



WESTERN SAMOA

Analysis

Title	
1. Short title	20. Inspection of ships for deficiencies and defects
2. Interpretation	21. Surveys
3. Establishment of Department	22. Port Administrator to be Receiver of Wrecks
4. Functions of Department	23. Powers of Receiver
5. Powers of Minister	24. Jurisdiction of Supreme Court
6. Marine Advisory Committee	25. Salvage
7. Port Administrator, Harbourmaster and other officers	26. Rescue
8. Functions of Port Administrator	27. Pilots and pilotage
9. Functions of Harbourmaster	28. Ports
10. Registration of ships	29. Responsibility for injury
11. Entries in register of ships	30. Dangerous goods
12. Change of name of registered ship	31. Liability for damage or loss
13. Registration of sale or mortgage	32. Seamen of foreign ships
14. Certificates of competency	33. Offences
15. Sailing beyond Western Samoa Without permit	34. Legal proceedings and penalties
16. Clearance book	35. Recovery of fines by distress
17. Reporting of casualties	36. Harbour dues and other dues and charges
18. Passenger carrying ships	37. Regulations
19. Engineers	38. Repeals and Savings Schedule

1972, No. 18

AN ACT to consolidate, amend and replace existing Ordinances relating to Shipping, ports, and matters connected therewith. [8 December 1972]

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

1. Short title—This Act may be cited as the Shipping Act 1972.

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

“Committee” means the Marine Advisory Committee referred to in Section 6 under this Act;

“Government” means the Government of Western Samoa:

“Harbourmaster” means the Harbourmaster or each Harbourmaster, as the case may be, appointed under this Act:

“Master” means any person (except a pilot) who is in command or in charge of any ship:

“Minister” means the Minister of Marine:

“Oil” means oil of any description and includes spirit produced from oil and oil mixed with water:

“Overseas ship” means any ship which arrives in Western Samoa from any port or place outside Western Samoa, other than a ship registered in Western Samoa:

“Ship” means any vessel customarily used for the carriage of passengers or cargo for commercial purposes:

“Western Samoa” means the Independent State of Western Samoa:

“Wharf” includes the approaches to a wharf by sea and by land and any building yard or way used in connection therewith.

3. Establishment of Department—There is hereby constituted and established a Department of the Government to be known as the Marine Department which Department is hereby declared to be the same Department as the Department of the same name existing immediately before the commencement of this Act.

4. Functions of Department—(1) The principal functions of the Department shall be,—

- (a) To provide and control pilotage for ships entering or leaving any port or harbour in Western Samoa where pilotage is required and all movements of such ships within any such port or harbour;
- (b) To superintend and direct the anchoring, mooring, berthing and unberthing of such ships in any port or harbour in Western Samoa;
- (c) To erect, install, maintain and service all lights, beacons, buoys and navigation aids of every description, when and where it is necessary so to do.

- (d) To take all such steps in relation to survey and inspection of ships shall be necessary;
- (e) To issue certificates of competency for masters and engineers of ships;
- (f) To revoke or suspend any certificate of competency granted under this Act, for incompetency gross misconduct, drunkenness, negligent navigation, breach of duty or conduct imperilling a ship, passengers, crew or cargo;
- (g) To keep a register of ships;
- (h) To establish manage operate and organise such ports harbours wharf facilities, and shipping services as the Government may decide to be necessary or desirable;
- (i) To undertake the maintenance, cleanness and supervision of wharves and wharf sheds, including the stacking and handling of cargo, subject to the statutory powers of the Collector of Customs;
- (j) To calculate or assess, collect and properly account for all revenue of the Department, including all fees and charges on ships in Western Samoa, and on goods imported into or exported from Western Samoa, and other than Customs duties;
- (k) To control and administer wharf working and cargo handling;
- (l) Generally to control shipping and to manage and operate all ports and harbours and port facilities in Western Samoa;
- (2) The Department shall perform any other function which may from time to time be lawfully conferred upon it and will generally implement the policy of the Government relating to ports and shipping.

5. Powers of Minister—(1) The Minister shall have a general superintendence over all matters relating to ports and shipping which fall within the competence of the Government and generally may exercise all such powers as are reasonably necessary for the effective performance of the functions of the Department.

(2) The Minister may from time to time delegate to the Port Administrator or any other officer of the Department or to the Marine Advisory Committee any of his powers under this Act.

6. Marine Advisory Committee—(1) For purposes of enabling the Department to carry out its functions, the Minister may institute investigations into all matters relating to the development and control of shipping facilities and shipping in Western Samoa, and for such purpose he is hereby empowered from time to time to appoint a Marine Committee.

(2) The Committee shall comprise —

- (a) The Port Administrator;
- (b) The Harbourmaster;
- (c) The Director of Works;
- (d) The Collector of Customs;
- (e) The Financial Secretary;
- (f) The Commissioner of Police and Prisons;
- (g) One representative of the Western Samoa Chamber of Commerce one representative of Shipping Agent, and one other reputable person representing the interests of the general public, each of whom shall hold office for a term of three years.

