

Te Whakahounga o Te Pire Tiaki Ture (Tūnuku) | Regulatory Systems (Transport) Amendment Bill

Ngā tūtohu moana | Maritime proposals

May 2022

Consultation Document



Tē taea te kaupapa te ū,
ki te kore he māhere,
he huarahi mahi hoki]
Nothing can be achieved
without a plan, workforce
and way of doing things

UARA
OUR VALUES



WHAKAPAKARI
IMPROVING OUTCOMES



AKO
CAPABILITY DEVELOPMENT



MAHI TAHI
WORKING TOGETHER



RANGATIRATANGA
EMPOWERING
AND LEADING



KAITIAKITANGA
GUARDIANSHIP AND
PROTECTION



WHANAUNGATANGA
COLLABORATION
AND UNITY



MANAAKITANGA
CARING FOR AND
VALUING OTHERS

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He kuputaka o ngā kupu rāpoto, ngā ture me ngā tikanga | Glossary of acronyms, legislation and conventions

Acronyms	
DOC	Department of Conservation
FPSO	Floating production storage and offloading unit
Framework	Effective Transport Financial Penalties Framework
ILO	International Labour Organization
IMO	International Maritime Organization
IOPC Funds	International Oil Pollution Fund and Supplementary Fund for pollution damage
Maritime NZ	Maritime New Zealand
SEA	Seafarers Employment Agreement
Legislation	
HSWA	Health and Safety at Work Act 2015
MTA	Maritime Transport Act 1994
RMA	Resource Management Act 1991
The Regulations	The Maritime (Offences) Regulations 1998 and the Marine Protection (Offences) Regulations 1998
Conventions	
BWM Convention	International Convention for the Control and Management of Ships' Ballast Water and Sediments 2004
Civil Liability Convention	International Convention on Civil Liability for Oil Pollution Damage 1969
LLMC	Convention on the Limitation of Liability for Maritime Claims 1976
MARPOL Convention	International Convention for the Prevention of Pollution from Ships 1973 as modified by the Protocol of 1978
MLC	Maritime Labour Convention 2006
SOLAS	International Convention for the Safety of Life at Sea
STCW	International Convention on Standards of Training, Certification and Watchkeeping for Seafarers

OVERVIEW

Our roles

Te Manatū Waka – our role in transport



Transport is about freedom of movement. It touches everyone's lives and is fundamental to our wellbeing and lifestyles. It connects people to family, work, education and recreation. It moves goods that are critical to the strength of the economy.

Te Manatū Waka – the Ministry of Transport (the Ministry) is the Government's system lead for transport. We provide advice to Government on transport issues and then help implement their decisions.

We help make New Zealand's sea, air, land and rail transport systems work together as an efficient, safe and sustainable system. To do this, we work with government transport agencies and departments, councils, and transport operators and interest groups.

We have a key leadership role in the stewardship of the transport regulatory system, in partnership with Waka Kotahi NZ Transport Agency, Maritime New Zealand, the Civil Aviation Authority and the Transport Accident Investigation Commission ("the transport regulatory agencies").

Maritime New Zealand's role in transport



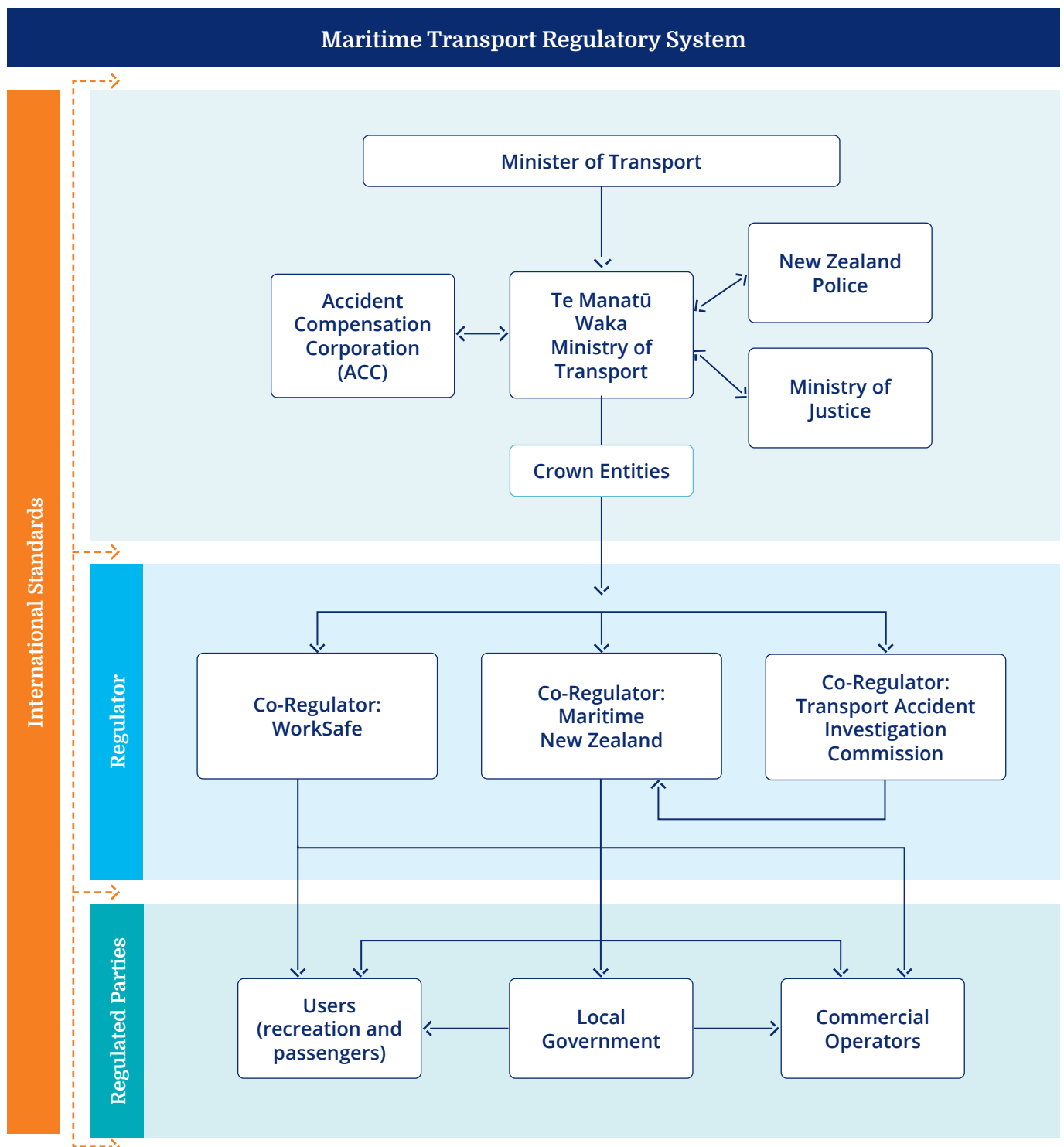
Maritime New Zealand (Maritime NZ) is the national maritime regulatory, compliance and response agency for the safety, security and protection of the maritime environment. Maritime NZ oversight of the maritime domain includes ship and port security, recreational and commercial operators, and national search and rescue coordination.

Maritime NZ supports the Ministry to maintain the legislation, as well as implementing and operationalising the responsibilities and requirements set out in the legislation.

Maritime NZ is also the designated agency for the maritime sector for the purposes of performing the functions of, and exercising powers under, the Health and Safety at Work Act 2015 (HSWA). The HSWA applies to ships as a place of work, including New Zealand-flagged vessels worldwide and foreign-flagged vessels operating in New Zealand on demise charter¹ to a New Zealand-based operator.

¹ A demise charter is a contract where the ship owner leases its vessel to the charterer for a period during which the whole use and management of the vessel passes to the charterer. The charterer pays all expenses for the operation and maintenance of the vessel. Officers and crew become employees of the charterer.

Diagram 1: Interactions in the maritime transport regulatory system



OVERVIEW

Roles and responsibilities are outlined below:

Te Manatū Waka	Develops and provides transport policy and advice for the government, develops legislation for Parliament to enact, drafts regulations and rules in association with the transport Crown entities and represents New Zealand's transport interests internationally. The Ministry also coordinates the work of the Crown entities, acting as an agent for the Minister of Transport.
New Zealand Police	Maritime patrol units investigate criminal and reckless behaviour, carry out search and rescue, undertake joint enforcement patrols and enforce maritime legislation for boat operators.
Accident Compensation Corporation (ACC)	ACC provides compulsory insurance cover for personal injury for everyone in New Zealand, whether a citizen, resident, or visitor. ACC is a no-fault scheme – it applies regardless of who caused the accident.
Ministry of Justice	The lead agency in the justice sector. Administers the court system, the legal aid system and the Public Defence Service. Collects and enforces fines and civil debts.
WorkSafe	New Zealand's primary workplace health and safety regulator. Targets critical risks at all levels (sector and system-wide) using intelligence. Delivers targeted interventions to address harm drivers (including workforce capability, worker engagement and effective governance). Influences attitudes and behaviour to improve health and safety risk management.
Maritime New Zealand	Promotes maritime safety, environmental protection and security through standard setting, monitoring, education, compliance, safety services (navigational aids, radio) and oil pollution response.
Transport Accident Investigation Commission	Investigates significant air, maritime and rail accidents and incidents to determine their cause and circumstances, with a view to avoiding similar occurrences in the future.
Local Government	The sector works closely with local government. Some local authorities own seaports or share ownership with the Crown.
Commercial Operators	Passenger boats, such as cruise ships and ferries, and other boats, such as fishing vessels, commercial cargo vessels, freight, coastal tankers and research vessels, charter boats, offshore mining installations, tourism operators, ports and harbours.
Users	Passengers, recreational boat users and owners.

He aha kē Te Whakahoungao Te Pire Tiaki Ture – Regulatory Systems Amendment Bill? | What is a Regulatory Systems Amendment Bill?

Regulatory stewardship is a proactive, collaborative approach to the design, monitoring and care of regulatory systems. It involves treating a regulatory system as an asset that requires ongoing repairs, maintenance and sometimes replacement. The Government has set **expectations for good regulatory practice**, which include reviewing legislation to ensure it is still fit-for-purpose.

Legislation is a key lever for the transport system, along with monitoring and oversight, influencing the international environment, economic and educational tools and investment and revenue. Without effective and efficient legislation, investment into the system is unlikely to deliver on the objectives and the vision that the Government has set.

Regulatory System Amendment Bills are vehicles for regulatory stewardship legislative change. They are made to maintain the effectiveness and efficiency of regulatory systems, and to reduce the chance of regulatory failure. They clarify and update statutory provisions to give effect to the intended purpose of the legislation and its provisions, and keep the regulatory system fit-for-purpose, up to date and relevant.



Regulatory System Amendment Bills address regulatory duplication, gaps, errors, and inconsistencies within and between different pieces of legislation, and aim to remove unnecessary costs of compliance and doing business. They do not include significant changes of policy; rather they seek to address minor matters to ensure that legislation remains effective and fit-for-purpose.

Regulatory System Amendment Bills are moved through the parliamentary process as omnibus bills and can therefore make effective use of parliamentary time.

OVERVIEW

Why take this approach?

The legislative framework underpinning the transport regulatory system is substantial, with seven pieces of maritime-related primary legislation, 15 regulations and dozens of maritime and Marine Protection Rules.

Regulatory stewardship is a legislative obligation for all public sector agencies, but it is also embedded in our work under Te Manatū Waka [Regulatory Stewardship Plan 2019-2022](#). The Regulatory Systems Transport Amendment Bill is a key vehicle for meeting our regulatory stewardship obligation.

What is in this document?

Through collaboration with Maritime NZ, we've identified a range of changes to maritime legislation that could help our legislation to remain effective and fit-for-purpose. For this reason, we are looking at potential amendments to the:

- Maritime Transport Act 1994
- Maritime (Offences) Regulations 1998
- Marine Protection (Offences) Regulations 1998.

Instead of working through the changes one at a time, which can be time-consuming, we are proposing changes to the Maritime Transport Act (MTA) as part of a Regulatory Systems Transport Amendment Bill, together with related changes to the Regulations that can be progressed once the Bill has been enacted. This document does not discuss proposals to change any maritime or marine protection rules.

He aha ngā whāinga hei tutuki mā mātou? | What are we seeking to achieve?

In the process of making changes to the legislative system, we are seeking to achieve five core objectives.

Objective/ criteria	What this means	Proposal	Who this might be of interest to
1. Improving the effective use of technology	<p>Legislation needs to adapt to allow for new technologies, new media and new processes.</p> <p>Our objectives are to update our legislative provisions to reflect the fact that technology can improve the speed and efficiency of regulatory processes, while reducing costs. Where possible, legislation needs to be future proof to ensure that system improvements are not delayed.</p>	1.1 Enable electronic service of documents and electronic signatures	All
2. Clarifying regulatory roles, responsibilities and requirements in the regulatory system	<p>The effective application of legislation can be hindered when the underlying purpose of a regulatory role, responsibility or compliance requirement is not clear.</p> <p>Our objective is to increase the coherence of the regulatory system by enhancing and clarifying the underlying intent.</p>	2.1 Update the definition of convention	All
3. Maintaining safety through responsive regulatory action	<p>New Zealand's transport regulators are committed to maintaining the safety of the transport system. This is achieved by equipping them with responsive regulatory powers that are flexible enough to allow maintenance of safety standards, while minimising unnecessary compliance costs and efforts for operators.</p>	3.1 Confer powers on the Minister of Conservation to effectively manage maritime safety in the Subantarctic Islands and the Kermadec Islands 3.2 Refine Maritime NZ's powers of investigation	<p>Owners of New Zealand and foreign-flagged vessels</p> <p>Maritime document holders</p> <p>Recreational boaters</p>

OVERVIEW

Objective/ criteria	What this means	Proposal	Who might this be of interest to?
4. Addressing inconsistencies, improving system efficiencies and aligning with international requirements	<p>Over time, regulatory requirements can diverge as legislation and approaches to compliance are amended. Because of the complex interactions between parts of the legislative framework, inconsistencies, duplications and errors can occur.</p> <p>Our objective here is to identify and reduce these, or to mitigate their impacts.</p>	<p>4.1 Enable New Zealand to meet its Maritime Labour Convention obligations</p> <p>4.2 Standardise the requirements to notify incidents and accidents</p> <p>4.3 Correct a technical issue regarding the definition of unit of account</p> <p>4.4 Bring floating production and storage and offloading units within scope of the maritime levy</p>	<p>Seafarer recruitment and placement service providers</p> <p>Maritime document holders</p> <p>Harbourmasters</p> <p>Operators of floating production and storage and offloading units</p> <p>Recreational boaters</p>
5. Modernising transport legislation to ensure it is fit-for-purpose	<p>Legislation is an asset that requires maintenance and care over time. As legislation is updated, maintaining a clear structure and coherence of the entire system is necessary.</p> <p>Our objective is to assess the stock of regulation continually to ensure that legislative requirements are effective, fit-for-purpose and accessible.</p>	<p>5.1 Update the maximum level of fines and infringement fees that can be set through regulations in the Maritime Transport Act</p> <p>5.2 Modernise the penalties for the safety offences in the MTA</p> <p>5.3 Amend the Maritime (Offences) Regulations 1998</p>	<p>Ships masters</p> <p>Recreational boaters</p> <p>Maritime document holders</p> <p>Ship owners</p>

Whakahoki kōrero mai: tukuna mai ki a mātou ōu whakairo me ōu kōrero hoki | How to have your say: providing us with your views and feedback

**You can provide feedback and
submissions from 19 May 2022
until 24 June 2022.**

You can make a submission about some or all the issues and proposed options by:

- providing feedback to questions asked at www.transport.govt.nz/rsta2022
- writing a submission and sending it to rstaconsultation@transport.govt.nz with the subject line "RSTA Maritime Submission"; or
- posting your submission to: Te Manatū Waka, PO Box 3175, Wellington, 6011.

Electronic submissions are preferred, if possible.

Following the submission process, we will prepare a report for the Minister of Transport to make recommendations about the project. Your submissions will be used in part of this report.

Your submission is public information. The Ministry may include your submission, in whole or in part, when publishing feedback on the consultation process. Your personal details will not be disclosed. If you do not want your submission published, please let us know within your submission.

We may publish details of your submission and identify you as a submitter. If you want all or part of your submission withheld, for example because it is commercially sensitive, you must let us know.

Release of submissions under the Official Information Act 1982 and the Privacy Act 2020

Even if we do not publish details of your submission, it may be subject to release under the Official Information Act 1982. If you want your response to be withheld under the Official Information Act, please tell us in your response why you think it should not be released if requested. However, this does not guarantee we will be able to withhold it.

Whāinga 1. Kia whakawhanake i te whakamahinga o ngā hangarau Objective 1. Improving the effective use of technology

Legislation needs to be flexible enough to enable the use of technology. This future-proofs the regulatory framework and enables cost savings for the regulators.

Proposals in this section have been identified as they will support Maritime New Zealand in strengthening its position as a modern, efficient regulator.



Proposal 1.1: Enable electronic service of documents and electronic signatures

This proposal would enable regulators to send regulatory notices electronically and future-proof the regulatory system. Under the *Land Transport Act 1998* (LTA) and the *Maritime Transport Act 1994* (MTA), regulatory notices and the provisions about how these are served (ie mailed to the last known address) are premised on written paper notices being created.

These provisions have remained unchanged for decades, while technology has overtaken the exclusively paper-based means of administering notices under the legislation. Both provisions still work on a presumption of physical paper copies of regulatory notices being delivered.

Section 458 of the MTA dates back to the Shipping and Seamen Act 1952 and still refers to affixing notices to the mast of a ship.

The inability to serve notices electronically is causing inefficiencies within the regulatory system. The requirement to serve people at a physical address means contact information needs to be constantly updated in the ship registers and other records maintained by Maritime NZ. Maritime transport operators are required under the Maritime Rules to provide contact details, but Maritime NZ checks on contact details are not routine so these can get out of date. Maritime NZ currently checks contact details for operators of smaller vessels during audits. Maritime NZ's risk-based audit approach means time between verification of addresses can vary greatly, whereas

email addresses can be verified more frequently due to the frequency of email exchanges.

The current provision requiring physical paper copies of regulatory notices can create issues when serving infringements on foreign ships. For example, a foreign-owned ship transiting an 'area to be avoided' under *Maritime Rules Part 190* (such as the Poor Knights Islands) can be liable to a \$12,000 infringement fee, and the master of the ship to a fee of \$2,000. Under section 423 of the MTA, infringement notices must be served by mail. However, as nearly all ships visiting New Zealand waters are foreign,² the owner or operator will be almost always overseas at the time of the infringement. This makes timely service of infringement notices dependent on overseas mail systems.

In contrast, email is instant, and it is easy to verify receipt.

Proposal

We propose to include a provision in both the LTA and MTA that allows the regulator discretion to use either/both traditional means of service or electronic service. This will require minor operational changes and IT changes at Maritime NZ that will improve efficiency.

We do not propose to change the underlying regime for offences. This proposal is limited to the means of delivery of a regulatory notice.



Questions/views

Do you agree with the proposal to serve regulatory notices electronically? Why/why not?

² For example, some infringements were for ships registered in Panama or Greece. Service by mail to these locations can be time consuming.

