

COOK ISLANDS

**PREVENTION OF MARINE POLLUTION
1998, No. 5**

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1998, No. 5

An act to provide for the prevention of marine pollution, the dumping and transportation of other waste in Cook Islands Waters by vessels and to give effect to various international conventions on marine pollution and protection of the marine environment

(23 July 1998)

BE IT ENACTED by the Parliament of the Cook Islands in Session assembled, and by the authority of the same, as follows:

PART I
PRELIMINARY

1. Short Title and Commencement - (1) This Act may be cited as the Prevention of Marine Pollution Act 1998.

(2) This Act shall come into force on the date that it is assented to by the Queen's Representative.

2. Interpretation - (1) In this Act, unless the context otherwise requires -

"barge" includes a lighter or other similar vessel;

"Cook Islands aircraft" means any aircraft that is registered or required to be registered in the Cook Islands under the Civil Aviation Act;

"Cook Islands incineration facility" means an incineration facility that is owned or managed by the Government of Cook Islands;

"Cook Islands vessel" means a vessel registered in the Cook Islands or any other vessel based in the Cook Islands and operating under the authority of the Government of the Cook Islands;

"Cook Islands Waters" means -

(a) the Territorial Sea of the Cook Islands;

(b) the waters of the Exclusive Economic Zone of the Cook Islands,

and the terms "Territorial Sea" and "Exclusive Economic Zone of the Cook Islands" have the same meanings as in The Territorial Sea and Exclusive Economic Zone Act 1977;

"dumping" means -

(a) the deliberate disposal into the sea or the seabed or the subsoil of the seabed of waste or other matter; and

(b) the deliberate disposal into the sea or abandonment at sea of any vessel, aircraft, fixed or floating platform, or any other man-made structure which is situated in or on the sea or seabed; but does not include the disposal of waste or other matter incidental to, or derived from, the normal operation of vessels, aircraft, platforms or other man-made structures at sea or their equipment;

"garbage" includes all kinds of victual, domestic and operational waste excluding fresh fish and parts thereof, generated during the normal operation of a vessel and liable to be disposed of continuously or periodically, but does not include oil, noxious liquid substances and other pollutants, or sewage from vessels;

"Government" means the Government of the Cook Islands;

"Harbour Master" means the Harbour Master appointed pursuant to section 15 of the Ports Authority Act 1994-95;

"Heavy diesel oil" means marine diesel oil, other than those distillates of which more than 50% by volume distils at a temperature not exceeding 3440 Degrees Celsius when tested for in the manner for the time being prescribed by regulations made under this Act,

or, while no regulations are in force, when tested by ASTM (American Society for Testing and Materials) Standard Method D.8615;

"IMDG Code" means the International Maritime Dangerous Goods Code published by the International Maritime Organisation from time to time;

"incineration" means the deliberate combustion of wastes or other matter on marine incineration facility for the purpose of their thermal destruction, but does not include, the incineration of waste or other matter incidental to, or derived from, the normal operation of vessels and platforms;

"marine causality" means a collision of ships, stranding or other incident of navigation, or other occurrence on board ship or external to it, resulting in material damage or imminent threat of material damage to a ship or cargo as defined in the Intervention Convention Article (ii);

"marine incineration facility" means a vessel or platform operating for the purpose of incineration at sea;

"Ministry" means the Ministry responsible for Transport;

"oil" means petroleum in any form including crude oil, fuel oil, sludge and refined products other than petrochemicals and, without limiting the generality of the foregoing, includes the substances listed in Appendix I to Annex I of MARPOL 73/78;

"oil mixture" means a mixture with any oil content;

"outside Cook Islands Waters" means seaward of the outer limits of the Exclusive Economic Zone of the Cook Islands;

"owner" in relation to a ship means-

(a) in the case of a registered ship, the registered owner;

(b) in the case of an unregistered vessel, the person actually owning the vessel;

"place on land" means any place on dry land, or on any reef, or any place connected with dry land or a reef, and the term "occupier", in relation to a place on land which has no other occupier, means the owner;

"platform" includes any man-made fixed or floating platform or other structure used for any purpose whatsoever;

"permit" means a permit to dump or incinerate waste or other matter, and the terms "general permit" and "special permit" have the same meanings as in Article III of the London Dumping Convention;

"pollutant" includes oil, hazardous substance, garbage or sewage referred to in MARPOL 73/78 and any substance declared by the Secretary to be a pollutant, and includes any water or any other substance contaminated by any such pollutant;

"pollution damage" means damage or loss of any kind occurring in the Cook Islands, Cook Islands Waters or outside the Cook Islands Waters, which is attributable to the discharge or escape of any pollutant from a vessel, or which is attributable to the dumping of waste or other matter into the sea, and includes the costs of a reasonable preventive measures taken to prevent or reduce pollution damage and any further loss or damage occurring as a result of such measures;

"pollution incident" means any occurrence that is associated with the operation of a vessel or platform and events involving the probable discharge or escape into the sea or seabed of any pollutant or other harmful substance;

"Principal Surveyor" means the Principal Surveyor appointed pursuant to section 54 of the Shipping Act 1998;

