

**PROTOCOL ON HAZARDOUS AND NOXIOUS SUBSTANCES POLLUTION, PREPAREDNESS,
RESPONSE AND COOPERATION IN THE PACIFIC REGION**

The Parties to this Protocol,

Being Parties to the Convention for the Protection of the Natural Resources and Environment of the South Pacific Region adopted in Noumea, New Caledonia on the twenty-fourth day of November in the year one thousand nine hundred and eighty-six;

Desiring to make this Protocol consistent with the provisions of the Protocol on Preparedness, Response and Co-operation to Pollution Incidents by Hazardous and Noxious Substances, 2000 as envisaged by Article 8 of that Protocol and any other relevant International Maritime Organization (IMO) agreements;

Conscious that pollution by hazardous and noxious substances arising from ships, off-shore units, sea ports and hazardous and noxious substances handling facilities pose the threat of significant pollution incidents in the Pacific Region;

Aware that the islands of the region are particularly vulnerable to damage resulting from significant pollution due to the sensitivity of their ecosystems and their economic reliance on the continuous utilisation of their coastal areas and marine environment;

Mindful of the importance of precautionary measures and prevention in avoiding pollution by hazardous and noxious substances in the first instance, and the need for strict application of existing international instruments dealing with maritime safety and marine pollution prevention, particularly the International Convention for the Safety of Life at Sea, 1974, (SOLAS) as amended, and the International Convention for the Prevention of Pollution from Ships, 1973, as modified by the Protocol of 1978 (MARPOL 73/78) relating thereto, as amended, and also the speedy development of enhanced standards for the design, operation and maintenance of ships carrying hazardous and noxious substances, and of offshore units;

Recognising further the importance of rational preparation and mutual co-operation and assistance in responding effectively to pollution incidents or the threat thereof;

Determined to avert ecological damage to the marine environment and coastal areas of the Pacific Region through the adoption of national contingency plans and the promotion of bilateral and multilateral co-operation in preparedness and response to pollution incidents involving hazardous and noxious substances;

Recognising the special needs and limited resources of Pacific Small Island Developing States with regard to the promotion of international and regional co-operation concerning preparedness and response, and further noting the provisions herein regarding the reimbursement of the cost of assistance provided;

Emphasising the importance of effective preparation for combating pollution incidents by hazardous and noxious substances and the important role which the industries dealing with hazardous and noxious substances and shipping industries have in this regard;

Recognising that in the event of a pollution incident by hazardous and noxious substances, prompt and effective action is essential and should be taken initially at the national level to organise and coordinate prevention, response, mitigation and clean-up activities;

Reaffirming the approach that the polluter should, in principle, bear the cost of pollution;

Bearing in mind the relevant provisions of the United Nations Convention on the Law of the Sea;

Have agreed as follows:

Article 1 DEFINITIONS

For the purposes of this Protocol:

- (a) “Convention” means the Convention for the Protection of the Natural Resources and Environment of the South Pacific Region adopted in Noumea, New Caledonia on the twenty-fourth day of November in the year one thousand nine hundred and eighty-six;
- (b) “hazardous and noxious substances” means any substance other than oil which, if introduced into the marine environment is likely to create hazards to human health, to harm living resources and marine life, to damage amenities or to interfere with other legitimate uses of the sea.
- (c) “Offshore unit” means any fixed or floating offshore installation or structure engaged in gas or oil exploration, exploitation or production activities, or loading or unloading of oil;
- (d) “Organisation” means the Secretariat of the Pacific Regional Environment Programme;
- (e) “pollution incident” means any occurrence or series of occurrences having the same origin, including fire or explosion, which results or may result in a discharge, release or emission of hazardous and noxious substances and which poses or may pose a threat to the marine environment, or to the coastline or related interests of one or more States, and which requires emergency action or immediate response;

- (f) “related interests” of a Party refer, inter alia, to:
- (i) maritime, coastal, port, or estuarine activities;
 - (ii) fishing activities and the management and conservation of living and non-living marine resources, including coastal ecosystems;
 - (iii) the cultural value of the area concerned and the exercise of traditional customary rights therein;
 - (iv) the health of the coastal population; and
 - (v) tourist and recreational activities;
- (g) “Sea ports and hazardous and noxious substances handling facilities” means those ports or facilities where such substances are loaded into or unloaded from ships;
- (h) “Pacific Region” means the Convention Area as defined in Article 2 of the Convention and adjacent coastal areas.

