SUMMARY

Executive summary: The purpose of this document is to assist the Committee in the finalization of the Manual on Chemical Pollution to address legal and administrative aspects of HNS incidents.

Strategic direction: 7.1

High-level action: 7.1.2

Planned output: 7.1.2.7

Action to be taken: Paragraph 5

Related documents: MEPC 65/22, MEPC 65/8 and OPRC-HNS/TG 14/3

1 This document comments on the draft Manual on Chemical Pollution to address legal and administrative aspects of HNS incidents, as set out in the annex to document OPRC-HNS/TG 14/3.

2 At MEPC 65, the Committee was invited to approve the draft Manual on Chemical Pollution to address legal and administrative aspects of HNS incidents. The Committee agreed to refer the matter to MEPC 66 to give the Parties additional time to review the document and submit any recommended changes (MEPC 65/22, paragraph 8.5).

3 The United States commends the work of the Technical Group in preparing the draft Manual on Chemical Pollution to assist countries by providing guidance on the legal and administrative aspects of HNS incidents. Although it is understood that the Manual is not a legal instrument, the United States believes that the usefulness of the Manual would be enhanced if certain statements of legal principles set out in the Manual on Chemical Pollution were further refined, as set out in the annex to this document.
The changes proposed in the annex to this document were made to more accurately reflect the legal obligations and requirements of the Manual and the referenced authorities. In addition, in a few instances, small editorial corrections are included to correct the text. Only those paragraphs with proposed changes are shown in the annex, although the Manual sub-headings were also included for ease of reference. Deleted text is shown as strikethrough and added new text is shown as underlined. In those instances where additional explanation was necessary, it is included as a "Note" in italic text.

Action requested of the Committee

The Committee is invited to consider the proposed changes provided in this document and annex to refine the legal principles in the draft Manual on Chemical Pollution to address legal and administrative aspects of HNS incidents, as set out in the annex to document OPRC-HNS/TG 14/3 and take action as appropriate.

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ANNEX

PROPOSED CHANGES TO THE DRAFT MANUAL ON CHEMICAL POLLUTION

The United States have made comments and suggestions on the Draft PROPOSED SECTION FOR THE MANUAL OF CHEMICAL POLLUTION LEGAL AND ADMINISTRATIVE ASPECTS OF HAZARDOUS AND NOXIOUS SUBSTANCES (HNS) INCIDENTS.

Only those paragraphs with suggested changes are shown, with deleted text shown in strikethrough and added new text shown as underlined. When amplifying information for the change is included, it is shown as a Note in italic text.

PART I – INTRODUCTION

1.1 This section of the Manual on Chemical Pollution is intended to provide the reader, in particular on-scene commanders, response personnel, government entities and others involved in the management of and/or response to pollution incidents involving Hazardous and Noxious Substance (HNS) with an appreciation of the various interests involved in an HNS incident and its aftermath. This will include a general review of the international legal regimes governing the various aspects of HNS, ranging from prevention, preparedness and response through to liability and compensation. This section is not intended to provide an authorized or definitive commentary on the legal relationships between the various entities involved in an HNS pollution emergency or an interpretation of relevant international conventions, but rather to provide a guide to the various elements and instruments that must to be considered when establishing a comprehensive regime for addressing HNS.

1.2 There are three main IMO instruments governing the prevention, preparedness and response; and liability and compensation for HNS pollution incidents, as follows:

1.3 Other legal regimes such as bilateral or regional agreements and, to the extent consistent with international law, domestic legal regimes may also govern these topics. Depending on the legal instrument referred to, chemical substances may be identified in various ways, such as "hazardous and noxious substances", "noxious liquid substances in bulk", "and harmful materials and substances carried in packaged form", "dangerous goods" or more colloquially as "hazardous materials" or "hazmat". They all nevertheless address some form of pollution incident, which may involve a chemical or a combination of chemical substances.

1.6 The Protocol also requires ships, seaports and HNS handling facilities within a port, where there is a risk of HNS pollution into the sea, each Party to maintain HNS Pollution Contingency Plans. The seaports and HNS handling facilities are also required to establish and, within its capabilities, a minimum level of pre-positioned equipment for responding to pollution incidents. Each Party is also obliged to require its ships, and as appropriate its seaports and HNS handling facilities, to have pollution incident emergency plans or similar arrangements.

