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INTERNATIONAL MARITIME LAW INSTITUTE

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AN ACT TO IMPLEMENT THE INTERNATIONAL CONVENTION ON OIL POLLUTION PREPAREDNESS, RESPONSE AND CO-OPERATION, 1990 (OPRC, 1990), AND ITS PROTOCOL ON PREPAREDNESS RESPONSE AND COOPERATION TO POLLUTION INCIDENTS BY HAZARDOUS AND NOXIOUS SUBSTANCES, 2000 (OPRC-HNS PROTOCOL 2000) INTO THE LAWS OF THE CO-OPERATIVE REPUBLIC OF GUYANA

A Legislation Drafting Project submitted in partial fulfillment of the requirements for the award of the Degree of Master of Laws (LL.M.) in International Maritime Law at the IMO International Maritime Law Institute

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Academic Year 2017-2018

Dedication

To Guyana – Land I Love

To: Lt. Col. L.H. London,

Brig. Edward Collins

and

Rear Adm. Gary Best

Acknowledgements

All Glory be to God!

Sincerest gratitude is foremost extended to my grandmother, Waveney, my mother Andrea, and my sister, Tiffany Andrea, for their unwavering support throughout my academic career. I am humbled by their belief in my dream.

Special commendation is bestowed upon my project supervisor, Ms. Catherine Panaguiton for her thorough oversight and guidance, and to the committed academic staff of the International Maritime Law Institute (IMLI) for imparting their immense knowledge and experience without reluctance. Indeed, the entire IMLI family is to be treasured for making the IMLI experience most memorable.

To The Nippon Foundation and the Government of Guyana, for affording me this valuable opportunity, I will forever indebted.

I am truly grateful to all my supportive relatives, friends and colleagues for making this journey less arduous.

EXPLANATORY NOTE

THE GUYANA SHIPPING (OIL AND HAZARDOUS AND NOXIOUS SUBSTANCES POLLUTION PREPAREDNESS, RESPONSE, AND COOPERATION) BILL, 2018

1. INTRODUCTION

This Bill is to give effect to the International Convention on Oil Pollution Preparedness, Response and Co-operation, 1990 (OPRC), and its Protocol on Preparedness Response and Cooperation to Pollution Incidents by Hazardous and Noxious Substances, 2000 (OPRC-HNS Protocol 2000). The effective implementation of the OPRC Convention and the OPRC-HNS Protocol must be regarded as critical to the regime of protection of the marine environment and coastal zones. The Co-operative Republic of Guyana (Guyana) acceded to the OPRC Convention on December 10, 1997[1] but remains a non-party to the OPRC-HNS Protocol of 2000.

The OPRC-HNS Protocol is a framework convention, which outlines the elementary requirements for the institutionalisation of systems for preparedness, response and reciprocated assistance in combating pollution by hazardous substances other than oil. Therefore, acceding to this Protocol should become a matter of national interest and thus, treated with utmost priority. Notwithstanding this gap, it is prudent to ensure the transposition of both of these international conventions into domestic law in a single instrument so as to derive a comprehensive legislative framework for the control of environmental pollution from oil and hazardous and noxious substances (HNS).

In light of Guyana's recently acquired status of a major oil producing nation,[2] successful and effective implementation of the foregoing instruments will provide the much-needed tool for the development of national capacity and boost regional co-operation to prepare for and respond to pollution incidents within the scope of the legislation. Additionally, the legislation will provide the impetus for the facilitation of international co-operation and mutual assistance arrangements to aid the preparation, response and management of major oil and HNS pollution incidents.

The adage "prevention is better than cure" is worthy of contemplation in determining the way forward on preparation for oil and gas production in 2020. Thus, the incorporation of the relevant provisions of the conventions must be granted utmost priority on the legislative agenda.

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[1] ECOLEX, 'International Convention on Oil Pollution Preparedness, Response and Co-operation' <www.ecolex.org>.

[2] Clifford Krauss, 'With a Major Oil Discovery, Guyana Is Poised to Become a Top Producer' (13 January 2017).

Guyana, by virtue of its dualistic nature, requires that the implementation of international instruments on the domestic plane must gain executive and legislative approval. Unless a majority vote is acquired in the National Assembly, international instruments can neither be invoked before the courts nor have any direct effect under Guyanese law.[3]

[3] International Business Publications (Washington, D.C.), *Guyana: Business law handbook* (Edition updated reprint, International Business Publications 2015), 130.

2. POLLUTION PREPAREDNESS, RESPONSE AND COOPERATION

2.1 Oil and HNS Pollution – A Global Problem

Historically, pollution incidents, especially oil spills, have had serious economic impact on coastal activities and on the resources of the sea. Toxicity and effects of tainting, consequent to the chemical composition of oil, compound the impact of pollution on the biological systems of the marine environment.[4] Marine life is greatly impacted by oil smothering, resulting in damage to subsistence, recreational and commercial fishing activity.[5] The occurrence of contamination in seafood organisms has potentially damaging implications for public health and must be contemplated by contingency plans and spill response procedures.

The greatest impact, however, is to be found on shorelines and shallow waters, where animals and plants may be physically coated and smothered or directly exposed to toxic components in hazardous and noxious substances and oil[6] Marine and coastal habitats and wildlife are principal concerns of the public and environmentalists, alike. It is, therefore, incumbent upon a prudent government to prepare for the occurrence of a spill by instituting the relevant legislation to address response, assessment and restoration, and the assignment of institutional responsibilities.[7] Pollution incident response is an inherently hazardous operation, which involves the handling of heavy equipment proximate to hazardous materials; in often unfavourable sea and weather conditions.[8]

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[4] The International Tanker Owners Pollution Federation Ltd, 'Response to Marine Oil Spills: (Witherby & Co. Ltd, 1987)' <http://www.itopf.com/knowledge-resources/documents-guides/document/response-to-marine-oil-spills/> accessed 24 January 2018.

[5] International Maritime Organisation and Food and Agricultural Organization, *IMOFAO guidance on managing seafood safety during and after oil spills* (International Maritime Organisation 2002), 1.

[6] ibid.

[7] International Maritime Organisation and United Nations Environment Programme, *IMOUNEP guidance manual on the assessment and restoration of environmental damage following marine oil spills* (2009 ed. International Maritime Organisation 2009).

[8] International Maritime Organisation, publisher, *Guideline for oil spill response in fast currents* (2013 edition, International Maritime Organisation 2013).

Preparedness demands continuous work at both national and regional levels to boost mechanisms to deal with pollution incidents, by oil and HNS, which could result in devastating consequences to the marine environment.[9] Numerous national exercises must be designed and implemented to bolster various aspects of national spill preparedness and response.[10] In order for response to be successful, it must be prompt.

International stakeholder planning and coordination ensure the availability and utilisation of maximum resources in times of catastrophe. The development of guidelines inclusive of a common lexicon of equipment terminology and an international equipment inventory; and procedures for the request and receipt of emergency assistance in the event of a large-scale pollution incident should be prioritised.[11]

In 1967, the *Torrey Canyon*, a 974-ft (297m) tanker ran aground in the English Channel, between Land's End and the Scilly Isles and spilled her entire cargo of 119,000 tons of crude oil into the sea.[12] In the weeks following the incident, the oil spread along the shores of the south coast of England and the Normandy coast of France.[13] Sludge, up to one foot deep, contaminated approximately 113 kilometres of beaches and more than 20,000 sea birds; and a rare hermit crab seems to have disappeared.[14] In addition to the detrimental impact on to marine life caused by the spill itself, considerable damage was caused by the approximately 10,000 gallons of detergent used at sea and on beaches.[15]

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[9] 'Cooperation for oil spill preparedness in west, central and southern Africa' <www.imo.org> accessed 25 November 2017.

[10] ibid.

[11] *Guidelines on international offers of assistance in response to a marine oil pollution incident* (IMO publication I558E, International Maritime Organization 2016).

[12] Malgosia Fitzmaurice, 'The International Convention for the Prevention of Pollution from Ships (MARPOL): Pollution from Ships: Introduction and Historical Development', *The IMLI Manual on International Maritime Law* , 35-36.

[13] BBC, '1967: Supertanker Torrey Canyon hits rocks' <http://news.bbc.co.uk/onthisday/hi/dates/stories/march/18/newsid_4242000/4242709.stm> accessed 7 December 2017.

[14] ibid.

[15] A.C.Simpson, 'The Torrey Canyon Disaster and Fisheries' (1968) <https://www.cefas.co.uk/publications/lableaflets/lableaflet18.pdf> accessed 7 December 2017.

In 1989, the *Exxon Valdez* loaded with an excess of 1.2 million barrels of crude oil, ran aground in the north-eastern portion of Prince William Sound, Alaska, causing one of the largest oil spills in the United States of America, dispensing more than one-fifth of her cargo.[16] The oil slick fanned out as far as 500 miles from the tanker's crash site and oozed along 1,300 miles of shoreline; decimating populations of salmon and eagles, thousands of seals and about a quarter of a million shorebirds.[17] Livelihoods too, were impacted as recreational fishing was greatly affected resulting in a reported total financial of loss up to $580 million because of reduction and in some areas, complete absence of recreational fishing.[18]

The sinking of *Erika* off the coast of France in 1999, and the *Prestige*, off the coast of Spain, in 2002[19] represent two of Europe's worst environmental disasters; polluting thousands of miles of coastline and bleeding tons of heavy fuel into the ocean, are both, principal examples of the frightening environmental damage that can result from large oil spills.[20]

Although HNS spills occur at lower frequencies as compared to oil spill incidents, the consequences are potentially more severe and expansive.[21] The complex nature of chemicals and their mostly unpredictable reaction to the environment increases the risk of irreversible damage, to the marine environment and human health.[22] While there is a body of evidence on the consequences and hazards of oil spills, very little is documented about the dangers associated with HNS spills.[23]

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[16] Malgosia Fitzmaurice (n 12), 37.

[17] Jennifer Latson, 'America's Second-Worst Oil Spill is Still Scarring the Shores of Alaska' <http://time.com/3748246/exxon-valdez-history> accessed 4 December 2017.

[18] Raunek, 'The Complete Story of the Exxon Valdez Oil Spill' <https://www.marineinsight.com/maritime-history/the-complete-story-of-the-exxon-valdez-oil-spill> accessed 4 December 2017.

[19] Malgosia Fitzmaurice (n 12), 38.

[20] European Commission, 'Response to Marine Pollution' (27 November 2015) <https://ec.europa.eu> accessed 24 January 2018.

[21] IOTPF, 'Hazardous and Noxious Substances'<http://www.itopf.com/knowledge-resources/documents-guides/hazardous-and-noxious-substances-hns/> accessed 01 May 2018.

[22] ibid.

[23] Karen Purnell, 'Are HNS Spills more Dangerous than Oil Spills?' – A White Paper for Interspill Conference & the IMO R&D Forum, Marseille (May 2009) <www.interspill.org>.

