

1998-1999-2000

The Parliament of the
Commonwealth of Australia

THE SENATE

As read a third time

**Environment and Heritage Legislation
Amendment Bill 2000**

No. , 2000

**A Bill for an Act to amend legislation relating to the
environment, and for related purposes**

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1 THIS bill originated in the Senate; and,
2 having this day passed, is now ready for
3 presentation to the House of
4 Representatives for its concurrence.

5 HARRY EVANS
6 *Clerk of the Senate*

7 The Senate
8 6 March 2000

9 **A Bill for an Act to amend legislation relating to the**
10 **environment, and for related purposes**

11 The Parliament of Australia enacts:

12 **1 Short title**

13 This Act may be cited as the *Environment and Heritage*
14 *Legislation Amendment Act 2000*.

15 **2 Commencement**

16 This Act commences on the 28th day after the day on which it
17 receives the Royal Assent.

18 **3 Schedule(s)**

19 Each Act that is specified in a Schedule to this Act is amended or
20 repealed as set out in the applicable items in the Schedule

1 concerned, and any other item in a Schedule to this Act has effect
2 according to its terms.

3 **4 Transitional—continuation of existing permits**

4 A permit in force immediately before the commencement of this
5 Act under section 19 of the *Environment Protection (Sea*
6 *Dumping) Act 1981* continues in effect as if it had been issued
7 under that Act, as amended by this Act.

8 **5 Regulations**

- 9 (1) The Governor-General may make regulations prescribing matters:
10 (a) required or permitted by this Act to be prescribed; or
11 (b) necessary or convenient to be prescribed for carrying out or
12 giving effect to this Act.
- 13 (2) In particular, regulations may be made for matters of a transitional
14 or saving nature arising from the amendments made by this Act.

1
2 **Schedule 1—Amendments**
3

4 ***Environment Protection (Sea Dumping) Act 1981***

5 **1 Title**

6 Repeal the title, substitute:

7 **An Act providing for the protection of the**
8 **environment by regulating dumping into the sea,**
9 **incineration at sea and artificial reef placements,**
10 **and for related purposes**

11 **2 Subsection 4(1)**

12 Insert:

13 *Antarctic Treaty* means the Treaty concerning Antarctica, to which
14 Australia is a party, done at Washington on 1 December 1959.

15 Note: The text of the Treaty is set out in the Australian Treaty Series 1961
16 No. 12.

17 **3 Subsection 4(1)**

18 Insert:

19 *artificial reef* means a structure or formation placed on the seabed:

20 (a) for the purpose of increasing or concentrating populations of
21 marine plants and animals; or

22 (b) for the purpose of being used in human recreational
23 activities;

24 and includes anything prescribed by the regulations to be an
25 artificial reef for the purposes of this definition, but does not
26 include anything prescribed by the regulations not to be an
27 artificial reef for the purposes of this definition.

28 **4 Subsection 4(1)**

29 Insert:

30 *artificial reef permit* means a permit under section 19 for the
31 placement of an artificial reef.

1 **5 Subsection 4(1)**

2 Insert:

3 *artificial reef placement* means the placement of any controlled
4 material into the sea for the purpose of creating an artificial reef,
5 being a placement that is not contrary to the aims of the Protocol.

6 **6 Subsection 4(1) (definition of *Australian fishing zone*)**

7 Repeal the definition.

8 **7 Subsection 4(1) (definition of *Australian platform*)**

9 Repeal the definition.

10 **8 Subsection 4(1) (paragraphs (c) and (d) of the definition of**
11 ***Australian waters*)**

12 Repeal the paragraphs, substitute:

13 (c) the exclusive economic zone, within the meaning of the *Seas*
14 *and Submerged Lands Act 1973*, adjacent to the coast of
15 Australia or the coast of an external Territory; or

16 (d) any other area of sea that is above the continental shelf of
17 Australia or above the continental shelf of an external
18 Territory.

19 Note: Section 4A can affect the scope of the definition of *Australian waters*.

20 **9 Subsection 4(1)**

21 Insert:

22 *controlled material* means:

23 (a) wastes or other matter (within the meaning of the Protocol);
24 and

25 (b) a vessel, aircraft or platform.

26 **10 Subsection 4(1) (definition of *Convention*)**

27 Repeal the definition.

28 **11 Subsection 4(1) (paragraph (b) of the definition of**
29 ***inspector*)**

30 After “police force”, insert “, or an officer of the Australian Customs
31 Service,”.

12 Subsection 4(1)

Insert:

offending craft, in relation to an offence against section 10F,
means:

- (a) if the primary offence referred to in section 10F is an offence against section 10A—any vessel, aircraft or platform from which, or on which, the controlled material was dumped; or
- (b) if the primary offence referred to in section 10F is an offence against section 10B—the vessel or platform on which the controlled material was incinerated; or
- (c) if the primary offence referred to in section 10F is an offence against section 10C—the vessel, aircraft or platform on which the controlled material was loaded; or
- (d) if the primary offence referred to in section 10F is an offence against section 10D—any vessel, aircraft or platform used to export the controlled material; or
- (e) if the primary offence referred to in section 10F is an offence against section 10E—any vessel, aircraft or platform from which the artificial reef placement occurred.

13 Subsection 4(1)

Insert:

offending material means:

- (a) in relation to an offence against section 10A—the controlled material that was dumped; or
- (b) in relation to an offence against section 10B—the controlled material that was incinerated; or
- (c) in relation to an offence against section 10C—the controlled material that was loaded; or
- (d) in relation to an offence against section 10D—the controlled material that was exported; or
- (e) in relation to an offence against section 10E—the controlled material that was placed for the purpose of creating an artificial reef; or
- (f) in relation to an offence against section 10F—the offending material in relation to the primary offence referred to in section 10F.

1 **14 Subsection 4(1)**

2 Insert:

3 *Protocol* means the Protocol whose English text is set out in
4 Schedule 1.

5 **15 Subsection 4(1)**

6 Insert:

7 *seriously harmful material* means:

8 (a) radioactive material; or

9 (b) any other material that is prescribed by the regulations for the
10 purposes of this paragraph.

11 Note: Subsection 41(3) places limitations on the making of regulations for
12 the purposes of paragraph (b) of this definition.

13 **16 Subsection 4(1) (definition of *SPREP Protocol*)**

14 Repeal the definition.

15 **17 Subsection 4(1)**

16 Insert:

17 *Torres Strait Treaty* means the Treaty between Australia and the
18 Independent State of Papua New Guinea concerning Sovereignty
19 and Maritime Boundaries in the area between the two Countries,
20 including the area known as Torres Strait, and Related Matters
21 done at Sydney on 18 December 1978.

22 Note: The text of the Treaty is set out in Australian Treaty Series 1985 No.
23 4.

24 **18 Subsection 4(4)**

25 Omit “Convention” (wherever occurring), substitute “Protocol”.

26 **19 Subsection 4(4A)**

27 Repeal the subsection.

28 **20 Subsection 4(5)**

29 Omit “matter or thing” (wherever occurring), substitute “controlled
30 material”.

21 After section 4

Insert:

4A Application of Act in relation to certain waters that are subject to the Torres Strait Treaty

- (1) For the purposes of this Act, *Australian waters* does not include the top hat area unless a notice is in force under subsection (2).
- (2) The Minister may, by notice in the *Gazette*, declare that Papua New Guinea has notified Australia that Papua New Guinea agrees to Australia's exercise of jurisdiction under this Act in relation to the top hat area.

Note: The notice can be revoked under subsection 33(3) of the *Acts Interpretation Act 1901*.

- (3) In this section:

top hat area means the area described in Article 4.3 of the Torres Strait Treaty.

4B Application of Act in relation to certain waters that are subject to the Australia-Indonesia Delimitation Treaty

- (1) This section commences to have effect when the Australia-Indonesia Delimitation Treaty enters into force for Australia.
- (2) The Minister must not issue a permit in relation to the overlap area unless:
- (a) the Minister has first consulted the Government of the Republic of Indonesia about issuing the permit; or
 - (b) a notice is in force under subsection (3) and the issue of the permit is within the scope of the agreement to which the notice relates.
- (3) The Minister may, by notice in the *Gazette*, declare that the Government of the Republic of Indonesia has notified Australia that the Government of the Republic of Indonesia agrees to the issue of permits under this Act in relation to the overlap area, either generally or in particular circumstances.

1 Note: The notice can be revoked under subsection 33(3) of the *Acts*
2 *Interpretation Act 1901*.

- 3 (4) An inspector must not exercise powers under this Act in the
4 overlap area in relation to:
5 (a) a vessel other than an Australian vessel; or
6 (b) an aircraft other than an Australian aircraft; or
7 (c) a platform, other than a platform that is subject to Australia's
8 jurisdiction under paragraph 7(b) or (h) of the
9 Australia-Indonesia Delimitation Treaty;

10 unless:

- 11 (d) the Minister has first consulted the Government of the
12 Republic of Indonesia about the exercise of powers by
13 inspectors in the overlap area in relation to that vessel,
14 aircraft or platform; or
15 (e) a notice is in force under subsection (5) and the exercise of
16 the powers is within the scope of the agreement to which the
17 notice relates.

- 18 (5) The Minister may, by notice in the *Gazette*, declare that the
19 Government of the Republic of Indonesia has notified Australia
20 that the Government of the Republic of Indonesia agrees to the
21 exercise by inspectors of powers under this Act in the overlap area,
22 either generally or in particular circumstances.

23 Note: The notice can be revoked under subsection 33(3) of the *Acts*
24 *Interpretation Act 1901*.

- 25 (6) The validity of the exercise of a power is not affected by a failure
26 to comply with subsection (4).

- 27 (7) In this section:

28 ***Australia-Indonesia Delimitation Treaty*** means the Treaty
29 between the Government of Australia and the Government of the
30 Republic of Indonesia establishing an Exclusive Economic Zone
31 Boundary and Certain Seabed Boundaries done at Perth on 14
32 March 1997.

33 ***overlap area*** means the overlapping area described in Article 7 of
34 the Australia-Indonesia Delimitation Treaty.

35 **22 Section 5**

1 Omit “of wastes or other matter”, substitute “or storage of controlled
2 material (other than a vessel, aircraft or platform)”.

3 **23 Section 7**

4 Repeal the section, substitute:

5 **7 Exemption for defence force vessels etc.**

6 (1) This Act does not apply in relation to a vessel or aircraft belonging
7 to the Australian Defence Force, when it is being used:

8 (a) in a situation of armed conflict; or

9 (b) in an emergency situation other than a situation of armed
10 conflict.