1.7 Following the adoption of the OPRC-HNS Protocol and recognizing the need for a benefit of liability and compensation instrument regimes for HNS pollution incidents, the International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances (HNS) by Sea was adopted in May 1996, providing regarding compensation to victims of maritime incidents involving HNS. The HNS Convention was adopted in May 1996 and aims to ensure adequate, prompt and effective compensation for damage to persons and property, costs of clean-up and reinstatement measures and certain economic losses caused by the maritime transport of hazardous and noxious substances (HNS).
PART II – ROLES AND FUNCTIONS OF ENTITIES WHICH COULD BE INVOLVED IN AN HNS POLLUTION EMERGENCY AND ITS AFTERMATH

There are many different entities involved in the transportation of HNS by sea. When a pollution incident involving HNS occurs, there are even more entities that will have a role and/or responsibilities and obligations, in order to protect life and to prevent or minimize damage to the marine environment. Part II attempts to identify the various players, define their respective roles, responsibilities and obligations, and the nature of the relationship between them, both for regular operations and during a marine pollution incident, in many pollution incident scenarios. In any given actual spill scenario, facts, entities, roles, relationships and functions may vary.

2.1 SHIPOWNER

2.1.2 The function of the shipowner is discussed here. The phrase “shipowner” is used throughout the Manual. However, in some cases a ship may be owned by more than one entity on a share basis, with the traditional denomination of 64ths being the common standard. In such cases, there is usually an agreement between the owners that one will take operational decisions on behalf of all, and joint ownership only becomes of particular interest when recovery of damages is sought. A schematic setting out the various entities that may be involved is set out in figure 1.

2.1.4 The interests within of the ship are, to a certain extent, protected under international law. For example, not only is there freedom of navigation on the high seas, but ships are generally also entitled to the right of innocent passage through the territorial sea. These rights of the ship are, however, affected in some cases where a marine pollution emergency occurs that threatens to or causes damage to the coastline of a State or its related interests, coastal State or its territorial sea. In such cases, however, the coastal State may, in accordance with international law and its own domestic law, take measures to protect its interests, take steps which interfere with those freedoms established under UNCLOS and the right of free passage through territorial seas.

2.1.5 The primary concern of the shipowner in a marine pollution emergency will be the preservation of life, followed by the preservation of property (ship and cargo) and the protection of the environment, especially if there is a significant release of HNS or oil. He will therefore be concerned about the protection of both his proprietary interest in the ship, the contractual obligations concerning the cargo, and the potential environmental consequences, given the shipowner’s strict liability under many regimes in the event of a pollution incident. The shipowner should liaise with all parties directly concerned with the position of the ship in the emergency, either directly through the master or his nominated agent.

2.1.6 In addition to the general rights and obligations concerning the operation of the ship, the shipowner or his nominated agent, will have typically has certain specific obligations concerning:

2.1.7 In 2000, amendments to MARPOL Annex II were adopted that added a new regulation 17 which requires ships of 150 gross tonnage and above certified for the carriage of noxious liquid substances (NLS) in bulk to carry a contingency plan on board identifying the procedures to be followed in the event of a spill or a probable spill of NLS. This requirement also includes procedures for notifying the relevant authorities coastal State in whose waters the spill occurs. The plan is called a Shipboard Marine Pollution Emergency Plan for Noxious Liquid Substances. (SMPEP/NLS). This new Annex II requirement is a similar requirement to regulation 37 of MARPOL Annex I, which requires ships carrying oil in bulk, either as cargo or bunkers, to have a contingency plan on board, referred to as a Shipboard Oil Pollution Emergency Plan (SOPEP).
2.1.8 The two planning requirements under MARPOL for oil and HNS are quite similar. Taking this into account and recognizing that ships certified for the carriage of noxious liquid substances that are carrying oil either as cargo or bunkers would require both plans on board, Annex II, regulation 17 and Annex I, regulation 37 allows for the two to be combined into a single plan called a Shipboard Marine Pollution Emergency Plan (SMPEP).

