



**Tuvalu**

# **MARINE POLLUTION ACT**

**2022 Revised Edition**

**CAP. 48.16**





Tuvalu

## MARINE POLLUTION ACT

### Arrangement of Sections

#### Section

<b>PART I - PRELIMINARY</b>	<b>5</b>
1 Short title.....	5
2 Interpretation.....	5
<b>PART IA - ADMINISTRATIVE AND PLANNING PROVISIONS</b>	<b>11</b>
2A Responsibilities of the Ministry .....	11
2B The National Marine Pollution Committee.....	12
2C The National Marine Spill Contingency Plan (NATPLAN).....	13
2D Regional Cooperation .....	13
2E Appointment of On Scene Commander .....	14
<b>PART II - PREVENTION OF POLLUTION</b>	<b>14</b>
3 Discharge of oil or pollutants into Tuvalu waters.....	14
4 Discharge of oil or pollutants into waters outside Tuvalu waters.....	15
5 Requirements related to garbage on ships .....	15
5A Controls on the discharge of sewage from ships.....	16
5B Harmful substances in packaged form .....	18
5C Controls over air pollution from ships .....	19
5D Controls over ballast water .....	21
5E Hull cleaning and scraping.....	22
5F Anti-fouling paints and systems.....	22
6 Special defences.....	23
7 Equipment to prevent pollution .....	24
8 Equipment to deal with pollution.....	25
9 Penalties .....	26
10 Waste reception facilities.....	26
11 Duty to report discharge .....	27
12 Duty to report threatened discharges .....	29
13 Records .....	30

14	Powers of inspection .....	32
15	Enforcement of Conventions on the prevention of pollution .....	33

### **PART III - DUMPING AND INCINERATION OF WASTES** **33**

16	Application of this Part .....	33
17	Interpretation .....	34
18	Offence to dump radioactive waste and other radioactive matter .....	34
19	Offence to store radioactive wastes .....	35
20	Offence to store toxic or other hazardous waste .....	35
21	Offence to dump waste or other matter without a permit .....	36
22	Regulations .....	36
23	Permits .....	37
24	Special defences .....	39

### **PART IV - MARINE CASUALTIES** **40**

25	Powers of Minister in relation to marine casualties .....	40
26	Right to compensation .....	41
27	Offences .....	42
28	Protection of Minister .....	42

### **PART V - MISCELLANEOUS PROVISIONS** **43**

29	General provisions as to application of Act .....	43
30	State-owned ships .....	43
31	Power of Minister to grant exemptions .....	44
32	Designation of Parties to Conventions .....	44
33	Regulations .....	45
34	Standards and Codes of Practice .....	45
35	Immunities .....	46

### **SCHEDULE 1** **47**

CRITERIA TO GOVERN DUMPING OF WASTE AND OTHER MATTERS	47
---	----

### **SCHEDULE 2** **49**

CRITERIA TO GOVERN INCINERATION OF WASTE AND OTHER MATTER AT SEA	49
--	----

## **Supporting Documents**

### **ENDNOTES** **50**



Tuvalu

## MARINE POLLUTION ACT

### AN ACT TO MAKE PROVISION FOR PREVENTING AND DEALING WITH POLLUTION OF THE SEA<sup>1</sup>

Commencement [29 July 1992]

## PART I - PRELIMINARY

### 1 Short title

This Act may be cited as the Marine Pollution Act.

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

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

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

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

“**Ballast Water Management Convention**” means the International Convention for the Control and Management of Ships’ Ballast Water and Sediments, 2004;

“**ballast water**” includes water with its suspended matter taken on board a ship to control trim, list, draught, stability or stresses of the ship, and has the meaning given to it in MARPOL 73/78 and the Ballast Water Management Convention;

“**barge**” includes a lighter or other similar vessel;

**“Convention”** means an International Convention for the prevention of marine pollution or the protection of the marine environment and includes —

- (a) the International Convention for the Prevention of Pollution from Ships, 1973;
- (b) the Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter, 1972;
- (c) the Convention for the Protection of the Natural Resources and Environment of the South Pacific Region, 1986;
- (ca) International Convention on the Control of Harmful Anti-fouling Systems on Ships, 2001 (Anti-fouling Convention);
- (cb) International Convention for the Control and Management of Ships’ Ballast Water and Sediments, 2004 (Ballast Water Management Convention);
- (cc) International Convention on the Removal of Wrecks, 2007 (Nairobi Convention);
- (d) any Annexes, Appendices, and Addenda, and any Protocols, to the above-mentioned Conventions; and
- (e) any other international agreement for the prevention of marine pollution or the protection of the marine environment to which the Government of Tuvalu is a party or to which the Government of Tuvalu wishes to become a party;

**“Director”** means the person holding the office of Director of Marine and Port Services, and includes any person lawfully acting in that position in the Division of the Ministry responsible for the regulation of maritime transport;

**“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 ship, 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 ships, aircraft, platforms, or other man-made structures at sea or their equipment; and **“to dump”** and **“dumped”** have corresponding meanings;

**“garbage”** means all kinds of food wastes, domestic wastes and operational wastes, plastics, cargo residues, cooking oil, fishing gear, and animal carcasses generated during the normal operation of a ship and liable to be disposed of continuously or periodically, but does not include fresh fish (or any parts of fish) generated as a result of fishing activities undertaken during the voyage, or as a result of aquaculture activities which involve the transport of fish (including shellfish) for placement in the aquaculture facilities and the

transport of harvested fish (including shellfish) from such facilities to shore for processing;

“**harbour master**” means a harbour master appointed under section 5 of the Harbours Act;<sup>3</sup>

“**harmful aquatic organisms and pathogens**” means aquatic organisms or pathogens which if introduced into the sea, including estuaries, or into fresh water courses, may create hazards to the environment, human health, property or resources, impair biological diversity or interfere with other legitimate uses of such areas;

“**heavy diesel oil**” means marine diesel oil, other than those distillates of which more than 50% by volume distils at a temperature not exceeding 340° Celsius when tested for in the manner for the time being prescribed by regulations made under this Act, or, while no such regulations are in force, when tested by ASTM (American Society for Testing and Materials) Standard Method D.86/59;

“**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;

“**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;

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

“**incineration**”, in relation to waste and other matter, means the deliberate combustion on a marine incineration facility of the waste or other matter for the purpose of the thermal destruction of such waste or other matter; but does not include the incineration of waste or other matter incidental to, or derived from, the normal operation of ships, platforms, or other man-made structures at sea or their equipment; and “**to incinerate**” and “**incinerated**” have corresponding meanings;

“**marine incineration facility**” means a ship, a fixed or floating platform, or any other man-made structure that is situated on or in the sea or seabed, and is used for the purpose of the incineration at sea of waste or other matter;

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

“**Minister**” means the Minister responsible for maritime transport, and includes any Minister lawfully acting in that capacity;

“**Ministry**” means the Ministry responsible for maritime transport;

“**Nairobi Convention**” means the Nairobi International Convention on the Removal of Wrecks, 2007;

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

“**oil**” means oil of any description in any form and includes spirits and other distillates produced from oil of any description, coal tar, bitumen, bitumen emulsions, fuel oil, sludge, oil refuse, and oil mixed with wastes, and any reference to oil includes a reference to mixtures of oil with water or with any other substance;

“**oil residues**” means any waste material consisting of, or arising from, oil or a mixture containing oil;

“**organotin compounds**” means tributyltin compounds and other chemical compounds based on tin with hydrocarbon substituents used for anti-fouling of vessels;

“**outside Tuvalu waters**” means seaward of the outer limits of the exclusive economic zone of Tuvalu;

“**owner**”: —

- (a) in relation to any ship means —
  - (i) in the case of a registered ship, the registered owner;
  - (ii) in the case of an unregistered ship, the person actually owning the ship; and
  - (iii) in the case of a ship owned by a State, the person registered as the operator of the ship; and includes —
    - (aa) any charterer, manager, or operator of the ship or any other person for the time being responsible for the navigation or management of the ship;
    - (bb) any agent in Tuvalu of the owner, charterer, manager, or operator;
    - (cc) any agent for the ship; and
    - (dd) any other person in possession of the ship, including any salvor in possession of the ship, and any servant or agent of any salvor, in possession of the ship;
- (b) in relation to any fixed or floating platform or any other man-made structure located in or on the sea or seabed, includes —
  - (i) any person having a right or privilege or licence 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
  - (ii) any agent or servant of the owner or manager or licensee for the time being of the platform or structure, or any person in charge of operations connected therewith;



“**permit**” means a permit to dump or incinerate waste or other matter, issued in accordance with section 23 of this Act, and “**general permit**” and “**special permit**” have corresponding meanings;

“**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 thereof, and, in relation to any road vehicle, means the person in charge of the vehicle and not the occupier of the land on which the vehicle stands;

“**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 that when added to any waters has the effect of contaminating those waters so as to make them unclean, noxious or impure or detrimental to the health, safety or welfare of any person, or poisonous or harmful to marine life;

“**pollution damage**” means damage or loss of any kind occurring in Tuvalu or in Tuvalu waters which is attributable to the discharge or escape of oil or any pollutant, or the discharge or escape of garbage or sewage from ships, or which is attributable to the dumping of waste or other matter, into the sea, and includes the costs of reasonable preventive measures taken in Tuvalu or in Tuvalu waters or outside Tuvalu waters to prevent or reduce pollution damage and any further loss or damage occurring as a result of such measures;

“**port**” includes all ports declared under any law, and all other places where ships load or discharge passengers or cargoes;

“**reception facilities**”, in relation to any port, means facilities for enabling ships using the port to discharge or deposit oil residues, or residues from any pollutant, or garbage or sewage from those, ships;

“**sea**” means all areas of the sea whether Tuvalu waters or not and includes any estuary or area of the sea;

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

- (a) drainage and other wastes from any form of toilets, urinals, and 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 drainages mentioned in the foregoing provisions of this definition;

“**ship**” means every description of vessel used on or in or under the sea, without regard to the method of or lack of propulsion and includes any hovercraft;

“**transfer**” in relation to oil or any pollutant or to garbage or sewage means transfer in bulk;

“**Tuvaluan ship**” means a ship registered under the Merchant Shipping Act;<sup>4</sup>

“**Tuvalu waters**” means —

- (a) the internal waters of Tuvalu;
- (b) the archipelagic waters of Tuvalu (if any);
- (c) the territorial sea of Tuvalu; and
- (d) the waters of the exclusive economic zone of Tuvalu,

and the terms “**internal waters**”, “**archipelagic waters**”, “**territorial sea**”, and “**exclusive economic zone**” have the same meanings as described in the Maritime Zones Act;<sup>5</sup>

“**waste or other matter**” means material and substances of any kind, and includes, but is not limited to, oil and any pollutant and garbage and sewage from ships.