11 (2) This Act does not apply in relation to a vessel or aircraft belonging
12 to the naval, military or air forces of a foreign country.

13 **24 After section 8**

14 Insert:

15 **8A *Criminal Code* applies**

16 Chapter 2 of the *Criminal Code* applies to all offences against this
17 Act.

18 **25 Section 9**

19 Repeal the section, substitute:

20 **9 Declaration by Minister in relation to coastal waters of State etc.**

21 (1) If the Minister is satisfied that the law of a State makes provision
22 for giving effect to the Protocol in relation to the coastal waters of
23 that State, the Minister may, by notice published in the *Gazette*,
24 make a declaration that limits the operation of this Act in relation
25 to that State and the coastal waters of that State. A declaration may
26 be made in relation to a State whether or not the Protocol extends
27 to the whole of the coastal waters of that State.

28 Note: Subsection 33(3) of the *Acts Interpretation Act 1901* allows the
29 declaration to be revoked or amended.

- 1 (2) However, this Act continues to apply in relation to the State and its
2 coastal waters in relation to the following activities where they
3 involve seriously harmful material:
4 (a) dumping or incineration at sea;
5 (b) loading for dumping or incineration at sea;
6 (c) export for dumping or incineration at sea;
7 (d) artificial reef placements.

8 (3) A notice under this section is a disallowable instrument for the
9 purposes of section 46A of the *Acts Interpretation Act 1901*.

10 (4) In this section:

11 *State* includes the Northern Territory.

12 **26 Sections 9A to 14**

13 Repeal the sections, substitute:

14 **10A Dumping of controlled material**

- 15 (1) A person is guilty of an offence against this section if, otherwise
16 than in accordance with a permit, the person:
17 (a) dumps controlled material into Australian waters from any
18 vessel, aircraft or platform; or
19 (b) dumps controlled material into any part of the sea from any
20 Australian vessel or Australian aircraft; or
21 (c) dumps a vessel, aircraft or platform into Australian waters; or
22 (d) dumps an Australian vessel or Australian aircraft into any
23 part of the sea.
- 24 (2) An offence against this section is punishable, on conviction, as
25 follows:
26 (a) if it is proved that any of the offending material is seriously
27 harmful material—imprisonment for up to 10 years or a fine
28 up to 2,000 penalty units, or both;
29 (b) if it is proved that any of the offending material is not within
30 Annex 1 to the Protocol—imprisonment for up to 2 years or a
31 fine up to 500 penalty units, or both;
32 (c) in any other case—imprisonment for up to 1 year or a fine up
33 to 250 penalty units, or both.

10B Incineration of controlled material

- 1
- 2 (1) A person is guilty of an offence against this section if, otherwise
3 than in accordance with a permit, the person incinerates controlled
4 material at sea:
- 5 (a) on a vessel or platform in Australian waters; or
6 (b) on an Australian vessel in any part of the sea.
- 7 (2) An offence against this section is punishable, on conviction, as
8 follows:
- 9 (a) if it is proved that any of the offending material is seriously
10 harmful material—imprisonment for up to 10 years or a fine
11 up to 2,000 penalty units, or both;
- 12 (b) if it is proved that any of the offending material is not within
13 Annex 1 to the Protocol—imprisonment for up to 2 years or a
14 fine up to 500 penalty units, or both;
- 15 (c) in any other case—imprisonment for up to 1 year or a fine up
16 to 250 penalty units, or both.

10C Loading for the purpose of dumping or incineration

- 17
- 18 (1) A person is guilty of an offence against this section if, otherwise
19 than in accordance with a permit, the person:
- 20 (a) loads controlled material on a vessel, aircraft or platform in
21 Australia or Australian waters:
- 22 (i) knowing that it will be dumped into the sea or
23 incinerated at sea; or
- 24 (ii) reckless as to whether it will be dumped into the sea or
25 incinerated at sea; or
- 26 (b) loads controlled material on any Australian vessel or
27 Australian aircraft:
- 28 (i) knowing that it will be dumped into the sea or
29 incinerated at sea; or
- 30 (ii) reckless as to whether it will be dumped into the sea or
31 incinerated at sea.
- 32 (2) An offence against this section is punishable, on conviction, as
33 follows:

- 1 (a) if it is proved that any of the offending material is seriously
2 harmful material—imprisonment for up to 10 years or a fine
3 up to 2,000 penalty units, or both;
4 (b) if it is proved that any of the offending material is not within
5 Annex 1 to the Protocol—imprisonment for up to 2 years or a
6 fine up to 500 penalty units, or both;
7 (c) in any other case—imprisonment for up to 1 year or a fine up
8 to 250 penalty units, or both.

9 **10D Export for the purpose of dumping or incineration**

- 10 (1) A person is guilty of an offence against this section if the person
11 exports controlled material from Australia to another country:
12 (a) knowing that it will be dumped into the sea or incinerated at
13 sea; or
14 (b) reckless as to whether it will be dumped into the sea or
15 incinerated at sea.
- 16 (2) An offence against this section is punishable, on conviction, as
17 follows:
18 (a) if it is proved that any of the offending material is seriously
19 harmful material—imprisonment for up to 10 years or a fine
20 up to 2,000 penalty units, or both;
21 (b) if it is proved that any of the offending material is not within
22 Annex 1 to the Protocol—imprisonment for up to 2 years or a
23 fine up to 500 penalty units, or both;
24 (c) in any other case—imprisonment for up to 1 year or a fine up
25 to 250 penalty units, or both.

26 **10E Placement of artificial reef**

- 27 (1) A person is guilty of an offence against this section if, otherwise
28 than in accordance with a permit, the person carries out an artificial
29 reef placement.
- 30 (2) An offence against this section is punishable, on conviction, as
31 follows:
32 (a) if it is proved that any of the offending material is seriously
33 harmful material—imprisonment for up to 10 years or a fine
34 up to 2,000 penalty units, or both;

-
- 1 (b) if it is proved that any of the offending material is not within
2 Annex 1 to the Protocol—imprisonment for up to 2 years or a
3 fine up to 500 penalty units, or both;
4 (c) in any other case—imprisonment for up to 1 year or a fine up
5 to 250 penalty units, or both.

6 **10F Offence by person responsible for offending craft or material**

- 7 (1) If an offence is committed against section 10A, 10B, 10C, 10D or
8 10E (the *primary offence*), then each person who is a responsible
9 person in relation to the offending craft or offending material is
10 guilty of an offence against this section if the person:
11 (a) knew that the offending craft or offending material would be
12 used in committing the primary offence, or was reckless as to
13 whether it would be used in committing the primary offence;
14 and
15 (b) did not take reasonable steps to prevent the use of the
16 offending craft or offending material in committing the
17 primary offence.
- 18 (2) Subsection (1) applies whether or not any person has been charged
19 with, or convicted of, the primary offence.
- 20 (3) An offence against this section is punishable, on conviction, as
21 follows:
22 (a) if it is proved that any of the offending material is seriously
23 harmful material—imprisonment for up to 10 years or a fine
24 up to 2,000 penalty units, or both;
25 (b) if it is proved that any of the offending material is not within
26 Annex 1 to the Protocol—imprisonment for up to 2 years or a
27 fine up to 500 penalty units, or both;
28 (c) in any other case—imprisonment for up to 1 year or a fine up
29 to 250 penalty units, or both.
- 30 (4) For the purposes of this section:
31 (a) each of the following persons is a *responsible person* in
32 relation to an offending craft:
33 (i) the owner of the offending craft;
34 (ii) the person in charge of the offending craft; and

- 1 (b) the owner of offending material is a *responsible person* in
2 relation to the offending material.

3 **27 Section 15**

4 Repeal the section, substitute:

5 **15 Exceptions to certain offences**

- 6 (1) Sections 10A and 10B do not apply in relation to:
7 (a) dumping into waters that are not Australian waters; or
8 (b) incineration at sea in waters that are not Australian waters;
9 if the dumping or incineration is in accordance with a permit
10 granted in accordance with the Protocol by a party to the Protocol
11 (other than Australia).
- 12 (2) Section 10C does not apply in relation to loading for the purpose
13 of:
14 (a) dumping into waters that are not Australian waters; or
15 (b) incineration at sea in waters that are not Australian waters;
16 if the loading is in accordance with a permit granted in accordance
17 with the Protocol by a party to the Protocol (other than Australia).
- 18 (3) Section 10A, 10B, 10C, 10E or 36 does not apply if:
19 (a) the relevant conduct was necessary to secure the safety of
20 human life or of a vessel, aircraft or platform in a case of
21 *force majeure* caused by stress of weather; or
22 (b) the relevant conduct appeared to be the only way of averting
23 a threat to human life, or to the safety of a vessel, aircraft or
24 platform, and there was every probability that the damage
25 caused by the conduct would be less than would otherwise
26 occur;
27 and, in either case:
28 (c) the relevant conduct was so carried out as to minimise the
29 likelihood of damage to human or marine life; and
30 (d) a report of the relevant conduct, setting out the prescribed
31 information, was given to the Minister as soon as practicable
32 after the conduct occurred.
- 33 (4) In a proceedings for an offence, the defendant bears the evidential
34 burden of proving an exception set out in this section.

28 Section 16

Repeal the section, substitute:

16 Restoration of environment

(1) If the Minister considers that a regulated occurrence is likely to:

(a) cause an obstruction, or constitute a danger, to vessels; or

(b) result in harm to human or marine life; or

(c) result in an interference with the exercise of the sovereign rights of Australia as a coastal State:

(i) to explore the seabed and subsoil beneath Australian waters; and

(ii) to exploit the natural resources of the seabed and subsoil beneath Australian waters;

then the Minister may cause to be taken such steps as the Minister considers proper to repair or remedy any condition, or to mitigate any damage, arising from the occurrence.

(2) In this section:

regulated occurrence means any of the following:

(a) the dumping of controlled material into Australian waters;

(b) the incineration at sea in Australian waters of controlled material;

(c) an artificial reef placement in Australian waters;

(d) a contravention of a condition of a permit.

