

## SAMOA

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**2008, No. 2**

**AN ACT to provide for the prevention of pollution to the marine environment and for responses to marine pollution incidents emanating from vessels, and other matters related to the implementation of international marine pollution conventions.** *[25<sup>th</sup> January 2008]*

**BE IT ENACTED** by the Legislative Assembly of Samoa in Parliament assembled as follows:

**PART I - PRELIMINARY**

**1. Short title and commencement-**(1) This Act may be cited as the Marine Pollution Prevention Act 2008.

(2) This Act shall commence on the date that it is assented to by the Head of State.

**2. Interpretation-**(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;

“Anti-fouling Convention” means the International Convention on the Control of Harmful Anti-fouling Systems on Ships 2001;

“anti-fouling systems” means a coating, painting, surface treatment, surface or device that is used on a ship to control or prevent attachment of unwanted organisms;

- “ballast water” has the meaning given to it in Marpol 73/78;
- “Bunker oil” means any hydrocarbon mineral oil, including lubricating oil, used or intended to be used for the operation or propulsion of the ship, and any residues of such oil;
- “Bunkers Convention” means the International Convention on Civil Liability for Bunker Oil Pollution Damage, 2001;
- “Chief Executive Officer” means the Chief Executive Officer of the Ministry responsible for maritime transport;
- “CLC 92” means the International Convention on Civil Liability for Oil Pollution Damage, 1992;
- “Committee” means the Marine Pollution Advisory Committee established under section 20(3);
- “contributing oil” means -
- (a) 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 396-69)”, or heavier; and
  - (b) subject to paragraph (a), any oil carried as cargo by sea and loaded onto or discharged from a vessel in Samoan waters.

- “contributing chemical site” means any site within Samoa where chemicals are manufactured, stored or utilised and which, in accordance with Regulations made under this Act, are determined to constitute a marine pollution risk;
- “contributing oil site” means any oil transfer site in Samoa or Samoan waters;
- “contributing vessel” means a vessel in excess of 100 gross tons, whose principal means of propulsion is mechanical;
- “Convention to which this Act applies” means the Conventions listed in section 3(1), and includes any other international marine pollution convention, protocol, agreement or arrangement added to the list by regulations made in accordance with section 3(2);
- “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; or
  - (b) release of pollutants or harmful substances for purposes of pollution abatement or control, or for purposes of combating specific pollution incidents, as permitted by the Chief Executive Officer under section 14.
- “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; and
  - (b) any deliberate disposal into the sea of vessels, aircraft, platforms or other man-made structures at sea; and
  - (c) any storage of wastes 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; or
- (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

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

“Discharge Permit” means permission to discharge for purposes of combating specific pollution incidents granted in advance by the Chief Executive Officer under section 14;

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

“FUND 92” 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 of fresh fish, 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;
- “Government” means the Government of Samoa;
- “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 without affecting the general application of this definition, includes any substance deemed by this Act and any other law, and by regulations made under this Act, to be a harmful substance in the context of the marine environment;
- “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;
- “HNS Protocol” means the Protocol on Preparedness, Response and Co-operation to Pollution Incidents by Hazardous and Noxious Substances, 2000 (HNS Protocol), which is a Protocol to the OPRC Convention;
- “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 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 Organisation from time to time;
- “International Fund” means the “International Oil Pollution Compensation Fund 1992” established under 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 section 3;
- “International Maritime Organisation” means the organisation set up under the International Maritime Organisation 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;
- “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 or any platform or any 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 maritime transport;
- “NATPLAN” means National Marine Spill Contingency Plan as referred in section 21;
- “non-indigenous harmful aquatic organisms or pathogens” means any species of aquatic microbe, plant or animal whose natural biogeographical range does not include Samoan waters and which, if introduced into Samoan 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, and includes exotic invasive species;
- “noxious liquid substances” means any substance referred to in Appendix II of Annex II of MARPOL 73/78;
- “occupier”, means the occupant of land or premises or building, and if the land or premises or building is unoccupied or the occupier is unknown or cannot be found, includes the owner of the land or premises or building or the owner of any interest in the land or premises or building;
- “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; and

(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 tanker” means a ship constructed or adapted for the carriage of oil in bulk as cargo and includes combination carriers and any chemical tanker as defined in Annex II of MARPOL 73/78 when it is 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;

“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” means -

(a) in relation to any vessel -

(i) the registered owner or owners, if the vessel is a registered vessel;

(ii) the person owning the vessel, if the vessel is an unregistered vessel;

(iii) the person or agency registered as the operator of the vessel, if the vessel is owned by the Government;

and includes -

(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 Samoa 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; and

(b) in relation to any platform -

(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; and

(c) for the purposes of Part V, 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);

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

“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;

“POLFUND” means the National Marine Pollution Fund established under section 25;

“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 which 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 pollutant 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 undertaken 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, oil 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;
- “Samoa vessel” means a vessel owned in Samoa or a vessel registered or required to be registered under the Shipping Act 1998, or any other vessel based in Samoa and operating under the authority of the Government;
- “Samoa waters” means -
- (a) the internal waters of Samoa as defined in section 3 of Maritime Zones Act 1999;
  - (b) the territorial sea of Samoa as defined in section 4 of the Maritime Zones Act 1999;
  - (c) the contiguous zone as defined in section 18 of the Maritime Zones Act 1999; and
  - (d) the waters of the Exclusive Economic Zone of Samoa as defined in section 19 of the Maritime Zones Act 1999;
- “sea” means all areas of water below highest astronomical tide and includes the ocean and 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;
- “ship repair facility” means any place on land, in the intertidal zone and in Samoa waters where vessels are repaired and maintained, including cleaning, scraping and painting;

- “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 its 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 Cooperation 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;
- “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 but is not limited to ships, small vessels, yachts, 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.

**3. Application of international marine pollution conventions under the laws of Samoa-**(1) For the purposes of this Act the following are the international marine pollution conventions to which this Act applies -

- (a) the 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 Cooperation in Combating Pollution Emergencies in the South Pacific Region (SPREP Pollution Emergencies Protocol);
- (b) 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 (London Convention);
  - (c) the International Convention for the Prevention of Pollution from Ships (1973) as amended by the Protocol of 1978 relating thereto (MARPOL 73/78);
  - (d) the International Convention on Civil Liability for Oil Pollution Damage, 1992 (CLC 92);
  - (e) the International Convention on Liability and Compensation for Damage in connection with the Carriage of Hazardous and Noxious Substances by Sea, 1996 (HNS Convention);
  - (f) the International Convention on Oil Pollution Preparedness, Response and Co-operation, 1990 (OPRC Convention);
  - (g) the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1992 (FUND 92);
  - (h) 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 (INTERVENTION Convention);
  - (i) the Protocol on Preparedness, Response and Co-operation to Pollution Incidents by Hazardous and Noxious Substances, 2000 (HNS Protocol);
  - (j) the International Convention on Civil Liability for Bunker Oil Pollution Damage, 2001 (Bunkers Convention);

- (k) International Convention on the Control of Harmful Anti-fouling Systems on Ships, 2001 (Anti-fouling Convention);
- (2) Regulations made under this Act may -
- (a) add to or delete from the list of Conventions listed in the subsection (1), and any international marine pollution convention added to the list may be implemented, enforced or otherwise applied in Samoa in accordance with this Act and any regulations made under this Act;
  - (b) make provision for any aspect of the application or enforcement of a Convention to which this Act applies;
  - (c) modify the application of any Convention to which this Act applies to meet the needs and circumstances of Samoa; and
  - (d) prescribe offences for the breach of any aspect of a Convention to which this Act applies, and any related offences, and impose penalties being fines not exceeding 5,000 penalty units, or imprisonment for terms not exceeding 5 years, or both.
- (3) Subject to this Act, any other law and any reservation that Samoa has made under a Convention to which this Act applies, all obligations, duties, legal processes and rights provided for under the Conventions to which this Act applies (and including any Protocols, Annexes, Appendices and Addenda to them) shall have the force of law in Samoa, and may be applied or enforced by any legal process available under the laws of Samoa.
- (4) The breach of any obligation or duty arising under a Convention to which this Act applies shall constitute an offence under section 62.
- (5) Subject to any provision of this Act in relation to the exercise of specific powers and responsibilities, the Minister and the Chief Executive Officer shall have the power to take any action that may be taken by State Parties under the Conventions to which this Act applies.

(6) The Ministry shall have the principal responsibility for implementing the Conventions to which this Act applies, and shall ensure that other Ministries and agencies having responsibilities in relation to the protection and management of the marine environment are involved in the actions that are taken by the Ministry under the authority of this Act.

(7) In the event of any inconsistency between the provisions of any of the Conventions to which this Act applies and the provisions of this Act, this Act shall apply.

