

SPREP

Report on the

Conference of Plenipotentiaries
to the Noumea (SPREP) Convention

10 September 2006
Noumea, New Caledonia

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Secretariat of the Pacific Regional Environment Programme

PO Box 240, Vailima, Apia, Samoa

T: (685) 21 929

F: (685) 20 231

E: sprep@sprep.org

W: www.sprep.org

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PO Box 240, Apia, Samoa
P: (685) 21929, F: (685) 20231, E: sprep@sprep.org, W: www.sprep.org

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Report on the Conference of Plenipotentiaries to the Noumea (SPREP) Convention

10 September 2006
Noumea, New Caledonia

Introduction

1. The Conference of Plenipotentiaries to the Convention for the Protection of the Natural Resources and Environment of the South Pacific Region and related protocols, met in Noumea, New Caledonia, on 10 September 2006. Australia, the Cook Islands, the Federated States of Micronesia, Fiji, France, New Zealand, Republic of Marshall Islands, and the United States of America were represented. The list of representatives is attached as Annex 1.

Agenda Item 1: Official Opening

2. The Director of SPREP opened the Conference of the Plenipotentiaries.

Agenda Item 2 and 3: Appointment of Chair and Vice-Chair and Adoption of Agenda and Working Arrangements

3. The Representatives of Australia and France were appointed Chair and Vice-Chair, respectively.

Agenda Item 4: Matters arising from the Conference of Plenipotentiaries 2005

4. The Secretariat presented the Protocols outlining that the rationale behind the amendments was to bring them into line with their global equivalent legal instruments.

5. The process of amending the instruments had taken four years. This started with the initial instruction by the 6th Meeting of the Parties (MOP) in July 2002 for the Secretariat to draft amendments to the protocols. The draft amendments were presented to the 7th MOP in September 2004 which decided to set up a working group to consider the draft amendments in detail. The Working Group met in February 2005 and agreed on final draft texts that were considered by the Conference of the Plenipotentiaries in September 2005, resulting in the adoption *in principle* of the texts of the 3 Protocols currently before the Conference.

6. The Conference noted the report of the Secretariat.

Agenda Item 5: Adoption of the Protocol for the Prevention of Pollution of the Pacific Region by Dumping

7. The Representative of France moved for the adoption of the amended Protocol for the Prevention of Pollution of the Pacific Region by Dumping. The Representative of the Cook Islands seconded the motion.

8. The Protocol was adopted by Cook Islands, Federated States of Micronesia, Fiji, France, New Zealand, Republic of Marshall Islands, and the United States of America.

9. The adopted Protocol is attached as Annex 2.

10. The Secretariat clarified that the adopted Protocol would be conveyed to the Depositary, the Secretary-General of the Pacific Islands Forum Secretariat, who would then submit the Protocol to all Parties for formal acceptance. Parties would indicate acceptance by depositing an Instrument of Acceptance with the Depositary. Three-quarters of the Parties (i.e., 8 Parties from the total of 12) would enable the amended Protocol to enter into force. The old Protocol would nevertheless remain in force for those Parties that did not accept the amended Protocol.

Agenda Item 6: Adoption and signature of the Protocol on Oil Pollution Preparedness, Response and Cooperation in the Pacific Region

11. The Representative of the Federated States of Micronesia moved for the adoption of the new Protocol on Oil Pollution Preparedness, Response and Cooperation in the Pacific Region. The Representative of the United States of America seconded the motion.

12. The Protocol was adopted unanimously by the Conference.

13. The adopted Protocol is attached as Annex 3.

14. The Secretariat clarified that the adopted new Protocol would be immediately open for signature until the end of the 17th SPREP Meeting at which time it would be conveyed to the Depositary, the Secretary-General of the Pacific Islands Forum Secretariat, where it would remain open until the expiration of 12 months from the date of adoption. The Protocol would thereafter remain open for signature indefinitely. Parties would indicate ratification, or accession by depositing an Instrument of Ratification or an Instrument of Accession with the Depositary. Five such instruments would enable the new Protocol to enter into force. The old Protocol would nevertheless remain in force for those Parties that neither ratified nor acceded to the new Protocol.

15. The Representatives of the Federated States of Micronesia, France, and the United States of America signed the Protocol.

Agenda Item 7: Adoption and signature of the Protocol on Hazardous and Noxious Substances Pollution, Preparedness, Response and Cooperation in the Pacific Region

16. The Representative of France moved for the adoption of the new Protocol on Hazardous and Noxious Substances Pollution, Preparedness, Response and Cooperation in the Pacific Region. The Representative of New Zealand seconded the motion.

17. The Representatives of Australia, Cook Islands, Federated States of Micronesia, Fiji, France, New Zealand, and Republic of Marshall Islands adopted the Protocol.

18. The adopted Protocol is attached as Annex 4.

19. The Secretariat clarified that the adopted new Protocol would be immediately open for signature until the end of the 17th SPREP Meeting at which time it would be conveyed to the Depository, the Secretary-General of the Pacific Islands Forum Secretariat, where it would remain open until the expiration of 12 months from the date of adoption. The Protocol would thereafter remain open for signature indefinitely. Parties would indicate ratification, or accession by depositing an Instrument of Ratification or an Instrument of Accession with the Depository. Five such instruments would enable the new Protocol to enter into force. The old Protocol would nevertheless remain in force for those Parties that neither ratified nor acceded to the new Protocol.

20. The Representatives of the Federated States of Micronesia and France signed the Protocol.

Agenda items 8: Other Matters

21. There were no other matters raised.

Agenda items 9: Adoption of the Conference Record

22. The Conference adopted the record of its proceedings.

Agenda items 10: Closing of the Conference

23. The Chair congratulated the Parties for adopting and signing the Protocols and expressed appreciation to the Director, his staff and the interpretation and translation teams for their support to the Conference. The Chair then declared the Conference closed.

