oil in bulk as cargo shall be required to maintain insurance or other financial security, such as the guarantee of a bank or a certificate

delivered by an international compensation fund, in the sums fixed by applying the limits of liability prescribed in section 41(1) to cover his liability for pollution damage under CLC 92.

- (2) A certificate attesting that insurance or other financial security is in force in accordance with the provisions of this Part shall be issued to each Tongan tanker after the Chief Executive Officer has determined that the requirements of subsection (1) have been complied with.
- (3) With respect to a ship registered in a Contracting State such certificate shall be issued or certified by the appropriate authority of the State of the tanker's registry. With respect to a ship that is not registered in a Contracting State it may be issued or certified by the appropriate authority of any Contracting State. This certificate shall be in the form prescribed in the Annex to CLC 92 and shall contain the following particulars —
  - (a) name of ship and port of registration;
  - (b) name and principal place of business of owner;
  - (c) type of security;
  - (d) name and principal place of business of insurer or other person giving security and, where appropriate, place of business where the insurance or security was established;
  - (e) period of validity of certificate which shall not be longer than the period of validity of the insurance or other security.
- (4) The certificate shall be in the official language or languages of the issuing State. If the language used is not English or French, the text shall include a translation into one of these languages.
- (5) The certificate shall be carried on board the ship and a copy shall be deposited with the authorities that keep the record of the ship's registry or, if the ship is not registered in a Contracting State, with the authorities of the State issuing or certifying the certificate.
- (6) An insurance or other financial security shall not satisfy the requirements of this section if it can cease, for reasons other than the expiry of the period of validity of the insurance or security specified in the certificate under subsection (2), before 3 months have elapsed from the date on which notice of its termination is given to the authorities referred to in subsection (5), unless the certificate has been surrendered to these authorities or a new certificate has been issued within the said period. The foregoing provisions shall similarly apply to any modification that results in the insurance or security no longer satisfying the requirements of this section.
- (7) The State of registry shall, subject to the provisions of this section, determine the conditions of issue and validity of the certificate.
- (8) Certificates issued or certified under the authority of a Contracting State in accordance with paragraph 2 of Article VII of CLC 92, shall be accepted by Tonga for the purposes of that Convention and shall be regarded by Tonga as

having the same force as certificates issued or certified by them even if issued or certified in respect of a ship not registered in a Contracting State.

- (9) Any claim for compensation for pollution damage may be brought directly against the insurer or other person providing financial security for the owner's liability for pollution damage. In such case the defendant may, even if the owner is not entitled to limit his liability prescribed in section 41(2) avail himself of the limits of liability prescribed in section 41(1). He may further avail himself of the defences (other than the bankruptcy or winding up of the owner) which the owner himself would have been entitled to invoke. Furthermore, the defendant may avail himself of the defence that the pollution damage resulted from the wilful misconduct of the owner himself, but the defendant shall not avail himself of any other defence which he might have been entitled to invoke in proceedings brought by the owner against him. The defendant shall in any event have the right to require the owner to be joined in the proceedings.
- (10) Any sums provided by insurance or by other financial security maintained in accordance with subsection (1) shall be available exclusively for the satisfaction of claims under CLC 92.
- (11) Tonga shall not permit a ship under its flag to which this section applies to trade unless a certificate has been issued under subsection (2) or (13) of this section.
- (12) Subject to the provisions of this section, the Chief Executive Officer shall ensure that insurance or other security to the extent specified in subsection (1) is in force in respect of any ship, wherever registered, entering or leaving a port in Tonga, or arriving at or leaving an offshore terminal in Tongan waters, if the ship actually carries more than 2,000 tons of oil in bulk as cargo.
- (13) If insurance or other financial security is not maintained in respect of a ship owned by a Contracting State, the provisions of this section relating thereto shall not be applicable to such ship, but the ship shall carry a certificate issued by the appropriate authorities of the State of the ship's registry stating that the ship is owned by that State and that the ship's liability is covered within the limits prescribed by section 41(1). Such a certificate shall follow as closely as practicable the model prescribed by subsection (3).

