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1974, No. 14

An Act to make better provision for preventing and dealing with pollution of the sea, and to enable effect to be given to certain International Conventions relating thereto

[6 April 1974]

BE IT ENACTED by the General Assembly of New Zealand in Parliament assembled, and by the authority of the same, as follows:

1. Short Title and commencement—(1) This Act may be cited as the Marine Pollution Act 1974.

(2) This Act shall come into force on a date to be fixed by the Governor-General by Order in Council. Different dates may be so fixed in respect of different provisions of this Act.

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

“Aircraft” has the same meaning as in section 2 of the Civil Aviation Act 1964; and includes a hovercraft as defined in section 2 of the Hovercraft Act 1971:

“Barge” includes a lighter or any similar vessel:

“Continental shelf” has the same meaning as in the Continental Shelf Act 1964:

“Dumping”—

(a) In relation to waste or other matter, means the deliberate disposal into the sea of the waste or other matter; and

(b) In relation to a ship, an aircraft, an offshore installation, a fixed or floating platform, or any other artificial structure which is situated in the sea or on the sea-bed, means a deliberate disposal into the sea or abandonment at sea of the same;—

but does not include the disposal of waste or other matter incidental to, or derived from, the normal operations of ships, aircraft, offshore installations, platforms, or other man-made structures at sea or their equipment, or the disposal of waste or other matter in the construction of any harbour works as defined in section 2 of the Harbours Act 1950; and “to dump” and “dumped” have corresponding meanings:

“Franc” has the meaning assigned to that term by section 59 of this Act:

“Harbour” or “port” has the same meaning as in the Harbours Act 1950:

“Harbour Board” has the same meaning as in the Harbours Act 1950:

“Harbourmaster” includes any person specially appointed by a Harbour Board for the purpose of enforcing the provisions of this Act in relation to the harbour; and, in relation to a harbour which has no Harbourmaster, references to the Harbourmaster shall be read as references to the Harbour Board:

“Heavy diesel oil” means marine diesel oil, other than those distillates of which more than 50 percent by volume distils at a temperature not exceeding 340°C when tested 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:

“Home-trade ship” has the same meaning as in the Shipping and Seamen Act 1952:

“Incident”, in relation to pollution damage, means any occurrence, or any series of occurrences having the same origin, which causes the damage:

“Internal waters of New Zealand” means—

(a) Harbours, estuaries, and other areas of the sea that are on the landward side of the baseline of the territorial sea of New Zealand; and

(b) Rivers and other inland waters of New Zealand that are navigable by ships:

“Marine life” means any species of the plant or animal kingdoms which at any time of the life of the species inhabits the sea or foreshore; and includes any specimen of the species whether alive or dead, and any part of any specimen, and the seed, spores, eggs, spawn, young, fry, and offspring of the species:

“Master” includes any person (not being a pilot) having command of or being in charge of any ship:

“Mile” means the international nautical mile of 1,852 metres:

“Minister” means the Minister of Transport:

“Natural resources” has the same meaning as in the Continental Shelf Act 1964:

“New Zealand aircraft” means any aircraft that is registered or required to be registered in New Zealand under the Civil Aviation Act 1964; but does not include any aircraft for the time being used as an aircraft of the New Zealand armed forces:

“New Zealand Government ship” has the same meaning as in the Shipping and Seamen Act 1952:

“New Zealand ship” has the same meaning as in the Shipping and Seamen Act 1952; and includes barges, lighters, and like vessels to which section 245A of that Act (as inserted by section 17 of the Shipping and Seamen Amendment Act 1963) applies:

“New Zealand waters” means the internal waters of New Zealand and the territorial sea of New Zealand:

“Offshore installation” includes—

(a) Any installation or device or anything (whether permanent or temporary) constructed, erected, placed, or used in or on or above the bed and subsoil of any New Zealand waters; and

(b) Any such installation or device (whether permanent or temporary) constructed, erected, placed, or used in or on or above the seabed and subsoil of the continental shelf in connection with the exploration of the seabed and subsoil and the exploitation of the natural resources thereof; and

(c) Anything afloat (other than a ship) if it is anchored or attached to the bed or shore of any

New Zealand waters, or if it is anchored or attached to the bed of the waters over the continental shelf in connection with the exploration and exploitation of the natural resources thereof; and

(d) Any structure connecting an offshore installation with any other offshore installation;—
but does not include a pipeline:

“Oil” means oil of any description in any form; and, without limiting the generality of the foregoing provisions of this definition, includes spirits and other distillates produced from oil of any description; and also includes coal tar, bitumen, bitumen emulsions, fuel oil, sludge, oil refuse, and oil mixed with wastes; and references to oil shall be construed as a reference to mixtures of oil with water or with any other substance:

Provided that, in relation to any ship to which section 32 of this Act applies, the term “oil” has the meaning defined in subsection (9) of that section:

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

“Outside New Zealand waters” means outside the seaward limits of the territorial sea of New Zealand:

“Owner”—

(a) In relation to any ship (other than a ship to which section 32 of this Act applies), includes—

(i) Any person interested in or in possession of the ship; and in Parts I, II, and III and section 30 of this Act, includes any salvor in possession of the ship, and any servant or agent of any salvor in possession of the ship; and

(ii) 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; and

(iii) Any agent in New Zealand of the owner, charterer, manager, or operator, as the case may be; and

(iv) Any agent for the ship:

(b) In relation to any ship to which section 32 of this Act applies, has the meaning defined in subsection (9) of that section:

(c) In relation to an offshore installation, includes—

- (i) The person having any right or privilege or licence to explore the seabed and subsoil and to exploit the natural resources thereof in connection with which the offshore installation is or has been or is to be used; and
- (ii) The agent or servant of the owner or the manager or licensee for the time being of the installation, or the person in charge of any operations connected therewith:

“Pipeline” means a pipeline used for the conveyance of gas (including natural gas), oil, water, or any other mineral, liquid, or substance, or any mixture of the same; and includes all fittings, pumps, tanks, appurtenances, and appliances connected to a pipeline:

“Place on land” means any place on dry land or any place connected with dry land; and the term “occupier”, in relation to a place on land which has no other occupier, means the owner thereof, and, in relation to a railway wagon or road vehicle, means the person in charge of the wagon or vehicle and not the occupier of the land on which the wagon or vehicle stands:

“Pollutant” means any substance, or any substance that is part of a class of substances, declared by the Governor-General pursuant to subsection (2) of this section to be a pollutant for the purposes of this Act; and includes any water contaminated by any such substance; and a reference to any pollutant shall be construed as a reference to mixtures of a pollutant with water or with any other substance:

“Pollution damage” means damage of any kind whatsoever occurring in New Zealand or in New Zealand waters which is attributable to the discharge or escape of oil, or (except in the case of any provision relating only to damage attributable to oil) any pollutant, into the sea, whether New Zealand waters or not; and includes the costs of reasonable preventive measures taken in New Zealand or in New Zealand waters or outside those waters to prevent or reduce pollution damage and any further loss or

damage occurring as a result of such measures; and in Part V of this Act also includes expenses reasonably incurred and sacrifices reasonably made by the owner of a ship voluntarily to prevent or reduce pollution damage; and for the purposes of this definition the term "damage" includes loss:

"Reception facilities", in relation to any harbour, means facilities for enabling ships using the harbour to discharge or deposit oil residues or residues from any pollutant:

"Sea" means all areas of the sea (whether New Zealand waters or not); and includes any estuary or arm of the sea:

"Ship" means every description of vessel (including any boat, barge, craft, or other contrivance) used in or on or under the sea, without regard to the method of or the lack of propulsion:

"Shipping casualty" means a collision of ships, the loss, stranding or abandonment of any ship, or any other incident occurring outside any ship or on board any ship or to any ship resulting in material damage or the risk of material damage to any ship or cargo or both:

"Special permit" means a permit to dump waste or other matter issued pursuant to section 22 of this Act:

"Territorial sea of New Zealand" has the same meaning as in the Territorial Sea and Fishing Zone Act 1965:

"Tonnage", in relation to any ship, means the tonnage of the ship determined in accordance with paragraph (b) of subsection (1) of section 466 of the Shipping and Seamen Act 1952:

Provided that where the tonnage of a ship carrying oil cannot be ascertained in accordance with that paragraph, the tonnage of the ship shall be deemed to be 40 percent of the weight (expressed in tons of 2,240 pounds) of oil which the ship is capable of carrying:

"Transfer", in relation to oil or any pollutant, means transfer in bulk:

"Waste or other matter" means material and substances of any kind, form, or description; and, without limiting the generality of the foregoing provisions of this definition, includes oil and any substance (whether or not it has been declared to be a pollutant pursuant to subsection (2) of this section).

(2) The Governor-General may from time to time, by Order in Council, declare to be a pollutant for the purposes of this Act or of any provision of this Act any substance, or any class of substances, other than oil, which, in the opinion of the Governor-General, 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 any pollutant, or to any oil or pollutant being discharged, from any ship or offshore installation or place or thing or pipeline or apparatus, or as the result of any of the operations mentioned in section 5 of this Act (except where the reference is to its being discharged for a specified purpose) includes, but is not limited to, spilling, leaking, pumping, pouring, emitting, or emptying of that oil or pollutant, as the case may be, howsoever it is caused and howsoever it occurs; but does not include dumping.

(4) For the purposes of any provision of this Act relating to the discharge or escape of oil or a mixture containing oil from a ship, any floating craft (other than a ship) which is attached to a ship shall be treated as part of the ship.

(5) Any power conferred by this Act to test any equipment on board a ship or on any offshore installation shall be construed as including a power to require persons on board the ship or on the installation to carry out such work as may be requisite for the purposes of testing the equipment; and any provision of this Act as to submitting equipment for testing shall be construed accordingly.

Cf. 1965, No. 65, s. 2; Merchant Shipping (Oil Pollution) Act 1971 (U.K.), s. 20 (1); Prevention of Oil Pollution Act 1971 (U.K.), s. 29; Canada Shipping Act (Can.), s. 736 (R.S.C., 1971, Ch. 27)

PART I

PREVENTION OF POLLUTION

3. Discharge of oil or pollutants into New Zealand waters—

(1) If any oil or pollutant is discharged or escapes into New Zealand 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 an offshore installation, or as the result of any operations for the exploration of the seabed or subsoil or the exploitation of the natural resources thereof, or from a pipeline, 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; or
- (b) If the discharge or escape is from a place on land, the occupier of that place; or
- (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 an offshore installation or as the result of any operations for the exploration of the seabed and subsoil or the exploitation of the natural resources thereof, the owner or the person carrying on the operations or the person in charge of the operations; or
- (e) If the discharge or escape is from a pipeline, the owner of the pipeline—

commits an offence under this section.

(2) Without limiting the liability for an offence under this section of any person mentioned in subsection (1) of this section, where that person is not the person whose act or omission caused the discharge or escape, then, whether or not that first-mentioned person establishes any of the defences mentioned in subsection (3) or subsection (5) of section 6 of this Act, the person whose act or omission caused the escape also commits an offence under this section.

(3) Regulations made under section 68 of this Act may make exceptions from the operation of subsection (1) of this section, either absolutely or subject to any 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.

Cf. 1965, No. 65, s. 6; Prevention of Oil Pollution Act 1971 (U.K.), s. 2

4. Discharge of oil or pollutant into waters outside New Zealand waters—(1) If any oil or pollutant to which this section applies is discharged or escapes from a New Zealand ship or a home-trade ship into any part of the sea outside New Zealand waters, then, subject to the provisions of this Act, the owner or master of the ship commits an offence under this section.

(2) This section applies to—

(a) Crude oil, fuel oil, lubricating oil, and heavy diesel oil:

(b) Any other description of oil to which this section is for the time being declared to apply by regulations made under this Act, having regard to the provisions of any International Convention, or to the persistent character of oil of that description or to the likelihood that it would cause pollution or that it would be harmful to marine life:

(c) Any pollutant to which this section is for the time being declared to apply by regulations made under this Act, having regard to the provisions of any International 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 68 of this Act may make exceptions from the operation of subsection (1) of this section, either absolutely or subject to any prescribed conditions, and either generally or in relation to particular classes of ship or to any specified ship, 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 in the regulations.

Cf. 1965, No. 65, ss. 3–5; Prevention of Oil Pollution Act 1971 (U.K.), s. 1

5. Discharge of oil or pollutant as the result of exploration or exploitation of the seabed—(1) If any oil or pollutant is discharged or escapes into any part of the sea—

(a) From a pipeline within New Zealand waters or on the continental shelf; or

(b) Otherwise than from a ship, as a result of any operations for the exploration of the seabed or

subsoil of the continental shelf or the exploitation of the natural resources thereof, or from an offshore installation,—

the owner of the pipeline, or, as the case may be, the person carrying on the operations, or the owner of the offshore installation, commits an offence under this section.

(2) Without limiting the liability for an offence under this section of any person mentioned in subsection (1) of this section, where that person is not the person whose act or omission caused the discharge or escape, then, whether or not that first-mentioned person establishes any of the defences mentioned in subsection (3) or subsection (5) of section 6 of this Act, the person whose act or omission caused the escape also commits an offence under this section.