- (2) The Minister may, from time to time, by Order, declare to be a pollutant for the purposes of this Act or of any provision of this Act, any substance, or class of substances, other than oil, or garbage or sewage from ships, which, in the opinion of the Minister, when added to any waters has the effect of contaminating those waters so as to make the waters unclean, noxious, or impure, or as to be detrimental to the health, safety, or welfare of any person, or as to be poisonous or harmful to marine life of any description in any waters.
- (3) Any reference in this Act to the discharge or escape of oil or of any pollutant or of garbage or of sewage from any ship or from any fixed or floating platform or from any other man-made structure includes, but is not limited to, spilling, leaking, pumping, pouring, emitting, or emptying of that oil, or pollutant, or garbage, or sewage as the case may be, howsoever it is caused or occurs, but does not include dumping.
- (4) Regulations made under this Act may:
  - (a) add to or delete from the list of Conventions listed in the definition of “Convention” in subsection (1), and any international marine pollution convention added to the list may be implemented, enforced or otherwise applied 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 any particular needs or circumstances; 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 \$250,000, or imprisonment for terms not exceeding 1 year, or both.

## **PART IA - ADMINISTRATIVE AND PLANNING PROVISIONS<sup>6</sup>**

### **2A Responsibilities of the Ministry**

- (1) The Ministry is responsible for:
  - (a) implementing the provisions of this Act;
  - (b) ensuring that Tuvalu meets its obligations under international and regional conventions related to marine pollution; and
  - (c) ensuring that Tuvalu participates effectively in regional and international initiatives relating to preventing and responding to marine pollution incidents.
- (2) Without limiting the generality of subsection (1), the Ministry has the following functions:
  - (a) to provide administrative and technical support to the National Marine Pollution Committee;
  - (b) to ensure that Tuvalu's laws relating to marine pollution are effectively applied and enforced, and that such laws support Tuvalu's roles and standing as a responsible maritime nation, and that they are kept up to date;
  - (c) to act as the responsible authority and lead agency under any international or regional convention or initiative related to marine pollution;
  - (d) ensuring that reports of marine pollution spills are made to the Government, and by the Government to relevant national, regional and international authorities;
  - (e) taking effective action to respond to marine pollution incidents that occur within Tuvalu's jurisdiction, or which might affect Tuvalu's territory or resources;
  - (f) establish and maintain a national marine pollution response equipment inventory;
  - (g) co-operating with and assisting neighbouring countries and territories in the response to marine pollution incidents;
  - (h) facilitating the provision and receipt of any external assistance relating to marine pollution incidents;
  - (i) advising Government in relation to additional marine conventions to which Tuvalu should become a Party;

- (j) providing reports to regional and international agencies in relation to changes in circumstances that affect Tuvalu's participation in regional and international initiatives, including levels of risk of marine pollution incidents, capability to manage marine pollution incidents, and internal administrative arrangements and contact details; and
  - (k) otherwise participating in activities related to regional and international marine pollution conventions and initiatives.
- (3) The Minister has all necessary powers to perform the responsibilities and functions under subsections (1) and (2), and may delegate any such power, in writing, to an officer of the Ministry and any other government officer.

## **2B The National Marine Pollution Committee**

- (1) For the purposes of responding to marine pollution incidents, a National Marine Pollution Committee may be established by the Minister.
- (2) The Committee established under subsection (1):
- (a) shall be chaired by the Director, or the nominee of the Director; and
  - (b) shall be comprised of other members appointed by the Minister, after consulting with the Minister, and shall include relevant government and industry representatives.
- (3) The Committee has the following functions and responsibilities:
- (a) to develop, review and implement the National Marine Spill Contingency Plan (NATPLAN) required under section 2C and related matters;
  - (b) to assist in the establishment and maintenance of the inventory of marine pollution response equipment under section 2D, and its effective utilisation;
  - (c) to review the provision and operation of waste facilities at ports, and setting standards for such facilities;
  - (d) to ensure the proper administration and utilisation of the National Marine Pollution Fund (POLFUND) in accordance with the requirements applying to the Fund under the law by which it is created;
  - (e) to promote effective participation 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 Committee shall meet at such times and places as are nominated by the Minister or the Director and may regulate its own procedures as it thinks fit.
- (5) An Annual Report prepared by the Committee shall report on the operations and determinations of the Committee.

**2C The National Marine Spill Contingency Plan (NATPLAN)**

- (1) The Director, with advice from the Committee, 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 acting on the advice of Cabinet, and must conform to all requirements stipulated in –
  - (a) any Convention which applies under this Act; and
  - (b) any approved disaster management plan.
- (3) All owners and operators of ports and fuel and chemical handling and storage facilities must develop, maintain and implement site-specific marine spill prevention and contingency plans for their facilities, consistent with the NATPLAN and any requirements applying under an approved disaster management plan.
- (4) All owners or operators of vessels to which MARPOL 73/78 applies must 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 Director for approval, and if approved by the Minister acting on the advice of Cabinet, shall form part of the NATPLAN.

**2D Regional Cooperation**

- (1) The Marine Pollution Advisory Committee shall advise the Ministry in relation to any matters that –
  - (a) can facilitate effective participation 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 external assistance be required to effectively respond 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 need assistance in response to a marine pollution incident, such requests may be considered by the Minister 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.

## **2E Appointment of On Scene Commander**

- (1) The Director shall act whenever necessary as the On - Scene Commander when a marine pollution incident emanating from a vessel occurs.
- (2) As the On - Scene Commander, the Director has all necessary authority to:
  - (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 has authority to direct the use of all national assets and resources that are deemed necessary to deal with the incident.

## **PART II - PREVENTION OF POLLUTION**

### **3 Discharge of oil or pollutants into Tuvalu waters**

- (1) If any oil or pollutant is discharged or escape into Tuvalu waters from any ship, or from any place on land, or from any apparatus used for transferring oil or a pollutant from or to any ship (whether to or from a place on land or to or from another ship), or from any fixed or floating platform or from any other man-made structure, or 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) if the discharge or escape is from a ship, the owner or master of the ship;
  - (b) if the discharge or escape is from a place on land, the occupier of that place;
  - (c) if the discharge or escape occurs during the course of transferring oil or a pollutant to or from a ship, the owner or master of the ship, or, where the discharge or escape is from any apparatus used for transferring oil or a pollutant, the person in charge of the apparatus; or
  - (d) if the discharge or escape is from a fixed or floating platform or from any other man-made structure or as the result of operations for the exploration of the seabed and subsoil or the exploitation of the natural resources thereof, the owner of the platform or structure or the person carrying on the operations or the person in charge of the operations —commits an offence under this section.

- (2) Without limiting the liability of any person referred to in subsection (1) of this section for an offence under this section, where the discharge or escape is caused by the act or omission of any other person, that other person also commits an offence under this section.
- (3) Regulations made under section 33 of this Act may make exceptions from the operation of subsection (1) of this section, either absolutely or subject to prescribed conditions, and either generally or specifically or in relation to particular descriptions of oil or pollutants or to the discharge or escape of oil or pollutants in particular circumstances, or in relation to any area of the sea specified by the regulations.

#### **4 Discharge of oil or pollutants into waters outside Tuvalu waters**

- (1) If any oil or pollutant to which this section applies is discharged or escapes from a Tuvaluan ship into any part of the sea outside Tuvalu waters, then, subject to the provisions of this Act, the owner or master of the ship commits an offence.
- (2) This section applies to —
  - (a) crude oil, fuel oil, lubricating oil, heavy diesel oil, sludge and oil refuse;
  - (b) any other description of oil to which this section is declared to apply by regulations made under this Act, having regard to the provisions of any Convention, or to the persistent character of such oil or to the likelihood that it would cause pollution or that it would be harmful to marine life; or
  - (c) any pollutant to which this section is declared to apply by regulations made under this Act, having regard to the provisions of any Convention, or to the character and nature of the pollutant or to the likelihood that it would cause pollution or that it would be harmful to marine life.
- (3) Regulations made under section 33 of this Act may make exceptions from the operation of subsection (1) of this section, either absolutely or subject to prescribed conditions, and either generally or specifically or in relation to particular descriptions of oil or pollutants or to the discharge or escape of oil or pollutants in particular circumstances, or in relation to any area of the sea specified by the regulations.

#### **5 Requirements related to garbage on ships<sup>7</sup>**

- (1) All words and expressions used in this regulation have the same meaning as is given to them in Annex V of MARPOL 73/78 (as amended).
- (2) The discharge of garbage (including all plastics and any cooking oil) into the sea from any ship is prohibited, unless the discharge is allowed under Annex

V (regulations 4, 5 and 6) of MARPOL 73/78 (as amended), or the discharge falls under an exception in regulation 7 of Annex V of MARPOL 73/78 (as amended).

- (3) For the purposes of subsection (2), “plastics” includes synthetic ropes, synthetic fishing nets, plastic garbage bags and incinerator ashes from plastic products.
- (4) Any ship is subject to inspection in Tuvalu whilst in port or at an offshore terminal to ensure compliance with all requirements under Annex V of MARPOL 73/78 (as amended), and any ship found to be in breach of any such requirements can be detained until the situation has been brought to order in accordance with Annex V of MARPOL 73/78 (as amended).
- (5) Without limiting the generality of subsection (4), all ships in a port or at an offshore terminal in Tuvalu must meet the requirements of Annex V of MARPOL 73/78 (as amended), as they apply to the particular ship, in relation to all of the following:
  - (a) the display of placards notifying crew and passengers of the requirements relating to garbage;
  - (b) the carrying of a garbage management plan, and the contents of such plans;
  - (c) the carrying and keeping of a Garbage Record Book, including the making of all required entries, unless waived by the Ministry in accordance with Annex V of MARPOL 73/78 (as amended).
- (6) The owner and master of a ship which is in breach of any requirements of this section or any requirement under Annex V of MARPOL 73/78 (as amended) which is applicable to the ship, each commit an offence and despite section 9, shall on conviction both be liable to a fine not exceeding \$250,000 or a term of imprisonment not exceeding 2 years, or both.