Whāinga 2. Kia whakamārama atu i ngā tūranga whakahaere, ngā haepapa me ngā herenga o ngā tukanga whakahaere

Objective 2. Clarifying regulatory roles, responsibilities and requirements in the regulatory system

The effective application of legislation can be hindered when the legislation does not clearly articulate the intended policy outcome for a regulatory role, responsibility or compliance requirement. Proposals that have been categorised in this section will ensure coherence of the regulatory framework by better clarifying the intent.



Proposal 2.1: Update the definition of convention

The MTA sets out the framework for the regulation of maritime safety and marine protection in New Zealand's waters. Rights, obligations and standards under international maritime conventions are central to the regulatory scheme, reflecting the international nature of maritime transport.

The MTA contains provisions which enable New Zealand to implement obligations under relevant international maritime conventions, and any amendments to adopted conventions through Rules and regulations. These conventions set out requirements relating to things such as safety procedures, pollution prevention practices, seafarer training and qualification, and maritime labour standards.

Once New Zealand becomes a party to a maritime convention, it must be declared as a convention for the purposes of the MTA by way of an Order in Council under section 2(2) of the MTA. These Orders serve as a record of all the conventions that are implemented through the MTA. Any amendment to a convention must also be declared by Order in Council.

Section 2 of the MTA defines 'conventions' for the purposes of Parts 2 to 15 as "*conventions and amendments to conventions that have been declared as such by Order in Council*". Section 222 includes an equivalent provision in relation to marine protection conventions for the purposes of Parts 19 to 27.

The definition also has the effect of making some functions and powers relating to conventions contingent on a convention or amendment having been declared as such by Order in Council. Such provisions include the Minister of Transport's objectives and functions in relation to conventions, the power to make Rules implementing convention requirements, and powers to accept convention documents and to detain a ship for breaching convention requirements.

In contrast to an Order in Council declaring a new convention or protocol that New Zealand has become party to, declaring amendments to a convention by Order in Council will not normally signal entry into new treaty obligations.

The implementation of amendments is an existing, continuing obligation rather than a new one. This is because amendments to regulations and standards for International Maritime Organization (IMO) conventions become binding automatically under the IMO tacit acceptance procedure³ for States party to the convention. Amendments to the International Labour Organization (ILO) Maritime Labour Convention are also subject to a tacit acceptance procedure.

³ Tacit acceptance means something is accepted unless objected to. Under tacit acceptance, a resolution is accepted on an agreed time interval from adoption unless it is objected to by a relevant party.

OBJECTIVE 2

The standards and requirements embodied in these conventions are typically technical in nature and are subject to regular amendments. The amendments are duly implemented in New Zealand law by changes to maritime and Marine Protection Rules, which are consulted on, published and become part of the regulatory framework. Declaration of amendments by Order in Council adds no value to this process and, if implemented in practice, would involve innumerable Orders involving a significant administrative burden and an ever more complex and lengthy accumulation of Order in Council updates.

For these reasons, the existing maritime convention amendments have not been updated in a timely fashion through Orders in Council.

At the same time, because the operation of some provisions of the MTA is linked to the definition of 'conventions', if no declaration of an amendment has been made the exercise of the authority conferred by such provisions could be *ultra vires* (beyond the powers) to the extent that it related to such amendments.

New Zealand is party to 21 conventions in the maritime domain. There are frequent amendments to the:

- International Convention for the Prevention of Pollution from Ships (MARPOL)
- International Convention for the Safety of Life at Sea (SOLAS)
- International Convention on Standards of Training, Certification and Watchkeeping for Seafarers (STCW).

There is no immediate impact as a result of a delay in implementing amendments to conventions. However, if Rules implement amendments that have not been declared, their enforceability and implementation of the relevant obligations could be compromised.

This proposal aligns with how the MARPOL Convention is treated in section 225 of the MTA. The MARPOL Convention is defined as including any subsequent protocol or amendment to, or revisions of that convention accepted or ratified by New Zealand.

This change is consistent with the New Zealand treaty making process and will not change how a convention is entered into. Implementation of amendments to a convention must follow the same constitutional and procedural requirements as the adoption of a treaty subject to the International Maritime Organization tacit acceptance procedure.⁴ The process for adoption and implementation of international agreements would continue to afford an appropriate level of scrutiny of any changes to a convention.

Legislative changes made consequent to a convention amendment would be subject to the same processes as normal legislative or Rule changes.

⁴ See the Ministry of Foreign Affairs and Trade's [Guidance for government agencies on practice and procedures for concluding international treaties and arrangements](#)

Proposal

We propose amending the definition of 'convention' in section 2 and 'marine protection convention' in section 222 of the MTA to provide that the definitions include any amendments to a convention after it has been declared.

This is an administrative change that will ensure the regulatory framework remains fit-for-purpose by streamlining the procedure for adoption of amendments to conventions.



Questions/views

Do you agree with the proposal to update the definition of 'convention'?

Why/why not?

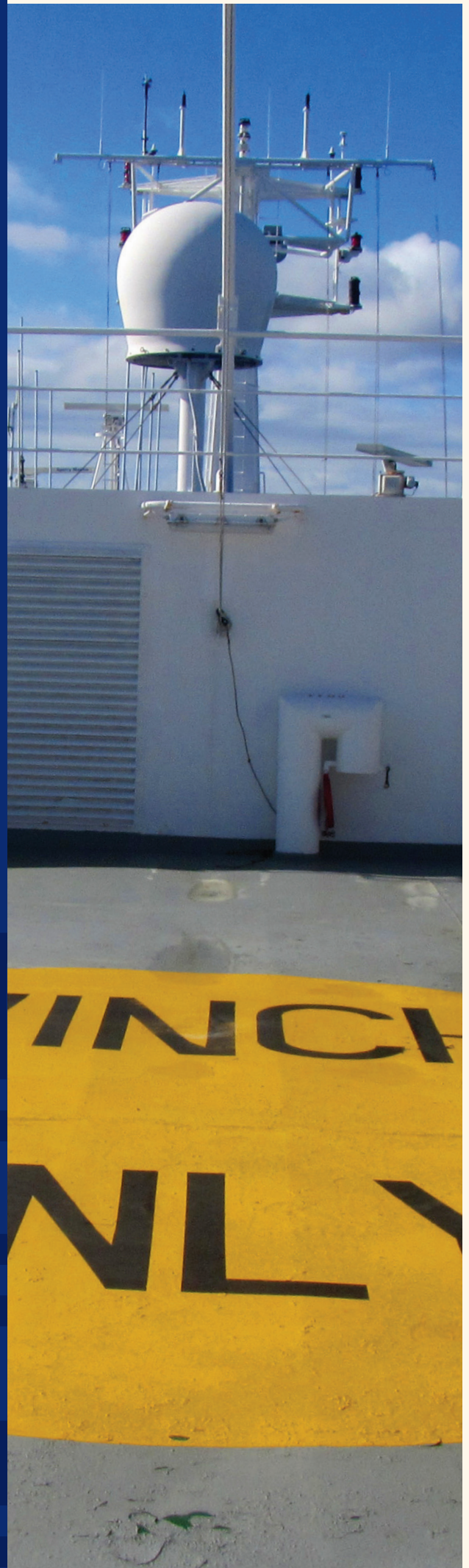
In your answer, you may wish to consider commenting on:

- Whether you think there are any alternatives
- Whether you have had to refer to the maritime or marine protection convention Orders in Council.



Whāinga 3: Kia ū tonu ki ngā tikanga whakahaumaru nā runga i ngā whakahaerenga torohū Objective 3. Maintaining safety through responsive regulatory action

New Zealand's transport regulators are committed to maintaining the safety of the transport system. Legislation needs to provide regulators with responsive regulatory powers that are flexible enough to allow maintenance of safety standards, while minimising unnecessary compliance costs and efforts for operators.



Proposal 3.1:

Confer powers on the Minister of Conservation to effectively manage maritime safety in the Subantarctic Islands and the Kermadec Islands

The Subantarctic and Kermadec Islands (the Islands) lie between 200km and 1,000km offshore of mainland New Zealand and have no permanent residents. The Islands and their coastal marine areas are subject to a range of protective measures under various legislation. Large parts of the territorial sea of the Islands are marine reserves and the Islands themselves are nature reserves.

The Islands' remoteness, the endemic nature of their flora and fauna, and the threat status of many species mean that a maritime accident could have a catastrophic effect. Any rescue or assistance required by vessels would likely be delayed due to their remoteness, and place those involved at risk because of the extreme environmental conditions experienced there. Further, any emergency response risks a biosecurity breach of these high value areas, undoing millions of dollars spent on making all these Islands, except the main Auckland Island,⁵ predator free.

Under the Resource Management Act 1991 (RMA), the Minister of Conservation has certain powers akin to a local authority in respect of the Islands. However, these powers do not reflect relevant powers of regional councils under the MTA.

This means that no-one has the authority to exercise the powers provided under Part 3A of the MTA to regulate maritime safety around the Islands – such as those that regional councils or unitary authorities do in other parts of New Zealand. This also includes the power to appoint a harbourmaster (section 33D of the MTA).

Since 2017, two incidents have demonstrated that the RMA is not suitable legislation to manage maritime safety at the Islands. The Minister of Conservation's RMA powers only provide the ability to prosecute or take other enforcement action after a non-compliant event. The Minister of Conservation needs to have the ability to utilise the relevant MTA provisions provided for under Part 3A, including the ability to appoint a harbourmaster.

In 2020, as required by a condition on an RMA coastal permit, a cruise ship submitted passage plans prior to accessing the waters of the Subantarctic Islands. Assessment of those passage plans found them to be inadequate. However, the Department of Conservation (DOC) was unable to take any action. Technically the cruise ship had complied with the permit condition by submitting the passage plans.

In 2017, a grounding incident occurred at the Snares Islands – Tini Heke, in which a French cruise ship (the L'Austral) hit an uncharted rock. This grounding punctured the vessel's hull in three places. Rather than return to Bluff, the nearest port, the ship's captain made the decision to continue the cruise schedule to the Auckland Islands, a further 285km south. This incident had the potential for an environmental and health and safety disaster.

⁵ A \$50 million plus project to make the main Auckland Island predator free (from pigs, cats and mice) was begun but is currently on-hold due to Covid.

OBJECTIVE 3

TAIC investigated the L'Austral grounding incident and published its report on 12 April 2018.⁶ TAIC made the following recommendation to DOC:

"...given the potentially harsh and sensitive environment in the sub-Antarctic Islands, and the likelihood that shipping activity will increase in the future, the Director-General of Conservation [should] appoint a suitably qualified person to manage the safety of navigation in the sub-Antarctic Islands."

TAIC's reference to "a suitably qualified person" acknowledged that neither DOC nor the Minister of Conservation has the ability to appoint a harbourmaster. DOC decided to go further than the TAIC recommendation and seek legislative change so that a harbourmaster can be appointed and have recourse to the functions, duties, responsibilities and powers of a regional council relating to maritime safety. This is for both the Kermadec and Subantarctic Islands given that the Minister of Conservation is the local authority for both groups of islands and the maritime safety risks are similar.

A harbourmaster, once appointed, would have the ability to direct how a ship arrives, departs or lies in the waters around the Islands, and the general function of exercising other relevant powers for the purpose of ensuring maritime safety. This needs to be addressed to prevent future incidents that could have catastrophic implications. Other relevant powers of Part 3A would include (but are not limited to) the ability to make navigation bylaws, prescribing fees and charges, and creating fines and infringements for breaches of navigation bylaws.

A change such as this will provide the same degree of maritime regulatory oversight and supervision of the waters of the Islands as the rest of New Zealand's ports, harbours, and waters.

The changes will provide greater safety and assurance for masters, crew and passengers of ships operating the waters surrounding the Islands. Additionally, the changes will allow the implementation of the New Zealand Port and Harbour Marine Safety Code, which sets out best practice for the management of maritime safety and has been implemented in all other areas of New Zealand.

Proposal

We propose extending the functions, duties, responsibilities and powers of a regional council relating to maritime safety provided for under Part 3A of the MTA to the Minister of Conservation. This will allow the Minister of Conservation to manage maritime safety at the Islands, with access to a system of powers in line with the rest of New Zealand.

The functions, duties, responsibilities and powers we propose extending to Minister of Conservation include:

- the power to appoint a harbourmaster (section 33D) with the related powers and functions (sections 33E and 33F)
- the power to appoint enforcement officers (section 33G)
- making navigation safety bylaws (section 33M)
- prescribing fees and charges (section 33R)
- creating fines and infringements for breaches of navigation bylaws (sections 33N and 33O).



Questions/views

Do you agree with the proposal to extend the functions, duties responsibilities and powers of a regional council to the Minister of Conservation under Part 3A?

Why/why not?

In your answer, you may wish to comment on:

- Whether you think there are any other powers in the MTA that the Minister of Conservation should have
- Whether you think these powers will ensure greater safety in the Subantarctic and Kermadec Islands

⁶ The report is also available on the TAIC website: <https://taic.org.nz/inquiry/mo-2017-201>

Proposal 3.2: Refine Maritime NZ's powers of investigation

Under the MTA, Maritime NZ, through delegation by its Director, has the powers to inspect, audit and investigate to monitor compliance with regulatory requirements and, where necessary, take appropriate action.

Section 54A of the MTA was enacted in 2013. This section provides the Director of Maritime NZ with the authority to initiate an investigation into a maritime document holder. This could be for situations of non-compliance with the requirements of a maritime document, or concerns the holder is carrying out their duties or exercising the privileges provided by the document in a careless or reckless manner. The focus of such an investigation is to identify whether there may be grounds to impose conditions on or revoke a maritime document.

There are two different issues with the current wording of section 54A of the MTA. These issues, along with the proposed amendments, are outlined below.

The proposed changes would potentially apply to all those who hold maritime documents, but would only affect those who may be operating or behaving in an unsafe way.



OBJECTIVE 3

Proposal 3.2.1: Clarify the threshold for starting an investigation

The current wording of section 54A provides that:

The Director may, in writing, require any holder of a maritime document to undergo an investigation if the Director—

(a) has reasonable grounds to believe that an investigation is necessary in the interests of maritime safety; and

(b) either—

(i) believes that the maritime document holder has failed to comply with any conditions of a maritime document; or

(ii) considers that the privileges or duties for which the maritime document has been granted are being carried out by the maritime document holder in a careless or incompetent manner.

The use of 'believes' in section 54A(1)(b)(i) provides a test or threshold of belief to be met before an investigation can be commenced. These thresholds are commonly provided in law to protect rights and individuals' expectations of privacy.

Using the term 'believe' in this subsection could be interpreted that the Director of Maritime NZ may only investigate where they have sufficient evidence to have formed a firm belief that non-compliance has occurred. This type of evidence would ordinarily be discovered through an investigation.

For example, all maritime document holders are required to be, and remain, a fit and proper person.⁷ To undertake an investigation where fit and proper person status is in doubt, the Director of Maritime NZ would need a degree of certainty that a failure has already occurred before starting an investigation. However, this certainty would usually come from investigating a matter.

The threshold of 'belief' for starting an investigation requires the non-compliance to be overt and reduces the Director's ability to uncover covert behaviour, or latent systemic risks, by means of investigation. This hampers Maritime NZ's key role and responsibility to conduct investigations, potentially restricting the circumstances in which the Director can investigate the holder of a maritime document, and ultimately ensure maritime safety and marine protection.

Proposal

We propose amending section 54A(1)(b)(i) to ensure Maritime NZ can investigate situations where the 'belief' threshold is not met but where Maritime NZ has 'reasonable grounds' to suspect the criteria in section 54A(b) are met.

This change still requires there to be facts and circumstances that suggest there is likely to have been a breach of obligations. However, it clarifies that the information held must only be such that would cause an impartial person to suspect that information to be true.

While this is a lower threshold than 'believes', it better aligns with the original policy intent of section 54A. Maritime NZ would be able to conduct an investigation where it has reasonable cause to do so based on information that is credible and reliable, but not of evidentiary standard.



Questions/views

Do you agree with the proposal to amend the threshold for investigation under s54A(1)(b)(i)

Why/why not?

⁷ That is, competent and of strong integrity.

Proposal 3.2.2: Provide certainty that breaches of maritime document holders' duties are grounds for investigation

Section 54A of the MTA empowers the Director of Maritime NZ to investigate the holder of a maritime document in relation to meeting the conditions on the document or carrying out the privileges the document grants. This could include investigation of whether the holder meets the fit and proper person threshold, which is a condition of the issue or renewal of a maritime document under section 41 of the MTA.

Section 17 of the MTA sets out the duties of participants in the maritime system. A participant is a person required to hold a maritime document. Section 17 imposes a duty on participants to comply with the MTA and associated regulations, Maritime Rules and any conditions attached to a maritime document.

Section 17 also requires participants to carry out duties that go beyond the mere duty to comply with legislation, Rules and document conditions, including:

- ensuring that the activities or functions for which the maritime document is issued are carried out safely and in accordance with prescribed standards and practices, by both the participant and persons for whom the participant is responsible
- providing training and supervision to employees to maintain compliance with relevant prescribed safety standards and promote safety
- providing sufficient resources to ensure compliance with relevant prescribed safety standards.

Section 43 of the MTA provides a power to suspend a maritime document, or impose conditions on a document, if such action is considered necessary in the interests of maritime safety. One of the grounds for exercising the section 43 power includes that *"the Director is satisfied that the holder has failed to comply with any conditions of the relevant maritime document or with the requirements of section 17"*.

While there is a direct link between the exercise of the powers in section 43 with the requirements of section 17, there is no direct link between sections 17 and 54A. This means that certain investigations that do not directly relate to failure to comply with conditions of a maritime document but relate to failures to comply with other requirements in section 17 may be vulnerable to legal challenge.

An explicit link between section 54A and the duties in section 17 would reduce this risk, clarify the intention of section 54A, and remove a deterrent to conducting 'fit and proper person' investigations of participants.

Proposal

We propose amending section 54A to provide that non-compliance with section 17 constitutes grounds for investigation.

This change will provide greater certainty and clarity to enable Maritime NZ to investigate for possible non-compliance and proactive investigation of potential breaches. It will allow comprehensive investigation of the adequacy of a participant's competence, safety management systems, and the training and resourcing the participant provides to employees and others.

It will also ensure that section 54A provides powers to support the existing power under section 43 to suspend a maritime document on the grounds of non-compliance with the requirements of section 17.



Questions/views

Do you agree with the proposal to make breaches of section 17 grounds for investigation?

Why/why not?

Whāinga 4.

Kia aro pū atu ki ngā tūāhuatanga hārakiraki, te whakapai ake i ngā tukanga me te tiaroaro i ngā herenga o tāwāhi

Objective 4.

Addressing inconsistencies, improving system efficiencies and aligning with international requirements

The MTA brought together two related Acts when it was passed in 1994. Since then it has been amended at least 55 times, sometimes significantly (eg by the Maritime Transport Amendment Act 2013) sometimes not (eg the Public Finance Amendment Act 2004). Parts have been added to the MTA that used to be a part of other regulatory systems (such as local government). Over time, these amendments, changes in legislative drafting practice and complex interactions within the legislative framework have created inconsistencies and errors, such as misaligned terminology or mismatched penalties. Further, as our maritime law is closely related to international maritime law, changes to international conventions have resulted in the MTA not always reflecting New Zealand's international obligations.

Proposals in this section identify minor drafting amendments required to address errors or inconsistencies and opportunities for wider system efficiencies or to enable New Zealand to meet international obligations.



Proposal 4.1: Enable New Zealand to meet its Maritime Labour Convention obligations

The Maritime Labour Convention 2006 (the MLC) is an International Labour Organization (ILO) treaty that sets out minimum standards to address welfare and employment conditions of seafarers.