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10 September 2006, Noumea, New Caledonia

Annex 1: LIST OF PARTICIPANTS

AUSTRALIA

Kevin Keeffe
Assistant Secretary
Communications & International Branch
Department of the Environment and Heritage
Australia

Tel: 61 2 627-41072
Email: Kevin.keeffe@deh.gov.au

Laura Holbeck
Senior Policy Officer
International Section
Department of the Environment and Heritage
Australia

Tel: (612) 6274 1041
Email: Laura.Holbeck@deh.gov.au

Christine Pahlman
Manager Pacific Environment
AusAID
Australia

Tel: (612) 620-64077
Fax: (612) 620-64636
Email: Christine.Pahlman@ausaid.gov.au

Dr Robyn Johnston

Chris Derrick
Director
Environmental Resource Information Network
Department of the Environment and Heritage
Australia

Tel: (612) 6274-1130
Email: chris.derrick@deh.gov.au

Ali Gilles
Senior Adviser
AusAID
Suva
FIJI
Tel: (679) 946-9946
Email: aligilles@ausaid.gov.au

Jane Urquhart
Consul-General
Australian Consulate-General
Tel: 687-79-27-14
Email: jane.urquhart@dfat.gov.au

COOK ISLANDS

Vaitoti Tupa
Director
Cook Islands National Environment Service
PO Box 371
Rarotonga
Cook Islands

Tel: (682) 21256
Fax: (682) 22256
Email: vaitoti@environment.org.ck

FEDERATED STATES OF MICRONESIA

H.E. Kodaro Gallen
Ambassador
Embassy of the Federated States of Micronesia
in Fiji
Suva
Fiji

Tel: (679) 330 4566
Fax: (679) 330 4081
Email: fsmsuva@fsmsuva.org.fj

Cindy Ehmes
Sustainable Development Planner
FSM Department of Economic Affairs
Palikir, Pohnpei
Federated States of Micronesia

FIJI

Napolioni Masirewa
Chief Executive Officer - Environment
Ministry of Environment
PO Box 2109
Government Buildings
Suva
Fiji

Tel: (679)
Fax: (679) 3312 879

Epeli Nasome
Director - Environment
Ministry of Environment
PO Box 2109
Government Buildings
Suva
Fiji

Tel: (679)
Fax: (679) 3312 879

Jone Draunimasi
Chief Assistant Secretary (Economics)/
Director of Sustainable Development
Ministry of Foreign Affairs and External
Trade
Suva
Fiji

Tel: (679) 330 662
Fax: (679) 330 1741
Email: jdraunimasi@govnet.gov.fj

FRANCE

Patrick Roussel
Ambassador
Representative of France to the Pacific
Community
Permanent Secretary for the Pacific
27, rue Oudinot - 75358
Paris 07

Tel: (01) 53 69 29 29
Fax: (01) 53 69 22 76
Email: patrick.roussel@diplomatie.gouv.fr

Jacques Buguet
Foreign Affairs Adviser
Deputy Representative of France to the Pacific
Community
Diplomatic Adviser to the High Commissioner
Republic of New Caledonia

Stephane Louhaur
Foreign Affairs Secretary
Environmental Affairs Division
Directorate of Economic & Financial Affairs
Ministry of Foreign Affairs

Marc Fagot
Advisor
International Affairs Division
Ministry of Ecology and Sustainable
Development

MARSHALL ISLANDS

H.E. Mack T. Kaminaga
RMI Ambassador to Fiji
The Embassy of the Marshall Islands
41 Borron Road
PO Box 2038 GB
Suva
Fiji

Tel: (679) 338 7899
Fax: (679) 338 7115

Email: rmisuva@sopacsun.sopac.org.fj

Yumiko Crisostomo
Director
Office of Environmental Planning & Policy
Coordination
PO Box 975
Majuro
Marshall Islands 96960

Tel: (692) 625 7944
Fax: (692) 625 7918
Email: oeppc@ntamar.net

NEW ZEALAND

Andrew Bignell
Department of Conservation
Wellington
New Zealand

Tel: (644) 471-3191
Fax: (644)
Email: abignell@doc.govt.nz

Tom Wilson
NZAIID
Ministry of Foreign Affairs & Trade
Wellington
New Zealand

Tel: (644) 439-8327
Fax: (644) 439.8513
Email: Tom.Wilson@mfat.govt.nz

Indra Prasad
Environment Division
Ministry of Foreign Affairs & Trade
Wellington
New Zealand

Tel: (644) 439-8440
Fax: (644)
Email: Indra.Prasad@mfat.govt.nz

Malcolm Millar
Deputy High Commissioner
New Zealand High Commission
Private Mail Bag
Apia
Samoa

Tel: (685) 21711
Fax: (685) 20086
Email: Malcolm.Millar@mfat.govt.nz

Craig Hawke
Director - Pacific Group NZAID
Ministry of Foreign Affairs & Trade
Wellington
New Zealand

Tel: (685) 21711
Fax: (685) 20086
Email: Craig.Hawke@mfat.govt.nz

Stacey Hayward

UNITED STATES OF AMERICA

Jennifer Christenson
Office of Oceans Affairs (OES/OA)
US Department of State
Washington, DC 20520
United States of America

Tel: (808) 984-3724
Fax: (808) 292-1128

Dr Mark Fornwall
USGS, Pacific Basin Information
310 Ka'ahumanu Avenue
Kahului, HI 96732
Honolulu
HAWAII

Tel: (662) 205 4712/202 4995
Fax: (662) 254 2839
Email: Mark.Fornwall@usgs.gov

James Waller
Regional Environmental Officer (Southeast
Asia/Pacific)
US Embassy - Bangkok
120 - 122 Wireless Road
Bangkok 10330
Thailand

Tel: (662) 205 4712/202 4995
Fax: (662) 254 2839
Email: WallerJM@state.gov

Kanchana Aksorn-Aree
Regional Environmental Affairs Specialist
(for Southeast Asia/Pacific)
US Embassy - Bangkok
120-122 Wireless Road
Bangkok 10330
Thailand

Tel: (662) 205 4609
Fax: (662) 205 4106
Email: kanchana@state.gov

Susan Ware Harris
Office of International Affairs
US Department of Commerce, NOAA
14th Constitution Ave, NW # 5230
Washington, DC 20230
United States of America

Tel: (202) 482-6196
Fax: (202) 482-4307
Email: susan.ware-harris@noaa.gov

Howard Diamond
Program Manager -US GCOS
US Department of Commerce, NOAA/NCDC
1335 East-West Highway, Rm 7214
Silver Spring, MD 20910
United States of America

Tel: 301-713-1283
Fax: 301-713-0819
Email: howard.diamond@noaa.gov

John McCarroll
Manager
Pacific Islands Office
US Environmental Protection Agency

Helene Takemoto
Program Manager
US Army Corps of Engineers Bldg.230
UFt.Shafter, Hawaii 96858-5440