2.1.12 The Code requires addresses the need for a link between the company and those on board by providing that every company, as appropriate, should therefore designate a person or persons ashore that have direct access to the highest level of company management. The responsibility and authority of the designated person ashore (DPA) should include monitoring the safety and pollution prevention aspects of the operation of each ship and ensure that adequate resources and shore-based support are available, as required.

2.1.13 The Code requires provides for the establishment of procedures for the preparation of plans and instructions for key shipboard operations concerning the safety of the ship and the prevention of pollution (section 7). The various tasks are to be defined and assigned to qualified personnel.

2.1.14 The Code also requires provides for the establishment of procedures to identify and respond to potential emergency shipboard situations, including a programme for drills and exercises to prepare for emergency actions and measures ensuring that the Company’s organization can respond at any time to hazards, accidents and to that ship (section 8). In the ISM Code, the Company means "the owner of the ship or any other organization or person such as the manager, or the bareboat charterer, who has assumed the responsibility for operation of the ship from the shipowner and who, on assuming such responsibility, has agreed to take over all duties and responsibility imposed by the Code".

2.1.15 The shipowner Reporting is obliged under both MARPOL (article 8 and Protocol I) and the OPRC- HNS Protocol (article 3), and may also be obliged by other international (e.g. bilateral or regional) agreements and applicable national law, to notify the nearest coastal State to ensure relevant authorities are aware of any HNS marine pollution emergency which has arisen. The master of the ship is expected to make such reports. This obligation falls upon the master of the ship. However, if the ship has been abandoned, or if the master’s report is incomplete, then the need to reporting obligation falls on the owner, charterer, manager or operator.

2.1.16 The obligation of a shipowner to undertake HNS pollution response and clean-up measures depends upon the applicable domestic law, for example of the State where the pollution occurs. Execution of pollution response operations will should be managed in conjunction with the competent national authority of the affected coastal state with jurisdiction but liability will generally remain with the shipper under State regimes that apply the "polluter pays" principle.

2.1.20 These contractual obligations, if they apply, are owed to different people – the first, to the insurer, and the second, to the salvor. There are not necessarily contractual obligations to the coastal State in this regard. The coastal State may, nevertheless, become involved in the owner’s implementation of them, given the legal obligations to the coastal State whose waters are being polluted, which can conflict with the shipowner’s contractual obligations. In such cases, it is very important to clarify who will pay the costs involved for any response action required by the coastal States.
2.1.21 The 1969 Intervention Convention affirms the right of a coastal State to take measures on the high seas as may be necessary to prevent, mitigate or eliminate danger to its coastline or related interests from pollution by oil or the threat of oil, following a maritime casualty in certain circumstances. This means that in some cases the State may intervene against the wishes of the owner of the ship and the cargo to prevent, mitigate or eliminate a grave and imminent threat, which may reasonably be expected to result in major harmful consequences. However, this should apply only in extreme cases. In principle, The Convention provides that the coastal State is generally empowered to take only such action as is necessary, and after due consultations with appropriate interests including, in particular, the flag State or States of the ship or ships involved, the owners of the ships or cargoes in question and, where circumstances permit, independent experts appointed for this purpose. A coastal State which takes measures beyond those considered reasonably necessary and proportionate to the actual or potential threat is liable to pay compensation for any damage caused by such measures.

2.1.22 The 1969 Intervention Convention deals only with the rights of coastal State to intervene concerns measures on the high seas in response to a threat of pollution, as well as in the EEZ (which formed part of the "high seas" at the time the 1969 Intervention Convention was adopted). It does not address incidents and measures that may occur within a coastal State’s territorial seawaters or EEZ. Incidents occurring within a State’s territorial waters-sea are generally covered by the domestic law of the coastal State, to the extent consistent with international law. It is nevertheless customary common that the provisions for intervention adopted under the applicable domestic law for a State’s territorial waters-sea are similar to the provisions set out in the 1969 Intervention Convention for intervention on the high seas.