(3) The Committee shall —

- (a) Advise the Minister on the improvement of wharf working, cargo handling, and port administration;
- (b) Recommend the Minister to take such measures as in the opinion of the Committee are necessary to ensure safety at sea in accordance with the generally accepted international standards relating to safe navigation and protection of life and property;
- (c) Consider and deal with any other matter which may be referred to it under the provisions of this Act or any regulations made thereunder;
- (d) Exercise such further or additional functions as may be delegated to it by the Minister.

(4) There shall be paid to members of such Committee who are not fulltime members of the Western Samoa Public Service such fees and allowances as are shall from time to time be approved by Cabinet and which shall be paid out of moneys to be appropriated by the Legislative Assembly for the purpose.

(5) The Minister shall appoint a member of the Committee to be Chairman of the Committee.

(6) At any meeting of the Committee five members personally present shall form a quorum.

(7) The Committee shall have power to make rules for the conduct of its proceedings.

7. Port Administrator, Harbourmaster and other officers—

(1) There shall from time to time be appointed, as officers of the Department and the Public Service, a Port Administrator and one or more Harbourmasters

(2) There shall from time to time be appointed such other officers and employees of the Department as the Public Service Commission shall consider necessary.

(3) The persons holding office at the commencement of this Act shall be deemed to have been so appointed under this Act.

8. Functions of Port Administrator—(1) The principal functions and duties of the Port Administrator shall be,—

(a) To be the administrative head of the Department;

(b) To be responsible for the administration of the Department to the Minister;

(c) To have the control and direction of all officers and employees of the Department in the performance of their functions and duties and the exercise of their powers under this Act or any other enactment.

(2) With the consent of the Minister, the Port Administrator may delegate any of his powers to collect revenue to the Collector of Customs or the Financial Secretary if such delegation is considered to be expedient and in the interests of the Government.

9. Functions of Harbourmaster—The principal functions and duties of the Harbourmaster shall be, —

(a) To perform the functions of the Department set out in paragraphs (a) to (f) inclusive of section 4 of this Act, under the general supervision and control of the Port Administrator;

(b) To keep such logbook and associated records and statistics and to make such returns or reports as may from time to time be required by the Port Administrator.

10. Registration of ships—(1) Every ship having a gross tonnage of more than fifteen tons owned by a resident of Western Samoa or company registered in Western Samoa, or owned by any other person or company and not registered elsewhere, which is engaged in the carriage of passengers or cargo from any port or place in Western Samoa to any other

port or place in Western Samoa or elsewhere shall be registered by the owner in accordance with this Act.

(2) Registration shall be effected at the office of the Port Administrator.

(3) Every ship required by this Act to be registered shall before registration be surveyed by the Harbourmaster or some other person appointed by the Minister, and the Harbourmaster or other person as aforesaid shall duly ascertain her tonnage in accordance with recognised international methods of measurement of tonnage.

(4) The Harbourmaster or other person as aforesaid shall issue to the owner or person applying for registration a certificate stating the registered tonnage of the ship as ascertained by him and whether the condition of the hull, rigging, tackle, boats and machinery of the ship is such as to comply with the provisions of this Act and any regulations made thereunder for a ship of that tonnage.

(5) Such certificate shall be delivered by the owner or person applying for registration to the Port Administrator with the application for registration.

(6) The owner of every ship in respect of which an application for registration is made, shall cause the same before registration to be marked permanently and conspicuously to the satisfaction of the Harbourmaster with the name of the ship, port of registry, official number, and registered tonnage.

(7) Application to register any ship shall be made in writing by the owner or the agent of the owner.

11. Entries in register of ships—(1) The Port Administrator shall keep a register book for the purpose of registering ships and shall enter in such book the following particulars:

- (a) Name of ship;
 - (b) Name of port to which the belongs;
 - (c) Number of registration;
 - (d) Date of registration;
 - (e) When built;
 - (f) Where built;
 - (g) How Propelled;
 - (h) Registered tonnage;
 - (i) Number and rating of the crew;
 - (j) Name and description of registered owners;
- (2) The Port Administrator shall issue a certificate of

such registry to the applicant for registration on payment of the prescribed fee.

12. Change of name of registered ship—No change may be made in the name of any registered ship without the permission of the Port Administrator, and on such permission the name on the ship and in the registry shall be amended accordingly.

13. Registration of sale or mortgage—(1) Every sale or mortgage or discharge of mortgage of a registered ship shall be null and void unless expressed in writing signed by the seller and purchaser, or the mortgagor and mortgagee, as the case may be, attested by one witness, and recorded in the shipping register at the port of registry of the ship.

(2) On every sale, mortgage, or discharge of a mortgage the document effecting same shall be produced to the Port Administrator at the port or registry and shall on payment of the prescribed fee shall be recorded by him in the register, and he shall endorse the document and the certificate of registry with a memorial of registration.

14. Certificates of competency—(1) It shall not be lawful for any person to command or have charge of or take to sea any registered ship unless he is the holder of a master's certificate of competency.

(2) For the purpose of granting certificates of competency as master, the Harbourmaster or any other person appointed by the Minister may conduct examinations when necessary.