**4. Act to bind the Government-**(1) Subject to the provisions of this Act, this Act shall bind the Government.

(2) The provisions of this Act shall apply to vessels belonging to or operated by the Government, and any of its agencies.

(3) The provisions of this Act shall not apply to -

- (a) warships of another State; or
- (b) aircraft being used as an aircraft of another State.

**5. Application of this Act and other pollution laws-**(1) This Act shall be the principal law dealing with pollution incidents affecting the marine environment where the source of the pollution is a vessel, and shall apply to -

- (a) all vessels in Samoan waters; and
- (b) all Samoan vessels.

(2) In the event that pollution to the marine environment arises from a source which is not a vessel, the provisions of this Act shall be applied subject to any other law which makes provision in relation to -

- (a) pollution from terrestrial sources;
- (b) pollution in the airspace; and
- (c) disaster and emergency response.

(3) Nothing in this section shall affect the validity of any prosecution taken for an offence against this Act, and shall not constitute a defence to any offence against this Act.

**6. Criminal liability under this Act-**(1) Unless otherwise provided for in specific sections of this Act, the following persons may be liable in respect of any breach of this Act which constitutes the commission of an offence –

- (a) where the breach arises from any vessel – the owner and master of the vessel may be liable;
  - (b) charterers of any vessel where they, or their servants or agents, exercise any degree of control over the vessel or its cargo, or the course of the voyage of the vessel;
  - (c) where the breach arises from any apparatus used for transferring a pollutant to or from any vessel – the person in charge of the apparatus, the owner of the apparatus, and the master and the owner of the vessel, may be liable;
  - (d) where the breach arises from any platform – the owner and master of the platform, and the person in charge of it, may be liable;
  - (e) where the breach arises from any place on land – the owner and occupier of the land, and any person who has caused or contributed to the breach, may be liable; and
  - (f) where the breach arises from the exploration of the seabed or sub-soil, or any natural resources in the marine environment – the owner or person in charge of such operations or activities may be liable.
- (2) The determination of criminal liability for any breach of this Act shall be done in accordance with the principles of criminal law applying in Samoa.

## **PART II - MARINE POLLUTION PREVENTION**

### **7. Design of vessels and pollution prevention equipment-**

(1) All vessels to which MARPOL 73/78 applies must comply with all of the design and pollution prevention equipment provisions specified in that Convention.

(2) Subject to subsection (3), the owner and master of any ship which is in breach of any of the requirements applying to a vessel under subsection (1) commits an offence and shall be liable upon conviction –

- (a) if the vessel is in excess 24 metres - to a fine not exceeding 5,000 penalty units, and to imprisonment for a term not exceeding 2 years, or both; or
- (b) if the vessel is 24 metres or less - to a fine not exceeding 3,000 penalty units, and to imprisonment for a term not exceeding 1 year, or both.

(3) For a period of 2 years after the commencement of this Act, a vessel to which this section applies which has operated prior to the commencement of this Act and is not in compliance with the requirements of MARPOL 73/78 may be allowed to continue to operate under such conditions and for such duration as the Chief Executive Officer may determine, and if such a vessel has this authority and is in compliance with any conditions imposed it shall not be in breach of this Act.

(4) Regulations made under this Act may prescribe powers and procedures whereby the Chief Executive Officer may grant certain exemptions from the requirements applying under subsection (1) for specific voyages if it is in the interest of Samoa for such exemptions to be granted.

**8. Operation of vessels-**(1) All vessels to which MARPOL 73/78 applies must be operated in compliance with the requirements specified in that Convention.

(2) Subject to subsection (3), the owner and master of any ship which is in breach of any of the requirements applying to a vessel under subsection (1) commits an offence and shall be liable upon conviction to –

- (a) if the vessel is in excess of 24 metres - to a fine not exceeding 10,000 penalty units, and to imprisonment for a term not exceeding 2 years, or both; or

(b) if the vessel is 24 metres or less - to a fine not exceeding 5,000 penalty units, and to imprisonment for a term not exceeding 1 year, or both.

(3) For a period of 2 years after the commencement of this Act, a vessel to which this section applies which has operated prior to the commencement of this Act and is not in compliance with the requirements of MARPOL 73/78 may be allowed to continue to operate under such conditions and for such duration as the Chief Executive Officer may determine, and if such a vessel has this authority and is in compliance with any conditions imposed it shall not be in breach of this Act.

(4) Regulations made under this Act may prescribe powers and procedures whereby the Chief Executive Officer may grant certain exemptions from the requirements applying under subsection (1) for specific voyages if it is in the interest of Samoa for such exemptions to be granted.

**9. Discharge of pollutants or harmful substances-**(1) For the purposes of this Part –

(a) the definitions given to “existing oil tanker”, “new tanker” and “special area” in MARPOL 73/78 shall apply to these terms in this Part, unless the context otherwise requires; and

(b) “pollutant and harmful substance” includes, but is not limited to, any oil, plastics, synthetic ropes and synthetic fishing nets.

(2) Subject to subsections (4) and (5) and to section 13, no pollutant or harmful substance may be discharged from a vessel, platform or place on land into Samoan waters, or from a Samoan vessel into any waters.

(3) Any person who breaches subsection (2) commits an offence and –

(a) shall be liable upon conviction to a fine not exceeding 10,000 penalty units or to imprisonment for a term not exceeding 10 years, or both; and

- (b) subject to the provisions of this Act concerning limitation of liability, shall be liable to pay for the total costs of any clean up operations and all necessary action to restore the environment to its original condition.
- (4) It shall be a defence to a prosecution for an offence against this section if the offender can prove that the discharge –
- (a) was necessary for the purposes of securing the safety of a vessel or the saving of life at sea (provided that the discharge was necessary and reasonable in the circumstances); or
  - (b) resulted from damage to a vessel or its equipment, and that –
    - (i) the offender took all reasonable precautions after the occurrence of the damage or discovery of the discharge to prevent or minimise the discharge; and
    - (ii) the owner or the master acted with no intent to cause damage, and did not act recklessly with knowledge that damage would probably result; or
  - (c) was for a purpose of –
    - (i) training government officers or other persons who are tasked with functions relating to pollution control as approved by the Chief Executive Officer; or
    - (ii) combating specific pollution incidents in order to minimise the damage from pollution, as permitted by a Discharge Permit issued in accordance with section 13.
- (5) It shall be a defence to a prosecution under this section if the offender can prove that the discharge into the sea was of oil, oily mixtures, noxious liquid substances, sewage and garbage that are allowed under MARPOL 73/78, including –
- (a) discharge by an oil tanker if all of the following criteria apply to the discharge –

- (i) the oil tanker is not in a special area;  
and
  - (ii) the oil tanker is more than 50 nautical miles from the nearest land; and
  - (iii) the oil tanker is proceeding en route;  
and
  - (iv) the instantaneous rate of discharge of oil content does not exceed 30 litres per nautical mile; and
  - (v) the total quantity of oil discharged into the sea does not exceed 1/15,000 of the total quantity of the particular cargo of which the residue formed a part in the case of existing oil tankers, and 1/30,000 of the total quantity of the particular cargo of which the residue formed a part in the case of new tankers; 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) discharge by a vessel of 400 tons gross tonnage and above (other than an oil tanker) from machinery space bilges (excluding cargo pump-room bilges of an oil tanker unless mixed with oil cargo residue) if all of the following criteria apply to the discharge -
- (i) the vessel is not within a special area;  
and
  - (ii) the ship is proceeding en route; and
  - (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) discharge of garbage which shall be allowed from all vessels, if it is made as far as practicable from the nearest land, but in all cases 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; and

(ii) 12 nautical miles for food wastes and all other garbage including paper products, rags, glass, metal, bottles, crockery and similar refuse.

(6) The exceptions stated in subsection (5) do not allow the discharge of any plastics, the discharge of which is prohibited from all vessels in all locations.

**10. Discharge of ballast water-**(1) No ballast water containing non-indigenous harmful aquatic organisms or pathogens may be discharged from a vessel into Samoan waters.

(2) The master of a vessel that discharges ballast water in Samoan waters must –

(a) obtain all necessary approvals under the Quarantine (Biosecurity) Act 2005 prior to the discharge; and

(b) comply with all voluntary or mandatory ballast water management requirements issued by the International Maritime Organisation and which are in force at the time of the discharge.