29 Paragraphs 17(1)(a) and (b)

Repeal the paragraphs, substitute:

(a) a person has been convicted of an offence against section 10A, 10B, 10E, 10F or 36; and

(b) because the Minister has exercised his or her powers under section 16, the Commonwealth has incurred expenses or other liabilities in repairing or remedying any condition, or mitigating any damage, arising from:

(i) if the offence is an offence against section 10A, 10B, 10E or 36—the conduct that constituted the offence; or

- 1 (ii) if the offence is an offence against section 10F—the
2 conduct that constituted the primary offence referred to
3 in that section;

4 **30 Subsection 17(2)**

5 Omit “the same act of dumping”, substitute “the same occurrence”.

6 **31 Subsection 17(2)**

7 Omit “that dumping”, substitute “that occurrence”.

8 **32 Subsection 17(3)**

9 Omit “Australian platform”, substitute “platform”.

10 **33 Paragraph 17(3)(a)**

11 Repeal the paragraph, substitute:

- 12 (a) has been convicted of:
- 13 (i) an offence against section 10A or 36 with respect to
14 dumping from the vessel, aircraft or platform; or
 - 15 (ii) an offence against section 10B or 36 with respect to
16 incineration at sea on the vessel or platform; or
 - 17 (iii) an offence against section 10E or 36 with respect to an
18 artificial reef placement from the vessel, aircraft or
19 platform; or
 - 20 (iv) an offence against section 10F with respect to the
21 vessel, aircraft or platform; and

22 Note: The heading to section 17 is altered by omitting “**resulting from dumping**”.

23 **34 Subsection 17(5)**

24 Repeal the subsection, substitute:

- 25 (5) If a person:
- 26 (a) takes to sea any vessel that been detained under subsection
27 (3), before it is released from detention, knowing that it is
28 still under detention or being reckless as to whether it is still
29 under detention; or
 - 30 (b) removes from Australia or an external Territory any aircraft
31 that has been detained under subsection (3), before it is
32 released from detention, knowing that it is still under

- 1 detention or being reckless as to whether it is still under
2 detention;
3 the person is guilty of an offence punishable, on conviction, by
4 imprisonment for up to 2 years or a fine up to 120 penalty units, or
5 both.
- 6 (6) If an offence (the *primary offence*) is committed against
7 subsection (5) in respect of taking a vessel to sea or removing an
8 aircraft from Australia or an external Territory, then each person
9 who is a responsible person in relation to the vessel or aircraft is
10 guilty of an offence against this subsection if the person:
11 (a) knew that the vessel or aircraft would be used in committing
12 the primary offence, or was reckless as to whether it would
13 be used in committing the primary offence; and
14 (b) did not take reasonable steps to prevent the use of the vessel
15 or aircraft in committing the primary offence.
- 16 (7) Subsection (6) applies whether or not any person has been charged
17 with, or convicted of, the primary offence.
- 18 (8) An offence against subsection (6) is punishable, on conviction, by
19 imprisonment for up to 2 years or a fine up to 120 penalty units, or
20 both.
- 21 (9) For the purposes of subsection (6), each of the following persons is
22 a *responsible person* in relation to a vessel or aircraft:
23 (a) the owner of the vessel or aircraft;
24 (b) the person in charge of the vessel or aircraft.

25 **35 Subsection 18(4)**

26 After “dumping” (wherever occurring), insert “or artificial reef
27 placement”.

28 **36 Subsections 19(5), (5A), (6), (6A), (7) and (8)**

29 Repeal the subsections, substitute:

- 30 (5) Subject to subsection (7), a permit for dumping or loading for
31 dumping:
32 (a) may only be granted for controlled material that is within
33 Annex 1 to the Protocol; and

- 1 (b) may only be granted in accordance with Annex 2 to the
2 Protocol.
- 3 (6) Subject to subsection (7), a permit cannot be granted for
4 incineration at sea or loading for incineration at sea.
- 5 (7) The Minister may grant a permit for dumping, incineration at sea
6 or loading for dumping or incineration at sea, of any controlled
7 material if, in the Minister's opinion, there is an emergency that:
8 (a) poses an unacceptable risk to human health, safety, or the
9 marine environment; and
10 (b) admits of no other feasible solution.
- 11 (8) A permit cannot be granted for an artificial reef placement of
12 seriously harmful material.
- 13 (8A) In considering the granting of a permit, the Minister must have
14 regard to the following (so far as they are relevant):
15 (a) the Protocol;
16 (b) the Torres Strait Treaty;
17 (c) the Antarctic Treaty;
18 (d) any other treaty or convention to which Australia is a party
19 and that relates to dumping at sea or to Antarctica or
20 Antarctic resources.

21 **37 Subsection 19(9)**

22 After "permit for dumping", insert "or artificial reef placement".

23 **38 Paragraph 19(9)(a)**

24 Before "a provision", insert "in the case of a permit for dumping or
25 artificial reef placement—".

26 **39 Paragraph 19(9)(a)**

27 After "dumping operation", insert "or artificial reef placement".

28 **40 Paragraph 19(9)(b)**

29 Before "a provision", insert "in the case of a permit for dumping—".

30 **41 Subsections 19(10) and (11)**

31 Repeal the subsections.

1 **42 Subsection 23(1)**

2 Repeal the subsection, substitute:

- 3 (1) The holder of a permit may apply to the Minister for:
4 (a) variation of the permit; or
5 (b) revocation, suspension or variation of a condition of the
6 permit.

7 **43 Subparagraph 23(3)(a)(i)**

8 After “revoke”, insert “or suspend”.

9 **44 Subparagraph 23(3)(a)(ii)**

10 After “vary”, insert “the permit or”.

11 **45 Paragraph 24(2)(b)**

12 Repeal the paragraph, substitute:

- 13 (b) a decision by the Minister under subsection 19(7) granting, or
14 refusing to grant, a permit.

15 **46 Section 25**

16 After “particulars of”, insert “the following”.

17 **47 Paragraph 25(d)**

18 Repeal the paragraph, substitute:

- 19 (d) any revocation, variation, suspension, or cancellation of the
20 suspension, of a permit;

21 **48 At the end of section 25**

22 Add:

- 23 (f) the reasons for a decision by the Minister under subsection
24 19(7) granting, or refusing to grant, a permit.

25 **49 Section 27**

26 Repeal the section, substitute:

27 **27 Inspectors ex officio**

28 The following persons are inspectors, by force of this section:

- 1 (a) members of the Australian Federal Police or of the police
2 force of a Territory;
3 (b) officers of the Australian Customs Service.

4 **50 Section 28**

5 After “police force”, insert “or an officer of the Australian Customs
6 Service”.

7 **51 Subsection 29(1)**

8 Repeal the subsection, substitute:

- 9 (1) This section applies to the following:
10 (a) any Australian vessel or Australian aircraft;
11 (b) any vessel, aircraft or platform that is in Australia or an
12 external Territory;
13 (c) any vessel or platform that is in Australian waters;
14 (d) any aircraft that is capable of landing on water and is in
15 Australian waters.

16 **52 Paragraph 29(2)(a)**

17 Omit “matter or thing”, substitute “controlled material”.

18 **53 After paragraph 29(2)(a)**

19 Insert:

- 20 (aa) any controlled material that is to be placed as part of an
21 artificial reef placement; or

22 **54 Subsection 29(6)**

23 Omit “member of a police force who is in uniform”, substitute “member
24 of a police force, or officer of the Australian Customs Service, who is in
25 uniform”.

26 **55 After paragraph 29(6)(a)**

27 Insert:

- 28 (aa) in the case of an officer of the Australian Customs Service—
29 produce, for inspection by the person in charge of that vessel,
30 aircraft or platform, written evidence of the fact that the
31 officer is an officer of the Australian Customs Service; or

1 **56 Subsection 29(7)**

2 Omit “member of a police force who is in uniform”, substitute “member
3 of a police force, or officer of the Australian Customs Service, who is in
4 uniform”.

5 **57 After paragraph 29(7)(a)**

6 Insert:

7 (aa) in the case of an officer of the Australian Customs Service—
8 produce, for inspection by that person, written evidence of
9 the fact that the officer is an officer of the Australian
10 Customs Service; or

11 **58 Paragraph 30(2)(a)**

12 Omit “matter or thing”, substitute “controlled material”.

13 **59 After paragraph 30(2)(a)**

14 Insert:

15 (aa) any controlled material that is to be placed as part of an
16 artificial reef placement; or

17 **60 Subsection 30(2)**

18 Omit “Justice of the Peace”, substitute “magistrate”.

19 **61 Subsection 30(3)**

20 Omit “Justice of the Peace” (wherever occurring), substitute
21 “magistrate”.

22 **62 Subparagraph 30(3)(a)(i)**

23 Omit “matter or thing”, substitute “controlled material”.

24 **63 After subparagraph 30(3)(a)(i)**

25 Insert:

26 (ia) any controlled material that is to be placed as part of an
27 artificial reef placement; or

28 **64 After section 30**

29 Insert:

1 **30A Warrants may be granted by telephone or other electronic**
2 **means**

- 3 (1) An application to a magistrate for a warrant under section 30 may
4 be made by telephone, facsimile or other electronic means:
5 (a) in an urgent case; or
6 (b) if the delay that would occur if an application were made in
7 person would frustrate the effective execution of the warrant.
- 8 (2) The magistrate may require voice communication to the extent that
9 it is practicable in the circumstances.
- 10 (3) An application under this section must include all information
11 required to be provided in an ordinary application for a warrant
12 under section 30, but the application may, if necessary, be made
13 before the information is sworn or affirmed.
- 14 (4) If the magistrate is satisfied:
15 (a) after having considered the information mentioned in
16 subsection (3); and
17 (b) after having received any further information that the
18 magistrate requires about the grounds on which the issue of
19 the warrant is being sought;
20 that there are reasonable grounds for issuing the warrant, the
21 magistrate may complete and sign the same form of warrant as
22 would be issued under section 30.
- 23 (5) If the magistrate signs a warrant under subsection (4):
24 (a) the magistrate must notify the inspector, by telephone,
25 facsimile or other electronic means, of the terms of the
26 warrant and the date on which and the time at which it was
27 signed, and write on it the reasons for granting it; and
28 (b) the inspector must complete a form of warrant in the terms
29 notified to the inspector by the magistrate and write on it the
30 name of the magistrate and the date on which and the time at
31 which it was signed.
- 32 (6) If the inspector completes a form of warrant under subsection (5),
33 the inspector must, not later than the day after the day on which the
34 warrant ceased to be in force or was executed, whichever is the
35 earlier, give or send to the magistrate the form of warrant

1 completed by the inspector and, if the information mentioned in
2 subsection (3) was not sworn or affirmed, that information duly
3 sworn or affirmed.