Tel: (808) 438-6931
Fax: (808) 438-7801
Email: helene.y.takemoto@usace.army.mil

INTERPRETERS

Roy Benyon

Blandine Jeanne

Aurelie Hammaide

Patrick Delhaye

Secretariat of the Pacific Community
BP D598848
Noumea
Cedex

Tel: (687) 26 20 00
Fax: (687) 26 38 18
Email: spc@spc.int

TRANSLATORS

Olivier Richard

Pierre Pellerin

Francis Marche

French Language Solutions Pty Ltd
21 Queen Street
Randwick
NSW 2031
Australia

Tel: (612) 9398 1767
Fax: (612) 8569 1383
Email: Olivier@french.com.au

SPREP SECRETARIAT

PO Box 240
Vailima
Samoa

Tel: (685) 21 929
Fax: (685) 20 231
Email: sprep@sprep.org

Asterio Takesy
Director

Dr Jaap Jasperse
Editor and Publications Officer

F. Vitolio Lui
Deputy Director

Taito Nakalevu
Climate Change Adaptation Officer

Taito John Roache
Corporate Services Manager

Dominique Benzaken
Coastal Management Adviser

Bruce Chapman
Programme Manager - Pacific Futures

Clark Peteru
Environmental Legal Adviser

Stuart Chape
Programme Manager - Island Ecosystems

Aliitasi Uesele-Petaia
IT/Network Officer

Alofa S. Tuuau
Finance Manager

Ruta Tupua-Couper
Personal Assistant to the Director

Sefanaia Nawadra
Marine Pollution Adviser

Apiseta Eti
Personal Assistant to the Deputy Director

Dr Frank Griffin
Pollution Prevention & Waste Management
Adviser

Lupe Silulu
Registry Supervisor

Kate Brown
Action Strategy Adviser

Pauline Fruean
Conference & Travel Officer

**Annex 2: PROTOCOL FOR THE PREVENTION OF POLLUTION OF THE
PACIFIC REGION BY DUMPING**

The Parties to the Protocol,

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

Desiring to make this Protocol consistent with the 1996 Protocol to the Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter 1972 as envisaged by Article 12 of that Protocol;

Taking into account relevant international agreements and actions, especially the United Nations Convention on the Law of the Sea, 1982 (UNCLOS), the Rio Declaration on Environment and Development and Agenda 21;

Recognising the danger posed to the marine environment by pollution caused by the dumping and incineration at sea of wastes or other matter;

Considering that they have a common interest to protect the Pacific region from this danger, taking into account the unique environmental quality of the region;

Recognising the special needs and limited resources of Small Island Developing States with regard to the promotion of international and regional co-operation concerning the prevention of marine pollution by dumping or incineration of wastes;

Applying a precautionary approach to environmental protection from dumping or incineration at sea of wastes or other matter, and taking into account the approach that the polluter should, in principle, bear the cost of pollution;

Aware of the need to promote access to and the transfer of environmentally sound technology, including clean production technology;

Have agreed as follows:

Article 1 DEFINITIONS

For the purposes of this Protocol:

(1) “Convention” means the Convention for the Protection of the Natural Resources and Environment of the South Pacific Region adopted in Noumea, New Caledonia on the twenty-fourth day of November in the year one thousand nine hundred and eighty-six;

- (2) (a) “Dumping” means:
- (i) any deliberate disposal into the sea of wastes or other matter from vessels, aircraft, platforms or other man-made structures at sea;
 - (ii) any deliberate disposal into the sea of vessels, aircraft, platforms or other man-made structures at sea;
 - (iii) any storage of wastes or other matter in the seabed and the subsoil thereof from vessels, aircraft, platforms or other man-made structures at sea; and
 - (iv) any abandonment or toppling at site of platforms or other man-made structures at sea, for the sole purpose of deliberate disposal.
- (b) “Dumping” does not include:
- (i) the disposal into the sea of wastes or other matter incidental to, or derived from the normal operations of vessels, aircraft, platforms or other man-made structures at sea and their equipment, other than wastes or other matter transported by or to vessels, aircraft, platforms or other man-made structures at sea, operating for the purpose of disposal of such matter or derived from the treatment of such wastes or other matter on such vessels, aircraft, platforms or other man-made structures;
 - (ii) placement of matter for a purpose other than the mere disposal thereof, provided that such placement is not contrary to the aims of this Protocol; and
 - (iii) notwithstanding paragraph 2(a)(iv) abandonment in the sea of matter (e.g., cables, pipelines and marine research devices) placed for a purpose other than the mere disposal thereof.
- (c) The disposal or storage of wastes or other matter directly arising from, or related to the exploration, exploitation and associated off-shore processing of seabed mineral resources is not covered by the provisions of this Protocol.
- (3) “Incineration at sea” means the combustion on board a vessel, platform or other man-made structure at sea of wastes or other matter for the purpose of their deliberate disposal by thermal destruction. “Incineration at sea” does not include the incineration of wastes or other matter on board a vessel, platform, or other man-made structure at sea if such wastes or other matter were generated during the normal operation of that vessel, platform or other man-made structure at sea.

(4) “Organisation” means the Secretariat for the Pacific Regional Environment Programme.

(5) “Permit” means permission granted in advance and in accordance with this Protocol for the disposal of wastes or other matter at sea.

(6) “Sea” means all marine waters other than the internal waters of Member States, as well as the seabed and the subsoil thereof; it does not include sub-seabed repositories accessed only from land.

Article 2 GENERAL APPLICATION PROVISIONS

(1) The area to which this Protocol applies (hereinafter referred to as the “Protocol Area”) shall be the Convention Area as defined in Article 2 of the Convention together with the continental shelf of a Party where it extends, in accordance with international law, outward beyond the Convention Area.

(2) Notwithstanding any other provision of this Protocol, this Protocol shall relate to internal waters only to the extent provided for in sub-paragraphs (a) and (b).

(a) Each Party shall at its discretion either apply the provisions of this Protocol or adopt other effective permitting and regulatory measures to control the deliberate disposal of wastes or other matter in marine internal waters where such disposal would be “dumping” or “incineration at sea” within the meaning of article 1, if conducted at sea.

(b) Each Party should provide the Organisation with information on legislation and institutional mechanisms regarding implementation, compliance and enforcement in marine internal waters. Parties should also use their best efforts to provide on a voluntary basis summary reports on the type and nature of the materials dumped in marine internal waters.

Article 3 GENERAL OBLIGATIONS

(1) Consistent with their technical, economic and scientific capabilities, the Parties shall take all appropriate measures to effectively prevent, reduce and where practicable eliminate pollution in the Protocol Area by the dumping and incineration of wastes and other matter at sea.

(2) Dumping and incineration of wastes and other matter within the territorial sea and the exclusive economic zone or onto the continental shelf of a Party as defined in international law shall not be carried out without the express prior approval of that Party, which has the right to permit, regulate and control such activities taking fully into account the provisions of this Protocol, and after due consideration of the matter with other Parties which by reason of their geographical situation may be adversely affected thereby.

(3) National laws, regulations and measures adopted by the Parties shall be no less effective in preventing, reducing and where practicable eliminating pollution by dumping or incineration than the rules and procedures provided for in the 1996 Protocol to the Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter, 1972.

(4) When implementing the provisions of this Protocol, the Parties shall act so as to ensure that:

- (a) there is no direct or indirect transfer of the damage or likelihood of damage from one part of the environment to another; and
- (b) the nature of the pollution is not transformed from one type to another.

(5) In implementing this Protocol, Parties shall apply a precautionary approach to environmental protection from dumping of wastes or other matter whereby appropriate preventative measures are taken when there is reason to believe that wastes or other matter introduced into the marine environment are likely to cause harm even when there is no conclusive evidence to prove a causal relation between inputs and their effects.