(3) The master of a vessel that intends to discharge ballast water in Samoan waters shall, prior to any discharge, complete and give to the Chief Executive Officer notice of the discharge –

(a) which may be a copy of any form of this nature required to be given under the Quarantine (Biosecurity) Act 2005; or

- (b) in the form approved by the Chief Executive Officer for that purpose.
- (4) The owner and master of an offending vessel each commit an offence if -
- (a) any ballast water containing non-indigenous harmful aquatic organisms or pathogens is discharged from any vessel into Samoan waters;
  - (b) ballast water is discharged from a vessel in Samoan waters in a manner which does not comply with any of the voluntary or mandatory ballast water management requirements issued by the International Maritime Organisation in force at the time of the discharge;
  - (c) no notice of the discharge as required by this section is submitted to the Chief Executive Officer prior to a discharge of ballast water in Samoan waters;  
or
  - (d) false or misleading particulars are provided in a notice submitted under this section -
- and shall be liable upon conviction to a fine not exceeding 7,500 penalty units or to imprisonment for a term not exceeding 5 years, or both.
- (5) It shall be a defence to any prosecution under section (4)(a) if the offender can prove that all reasonable measures to comply with any voluntary or mandatory ballast water management requirements issued by the International Maritime Organisation 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 Samoan waters.

**11. Hull scraping and cleaning-**(1) The scraping and cleaning of the hulls and other external surfaces of vessels must be undertaken in a manner that prevents the introduction of non-indigenous harmful aquatic organisms or pathogens into Samoan waters.

(2) Any person who scrapes or cleans any hull or other external surface of a vessel in a manner –

- (a) which permits the introduction of non-indigenous harmful aquatic organisms or pathogens into Samoan waters;
  - (b) which is inconsistent with any requirements applying to the scraping and cleaning of hulls published by the Ministry or the International Maritime Organisation from time to time; or
  - (c) which contravenes a direction given to the person by an authorised officer of the Ministry in relation to the scraping or cleaning of the hull -
- commits an offence and shall be liable upon conviction to a fine not exceeding 4,500 penalty units or to a term of imprisonment not exceeding 2 years, or both.

(3) The owner and master of a vessel in relation to which an offence is committed under this section shall also be liable for that offence.

**12. Anti-fouling systems-**(1) The Anti-fouling Convention shall apply to all ships of 24 metres or more in length in Samoan waters.

(2) Ships of 400 gross tonnage and above engaged in international voyages shall be required to undergo –

- (a) an initial survey and be certified before the ship is put into service or before the International Anti-fouling System Certificate is issued for the first time; and
- (b) a survey and be certified when the anti-fouling systems are changed or replaced.

(3) Ships of 24 metres or more in length but less than 400 gross tonnage engaged in international voyages and operating in Samoan waters shall carry a Declaration on Anti-fouling Systems signed by the owner or owner's authorised agent, and the Declaration shall be accompanied by appropriate documentation to verify its contents including a paint receipt or contractor invoice.

(4) The use and application of harmful anti-fouling systems containing organotin compounds and any other prescribed harmful substance on vessels in Samoan waters or any man-made structure is prohibited.

(5) Any owner or master who contravenes any provision of the Anti-fouling Convention commits an offence and shall be liable upon conviction to a fine not exceeding 3,500 penalty units or to imprisonment for 6 months, or both.

(6) The owner or master of any Samoan vessel or any vessel in Samoan waters shall not use any harmful anti-fouling system, containing organotin compounds or any other prescribed harmful substance in Samoan waters and any person that applies harmful anti-fouling systems to a vessel or man-made structure in Samoa commits an offence and shall be liable upon conviction to a fine not exceeding 2,000 penalty units.

(7) For the purposes of this section, 'man-made structures' includes any buoy, markers or any object specifically created for use or placement in water.

### **13. Management of waste from ship repair facilities-(1)**

The discharge, disposal and escape of -

- (a) hull scrapings;
- (b) paints and paint residues;
- (c) abrasive blasting mediums;
- (d) any other pollutant or harmful substance; and
- (e) any effluent containing such pollutants or harmful substances –

into Samoan waters from ship repair facilities is prohibited.

(2) All ship repair facility must put in place systems for the effective containment and recovery of all of the substances specified in subsection (1) for proper re-use, recycling, treatment and/or disposal in a waste management facilities on-shore that has been approved under any law.

(3) The owner or operator of a ship repair facility who breaches any prohibition or requirement stated in this section commits an offence and shall be liable upon conviction to a fine not exceeding 1,750 penalty units or to imprisonment for a term not exceeding 6 months, or both.

**14. Discharge Permits-**(1) A person wishing to discharge a pollutant or harmful substance for a purpose associated with responding to a specific pollution incident shall apply in writing to the Chief Executive Officer for a Discharge Permit and shall provide the following information –

- (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 environmental impacts of the discharge; and
  - (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 consider -
- (a) all potential adverse impacts to human life, health and safety; and

(b) the environmental impacts that are likely to occur from the proposed discharge as opposed to the environmental impacts that are likely to occur if the proposed discharge is not permitted.

(3) When issuing a Discharge Permit the Chief Executive Officer may impose any conditions, but it shall be a condition of every Discharge Permit issued under this section to a person who is responsible for the pollution incident arising that the permit holder is liable to pay all costs of any clean up operation necessary to restore the environment to its original condition if the environment is affected by a discharge done under a permit.

(4) A person who -

(a) provides any information of the nature required under subsection (1) which is false or misleading;

(b) fails to comply with any condition imposed by the Chief Executive Officer in relation to a Discharge Permit issued to that person; or

(c) undertakes any discharge for a purpose or of a nature that is different from that for which the Discharge Permit is applied for or issued -

commits an offence and shall be liable upon conviction to a fine not exceeding 1,500 penalty units or to a term of imprisonment not exceeding 1 year.

**15. Waste reception facilities in ports-**(1) Regulations may be made under this Act in relation to the provision of waste reception facilities at Samoan ports to enable vessels to discharge waste oil or oily residues, hazardous and noxious substances and sewage from those vessels, or to deposit their garbage.

(2) Waste reception facilities shall not be provided where a vessel's wastes may cause unacceptable environmental impacts in Samoa.

(3) The full or partial cost of providing and operating these waste reception facilities may be recovered by user fees which may be set -

- (a) by Regulations made under this Act; or
- (b) by the Chief Executive Officer if no such Regulations apply; or
- (c) by any agency which is given responsibility for providing or managing the waste reception facilities.

(4) No water containing pollutants that have not been first processed by the ship's oily water separator, or other effective process for separating the pollutant from the water, may be discharged into any waste reception facilities.

(5) The owner and master of a vessel which discharges at a waste reception facility in breach of subsection (4) commit an offence and shall be liable upon conviction -

- (a) to a fine not exceeding 2,500 penalty units or to imprisonment for a term not exceeding 6 months, or both; and
- (b) to pay any compensation for any damage done to the facility or the cost of any remedial action that is necessary as a result of the breach.

**16. Duty to report discharges-**(1) If any pollutant, harmful substance, non-indigenous harmful aquatic organism or pathogen is discharged into Samoan waters from a vessel, platform or a place on land -

- (a) the owner, master or person in charge of the vessel or platform; or
- (b) the occupier of the place on land -

shall immediately and by the quickest available means report the occurrence to the Chief Executive Officer and to the Chief Executive Officer of the Ministry responsible for disaster management.

(2) A report made under subsection (1) shall provide each of the following particulars -

- (a) the time of the discharge; and
- (b) the position of the discharge, including latitude and longitude if possible; and

- (c) the event to which the discharge is directly attributable; and
- (d) the precise source of the discharge; and
- (e) the weather and sea conditions at the time of the discharge and at the time when the report was made; and
- (f) where oil has been discharged –
  - (i) the quantity and description of each type of oil that was discharged; and
  - (ii) the quantity and description of each type of oil remaining on board; and
- (g) 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); and
- (h) the quantity and description of each type of pollutant other than oil remaining on board; and
- (i) where garbage or sewage has been discharged, the quantity, description and concentration that was discharged; and
- (j) the types, quantity and condition of other cargo carried or stored; and
- (k) the existence of any slick and the direction and speed of its movement; and
- (l) the measures that have been taken to -
  - (i) stop or reduce the discharge;
  - (ii) contain the pollutant and prevent the spread of it;
  - (iii) remove the pollutant from the sea or to disperse it; and
  - (iv) minimise damage or the possibility of damage resulting from the discharge; and
- (m) the identity and full contact details of the person making the report.

(3) If any vessel becomes stranded, wrecked or is abandoned in Samoan waters or if a Samoan vessel becomes stranded, wrecked or is abandoned in any waters, then the owner, master or person in charge shall immediately and by the quickest available means report the occurrence to the Chief Executive Officer, and shall provide -

- (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 their condition;
- (d) if a discharge has occurred, the details required in subsection (2); and
- (e) the identity and full contact details of the person making the report.