4 (7) The magistrate must attach to the documents provided under
5 subsection (6) the warrant signed by the magistrate.

6 (8) A form of warrant that has been duly completed by the inspector
7 under subsection (5), and is in accordance with the terms of the
8 warrant signed by the magistrate, has the same authority as the
9 warrant signed by the magistrate.

10 (9) If:

11 (a) it is material, in any proceedings, for a court to be satisfied
12 that an exercise of power was authorised under this section;
13 and

14 (b) the warrant signed by the magistrate under this section
15 authorising the exercise of power is not produced in
16 evidence;

17 the court must assume, unless the contrary is proved, that the
18 exercise of power was not authorised by such a warrant.

19 **65 Paragraphs 31(1)(b), (c) and (d)**

20 Repeal the paragraph, substitute:

21 (b) to search for, inspect, takes extracts from and make copies of
22 any document that relates to:

23 (i) the loading, dumping or incineration at sea of any
24 controlled material; or

25 (ii) the export of any controlled material that is to be
26 dumped into the sea or incinerated at sea; or

27 (iii) any controlled material that is to be placed as part of an
28 artificial reef placement;

29 (c) to inspect, and take samples of:

30 (i) any controlled material; or

31 (ii) any controlled material that is to be placed as part of an
32 artificial reef placement;

33 (d) to observe:

34 (i) the loading on a vessel, aircraft or platform of any
35 controlled material that is to be dumped into the sea or
36 incinerated at sea; or

- 1 (ii) the dumping into the sea, or the incineration at sea, of
2 any controlled material; or
3 (iii) an artificial reef placement.

4 **66 Subsection 32(2)**

5 Omit “member of a police force who is in uniform”, substitute “member
6 of a police force, or officer of the Australian Customs Service, who is in
7 uniform”.

8 **67 After paragraph 32(2)(a)**

9 Insert:

- 10 (aa) in the case of an officer of the Australian Customs Service—
11 produce, for inspection by that person, written evidence of
12 the fact that the officer is an officer of the Australian
13 Customs Service; or

14 **68 Subsection 32(3)**

15 Omit “Justice of the Peace”, substitute “magistrate”.

16 **69 Paragraph 33(1)(a)**

17 Omit “section 9A, 9B, 9C, 10, 11, 12 or 14”, substitute “section 10A,
18 10B, 10C, 10D or 10E”.

19 **70 Subsection 35(2)**

20 Omit “a fine not exceeding 10 penalty units”, substitute “imprisonment
21 for up to 1 year or a fine up to 60 penalty units, or both”.

22 **71 Section 36**

23 Repeal the section, substitute:

24 **36 Compliance with conditions of permit**

- 25 (1) The holder of a permit is guilty of an offence against this section if:
26 (a) the holder does an act that constitutes a contravention of a
27 condition imposed in respect of the permit; and
28 (b) at the time of that act, the holder knows of the existence of
29 that condition, or is reckless as to the existence of that
30 condition.

1 (2) An offence against this section is punishable, on conviction, by
2 imprisonment for up to 1 year or a fine up to 250 penalty units, or
3 both.

4 (3) In this section:

5 *act* includes omission.

6 **72 Section 37**

7 Repeal the section, substitute:

8 **37 Indictable offences**

9 (1) An offence against section 10A, 10B, 10C, 10D, 10E or 10F or
10 subsection 17(5), 35(1), 35(2) or 36(1) is an indictable offence.

11 (2) Even though an offence referred to in subsection (1) is an
12 indictable offence, a court of summary jurisdiction may hear and
13 determine proceedings for such an offence if:

14 (a) the court is satisfied that it is proper to do so; and

15 (b) the defendant and the prosecutor consent.

16 (3) The penalty that a court of summary jurisdiction may impose for
17 an offence against section 10A, 10B, 10C, 10D, 10E or 10F is as
18 follows:

19 (a) if it is proved that any of the offending material is seriously
20 harmful material—imprisonment for up to 2 years or a fine
21 up to 240 penalty units, or both;

22 (b) if it is proved that any of the offending material is not within
23 Annex 1 to the Protocol—imprisonment for up to 1 year or a
24 fine up to 120 penalty units, or both;

25 (c) in any other case—imprisonment for up to 6 months or a fine
26 up to 60 penalty units, or both.

27 (4) The penalty that a court of summary jurisdiction may impose for
28 an offence against subsection 17(5) or 35(1) is imprisonment for up
29 to 1 year or a fine up to 60 penalty units, or both.

30 (5) The penalty that a court of summary jurisdiction may impose for
31 an offence against subsection 35(2) is imprisonment for up to 6
32 months or a fine up to 30 penalty units, or both.

- 1 (6) The penalty that a court of summary jurisdiction may impose for
2 an offence against subsection 36(1) is imprisonment for up to 6
3 months or a fine up to 60 penalty units, or both.

4 **73 Subsection 38(4)**

5 After “may give a certificate”, insert “stating any of the following”.

6 **74 After paragraph 38(4)(b)**

7 Insert:

- 8 (ba) that a specified permit was revoked, suspended or varied on a
9 specified day;
10 (bb) that the suspension of a specified permit was cancelled on a
11 specified day;

12 **75 Paragraph 38(4)(e)**

13 Omit “or”.

14 **76 After paragraph 38(4)(f)**

15 Insert:

- 16 (g) that Australian waters did, or did not, at a particular time
17 include the top hat area referred to in section 4A;

18 **77 After section 40**

19 Insert:

20 **40A Protection against legal action in relation to artificial reef**
21 **permits**

- 22 (1) This section applies to an act or omission, in good faith, by an
23 official in relation to an artificial reef permit. This section does not
24 apply to the act or omission if it was negligent.
- 25 (2) No action or proceeding lies against the official, or against the
26 Commonwealth, in respect of the act or omission, for any loss or
27 injury caused by the controlled material whose placement was
28 authorised by the permit (whether or not the placement of the
29 controlled material was done in accordance with the permit).
- 30 (3) In this section:

1 *official* means a person who is exercising powers under this Act
2 (or purporting to exercise such powers).

3 **78 At the end of section 41**

4 Add:

5 (3) Before the Governor-General makes a regulation prescribing
6 material for the purposes of paragraph (b) of the definition of
7 *seriously harmful material* in subsection 4(1), the Minister must
8 apply the precautionary approach contained in Article 3 of the
9 Protocol.

10 **79 Schedules 1 to 4**

11 Repeal the Schedules, substitute:

12 **Schedule 1—1996 Protocol to the Convention**

13 Note: See section 4.

14
15 **1996 PROTOCOL TO THE CONVENTION ON THE PREVENTION OF**
16 **MARINE POLLUTION BY DUMPING OF WASTES AND OTHER**
17 **MATTER, 1972**

18
19
20
21
22 **THE CONTRACTING PARTIES TO THIS PROTOCOL,**

23
24 STRESSING the need to protect the marine environment and to
25 promote the sustainable use and conservation of marine resources,

26
27 NOTING in this regard the achievements within the framework of the
28 Convention on the Prevention of Marine Pollution by Dumping of Wastes and
29 Other Matter, 1972 and especially the evolution towards approaches based on
30 precaution and prevention,

31
32 NOTING FURTHER the contribution in this regard by complementary
33 regional and national instruments which aim to protect the marine environment
34 and which take account of specific circumstances and needs of those regions
35 and States,

1 REAFFIRMING the value of a global approach to these matters and in
2 particular the importance of continuing co-operation and collaboration between
3 Contracting Parties in implementing the Convention and the Protocol,
4

5 RECOGNIZING that it may be desirable to adopt, on a national or
6 regional level, more stringent measures with respect to prevention and
7 elimination of pollution of the marine environment from dumping at sea than
8 are provided for in international conventions or other types of agreements with
9 a global scope,
10

11 TAKING INTO ACCOUNT relevant international agreements and
12 actions, especially the United Nations Convention on the Law of the Sea, 1982,
13 the Rio Declaration on Environment and Development and Agenda 21,
14

15 RECOGNIZING ALSO the interests and capacities of developing
16 States and in particular small island developing States,
17

18 BEING CONVINCED that further international action to prevent,
19 reduce and where practicable eliminate pollution of the sea caused by dumping
20 can and must be taken without delay to protect and preserve the marine
21 environment and to manage human activities in such a manner that the marine
22 ecosystem will continue to sustain the legitimate uses of the sea and will
23 continue to meet the needs of present and future generations,
24

25 HAVE AGREED as follows:
26
27

28 **ARTICLE 1**
29 **DEFINITIONS**
30

31 For the purposes of this Protocol:
32

33 1 "Convention" means the Convention on the Prevention of Marine
34 Pollution by Dumping of Wastes and Other Matter, 1972, as amended.
35

36 2 "Organization" means the International Maritime Organization.
37

38 3 "Secretary-General" means the Secretary-General of the Organization.
39

40 4 .1 "Dumping" means:
41

-
- 1 .1 any deliberate disposal into the sea of wastes or other
2 matter from vessels, aircraft, platforms or other
3 man-made structures at sea;
4
5 .2 any deliberate disposal into the sea of vessels, aircraft,
6 platforms or other man-made structures at sea;
7
8 .3 any storage of wastes or other matter in the seabed and
9 the subsoil thereof from vessels, aircraft, platforms or
10 other man-made structures at sea; and
11
12 .4 any abandonment or toppling at site of platforms or
13 other man-made structures at sea, for the sole purpose
14 of deliberate disposal.
15
16 .2 “Dumping” does not include:
17
18 .1 the disposal into the sea of wastes or other matter
19 incidental to, or derived from the normal operations of
20 vessels, aircraft, platforms or other man-made
21 structures at sea and their equipment, other than wastes
22 or other matter transported by or to vessels, aircraft,
23 platforms or other man-made structures at sea,
24 operating for the purpose of disposal of such matter or
25 derived from the treatment of such wastes or other
26 matter on such vessels, aircraft, platforms or other
27 man-made structures;
28
29 .2 placement of matter for a purpose other than the mere
30 disposal thereof, provided that such placement is not
31 contrary to the aims of this Protocol; and
32
33 .3 notwithstanding paragraph 4.1.4, abandonment in the
34 sea of matter (e.g., cables, pipelines and marine
35 research devices) placed for a purpose other than the
36 mere disposal thereof.
37
38 .3 The disposal or storage of wastes or other matter directly
39 arising from, or related to the exploration, exploitation and
40 associated off-shore processing of seabed mineral resources is
41 not covered by the provisions of this Protocol.
42
-