(3) A person shall not be granted a master's certificate unless he shall satisfy the Harbourmaster or such other person that he is physically fit and of sober habits, and has an adequate knowledge of seamanship and rules of navigation, local knowledge of waters harbours currents and tides, and has served as a member of a crew of a registered or foreign ship for at least three years prior to his applying for a master's certificate:

Provided that a person holding a master's certificate or a licence to command a ship engaged in inter-island trade in any group of Pacific Islands granted to him by any competent authority elsewhere, may be granted a master's certificate without being compelled to sit for the said examination if the Harbourmaster is satisfied that such certificate or licence qualifies the person holding the same to act as a master in Western Samoa.

(4) The penalty for an offence against subsection (1) of this section shall be a term of imprisonment not exceeding 12 months or a fine not exceeding five hundred tālā or both.

15. Sailing beyond Western Samoa without permit—(1) It shall be unlawful for any person holding a Western Samoa master's certificate to take any registered ship to sea on a voyage to any place beyond Western Samoa, unless he shall have first had issued to him from the Port Administrator a written permit to do so and the Port Administrator shall not issue such a permit unless he is satisfied that the ship is seaworthy, is properly manned and equipped and has sufficient stores and water for the particular voyage.

(2) The penalty for an offence against the preceding subsection shall be a fine not exceeding one thousand tālā.

16. Clearance book—The master of every registered ship shall keep a clearance book and shall enter therein a true record of the time and date of all departures from and all arrivals at any port or place of his ship, and shall lodge the clearance book with the Port Administrator upon arrival at any port of entry until the ship is ready to depart there from.

17. Reporting of casualties—Upon arrival at any port of entry the master of a registered ship shall immediately report in writing to the Harbourmaster, any casualty that has happened to or on board the ship including failure of any mechanical or radio equipment.

18. Passenger carrying ships—No master of any ship shall carry passengers without having obtained a passenger certificate nor shall be taken on board a greater number of passengers than is shown in the passenger certificate or than is permitted by this Act.

19. Engineers—(1) No ship shall carry passengers for reward unless there is on board a person holding an engineer's certificate of competency.

(2) Certificate under this section may be issued by the Harbourmaster after examination of persons applying for the same; such examination to be carried out either by the Harbourmaster himself or by some competent person appointed him for that purpose.

20. Inspection of ships for deficiencies and defects—(1) The Harbourmaster may at any time inspect any ship for the purpose of seeing that she is properly provided with life-saving appliances and if he should find the ship is not so provided he shall give to the master or owner notice in writing pointing out the deficiency and what is required in his opinion to remedy the same and shall detain the ship until she is properly provided with such appliances.

(2) When the Harbourmaster has reason to believe that any ship is by reason of the defective condition of her hull, equipment or machinery or by reason of overloading or improper loading, unfit to proceed to sea without serious danger to human life, he or some person or persons appointed by him may survey such ship and the equipment and machinery and cargo thereof, and if he thinks fit may make such order as he thinks requisite as to the detention of the ship or as to her release either absolutely or upon the performance of such conditions with respect to the execution of repairs or alterations or the unloading or reloading of cargo as he may think fit to impose.

(3) The costs of the survey shall be borne by the owner of the ship if such is found unfit to proceed to sea without serious danger to human life.

21. Surveys—(1) Application for a certificate of survey shall be made by the master or owner of every ship which is required to be registered under this Act in such form as the Harbourmaster may prescribe and shall be accompanied by the prescribed fee.

(2) The master or owner shall do all things at their expense which the Harbourmaster may require to enable him properly to survey the ship.

(3) Upon the Harbourmaster being satisfied as to the seaworthiness of the ship and the sufficiency and efficacy of its equipment he shall issue in duplicate a certificate of survey (written in the English and Samoan languages) setting out,—

(a) The limits (if any) within which the ship may ply;

(b) The masts, sails, boats, cars, compasses, sea anchors, ropes, hawsers, charts, lights, fire fighting appliances, radio equipment, life-saving appliances, water, provisions, and other equipment which the ship shall at all times carry;

- (c) The number of passengers which the ship may carry distinguishing if necessary the numbers to be carried on the deck or in the cabins and in different parts of the deck and cabins;
- (d) The amount of cargo which the ship may carry specifying the places in which such cargo may be carried;
- (e) The number of engineers and seamen to be carried while the ship is plying;
- (f) Prescribing the load water lines to be marked on the ship, indicating the maximum depth to which the ship may be safely loaded;
- (g) The period (not exceeding twelve calendar months from the date of the certificate) during which it shall remain in force;

Provided however that the Harbourmaster may in his discretion extend the period of any certificate of survey for a term not exceeding three months from the date of its expiration.

(4) The Harbourmaster may cancel a ship's certificate of survey where he has reason to believe,—

- (a) That the certificate has been issued upon false or erroneous information;
- (b) That since the issue of the certificate the ship or its equipment has sustained any injury or is otherwise insufficient.

(5) The owner or master of every ship shall forthwith on the receipt of the certificate of survey by him or his agent cause it to be put up in some conspicuous place on board the ship and to be kept so put up and legible while the certificate remains in force and the ship is in use.