The Sinking of chemical tanker, the *Levoli Sun* carrying approximately four thousand tons of Styrene, one thousand twenty-five tons of *Methyl-Ethyl-Keton* (MEK), and an estimated one thousand tons of *Isopropyl Alcohol* (IPA) highlighted the distinctly varying reactivity of each chemical and the need for organized detection and monitoring toxicity not only in the water, but also in the air.[24]

The spill of *Phosphoric Acid* consequent upon the sinking of the *Ece* raised immense concerns as the spill remained near the ocean floor owing to the high density of water contained in the chemical.[25] Existing sampling techniques were ineffective in the detection of the chemical in the water and it was impossible to obtain water column samples near the ocean floor.[26] These challenges amplified the necessity of modern technologies for the detection of HNS and improved response mechanisms to combat potential disastrous consequences.[27]

Ships are not the only source of oil or HNS pollution. Pollution incidents have occurred as a result of ruptured pipelines, broken hulls of Floating Production Storage Offloading Facilities (FPSOs), well blowouts and rig explosions. The 2010 *Deepwater Horizon* well blowout, in the Gulf of Mexico, mandated a response which far surpassed the capacity of resources available in the United States of America.[28] The *Deepwater Horizon* was an ultra-deepwater semi-submersible offshore oil drilling rig which exploded on April 20, 2010 during the conduct of drilling when gushing natural gas blasted through a concrete core to reach the platform.[29] The explosion resulted in the death of eleven persons; and injuries to seventeen. Two days later, the *Deepwater Horizon* sank. Its leak impacted close to 100,000 kilometers, including more than 1,000 total linear miles of coastlines in Louisiana, Alabama, Mississippi and Florida resulting in the gravest offshore oil spill in the history of the United States.[30]

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[24] Cedre and InterOcean Systems, 'HNS Detection and Monitoring- Recent Incidents and Future Considerations', Interspill, Marseille, (2009) <www.interspill.org>.

[25] ibid.

[26] ibid.

[27] ibid.

[28] Richard Pillardy, 'Deepwater Horizon oil spill of 2010: ENVIRONMENTAL DISASTER, GULF OF MEXICO' (12/15/2017) <www.britannica.com> accessed 22 January 2018.

[29] ibid.

[30] ibid.

2.2 Global and Regional Regimes relative to Guyana

The basis for the development of an international regime to address pollution incident response can be found in Article 194(1) of the United Nations Convention of the Law of the Sea (UNCLOS)[31] which provides that States shall implement measures necessary for the prevention, reduction and control of pollution of the marine environment from any source utilising the best practicable means available, and shall undertake to harmonise their policies in this regard.[32] Article 194(2) imposes on States the undertaking of all necessary measures to control the conduct of activities within their respective jurisdictions so as not to cause pollution damage to the environment of other States. Further, the exercise of control must be effected to prevent the spread of pollution arising from incidents or activities within the jurisdiction of States to areas beyond their exercise of sovereign rights.[33]

The formulation of a State's duty to give immediate notification to other States likely to be impacted by pollution damage, and to the International Maritime Organisation (IMO), can be found in article 198 UNCLOS. This, in fact recalls and endorses the formulation of Principle 21 of the Stockholm Declaration[34] which emphasises the need for the protection of the marine environment beyond the limits of national jurisdiction.[35] The provision of a global framework, by the OPRC, for international co-operation in combating major pollution incidents or marine pollution threats is a direct response to the requirement formulated in article 199 of the UNCLOS.[36] Article 5(1)(c) of the OPRC Convention provides that, a State Party, upon receiving a report of a possible oil discharge or pollution information, must, immediately following its assessment of the incident, "inform all States whose

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[31] United Nations Convention on the Law of the Sea (Montego Bay, opened for signature 10 Dec, 1982, entered into force 16 Nov, 1994) 1833 UNTS 3, UNCLOS.

[32] ibid.

[33] ibid.

[34] Declaration of the United Nations Conference on the Human Environment (Adopted: 28 June 1998; Entry into force: 30 October 2001) 2161 UNTS 447, Stockholm Declaration.

[35] ibid.

[36] Anna Natova, 'Implications of The United Nations Convention on the Law of the Sea for IMO' <http://www.un.org/depts/los/nippon/unnff_programme_home/alumni/tokyo_alumni_presents_files/alum_tokyo_natova.pdf> accessed 14 January 2018.

interests are affected or likely to be affected by such oil pollution incident" and provide details of its action undertaken in light of the incident.

Evidently, the regime on response and cooperation articulated in the OPRC Convention and OPRC-HNS Protocol derived their premise from the provisions contained in the UNCLOS. Article 199 of the UNCLOS obliges States affected by pollution incidents to combine their capabilities and co-operate with the IMO to eliminate "the effects of pollution and preventing or minimising the damage." Further, States are mandated to "jointly develop and promote contingency plans for responding to pollution incidents in the marine environment."[37]

Numerous multilateral and bilateral treaty arrangements have been concluded since the 1967 Torrey Canyon disaster to tackle, inter alia, the coordination of pollution response activities.[38]
Although pollution incidents off the coast of Guyana and even in the Caribbean Sea have not reached catastrophic levels, the risk of oil spills is still a living threat. For this reason, there can be no postponement of the establishment of an effective response mechanism.

Countries of the Wider Caribbean Region (WCR), which include Guyana, adopted the ***1983 Convention for the Protection and Development of the Marine Environment of the Wider Caribbean Region*** and the Protocols thereto concerning Cooperation in Combating Oil Spills. This Convention was designed to cover the "insular and coastal States and Territories with coasts on the Caribbean Sea and Gulf of Mexico, as well as waters of the Atlantic Ocean adjacent to these States and Territories" (UN environment) and serves to complement other international regimes including UNCLOS. The Convention, which was adopted in Cartegena, Colombia in March 1983 obliges the Contracting Parties to cooperate in response to pollution emergencies and to control, reduce or eliminate pollution or the threat of pollution.[39]

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[37] United Nations Convention on the Law of the Sea (Montego Bay, opened for signature 10 Dec, 1982, entered into force 16 Nov, 1994) 1833 UNTS 3 (n 24).

[38] David Abecassis, Richard L Jarashow and David. L a p r t o p f s Abecassis, *Oil pollution from ships: International, United Kingdom and United States law and practice* (2nd ed./by David W. Abecassis and Richard L. Jarashow with Robert M. Jarvis … [et al.]/ edited by David W. Abecassis, Stevens 1985), 130-131.

[39] Convention for the Protection and Development of the Marine Environment of the Wider Caribbean Region and Protocol (Adopted: 24 March 1983; Entry into force: 11 October 1986) 22 ILM 227 (1983), Cartegena Convention, Article 11.

Further, States are obliged to individually and jointly, develop and promote contingency plans for responding to incidents involving pollution or the threat of pollution.[40] There is a requirement that States aware of imminent pollution or which have been polluted, must immediately notify other States likely to be impacted, of the danger.[41] States are also entitled to be informed, as soon as reasonably practicable, of the measures undertaken to minimise or reduce pollution or the threat of pollution.[42] The Protocol concerning oil spill incidents has a wider scope than the Convention, including in its reach coastal and inland waters; and expressing the commitment of Contracting Parties to consider ways of extending the regional co-operation mechanism to incidents involving hazardous substances other than oil.[43]

Guyana acceded to the Convention and its Protocols on July 14, 2010.[44]

3. THE INTERNATIONAL LEGISLATIVE FRAMEWORK

3.1 The Global Response of States

The OPRC Convention was concluded after the stranding of *Exxon Valdez* off the coast of Alaska in 1989. The Convention, designed to aid Member States in combatting major oil spills, is chiefly concerned with the facilitation of international co-operation in preparing for, and responding to such disasters and encouraging the development and maintenance, by governments, of adequate capability to address issues relating to oil pollution emergencies.[45]

By virtue of Resolution 10, the 1990 Conference adopting the OPRC Convention, invited the initiation of a work programme, by the IMO, to develop "an appropriate instrument" catering for the expansion of the scope of the OPRC Convention to include pollution incidents by hazardous and

[40] ibid.

[41] ibid, Article 11(2).

[42] ibid.

[43] Winston Anderson, *The law of Caribbean marine pollution* (International environmental law and policy series, Kluwer Law International 1997), 227-228. See also Arts. 2 and 10(2) Cartegena.

[44] Caribbean Water and Sewerage Association Inc, 'Final Report-Assessment Report for Select Countries in Respect of the Protocol Concerning Pollution from Land-Based Sources and Activities' < www.cep.unep.org> accessed 30/04/2018

[45] S. T Orszulik, *Environmental technology in the oil industry* (Blackie Academic & Professional 1997).

noxious substances.[46] Five years following the entry into force of the OPRC in 1995, the HNS Protocol was formally adopted by States already party to the OPRC.

The impact of HNS pollution differs from oil in that public safety and responder risks can be potentially more severe. Although HNS incidents occur at a lower frequency, HNS response measures require intimate knowledge of the physical and chemical properties of the substances involved.[47]

3.2 The Oil Pollution Preparedness, Response and Co-operation Convention (OPRC), 1990

Adopted by the IMO in 1990, the OPRC Convention is the international instrument that provides a framework designed to facilitate international co-operation and mutual assistance in preparing for and responding to major oil pollution incidents. It requires Contracting States to cooperate and exchange information; and to develop national systems for pollution response, and to maintain adequate capacity and resources to address oil pollution emergencies.[48]

Since its entry into force in November 1995, the OPRC Convention of 1990 has been branded a success owing to what has been described as a consistent reduction in the level of marine oil spills and a marked level of preparedness and response cooperation throughout the world[49] as Contracting States continuously work co-operatively with other countries and the shipping industry to ensure effective and appropriate national pollution incident response systems are in place.

While the OPRC Convention occupies a principal position in the area of oil response effectiveness, it is critical to appreciate the role and interaction of other Conventions relative to pollution response.

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[46] International Convention on Oil Pollution Preparedness, Response and Co-operation 1990, OPRC (International Maritme Organisation).

[47] European Maritime Safety Agency, 'HNS Action Plan' <http://www.emsa.europa.eu/opr-documents/action-plans.html> accessed 7 December 2017.

[48] (n 9).

[49] Simon Rickaby C.Eng, 'The OPRC-HNS Protocol and its practical implications: A paper to the PAJ Oil Spill Symposium, Tokyo 24-25th February 2005' <www.pcs.gr.jp/doc/esymposium/2005/2005_Rickaby_E.pdf> accessed 30 November 2017.

The Convention has one hundred and twelve Contracting States representative of 75.33% of world tonnage.[50]

3.3 Scope and objectives of the Convention

The principal objective of the Convention is the preparedness of States to respond to oil pollution incidents caused by ships, sea ports and oil handling facilities, and offshore oil exploration and production facilities. The Convention seeks to ensure that the best endeavours at mitigating the damages caused by such incidents are employed.

Legislative currency is intended for Articles 3 through 10 of the OPRC that address the issues relating to emergency plans,[51] reporting procedures,[52] national and regional systems for preparedness and response to pollution incidents,[53] international co-operation and support schemes,[54] research and development programmes to aid capacity building,[55] technical co-operation and technology transfer[56] and the establishment of bilateral and multilateral co-operation initiatives to boost response capability.[57]

Article 3 sets out the requirement of oil pollution emergency plans and necessary reporting procedures for flag ships and operators of offshore units, sea ports and oil handling facilities under the jurisdiction of the State. It mandates the inspection of ships' oil pollution emergency plans by port State authorities and the incorporation of the oil pollution emergency plans into the national preparedness and response system. The outlines for oil pollution emergency plans for ships seaports and oil handling facilities are found in regulation 26 Annex 1 of the International Convention for the Prevention of Pollution from Ships, 1973 as modified by the Protocol of 1978 (MARPOL 73/78).