- 1 5 .1 “Incineration at sea” means the combustion on board a vessel,
2 platform or other man-made structure at sea of wastes or other
3 matter for the purpose of their deliberate disposal by thermal
4 destruction.
5
6 .2 “Incineration at sea” does not include the incineration of wastes
7 or other matter on board a vessel, platform, or other man-made
8 structure at sea if such wastes or other matter were generated
9 during the normal operation of that vessel, platform or other
10 man-made structure at sea.
11
12 6 “Vessels and aircraft” means waterborne or airborne craft of any type
13 whatsoever. This expression includes air-cushioned craft and floating
14 craft, whether self-propelled or not.
15
16 7 “Sea” means all marine waters other than the internal waters of States,
17 as well as the seabed and the subsoil thereof; it does not include
18 sub-seabed repositories accessed only from land.
19
20 8 “Wastes or other matter” means material and substance of any kind,
21 form or description.
22
23 9 “Permit” means permission granted in advance and in accordance with
24 relevant measures adopted pursuant to article 4.1.2 or 8.2.
25
26 10 “Pollution” means the introduction, directly or indirectly, by human
27 activity, of wastes or other matter into the sea which results or is likely
28 to result in such deleterious effects as harm to living resources and
29 marine ecosystems, hazards to human health, hindrance to marine
30 activities, including fishing and other legitimate uses of the sea,
31 impairment of quality for use of sea water and reduction of amenities.
32
33

ARTICLE 2

OBJECTIVES

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37
38 Contracting Parties shall individually and collectively protect and
39 preserve the marine environment from all sources of pollution and take
40 effective measures, according to their scientific, technical and economic
41 capabilities, to prevent, reduce and where practicable eliminate
42 pollution caused by dumping or incineration at sea of wastes or other

1 matter. Where appropriate, they shall harmonize their policies in this
2 regard.

3
4
5 **ARTICLE 3**

6
7 **GENERAL OBLIGATIONS**

- 8
9 1 In implementing this Protocol, Contracting Parties shall apply a
10 precautionary approach to environmental protection from dumping of
11 wastes or other matter whereby appropriate preventative measures are
12 taken when there is reason to believe that wastes or other matter
13 introduced into the marine environment are likely to cause harm even
14 when there is no conclusive evidence to prove a causal relation between
15 inputs and their effects.
- 16
17 2 Taking into account the approach that the polluter should, in principle,
18 bear the cost of pollution, each Contracting Party shall endeavour to
19 promote practices whereby those it has authorized to engage in
20 dumping or incineration at sea bear the cost of meeting the pollution
21 prevention and control requirements for the authorized activities,
22 having due regard to the public interest.
- 23
24 3 In implementing the provisions of this Protocol, Contracting Parties
25 shall act so as not to transfer, directly or indirectly, damage or
26 likelihood of damage from one part of the environment to another or
27 transform one type of pollution into another.
- 28
29 4 No provision of this Protocol shall be interpreted as preventing
30 Contracting Parties from taking, individually or jointly, more stringent
31 measures in accordance with international law with respect to the
32 prevention, reduction and where practicable elimination of pollution.

33
34
35 **ARTICLE 4**

36
37 **DUMPING OF WASTES OR OTHER MATTER**

- 38
39 1 .1 Contracting Parties shall prohibit the dumping of any wastes or
40 other matter with the exception of those listed in Annex 1.

1 .2 The dumping of wastes or other matter listed in Annex 1 shall
2 require a permit. Contracting Parties shall adopt administrative
3 or legislative measures to ensure that issuance of permits and
4 permit conditions comply with provisions of Annex 2.
5 Particular attention shall be paid to opportunities to avoid
6 dumping in favour of environmentally preferable alternatives.

7
8 2 No provision of this Protocol shall be interpreted as preventing a
9 Contracting Party from prohibiting, insofar as that Contracting Party is
10 concerned, the dumping of wastes or other matter mentioned in Annex
11 1. That Contracting Party shall notify the Organization of such
12 measures.

ARTICLE 5

INCINERATION AT SEA

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19 Contracting Parties shall prohibit incineration at sea of wastes or other
20 matter.

ARTICLE 6

EXPORT OF WASTES OR OTHER MATTER

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27 Contracting Parties shall not allow the export of wastes or other matter
28 to other countries for dumping or incineration at sea.

ARTICLE 7

INTERNAL WATERS

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34
35 1 Notwithstanding any other provision of this Protocol, this Protocol shall
36 relate to internal waters only to the extent provided for in paragraphs 2
37 and 3.

38
39 2 Each Contracting Party shall at its discretion either apply the provisions
40 of this Protocol or adopt other effective permitting and regulatory
41 measures to control the deliberate disposal of wastes or other matter in

1 marine internal waters where such disposal would be “dumping” or
2 “incineration at sea” within the meaning of article 1, if conducted at sea.

- 3
4 3 Each Contracting Party should provide the Organization with
5 information on legislation and institutional mechanisms regarding
6 implementation, compliance and enforcement in marine internal waters.
7 Contracting Parties should also use their best efforts to provide on a
8 voluntary basis summary reports on the type and nature of the materials
9 dumped in marine internal waters.
10

11 **ARTICLE 8**

12 **EXCEPTIONS**

- 13
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15
16 1 The provisions of articles 4.1 and 5 shall not apply when it is necessary
17 to secure the safety of human life or of vessels, aircraft, platforms or
18 other man-made structures at sea in cases of force majeure caused by
19 stress of weather, or in any case which constitutes a danger to human
20 life or a real threat to vessels, aircraft, platforms or other man-made
21 structures at sea, if dumping or incineration at sea appears to be the only
22 way of averting the threat and if there is every probability that the
23 damage consequent upon such dumping or incineration at sea will be
24 less than would otherwise occur. Such dumping or incineration at sea
25 shall be conducted so as to minimize the likelihood of damage to
26 human or marine life and shall be reported forthwith to the
27 Organization.
28
- 29 2 A Contracting Party may issue a permit as an exception to articles 4.1
30 and 5, in emergencies posing an unacceptable threat to human health,
31 safety, or the marine environment and admitting of no other feasible
32 solution. Before doing so the Contracting Party shall consult any other
33 country or countries that are likely to be affected and the Organization
34 which, after consulting other Contracting Parties, and competent
35 international organizations as appropriate, shall, in accordance with
36 article 18.6 promptly recommend to the Contracting Party the most
37 appropriate procedures to adopt. The Contracting Party shall follow
38 these recommendations to the maximum extent feasible consistent with
39 the time within which action must be taken and with the general
40 obligation to avoid damage to the marine environment and shall inform
41 the Organization of the action it takes. The Contracting Parties pledge
42 themselves to assist one another in such situations.

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3 Any Contracting Party may waive its rights under paragraph 2 at the time of, or subsequent to ratification of, or accession to this Protocol.

ARTICLE 9

ISSUANCE OF PERMITS AND REPORTING

1 Each Contracting Party shall designate an appropriate authority or authorities to:

- .1 issue permits in accordance with this Protocol;
- .2 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
- .3 monitor individually, or in collaboration with other Contracting Parties and competent international organizations, the condition of the sea for the purposes of this Protocol.

2 The appropriate authority or authorities of a Contracting Party shall issue permits in accordance with this Protocol in respect of wastes or other matter intended for dumping or, as provided for in article 8.2, incineration at sea:

- .1 loaded in its territory; and
- .2 loaded onto a vessel or aircraft registered in its territory or flying its flag, when the loading occurs in the territory of a State not a Contracting Party to this Protocol.

3 In issuing permits, the appropriate authority or authorities shall comply with the requirements of article 4, together with such additional criteria, measures and requirements as they may consider relevant.

4 Each Contracting Party, directly or through a secretariat established under a regional agreement, shall report to the Organization and where appropriate to other Contracting Parties:

- 1 .1 the information specified in paragraphs 1.2 and 1.3;
- 2
- 3 .2 the administrative and legislative measures taken to implement
- 4 the provisions of this Protocol, including a summary of
- 5 enforcement measures; and
- 6
- 7 .3 the effectiveness of the measures referred to in paragraph 4.2
- 8 and any problems encountered in their application.
- 9

The information referred to in paragraphs 1.2 and 1.3 shall be submitted on an annual basis. The information referred to in paragraphs 4.2 and 4.3 shall be submitted on a regular basis.

- 10
- 11
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- 13
- 14 5 Reports submitted under paragraphs 4.2 and 4.3 shall be evaluated by
- 15 an appropriate subsidiary body as determined by the Meeting of
- 16 Contracting Parties. This body will report its conclusions to an
- 17 appropriate Meeting or Special Meeting of Contracting Parties.
- 18

ARTICLE 10

APPLICATION AND ENFORCEMENT

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- 21
- 22 **APPLICATION AND ENFORCEMENT**
- 23
- 24 1 Each Contracting Party shall apply the measures required to implement
- 25 this Protocol to all:
- 26
- 27 .1 vessels and aircraft registered in its territory or flying its flag;
- 28
- 29 .2 vessels and aircraft loading in its territory the wastes or other
- 30 matter which are to be dumped or incinerated at sea; and
- 31
- 32 .3 vessels, aircraft and platforms or other man-made structures
- 33 believed to be engaged in dumping or incineration at sea in
- 34 areas within which it is entitled to exercise jurisdiction in
- 35 accordance with international law.
- 36
- 37 2 Each Contracting Party shall take appropriate measures in accordance
- 38 with international law to prevent and if necessary punish acts contrary
- 39 to the provisions of this Protocol.
- 40
- 41 3 Contracting Parties agree to co-operate in the development of
- 42 procedures for the effective application of this Protocol in areas beyond

1 the jurisdiction of any State, including procedures for the reporting of
2 vessels and aircraft observed dumping or incinerating at sea in
3 contravention of this Protocol.

4
5 4 This Protocol shall not apply to those vessels and aircraft entitled to
6 sovereign immunity under international law. However, each
7 Contracting Party shall ensure by the adoption of appropriate measures
8 that such vessels and aircraft owned or operated by it act in a manner
9 consistent with the object and purpose of this Protocol and shall inform
10 the Organization accordingly.