(6) If any ship which is required to be registered under this Act shall ply for hire in any waters within Western Samoa or proceed to sea on any voyage or excursion,—

- (a) Without a valid certificate of survey; or
- (b) Beyond the limits specified in its certificate of survey;
- or
- (c) Without the equipment or any part thereof specified in its certificate of survey; or
- (d) With passengers or cargo in excess of the number or amount specified in its certificate of survey,—

then and in such case the master and owner severally commit an offence for which each of them shall be liable to imprisonment for a term not exceeding twelve months or a fine not

exceeding one thousand tālā or both, unless such master or owner (as the case may be) satisfies the Court that he had exercised all due diligence to prevent the commission of an offence and was personally unaware that the offence was committed.

22. Port Administrator to be Receiver of Wrecks—The Port Administrator shall be the Receiver of Wrecks and shall have the general superintendence throughout Western Samoa of all matters relating to Wrecks and may appoint any Harbourmaster or other person to be a receiver of wrecks in any district island or place and to perform the duties of receiver.

23. Powers of Receiver—(1) Where any ship is sunk stranded or abandoned in any harbour fairway or on the seashore or on or near any rock shoal bank or reef the Receiver of Wrecks by order in writing may direct the owner:

- (a) To remove the same within the time mentioned in the order;
- (b) To light and keep a light on the same until its removal;
- (c) To buoy and keep buoyed the same.

(2) Any owner failing to carry out the lawful orders of the Receiver of Wrecks shall commit an offence against this Act.

(3) Where no owner of such ship can be found the Receiver of Wrecks may take possession of and raise remove or destroy the whole or any part of the ship and light or buoy the ship or part until the raising removal or destruction thereof and may sell the ship thereof or any part thereof and out of the proceeds of the sale reimburse himself for all expenses incurred.

Provided that in case of a sale seven days' notice shall be given of such intended sale.⁽¹¹⁾

24. Jurisdiction of Supreme Court—(1) The Supreme Court, sitting with four assessors, shall have jurisdiction to enquire into any shipping casualty

(2) A shipping casualty shall be deemed to have occurred—

- (a) When any ship is lost, abandoned, or materially injured, or causes loss or material damage to any other ship; or

- (b) When loss of life ensues by reason of any casualty on board any ship; or
 - (c) When any ship has been stranded, or damaged, or blown away and any witness is found in Western Samoa, provided either such event occurs on or near the coasts of Western Samoa, or occurs elsewhere and a witness is found in Western Samoa; or
 - (d) When any ship is lost or supposed to have been lost and any evidence is obtainable in Western Samoa as to the circumstances under which she proceeded to sea or was last heard of.
- (3) The Supreme Court shall hold an enquiry into any shipping casualty when requested by the Minister so to do.
- (4) When holding an enquiry into a shipping casualty the Court, in addition to the jurisdiction it may exercise under any other law, shall have jurisdiction—
- (a) To go on board the ship and inspect it or anything on board;
 - (b) To order the cancellation of any certificate of competency of any master or engineer;
 - (c) To order costs to be paid by whomsoever it thinks proper.

25. Salvage—(1) When any ship is stranded or wrecked or otherwise in distress on or near the shore of any sea or tidal water within the limits of Western Samoa and services are rendered by any person in assisting such ship or saving the lives of the persons belonging to such ship or saving the cargo or apparel of such ship or any portion thereof and when any wreck is saved by any person other than a Receiver of Wrecks, there shall be payable by the owners of such ship cargo, apparel or wreck to the person by whom such services or any of them are rendered or by whom such wreck is saved a reasonable amount of salvage with all expenses properly incurred by him in the performance of such services or the saving of such wreck, the amount of such salvage and expenses (which expenses are hereinafter included under the term salvage) to be determined in cases of dispute by the Supreme Court and to be apportioned among the several claimants as the Court thinks fit.

(2) Salvage in respect of the preservation of the life or lives of any person or persons belonging to any such ship shall be payable by the owners of the ship in priority to all other claims for salvage.

(3) When any salvage is due to any person under this Act the Receiver of Wrecks shall act as follows:

- (a) If the same is due in respect of services rendered in assisting any ship or in saving the lives of persons belonging to the same or the cargo or apparel thereof, he shall detain such ship and the cargo and apparel belonging thereto until payment is made or process has been issued for the detention of such ship cargo or apparel;
- (b) If the same is due in respect of the saving of any wreck and such wreck is not sold as unclaimed in pursuance of the provisions hereinafter contained, he shall detain such wreck until payment is made or process has been issued as aforesaid:

Provided that it shall be lawful for the Receiver if, at any time previously to the issue of such process, a bond or other security is given to his satisfaction for the amount of salvage due, to release from his custody any ship cargo or wreck so detained by him as foresaid and the Supreme Court may enforce payment of the said bond or other security in the same manner as if the bail had been given in the Court.

(4) Whenever any ship cargo apparel or wreck is detained by the Receiver for non-payment of any sums due as aforesaid and the parties liable to pay the same are aware of such detention then the Receiver may proceed to sell such ship cargo apparel or wreck or a sufficient part thereof and out of the proceeds of sale, after payment of all expenses thereof, defray all sums of money due in respect of expenses, fees and salvage, paying the surplus (if any) to the owners of the property sold or the other parties entitled to receive the same.