The MLC is the fourth major pillar of the international maritime legal regime, alongside the following International Maritime Organization conventions:

- International Convention for the Safety of Life at Sea
- International Convention on Standards of Training, Certification and Watchkeeping for Seafarers
- International Convention for the Prevention of Pollution from Ships (MARPOL Convention).

The MLC came into force in New Zealand on 9 March 2017 and is implemented largely through the MTA and Maritime Rules.⁸

The MLC applies to all ships, whether publicly or privately owned, ordinarily engaged in commercial activities. The only exceptions to this include ships engaged in fishing,⁹ warships or naval auxiliaries.

The MLC applies to around 55 New Zealand ships, along the following size bands:

- 24 ships below 200 gross tonnage
- 17 ships between 200 and 500 gross tonnage
- 4 ships between 500 and 3,000 gross tonnage
- 10 ships that are 3,000 gross tonnage or more

Parties to the MLC are required to report regularly to the ILO on their implementation of the MLC to promote quality assurance and continuous improvement. A Committee of Experts formed of representatives of countries which have ratified the MLC reviews country reports and goes back to Parties with questions.

The Committee reviewed New Zealand's implementation of the MLC in 2019, following its/our first report on implementation in 2017. The Committee asked a number of questions, and New Zealand was asked provide answers in 2021, alongside its/our second regular report on implementation. To assist this reporting, Maritime NZ undertook a gap analysis to see where New Zealand could improve its/our implementation of the MLC. The six proposals below address many of the questions raised by the ILO, remove inconsistencies between the MTA and MLC, and will ensure New Zealand clearly meets the relevant obligations under the MLC.

⁸ MLC obligations relating to such matters as health and safety protection, welfare and social security protection are implemented through the relevant non-Transport regimes eg workplace health and safety, employment relations, accident compensation and social welfare.

⁹ Legislation has required Foreign Charter Vessels fishing in our Economic Exclusion Zone (EEZ) to reflag to New Zealand and be subject to its laws, including the Maritime Transport Act, the Health and Safety at Work Act, and the Seafarer Certification Framework (SeaCert). Because of this, some MLC provisions in the MTA have been applied to fishing vessels in New Zealand.

OBJECTIVE 4

The proposals are to:

- align section 27 of the MTA with MLC Standard A1.4 to allow charges for placing seafarers in employment provided charges are not borne directly or indirectly by the seafarer, with consequential changes to sections 54 and 409.
- align the definition of 'Articles of agreement' in the MTA with the MLC definition of 'seafarers' employment agreement'.
- repeal section 22(1)(d) of the MTA to prevent records of employment from containing comment on the quality of a seafarer's work.
- repeal section 26(4) of the MTA to align with the MLC prohibition of employment on a ship of persons under 16 years of age.
- revise and reorganise Part 3 of the MTA
- amend section 36 of the MTA to ensure it is clear that Rule-making powers include implementing MLC requirements.

Amended or new Rules will be necessary to reflect the new proposed Rule-making powers to implement relevant MLC obligations. These obligations are already binding on New Zealand as we are Party to the MLC. The wider costs and benefits of New Zealand membership of the MLC were covered by the National Interest Analysis prepared at the time the government made the decision to accede.

Proposal 4.1.1: Resolve inconsistency with prohibiting charges for placing seafarers in employment

Section 27 of the MTA prevents anyone from charging for seafarer recruitment and placement services without exception. A seafarer is defined as a person, excluding the pilot, who is employed to work on any ship in any capacity.

Regulation 1.4 and Standard A1.4 of the MLC set out the obligations of Parties to ensure that seafarers have access to an efficient and well-regulated seafarer recruitment and placement system. These measures include obligations on recruitment and placement services, a requirement for regulation of private recruitment and placement services, and a requirement that seafarers not be charged fees for being placed in employment.

At present, there is inconsistency between the MTA and MLC, as the section 27 prohibition on charging fees for placing seafarers in employment goes beyond the relevant MLC standard:

MLC Standard A1.4, paragraph 5(b)

5. *A Member adopting a system referred to in paragraph 2 of this Standard shall, in its laws and regulations or other measures, at a minimum:*
 - b. require that no fees or other charges for seafarer recruitment or placement or for providing employment to seafarers are borne directly or indirectly, in whole or in part, by the seafarer.*

The lack of alignment in wording effectively means that creating new Maritime Rules to establish a system to regulate private seafarer recruitment services (an obligation under Standard A1.4) would be incompatible with section 27 of the MTA, given that such services operate on a commercial basis.

This inconsistency prevents Maritime NZ from implementing New Zealand's MLC obligations for regulation of seafarer recruitment and placement services through Maritime Rules.

The ILO has drawn attention to New Zealand's non-compliance with Regulation 1.4. New Zealand made its second report on implementation of the MLC in late 2021, including answering specific questions about how it plans to meet its obligations relating to seafarer recruitment and placement services. New Zealand will need to be able to demonstrate progress on this issue in its next report.

There is currently a handful of companies within New Zealand operating seafarer recruitment and placement services. These companies have

been voluntarily assessed as compliant with the MLC by independent bodies, with no delegation from Maritime NZ. Some companies operating in Australia, with approval from the Australian Maritime Safety Authority, also offer recruitment and placement services for vessels in New Zealand.

These companies are directly affected by the requirements of the MLC, though Maritime NZ has no oversight of these companies.

Clear legislation enabling regulation of seafarer recruitment and placement services would provide for Maritime NZ's oversight of the system and ensure implementation in line with MLC obligations.

There is also an opportunity to update the current penalty level for a breach of the requirements of this section. The current maximum penalty is \$200, whether the offender is an individual or a body corporate, and has not been updated since the commencement of the MTA in 1994.

Revised penalty levels have been assessed and determined in line with the Ministry's new Effective Transport Financial Penalties Framework (discussed further in Objective 5). This Framework is designed to support more consistent penalties across transport legislation, better aligned with expected or potential harm and risk.

We also propose that a breach of section 27 should be eligible for consideration of an additional financial penalty as an offence involving financial gain. Section 409 of the MTA provides that additional penalties for particular offences may be applied, provided the additional penalty does not exceed three times the value of the commercial gain. This is necessary as the decision to charge a seafarer a fee is a commercial consideration.

The proposal will be implemented through a new regulatory framework for seafarer recruitment and placement services in the Maritime Rules. We are not yet in a position to assess the impact of the change on the operators of recruitment and placement services, and how the costs of regulation will be met (service providers are largely meeting the MLC requirements voluntarily). Feedback through this consultation process, as well as the consultation which will take place in future development and detailed design of the Maritime Rules, will inform:

- the extent of the framework
- its costs and impacts on providers
- whether any portion of the costs should be Crown funded.

OBJECTIVE 4**Proposal**

We propose replacing the current section 27 with a provision that is better aligned with the MLC and enables rules to cover recruitment and placement services. This would give Maritime NZ oversight of these services to ensure they comply with the MLC.

The change would correctly reflect the primary obligation to not charge seafarers for the provision of recruitment and placement services, while allowing employers and ship owners to be charged for such services, in line with the MLC.

As part of this change, a definition of 'seafarer recruitment and placement service' would need to be added to section 2. An amendment to section 54(1) would also be necessary to ensure that seafarer recruitment and placement services can be checked for compliance.

In addition, we propose shifting the offences and penalties in section 27 to the offence in section 71(1). Section 71 is a general offence for failing to comply with sections 20-23, 25, 30 and 31 of the MTA. We also propose adding section 27

to the list of provisions in respect of which an additional penalty under section 409 of the MTA may apply to offences involving commercial gain.

These two amendments would result in a fine of up to \$5,000 (individual) and \$30,000 (body corporate) for failing to comply with section 27, and potentially an additional penalty of up to three times the amount of the commercial gain. Currently the maximum penalty for an offence against section 27 is \$200, so this would be a significant shift in incentive to comply.

Including section 27 in section 71 would result in a penalty that does not match the Effective Transport Penalties Framework and Tool (see Objective 5). However the penalty for failing to comply with section 27 would be in line with the penalty for failing to comply with similar sections of Part 3. All offences and penalties in the MTA will be considered in a review of the Act. As a review of the MTA is likely to take several years, the change to section 71 is proposed to implement the MLC now.

**Questions/views**

Do you agree with the proposal to replace section 27 and amend the maximum penalties for breaches of it?

Why/why not?

In your answer, you may wish to consider commenting on:

- The effect on recruitment and placement services' operations
- Whether the distinction between prohibiting charges to seafarers and allowing charges to employers and ship owners aligns with the relevant MLC regulation
- Whether the penalties reflect the harm or risk of harm
- Whether the penalties are sufficient to deter offending

Proposal 4.1.2: Aligning seafarer employment agreement clauses with MLC requirements

The MTA implements various MLC requirements relating to seafarer employment agreements. During the gap analysis of New Zealand's implementation of MLC in 2021, Maritime NZ identified a number of areas where MLC seafarer employment agreement requirements could be better implemented, including through amendments to sections 2, 22, and 23.

Section 2

Section 2 of the MTA defines 'Articles of Agreement' to mean 'an agreement between an employer and one or more seafarers setting out the terms and conditions of the seafarers' employment'.

This definition, derived from the Seamen's Articles of Agreement Convention 1926, has been superseded by the MLC definition of 'seafarers' employment agreement':

'seafarers' employment agreement includes both a contract of employment and articles of agreement'.

The MLC contains detailed requirements for seafarer employment agreements, which are implemented through Maritime Rules Part 52.

The scope of the definition of 'Articles of Agreement' in section 2 of the MTA is narrower than the scope of the MLC definition of 'seafarers' employment agreement'.

Maritime Rules Part 52 uses the term 'Seafarer Employment Agreement' which aligns with the MLC but not with the definition of 'Articles of Agreement', which informs the operation of section 22 of the MTA (Employer's duties in relation to seafarers of New Zealand ships on overseas voyages).

This has created a misalignment of terms between the MTA and the MLC and, in turn, between the Maritime Rules and the MTA. No one is directly affected by this issue, but it does undermine legislative certainty and cohesion.

Sections 22 and 23

The requirements relating to seafarer employment agreements contained in sections 22 and 23 of the MTA are not aligned with the requirements of the MLC.

For example, current drafting of section 22(1)(a)(i) of the MTA excludes employers of seafarers on New Zealand ships going on international voyages from having to sign articles of agreement with the

master of the ship. This is an artefact of historical maritime hiring practices. In its review, the ILO was critical of this exclusion, as there are no exceptions to the requirement for an employment agreement under the MLC.

Additionally, requirements relating to seafarer employment agreements under section 22 currently only apply to seafarers of New Zealand ships on overseas voyages, whereas they should apply to all New Zealand ships.

Further, there are opportunities to clarify requirements relating to seafarer employment agreements and fill some gaps in our MLC implementation, for example, by introducing minimum notice periods for termination of employment in seafarer employment agreements in line with MLC requirements.

Proposal

We propose amending section 2 to ensure that the MTA is aligned with the MLC by replacing the definition of 'Articles of Agreement' with the MLC definition of 'seafarers' employment agreement'.

From:

Articles of Agreement means an agreement between an employer and 1 or more seafarers setting out the terms and conditions of the seafarers' employment

To:

Seafarer's Employment Agreement includes both a contract of employment and articles of agreement between a person employed as a seafarer and the person employing the seafarer.

We also propose to redraft the MTA's SEA requirements currently found in sections 22 and 23 to make them clearer, more comprehensive, and fully aligned with the MLC, including removing the exclusion for masters in 22(1)(a)(i).

Q

Questions/views

Do you agree with the proposed amendment to sections 2, 22 and 23? Why/why not?

OBJECTIVE 4

Proposal 4.1.3: Resolve inconsistency with the MLC requirement that a seafarer's record of employment not include any statement as to the quality of the seafarer's work

Title 2 of the MLC sets out employers' duties relating to conditions of employment, including seafarers' employment agreements, and records of employment.

The MLC requires employers to provide seafarers with a record of their employment without reference to the quality of their work. The record of employment is intended simply to be a record of a seafarer's service, to help when seeking another job or making a case for promotion. It must not include reference to performance or discipline issues. This also serves to protect seafarers from being disadvantaged for advocating for their or other seafarers' rights or raising concerns over unsafe operational practices. The MLC does not override other employment practices, such as reference checking, but sets a minimum standard.

Sections 22 and 23 of the MTA set out employers' duties in relation to seafarers on any New Zealand ship. Section 23 requires employers of seafarers on New Zealand ships to maintain a record of every seafarer's employment on the ship, and to provide a copy of the record to the seafarer if requested.

In addition, section 22(1)(d) specifies that, if requested by the seafarer, an employer on a New Zealand ship on an overseas voyage must provide a certificate as to the quality of the seafarer's work and whether they have fully met their obligations under any agreement with the employer.

Not only are the requirements in section 22 and 23 unnecessarily inconsistent, but also the requirements under section 22(1)(d) that the certificate relate to the quality of the seafarer's work directly contravenes Standard A2.1, paragraph 3 of the MLC. The MLC states that such documents 'shall not contain any statement as to the quality of the seafarers' work or as to their wages'.

Proposal

We propose to meet the MLC requirement through a combination of law and practice, repealing section 22(1)(d) of the MTA and relying on the equivalent section 23(1)(d) of the MTA, which allows the Director of Maritime NZ to set or approve the form of the records. Section 23(1)(d) of the MTA states:

- 23 *Employer's duties in relation to seafarers on New Zealand ships*
- (1) *Every employer of seafarers on a New Zealand ship shall—*
- (d) *maintain a record (in a form prescribed or in a form approved by the Director) of the employment on board a New Zealand ship of every seafarer employed on that ship by that employer and provide to a seafarer, if requested by that seafarer, a copy of the record applying to that seafarer.*

This will ensure alignment with Standard A2.1 of the MLC, in that it applies to all seafarers and does not require comment on the quality of the seafarer's work.

We propose also to amend section 23(1)(d) to clarify that maritime rules would prescribe the form of seafarer employment records. The forms prescribed in the rules would not include any comment in breach of Standard A2.1.



Questions/views

Do you agree with the proposal to repeal section 22(1)(d) and rely on section 23(1)(d) to meet the MLC requirement?

Why/why not?

Proposal 4.1.4: Align with the MLC requirement to prohibit people younger than 16 years old from working on a ship and people under 18 from undertaking hazardous work

The MLC contains provisions relating to the employment of young people on ships. This is to ensure there are sufficient protections in place for young people employed in the maritime sector. Working on a ship is inherently more hazardous than many other occupations. It involves working with machinery in confined spaces, the marine operational environment, and in round the clock operations. Seafarers need experience, skills and training to cope with these conditions safely. Seafarers under 16 will not have had time to acquire the training and qualifications necessary to obtain a maritime document that authorised them to do the work.

The MLC prohibits the employment of a person under 16, and employment of seafarers under 18 where the work is likely to jeopardise their health or safety, such as acting as ship's cook.

Currently, section 26(2) prohibits the employment of a person under 16, or any person under 18 as a trimmer or stoker (the most hazardous work). Section 26(3) allows employers on a New Zealand ship to employ two people under 18 to take the place of a single trimmer or stoker if reasonable steps have been taken to find someone 18 or over.

Section 26(4) of the MTA allows the Director of Maritime New Zealand to approve the employment of a school age person to carry out work on a training ship. The current drafting of section 26 is generally misaligned with the language of the MLC. Section 26(4) directly conflicts with the MLC, which strictly prohibits the employment of people under 16 years of age to work on any ship, including training ships.

Proposal

We propose repealing sections 26(3) and 26(4) entirely to remove the conflict between the MTA and MLC. Repealing section 26(4) would be consistent with requirements of the Education and Training Act 2020, which prohibits the employment of children under the age of 16 years within school hours.¹⁰ There will be no practical impact as a result of this revocation as there is no training ship for seafarers in New Zealand. Operation of the sail training ship *Spirit of Adventure* would be unaffected, as participants must be over 16 and are not employed or engaged to do work.

We also propose amending section 26(2)(b) to replace the references to trimming and stoking with a reference to hazardous work, as defined by maritime rules. In addition, section 26(3) does not appear to be compliant with the MLC, so should be repealed.

Taken together, these proposals will ensure our domestic legislation remains aligned and consistent with international convention obligations.



Questions/views

Do you agree with the proposal to amend section 26?

Why/why not?

In your answer you may wish to comment on:

- The impact of shifting away from specified activities to 'hazardous work'
- Whether 'hazardous work' should be defined in Maritime Rules or the MTA
- The types of activities that should be considered hazardous work.

¹⁰ Education and Training Act 2020 s54(1)

OBJECTIVE 4

Proposal 4.1.5: Revise and reorganise Part 3 of the MTA

Part 3 of the MTA is relatively unchanged since it was passed in 1994 and predates the MLC by 12 years. In addition to the changes in proposals 4.1.1 – 4.1.4, above, a revision and reorganisation of Part 3 would help the MTA better reflect the relevant MLC obligations and incorporate changes identified by the ILO in the last review of New Zealand's implementation of the MLC. This reorganisation would enable the revision of some sections of Part 3.

The reorganisation would make sure that the MTA aligns with MLC requirements in terms of general social obligations on shipowners, including to meet seafarers' basic needs such as food and clean water, and to provide for seafarer repatriation in accordance with the MLC.

We consider introducing a definition of shipowner to Part 3 would greatly support several changes to this Part. Currently, Part 3 places obligations on 'employers' of seafarers. This differs from the MLC, which places obligations onto a 'shipowner'. We consider reflecting the MLC terminology in the MTA would make the MTA clearer about who is responsible for meeting shipowners' obligations under the MLC.

Proposal

We propose inserting a definition of 'shipowner' similar to:

'shipowner' [in Part 3] means the owner of the ship; or another organisation or person, such as the manager, agent or bareboat charterer, who has assumed the responsibility for the operation of the ship from the owner and who, on assuming such responsibility, has agreed to take over the duties and responsibilities imposed on shipowners in accordance with [the Maritime Labour Convention], regardless of whether any other organisation or persons fulfil certain of the duties or responsibilities on behalf of the shipowner.

The inclusion of this definition would require references to 'employers' in Part 3 to be changed to 'shipowner'. This would not remove the responsibilities of employers as currently in the MTA according to the above definition of 'shipowner'.

We also propose that the general revision of Part 3 includes:

- shifting the duty to provide food and drinking water from the employer to the owner and master of a ship
- introducing a requirement for documentary evidence of financial security for the purposes of repatriation of seafarers to be set by maritime rules
- prohibiting advanced payments to cover costs of repatriation of a seafarer.

All of the matters listed above are areas in which New Zealand's MLC obligations are not currently reflected in our national legislation.

Q

Questions/views

Do you agree with the proposal to revise and reorganise Part 3 to better reflect New Zealand's obligations under the MLC?

Why/why not?

In your answer, you may wish to consider commenting on:

- The effect of adding a definition of shipowner and its application to Part 3's references to employers
- Proposed changes to requirements about the repatriation of seafarers
- Whether specific obligations under the general duty to provide food and drinking water should be set in Maritime Rules

Proposal 4.1.6: Clarify Rulemaking and compliance powers to support the implementation of MLC requirements

The MTA includes a range of Rule-making powers. Many of the powers support the implementation of requirements under International Maritime Organization (IMO) safety and environmental protection conventions.

Section 36(1)(b) of the MTA enables the use of Rules to implement requirements set out in conventions such as the MLC. This broad power is complemented by a suite of more detailed powers that reflect the specific types of requirements to be found in the conventions.