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[50] IMO, 'Status of Treaties' <www.imo.org/en/About/Conventions/StatusOfConventions/Documents/Status%20of%20Treaties.pdf> accessed 13 December 2017.

[51] International Convention on Oil Pollution Preparedness, Response and Co-operation (n 38), Article 3.

[52] ibid, Article 4.

[53] ibid, Article 6.

[54] ibid, Article 7.

[55] ibid, Article 8.

[56] ibid, Article 9.

[57] ibid, Article 10.

Oil pollution reporting procedures are outlined in **Article 4**. In the event of an incident involving a ship, the master is required to promptly report the incident relating to the ship or any observance of a pollution incident or oil discharge at sea, to the nearest coastal State.
Similar reporting requirements are established for the operators of offshore units with respect to the State in whose jurisdiction they operate. Reporting obligations are also assigned to maritime officials and pilots of civil aircraft.

Article 5 of the OPRC Convention requires Contracting States to confirm the validity of all reported incidents and assess the nature and impact of incidents confirmed to determine appropriate response actions. Details of the assessment and action taken or intended to be taken are to be promptly transmitted to other States likely to be affected by the incident, as well as the IMO.

Article 6 requires that Contracting Parties submit current information regarding designated authorities responsible for preparedness and response, national contact points for the receipt and transmission of oil pollution reports,4 authorities responsible for the coordination of mutual assistance, oil pollution response equipment and national establishment of national oil pollution response system.
Article 7(3) requires Governments to implement the requisite legal and administrative measures for transport of personnel and equipment and materials in and out of the State in the event of an oil pollution incident.

States Parties are encouraged by virtue of **Article 8**, to undertake research and development activities designed to enhance capacity for response, recovery and restoration, and to cooperate with appropriate regional organisations, either directly or through the IMO, for the convening of "international symposia on relevant subjects, including technological advances in oil pollution combating techniques."
The object of **Article 9** of the Convention is to have States take necessary recourse to ensure training of relevant personnel, the availability of technology, equipment and facilities requisite for effective preparedness and response to oil pollution incidents; and to facilitate measures and arrangements and initiate joint research and development programmes, directly or through the IMO, with appropriate international organisations.

The conclusion of bilateral and multilateral cooperation agreements for oil pollution response is obliged by **Article 10**. All such agreements must be communicated to the IMO.

The convention formulates a three-tier response system for oil spill incidents. Tier one is activated to address small operational spills occurring generally, at fixed installations including ports, oil-handling facilities and terminals.[58] These incidents are usually of potentially minor impact and the responsibility of a response mechanism is on the facility operators who are to prepare and maintain oil-spill emergency plans highlighting the risks and potential threats posed by such incidents.[59] Tier one response capabilities require members of the workforce to be trained to activate the proper emergency procedures as outlined in the plan. Tier one resources are usually integrated into the higher tiers.[60] Thus, deficiencies existing at this level will engender serious repercussions on the response mechanisms of the other tiers.[61]

Medium sized incidents are covered by a tier two response system. Tier two spill response is usually the coordinated and managed by a local government agency.[62] This response mechanism involves the pooling of available resources of neighbouring agencies and authorities, and the local industry in order to produce the required response capability.[63] By virtue of their size and potential impact, oil spill incidents activating the tier three response system are of national significance.[64] This system necessitates the direct involvement of government and the activation of a national contingency plan in which the government's oil pollution policy and strategies applicable to oil pollution incidents are outlined.[65] The national contingency plan also highlights the capabilities available for the management of such incidents.[66]

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[58] T.H Moller and R.S Santer, 'Are we our Brothers' Keeper? Oil Spill Preparedness and Response: The Role of the Industry' <http://www.itopf.com> accessed 20 December 2017

[59] ibid

[60] ibid

[61] ibid

[62] ibid

[63] ibid

[64] ibid

[65] ibid

[66] ibid

In addition to the resources available at the tier two level, tier three resources include stockpiles of equipment which in many countries are provided by the oil industry.[67]

Provisions for the reimbursement of costs of assistance are embodied in the Annex to the OPRC Convention. The financing of the costs for the actions undertaken by assisting States may be agreed upon on a "bilateral or multilateral basis prior to the pollution incident."[68] In the absence of such agreements, the State requesting response assistance is obligated to the assisting State(s) for the reimbursement of costs incurred in providing such assistance.[69] A State which renders assistance at its own initiative, however, is not entitled to reimbursement of any cost incurred. The costs incurred are to be calculated based on the laws and practice of the assisting State which has a discretion to either waive or reduce the amount to be reimbursed.[70] In this regard, particular considerations are to be granted to requesting States that are developing States.[71]

Additionally, the Annex makes it clear that the rights to compensation for costs associated with pollution or threat of pollution granted to States under other existing regimes shall not be affected by the provisions of the OPRC Convention.[72] The right to recover from persons or entities responsible for pollution damage under the 1969 International Convention on Civil Liability for Oil Pollution Damage (CLC) and the 1971 International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage (FUND), as amended.[73]
At this juncture, it is important to note that these two Conventions were amended in 1992 and, in 2003, the Supplementary Fund Protocol was adopted.[74]

3.4 Protocol on Preparedness, Response and Co-operation to Pollution Incidents by Hazardous and Noxious Substances (OPRC-HNS), 2000

[67] ibid

[68] International Convention on Oil Pollution Preparedness, Response and Co-operation (n 38), Annex

[69] ibid

[70] ibid

[71] ibid

[72] ibid

[73] ibid

[74] Josebe Martínez Gutiérrez, *Limitation of liability in international maritime conventions: The relationship between global limitation conventions and particular liability regimes* (Routledge 2012), 146

By Resolution 10 of the 1990 Conference on International Co-operation on Oil Pollution Preparedness and Response (OPRC Conference), IMO was requested to develop an appropriate instrument to expand the scope of the OPRC Convention, and which would be applicable unabridged or partially, to pollution incidents by hazardous substances other than oil.[75] Conforming to this invitation and, subsequent to the recommendation of the IMO Marine Environment Protection Committee (MEPC), the Council, in accordance with Article 2(b) of the Convention of the IMO, convened a diplomatic conference, in March 2000, to consider the adoption of a protocol on preparedness, response and co-operation to pollution incidents by hazardous and noxious substances.[76] The OPRC-HNS Protocol mirrors the principles enshrined in the OPRC Convention and offers a global framework for international co-operation in combating major pollution incidents or threats of marine pollution from HNS.[77]

The Protocol was signed by seven States, including Brazil. And, to date has thirty-nine Contracting States. The fifteenth ratification as required for the entry into force of the Protocol was filed with IMO on 14 June 2006; and on 14 June 2007, the Protocol took effect.[78]

The HNS Protocol mandates preparedness and response regimes, comparable to those required for oil spills, for ships carrying hazardous and noxious liquid substances.[79] HNS, as determined by the Protocol, refers to any substance other than oil which, if introduced into the marine environment, is likely to create hazards to human health, to harm living resources and marine life, to damage amenities, or to interfere with legitimate uses of the sea.[80] This definition captures:

i. Noxious liquid substances described in Annex II of MARPOL 73/78 and the International Bulk Chemical Code (IBC Code);
ii. Dangerous goods described in the IMO Dangerous Goods Code (IMDG Code); and

[75] Protocol on Preparedness, Response and Co-operation to Pollution Incidents by Hazardous and Noxious Substances (Adopted: 15 March 2000; Entry into force: 14 June 2007) 2000, OPRC-HNS, 1.

[76] ibid.

[77] Simon Rickaby C.Eng (n 41).

[78] INTERTANKO, 'The OPRC-HNS Protocol – An Overview' (2006) <www.intertanko.com/upload/23191/CTC--C-Incom-OPRC-HNS-Protocol-fi.doc> accessed 30 November 2017.

[79] ibid.

[80] Protocol on Preparedness, Response and Co-operation to Pollution Incidents by Hazardous and Noxious Substances (Adopted: 15 March 2000; Entry into force: 14 June 2007) (n 60), Article 2.

iii. Solid cargoes covered by the Code of Safe Practice for Solid Bulk Cargoes (BC Code)[81]

3.5 Principal Features of the Protocol of 2000

Generally, the OPRC-HNS Protocol mirrors the Convention in structure and literature; giving coverage to HNS and oil spill preparedness and response, respectively.

Article 3 outlines the requirements of States Parties to obligate ships flying their flags to have pollution incident emergency plans on board. The same requirement extends to offshore units, HNS Handling facilities and seaports. All these entities must report any incident of HNS or oil pollution to the nearest coastal State or the State with jurisdiction.

Similar to the OPRC Convention, **Article 4** of the Protocol requires Contracting States to institute a national system for responding to pollution incidents which must include a designated national authority competent to coordinate the State's pollution incidents response plan, operational contact points, a national authority empowered to act on the State's behalf to request for, and render requested assistance; and a national contingency plan, compliant with IMO guidelines, outlining the inter-organisational relationship of principal participants in the State's preparedness for and response to pollution incidents.

Preparedness and response capacity building is to be achieved through bilateral and/or multilateral co-operation, training and a programme of exercises. The establishment of pre-positioned equipment; and a mechanism to coordinate pollution incident response are compulsory.

On the international level, Contracting States are required to inform neighbouring States of spills that are likely to impact them; provide assistance to another Contracting State upon request; provide assistance according to their respective capabilities to other Contracting States and include the shipping and oil sectors in the response mechanism. States requesting assistance must facilitate the receipt of such assistance in their territories.

Like the Convention, the Protocol outlines a three-tier response framework to pollution incident preparedness and response ranging from the country plan to inter-regional arrangements.

[81] INTERTANKO (n 63).

3.6 Benefits and Obligations of States Parties

Benefits are to be derived from accession to the OPRC-HNS Protocol, including opportunities for shared assistance in pollution incident response techniques, and the exchange of research findings with other States which will aid the much needed protection of coastal zones and fragile marine ecosystems and environment.[82] The OPRC-HNS Protocol also provides Member States access to an international platform for cooperation and the development of regional and national capacity to effectively address major HNS incidents.[83] States Parties are able to exchange best practices, access training and technical support for the development of practical response mechanisms through the Integrated Technical Co-operation Programme (ITCP) of the IMO.[84]

Proper implementation of the OPRC-HNS Protocol States requires the establishment of a national HNS response system inclusive of an identified responsible authority, operational contact point and a national contingency plan.[85] Contracting States are obliged to acquire "a minimum level of response equipment, communications plans, regular training and exercises.[86] A State Party must require ships flying its flag to have onboard "Pollution Incident Emergency Plan" and reporting procedures outlined by the Protocol.[87] Seaports, offshore units, floating production and like facilities within the jurisdiction of the State must fulfill similar requirements; all of which must be coordinated with the national framework to ensure prompt and effective response to HNS pollution incidents.[88]
Another obligation of the State is the provision of assistance, as far as "possible and feasible", to other States when there is a pollution emergency with the understanding that the assistance provided would be reimbursed.[89]

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[82] 'IMO's Response to Current Environmental Challenges: OPRC – HNS PROTOCOL' <www.imo.org/en/KnowledgeCentre>.