Cf. 1965, No. 65, s. 10; Prevention of Oil Pollution Act 1971 (U.K.), s. 3

6. Special defences—(1) Where a person is charged with an offence under section 3 or section 5 of this Act, or is charged with an offence under section 4 of this Act as the owner or master of a ship, it shall be a defence to prove that the oil or pollutant, 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 any ship or offshore installation, or of preventing damage to any ship or cargo, or of saving life:

Provided that a defence under this subsection shall not have effect if the Court is satisfied that the discharge of the oil or pollutant, as the case may be, was not necessary for the purpose alleged in the defence or was not a reasonable step to take in 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 escaped in consequence of major structural damage to—

(a) The ship; or

(b) Any offshore installation, or any apparatus other than a ship used in or for any operations for the exploration of the seabed or subsoil or the exploitation of the natural resources thereof,—

which 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.

(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 (express or implied) of the occupier:

Provided that a defence under this subsection shall not have effect if the Court is satisfied that the person charged—

- (a) Had not taken all reasonable steps to prevent the person who actually caused the discharge or escape from obtaining access to the place; and
- (b) Had not complied with the requirements of any other Act applying to that 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 reasonable care, and that immediately the discharge or escape was discovered all reasonable steps were taken to stop or reduce it.

(5) Where any oil or pollutant is discharged or escapes in consequence of the exercise by any Minister of the Crown or any Harbour Board or any Receiver of Wreck of any power conferred on him or it by or under section 208 of the Harbours Act 1950 or section 353 of the Shipping and Seamen Act 1952, and apart from this subsection the Minister or Board or Receiver exercising the power or a person employed by or acting on his or its behalf would commit an offence under section 3 or section 4 of this Act in respect of that discharge or escape, the Minister or Board or Receiver or person shall not be convicted of that offence if it is shown that he or it took all practicable steps to prevent, stop, or reduce the discharge.

Cf. 1965, No. 65, s. 7; Prevention of Oil Pollution Act 1971 (U.K.), ss. 5-7

7. Equipment in ships to prevent pollution—(1) For the purpose of preventing or reducing discharges or escapes of oil or pollutants into the sea, regulations may be made under section 68 of this Act requiring New Zealand ships, home-trade ships, and any other ships while they are within New Zealand 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 to be fitted with equipment of a prescribed description, the regulations may provide that equipment of that description—

- (a) Shall not be installed in a ship to which the regulations apply, unless the equipment is of a type tested and approved by a person appointed by the Minister; or
- (b) While installed in such a ship, 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 any such tests, may charge such fees as may be prescribed by the regulations.

(4) Every Surveyor of Ships appointed under section 13 of the Shipping and Seamen Act 1952 shall be deemed to be a person appointed by the Minister to carry out tests for the purposes of any regulations made pursuant to this section, so far as they relate to tests required in accordance with paragraph (b) of subsection (2) of this section.

(5) If in the case of any ship the provisions of any regulations made pursuant to this section which apply to that ship are contravened, the owner or master of the ship commits an offence under this section.

Cf. 1965, No. 65, s. 8

8. Equipment in ships to deal with pollution—(1) For the purpose of cleaning up or removing or dispersing any oil or pollutant in or on the sea, regulations may be made under section 68 of this Act requiring New Zealand ships, home-trade ships, and any other ships while they are within New Zealand 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 to carry equipment of a prescribed description, the regulations may provide that equipment of that description—

(a) Shall not be installed in a ship to which the regulations apply, unless the equipment is of a type tested and approved by a person appointed by the Minister; and

(b) While carried on board such a ship, 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 any such tests, may charge such fees as may be prescribed by the regulations.

(4) Every Surveyor of Ships appointed under section 13 of the Shipping and Seamen Act 1952 shall be deemed to be a person appointed by the Minister to carry out tests for the purposes of any regulations made pursuant to this section, so far as they relate to tests required in accordance with paragraph (b) of subsection (2) of this section.

(5) If in the case of any ship the provisions of any regulations made pursuant to this section which apply to that ship are contravened, the owner or master of the ship commits an offence under this section.

Cf. 1965, No. 65, s. 8

9. Equipment for pipelines and offshore installations—

(1) Regulations may be made under section 68 of this Act requiring the owner of a pipeline in New Zealand waters or on the continental shelf or the owner or occupier of a place on land, or the owner of an offshore installation, or the person carrying on operations within New Zealand waters or on the continental shelf or in waters above the continental shelf for the exploration of the seabed and subsoil and the exploitation of the natural resources thereof, to install or carry on board or to have readily available such equipment, and to comply with such requirements, as may be prescribed,—

(a) For the purpose of reducing or preventing the discharge or escape of oil or any pollutant into the sea or on to the seabed; and

(b) For the purpose of cleaning up, or removing, or dispersing any oil or pollutant that is discharged or escapes into the sea or on to the seabed.

(2) Without prejudice to the generality of subsection (1) of this section, where any regulations made pursuant to that subsection require equipment of a prescribed description to be installed, carried on board, or readily available, the regulations may provide that equipment of that description—

(a) Shall not be used, unless it is of a type tested and approved by a person appointed by the Minister; and

(b) While installed, carried on board, or available, 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 any such tests, may charge such fees as may be prescribed by the regulations.

(4) Every Surveyor of Ships appointed under section 13 of the Shipping and Seamen Act 1952 shall be deemed to be a person appointed by the Minister to carry out tests for the purposes of any regulations made pursuant to 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 occupier, as the case may be, commits an offence under this section.

10. Penalties—Every person who commits an offence under any of the provisions of sections 3 to 9 of this Act—

(a) Is liable on summary conviction to a fine not exceeding \$50,000; 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 oil or pollutant to which the offence relates from any New Zealand waters or from any foreshore or harbour works in New Zealand.

Cf. 1965, No. 65, s. 11

11. Records—(1) Regulations may be made under section 68 of this Act requiring the master of a New Zealand ship or home-trade 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) Any occasion on which oil is found to be escaping or to have escaped or is discharged from the ship; and
- (b) Any occasion on which oil is discharged from the ship for the purpose of securing the safety of any ship or of preventing damage to any ship or cargo or of saving life; and
- (c) Any occasion on which oil is found to be escaping or to have escaped, or is discharged, from the ship in consequence of damage to the ship, or by reason of leakage; and
- (d) The carrying out, on board or in connection with the ship, of such operations as may be prescribed, being operations relating to—
 - (i) 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; or
 - (ii) The separation of oil from water, or from other substances, in any mixture containing oil; or
 - (iii) The loading of oil cargo; or
 - (iv) The transfer of oil cargo during a voyage to or from a ship, or between tanks within a ship; or
 - (v) The discharge of oil cargo; or
 - (vi) The discharge or other disposal of any oil, or water, or any other substance, arising from operations relating to any of the matters specified in subparagraphs (i) to (v) of this paragraph; or
 - (vii) The discharge or disposal of any other oil residues or sediments or of any other mixture containing oil.

(2) Regulations may be made under section 68 of this Act requiring the keeping of records of all or any of the matters specified in subsection (1) of this section while a ship is within New Zealand waters or requiring the keeping of records relating to the transfer of oil to and from ships while within New Zealand waters. In the case of ships in respect of which requirements are imposed pursuant to subsection (1) of this section any requirements imposed pursuant to this section shall be in addition to those imposed pursuant to the said subsection (1).

(3) Regulations made under section 68 of this Act may require the person in charge (other than the master) of a barge, dracone, or other like craft or the owner of or person in charge of any offshore installation or of any apparatus being used for operations relating to the exploration of the seabed and sub-soil of New Zealand waters or the continental shelf and the exploitation of the natural resources thereof 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 68 of this Act may require the master of a New Zealand ship or home-trade ship, or the person in charge of a barge, dracone, or other like craft, or the owner or person in charge of an offshore installation or any apparatus, or the master of any ship while that ship is in New Zealand waters, to carry thereon a record book, whether as part of an official log book or as a separate record book, and to keep in that book records relating to the discharge or escape of pollutants, the loading or unloading of pollutants, the transfer of pollutants, and any other operations in respect of pollutants that may be prescribed.

(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) Where by virtue of regulations made pursuant to this section records are required to be kept, the regulations may—

- (a) Prescribe the manner and form of the records to be kept; and
- (b) The nature of the entries to be made; and
- (c) The period of time for which the records must be kept by the person keeping them; and
- (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 summary conviction to a fine not exceeding \$3,000.

(8) Every person commits an offence who makes an entry in any records kept pursuant to regulations made pursuant to this section which is to his knowledge false or misleading in any material particular, and is liable on summary conviction to imprisonment for a term not exceeding 1 year, or to a fine not exceeding \$3,000, or to both.

- (9) In any proceedings under this Part of this Act—
- (a) Any records kept pursuant to regulations made pursuant to this section shall be admissible as evidence of the facts stated in those records:
 - (b) Any copy of an entry in any such records, which is certified 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:
 - (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.

Cf. 1965, No. 65, s. 12; Prevention of Pollution Act 1971 (U.K.), s. 17

12. Facilities in harbours for disposal of residues—

(1) Without restricting anything in the Harbours Act 1950, the powers of the Harbour Board in respect of every harbour under its control shall include power to provide facilities for enabling ships using the harbour to discharge or deposit oil residues or pollutant residues.

(2) Any power of a Harbour Board to provide oil reception facilities or pollutant reception facilities shall include power to join with any other person in providing them, and references in this section to the provision of oil or pollutant reception facilities by a Harbour Board shall be construed accordingly; and any such power shall also include power to arrange for the provision of such facilities by any other person.

(3) A Harbour Board providing oil or pollutant reception facilities, or a person providing such facilities by arrangement with a Harbour Board, may make reasonable charges for the use of the facilities, and may impose reasonable conditions in respect of the use thereof.

(4) Subject to the following provisions of this section, any oil or pollutant reception facilities provided by, or by arrangement with, a Harbour Board shall be open to all ships using the harbour, on payment of any charges, and subject to compliance with any conditions, imposed in accordance with subsection (3) of this section.

(5) Where in the case of any harbour it appears to the Minister, after consultation with the Harbour Board and with any organisation appearing to him to be representative of shipowners, whether of New Zealand ships or not,—

- (a) If the harbour has oil or pollutant reception facilities, that those facilities are inadequate; or
- (b) If the harbour has no such facilities, that the harbour has need of such facilities,—

the Minister may direct the Harbour Board to provide, or arrange for the provision of, such oil or pollutant reception facilities as may be specified in the directions.

(6) Nothing in this section shall be construed as requiring a Harbour Board to allow untreated ballast water (that is to say, ballast water which contains oil or pollutant and has not been subjected to an effective process for separating the oil or the pollutant from the water) to be discharged into any oil or pollutant reception facilities provided by, or by arrangement with, the Harbour Board; and the Minister shall exercise his powers under subsection (5) of this section accordingly.

(7) Any Harbour Board failing to comply with any directions given under subsection (5) of this section within the period specified in the directions, or within any extended period allowed by the Minister (whether before or after the end of the period so specified), commits an offence and is liable on summary conviction to a fine not exceeding \$500 for each day during which the default continues, from the day after the end of the period specified in the directions or any extended period allowed by the Minister, as the case may be, until the last day before that on which the facilities are provided in accordance with the directions.

(8) Subsections (1), (2), (5), and (7) of this section shall have effect in relation to arrangements for disposing of oil residues and pollutant residues discharged or deposited by ships using the harbour's reception facilities, and to the making of such arrangements, as those subsections have effect in relation to oil reception facilities and pollutant facilities and the provision of those facilities.

Cf. 1965, No. 65, s. 13

13. Provision of substances and equipment in harbours—

(1) Where in the case of any harbour it appears to the Minister, after consultation with the Harbour Board, that—

- (a) If the Harbour Board has substances, materials, and equipment on hand for dealing with, cleaning up,

removing, or dispersing any oil or pollutant which has been discharged or has escaped into the harbour from a ship, a place on land, or a pipeline, those substances or materials or that equipment are inadequate; or

- (b) If the Harbour Board has no such substances, materials, or equipment, as the case may be, on hand for dealing with, cleaning up, removing, or dispersing any oil or pollutant which has been discharged or has escaped into the harbour from a ship, a place on land, or a pipeline, the harbour has need of such substances, materials, or equipment, as the case may be,—

the Minister may direct the Harbour Board to provide or arrange for the provision of such substances, materials, or equipment, as the case may be, as may be specified in the directions.

(2) Any Harbour Board failing to comply with any directions given under subsection (1) of this section within the period specified in the directions, or within any extended period allowed by the Minister (whether before or after the end of the period so specified), commits an offence and is liable on summary conviction to a fine not exceeding \$500 for each day during which the default continues, from the day after the end of the period specified in the directions or any extended period allowed by the Minister, as the case may be, until the last day before or on which the substances, materials, or the equipment, as the case may be, are provided in accordance with the directions.

14. Restrictions on transfer of oil or pollutants—(1) No oil or pollutant shall be transferred to or from a ship in any harbour in New Zealand, unless the requisite notice has been given in accordance with this section:

Provided that this subsection shall not apply to the transfer of oil or pollutant at the request or direction of a fire brigade.

(2) For the purposes of this section, a general notice may be given to the Harbourmaster of a harbour that transfers of oil or of a pollutant will be frequently carried out at a place in the harbour within a period specified in the notice; and, if such a notice is given, it shall be the requisite notice for the purposes of this section as regards transfers of oil or pollutants at that place within the period specified in the notice:

Provided that the period specified in such a notice shall not extend beyond the end of a period of 6 months beginning with the date on which the notice is given.

(3) Subject to subsection (2) of this section, the requisite notice for the purposes of this section shall be a notice given to the Harbourmaster not less than 3 hours nor more than 96 hours before the transfer of oil or pollutant begins.