11
12 5 A State may, at the time it expresses its consent to be bound by this
13 Protocol, or at any time thereafter, declare that it shall apply the
14 provisions of this Protocol to its vessels and aircraft referred to in
15 paragraph 4, recognising that only that State may enforce those
16 provisions against such vessels and aircraft.

17
18
19 **ARTICLE 11**

20
21 **COMPLIANCE PROCEDURES**

22
23 1 No later than two years after the entry into force of this Protocol, the
24 Meeting of Contracting Parties shall establish those procedures and
25 mechanisms necessary to assess and promote compliance with this
26 Protocol. Such procedures and mechanisms shall be developed with a
27 view to allowing for the full and open exchange of information, in a
28 constructive manner.

29
30 2 After full consideration of any information submitted pursuant to this
31 Protocol and any recommendations made through procedures or
32 mechanisms established under paragraph 1, the Meeting of Contracting
33 Parties may offer advice, assistance or co-operation to Contracting
34 Parties and non-Contracting Parties.

35
36
37
38 **ARTICLE 12**

39
40 **REGIONAL CO-OPERATION**

41
42

1 In order to further the objectives of this Protocol, Contracting Parties
2 with common interests to protect the marine environment in a given
3 geographical area shall endeavour, taking into account characteristic
4 regional features, to enhance regional co-operation including the
5 conclusion of regional agreements consistent with this Protocol for the
6 prevention, reduction and where practicable elimination of pollution
7 caused by dumping or incineration at sea of wastes or other matter.
8 Contracting Parties shall seek to co-operate with the parties to regional
9 agreements in order to develop harmonized procedures to be followed
10 by Contracting Parties to the different conventions concerned.
11

12 **ARTICLE 13**

13 **TECHNICAL CO-OPERATION AND ASSISTANCE**

14
15
16
17 1 Contracting Parties shall, through collaboration within the Organization
18 and in co-ordination with other competent international organizations,
19 promote bilateral and multilateral support for the prevention, reduction
20 and where practicable elimination of pollution caused by dumping as
21 provided for in this Protocol to those Contracting Parties that request it
22 for:

- 23
24 .1 training of scientific and technical personnel for research,
25 monitoring and enforcement, including as appropriate the
26 supply of necessary equipment and facilities, with a view to
27 strengthening national capabilities;
28
29 .2 advice on implementation of this Protocol;
30
31 .3 information and technical co-operation relating to waste
32 minimization and clean production processes;
33
34 .4 information and technical co-operation relating to the disposal
35 and treatment of waste and other measures to prevent, reduce
36 and where practicable eliminate pollution caused by dumping;
37 and
38
39 .5 access to and transfer of environmentally sound technologies
40 and corresponding know-how, in particular to developing
41 countries and countries in transition to market economies, on
42 favourable terms, including on concessional and preferential

1 terms, as mutually agreed, taking into account the need to
2 protect intellectual property rights as well as the special needs
3 of developing countries and countries in transition to market
4 economies.
5

- 6 2 The Organization shall perform the following functions:
7
8 .1 forward requests from Contracting Parties for technical
9 co-operation to other Contracting Parties, taking into account
10 such factors as technical capabilities;
11
12 .2 co-ordinate requests for assistance with other competent
13 international organizations, as appropriate; and
14
15 .3 subject to the availability of adequate resources, assist
16 developing countries and those in transition to market
17 economies, which have declared their intention to become
18 Contracting Parties to this Protocol, to examine the means
19 necessary to achieve full implementation.
20
21

22 **ARTICLE 14**

23 **SCIENTIFIC AND TECHNICAL RESEARCH**

- 24
25
26 1 Contracting Parties shall take appropriate measures to promote and
27 facilitate scientific and technical research on the prevention, reduction
28 and where practicable elimination of pollution by dumping and other
29 sources of marine pollution relevant to this Protocol. In particular, such
30 research should include observation, measurement, evaluation and
31 analysis of pollution by scientific methods.
32
33 2 Contracting Parties shall, to achieve the objectives of this Protocol,
34 promote the availability of relevant information to other Contracting
35 Parties who request it on:
36
37 .1 scientific and technical activities and measures undertaken in
38 accordance with this Protocol;
39
40 .2 marine scientific and technological programmes and their
41 objectives; and
42

1 .3 the impacts observed from the monitoring and assessment
2 conducted pursuant to article 9.1.3.
3
4

5 **ARTICLE 15**

6 **RESPONSIBILITY AND LIABILITY**

7
8
9 In accordance with the principles of international law regarding State
10 responsibility for damage to the environment of other States or to any
11 other area of the environment, the Contracting Parties undertake to
12 develop procedures regarding liability arising from the dumping or
13 incineration at sea of wastes or other matter.
14

15 **ARTICLE 16**

16 **SETTLEMENT OF DISPUTES**

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19
20 1 Any disputes regarding the interpretation or application of this Protocol
21 shall be resolved in the first instance through negotiation, mediation or
22 conciliation, or other peaceful means chosen by parties to the dispute.
23

24 2 If no resolution is possible within twelve months after one Contracting
25 Party has notified another that a dispute exists between them, the
26 dispute shall be settled, at the request of a party to the dispute, by
27 means of the Arbitral Procedure set forth in Annex 3, unless the parties
28 to the dispute agree to use one of the procedures listed in paragraph 1 of
29 Article 287 of the 1982 United Nations Convention on the Law of the
30 Sea. The parties to the dispute may so agree, whether or not they are
31 also States Parties to the 1982 United Nations Convention on the Law
32 of the Sea.
33

34 3 In the event an agreement to use one of the procedures listed in
35 paragraph 1 of Article 287 of the 1982 United Nations Convention on
36 the Law of the Sea is reached, the provisions set forth in Part XV of that
37 Convention that are related to the chosen procedure would also apply,
38 *mutatis mutandis*.
39

40 4 The twelve month period referred to in paragraph 2 may be extended
41 for another twelve months by mutual consent of the parties concerned.
42

1 5 Notwithstanding paragraph 2, any State may, at the time it expresses its
2 consent to be bound by this Protocol, notify the Secretary-General that,
3 when it is a party to a dispute about the interpretation or application of
4 article 3.1 or 3.2, its consent will be required before the dispute may be
5 settled by means of the Arbitral Procedure set forth in Annex 3.

6
7 **ARTICLE 17**

8
9 **INTERNATIONAL CO-OPERATION**

10
11 Contracting Parties shall promote the objectives of this Protocol within
12 the competent international organizations.

13
14
15 **ARTICLE 18**

16
17 **MEETINGS OF CONTRACTING PARTIES**

18
19 1 Meetings of Contracting Parties or Special Meetings of Contracting
20 Parties shall keep under continuing review the implementation of this
21 Protocol and evaluate its effectiveness with a view to identifying means
22 of strengthening action, where necessary, to prevent, reduce and where
23 practicable eliminate pollution caused by dumping and incineration at
24 sea of wastes or other matter. To these ends, Meetings of Contracting
25 Parties or Special Meetings of Contracting Parties may:

- 26
27 .1 review and adopt amendments to this Protocol in accordance
28 with articles 21 and 22;
29
30 .2 establish subsidiary bodies, as required, to consider any matter
31 with a view to facilitating the effective implementation of this
32 Protocol;
33
34 .3 invite appropriate expert bodies to advise the Contracting
35 Parties or the Organization on matters relevant to this Protocol;
36
37 .4 promote co-operation with competent international
38 organizations concerned with the prevention and control of
39 pollution;
40
41 .5 consider the information made available pursuant to article 9.4;
42

- 1 .6 develop or adopt, in consultation with competent international
2 organizations, procedures referred to in article 8.2, including
3 basic criteria for determining exceptional and emergency
4 situations, and procedures for consultative advice and the safe
5 disposal of matter at sea in such circumstances;
6
7 .7 consider and adopt resolutions; and
8
9 .8 consider any additional action that may be required.

10
11 2 The Contracting Parties at their first Meeting shall establish rules of
12 procedure as necessary.
13

ARTICLE 19

DUTIES OF THE ORGANIZATION

- 14
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18
19 1 The Organization shall be responsible for Secretariat duties in relation
20 to this Protocol. Any Contracting Party to this Protocol not being a
21 member of this Organization shall make an appropriate contribution to
22 the expenses incurred by the Organization in performing these duties.
23
24 2 Secretariat duties necessary for the administration of this Protocol
25 include:
26
27 .1 convening Meetings of Contracting Parties once per year,
28 unless otherwise decided by Contracting Parties, and Special
29 Meetings of Contracting Parties at any time on the request of
30 two-thirds of the Contracting Parties;
31
32 .2 providing advice on request on the implementation of this
33 Protocol and on guidance and procedures developed
34 thereunder;
35
36 .3 considering enquiries by, and information from Contracting
37 Parties, consulting with them and with the competent
38 international organizations, and providing recommendations to
39 Contracting Parties on questions related to, but not specifically
40 covered by, this Protocol;
41

- 1 .4 preparing and assisting, in consultation with Contracting Parties
2 and the competent international organizations, in the
3 development and implementation of procedures referred to in
4 article 18.6.;
- 5
- 6 .5 conveying to the Contracting Parties concerned all notifications
7 received by the Organization in accordance with this Protocol;
8 and
9
- 10 .6 preparing, every two years, a budget and a financial account for
11 the administration of this Protocol which shall be distributed to
12 all Contracting Parties.
- 13
- 14 3 The Organization shall, subject to the availability of adequate resources,
15 in addition to the requirements set out in article 13.2.3.
- 16
- 17 .1 collaborate in assessments of the state of the marine
18 environment; and
19
- 20 .2 co-operate with competent international organizations
21 concerned with the prevention and control of pollution.
22
23

24 **ARTICLE 20**

25 **ANNEXES**

26 Annexes to this Protocol form an integral part of this Protocol.
27

28 **ARTICLE 21**

29 **AMENDMENT OF THE PROTOCOL**

- 30
- 31 1 Any Contracting Party may propose amendments to the articles of this
32 Protocol. The text of a proposed amendment shall be communicated to
33 Contracting Parties by the Organization at least six months prior to its
34 consideration at a Meeting of Contracting Parties or a Special Meeting
35 of Contracting Parties.
36
- 37 2 Amendments to the articles of this Protocol shall be adopted by a
38 two-thirds majority vote of the Contracting Parties which are present
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1 and voting at the Meeting of Contracting Parties or Special Meeting of
2 Contracting Parties designated for this purpose.