### **5A Controls on the discharge of sewage from ships<sup>8</sup>**

- (1) The requirements of this section apply to ships which are new ships and existing ships as defined by and in accordance with regulation 2 of Annex IV of MARPOL 73/78, subject to the exceptions provided for in regulation 3 of that Annex.
- (2) In accordance with the requirements of regulations 9 – 11 (inclusive) of Annex IV of MARPOL 73/78, all ships to which this regulation and Annex IV applies, must:
  - (a) be equipped with a sewage treatment plant, a sewage comminuting and disinfecting system or a holding tank, which is approved by the Ministry taking into account any applicable IMO Guidelines, and the operation of the ship and the number of persons which are likely to be aboard it;



- (b) be fitted with standard discharge connections which meet the requirements of regulation 10 of Annex IV of MARPOL 73/78;
  - (c) not discharge sewage except in the circumstances and manner approved by regulation 11 of Annex IV of MARPOL 73/78.
- (3) All ships to which this section applies are subject to the following surveys in accordance with the requirements of regulation 4 of Annex IV of MARPOL 73/78:
- (a) an initial survey before the ship is put in service or before the International Sewage Pollution Prevention Certificate is issued for the first time, which must include a complete survey of its structure, equipment, systems, fittings, arrangements and material to ensure that the structure, equipment, systems, fittings, arrangements and material fully comply with the applicable requirements of Annex IV;
  - (b) a renewal survey at intervals specified by the Ministry, but not exceeding 5 years, unless required to the contrary by Annex IV, to ensure that the structure, equipment, systems, fittings, arrangements and material fully comply with applicable requirements of Annex IV; and
  - (c) an additional survey, either general or partial according to the circumstances, which must be made after a repair resulting from investigations undertaken in accordance with this section, or whenever any important repairs or renewals are made to the ship.
- (4) All surveys and inspections of ships for the purposes of this section are to comply with the provisions of Annex IV of MARPOL 73/78.
- (5) An International Sewage Pollution Prevention Certificate is to be issued by or on behalf of the Ministry, after an initial or renewal survey for any ship which is engaged in voyages to ports or offshore terminals of any other Party to MARPOL 73/78, and the Ministry assumes full responsibility for any such certificate which is so issued.
- (6) An International Sewage Pollution Prevention Certificate which is issued by the Government of a Party to MARPOL 73/78 at the request of the Ministry has the same effect as a certificate issued under subsection (5).
- (7) All certificates issued for the purposes of this section must be in the form specified in the Annex to Annex IV of MARPOL 73/78, and must be in the English language, or accompanied by a translation into the English language, if they are in another language.
- (8) Any ship to which this section applies is subject to inspection in Tuvalu whilst in port or at an offshore terminal to ensure compliance with all requirements under Annex IV of MARPOL 73/78 (as amended), and any ship found to be in breach of any such requirements can be detained until the situation has been brought to order in accordance with Annex IV of MARPOL 73/78 (as amended).

- (9) The owner and master of a ship to which this section applies which is in breach of any requirements of this section or any requirement under Annex IV of MARPOL 73/78 (as amended) which is applicable to the ship, each commit an offence and despite section 9 shall on conviction both be liable to a fine not exceeding \$250,000 or a term of imprisonment not exceeding 2 years.

## 5B Harmful substances in packaged form<sup>9</sup>

- (1) In this section, unless the context otherwise requires:
- “**harmful substance**” means any substance which is identified as a marine pollutant in the IMDG Code, and includes empty packaging which has been used previously for the carriage of harmful substances, unless adequate precautions have been taken to ensure that they contain no residue that is harmful to the marine environment; and
- “**packaged form**” means any form of containment specified for harmful substances in the IMDG Code.
- (2) The requirements of this section do not apply to ship’s stores and equipment.
- (3) The owner and master of any ship which carries a harmful substance must:
- (a) comply with the requirements of Annex III of MARPOL 73/78, including the application of the criteria in the Appendix to Annex III to identify harmful substances;
  - (b) comply with any standard issued by the Ministry which specifies requirements for packing, marking, labelling, documenting and stowing, and for quantity limitations and exceptions for preventing or minimizing pollution of the marine environment by harmful substances;
  - (c) ensure that packages used for harmful substances comply with all of the following:
    - (i) they must be adequate to minimise the hazard to the marine environment, having regard to their specific contents;
    - (ii) they must be durably marked to indicate that the substance is a marine pollutant;
    - (iii) all required markings and labels must be in accordance with the requirements of the IMDG Code;
  - (d) ensure that all documents relating to the carriage of harmful substances comply with the IMDG Code, and that they are made available to the Ministry;
  - (e) ensure that a special list, manifest or stowage plan is prepared, and that the harmful substance on board, and its location on the ship, is indicated;
  - (f) ensure that harmful substances are properly stowed on the ship, and that they are secured so as to minimise the hazards to the marine

environment without impairing the safety of the ship and persons on board.

- (4) The jettisoning of a harmful substance from a ship is prohibited, unless it is necessary for securing the safety of the ship, or saving life at sea.
- (5) Any ship to which this section applies is subject to inspection in Tuvalu whilst in port or at an offshore terminal to ensure compliance with all requirements under Annex III of MARPOL 73/78 (as amended), and any ship found to be in breach of any such requirements can be detained until the situation has been brought to order in accordance with Annex III of MARPOL 73/78 (as amended).
- (6) The owner and master of a ship to which this section applies which is in breach of any requirements of this section or any requirement under Annex III of MARPOL 73/78 (as amended) which is applicable to the ship, each commit an offence and despite section 9, shall on conviction both be liable to a fine not exceeding \$500,000 or a term of imprisonment not exceeding 2 years

### **5C Controls over air pollution from ships<sup>10</sup>**

- (1) The requirements of this section apply to ships in Tuvalu which are subject to the provisions of Annex VI of MARPOL 73/78, subject to the exceptions provided for in regulation 3 of that Annex.
- (2) In accordance with the requirements of Chapter III of Annex VI of MARPOL 73/78, all ships to which this regulation and Annex VI applies:
  - (a) must not deliberately cause or allow the emission of ozone depleting substances regulated under Annex VI;
  - (b) must not carry equipment, or have any installation, which contains any prohibited ozone depleting substance under Annex VI;
  - (c) must maintain an Ozone Depleting Substance Record Book if required to do so under Annex VI, and record the entries which are required under that Annex;
  - (d) must comply with any requirements under regulation 13 of Annex VI relating to nitrogen oxides which apply to the ship;
  - (e) must comply with any requirements under regulation 14 of Annex VI relating to sulphur oxides and particulate matter which apply to the ship;
  - (f) must comply with any requirements under regulation 14 of Annex VI relating to volatile organic compounds which apply to the ship; and
  - (g) can only undertake shipboard incineration if it complies with regulation 16 of Annex VI.

- (3) All ships to which this section applies are subject to the following surveys in accordance with the requirements of regulation 5 of Annex VI of MARPOL 73/78:
  - (a) an initial survey before the ship is put in service or before the International Air Pollution Prevention Certificate is issued for the first time, which must include a complete survey of its structure, equipment, systems, fittings, arrangements and material to ensure that the structure, equipment, systems, fittings, arrangements and material fully comply with the applicable requirements of Annex VI;
  - (b) a renewal survey at intervals specified by the Ministry, but not exceeding 5 years, unless required to the contrary by Annex VI, to ensure that the structure, equipment, systems, fittings, arrangements and material fully comply with applicable requirements of Annex VI;
  - (c) intermediate and annual surveys as required by Annex VI; and
  - (d) an additional survey (either general or partial, according to the circumstances), which must be made after a repair resulting from investigations undertaken in accordance with this section, or whenever any important repairs or renewals are made to the ship.
- (4) All surveys and inspections of ships for the purposes of this section are to comply with the provisions of Article VI of MARPOL 73/78.
- (5) An International Air Pollution Prevention Certificate is to be issued by or on behalf of the Ministry, after an initial or renewal survey for any ship, platform or drilling rig, which is engaged in voyages to ports or offshore terminals of any other Party to MARPOL 73/78, and the Ministry assumes full responsibility for any such certificate which is so issued.
- (6) An International Air Pollution Prevention Certificate which is issued by the Government of a Party to MARPOL 73/78 at the request of the Ministry has the same effect as a certificate issued under subsection (5).
- (7) All certificates issued for the purposes of this section must be in the form specified in the Annex to Article VI of MARPOL 73/78, and must be in the English language, or accompanied by a translation into the English language, if they are in another language.
- (8) Any ship is subject to inspection in Tuvalu whilst in port or at an offshore terminal to ensure compliance with all requirements under Annex VI of MARPOL 73/78 (as amended), and any ship found to be in breach of any such requirements can be detained until the situation has been brought to order in accordance with Annex VI of MARPOL 73/78 (as amended).
- (9) The owner and master of a ship which is in breach of any requirements of this section or any requirement under Annex VI of MARPOL 73/78 (as amended) which is applicable to the ship, each commit an offence and despite section 9, shall on conviction both be liable to a fine not exceeding \$250,000 or a term of imprisonment not exceeding 2 years.