The MTA predates the MLC by over a decade. As such, several of the Rule-making powers relate to aspects of earlier International Labour Organization (ILO) maritime conventions. Section 36 of the MTA in particular does not reflect the much more comprehensive scope of the MLC, which has consolidated, modernised and expanded on the earlier treaties.

For example, section 36(1)(p) of the MTA states:

- 36 *Maritime rules relating to other matters*
- (1) *The Minister may from time to time make maritime rules that provide for all or any of the following:*
- (p) *technical standards or requirements relating to the health and safety of seafarers:*

It does not, for example, reference welfare-related standards such as those contained in the MLC:

- engagement and working conditions of seafarers
- repatriation of seafarers
- provision of seafarer recruitment and placement services
- financial security requirements.

The current Rules were originally drafted to reflect that there are currently no foreign-going New Zealand ships. If that situation changes, Rules implementing MLC requirements may be more difficult to make.

Proposed changes will directly address the concern raised by the ILO about New Zealand not implementing its MLC obligations and ensure that the Rule-making powers relied on to implement MLC requirements through maritime legislation are sufficiently clear and transparent. They would

also support the proposed changes to Part 3 of the MTA in 4.1, above.

We expect that the impact of this proposal will be relatively minor for businesses and ensure New Zealand can exercise port State control over all ships in New Zealand waters as a signatory to the MLC. Arguably, the very high-level Rule-making power in section 36(1)(b) already makes it possible to make a Rule that covers the same matters. However, this power gives no indication as to what the specific subject matter of such Rules might happen to be. The proposed changes provide clarity, rather than fundamentally changing Rule-making powers.

Proposal

We propose amending section 36 of the MTA to clarify the scope of the rule-making powers (that support the implementation of the MLC requirements) to cover the relevant aspects of the MLC.

We propose that the scope of the MLC rule-making powers includes (but is not limited to):

- minimum requirements for seafarers to work on a ship
- conditions of employment on a ship
- repatriation of seafarers
- liability of ship owners to assist seafarers in the event of abandonment.

To ensure the legislation has further clarity and is fit-for-purpose going forward, we also propose complementing the current section 36(1)(u)(ii) about IMO recommendations with an equivalent provision that relates to the specific requirements set out in the ILO maritime conventions.



Questions/views

Do you agree with the proposal to amend section 36?

Why/why not?

OBJECTIVE 4

Proposal 4.2: Standardise the requirements to notify incidents and accidents

The MTA imposes obligations on various maritime participants (such as the master of a ship) to notify mishaps involving serious harm to a person, or any accidents or incidents to Maritime NZ. This allows Maritime NZ to both respond directly to adverse safety and pollution events, and to use data from notifications to identify trends, risks, and where harm prevention efforts should be focused.

Maritime NZ depends on the quality and completeness of the information gathered to support effective performance of its regulatory role, which requires an effective and comprehensive system of notification.

Section 31 of the MTA sets out the obligations to notify all accidents, incidents etc. Subsection (1) sets out the requirement for the master of a New Zealand ship or any foreign ship in New Zealand waters, irrespective of whether it is operating under a Maritime Rule, to notify Maritime NZ of adverse maritime events such

as a *'mishap that results in serious harm to a person, an accident or an incident'*. Conversely, section 31(3) states that *'accidents, incidents or mishaps resulting in serious harm'* must be notified. This section only applies to those operating under a Maritime Rule that has specific notification requirements – these parties may not be subject to regulatory requirements, as they do not need to be holders of maritime documents.

While the intent is the same across both provisions, the placement of “resulting in serious harm” in section 31(3)(b) *'...accident, incident, or mishap resulting in serious harm...'* compared to the phrasing in 31(1) *'mishap that results in serious harm to a person, an accident, or an incident'*, creates confusion as to the reporting obligations on operators and masters.

This inconsistency undermines the reliability of reporting data, which is an important part of Maritime NZ's intelligence gathering. Maritime NZ currently receives around 1,100 reports of incidents per year. These do not align with other measures of safety incidents, such as Accident Compensation Corporation records of vessel-related injury accidents (around 4,000), or notifications to harbourmasters (eg the Bay of Plenty Harbourmaster receives around 3,000 per year, of which only around 300 are reported to Maritime NZ). This indicates that the number of incidents could be underreported by a factor of 10.

The expected increased level of reporting from this change will help Maritime NZ identify and respond to systemic risks and focus its education and compliance work on the areas of risk that have the most impact in improving maritime safety. Full information will support effective regulatory stewardship, system design decisions and essentially enhance Maritime NZ's capacity to regulate for harm prevention. There will likely be a cost to Maritime NZ to collect and analyse the additional volume of reports.

This will impact all of those in the maritime domain who need to notify Maritime NZ if and when an incident, accident or mishap occurs as required under the MTA and relevant Maritime Rules.

Information and education could improve understanding of the existing obligations and reporting requirements in the legislation. But these efforts would be undermined by the difference in the phrasing of the legislation which would not be able to be upheld in Court.

Proposal

We propose replacing the words "*an accident, incident, or mishap resulting in serious harm*" in section 31(3) with the equivalent from section 31(1): "*a mishap that results in serious harm to a person, an accident, or an incident*".

This change clarifies that the rationale behind section 31(3) imposes a requirement to notify Maritime NZ of all accidents and incidents, not only those that result in serious harm.

This change will also mean that, if and when a maritime rule includes a specific notification requirement, the 'threshold' for notifications will be same under 31(3) as 31(1).

Q

Questions/views

Do you agree with the proposal to align the definition of accidents and incidents in sections 31(1) and 31(3)?

Why/why not?

You may wish to consider whether the solution brings clarity, or what further changes are required

OBJECTIVE 4

Proposal 4.3: Correct a technical issue regarding the definition of unit of account

The term ‘unit of account’ is used to represent an international equivalent amount value that can be used to calculate the limit of liability or recompense for damage or loss.

The unit of account for the purposes of the MTA is the ‘Special Drawing Right’ as defined by the International Monetary Fund.¹¹ For States (like New Zealand) that are members of the IMF, liability or compensation amounts specified in such treaties are to be converted into the national currency of the State according to the value of that currency at the relevant date.

‘Unit of account’ is referred to in the following MTA provisions:

- Part 7, which deals with limitations of liability under the Convention on the Limitation of Liability for Maritime Claims (LLMC) and Schedules 8 (text of the LLMC) and 9 (text of the 1996 Protocol to amend the LLMC)
- Part 16, relating to the carriage of goods by sea and Schedule 5 (the Amended Hague Rules governing carrier liability)
- Part 25, which deals with civil liability for pollution of the marine environment by ships under the International Convention on Civil Liability for Oil Pollution Damage 1969 (Civil Liability Convention)
- Part 26, which deals with compensation from the International Oil Pollution Compensation Fund and Supplementary Fund for pollution damage (the IOPC Funds).

Currently, there is a technical problem in the MTA in relation to the definition of ‘unit of account’ because section 2 of the Act defines the term only with reference to Part 7, when Parts 16, 25 and 26 are also relevant.

Specifically, section 2 defines a unit of account to mean ‘*1 special drawing right as defined by the International Monetary Fund, the calculation of which, in New Zealand currency, is in accordance with section 88*’. However, section 88 relates only to calculations for the purposes of the LLMC, despite, confusingly, being entitled ‘Units of account’. This means the provisions outlined in section 88 do not apply to other references of ‘unit of account’ such as in Parts 16, 25, and 26 of the MTA.

Given that the definition of ‘unit of account’ and the procedure for calculation of New Zealand currency equivalent are equally relevant to Parts 16, 25 and 26 of the MTA, the section 2 definition and calculation procedure are inadequate for the purposes of those other parts.

As a result, the MTA is, on the one hand, explicit as to the interpretation and procedure for Part 7, but not in relation to Parts 16, 25 and 26. Such inconsistency in provisions that should be the same for all relevant MTA Parts introduces a lack of clarity and potential for interpretational challenges on account of the different treatment.

The definition of unit of account in the IOPC Funds cross-references the definition in the Civil Liability Convention, so it is not necessary for Part 26 to contain an equivalent provision to section 88(2).

¹¹ Special Drawing Rights (SDR) are the units of account used by the International Monetary Fund for internal accounting purposes. The SDR is based on a weighted basket of five currencies—the U.S. dollar, the euro, the Chinese renminbi, the Japanese yen, and the British pound sterling.

The proposed changes will:

- clarify the application of the definition of unit of account for the purposes of the MTA
- extend the provisions currently contained in section 88(2) and the carrier liability provision of Part 16 and Schedule 5 to the Civil Liability Convention provisions of Part 25, and by extension, Part 26.

This is a technical change that provides clarity of the operation of the MTA. It will not affect liability for claims of loss or damage under Parts 7, 16, 25 and 26 of the MTA but will avoid any risk of unnecessary complications due to inconsistent treatment of these matters in the Act as it stands.

Proposal

We propose making the following changes to the MTA to clarify and simplify the legislation relating to units of account:

- Amend the definition of 'unit of account' in section 2 of the MTA by deleting the words "the calculation of which, in New Zealand currency, is in accordance with section 88". This will mean that the definition is not inextricably linked to section 88.
- Amend section 88 to clearly reflect the function of the section by changing the heading from 'Units of Account' to 'Certification of value of New Zealand currency under Part 7' and replace the words 'special drawing right' with the words 'unit of account'. This will ensure consistency of wording between section 88 and the definition in section 2.
- Add to Part 25 a provision regarding the calculation of the value of units of account in New Zealand currency, similar to section 88, for consistency with the treatment of this matter in relation to the LLMC, to make it clear that:

347(7) *"For the purposes of Article V, paragraph 9(a) of the Civil Liability Convention, a Certificate given by or on behalf of the Secretary to the Treasury stating that*

(a) *a particular sum in New Zealand currency has been fixed as the equivalent of 1 unit of account for a particular date; or*

(b) *that no sum has been fixed for that date, and a particular sum has been fixed for the date most recently preceding a particular date,—*

shall, in any proceedings, be received in evidence and, in the absence of proof to the contrary, be sufficient evidence of the value of the New Zealand currency for the purposes of Article V, paragraph 9(a) of the Civil Liability Convention.

Q

Questions/views

Do you agree with the proposal to simplify the legislation relating to units of account?

Why/why not?

OBJECTIVE 4

Proposal 4.4: Bring floating production and storage and offloading units within scope of the maritime levy

The maritime levy is paid by commercial maritime operators to fund the maritime regulatory system. The levy is enabled under section 191 of the MTA with the levy rates, methods of calculation and administrative matters set out in the Maritime Levy Regulations 2016.

Funding raised from the levy allows Maritime NZ to maintain important regulatory activities and functions that are critical to maritime safety and protection of the marine environment. The permitted activities and functions that the levy can pay for include safety services, support for seafarer welfare services and regulatory activities such as investigations, audits and inspections.

Section 191 requires ships that enter any port in New Zealand or operate in New Zealand waters to pay the maritime levy. However, a floating production storage and offloading unit (FPSO) does not wholly fit within the existing definition of a ship. This means that a FPSO does not pay maritime levies, even though it benefits from the well maintained maritime regulatory system.

In the MTA, a ship is defined as every description of a boat or craft used in navigation, whether or not it has any means of propulsion (such as a barge, lighter or other like vessel, a hovercraft or a submarine).



Figure 1: An example of a FPSO – Alf van Beem, public domain

A FPSO is a floating vessel used in the offshore oil and gas industry for the production and processing of hydrocarbons, and for the storage of oil. But the characteristics and use of a FPSO can vary from purpose-built vessels and converted oil tankers.

The function of a FPSO is primarily related to transit between offshore oil installations. A FPSO generally resemble a 'ship' in much of its construction, but rather than navigating regularly between places like trading ships it has some form of ongoing (but not necessarily permanent) connection to surface or subsea facilities, or to the seabed.

Proposal

We propose amending section 191 of the MTA to clarify the requirement for operators of a FPSO to pay the maritime levy. This will include FPSO used in the production, storage and offloading of oil operating in New Zealand waters.

There are currently only two FPSOs operating around New Zealand. However, these FPSO operators are not within our territorial waters and would not be affected by this change unless they are moved within our waters.

Although there are no FPSOs in New Zealand waters now, this change will ensure that when a FPSO does enter our waters, they will contribute to our maritime regulatory system through the levy payment.

The method of calculation and rate of levy payable would be considered during the next review of the maritime levy. This change will not give rise to additional costs for Maritime NZ as a review of the basis of charges for the maritime levy is already a requirement and budgeted for.

Q

Questions/views

Do you agree with the proposal to clarify that FPSOs are required to pay the maritime levy?

Why/why not?

In your answer, you may wish to comment on:

- Whether adding FSPOs to maritime levy payers is appropriate
- Whether there are any other vessels not currently subject to the maritime levy that should be, using the reasoning applied to FPSOs (eg Floating storage units, Floating Storage regasification units, or Floating storage and offloading units)

Whāinga 5. Kia whakahou mai i ngā whakatureture tūnuku e hāngai ana ki te wā

Objective 5. Modernising transport legislation to ensure it is fit-for-purpose

Legislation is an asset that requires maintenance and care over time. Maintaining a clear structure and coherence of the entire system and the legislation itself is necessary. Our objective is to continually assess the stock of legislation to ensure it is effective, fit-for-purpose and accessible.

The proposals under this objection have twofold purposes:

- to improve New Zealand's implementation of international conventions. This applies to proposal 5.4.
- to ensure that penalties for breaches of the MTA and associated regulations are transparent, proportionate and effective. To achieve this, we have used the Effective Transport Financial Penalties Framework and Tool.



Effective Transport Financial Penalties Framework and Tool

As the regulator, Maritime NZ's compliance approach is designed to achieve outcomes like safety, security and marine protection. Offences and subsequent penalties are tools that Maritime NZ and other entities that enforce maritime legislation can use when someone does not comply with the Rules or requirements under the regulatory framework.

Te Manatū Waka undertook an initial regulatory stewardship assessment of the MTA, prompted by operational feedback from Maritime NZ. The assessment involved reviewing the offences and penalties for the MTA, the Maritime (Offences) Regulations 1998 and the Marine Protection (Offences) Regulations 1998 (together, the Regulations). The penalties in the MTA and most of the penalties in the Regulations have not been updated since the 1990s. This creates several anomalies which affect the coherence of the penalties or create inequities. These include that:

- penalties do not reflect the potential or actual severity and likelihood of harm that could or has occurred (for example, a serious injury or death)
- some penalty levels are well below levels applied for similar offending in more modern legislation such as the Health and Safety at Work Act 2015 (HSWA)
- offences can create inequities between domestic commercial ships and domestic recreational ships
- some offences do not provide for infringements when infringement offences would be a suitable enforcement tool
- Some requirements in Rules had no corresponding offence, making enforcement difficult.

Considering the above, the offences and penalties throughout the MTA and the Regulations were assessed using the Ministry's Effective Transport Financial Penalties Framework (the Framework) and its accompanying Tool (the Tool). The Framework is a systematic and principles-based framework that provides a guide to setting financial penalty levels in primary and secondary transport legislation. The Tool helps to apply the framework to offences. The Framework was developed in consultation with other ministries including the Ministry of Justice and has been refined over time, including while developing the offences under the Civil Aviation Bill currently before Parliament.

The Framework involves a process to determine financial penalty levels by considering four principles:

- **Respond to the severity of the offence:**
This involves assessing the type of harm an offence is likely to result in, or has caused, and its associated severity. This will also take into account the likelihood of the harm if an offence happens (low, medium or high). The Framework identifies three harm types:
 - System – this is harm to the transport regulatory system itself by breaching a requirement, but it does not constitute an inherent or tangible harm to people, the environment or property. For example, not having the required maritime document doesn't harm anyone but it does undermine the requirement in the system to keep people safe. All offences constitute some level of system harm.
 - Safety – this is an actual harm, or risk of harm, to people. For example, actions that may cause injury or death like operating a ship recklessly while under the influence of alcohol.

OBJECTIVE 5

- Environmental and property – this is an actual harm, or risk of harm, to the environment or property. For example, discharging hazardous substances into the marine environment or crashing a vessel.
- **Act as a deterrent to undesirable behaviour:** Penalties should be at levels that make the negative consequences of incurring a penalty greater than the perceived benefits of committing the offence.
- **Be proportionate:** Penalty levels should be proportionate to the actual or potential for harm, as assessed in principle 1. This proportionality should also be consistent for penalties within and across transport modes and with relevant external regulatory frameworks.
- **Consider the responsibilities and financial capacity of the person or entity in the system:** Penalty levels should reflect the different expectations and additional responsibilities these groups have in the maritime system, to distinguish, for example the difference between a recreational boater and a professional skipper or ship's master.

The Tool contains a number of steps to determine the penalty:

- | | |
|----------------|---|
| Step 1. | Consider the offence's design, use and associated data (such as the harms that have resulted from breaches, or how often the offence is used). |
| Step 2. | Assess the offence's severity. This includes documenting the potential consequences of the offence including the three harm types listed above. |
| Step 3. | Identify the type of offender the penalty would apply to such as an individual, a 'special regulated individual' or a business or undertaking. |
| Step 4. | Use the tool to assign an initial penalty level, including for the different types of offenders. Also consider whether infringement fees are appropriate. |
| Step 5. | Check the initial penalty against the two remaining Framework principles, deterring undesirable behaviour, and being proportionate (including whether it is consistent with other offences and whether it is fair). |
| Step 6. | Refine the financial penalty including considering whether adjustments are necessary to increase deterrence or increase proportionality. |

Following these six steps the penalties undergo an independent moderation process.

More information about the Framework can be found on the Ministry's website at www.transport.govt.nz.

Proposal 5.1:

Update the maximum level of fines and infringement fees that can be set through regulations in the Maritime Transport Act

The MTA provides the Governor-General with powers to make regulations with respect to prescribing the level of infringement fees, and fines (on conviction before a court). These powers can be found in section 201 of the MTA, with respect to breaches of the Maritime Rules or navigation bylaws, and section 394, with respect to breaches of the Marine Protection Rules.

The legislation prescribes limits on both fines applied by a court (fines) and infringement fees (fees). In the case of fines, the Governor-General can prescribe the penalty for each offence in the Rules, to the following limits:

- In the case of an individual, a fine not exceeding \$10,000
- In the case of any other person (ie a body corporate), a fine not exceeding \$50,000.

Similarly, for fees, the Governor-General can prescribe the penalty for each offence in the Rules to the following limits:

- In the case of an individual, a fee not exceeding \$2,000
- In the case of any other person (ie a body corporate), a fee not exceeding \$12,000.

In 2021, following the development of the Effective Transport Financial Penalties Framework, the Ministry of Transport developed the Financial Penalties Categorisation Tool (the Tool). The Tool helps apply the Framework to set transport-related infringement fees and fines applied by a

court. It provides a step-by-step categorisation process for determining financial penalty levels in transport legislation, that is coherent and better aligned to severity and risk of harm.

The Framework and the Tool provide a more fit-for-purpose approach to prescribing transport-related financial penalties, ensuring they are consistent, fair and effective. For example, the Framework differentiates between individuals and 'special regulated individuals.' If an individual is acting in a professional capacity, they are a special regulated individual. Regulators usually have extra expectations of the conduct of special regulated individuals, so the Framework and Tool allow for a corresponding increase in penalty over individuals operating in a personal capacity.