(4) If any oil or pollutant is transferred to or from a ship in contravention of this section, the master of the ship, and, if the oil or pollutant is transferred from or to a place on land, the occupier of that place, commits an offence and is liable on summary conviction to a fine not exceeding \$3,000.

Cf. 1965, No. 65, s. 14

15. Master of overseas ship carrying oil to notify Harbourmaster—(1) The master of every ship arriving in New Zealand from overseas carrying oil in bulk as cargo or carrying a pollutant in bulk as cargo shall—

(a) Send by radio to the Harbourmaster at the first port of call in New Zealand, so as to be delivered to him not later than 12 hours before the arrival of the ship thereat, notice of the fact that oil or a pollutant is being carried as aforesaid and specifying the nature of the oil or pollutant carried and the quantity carried; and

(b) Before proceeding from any port in New Zealand to any other such port, send a similar notice to the Harbourmaster at the last-mentioned port by such means as will ensure its being delivered at least 12 hours before the arrival of the ship.

(2) The master of any ship proceeding to any port in New Zealand from any other port in New Zealand carrying oil in bulk or a pollutant in bulk, as cargo, whether or not the oil or pollutant or any part thereof is to be discharged at the first-mentioned port, shall send to the Harbourmaster at the first-mentioned port, by such means as will ensure its being delivered at least 12 hours before the arrival of the ship, a notice of the fact that oil or a pollutant is being carried as aforesaid and specifying the nature of the oil or pollutant carried and the quantity carried.

(3) If the master of any ship fails to comply with the requirements of this section, he commits an offence, and is liable on summary conviction to a fine not exceeding \$3,000.

(4) In any proceedings for an offence against this section it shall be a good defence to prove that notice to the effect required by this section was given to the Harbourmaster by the owner of the ship, or by any other person, within the time limited by this section.

Cf. 1965, No. 65, s. 15

16. Duty to report discharges of oil or pollutants—(1) If any oil or pollutant is discharged or escapes into any part of the sea from a New Zealand ship or a home-trade ship, or from a place on land, or from a pipeline in New Zealand waters or on the continental shelf, or from an offshore installation, or as the result of operations for the exploration of the seabed and subsoil of any New Zealand waters or the continental shelf or the exploitation of the natural resources thereof, the owner or master of the ship, or the occupier of the place on land, or the owner of the pipeline, or the owner of the offshore installation, or the person carrying on the operations, as the case may be, shall immediately, by the quickest means available to him, by radio if possible, report the occurrence to the Harbourmaster 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 oil or pollutant is discharged or escapes into New Zealand waters from a ship other than a New Zealand ship or home-trade ship, the owner or master of the ship shall immediately, by the quickest means available to him, report the occurrence to the Harbourmaster in the case of any discharge or escape into a harbour, and to the Minister in the case of any 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 and position of the discharge or escape; and
- (b) The event to which the discharge or escape is directly attributable; and
- (c) The weather and sea conditions at the time of the discharge or escape and at the time when the report is made; and
- (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 may escape; and

- (e) Where a pollutant has been discharged or has escaped, the description and quantity of each type of pollutant carried (including their correct technical names) 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; and
- (f) The state of the rest of the cargo carried (whether oil or pollutants or not); and
- (g) The existence of any slick and its movement in any direction; and
- (h) The measures that are being taken—
 - (i) To stop or reduce the discharge or escape; and
 - (ii) To clean up or disperse any oil or pollutant on or in the sea or to remove any oil or pollutant from the sea; and
 - (iii) To minimise damage or the possibility of damage resulting from the discharge or escape.

(4) If—

- (a) A New Zealand ship or home-trade ship becomes stranded or is abandoned anywhere (whether in New Zealand waters or not); or
- (b) A ship (other than a New Zealand ship or home-trade ship) becomes stranded or is abandoned in New Zealand waters,—

the owner shall immediately, by the quickest means available to him, by radio if possible, report the occurrence to the Minister, giving full details of the damage to the ship, the state of the cargo, a complete list of all oil and all pollutants carried (including the description and quantity of each type of oil or pollutants, as the case may be, carried), and a statement or estimate of the quantity of each type of oil or pollutant that has been discharged or escaped or that may be discharged or may escape.

(5) Every person commits an offence, and is liable on summary conviction to a fine not exceeding \$10,000, 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.

Cf. 1965, No. 65, s. 16

17. 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 (including prohibitions so imposed by the creation of offences under this Part of this Act) have been complied with:
 - (b) What measures (other than measures made obligatory by regulations pursuant to section 7 or section 8 or section 9 of this Act) have been taken to prevent the discharge or escape of oil or pollutants:
 - (c) Whether the oil reception or pollutant reception facilities provided in harbours are adequate.
- (2) Any 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 Surveyor of Ships appointed under section 13 of the Shipping and Seamen Act 1952 and every inspector appointed under section 33 of the Petroleum Act 1937 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.

(4) Section 14 of the Shipping and Seamen Act 1952 (which relates to Marine Inspectors) shall apply to persons appointed under the foregoing provisions of this section (including Surveyors of Ships in their capacity as such persons) as it applies to the Marine Inspectors referred to in that section, as if—

- (a) Every reference in that section 14 to that Act were a reference to this Act and included any regulations made under this Act; and
 - (b) Any power under that section 14 to inspect premises included power to inspect any apparatus used for transferring oil or for transferring a pollutant.
- (5) Any power of an inspector, under the said section 14 (as applied by subsection (4) of this section), to inspect a ship shall include power to test any equipment with which the ship is required to be fitted pursuant to regulations made pursuant to section 7 or section 8 or section 9 of this Act.

(6) Any power of an inspector, under the said section 14 (as so applied), to require the production of any records required to be kept in accordance with section 11 of this Act shall include 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; and in paragraph (b) of subsection

(5) of the said section 14 (as so applied), the reference to subscribing a declaration shall be construed as a reference to the certification of such a copy.

(7) 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 harbour in New Zealand, the Harbourmaster, and any person appointed or deemed to be appointed by the Minister under this section (either generally or in relation to a particular ship), shall have 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 a pollutant from the ship into the waters of the harbour:
- (b) To require the production of any records which by virtue of any 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:
- (d) To go on board the ship and take, or require the taking of, soundings of tanks, spaces, and bilges, 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.

(8) Every person commits an offence, and is liable on summary conviction to a fine not exceeding \$500, who—

- (a) Fails to comply with any requirement duly made pursuant to paragraph (b) or paragraph (c) or paragraph (d) of subsection (7) of this section; or
- (b) Wilfully obstructs a person acting in the exercise of any power conferred by this section.

Cf. 1965, No. 65, s. 17

18. Shipping traffic controls—(1) For the purpose of ensuring the safety of navigation in New Zealand waters and in adjacent waters, regulations may be made under section 68 of this Act establishing any or all of the following:

- (a) Shipping traffic lanes:
- (b) Shipping traffic controls:

(c) Shipping traffic control zones:

(d) Shipping traffic control centres.

(2) Regulations made pursuant to subsection (1) of this section may require ships to comply with such requirements as may be prescribed, and may prescribe the functions of any shipping control centre.

(3) Without limiting the generality of subsection (2) of this section, regulations made pursuant to subsection (1) of this section may provide that any ship navigating in any shipping traffic lane or shipping traffic control zone, or which is subject to any other shipping traffic control established pursuant to the regulations shall—

(a) Carry an authorised pilot; or

(b) Maintain a radio listening watch on any frequency prescribed and for such period or periods of time as may be prescribed; or

(c) Report to any shipping traffic control centre at such times and on the happening of such events as may be prescribed; or

(d) Obtain a clearance to enter or to leave any shipping traffic lane or shipping traffic control zone; or

(e) While in a shipping traffic lane or a shipping traffic control zone, comply with any directions given by a shipping traffic control centre or by a Harbourmaster or by a pilot or by the Minister by any person authorised by him.

(4) Regulations made pursuant to subsection (1) of this section may make exceptions from the operation of the regulations, either absolutely or subject to any prescribed conditions, and either generally or with respect to particular classes of ships or to particular ships.

(5) Where a ship fails to comply with the provisions of any regulations made pursuant to this section, the owner or the master commits an offence, and is liable on summary conviction to a fine not exceeding \$20,000.

19. Enforcement of Convention relating to oil pollution—

(1) Regulations made under section 68 of this Act may empower such persons as may be designated by or under the regulations to go on board any ship to which the International Convention for the Prevention of Pollution of the Sea by Oil 1954 as amended in 1962 applies while the ship is within New Zealand waters, and to require production of any records required to be kept in accordance with that Convention.

(2) Any such regulations may, for the purposes thereof and with any necessary modifications, apply any of the provisions of this Part of this 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 provisions of the Shipping and Seamen Act 1952 applied by those provisions and also including any penal provisions of this Part of this Act, so far as they relate to those matters.

(3) For the purposes of this section, the Governor-General, if he is satisfied that any country has accepted or denounced the International Convention for the Prevention of Pollution of the Sea by Oil 1954 as amended in 1962, or that the said Convention extends or has ceased to extend to any territory, may, by Order in Council, include in any such regulations a declaration to that effect.

(4) In this section—

“International Convention for the Prevention of Pollution of the Sea by Oil 1954 as amended in 1962” includes any other amendments to that Convention; and also includes any Convention subsequent to that Convention, whether or not it is designed to replace that Convention, relating either in whole or in part to the prevention of pollution of the sea by oil or pollutants:

“Ship to which the International Convention for the Prevention of Pollution of the Sea by Oil 1954 as amended in 1962 applies” means a ship registered in or having the nationality of—

(a) A country the government of which has been declared as aforesaid to have accepted that Convention, and has not been so declared to have denounced it; or

(b) A territory to which it has been so declared that the Convention extends, not being a territory to which it has been so declared that the Convention has ceased to extend.

Cf. 1965, No. 65, s. 25

PART II

DUMPING OF WASTES INTO THE SEA

20. Application of this Part—This Part of this Act shall apply to—

(a) All ships and aircraft which in New Zealand or in New Zealand waters take on board waste or other matter for the purpose of dumping the same at sea:

- (b) All ships and aircraft which dump waste or other matter in New Zealand waters:
- (c) All ships (being New Zealand ships or home-trade ships) which dump waste or other matter into the sea:
- (d) All New Zealand aircraft which dump waste or other matter into the sea:
- (e) Every offshore installation or fixed or floating platform or other artificial structure which is situated in the sea or on the seabed and is under New Zealand jurisdiction:
- (f) All ships and aircraft dumped into New Zealand waters, and all New Zealand ships and New Zealand aircraft dumped into the sea.

21. Offence to dump waste or other matter—(1) If—

- (a) Any waste or other matter is dumped into New Zealand waters, without a special permit, from any ship or aircraft to which this Part applies; or
- (b) Any waste or other matter is discharged into the sea, without a special permit, from any New Zealand ship or home-trade ship or New Zealand aircraft or from any offshore installation or fixed or floating platform or other artificial structure to which this Part applies; or
- (c) A ship or aircraft is dumped into New Zealand waters without a special permit; or
- (d) An offshore installation or fixed or floating platform or other artificial structure to which this Part applies is dumped into the sea without a special permit; or
- (e) Any waste or other matter is taken on board any ship or aircraft in New Zealand or in New Zealand waters without a special permit and for the purpose of dumping,—

then, subject to the provisions of this Part of this Act,—

- (f) If the dumping is from a ship or if a ship is dumped, the master or the owner of the ship; or
- (g) If the dumping is from an aircraft, or if an aircraft is dumped, the pilot or the owner of the aircraft or the person in possession of the aircraft; or
- (h) If the dumping is from an offshore installation or if an offshore installation is dumped, the owner or the person carrying on operations or the person in charge of the operations; or

- (i) If the dumping is from a fixed or floating platform or other artificial structure situated in the sea or on the seabed, or if a fixed or floating platform or other artificial structure is dumped, the person in possession of the platform or structure or the owner, as the case may be; or
- (j) If the waste or other matter is taken on board a ship or aircraft in New Zealand or in New Zealand waters for the purpose of dumping at sea, the master or the owner of the ship or, as the case may be the pilot or the owner of the aircraft or the person in possession of the aircraft—

commits an offence under this section.

(2) Every person who commits an offence under this section—

- (a) Is liable on summary conviction to a fine not exceeding \$50,000; 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 any New Zealand waters or from any foreshore or harbour works in New Zealand.

22. Special permits—(1) Regulations may be made under section 68 of this Act—

- (a) Establishing an Ocean Dumping Permit Authority:
 - (b) Prescribing the composition of the Authority, its members, the term of office of its members, and any other provisions that may reasonably be necessary or expedient to allow the Authority to carry out its functions under this Part of this Act.
- (2) A special permit shall be obtained—
- (a) Before each occasion on which it is intended to dump waste or other matter:
 - (b) Before each occasion on which waste or other matter is taken on board a ship or aircraft in New Zealand or New Zealand waters for the purpose of dumping:
 - (c) Before each occasion on which a ship, an aircraft, an offshore installation, a fixed or floating platform, or any other artificial structure to which this Part applies is to be dumped.

(3) Every application for a special permit shall be made in writing to the Ocean Dumping Permit Authority or, where no such Authority has been established, to the Minister, and shall contain information relating to—

- (a) The characteristics and composition of the waste or other matter intended to be dumped; and
- (b) The method by which the waste or other matter is to be dumped; and
- (c) Such other information as may be prescribed by regulations made pursuant to subsection (4) of this section or, while no such regulations are in force, as may be required by the Ocean Dumping Permit Authority or the Minister, as the case may be.