**5D Controls over ballast water<sup>11</sup>**

- (1) No ballast water containing harmful aquatic organisms or pathogens is allowed to be discharged from a ship into Tuvalu waters.
- (2) The master of a ship that discharges ballast water in Tuvalu waters must:
  - (a) obtain all necessary approvals under Part IIIA, and all laws relating to quarantine and biosecurity prior to the discharge; and
  - (b) comply with the requirements of Part IIIA and the Ballast Water Management Convention, and 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 ship that intends to discharge ballast water in Tuvalu waters must, prior to any discharge, complete and give to the Director notice of the discharge:
  - (a) which can be a copy of any form of this nature required to be given under laws relating to quarantine and biosecurity; or
  - (b) in the form approved by the Director for that purpose.
- (4) The owner and master of a ship from which any ballast water is discharged in Tuvalu waters:
  - (a) which contains harmful aquatic organisms or pathogens; or
  - (b) which is done in a manner which does not comply with Part IIIA or the Ballast Water Management Convention, or 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) which is done without notice of the discharge required by this Act having been submitted to the Director prior to a discharge; or
  - (d) who provides false or misleading particulars in a notice required under this Act in relation to the discharge,

each commit an offence and shall on conviction both be liable to a fine not exceeding \$500,000 or a term of imprisonment not exceeding 2 years.

- (5) It is a defence to any prosecution under paragraph (4)(a) if the offender can prove that all reasonable measures to comply with the Ballast Water Management Convention, and 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 harmful aquatic organisms or pathogens were discharged from a ship into Tuvalu waters.

**5E Hull cleaning and scraping<sup>12</sup>**

- (1) The scraping and cleaning of the hulls and other external surfaces of ships in a manner that may result in the introduction of non-indigenous harmful aquatic organisms or pathogens into Tuvalu waters is prohibited.
- (2) Any person who scrapes or cleans any hull or other external surface of a ship in a manner:
  - (a) which permits the introduction of non-indigenous harmful aquatic organisms or pathogens into Tuvalu 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 inspector of the Ministry in relation to the scraping or cleaning of the hull,is guilty of an offence and despite section 9, shall be liable upon conviction to a fine not exceeding \$250,000 or a term of imprisonment not exceeding or 2 years.
- (3) The owner and master of a ship in relation to which an offence is committed under this section shall also be liable for that offence.

**5F Anti-fouling paints and systems<sup>13</sup>**

- (1) The Anti-fouling Convention applies to all ships of 24 metres or more in length in Tuvalu waters, and to any other ships prescribed by Regulations made under this Act.
- (2) Ships of 400 gross tonnage and above engaged in international voyages are 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;
  - (b) a survey and be certified when the anti-fouling paints or systems are changed or replaced; and
  - (c) any other surveys specified by Regulations made under this Act to apply and enforce the Anti-fouling Convention.
- (3) Ships of 24 metres or more in length but less than 400 gross tonnage engaged in international voyages and operating in Tuvalu waters must carry a Declaration on Anti-fouling Systems signed by the owner or owner's authorised agent, and the Declaration must 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 paints or systems containing organotin compounds and any other prescribed harmful substance on ships in Tuvalu waters or on any man-made structure is prohibited.
- (5) Any owner or master who contravenes any provision of the Anti-fouling Convention is guilty of an offence and despite section 9, shall be liable upon conviction to a fine not exceeding \$250,000 or a term of imprisonment not exceeding 1 year.
- (6) The owner or master of any Tuvalu ship or any ship in Tuvalu waters must not use any harmful anti-fouling system, containing organotin compounds or any other prescribed harmful substance in Tuvalu waters and any person who applies harmful anti-fouling paints or systems to a ship or man-made structure in Tuvalu commits an offence despite section 9, shall be liable upon conviction to a fine not exceeding \$500,000 or a term of imprisonment not exceeding 2 years.
- (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.

## 6 Special defences

- (1) Where a person is charged with an offence under sections 3, 4, 5 or 5A of this Act, it shall be a defence to prove that the oil or pollutant or garbage or sewage, as the case may be, in respect of which the offence is alleged to have been committed was discharged for the purpose of securing the safety of the ship or platform or other man-made structure, or of saving life at sea:<sup>14</sup>

Provided that a defence under this subsection shall not have effect unless the Court is satisfied that the discharge of the oil or pollutant or garbage or sewage, as the case may be, was necessary for the purpose alleged in the defence and was a reasonable step to take in all the circumstances.

- (2) Where a person is charged as mentioned in subsection (1) of this section, it shall also be a defence to prove that the oil or pollutant or garbage or sewage, as the case may be, escaped as a consequence of damage to the ship or platform or other man-made structure or to any equipment used on or in connection with such ship, platform or structure, and that the damage occurred without the negligence or deliberate act of that person:

Provided that it shall not be a defence under this subsection unless, as soon as possible in the circumstances after the damage occurred, all reasonable steps were taken to prevent, or if it could not be prevented, to stop or reduce the escape of the oil or pollutant or garbage or sewage, as the case may be.

- (3) It shall be a defence for a person charged with an offence mentioned in subsection (1) of this section in the case of a discharge or escape from a place on land of which he is the occupier, to prove that the discharge or escape was caused by the act or omission of a person who was in that place without the permission of the occupier:

Provided that a defence under this subsection shall not have effect unless the Court is satisfied that the person charged had taken all reasonable steps to prevent the person who actually caused the discharge or escape from obtaining access to the place.

- (4) Where a person is charged with an offence under section 3 of this Act as the occupier of a place on land, or as the person in charge of any apparatus, from which oil or a pollutant has been discharged or has escaped, it shall be a defence to prove that the discharge or escape was not due to the want of any reasonable care, and that immediately after the discharge or escape was discovered all reasonable steps were taken to stop or reduce it.
- (5) Where a person is charged with an offence under section 5 of this Act in respect of the loss of synthetic fishing nets or synthetic material used in the repair of such nets, it shall be a defence to prove that the loss was accidental and that all reasonable precautions had been taken to prevent such loss.
- (6) Where any oil or pollutant or garbage or sewage is discharged as a consequence of the exercise, for the purpose of preventing an obstruction or danger to navigation, of any power by a port authority under any other statutory authority, and apart from this subsection the authority exercising the power, or a person employed by or acting on behalf of the authority, would commit an offence under sections 3, 4, 5 or 5A of this Act in respect of that discharge or escape, the authority or person employed by or acting on behalf of the authority shall not be convicted of that offence if it is shown that the authority or person took all reasonable steps to prevent, stop, or reduce the discharge or escape.<sup>15</sup>

## **7 Equipment to prevent pollution**

- (1) For the purpose of preventing or reducing discharges or escapes of oil, pollutants, garbage or sewage into the sea, regulations may be made under section 33 of this Act requiring Tuvaluan ships, and any other ships in Tuvalu waters, and any fixed or floating platforms or any other man-made structures situated on or in or under Tuvalu waters to be fitted with such equipment, and to comply with such requirements, as may be prescribed.
- (2) Without prejudice to the generality of subsection (1) of this section, where any regulations made pursuant to that subsection require ships or platforms or other structures to be fitted with equipment of a prescribed description, the regulations may provide that equipment of that description —
  - (a) shall not be installed unless the equipment is of a type tested and approved by a person appointed by the Minister; or
  - (b) while installed, shall not be regarded as satisfying the requirements of the regulations unless, at such times as may be specified in the regulations, the equipment is submitted for testing and is approved by a person so appointed.



- (3) The Minister may appoint persons to carry out tests for the purposes of any regulations made pursuant to this section, and, in respect of the carrying out of such tests, may charge such fees as may be prescribed by the regulations.
- (4) Every surveyor appointed under section 139 of the Merchant Shipping Act shall be deemed to be a person appointed by the Minister to carry out tests for the purposes of any regulations made under this section, so far as they relate to tests required in accordance with paragraph (b) of subsection (2) of this section.
- (5) If the provisions of any regulations made pursuant to this section are contravened, the owner or master of the ship, or the owner or operator of the platform or structure, as the case may be, that is in contravention of the regulations commits an offence under this section.

## **8 Equipment to deal with pollution**

- (1) For the purpose of cleaning up or removing or with pollution dispersing any oil, pollutant, garbage or sewage in or on the sea, regulations may be made under section 33 of this Act requiring Tuvaluan ships, and any other ships while they are within Tuvalu waters, and any fixed or floating platforms or any other man-made structures situated on or in or under Tuvalu waters to carry such equipment, and to comply with such requirements as may be prescribed.
- (2) Without prejudice to the generality of subsection (1) of this section, where any regulations made pursuant to that subsection require ships or platforms or other structures to carry equipment of a prescribed description, the regulation may provide that equipment of that description —
  - (a) shall not be carried on board unless the equipment is of a type tested and approved by a person appointed by the Minister; and
  - (b) while carried on board, shall not be regarded as satisfying the requirements of the regulations unless, at such times as may be specified in the regulations, the equipment is submitted for testing and is approved by a person so appointed.
- (3) The Minister may appoint persons to carry out tests for the purposes of any regulations made pursuant to this section, and, in respect of the carrying out of such tests, may charge such fees as may be prescribed by the regulations.
- (4) Every surveyor appointed under section 139 of the Merchant Shipping Act<sup>16</sup> shall be deemed to be a person appointed by the Minister to carry out tests for the purposes of any regulations made under this section, so far as they relate to tests required in accordance with paragraph (b) of subsection (2) of this section.
- (5) If the provisions of any regulations made pursuant to this section are contravened, the owner or master of the ship, or the owner or operator of the

platform or structure, as the case may be, commits an offence under this section.

## **9 Penalties<sup>17</sup>**

Every person who commits an offence under any of the provisions of sections 3 to 8 of this Act —

- (a) is liable on conviction to a fine not exceeding \$500,000; and
- (b) is 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 oil or pollutant or garbage or sewage to which the offence relates from any Tuvalu waters or from any foreshore or port works in Tuvalu.

## **10 Waste reception facilities<sup>18</sup>**

- (1) Regulations may be made under this Act in relation to the provision of waste reception facilities at ports where ships are permitted to discharge waste oil or oily residues, hazardous and noxious substances, sewage from those ships, or to deposit their garbage.
- (2) Waste reception facilities will not be provided where a ship's wastes could cause unacceptable environmental impacts.
- (3) The full or partial cost of providing and operating these waste reception facilities can be recovered by user fees which may be set:
  - (a) by Regulations made under this Act; or
  - (b) by the Minister 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, is allowed to be discharged into any waste reception facility.
- (5) The owner and master of a ship which discharges at a waste reception facility in breach of subsection (4) commit an offence and are both liable upon conviction:
  - (a) to a fine not exceeding \$250,000 or a term of imprisonment not exceeding 1 year; 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.
- (6) The Ministry has authority to enter into arrangements with other States which are Parties to MARPOL 73/78 for the establishment, operation and use of regional reception facilities to receive and dispose of wastes or any other

substance or thing regulated by MARPOL 73/78, and such regional reception facilities must be operated in accordance with the applicable requirements under MARPOL 73/78, including:

- (a) compliance with applicable guidelines developed by IMO;
- (b) the development and application of a Regional Reception Facilities Plan; and
- (c) consultation with and reporting to IMO as required."