[83] ibid.

[84] ibid.

[85] ibid.

[86] ibid.

[87] ibid.

[88] ibid.

[89] ibid.

4. DOMESTICATING THE OPRC CONVENTION AND THE OPRC-HNS PROTOCOL – An essential for Guyana

The Co-operative Republic of Guyana is located on the north-eastern coast of the South American continent; sharing borders with Suriname to her east, Venezuela to her west and Brazil to her south. To her north is the vast Atlantic Ocean. Guyana benefits immensely from three large marine ecosystems: Caribbean large green ecosystem, North Brazil Shelf and Guyana coastal zone. The country boasts of healthy pelagic fisheries consisting of large catches of trout, snapper, crayfish and prawns. Any pollution incident, particularly offshore, is likely to impact all three marine zones. The degradation of an ecosystem will lead to unfavourable conditions for survival and reproduction.

Numerous reports suggest that Guyana boasts of one of the world's most significant oil finds in recent years. It is public knowledge that significant quantities of hydrocarbons have been discovered offshore.[90] To date, Exxon Mobil has dug five exploration wells in two of twenty potential fields, and only one has come up dry.[91]

The Stabroek Block in which Exxon Mobil conducts its drilling activities is 26,800 square kilometres, has, to date, belched up estimated billions of barrels of oil mixed with natural gas.[92]

Consequences of an oil spill can overshadow financial gains from oil production. And so, just as the prospects of oil should not be underestimated, neither should the risks and challenges of a pollution incident or threat thereof.

As previously noted, Guyana is party to the 1982 UNCLOS, and the OPRC Convention, but is yet to accede to the OPRC-HNS Protocol. The Maritime Zones Act 2010, which repealed and replaced the Maritime Boundaries Act of 1977, provides for a 12-mile territorial sea, the exercise of rights and jurisdiction in the Exclusive Economic Zone as recognized by international law, and the jurisdiction of protection and preservation of the marine environment and prevention and control of marine pollution.[93]

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[90] Patrick Chesney, 'Youth and Environmental Stewardship in the Oil and Gas Sector' (Guyana, 2 December 2017).

[91] ibid.

[92] 'ExxonMobil Announces Fifth Discovery Offshore Guyana' <http://news.exxonmobil.com/press-release/exxonmobil-announces-fifth-discovery-offshore-guyana> accessed 13 December 2017.

[93] Maritime Zones Act 2010.

The Minister of Foreign Affairs, in consultation with the Minister responsible for the environment, is empowered to make regulations for the prevention, reduction and control of pollution of the marine environment.[94]

However, there exists no established regulatory standard subscribing powers and duties with respect to pollution incidents preparedness, response and co-operation.

The Environmental Protection Act (Act 11 of 1996; Amended by Act 17 of 2005), makes broad provisions for the prevention and control of pollution. Although not specifically related to relevant maritime conventions, the Act in Part V, does make it an offence to discharge or permit the entry of pollution into the environment.[95] The Act also prohibits the undertaking of an activity that causes or is likely to cause pollution of the environment unless reasonable measures are undertaken to minimise any resulting adverse effect.[96]

As Guyana prepares for oil production as it intends, "through maximis ing benefits and value retention through capacity development"[97], it must be cognizant of all factors necessary to plan and prepare a national pollution response mechanism with adequate capacity and resources to address pollution emergencies.

4.1 The need for Independent Legislation

A pollution incident, such as an oil discharge, or a release or emission of HNS including those from fire or explosions, which pose or may pose a threat to the marine environment, or coastline would require emergency action or an immediate response.[98] The fact that Guyana has not acceded to the OPRC-HNS Protocol is of no consequence to the exigency of closing the gap which exists on the national plane, as a first step, in contemplation of becoming a State Party to the Protocol. Indeed, it is impossible to legislate into oblivion, human frailties and mechanical defects which may contribute to pollution incidents.[99] The most elaborate crewing standards or traffic separation schemes are not

[94] ibid, Section 48.

[95] Anderson (n 36).

[96] ibid.

[97] Ministry of Natural Resources, 'Making the Most of Our Oil and Natural Gas: A Policy Framework – Working Draft for Discussion and Input' (2017)

[98] (n 67)

[99] Anderson (n 36), 73

likely to prevent collision of tankers;[100] the best oil field practice does not eliminate the risk of oil rigs explosions;[101] pollution may occur despite the sternest preventive efforts.[102] As certain as pollution, there is the requirement for a regime governing emergency response to pollution incidents.[103]

A draft Disaster Risk Management Bill was prepared and submitted to the National Assembly in 2017.[104] The Bill envisages the enhancement of Guyana's disaster risk management and resilience to flooding through integrated coastal zone management, including sea and river defences, drainage and mangrove regeneration pursuant to which, several Regional Multi-Hazard Preparedness and Response Plans were completed.[105]

There is, therefore, the urgent need for the implementation of a comprehensive legislative instrument to address response strategies to oil and HNS pollution incidents and provide a platform for technical assistance and the execution of the national pollution contingency plan.

Currently, the Civil Defence Commission (CDC), established under the Ministry of the Presidency, is the national body tasked with the co-ordination of all disaster response and, is a full member of the Caribbean Disaster Emergency Management Agency (CDEMA).[106]

The nature of the subject-matter of this bill derives serious consequences if not treated with the strictest of adherence. Thus, the independence derived from primary legislation is necessary for the effective monitoring and conduct of the roles and functions of agencies involved in the management of a pollution incident response. In any event, the legislation can be imbued with sufficient authority

[100] ibid, 30

[101] ibid

[102] ibid

[103] ibid

[104] 'Integrated Coastal Zone Management 2016/039309' <https://ec.europa.eu/europeaid/sites/devco/files/aap-financing-guyana-annex1-2016-20161130_en.pdf> accessed 7 December 2017

[105] ibid.

[106] ibid.

to formulate regulations, rules and orders to address problems, loopholes or update information not foreseen prior to the enactment of the legislation.[107]

Also, a primary instrument is appropriate for endowment of the necessary powers on the entity responsible for the co-ordination of the response mechanism. This would be defeated entirely if it were to perhaps be subsumed under the Guyana Shipping Act[108], for example. Any such subjugation would foster conflict in the division of coordinating authority; and may lead to eventual usurpation of authority given that the CDC is bereft of statutory legitimacy, and the Guyana Shipping Act empowers the Maritime Administration Department (MARAD) to administer not only the Act, itself, but all other related maritime law.[109]

4.2 The Legislative Process

Guyana is a dualist State. Unless obligations created on the international plane are incorporated into the domestic legislative framework by an Act of Parliament, they remain non-binding on the courts and citizens of Guyana. There is no legislative instrument stipulating the formation of new laws. However, it is ascribed in the rules of procedure adopted for use by the National Assembly.[110]

Given the technical nature of this Bill and the national interests it represents, internal State practice dictates that it will be presented as a Public Bill issuing out of the Ministry of the Presidency. Following approval by the Minister of State, the Bill will be forwarded to the Ministry of Legal Affairs for review by the Office of the Chief Parliamentary Counsel. The Bill will then be presented for approval by the Minister of Legal Affairs. Final approval must be derived from the Ministerial Cabinet before the Bill is made subject to public consultation. Cabinet may determine the need for technical consultation owing to the subject matter addressed by the Bill.

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[107] 'Purpose and Use of Subordinate Legislation: (March 1998)' <https://www.insolvencydirect.bis.gov.uk/technicalmanual/Ch49-60/Chapter%2051/part2/part_2.htm> accessed 3 December 2017.

[108] Act No. 7 of 1998, Chapter 49:01, Laws of Guyana.

[109] ibid.

[110] National Assembly of Guyana, 'Manual of Rules of Procedure, Practices and Conventions used by Parliamentarians in the Conduct of the Business of the National Assembly' < www.parliament.gov.gy> (September, 2007) accessed 30/04/2018

To obtain the status of law, the Bill must be tabled in the National Assembly and thereafter, be subjected to the formal legislative procedures requisite for the National Assembly's approval.[111]
Upon successful passing, the Bill is submitted to the President for executive assent.[112] Following the President's assent, the new Act will be published in the Gazette; thereby assuming the status of law.[113]

[111] ibid.

[112] 'How a Bill becomes an Act' <www.parliament.gov.gy'> accessed 30/04/2018.

[113] ibid.

5. A STATE OF READINESS - OIL AND HAZARDOUS AND NOXIOUS SUBSTANCES POLLUTION PREPAREDNESS, RESPONSE, AND COOPERATION BILL, 2018

This Bill is aimed at, inter alia, improving inter-agency coordination and providing unambiguous definitions on the roles and responsibilities of those engaged in all aspects of preparedness and response to pollution incidents by oil and HNS. It provides a mandatory framework for the implementation and incorporation of internationally acceptable standards and practices to improve response readiness for a pollution incident. The Bill considers as principal elements of this framework: risk assessment, contingency planning, training drills and simulation exercising and equipment.

5.1 Summary of the Draft Text

The Bill is comprised of seven parts and six schedules covering preliminary matters, the establishment of the CDC as the authority responsible for the management and oversight of pollution incidents response and other disaster response mechanisms, the national system for preparedness, response and cooperation, reporting and communication procedures and other areas critical to the implementation of the Convention.

Part I, designated as Preliminary, contains three sections which address the interpretation and application of this Bill. Included in the section 2, in addition to definitions provided by the Convention, are key administrative elements necessary for the effective implementation of the Convention. Section 3 prescribes the ships and structures to which this Bill is applicable and specific reference of those ships that are exempted from the provisions of this Bill is made in section 4.

The CDC is established as a body corporate, under Part II of this Bill, in fulfilment of the requirement for the establishment of a national competent authority under article 6 of the Convention and article 4 of the Protocol, to coordinate the national response system. The CDC is established under section 5 and the functions necessary for the effective implementation of the Act are outlined in section 6. Provisions concerning the management of the CDC are found in sections 7 through 10, which include the appointment of a Director General who will exercise general administrative oversight.

Funding and statutory requirements of the CDC are provided for in sections 11-16.

Section 17 delineates the powers of the Minister with responsibility for the environment to issue directives to the CDC.

Part III of this Bill sets out the composition and functions of the Directorate that shall govern the CDC. It addresses issues of qualifications and termination of Board Members and matters of procedure relating to meetings and committees.

Within Part IV, which is titled, "National System for Preparedness, Response and Co-operation, provisions address mechanisms set out by the Convention to enable co-ordinated response to pollution incidents. These include:

- The National Contingency Plan in section 33; and
- Incident Emergency Plans in section 34.

Obligations are placed on the masters of ships and persons having charge of facilities to which this Bill is applicable, to have an incident emergency plan to be approved by the CDC.

The development and maintenance of the National Contingency Plan is necessary to ensure adequate capacity to promptly and effectively respond to pollution incident emergencies. The National Contingency Plan will provide a framework for the cooperation of local authorities and agencies, ports and other industry stakeholders in response to pollution incidents. The Plan embodies a system of mutual cooperation, and the operational aspects associated with a multisectoral response, in the event of a pollution incident which outweighs the capacity of the CDC. In fact, this blueprint pollution incident response promotes the coordination of contingency plans developed by the oil industry, relevant local authorities and agencies and the three major ports: Georgetown, Essequibo and Berbice.