#### **44 Right of compensation extinguished**

- (1) Rights of compensation under this Part shall be extinguished unless an action is brought within 3 years from the date when the damage occurred. However, in no case shall an action be brought after 6 years from the date of the incident that caused the damage.
- (2) Where the incident consists of a series of occurrences, the 6 years' period shall run from the date of the first such occurrence.



**45 Jurisdiction of courts where pollution damage occurs in more than one State**

- (1) Where an incident has caused pollution damage in Tongan waters and in the Territorial Sea or Exclusive Economic Zone of one or more Contracting States or preventive measures have been taken to prevent or minimise pollution damage in Tongan waters and in the Territorial Sea or Exclusive Economic Zone of one or more Contracting States, actions for compensation may only be brought in the Courts of Tonga or any such Contracting States. Provided that 90 days notice of any such action shall be given to the defendant.
- (2) After the fund has been constituted in accordance with section 41 the Court in which the fund is constituted shall be exclusively competent to determine all matters relating to the apportionment and distribution of the fund.

**46 Judgments enforceable**

- (1) Any judgment given by a Court with jurisdiction in accordance with section 45, which is enforceable in the State of origin, where it is no longer subject to ordinary forms of review, shall be recognised in any Contracting State, except —
  - (a) where the judgement was obtained by fraud; or
  - (b) where the defendant was not given reasonable notice and a fair opportunity to present his case.
- (2) A judgment recognised under subsection (1) shall be enforceable in each Contracting State as soon as the formalities required in that State have been complied with. These formalities shall not permit the merits of the case to be re-opened.

**47 Exemptions**

- (1) The provisions of this Part shall not apply to warships or other ships owned or operated by a State and used, for the time being, only on government non-commercial service.
- (2) With respect to ships owned by a Contracting State and used for commercial purposes, each State shall be subject to suit in the jurisdictions set forth in section 45 and shall waive all defences based on its status as a sovereign State.

**48 International Fund**

- (1) The International Fund for compensation for pollution damage established under FUND Convention 92, hereinafter referred to as the “International Fund”, has the following aims —

- (a) to provide compensation for pollution damage to the extent that the protection afforded by CLC 92 is inadequate;
  - (b) to give effect to the related purposes set out in FUND Convention 92.
- (2) The International Fund shall be recognised as a legal person capable under the laws of Tonga of assuming rights and obligations and of being a party in legal proceedings before the Courts of Tonga.
  - (3) The Director of the International Fund shall be its legal representative.

#### **49 Application of the FUND Convention 92**

The FUND Convention 92 shall apply exclusively —

- (a) to pollution damage caused in Tongan territory, including its Territorial Seas and Exclusive Economic Zone; and
- (b) to preventive measures, wherever taken, to prevent or minimise such damage.

#### **50 International Fund to pay compensation**

For the purpose of fulfilling its function under section 48(1) (a), the International Fund shall pay compensation (in accordance with the provisions of FUND Convention 92) to any person suffering pollution damage if such person has been unable to obtain full and adequate compensation for the damage under the terms of CLC 92.

## **PART VI- DUMPING AND INCINERATION OF WASTES**

#### **51 General application of this Part**

Part VI shall be applied consistent with the principles and provisions of the London Convention as amended by the Protocol of 1996 relating thereto.