(4) A person who -

- (a) fails to comply with any provision of this section; or
  - (b) makes a report containing any information that is false, misleading or incomplete -
- commits an offence and is liable upon conviction to a fine not exceeding 1,500 penalty units or to imprisonment for a term not exceeding 6 months, or both.

**17. Records-**(1) The master of -

- (a) every Samoan oil tanker; and
  - (b) every oil tanker in Samoan waters of 150 tons gross tonnage and above and
  - (c) every Samoan vessel; and
  - (d) every vessel in Samoan waters of 400 tons gross tonnage and above other than an oil tanker -
- shall carry and maintain an Oil Record Book Part I (Machinery Space Operations) and enter a record whenever any of the following machinery space operations are carried out -
- (e) ballasting or cleaning of oil fuel tanks;
  - (f) discharge of dirty ballast or cleaning water from tanks referred to in paragraph (a) above;
  - (g) disposal of oily residues (sludge); and

(h) discharge overboard or disposal otherwise of bilge water which has accumulated in machinery spaces.

(2) The master of every Samoan oil tanker and every oil tanker in Samoan 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; and
- (j) disposal of residues.

(3) The Oil Record Books required under subsections (1) and (2) whether as a part of the vessel's official log-book or otherwise, shall be in the Forms specified in Regulation 20 and Appendix III of Annex I of MARPOL 73/78, or any other form which may supersede those forms.

(4) The person in charge of a platform in Samoan waters, shall comply with the provisions of subsections (1) and (2), as far as is applicable and with all necessary modifications.

(5) The master of a Samoan vessel or a vessel in Samoan waters to which Annex II of MARPOL 73/78 applies, shall carry a Record Book, and shall record –

- (a) the loading or unloading of pollutants specified in that Annex;
- (b) the transfer of pollutants specified in that Annex; and

- (c) any other operations in respect of pollutants specified in that Annex; and
  - (d) any discharge or escape of such pollutants and the circumstances and reasons relating to their discharge or escape.
- (6) A person who fails to comply with any requirement imposed by this section commits an offence and is liable upon conviction to a fine not exceeding 500 penalty units or to imprisonment for a term not exceeding 6 months, or both.
- (7) A person who makes an entry in any records to be kept in accordance with this section which is false, misleading or incomplete commits an offence, and is liable upon conviction to a fine not exceeding 500 penalty units, or to imprisonment for a term not exceeding 1 year, or both.

**18. Powers of inspection-**(1) The Chief Executive Officer may by written notice appoint any properly trained and qualified person as an inspector to investigate and report -

- (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 those made 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; and
  - (d) any other matter associated with the administration of this Act and the implementation of the Conventions to which this Act applies.
- (2) Every inspector shall have the power to –
- (a) enter and inspect any vessel, platform, facility, place on land and any apparatus used for the storage, transfer or processing of pollutants, garbage or sewage; and

- (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; and
  - (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; and
  - (d) board a vessel or platform to ascertain the circumstances relating to an alleged discharge of a pollutant into Samoan waters or from a Samoan vessel into any waters; and
  - (e) board a 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) Any inspection under this section may require verification that there is on board all valid certificates as required by this Act.
- (4) If the inspector believes that the condition of the vessel or its equipment does not correspond substantially with the particulars of any applicable certificate or if the ship does not carry a valid certificate, the Chief Executive Officer -
- (a) shall take all necessary steps to ensure that the ship shall not sail until it –
    - (i) it is in compliance with the provisions of this Act; and
    - (ii) it can proceed to sea without presenting a threat of harm to the marine environment; or
  - (b) may grant permission for the vessel to leave the port or offshore terminal for the purpose of proceeding to the nearest appropriate repair yard available.
- (5) If the Chief Executive Officer denies a foreign vessel entry to a port or offshore terminal, or takes any action against a vessel for the reasons that it does not comply with the

provisions of this Act, the Chief Executive Officer shall immediately inform the consul or diplomatic representative of the State whose flag the ship is entitled to fly, or if this is not possible, the Maritime Administration of the ship concerned.

(6) All powers conferred by this section shall be exercised so that a vessel is not unnecessarily detained or delayed in proceeding on any voyage.

(7) A 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 is liable upon conviction to a fine not exceeding 2,500 penalty units or to a term of imprisonment for a term not exceeding 1 year, or both.

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

**19. General Application of this Part-**(1) The applicable law determining and regulating the response in Samoa to a marine pollution incident shall be -

(a) where the incident emanates from a vessel and is determined to be a disaster or emergency under the Disaster and Emergency Management Act 2007 – the Disaster and Emergency Management Act 2007 applied subject to the provisions of this Part;

(b) where the incident emanates from any source other than a vessel - the Disaster and Emergency Management Act 2007 without the provisions of this Part having any effect;

(c) where the incident emanates from a vessel and is not determined to be disaster or emergency – this Act; and

- (d) where the incident emanates from any source other than a vessel and is not determined to be a disaster or emergency – any relevant law dealing with pollution, wastes, environment protection, ports administration or land management.
- (2) An incident of the nature referred to in subsection (1)(a) shall be “a marine pollution incident to which this Part applies”.
- (3) The provisions of subsection (1) are for the purpose of defining areas of administrative responsibility only and do not affect the liability of any offender under any, law or the right of any government agency to prosecute breaches of any law.
- (4) This Part shall be applied so as to most effectively implement the general principles and provisions of -
  - (a) the OPRC Convention and its HNS Protocol;
  - (b) the SPREP Pollution Emergencies Protocol; and
  - (c) any other provision of a Convention to which this Act applies which relates to responses to marine pollution incidents.

**20. Committee to be established under this Part-**(1) For the purposes of responding to marine pollution incidents to which this Part applies, a sub-committee of the Disaster Advisory Committee shall be established in accordance with section 6(5) of the Disaster and Emergency Management Act 2007.

- (2) The Sub-Committee established under subsection (1) -
  - (a) shall be chaired by the Chief Executive Officer, or his or her nominee; and
  - (b) shall be comprised of other members appointed by the Minister responsible for disaster management, after consulting with the Minister, and shall include the Commissioner of Police and relevant industry representatives, including –
    - (i) the Samoa Ports Authority;
    - (ii) ports users;

- (iii) fuel suppliers; and
    - (iv) the shipping industry.
  - (c) shall perform –
    - (i) the functions of the Disaster Advisory Committee stated in sections 6(6)(a), (f), (g), (k) and (l) of the Disaster and Emergency Management Act 2007 in relation to all marine pollution incidents to which this Part applies; and
    - (ii) any other functions vested in it by the National Disaster Council.
- (3) A Marine Pollution Advisory Committee may be established, administered and provided with administrative support by the Ministry to have functions and responsibilities of –
- (a) developing, reviewing and implementing the National Marine Spill Contingency Plan (NATPLAN) required under section 21 and related matters;
  - (b) assisting in the establishment and maintenance of the inventory of marine pollution response equipment under this Part, and its effective utilisation;
  - (c) reviewing the provision and operation of waste facilities in Samoa's ports and setting standards for such facilities;
  - (d) ensuring the proper administration and utilisation of the Marine Pollution Levy and the National Marine Pollution Fund in accordance with regulations made under this Act;
  - (e) promoting the effective participation of Samoa in any bilateral, multilateral and regional marine spill contingency plans and related arrangements; and
  - (f) any other matters related to marine pollution as required by the Minister or Cabinet.

(4) The members of the Marine Pollution Advisory Committee shall be appointed by the Minister and shall include-

(a) government representatives from Ministries and agencies which are relevant to the management of the marine environment and the proper management of the POLFUND; and

(b) industry representatives representing –

(i) the shipping industry;

(ii) the oil industry;

(iii) port users; and

(iv) the fishing industry.

(5) The Committee shall meet at such times and places as are nominated by the Minister and may regulate its own procedures as it thinks fit.

(6) The Annual Report prepared by the Maritime Division of the Ministry shall report on the operations and determinations of the Marine Pollution Advisory Committee and the Sub-Committee established under subsection (1).

**21. Marine Spill Contingency Plans-**(1) The Chief Executive Officer, with advice from the Committee “..(if it is established under section 20(3)).” shall ensure that a National Marine Spill Contingency Plan (NATPLAN) is developed, maintained and implemented.

(2) The NATPLAN shall take effect when it is approved by the Minister and must conform to all requirements stipulated in –

(a) any Convention to which this Part applies; and

(b) the Disaster and Emergency Management Act 2007.

(3) All owners and operators of ports and oil and chemical handling and storage facilities shall develop, maintain and implement and maintain site-specific marine spill prevention and contingency plans for their facilities, consistent with the NATPLAN and any requirements applying under the Disaster and Emergency Act.