2.2 THE SHIP TECHNICAL MANAGER

2.2.1 As shown in figure 1, there are many ways in which a vessel may be financed, managed and operated. The master, in any circumstance, will be the agent representing the interests of the shipowner. The notable exception to this is with regard to the liability of the shipowner under the 1992 Compensation Conventions (CLC 92, Funds 92 & 2003, HNS Convention) whereby the liability cannot be directly assumed by any other person. The bareboat charterer may seek any right of limitation of liability which he may have under the relevant law, such as the Convention on Limitation of Liability for Maritime Claims, 1976 (LLMC 1976).

2.2.2 It should be noted that the 1989 Salvage Convention places an obligation on the owner to cooperate with a salvor and to exercise due care in preventing or minimizing damage to the environment. The 1989 Salvage Convention does not provide a definition for the shipowner, it is therefore left to each State Party to define it in its own national legislation laws. Such legislation laws may or may not recognize bareboat charterer as being equivalent to an shipowner in this respect.

2.3 THE MASTER

2.3.2 If the ship is in distress, the master will be responsible for ensuring that a distress signal is sent and has the right to call upon any ship with which he is in contact and which he considers best able to render assistance. The master of the ship requested to render assistance must proceed with all speed to the assistance of the distressed ship. In addition, under article 10 of the 1989 Salvage Convention, every master is bound to render assistance to any person in danger of being lost at sea, as long as it does not incur serious danger to his ship and those on board.
2.3.3 The master is also usually the person responsible for notifying the nearest coastal State relevant authorities of a marine pollution incident.

2.3.4 The master is in most, if not all systems of law, the agent of the shipowner in the navigation and shipboard management of the ship. Where the cargo is in danger, he is usually also the contractual agent of the cargo owner with regard to any action taken to save the cargo. Coastal States may therefore deal with the master, with the confidence that his word will should bind the shipowner and cargo owner, insofar as the security of ship and cargo are concerned, when their owners are themselves not in contact with the coastal State.

2.3.6 In the event of a HNS marine pollution incident, a master will often establish direct contact with his shipowner, in order to consult with the shore side management. Whether such communications take place or not, the master’s decisions with regard to the protection of the marine environment should not be unduly influenced by economic and other pressures that may be exerted by his shore side office, given that the protection of the marine environment must should be of prime concern, following the protection of human life.

2.4 THE CARGO OWNER

2.4.2 The individual cargo owner would not normally be liable for providing compensation arising from pollution-related damage. Under relevant international law agreements, it is indeed usually the shipowner that is liable, and, under the bill of lading or other contract governing the carriage of the cargo by sea (such as a charter-party), this responsibility will remain with the shipowner throughout the marine pollution incident, unless the shipowner abandons the voyage. As a result, the cargo owner does not normally feature prominently in the management of or response to a marine pollution incident, but may be called up to provide technical information and guidance on the nature and behaviour of product(s) involved, if appropriate.

2.5 THE FLAG STATE

2.5.1 The flag State is responsible for enacting and enforcing all design and equipment standards, safety standards, and crew certification and training. This includes the issuance of certificates required under the international conventions for setting minimum manning levels and standards relating to the prevention of collisions and the prevention of pollution; and exercising jurisdiction and control over the ship, including while it is on the high seas. The flag State also has a number of obligations once a marine casualty has occurred.

2.5.4 Under article 94(7) of the United Nations Convention on the Law of the Sea, 1982 (UNCLOS), the flag State is under a duty to hold an inquiry into every marine casualty or incident of navigation on the high seas, including where there has been loss of life or serious injury to nationals of another State or serious damage to ships or installations of another State or to the marine environment. The flag State is also required to cooperate in any inquiry held by that other state into any such marine casualty or incident of navigation. The other State involved is also required to co-operate in such an inquiry.

2.5.5 Under article 6 of MARPOL, the flag State Parties must cooperate with other Parties in the detection of violations and the enforcement of the provisions of the Convention. If presented with evidence that a ship has discharged harmful substances or effluents containing such substances in violation of the provisions of MARPOL regulations of a violation, the flag State must investigate the matter and, if it is satisfied that there is sufficient available evidence, it must initiate proceedings for addressing the violation in accordance with its law. Similar provisions exist in regulation 1/19 of SOLAS, article 21 of LL 1966 and article X of the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers (STCW) 2012. Where a coastal another State presents a flag

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State with evidence of a violation, it may contact the flag State with regard to its investigation, and offer assistance with oral or written evidence at any flag State legal proceedings.