(4) Regulations may be made under section 68 of this Act prescribing—

- (a) That a special permit shall not be issued by the Ocean Dumping Permit Authority or by the Minister, as the case may be, for the dumping of specified types of waste or other matter or of specified classes of waste and other matter; and

- (b) The criteria to govern the issue of special permits.

(5) No regulations shall be made pursuant to subsection (4) of this section except on the advice of the Minister—

- (a) After consultation by him with the Minister of Health and the Minister of Science; and

- (b) After careful consideration by him of the matters specified in section 24 of this Act.

(6) In determining any application for a special permit, the Ocean Dumping Permit Authority or the Minister, as the case may be, shall have special regard to—

- (a) The criteria prescribed pursuant to regulations made pursuant to subsection (4) of this section; or

- (b) While no such regulations are in force, the criteria specified in section 24 of this Act,—

and may issue the permit if in its or his opinion such of those criteria as are applicable have been met.

(7) Every special permit shall specify—

- (a) The waste or other matter to be dumped; and

- (b) The quantity to be dumped; and

- (c) The method of dumping to be used; and

- (d) The specific location at sea of the dumping site; and

- (e) The ship, aircraft, offshore installation, fixed or floating platform, or other artificial structure to be used in the dumping operation; and

- (f) The person who shall be responsible for carrying out the dumping operation; and
- (g) Such other conditions, stipulations, and requirements as the Ocean Dumping Permit Authority, or the Minister, as the case may be, thinks fit, having special regard to the provisions of any regulations made pursuant to subsection (4) of this section or, while no such regulations are in force, the criteria specified in section 24 of this Act.

(8) Notwithstanding anything in this Part of this Act or in any special permit, no special permit shall authorise or be deemed to authorise the dumping of any waste or other matter in breach of section 242 of the Harbours Act 1950.

(9) Every person commits an offence who fails to comply with any condition, specification, or requirement contained in a special permit, and is liable on summary conviction to a fine not exceeding \$10,000 for each day or part of each day on which the offence has continued.

23. Special defences—Where a person is charged with an offence under section 21 or section 22 of this Act, it shall be a defence to prove that the dumping 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, stipulation, or requirement contained in the special 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; or
- (b) In a case of force majeure caused by stress of weather, for the purpose of securing the safety of any ship or aircraft or offshore installation or fixed or floating platform, or any other artificial structure situated at sea or on the seabed; or
- (c) For the purpose of averting a serious threat to any ship or aircraft or offshore installation or fixed or floating platform, or any other artificial structure situated 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 of the waste or other matter or, as the case may be, the failure to comply with the condition, stipulation, or requirement was necessary for the purpose alleged in the defence and was a reasonable step to take in all the circumstances:

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 of the waste or other matter or, as the case may be, the failure to comply with the condition, stipulation, or requirement was less or would be less than would have otherwise occurred, and that the dumping was so conducted that the likelihood of damage to human or marine life was minimised.

24. Criteria to govern dumping of waste and other matter into the sea—The following matters are to be taken into account in establishing criteria for dumping waste and other matter into the sea:

A. Characteristics 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. Susceptibility to physical, chemical, and biochemical changes and interaction in the aquatic environment with other dissolved organic and inorganic materials.

8. Probability of production of taints or other changes reducing marketability of resources (fish, shellfish, etc.) :

B. Characteristics of Dumping Site and Method of Deposit—1. Location (for example, co-ordinates 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 characteristics (for example, effects of currents, tides, and wind on horizontal transport and vertical mixing).

6. Water characteristics (for example, temperature, pH, salinity, stratification, oxygen indices 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 characteristics (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).

9. In issuing a special permit, the issuing authority should consider whether an adequate scientific basis exists for assessing the consequences of such dumping, as outlined in this Schedule, taking into account seasonal variations:

C. General Considerations and Conditions—1. Possible effects on amenities (for example, presence of floating or stranded material, turbidity, objectionable odour, discolouration, and foaming).

2. Possible effects 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 at sea.

PART III

MARINE CASUALTIES

25. Powers of Minister in relation to ships—(1) Without prejudice to any rights or powers of the Crown exercisable, whether under international 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 the result of a shipping casualty,—

- (a) In New Zealand waters; or
- (b) Outside those waters,—

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

(2) Where it appears to the Minister that as a result of a shipping casualty or acts related to such a casualty a ship constitutes or is likely to constitute a serious risk of pollution in or to New Zealand waters, or to the coast of New Zealand, or to related interests, then, for the purposes mentioned in subsection (1) of this section, he may—

- (a) Issue instructions to the master or to the owner of the ship, or to any person in charge of any salvage operation or his servant or agent, requiring any specified action be taken or that no action be taken or that no specified action be taken with respect to the ship or its cargo or both; or
- (b) Take any measures whatsoever with respect to the ship or the cargo or both, whether or not he has issued instructions under paragraph (a) of this subsection.

(3) Without limiting the generality of the powers conferred by this section, the measures the Minister may direct to be taken or may himself take under paragraph (b) of subsection (2) of this section for the purposes mentioned in subsection (1) of this section may include, with respect to the ship or its cargo or both, operations relating to—

- (a) The removal to another place of the ship or its cargo or both; or
- (b) The salvage of the ship or its cargo or both; or
- (c) The sinking or destruction of the ship or the destruction of its cargo or both; or
- (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 paragraph (b) of 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 New Zealand ship or home-trade ship, or the master of any other ship within New Zealand waters, to render assistance to any ship that is or is likely to be a shipping casualty; and

(b) Instruct the master of any New Zealand ship or home-trade 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 master or owner of the ship shall be notified of any measures the Minister proposes to take under paragraph (b) of subsection (2) of this section:

Provided that the Minister may dispense with such notice where in his opinion the urgency of the situation is such that the measures must be taken immediately.

(6) The powers of the 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 him.

(7) Any instructions issued under this section by the Minister or by any person so authorised shall be served on the persons specified in subsection (2) or, as the case may require, subsection (5) of this section in accordance with the provisions of section 61 of this Act.

(8) In this section—

“Related interests” includes interests directly affected or threatened, including (but without limiting the generality of this definition) maritime, coastal, port, or estuarine 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:

“Ship” does not include any installation or device engaged in the exploration of the seabed and subsoil and the exploitation of the natural resources thereof.

Cf. Prevention of Oil Pollution Act 1971 (U.K.), s. 12; Navigation Act 1912–1968 (Aus.), ss. 329E, 329J, 329K; Canada Shipping Act (Can.), s. 738 (R.S.C., 1971, Ch. 27)

26. Powers of Minister in relation to offshore installations and pipelines—(1) Without prejudice to any rights or powers of the Crown exercisable, whether under international 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 the result of an incident occurring outside or on board or to an offshore installation or to a pipeline, it appears to the Minister necessary to prevent or reduce or eliminate pollution from oil or from any pollutant in, or the risk of such pollution to, New Zealand waters or to the coast of New Zealand or to related interests.

(2) Where it appears to the Minister that by reason of an incident mentioned in subsection (1) of this section an offshore installation, or a pipeline in New Zealand waters or on the continental shelf, or operations in New Zealand waters or on the continental shelf for the exploration of the seabed and subsoil and the exploitation of the natural resources thereof constitute or are likely to constitute a serious risk of pollution to New Zealand waters or to the coast of New Zealand or to related interests, or is likely to be a source of pollution in New Zealand waters or to the coast of New Zealand, then, for the purposes mentioned in subsection (1) of this section, he may, with the concurrence in writing of the Minister of Mines,—

(a) Issue instructions to the owner, or to any person in possession of the offshore installation, or to any person in charge of or carrying on any operations for the exploration of the seabed and subsoil and exploitation of the natural resources thereof, or to the owner of the pipeline, or to the servant or agent of any such person, requiring any specified action to be taken or requiring that no action be taken or that no specified action be taken with respect to the offshore installation, or to the operations, or to both, or to the pipeline, as the case may be; or

(b) Take any measures whatsoever with respect to the offshore installation, or to the operations, or to both, or to the pipeline, whether or not he has issued instructions under paragraph (a) of this subsection.

(3) The Minister shall notify the owner or any person mentioned in paragraph (a) of subsection (2) of this section 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 measures must be taken immediately.

(4) The powers of the Minister 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.

(5) Any instructions issued under this section by the Minister or by any person so authorised shall be served on the persons mentioned in subsection (2) of this section in accordance with the provisions of section 61 of this Act.

(6) In this section the expression "related interests" includes interests directly affected or threatened, including (but without limiting the generality of this definition) maritime, coastal, port, or estuarine 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.

27. Right to compensation—(1) Where any action duly taken by any person pursuant to instructions issued under paragraph (a) of subsection (2) or subsection (4) of section 25 or paragraph (a) of subsection (2) of section 26 of this Act, or any measures taken by the Minister under paragraph (b) of subsection (2) of section 25 or paragraph (b) of subsection (2) of section 26 of this Act—

(a) Were not reasonably necessary to eliminate or prevent or reduce pollution or the risk of pollution; or
(b) Were such that the good the action or measures taken did or were likely to do was disproportionately less than the expense incurred or the loss or damage suffered as a result of that action or those measures—
a person who has incurred expense or loss or damage as a result of taking that action or of those measures or as a result of his taking those measures himself may recover compensation from the Crown.

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

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

- (b) The likelihood of the measures taken being effective; and
- (c) The extent of the damage which has been caused by the measures taken.

Cf. Prevention of Oil Pollution Act 1971 (U.K.), s.13

28. Offences—(1) Every person commits an offence who—

- (a) Fails to comply with any instructions issued by the Minister under section 25 or section 26 of this Act or by any person authorised by him; or
- (b) Wilfully obstructs a person acting in compliance with any instructions issued by the Minister under either of those sections or by any person authorised by him; or
- (c) Wilfully obstructs the Minister or any person acting on behalf of the Minister in carrying out any of the powers conferred on the Minister by either of those sections.

(2) Every person who commits an offence against this section is liable on summary conviction to a fine not exceeding \$10,000 for each day or part of each day on which the offence has continued.

(3) In any proceedings for an offence against this section, it shall be a defence to prove that the failure to comply with any instructions issued under section 25 or section 26 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 life at sea.

(4) In any proceedings for an offence against this section, it shall also be a defence to prove that the person charged used all due diligence to comply with the instructions.

Cf. Prevention of Oil Pollution Act 1971 (U.K.), s. 13

29. Protection of Minister and other persons—Where—

- (a) The Minister or any person duly authorised by him has taken any measures under the provisions of paragraph (b) of subsection (2) of section 25 or paragraph (b) of subsection (2) of section 26 of this Act; or
- (b) Any person has taken any action or refrained from taking any action pursuant to instructions issued

under paragraph (a) of subsection (2) or subsection (4) of section 25 or paragraph (a) of subsection (2) of section 26 of this Act,—
then, subject to section 27 of this Act, the Minister or that person, as the case may be, shall not be under any civil liability in respect thereof.

PART IV

CIVIL LIABILITY

30. Liability for costs of removal of oil or pollutant or waste or other matter—Where any oil or pollutant is discharged or escapes or any waste or other matter is dumped in contravention of this Act—

(a) Into New Zealand waters or into waters over the continental shelf from any place on land, or from any offshore installation, or from a pipeline, or as the result of any operations for the exploration of the seabed and subsoil and the exploitation of the natural resources thereof, or from any apparatus used in transferring oil or a pollutant; or

(b) Into New Zealand waters from any ship (other than a ship which is registered in or flies the flag of a Contracting State to the International Convention on Civil Liability for Oil Pollution Damage 1969 and to which section 32 of this Act applies)—

then, notwithstanding anything in section 33 of this Act, an amount equal to all expenditure reasonably incurred by the Minister or a Harbour Board, as the case may be, for the removal from any of the waters referred to in this subsection, or from any foreshore or harbour works, or from any wharf or jetty, or from any other amenity, of that oil or pollutant or that waste or other matter, less any amount ordered to be paid in respect of that removal under section 10 of this Act, is hereby declared to be a debt due to the Crown or the Harbour Board, as the case may be, by the occupier of the land, the owner of the ship or installation or pipeline or apparatus from which the oil or pollutant was discharged or escaped, or from which that waste or other matter was dumped, or, as the case may be, the person carrying on those operations, and may be recovered accordingly.

Cf. 1965, No. 65, s. 18

31. Liability for pollution damage—(1) Subject to this section, the owner of a ship (other than an owner as defined in section 32 of this Act of a ship to which that section applies) carrying any oil or pollutant (whether as part of the cargo or otherwise) shall be liable in damages for all pollution damage in New Zealand or in New Zealand waters attributable to the discharge or escape of oil or a pollutant into the sea from that ship, or, notwithstanding any special permit issued under section 22 of this Act, attributable to the dumping of waste or other matter into the sea from that ship.

(2) Where oil or any pollutant is discharged or escapes from a ship to which this section applies, or waste or other matter is dumped from a ship to which this section applies, the owner of that ship shall not be liable in damages for pollution damage under subsection (1) of this section to a greater extent than an aggregate amount determined by reference to the tonnage of that ship in accordance with subsection (3) of this section.

(3) The aggregate amount referred to in subsection (2) of this section shall not exceed an amount of 1,500 francs for each ton of the ship's tonnage. That aggregate amount shall be ascertained exclusive of costs of any proceedings.