## 11 Duty to report discharge

- (1) If any oil or any pollutant is discharged or discharge escapes into Tuvalu waters from a ship, or from a fixed or floating platform, or from any other man-made structure in on or under the sea or seabed, or from a place on land, the owner or master of the ship, or the owner or person in charge of operations on the platform or structure, or the occupier of the place on land, as the case may be, shall immediately and by the quickest available means, by radio if possible, report the occurrence to the harbour master of the port in the case of a discharge or escape into a harbour and to the Minister in the case of a discharge or escape otherwise than into a harbour.
- (2) If any garbage or sewage is discharged or escapes from a ship, or from a fixed or floating platform, or from any other man-made structure in on or under the sea or seabed, or from a place on land in a quantity or concentration likely to be detrimental to the health of any person or harmful to marine life, the owner or master of the ship, or the owner or person in charge of operations on the platform or structure, as the case may be, shall immediately and by the quickest available means, by radio if possible, report the occurrence to the harbour master in the case of a discharge or escape into a harbour and to the Minister in the case of a discharge or escape otherwise than into a harbour.
- (3) The reports required to be made under subsections (1) and (2) of this section shall contain the following matters:
  - (a) the time or position of the discharge or escape;
  - (b) the event to which the discharge or escape is directly attributable;
  - (c) the weather and sea conditions at the time of the discharge or escape and at the time when the report was made;
  - (d) where oil has been discharged or has escaped, the description and quantity of the oil of each type carried and the description and quantity of each type of oil that was discharged or escaped or that may be discharged or escape;
  - (e) where a pollutant has been discharged or has escaped, the description and quantity of each type of pollutant carried and the description and quantity and concentration of each type of pollutant that was discharged or escaped or that may be discharged or may escape;

- (f) where garbage or sewage has been discharged or has escaped in the circumstances mentioned in subsection (2) of this section, the description and quantity and concentration of the garbage or sewage, as the case may be, that was discharged or escaped or which may be discharged or escape;
  - (g) the state of the rest of the cargo carried;
  - (h) the existence of any slick and its movement in any direction; and
  - (i) the measures that have been taken —
    - (i) to stop or reduce the discharge or escape;
    - (ii) to remove any oil or pollutant or garbage or sewage from the sea or to clean up or disperse any oil or pollutant or garbage or sewage; and
    - (iii) to minimise damage or the possibility of damage resulting from the discharge or escape.
- (4) If:
- (a) any Tuvaluan ship becomes stranded or is abandoned anywhere (whether in Tuvalu waters or not); or
  - (b) a ship (other than a Tuvaluan ship) becomes stranded or abandoned in Tuvalu waters;
  - (c) the owner or master shall immediately and by the quickest means available, by radio if possible, report the occurrence, to the Minister, giving:
    - (i) full details of the ship including name and description of ship and location of where it is stranded;
    - (ii) full details of the damage to the ship and the state of the cargo;
    - (iii) a complete list of all oil and all pollutants carried including the description and quantity of each type of oil or pollutant, as the case may be, carried;
    - (iv) an estimate of the quantity of garbage and sewage on board;
    - (v) a statement or estimate of the quantity of each type of oil or pollutant that has been discharged or has escaped, or that may be discharged or escape; and
    - (vi) an estimate of the quantity of garbage or sewage that has been discharged or has escaped or that may be discharged or may escape.
- (5) Every person commits an offence, and is liable on conviction to a fine not exceeding \$20,000, who —
- (a) fails to comply with any provision of this section; or
  - (b) makes a report containing any information which to his knowledge is false or misleading in any material particular.

## 12 Duty to report threatened discharges

- (1) Where there is any significant threat that a discharge or escapes of any oil or pollutant to which subsection (1) of section 11 applies may occur, the owner or master of the ship, or the owner or person in charge of operations on the platform or structure, or the occupier of the place on land, as the case may be, shall immediately and by the quickest available means, by radio if possible, report the threatened occurrence to the harbour master of the port in the case of a possible discharge or escape into a harbour and to the Minister in the case of a possible discharge or escape otherwise than into a harbour.
- (2) Where there is any significant threat that a discharge or escape of garbage or sewage in the circumstances mentioned in subsection (2) of section 11 applies may occur, the owner or master of the ship, or the owner or person in charge of operations on the platform or structure, as the case may be shall immediately and by the quickest available means, by radio if possible, report the threatened occurrence to the harbour master of the port in the case of a possible discharge or escape into a harbour and to the Minister in the case of a possible discharge or escape otherwise than into a harbour.
- (3) The reports required to be made under subsections (1) and (2) of this section shall contain the following matters:
  - (a) the event to which the threat is attributable;
  - (b) the weather and sea conditions at the time the report is made;
  - (c) the description and quantity of any oil carried and the description and quantity of certain type of oil that may be discharged and or may escape;
  - (d) the description and quantity of any pollutant carried and the description and quantity and concentration of each type of pollutant that may be discharged or may escape;
  - (e) an estimate of the quantity of garbage and sewage on board and an estimate of the quantity of garbage and sewage that may be discharged or may escape;
  - (f) the state of the rest of the cargo carried; and
  - (g) the measures being taken to minimise the threat of damage that may occur.
- (4) Every person commits an offence, and is liable on conviction to a fine not exceeding \$20,000, who —
  - (a) fails to comply with any provision of this section; or
  - (b) makes a report containing any information which to his knowledge is false or misleading in any material particular.

### 13 Records

- (1) Regulations may be made under section 33 of this Act requiring the master of a Tuvaluan ship to carry a record book, whether as part of the ship's official log book or as a separate record book, and to keep in that book records of:
  - (a) the carrying out, on board or in connection with the ship, of such operations as may be prescribed, being operations relating to —
    - (i) the loading of oil cargo;
    - (ii) the transfer of oil cargo during a voyage to or from a ship or between tanks within a ship;
    - (iii) the discharge of oil cargo;
    - (iv) the separation of oil from water, or from other substances, in any mixture containing oil;
    - (v) the ballasting and cleaning of oil tanks (whether cargo or bunker fuel tanks) and the discharge of ballast or cleaning water or any other substance from any such tanks;
    - (vi) the discharge or other disposal of any oil, or water, or any other relating to any of the matter substance, arising from operations specified in sub-paragraphs (i) to (v) of this paragraph; or
    - (vii) the discharge or other disposal of mixture containing oil; and
  - (b) any occasion on which oil is discharged or escapes from the ship, and the circumstances and reasons relating thereto, including, but not limited to:
    - (i) discharges for the purpose of securing the safety of any ship or of preventing damage to any ship or cargo or of saving life; and
    - (ii) any occasion on which oil is found to be escaping or have escaped, or is discharged, from the ship as a consequence of damages to the ship, or by reason of leakage.
- (2) Regulations may be made under section 33 of this Act requiring the keeping of records of all or any of the matters specified in sub section (1) of this section while a ship is within Tuvalu waters or requiring the keeping of records relating to the transfer of oil to and from ships while within Tuvalu waters; and the requirements of any regulations made under this subsection shall be in addition to the requirements of any regulations made under subsection (1) this section.
- (3) Regulations made under section 33 of this Act may require the person (other than the master) in charge of a barge or other like craft, or of any fixed or floating platform, or other man-made structure situated in or on or under the sea or seabed, when such barge or craft or platform or structure is in Tuvalu waters, to comply with such of the matters specified in subsection (1) of this section, as far as applicable and with the necessary modifications, as are specified in the regulations.

- (4) Regulations made under section 33 of this Act may require the master of a Tuvaluan ship or the person in charge of a barge or other like craft, or of any fixed or floating platform, or other man-made structure situated in or on or under the sea or seabed, when such barge or craft or platform or structure is in Tuvalu waters, or the master of any ship while that ship is in Tuvalu waters, to carry thereon a record book, and to keep in that book records relating to the loading or unloading of pollutants, the transfer of pollutants and any other operations in respect of pollutants that may be required, and the discharge or escape of pollutants and the circumstances and reasons relating thereto.
- (5) The provisions of subsection (1) of this section, as far as they are applicable and with the necessary modifications, shall apply with respect to the making of regulations pursuant to subsection (4) of this section.
- (6) Regulations made pursuant to this section requiring the keeping of records may prescribe —
  - (a) the manner and form of the records to be kept;
  - (b) the nature of the entries to be made;
  - (c) the period of time the records must be kept by the person keeping them;
  - (d) the transfer of custody of the records at the end of that period of time; and
  - (e) the ultimate disposal of the records.
- (7) Every person commits an offence who fails to comply with any requirement imposed by or under this section, and is liable on conviction to a fine not exceeding \$5,000.
- (8) Every person commits an offence who makes an entry in any records to be kept in accordance with regulations made pursuant to this section which is to his knowledge false or misleading in any material particular, and is liable on conviction to imprisonment for a term not exceeding one year, and to a fine not exceeding \$5,000.
- (9) In any proceeding, under this part of this Act —
  - (a) any records kept in accordance with regulations made pursuant to this section shall be admissible as evidence of the facts stated in these records;
  - (b) any copy of an entry in any such records, which are verified by the person by whom the records are required to be kept to be a true copy of the entry, shall be admissible as evidence of the facts stated in the entry; and
  - (c) any document purporting to be records to which paragraph (a) of this subsection applies, or purporting to be such a certified copy as is mentioned in paragraph (b) of this subsection, shall, unless the contrary is proved, be presumed to be such record, or such a certified copy, as the case may be.