(6) Taking into account the approach that the polluter should, in principle, bear the cost of pollution, each Party shall endeavour to promote practices whereby those it has authorised to engage in dumping or incineration at sea bear the cost of meeting the pollution prevention and control requirements for the authorised activities, having due regard to the public interest.

Article 4 DUMPING OF WASTES AND OTHER MATTER AND EXCEPTIONS

(1) Each Party shall establish and implement legislative and administrative arrangements to give effect to this Protocol.

(2) Parties shall ensure that the issuance of permits, and the permit conditions, comply with the provisions of Annexes I and II. The dumping of wastes or other matter listed in Annex I shall require a permit issued in accordance with this Protocol.

(3) Special attention shall be paid to opportunities to avoid dumping and to apply environmentally preferable alternatives.

(4) The Parties shall prohibit the following activities:

- (a) the dumping of wastes or other matter at sea, other than those listed in Annex I;
- (b) the incineration of wastes or other matter at sea; and
- (c) the exportation of wastes and other matter for the purpose of dumping or incineration at sea.

(5) The provisions of paragraph 4(a) and (b) shall not apply when it is necessary to secure the safety of human life or of vessels, aircraft, platforms or other man-made structures at sea in cases of *force majeure* caused by stress of weather, or in any case which constitutes a danger to human life or a real threat to vessels, aircraft, platforms or other man-made structures at sea, if dumping or incineration at sea appears to be the only way of averting the threat and if there is every probability that the damage consequent upon such dumping or incineration at sea will be less than would otherwise occur. Such dumping or incineration at sea shall be so conducted as to minimise the likelihood of damage to human or marine life and shall be reported forthwith to the Organisation.

(6) A Party may issue a permit as an exception to paragraph 4(a) and (b), in emergencies posing an unacceptable threat to human health, safety, or the marine environment and admitting of no other feasible solution. Before doing so the Party shall consult any other country or countries that are likely to be affected and the Organisation which, after consulting other Parties, and competent international organisations as appropriate, shall, in accordance with article 12(2)(e) promptly recommend to the Party the most appropriate procedures to adopt. The Party shall follow these recommendations to the maximum extent feasible consistent with the time within which action must be taken and with the general obligation to avoid damage to the marine environment and shall inform the Organisation of the action it takes. The Parties pledge themselves to assist one another in such situations.

(7) Any Party may waive its rights under paragraph 6 at the time of, or subsequent to ratification, acceptance or approval of, or accession to this Protocol.

(8) No provision of this Protocol shall be interpreted as preventing a Party from prohibiting, insofar as that Party is concerned, the dumping of wastes or other matter listed in Annex I. That Party shall notify the Organisation of any such prohibition.

Article 5 RESPONSIBILITIES OF DESIGNATED AUTHORITIES

- (1) Each Party shall designate an appropriate authority or authorities to:
 - (a) issue permits in accordance with this Protocol;
 - (b) keep records of the nature and quantities of all wastes or other matter for which dumping permits have been issued and where practicable the quantities actually dumped and the location, time and method of dumping; and
 - (c) monitor individually, or in collaboration with other Parties and competent international organisations, the condition of the sea for the purposes of this Protocol.

- (2) The appropriate authority or authorities of each Party shall issue the permits under paragraph 1 and in the emergency circumstances provided for in Article 4, in respect of the wastes or other matter intended for dumping or incineration at sea:
 - (a) loaded in its territory; or
 - (b) loaded onto vessels and aircraft registered in its territory or flying its flag when the loading occurs in the territory of a State not Party to this Protocol.

- (3) In issuing permits under this Protocol the appropriate authority or authorities shall comply with Article 4 and Annex II together with such additional criteria, measures and requirements, as they may consider relevant.

- (4) Each Party shall report to the Organisation, and where appropriate to the other Parties:
 - (a) the information specified in paragraph 1(b) and (c), which shall be submitted annually;
 - (b) any administrative and legislative measures taken to implement the provisions of this Protocol, including a summary of enforcement measures; and
 - (c) any problems experienced in the application of the administrative and legislative measures, and any matter related to their effectiveness.

- (5) The information referred to in paragraph 4(b) and (c) shall be submitted on a regular basis for evaluation by an appropriate subsidiary body determined by the Meeting of the Parties. This body shall regularly report to Meetings or Special Meetings of the Parties.

Article 6 IMPLEMENTATION AND ENFORCEMENT

- (1) Each Party shall apply the measures required to implement this Protocol to all:
 - (a) vessels and aircraft registered in its territory or flying its flag;
 - (b) vessels and aircraft loading in its territory wastes or other matter which are to be dumped or incinerated at sea; and
 - (c) vessels, aircraft and fixed or floating platforms or other man-made structures believed to be engaged in dumping or incineration at sea in areas within which it is entitled to exercise jurisdiction in accordance with international law.

- (2) Each Party shall take in its territory appropriate measures in accordance with international law to prevent and if necessary punish conduct in contravention of the provisions of this Protocol.

- (3) The Parties agree to co-operate in the development of procedures for the effective application of this Protocol particularly on the high seas, including procedures for the reporting of vessels and aircraft observed dumping or incinerating at sea wastes or other matter in contravention of the Protocol.

- (4) This Protocol shall not apply to those vessels and aircraft entitled to sovereign immunity under international law. However, each Party shall ensure by the adoption of appropriate measures that such vessels and aircraft owned or operated by it act in a manner consistent with the object and purpose of this Protocol, and shall inform the Organisation accordingly.

- (5) A State may at the time it expresses its consent to be bound by this Protocol, or at any time thereafter, declare that it shall apply the provisions of this Protocol to its vessels and aircraft referred to in paragraph 4, recognising that only that State may enforce those provisions against its vessels and aircraft.

Article 7 COMPLIANCE PROCEDURES

The Meeting of the Parties shall establish procedures and mechanisms necessary to assess and promote compliance with this Protocol. Such procedures and mechanisms shall be developed with a view to allowing for the full and open exchange of information in a constructive manner. Where appropriate, the Meeting of the Parties may provide for the provision of information, advice and assistance to countries which are Parties or non-Parties to the Convention.

Article 8 ADOPTION OF OTHER MEASURES

Nothing in this Protocol shall affect the right of each Party to adopt more stringent measures in accordance with the principles of international law to prevent dumping or incineration of wastes or other matter at sea.

Article 9 REPORTING OF UNAUTHORISED DUMPING AND INCINERATION INCIDENTS

Each Party undertakes to issue instructions to its maritime inspection vessels and aircraft and to other appropriate services to report to its authorities any incidents or conditions in the Protocol Area which give rise to suspicions that dumping or incineration at sea in contravention of the provisions of this Protocol has occurred or is about to occur. Parties shall, if they consider it appropriate, report accordingly to the Organisation and to any other Party concerned.