#### **52 Dumping of wastes or other matter**

- (1) The dumping of any wastes or other matter is prohibited.
- (2) Subsection (1) does not apply to —
  - (a) dredged material;
  - (b) sewage sludge;
  - (c) fish waste, or material resulting from industrial fish processing operations;
  - (d) vessels and platforms or other man-made structures at sea;

- (e) inert, inorganic geological material;
  - (f) organic material of natural origin; and
  - (g) bulky items primarily comprising iron, steel, concrete and similarly unharmful materials for which the concern is physical impact, and limited to those circumstances where such wastes are generated at locations, such as small islands with isolated communities, having no practicable access to disposal options other than dumping.
- (3) Notwithstanding subsection (1), the material referred to in subsection (2)(d) and (g) may be considered for dumping, provided that material capable of creating floating debris or otherwise contributing to pollution of the marine environment has been removed to the maximum extent and provided that the material dumped poses no serious obstacle to fishing or navigation.
- (4) None of the materials listed in subsection (2) shall be dumped without a Dumping Permit, issued pursuant to section 53.
- (5) Any person who fails to comply with any provision of this section commits an offence and shall on conviction be liable to a fine not exceeding \$500,000 or a term of imprisonment not exceeding 10 years, and shall, in addition, be also liable to pay such amount as the Court may assess in respect of the costs that have been incurred or will be incurred in removing or cleaning up or dispersing any waste or other matter to which the offence relates.

### 53 Dumping Permits

- (1) A person wishing to dump wastes or other matter listed under section 52(2) at sea shall apply in writing to the Chief Executive Officer for a Dumping Permit. In applying for a Dumping Permit, the person shall provide the Chief Executive Officer with the following information in writing —
- (a) the characteristics, composition and quantity of the waste or other matter intended to be dumped;
  - (b) the method by which the waste or other matter is to be dumped and the proposed location; and
  - (c) such other information as may be required by the Chief Executive Officer.
- (2) In assessing a permit application, the Chief Executive Officer shall cause to be carried out an assessment of alternatives to dumping, taking into account the following —
- (a) types, amounts, and relative hazard of wastes generated;
  - (b) details of the production process and the sources of wastes within the process;
  - (c) feasibility of the following waste reduction and prevention techniques —
    - (i) product reformulation;

- (ii) clean production technologies;
  - (iii) process modification;
  - (iv) input substitution; and
  - (v) on-site, closed-loop recycling.
- (3) Where the above assessment of alternatives to dumping reveals that dumping is necessary, a Dumping Permit may be issued, provided however that the permit shall specify, as a condition precedent, compliance with any resulting waste reduction and prevention requirements recommended in the assessment, in accordance with Annex 2 of the 1996 Protocol to the London Convention.
- (4) In considering whether a Dumping Permit should be granted the Chief Executive Officer shall take into account —
- (a) the chemical, physical and biological properties of the material, including —
    - (i) origin, total amount, form and average composition;
    - (ii) properties: physical, chemical, biochemical and biological;
    - (iii) toxicity;
    - (iv) persistence: physical, chemical and biological; and
    - (v) accumulation and biotransformation in biological materials or sediments; and
  - (b) the characteristics of the proposed dump site, including —
    - (i) the physical, chemical and biological characteristics of the water-column and the seabed;
    - (ii) location of amenities, values and other uses of the sea in the area under consideration;
    - (iii) assessment of the constituent fluxes associated with the dumping in relation to existing fluxes of substances in the marine environment; and
    - (iv) economic and operational feasibility; and
  - (c) general considerations and conditions, including —
    - (i) possible effects on amenities including, presence of floating or stranded material, turbidity, objectionable odour, discoloration, and foaming;
    - (ii) possible effects on marine life, fish and shellfish culture, fish stocks and fisheries, seaweed harvesting and culture;
    - (iii) possible effects on other uses of the sea including, impairment of water quality for industrial use, underwater corrosion of structures, interference with vessel operations from floating materials, interference with fishing or navigation through deposit of waste or solid objects on the sea floor, and protection of areas of special importance for scientific or conservation purposes.