"reception facilities", means such facilities as the Government of the Cook Islands may provide or cause to be provided at any of its ports of entry or elsewhere in the Cook Islands for enabling vessels to discharge garbage, but not for other pollutant residues from vessels;

"related interests" includes interests directly affected or threatened by pollution damage, including but not limited to, maritime, coastal, port, (including fisheries activities constituting an essential means of livelihood of the person concerned), tourist attractions, public health and welfare, and the conservation of living marine resources and of wildlife;

"sea" means all areas of the ocean, including those defined in The Territorial Sea and Exclusive Economic Zone Act 1977;

"Secretary" means the Secretary for the Ministry responsible for Shipping;

"sewage" includes-

- (a) drainage and other wastes from any form of toilets, urinals, and W.C. 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;

"ship" means-

(a) any sea-going vessel of any type whatsoever; and

(b) any floating craft, with the exception of an installation or device engaged in the exploration and exploitation of the resources of the seabed and the ocean floor and the subsoil thereof;

"synthetic fishing nets" includes synthetic material used in the repair of such nets;

"transfer" in relation to any pollutant, means the conveyance in bulk from the vessel to terminal or vice versa or the internal transfer from tank to tank within the vessel;

"unit of account" shall have the same meaning as in the International Convention on Civil Liability for Oil Pollution Damage, 1969 and the 1976, 1984 and 1992 Protocols to the Civil Liability Convention (CLC 1969);

"untreated ballast water" means ballast water which contains oil or pollutant and has not been subjected to an effective process for separating the oil or pollutant from the water;

"vessel" means every description of water craft (including any ship, boat, barge, non-displacement craft or seaplane) used or capable of being used as a means of transportation on or under the sea, without regard to the method of or lack of propulsion and includes any hovercraft;

"waste or other matter" means material and substances of any kind, and includes oil and any pollutant.

(2) The Secretary may, from time to time by Order published in the Gazette, declare to be a pollutant for the purposes of this Act any substance which, in the opinion of the Secretary, when added to any waters has the effect of contaminating those waters so as to make the waters unclean, noxious, or impure, or detrimental to the health, safety, or welfare of any person, or poisonous or harmful to marine life.

(3) Any reference in this Act to the discharge or escape of oil or of any pollutant from any vessel or platform includes, but is not limited to, spilling, leaking, pumping, pouring, emitting, or emptying of that pollutant howsoever it is caused or occurs but does not include dumping.

(4) The following International Maritime Conventions are adopted into and have the force of law in the Cook Islands:

(a) International Convention for the Prevention of Pollution from Ships, 1973; and the Protocol of 1978 relating to the International Convention for the Prevention of Pollution from Ships, 1973 (MARPOL 73/78);

(b) Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter, 1972 (The London Dumping Convention);

(c) Convention for the Protection of the natural Resources and Environment of the South Pacific Region 1986 (SPREP Convention), including the -

(i) Protocol for the Prevention by Pollution of the South Pacific Region by Dumping, 1986;

(ii) Protocol Concerning Co-operation in Combating Pollution Emergencies in the South Pacific Region; 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;

(d) International Convention relating to Intervention on the High Seas in case 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;

(e) International Convention on Civil Liability for Oil Pollution Damage, 1969 and the 1976, 1984 and 1992 Protocols to the Civil Liability Convention (CLC 1969); and

(f) International Convention on the Establishment of an International Fund for Compensation of Oil Pollution Damage, 1976, 1984 and the 1992 Protocols to the Fund Convention (FUND 1971);

and include any Annexes, Appendices, and Addenda, to the above-mentioned conventions; and any other international agreement for the protection of the marine environment to which the Cook Islands is a Contracting Party.

(5) The following International Maritime Conventions are adopted into and have the force of law in the Cook Islands, but only to the extent that the provisions apply to the Cook Islands:

(a) International Convention for the Safety of Life at Sea, 1974, (SOLAS 1974) and its Protocol of 1978, articles, annex and certificates, and any amendment thereto;

(b) International Convention on Standards of Training, Certification and Watchkeeping for Seafarers, 1978, (STCW 1978) as amended in 1995, (STCW-95) and any subsequent amendments thereto.

PART II **PREVENTION OF POLLUTION**

3. Discharge of oil or pollutants into Cook Islands Waters - (1) No oil or any pollutant shall be discharged or allowed to escape from a vessel or platform into Cook Islands waters.

(2) If any oil or pollutant is discharged or escapes into Cook Islands Waters-

- (a) from any vessel; or
- (b) from any place on land; or
- (c) from any apparatus used for transferring a pollutant to or from a vessel; or
- (d) from any platform; or
- (e) as a result of operations for the exploration of the seabed or subsoil or the exploitation of the natural resources thereof,

then, subject to the provisions of this Act, -

- (a) the owner or master of the vessel; or
- (b) the occupier of any place on land; or
- (c) the person in charge of the apparatus; or
- (d) the owner of the platform or structure; or
- (e) the person in charge of the operations -

commits an offence and shall be liable upon conviction to a fine not exceeding \$500,000 or two years imprisonment and in addition, shall be liable to pay for the total costs of the clean up operation necessary to restore the environment to its original condition.