## 14 Powers of inspection

- (1) The Minister may appoint any person as an inspector to report to him:
  - (a) whether the prohibitions, restrictions, and obligations imposed by virtue of this Part of this Act have been complied with;
  - (b) what measures (other than measures made obligatory by regulations made pursuant to section 7 or 8 of this Act) have been taken to prevent the discharge or escape of oil or pollutants, or of garbage or sewage other than in accordance with the provisions of this part of this Act; and
  - (c) whether reception facilities provided in ports are adequate.
- (2) Every such inspector may be so appointed to report either in a particular case or in a class of cases specified in his appointment.
- (3) Every inspector appointed under section 140 of the Merchant Shipping Act shall be deemed to be a person appointed generally under subsection (1) of this section to report to the Minister on every kind of case falling within that subsection, and —
  - (a) any power of an inspector under section 138 of the Merchant Shipping Act to inspect a ship shall include the power to test any equipment with which the ship is required to be fitted in accordance with regulations made pursuant to section 7 or 8 of this Act; and
  - (b) any power of an inspector under section 138 of the Merchant Shipping Act to require the production of records required to be kept in accordance with section 13 of this Act shall include the power to copy any entry in those records and require the person by whom the records are to be kept to certify the copy as a true copy of the entry.
- (4) Without prejudice to any powers exercisable by virtue of the foregoing provisions of this section, in the case of a ship which is for the time being in a port of Tuvalu, the harbour master and any person appointed or deemed to be appointed under this section shall have the power:
  - (a) to go on board and inspect the ship or any part thereof, or any of the machinery, boats, equipment, or articles on board the ship, for the purpose of ascertaining the circumstances relating to an alleged discharge or escape of oil or of a pollutant or of garbage or sewage from the ship into the waters of the harbour;
  - (b) to require the production of any records which by virtue of regulations made under this Act are required to be kept in respect of the ship;
  - (c) to copy any entry in any such records, and require the person by whom the records are to be kept to certify the copy as a true copy of the entry; and
  - (d) to go on board the ship and take, or require the taking of, soundings of tank, spaces, and bilge, and to take, or require the taking of any sample or samples of oil or any pollutant from the ship for chemical analysis:



Provided that a person exercising any powers conferred by this subsection shall not unnecessarily detain or delay the ship from proceeding on any voyage.

- (5) Every person commits an offence and is liable on conviction to a fine not exceeding \$1,000, who —
  - (a) fails to comply with any requirement duly made pursuant to paragraph (b), (c) or (d) of subsection (4) of this section; or
  - (b) wilfully obstructs a person acting in the exercise of any power conferred by this section.

## **15 Enforcement of Conventions on the prevention of pollution**

- (1) Regulations made under section 33 of this Act may empower persons as may be designated by or under the regulations to go on board any ship to which a Convention applies (being a Convention to which Tuvalu is a party) while that ship is within Tuvalu waters, and to require production of any records required to be kept in accordance with any such Convention.
- (2) Any such regulations may, for the purposes thereof and with any necessary modifications, apply any of the provisions of this Part of the Act relating to the production and inspection of records and the taking of copies of entries therein, and to the admissibility in evidence of such records, including any penal provisions of this Part of this Act, in so far as they relate to those matters.
- (3) For the purposes of this section the Minister may, by Order, declare whether any country is a party to a Convention, and such an Order shall be conclusive evidence of the facts stated therein.
- (4) In this section, “ship to which a Convention applies” means a ship registered in or having the nationality of or operating under the authority of a country that is a party to the Convention in question.

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

### **16 Application of this Part**

This Part of this Act shall apply to —

- (a) all ships and aircraft that, in Tuvalu or in Tuvalu waters, take on board waste or other matter for the purpose of dumping or incineration;
- (b) all ships and aircraft that dump waste or other matter in Tuvalu waters or into the seabed or the subsoil of the seabed below Tuvalu waters;
- (c) all Tuvaluan ships that dump waste or other matter into the sea;

- (d) all marine incineration facilities that incinerate waste or other matter in Tuvalu waters;
- (e) all fixed or floating platforms or other man-made structures that are used or intended to be used for the dumping or incineration of waste or other matter, and situated on or in or under Tuvalu waters or the seabed below Tuvalu waters; and
- (f) all ships and aircraft dumped into Tuvalu waters, and all Tuvaluan ships dumped into the sea.

## 17 Interpretation

In this Part of this Act, the term “Convention State” means —

- (a) a State that is a party to the Convention on the Prevention of Marine Pollution by Dumping of Wastes and other Matter, 1972;
- (b) a State that is a party to the Protocol for the Prevention of Pollution of the South Pacific Region by Dumping, 1986.

## 18 Offence to dump radioactive waste and other radioactive matter

- (1) Notwithstanding anything to the contrary in this Act, if: —
  - (a) any radioactive waste or other radioactive matter is, for the purpose of dumping, taken on board any ship or any aircraft, in Tuvalu or in Tuvalu waters;
  - (b) any radioactive waste or other radioactive matter is dumped from any ship or aircraft or from any fixed or floating platform or from any other man-made structure into Tuvalu waters or into the seabed or subsoil below Tuvalu waters; or
  - (c) any radioactive waste or other radioactive matter is dumped from any Tuvaluan ship into any part of the sea outside Tuvalu waters,

then, as the case may be, the owner and the master of the ship, or the owner and the person in possession 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.

- (2) For the purposes of this section and of section 19 of this Act, waste or other matter (including sewage sludge, dredge spoil, fly ash, agricultural waste, construction and building material, ships and 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.
- (3) Every person who is guilty of an offence under this section —
  - (a) is liable on conviction to a fine not exceeding \$100,000; and
  - (b) is also liable to pay any such amount as the Court may assess in respect of the expense; and cost 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.
- (4) Nothing in paragraph, (a), (b) and (d) of subsection (1) of section 21 of this Act or in paragraph (a) of subsection (2) of section 21 of this Act shall apply in respect of the dumping of waste or other matter.

### **19 Offence to store radioactive wastes**

- (1) Every person commits an offence under this section who stores radioactive waste or other matter in Tuvalu waters, or in the seabed or in the subsoil of the seabed below Tuvalu waters.
- (2) Every person who is guilty of 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 the waters or other matter to which the offence relates.

### **20 Offence to store toxic or other hazardous waste**

- (1) Every person commits an offence under this section who stores toxic or hazardous waste or matter in Tuvalu waters or in the seabed or in the subsoil of the seabed below Tuvalu waters.
- (2) Every person who is guilty of 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 expense, 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.
- (3) For the purposes of this section, “toxic or hazardous waste or other matter” means any waste or other matter specified in regulations made for the purpose of paragraphs (a) and (b) of subsection (1) of Section 22 of this Act, being any waste or other matter for which a permit cannot be granted under section 23 of this Act or for which a special permit is required under that section.

## 21 Offence to dump waste or other matter without a permit

- (1) If, otherwise than in accordance with a permit to incinerate wood pursuant to Section 23 of this Act:
  - (a) any waste or other matter is taken on board any ship or aircraft in Tuvalu or in Tuvalu waters for the purpose of dumping or incineration;
  - (b) any waste or other matter is dumped into Tuvalu waters from any ship, or from any aircraft, or from any fixed or floating platform, or from any other man-made structure;
  - (c) any waste or other matter is incinerated on any marine incineration facility in Tuvalu waters; or
  - (d) any ship, or aircraft, or fixed or floating platform, or any other man-made structure, is dumped into the Tuvalu waters,

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

- (2) If, other than in accordance with a permit issued pursuant to section 23 of this Act:
  - (a) any waste or other matter is dumped from any Tuvaluan ship into any part of the sea beyond Tuvalu waters; or
  - (b) any Tuvaluan ship is dumped into any part of the sea beyond Tuvalu waters,

then the owner and the master of the ship, commit an offence under this section.

- (3) Every person who is guilty of 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 Tuvalu waters or from any foreshore or port works in Tuvalu waters.

## 22 Regulations

- (1) Without limiting the general power to make regulations conferred by section 33 of this Act, but subject to subsection (2) of this section, the Minister may from time to time make regulations for all or any of the following purposes:
  - (a) prohibiting the issue of permits authorising the dumping or incineration of any specified type of waste or other matter or of any specified class of waste or other matter;

- (b) requiring a special permit to be obtained for the dumping or incineration of any specified type of waste or other matter or of any specified class of waste or other matter;
- (c) requiring a general permit to be obtained for the dumping or incineration of any waste or other matter, not being of a type or class that can lawfully be dumped or incinerated under this part of this Act only in accordance with a special permit;
- (d) providing for applications for special permits and general permit, and the issue, renewal, duration, suspension, and revocation of special permits and general permits;
- (e) prescribing the criteria to govern the issue of special permits and general permits;
- (f) providing for the survey, testing, approval, and monitoring of marine incineration facilities and their equipment, providing for the survey, testing, approval, and monitoring of incineration systems to be used on any such facility, and prescribing operational requirements in respect of such systems; and prohibiting the alteration of any marine incineration facility or its equipment or any incineration system without prior approval;
- (g) prescribing fees in respect of any matter referred to in paragraph (d) or paragraph (f) of this subsection;
- (h) prescribing such other matters as may be necessary or desirable to give effect in Tuvalu to:
  - (i) the Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter, 1972;
  - (ii) the Protocol for the Prevention of Pollution in the South Pacific Region by Dumping, 1986; and
  - (iii) any Annexes and Regulations to that Convention or that Protocol;
- (i) prescribing offences in respect of the contravention of, or noncompliance with, any regulations made under this section, and the amounts of fines that may be imposed in respect of any such offences, which fines shall be an amount not exceeding \$2,000, and, where the offence is a continuing one, a further amount not exceeding \$200 for each day during which the offence has continued.

## 23 Permits

- (1) The Minister may, in accordance with the provisions of this section and with any regulations made under section 22 of this Act, consider and determine applications for permits, and issue permits, for the dumping or incineration of waste or other matter.