(4) Where money has been paid into Court in respect of any liability to which a limit is fixed under this section, the ascertainment of that limit shall not be affected by a subsequent variation of the amounts specified pursuant to subsection (2) of section 59 of this Act, unless the amount paid was less than that limit as ascertained in accordance with the order then in force under that section.

(5) The limits fixed by this section to the liability mentioned in subsection (1) of this section shall apply to the aggregate of such liabilities which are incurred on each distinct occasion, and shall so apply in respect of each distinct occasion without regard to any liability incurred on another occasion.

(6) The limitation of liability under this section shall relate to the whole of the damage which arises on any one distinct occasion although that damage is sustained by more than one person.

(7) Where oil or a pollutant has escaped or has been discharged from 2 or more ships, or waste or other matter has been dumped from 2 or more ships, and the owner of each of the ships incurs liability under subsection (1) of this section, but the damage for which each of the owners would be liable

under that subsection cannot reasonably be separated from that for which the other or others would be liable, each of the owners shall be liable, jointly with the other or others, for the whole of the damage or costs and expenses for which the owners together would be liable under subsection (1) of this section.

(8) Where the owner of a ship is liable under this section, section 460 of the Shipping and Seamen Act 1952 (limitation of liability) shall not apply.

(9) Subject to subsection (10) of this section, the owner of an offshore installation or of a pipeline in New Zealand waters or on the continental shelf, and the person carrying on any operations in New Zealand waters or in waters over the continental shelf or on the continental shelf for the exploration of the seabed and subsoil and the exploitation of the natural resources thereof, shall be liable in damages for all pollution damage wheresoever attributable to a discharge or escape of oil or a pollutant, or attributable to the dumping of any waste or other matter. In this subsection the term "pollution damage" includes all damage caused in waters over the continental shelf and all damage caused on the continental shelf or to the natural resources thereof.

(10) Where a ship collides with or damages any offshore installation or pipeline in New Zealand waters or on the continental shelf or in the waters over the continental shelf, the owner of the ship shall be liable in damages for all pollution damage in New Zealand or New Zealand waters or on the continental shelf or in the waters over the continental shelf that is attributable to the discharge or escape of oil or a pollutant into the sea resulting from that collision or the damage to the offshore installation or pipeline, whether the discharge or escape is from the ship or from the offshore installation or from the pipeline or from any apparatus connected to the offshore installation or pipeline.

(11) This section applies to every ship other than a ship to which section 32 of this Act applies.

32. Liability of certain shipowners—(1) Subject to the provisions of this section, the owner of a ship to which this section applies shall be liable in damages for all pollution damage in New Zealand or in New Zealand waters attributable to the discharge or escape of oil into the sea from that ship.

(2) Where oil carried by a ship to which this section applies, whether as part of the cargo or otherwise, is discharged or

escapes from that ship, the owner of that ship shall not be liable in damages for pollution damage under subsection (1) of this section to a greater extent than an aggregate amount determined by reference to the tonnage of that ship in accordance with subsection (3) of this section.

(3) The aggregate amount referred to in subsection (2) of this section shall not exceed an amount of 2,000 francs for each ton of the ship's tonnage or 210 million francs, whichever is the less. That aggregate amount shall be ascertained exclusive of costs of any proceedings.

(4) Where money has been paid into Court in respect of any liability to which a limit is fixed under this section, the ascertainment of that limit shall not be affected by a subsequent variation of the amounts specified pursuant to subsection (2) of section 59 of this Act, unless the amount paid was less than that limit as ascertained in accordance with the order then in force under that section.

(5) The limits fixed by this section to the liability mentioned in subsection (1) of this section shall apply to the aggregate of such liabilities which are incurred on each distinct occasion, and shall so apply in respect of each distinct occasion without regard to any liability incurred on another occasion.

(6) The limitation of liability under this section shall relate to the whole of the damage which arises on any one distinct occasion although that damage is sustained by more than one person.

(7) Where oil has been discharged or has escaped from 2 or more ships, and the owner of each of the ships incurs liability under this section, but the damage for which each of the owners would be liable cannot reasonably be separated from that for which the other or others would be liable, each of the owners shall be liable, jointly with the other or others, for the whole of the damage or costs and expenses for which the owners together would be liable under this section.

(8) Where the owner of a ship is liable under this section, section 460 of the Shipping and Seamen Act 1952 (limitation of liability) shall not apply.

(9) In this section, and in other provisions of this Part of this Act, so far as they apply to ships to which this section applies,—

“Oil” means any persistent oil, such as crude oil, fuel oil, heavy diesel oil, lubricating oil, and whale oil:

“Owner”, in relation to any ship, means—

(a) In the case of a registered ship, the person registered as the owner of that ship:

(b) In the case of an unregistered ship, the person actually owning the ship:

(c) In the case of a ship owned by a State which is operated by a person registered as the ship's operator, the person registered as its operator:

Provided that where liability is incurred under this section as a result of an incident consisting of a series of occurrences, references in this section to the owner of a ship are to be construed as references to the owner at the time of the incident or at the time of the first of the occurrences.

(10) This section applies to any ship, whether a New Zealand ship or not,—

(a) Actually carrying a cargo of persistent oil in bulk; and

(b) From which oil has been discharged or has escaped, without the actual fault or privity of the owner, as the result of an incident occurring to or in the ship.

Cf. Merchant Shipping (Oil Pollution) Act 1971 (U.K.), ss. 1, 4; Navigation Act 1912–1968 (Aus.), s. 329k; Canada Shipping Act (Can.), s. 744 (4) (R.S.C., 1971, Ch. 27)

33. Special defences—(1) The owner of a ship shall not be liable in damages for pollution damage under section 31 or section 32 of this Act if he proves that the discharge or escape—

(a) Resulted from an act of war, hostilities, civil war, insurrection, or a natural phenomenon of an exceptional, inevitable, and irresistible character; or

(b) Was wholly caused by the act or omission of a third person, other than the servant or agent of the owner, with intent to cause damage; or

(c) Was wholly caused by the negligence or other wrongful act of any government or other authority, or of any person, responsible for the maintenance of lights or other navigational aids in the exercise of its functions in relation to those lights or aids.

(2) The owner of an offshore installation, a place on land, or a pipeline, and the person in charge of the exploration operations mentioned in subsection (9) of section 31 of this Act, shall not be liable for pollution damage under that section, if he proves that the discharge or escape—

(a) Resulted from an act of war, hostilities, civil war, insurrection, or a natural phenomenon of an exceptional, inevitable, and irresistible character; or

(b) Was wholly caused by the act or omission of a third person, other than the servant or agent of the owner, with intent to cause damage.

(3) Subject to subsection (4) of this section, the owner of a ship to which section 31 or section 32 of this Act applies, the owner of an offshore installation, and the person carrying on operations to which section 31 of this Act applies, shall not be liable under the said section 31 or, as the case may be, the said section 32 for any pollution damage if it is proved that the pollution damage suffered by any person was wholly caused by the act or omission of that person or his servant or agent with intent to cause damage, or was wholly caused by the negligence of that person or his servant or agent.

(4) Where the owner of any ship or offshore installation or the person in charge of any operations proves that the person to whom he is liable for pollution damage under section 31 or section 32 of this Act suffered that damage as a result partly of his own negligence, or as a result partly of any act or omission done by him with intent to cause pollution damage, a claim by that person against the owner or person in charge shall not be defeated solely by reason of the negligence or the act or omission, but the damages recoverable in respect thereof shall be reduced to such extent as the Court thinks just and equitable having regard to the claimant's share in the responsibility for the damage suffered.

Cf. Merchant Shipping (Oil Pollution) Act 1971 (U.K.), s. 2; Navigation Act 1912–1968 (Aus.), s. 329K

34. Restriction on shipowner's liability—(1) Whether or not the owner of a ship to which section 32 of this Act applies incurs liability under that section,—

(a) He shall not be liable otherwise than under that section for pollution damage; and

- (b) No agent or servant of the owner of any such ship nor any person performing salvage operations with the agreement of the owner shall be liable for any pollution damage.

(2) Whether or not the owner of a ship to which section 31 of this Act applies incurs liability under that section, a person performing salvage operations with the agreement of the owner shall not be liable for pollution damage arising from such operations.

Cf. Merchant Shipping (Oil Pollution) Act 1971 (U.K.), s. 3

35. Limitation in actions against shipowners—(1) Where in any proceedings under this Part of this Act a Court finds that—

- (a) The owner of a ship to which section 32 of this Act applies has incurred liability under that section; and

- (b) The liability of the owner of that ship is limited by reason of the provisions of that section,—

the Court shall, subject to the provisions of that section,—

- (c) Determine the actual limit of that liability; and
- (d) Direct payment into Court of the amount of that limit; and
- (e) Determine the amount that would, apart from that limit, be due in respect of the liability to any or all of the several persons making claims in the proceedings; and
- (f) Direct the distribution of the amount paid into Court to those persons in proportion to the amounts of their established claims.

(2) Where any sum has been paid in or towards satisfaction of any claim in respect of damage to which the liability under section 32 of this Act extends—

- (a) By the owner or by the person referred to in section 37 of this Act as the insurer, or by any other person, apart from that insurer, who has provided insurance or other financial security; or

- (b) By a person who has or is alleged to have incurred liability otherwise than under section 32 of this Act and who is—

- (i) The servant or agent of the owner; or

(ii) The charterer or the agent in New Zealand of the charterer; or

(iii) Any person interested in or in possession of the ship,—

the person who paid the sum shall, to the extent of the amount paid, be in the same position with respect to any distribution made in accordance with this section as the person to whom it was paid would have been.

(3) Where an owner who has incurred liability under section 32 of this Act has voluntarily made any reasonable sacrifice or incurred any reasonable expense to prevent or reduce the pollution damage to which his liability extends or might have extended, he shall be in the same position with respect to any distribution made under this section as if he had a claim in respect of his liability equal to the cost of that sacrifice or those expenses.

(4) No claim shall be admitted in proceedings under this section, unless it is made within such time as the Court may direct or such further time as the Court may allow.

(5) The Court may, if it thinks fit, postpone the distribution of such part of the amount to be distributed as it thinks appropriate, having regard to any claims that may later be established before any Court in New Zealand arising out of the same incident.

Cf. Merchant Shipping (Oil Pollution) Act 1971 (U.K.), s. 5

36. Restrictions on enforcement of claims against ship-owners—(1) Where the owner of any ship to which section 32 of this Act applies has paid into Court the amount directed so to be paid in accordance with subsection (1) of section 35 of this Act,—

(a) The Court shall order the release of any ship or other property arrested in connection with a claim in respect of liability incurred under section 32 of this Act or any security given to prevent or obtain release from such an arrest; and

(b) No judgment for any such claim shall be enforced (except in relation to costs),—

if the amount paid into Court, or such part thereof as corresponds to the claim, will, to the extent that the claim is established and in proportion to other such claims, be actually available for distribution to the claimant.

(2) In proceedings under this Part of this Act against the owner of any ship to which section 32 of this Act applies, the reasonable costs and expenses of the claimant, including costs incurred between solicitor and client, shall, unless the Court otherwise orders, be taxed by the Court and paid by the owner.

Cf. Merchant Shipping (Oil Pollution) Act 1971 (U.K.),
s. 6

37. Compulsory insurance for ships—(1) This section applies to—

- (a) Any ship, wherever registered and of whatever nationality (including a New Zealand ship and a home-trade ship), carrying a quantity of oil in bulk, as cargo, in excess of any quantity prescribed by regulations made under section 68 of this Act, or, while no such regulations are in force, in excess of 2,000 tons of oil; and
- (b) Any ship or class of ships carrying any pollutant in bulk to which the provisions of this section have been applied by regulations made pursuant to section 46 of this Act.

(2) Subject to the provisions of subsections (3) and (5) of this section, a ship to which this section applies shall not enter or leave any port in New Zealand or arrive at or leave an offshore terminal in New Zealand waters or, if a New Zealand ship, a port in any other country or an offshore terminal in the territorial sea of any other country, unless the ship carries on board a certificate currently in force complying with the provisions of subsection (3) of this section and issued—

- (a) In the case of a New Zealand ship, by the Minister; and
- (b) In the case of a ship registered in a country in respect of which the International Convention on Civil Liability for Oil Pollution Damage 1969 is in force, by or under the authority of the government of that country; and
- (c) In the case of a ship registered in any other country, by the Minister or by or under the authority of the government of that other country, or by or under the authority of the government of any other country and recognised for the purposes of this subsection by regulations made under section 68 of this Act.

(3) Subject to subsection (5) of this section, the certificate required to be carried by any ship in accordance with subsection (2) of this section—

(a) Shall show that there is in force in respect of that ship a contract of insurance, or other financial security, in an amount not less than the aggregate amount of the liability specified in subsection (3) of section 32 of this Act; and

(b) Shall specify—

(i) The name of the ship and port of registry; and

(ii) The name and principal place of business of the owner; and

(iii) The nature of the contract of insurance or other financial security; and

(iv) The name and principal place of business of the insurer or other person giving security and the place of business where the insurance or security is established; and

(v) The period of validity of the insurance or other financial security; and

(vi) The period of validity of the certificate, that period to be co-terminous with the period of validity of the insurance or other financial security.

(4) It shall be sufficient for the purposes of paragraph (a) of subsection (3) of this section if the certificate shows—

(a) That there is in force in respect of the ship a contract of insurance or other financial security covering the aggregate amount of the liability of the owner up to an amount equivalent to 1,500 francs for each ton of the ship's tonnage or an amount of 125 million francs, whichever is the less; and

(b) That the Oil Fund (as defined in section 47 of this Act) has in accordance with section 52 of this Act, agreed to provide insurance or other financial security for the amount of the difference between the aggregate of the amount of the liability specified in paragraph (a) of this subsection and the aggregate of the amount specified in subsection (3) of section 32 of this Act.