(4) All owners or operators of vessels to which MARPOL 73/78 applies shall develop, maintain and implement shipboard marine pollution emergency plans consistent with the requirements of MARPOL 73/78.

(5) The plans required to be developed under this section shall be submitted to the Chief Executive Officer for approval, and if approved by the Minister shall form part of the NATPLAN.

**22. Regional Cooperation-**(1) The Marine Pollution Advisory Committee shall advise the Ministry in relation to any matters that -

- (a) can assist in the effective participation of Samoa in regional and international arrangements relating to the response to marine pollution incidents; and
- (b) most effectively implement the arrangements provided for in the Conventions to which this Act applies dealing with response to marine pollution incidents.

(2) The Ministry shall ensure that all necessary notifications are given in accordance with the procedures stated in any Convention to which this Act applies.

(3) Should Samoa require external assistance in response to a marine pollution incident, such assistance may be requested by the Ministry in accordance with the procedures contained in any bilateral, multilateral or regional marine spill contingency plan(s), and related arrangements in place at the time.

(4) Should other Pacific Island Countries and Territories request assistance from Samoa in response to a marine pollution incident, such requests may be considered by the Ministry in accordance with the procedures contained in any bilateral, multilateral or regional marine spill contingency plan(s) and related arrangements in place at the time.

**23. Appointment of On Scene Commander-**(1) The Chief Executive Officers shall from time to time appoint qualified officer of the Ministry to be -

- (a) the Ministry's On Scene Commander; and
  - (b) such number of Deputy On Scene Commanders as are considered to be necessary, who shall be deemed to be the On Scene Commander if the office of On Scene Commander is vacant or the incumbent is absent or is otherwise unavailable to act in relation to any specific marine pollution incident.
- (2) The On Scene Commander shall -
- (a) command, manage and co-ordinate all operations relating to the response to marine pollution incidents emanating from vessels; and
  - (b) control and direct the use of all resources allocated to the response to marine pollution incidents emanating from vessels.
- (3) During a marine pollution incident emanating from a vessel, the On Scene Commander shall direct the use 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 this Act.
- (4) The powers exercisable under this section are subject to any directions given to the On-scene Commander under the authority of the Disaster and Emergency Management Act 2007, if it has application to the particular marine pollution incident in accordance with section 19.

**24. 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 an arrangement involving government and industry comprising the owners and operators of all ports and

all oil and chemical handling and storage facilities within Samoa and all parties contributing and having access to the equipment.

(3) In determining equipment needs, the government and industry stakeholders shall co-operate to ensure compatibility and inter-operability, and that the inventory is the most appropriate for all levels of marine pollution risk and for local conditions.

(4) Regulations made under this Act may -

- (a) require owners or operators of vessels and platforms to carry on board and maintain marine pollution response equipment for the containment, recovery or dispersal of any pollutant that may be discharged by the vessel or platform into Samoan waters;
- (b) specify the type and quantity of such equipment which shall be sufficient to allow an initial response to the pollution incident taking into consideration limitations of the crew and the practicalities of operations at sea;
- (c) prescribe arrangements for the type and quantity of such equipment to be specified in the shipboard marine pollution emergency plan required under this Act;
- (d) make any other necessary provision relating to marine pollution response equipment in Samoa; and
- (e) prescribe offences for the failure to comply with any requirement of the Regulations and penalties for such offences which shall be fines not exceeding 500 penalty units or terms of imprisonment not exceeding 12 months, or both.

**25. National Marine Pollution Fund (POLFUND)-(1)**

Regulations made under this Act may provide for the establishment and management of a Fund to be known as the National Marine Pollution Fund (POLFUND) to finance the

implementation of the National Marine Spill Contingency Plan (NATPLAN).

(2) The Regulations made under subsection (1) may make provision for –

- (a) the administration and government of the POLFUND by a Board of Trustees, which shall include representatives of government and industry stakeholders;
- (b) the imposition of marine pollution levies and any other sources of revenue for the POLFUND, and any returns to be filed by persons liable to pay such levies or other charges;
- (c) the investment of monies held in the POLFUND;
- (d) the expenditure of monies held in the POLFUND for purposes associated only with response to marine pollution incidents;
- (e) the audit of the POLFUND and any other matters necessary for its proper management, investment and utilisation;
- (f) the duties and responsibilities of the Board of Trustees relating to 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.

**26. Application of POLFUND monies** - In accordance with the provisions of the regulations made under section 25, the Ministry 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 incurred 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.

**27. Approval of expenditure from the POLFUND-(1)**

After consultation with the Committee the On Scene Commander shall prepare an annual budget of income and expenditure for the POLFUND which shall be endorsed by the Chief Executive Officer and the Minister and referred to 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 -

**PROVIDED THAT** in the event of a marine pollution incident, the On Scene Commander shall have the authority to 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, but all subsequent expenditure of funds for subsequent clean-up operations must be approved in writing by 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.

**28. Marine Pollution Levies-(1)** The regulations made under section 25 may impose marine pollution levies and other appropriate charges to be contributed to the POLFUND by owners of -

- (a) contributing vessels;
- (b) contributing oil sites; and

(c) contributing chemical sites.

(2) The Chief Executive Officer shall require returns to be made by the persons by whom any levy is payable.

**29. Establishment and maintenance of maximum POLFUND level-**(1) The Minister shall, in consultation with the Chief Executive Officer and the Committee determine the maximum POLFUND level and determine mechanisms to maintain the desired financial reserve.

(2) When the maximum amount of the POLFUND has been collected, the levy may be suspended on the order of the Minister.

(3) If the POLFUND is depleted the Minister may, in consultation with the Chief Executive Officer and the Committee, determine the date on which the levy is to be reinstated.

**30. Rates and basis of marine pollution levies-**(1) The Regulations made under section 25 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 Samoa.

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

**31. 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 Samoa 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 Samoa.
- (2) Where any levy is imposed in respect of a contributing oil site or contributing Chemical site the liability to pay that levy shall arise on a quarterly basis.
- (3) The regulations made under section 25 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; and
  - (d) provide for the refund of the whole or any part of a levy paid in advance or otherwise.
- (4) 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.

**32. 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 received shall be paid into the POLFUND.
- (3) A receipt shall be given to any person paying any marine pollution levy.

**33. 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 Samoa.

**34. Offences-**(1) Every person who contravenes or fails to comply with any obligation or requirement imposed on the person by Part III or any Regulation made under section 25 commits an offence.

(2) Every person who commits an offence under this section is liable upon conviction -

- (a) in the case of an individual, to a fine not exceeding 500 penalty units;
- (b) in any other case, to a fine not exceeding 2,500 penalty units.

**35. 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 debt and where the levy is payable in relation to a contributing vessel the debt shall constitute a charge upon the vessel.

#### **PART IV - MARINE CASUALTIES**

**36. General application of this Part –** This Part shall be applied so as to most effectively implement the general principles and provisions of the INTERVENTION Convention.

**37. Powers in relation to marine casualties-**(1) The provisions of this Part shall be in addition to and shall not in any way prejudice any other rights or powers of the Government which are exercisable under international law.

(2) 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 Samoan waters or on the High Seas; or

- (b) a pollution incident occurring onboard a vessel, where it appears to the Chief Executive Officer necessary to prevent, reduce or eliminate grave and imminent danger from any pollutant -
  - (i) in or to Samoan waters ;or
  - (ii) to the coast of Samoa; or
  - (iii) to related interests -

following upon a marine casualty, or acts related to a marine casualty.

(3) Where it appears to the Chief Executive Officer that as a result of a marine casualty or incident referred to in subsection (2) a vessel constitutes or is likely to constitute a risk of pollution then, for prevention, reduction or elimination of the pollution, the Chief Executive Officer may -

- (a) issue any instructions to -
  - (i) the master, owner or agent of the vessel; or
  - (ii) any person in charge of any salvage operation in respect of the vessel, and to any employee or agent of that person -

requiring any specified action to be taken or determining that no specified action be taken with respect to the vessel or its cargo; and

- (b) take any measures whatsoever with respect to the vessel or its cargo whether or not the Chief Executive Officer has issued instructions under paragraph (a).