Article 10 TECHNICAL COOPERATION AND ASSISTANCE

The Parties, in consultation with the Organisation, shall cooperate with a view to formulating and as far as practicable implementing programs of assistance for the prevention, reduction and where practicable elimination of pollution caused by dumping and incineration of wastes and other matter at sea, including the provision of:

- (a) training programs for scientific and technical personnel relating to research, monitoring and enforcement;
- (b) as appropriate, necessary equipment and facilities with a view to strengthening national capabilities;
- (c) advice on the implementation of this Protocol;
- (d) information and technical cooperation relating to the disposal and treatment of wastes and other measures to prevent, reduce and where practicable eliminate pollution caused by dumping and incineration at sea; and
- (e) access to and transfer of environmentally sound technologies and corresponding know-how, in particular to Small Island Developing States on favourable terms, including on concessional and preferential terms, as mutually agreed, taking into account the need to protect intellectual property rights as well as the special needs of Small Island Developing States.

Article 11 INSTITUTIONAL ARRANGEMENTS

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

- (a) to assist the Parties, upon request, in the communication of reports in accordance with this Protocol;
- (b) to convey to the Parties concerned all notifications received by the Organisation in accordance with the provisions of this Protocol;
- (c) to transmit to the International Maritime Organization as the organisation responsible for the secretariat functions under the Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter, 1972 and the 1996 Protocol thereto, reports of dumping or incineration at sea and any other records and information submitted under this Protocol which the Organisation considers should be provided;
- (d) to foster cooperation with the International Maritime Organization with a view to promoting capacity building of Parties and non-Parties, and achieving a more effective implementation of this Protocol and use of resources;
- (e) to keep itself informed on evolving international standards and the results of research and investigation, and to advise Meetings of the Parties to this Protocol of such developments and any modification of the Annexes which may become desirable;
- (f) to provide policy and technical advice including guidelines taking into account that developed by the International Maritime Organization; and
- (g) to carry out other duties assigned to it by the Parties.

Article 12 MEETING OF THE PARTIES

(1) Ordinary meetings of the Parties to this Protocol shall be held in conjunction with ordinary meetings of the Parties to the Convention held pursuant to Article 22 of the Convention. The Parties to this Protocol may also hold extraordinary meetings in conformity with Article 22 of the Convention.

(2) It shall be the function of the meetings of the Parties to this Protocol to:

- (a) keep under review the implementation of this Protocol, and to consider the efficacy of the measures adopted and the need for any other measures, in particular in the form of Annexes;
- (b) study and consider the records of the permits issued in accordance with Article 5 and the emergency situation in Article 4 and of the dumping or incineration at sea which has taken place;

- (c) review and amend as required any Annex to this Protocol;
 - (d) adopt as necessary guidelines for the preparation of records and procedures to be followed in submitting reports and records in accordance with this Protocol, taking into account the guidelines and procedures adopted by the International Maritime Organization;
 - (e) develop, adopt and implement in consultation with the Organisation and other competent international organisations procedures pursuant to Article 4 including basic criteria for determining emergency circumstances and procedures for consultative advice and the safe disposal, storage or destruction of matter in such circumstances;
 - (f) invite, as necessary, the appropriate scientific body or bodies to collaborate with and to advise the Parties and the Organisation on any scientific or technical aspects relevant to this Protocol, including particularly the content and applicability of the Annexes; and
 - (g) perform such other functions as may be appropriate for the implementation of this Protocol.
- (3) The adoption of amendments to the Annexes to this Protocol pursuant to Article 25 of the Convention shall require a three-fourths majority vote of the Parties to this Protocol.

**Article 13 RELATIONSHIP BETWEEN THIS PROTOCOL AND THE
CONVENTION**

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

ANNEX I**WASTES OR OTHER MATTER THAT MAY BE CONSIDERED FOR DUMPING**

1. Taking into consideration the provisions of Article 4 of this Protocol a Party may consider the following wastes or other matter for dumping:

- (a) dredged material;
- (b) sewage sludge;
- (c) fish waste, or material resulting from industrial fish processing operations;
- (d) vessels and platforms or other man-made structures at sea;
- (e) inert, inorganic geological material;
- (f) organic material of natural origin; and
- (g) bulky items primarily comprising iron, steel, concrete and similarly unarmful materials for which the concern is physical impact, and limited to those circumstances where such wastes are generated at locations, such as small islands with isolated communities, having no practicable access to disposal options other than dumping.

2. The wastes or other matter referred to in paragraph 1(d) and (g) may be considered for dumping, provided that material capable of creating floating debris or otherwise contributing to pollution of the marine environment has been removed to the maximum extent and provided that the material dumped poses no serious obstacle to fishing or navigation.

3. Notwithstanding the above, materials listed in paragraphs 1(a)–(g) containing levels of radioactivity greater than *de minimis* (exempt) concentrations as defined by the International Atomic Energy Agency and adopted by Parties, shall not be considered eligible for dumping; provided further that within 25 years of 20 February 1994, and at each 25 year interval thereafter, Parties shall complete a scientific study relating to all radioactive wastes and other radioactive matter other than high level wastes or matter, taking into account such other factors as Parties consider appropriate and shall review the prohibition on dumping of such substances in accordance with the procedures set forth in article 25 of the Convention.

ANNEX II**ASSESSMENT OF WASTES OR OTHER MATTER
THAT MAY BE CONSIDERED FOR DUMPING****GENERAL**

1. The acceptance of dumping under certain circumstances shall not remove the obligations under this Annex to make further attempts to reduce the necessity for dumping.

WASTE PREVENTION AUDIT

2. The initial stages in assessing alternatives to dumping should, as appropriate, include an evaluation of:

- (a) types, amounts and relative hazard of wastes generated;
- (b) details of the production process and the sources of wastes within that process;
and
- (c) feasibility of the following waste reduction/prevention techniques -
 - (i) product reformulation;
 - (ii) clean production technologies;
 - (iii) process modification;
 - (iv) input substitution; and
 - (v) on site, close-loop recycling.

3. In general terms, if the required audit reveals that opportunities exist for waste prevention at source, an applicant is expected to formulate and implement a waste prevention strategy, in collaboration with relevant local and national agencies, which includes specific waste reduction targets and provision for further waste prevention audits to ensure that these targets are being met. Permit issuance or renewal decisions shall assure compliance with any resulting waste reduction and prevention requirements.

4. For dredged material and sewage sludge, the goal of waste management should be to identify and control the sources of contamination. This should be achieved through implementation of waste prevention strategies and requires collaboration between the relevant local and national agencies involved with the control of point and non-point sources of pollution. Until this objective is met, the problems of contaminated dredged material may be addressed by using disposal management techniques at sea or on land.

CONSIDERATION OF WASTE MANAGEMENT OPTIONS

5. Applications to dump wastes or other matter shall demonstrate that appropriate consideration has been given to the following hierarchy of waste management options, which implies an order of increasing environmental impact:

- (a) re-use;
- (b) off-site recycling;
- (c) destruction of hazardous constituents;
- (d) treatment to reduce or remove the hazardous constituents; and
- (e) disposal on land, into air and in water.