(3) This section shall not apply to:

- (a) discharge into the sea of oil or oily mixture necessary for the purpose of securing the safety of a vessel or saving life at sea; or
- (b) the discharge into the sea of oil or oily mixture resulting from damage to a vessel or its equipment -

- (i) provided that all reasonable precautions have been taken after the occurrence of the damage or discovery of the discharge for the purpose of preventing or minimising the discharge; and

- (ii) except if the owner or the master acted either with intent to cause damage, or recklessly and with knowledge that damage would probably result; or

- (c) the discharge into the sea of substances containing oil, approved by the Secretary, when being used for the purpose of combating specific pollution incidents in order to minimise the damage from pollution. Any such discharge shall be subject to the approval

of the Government of the Cook Islands in whose jurisdiction it is contemplated the discharge will occur.

4. Discharge of garbage and sewage from ships and platforms - (1) No garbage or sewage shall be discharged or allowed to escape from a vessel or platform in Cook Islands Waters.

(2) If any garbage or sewage is discharged or escapes into Cook Island Waters -

(a) from any vessel; or

(b) from any place on land; or

(c) from any apparatus used for transferring a pollutant to or from a vessel; or

(d) from any platform; or

(e) as a result of operations for the exploration of the seabed or subsoil or the exploitation of the natural resources thereof,

then, subject to the provisions of this Act, -

(a) the owner or master of the vessel; or

(b) the occupier of any place on land; or

(c) the person in charge of the apparatus; or

(d) the owner of the platform or structure; or

(e) the person in charge of the operations -

commits an offence and shall be liable upon conviction to a fine not exceeding \$500,000 or two years imprisonment and, in addition, shall be liable to pay for the total costs of the clean up operation necessary to restore the environment to its original condition.

(3) Subject to Annex V of MARPOL 73/ 78, the disposal into the sea of all plastics, including but not limited to synthetic ropes, synthetic fishing nets and plastic garbage bags is prohibited, and any person so doing commits an offence and shall be liable upon conviction to a fine not exceeding \$500,000.

(4) The disposal into the sea of the following garbage shall be made as far as practicable from the nearest land but in any case is prohibited if the distance from the nearest land is less than-

(a) 35 nautical miles for dunnage, lining and packing materials that will float;

(b) 25 nautical miles for food wastes and all other garbage including paper products, rags, glass, metal, bottles, crockery and similar refuse,

and any person so doing commits an offence, and shall be liable upon conviction to a fine not exceeding \$50,000.

5. Equipment to deal with pollution - (1) The Secretary may designate the Principal Surveyor or other Surveyors to carry out inspections on board vessels and platforms to determine the adequacy and appropriateness of equipment carried on board to deal with waste or other matter, and may charge such fees as are reasonable to cover the cost of such inspection.

(2) For the purpose of cleaning up or removing or dispersing any pollutant in or on the sea, all vessels and platforms shall carry adequate and appropriate equipment as required by international and regional standards in quantities determined by the Principal Surveyor.

(3) The equipment referred to in sub-section (2) shall be of a type tested to international standards and approved by the Maritime Safety Authority of New Zealand or similar national regulatory authority.

(4) Where the equipment referred to in sub-section (2) is, on inspection, found to be inadequate or inappropriate, the Principal Surveyor may require the vessel's master or owner to rectify such deficiencies.

(5) If the provisions of this section are contravened, the owner or master of a vessel or platform commits an offence, and shall be liable upon conviction to a fine not exceeding \$100,000.

6. Reception facilities in the port of Avatiu - (1) The Government of the Cook Islands shall not be required to provide reception facilities at the Port of Avatiu nor elsewhere, in the Cook Islands, for those pollutants and other substances for which it is not equipped to dispose of.

(2) The Secretary may approve the installation of reception facilities for the disposal of garbage, from visiting warships, yachts and locally registered vessels provided that these comply with the specification prescribed in MARPOL 73/78.

(3) Nothing in this section shall be construed as requiring the Secretary to allow untreated ballast water to be discharged into Cook Islands Waters.

7. Duty to report discharges - (1) If any pollutant, garbage or sewage is discharged or escapes into Cook Islands Waters from a vessel or platform in, on or under the sea or seabed, or from a place on land, the owner, master, person in charge of operations, or the occupier of the place on land shall immediately and by the quickest available means report the occurrence to the Secretary.

(2) The details of report required to be made under sub-section (1) of this section shall contain the information prescribed in Regulations.

8. Duty to report threatened discharges - Where there is any significant threat -that a discharge or escape of any pollutant, garbage or sewage may occur, the provisions of section 7 apply *mutatis mutandis*

9. Records - (1) Every oil tanker of 150 tons gross tonnage and above and every other vessel of 400 tons gross tonnage and above in Cook Islands Waters shall be provided with an Oil Record Book Part I (Machinery space operations). Every oil tanker in Cook Islands Waters of 150 tons gross tonnage and above shall also be provided with Oil Record Book Part II (Cargo Ballast Operations). The Oil Record Book(s), whether as a part of the ship's official log-book or otherwise, shall be in the Form(s) specified in appendix III to Annex I of MARPOL 73/ 78.