(4) In determining what measures should be taken under subsection (3), the Chief Executive Officer shall have regard to

-

- (a) the extent and probability of imminent damage if those measures are not taken;
- (b) the likelihood of those measures being effective;
- (c) the extent of the damage which may be caused by such measures; and

- (d) the views of the Samoa Ports Authority and the Ministries responsible for fisheries, disaster management and the environment (if these can be readily obtained in the circumstances).
- (5) The measures that the Chief Executive Officer may direct to be taken or may take under subsection (3) shall include -
- (a) the removal to another place of the vessel or its cargo;
  - (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; and
  - (e) the taking over of control of the vessel.
- (6) In order to carry out any of the measures referred to in subsection (3), 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 Samoan vessel, or the master of any other vessel within Samoan waters, to render assistance to any vessel that is or is likely to be a marine casualty; and
  - (b) instruct the master of any Samoan vessel to -
    - (i) render assistance to any vessel;
    - (ii) take on board any equipment;
    - (iii) sail to any place, to render assistance to any vessel assisting a marine casualty;
    - (iv) assist in any operations for the cleaning up, removal, or dispersal of any oil or other pollutant; and
    - (v) obey the instructions of any person authorised by the Chief Executive Officer to exercise control over or responsibility for a marine casualty.

(7) The powers of the Chief Executive Officer to issue instructions or to take measures under subsection (3) shall be exercisable by any person authorised by the Chief Executive Officer -

- (a) in writing; or
- (b) orally and later confirmed in writing, in cases of emergency where the giving of written authority is not practicable.

(8) Before taking any measures under subsection (3), the Chief Executive Officer shall take all available and practicable measures to consult with any other States affected by the marine casualty, and in particular the Flag State(s) of the vessels involved.

(9) The Chief Executive Officer shall notify any persons known to have interests which can reasonably be expected to be affected by the measures that are proposed to be taken under subsection (3), but any failure to do so does not affect the powers of the Chief Executive Officer, or give rise to any liability for non-compliance with this section.

**38. Right to compensation-**(1) A person who has incurred expense, loss or damage as a result of the taking of any action or measure under section 37 may seek compensation from the Government only if he or she can prove that the instruction given or measure taken –

- (a) was wholly inappropriate in the circumstances and in excess of any instruction or measure that could have reasonably been given by any reasonable person in the circumstances; or
- (b) had no prospect of preventing, reducing or eliminating the pollution to which it was directed.

(2) A claim made for compensation under subsection (1) shall be made to the Supreme Court of Samoa which may take into account any relevant matter in determining whether the criteria stated in subsection (1) apply.

(3) Nothing in subsection (2) prevents a claim from being dealt with by conciliation or arbitration provided for under domestic or international law.

(4) Where any measures have been taken pursuant to section 37 on the high seas and there is a dispute between the Government and –

- (a) the owner of the vessel; or
- (b) the Government of the State where the vessel is registered; or
- (c) the Government of the State having any related interests –

and the dispute relates to –

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

then, 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.

**39. Offences-**(1) A person commits an offence if he or she

-

- (a) fails to comply with any instructions issued by the Chief Executive Officer pursuant to section 37, or by any person duly authorised by the Chief Executive Officer; or

- (b) wilfully obstructs a person acting in compliance with any instructions issued by the Chief Executive Officer pursuant to section 37 of this Act or by any person duly authorised by the Chief Executive Officer; or
- (c) wilfully 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 37.

(2) Every person who commits an offence under this section is liable upon conviction to a fine not exceeding 500 penalty units, and to an additional fine of 500 penalty units for each day during which the offence continues

(3) In any proceedings for an offence under this section it shall be a defence if the offender can prove that –

- (a) the failure to comply with any instructions issued under section 37; or
- (b) the wilful 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 if the offender proves that he or she used all due diligence to comply with any instructions issued by the Chief Executive Officer pursuant to section 37 or by any person duly authorised by the Chief Executive Officer.

**40. Protection from liability - Where -**

- (a) the Chief Executive Officer or any person duly authorised by the Chief Executive Officer has taken any measures under section 37; or

(b) any person has taken any action or refrained from taking any action in accordance with instructions issued under section 37 -  
then subject to section 38, the Chief Executive Officer or that person, as the case may be, shall not incur any civil liability in respect of the instruction given or measures taken.

**PART V - LIABILITY AND COMPENSATION FOR  
POLLUTION DAMAGE FROM SHIPS**

**41. General application of this Part-**(1) This Part relates to liability and compensation for damage from all forms of pollution from ships, and shall be applied as the law of Samoa in a manner which is consistent with the principles and provisions of CLC 92 and FUND 92, the HNS Convention and the Bunkers Convention.

(2) This Part shall not apply to warships, naval auxiliaries or other ships owned or operated by a State and used for the time being on non-commercial service for the Government.

(3) No liability for pollution damage shall attach to the owner if the owner 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;  
or

(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 Government or any other authority responsible for the maintenance of lights or other navigational aids in the exercise of that function.

(4) 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 liability to that person.

(5) When an incident involving two or more ships occurs and pollution damage results from the incident, the owners of all the ships concerned, unless exonerated under subsections (3) and (4), shall be jointly and severally liable for all such damage which cannot be reasonably attributed to one or other of them.

(6) No claim for compensation for pollution damage may be made against the owner of a ship otherwise than in accordance with this Part.

(7) No exemption or exoneration from liability under this Part shall affect the liability of any person for an offence committed against this Act.

**42. Liability for oil pollution damage-**(1) Liability for any oil pollution damage caused by the tanker as a result of the incident shall apply to -

- (a) the owner of an oil tanker at the time of an incident; and also
- (b) where the incident consists of a series of occurrences, the owner at the time of the first such occurrence.

(2) No claim for compensation for oil pollution damage may be made against the owner otherwise than in accordance with this Part, but this shall not affect the liability of any person under any other law in relation to the pollution.

(3) No claim for compensation for oil pollution damage under this Part may be made against -

- (a) servants or agents of the owner, or members of the crew of the ship;
- (b) the pilot or any other person who, without being a member of the crew of the ship, 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 lawful instructions of a public authority;

- (e) any person taking preventive measures in relation to the cause of the pollution from the ship, or its effects; or
  - (f) all servants or agents of persons mentioned in paragraphs (c), (d) and (e),
- unless the damage resulted from their personal act or omission, committed with the intent to cause such damage, or done recklessly and with knowledge that such damage would probably result.
- (4) Nothing in this Part shall prejudice any rights of the owner in relation to third parties.

**43. Liability for pollution damage from hazardous and noxious substances-**(1) Liability for any pollution damage caused by any hazardous and noxious substances in connection with their carriage by sea on board the ship shall apply to -

- (a) the owner of the ship at the time of an incident; and also
  - (b) where the incident consists of a series of occurrences, the owner at the time of the first such occurrence.
- (2) No liability for pollution damage referred to in subsection (1) shall attach to the owner if the owner proves that the failure of the shipper or any other person to furnish information concerning the hazardous and noxious nature of the substances shipped has either -
- (a) caused the damage, wholly or partly; or
  - (b) led the owner not to obtain compulsory insurance required by the HNS Convention –

if neither the owner nor its servants or agents knew or ought reasonably to have known of the hazardous and noxious nature of the substances shipped.

(3) No claim for compensation for pollution damage arising from hazardous or noxious substances under this Part may be made against –

- (a) servants or agents of the owner or members of the crew of the ship;
- (b) the pilot or any other person who, without being a member of the crew of the ship, performs services for the ship;
- (c) any charterer (howsoever described, including a bareboat charterer), manager or operator of the ship;
- (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; or
- (f) all servants or agents of persons mentioned in 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.

(4) Nothing in this Part shall prejudice any existing right of the owner against any third party, including the shipper or the receiver of the substance causing the damage, or the persons indicated in subsection (3).

#### **44. Liability for pollution damage from bunkers –**

Liability for pollution damage from Bunkers shall be applied in accordance with the common law of Samoa, which shall be subject to any applicable provisions of the Bunkers Convention which makes any particular provision in relation to –

- (a) the liability of certain persons;
- (b) the extent of that liability; and
- (c) principles or procedures to be applied in relation to assessing or discharging that liability.

#### **45. Actions for compensation-(1) Where -**

- (a) an incident has caused pollution damage in Samoa (including its Territorial Sea and Exclusive Economic Zone); or

(b) measures have been taken under this Act to prevent or minimise pollution damage – actions for compensation against the owner, insurer or other person providing security for the owner’s liability may be brought only in the courts of Samoa.

(2) All such actions shall be brought in the Supreme Court.

**46. Limitation of liability for oil pollution damage-(1)**

Persons who are liable for oil pollution damage under the provisions of this Part may rely on any applicable limitations of liability provided for in the Conventions specified in section 41(1), but this right is subject to any exceptions, conditions and requirements -

(a) stated in this Part; and

(b) provided for in any of the applicable Conventions.

(2) For the purposes of determining the extent of any applicable limitation of liability -

(a) the “unit of account” is the Special Drawing Right as defined by the International Monetary Fund. The amounts mentioned in this Part shall be converted into Samoan 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 or applying under sections 46(5), 47(5) and section 49;

(b) the value of the Samoan 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; and

(c) other 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) -

**PROVIDED THAT** these matters may be modified or replaced by any other means of calculating the extent of liability described as “units of account” provided for in Regulations

made under this Act, and such Regulations may have retrospective effect to cure any problem that may arise in determining the unit of account under these provisions.