2.6 THE COASTAL STATE

2.6.2 Under many international agreements, States have a general duty to notify other States of a marine pollution threat of which it becomes aware and which is likely to affect them. This is enshrined in a number of international instruments including MARPOL, OPRC, OPRC-HNS Protocol, and UNCLOS. Therefore, once a marine pollution emergency has occurred within the jurisdiction and control of a coastal State, the coastal State must be required to consider the likely effect on other States and take the appropriate action, which, as a minimum, would be to notify those likely to be affected.

2.6.3 These notification and reporting obligations are also likely to be included in any regional agreement or arrangement to which a State has signed on to. Regional arrangements – whether they are established as a formal legal agreement or as a working arrangement between countries – will also set out the parameters for cooperation in responding to major marine pollution incidents which are likely to affect more than one State. Under such an agreement, a coastal State is generally States Parties are typically under a duty to report marine pollution incidents to any other State which may be affected, to take the necessary response actions, and to continuously monitor the situation until it is resolved. Other Parties to the agreement are usually expected to respond positively to requests for assistance from an affected coastal State and to cooperate with the affected State in conducting the response. Many regional agreements have established regional centres, which will assist State Parties in implementing the agreement and, when an incident occurs, to provide technical advice and guidance, coordinate assistance and facilitate communication between the Parties to the agreement. The Centre may effectively serve to backstop the efforts of the affected coastal State, as required, given that their resources may be stretched to the limit during a major response. The coastal State may also have the possibility of accessing equipment stockpiles, established either by industry or by groups of countries, during a major incident.

2.6.5 Another area where a coastal State may wish to take action is with regard to salvage. In this regard, the coastal State may wish to provide these services directly or have a salvor selected from a pre-approved list of providers. There are certain practical problems in implementing such an imposed requirement, where the responsible parties are unwilling to take action. However, articles 5 and 9 of the 1989 Salvage Convention recognizes that States may wish to control or provide such services themselves, and the Convention supports this by stating that nothing within the Convention shall affect provisions which the coastal State may have made in this respect. However, salvors carrying out such services under the control of a public authority are still entitled to avail themselves of the Convention's rights and remedies. Article 9 of the 1989 Salvage Convention provides that "nothing in this Convention shall affect the right of the coastal State concerned to take measures in accordance with generally recognized principles of international law to protect its coastline or related interests from pollution or the threat of pollution following upon a maritime casualty or acts relating to such a casualty which may reasonably be expected to result in major harmful consequences, including the right of a coastal State to give directions in relation to salvage operations."

2.6.6 The coastal State has an absolute right under international law to deny a ship entry to any of its ports or offshore installations, may take the necessary steps in its territorial sea to prevent passage which is not innocent. In most cases, there should be cooperation and coordination between the master and the coastal State is positive, and the coastal State's
task of coordinating and managing the response and clean-up actions are in accord with the master’s responsibility for their ship and cargo, and the mitigation of any and mitigate pollution.

2.7 THE SALVORS

2.7.3 Salvage services may be rendered under a number of different types of commercial contract, i.e. "Daily Rate" or "Lump Sum", "Towage Contract". However, Professional salvors tend to prefer other types of contractual arrangements for normal salvage services. If a non-salvage commercial contract is utilized, there will have been negotiation between the parties, who may include the coastal State. No special limiting considerations are therefore relevant to marine pollution emergencies in such a case. Salvage services rendered under "no cure – no pay" terms do, however, under article 13(b)b give rise to important considerations for the handling of a marine pollution emergency. Salvors may be entitled to special compensation, as an exception to a "no cure-no pay" rule or contract, when it can be shown that the salver prevented or minimized damage to the environment.

Note: Sentence deleted as it is unclear what article is being referenced. It is presumed that the intent was to reference articles 13(1)(b) and 14 of the 1989 International Convention on Salvage, although that Convention is not otherwise referenced in this section. The sentence added was to convey the information that preventing or minimizing damage to the environment is an important criteria for fixing a Salvage reward. Specific reference to the International Convention on Salvage was not included in this section, as it is referenced separately in section 5.3 of the Manual.