The Tool outlines 12 categories of offence penalties on a continuum from minor to extremely serious offences (those likely to result in catastrophic harm). Each category contains penalty levels for three circumstances:

- In the case of an individual:¹²
 - when an offence can be committed by any individual
 - when an offence can only be committed by a special regulated individual (for example, the Master of a ship)
- In the case of any other person (ie a body corporate) when an offence can be committed by a business or undertaking.

Categories 1A to 5 in Table 1 overleaf are intended for the types of offences covered by the regulations, and the majority of these penalties fit within the limits already prescribed.

In Categories 4 and 5 the penalty levels for special regulated individuals in the Tool are higher than those limits set through the MTA. For example, at Category 4 the Tool (which is more modern than

¹² Special regulated individuals are not recognised in legislation currently. Responding to this, the tool recommends that the penalty allocated to an "individual" in legislation should only reflect the levels recommended for special regulated individuals when the design of the offence means that it can only be committed by people in this category.

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the legislation), sets the limit for a serious offence committed by a special regulated individual to \$2,100 for an infringement offence, whereas the MTA sets the limit for an individual to \$2,000. Similarly, the maximum fine for a special regulated individual in Category 5 is \$15,000 versus \$10,000 in the MTA

The discrepancy between the MTA and the Framework is restricting application of the Framework and Tool to the offences made in regulations, by limiting the level of fees and fines applied. This makes it more difficult to achieve the fair and consistent penalty system that the Framework is intended to support.

Table 1: Penalty scale for harm and types of offenders

Severity Scale:	Category Level:		Individual	Special Regulated Individual	Business or under-taking		Individual	Special Regulated Individual	Business or under-taking
Minor	1A	Infringement Fees	\$50	\$150	\$500	Fines before a Court	\$250	\$750	\$2,500
	1B		\$150	\$450	\$1,500		\$750	\$2,250	\$7,500
	2A		\$250	\$750	\$2,500		\$1,250	\$3,750	\$12,500
	2B		\$350	\$1,050	\$3,500		\$1,750	\$5,250	\$17,500
Moderate	3		\$500	\$1,500	\$5,000		\$2,500	\$7,500	\$25,000
	4		\$700	\$2,100	\$7,000		\$3,500	\$10,500	\$35,000
Serious	5		\$1,000	\$3,000	\$10,000		\$5,000	\$15,000	\$50,000
	6						\$10,000	\$30,000	\$100,000
Very Serious	7						\$20,000	\$60,000	\$200,000
	8						\$30,000	\$90,000	\$300,000
Catastrophic	9						\$50,000	\$150,000	\$1,500,000
	10						\$60,000	\$180,000	\$3,000,000

Proposal

To bring the legislation into alignment with the Framework and Tool, we propose amending sections 201 and 394. This means that the maximum penalties that can be applied will be:

- In the case of an individual, a fee not exceeding \$3,000 and a fine not exceeding \$15,000.
- In the case of any other person (ie a body corporate) the fees and fines would remain the same.

This proposal does not amend any penalties; however, other proposals within this section propose changes in penalty levels.



Questions/views

Do you agree with the proposal to amend the maximum penalty levels in the Regulations?

Why/why not?

Proposal 5.2: Modernise the penalties for the safety offences in the MTA

Most offences and penalties are set in regulations (secondary legislation); however, serious offences and penalties are often set in primary legislation. This reflects the serious nature of the offending which could result in multiple deaths or serious injuries, warranting significant penalty levels.

The safety offences in Part 6 of the MTA address acts or omissions that can cause unnecessary danger or risk to people and property, or that have caused actual harm or damage. These offences are:

- unnecessary danger caused by holder of maritime document (s64)
- dangerous activity involving ships or maritime products (s65)
- proceeding without pilot contrary to Maritime Rules or direction given under section 60A (s65A)
- communicating false information affecting safety (s67)
- offences for submerged load lines (s67A)
- other offences (s67B) such as:
 - operating a ship without the prescribed number of seafarers or qualified personnel
 - operating a ship outside its prescribed operating limits
 - knowingly breaching any requirement in the MTA or in regulations or Rules made under the MTA for carrying dangerous goods.

These represent some of the most serious offending against the MTA.

The current penalty level for these offences is a maximum fine for an individual of \$10,000 and a maximum fine for a body corporate of \$100,000.

These offences also include a possible alternative penalty of imprisonment for up to twelve months for individual offenders. Except for the section 67 offence, these offences are also liable for a further variable fine under section 409 of the MTA, linked to the commercial benefit derived from the offending.

The financial penalties that apply to these offences:

- have generally not been updated since the 1990s
- do not reflect the potential or actual severity and likelihood of harm that could or has occurred (for example, a serious injury or death)
- are well below penalty levels applied for similar offending in more modern legislation such as the Health and Safety at Work Act 2015 (HSWA).

These different levels of financial penalties under the MTA and HSWA are creating challenges. Maritime NZ enforces the HSWA and its associated regulations for work on board ships, and where New Zealand ships are places of work. However, the HSWA does not apply to non-commercial vessels or the management of a foreign vessel. This means that maritime safety breaches by non-commercial (recreational) operators and foreign operators in New Zealand must be prosecuted under the MTA, which applies to all ships (including commercial New Zealand ships) operating in New Zealand waters.

OBJECTIVE 5

Table 2: HSWA application and MTA application

HSWA applies	MTA applies
Injuries on land, including ports	Safety breaches on non-commercial (including recreational) vessels
Onboard New Zealand commercial vessels	Onboard foreign vessels in New Zealand ports and waters

This creates an inequity between penalties imposed on domestic commercial ships when HSWA is used, compared to actions taken under the MTA which is the only option for domestic recreational ships and foreign ships for similar offending.

Between January 2019 and June 2020 five companies and seven individuals were sentenced for offences under the provisions in the MTA. In comparison, eight companies and four individuals were sentenced under the HSWA.

The financial penalties in HSWA for similar levels of offending to those addressed by the safety offences in the MTA are much higher. For example, section 65 of the MTA makes it an offence to operate a ship (or maritime product) in a manner that causes unnecessary danger or risk to any other person or to any property. The maximum financial penalty under this section for a body corporate is \$100,000. The equivalent offence in HSWA (section 48) has a maximum penalty of \$1.5 million.

Misaligned penalties can result in unequal outcomes. Apart from being inconsistent with comparable HSWA penalties, the penalties may not be sufficient to hold an offender accountable for harm and deter potential offenders from committing similar offences. For example, in 2020 an overseas shipping company was fined \$24,000 under the MTA for poor maintenance and safety communication leading to the severe injury of a stevedore. The stevedore’s employer, however, offered a \$420,000 enforceable undertaking to avoid prosecution under the HSWA for the same incident.¹³

We consider the adjustments to the maximum penalty levels will allow the courts to impose penalties that better reflect the level of harm and culpability associated with the offence. In making decisions on the level of fines to be imposed in any particular case, the judge must also take into account the principles of the Sentencing Act 2002 and any aggravating or mitigating factors.

This will mean that the new penalty levels will serve as a genuine deterrent, particularly for large body corporates, rather than as a cost of doing business.

Aligning the financial penalty levels with modern legislation like HSWA will reduce the risk of the inequitable imposition of penalties for the same severity of offending depending on whether the MTA or HSWA is used.

Proposal

We propose increasing the maximum financial penalties possible for these offences, as assessed through using the Framework.

The proposed new levels are set out below (old amounts ~~turquoise strikethrough~~)

13 An enforceable undertaking is an agreement between WorkSafe and a duty holder made under the Health and Safety at Work Act 2015 (HSWA). It is entered into voluntarily by the duty holder following a breach (including an alleged breach) of the HSWA and, once in place, is legally binding. It is generally used as an alternative to prosecution.

Table 3: Proposed amended penalties for safety offences

Section	Title	Maximum fine for individual	Maximum fine for body corporate
64	Unnecessary danger caused by holder of maritime document (this includes all masters and ship owners)	\$150,000* \$10,000	\$1,500,000 \$100,000
65	Dangerous activity involving ships or maritime products	\$50,000 \$10,000	\$1,500,000 \$100,000
65A	Proceeding without pilot contrary to Maritime Rules or direction given under section 60A	\$150,000* \$10,000	\$1,500,000 \$100,000
67	Communicating false information affecting safety	\$50,000 \$10,000	\$1,500,000 \$100,000
67A	Offence for submerged load lines	\$150,000* \$10,000	\$1,500,000 \$100,000
67B	Other offences	\$50,000 \$10,000	\$1,500,000 \$100,000

The maximum financial penalties for individuals in sections 64, 65A and 67A (*) are significantly higher than the remaining offences as these offences apply to people acting in professional capacities involving large vessels. In terms of the Framework these offences apply to individuals we consider to be 'special regulated individuals'.

Due to the nature of the offence, individuals that could be charged under section 64 can only be undertaking duties while holding a maritime document, and under sections 65A and 67A will only involve professional masters of mostly larger commercial or some recreational ships (such as superyachts) that are subject to pilotage requirements. Those individuals should be subject to higher penalties to reflect their responsibilities and the trust and expectations placed upon them by the transport system.

These changes would affect individuals and body corporates convicted of a safety offence. They would also provide court judges greater flexibility when determining the appropriate penalty level for the context. While the increased maximum penalty levels better allow penalties to reflect the seriousness of these offences, the judge also can take matters like financial capacity of offenders and broad context of offending into consideration. Lesser penalties appropriate to circumstances may therefore be imposed depending on these factors. This may lead to more appeals due to the higher penalties.



Questions/views

Do you agree with the proposal to aligning the financial penalties for safety offences with the HSWA?

Why/why not?

OBJECTIVE 5

Proposal 5.3

Amend the Maritime (Offences) Regulations 1998 and Marine Protection (Offences) Regulations 1998

The Regulations set out the offences and subsequent penalties for breaching requirements in the Maritime and Marine Protection Rules (the Rules).

A key purpose of these Rules is to put in place safety and environmental regulation in accordance with New Zealand's obligations under a range of international conventions. The technical and operational standards contained in the conventions are incorporated into New Zealand law by means of the Rules. These Rules enable New Zealand to be party to the conventions and are therefore an important prerequisite for New Zealand to fulfil its obligations under international law.

The International Maritime Organization (IMO) expects party States to have in place appropriate procedures for detection of violations and enforcement of conventions. The IMO periodically audits party States' implementation of conventions. It is a reputational risk for New Zealand not to have a robust regulatory framework, including effective offences and penalties associated with these Rule Parts.

As the maritime regulator, Maritime NZ manages compliance to achieve its aim of a maritime environment that is safe, secure and clean. Maritime NZ has a range of tools, or interventions, available when non-compliance with Rules is identified. Some tools are designed to assist maritime sector participants to get things right, and others are about using enforcement where necessary.

Maritime NZ's approach will be tailored to the circumstances, taking into account risk, attitude and capability, plus the likely consequences of an incident or harm occurring.

The range of interventions available enables Maritime NZ to:

- provide information and educational materials to operators
- give advice and suggest improvements in safety and marine environment protection
- issue safety updates and advisory circulars
- issue infringement notices
- issue notices requiring corrective action on deficiencies or improvements to be made
- impose conditions
- investigate, and issue warnings
- detain vessels
- prohibit port operations or other potentially harmful activities
- suspend or revoke a seafarer's licence
- prosecute.¹⁴

When a full range of regulatory tools is not available (for example, when a criminal prosecution is the only available option, or where no offence is identified in the Rules), it can limit Maritime NZ's ability to regulate effectively. Section 201 of the Act allows for regulations to be made setting infringement fees and maximum fines before a court. This consultation document includes proposals that seek to change two types of financial penalties:

- infringement fees – these are suitable for minor offending where there is a relatively low risk of harm to people, the maritime system or the environment. For this level of penalty, offending must be straightforward (the offence specific and clear), and it is only necessary to prove that the offence was committed. Factors like intention, knowledge of the offending occurring, or recklessness are not relevant. Since the offences are less serious, fees do not result in a criminal conviction, and the penalty level is lower compared to a fine with a maximum \$3,000 for an individual (if proposal 5.1 is approved) or \$10,000 for a body corporate. Charging documents can be

¹⁴ For more information about Maritime NZ's compliance approach go to <https://www.maritimenz.govt.nz/about/what-we-do/compliance/compliance-model.asp>

laid, and infringement fees can be challenged. However, even when the matter proceeds to court it would not result in a criminal conviction.

- fines – these fines are suitable for medium-level offending and where offending does not involve straightforward matters of fact. Fines are also suitable for serious offending, which is considered under the Act, with criminal conviction on prosecution before a court. The maximum fines on conviction are \$15,000 for an individual (if proposal 5.1 is approved) or \$50,000 for a body corporate.

We propose five types of changes to the offences and penalties in the Regulations. These include:

- Creating new offences
- Merging offences
- Removing offences
- Adding infringement penalties
- Setting new financial penalties.

These are discussed in Table 4: Proposed changes to offences and penalties, below.

Table 4: Proposed changes to offences and penalties

Issue/change description	Example
Creating new offences <ul style="list-style-type: none"> • Some Rules have no corresponding offence in the Regulations, meaning there is no ability to address non-compliance or to deter offending if other tools such as education have not improved compliance rates. • In all but two cases, the Rules covered by the offences being modified put international conventions into effect and the absence of offences is a reputational risk. 	<p><i>300.80(3)(a) Owner and the master to ensure New Zealand ship carries a ballast water management plan (Marine Protection Rules).</i></p> <p>The requirement to have a ballast water management plan is a part of the International Convention for the Control and Management of Ships' Ballast Water and Sediments.</p> <p>While the rule currently exists in New Zealand's Marine protection rules, there are no offences at all for breaches of Rules Part 300.</p>
Merging offences <ul style="list-style-type: none"> • Historically, some offences were broken into subsets of the same offence and have been determined to have the same penalty under the Framework. In these cases, it makes sense to merge these offences into a single offence. 	<p><i>101A.6(4) and 101A.6(5) Surveys and Inspection (oil)</i></p> <p>These offences have historically been separated. It now makes sense to combine them into a single offence.</p>
Removing offences <ul style="list-style-type: none"> • Some offences do not require a rules-level offence as they are serious enough to always use an offence under the Act. • Some offences are being removed as the relevant rules has been revoked. 	<p><i>130B.4 No person may operate oil transfer site without approved contingency plan that complies with certain requirements (Marine Protection Rules).</i></p> <p>The offence associated with this Rule is revoked as it is of sufficient gravity to rely on Act-level provisions in section 277 (acting without necessary marine protection document).</p> <p><i>47.3(1) Master of ship 24 metres or more in length must ensure appropriate load lines not submerged (Maritime Rules).</i></p> <p>While this Rule was revoked in 2007, an associated offence still exists in the Maritime (Offences) Regulations</p>
Adding infringement penalties <ul style="list-style-type: none"> • Some offences are straightforward and easily provable (termed 'strict liability' offences) and are appropriate for infringement fee penalties to deter lower-level offending. Prosecution and subsequent fines would still be available for more serious offending. 	<p><i>46.24(4) Owner of barge must retain New Zealand Barge Safety Certificate for period of validity and make certificate available for inspection (Maritime Rules).</i></p> <p>This is a straightforward and relatively minor offence, as the owner of the barge either has the safety certificate available for inspection or does not. It is also a category 2 (minor) offence (as defined in the Framework), so is appropriate to introduce infringement fees.</p>

OBJECTIVE 5

Issue/change description	Example
<p>Setting new financial penalty levels</p> <ul style="list-style-type: none">• The financial penalties for fees and fines have either not been reviewed for a long time or have been reviewed on an ad-hoc basis, and no longer reflect the level of harm associated with the offending or undermine the deterrent effect.• The Framework has been applied across all offences to ensure that penalties are consistent for similar forms of offending.• In some instances, we propose decreasing the fee/fine associated with an offence. In other instances, we propose increasing the fee/fine.¹⁵• Proposal 5.1 (update the maximum level of fines and infringement fees that can be set through regulations in the MTA) supports this proposal.	<p><i>24C.3 Responsibilities of shipper of specific cargo (other than grain) re cargo information (Maritime Rules).</i></p> <p>We propose decreasing the penalties for this offence, as the review determined this offence to have low harm likelihood in a one-off case.</p> <p><i>131.29(3) Following every review of emergency response procedures, owner must determine modifications to oil spill contingency plan, submit modifications to Director for approval, and implement modifications in accordance with rule (Marine Protection Rules).</i></p> <p>We propose increasing the penalties for this offence, as the review determined this offence to have very high system harm, and moderate to medium likelihood of harm to the environment.</p>

Some Rules have been re-worded and re-numbered without similar changes being made in the offences. In addition, the wording of some offences is being amended to better reflect and capture the wording in the Rule itself. We are not consulting on the rewording/renumbering changes as they are necessary corrections reflecting the current text of the Rules. Without making these changes the Rules may be unenforceable by Maritime NZ. These changes are summarised and colour-coded in the tables in Appendix I.

We have identified no immediate or direct impacts resulting from the proposed changes. However, it will affect the persons or groups identified under each Rule Part if they commit a relevant offence. As discussed under Step 4 of the Tool in the Effective Transport Financial Penalties Framework and Tool section, the penalty assigned reflects the level of responsibility of the person involved. For example, offences that are more

likely to affect recreational fishers rather than commercial fishing boat masters will have lower penalties assigned to them. No demographic data is available for current infringement notices so we cannot state whether the changes for recreational boaters would disproportionately affect particular demographic groups.

Revising the penalties will ensure that they are fair and reflect the severity and likelihood of harm caused by breaches of the requirements, and that similar offences are treated consistently, both across the Rules and across legislation applying to different transport modes. In some cases, the fines will increase and in others they will decrease. The introduction of infringement fees will make it possible for Maritime NZ to better and more quickly enforce minor breaches of the requirements and reduce reliance on court proceedings. However, the introduction of new infringements may also lead to an increased number of court appeals.

15 Increases in penalty levels will largely only impact fines that apply to body corporates (with the exception of 131.29(3) which proposes an increase to the fee payable by body corporates, as well as a fine increase), and Special Regulated Individuals (SRIs). You can read more about penalty changes to better recognise SRIs in proposal 5.1.

Overall, the changes will contribute positively to the outcome of a safe, secure and clean maritime transport system.

Note: In general warships of the New Zealand Defence Force (NZDF) are carved out from MTA requirements (s4 MTA) except “as otherwise provided in the Act or regulations or rules under the Act”. Some Maritime and Marine Protection Rules cover NZDF ships and others do not. In instances where warships are covered, Maritime NZ has jurisdiction. Many international maritime conventions contain carve-outs for defence force vessels, as in emergency or conflict situations it may be unreasonable to subject warships to the same safety and environmental restrictions that apply to peacetime use of ships.



Questions/views

Do you agree with the proposed amendments to the maritime and marine protection offences and penalties?

Why/why not?

In your response you may wish to consider:

- Where new offences are proposed, do you consider that these are justified?
- Where new infringement offences are specifically proposed, do you consider that these are justified and appropriate?
- Can you identify any impacts resulting from the proposed changes?
- Do you consider that the proposed financial penalties, whether these are for maximum fines or infringement fees, applying to individuals, body corporates or other persons, are at the right levels?
- Do you consider that the proposed financial penalties appropriately reflect the potential harm likely to be caused by the offending?
- Where amended wording is proposed, do you consider these better reflect the intention of that Rule?