6. A permit to dump wastes or other matter shall be refused if the permitting authority determines that appropriate opportunities exist to re-use, recycle or treat the waste without undue risks to human health or the environment or disproportionate costs. The practical availability of other means of disposal should be considered in the light of a comparative risk assessment involving both dumping and the alternatives.

CHEMICAL, PHYSICAL, AND BIOLOGICAL PROPERTIES

7. Parties shall consider whether an adequate scientific basis and sufficient knowledge of the composition and characteristics of the wastes or other matter proposed for dumping exist for assessing the impact of such material on the marine environment and human health. This information will be the basis for a decision to consider the practical availability of alternatives or whether a waste may be dumped. If a waste is so poorly characterised that proper assessment cannot be made of its potential impacts on human health and the environment, that waste shall not be dumped.

8. Characterisation of the wastes and their constituents shall take into account:

- (a) Origin, total amount and average composition of matter;
- (b) Form (e.g. solid, sludge, liquid, or gaseous);
- (c) Properties: physical (e.g. solubility and density), chemical and biochemical (e.g. oxygen demand, nutrients) and biological (e.g. presence of viruses, bacteria, yeasts, parasites);
- (d) Persistence: physical, chemical and biological;
- (e) Toxicity;
- (f) Accumulation and biotransformation in biological materials or sediments;
- (g) Susceptibility to physical, chemical and biochemical changes and interaction in the aquatic environment with other dissolved organic and inorganic materials;
- (h) Probability of production of taints or other changes reducing marketability of resources (e.g. fish, shellfish).

ACTION LIST

9. Each Party shall develop a National Action List to provide a mechanism for screening candidate wastes and their constituents on the basis of their potential effects on human health and the marine environment. In selecting substances for consideration in an Action List, priority shall be given to toxic, persistent and bioaccumulative substances from anthropogenic sources (e.g. cadmium, mercury, organohalogens, petroleum hydrocarbons, and, whenever relevant, arsenic, lead, copper, zinc, beryllium, chromium, nickel and vanadium, organosilicon compounds, cyanides, fluorides and pesticides or their by-products other than organohalogens). An Action list can also be used as a trigger mechanism for further waste prevention considerations.

10. An Action List shall specify an upper level, and may also specify a lower level. The upper level should be set so as to avoid acute or chronic effects on human health or on sensitive marine organisms representative of the marine ecosystem. Application of an Action List will result in three possible categories of waste:

- (a) Wastes which contain specified substances, or which cause biological responses, exceeding the relevant upper level shall not be dumped, unless made acceptable for dumping through the use of management techniques or processes;
- (b) Wastes which contain specified substances, or which cause biological responses, below the relevant lower levels should be considered to be of little environmental concern in relation to dumping; and
- (c) Wastes which contain specified substances, or which cause biological responses, below the upper level but above the lower level require more detailed assessment before their suitability for dumping can be determined.

DUMP-SITE SELECTION

11. Information required to select a dump-site shall include:

- (a) physical, chemical and biological characteristics of the water-column and the seabed;
- (b) location of amenities, values and other uses of the sea in the area under consideration;
- (c) assessment of the constituent fluxes associated with dumping in relation to existing fluxes of substances in the marine environment; and
- (d) economic and operational feasibility.

ASSESSMENT OF POTENTIAL EFFECTS

12. Assessment of potential effects should lead to a concise statement of the expected consequences of the sea or land disposal options, i.e. the “Impact Hypothesis”. It provides a basis for deciding whether to approve or reject the proposed disposal option and for defining environmental monitoring requirements.

13. The assessment for dumping should integrate information on waste characteristics, conditions at the proposed dump-site(s), fluxes, and proposed disposal techniques and specify the potential effects on human health, living resources, amenities and other legitimate uses of the sea. It should define the nature, temporal and spatial scales and duration of expected impacts based on reasonably conservative assumptions.

14. An analysis of each disposal option should be considered in the light of a comparative assessment of the following concerns: human health risks, environment costs, hazards, (including accidents), economics and exclusion of future uses. If this assessment reveals that adequate information is not available to determine the likely effects of the proposed disposal option then this option should not be considered further. In addition, if the interpretation of the comparative assessment shows the dumping option to be less preferable, a permit for dumping should not be given.

15. Each assessment should conclude with a statement supporting a decision to issue or refuse a permit for dumping.

MONITORING

16. Monitoring is used to verify that permit conditions are met – compliance monitoring – and that the assumptions made during the permit review and site selection process were correct and sufficient to protect the environment and human health – field monitoring. It is essential that such monitoring programs have clearly defined objectives.

PERMIT AND PERMIT CONDITIONS

17. A decision to issue a permit should only be made if all impact evaluations are completed and the monitoring requirements are determined. The provisions of the permit shall ensure, as far as practicable, that environmental disturbance and detriment are minimised and the benefits maximised. Any permit issued shall contain data and information specifying:

- (a) the types and sources of materials to be dumped;
- (b) the location of the dump-site(s)
- (c) the method of dumping; and
- (d) monitoring and reporting requirements.

18. Permits should be reviewed at regular intervals, taking into account the results of monitoring and the objectives of monitoring programs. Review of monitoring results will indicate whether field programs need to be continued, revised or terminated and will contribute to informed decisions regarding the continuance, modification or revocation of permits. This provides an important feedback mechanism for the protection of human health and the marine environment.

**Annex 3: PROTOCOL ON OIL POLLUTION PREPAREDNESS, RESPONSE AND
COOPERATION IN THE PACIFIC REGION**

The Parties to this Protocol,

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

Desiring to make this Protocol consistent with the provisions of the International Convention on Oil Pollution Preparedness, Response and Cooperation 1990 (OPRC Convention 90) as envisaged by Article 10 of that Convention and any other relevant International Maritime Organization (IMO) agreements;

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

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

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

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

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

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

Emphasising the importance of effective preparation for combating oil pollution incidents and the important role which the oil and shipping industries have in this regard;

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

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

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

Have agreed as follows:

Article 1 DEFINITIONS

For the purposes of this Protocol:

- (a) “Convention” means the Convention for the Protection of the Natural Resources and Environment of the South Pacific Region adopted in Noumea, New Caledonia on the twenty-fourth day of November in the year one thousand nine hundred and eighty-six;
- (b) “Offshore unit” means any fixed or floating offshore installation or structure engaged in gas or oil exploration, exploitation or production activities, or loading or unloading of oil;
- (c) “oil” means petroleum in any form including crude oil, fuel oil, sludge, oil refuse and refined products;
- (d) “Organisation” means the Secretariat for the Pacific Regional Environment Programme;
- (e) “pollution incident” means an occurrence, or series of occurrences having the same origin which results or may result in a discharge of oil and which poses or may pose a threat to the marine environment, or to the coastline or related interests of one or more States, and which requires emergency action or other immediate response;
- (f) “related interests” of a Party refer, inter alia, to:
 - (i) maritime, coastal, port, or estuarine activities;
 - (ii) fishing activities and the management and conservation of living and non-living marine resources, including coastal ecosystems;
 - (iii) the cultural value of the area concerned and the exercise of traditional customary rights therein;
 - (iv) the health of the coastal population; and
 - (v) tourist and recreational activities;

(g) “Sea ports and oil handling facilities” means those facilities which present a risk of an oil pollution incident and includes, inter alia, sea ports, oil terminals, pipelines and other oil handling facilities;

(h) “Pacific Region” means the Convention Area as defined in Article 2 of the Convention and adjacent coastal areas.