(2) The information to be recorded in Oil Record Books shall be completed on each occasion that any of the specified operations are carried out, on a tank-to-tank basis if appropriate, in the manner set forth in Regulations.

10. Powers of inspection - (1) The Secretary may appoint a suitably qualified person as an inspector to report to him-

(a) whether the provisions of this Act have been complied with;

(b) what measures have been taken to prevent the discharge or escape of oil, pollutants, garbage or sewage other than in accordance with the provisions of this Act;

(c) whether reception facilities provided in port are adequate to meet the needs of the vessels using them without causing undue delay.

(2) Such person(s) designated by the Secretary shall have the powers prescribed in Regulations.

(3) The inspector appointed under this section shall have the same powers to exercise Port State Control functions as are set out in Chapter 1, Part A, Regulation 19 of SOLAS 1974 and Article 10 of STCW 1978 and Regulation I/4 of STCW-95.

(4) Where, in respect of compliance with the safety provisions of SOLAS and the verification and assessment provisions of STCW, any deficiencies are found, the inspector may require that those deficiencies be corrected before the vessel proceeds to sea.

(5) The failure to correct any deficiency, which in the opinion of the inspector could pose a danger to persons, property or the environment, shall be grounds for the detention of the ship.

PART III **DUMPING AND INCINERATION OF WASTES**

11. Application of this Part - This part of the Act shall apply to-

(a) all vessels and aircraft that take on board waste or other matter in Cook Islands Waters;

(b) all vessels and aircraft that incinerate or dump waste or other matter in Cook Islands Waters or into the seabed or the subsoil of the seabed below Cook Islands Waters;

(c) all vessels and aircraft dumped into Cook Islands Waters.

12. Dumping or incinerating without a permit - (1) No wastes or other matter in whatsoever form or condition shall be dumped from a vessel or platform into Cook Islands Waters except as specified under Article IV of the London Dumping Convention.

(2) If, otherwise than in accordance with Article IV 1(a) or V(2) and Annex I of the London Dumping Convention, or without a permit issued pursuant to section 15 of this Act -

(a) any waste or other matter taken on board any vessel or aircraft in the Cook Islands or in Cook Islands Waters for the purpose of dumping or incineration; or

(b) any waste or other matter is dumped into Cook Islands Waters from any vessel, or from any aircraft, or from any fixed or floating platform, or from any other man-made structure; or

(c) any waste or other matter is incinerated in Cook Islands Waters; or

(d) any vessel, aircraft, or platform is dumped in Cook Islands Waters,-

then the owner and the master of the vessel, or the owner and the pilot in command of the aircraft, or the owner and the person in control of the operations of the platform, commit an offence under this section.

(3) If, otherwise than in accordance with a permit issued under this Act -

(a) any waste or other matter is dumped by any Cook Islands vessel or Cook Islands aircraft into any part of the sea beyond Cook Islands Waters;

(b) any Cook Islands vessel or Cook Islands aircraft is dumped into any part of the sea beyond Cook Islands Waters; or

(c) any waste or other matter is incinerated at sea beyond Cook Islands Waters or any Cook Islands marine incineration facility -

then, as the case may be the owner and the master of the vessel, or the owner and the pilot in command of the aircraft, or the owner of the marine incineration facility and the person having control of the operations of the facility, commit an offence under this section.

(4) Every person who commits an offence under this section-

(a) is liable on conviction to a fine not exceeding \$100,000 and

(b) is also liable to pay such amount as the Court may assess in respect of the expenses and costs that have been incurred or will be incurred in removing or cleaning up or dispersing any waste or other matter to which the offence relates from Cook Islands Waters or from any foreshore or port works in Cook Islands Waters; or

13. Offence to transport nuclear waste and other radioactive matter - (1) No nuclear waste or other radioactive matter in whatsoever form or condition shall be transported by a vessel or platform into Cook Island waters except as specified under Article IV of the London Dumping Convention.

(2) If -

(a) any nuclear waste or other radioactive matter, for the purpose of transporting is taken on board any vessel or any aircraft into the Cook Islands, or Cook Islands Airspace or in Cook Islands Waters; or on the seabed or subsoil below Cook Islands Waters; or

(b) any nuclear waste or other radioactive matter is transported from any fixed or floating platform or from any other man-made structure into the Cook Islands or its Airspace or in Cook Islands Waters or on the seabed or subsoil below Cook Islands Waters; or

(c) any nuclear waste or other radioactive matter is transported from any Cook Islands vessel or from any Cook Islands aircraft into the Cook Islands or its Airspace or in Cook Islands Waters or the sea outside Cook Islands Waters,

then, as the case may be, the owner and the master of the vessel, or the owner and the pilot in command of the aircraft, or the owner of the platform or structure, commit an offence under this section.

(3) Waste or other matter (including sewage, sludge, dredge spoil, fly ash, agricultural waste, construction and building materials, artificial reef building material, and other such material) shall be regarded as non-radioactive if it-

(a) has not been contaminated with radionuclides of anthropogenic origin (other than dispersed global fallout from the testing of nuclear explosive devices);

(b) is not a source of radionuclides which occur naturally and which offer a potential for commercial utilisation; or

(c) has not been enriched in natural or artificial radionuclides.