(5) Subject to the payment of such expenses fees and salvage as aforesaid, the owner of any wreck who establishes his claim thereto to the satisfaction of the Receiver within one year from the date on which such wreck has come within the possession of the Receiver shall be entitled to have the same delivered up to him.

(6) Any person who removes or attempts to remove any ship cargo apparel or wreck from the place where the Receiver has ordered the same to be detained shall be guilty of any offence against this Act.

(7) If no owner establishes his claim to wreck found at any place before the expiration of a year from the date at which the same has come into possession of the Receiver then the Receiver shall proceed to sell the same, and after deduction of all expenses attending such sale including his own fees and expenses incurred by him and paying to the salvos such amount of salvage as shall be determined to be properly due to them, pay the same into the Public Account.

(8) Every person commits an offence against this Act who—

- (a) Wrongfully carries away or removes any part of a ship stranded or in danger of being stranded or otherwise in distress on or near the shore of any sea or tidal water or any part of the cargo or apparel thereof or any wreck; or
- (b) Endeavours in any way to impede or hinder the saving of such ship, cargo, apparel or wreck; or
- (c) Secretes any wreck or obliterates any marks thereon.

26. Rescue—(1) The master or person in charge of any ship or boat shall, so far as he can do so without serious danger to his own ship, his crew and passengers, render assistance to any other ship or person in distress.

(2) It is the duty of every person to render every aid possible when any ship is wrecked, stranded or in distress.

(3) Where any ship is wrecked, stranded, or in distress at any place on or near the coasts of Western Samoa, the Harbourmaster, if present, may assume charge of all persons and things present, and shall assign such duties and give such directions to each person as he thinks fit for the preservation of the ship and the lives of the persons belonging thereto and of the cargo and equipment of the ship.

(4) The Harbourmaster may, with a view to the preservation of the lives of any persons or ship in distress,—

- (a) Require such persons as he thinks necessary to assist him;
 - (b) Require the master or other person having the charge of any ship or other ship or boat near at hand to give such aid as may be in his power.
- (5) Every person commits an offence against this Act who—

- (a) Wilfully disobeys the lawful direction of the Harbourmaster, or
- (b) Refuses without reasonable cause to comply with any lawful requisition or demand made by a Harbourmaster under this section.

(6) If a Harbourmaster is not present at the scene of a wreck the powers of the Harbourmaster may be exercised by these senior member of the Police then present at or near to the scene of the wreck, in consultation with any officers of the Marine Department who may be present.

27. Pilots and pilotage—(1) The Public Service Commission may from time to time appoint a pilot or pilots under this Act, who may hold any other office in the Public Service which the Public Service Commission shall not to be not incompatible therewith.

(2) The Harbourmaster shall be ex officio a pilot under this Act:

(3) In the event of there being no pilots appointed or available to act under either of the two preceding subsections, the Minister may from time to time appoint or license a pilots who shall be paid such fees as the Minister shall determine.

(4) No person shall be appointed or licensed as a pilot under this section unless he is shown, by examination or otherwise, to possess sufficient competency and experience to pilot overseas ships in the harbours and channels in which he shall be working.

(5) No overseas ship shall enter or depart from any port in Western Samoa without first taking on board a pilot, unless written permission has first been obtained from the Minister, Port Administrator or Harbourmaster, either of whom may give such permission subject to such conditions as he thinks fit to impose.

(6) The master of an overseas ship arriving near any port in Western Samoa shall bring his ship to on being approached, hailed or signalled by a pilot and shall comply with all reasonable directions issued by him as to the bringing of such ship into port and the anchoring, mooring and berthing of such ship therein.

(7) The Harbourmaster may appoint the place where any ship arriving in or present in any port in Western Samoa shall cast anchor, moor, or berth, and may in his discretion cause or permit such ship to be removed from one place of anchorage, mooring, or berthage to any other place and may cause such acts to be done as may be necessary to facilitate such removal and the master of such ship shall comply with and observe all such powers of the Harbourmaster.

(8) The master of a ship who fails to comply with any of the provisions of this section shall be guilty of an offence and shall be liable on conviction to a fine not exceeding one thousand tālā.

(9) If any pilot when in charge of any ship is guilty of any breach or neglect of duty tending to the loss, destruction, or serious damage of such ship or tending to endanger the life or limb of any person on board such ship, the pilot shall commit an offence against this Act, and on conviction he shall be liable to a term of imprisonment not exceeding two years or to a fine not exceeding one thousand tālā or both.

(10) Notwithstanding anything contained in this Act no civil action for damages or otherwise shall lie against any pilot in respect of any damage occasioned by negligence or want of skill in the performance of his duties and no civil action for damages or compensation in respect of property damage, death, personal injury or otherwise shall lie against the Government of Western Samoa or any Department or officer thereof in respect of any such damage occasioned as aforesaid.