OBJECTIVE 5

Proposal 5.3.1: Amend the Maritime (Offences) Regulations 1998

Rule Part 19: Maritime Transport Operator – Certification and Responsibilities

Summary

Rule Part and purpose	Application	Issues	Proposed changes
<p>Part 19: Maritime Transport Operator – Certification and Responsibilities</p> <p>Requires maritime transport operators to develop, and operate according to, a safety system specific to their operation.</p> <p>Reaffirms the responsibility operators must take for the safety of their operations and the vessels used within those operations.</p>	<p>Most domestic commercial ship operators – every person conducting a maritime transport operation, operating a New Zealand commercial ship in New Zealand waters, on the New Zealand coast; or outside New Zealand waters if requirements under fisheries or ship registration regulations.</p>	<p>There are currently no offences in the Regulations for breaches of Part 19, which most domestic commercial vessel operators must operate under. Consequently, Maritime NZ has limited ability to respond to and address breaches of those Rules using, for example, infringement offences.</p>	<p>Establish offences and associated infringement fees and fines based on the Effective Transport Financial Penalties Framework (the Framework) for Rules 19.24, 19.43(4), 19.45(3), and 19.65.</p>

Most of the offences in this part deal with administrative requirements such as displaying certificates. Fines for offences under this Rule would range from \$740 – \$15,000 for individuals and \$2,500 – \$50,000 for any other persons. Infringement fees would range from \$150 – \$3,000 for individuals and \$500 – \$10,000 for any other person using the Framework.

Description

Part 19 requires maritime transport operators to develop, and operate according to, a safety system specific to their operation. The objective of the Rule is to improve the safety record of those operating ships commercially in New Zealand.

It reaffirms the responsibility operators must take for the safety of their operations and the vessels used within those operations.

There are currently no offences in the Maritime (Offences) Regulations 1998 for breaches of Part 19, which most domestic commercial vessel operators must operate under.

Consequently, Maritime NZ’s ability to respond to and address breaches of those Rules is limited, and as a result the deterrent effect of the Rules is also limited.

More serious breaches of Rules in this part can be prosecuted under the MTA (for example, operating without a certificate of survey or a Marine Transport Operator Certificate can be prosecuted under section 68 of the MTA). However, we consider it is important to introduce offences under Part 19 as a deterrent to more minor offending such as the failure to display or make available the relevant certificates.

Minor breaches of this sort ultimately undermines the integrity of the system as well as Maritime NZ’s regulatory role and responsibility to manage compliance.

Without an offence or penalty for these Rules, it assumes that all requirements and obligations are of equal importance. Most operator duties in Rules Part 19 are very minor matters where the power to issue infringement fees or fines would not be necessary. However, there are four duties in the Rule Part that we consider are sufficiently important to warrant being offences.

Proposal

In line with the Framework, we propose establishing four new offences associated with existing requirements in Rules Part 19:

- Rule 19.25
- Rule 19.43(4)
- Rule 19.45(3)
- Rule 19.65

The four rules listed above involve breaches for maritime transport operators not displaying documentation or making it available for inspection. These documents include operator certificates, survey plans and maintenance plans. It is important that these documents are readily available to enable the regulator to quickly and efficiently determine that an operator is operating in accordance with required safety systems.

Creating these four offences will provide a level of deterrent and will allow Maritime NZ to address non-compliance. The addition of these offences will signal a higher expectation of compliance with those requirements. It will also ensure that breaches of Part 19 are treated in a consistent manner to other rules breaches involving failure to carry documentation or make it available for inspection.

It is proposed that all the above offences will apply to both individuals and persons other than individuals (eg body corporates).

Impact

The new offences in Rules Part 19 will apply to most domestic commercial ship operators. They will apply to every person conducting a maritime transport operation (as defined in the Rules), operating a New Zealand commercial ship—

- (a) in New Zealand waters
- (b) on the New Zealand coast; or
- (c) outside New Zealand waters—
 - (i) if the ship is registered in New Zealand under the Ship Registration Act 1992; or
 - (ii) if the ship is, or is required to be, licensed or registered in New Zealand under any applicable New Zealand fisheries law.

The offences will not apply in the case of the non-commercial use of a commercial ship during the period of the non-commercial use.

The impact of the new offences will be on those who breach the Rules, who may now be subject to penalties in line with those who commit similar offences under other Rules Parts. There will also be an impact on Maritime NZ, which will be able to enforce the Rules more effectively, and better contribute to the outcome of a safe maritime transport system. There will be no impact on compliant operators.

OBJECTIVE 5**Rules Part 20: Operating Limits****Summary**

Rule Part and purpose	Application	Issues	Proposed changes
Part 20: Operating Limits Defines physical operating limits for ships for the purpose of all Maritime Rules. Requires ships to be assigned operating limits and keep within the assigned operating limits, subject to exceptions.	New Zealand commercial ships, foreign commercial ships operating in New Zealand waters or foreign fishing vessels registered under the Fisheries Act 1996. Does not apply to pleasure craft, New Zealand ships which have current SOLAS certificates, or most visiting foreign ships	Offences have been reviewed in line with the Framework and penalties require changes to better reflect the severity and likelihood of harm. Offences relating to Rules 20.20(1) and 20.43(2) require renumbering and rewording due to a Rules update.	Increase penalty levels for Rules 20.20(1) and 20.43(2), based on the Framework. Renumber and reword Rules 20.20(1) and 20.43(2). Remove duplicative offence under 20.6.

Most of the offences in this part deal with requirements on ship operators. Consistent with this, the maximum fines for offences under this Rule would range from \$5,000 – \$10,000 for individuals and from \$30,000 – \$50,000 for any other person using the Framework.

Description

The purpose of Rules Part 20 is to ensure the safety of ships by:

- defining physical operating limits for ships for the purpose of all Maritime Rules. These operating limits are enclosed water, inshore, inshore fishing, coastal and offshore limits and unlimited area
- requiring ships to be assigned operating limits
- requiring ships to keep within the assigned operating limits or the operating limits that apply to the ship's master (whichever is the lesser limit), subject to exceptions.

There are several issues relating to three of the Rules in this Rule Part – 20.20(1), 20.21 and 20.43(2):

- In 2014 the Rules were extensively revised and renumbered with no corresponding update being made to the Regulations. As a result, the numbering of the offences in the Regulations is misaligned to the corresponding offences in the Rules. The offence numbered 20.5(1) in the Regulations should be numbered 20.20(1); and the offence numbered 20.7(2) in the Regulations should be numbered 20.43(2). Without this correction the Rules may be unenforceable.
- The wording for the offence in regulations for Rule 20.43(2) needs to be amended to include responsibilities of the owner and master when

operating outside either restricted or coastal limits. This better reflects the intention and wording of the Rule. Without this correction the Rule may be able to be enforced only for voyages outside restricted limits into coastal limits.

- The penalty levels for Rules 20.20(1) and 20.43(2) are proposed to be increased in line with the Framework.
 - An offence under Rule 20.20(1) is a serious breach of the system requirements for maritime safety, as it will mean that a ship has not been properly surveyed. This could lead to a high risk of harm to maritime safety, as not having limits assigned means there is no basis for the operator to judge whether the ship is operating in a safe physical location.
 - An offence under Rule 20.43(2) is a medium-level breach of the system requirements for maritime safety, as it requires the ship operator to behave in accordance with those requirements. There is also a high safety harm as the offender would be breaching important safety requirements (such as a prohibition on carrying passengers when voyaging outside limits).

Current Maritime Rule 20.21 corresponds to the offence under Rule 20.6 in the Regulations. This offence is overridden by another offence in the MTA (sections 67B(1)(b) – it is an offence for any person to operate a ship outside its prescribed operating limits), which carries a penalty appropriate for the seriousness of the offence. It is considered unnecessary to duplicate the offence in the Regulations and therefore the offence under 20.6 can be revoked.

Proposal

We propose amending three offences relating to Rules Part 20 to address the issues outlined above. These amendments are:

- Correcting and re-aligning rules 20.20(1) and 20.43(2) with the right rule number and offence.
- Clarifying the description of the offence for rule 20.43(2) to better match the rule. We propose add the underlined text into the offence wording:
- “Responsibilities of owner and master of restricted or coastal limits ship making single voyage outside restricted or coastal limits under Rule 20.43.”
- Revoking the offence in Regulations relating to the revoked rule 20.6. We do not propose establishing a new offence associated with rule 20.21 as this would conflict with the similar offences in the MTA and undermine or disregard Parliament’s oversight of this serious offence.
- Increasing the penalty levels for offences under rules 20.20(1) and 20.43(2) to better reflect the severity and likelihood of harm. We also propose changing the individual penalties for these offences to reflect that the requirements set out in Part 20 relate to individuals operating in a professional capacity and required to hold a relevant maritime document to fulfil their role.

Impact

These changes will apply to any ship owners and masters to whom Rules Part 20 applies. This includes New Zealand commercial ships,¹⁶ foreign commercial ships operating in New Zealand waters or foreign fishing vessels registered under the Fisheries Act 1996.

Part 20 does not apply to certain ships including pleasure crafts, New Zealand ships which have current SOLAS certificates, or foreign ships visiting New Zealand ports, New Zealand offshore terminals or transiting New Zealand waters.

The impact of the changes will be on those who breach the Rules, who may now be subject to more effective enforcement and higher penalties, and on Maritime NZ, which will now be able to enforce the Rules more effectively and better contribute to the outcome of a safe maritime transport system. There will be no impact on compliant operators.

¹⁶ Defined under the Maritime Transport Act as ships that are not—(a) a pleasure craft; or (b) solely powered manually; or (c) solely powered by sail.

OBJECTIVE 5**Rules Part 21: Safe Ship Management Systems****Summary**

Rule Part and purpose	Application	Issues	Proposed changes
Part 21: Safe Ship Management Systems Requires certain New Zealand commercial ships to establish safe ship management procedures which are consistent with the duties of participants in the maritime system stated in the MTA.	Section 1 relates to foreign-going ships which are subject to SOLAS requirements, and to other large ships, other than fishing ships, which proceed beyond restricted limits. Section 2 (revoked) relates to restricted limit ships, fishing ships and ships of less than 54 metres in length which are not required to comply with section 1.	Offences have been reviewed in line with the Framework and penalties require changes to better reflect the severity and likelihood of harm. Section 2 of Part 21 was revoked by Part 19.	Increase penalty levels for offences under Rules 21.6(1)(b), 21.6(4), 21.6(5) and 21.8, based on the Framework. Remove offences under revoked Rules 21.13(1), (3), (5), (15) and (19) as they are redundant

Most of the offences in this part deal with safe management of ships. Consistent with this, fines for offences under this Rule would change from \$1,250 to \$3,750 for individuals and from \$7,500 – \$30,000 to \$12,500 – \$50,000 for any other person using the Framework. Infringement fees would change from \$500 to \$750 for individuals and reduce from \$3,000 to \$2,500 for any other person.

Description

Part 21 requires certain New Zealand commercial ships to establish safe ship management procedures which are consistent with the duties of participants in the maritime system stated in the MTA.

Section 1 relates to those foreign-going ships which are subject to SOLAS requirements, and to other large ships, other than fishing ships, which proceed beyond restricted limits.

Section 2 (now revoked) related to restricted limit ships, fishing ships and ships of less than 54 metres in length which are not required to comply with section 1.

There are issues with existing offences relating to section 1 and offences once applied to the now revoked section 2.

In section 1 of Part 21, the penalty levels for offences under Rules 21.6(1)(b), 21.6(4), 21.6(5) and 21.8 are proposed to be increased in line with the Effective Transport Financial Penalties Framework.

The offence under Rule 21.6(1)(b) applies to failure of a ship owner to maintain a safety management system. This is a serious breach of the system requirements for maritime safety and could in turn lead to a high actual safety risk to the ship, given that safety is not appropriately managed.

The offences under Rules 21.6(4), 21.6(5), and 21.8 apply to requirements to carry compliance documents and certification on board the ship. Failure to do so is a serious breach of the system requirements for maritime safety, because of the importance of such documents as assurance of regulatory compliance. Given that there is no actual safety risk in not carrying the documentation, the proposed fine levels for these offences have been increased but are set lower than the fine for Rule 21.6(1)(b).

Section 2 of Part 21 was revoked by Part 19. There was a caveat that provisions continued to apply to maritime transport operators who were operating under a deemed Maritime Transport Operator Certificate after 1 July 2014, until their certificate expired. The last certificate expired on 1 July 2019. Consequently, offence provisions relating to former section 2 Rules 21.13(1), (3), (5), (15) and (19) are now redundant.

Proposal

We propose increasing penalty levels for offences under four rules – 21.6(1)(b), 21.6(4), 21.6(5) and 21.8 – to better reflect the severity and likelihood of harm. We propose changing the individual penalties to levels for special regulated individuals under the Framework, as the requirements set out in Part 21 relate to special regulated individuals.

We also propose revoking five offence provisions 21.13(1), (3), (5), (15) and (19), given that these related to the revoked section 2 of Part 21, and the Safe Ship Management Certificate transition period has now expired. These offences are no longer required.

Impact

The proposed changes will apply to domestic and foreign owners, masters or both (depending on the particular Rule), of commercial ships that are any of the following:

- SOLAS ship
- passenger ship of 45 metres or more in length that proceeds beyond restricted limits
- non-passenger ship of 45 metres or more in length that proceeds beyond restricted limits
- self-propelled mobile offshore drilling unit of 500 tons gross tonnage or more
- non-passenger ship of 500 tons gross tonnage or more which is at a New Zealand port or offshore terminal
- passenger ship which is at a New Zealand port or offshore terminal
- self-propelled mobile offshore drilling unit of 500 tons gross tonnage or more which is at a New Zealand port or offshore terminal or is operating in New Zealand continental waters.

The proposed changes will not apply to masters or owners of pleasure craft, fishing ships or barges.

The higher penalties are likely to deter operators from breaching the Rules, and maritime transport will be safer as a result. There will be no impact on compliant operators.

OBJECTIVE 5

Rules Part 22: Collision Prevention

Summary

Rule Part and purpose	Application	Issues	Proposed changes
Part 22: Collision Prevention Gives effect to the Convention on the International Regulations for Preventing Collisions at Sea, to which New Zealand is party. Steering and sailing Rules for ships, as well as standards for light signals and collision avoidance lights.	Owners and persons responsible for navigation of: <ul style="list-style-type: none"> • New Zealand ships, including pleasure craft • foreign ships, including pleasure craft, in New Zealand waters • ships of the Defence Force and foreign defence forces in New Zealand waters • seaplanes when manoeuvring on the surface of New Zealand waters • craft in inland waters, such as lakes and rivers 	There is only one offence under these Rules, 22.39. Offences under Rule 22.39 need amending to provide for infringement-level penalties for some offences, where only fine-level penalties are currently available.	Replace the current single offence for Rule 22.39 with two separate offences. The first offence would relate to sub-rules 22.39(1), (2) (a) and (2)(b) and would include a new infringement fee and a revised fine penalty based on the Framework. The second offence would relate to sub-rules 22.39(2)(c) and (2)(d), with only a revised fine penalty.

Most of the offences in this part deal with safety requirements on ship operators. Consistent with this, fines for offences under this Rule would stay at \$5,000 for individuals and from \$30,000 – \$50,000 for any other person using the Framework. Infringement fees of \$3,000 and \$10,000 respectively would be introduced.

Description

Part 22 gives effect to the Convention on the International Regulations for Preventing Collisions at Sea, to which New Zealand is party.

Part 22 provides the steering and sailing Rules for ships, as well as standards for the installation, performance and use of lights for collision avoidance and the sound and light signals used for communication of safety information.

A collision or near-miss is a serious incident that often deserves serious penalties. We consider that Rule 22.39 needs amending to provide for infringement-level penalties for lesser offences, where suitable.

Currently, one offence covers all the requirements providing only fine-level penalties. However, it would be beneficial to have infringement penalties available to address breaches for sub-rules (1), (2) (a) and (2)(b). These sub-rules are:

- “(1) Every owner of a vessel to which this Part applies must ensure that the vessel is provided with all such lights, shapes, and means of making fog signals as may be required by this Part.
- (2) Every master or other person for the time being responsible for the navigation of a vessel to which this Part applies must—
 - (a) ensure that all such lights, shapes, and means of making fog signals, as may be required by this Part, are carried, exhibited, and used in accordance with this Part; and
 - (b) refrain from carrying, exhibiting, or using on the vessel any lights, shapes, or means of making fog signals other than those required or permitted by this rule to be carried, exhibited or used on the vessel;”

These are straightforward, easily provable, low- to moderate-level harm severity breaches of owners and masters of ships and other craft having the right navigation equipment available and using it.

Conversely, sub-rules (2)(c) and (2)(d) are much broader, referring to navigating in accordance with the whole of Rule Part 22. Breaches would therefore be complex to prove in this context, making (2)(c) and (2)(d) inappropriate for infringement offences and appropriately remain fine-level offences. These sub-rules are:

- “(2) Every master or other person for the time being responsible for the navigation of a vessel to which this Part applies must—*
- (a) ensure that the vessel is navigated in accordance with this Part; and*
 - (b) refrain from navigating the vessel in a manner that is contrary to this Part.”*

Proposal

We propose replacing the current single offence for rule 22.39 with two separate offences. The first offence would relate to sub-rules (1), (2)(a) and (2)(b), which would include a new infringement fee and a revised fine penalty. The second offence would relate to sub-rules (2)(c) and (2)(d) with only a revised fine penalty.

Adding the infringement-level penalty and revising the fine penalty will ensure these offences and penalties reflect the severity of breaches of the requirements in Part 22.

Impact

The proposed changes will apply to owners and persons responsible for navigation of:

- New Zealand ships, including pleasure craft, wherever they are
- foreign ships, including pleasure craft, in New Zealand waters
- ships of the Defence Force and foreign defence forces in New Zealand waters
- seaplanes when manoeuvring on the surface of New Zealand waters
- craft in inland waters, such as lakes and rivers.

The changes will increase navigation safety for all maritime users. The changes will impact on those who breach the Rules, who may now be subject to infringement fees and revised penalties. This is likely to deter non-compliance and better contribute to the outcome of a safe maritime transport system. There will be no impact on compliant operators. The introduction of infringement fees will make it possible for Maritime NZ to better enforce minor breaches of the requirements.

OBJECTIVE 5**Rules Part 24A: Carriage of Cargoes – Dangerous Goods****Summary**

Rule Part and purpose	Application	Issues	Proposed changes
Part 24A: Carriage of Cargoes – Dangerous Goods Implements New Zealand's obligations under the Convention for the Safety of Life at Sea (SOLAS) with respect to the carriage of dangerous goods. Prescribes Rules governing the carriage of dangerous goods by sea by certain commercial ships.	New Zealand commercial ships in New Zealand waters and elsewhere, and foreign ships in New Zealand waters, carrying dangerous goods as cargo. All persons involved in any way with the carriage of dangerous goods on a ship, whether they are shore-based or on board a ship. Does not apply to dangerous goods that form part of the stores or equipment of the ship. Does not apply to pleasure craft, warships or fishing ships.	There are 34 offences relating to Part 24A. Due to subsequent Rule amendments, most of these offences relate to the wrong Rule or a revoked Rule. Without this correction the Rules may be unenforceable. For this reason, the entire set of offences for Part 24A requires a complete review to be fit-for-purpose.	Replace the current Part 24A offences with a reduced, rationalised, and correctly referenced set of five new offences. These cover what we consider are the most critical code requirements to support compliance with the Part 24A Rules. Penalties have been reviewed in line with the Framework.

The offences in this part deal with dangerous goods. Consistent with this, fines for offences under this Rule would change from \$3,000 – \$5,000 to \$5,000 for individuals. New fines for any other person would be set at \$50,000 using the Framework. Infringement fees for individuals and any other person would be set at \$1,000 and \$10,000 respectively.