(4) Every person who commits an offence under this section-

(a) is liable on conviction to a fine not exceeding \$1,000,000 and;

(b) is also liable to pay such amount as the Court may assess in respect of the expenses and costs that have been incurred or will be incurred in preventing or removing the nuclear waste or other radioactive matter, or enforcing eviction, or any other matter to which the offence relates.

14. Offence to store or dump nuclear waste and other radioactive matter - (1) No nuclear wastes or other radioactive matter in whatsoever form or condition shall be stored or dumped by a Vessel or platform into Cook Islands Waters except as specified under Article IV of the London Dumping Convention.

(2) If -

(a) any nuclear waste or other radioactive matter is, for the purpose of dumping, taken on board any vessel or any aircraft in the Cook Islands or in Cook Islands Waters; or

(b) any nuclear waste or other radioactive matter is dumped from any fixed or floating platform or from any other man-made structure into Cook Islands Waters or into the seabed or subsoil below Cook Islands Waters; or

(c) any nuclear waste or other radioactive matter is dumped from any Cook Islands vessel or from any Cook Islands aircraft into any of the sea outside Cook Islands Waters,

then, as the case may be, the owner and the master of the vessel, or the owner and the pilot in command of the aircraft, or the owner of the platform or structure and the person in control of the operations of the platform or structure, commit an offence under this section.

(3) Every person who commits an offence under this section-

(a) is liable on conviction to a fine not exceeding \$1,000,000 and;

(b) is also liable to pay such amount as the Court may assess in respect of the expenses and costs that have been incurred or will be incurred in removing or cleaning up or dispersing the waste or other matter to which the offence relates.

15. Permits - (1) The Secretary may, in accordance with the provisions of Article IV, Article V (2) and Article VI, with Annexes II and III of the London Dumping Convention, 1972 and with any Regulations made under this Act, consider applications for permits and issue permits for the dumping or incineration of waste or other matter.

(2) The circumstances in which a permit may be obtained prior to and for the dumping of matter listed in the London Dumping Convention 1972, and the conditions under which a permit may be issued shall be prescribed in Regulations.

(3) Notwithstanding anything in this Act, no permit shall authorise the dumping of nuclear waste or other radioactive matter.

(4) Every person who fails to comply with any condition or requirement contained in a permit commits an offence, and is liable on conviction to a fine not exceeding \$100,000 or a term-of imprisonment not exceeding one year, and in addition a fine of \$10,000 for each day during which the offence has continued.

16. Criteria to govern dumping of waste and other matter at sea - The matters that are to be taken into account in establishing criteria for the consideration of applications for permits for dumping waste or other matter at sea shall be those prescribed in Regulations.

17. Criteria to govern incineration of waste and other matters at sea - The matters that are to be taken into account in establishing criteria and when considering applications for permits for the incineration of waste or other matter at sea shall be those prescribed in Regulations.

18. Special Defences - Where a person is charged with an offence under sections 3, 4 or 12 of this Act, it shall be defence to prove on the balance of probabilities that the -

- (a) Discharge of oil or pollutants in Cook Islands Waters;
- (b) Discharge of garbage and sewage from ships and platforms;
- (c) Dumping or incinerating of waste or other matter without a permit, -

was necessary in such circumstances as are prescribed in Regulations.

PART IV **MARINE CASUALTIES**

19. Powers of Secretary in relation to marine casualties - (1) Without prejudice to any rights or powers of the Government exercisable under international law, the powers conferred by this Part shall only be exercised and the measures shall only be taken where, as a result of -

- (a) marine casualty in Cook Islands Waters or on the High Seas; or
- (b) a pollution incident occurring on board a platform,

it appears to the Secretary necessary to prevent, reduce or eliminate pollution from any oil or pollutant in or the risk of any such pollution to Cook Islands Waters, the coasts of the Cook Islands or related interests.

(2). Where it appears to the Secretary that as a result of any marine casualty or any incident mentioned in sub-section (1) of this section, or as a result of acts related to any such casualty or incident, a vessel or platform constitutes or is likely to constitute a serious risk of pollution in, or to, Cook Islands Waters, or to the reefs of the Cook Islands, or to related interests, then, for the prevention, reduction or elimination of pollution, the Secretary may-

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

(b) take any measures whatsoever with respect to the vessel or cargo, or both, or to the platform or operations relating thereto, or both, whether or not he has issued instructions under paragraph (a).

(3) The measures the Secretary may direct to be taken or may take himself under paragraph (b) of sub-section (2) of this section may include -

(a) the removal to another place of the vessel or its cargo, or both;

(b) the removal of cargo from the vessel; or

(c) the salvage of the vessel or its cargo, or both;

(d) the sinking or destruction of the vessel or the destruction of the cargo, or both;

(e) the taking over of control of the vessel.