3
4 3 An amendment shall enter into force for the Contracting Parties which
5 have accepted it on the sixtieth day after two-thirds of the Contracting
6 Parties shall have deposited an instrument of acceptance of the
7 amendment with the Organization. Thereafter the amendment shall
8 enter into force for any other Contracting Party on the sixtieth day after
9 the date on which that Contracting Party has deposited its instrument of
10 acceptance of the amendment.

11
12 4 The Secretary-General shall inform Contracting Parties of any
13 amendments adopted at Meetings of Contracting Parties and of the date
14 on which such amendments enter into force generally and for each
15 Contracting Party.

16
17 5 After entry into force of an amendment to this Protocol, any State that
18 becomes a Contracting Party to this Protocol shall become a
19 Contracting Party to this Protocol as amended, unless two-thirds of the
20 Contracting Parties present and voting at the Meeting or Special
21 Meeting of Contracting Parties adopting the amendment agree
22 otherwise.

23
24
25 **ARTICLE 22**

26
27 **AMENDMENT OF THE ANNEXES**

28
29 1 Any Contracting Party may propose amendments to the Annexes to this
30 Protocol. The text of a proposed amendment shall be communicated to
31 Contracting Parties by the Organization at least six months prior to its
32 consideration at a Meeting of Contracting Parties or Special Meeting of
33 Contracting Parties.

34
35 2 Amendments to the Annexes other than Annex 3 will be based on
36 scientific or technical considerations and may take into account legal,
37 social and economic factors as appropriate. Such amendments shall be
38 adopted by a two-thirds majority vote of the Contracting Parties present
39 and voting at a Meeting of Contracting Parties or Special Meeting of
40 Contracting Parties designated for this purpose.

41

- 1 3 The Organization shall without delay communicate to Contracting
2 Parties amendments to the Annexes that have been adopted at a
3 Meeting of Contracting Parties or Special Meeting of Contracting
4 Parties.
5
- 6 4 Except as provided in paragraph 7, amendments to the Annexes shall
7 enter into force for each Contracting Party immediately on notification
8 of its acceptance to the Organization or 100 days after the date of their
9 adoption at a Meeting of Contracting Parties, if that is later, except for
10 those Contracting Parties which before the end of the 100 days make a
11 declaration that they are not able to accept the amendment at that time.
12 A Contracting Party may at any time substitute an acceptance for a
13 previous declaration of objection and the amendment previously
14 objected to shall thereupon enter into force for that Contracting Party.
15
- 16 5 The Secretary-General shall without delay notify Contracting Parties of
17 instruments of acceptance or objection deposited with the Organization.
18
- 19 6 A new Annex or an amendment to an Annex which is related to an
20 amendment to the articles of this Protocol shall not enter into force until
21 such time as the amendment to the articles of this Protocol enters into
22 force.
23
- 24 7 With regard to amendments to Annex 3 concerning the Arbitral
25 Procedure and with regard to the adoption and entry into force of new
26 Annexes the procedures on amendments to the articles of this Protocol
27 shall apply.
28

29
30 **ARTICLE 23**

31
32 **RELATIONSHIP BETWEEN THE PROTOCOL AND THE**
33 **CONVENTION**
34

35 This Protocol will supersede the Convention as between Contracting
36 Parties to this Protocol which are also Parties to the Convention.
37

38
39 **ARTICLE 24**

40
41 **SIGNATURE, RATIFICATION, ACCEPTANCE,**
42 **APPROVAL AND ACCESSION**

-
- 1
2 1 This Protocol shall be open for signature by any State at the
3 Headquarters of the Organization from 1 April 1997 to 31 March 1998
4 and shall thereafter remain open for accession by any State.
5
6 2 States may become Contracting Parties to this Protocol by:
7
8 .1 signature not subject to ratification, acceptance or approval; or
9
10 .2 signature subject to ratification, acceptance or approval,
11 followed by ratification, acceptance or approval; or
12
13 .3 accession.
14
15 3 Ratification, acceptance, approval or accession shall be effected by the
16 deposit of an instrument to that effect with the Secretary-General.
17

ARTICLE 25

ENTRY INTO FORCE

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21
22 1 This Protocol shall enter into force on the thirtieth day following the
23 date on which:
24
25 .1 at least 26 States have expressed their consent to be bound by
26 this Protocol in accordance with article 24; and
27
28 .2 at least 15 Contracting Parties to the Convention are included in
29 the number of States referred to in paragraph 1.1.
30
31 2 For each State that has expressed its consent to be bound by this
32 Protocol in accordance with article 24 following the date referred to in
33 paragraph 1, this Protocol shall enter into force on the thirtieth day after
34 the date on which such State expressed its consent.
35
36

ARTICLE 26

TRANSITIONAL PERIOD

- 37
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41 1 Any State that was not a Contracting Party to the Convention before 31
42 December 1996 and that expresses its consent to be bound by this
-

- 1 Protocol prior to its entry into force or within five years after its entry
2 into force may, at the time it expresses its consent, notify the
3 Secretary-General that, for reasons described in the notification, it will
4 not be able to comply with specific provisions of this Protocol other
5 than those provided in paragraph 2, for a transitional period that shall
6 not exceed that described in paragraph 4.
7
- 8 2 No notification made under paragraph 1 shall affect the obligations of a
9 Contracting Party to this Protocol with respect to incineration at sea or
10 the dumping of radioactive wastes or other radioactive matter.
11
- 12 3 Any Contracting Party to this Protocol that has notified the
13 Secretary-General under paragraph 1 that, for the specified transitional
14 period, it will not be able to comply, in part or in whole, with article 4.1
15 or article 9 shall nonetheless during that period prohibit the dumping of
16 wastes or other matter for which it has not issued a permit, use its best
17 efforts to adopt administrative or legislative measures to ensure that
18 issuance of permits and permit conditions comply with the provisions
19 of Annex 2, and notify the Secretary-General of any permits issued.
20
- 21 4 Any transitional period specified in a notification made under paragraph
22 1 shall not extend beyond five years after such notification is submitted.
23
- 24 5 Contracting Parties that have made a notification under paragraph 1
25 shall submit to the first Meeting of Contracting Parties occurring after
26 deposit of their instrument of ratification, acceptance, approval or
27 accession a programme and timetable to achieve full compliance with
28 this Protocol, together with any requests for relevant technical
29 co-operation and assistance in accordance with article 13 of this
30 Protocol.
31
- 32 6 Contracting Parties that have made a notification under paragraph 1
33 shall establish procedures and mechanisms for the transitional period to
34 implement and monitor submitted programmes designed to achieve full
35 compliance with this Protocol. A report on progress toward compliance
36 shall be submitted by such Contracting Parties to each Meeting of
37 Contracting Parties held during their transitional period for appropriate
38 action.
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ARTICLE 27

WITHDRAWAL

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2
3 1 Any Contracting Party may withdraw from this Protocol at any time
4 after the expiry of two years from the date on which this Protocol enters
5 into force for that Contracting Party.
6
7 2 Withdrawal shall be effected by the deposit of an instrument of
8 withdrawal with the Secretary-General.
9
10 3 A withdrawal shall take effect one year after receipt by the
11 Secretary-General of the instrument of withdrawal or such longer
12 period as may be specified in that instrument.
13
14

ARTICLE 28**DEPOSITARY**

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18
19 1 This Protocol shall be deposited with the Secretary-General.
20
21 2 In addition to the functions specified in articles 10.5, 16.5, 21.4, 22.5
22 and 26.5, the Secretary-General shall:
23
24 .1 inform all States which have signed this Protocol or acceded
25 thereto of:
26
27 .1 each new signature or deposit of an instrument of
28 ratification, acceptance, approval or accession, together
29 with the date thereof;
30
31 .2 the date of entry into force of this Protocol; and
32
33 .3 the deposit of any instrument of withdrawal from this
34 Protocol together with the date on which it was
35 received and the date on which the withdrawal takes
36 effect;
37
38 .2 transmit certified copies of this Protocol to all States which
39 have signed this Protocol or acceded thereto.
40
41 3 As soon as this Protocol enters into force, a certified true copy thereof
42 shall be transmitted by the Secretary-General to the Secretariat of the

1 United Nations for registration and publication in accordance with
2 Article 102 of the Charter of the United Nations.

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ARTICLE 29

AUTHENTIC TEXTS

9 This Protocol is established in a single original in the Arabic, Chinese,
10 English, French, Russian and Spanish languages, each text being
11 equally authentic.

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16
17 IN WITNESS WHEREOF the undersigned being duly authorized by
18 their respective Governments for that purpose have signed this
19 Protocol.

20
21

[Signatures omitted]

22
23
24

DONE AT LONDON, this seventh day of November, one thousand
nine hundred and ninety-six.

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26
27

ANNEX 1

28
29
30

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

31 1 The following wastes or other matter are those that may be considered
32 for dumping being mindful of the Objectives and General Obligations
33 of this Protocol set out in articles 2 and 3:

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- .1 dredged material;
- .2 sewage sludge;
- .3 fish waste, or material resulting from industrial fish processing operations;
- .4 vessels and platforms or other man-made structures at sea;

- 1
2 .5 inert, inorganic geological material;
3
4 .6 organic material of natural origin; and
5
6 .7 bulky items primarily comprising iron, steel, concrete and
7 similarly unarmful materials for which the concern is physical
8 impact, and limited to those circumstances where such wastes
9 are generated at locations, such as small islands with isolated
10 communities, having no practicable access to disposal options
11 other than dumping.

12
13 2 The wastes or other matter listed in paragraphs 1.4 and 1.7 may be
14 considered for dumping, provided that material capable of creating
15 floating debris or otherwise contributing to pollution of the marine
16 environment has been removed to the maximum extent and provided
17 that the material dumped poses no serious obstacle to fishing or
18 navigation.

19
20 3 Notwithstanding the above, materials listed in paragraphs 1.1 to 1.7
21 containing levels of radioactivity greater than *de minimis* (exempt)
22 concentrations as defined by the IAEA and adopted by Contracting
23 Parties, shall not be considered eligible for dumping; provided further
24 that within 25 years of 20 February 1994, and at each 25 year interval
25 thereafter, Contracting Parties shall complete a scientific study relating
26 to all radioactive wastes and other radioactive matter other than high
27 level wastes or matter, taking into account such other factors as
28 Contracting Parties consider appropriate and shall review the
29 prohibition on dumping of such substances in accordance with the
30 procedures set forth in article 22.