(5) It shall be sufficient for the purposes of subsections (2) and (3) of this section, in the case of a ship owned by a State and being used for commercial purposes, if there is in force in respect of that ship a certificate issued by the Government

of the State of its registry stating that the ship is owned by that State and that any liability that may be incurred in respect of that ship for pollution damage under section 32 of this Act will be met up to the limit prescribed by Article V of the International Convention on Civil Liability for Oil Pollution Damage 1969.

(6) The certificate required by subsection (2) of this section to be carried by a ship shall be produced on demand by the master of the ship to any officer of Customs, or to any inspector appointed under this Act, or to any Marine Inspector appointed under the Shipping and Seamen Act 1952.

(7) Regulations made under section 68 of this Act may prescribe the form of the certificate to be carried, and may provide that a certificate issued in respect of a ship registered in any country, or any specified country, which is not a country in respect of which the International Convention on Civil Liability for Oil Pollution Damage 1969 is in force, shall, in such circumstances as may be prescribed in the regulations, be recognised for the purposes of subsection (2) of this section.

(8) If a ship to which this section applies enters or leaves or attempts to enter or leave a port in New Zealand, or arrives at or leaves or attempts to arrive at or leave an offshore oil terminal in New Zealand waters, in contravention of this section, the owner or the master commits an offence, and is liable on summary conviction to a fine not exceeding \$50,000.

(9) If a ship to which this section applies fails to carry, or the master fails to produce, the certificate required by this section to be carried, the master commits an offence, and is liable on summary conviction to a fine not exceeding \$2,000.

(10) If a ship attempts to leave a port in New Zealand, or an offshore oil terminal in New Zealand waters, in contravention of this section, the ship may be detained until such time as a certificate complying with the requirements of this section is obtained or produced, as the case may be.

(11) In subsections (3) and (4) of this section the term "owner" has the same meaning as in subsection (9) of section 32 of this Act.

Cf. Merchant Shipping (Oil Pollution) Act 1971, (U.K.) s. 10; Canada Shipping Act (Can.), s. 745 (R.S.C., 1971, Ch. 27)

38. Certificates—(1) If the Minister is satisfied that, in respect of any New Zealand ship, or in respect of any ship registered in a country in respect of which the International Convention on Civil Liability for Oil Pollution Damage 1969 is not in force, there will be in force in respect of the ship, throughout the period for which the certificate is to be issued, a contract of insurance or other financial security satisfying the requirements specified in section 37 of this Act, he may issue to the owner of that ship a certificate under that section.

(2) If the Minister is not satisfied that the person providing the insurance or other financial security will be able to meet his obligations thereunder, or that the insurance or other financial security will cover the owner's liability under section 32 of this Act in all circumstances, he shall refuse to issue a certificate.

(3) If the Minister is satisfied that, by reason of any modification or variation of or to the contract of insurance or other financial security, the owner of a ship will not be covered up to the limit of the liability he may incur under section 32 of this Act, he may cancel any certificate issued pursuant to this section, or may require, as a condition of such a certificate continuing in force, the immediate deposit with him of adequate additional financial security.

(4) For the purposes of subsection (1) of this section notarially certified copies of the contract of insurance or other financial security and of every variation or modification of or thereto shall be deposited with the Minister.

(5) A copy of every certificate issued under this section in respect of a New Zealand ship shall be sent by the Minister to the Registrar at the port of registry of the ship, and the Registrar shall keep the copy of the certificate with the register book entry of the registration of that ship.

(6) Every certificate issued under this section shall, unless sooner cancelled, continue in force for 1 year, and shall terminate at the expiry of that year.

(7) Regulations made under section 68 of this Act may prescribe the form of a certificate under this section and the annual fees for the issue of a certificate, for the cancellation of a certificate in such circumstances other than those mentioned in subsection (3) of this section as may be prescribed by the regulations, for the surrender of cancelled

certificates, and for penalties, for failure to surrender any certificate required by this section or by the regulations to be surrendered.

Cf. Merchant Shipping (Oil Pollution) Act 1971 (U.K.), s. 11; Canada Shipping Act (Can.), s. 745 (R.S.C., 1971, Ch. 27)

39. Rights of third parties against insurers of shipowner—

(1) Where the owner of a ship to which section 32 of this Act applies is alleged to have incurred liability under that section, proceedings to enforce a claim in respect of that liability may be brought against any person (in this section referred to as the insurer) providing insurance or other financial security for the owner's liability for pollution damage to which the certificate issued under section 38 of this Act relates.

(2) In proceedings brought against the insurer under this section, it shall be a defence, in addition to any defence under this Act affecting the owner's liability, for the insurer to prove that the discharge or escape of oil giving rise to liability under section 32 of this Act resulted from the wilful misconduct of the owner himself:

Provided that the insurer shall not be entitled to invoke any other defence which he might have been entitled to invoke in any proceedings brought by the owner against him.

(3) The liability of the insurer in proceedings under this section (irrespective of the actual fault or privity of the owner) is limited in like manner and to the same extent as the liability of the owner is limited under section 32 of this Act.

(4) Nothing in this section shall prejudice any claim, or the enforcement of any claim, by any person against the owner in respect of pollution damage.

(5) Where in proceedings under this Part of this Act an amount has been paid into Court by the owner and by the insurer in respect of the limit of their liability, any amount paid by either the owner or the insurer shall be treated as paid on behalf of the other.

Cf. Merchant Shipping (Oil Pollution) Act 1971 (U.K.) s. 12

40. Rights against third parties—(1) Where the owner of a ship to which section 31 of this Act applies, or the owner of a ship to which section 32 of this Act applies, would have

incurred liability under the said section 31 or, as the case may be, the said section 32 but for the fact that he has proved any of the matters specified in paragraph (b) or paragraph (c) of subsection (1) of section 33 of this Act, proceedings to enforce a claim for pollution damage may be brought under this section against the persons specified in the said paragraph (b) or, as the case may be, against the Crown or other authority or person in respect of the matters specified in the said paragraph (c):

Provided that no such proceedings shall be brought where the government mentioned in the said paragraph (c) is the government of any country other than New Zealand.

(2) Where the owner of an offshore installation, a place on land, or a pipeline, or the person carrying on exploration operations to which subsection (9) of section 31 of this Act applies would have incurred liability under that section but for the fact that he has proved any of the matters mentioned in paragraph (b) of subsection (2) of section 33 of this Act, proceedings to enforce a claim for pollution damage may be brought under this section against the persons mentioned in the said paragraph (b).

(3) The defendant in any proceedings brought under this section shall be entitled to the same exemptions from liability as is an owner under section 31 or section 32 of this Act or, as the case may be, an owner or person carrying on operations under subsection (9) of section 31 of this Act, and to any or all of the defences which he would be entitled to raise in proceedings under this Part of this Act to enforce any claim for pollution damage.

(4) The liability of the defendant in proceedings under subsection (1) of this section is limited in like manner and to the same extent as the liability of an owner under section 31 or section 32 of this Act is limited.

41. Time for bringing proceedings—No action to enforce a claim in respect of liability incurred under section 31 or section 32 of this Act shall be brought in any Court in New Zealand, unless the proceedings are commenced not later than 3 years after the date on which the claim arose, nor later than 6 years after the incident, or, as the case may be, the first of the incidents, by reason of which liability was incurred.

Cf. Merchant Shipping (Oil Pollution) Act 1971 (U.K.),
s. 9

42. Ships owned by a State—Subject to paragraphs (c) and (d) of subsection (1) of section 65 of this Act, a State which is a party to the International Convention on Civil Liability for Oil Pollution Damage 1969 shall in any action brought in a New Zealand Court to enforce a claim in respect of liability incurred under section 32 of this Act be deemed to have waived any defence based on its status as a sovereign State and to have submitted to the Court's jurisdiction, but nothing in this section shall permit the levy of execution against the property of any State.

Cf. Merchant Shipping (Oil Pollution) Act 1971 (U.K.), s. 14 (3)

43. Extension of admiralty jurisdiction—(1) The admiralty jurisdiction of the Supreme Court of New Zealand shall extend to any claim under this Part of this Act in respect of liability for pollution damage.

(2) No action shall be brought in a New Zealand Court to enforce any claim attributable to the discharge or escape of oil causing damage in or to the territory or territorial sea of a country, other than New Zealand, in respect of which the International Convention on Civil Liability for Oil Pollution Damage 1969 is in force.

(3) Nothing in this Part of this Act shall prejudice any claim, or the enforcement of any claim, that a person incurring liability under this Part may have against another person in respect of that liability.

Cf. Merchant Shipping (Oil Pollution) Act 1971 (U.K.), s. 13

44. Reciprocal enforcement of judgments—(1) Part I of the Reciprocal Enforcement of Judgments Act 1934 shall apply, whether or not it would so apply apart from this section, to any judgment given by a Court in a country in respect of which the International Convention on Civil Liability for Oil Pollution Damage 1969 is in force, to enforce a claim in respect of liability incurred under any provision corresponding to section 32 of this Act.

(2) In its application to any such judgment, subsections (3) and (4) of section 6 of the Reciprocal Enforcement of Judgments Act 1934 shall have no effect.

Cf. Merchant Shipping (Oil Pollution) Act 1971 (U.K.), s. 13 (3)

45. Special provisions for offshore installations, etc.—

(1) Regulations made under section 68 of this Act may require the owner of an offshore installation, or the owner of a place on land, or the owner of a pipeline, or the person in charge of the operations mentioned in subsection (1) of section 31 of this Act to maintain insurance or other financial security up to the limits of an aggregate amount of liability specified in the regulations.

(2) Regulations made under section 68 of this Act may, subject to such modifications and exceptions as are specified in the regulations, apply the provisions of section 35 (limitation in actions against shipowners), section 36 (restrictions on enforcement of claims against shipowners), section 38 (certificates), and section 39 (rights of third parties against insurers) of this Act to any offshore installation or place on land or pipeline or operations for the exploration of the seabed and subsoil and the exploitation of the natural resources thereof, or to all or any of them.

46. Extension of this Part to pollutants—Regulations may be made under section 68 of this Act applying all or any of the provisions of this Part of this Act that apply to ships carrying oil in bulk, subject to such modifications and exceptions as are specified in the regulations, to any ship or ships carrying a specified pollutant or specified pollutants in bulk, whether as cargo or otherwise.

PART V

ADDITIONAL COMPENSATION AND INDEMNIFICATION

47. Interpretation—In this Part of this Act, unless the context otherwise requires,—

“Convention ship” means a ship registered in, or flying the flag of, any State which is a party to the International Convention on the Establishment of an International Fund for Oil Pollution Damage 1971;

“The Oil Fund” means the International Oil Pollution Compensation Fund established under Article 2 of the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage 1971;

“Owner”, in relation to any ship, has the same meaning as in section 32 of this Act.

48. Capacities of Oil Fund—The International Oil Pollution Compensation Fund shall have all the capacities of a body corporate, including the capacity to acquire, hold, and dispose of real and personal property, and of suing and being sued, and of doing and suffering all such other acts and things as bodies corporate may lawfully do and suffer.

49. Additional compensation—(1) Subject to the provisions of this section, where oil has been discharged or escaped from a ship, the Oil Fund shall be liable to pay compensation for pollution damage in the circumstances mentioned in subsection (3) of this section.

(2) Where liability is incurred under subsection (1) of this section, the Oil Fund shall not be liable to a greater extent than the aggregate of the amount of liability determined in accordance with subsection (6) of this section.

(3) The Oil Fund shall be liable to pay compensation for pollution damage—

(a) Where no liability for the damage arises under the provisions of the International Convention on Civil Liability for Oil Pollution Damage 1969; or

(b) To the extent that any person, after pursuing his legal remedies against the owner of a ship (being a ship which is registered in or flies the flag of a Contracting State to the International Convention on Civil Liability for Oil Pollution Damage 1969) and against his insurer to recover payment of the amount of any damages awarded by a Court in proceedings under section 32 or section 39 of this Act, does not receive payment in full of the damages and costs awarded; or

(c) To the extent that the damage exceeds the aggregate amount of liability of the owner of a ship determined as follows:

(i) Where the liability of the owner for pollution damage is limited by the terms of the International Convention on Civil Liability for Oil Pollution Damage 1969, his liability under Article V (1) of that Convention:

(ii) Where the liability of the owner for pollution damage is limited by the terms of any other international Convention (being a Convention which deals with the liabilities of shipowners for

damage or loss) which is in force between New Zealand and a State which is a party to that other Convention but is not a Contracting State to the International Convention on Civil Liability for Oil Pollution Damage 1969, his liability under the relevant provisions of the first-mentioned Convention.

(4) The Oil Fund shall not be liable to pay compensation for pollution damage under this section if—

- (a) It is proved that the pollution damage resulted from an act of war, hostilities, civil war, or insurrection, or was caused by oil which had escaped or been discharged from a warship or from any other ship owned or operated by a State and which at the time of the discharge or escape was being used by the Government of that State for purposes other than commercial purposes; or
- (b) The person making the claim is unable to prove that the pollution damage was the result of the discharge or escape of oil from one or more ships.