Description

The purpose of Part 24A is to implement New Zealand's obligations under SOLAS¹⁷ with respect to the carriage of dangerous goods.

Part 24A prescribes Rules governing the carriage of dangerous goods by sea by certain commercial ships – New Zealand ships in New Zealand waters and elsewhere, and foreign ships in New Zealand waters.

It does not apply to dangerous goods that form part of the stores or equipment of the ship, such as paints, cleaning agents, lubricating and hydraulic oils, oxy-acetylene equipment for maintenance purposes, or fuel for use aboard the ship. It also does not apply to pleasure craft, warships or fishing ships.

The SOLAS requirements cover a series of mandatory codes for dangerous goods in packaged form, dangerous goods in solid form in bulk, dangerous liquid chemicals in bulk, liquefied gases in bulk as well as packaged irradiated nuclear fuel, plutonium and high-level radioactive wastes on board ships.

There are 34 offences relating to Part 24A. But due to subsequent Rule amendments, most of these offences relate to the wrong Rule or a revoked Rule. Without this correction the Rules may be unenforceable. For this reason, the entire set of offences for Part 24A requires a complete review to be fit-for-purpose.

¹⁷ The main objective of the SOLAS Convention is to specify minimum standards for the construction, equipment and operation of ships, compatible with their safety. Flag States are responsible for ensuring that ships under their flag comply with its requirements, and a number of certificates are prescribed in the Convention as proof that this has been done.

Proposal

We propose removing the current Part 24A offences and replacing them with a reduced, rationalised, and correctly referenced set of five new offences. These cover what we consider are the most critical requirements to support compliance with the Part 24A rules which are:

- 24A.62(1)(a) – Identifying and classifying
- 24A.62(1)(b) – Packaging
- 24A.62(1)(c) – Marking and labelling
- 24A.82(1)(a) – Documentation
- 24A.223(1) – Alternative standards for carriage of dangerous goods freight on a ship on a domestic voyage within restricted limits other than across Cook Strait.¹⁸

The proposed penalty levels for the above offences align with Framework and are also more closely aligned with the levels for the most serious dangerous goods-related offences in land transport and civil aviation offences regulations.

On domestic voyages, the Rules provide for dangerous goods standards to be varied for passengers carrying non-freight dangerous goods. Ship operators must have a dangerous goods management plan as part of the ship safety management system and provide passengers with reasonable notice of the dangerous goods requirements before embarkation (Rules 24A.183 and 184). Passenger ferries also have a number of exemptions for the carriage of limited amounts of dangerous goods by passengers (outlined in schedules 2 and 3 of Rule 24A) such as cigarette lighters, scuba tanks, propane gas canisters, and fuel.

The changes will impact on those who breach the Rules despite the procedures in the ship's management plan, who may now be subject to revised penalties. This is likely to deter non-compliance and better contribute to the outcome of a safe maritime transport system. There will be no impact on people who comply. The changes to numbering will make it possible for Maritime New Zealand to enforce the Rules effectively.

Impact

The proposed changes apply to all persons involved in any way with the carriage of dangerous goods on a ship, whether they are shore-based or on board a ship, including:

- owners, operators and masters of ships
- shippers of dangerous goods
- any person engaged in packing dangerous goods or consolidating cargo containing dangerous goods for carriage on a ship
- any person who loads, stows or unloads dangerous goods on a ship
- any person who manufactures or supplies packaging for dangerous goods that will be carried on a ship
- any person, including a passenger, who carries dangerous goods onto a ship or allows them to be brought onto a ship.

¹⁸ This offence supports the rule which pragmatically aligns maritime and land transport requirements in this limited situation. Persons performing dangerous goods cargo functions must comply with the Land Transport Rule: Dangerous Goods 2005 requirements such as identification, classification, packaging, marking and labelling.

OBJECTIVE 5**Rules Part 24B: Carriage of Cargoes – Stowage & Securing****Summary**

Rule Part and purpose	Application	Issues	Proposed changes
Part 24B: Carriage of Cargoes – Stowage and Securing Prescribes the SOLAS requirements for the stowage and securing of all cargoes other than liquid, gas or solid bulk cargoes, grain, timber deck cargoes and livestock (except livestock carried in road or rail vehicles).	New Zealand ships carrying cargo in any location and foreign ships carrying cargo in New Zealand. New Zealand ships loading cargo at any port, and foreign ships loading cargo at a New Zealand port, before embarking on an international voyage.	There are currently no offences for breaches of Rules Part 24B. Consequently, Maritime NZ does not have an ability to respond to and address breaches.	Create a new offence for Rule 24B.10(2). The proposed offence is appropriate for infringement fee penalties to deter straightforward, lower-level offending

Most of the offences in this part deal with requirements for stowing of cargo. Consistent with this, the new offence under this Rule set a fine of \$7,500 for individuals and \$25,000 for any other person using the Framework. Infringement fees would be set at \$1,500 and \$5,000 respectively.

Description

Part 24B prescribes the requirements for the stowage and securing of all cargoes other than liquid, gas or solid bulk cargoes, grain, timber deck cargoes and livestock (except livestock carried in road or rail vehicles).¹⁹

This Rule applies to:

- New Zealand ships carrying cargo and foreign ships carrying cargo in New Zealand
- portable tanks, heavy cargo units, wheel based rolling cargoes, under deck stowage of logs, containers, vehicles on roll on/roll off (ro-ro) ships, livestock road vehicles and cargoes on offshore supply vessels
- New Zealand ships loading cargo at any port, and to foreign ships loading cargo at a New Zealand port, before embarking on an international voyage in line with SOLAS implementation requirements for stowing and securing cargo.

There are currently no offences for breaches of Rules Part 24B. However, we think it would be beneficial if there was an offence to address breaches of Rule 24B.10(2). This Rule states:

“The shipper of a road freight vehicle, road tank vehicle, or road livestock vehicle must not offer the vehicle for shipment on a ro-ro ship to which rule 24B.14 applies [which applies to ships undertaking international and coastal voyages] unless it is—

- fitted with vehicle securing points in accordance with Part 2 of NZS 5444:2005; and*
- marked with an information plate in accordance with Part 2 of NZS 5444:2005.”*

Currently, cargo vehicles frequently arrive on interisland ferries without approved tie-down points. Inappropriately secured cargoes could shift, causing injuries to ferry crew. Currently there is no offence if a vehicle is loaded without securing points and an information plate. Once the vehicle is on board, unloading it would likely entail a disproportionate cost for the ferry operator. With no offence there is a lack of deterrence or response for this situation.

¹⁹ Carriage of solid bulk cargoes, grain cargoes, timber deck cargoes and livestock is covered by Part 24C of the Maritime Rules.

Proposal

We propose establishing a new offence for rule 10(2) of Part 24B with an associated infringement fee and fine. The offence meets the criteria for a strict liability offence, as the presence or absence of the required equipment can be easily determined by a regulator at the point of inspection. The offence is therefore suitable to be an infringement offence, and enforcement action can be taken before an injury (and subsequent prosecution) occurs.

Impact

This change will provide a sufficient deterrent and ensure that shippers are more likely to ship compliant vehicles.

The new offence will apply to shippers²⁰ of road freight, road tank, or road livestock vehicles on roll on/roll off ships undertaking international and coastal voyages (not the master of the vessel).

The impact of the changes will be on those who breach the Rules, who may now be subject to the new offence and penalties. This is likely to deter non-compliance and better contribute to the outcome of a safe maritime transport system. There will be no impact on compliant operators. The introduction of an infringement fee will make it possible for Maritime NZ to better enforce minor breaches of the requirements.

²⁰ 'Shipper' means any person who offers goods for carriage by sea and includes any person who arranges for the carriage of goods by sea on behalf of any other person. Under this definition trucking firms would be liable as shipper rather than the individual truck driver or owner of the consignment.

OBJECTIVE 5**Rule Part 24C – Carriage of Cargoes – Specific Cargoes**

Table 1: Penalty scale for harm and types of offenders

Rule Part and purpose	Application	Issues	Proposed changes
Part 24C: Carriage of Cargoes – Specific Cargoes Implements SOLAS requirements and IMO codes of practice for loading and/or carrying specific cargoes, namely grain, solid bulk cargoes, timber deck cargoes and livestock.	Shippers of solid bulk and timber deck cargoes and livestock Owners and masters of ships carrying grain, solid bulk cargoes, timber deck cargoes and livestock.	Offences with fine-level penalties exist for fifteen Rules in Part 24C. Only one of these offences (associated with Rule 24C.18(5)) currently also has an infringement-level penalty attached. We consider all these offences (except Rule 24C.9) meet the criteria for strict liability offences.	Establish infringement fees based on the Framework for all offences except 24C.9. Amend penalty levels (some increases, some decreases) for all offences, based on the Framework. Reword offences 24C.6(2) and 24C.9

Most of the offences in this part deal with requirements for carriage of cargoes for professional individuals and companies. Consistent with this, fines for offences under this Rule would change from \$5,000 to \$3,750 – \$10,000 for individuals and from \$30,000 to \$12,500 – \$50,000 for any other person using the Framework. The new infringement offences would be set at \$750 – \$3,000 for individuals and \$2,500 – \$10,000 for any other person, depending on the potential harm of the specific offence.

Description

Part 24C outlines the requirements for ships carrying specific cargoes, namely grain, solid bulk cargoes, timber deck cargoes and livestock. It implements the requirements of the following conventions and codes for ships loading and/or carrying:

- grain – the grain carriage requirements of SOLAS 74
- solid bulk cargoes – the relevant provisions of SOLAS 74 and requires that the cargo is loaded and carried in accordance with the IMO's Code of Safe Practice for Solid Bulk Cargoes
- timber deck cargoes – IMO's Code of Safe Practice for Ships Carrying Timber Deck Cargoes
- livestock – but only relating to the safety of the ship and personnel on board (requirements regarding livestock welfare are the responsibility of the Ministry for Primary Industries).

Offences with fine-level penalties exist for fifteen Rules in Part 24C, which we have reviewed according to the Effective Transport Financial Penalties Framework. As a result some of the penalties are proposed to be increased and others to be reduced.

Only one of these offences (associated with Rule 24C.18(5)) currently also has an infringement-level penalty attached. Recent examples of where infringement-level offences may have been useful include the following:

- In 2019 after logs were not tied down and staff were not trained in accordance with IMO requirements a fatality took place on the Coresky OL. In a less serious or 'near-miss' situation, an infringement would have been appropriate.
- A successful prosecution took place after an incident in 2019, where crew working at height on a foreign vessel were not wearing the appropriate personal protective equipment. The ability to issue an infringement would have been quicker and less expensive for all parties.

We consider all these offences (except Rule 24C.9) meet the criteria for strict liability offences and would benefit from having associated infringement offences. The exception is the offence associated with Rule 24C.9, as it is broadly framed to relate to loading an entire ship and for this reason is not appropriate as an infringement offence.

The wording in the offences for Rules 24C.6(2) and 24C.9 also needs minor amendment, to align better with the wording in the Rules themselves.

Proposal

We propose:

- amending financial penalty levels for all fifteen current Part 24C offences, in line with the Framework
- establishing associated infringement offences for all the offences except rules 24C.9 and 24C.18(5)
- amending the wording for offences under rules 24C.6(2) and 24C.9 as follows.

*Owner and master of ship must ensure ship does not load grain unless ship holds document of authorisation **in English***
*Responsibilities of owner and master of ships **re for** assessing **acceptability of** solid bulk cargo before loading*

Impact

These proposed changes will apply to shippers of solid bulk and timber deck cargoes and livestock (excluding grain), and owners and masters of ships carrying grain, solid bulk cargoes, timber deck cargoes and livestock.

The impact of the changes will be on those who breach the Rules, who may now be subject to the revised offences and penalties, including infringement fees. This is likely to deter non-compliance and better contribute to the outcome of a safe maritime transport system. There will be no impact on those who comply. The introduction of infringement fees will make it possible for Maritime NZ to better enforce minor breaches of the requirements.

OBJECTIVE 5**Rules Part 40B – Design, Construction & Equipment – SOLAS Ships****Summary**

Rule Part and purpose	Application	Issues	Proposed changes
Part 40B: Design, Construction and Equipment – SOLAS ships Covers the requirement of SOLAS ships to comply with the design, construction and equipment applicable at the time the ship was built.	Foreign-going passenger ships Foreign-going non-passenger ships (other than fishing ships) of 500 tons gross or more (300 tons gross or more for radio requirements) Ships (other than fishing ships) of 45 metres or more in length that proceed beyond restricted limits.	There are no infringement offences associated with Part 40B. Two of the four offences (associated with Rules 40B.34 and 40B.35) are suitable to be infringement offences.	Establish infringement fees based on the Framework for Rules 40B.34 and 35. Amend penalty levels (some increases, some decreases) for all offences, based on the Framework.

Most of the offences in this part deal with construction and equipment requirements. Consistent with this, fines for offences under this Rule would change from \$5,000 to \$3,750 – \$10,000 for individuals and from \$30,000 to \$12,500 – \$50,000 for any other person using the Framework. New infringement penalties would range from \$750 – \$3,000 for individuals and \$2,500 – \$10,000 for any other person.

Description

Part 40B covers the requirement of SOLAS ships to comply with the design, construction and equipment applicable at the time the ship was built as specified in SOLAS 74.

Part 40B also requires compliance with relevant IMO Codes for certain types of ship such as bulk chemical carriers and liquefied gas carriers. Requirements regarding passenger accommodation and other relevant issues not covered by SOLAS 74 are also covered in Part 40B.

There are four offences associated with Part 40B for important safety-related requirements. There are three issues with the offences and penalties for Part 40B:

- The fine-level penalties for these offences require review in line with the Effective Transport Financial Penalties Framework. As a result, some of the penalties are proposed to be increased and others to be reduced.

- There are no infringement offences associated with Part 40B. Two of the offences (associated with Rules 40B.34 and 40B.35) meet the criteria for strict liability offences and are suitable to be infringement offences.
- The wording for offences for Rules 40B.46.10 and 40B.46.13(12) needs minor amendment to match the Rule wording more clearly.

SOLAS ships enter and leave New Zealand waters quickly, so any compliance tool that can be served quickly due to the offence being factually straightforward and relatively minor is of benefit. Investigations are reserved for the more serious matters due to resourcing, and they take time to conduct.

The proposed addition of infringements provides a more appropriate and proportional range of compliance options, making it more likely that compliance action will be taken and that it will be effective, and thereby reducing the system impact/cost if the ship is involved in an incident.

Proposal

We propose:

- amending the penalty levels for the four offences associated with Part 40B in line with the Framework and establishing infringement offences for the offences associated with rules 40B.34 and 40B.35
- making the following minor changes to the wording of the offences associated with rules 40B.46.10 and 40B.46.13(12):

*Responsibilities of owner of ship carrying dangerous chemicals **and liquefied gas** in bulk re surveys of ship*

*Owner and master of SOLAS ship must ensure **relevant** certificate(s) available on board for examination*

Impact

The proposed changes will apply to owners and/or masters of the following ships/craft:

- New Zealand-flagged foreign-going passenger ships (including cruise ships)
- New Zealand-flagged foreign-going non-passenger ships (other than fishing ships) of 500 tons gross tonnage or more (300 tons gross tonnage or more for radio requirements)
- New Zealand-flagged ships (other than fishing ships) of 45 metres or more in length that proceed beyond restricted limits.

The impact of the changes will be on those who breach the Rules, who may now be subject to the revised offences and penalties, including infringement fees. This is likely to deter non-compliance and better contribute to the outcome of a safe maritime transport system. There will be no impact on those who comply. The introduction of infringement fees will make it possible for Maritime NZ to better enforce breaches of the requirements.

OBJECTIVE 5**Rules Part 46 – Surveys, Certification and Maintenance****Summary**

Rule Part and purpose	Application	Issues	Proposed changes
Part 46: Surveys, Certification and Maintenance Prescribes the survey and certification requirements of SOLAS 74 for those New Zealand ships to which the convention applies. Incorporates the harmonised system of survey and certification adopted by the 1988 SOLAS Protocol. Prescribes survey requirements for barges.	Owners and masters of: SOLAS ships and ships, other than fishing ships, of 45 metres or more in length which operate outside restricted limits. Unmanned barges exceeding 24 metres or going overseas. Port state control of foreign ships.	The offences associated with Rules 46.9, 46.12, 46.13(15), 46.24(4) and 46.25 would benefit from having associated infringement offences and are appropriately straightforward strict liability offences. The offences associated with Rules 46.10 and 46.13(12) require minor amendments to ensure the wording is better aligned with the Rules narrative. Three Rules (46.28(1), 46.28(3), 46.28(5) have been revoked.	Establish infringement based on the Framework for offences associated with Rules 46.9, 46.13(15), 46.24(4) and 46.25. Increase penalty levels for all current offences, based on the Framework. Reword offences associated with Rules 46.10 and 46.13(12). Remove the offences associated with revoked Rules 46.28(1), 46.28(3) and 46.28(5).

Most of the offences in this part deal with certification and maintenance requirements for ship operators. Consistent with this, fines for offences under this Rule would change from \$1,250 – \$5,000 to \$3,750 – \$10,000 for individuals and from \$7,500 – \$30,000 to \$12,500 – \$50,000 for any other person using the Framework. New infringement fees would range from \$750 – \$3,000 for individuals and \$2,500 – \$10,000 for any other person.

Purpose

Part 46 comprises three sections relating to different types of ships. Section 1 deals with SOLAS ships and larger ships, other than fishing ships, of 45 metres or more in length which operate outside restricted limits. Section 3 deals with barges and Section 4 deals with port state control of foreign ships. Former Sections 2 and 5 have been revoked.

Section 1 prescribes the survey and certification requirements of SOLAS 74, to which New Zealand is currently party, for those New Zealand ships to which the convention applies. This section incorporates, for New Zealand ships, the harmonised system of survey and certification adopted by the 1988 SOLAS Protocol.

Section 3 deals with barges which have not previously been subject to surveys other than an initial survey. Barges which are required to be registered under the Ship Registration Act 1992 (exceeding 24 metres or going overseas) will be subject to initial survey for issue of a certificate and further surveys at five-year intervals for renewal of that certificate. This section applies to barges which do not carry persons on board when they are underway.

Section 4 implements the United Nations Convention of the Law on the Sea (UNCLOS) port state control regime in respect of a foreign ship's SOLAS certificates whilst it is at a New Zealand port or offshore terminal.

Three Rules in Rules Part 46 (46.28(1), 46.28(3), 46.28(5) have been revoked and therefore the associated offences also need to be removed.

The remaining ten offences associated with Rules Part 46 have been assessed in line with the Effective Transport Financial Penalties Framework. In this case higher penalties have been proposed for all offences due to the level of system or safety harm associated with each offence.

The offences associated with Rules 46.9, 46.13(15), 46.24(4) and 46.25 would benefit from having associated infringement offences and are appropriately straightforward strict liability offences.

These offences are potentially lesser offences relating to failure to have the right surveys carried out at specified times and not carrying certificates (which are not maritime documents) on ships. Not doing these things may not directly cause a safety incident but may either contribute to a safety incident or impair compliance activity. The proposed addition of infringements provides a more appropriate and proportional range of compliance options, making it more likely that compliance action will be taken and that it will be effective, thereby increasing the overall safety of the system.

The offences associated with Rules 46.10 and 46.13(12) require minor amendments to ensure the wording is better aligned with the Rules narrative.