28. Ports—(1) For purposes of this Act “port” or “harbour” includes any harbour properly so called, whether natural or artificial, and any haven, dock, pier, jetty and wharf in or at which ships do or can obtain shelter, or ship or unship goods or passengers, and any port or harbour designated or declared under or pursuant to this or any other enactment.

(2) The ports of Apia and Asau shall include all areas of sea included within a circle of two miles radius from the main wharf existing at each of those places, and all harbour works, wharves, jetties, installations and buildings directly used in connection therewith.

(3) The Head of State may from time to time acting on the advise of Cabinet, define or redefine the limits of any port.

(4) The Minister shall have power to do the following things:

- (a) Make construct erect and maintain harbour works;
- (b) Construct warehouses, storehouses, sheds and other buildings and works as may be necessary for the accommodation of goods shipped or unshipped at the harbour, or for the use or convenience of importers or exporters or of shipowners or shipping agents, or for any purpose connected with the harbour;
- (c) Erect, provide, and maintain refrigerated chambers;
- (d) Erect or provide cranes, lifts, weighing machines, conveniences or appliances as may be necessary;
- (e) Do all things necessary or expedient for the better utilisation of the harbours and efficient loading and unloading of passengers and cargo.

(5) The management of every harbour and wharf shall be vested in the Minister, who may delegate any of his powers of management to the Port Administrator or Harbourmaster or other officer or officers or to the Marine Committee as he sees fit.

(6) All traffic navigation in any harbour shall be under the control of the Harbourmaster.

29. Responsibility for injury—(1) Where any injury is done by any ship to any part of the works or property of the Government or causes any nuisance, the owner of that ship shall be answerable in damages to the Government for the injury or nuisance or damage whether such injury nuisance or damage was caused through negligence or not.

(2) It shall be an offence to cast or suffer to fall from any ship any ballast, rock, gravel, sand, earth, sawdust, rubbish, dunnage or other substance into any harbour.

(3) It shall be an offence to discharge any oil or allow any oil to escape from any ship or pipeline, or place on land or other installation whether directly or indirectly into the harbours and territorial waters of Western Samoa unless such discharge or escape was necessitated or caused by a collision and all reasonable means were taken to avoid such discharge or escape.

30. Dangerous goods—(1) The master agent or consignee of every ship due to arrive in Western Samoa having on board any quantity of explosives petroleum or other dangerous goods shall not less than 48 hours before the arrival of such ship furnish full particulars thereof to the Port Administrator.

(2) The master of every ship having as cargo on board any explosives petroleum or other dangerous goods shall on arrival take the same to such place as shall be specified by the Harbourmaster, and he shall comply with all directions of the Harbourmaster in the control movement carriage landing shipment and transshipment of any such explosives petroleum or other dangerous goods.

(3) Such explosives or dangerous goods shall be unloaded from the ship as soon as practicable after the arrival of such ship at its destination.

(4) No person shall send by any ship nor shall the owner or master of any ship carry any explosives or dangerous goods without distinctly marking their nature on the outside of the container thereof.

31. Liability for damage or loss—(1) Where, by the fault of two or more ships, damage or loss is caused to one or more of them or to their cargoes or freight, or to any property on board, the liability to make good the damage or loss shall be in proportion to the degree in which each ship was in fault:

Provided that—

- (a) If, having regard to all the circumstances of the case, it is not possible to establish different degrees of fault, the liability shall be apportioned equally; and
- (b) Nothing in this subsection shall operate so as to render any ship liable for any loss or damage to which her fault has not contributed; and
- (c) Nothing in this subsection shall affect the liability of any person under a contract of carriage, or any contract, or shall be construed as imposing any liability upon any person from which he is exempted by any contract or by any provision of law, or as affecting the right of any person to limit his liability in the manner provided by law.

(2) References to damage or loss caused by the fault of a ship shall be construed as including references to any salvage or other expenses consequent upon that fault recoverable at law by way of damages.

(3) Where loss of life or personal injury is suffered by any person on board a ship owing to the fault of that ship and of any other ship or ships, the liability of the owners of the ships shall be joint and several;

Provided that nothing in this subsection shall be construed as depriving any person of any right of defence on which, independently of this subsection, he might have relied in an action brought against him by the person injured or any person entitled to sue in respect of that loss of life, or shall affect the right of any person to limit his liability in cases to which this subsection relates in the manner provided by law.

(4) Where loss of life or personal injury is suffered by any person on board a ship owing to the fault of that ship and any other ship or ships, and a proportion of the damages is recovered against the owners of one of the ships which exceeds the proportion in which she was in fault, they may recover by way of contribution the amount of the excess from the owners of the other ship or ships to the extent to which those ships were respectively in fault:

Provided that no amount shall be so recovered which could not by reason of any statutory or contractual limitation of or exemption from liability, or which could not for any other reason, have been recovered in the first instance as damages by the persons entitled to sue therefor.

(5) In addition to any other remedy provided by law the persons entitled to any such contribution as aforesaid shall, for the purpose of recovering the same have, subject to the provisions of this Act, the same rights and powers as the persons entitled to sue for damages in the first instance.

(6) This section shall apply in the case of ships owned by the Government of Western Samoa as it applies in the case of other ships.