- (2) A special permit shall be obtained —
  - (a) before each occasion on which it is intended to dump or incinerate waste or other matter;
  - (b) before each occasion on which waste or other matter is taken on board a ship or aircraft in Tuvalu or in Tuvalu waters for the purpose of dumping or incineration; and
  - (c) before each occasion on which a ship, an aircraft, a marine incineration facility, a fixed or floating platform, or any other man-made structure to which this Part of this Act applies, is to be dumped.
- (3) A general permit shall be obtained before the commencement of each period not exceeding 12 months during which it is intended to dump or incinerate waste or other matter.
- (4) Every application for a permit shall be made in writing to the Minister and shall contain the following information:
  - (a) the characteristics and composition of the waste or other matter intended to be dumped or incinerated;
  - (b) the method by which the waste or other matter is to be dumped or incinerated; and
  - (c) such other information as may be prescribed by regulations made under section 22 of this Act or as may be required by the Minister.
- (5) In considering any application for a permit, the Minister shall consider, having regard to the criteria specified in Schedule 1 and Schedule 2 as the case may require, of this Act —
  - (a) whether an adequate scientific basis and sufficient knowledge of the composition of the waste or other matter proposed for dumping or incineration exist for assessing the impact of such material on the marine environment and human health; and
  - (b) whether an adequate scientific basis exists for assessing other consequences of such dumping or incineration, taking into account seasonal variations.
- (6) In determining any application for a permit, the Minister shall have special regard to the criteria specified in Schedule 1 or Schedule 2, as the case may require, of this Act, and may issue the permit if, in his opinion, such of the criteria as are applicable have been met.
- (7) Every permit shall specify —
  - (a) the waste or other matter to be dumped or incinerated;
  - (b) the quantity to be dumped or incinerated;
  - (c) the method of dumping or incineration to be used;
  - (d) the specific location at sea of the dumping site or marine incineration facility;

- (e) the ship, aircraft, marine incineration facility, fixed or floating platform, or other man-made structure, to be used in the dumping or incineration;
  - (f) the person who shall be responsible for carrying out the dumping or incineration; and
  - (g) such other conditions and requirements as the Minister thinks fit, having regard to the criteria specified in Schedule 1 and Schedule 2, as the case may require, of this Act.
- (8) Notwithstanding anything in this Act, no permit shall authorise the dumping of radioactive waste or other radioactive matter.
- (9) 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 \$20,000 and \$200 for each day during which the offence has continued.

## 24 Special defences

- (1) Where a person is charged with an offence under sections 21 or 23 of this Act, it shall be a defence to prove that the dumping or incineration of the waste or other matter in respect of which the offence is alleged to have been committed, or, as the case may be, the failure to comply with any condition or requirement contained in the permit in respect of which the offence is alleged to have been committed, was necessary —
- (a) for the purpose of saving or preventing danger to human life;
  - (b) in the case of *force majeure* caused by stress of weather, for the purpose of securing the safety of any ship or aircraft or incineration facility or fixed or floating platform, or any other man-made structure situated on or in the sea or on the seabed; or
  - (c) for the purpose of averting a serious threat to any ship or aircraft or incineration facility or fixed or floating platform, or any other man-made structure situated on or in the sea or on the seabed:

Provided that a defence under this section shall not have effect unless the Court is satisfied that the dumping or incineration of the waste or other matter or, as the case may be, the failure to comply with the condition or requirement, was necessary for the purpose alleged in the defence and was a reasonable step to take in all the circumstances: and

Provided also that a defence under this section shall not have effect unless the Court is satisfied that in the circumstances there was every probability that the damage resulting from the dumping or incineration of the waste or other matter or, as the case may be, the failure to comply with the condition or requirement, was less than would have otherwise occurred, and that the dumping or incineration was so conducted that the likelihood of damage to human or marine life was minimised.

## PART IV - MARINE CASUALTIES

### 25 Powers of Minister in relation to marine casualties

(1) Without prejudice to any rights or powers of or in relation to the Government exercisable, whether under international marine casualties law or otherwise, apart from the powers conferred by this section, the powers conferred by this section shall only be exercised and the measures authorised by this section shall only be taken where, as a result of —

- (a) a shipping casualty in Tuvalu waters or outside those waters; or
- (b) an incident occurring outside or on board or to any fixed or floating platform or any other man-made structure,

it appears to the Minister necessary to prevent or reduce or eliminate pollution from any oil or pollutant in, or the risk of any such pollution to, Tuvalu waters or to the coast of Tuvalu or to related interests.

(2) Where it appears to the Minister that as a result, of any shipping casualty or any incident mentioned in subsection (1) of this section, or as a result of acts related to any such casualty or incident, a ship or a fixed or floating platform or other man-made structure constitutes or is likely to constitute a serious risk of pollution in or to Tuvalu waters, or to the coast of Tuvalu, or to related interests, then, for the purposes mentioned in subsection (1) of this section, the Minister may —

- (a) issue instructions to the master or owner of the ship, or to the owner or any person in charge of carrying on operations on any platform or structure, as the case may be, requiring any specified action to be taken or that no specified action be taken with respect to the ship or its cargo, or both, or to the platform or structure or to operations thereon, or both, as the case may be; or
- (b) take any measures whatsoever with respect to the ship or the cargo, or both, or to the platform or structure or to operations relating thereto, or both, whether or not he has issued instruction under paragraph (a) of this subsection.

(3) Without limiting the generality of powers conferred by this section, the measures the Minister may direct to be taken or may take himself under paragraph (b) of subsection (2) of this section may include —

- (a) the removal to another place of the ship or its cargo, or both;
- (b) the salvage of the ship or its cargo, or both;
- (c) the sinking or destruction of the ship or the destruction of the cargo, or both;
- (d) the taking over of control of the ship or
- (e) the removal of cargo from the ship.



- (4) In order to carry out any of the measures referred to in subsection (2) of this section, the Minister may, after consulting the owner of the ship to whose master the instructions are to be given —
- (a) instruct the master of any Tuvaluan ship, or the master of any other ship within Tuvalu waters, to render assistance to any ship that is or is likely to be a shipping casualty; and
  - (b) instruct the master of any Tuvaluan ship to take on board any equipment, to sail to any place, to render assistance to any ships engaged in assisting a shipping casualty or engaged in any operations for the cleaning up, removal, or dispersal of any oil or pollutant and to obey the instructions of any person for the time being authorised by the Minister to exercise control over or responsibility for a shipping casualty.
- (5) The Minister shall notify the master or owner of the ship, or the owner of any platform or structure, or any person mentioned in paragraph (a) of subsection (2) of this section, as the case may be, of any measures that the Minister proposes to take under paragraph (b) of that subsection:
- Provided that the Minister may dispense with such notice where in his opinion the urgency of the situation is such that the measure must be taken immediately.
- (6) The powers of the Minister under this section to issue instructions under paragraph (a) of subsection 2 of this section or to take measures under paragraph (b) of that subsection, shall be exercisable by any person duly authorised by the Minister.
- (7) In this section —
- “**related interests**” include interests directly affected or threatened, including coastal, port, or estuary activities (including fisheries activities constituting an essential means of livelihood of the persons concerned), tourist attractions, public health and welfare, and the conservation of living marine resources and of wildlife.

## 26 Right to compensation

- (1) Where any action duly taken by any person in accordance with instructions pursuant to paragraph (a) of subsection (2) of section 25 of this Act, or any measure taken by the Minister under paragraph (b) of subsection (2) of section 25 of this Act —
- (a) was not reasonably necessary to eliminate or prevent or reduce pollution or the risk of pollution; or
  - (b) was such that the good the action or measure taken did or was likely to do was disproportionately less than the expense incurred or the loss or the damage suffered as a result of that action or measure,

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

- (2) Where a claim is brought against the Government for compensation under subsection (1) of this section, the Court, in determining whether paragraph (b) of that subsection applies, shall take into account —
  - (a) the extent and probability of imminent damage if the measures had not been taken;
  - (b) the likelihood of the measures taken being effective; and
  - (c) the extent of this damage which has been caused by the measure taken.

## 27 Offences

- (1) Every person commits an offence who —
  - (a) fails to comply with any instructions issued by the Minister pursuant to section 25 of this Act or by any person authorised by the Minister;
  - (b) wilfully obstructs a person acting in compliance with any instructions issued by the Minister pursuant to section 25 of this Act or by any person authorised by the Minister; or
  - (c) wilfully obstruct the Minister or any person acting on behalf of the Minister in carrying out any of the powers conferred on the Minister by section 25 of this Act.
- (2) Every person who commits an offence under this section is liable on conviction to a fine not exceeding \$20,000 and \$2.00 for 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 that the failure to comply with any instructions issued under section 25 of this Act, or, as the case may be, that the wilful obstruction of any person acting in compliance with any such instructions duly issued or of any person acting on behalf of the Minister, resulted from the need to save lives at sea.
- (4) In any proceedings for an offence under this section, it shall also be a defence to prove that the person charged with the offence used all due diligence to comply with any instruction issued by the Minister pursuant to section 27 of this Act or by any person authorised by the Minister.

## 28 Protection of Minister

Where —

- (a) the Minister or any person duly authorised by the Minister has taken any measures pursuant to paragraph (b) of subsection (2) of section 25 of this Act; or

- (b) any person has taken any action or refrained from taking any action in accordance with instruction issued pursuant to paragraph (a) of subsection (2) of section 25 of this Act,

then subject to section 26 of this Act, the Minister or that person as the case may be, shall not incur any civil liability in respect thereof.

## PART V - MISCELLANEOUS PROVISIONS

### 29 General provisions as to application of Act

- (1) The provisions of this Act, except provisions which are expressed as applying only to Tuvaluan ships, shall subject to any exemptions expressly conferred by or under this Act apply to all ships, whether registered or not, and of whatever nationality.
- (2) Regulations made under section 33 of this Act may direct that, subject to such exemptions and modifications as may be prescribed, any regulations made pursuant to section 7 or section 8 of this Act or under subsection (1) of section 13 of this Act shall apply to ships registered in, or having the nationality of, countries other than Tuvalu at any time when they are in port in Tuvalu, or are within Tuvalu waters while on their way to or from port in Tuvalu.
- (3) Regulations made pursuant to this section shall not be made so as to impose different requirements in respect of different countries:

Provided that if the Minister is satisfied, with respect to any country, that ships registered in, or having the nationality of, that country are required, by the law of that country, to comply with provisions which are substantially the same as, or equally effective with, the requirements imposed by virtue of the regulations, the regulations may include a direction that those requirements shall not apply to any ship registered in, or having the nationality of that country if the ship complies with the said provisions applicable thereto under the laws of that country.