2.9 THE HNS RESPONDER

2.9.1 For the response to incidents involving hazardous and noxious substances, the safety of personnel must be of the highest priority since certain hazardous and noxious substances may have serious health impacts and, in certain cases, cause fatalities and/or long-term health effects to responders, which is not the case with oil.

2.9.2 Responding to an HNS incident requires different equipment and response strategies than those employed for oil. This means that all personnel responding to such an incident must have the necessary level of training, capability and skills for dealing with the incident safely.

2.9.5 A Safety Risk Assessment of the HNS incident is an essential first step. The response strategy must subsequently be developed and agreed by the On Scene Coordinator/Commander (OSC) and the response team, and a safety briefing in line with the risk assessment findings is given to, and understood by, the responders before any operations commence.

2.10 THE PORT AUTHORITY

2.10.1 Port authorities have general duties and powers, which vary among States. As long as the harbour is open to general users, they may have a duty to take reasonable care to ensure that all who navigate it can do so without danger to life or property.

2.10.2 Ports authorities may have a duty of care to conserve and promote the safe use of the harbour and an obligation to ensure the efficiency, economy and safety of their operations for all the services and facilities provided.
2.10.5 Port authorities should ensure they have an effective Safety Management System (SMS) in place, which identifies all those powers, policies and procedures for safety during normal operations and especially in times of an emergency. The SMS should be based on a formal assessment of hazards and risk. The Port's SMS should be monitored, exercised and reviewed on a regular basis, and regular external audits carried out.

2.10.6 Port authorities should ensure they have an effective Counter Pollution Response Plan (CPRP) in place, which identifies all those powers, policies and procedures which reduce the risk of pollution within the Port and especially in times of a potential and/or actual pollution incident. The CPRP should be based on a formal assessment of hazards and risk. For all ports that handle HNS, it is essential that there is a section dealing with the risks and handling of an HNS incident. The Port's CPRP should be monitored, exercised and reviewed on a regular basis, and ideally an independent external audit carried out also on a regular basis.

2.10.7 Ports operating within special protection areas such as designated Particularly Sensitive Sea Areas or that have environmentally sensitive sites in close proximity will have to take account of the requirements of the management plan of the designated area; this may mean extra precautionary measures to prevent pollution and accidents involving HNS.

PART III – PROPOSED INFORMATION TO BE DEVELOPED FOR STATES CONSIDERING BECOMING PARTY TO THE PROTOCOL

3.1 THE PROTOCOL ON PREPAREDNESS, RESPONSE AND CO-OPERATION TO POLLUTION INCIDENTS

3.1.4 The Protocol contains a number of obligations that States Party must fulfil, including coastal and flag State responsibilities, national systems for preparedness and response, international cooperation and financial systems. This chapter details these obligations and outlines the systems and processes that States should establish to fulfil these obligations. Additionally, the document describes some options for putting these systems and processes into place.

3.2 OBLIGATIONS

3.2.3 Article 1 also details those vessels to which the Protocol does not apply, including warships, naval auxiliaries or State-owned or State-operated vessels on Government non-commercial service. However, Parties should take measures to ensure that these vessels comply with the Protocol as far as is reasonable and practical.

International obligations cooperation

3.2.9 Article 6 of the Protocol provides that States Party to the Protocol are required to cooperate and share information with other States on research and development that they conduct into HNS spill response, and establish any necessary links with international work between their research institutions. Parties also should cooperate in supporting proposals for international symposia on HNS response developments as well as supporting and encouraging appropriate proposals to develop international standards.

3.2.10 Article 7 provides that Parties will undertake directly, or through the Organization, to assist Parties who request assistance for response preparedness and during incidents and in initiating joint R&D programmes. This may include assistance with regards to training, ensuring availability of technology, equipment and facilities, and planning and response measures and arrangements.
3.2.12 To become Party, States must deposit an instrument of ratification, acceptance, approval or accession with the Secretary-General of the IMO, including defining to which of its territories the Protocol will apply. Where more than one system of law exists within a State, it will may also need to define to which of its territories the Protocol shall apply. Following ratification, acceptance, approval or accession, the Protocol will become effective three months after the date of deposit of the instrument.