(3) The owner of a ship shall be entitled to limit liability under this section 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; and
- (b) for a ship with a tonnage in excess of 5,000 units of tonnage, for each additional unit of tonnage - 420 units of account in addition to the amount mentioned in paragraph (a) -

**PROVIDED THAT** that this aggregate amount shall not in any event exceed 59.7 million units of account.

(4) The owner shall not be entitled to limit liability under this section unless he or she can prove that the pollution damage -

- (a) did not result from his or her personal act or omission; and
- (b) was not committed with the intent to cause such damage; and
- (c) that he or she had not acted recklessly, and with knowledge that such damage would probably result.

(5) To be entitled to any limitation under this section, the owner must first constitute a fund for the total sum representing the limit of the owner's liability.

(6) The fund must be constituted in accordance with -

- (a) any regulations made under this Act; or
- (b) any requirements stipulated by the Chief Executive Officer taking account of all applicable requirements of laws dealing with the financial accounts of the Government, if no Regulations have been made; or
- (c) otherwise, in accordance with any procedures stated in CLC 92 (Article IX).

(7) The fund shall be distributed among the claimants in proportion to the amounts of their established claims, as ordered by a court of competent jurisdiction.

(8) If before the fund is distributed –

- (a) the owner; or
- (b) any servants or agents of the owner; or
- (c) any person providing the owner with insurance or other financial security –

has, as a result of the incident in question, paid compensation for pollution damage, that person shall, up to the amount that has been paid, acquire by subrogation, the rights which the person so compensated would have enjoyed under this section.

(9) The right of subrogation provided for in subsection (8) may also be exercised by a person other than those mentioned that subsection in respect of any amount of compensation for pollution damage that the person may have paid.

(10) Where the owner or any other person establishes that he or she may later be compelled to pay (in whole or in part) any amount of compensation to which a right of subrogation may have applied 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 that person to enforce his or her claim against the fund at a later date.

(11) 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.

(12) 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.

(13) 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.

(14) A fund may be constituted under subsection (13) even if, by reason of subsection (4), the owner is not entitled to limit his or her liability, but its constitution in that case shall not prejudice the rights of any claimant against the owner.

**47. Limitation of liability for damage from hazardous and noxious substances-**(1) Persons who are liable for pollution damage arising from hazardous and noxious substances under the provisions of this Part may rely on any applicable limitations of liability provided for in the Conventions specified in section 41, but this right is subject to any exceptions, conditions and requirements –

(a) stated in this Part; and

(b) provided for in any of the applicable Conventions.

(2) The definitions and methods of calculation referred to in subsection 46(2) shall apply to this section.

(3) The owner of a ship shall be entitled to limit liability under this section in respect of any one incident to an aggregate amount calculated as follows –

(a) 10 million units of account for a ship not exceeding 2,000 units of tonnage; and

(b) for a ship with a tonnage in excess of 2,000 units of tonnage for each unit of tonnage from –

(i) 2,001 to 50,000 units of tonnage – 1,500 units of account in addition to the amount mentioned in paragraph (a); and

(ii) for each unit of tonnage in excess of 50,000 units of tonnage – 360 units of account, in addition to the amounts applying under this section –

**PROVIDED THAT** this aggregate amount shall not in any event exceed 100 million units of account.

(4) The owner shall not be entitled to limit liability under this section unless he or she can prove that the pollution damage

–

- (a) did not result from his personal act or omission; and
  - (b) was not committed with the intent to cause such damage; and
  - (c) that he or she had not acted recklessly, and with knowledge that such damage would probably result.
- (5) To be entitled to any limitation under this section, the owner must first constitute a fund for the total sum representing the limit of the owner's liability.
- (6) The fund must be constituted in accordance with –
- (a) any regulations made under this Act; or
  - (b) in requirements stipulated by the Chief Executive Officer taking account of all applicable requirements of laws dealing with the financial accounts of the Government, if no Regulations have been made; or
  - (c) otherwise, in accordance with any procedures stated in the HNS Convention.
- (7) The fund shall be distributed among the claimants in proportion to the amounts of their established claims, but claims in respect of death or personal injury have priority over other claims save to the extent that the aggregate of such claims exceeds two-thirds of the total amount of the constituted fund.
- (8) If before the fund is distributed –
- (a) the owner; or
  - (b) any servants or agents of the owner; or
  - (c) any person providing him insurance or other financial security –
- has, as a result of the incident in question, paid compensation for pollution damage, that person shall, up to the amount that has been paid, acquire by subrogation, the rights which the person so compensated would have enjoyed under this section.
- (9) The right of subrogation provided for in subsection (8) may also be exercised by a person other than those mentioned in that subsection in respect of any amount of compensation for pollution damage that the person may have paid, but this right is

subject to any applicable limitations on the rights of subrogation under any law of Samoa.

(10) Where the owner or any other person establishes that he or she may later be compelled to pay (in whole or in part) any amount of compensation to which a right of subrogation may have applied 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 that person to enforce his or her claim against the fund at a later date.

(11) 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.

(12) 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.

(13) 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.

(14) A fund may be constituted under subsection (13) even if, by reason of subsection (4), the owner is not entitled to limit his or her liability, but its constitution shall in that case not prejudice the rights of any claimant against the owner.

**48. Limitation of liability for pollution damage from bunkers** – Any provision of the Bunkers Convention which provides for any right of limitation of liability for pollution damage involving bunkers shall have the force of law in Samoa, and shall be applied by the Courts so as to give full effect to such limitation.

**49. Rights of owner on constitution of fund-**(1) Where after an incident, an owner, has duly constituted a fund in

accordance with the provisions of this Part, and is entitled to a limitation on his or her 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 the claim; and
  - (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) Subsection (1) shall only apply if –
- (a) the claimant has a right to take action in the Court administering the fund; and
  - (b) the fund is available in respect of the particular claim made by the claimant.

**50. Requirement for insurance for pollution damage-(1)**

This section applies to all –

- (a) oil tankers carrying more than 2,000 tons of oil in bulk as cargo in Samoan waters;
  - (b) ships carrying hazardous and noxious substances in Samoan waters;
  - (c) Samoan ships having a gross tonnage greater than 300grt; and
  - (d) any other Samoan vessel, or class of Samoan vessel, that is determined from time to time by the Minister to be a vessel to which this section applies.
- (2) All ships to which this section applies must be covered by insurance or other financial security in accordance with –
- (a) any Convention to which this Act applies; and
  - (b) if the vessel is one to which subsection (1)(c) or (d) applies, any requirement imposed by the Chief Executive Officer that is consistent with this section.

(3) The insurance cover or other financial security must be in the form of a current –

- (a) policy of insurance;
- (b) bank guarantee;
- (c) certificate issued by an international compensation fund; or
- (d) other appropriate security or cover prescribed by Regulations made under this Act, or approved from time to time by the Chief Executive Officer.

(4) All ships to which this section applies must carry a certificate which certifies that the ship currently has the required insurance cover or other financial security, and which is issued –

- (a) in accordance with any applicable Convention to which this Act applies; and
- (b) by a competent authority under those Conventions, or by the Chief Executive Officer under section 51.

(5) All certificates required to be carried under this section shall be in the form required under the applicable Convention to which this Act applies, and shall include the following particulars –

- (a) name of the ship, its distinctive number or letters and its port of registry;
- (b) name and principal place of business of the owner;
- (c) IMO ship identification number;
- (d) type and duration of security;
- (e) name and principal place of business of insurer or other person giving security and, where appropriate, place of business where the insurance or security is established; and
- (f) period of validity of certificate, which shall not be longer than the period of validity of the insurance or other security.

(6) 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.

(7) 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 Samoa for the purposes of that Convention, and shall be regarded by Samoa 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.

(8) All certificates to which this section applies shall be in the official language or languages of the issuing State, and if that language is not English, the text shall include a translation into English.

(9) An insurance or other financial security required under this section shall not satisfy the requirements of this section if it can cease to extend cover 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 (6), unless the certificate has been surrendered to these authorities or a new certificate has been issued within the said period.

(10) Subsection (9) shall similarly apply to any modification that results in the insurance or security no longer satisfying the requirements of this section.

(11) 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, and in such cases the defendant –

- (a) may have the benefit of limitations of liability prescribed in this Act, even if the owner is not entitled to limit his or her liability;
- (b) may avail himself or herself of the defences which the owner would have been entitled to invoke (other than a defence based upon the bankruptcy or winding up of the owner);

- (c) may claim the defence that the pollution damage resulted from the wilful misconduct of the owner;
  - (d) shall have the right to require the owner to be joined in the proceedings -
- but the defendant shall not have the right to claim any other defence which he or she might have been entitled to invoke in proceedings brought by the owner.