(5) Where the Oil Fund proves that the pollution damage suffered by any person (other than the costs and expenses of any reasonable measures taken or authorised to be taken under section 25 of this Act and damage caused by such measures) was the result partly of that person's own negligence or was the result partly of any act or omission done or omitted by him with intent to cause the pollution damage, a claim by that person against the Fund shall not be defeated merely by reason of that negligence or by reason of that act or omission, but the damages recoverable in respect thereof shall be reduced to such extent as the Court thinks just and equitable, having regard to the claimant's share in the responsibility for the pollution damage suffered:

Provided that this subsection shall have no effect in relation to any claim, or to any part of a claim, brought against the Oil Fund for pollution damage where that claim or that part thereof relates to expenses reasonably incurred or sacrifices reasonably made by the owner of a ship voluntarily to prevent or reduce pollution damage.

(6) The liability of the Oil Fund for pollution damage shall not exceed, while no Order in Council is in force under subsection (8) of this section, the amounts determined in accordance with the following provisions:

- (a) Where the pollution damage resulted from a natural phenomenon of an exceptional, inevitable, and irresistible character, the amount of 450 million francs in aggregate:
- (b) Where no liability arises under the provisions of the International Convention on Civil Liability for Oil Pollution Damage 1969 and under any provisions of this Act giving effect to that Convention, the amount of 450 million francs:
- (c) Where liability has been incurred under section 32 of this Act by the owner of a ship (being a ship which is registered in or flies the flag of a Contracting State to the International Convention on Civil Liability for Oil Pollution Damage 1969), 450 million francs, less the aggregate of—
 - (i) The amount of compensation actually paid by the owner or his insurer or by both pursuant to a direction of the Court under section 35 of this Act; and
 - (ii) The amount for which the owner is entitled to be indemnified by the Oil Fund.

(7) The limits fixed by this section to the liabilities mentioned in this section shall apply to the aggregate of such liabilities which are incurred on each distinct occasion, and shall so apply in respect of each distinct occasion without regard to any liability incurred on another occasion.

(8) The Governor-General may from time to time, by Order in Council, increase the amount of 450 million francs specified in paragraphs (a), (b), and (c) of subsection (6) of this subsection to such amount as he thinks fit, not exceeding an amount of 900 million francs.

(9) This section applies only to ships actually carrying persistent hydrocarbon mineral oil in bulk as cargo.

50. Consolidation—(1) Subject to subsection (2) of this section, where liability to pay compensation is incurred by the Oil Fund for pollution damage, and several claims are made in respect of that liability, then, subject to subsection (5) of section 49 of this Act, the Court shall determine the amount of the Oil Fund's liability, and distribute that amount rateably among the several claimants.

(2) Where the amount of claims established against the Oil Fund exceeds the aggregate of the amounts specified

in paragraph (a) of subsection (6) of section 49 of this Act or, as the case may be, paragraph (b) or paragraph (c) of that subsection, the Court shall order the actual amount available to be distributed in such a way that the ratio between any established claim and the amount actually recovered by a claimant from the owner of a ship (being a ship which is registered in or flies the flag of a Contracting State to the International Convention on Civil Liability for Oil Pollution Damage 1969) and his insurer under section 32 or section 39 of this Act and from the Oil Fund under section 49 of this Act is the same for all claimants.

51. Indemnification by the Oil Fund—(1) Subject to the provisions of this section, the Oil Fund shall indemnify the owner of a Convention ship and his insurer against liability for pollution damage to the extent that the aggregate amount of that liability under section 32 of this Act, including expenses reasonably incurred and sacrifices reasonably made by the owner voluntarily to prevent or reduce pollution damage,—

- (a) Exceeds an amount equivalent to 1,500 francs for each ton of the ship's tonnage or an amount of 125 million francs, whichever is the less; and
- (b) Does not exceed an amount equivalent to 2,000 francs for each ton of the ship's tonnage or an amount of 210 million francs, whichever is the less:

Provided that the Oil Fund shall not be bound to indemnify the owner, or, as the case may be, the owner and his insurer, where the pollution damage in respect of which the owner, or the owner and his insurer, incurred liability resulted from the wilful misconduct of the owner himself.

(2) The Oil Fund may be exonerated by the Court from liability to the owner of a Convention ship and to his insurer to the extent that it is proved that as a result of the actual fault or privity of the owner, the incident or the pollution damage, as the case may be, in respect of which the owner incurred liability under this Act was caused wholly or partially by the fact that the ship from which the oil which caused the pollution damage was discharged or escaped did not, at the time when the claim arose, comply with the requirements of any international Convention, treaty, or agreement prescribed for the purposes of this section by regulations made under section 68 of this Act, or, while no such regulations are in force, with the following:

- (a) The International Convention for the Prevention of Pollution of the Sea by Oil 1954 as amended in 1962, and any other amendment determined to be of an important nature in accordance with Article XVI (5) thereof and in force for not less than 12 months; or
- (b) The International Convention for the Safety of Life at Sea 1960, and any amendment determined to be of an important nature in accordance with Article IX (e) thereof and in force for not less than 12 months; or
- (c) The International Convention on Loadlines 1966, and any amendment determined to be of an important nature in accordance with Article 29 (3) (d) or Article 29 (4) (d) thereof and in force for not less than 12 months; or
- (d) The International Regulations for Preventing Collisions at Sea 1960,—
whether or not the State of registry, or, where it is not registered, the flag State, of a Convention ship is a party to any of the instruments mentioned in paragraphs (a), (b), (c), and (d) of this subsection.

(3) This section applies only to ships actually carrying persistent hydrocarbon mineral oil in bulk as cargo.

52. Fund as insurer—(1) Where the owner of a Convention ship carrying persistent hydrocarbon mineral oil in bulk as cargo maintains a contract of insurance or other financial security covering his liability for pollution damage under section 32 of this Act up to an amount equivalent to 1,500 francs for each ton of the ship's tonnage or an amount of 125 million francs, whichever is the less, he may request the Oil Fund to act as insurer for the balance of the aggregate amount of his liability which exceeds an amount equivalent to 1,500 francs for each ton of the ship's tonnage or an amount of 125 million francs, whichever is the less, but does not exceed an amount equivalent to 2,000 francs for each ton of the ship's tonnage or an amount of 210 million francs, whichever is the less.

(2) If the Oil Fund agrees to act as insurer, then, in the case of a ship to which section 37 of this Act applies, subsection (4) of that section shall apply accordingly.

(3) Where the Oil Fund, as insurer under the foregoing terms of this section, has paid any money as compensation for pollution damage incurred by the owner of a Convention ship under section 32 of this Act, it may recover from the owner the money so paid to the extent (if any) that the Oil Fund would have been exonerated from indemnifying the owner by the provisions of subsection (2) of section 51 of this Act.

53. Time for bringing proceedings—(1) No action to enforce a claim against the Oil Fund for compensation under section 49 of this Act or for indemnification under section 51 of this Act shall be brought in any Court in New Zealand, unless the proceedings are commenced, or a notice is served on the Oil Fund in accordance with the provisions of section 54 of this Act, not later than 3 years after the claim arose; and in any case no such action shall be brought later than 6 years after the occurrence of the incident, or, as the case may be, the first of the incidents, giving rise to the claim.

(2) Notwithstanding anything in subsection (1) of this section, the right of the owner or his insurer to bring proceedings to enforce a claim for indemnification against the Oil Fund under section 51 of this Act shall not be extinguished until the expiry of a period of 6 months from the date on which the owner or his insurer was served with the revelant documents initiating proceedings brought against the owner or his insurer, as the case may be, under Part III of this Act.

54. Jurisdiction of Court—(1) Subject to the provisions of this section, no action shall be brought in a New Zealand Court to enforce a claim against the Oil Fund under section 49 or section 51 of this Act, arising from the discharge or escape of oil causing pollution damage in or to the territory or territorial sea of a country other than New Zealand in respect of which the International Convention on Civil Liability for Oil Pollution Damage 1969 is in force.

(2) Where an action to enforce a claim for compensation for pollution damage under the International Convention on Civil Liability for Oil Pollution Damage 1969 has been brought before a Court in a State which is a party to that

Convention but is not a party to the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage 1971, an action by the claimant against the Oil Fund for compensation under Article 4 and for indemnification under paragraph (1) of Article 5 of the last-mentioned Convention may be brought before a Court in New Zealand, and the provisions of this Part of this Act shall apply accordingly.

(3) Where proceedings are brought against the Oil Fund under section 49 or section 51 of this Act, copies of the documents initiating the proceedings shall be sent to the Minister of Foreign Affairs by the Registrar of the Court in which the documents are filed.

(4) Subject to subsections (5) and (6) of this section, where proceedings have been brought in a Court in New Zealand against the owner of a ship (being a ship which is registered in or flies the flag of a Contracting State to the International Convention on Civil Liability for Oil Pollution Damage 1969) or his insurer to enforce a claim in respect of any liability incurred under section 32 or, as the case may be, section 39 of this Act—

- (a) Either party to the action may serve a notice on the Oil Fund or its representative in New Zealand:
- (b) Either party may join the Oil Fund in the action:
- (c) The Oil Fund may apply to the Court to be joined in the action.

(5) A notice served on the Oil Fund or its representative under paragraph (a) of subsection (4) of this section—

- (a) Shall give sufficient details of the cause of action to allow the Oil Fund to decide whether to apply to be joined in the action; and
- (b) Shall specify a period of 30 days, or such lesser period as the Court may order, for the Oil Fund to apply to be joined in the action.

(6) Where the Oil Fund applies to be joined in any proceedings and the cause of action arises from liability incurred by the owner of a ship (being a ship which is registered in or flies the flag of a Contracting State to the International Convention on Civil Liability for Oil Pollution Damage 1969) under section 32 of this Act or his insurer under section 39 of this Act, the Court shall join the Oil Fund in those proceedings.

(7) Where the Oil Fund or its representative has been served with a notice under paragraph (a) of subsection (4) of this section but the Oil Fund has not been joined in the proceedings, the judgment of the Court, when it has become enforceable as a judgment, shall become final and binding on the Oil Fund in the sense that the facts and findings of the Court may not be challenged by the Oil Fund in any subsequent proceedings relating to the same cause of action.

55. Reciprocal enforcement of judgments—Part I of the Reciprocal Enforcement of Judgments Act 1934 shall apply, whether or not it would so apply apart from this section, to any judgment given by a Court against the Oil Fund in a country in respect of which the International Convention on the Establishment of an International Fund for Oil Pollution Damage 1971 is in force; and, in its application to such a judgment, subsections (3) and (4) of section 6 of that Act shall have no effect:

Provided that where a Court in a country in respect of which the International Convention on the Establishment of an International Fund for Oil Pollution Damage 1969 is in force has directed the distribution of the amounts available for distribution in accordance with the provisions of paragraph 5 of Article 4 of that Convention, then, for the purpose of enforcing the judgment of that Court in New Zealand, the judgment to be enforced shall be the judgment of that Court as modified by the direction as to distribution.

56. Rights of subrogation—(1) Where any person has received payment of compensation from the Oil Fund pursuant to section 49 of this Act, then, subject to sections 51 and 52 of this Act, the Oil Fund shall (up to the amount of compensation so paid) be subrogated to the rights and remedies of that person against the owner of a ship (being a ship which is registered in or flies the flag of a Contracting State to the International Convention on Civil Liability for Oil Pollution Damage 1969, and to which section 32 of this Act applies) or his insurer in respect of the liability incurred by that owner or his insurer under the said section 32 or, as the case may be, section 39 of this Act.

(2) Where the Oil Fund has paid compensation to any person pursuant to section 49 of this Act, the Oil Fund shall (up to the amount of the compensation so paid) be

subrogated to any right of action or remedy that that person may have or may have had against any person other than the persons mentioned in subsection (1) of this section:

Provided that the right of action or remedy against any person to which the Oil Fund is subrogated by the provisions of this subsection shall be no less favourable than any right of action or remedy against that person that the insurer of any of the persons mentioned in subsection (1) of this section may have or may have had by way of subrogation.

57. Legal proceedings—(1) No proceedings to enforce a claim against the Oil Fund for compensation or indemnification under the provisions of this Part of this Act shall be brought in any Court in New Zealand in respect of an incident giving rise to the Oil Fund's liability occurring within a period of 120 days after the date of the entry into force of the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage 1971.

(2) Subject to subsection (1) of this section, no proceedings to enforce a claim against the Oil Fund for compensation or indemnification under the provisions of this Part of this Act shall be brought in a Court in New Zealand until the expiry of 240 days from the date of entry into force of the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage 1971.

(3) For the purposes of subsections (1) and (2) of this section, the Governor-General in Council may, by Order in Council, prescribe the day after which proceedings may be brought in a Court in New Zealand against the Oil Fund under the provisions of this Part of this Act.

58. Levies on oil imports—(1) For the purpose of complying with the requirements of Articles 10, 11, 12, 13, 14, and 15 of the International Convention on the Establishment of an International Compensation Fund for Oil Pollution Damage 1971, regulations may be made under section 68 of this Act imposing a levy on oil to which this section applies carried by sea and landed from a ship in any harbour or terminal installation in New Zealand (whether or not landed from a country outside New Zealand).

(2) Regulations made pursuant to subsection (1) of this section may prescribe all or any of the following matters:

- (a) The rate of the levy, and the basis on which it is to be assessed in any one calendar year, whether for that year or the preceding calendar year or for any other calendar year:
- (b) Any additional rate of levy, and the basis on which it is to be assessed:
- (c) The persons by whom the levy is to be paid, the due date for payment, and the person to whom the levy is to be paid:
- (d) Penalties and interest for non-payment and for late payment of levies:
- (e) The taking of legal proceedings to recover any levy or any penalty or amount of interest.