Thus, the National Contingency Plan represents a comprehensive system which requires principal actors to submit to the CDC emergency plans outlining their response capabilities to a range of incidents spanning tiers one to three. The National Contingency Plan also demands the development of regional plans, particularly developed for coastal administrative regions most likely to be impacted by pollution incidents.

The minimum criteria for the development and maintenance of local and regional response mechanisms, although not expressly provided for in the proposed legislation, may most effectively be

facilitated through subsidiary legislation promulgated by the Minister under section 49. Such mechanisms shall be consistent with the National Contingency Plan.

Reporting systems required under article 4 of the Convention and article 3 of the Protocol are dealt with in Reports and Communication – Part V of this Bill. Section 36 addresses reporting procedures to which ships' masters, persons having charge of facilities and units to which this Bill is applicable members of the civil service and other individuals must confirm. This Part canvasses a plethora of issues including, international and technical co-operation in pollution response, research and development, and the requisite actions to be undertaken by the CDC following the receipt of a report of an incident.

Part VI of this Bill contains Miscellaneous provisions including the creation of offences and penalties found in section 46, and the powers of the Minister to make regulations necessary for the fulfilment of the Bill.

Attached to this Bill are six schedules that are provided for in the body of the Bill and relate to the following areas:

Schedule 1 – (Section 34) -Ship Board Pollution Incident Emergency Plans Guidelines;

Schedule 2 - (Section 36) - Standard Reporting Requirements;

Schedule 3 - (Section 37) - Pollution Incident Communication Form;

Schedule 4 – (Section 38) - Pollution Incident Assistance Reimbursement Form;

Schedule 5 – (Section 42) - Specifications of Dispersants;

Schedule 6 – (Section 43) - Equipment at Facility or Installation.

SHIPPING

THE GUYANA SHIPPING (OIL AND HAZARDOUS AND NOXIOUS SUBSTANCES POLLUTION PREPAREDNESS, RESPONSE, AND COOPERATION) ACT

ARRANGEMENT OF SECTIONS

SECTION

ESTABLISHMENT OF THE CIVIL DEFENCE COMMISSION

PART III

BOARD OF DIRECTORS OF THE CIVIL DEFENCE COMMISSION

PART IV

NATIONAL SYSTEM FOR PREPAREDNESS, RESPONSE AND CO-OPERATION

PART V

REPORTS AND COMMUNICATION

AN ACT to provide for due preparedness, and expedient and efficient response to actual and potential pollution incidents from ships, seaports or offshore installations. And, to ensure that the impacts of spills are remedied so as to minimise harm to people, property or the environment.

PART I
PRELIMINARY

Short title and commencement

1. This Act may be cited as the Guyana Shipping (Pollution Incident Preparedness, Response and Cooperation) Act, and shall come into operation on such date as the Minister may by order appoint.

Interpretation

2. In this Act, unless the contrary intention appears –

"Commission" means the Civil Defence Commission established under section 5;

"Convention" means the International Convention on Oil Pollution Preparedness, Response and Co-operation, 1990 (OPRC Convention), as amended;

"Director General" means the person, appointed under section 7 of this Act, having, for the time being, responsibility for the National Coordinating Agency;

"Financial year" means the period beginning with the day this Act comes into force and ending with the next date which concludes the first financial year; and each subsequent period of twelve months beginning on the day the financial year commences;

"Hazardous and Noxious Substances" means any substance other than oil which, if introduced into the marine environment is likely to create hazards to human health, to harm living resources and marine life, to damage amenities or to interfere with other legitimate uses of the sea. The abbreviation "HNS" shall be construed as same;

"Minister" means the Minister responsible for the Environment;

"Oil" means petroleum in any form including crude oil, fuel oil, sludge, oil refuse and refined products;

"Offshore unit" means any fixed or floating offshore installation or structure engaged in gas or oil exploration, exploitation or production activities, or loading or unloading of oil, or in connection with such operations;

"Operator" means in relation to an oil and HNS handling facility, a person having, for the time being, the management of such facility in Guyana, and in relation to an offshore unit, includes any person having the management of the unit.

"Organisation" means International Maritime Organisation and the abbreviation "IMO" shall be construed as same;

"Polluter Pay Principle" is as described under section 45 of this Act.

"Pollution incident by hazardous and noxious substances" means any occurrence or series of occurrences having the same origin, including fire and explosion, which results in a discharge, release or emission of oil or HNS and which poses or may pose a threat to the marine environment, or to the coastline or related interests or one or more States, and which requires emergency action or immediate response;

"Protocol" means the Protocol relating to Pollution incidents by Hazardous and Noxious Substances, 2000 (OPRC-HNS Protocol) as amended;

"Ship" means a vessel of any type whatsoever operating in the marine environment and includes hydrofoil boats, air-cushion vehicles, submersibles, and floating craft of any type;

"Seaports and oil and HNS handling facilities" mean those ports, or facilities which present a risk of an oil pollution incident and include, inter alia, sea ports, oil terminals, pipelines and those facilities where oil or hazardous and noxious substances are loaded into or unloaded from ships;

"State Party" means a country that has ratified or acceded to the OPRC-HNS Protocol, as amended.

Application

3. This Act shall apply to-

(a) every Guyanese regulated ship;

(b) every foreign ship navigating in Guyana waters

(c) every offshore unit and its connected infrastructure in offshore waters;

(d) every oil handling facility which—

(i) is a pipeline; or

(ii)would be an offshore installation were it in offshore waters,

(e) every seaport and oil or HNS handling facility

for the prevention of and response to oil spills and hazardous and noxious substances spills and related incidents in Guyana waters and in any area designated under the Maritime Zones Act 2010.

Application to government ships and naval vessels

4. (1) Subject to subsections (3), nothing in this Act shall apply to-

(a) any Guyana Government ship on government non-commercial

service; and

(b) any naval auxiliary or warship or other vessel operated for military purposes by Guyana or a foreign country

(c) a vessel used by a foreign country for customs or law enforcement or other non-commercial purposes.

(2) Ships referred to in subsection (1) (a) shall, so far as is reasonable and practicable, act in a manner consistent with this Act.

(3) The Minister may make regulations prescribing the manner and extent to which the provisions of this Act apply to Guyana Government ships operated for non-commercial service.

PART II
ESTABLISHMENT OF THE CIVIL DEFENCE COMMISSION

Establishment of the Civil Defence Commission

5. There shall be a Civil Defence Commission of Guyana which shall be a body corporate.

Functions of the Commission

6. (1) The Commission shall function as the National Co-ordinating Agency and for the purpose of this Act and any other law relating to emergency response or disaster management.

(2) Without limiting the generality of subsection (1), the Commission shall –

(a) co-ordinate and implement the National Preparedness, Response and Co-operation system outlined in Part IV of this Act;

(b) provide prompt, safe, effective and appropriate response to pollution incidents by oil and HNS;

(c) develop and implement a national contingency plan;

(d) conduct periodic review of the national contingency plan;

(e) issue rules, regulations and guidelines for the preparation, development, implementation and update of the pollution emergency plans by ships, seaports and oil and HNS handling facilities and offshore units in accordance with the provisions adopted by the Organisation;

(f) review and approve the pollution incident emergency plans of ships, seaports and oil and HNS handling facilities and offshore units, as provided in section 34;

(g) authorise officers to conduct inspections of ships, seaports and oil and HNS handling facilities and offshore units to verify compliance with this Act;

(h) monitor ships, sea ports and oil and HNS handling facilities and offshore units for the implementation, update and maintenance of their pollution emergency plans;

(i) organise and conduct periodic national pollution incident emergency response exercises and drills for all stakeholder government agencies and departments;

(j) co-ordinate with ship owners, masters or ship operators and operators of sea ports and oil and HNS handling facilities and offshore

units, the organisation of training of their crew or personnel in pollution incident emergency response;

(k) co-ordinate with ship owners, masters or ship operators and operators of sea ports and oil and HNS handling facilities and offshore units, the organisation of pollution incident emergency exercises and drills;

(l) develop accreditation guidelines and procedures for compliance by private oil spill response organisations;

(m) issue rules and regulations for the reporting of pollution information or incidents, as provided in section 36.

(n) act as the national operational contact point for the receipt and transmission of pollution incidents;

(o) provide a programme of activities, training and drill exercises to ensure readiness to pollution incident preparedness and response and the management and operational personnel;

(p) provide support for research and development in the local development of methods, materials and equipment for oil and HNS spill detection and response;

(q) act on behalf of the Government of Guyana in requesting assistance from, or rendering assistance requested by, other State Parties to the Convention;

(r) take appropriate measures to facilitate the assistance being rendered by other States under the Convention;

(s) co-operate with the Organisation and other national, regional and international organisations in the promotion and exchange of results of any research and development programme relating to the enhancement of the state of the art of the oil pollution preparedness and response, including technologies, techniques for surveillance, containment, recovery, disposal and clean up to the best practical extent;

(t) establish agreements with neighbouring countries regarding the rapid movement of equipment, personnel and supplies into and out of the countries for emergency pollution incident response activities;

(u) where appropriate, establish directly or, through relevant regional organisations or arrangements, the necessary links between research institutions within Guyana and those of other State Parties to the Convention;

(v) where appropriate, co-operate directly or through relevant regional organisations or arrangements to promote, as appropriate, the holding on a regular basis of international symposia on relevant subjects, including technological advances in pollution incident combating techniques and equipment;

(w) where appropriate, co-operate directly or through other competent international organisations, the development of standards for compatible pollution incident combating techniques and equipment

(x) such other functions as may be directed by the Board or as may be necessary for the effective implementation of this Act.

Appointment of the Director General and Deputy Director

7. (1) The President shall, on the recommendation of the Minister, appoint the Director General and Deputy Director General of the Civil Defence

General

Commission.

(2) The Director General assisted by the Deputy Director General shall carry out the functions of the Commission.

(3) The Deputy Director General shall act as Director General during any vacancy in that office or if the Director General is absent.

Terms and Conditions of appointment of Director and Deputy Director

8. (1) The terms and conditions of the appointment of the Director General and Deputy Director General, including their terms of office shall be such as determined by the Minister.

(2) The appointment of the Director General and Deputy Director General shall be for a period not less than three years and not more than five years.

(3) The Director and Deputy Director General shall be eligible for reappointment.

Functions of the Director General

9. (1) The Director General shall –

(a) hold office on such terms and conditions as shall be specified in the letter of appointment;

(b) exercise general supervision over all matters relating to the work of the Commission and shall be responsible for the day to day administration of the Commission;

(c) develop and oversee an operational plan to guide the Commission in performing its functions;

(d) develop an economic efficient and cost effective internal management structure;

(e) as soon as practicable but within three months after the end of each financial year submit to the Minister a report on how the Commission has discharged its functions during the financial year;

(f) co-operate with stakeholder agencies and organisations in matters related to disaster response management.

(g) provide advice as required on all matters which fall within the scope of the Commission's responsibility;

(h) undertake any other function as determined by the Minister for the implementation of this Act.

(2) The Director General may delegate the exercise of any powers or the performance of any duties conferred or imposed by this Act or any other law.