Article 2 APPLICATION

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

Article 3 PLANNING AND RESPONSE PROVISIONS

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

3. Each Party shall require that ships entitled to fly its flag have on board a shipboard pollution emergency pollution plan in accordance with the provisions developed by the International Maritime Organization.

4. Each Party shall require that authorities or operators in charge of such sea ports and oil handling facilities under its jurisdiction as it deems appropriate have pollution incident plans or similar arrangements which are co-ordinated with the national system established and approved in accordance with procedures established by the competent national authority.

5. In addition, each Party, within its capabilities either individually or through bilateral or multilateral cooperation and, as appropriate, in cooperation with the oil and shipping industries, port authorities and other relevant entities, shall establish:

- (a) a minimum level of pre-positioned equipment for responding to pollution incidents, commensurate with the risk involved, and programmes for its use;
- (b) a programme of exercises for pollution incident response organisations and training of relevant personnel;
- (c) detailed plans and communication capabilities for responding to a pollution incident. Such capabilities should be continuously available; and
- (d) a mechanism or arrangement to coordinate the response to a pollution incident with, if appropriate, the capabilities to mobilise the necessary resources.

Article 4 EXCHANGE OF INFORMATION

1. Each Party shall periodically exchange with other Parties, either directly or through the Organisation, current information relating to the implementation of this Protocol, including the identification of the officials charged with carrying out the activities covered by it, and information on its laws, regulations, institutions and operational procedures relating to the prevention and the means of reducing and combating the harmful effects of pollution incidents.

2. In particular each Party shall ensure that current information is provided to the Organisation concerning:

- (a) the location, telecommunication data and, if applicable, areas of responsibility of authorities and entities responsible for pollution preparedness and response;
- (b) information concerning pollution response equipment and expertise in disciplines related to pollution incident response and marine salvage which may be made available to other States, upon request; and
- (c) its national contingency plan.

Article 5 REPORTING OF POLLUTION INCIDENTS

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

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

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

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

Article 6 OPERATIONAL MEASURES

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

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

Article 7 MUTUAL ASSISTANCE

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

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

Article 8 REIMBURSEMENT OF COSTS OF ASSISTANCE

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

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

Article 9 SUB-REGIONAL ARRANGEMENTS

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

Article 10 INSTITUTIONAL ARRANGEMENTS

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

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

- (f) maintaining an appropriate current inventory of available pollution incident response equipment;
- (g) disseminating information related to the prevention and control of pollution incidents and the removal of pollutants resulting there from;
- (h) identifying or maintaining pollution incident response communications systems;
- (i) encouraging research by the Parties, as well as by relevant international and private organisations, on the environmental effects of pollution incidents, the environmental effects of pollution incident control materials and other matters related to pollution incidents;
- (j) assisting Parties in the exchange of information pursuant to Article 4; and
- (k) preparing reports and carrying out other duties assigned to it by the Parties.

Article 11 MEETINGS OF THE PARTIES

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

Article 12 RELATIONSHIP BETWEEN THIS PROTOCOL AND THE CONVENTION

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

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

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

For the Government of Australia:
This day of

For the Government of the Cook Islands:
This day of

For the Government of the Federated
States of Micronesia:
This day of

For the Government of the Republic of Fiji:
This day of

For the Government of the Republic of France:
This day of

For the Government of the Republic
of the Marshall Islands:
This day of

For the Government of the Republic of Nauru:
This day of

For the Government of New Zealand:
This day of

For the Government of Papua New Guinea:
This day of

For the Government of Samoa:
This day of

For the Government of the Solomon Islands:
This day of

For the Government of the United
States of America:
This day of

**Annex 4: PROTOCOL ON HAZARDOUS AND NOXIOUS SUBSTANCES POLLUTION,
PREPAREDNESS, RESPONSE AND COOPERATION IN THE PACIFIC REGION**

The Parties to this Protocol,

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

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

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

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

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

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

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

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

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

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

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

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

Have agreed as follows:

Article 1 DEFINITIONS

For the purposes of this Protocol:

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

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

Article 2 APPLICATION

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

Article 3 PLANNING AND RESPONSE PROVISIONS

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

taking into account guidelines developed by the Organisation and the International Maritime Organization.

3. Each Party shall require that ships entitled to fly its flag have on board a shipboard pollution emergency pollution plan in accordance with the provisions developed by the International Maritime Organization.

4. Each Party shall require that authorities or operators in charge of such sea ports and hazardous and noxious substances handling facilities under its jurisdiction as it deems appropriate have pollution incident plans or similar arrangements which are co-ordinated with the national system established and approved in accordance with procedures established by the competent national authority.

5. In addition, each Party, within its capabilities either individually or through bilateral or multilateral cooperation and, as appropriate, in cooperation with the shipping industries and industries dealing with hazardous and noxious substances, port authorities and other relevant entities, shall establish:

- (a) a minimum level of pre-positioned equipment for responding to pollution incidents, commensurate with the risk involved, and programmes for its use;
- (b) a programme of exercises for pollution incident response organisations and training of relevant personnel;
- (c) detailed plans and communication capabilities for responding to a pollution incident. Such capabilities should be continuously available; and
- (d) a mechanism or arrangement to coordinate the response to a pollution incident with, if appropriate, the capabilities to mobilise the necessary resources.

Article 4 EXCHANGE OF INFORMATION

1. Each Party shall periodically exchange with other Parties, either directly or through the Organisation, current information relating to the implementation of this Protocol, including the identification of the officials charged with carrying out the activities covered by it, and information on its laws, regulations, institutions and operational procedures relating to the prevention and the means of reducing and combating the harmful effects of pollution incidents.

2. In particular each Party shall ensure that current information is provided to the Organisation concerning:

- (a) the location, telecommunication data and, if applicable, areas of responsibility of authorities and entities responsible for pollution preparedness and response;
- (b) information concerning pollution response equipment and expertise in disciplines related to pollution incident response and marine salvage which may be made available to other States, upon request; and
- (c) its national contingency plan.