- (4) No regulations made pursuant to this section shall apply to any ship as being in port in Tuvalu or on her way to or from port in Tuvalu, if the ship would not have been in port, or, as the case may be, on her way to or from port, but for stress of weather or other circumstances which neither the master nor the owner of the ship could have prevented or forestalled.

### 30 State-owned ships

- (1) The provisions of this Act shall not apply to —
  - (a) warships of a state other than Tuvalu;

- (b) aircraft for the time being used as aircraft of a state other than Tuvalu; and
  - (c) other ships and aircraft operated by a state other than Tuvalu and for the time being used only for government purposes other than commercial purposes.
- (2) The provisions of this Act, whether or not they are expressed as applying only to Tuvaluan ships shall apply to Tuvalu Government ships, as they apply to other Tuvaluan ships.

### **31 Power of Minister to grant exemptions**

- (1) The Minister may exempt any ships or classes of ships from any provisions of this Act or of any regulations made thereunder, either absolutely or subject to such conditions as he thinks fit.
- (2) Except in a case where the Minister considers that by reason of the urgency of the situation it is impracticable to do so, the Minister shall before granting any exemption under this section to give notice of his intention specifying the nature of the exemption proposed and the grounds upon which it is intended to be granted.
- (3) Where any notice is given under subsection (2) of this section, the exemption shall not take effect before the expiration of 28 days after the publication of the notice or such later date as specified in the notice.
- (4) The Minister shall annually lay before Parliament a report stating the cases in which he has exercised his powers under this section and the grounds upon which he has acted in each case.

### **32 Designation of Parties to Conventions**

- (1) The Minister may, from time to time, by Order, declare which are —
  - (a) the Parties to the International Convention for the Prevention of Pollution from Ships, 1973;
  - (b) the Contracting Parties to the Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other matter, 1972;
  - (c) the Parties to the Convention for the Protection of the Natural Resources and Environment of the South Pacific Region, 1986;
  - (d) the Parties to any Protocols to and any revisions and amendments of the Conventions mentioned in paragraphs (a), (b), and (c) of this subsection; and
  - (e) the Parties to any other international agreement for the prevention of marine pollution or the protection of the marine environment to which Tuvalu is a party.

- (2) An Order under this section shall, except so far as it has been superseded by a subsequent Order, the sufficient evidence of the matters so declared.
- (3) If in any proceedings any question arises as to whether any country is a party to any Convention referred to subsection (1) of this section, or to any Convention referred to in section 15 of this Act including any Protocol to or amendment or revision of any such convention, a certificate by the Minister responsible for Foreign Affairs shall be conclusive evidence thereof.

### 33 Regulations

The Minister may from time to time, by Order, 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
- (b) prescribing offences for breaches of any such regulations, and, except where some other penalty is prescribed or permitted by this Act, prescribing fines, not exceeding \$25,000, in respect of any such offence and, where the offence is a continuing one, further fines not exceeding \$2,500 for each day during which the offence has continued.<sup>19</sup>

### 34 Standards and Codes of Practice<sup>20</sup>

- (1) The Minister has authority to approve and publish standards, codes of practice or operating procedures to ensure the effective implementation of this Act and any Convention to which this Act applies, and which relate to:
  - (a) design requirements applying to ships or anything used in connection with the operation of a ship so as to apply the provisions of any applicable Convention to which these Regulations apply;
  - (b) the nature, specifications or capabilities of any pollution prevention equipment which must be carried on board ships, or which must otherwise be available to respond to a marine pollution incident;
  - (c) operations and operational requirements applying to ships so as to apply the provisions of any applicable Convention to which these Regulations apply;
  - (d) the nature, scope and extent of plans and operational measures related to the discharge of any pollutant and the disposal of garbage, and to prevent the discharge of harmful aquatic organisms or pathogens from ballast waters, or by any other activity;
  - (e) operational aspects of hull scraping and cleaning, and other aspects of ship cleaning operations;
  - (f) specifications and operational standards for waste reception facilities at ports (including any arrangements or requirements related to regional

- reception facilities), and any other matter associated with the discharge or disposal of wastes from ships;
- (g) specifications and operational capabilities of equipment necessary to respond to marine pollution incidents from any ship or relevant land-based facility; and
  - (h) the nature, scope and procedure for keeping and maintaining records for any purpose associated with the implementation of these Regulations.
- (2) A standard, code of practice or operating procedure takes effect upon its approval by the Minister.
  - (3) A person to whom a standard, code of practice or operating procedure made under this section is stated to apply, and who fails to comply with such a standard, code of conduct or operating procedure is guilty of an offence and is liable upon conviction to a fine not exceeding \$20,000.

### **35 Immunities<sup>21</sup>**

- (1) The Minister, the Ministry, the Director and all officers, employees and persons acting under the authority of this Act, including committees and persons acting with delegated authority for the purposes of implementing this Act, are not subject to any action, liability, claim or demand for any matter or thing done or omitted to be done in good faith (whether negligently or not) in the performance or purported performance of any function or duty, or the exercise or purported exercise of any power under this Act.
- (2) This section does not affect any rights under section 26.

**SCHEDULE 1**

(Section 23)

**CRITERIA TO GOVERN DUMPING OF WASTE AND OTHER MATTERS**

The following matters are to be taken into account when considering applications for permits for dumping waste or other matter at sea:

**A. Characteristic and Composition of the matter —**

1. Total amount and average composition of matter dumped (for example, per year).
2. Form (for example, solid, sludge, liquid, or gaseous).
3. Properties: physical (for example, solubility and density), chemical and biochemical (for example, oxygen demand, nutrients), and biological (for example, presence of viruses, bacteria, yeasts, parasites).
4. Toxicity.
5. Persistence: physical, chemical, and biological.
6. Accumulation and biotransformation in biological materials or sediments.
7. Susceptible to physical, chemical, and biochemical changes and interaction in the aquatic environment with other organic and inorganic materials.
8. Probability of production of taints or other changes reducing marketability of resources (For example, fish, shellfish).

**B. Characteristics of Dumping site and Method of Deposit —**

1. Location (for example, coordinates of the dumping area, depth, and distance from the coast, location in relation to other areas, (for example, amenity areas, spawning, nursery, and fishing areas, and exploitable resources).
2. Rate of disposal per specific period (for example, quantity per day per week, per month).
3. Methods of packaging and containment, if any.
4. Initial dilution achieved by proposed method of release.
5. Dispersal characteristic (for example, effects on currents, tides, and wind on horizontal transport and vertical mixing).
6. Water characteristics (for example, temperature, pH, salinity, stratification, oxygen incidences of pollution - dissolved oxygen (DO), chemical oxygen

demand(COD), biochemical oxygen demand (BOD) - nitrogen present in organic and mineral form, including ammonia, suspended matter, other nutrients, and productivity).

7. Bottom characteristic (for example, topography, geochemical and geological characteristics and biological productivity).
8. Existence and effects, of other dumpings which have been made in the dumping area (for example, heavy metal background reading and organic carbon content).

### **C. General Considerations and Conditions —**

1. Possible effects on amenities (for example, presence of floating or stranded material, turbidity, objectionable odour, discoloration, and foaming).
2. Possible effect on marine life, fish and shellfish culture, fish stocks and fisheries, seaweed harvesting and culture.
3. Possible effects on other uses of the sea (for example, impairment of water quality for industrial use, underwater corrosion of structures, interference with ship operations from floating materials, interference with fishing or navigation through deposit of waste or solid objects on the sea floor, and protection of areas of special importance for scientific or conservation purposes).
4. The practical availability of alternative land-based methods of treatment, disposal, or elimination, or of treatment to render the matter less harmful for dumping.



**SCHEDULE 2**

(Section 23)

**CRITERIA TO GOVERN INCINERATION OF WASTE AND OTHER MATTER AT SEA****A. Characteristics and Composition of Matter —**

Such of the matters specified in paragraph A of Schedule 1 of this Act as are applicable to incineration.

**B. Characteristics of Incineration Site and Method of Incineration —**

1. Such of the matter specified in paragraph B of Schedule 1 of this Act as are applicable to incineration.
2. The atmospheric dispersal characteristics of the area (for example, as are applicable to incineration wind, speed and direction, atmospheric stability, frequency of inversions and fog, precipitation types and amounts, and humidity), in order to determine the potential impact on the surrounding environment of pollutants released from the marine incineration facility, giving particular attention to the possibility of atmospheric transport of pollutants to coastal areas.
3. The Oceanic dispersal characteristics of the area, in order to evaluate the potential impact of plume interaction with the water surface.
4. The availability of navigational aids.

**C. General Consideration and Conditions —**

Such of the matters specified in paragraph C of Schedule 1 of this Act as are applicable to incineration.

---

## ENDNOTES

---

<sup>1</sup> Act 1 of 1992

Amended by Act 16 of 2017, commencement 24 November 2017

<sup>2</sup> Amended by Act 16 of 2017

<sup>3</sup> Cap. 48.08

<sup>4</sup> Cap. 48.28

<sup>5</sup> Cap. 48.24

<sup>6</sup> Inserted by Act 16 of 2017

<sup>7</sup> Substituted by Act 16 of 2017

<sup>8</sup> Inserted by Act 16 of 2017

<sup>9</sup> Inserted by Act 16 of 2017

<sup>10</sup> Inserted by Act 16 of 2017

<sup>11</sup> Inserted by Act 16 of 2017

<sup>12</sup> Inserted by Act 16 of 2017

<sup>13</sup> Inserted by Act 16 of 2017

<sup>14</sup> Amended by Act 16 of 2017

<sup>15</sup> Amended by Act 16 of 2017

<sup>16</sup> Cap. 48.28

<sup>17</sup> Amended by Act 16 of 2017

<sup>18</sup> Substituted by Act 16 of 2017

<sup>19</sup> Amended by Act 16 of 2017

<sup>20</sup> Inserted by Act 16 of 2017

<sup>21</sup> Inserted by Act 16 of 2017