(3) Any act done by a person referred to in subsection (2) in exercise or performance of any power, right or duty conferred or imposed by this Act or any other law shall have the same effect as if done by the Director General.

Appointment of other staff

10. (1) For the purposes of carrying out the functions of the Commission under this Act the following public officers shall be appointed –

(2) The Commission shall have such other officers and employees as may be necessary for the proper and effective performance of its functions under this Act.

(3) The Commission may engage the services of such experts and consultants as may be necessary for the conduct of the work of the Commission.

(4) The Director General shall appoint such staff for the Commission,

with the approval of the Minister as to the numbers, remuneration and other terms and conditions of service, the Director General considers necessary for the discharge of the functions of the Commission.

Source of Funding

11. (1) The Commission shall have an annual financial allocation which shall consist of the following –

(a) funds determined by the National Assembly based on a budget recommended by the Minister;

(b) any grants, gifts, donations or other endowments given to the Commission;

(c) such funds as may vest in or accrue to the Commission in the performance of its functions under this Act or any written law

(2) Any gifts, funds, donations, grants or other endowments to the Commission shall be disclosed to the Minister and made public before use.

Remuneration

12. The remuneration of the Director General, Deputy Director General and staff of the Commission shall be paid out of the funds provided by the National Assembly.

Accounts and audit

13. (1) The Commission shall keep proper records of accounting and in such form as approved by the office of the Auditor General.

(2) The Commission shall submit its financial records to be audited by the Auditor General within six months of the end of each financial year and in accordance with the Audit Act.

Exemption from taxation

14. (1) The Commission, its assets, property, income, operations and transactions are exempt from all taxation including customs duties, capital gains tax, income tax, and property tax.

(2) No taxation of any kind shall be levied on any obligation or security issued by the Commission.

Immunity.

15. No proceedings or other action shall be brought or instituted against the Director or member of the Commission staff, or any person acting on behalf of the Commission for any act done in good faith in the performance or intended performance of any duty under this Act, in the exercise or intended exercise of any power under this Act, or for any default in the performance or exercise in good faith of any such power or duty.

Custody and authentication of the seal of the Commission

16. The official seal of the Commission shall be in a form determined by the Board and approved by the Minister and shall be kept in the custody of the Secretary and shall be authenticated by the signatures of the Chairperson and the Secretary or any person performing the functions of Chairperson or Secretary.

Power of the Minister to give directions to the Commission

17. (1) The Minister may give to the Commission general directions –

(a) as to any policy to be observed and implemented by the Commission in the discharge of its functions;

(b) for the organisation of the Commission to enable it to discharge its functions, including the size of the establishment, the employment of staff and the terms and conditions of employment, the provision of equipment and use of funds. The Commission shall comply with such directions.

(2) In the exercise of its functions in relation to training, education and research, the Commission shall act in accordance with a programme approved by the Minister.

(3) The Minister shall be furnished with annual estimates and returns and any other information required by him in relation to the functions and business of the Commission.

(4) The Minister may require the Commission to provide such facilities as will enable the verification of information furnished in pursuance of this section.

PART III
BOARD OF DIRECTORS OF THE CIVIL DEFENCE COMMISSION

Board of Directors

18. (1) The Commission shall have a Board of Directors which shall be the governing body of the Commission.

(2) The Board of Directors shall have a life of three years from the date of commencement, provided that the Minister, with the approval of Cabinet, may terminate the life of the Board at any time.

(3) Where the Board of Directors has not been appointed or is not functioning, the Minister shall discharge the functions of the Board provided that the Minister shall not perform the functions beyond thirty days.

(4) The Board of Directors shall consist of –

(a) the Chairperson, who shall be appointed by the Minister, and who shall have proven knowledge and experience in disaster management co-ordination and marine environmental protection matters or international maritime law or law of the sea matters;

(b) the Director General, appointed under section 7;

(c) a representative each of the following bodies –

(i) Department of Environment;
(ii) Maritime Administration Department;
(iii) Guyana Civil Aviation Authority;
(iv) Guyana Defence Force Coast Guard;
(v) Guyana Police Force Marine Branch;
(vi) Guyana Fire Service;
(vii) Environmental Protection Agency;
(viii) Ministry of Health;
(ix) Petroleum Commission of Guyana;
(x) Department of Fisheries;
(xi) Transport and Harbours Department;
(xii) National Frequency Management Unit;
(xiii) Ogle International Airport Incorporated;
(xiv) Shipping Association of Guyana

(5) A representative from each of the following stakeholders may be appointed to the Board –

(i) Oil or Chemical Companies registered to trade in Guyana;

(ii) Environmental or Marine Conservation Civil Society Organisation;

(iii) Any other sector

(6) The Chairperson and other members of the Board, except the Director General, shall be appointed by the President on the recommendation of the Minister.

(7) The Minister shall appoint the Secretary to the Board who shall not be a member of the Board.

(8) The Board shall be responsible and answerable to the Minister for the execution of its policy, functions and duties as well as any directions and assignments given to it by the Minister under the provisions of this Act.

Gazetting of appointments

19. The names of members of the Board as first constituted and every change in membership, including the termination of the life of the Board, shall be notified in the Gazette.

Disqualification from appointment to the Board

20. (1) A person shall not be appointed to the Board who –

(a) has been convicted of an offence involving fraud or dishonesty by a competent court in Guyana or elsewhere;

(b) has been convicted of an offence and sentenced to imprisonment by a competent court in Guyana or elsewhere; or

(c) is an undischarged bankrupt or has made any assignment or arrangements with his or her creditors.

Term of office of Board Members

21. A member of the Board, except the Director General, may hold office for a renewable term of three years.

Termination of appointment of Board Members

22. (1) A member of the Board may, at any time, resign his office by giving notice in writing delivered to the Minister.

(2) The Minister may revoke the appointment of any member of the Board who contravenes or fails to comply with the provisions of this Act. The Minister may also revoke the appointment of any member –

(a) if information relating to the conduct of a member, which could have precluded his or her appointment if it had been made available to the Minister, is brought to the attention of the Minister;

(b) for incompetence;

(c) for misbehavior or misconduct;

(d) for inability to perform the functions of his or her office arising from infirmity of body or mind; or

(e) for bankruptcy or insolvency.

(3) Where it appears to the Minister that there is cause to revoke the appointment of a member under subsection (2), the Minister shall notify the member in writing and shall give the member an opportunity to submit his explanation or response, which shall be duly considered by the Minister.

(4) Where it is the Minister's decision to revoke the appointment, that member shall not be entitled after the revocation to any benefits that may be payable to him or her.

Remuneration of Board Members

23. The Chairperson and members of the Board shall be paid such remuneration as the Minister may determine.

Filling of vacancies on the Board

24. (1) Where a member of the Board resigns, dies, is removed from office or is for any other reason unable to act as a member of the Board, the Minister shall, within one month of the occurrence of the vacancy, appoint another person to hold office for the remainder of the term of the

previous member, such appointment to be made in accordance with the provisions of this Act.

(2) Where the member of the Board referred to in subsection (1) is the Chairperson, the Minister shall, within one month of the occurrence of the vacancy, appoint one of the Board members to hold the office of Chairperson for the unexpired portion of the Chairperson's term of office.

Committees of the Board

25. (1) The Board may appoint such committees as are required to effectively carry out its functions –

(a) to inquire into and advise the Board on any matter concerning the functions of the Board as it may refer to the committee; and

(b) to exercise such powers or perform such functions of the Board as the Board may delegate or refer to the committee.

(2) A committee appointed under subsection (1) shall consist of a Chairperson who shall be a member of the Board and other members of the committee as the Board may determine whether members of the Board or not.

(3) The Board shall, in writing, specify the terms and conditions of service of the members of a committee appointed under this section.

(4) Members of a committee appointed under this section shall be paid such allowances as the Board may determine.

(5) The Board may require a committee appointed under this section to act jointly or in co-operation with any other committee.

(6) Subject to any direction given by the Board, a committee appointed under this section shall be regulated in the manner prescribed by the Board.

Functions of the Board

26. (1) Subject to this Act, the Board is responsible for the general direction and supervision of the Commission and shall be the policy directive arm of the National Preparedness, Response and Co-operation system outlined in Part IV of this Act.

(2) Without limiting the generality of subsection (1), the Board shall –

(a) oversee the operations of the Commission;

(b) establish and approve rules and procedures for appointment, promotion, termination, discipline, and terms and conditions of service of the staff of the Commission;

(c) approve the guidelines and rules and regulations issued by the Commission for the proper implementation of this Act;

(d) provide such advice and policy guidance to the Commission in the preparation of the National Contingency Plan;

(e) provide guidance to the Director General and staff of the Commission for the proper implementation of this Act;

(f) review and approve the National Contingency Plan prepared by the Commission;

(g) enlist the support and co-operation of any department or agency of the Government to assist the Commission in the performance of its functions under this Act; and

(h) perform any function conferred by this Act or which may be necessary for the proper implementation of this Act.

Meetings of the Board

27. (1) The Chairperson shall convene every meeting of the Board at times

and places as the Board may determine, and the Board shall meet for the discharge of business at least once every month, and the Board shall determine the methods for the holding of meetings.

(2) The Chairperson may, at any time, convene a special meeting of the Board and shall also call a meeting within fourteen days, if requested to do so in writing by at least one third of the members of the Board.

(3) Notice of a Board meeting shall be given in writing to each member at least two weeks before the day of the meeting.

(4) In case of a pollution incident by oil or HNS, the Board shall meet immediately at the request of the Chairperson and at such place that the Chairperson decides.

(5) The Chairperson shall preside at every meeting of the Board and in the absence of the Chairperson; the members present shall appoint a member from among themselves to preside at that meeting.

Quorum

28. (1) The quorum for a meeting of the Board is a simple majority of the members appointed.

(2) All decisions at a meeting of the Board shall be by a majority of the votes of the members present and voting and in the case of an equality of votes, the person presiding at the meeting shall have a casting vote in addition to his deliberative vote.

(3) All members except the Director General shall have the right to vote.

Minutes of the meetings

29. (1) The Board shall cause to be recorded and kept, minutes of all meetings of the Board in a form approved by the Board.

(2) The minutes recorded under this section shall be submitted to the Board for confirmation at its next meeting following that to which the minutes relate and when so confirmed, shall be signed by the Chairperson, in the presence of the members present at the latter meeting.

Power to co-opt

30. (1) The Board may invite any person who, in the opinion of the Board, has expert knowledge concerning the functions of the Board, to attend and take part in the proceedings of the Board.

(2) A person attending a meeting of the Board under subsection (1) may take part in any discussion at the meeting on which his advice is required but shall not have any right to vote.

Validity of proceedings

31. The validity of any proceedings of the Board shall not be affected by a vacancy in its membership or by any defect in the appointment or qualification of a member or by reason that a person not entitled, took part in its proceedings.

Disclosure of interest

32. (1) A member of the Board who is in any way directly or indirectly interested in a contract made or proposed to be made by the Board, or in any other matter which falls to be considered by the Board, shall disclose the nature of his interest at a meeting of the Board.

(2) A disclosure shall be recorded in the minutes of that meeting.

(3) A member who makes a disclosure shall not –

(a) be present during any deliberation of the Board with respect to that matter; or

(b) take part in any decision of the Board with respect to that matter.