Article 2 APPLICATION

1. This Protocol applies to pollution incidents in the Pacific Region.
2. Each Party shall apply this Protocol without prejudice to the sovereignty or the jurisdiction of other Parties or other States. Any measure taken by a Party to apply this Protocol shall be in accordance with international law.

Article 3 PLANNING AND RESPONSE PROVISIONS

1. The Parties to this Protocol shall, within their respective capabilities, co-operate in taking all necessary measures for the protection of the Pacific Region from the threat and effects of pollution incidents.
2. The Parties shall, within their respective capabilities, establish and maintain, or continue the establishment and maintenance of national systems aimed at preventing, responding to and combating pollution incidents, and reducing the risk thereof. Such means shall include:
 - (a) the enactment, as necessary, of relevant legislation;
 - (b) the designation of:
 - (i) a competent national authority or authorities with responsibility for pollution preparedness and response;
 - (ii) a national operational contact point or points, which shall be responsible for the receipt and transmission of pollution incident reports; and
 - (iii) an authority which is entitled to act on behalf of the State to request assistance, or to decide to render any assistance requested;

- (c) a national contingency plan for preparedness and response which includes the organisational relationship of the various bodies involved, whether public or private, taking into account guidelines developed by the Organisation and the International Maritime Organization.
3. Each Party shall require that ships entitled to fly its flag have on board a shipboard pollution emergency pollution plan in accordance with the provisions developed by the International Maritime Organization.
4. Each Party shall require that authorities or operators in charge of such sea ports and hazardous and noxious substances handling facilities under its jurisdiction as it deems appropriate have pollution incident plans or similar arrangements which are co-ordinated with the national system established and approved in accordance with procedures established by the competent national authority.
5. In addition, each Party, within its capabilities either individually or through bilateral or multilateral cooperation and, as appropriate, in cooperation with the shipping industries and industries dealing with hazardous and noxious substances, port authorities and other relevant entities, shall establish:
- (a) a minimum level of pre-positioned equipment for responding to pollution incidents, commensurate with the risk involved, and programmes for its use;
 - (b) a programme of exercises for pollution incident response organisations and training of relevant personnel;
 - (c) detailed plans and communication capabilities for responding to a pollution incident. Such capabilities should be continuously available; and
 - (d) a mechanism or arrangement to coordinate the response to a pollution incident with, if appropriate, the capabilities to mobilise the necessary resources.

Article 4 EXCHANGE OF INFORMATION

1. Each Party shall periodically exchange with other Parties, either directly or through the Organisation, current information relating to the implementation of this Protocol, including the identification of the officials charged with carrying out the activities covered by it, and information on its laws, regulations, institutions and operational procedures relating to the prevention and the means of reducing and combating the harmful effects of pollution incidents.
2. In particular each Party shall ensure that current information is provided to the Organisation concerning:
- (a) the location, telecommunication data and, if applicable, areas of responsibility of authorities and entities responsible for pollution preparedness and response;

- (b) information concerning pollution response equipment and expertise in disciplines related to pollution incident response and marine salvage which may be made available to other States, upon request; and
- (c) its national contingency plan.

Article 5 REPORTING OF POLLUTION INCIDENTS

1. Each Party shall within its respective capability establish appropriate procedures to ensure that information regarding pollution incidents is reported as rapidly as possible and shall, inter alia:

- (a) require masters or other persons having charge of ships flying its flag and persons having charge of offshore units under its jurisdiction to report without delay any event on their ship or offshore unit involving a discharge or probable discharge of hazardous and noxious substance
 - (i) in the case of a ship, to the nearest coastal State;
 - (ii) in the case of an offshore unit, to the coastal State to whose jurisdiction the unit is subject;
- (b) require masters or other persons having charge of ships flying its flag and persons having charge of offshore units under its jurisdiction to report without delay any observed event at sea involving a discharge of hazardous and noxious substances or the presence of hazardous and noxious substances:
 - (i) in the case of a ship, to the nearest coastal State;
 - (ii) in the case of an offshore unit, to the coastal State to whose jurisdiction the unit is subject;
- (c) require persons having charge of seaports and hazardous and noxious substances handling facilities under its jurisdiction to report without delay any event involving a discharge or probable discharge of hazardous and noxious substances or the presence of hazardous and noxious substances to the competent national authority;
- (d) instruct its maritime inspection vessels or aircraft and other appropriate services or officials to report without delay any observed event at sea or at a sea port or hazardous and noxious substances handling facility involving a discharge of hazardous and noxious substances or the presence of hazardous and noxious substances to the competent national authority or, as the case may be, to the nearest coastal State;
- (e) request the pilots of civil aircraft to report without delay any observed event at sea involving a discharge of hazardous and noxious substances or the presence of hazardous and noxious substances to the nearest coastal State.

2. Reports made under this Article shall be required to conform with any applicable international requirements, and in particular shall be made in accordance with the requirements of the Organisation and taking into account the guidelines and general principles adopted by the International Maritime Organization.

3. In the event of receiving a report regarding a pollution incident, each Party shall promptly inform all other Parties whose interests are likely to be affected by such incident as well as the flag State of any vessel involved in it. Each Party shall also inform the Organisation and, directly or through the Organisation, the competent international organisations. Furthermore, it shall inform, as soon as feasible, such other Parties and organisations of any measures it has itself taken to minimise or reduce pollution or the threat thereof.

Article 6 OPERATIONAL MEASURES

Each Party shall, within its capabilities, take steps including those outlined below in responding to a pollution incident:

- (a) make a preliminary assessment of the pollution incident, including the type and extent of existing or likely pollution incident effects;
- (b) promptly communicate information concerning the situation to other Parties, any other State likely to be affected by the pollution incident and the Organisation, consistent with Article 5.3;
- (c) promptly determine its ability to take effective measures to respond to the pollution incident and the assistance that might be required and to communicate any request for such assistance to the Party or Parties concerned or the Organisation in accordance with Article 7;
- (d) consult, as appropriate, with other affected or concerned Parties or the Organisation in determining the necessary response to a pollution incident; and
- (e) carry out the necessary measures to prevent, eliminate or control the effects of the pollution incident, including surveillance and monitoring of the situation.

Article 7 MUTUAL ASSISTANCE

1. Each Party requiring assistance to deal with a pollution incident may request, either directly or through the Organisation, the assistance of the other Parties. The assistance sought may be in the nature of advisory services, technical support or the provision of equipment. The Party requesting assistance shall specify the type of assistance it requires. The Parties whose assistance is requested under this Article shall, within their capabilities, provide this assistance based on an agreement with the requesting Party or Parties and taking into account, the technological means available to them. If the Parties responding jointly within the framework of this Article so request, the Organisation may co-ordinate the activities undertaken as a result.

2. Each Party shall facilitate the movement of technical personnel, equipment and material necessary for responding to a pollution incident, into, out of and through its territory.

Article 8 REIMBURSEMENT OF COSTS OF ASSISTANCE

Unless an agreement concerning the financial arrangements governing actions of Parties to deal with pollution incidents has been concluded on a bilateral or multilateral basis prior to the pollution incident, Parties shall apply the following principles in relation to the bearing and reimbursement of all costs involved in the response:

- (a) If the action was taken by a Party on its own initiative, that Party shall bear the costs of its action;
- (b) If the action was taken by one Party at the express request of another Party, the requesting Party shall reimburse to the assisting Party the cost of its actions;
- (c) The requesting Party may cancel its request at any time, but in that case it shall bear the costs already incurred or committed by the assisting Party;
- (d) Nothing in paragraphs (b) or (c) shall affect any agreement made between Parties that makes alternative arrangements for any individual case;
- (e) Unless otherwise agreed, the costs of action taken by a Party at the request of another Party shall be fairly calculated according to the law and current practice of the assisting Party concerning the reimbursement of such costs;
- (f) The Party requesting assistance and the assisting Party shall, where appropriate, cooperate in concluding any action in response to a compensation claim. To that end, they shall give due consideration to existing legal regimes. Where the action thus concluded does not permit full compensation for expenses incurred in the assistance operation, the Party requesting assistance may ask the assisting Party to waive reimbursement of the expenses exceeding the sums compensated or to reduce the costs which have been calculated in accordance with paragraph (e). It may also request a postponement of the reimbursement of such costs. In considering such a request, assisting Parties shall give due consideration to the needs of the developing countries; and
- (g) The provisions of this Protocol shall not be interpreted as in any way prejudicing the rights of Parties to recover from third parties the costs of actions to deal with pollution or the threat of pollution under other applicable provisions and rules of national and international law. Special attention shall be paid to relevant International Maritime Organization liability and compensation agreements.

Article 9 SUB-REGIONAL ARRANGEMENTS

1. The Parties should develop and maintain appropriate sub-regional arrangements, bilateral or multilateral, in particular to facilitate the steps provided for in Articles 6 and 7 and taking into account the general provisions of this Protocol.
2. The Parties to any arrangements shall notify the other Parties to this Protocol as well as the Organisation of the conclusion of such sub-regional arrangements and the provisions thereof.

Article 10 INSTITUTIONAL ARRANGEMENTS

The Parties designate the Organisation to carry out the following functions:

- (a) assisting Parties, upon request, in the communication of reports of pollution incidents in accordance with Article 5;
- (b) assisting Parties, upon request, in the organisation of a response action to a pollution incident, in accordance with Article 7;
- (c) assisting Parties, upon request, in the following areas:
 - (i) the preparation, periodic review, and updating of the contingency plans, referred to in paragraph 2 of Article 3, with a view, inter alia, to promoting the compatibility of the plans of the Parties; and
 - (ii) the identification of training courses and programmes;
- (d) assisting the Parties upon request, on a regional or sub-regional basis, in the following areas:
 - (i) the co-ordination of pollution incident response activities; and
 - (ii) the provision of a forum for discussions concerning pollution incident response and other related topics;
 - (iii) the provision of policy and technical advice including guidelines.
- (e) establishing and maintaining liaison with:
 - (i) the relevant regional and international organisations; and
 - (ii) relevant private organisations, including producers and transporters of substances which could give rise to a pollution incident in the Pacific Region and clean-up contractors and cooperatives;
- (f) maintaining an appropriate current inventory of available pollution incident response equipment;
- (g) disseminating information related to the prevention and control of pollution incidents and the removal of pollutants resulting therefrom;
- (h) identifying or maintaining pollution incident response communications systems;

- (i) encouraging research by the Parties, as well as by relevant international and private organisations, on the environmental effects of pollution incidents, the environmental effects of pollution incident control materials and other matters related to pollution incidents;
- (j) assisting Parties in the exchange of information pursuant to Article 4; and
- (k) preparing reports and carrying out other duties assigned to it by the Parties.

Article 11 MEETINGS OF THE PARTIES

1. Ordinary meetings of the Parties to this Protocol shall be held in conjunction with ordinary meetings of the Parties to the Convention, held pursuant to Article 22 of the Convention. The Parties to this Protocol may also hold extraordinary meetings as provided for in Article 22 of the Convention.
2. It shall be the function of the meetings of the Parties:
 - (a) to review the operation of this Protocol and to consider special technical arrangements and other measures to improve its effectiveness;
 - (b) to consider any measures to improve cooperation under this Protocol including, in accordance with Article 24 of the Convention, amendments to this Protocol.

Article 12 RELATIONSHIP BETWEEN THIS PROTOCOL AND THE CONVENTION

1. The provisions of the Convention relating to any Protocol shall apply with respect to the present Protocol.
2. The rules of procedure and the financial rules adopted pursuant to Article 22 of the Convention shall apply with respect to this Protocol, unless the Parties to this Protocol agree otherwise.

IN WITNESS WHEREOF the undersigned, being duly authorised by their respective Governments, have signed this Protocol.

Done at Noumea, New Caledonia on the seventh day of September two thousand and six, in a single copy in the English and French languages, the two texts being equally authentic.