(4) In order to carry out any of the measures referred to in sub-section (3) for this section, the Secretary may, after consulting the owners of the vessel to whose master the instructions are to be given-

(a) Instruct the master of any vessel within Cook Islands Waters to render assistance to any vessel that is or is likely to be a maritime casualty; and

(b) Instruct the master of any vessel to take on board any equipment, to sail to any place, to render assistance to any vessels in assisting a marine casualty or to assist in any operations for the cleaning up, removal, or dispersal of any oil or pollutant, and to obey the instructions of any person authorised by the Secretary to exercise control over or responsibility for marine casualty.

(5) The Secretary shall notify any person mentioned in paragraph (a) of sub-section (2) of this section of any measures that the Secretary proposes to take under paragraph (b) of that sub-section, provided that the Secretary may dispense with such notice where in his opinion the urgency of the situation is such that the measures must be taken immediately.

(6) The powers of the Secretary to issue instructions under sub-sections (2) and (3) of this Section shall be exercisable by any person duly authorised by the Secretary.

20. Right to compensation - (1) Where any action taken by any person in accordance with instructions issued pursuant to sub-sections (2) and (3) of section 19 of this Act, -

(a) was in excess of that reasonably necessary to eliminate, prevent or reduce pollution or the risk of pollution; or

(b) was such that the benefit resulting from the action or measures taken did or was likely to do was disproportionately less than the expense incurred or the loss or the damage suffered as a result of that action or measures -

then, a person who has incurred expense or loss or damage as a result of the taking of that action or those measures, may recover compensation from the Government.

(2) Where a claim is brought against the Government for compensation under sub-section (1) of this section the Court, in determining whether paragraph (b) of that sub-section applies, shall take into account -

(a) the extent and probability of imminent damage if the measures had not been taken; and

(b) the likelihood of the measures taken being, effective; and

(c) the extent of the damage which has been caused by the measures taken.

(3) Where any measures have been taken pursuant to section 19 of this Act on the High Seas and there is a dispute between the party taking such measures and the owner of the vessel or Government of the State where the vessel is registered or the Government of the State having any related interests in respect of the following -

(a) whether such measures were necessary to prevent, mitigate or eliminate grave and imminent danger to Cook Islands Waters or the reefs of the Cook Islands or related interest from pollution or the threat of pollution by oil or pollutants other than oil; or

(b) whether the measures taken were in excess of that reasonably necessary to eliminate, prevent or reduce pollution or the risk of pollution; or

(c) whether compensation should be paid in accordance with sub-section (1); or

(d) 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 controversy 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 International Convention relating to Intervention on the High Seas in Cases of Oil Pollution Casualties, 1969.

21. Offences under Part IV - (1) Every person commits an offence who -

(a) fails to comply with any instructions issued pursuant to section 19 of this Act;

(b) wilfully obstructs a person acting in compliance with any instructions issued pursuant to section 19 of this Act; or (c) wilfully obstruct any person acting on behalf of the Secretary in carrying out any of the powers conferred by section 19 of this Act.

(2) Every person who commits an offence under this section is liable on conviction to a fine not-exceeding \$100,000 of each day during which the offence has continued.

(3) In any proceedings for an offence under this section it shall be a defence to prove on the balance of probabilities that -

(a) the failure to comply with any instructions issued under section 19; or

(b) the wilful obstruction of -

(i) any person acting in compliance with such instruction duly issued; or

(ii) any person acting on behalf of the Secretary -

resulted from the need to save life at sea.

(4) In any proceedings for an offence under this section, it shall also be a defence to prove on the balance of probabilities that the person charged with the offence used all due diligence to comply with any instructions issued pursuant to section 19 of this Act.

22. Immunity from Prosecution - Where -

(a) the Secretary or any person duly authorised by the Secretary has taken any measures pursuant to paragraph (b) of sub-section (2) of section 19 of this Act; or

(b) any person has taken any action or refrained from taking any action in accordance with instructions issued pursuant to paragraph (a) of sub-section (2) of section 19 of this Act -

then, subject to section 20 of this Act or any contractual obligations or arrangements, the Secretary or that person, as the case may be, shall not incur any civil liability in respect thereof.

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

23. Liability for Pollution Damage - (1) Except as provided in subsections (2) and (3) of this section, the owner of a vessel at the time of an incident shall be liable for any pollution damage caused by the vessel as a result of the incident.

(2) No liability for pollution damage shall be attached to the owner if he proves on the balance of probabilities 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 any Government or other authority responsible for the maintenance of lights or other navigational aids in the exercise of that function.

(3) If the owner proves on the balance of probabilities that the pollution damage resulted wholly or partially either from an act or omission done with intent to cause damage by the person who suffered the damage or from the negligence of that person, the owner may be exonerated wholly or partially from his liability to such person.

(4) No claim for compensation for pollution damage may be made; against the owner otherwise than in accordance with this Part of this Act. Subject to sub-section (5), no claim for compensation for pollution damage under this Part or otherwise may be made against:

(a) employees or agents of the owner or members of the crew;

(b) the pilot or any other person who, without being a member of the crew, performs services for the 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;

(f) all employees or agents of persons mentioned in sub-paragraphs (c), (d) and (e),

unless the damage resulted from their personal act or omission, committed with the intent to cause such damage, or recklessly and with knowledge that such damage would probably result.