(4) For purposes of determining whether there is a quorum, a member withdrawing from a meeting or who is not taking part in a meeting under

subsection (3) shall be treated as being present.

Regulation of procedure

33. Subject to this Act, the Board may regulate its own procedure or any other matter relating to its meetings.

PART IV
NATIONAL SYSTEM FOR PREPAREDNESS, RESPONSE AND CO-OPERATION

National Contingency Plan

34. (1) The national contingency plan for prompt and effective preparedness and response shall be developed by the Commission and approved by the Board within twelve (12) months of the coming into operation of this Act.

(2) The plan shall take into account –

(a) The designation of –

(i) the competent national authority with responsibility for pollution preparedness and response in accordance with this Act;

(ii) the national operational contact point responsible for the receipt and transmission of pollution incident reports; and

(iii) the authority to act on behalf of the Government of Guyana to request assistance or to decide to render the assistance requested.

(b) the organisational relationship of the various bodies, departments and agencies involved, whether public or private;

(c) a programme of activities and exercises for pollution incident response and the training of management and operational personnel;

(d) detailed plans and communication capabilities for pollution incident response;

(e) arrangements to co-ordinate the response to a pollution incident;

(f) mechanisms to mobilise the necessary resources and capabilities within the response system;

(g) a minimum level of prepositioned pollution combating equipment and the programme for the use of such equipment; and

(h) guidelines developed by the Organisation.

(3) The plan shall be reviewed and updated by the Commission every five years.

(4) Any amendment or update of the plan shall be submitted to the Board for its consideration and approval.

Pollution Incident Emergency Plans

35. (1) Every ship to which this Act applies shall have on board at all times, a shipboard pollution incident emergency plan in accordance with the guidelines for the development of ship board pollution incident emergency plans as set out in the First Schedule.

(2) Every –

(a) offshore unit to which this Act apply; and

(b) seaport and oil and HNS handling facility to which this Act apply;

shall have a pollution incident emergency plan in accordance with this Act

(3) There shall be a separate plan for each offshore unit, seaport and oil and HNS handling facility except that –

(a) there may be joint plans between oil and HNS handling facilities within an area;

(b) there may be joint plans in respect of offshore installations and oil and HNS handling facilities which are pipelines associated with that

installation.
(4) (a) Subject to sub-sections 5 and 8 below, within twelve (12) months of the coming into force of this Act, the operator(s) of every offshore unit or seaport and oil and HNS handling facility, to which this Act applies, shall submit a Pollution Incident Emergency Plan relating to its facility or offshore installation, to the Commission for approval; and
(b) in preparing a Pollution Incident Emergency Plan, an operator shall take into account any guidance and related manuals issued by the Commission.
(5) (a) Where, after the coming into force of this Act –
(i) a seaport and oil and HNS handling facility or pipeline is established, or
(ii) in respect of an offshore installation, activities are commenced on the site of drilling for the production of oil, storage, loading or offloading of oil occurs;
sub-section (4) above shall apply to require the submission of a plan at least two months before such seaport and oil and HNS handling facility is established or in respect of an offshore installation activities are commenced on the site;
(b) n relation to a seaport and oil and HNS handling facility referred to in paragraph (a) of this sub-section, where there is no operator at that time, sub-section (4) above shall apply to require the submission of Pollution Incident Emergency Plan by the promoter of the proposed seaport and oil and HNS handling facility pursuant to the provisions of this Act; and
(c) in relation to paragraph (b) of this sub-section, as part of the submission of a plan by the promoter of the seaport and oil and HNS handling facility, a seabed-sensitivity study report up to 500 metres from the extremity of seaport and oil and HNS handling facility and 50 metres either side of the underwater pipeline route, shall be produced and submitted to the Commission.
(6) Every seaport and oil and HNS handling facility or pipeline operator shall fully review its pollution incident emergency plan including its seabed sensitivity study not later than five years after submission of the plan in accordance with sub-section (3) or (4) of this section, as applicable and re-submit a plan within that period.
(7) Where any major change occurs, which affects or may affect the validity or effectiveness of a plan to a material extent, the operator in question shall submit a new plan or amendments to the existing plan, within three months of such change becoming known to that operator.
(8) Every seaport and oil and HNS handling facility operator shall undertake a table top management exercise of its oil pollution emergency plan annually and at least every two years, may undertake a full equipment deployment and mobilisation exercise of its pollution incident emergency plan and in each case, shall notify and invite the Commission to monitor the exercise.
(9) Further to sub-section (8) above, where any deficiencies are identified which affect or may affect the validity or effectiveness of a plan, the operator in question shall amend the existing plan, within three

months of the exercise and re-submit the plan to the Commission within that period.

(10) Where the Commission considers that any plan or amended plan submitted under sub-sections (4), (5) or (6) above is not –

(a) compatible with the National Contingency Plan for the time being in force; or

(b) appropriate for dealing with pollution incidents which may occur in the area in which the operator has jurisdiction or exercises responsibility the Commission may, after consultation with the operator, direct that the plan should be altered and re-submitted accordingly.

(11) It shall be the duty of the operator to alter the plan in accordance with any directive issued pursuant to sub-section (10) above.

(12) It shall be the duty of every operator to implement its Pollution Incident Emergency Plan approved or altered under this Act in the event of a pollution incident.

Inspection

36. (1) Any ship entering or leaving a seaport, handling facility or offshore unit shall be subject to inspection, by the officers duly authorised by the Commission, in order to verify that it has on board a pollution incident emergency plan in accordance with the provisions of this Act.

(2) Seaports, and oil and HNS handling facilities and offshore units shall be subject to random inspection by the duly authorised officers.

PART V
REPORTS AND COMMUNICATION

Pollution incident reporting procedures

37. (1) The master or any other person having charge of a ship registered in Guyana shall where he observes within or outside Guyana waters or otherwise becomes aware of any event involving discharge, emission or release of oil or HNS at sea from his ship, another ship or from an offshore unit, regardless of quantity, report the event without delay, where the discharge, emission or release occurs in Guyana waters, to the Commission and where outside Guyana waters, to the nearest Coastal State.

(2) The master of a foreign ship in Guyana waters, who observes or otherwise becomes aware of any event involving discharge, emission or release of oil or HNS at sea from his ship, another ship or from an offshore unit, regardless of quantity, shall report the event without delay to the Commission.

(3) An individual having charge of an offshore unit or a seaport and oil and HNS handling facility, who observes or otherwise becomes aware of any event involving discharge, emission or release of oil or HNS at sea from another installation or a ship, regardless of the quantity of oil involved, shall without delay report the event to the Commission.

(4) The following officials shall report without delay any observed event at sea or at a seaport and oil and HNS handling facility involving a discharge, emission, release or presence of oil or HNS to the Commission –

(a) officers of the Coast Guard, Police Force, Customs, Immigration Service or Maritime Administration;

(b) marine pilots; and

(c) any other officials designated by the Minister for the purposes of this

sub-section.

(5) Any other person who becomes aware of any event involving discharge, emission or release of oil or HNS into sea from a ship, offshore unit or oil and HNS handling facility, regardless of quantity of oil, shall without delay, report the event to the Commission.

(6) Reports under this section shall be made in accordance with the Standard Reporting Requirements as set out in Second Schedule

(7) Reports shall be made using the fastest telecommunications channels available with the highest possible priority.

Action on receiving a pollution incident report

38. (1) When the Commission receives a report referred to in section 36, or pollution incident information provided by any other source, it shall –

(a) assess the situation to determine whether it is an oil or HNS pollution incident;

(b) assess the nature, extent and possible consequences of the oil or HNS pollution incident;

(c) without delay inform all States whose interests are affected or likely to be affected by such oil or HNS pollution incident, and –

(i) provide details of its assessments and any action it has taken, or intends to take, to deal with the incident; and

(ii) furnish any other or further information as considered appropriate until the action taken to respond to the incident has been concluded or until joint action has been decided by such States.

(2) In the event of a severe pollution incident, the Commission should provide the information derived from sub-section (1) (a) and (b) of this section, to the Organisation directly, or as appropriate through the relevant regional organisation or arrangement, and other States where necessary, for further action.

(3) When exchanging information and communicating with other States and with the Organisation, the Commission shall, in so far as it is practicable, comply with the reporting system contained in the Third Schedule.

(4) Upon recognition of a pollution incident that has the potential to become of national significance, the Commission may activate all or part of the National Contingency Plan as appropriate.

(5) Upon confirmation of a pollution incident as being of national significance, the Commission shall –

(a) activate all or part of the National Contingency Plan;

(b) take steps to organise and coordinate the mitigation and prevention of any further pollution;

(c) initiate and pursue clean-up strategies and activities;

(d) monitor and evaluate the extent of the pollution and efforts by all parties in the clean-up and control;

(e) ensure and encourage the deployment of stockpiles of equipment and dispersants; and

(f) request for regional and international assistance.

International co-operation in pollution response

39. (1) The Commission, with the concurrence of the Board, shall co-operate and provide advisory services, technical support and equipment for the purpose of responding to a serious pollution incident, upon the request of any State Party to the Convention affected or likely to be

affected.

(2) The financing of the costs for such assistance shall be subject to reimbursement by the requesting State and shall be in accordance with the provisions set out in the Fourth Schedule.

(3) Where Guyana is the State in need of assistance, the Commission may ask the Organisation to assist in identifying sources of provisional financing of the costs.

(4) In accordance with applicable international agreements, the Commission shall take necessary measures to facilitate –

(a) the arrival and utilisation in, and departure from, its territory of ships, aircraft and other modes of transport engaged in responding to an oil pollution incident or transporting personnel, cargoes, materials and equipment required to deal with such an incident; and

(b) the expeditious movement into, through and out of Guyana of personnel, cargoes, materials and equipment referred to in paragraph (a).

Research and development

40. (1) The Commission shall co-operate directly or, through relevant regional organisations or arrangements in the promotion and exchange of results of research and development programmes relating to the enhancement of the state-of-the-art oil pollution preparedness and response, including technologies and techniques for surveillance, containment, recovery, dispersion, clean-up and otherwise minimising or mitigating the effects of oil and HNS pollution, and for restoration.

(2) The Commission shall, where appropriate, establish directly or, through relevant regional organisations or arrangements, the necessary links between research institutions within Guyana and those of other State Parties to the Convention.

(3) The Commission shall, where appropriate, co-operate directly or through relevant regional organisations or arrangements to promote, as appropriate, the holding on a regular basis of international symposia on relevant subjects, including technological advances in oil pollution combating techniques and equipment.

(4) The Commission shall, where appropriate, co-operate directly or through other competent international organisations, the development of standards for compatible oil pollution combating techniques and equipment.

(5) The activities referred to in this section may be carried out through the Organisation, and for such purposes the Commission shall liaise with the Organisation.

Technical co-operation

41. (1) The Director General shall, where appropriate, directly or through international bodies, as appropriate, in respect of pollution preparedness and response, provide support for those State Parties to the Convention which request technical assistance –

(a) to train personnel;

(b) to ensure the availability of relevant technology, equipment and

facilities;

(c) to facilitate other measures and arrangements to prepare for and respond to oil pollution incidents; and

(d) to initiate joint research and development programmes.