Article 5 REPORTING OF POLLUTION INCIDENTS

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

- (a) require masters or other persons having charge of ships flying its flag and persons having charge of offshore units under its jurisdiction to report without delay any event on their ship or offshore unit involving a discharge or probable discharge of hazardous and noxious substance
 - (i) in the case of a ship, to the nearest coastal State;
 - (ii) in the case of an offshore unit, to the coastal State to whose jurisdiction the unit is subject;
- (b) require masters or other persons having charge of ships flying its flag and persons having charge of offshore units under its jurisdiction to report without delay any observed event at sea involving a discharge of hazardous and noxious substances or the presence of hazardous and noxious substances:
 - (i) in the case of a ship, to the nearest coastal State;
 - (ii) in the case of an offshore unit, to the coastal State to whose jurisdiction the unit is subject;
- (c) require persons having charge of seaports and hazardous and noxious substances handling facilities under its jurisdiction to report without delay any event involving a discharge or probable discharge of hazardous and noxious substances or the presence of hazardous and noxious substances to the competent national authority;

- (d) instruct its maritime inspection vessels or aircraft and other appropriate services or officials to report without delay any observed event at sea or at a sea port or hazardous and noxious substances handling facility involving a discharge of hazardous and noxious substances or the presence of hazardous and noxious substances to the competent national authority or, as the case may be, to the nearest coastal State;
- (e) request the pilots of civil aircraft to report without delay any observed event at sea involving a discharge of hazardous and noxious substances or the presence of hazardous and noxious substances to the nearest coastal State.

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

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

Article 6 OPERATIONAL MEASURES

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

- (a) make a preliminary assessment of the pollution incident, including the type and extent of existing or likely pollution incident effects;
- (b) promptly communicate information concerning the situation to other Parties, any other State likely to be affected by the pollution incident and the Organisation, consistent with Article 5.3;
- (c) promptly determine its ability to take effective measures to respond to the pollution incident and the assistance that might be required and to communicate any request for such assistance to the Party or Parties concerned or the Organisation in accordance with Article 7;

- (d) consult, as appropriate, with other affected or concerned Parties or the Organisation in determining the necessary response to a pollution incident; and
- (e) carry out the necessary measures to prevent, eliminate or control the effects of the pollution incident, including surveillance and monitoring of the situation.

Article 7 MUTUAL ASSISTANCE

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

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

Article 8 REIMBURSEMENT OF COSTS OF ASSISTANCE

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

- (a) If the action was taken by a Party on its own initiative, that Party shall bear the costs of its action;
- (b) If the action was taken by one Party at the express request of another Party, the requesting Party shall reimburse to the assisting Party the cost of its actions;
- (c) The requesting Party may cancel its request at any time, but in that case it shall bear the costs already incurred or committed by the assisting Party;
- (d) Nothing in paragraphs (b) or (c) shall affect any agreement made between Parties that makes alternative arrangements for any individual case;
- (e) Unless otherwise agreed, the costs of action taken by a Party at the request of another Party shall be fairly calculated according to the law and current practice of the assisting Party concerning the reimbursement of such costs;

- (f) The Party requesting assistance and the assisting Party shall, where appropriate, cooperate in concluding any action in response to a compensation claim. To that end, they shall give due consideration to existing legal regimes. Where the action thus concluded does not permit full compensation for expenses incurred in the assistance operation, the Party requesting assistance may ask the assisting Party to waive reimbursement of the expenses exceeding the sums compensated or to reduce the costs which have been calculated in accordance with paragraph (e). It may also request a postponement of the reimbursement of such costs. In considering such a request, assisting Parties shall give due consideration to the needs of the developing countries; and
- (g) The provisions of this Protocol shall not be interpreted as in any way prejudicing the rights of Parties to recover from third parties the costs of actions to deal with pollution or the threat of pollution under other applicable provisions and rules of national and international law. Special attention shall be paid to relevant International Maritime Organization liability and compensation agreements.

Article 9 SUB-REGIONAL ARRANGEMENTS

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

Article 10 INSTITUTIONAL ARRANGEMENTS

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

- (a) assisting Parties, upon request, in the communication of reports of pollution incidents in accordance with Article 5;
- (b) assisting Parties, upon request, in the organisation of a response action to a pollution incident, in accordance with Article 7;
- (c) assisting Parties, upon request, in the following areas:
 - (i) the preparation, periodic review, and updating of the contingency plans, referred to in paragraph 2 of Article 3, with a view, inter alia, to promoting the compatibility of the plans of the Parties; and
 - (ii) the identification of training courses and programmes;

- (d) assisting the Parties upon request, on a regional or sub-regional basis, in the following areas:
 - (i) the co-ordination of pollution incident response activities; and
 - (ii) the provision of a forum for discussions concerning pollution incident response and other related topics;
 - (iii) the provision of policy and technical advice including guidelines.
- (e) establishing and maintaining liaison with:
 - (i) the relevant regional and international organisations; and
 - (ii) relevant private organisations, including producers and transporters of substances which could give rise to a pollution incident in the Pacific Region and clean-up contractors and cooperatives;
- (f) maintaining an appropriate current inventory of available pollution incident response equipment;
- (g) disseminating information related to the prevention and control of pollution incidents and the removal of pollutants resulting therefrom;
- (h) identifying or maintaining pollution incident response communications systems;
- (i) encouraging research by the Parties, as well as by relevant international and private organisations, on the environmental effects of pollution incidents, the environmental effects of pollution incident control materials and other matters related to pollution incidents;
- (j) assisting Parties in the exchange of information pursuant to Article 4; and
- (k) preparing reports and carrying out other duties assigned to it by the Parties.

Article 11 MEETINGS OF THE PARTIES

1. Ordinary meetings of the Parties to this Protocol shall be held in conjunction with ordinary meetings of the Parties to the Convention, held pursuant to Article 22 of the Convention. The Parties to this Protocol may also hold extraordinary meetings as provided for in Article 22 of the Convention.

2. It shall be the function of the meetings of the Parties:

- (a) to review the operation of this Protocol and to consider special technical arrangements and other measures to improve its effectiveness;
- (b) to consider any measures to improve cooperation under this Protocol including, in accordance with Article 24 of the Convention, amendments to this Protocol.

Article 12 RELATIONSHIP BETWEEN THIS PROTOCOL AND THE CONVENTION

1. The provisions of the Convention relating to any Protocol shall apply with respect to the present Protocol.

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

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

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

For the Government of Australia:
This day of

For the Government of the Cook Islands:
This day of

For the Government of the Federated
States of Micronesia:
This day of

For the Government of the Republic of Fiji:
This day of

For the Government of the Republic of France:
This day of

For the Government of the Republic
of the Marshall Islands: This day of

For the Government of the Republic of Nauru:
This day of

For the Government of New Zealand:
This day of

For the Government of Papua New Guinea:
This day of

For the Government of Samoa:
This day of

For the Government of the Solomon Islands:
This day of

For the Government of the United
States of America: This day of