3.2.17 Parties will need to should ensure that there is clarity regarding funding issues in bilateral and multilateral agreements for co-operation on HNS response. Parties will also need to consider cost requirements of establishing and maintaining a response system and fulfilling their other obligations under the Protocol and determining how these will be funded, such as through national levy systems or other means. In some cases, States may also be Party to international liability instruments, such as the HNS Convention, that give access to an international compensation fund for costs and damages incurred during an HNS incident.

3.3 MEANS OF MEETING OBLIGATIONS UNDER THE PROTOCOL

3.3.1 This section describes the actions that Parties should take in order to meet their obligations under in the implementation of the Protocol as described in Section 2 above.

3.3.2 Parties must should establish a 24-hour response capability including personnel, information, equipment and procedures to conduct a response to a marine HNS incident. This may be done through developing internal systems or may be achieved through arrangements with other Parties or external organizations. More details on the components of a national system for HNS incident preparedness are included in Section 3.2.

3.3.3 Parties will also need to should also establish a mechanism, such as a regulation, that will ensure State-flagged naval and government vessels that carry HNS have shipboard plans that are, as far as possible reasonable and practicable, consistent with those plans that are required by non-government vessels to have in place. Some means of determining compliance with the requirement, such as inspection or audit, should also be established.

3.3.7 A national response or contingency plan will need to should be developed to describe the above information, along with the resources including personnel and equipment available for a response and procedures to be followed during an incident.

3.3.9 During an incident it is necessary important to be able to account for costs incurred, and the national response or contingency plan should include the establishment of the necessary financial framework to achieve this; additionally to have in place the means to cover the costs of the response and, where appropriate for claiming costs from another agency or individual.

3.3.11 Finally, it will be necessary is important to establish a process for auditing or testing of the response system to ensure its effectiveness and consequently participate in the updating of the national plan as required.

3.3.12 Parties will need regulations in place to require ships flagged to that Party to have in place an onboard pollution incident emergency plan that covers HNS. To ensure compliance with this requirement Parties will need to should establish an effective auditing regime with applicable procedures.
3.3.15 Neighbouring coastal States may be at risk from pollution impacts to their waters or coastlines. Therefore, procedures will need to be established and documented to ensure that the relevant Party authorities notify other States which may be affected where an HNS incident may have impacts beyond territorial boundaries. The flag State of any vessels involved in the incident should also be notified.

International obligations - cooperation

3.3.16 Parties should have systems in place whereby they are represented at the International Maritime Organization and be willing to work with the Organization to facilitate training and access to appropriate resources by those States that require technical assistance. Additionally, Parties should seek ways to participate in international co-operative efforts to share information about research and development, and facilitate transfer of technologies.

PART IV – LIABILITY AND COMPENSATION REGARDING MARINE POLLUTION INCIDENTS INVOLVING HNS

4.1 INTRODUCTION

4.1.5 Despite the adoption and ratification by a number of countries, by the late 2000s the HNS Convention had still not received the sufficient number of ratifications to trigger its entry into force. In order to address the practical problems preventing States from ratifying the Convention, in 2010 a Protocol to the 1996 HNS Convention was adopted, which sought to address the three principal issues seen as the main barriers to ratification:

4.1.6 The HNS Convention and as amended by the 2010 Protocol will enter into force 18 months after ratification by at least 12 States, subject to the following conditions: in the previous calendar year a total of at least 40 million tonnes of contributing cargo to the general account was received in States which had ratified the Convention; and four of the States each have ships with a total tonnage of at least 2 Million GT.

4.2 SCOPE OF THE HNS CONVENTION

4.2.1 The HNS Convention covers damage in the territory or territorial sea of a State Party to the Convention. It also covers pollution damage in the exclusive economic zone (EEZ), or equivalent area, of a Member State Party, as well as damage (other than pollution damage) caused by HNS carried on board ships registered in the flag of a Member State Party outside the territorial sea of any State.

4.3 TWO-TIER STRUCTURE OF THE HNS CONVENTION

4.3.8 Different from the OPRC-HNS Protocol, the HNS Convention as amended by the 2010 Protocol defines “Hazardous and Noxious Substances (HNS)” as:

- dangerous, hazardous and harmful substances, materials and articles in packages for packaged form covered by the IMDG Code;
PART V – INTERNATIONAL CONVENTIONS, CODES AND GUIDELINES INVOLVING HNS

5.1.3 A number of amendments have been made to SOLAS affecting HNS transportation. Examples of these are summarized below.