32. Seamen of foreign ships—(1) If any seaman belonging to a foreign ship deserts or absents himself without leave from that ship in Western Samoa, he may be arrested by any constable with or without warrant, and shall cause such person to be conveyed as soon practicable before a Judge or Magistrate.

(2) Such Judge or Magistrate may direct that that seaman be placed at any available opportunity on board the ship to which he belonged or to be deported.

(3) Every seaman who so deserts or absents himself without leave from a foreign ship in Western Samoa shall be guilty of an offence and shall be liable to imprisonment for a term not exceeding three months or a fine not exceeding five hundred tālā.

33. Offences—Wherever this Act require anything or any regulations or rules made pursuant to it to be done or not to be done, as the case may be, the breach of such requirement shall constitute an offence against this Act.

34. Legal proceedings and penalties—(1) Where under this Act any person is guilty of an offence for which no special penalty is provided elsewhere than in this section, that person shall be liable on conviction to imprisonment for a term not exceeding two years or to a fine not exceeding one thousand tālā or both.

(2) Where any person claims that any sum is due to him from the owners or other persons responsible for the navigation and management of a ship for work done at any port in Western Samoa by that person in connection with the loading or discharging of cargo or fuel on or from that ship, he may institute proceedings in the Supreme Court for enforcing that claim, and the Court shall have the same jurisdiction as if the claim were a claim for necessaries supplied to the ship.

(3) If it is alleged that the owners of any ship have incurred any liability to pay any sum in respect of work done or goods supplied in connection with that ship or in respect of loss of life or personal injury caused by or sustained on board that ship, a Judge of the Supreme Court on its being shown that the owners are probably liable in any such respect as aforesaid, and none of the owners resides in Western Samoa, may in his discretion, issue an order directed to the Port Administrator, Collector of Customs, or other officer, for the detention of the ship until such time as satisfaction has been made by the owner or his agent or by the master of the ship, or until security approved by the Judge making the order has been given by such person to abide the event

of any action or other legal proceeding which may be instituted in respect of the alleged liability, and to pay all costs that may be awarded therein.

35. Recovery of fines by distress—Where any Court orders the owner or master of a ship to pay any fine or other moneys and the same are not paid in the time and manner limited by the conviction or specified in the order of the Court, then in such case the Court may direct the amount unpaid to be levied by distress or by the detention or sale of the ship and her equipment.

36. Harbour dues and other dues and charges—(1) Until other provision is made in that behalf under this Act, all fees dues and charges which at the commencement of this Act are payable by law within any port or harbour shall continue to be levied and shall be payable and promptly paid as if the same had been made payable by this Act.

(2) The persons liable to pay the dues payable by or in respect of any ship shall be the owner and master and any consignee or agent who has paid or made himself liable to pay any other charge on account of the ship in the port of arrival or discharge.

(3) The persons liable to pay the dues in respect of any goods carried in any ship shall be the owner of the goods, any consignor, consignee, shipper, or agent for the goods, and any person entitled to the possession of the goods as owner or agent for the owner.

(4) There may be levied and collected in respect of ships entering or leaving any port or harbour such pilotage rates, light dues, anchorage charges, berthage charges, and harbour and shipping dues as may be prescribed by regulations.

(5) There may be levied and collected wharfage charges and dues on goods and cargo imported into or exported from Western Samoa at such rates as may be prescribed by regulations.

(6) There may be collected storage fees in respect of goods and commodities stored in Government sheds, at such rates as may be prescribed by regulations.

(7) Where any ship of a measurement of not less than two tons shall be placed alongside a Government wharf there may be levied and collected in respect of such ship before obtaining her clearance or before she sails beyond the Harbour a duty per ton as may be prescribed by regulations.

(8) It shall not be lawful for any ship to go alongside of or make fast to any Government wharf except with the permission of the Port Administrator or Harbourmaster, and the master or person in charge of any ship who shall fail to comply with the provisions of this section shall be guilty of an offence against this Act.

(9) All fees, dues, fines, and other moneys received under this Act shall be paid into the Treasury for the benefit of the Public Account.

37. Regulations—The Head of State, acting on the advice of Cabinet may from time to time make regulations for or relating to all or any of the following purposes;

(1) Preventing the overloading of ships or the overcrowding of ships with passengers, and securing the safety and properly accommodation of passengers.

(2) Providing for the inspection, survey, and testing from time to time of all ships, machinery, ropes, staging, gear and appliances.

(3) Prescribing maximum weight limits for any class or classes of chains, ropes, hooks, or other appliances used in loading or unloading or transhipment of goods.

(4) Prescribing navigational aids, safety appliances, radio equipment and life-saving equipment to be carried on ships (including fishing vessels, small ships, boats, and ferries).

(5) Providing for the cleaning, fumigating, and disinfecting of buildings, wharves, ships and cargo.

(6) Prescribing all such things as may be necessary with respect to harbour lights, buoys, beacons, and signals.

(7) Prescribing rules for determining the qualifications in respect of age, service, skill, character, and otherwise to be required or persons holding positions as Harbourmaster or Pilots.

(8) Regulating all other matters relating to the protection of life and property in or on ships, (including fishing vessels, small ships, boats, and ferries), wharves or harbours.