(3) In this section the term "oil" means—

- (a) Crude oil, that is, any liquid hydrocarbon mixture occurring naturally in the earth, whether or not treated to render it suitable for transportation; and includes crude oils from which certain distillate fractions have been removed (topped crudes) or to which certain distillate fractions have been added (spiked or reconstituted crudes); and
- (b) Fuel oil, that is, heavy distillates or residues from crude oil, or blends of such materials, intended for use as a fuel for the production of heat or power of a quality equivalent to or heavier than the American Society for Testing and Materials' Specification for Number Four Fuel Oil (Designation D396-69).

PART VI

MISCELLANEOUS PROVISIONS

59. Determination of amounts—(1) For the purposes of this Act, a franc shall be taken to be a unit consisting of 65.5 milligrams of gold of millesimal fineness 900.

(2) The Governor-General may from time to time, by Order in Council, specify the amounts in New Zealand currency which—

- (a) For the purposes of section 31 of this Act, are to be taken as equivalent to 1,500 francs:

- (b) For the purposes of subsection (4) of section 37 and subsection (1) of section 51 and subsection (1) of section 52 of this Act, are to be taken as equivalent to 1,500 francs and 125 million francs, respectively:
- (c) For the purposes of section 32, subsection (1) of section 51, and subsection (1) of section 52 of this Act, are to be taken as equivalent to 2,000 francs and 210 million francs, respectively:
- (d) For the purposes of section 49 of this Act, are to be taken as equivalent to 450 million francs:
- (e) For the purposes of section 49 of this Act, are to be taken as equivalent to any amount specified in any Order in Council made under subsection (8) of that section.

60. Proceedings for offences—(1) Where an offence against this Act or any regulations made under this Act is alleged to have been committed by the master of a ship who thereafter departs from New Zealand before the expiration of the period within which proceedings for the offence might have been instituted against him, proceedings for the offence may, notwithstanding anything in the Summary Proceedings Act 1957, be instituted against him at any time within 2 months next after the date on which he first returns to New Zealand.

(2) For the purpose of any proceedings for any such offence, the offence may be treated as having been committed either at the place at which it was actually committed or at any place in which the person charged with the offence may at any time be.

(3) Where any body corporate is convicted of an offence against this Act or against any regulations made under this Act, every director and every person concerned in the management of the body corporate shall be guilty of a like offence, unless it is proved that the act or omission which constituted the offence took place without his authority, permission, or consent.

(4) Notwithstanding that clearance has been granted to any ship under the Customs Act 1966, any officer of Customs may, if he has reason to believe that an offence against this Act has been committed by reason of a discharge or escape of oil or a pollutant from any ship, detain the ship in New Zealand waters:

Provided that no ship shall be detained pursuant to this subsection for a longer period than 48 hours unless within that period proceedings in respect of the offence are instituted against the owner or master.

(5) All the provisions of the Shipping and Seamen Act 1952 relating to the detention of ships (including the penal provisions thereof) shall, with the necessary modifications, apply to the detention of a ship pursuant to subsection (4) of this section.

(6) Where a fine imposed by any Court in proceedings against the owner or master of a ship for an offence against this Act or any regulations made under this Act is not paid at the time and in the manner ordered by the Court, the Court shall, without prejudice to any other powers of the Court for enforcing payment, have power to direct the amount remaining unpaid to be levied by distress and sale of the ship and her equipments.

(7) Proceedings for an offence against this Act or any regulations made under this Act shall not be instituted in the case of an offence (other than an offence against subsection (7) of section 12 of this Act) committed in or in relation to the waters of a harbour, except by a person authorised in that behalf by the Harbour Board, and in any other case (including an offence against the said subsection (7)) except by a person authorised in that behalf by the Minister.

Cf. 1965, No. 65, s. 19

61. Service of instructions—Any instructions issued under the provisions of Part III of the Act shall be served—

- (a) In any case, by delivering a copy thereof personally to the person to be served; or
- (b) If the instructions are to be served on the master of a ship or on any person in charge of any salvage operation or his servant or agent, by leaving the same for the person to be served on board that ship with the person being or appearing to be in command of or in charge of or in possession of the ship, and explaining to that last-mentioned person the purport thereof; or
- (c) If the instructions are to be served on any person in possession of an offshore installation or on any person in charge of or carrying on any operations for the exploration of the seabed and subsoil and the exploitation of the natural resources thereof, by

leaving the same for the person to be served with the person being or appearing to be in command of or in charge of or in possession of the offshore installation or in charge of or carrying on any of the aforesaid operations; or

- (d) If the instructions are to be served on the owner of a ship, or the owner of an offshore installation, or the owner of a pipeline, by delivering a copy thereof to the owner, or to the place of business of the owner in New Zealand, or to any agent of the owner residing in New Zealand, or, where no such agent is known or can be found, by affixing a copy thereof to the mast of the ship, or, as the case may be, to some part of the offshore installation or pipeline which is out of the water.

62. Detention of ships in cases of damage to property by discharge of oil or pollutant—(1) If the Magistrate by whom any person is convicted of an offence under this Act in respect of the discharge or escape of oil or a pollutant from a ship, or any other Magistrate, is satisfied that damage to any property has been or is likely to be caused by the discharge or escape of oil or by the discharge or escape of a pollutant, he may, upon its being shown to him by any applicant that none of the owners of the ship resides in New Zealand, issue an order directed to any officer of Customs or other officer named by the Magistrate, requiring him to detain the ship until such time as security, to be approved by the Magistrate, is given to abide the event of any action, suit, or other legal proceedings that may be instituted in respect of the damage to property, and to pay all costs, damages, and other money that may be awarded therein:

Provided that in the case of a ship to which section 32 of this Act applies, a certificate issued under section 38 of this Act, or, where no certificate has been issued under that section, a certificate complying with the terms of Article VII of the International Convention on Civil Liability for Oil Pollution Damage 1969, on being produced to the Magistrate, shall be accepted by him as sufficient security for the purposes of this section.

(2) On any such order being made, the officer of Customs or other officer to whom the order is directed shall detain the ship accordingly, and the provisions of the Shipping and Seamen Act 1952 as to the detention of ships (including the penal provisions thereof) shall apply accordingly.

(3) In any civil proceedings in relation to any such pollution damage as aforesaid, the person giving security shall be made defendant, and shall be stated to be the owner of the ship, and the production of the order of the Magistrate made in relation to the security shall be conclusive evidence of the liability of the defendant in the proceedings for any such damage proved:

Provided that nothing in this subsection shall apply with respect to any ship (being a ship which is registered in or flies the flag of a Contracting State to the International Convention on Civil Liability for Oil Pollution Damage 1969) to which section 32 of this Act applies.

(4) If the owner of a ship is a corporation, it shall for the purposes of this section be deemed to reside in New Zealand if it has an office in New Zealand at which service of writs can be effected.

(5) The procedure under this section shall be such as the Magistrate to whom the application is made considers appropriate to the case.

Cf. 1965 No. 65, s. 20

63. Application of fines—Notwithstanding anything in section 109 of the Public Revenues Act 1953, where any person is convicted of an offence against section 3 or section 4 or section 5 or section 21 of this Act, the Court before which he is convicted may, on the application of the prosecutor, order that the whole or any part of the fine imposed in respect of the offence shall be paid to such person as the Court may direct for the purpose of being applied by him in or towards meeting any expenses incurred in the removal of the oil or pollutant so discharged or escaped, or, as the case may be, incurred in the removal of any waste or other matter dumped, or in or towards making good any damage resulting from the discharge or escape of that oil or pollutant, or, as the case may be, from the dumping of any waste or other matter.

Cf. 1965 No. 65, s. 21

64. General provisions as to application of Act—(1) The provisions of this Act, except provisions which are expressed to apply only to New Zealand ships or only to New Zealand ships and home-trade 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 68 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 11 of this Act shall apply to ships registered in, or having the nationality of, countries and territories other than New Zealand at any time when they are in a harbour in New Zealand, or are within New Zealand waters while on their way to or from a harbour in New Zealand.

(3) Regulations made pursuant to this section shall not be made so as to impose different requirements in respect of different countries or territories:

Provided that if the Governor-General is satisfied, with respect to any country or territory, that ships registered in, or having the nationality of, that country or territory are required, by the law of the country or territory, 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 or territory if the ship complies with the said provisions applicable thereto under the law of that country or territory.

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

Cf. 1965, No. 65, s. 22

65. State-owned ships—(1) The provisions of this Act shall not apply to—

(a) Naval ships as defined in section 2 of the Defence Act 1971:

Provided that—

(i) The provisions of sections 30 to 35 and sections 40, 41, and 43 of this Act (relating to civil liability) shall apply to naval ships (as so defined), and every other provision of this Act which relates

to or is ancillary to or consequential on the provisions so applied shall have effect accordingly; and

(ii) In the application of the provisions so applied, the term "tonnage", in relation to any such naval ship, means the tonnage of the ship determined in accordance with section 466 of the Shipping and Seamen Act 1952:

(b) Aircraft for the time being used as aircraft of the armed forces of a State other than New Zealand:

(c) Warships of a State other than New Zealand:

(d) Other ships or aircraft owned or operated by a State other than New Zealand and for the time being used only for government purposes other than commercial purposes.

(2) Subject to the provisions of paragraph (a) of subsection (1) of this section, the provisions of this Act, whether or not they are expressed to apply only to New Zealand ships, shall apply to New Zealand Government ships as they apply to other New Zealand ships.

(3) No naval ship as defined in section 2 of the Defence Act 1971 and no New Zealand Government ship shall be liable to arrest or detention under any provision of this Act.

(4) In this Act the term "owner", in relation to any naval ship (as so defined) and to any New Zealand Government ship, means Her Majesty in right of Her Government in New Zealand.

Cf. 1965, No. 65, s. 24

66. Power of Minister to grant exemptions—(1) The Minister may exempt any ships or classes of ships from any of the 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, he shall before granting any exemption under this section give notice of his intention in the *Gazette* 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 gazetting 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.

Cf. 1965, No. 65, s. 23

67. Designation of parties to Conventions—(1) The Governor-General may, from time to time, by Order in Council, declare which are—

- (a) The Contracting Governments to the International Convention for the Prevention of Pollution of the Sea by Oil 1954 as amended in 1962 and any subsequent amendments thereof, or any Convention subsequent to that Convention designed to replace that Convention, either in part or in whole:
- (b) The States Parties to the International Convention Relating to Intervention on the High Seas in Cases of Oil Pollution Casualties 1969, and to any amendment or revision thereof:
- (c) The Contracting States to the International Convention on Civil Liability for Oil Pollution Damage 1969, and to any amendment or revision thereof:
- (d) The Contracting States to the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage 1971, and to any amendment or revision thereof:
- (e) The Contracting Parties to the Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter 1972, and to any amendment or revision thereof.

(2) An Order in Council under this section shall, except so far as it has been superseded by a subsequent order, be sufficient evidence of the matters so declared.

(3) An Order in Council under this section may contain such transitional and other consequential provisions as appear to the Governor-General to be expedient.

(4) An Order in Council under this section declaring the Contracting Governments, the States Parties, or the Contracting States, as the case may be, to any of the international Conventions (including amendments and revisions thereof) specified in subsection (1) of this section shall specify the date on which any such government or State, as the case

may be, became or ceased to be a contracting Government, a State Party, or a Contracting State, as the case may be.

(5) If in any proceedings any question arises as to whether any government or State is or is not a Contracting Government, a State Party, or a Contracting State, as the case may be, to any Convention referred to in subsection (1) of this section or any amendment or protocol thereto or to any Convention referred to in subparagraph (ii) of paragraph (c) of subsection (3) of section 49 of this Act, a certificate by the Minister of Foreign Affairs to that fact shall be conclusive evidence thereof.

68. Regulations—The Governor-General may from time to time, by Order in Council, 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:
- (b) Prescribing offences for breaches of any such regulations, and, except where some other penalty is prescribed by this Act, prescribing fines, not exceeding \$2,000, in respect of any such offence and, where the offence is a continuing one, further fines not exceeding \$200 for each day on which the offence has continued.

69. Other Acts not affected—(1) Subject to subsection (2) of this section, the provisions of this Act are in addition to and not in substitution for the provisions of any other enactment, and, except as expressly provided by this Act, nothing in this Act shall derogate from the provisions of any other enactment.

(2) Section 29 of the Petroleum Act 1937 (including the provisions of that section as applying to the continental shelf pursuant to section 4 of the Continental Shelf Act 1964) shall not apply with respect to the discharge or escape of oil into the sea from any offshore installation or pipeline (whether in New Zealand waters or not), or from any place on land, or as a result of operations for the exploration of the seabed and subsoil (whether in New Zealand waters or not) and the exploitation of the natural resources thereof.

(3) Nothing in this Act shall apply with respect to the discharge of any substance into the sea pursuant to a right granted or authorised under the Water and Soil Conservation Act 1967.

70. Repeal and amendment—(1) The Oil in Navigable Waters Act 1965 is hereby repealed.

(2) The First Schedule to the Ministry of Transport Act 1968 (as substituted by section 3 (1) of the Ministry of Transport Amendment Act 1973) is hereby amended by omitting from Part I the item relating to the Oil in Navigable Waters Act 1965, and substituting the following item:

“1974, No. 14—The Marine Pollution Act 1974.”

This Act is administered in the Ministry of Transport.