.5 In addition a new chapter XI-1: Special Measures to Enhance Maritime Safety, provides for enhanced surveys applicable to bulk carrier. The related guidelines on enhanced surveys pay special attention to corrosion. Coatings and tank corrosion prevention systems must be thoroughly checked and measurements must also be carried out to check the thickness of plates;

5.3 RELATED CODES AND CATEGORIZATION SYSTEMS FOR THE IMPLEMENTATION OF SOLAS AND MARPOL

5.3.12 The Globally Harmonized System for Classification and Labelling of Chemicals (GHS) is a system that defines and classifies the hazards of chemical products, and communicates health and safety information on labels and safety data sheets (called Safety Data Sheets, or SDSs, in GHS). The goal is that the same set of rules for classifying hazards, and the same format and content for labels and safety data sheets (SDS) will be adopted and used around the world. An international team of hazard communication experts developed the GHS, which is administered by the United Nations. SDS required under MARPOL Annex II, must conform to the requirements set out by the GHS. MARPOL Annex II requirements are in harmony with the GHS.

5.3.13 Compliance with the International Safety Management (ISM) Code became mandatory with the adoption of SOLAS, chapter IX, "Management for the Safe Operation of Ships" (IMO Assembly resolution A.741(18)). The purpose of the Code is to provide an international standard for the safe management and operation of ships and for pollution prevention, to ensure safety at sea, prevention of human injury or loss of life, and avoidance of damage to property and the environment, in particular the marine environment. The Safety management objectives of shipowners/operators must provide for safe practices in ship operation and a safe working environment; establish safeguards against all identified risks; and continuously improve safety management skills of personnel ashore and aboard ships, including preparing for emergencies related both to safety and environmental protection. In addition companies must develop, implement and maintain a Safety Management System (SMS) which includes functional requirements as listed in section 1.4 of the ISM Code.
5.4 OTHER RELEVANT INTERNATIONAL INSTRUMENTS

The Protocol on Liability and Compensation for Damage Resulting from Transboundary Movements of Hazardous Wastes and their Disposal (Basel Convention Protocol)

5.4.1 Also known as the **The Basel Protocol on Liability and Compensation**, the Convention was adopted on 10 December 1999, as a protocol to the **The Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal (the "Basel Convention")**. The Basel Convention provides that "the Parties shall co-operate with a view to adopting, as soon as practicable, a protocol setting out appropriate rules and procedures in the field of liability and compensation for damage resulting from the transboundary movement and disposal of hazardous wastes and other wastes".

5.4.2 The Basel Protocol has not entered into force. The objective of the Protocol is to provide for a comprehensive regime for liability and for adequate and prompt compensation for damage resulting from the transboundary movement of hazardous wastes and other wastes and their disposal including illegal traffic in those wastes.

The International Convention on Salvage, 1989

5.4.3 The Convention provides for **concerns salvage of commercial vessels and applies to any salvage operation, except where a contract provides otherwise, in navigable waters including the rights and duties of a salvor and the contents of contracts of salvage**. The Convention specifies the main obligations of a salvor, which are owed not to the coastal State, but to the owners of the ship and property in danger, requiring the salvor to not only carry out the salvage operations with due care, but in doing this, he must "exercise due care to prevent or minimize damage to the environment". Article 9, however, recognises the right of a coastal State to take measures in accordance with international law to protect its coastline from pollution or threat of pollution from a casualty or acts related thereto that may reasonably be expected to lead to major harmful consequences.

5.4.4 The main purpose of the Salvage Convention 1989 was to review the international rules contained in the 1910 Salvage Convention. It applies to all types of salvage operations in navigable waters. It applies to any ship or craft or any structure capable of navigation and any property not permanently and intentionally attached to the shoreline. Because of the wide definition of damage to the environment, its environmental protection provisions apply not just to damage to marine flora and fauna, but also to human health, and the cause may be pollution, contamination, fire, explosion or any similar major incidents.