- (5) When the Chief Executive Officer is satisfied that the above requirements have been met, he may issue a Dumping Permit specifying —
  - (a) the person who shall be responsible for carrying out the dumping;
  - (b) the vessel, aircraft, or platform to be used in the dumping;
  - (c) the type of waste or other material to be dumped;
  - (d) the quantity to be dumped;
  - (e) the method of dumping to be used;
  - (f) the specific location at sea of the dumping; and
  - (g) such other conditions and requirements as the Chief Executive Officer thinks fit, having regard to subsection (1) to (4) above.
- (6) Any Dumping Permit so issued may contain such terms and conditions that the Chief Executive Officer thinks necessary for the preservation of the environment, including —
  - (a) the types and sources of materials to be dumped;
  - (b) the location of the dump-site(s);
  - (c) the method of dumping; and
  - (d) monitoring and reporting requirements.
- (7) Notwithstanding anything in this Act, no Dumping Permit shall authorise the dumping of radioactive waste or other radioactive matter.
- (8) Any person who fails to comply with any provision of this section, or the terms and conditions contained in a Dumping Permit, commits an offence and shall on conviction be liable to a fine not exceeding \$100,000, and, in addition, to a fine not exceeding \$20,000 for each day during which the offence has continued.

#### **54 Incineration at sea**

- (1) The incineration at sea of wastes or other matter is prohibited.
- (2) Any person who fails to comply with any provision of this section commits an offence and shall on conviction be liable to a fine not exceeding \$500,000 or a term of imprisonment not exceeding 10 years.

#### **55 Exceptions**

- (1) Where a person is charged with an offence under this Part it shall be a defence to prove on the balance of probabilities that the dumping of the waste or other matter or the failure to comply with any condition or requirement of the permit was necessary —

- (a) to secure the safety of human life or of vessels, aircraft, platforms or other man-made structures at sea in cases of force majeure caused by stress of weather; or
  - (b) in any case which constitutes a danger to human life or a real threat to vessels, aircraft, platforms or other man-made structures at sea, if dumping at sea appears to be the only way of averting the threat and if there is every probability that the damage consequent upon such dumping will be less than would otherwise occur.
- (2) Such dumping shall be conducted to minimise the likelihood of damage to human or marine life and shall be reported to the Chief Executive Officer as soon as possible.

## **PART VII - MISCELLANEOUS PROVISIONS**

### **56 State-owned ships**

- (1) The provisions of this Act shall not apply to —
  - (a) warships of a State other than Tonga;
  - (b) aircraft being used as aircraft of a State other than Tonga.
- (2) The provisions of this Act shall apply to Government vessels.

### **57 Regulations**

The Minister may, with the consent of Cabinet, make regulations providing for such matters as are contemplated by or necessary for giving full effect to the provisions of this Act and for its due administration and to any International Convention.

### **58 Offences and penalties**

- (1) Every person who commits an offence against this Act or any regulations made thereunder for which no penalty is provided elsewhere, shall on conviction be liable to a fine not exceeding \$10,000.
- (2) Where an offence against this Act is a continuing one and no penalty is provided elsewhere for the continuance thereof, every person who commits that offence shall, in addition to any other liability, on conviction be liable to a fine not exceeding \$1,000 for every day during which the offence continues.

### **59 Recovery of fines by distress**

Where a Court orders a person convicted of any offence against this Act to pay any fine or other costs and that person is the owner or master of a vessel registered under

this Act and the fine or other costs are not paid within the time and in the manner specified by the conviction or in the Order of the Court, the Court may, in addition to any other power it may have to compel payment, and notwithstanding any other Act, direct the amount remaining unpaid to be levied by distress or by the sale of the vessel or the equipment of the vessel, as the case requires.

**ENDNOTES**

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<sup>1</sup> Act 8 of 2002

Amended by Act 14 of 2009, commencement 26 July 2013

Amended by Act 5 of 2012, commencement 30 July 2012

<sup>2</sup> GS 6/2005

<sup>3</sup> Amended by Act 14 of 2009

<sup>4</sup> Amended by Act 5 of 2012

<sup>5</sup> Inserted by Act 5 of 2012

<sup>6</sup> Amended by Act 5 of 2012