(12) In the case of oil pollution damage 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.

#### **51. Issue of Certificates for Samoan ships and bunkers-**

(1) In relation to all Samoan ships of the nature specified in subsection 50(1), the Ministry -

- (a) shall apply all relevant insurance related requirements to Samoan vessels in accordance with all applicable Conventions to which this Act applies, and to any additional requirements applying under this Act;
  - (b) ensure that the insurance cover or other financial security relating to the vessel meets the requirements stated in subsections 50(3), (5), (8) and (9); and
  - (c) may issue a certificate in the appropriate form and meeting the requirements of the applicable Convention.
- (2) No Samoan ship to which section 50 applies may conduct any trade unless –
- (a) it is covered by the required policy of insurance or other financial security as required by this Part;
  - (b) a certificate has been issued under this section.
- (3) The owner and master of any Samoan ship which breaches any of the requirements of subsection (2) commit an offence and shall be liable upon conviction to a fine of 2,500

penalty units, or to a term of imprisonment for a period of 3 years, or both.

(4) Regulations made under this Act may require bunkers in Samoa to have prescribed insurance cover, or any other prescribed financial security, and may make provision in relation to any matter associated with such a requirement.

**52. Failure to carry the required certificate insurance-(1)**

No ship, wherever registered, may enter or leave a Samoan port unless it has current insurance cover or other financial security as required under this Part.

(2) The owner and master of any ship which breaches subsection (1) commit an offence and shall be liable upon conviction to a fine of 2,500 penalty units, or to a term of imprisonment for a period of 3 years, or both

**53. Limitation periods for compensation claims-(1)**

No claim for compensation under this Part may be made unless the claim is brought within 3 years from the date that the damage occurred.

(2) Where the damage does not arise immediately following the incident, no claim for compensation under this Part may be made after the expiration of 6 years from the date of the incident that caused the damage.

(3) Where the incident consists of a series of occurrences, the limitation period provided for in subsection (2) shall run from the date of the first occurrence.

**54. Jurisdiction of courts where pollution damage occurs in more than one State-(1)** Where -

- (a) an incident has caused pollution damage in Samoan waters and in the Territorial Sea or Exclusive Economic Zone of one or more Contracting States; or

(b) preventive measures have been taken to prevent or minimise pollution damage in Samoan 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 Samoa or any such Contracting States.

(2) After the fund has been constituted in accordance with the provisions of this Part the court or jurisdiction in which the fund is constituted shall be exclusively competent to determine all matters relating to the apportionment and distribution of the fund.

**55. Judgements enforceable-**(1) Any judgement given by a Court with jurisdiction in accordance with section 54, 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 its case.

(2) A judgement recognised under subsection (1) shall be enforceable in each Contracting State as soon as the formalities required in that State have been complied with, which may be prescribed by Regulations made under this Act, or by Rules of the Court.

(3) The use of the procedures under this section shall not permit the merits of the case to be re-opened.

**56. 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 specified in section 54 and shall waive all defences based on its status as a sovereign State.

**57. International Fund-**(1) For the purposes of this section and sections 58 and 59, “the International Fund” is the International Fund for compensation for pollution damage established under the FUND Convention 92, with the following objectives –

- (a) to provide compensation for pollution damage to the extent that the protection afforded by CLC 92 is inadequate; and
- (b) to give effect to the related purposes set out in FUND Convention 92.

(2) The International Fund is hereby recognised as a legal person capable under the laws of Samoa of assuming rights and obligations, and of being a party in legal proceedings before the courts of Samoa.

(3) The Director of the International Fund shall be its legal representative.

**58. Application of the FUND Convention 92 -** The FUND Convention 92 shall apply exclusively –

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

**59. Claims to the International Fund –** A claim to the International Fund to pay compensation (in accordance with the provisions of FUND Convention 92) may be made and processed in accordance with Regulations made under this Act by a person who suffers pollution damage, if that 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**

**60. General application of this Part** - The principles and provisions of the London Convention as amended by the Protocol of 1996 relating thereto, and the Waigani Convention relating to the dumping and incineration of wastes at sea shall be applied in Samoa in accordance with –

- (a) the provisions of any Act dealing with the management of wastes; or
- (b) in the absence of such an Act, in accordance with regulations made under this Act

**61. Offences relating to disposing of wastes at sea-(1)**  
The owner or master of any vessel from or on which wastes are

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- (a) dumped at sea otherwise than as permitted by this Act; or
- (b) incinerated at sea -

commits an offence and shall be liable upon conviction to a fine not exceeding 5,000 penalty units, or to a term of imprisonment not exceeding 2 years, or both.

(2) It shall be a defence to a prosecution taken under subsection (1) if the offender can prove that he or she had an authority issued under a relevant law that permitted the particular activity of dumping or incineration.

(3) The principal responsibility for enforcing the provisions of this Act, or any other law which regulates the dumping and incineration of wastes at sea shall lie with the Ministry responsible for the environment, but this shall not affect the validity of any prosecution duly taken for an offence against this section.

**PART VII - MISCELLANEOUS PROVISIONS**

**62. General offences and penalties-**(1) A person who breaches any requirement, duty or obligation provided for in this Act, or any regulation made under this Act, for which no offence is stated or no penalty is provided for, commits an offence and shall be liable upon conviction to a fine not exceeding 300 penalty units.

(2) Where any offence against this Act continues for a period after the initial breach and no other penalty is provided elsewhere for the continuance of the offence, a person who commits that offence shall, in addition to any other liability, be liable upon conviction to a fine not exceeding 300 penalty units for every day during which the offence continues.

**63. Recovery of fines by distress-**(1) The Court may direct that a vessel or its equipment be sold, and that the proceeds of sale be applied to the payment of fines and costs awarded against any person convicted of an offence against this Act, if -

- (a) the person ordered to pay the fines or costs is the owner or master of the vessel; and
- (b) that person has failed or refused to pay the fine or costs, or any part of them within the time and in the manner –
  - (i) ordered by the court; or
  - (ii) applying by reason of any relevant law.

(2) The power provided for under subsection (1) is in addition to any other power that the Court may have to compel payment of the fine or costs, and shall apply notwithstanding the provisions of any other Act.

**64. Regulations-**(1) The Head of State, acting on the advice of Cabinet, may make Regulations for any purpose for which Regulations are contemplated or required by this Act, and may make any other Regulations which are necessary or

expedient for the purpose of giving effect to this Act or the provisions of any Convention to which this Act applies.

(2) Without limiting the generality of subsection (1), Regulations may make provision in relation to –

- (a) the design requirements applying to vessels so as to apply the provisions of any applicable Convention to which this Act applies;
- (b) the pollution prevention equipment which must be carried on board vessels, or which must otherwise be available to respond to a marine pollution incident;
- (c) the operations and operational requirements applying to vessels so as to apply the provisions of any applicable Convention to which this Act applies;
- (d) any other measures to prevent the discharge of non-indigenous harmful aquatic organisms or pathogens from ballast waters, or by any other activity;
- (e) regulating hull scraping and other aspects of vessel cleaning operations;
- (f) the provision, management and utilisation of waste reception facilities for vessels, and any other matter associated with the discharge or disposal of wastes from vessels;
- (g) the provision, management and utilisation of equipment necessary to respond to marine pollution incidents from any vessel or relevant land-based facility;
- (h) the consideration and granting of Discharge Permits under section 14;
- (i) the duties to report discharges or pollution incidents;
- (j) the duties to keep records for any purpose associated with the implementation of this Act, and for the production of such records;
- (k) further powers to be exercised by persons appointed to undertake investigations or inspections under this Act;

- (l) the preparation and enforcement of any aspect of the NATPLAN;
- (m) any additional responsibilities of any Committee established under this Act;
- (n) any matter which may facilitate regional cooperation in relation to marine pollution prevention, preparedness or response;
- (o) additional powers and functions of the On-Scene Commander under this Act;
- (p) additional powers and procedures to recover marine pollution levies and other charges imposed under this Act;
- (q) additional powers to be exercised in the event of a marine casualty;
- (r) any procedure and power relating to making or responding to any request for assistance in accordance with any Convention to which this Act applies;
- (s) additional requirements relating to the insurance or other financial securities required to be held by Samoan ships, and other vessels in Samoan waters, and in relation to bunkers; and
- (t) any matter associated with the certificates required under this Act relating to the requirements for vessels to have insurance or other financial security.

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**The Marine Pollution Prevention Act 2008 is administered by the  
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