(5) Nothing in this Part of this Act shall prejudice any right of recourse of the owner against third parties.

24. Limitation of Liability - (1) The owner of a vessel shall be entitled to limit his liability under this Part of this Act in respect of any one incident to an aggregate amount calculated as follows:

(a) 3 million units of account for a ship not exceeding 5,000 units of tonnage;

(b) for a ship with a tonnage in excess thereof, for each additional unit of tonnage, 420 units of account in addition to the amount mentioned in sub-paragraph (a),

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

(2) The owner shall not be entitled to limit his liability under this Part of this Act if it is proved that the pollution damage resulted from his personal act or omission, committed with the intent to cause such damage, or recklessly and with knowledge that such damage would probably result.

(3) For the purpose of availing himself of the benefit of the limitation provided for in sub-section (1), the owner shall constitute a fund for the total sum representing the limit of his liability with the Court or other competent authority of any one of the Contracting States in, which action is brought under Article IX of CLC 1969 or, if no action is brought, with any Court in which an action is brought under Article IX of CLC 1969. The fund can be constituted either by depositing the sum or by producing a bank guarantee or other guarantee in an amount considered adequate by the Court.

(4) The fund shall be distributed among the claimants in proportion to the amounts of their established claims.

(5) If before the fund is distributed the owner or any of his employees or agents or any person providing him insurance or other financial security has as a result of the incident in question, paid compensation for pollution damage, such person shall, up to the amount he has paid, acquire by subrogation the rights which the person so compensated would have enjoyed under this Part of this Act.

(6) The right of subrogation provided for in sub-section (5) may also be exercised by a person other than those mentioned therein in respect of any amount of compensation for pollution damage that he may have paid.

(7) Where the owner or any other person establishes that he may be compelled to pay at a later date in whole or in part any such amount of compensation, with regard to which such person would have enjoyed a right of subrogation under sub-sections (5) or (6), had the compensation been paid before the fund was distributed, the Court may order that a sufficient sum shall be provisionally set aside to enable such person at such later date to enforce his claim against the fund.

(8) Claims in respect of expenses reasonably incurred or sacrifices reasonably made by the owner voluntarily to prevent or minimise pollution damage shall rank equally with other claims against the fund.

(9) The "unit of account" referred to in sub-section (1) is the Special Drawing Right as defined by the International Monetary Fund. The amounts mentioned in sub-section (1) shall be converted into New Zealand currency on the basis of the value of that currency by reference to

the Special Drawing Right on the date of the constitution of the fund referred to in sub-section (3).

(10) The value of the New Zealand 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.

(11) For the purpose of this section, the vessel 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.

(12) The insurer or other person providing financial security shall be entitled to constitute a fund in accordance with this section on the same conditions and having the same effect as if it were constituted by the owner. Such a fund may be constituted even if, under the provisions of sub-section (2) of this section, the owner is not entitled to limit his liability, but its constitution shall in that case not prejudice the rights of any claimant against the owner.

25. Rights of Owner on Constitution of Fund - (1) Where the owner, after an incident, has constituted a fund in accordance with section 24 and is entitled to limit his liability,

(a) no person having a claim for pollution damage arising out of that incident shall be entitled to exercise any right against any other assets of the owner in respect of such claim;

(b) the Court shall order the release of any vessel or other property belonging to the owner which has been arrested in respect of a claim for pollution damage arising out of that incident, and shall similarly release any bail or other security furnished to avoid such arrest.

(2) The foregoing, however, shall only apply if the claimant has access to the Court administering the fund and the fund is actually available in respect of his claim.

26. Requirement for Insurance - (1) The owner of a vessel registered in a signatory State and carrying more than 2,000 tonnes of oil in bulk as cargo shall be required to maintain -insurance or other financial security, such as the guarantee of a bank or a certificate delivered by an international compensation fund, in the sums fixed by applying the limits of liability prescribe in section 24 sub-section (1) to cover his liability for pollution damage under CLC 1969.

(2). The owner of a vessel referred to in sub-section (1) of this section shall be required to keep a certificate of insurance aboard the vessel in a form set forth in Regulations.

27. Right of Compensation Extinguished - (1) Rights of compensation under this Part of this Act shall be extinguished unless an action is brought within three years from the date when the damage occurred. However, in no case shall an action be brought after six years from the date of the incident that caused the damage.

(2) Where this incident consists of a series of occurrences, the six years period shall run from the date of the first such occurrence.

28. Jurisdiction where Pollution Damage occurs in more than one State -

(1) (a) Where an incident has caused pollution damage in Cook Islands Waters and in the Territorial Sea or Exclusive Economic Zone of one or more signatory States or preventive measures have been taken to prevent or minimise pollution damage in Cook Islands Waters and in the Territorial Sea or Exclusive Economic Zone of one or more signatory States; actions for compensation may only be brought in the High Court of the Cook Islands;

(b) when any such signatory States within ninety (90) days' notice of any such action shall be given to the defendant.

(2) After the fund has been constituted in accordance with section 24 of this Act, the Court in which the fund is constituted shall be exclusively competent to determine all matters relating to the apportionment and distribution of the fund.