(2) The Commission shall, where appropriate, co-operate in the transfer of technology in respect of oil pollution preparedness and response.

(3) The support and transfer of technology referred to in this section may be provided through the Organisation, and for such purposes, the Director General shall liaise with the Organisation.

Bilateral and multilateral co-operation in preparedness and response

42. The Commission, with concurrence of the Board, may enter into bilateral or multilateral arrangements for oil and HNS pollution preparedness and response, and in such circumstances, the Director General shall send to the Organisation, copies of relevant instruments or documents relating to such arrangements.

PART VI
MISCELLANEOUS

Stockpile of dispersants

43. (1) The operator of an oil and HNS handling facility or offshore unit shall at all times keep a stock of not less than 10,000 litres of readily usable dispersants which is appropriate for the type of oil or HNS the oil and HNS handling facility or offshore unit handles, and it shall comply with the specifications set out in the Fifth Schedule to this Act which may change from time to time without prior notice.

(2) The operator shall keep the dispersants at the facility or installation in such a manner as to be readily accessible to the operator and the Commission.

(3) The operator shall, when so required by the Commission, submit samples of dispersants kept under this regulation for testing and certification or provide a valid Certificate of the date of testing the dispersant.

(4) All costs incurred in connection with the testing and certification of dispersants shall be borne by the operator or owner of the facility or installation.

(5) A person shall not use any dispersant which does not comply with the specifications set out in the Fifth Schedule of this Act for the purpose of eliminating or reducing any oil or HNS pollution.

(6) The Commission shall at all times keep a stock of not less than 10,000 litres of readily usable dispersants which comply with the specifications set out in the Fifth Schedule of this Act at all its operational offices in a manner that they shall be readily accessible and deployable in the event of an oil or HNS pollution incident

Stockpile and

44. (1) The operator of a seaport and oil and HNS handling facility or

maintenance of equipment

offshore unit shall at all times maintain at their operational offices, facility or installation, a minimum level of prepositioned oil spill combating equipment, including the items specified in the Sixth Schedule of this Act, that is appropriate for the type and quantity of oil or HNS that the operator's pollution incident emergency plan may be utilised to effectively combat an oil or HNS pollution incident spill from the seaport and oil handling and HNS facility or offshore unit.

(2) The operator of a seaport and oil and HNS handling facility or offshore unit shall –

(a) submit to the Commission an annual return of the inventory of the stockpiled equipment;

(b) maintain an inventory of all equipment owned by the operator; and

(c) certify that the equipment is maintained and exercised in a condition ready for immediate deployment at any time required.

(3) The Commission may from time to time

(a) visit the seaport and oil and HNS handling facility or offshore unit to audit the equipment stockpile and the maintenance records; and

(b) request for a sample of equipment to be taken out of the stockpile to assess its working condition.

(4) The operator or owner of the seaport and oil and HNS handling facility or offshore unit shall comply with the request made under sub-section (3) of this section.

Requirement to co-operate with Commission

45. (1) In the event of an oil or HNS pollution incident, the operator of a seaport and oil and HNS handling facility or offshore unit shall, upon the request of the Commission, provide to the Commission the dispersants and equipment kept under sections 42 and 43, respectively.

(2) The operator shall render such assistance and services as may be required by the Commission for eliminating or reducing the oil or HNS pollution.

Polluter Pay Principle

46. (1) Notwithstanding any provision contained in this Act, the recognised source of the pollution damage shall bear responsibility for the costs of responding to the oil or HNS pollution incident.

(2) The provisions of this Act shall not be interpreted so as to prejudice the rights of the Commission to recover from third parties the costs of actions taken to deal with pollution or the threat of pollution under other applicable legislations and rules for the time being in force nationally and internationally.

(3) Every ship and operator of a seaport and oil and HNS handling facility or offshore unit to which this Act applies must show evidence of readiness to deal with its pollution incidents, including without limit to –

(a) an approved pollution incident emergency plan;

(b) adequate stockpile of oil and HNS pollution incident combating equipment and dispersants; and

(c) evidence of contract with accredited oil and HNS pollution incident responder.

Offences and penalties

47. A master or owner of a ship or operator of a facility within Guyana waters to which this Act applies who –

(a) fails to submit or re-submit a Pollution Incident Emergency Plan in accordance with sections 34(3), (4) or (5) of this Act;

(b) does not maintain a Pollution Incident Emergency Plan, as approved, with alterations directed by the Commission, under section 34(4) to (l0) of this Act;

(c) fails to implement its Pollution Incident Emergency Plan in contravention of section 34(12) of this Act; or

(d) denies access to a Commission appointed inspector,

commits an offence and shall be liable on conviction to a fine of not less than _____ Million Guyana Dollars or imprisonment for a term not exceeding _____ years or to both.

(2) A person who fails to make a report under the provisions of section 36 of this Act, without reasonable cause, commits an offence and shall be liable on conviction to a fine of not less than _____ Million Guyana Dollars or imprisonment for a term not exceeding _____ years or to both.

(3) The Commission may impose administrative fines, not exceeding the amount of the fines provided in this section, for the non-compliance of any provision in this Act.

Fees

48. Fees payable in respect of any approval of a Pollution Incident Emergency Plan and any renewal, amendments and late submission thereof shall be established from time to time by the Commission.

Exemption

49. The Commission may, either absolutely or subject to such conditions as the Commission may deem fit, exempt from any of the provisions of this Act any person to whom this Act applies if the Commission is satisfied that compliance with the provisions is either impracticable or unreasonable.

General power to make regulations

50. Without prejudice to any other power to make regulations conferred upon the Minister by this Act, the Minister may make regulations generally for carrying this Act into effect and may by such regulations provide for anything which is to be or may be prescribed under this Act.

Repealing Clause

51. All laws, regulations and rules or parts thereof which are inconsistent with the provisions of this Act are hereby amended or repealed accordingly.

FIRST SCHEDULE

Section 34

SHIP BOARD POLLUTION INCIDENT EMERGENCY PLANS

GUIDELINES

(1) Every oil tanker of 150 tons gross tonnage and above and every ship other than an oil tanker of 400 tons gross tonnage and above shall carry on board a shipboard pollution incident emergency plan approved by the Commission. In the case of ships built before 4 April 1993 this requirement shall apply 24 months after that date.

(2) Such a plan shall be in accordance with guidelines (MEPC.54(32), as amended, developed by the Organisation and written in the working language of the master and officers. The plan shall consist at least of-.

(a) the procedure to be followed by the master or other persons having charge of the ship to report an oil pollution incident, as required in the guidelines established by the Commission;

(b) the list of authorities or persons to be contacted in the event of an oil pollution incident;

(c) a detailed description of the action to be taken immediately by persons on board to reduce or control the discharge of oil following the incident; and

(d) the procedures and point of contact on the ship for coordinating shipboard action with national and local authorities in combating the pollution.

SECOND SCHEDULE

Section 36

STANDARD REPORTING REQUIREMENTS

Any report under section 36 shall be made in accordance with the General Principles for Ship Reporting Systems and Ship Reporting Requirements, including Guidelines for Report Incidents Involving Dangerous Goods, Harmful Substances and/or Marine Pollutants, adopted by the Organisation (Resolution A.851(20) as amended by resolution MEPC.138(53)).

1. Any report shall include:

(a) identity of the ships involved;

(b) time, type and location of incident;

(c) quantity of oil involved or estimate thereof; and

(d) assistance and salvage measures.

2. Any person who is obliged under the provisions of this Act to send a report shall so soon thereafter:

(a) supplement the initial report, as necessary and provide information concerning further developments; and

(b) comply as fully as possible with requests from the Commission or affected States for additional information.

3.Reports shall be made by using the fastest telecommunications channels available with the highest possible priority.

THIRD SCHEDULE

Section 37

POLLUTION INCIDENT COMMUNICATION FORM

Address:

To:

Date time group:

Identification: CDC-GUYANA

1	Date and Time	
2	Position	
3	Incident	
4	Position and/or extent of pollution on the sea	
5	Characteristics of pollution	
6	Source and cause of pollution	
7	Wind direction and speed	
8	Current direction and speed and/or tide	
9	Sea state and visibility	
10	Drift of pollution	
11	Forecast of likely effect of pollution and zones affected	
12	Identity of observer/reporter. Identity of ships on scene	
13	Action taken	
14	Photographs or samples	
15	Names of other states and organisations informed	
16	Spare	
17	Request for assistance	
18	Cost	
19	Pre-arrangements for the delivery of assistance	
20	To where assistance should be rendered and how	
21	Acknowledge	

FOURTH SCHEDULE

Section 38

POLLUTION INCIDENT ASSISTANCE REIMBURSEMENT FORM

To:

Incident date:

Date claim submitted:

Identification:

	RESOURCES	COST
1	Aerial Activity (Helicopters and other aircraft)	
2	Maritime Activity (Coast Guard vessels; launches etc)	
3	Response Resources (Vehicles and equipment)	
4	Personnel (Salaries etc)	
5	Expenses (Associated with personnel)	
6	Subcontractors 1. Equipment 2. Personnel	
7	Miscellaneous 1. Other third-party services and purchases, including consumable items.	

FIFTH SCHEDULE

Section 42

SPECIFICATIONS OF DISPERSANTS

1. The flash point of the dispersant shall not be less than 65°C (150°F) and shall be in accordance with a defined testing standard approved by the Commission, the Guyana Energy Agency or other relevant regulatory authorities.

2. The dispersion capacity of the dispersant shall not be more than 1 part of dispersant to 1 part of marine fuel oil of viscosity not less than 300 seconds (Redwood 1) at 50°C (l22°F) and shall be in accordance with a defined testing standard approved by the Commission.

3. The biodegradability of the surface-active agent shall not be less than 9000n the average of the results of the seventh and eighth day from the commencement of the test at 37°C (99°F) which shall be in accordance with a defined testing standard approved by the Commission.

4. The toxicity of the dispersant using glass fish (*Chanda gymocephalus*) as a standard test organism shall be as follows: The mixture of the dispersant and the standard marine fuel oil (MFO V1100/ 1200) in the ratio of 1:1shall have a 96-hour LC 50 value of not less than 100mg per litre as measured by the method of the Ministry of Agriculture or other relevant regulatory authorities.

5. The dispersant shall not contain aromatic hydrocarbons and chlorinated hydrocarbons in concentrations greater than(a) total aromatic hydrocarbons 3% (b) total chlorinated hydrocarbons 0.05 mg per litre.

SIXTH SCHEDULE

Section 43

EQUIPMENT AT FACILITY OR INSTALLATION

1. At least one marine craft specifically suited for day and night counter pollution operations, equipped with a complete set of dispersant spray booms as approved by the Commission, from which dispersants can be applied on to the sea surface with at least 2,000 litres of dispersants which shall comply with the specifications set out in the Fifth Schedule to this Act, on board.

2. All boom is to have at least one ISO international boom connector per 300 metres of boom for connecting dissimilar booms, with a minimum of 300 meters of boom recognised as being appropriate in the oil pollution emergency plan for the oil at risk of being spilt.

3. At least 12 knapsack sprayers each of 20 litre capacity and at least 2 dispensing pumps, and suitable VHF radio telephone sets as approved by the National Frequency Management Unit (NFMU) on a frequency to be specified by the Commission, for beach cleaning operations.