(9) Regulating the use or occupation of the foreshore and the bed of any lagoon, tidal area, or navigable waters.

(10) Regulating the use in harbours of motor launches, yachts, pleasure craft, surfboards, and water skis.

(11) Regulating the use of wharves and places within the jurisdiction and control of the Minister, including the regulating of traffic on the same.

(12) Regulating the mode and place of mooring, berthing, and anchoring of ships within any harbour and their unmooring and removal out of the harbour, and determining the scale of fees payable in respect of any ship moored to any wharf and in respect to berthage and anchorage charges.

(13) Regulating and fixing charges for the laying up of any vessel within the harbour, and exempting vessels so laid up from port charges.

(14) Regulating the times, places, order and mode of the shipping, unshipping, landing, warehousing, stowing and depositing of goods, and of the landing and embarking of passengers.

(15) Regulating the use of cranes, weighing and measuring devices, conveniences and appliances, and fixing charges for and setting out terms upon which the same may be used.

(16) Fixing charges for the use of any fire prevention appliance belonging to the Government in extinguishing fires on board ships.

(17) Regulating the duties and conduct of all persons who are employed in the harbour or on any land under the control of the Minister.

(18) Providing for the control and management of ferry boats plying for hire.

(19) Regulating the towage of ships.

(20) Licensing any ships or boats for any purpose and fixing fees to be paid for licensing of any such ships or boats.

(21) Regulating and controlling the sale of any articles on any wharf.

(22) Prohibiting or restricting owners of goods from taking delivery of goods or cargo unloaded from any ship, or from delivering goods or cargo to any ship, except through the Department.

(23) Limiting the waters of any harbour that may be utilised for bathing, and regulating bathing on or near any foreshore.

(24) Prohibiting the discharge or flow into the harbour or elsewhere within the territorial waters of Western Samoa of any oil or tar; regulating the discharge of ballast tanks on ships; controlling the storage, loading and discharge of oil or tar.

(25) Regulating and controlling the use of any anchorages for yachts, boats, launches and other small craft; providing for the proper conduct of persons using any such anchorage; fixing fees for mooring, and mooring sites.

(26) Controlling and prohibiting any nuisances.

(27) Prescribing conditions relating to the use of the Government's tugs, dredges, and ships, and fixing charges therefor.

(28) Governing the conduct and attendances and services of pilots.

(29) Requiring the master of every ship to report his arrival, to produce the certificate of registry on demand, and to deliver a copy of every bill of lading or manifest of the cargo or other account of goods intended to be unshipped.

(30) Regulating the time when dues on goods shipped or unshipped are to be payable.

(31) Regulating the examination, checking of any vehicle, case, bag, or luggage where there is reason to believe that any person has in his possession any goods on which duties or dues or fees have not been paid.

(32) Prescribing collision regulations rules or requirements for the prevention of collisions of ships.

(33) Prescribing load line rules.

(34) Restricting or controlling the sea carriage of deck cargo or livestock or dangerous goods, explosives or goods liable to spontaneous combustion.

(35) Regulating terms of contracts of employment between masters and crews or registered ships, and conditions of work and accommodation for crews.

(36) Regulating the engagement and discharge of seamen

(37) Making provisions relating to births and deaths on any ship.

(38) Prescribing safety and life-saving rules.

(39) Any purpose which is necessary or expedient for giving effect to or for the administration of this Act.

38. Repeals and Savings—(1) The enactments specified in the Schedule to this Act shall cease to have effect as part of the law of Western Samoa, but without prejudice to the provisions of subsection (1) of section 36 of this Act relating to port dues and charges.

(2) All offices, appointments, proclamations, orders, rules, regulations, certificates, licences, warrants, permits, registers, records, registrations, entries, instruments and generally all

acts of authority which originated or continued to be under any of the enactments hereby repealed and are subsisting or in force at the time of the repeal or revocation of that enactment, shall ensure for the purposes of this Act as fully and effectually as if they had originated under the corresponding provisions of this Act, and accordingly shall, where necessary, be deemed to have so originated.

(3) All matters and proceedings commenced under any enactment hereby repealed, and pending or in progress at the time of the repeal or revocation of that enactment, may be continued, completed, and enforced under this Act.

SCHEDULE

The following enactments are repealed:

1931, No. 5:

The Lighterage Ordinance 1931.

1932, No. 4:

Port Control Ordinance 1932.

1959, No. 8:

Port Control Amendment Ordinance 1959.

1965, No. 17:

Port Control Amendment Act 1965.

1966, No. 4:

Port Control Amendment Act 1966.

1970, No. 7:

Port Control Amendment Act 1970.

The enumerated sections of the following enactment are repealed:

1951, No. 3:

Ordinances Amendment Ordinance 1951, section 3.

1958, No. 1:

Ordinances Amendment Ordinance 1958, section 2.

1960, No. 21:

Enactments Amendment and Repeal Ordinance 1960, section 4 and 5.

BY AUTHORITY:

J. W. MEREDITH GOVERNMENT PRINTER, APIA, WESTERN SAMOA—1973.