29. Judgements Enforceable - (1) Any judgement given by a Court with jurisdiction in accordance with section 28 of this Act that is enforceable in the State of origin when all avenues of appeal have been exhausted shall be recognised in any signatory State.

(2) A judgement recognised under sub-section (1) shall be enforceable in each signatory State as soon as the formalities required in that State have been complied with. These formalities shall not permit the merits of the case to be re-opened.

30. Exemptions - (1) The provisions of this Part of this Act 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 signatory State and used for commercial purposes each State shall be subject to suit in the jurisdictions set forth in section 28 of this Act and shall waive all defences based on its status as a sovereign State.

31. Fund Established - (1) The International Oil Pollution Compensation Fund 1971, hereinafter referred to as "the Fund", established under FUND 1971 has the following aims:

(a) to provide compensation for pollution damage to the extent that the protection afforded by CLC 1969 is inadequate;

(b) to give effect to the related purposes set out in FUND 1971.

(2) The Fund shall be recognised as a legal person capable under the laws of the Cook Islands of assuming rights and obligations and of being a party in legal proceedings before the High Court of the Cook Islands, and the Director of the Fund is its legal representative.

32. Application of Fund - The Fund shall apply exclusively-

- (a) to pollution damage caused in Cook Islands Waters;
- (b) to preventive measures, wherever taken, to prevent or minimise such damage.

33. Fund to Pay Compensation - For the purpose of fulfilling its function under sub-section (1) (a) of section 31 of this Act, the Fund shall pay compensation in accordance with the provisions of FUND 1971 to any person suffering pollution damage if such person has been unable to obtain full and adequate compensation for the damage under the terms of CLC 1969.

PART VI **MISCELLANEOUS PROVISIONS**

34. Regulations - The Cabinet, by Order in Executive Council may make Regulations

- (a) providing for such matters as are contemplated by or necessary for giving full effect to the provisions of this Act and for its due administration and to any International Convention dealing with Pollution of the Marine Environment to which the Cook Islands is a party;
- (b) and prescribing offences for breaches of any such regulations, and, except where some other penalty is prescribed by this Act, prescribing fines not exceeding \$50,000 in respect of any such offence and, where the offence is a continuing one, further fines not exceeding \$5000 for each day during which the offence has continued;
- (c) prescribing the method of serving a summons and the procedures in respect of the prosecution of offences and in respect of evidence and proof;
- (d) prescribing penalties and methods of assuring payment of fines by distress;
- (e) prescribing rights of appeal;
- (f) providing for the notification of Consular Officers or the notifications of the Government of the State in which the vessel is registered through appropriate diplomatic channels;
- (g) providing for the levying of fees and other charges.

35. Oil Spill Contingency Plan - (1) The Ministry may develop, amend, approve and adopt the Cook Islands "Oil Spill Contingency Plan".

(2) The Secretary may from time to time appoint an On-scene Commander to carry out the duties and functions specified in the Oil Spill Contingency Plan.

(3) In the event of a pollution incident occurring in Cook Islands Waters, the On-scene Commander specified in the Cook Islands Oil Spill Contingency Plan shall take charge of all forces and resources necessary to combat and clean up the effects of the oil spill on the, environment.

(4) The On-scene Commander has the authority to commit or expend funds necessary to combat and clean up the effects of the oil spill on the environment to the limit determined by the Secretary from time to time.

(5) The On-scene Commander has the authority to requisition human resources, vehicles or material as may, in his opinion, be necessary to combat and clean up the effects of the oil spill on the environment.

(6) The On-scene Commander shall, in the event of a pollution incident, maintain a log of events and a record of all committed or expended funds or resources requisitioned necessary to fulfil his duties as set out in the Oil Spill Contingency Plan.

(7) The person designated On-scene Commander in the Oil Spill Contingency Plan shall be responsible for exercising that Plan at regular intervals and recommending to the Ministry any changes that are necessary or desirable for its improvement.

36. Prosecution of offences - Any Police Officer or Fisheries Officer appointed under the Marine Resources Act 1989 shall have the power under this Act to arrest with or without warrant any person committing an offence or whom he or she has reasonable cause to believe has committed an offence against the provisions of this Act.

37. Offences and penalties - (1) A person who commits an offence against this Act or any regulations made thereunder for which no penalty is provided elsewhere shall be liable upon conviction to a fine not exceeding \$25,000.

(2) Where an offence against this Act is a continuing one and no penalty is provided elsewhere for the continuance of the offence the person who commits that offence shall, in addition to any other liability, be liable upon conviction a fine not exceeding \$2,500 for every day or part of day during which the offence continues.

38. Recovery of fines by distress - Where a Court orders a person convicted of any offence against this Act to pay any fine or other monies and that person is the owner or master of a vessel and the fine or other monies are not paid within the time and manner specified, the Court may, in addition to any other power it may have to compel payment and notwithstanding any other Act, direct the amount remaining unpaid be levied by distress or sale of the vessel or the equipment of the vessel, as the case requires.

This Act is administered by the Ministry of Tourism and Transport