31
32
33 **ANNEX 2**

34
35 **ASSESSMENT OF WASTES OR OTHER MATTER**
36 **THAT MAY BE CONSIDERED FOR DUMPING**

37
38 **GENERAL**

39
40 1 The acceptance of dumping under certain circumstances shall not
41 remove the obligations under this Annex to make further attempts to
42 reduce the necessity for dumping.

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WASTE PREVENTION AUDIT

- 2 The initial stages in assessing alternatives to dumping should, as appropriate, include an evaluation of:
- .1 types, amounts and relative hazard of wastes generated;
 - .2 details of the production process and the sources of wastes within that process; and
 - .3 feasibility of the following waste reduction/prevention techniques:
 - .1 product reformulation;
 - .2 clean production technologies;
 - .3 process modification;
 - .4 input substitution; and
 - .5 on-site, closed-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.

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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:

- 9 .1 re-use;
- 11 .2 off-site recycling;
- 13 .3 destruction of hazardous constituents;
- 15 .4 treatment to reduce or remove the hazardous constituents; and
- 17 .5 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 A detailed description and characterization of the waste is an essential precondition for the consideration of alternatives and the basis for a decision as to whether a waste may be dumped. If a waste is so poorly characterized that proper assessment cannot be made of its potential impacts on human health and the environment, that waste shall not be dumped.

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

- 40 .1 origin, total amount, form and average composition;
- 42 .2 properties: physical, chemical, biochemical and biological;

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- .3 toxicity;
- .4 persistence: physical, chemical and biological; and
- .5 accumulation and biotransformation in biological materials or sediments.

ACTION LIST

- 9 Each Contracting 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:
 - .1 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;
 - .2 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
 - .3 wastes which contain specified substances, or which cause biological responses, below the upper level but above the lower

1 level require more detailed assessment before their suitability
2 for dumping can be determined.
3
4

5 DUMP-SITE SELECTION 6

7 11 Information required to select a dump-site shall include:

- 8
9 .1 physical, chemical and biological characteristics of the
10 water-column and the seabed;
11
12 .2 location of amenities, values and other uses of the sea in the
13 area under consideration;
14
15 .3 assessment of the constituent fluxes associated with dumping in
16 relation to existing fluxes of substances in the marine
17 environment; and
18
19 .4 economic and operational feasibility.
20
21

22 ASSESSMENT OF POTENTIAL EFFECTS 23

24 12 Assessment of potential effects should lead to a concise statement of the
25 expected consequences of the sea or land disposal options, i.e., the
26 “Impact Hypothesis”. It provides a basis for deciding whether to
27 approve or reject the proposed disposal option and for defining
28 environmental monitoring requirements.
29

30 13 The assessment for dumping should integrate information on waste
31 characteristics, conditions at the proposed dump-site(s), fluxes, and
32 proposed disposal techniques and specify the potential effects on human
33 health, living resources, amenities and other legitimate uses of the sea.
34 It should define the nature, temporal and spatial scales and duration of
35 expected impacts based on reasonably conservative assumptions.
36

37 14 An analysis of each disposal option should be considered in the light of
38 a comparative assessment of the following concerns: human health
39 risks, environmental costs, hazards, (including accidents), economics
40 and exclusion of future uses. If this assessment reveals that adequate
41 information is not available to determine the likely effects of the
42 proposed disposal option then this option should not be considered

1 further. In addition, if the interpretation of the comparative assessment
2 shows the dumping option to be less preferable, a permit for dumping
3 should not be given.

4
5 15 Each assessment should conclude with a statement supporting a
6 decision to issue or refuse a permit for dumping.

7
8
9 MONITORING

10
11 16 Monitoring is used to verify that permit conditions are met - compliance
12 monitoring - and that the assumptions made during the permit review
13 and site selection process were correct and sufficient to protect the
14 environment and human health - field monitoring. It is essential that
15 such monitoring programmes have clearly defined objectives.

16
17
18 PERMIT AND PERMIT CONDITIONS

19
20 17 A decision to issue a permit should only be made if all impact
21 evaluations are completed and the monitoring requirements are
22 determined. The provisions of the permit shall ensure, as far as
23 practicable, that environmental disturbance and detriment are
24 minimized and the benefits maximized. Any permit issued shall contain
25 data and information specifying:

- 26
27 .1 the types and sources of materials to be dumped;
28
29 .2 the location of the dump-site(s);
30
31 .3 the method of dumping; and
32
33 .4 monitoring and reporting requirements.

34
35 18 Permits should be reviewed at regular intervals, taking into account the
36 results of monitoring and the objectives of monitoring programmes.
37 Review of monitoring results will indicate whether field programmes
38 need to be continued, revised or terminated and will contribute to
39 informed decisions regarding the continuance, modification or
40 revocation of permits. This provides an important feedback mechanism
41 for the protection of human health and the marine environment.

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ANNEX 3

ARBITRAL PROCEDURE

Article 1

- 1 An Arbitral Tribunal (hereinafter referred to as the “Tribunal”) shall be
2 established upon the request of a Contracting Party addressed to another
3 Contracting Party in application of article 16 of this Protocol. The
4 request for arbitration shall consist of a statement of the case together
5 with any supporting documents.
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- 13
- 14 2 The requesting Contracting Party shall inform the Secretary-General of:
- 15
- 16 .1 its request for arbitration; and
- 17
- 18 .2 the provisions of this Protocol the interpretation or application
- 19 of which is, in its opinion, the subject of disagreement.
- 20
- 21 3 The Secretary-General shall transmit this information to all Contracting
- 22 States.
- 23

Article 2

- 24
- 25
- 26
- 27 1 The Tribunal shall consist of a single arbitrator if so agreed between the
- 28 parties to the dispute within 30 days from the date of receipt of the
- 29 request for arbitration.
- 30
- 31 2 In the case of the death, disability or default of the arbitrator, the parties
- 32 to a dispute may agree upon a replacement within 30 days of such
- 33 death, disability or default.
- 34

Article 3

- 35
- 36
- 37
- 38 1 Where the parties to a dispute do not agree upon a Tribunal in
- 39 accordance with article 2 of this Annex, the Tribunal shall consist of
- 40 three members:
- 41
- 42 .1 one arbitrator nominated by each party to the dispute; and
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.2 a third arbitrator who shall be nominated by agreement between the two first named and who shall act as its Chairman.

2 If the Chairman of a Tribunal is not nominated within 30 days of nomination of the second arbitrator, the parties to a dispute shall, upon the request of one party, submit to the Secretary-General within a further period of 30 days an agreed list of qualified persons. The Secretary-General shall select the Chairman from such list as soon as possible. He shall not select a Chairman who is or has been a national of one party to the dispute except with the consent of the other party to the dispute.

3 If one party to a dispute fails to nominate an arbitrator as provided in paragraph 1.1 within 60 days from the date of receipt of the request for arbitration, the other party may request the submission to the Secretary-General within a period of 30 days of an agreed list of qualified persons. The Secretary-General shall select the Chairman of the Tribunal from such list as soon as possible. The Chairman shall then request the party which has not nominated an arbitrator to do so. If this party does not nominate an arbitrator within 15 days of such request, the Secretary-General shall, upon request of the Chairman, nominate the arbitrator from the agreed list of qualified persons.

4 In the case of the death, disability or default of an arbitrator, the party to the dispute who nominated him shall nominate a replacement within 30 days of such death, disability or default. If the party does not nominate a replacement, the arbitration shall proceed with the remaining arbitrators. In the case of the death, disability or default of the Chairman, a replacement shall be nominated in accordance with the provision of paragraphs 1.2 and 2 within 90 days of such death, disability or default.

5 A list of arbitrators shall be maintained by the Secretary-General and composed of qualified persons nominated by the Contracting Parties. Each Contracting Party may designate for inclusion in the list four persons who shall not necessarily be its nationals. If the parties to the dispute have failed within the specified time limits to submit to the Secretary-General an agreed list of qualified persons as provided for in paragraphs 2, 3 and 4, the Secretary-General shall select from the list maintained by him the arbitrator or arbitrators not yet nominated.

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Article 4

The Tribunal may hear and determine counter-claims arising directly out of the subject matter of the dispute.

Article 5

Each party to the dispute shall be responsible for the costs entailed by the preparation of its own case. The remuneration of the members of the Tribunal and of all general expenses incurred by the arbitration shall be borne equally by the parties to the dispute. The Tribunal shall keep a record of all its expenses and shall furnish a final statement thereof to the parties.

Article 6

Any Contracting Party which has an interest of a legal nature which may be affected by the decision in the case may, after giving written notice to the parties to the dispute which have originally initiated the procedure, intervene in the arbitration procedure with the consent of the Tribunal and at its own expense. Any such intervenor shall have the right to present evidence, briefs and oral argument on the matters giving rise to its intervention, in accordance with procedures established pursuant to article 7 of this Annex, but shall have no rights with respect to the composition of the Tribunal.

Article 7

A Tribunal established under the provisions of this Annex shall decide its own rules of procedure.

Article 8

1 Unless a Tribunal consists of a single arbitrator, decisions of the Tribunal as to its procedure, its place of meeting, and any question related to the dispute laid before it, shall be taken by majority vote of its members. However, the absence or abstention of any member of the Tribunal who was nominated by a party to the dispute shall not

- 1 constitute an impediment to the Tribunal reaching a decision. In case of
2 equal voting, the vote of the Chairman shall be decisive.
3
- 4 2 The parties to the dispute shall facilitate the work of the Tribunal and in
5 particular shall, in accordance with their legislation and using all means
6 at their disposal:
- 7
- 8 .1 provide the Tribunal with all necessary documents and
9 information; and
- 10
- 11 .2 enable the Tribunal to enter their territory, to hear witnesses or
12 experts, and to visit the scene.
13
- 14 3 The failure of a party to the dispute to comply with the provisions of
15 paragraph 2 shall not preclude the Tribunal from reaching a decision
16 and rendering an award.
17

18 **Article 9**

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21 The Tribunal shall render its award within five months from the time it
22 is established unless it finds it necessary to extend that time limit for a
23 period not to exceed five months. The award of the Tribunal shall be
24 accompanied by a statement of reasons for the decision. It shall be final
25 and without appeal and shall be communicated to the Secretary-General
26 who shall inform the Contracting Parties. The parties to the dispute
27 shall immediately comply with the award.

28 ***Sea Installations Act 1987***

29 **80 Subsection 19(2)**

30 Repeal the subsection.

31 **81 Subsection 29(3)**

32 Repeal the subsection.