Proposal

We propose:

- removing the offences associated with revoked rules 46.28(1), 46.28(3) and 46.28(5)
- raising the penalty levels of the remaining offences associated with Rules Part 46
- establishing infringement offences for rules 46.9, 46.13(15), 46.24(4) and 46.25
- making the following minor amendments to the narrative of offences associated with rules 46.10 and 46.13(12):

*Responsibilities of owner of ship carrying dangerous chemicals **and liquefied gas** in bulk re surveys of ship*

*Owner and master of SOLAS ship must ensure **relevant** certificate(s) available on board for examination*

Impact

The proposed changes to sub-Rules 46.9, 46.10, 46.12, 46.13(12), 46.13(15), 46.14(6) will apply to owners and/or masters of New Zealand SOLAS ships of 45 metres or more in length that proceed beyond restricted limits.

The proposed changes to sub-rules 46.24(4) and 46.25 will apply to owners of New Zealand barges of 24 meters or more in length which do not carry any person on board while underway.

The proposed changes to sub-rules 46.27(1) and 46.27(2) will apply to owners and masters of foreign ships while they are at a New Zealand port or operating on the New Zealand coast.

The impact of the changes will be on those who breach the Rules, who may now be subject to the revised offences and increased penalties, including infringement fees. This is likely to deter non-compliance and better contribute to the outcome of a safe maritime transport system. There will be no impact on those who comply. The introduction of infringement fees will make it possible for Maritime NZ to better enforce minor breaches of the requirements.

OBJECTIVE 5**Rules Part 47 – Load Lines****Summary**

Rule Part and purpose	Application	Issues	Proposed changes
Part 47: Load Lines Implements the International Convention on Load Lines 1966. Prescribes requirements for assigning and marking load lines and the issue of load line certificates in respect of the ship or barge. The load lines indicate the draught to which the ship or barge may be safely loaded having regard to its design, construction and area of operation.	Commercial ships and barges which carry cargo. Excludes fishing ships, and barges which operate outside the coastal limit	The numbering of three offences for the part (47.6(b), 47.55(3), 47.54) also needs to be changed to realign with the correct current Rules (47.8(2), 47.56), 47.66(5)). Without this correction the Rules may be unenforceable. Four Rule sub-parts in Part 47 (47.3(1), 47.29(1), 47.48, 47.54) have been revoked and therefore their corresponding offences need to also be revoked.	Amend penalty levels (some increases, some decreases) for all current offences, based on the Framework. Renumber offences associated with Rules 47.6(b), 47.55(3) and 47.54 to realign with the current Rules (47.8(2), 47.56) and 47.66(5)). Add infringement fees for 47.5(1) and 47.5(2) Remove offences for revoked Rules 47.3(1), 47.29(1), 47.48 and 47.54.

Most of the offences in this part deal with safety requirements on ship operators. Consistent with this, fines for offences under this Rule would change from \$3,000 – \$5,000 to \$3,750 – \$10,000 for individuals and from \$7,500 – \$30,000 to \$12,500 – \$50,000 for any other person using the Framework. Infringement offences would be adjusted or introduced at \$750 for individuals and \$2,500 for any other person.

Description

Rules Part 47 implements the International Convention on Load Lines 1966, focussing on the following key principles, issues and areas of concern:

- strength of the ship in relation to the loads it will carry
- stability of the ship
- reserves of stability and strength maintained through the setting of a minimum 'freeboard'
- watertight integrity of all openings, doors, ventilators, vent pipes and hatches on the ship
- protection of the crew.

These basic principles are applied within all three sections of this Rule Part:

- Section 1 applies to commercial ships of more than 24 metres in length, other than fishing ships, and barges of 24 metres in length or more which operate outside the coastal limit.

- Section 2 applies to smaller ships which carry cargo and section.
- Section 3 applies to barges of 24 metres in length or more which do not go beyond the coastal limit.

Each section prescribes requirements for assigning and marking load lines and the issue of a load line certificate in respect of the ship or barge. The assigned and marked load lines indicate the draught to which the ship or barge may be safely loaded having regard to its design, construction and area of operation.

The load line certificate issued indicates the nature of the load lines and minimum freeboards assigned to the ship or barge and records the conditions of assignment. Periodic surveys are required to verify the marked load line and maintenance of the ship or barge construction detail, which has been considered in assigning the load lines.

Rules Part 47 currently has sixteen associated offences. Four Rule sub-parts in Part 47 (47.3(1), 47.29(1), 47.48, 47.54) have been revoked and therefore their corresponding offences need to also be revoked.

Penalty levels for the remaining offences were reviewed in line with the Framework. As a result some of the penalties are proposed to be increased and others to be reduced.

The current numbering of three offences for the part (47.6(b), 47.55(3), 47.54) also needs to be changed to realign with the correct current Rules (47.8(2), 47.56), 47.66(5). Without this correction the Rules may be unenforceable.

Proposal

We propose:

- revoking the offences associated with rules (47.3(1), 47.29(1), 47.48)
- realigning the numbering of the current offences (47.6(b), 47.55(3), 47.54) with their correct rules
- amending the penalty levels for all remaining Part 47 offences in line with the Framework.
- adding infringement fees for 47.5(1) and 47.5(2), which are suitable for strict liability offences.

These changes will affect the following groups:

- in the General section of the Rules Part:
 - 47.3(4) – masters of ships less than 24 metres in length
 - 47.3(5) – barge owners and masters of ships towing barges
 - 47.5(1), 47.5(2) – owners of a New Zealand ship of 16 metres or more in length that is a fishing ship or that carries cargo or more than 50 passengers
- in section 1 – 47.8(2), 47.56, 47.59 owners and masters of commercial ships other than fishing ships of more than 24 metres in length, and barges of 24 metres or more in length which go beyond the coastal limit
- in section 2 – 47.60(b), 47.66(5), 47.67(3) owners and masters of smaller ships that carry cargo
- in section 3 – 47.68(b), 47.74, 47.75(3) owners of barges of 24 metres or more in length which do not go beyond the coastal limit.

Impact

The impact of the changes will be on those who breach the Rules, who may now be subject to the revised offences and penalties. This is likely to deter non-compliance and better contribute to the outcome of a safe maritime transport system. There will be no impact on those who comply.

OBJECTIVE 5**Rules Part 73 – Logbooks****Summary**

Rule Part and purpose	Application	Issues	Proposed changes
Part 73: Logbooks Provides for standardised shipboard recording of routine, emergency and safety operational information. Gives effect to or provides for verification or recording under: <ul style="list-style-type: none"> • SOLAS 74 • International Convention on Load Lines 1966. • MARPOL 73/78. 	New Zealand commercial ships engaged on international voyages. Passenger and non-passenger ships of 45 metres or more in length that proceed beyond restricted limits. Self-propelled mobile offshore drilling units of 500 tons gross or more. Fishing ships involved in international voyages, meaning voyages involving a call at a port in a country outside New Zealand.	Penalty levels for the offences have been reviewed in line with the Framework and require changes to better reflect the severity and likelihood of harm. The numbering for all offences associated with the Rules in this part, except Rules 73.4.1 and 73.5, is out of alignment with the current Rules numbering. Unless the numbering is corrected the Rules may be unenforceable.	Amend penalty levels (some increases, some decreases) for all offences, based on the Framework. Renumber all offences except those associated with Rules 73.4.1 and 73.5 to realign with the current Rules. Add infringement fees to 73.5, 73.5A, 73.6, 73.7, 73.8, 73.12 (new numbers).

Most of the offences in this part deal with record keeping requirements on ship operators. Consistent with this, fines for offences under this Rule would change from \$1,250 – \$5,000 to \$3,750 – \$10,000 for individuals and from \$7,500 – \$30,000 to \$12,500 – \$50,000 for any other person using the Framework. Infringement fees would go from \$500 – \$2,000 to \$750 for individuals, and from \$3,000 – \$12,000 to \$2,500 for any other person.

Description

Part 73 provides for the standardised shipboard recording of routine and emergency operational information and significant, generally untoward events affecting the ship and its safety, and the safety and well-being of the people on board.

The Rules in Part 73 give effect to the various recording requirements under SOLAS 74 and provide verification of compliance with the submersion requirements of the International Convention on Load Lines 1966.

Provision is also made for recording exercises of shipboard oil pollution emergency plans, which is required to be carried under MARPOL 73/78.

The numbering for all offences associated with the Rules in this part, except Rules 73.4.1 and 73.5, is out of alignment with the current Rules numbering. Unless the numbering is corrected the Rules may be unenforceable.

Old Rule number in regulations	New Rule number	
73.6	73.5A	Owner and master of ship must ensure that record of watch keeping crew is entered in New Zealand official logbook in approved form
73.7	73.6	Owner and master of ship must ensure that record of depth to which ship is loaded, and the freeboard is entered in approved form in New Zealand official logbook whenever ship proceeds on a voyage
73.8	73.7	Owner and master of ship must ensure that records of on-board inspection drills, musters, and training are entered in New Zealand official logbook
73.9	73.8	Owner and master of ship must ensure that appropriate entry recording any specified occurrence is made in New Zealand official logbook
73.11(1)(b)	73.10(1)(b)	Owner and master of ship must ensure New Zealand official logbook available for inspection at all reasonable times
73.11(2)	73.10(2)	Owner of ship must ensure New Zealand official logbook is preserved for 3 years after date of last entry
73.12	73.11	Owner and master of ship must ensure ship carries on board engine-room logbook in approved form
73.13	73.12	Owner, master, chief engineer or engineer must ensure that appropriate entry is made in engine-room logbook recording specified occurrences
73.15(1)(a)	73.14(1)(a)	Owner and master of ship must ensure engine-room logbook kept on board
73.15(1)(b)	73.14(1)(b)	Owner and master of ship must ensure engine-room logbook available for inspection at all reasonable times
73.15(2)	73.14(2)	Owner of ship must ensure engine-room logbook is preserved for 3 years after date of last entry

The penalty levels for the offences have been reviewed in line with the Framework. As a result, some of the penalties are proposed to be increased and others to be reduced.

Proposal

We propose realigning the numbering of the offences to match current rules and amending penalty levels in line with our assessment using the Framework. We also consider rules 73.5, 73.5A, 73.6, 73.8, and 73.12 are strict liability offences suitable for infringement fees.

These offences apply to owners and/or masters, and additionally for Rule 73.12, chief engineers or engineers of:

- New Zealand commercial ships engaged on international voyages
- passenger and non-passenger ships of 45 metres or more in length that proceed

beyond restricted limits

- self-propelled mobile offshore drilling units of 500 tons gross tonnage or more
- fishing ships involved in international voyages, meaning voyages involving a call at a port in a country outside New Zealand.

The impact of the changes will be on those who breach the rules, who may now be subject to the revised offences and penalties. This is likely to deter non-compliance and better contribute to the outcome of a safe maritime transport system. There will be no impact on those who comply.

OBJECTIVE 5**Proposal 5.3.2: Amend the Marine Protection (Offences) Regulations 1998****Rules Part 100 – Port Reception Facilities (Oil, Noxious Liquid Substances and Garbage)****Summary**

Rule Part and purpose	Application	Issues	Proposed changes
<p>Part 100: Port Reception Facilities (Oil, Noxious Liquid Substances and Garbage)</p> <p>To protect the marine environment from ship-sourced oil, noxious liquid substances and garbage by ensuring the provision of port reception facilities to receive these waste substances, which cannot be discharged into the sea under conditions prescribed by MARPOL.</p> <p>Gives effect to regulation 38 of Annex I, regulation 18 of Annex II and regulation 7 of Annex V of MARPOL.</p>	<p>This applies to port operators operating ports in New Zealand, the internal waters of New Zealand, or New Zealand continental waters, which have been required by notice in writing under section 236 of the Maritime Transport Act 1994, to provide at that port a facility for the reception of harmful substances from ships.</p>	<p>There are currently no offences in the Regulations for breaches of Part 100. This means there is no deterrent in the legislation to encourage compliance with those Rules. Consequently, Maritime NZ does not have an ability to respond to and address breaches of those Rules.</p>	<p>Establish offences and associated infringement fees and fines based on the Framework for Rules 100.4(1), 100.4(2), 100.5(1), 100.5(2), 100.6, 100.7, 100.8, 100.9 100.10(1), 100.10(2), 100.11, 100.12(1), 100.12(2), 100.13(1) and 100.13(2)</p> <p>Penalty levels for new offences have been reviewed in line with the Framework</p>

The offences in this part deal with ensuring port facilities are available to protect the environment from spills. Consistent with this, new fines for offences under this Rule would be set at \$10,000 for individuals and \$35,000 for any other person using the Framework. Infringement fees would be set at \$2,100 for individuals, and \$7,000 for any other person.

Description

The objective of Part 100 is to protect the marine environment from ship-sourced oil, noxious liquid substances and garbage. This is by ensuring the provision of port reception facilities to receive these waste substances, which cannot be discharged into the sea under the controlled conditions prescribed by International Convention for the Prevention of Pollution from Ships 1973/78 (MARPOL).

The objective of Part 100 is therefore served by setting requirements for reception facilities for these substances, for the ports providing services to different sizes and types of ship.

The technical standards contained in MARPOL are incorporated into New Zealand law by means of Marine Protection Rules. These Rules enable New Zealand to be party to MARPOL. Part 100 gives effect to regulation 38 of Annex I, regulation 18 of Annex II and regulation 7 of Annex V of MARPOL.

There are currently no offences associated with Part 100.²¹ This means the regulatory framework lacks important incentives, deterrents and responses to port reception facilities not providing reception facilities for waste substances from ships. This in turn presents risks to the marine environment from ships not having appropriate facilities in which to discharge their waste, making it more likely ships may discharge waste into the marine environment.

²¹ Cabinet has approved new Part 100 offences and penalties in relation to regulation 17 of MARPOL Annex VI, which covers reception facilities for ozone-depleting substances and waste from exhaust gas cleaning systems.

Proposal

We propose establishing fifteen new offences relating to Part 100, all at the same penalty level. Assessment using the Framework has determined that these offences are all system harms (breaching requirements of the transport system designed to ensure safety, security and efficiency) of the same level of severity. This is because they all involve proactive provision of reception facilities for waste. They are not offences, for example, involving actually inappropriately discharging waste, which would involve both system and tangible environmental/property harms, warranting higher penalties under the Framework.

Impact

These offences apply to port operators operating ports in New Zealand, the internal waters of New Zealand, or New Zealand continental waters, which have been required by notice in writing under section 236 of the Maritime Transport Act 1994, to provide at that port a facility for the reception of harmful substances from ships.

The proposal applies the Framework to existing Rules and makes them consistent with the new (already approved) MARPOL Annex VI offences and penalties.

The impact of the changes will be on those who breach the Rules, who may now be subject to the new offences and penalties. By enabling Maritime NZ to take action in cases of a breach, it is likely to deter non-compliance and better contribute to the outcome of a safe maritime transport system and protection of the marine environment. There will be no impact on those who comply.

OBJECTIVE 5**Rules Part 101A – Surveys and Inspections (Oil)****Summary**

Rule Part and purpose	Application	Issues	Proposed changes
Part 101A: Surveys and Inspections (Oil) Applies the survey and inspection requirements of regulation 4 of Annex I of MARPOL, to verify compliance with the construction and equipment requirements set out in Marine Protection Rules Parts 121A, 121B and 122.	Oil tankers of 150 tons gross or more and ships other than oil tankers of 400 tons gross or more. Warships and other ships of the New Zealand Defence Force which are oil tankers of 150 tons gross or more, or ships other than oil tankers of 400 tons gross or more.	Offences 101A.6(4) and 101A.6(5) are essentially parts of the same offence. The 101A.6(5) offence effectively adds detail to the 101A.6(4) offence and they can be treated as one offence. We consider that two offences (101A.6(2), and the merged 101A.6(4) and (5)) are straightforward, strict liability offences suitable to also be infringement offences.	Combine offences under 101A.6(4) and (5) into one offence. Establish infringement fees based on the Framework for offences associated with the merged 101A.6(4) and (5). Amend penalty levels (some increases, some decreases) for all offences, based on the Framework.

The offences in this part deal with ensuring ships comply with Marine Protection Rules to prevent oil spills. Consistent with this, fines for offences under this Rule would change from \$5,000 to \$10,000 for individuals and from \$35,000 to \$50,000 for any other person using the Framework. Infringement fees would be set at \$750 – \$3,000 for individuals, and \$7,000 – \$10,000 for any other person.

Description

Part 101A applies the survey and inspection requirements of regulation 4 of Annex 1 of MARPOL, to verify compliance with the construction and equipment requirements set out in Marine Protection Rules Parts 121A, 121B and 122, for the following categories of New Zealand ships:

- oil tankers of 150 tons gross or more and ships other than oil tankers of 400 tons gross or more.
- warships and other ships of the New Zealand Defence Force which are oil tankers of 150 tons gross or more or ships other than oil tankers of 400 tons gross or more.

These surveys are a key part of the marine protection system relating to the prevention of oil spills. Unless they are carried out regularly and effectively there is a risk of oil spills occurring due to non-compliance with technical construction and equipment requirements. The environmental impact of oil spills can range from minor to catastrophic, as New Zealand's experience with the Rēna demonstrates.

There are currently seven offences associated with Part 101A.

Offences 101A.6(4) and 101A.6(5) are essentially parts of the same offence, and we propose these should be combined into one offence. The 101A.6(4) offence involves breaching the requirement to report an accident to a ship or a defect discovered in a ship. The 101A.6(5) offence involves not reporting an accident or defect to the Director of Maritime NZ, authorised organisation or appropriate authorities. Thus, the 101A.6(5) offence effectively adds detail to the 101A.6(4) offence and can be treated as one offence.

Using the Framework, the merged 101A.6(4) and (5) offences are straightforward, strict liability offences suitable to also be infringement offences.

Assessment using the Framework has also determined that the penalty levels for two offences (101A.7(3) and 101A.7(4)) should be lowered from current levels. This is because these offences merely relate to ensuring appropriate documentation is on board the ship. Breaching this is a 'system' harm to the integrity of the regulatory framework but not a direct harm to people's safety or the environment.

Proposal

We propose:

- combining offences 101A.6(4) and (5) into one offence.
- establishing new infringement offences for the merged (4) and (5)
- amending penalties for the offences in line with the Framework.

Impact

These proposed changes will apply to owners and masters of the categories of the ships listed under 'Purpose of Rules part' above.

The impact of the changes will be on those who breach the Rules, who may now be subject to the revised offences and penalties, including infringement fees. This is likely to deter non-compliance and better contribute to the outcome of a safe maritime transport system and protection of the marine environment. There will be no impact on those who comply. The introduction of infringement fees will make it possible for Maritime NZ to better enforce minor breaches of the requirements.

OBJECTIVE 5**Rules Part 101B – Surveys and Inspections (Noxious Liquid Substances Carried in Bulk)****Summary**

Rule Part and purpose	Application	Issues	Proposed changes
Part 101B: Surveys and Inspections: Noxious Liquid Substances Carried in Bulk Gives effect to regulation 8 of Annex II of MARPOL. Contains requirements for initial and periodic surveys of tankers carrying noxious liquid substances in bulk, to verify compliance with the construction and equipment requirements set out in Marine Protection Rules Part 141. These lower the chance of spills which are rare in New Zealand but potentially catastrophic.	All New Zealand ships which carry noxious liquid substances in bulk. Warships and other ships of the New Zealand Defence Force which carry noxious liquid substances in bulk.	Two of the four offences (101B.6(2), (4) and (5)) are straightforward offences which are appropriate to also be infringement offences. The four offences associated with Rules Part 46 have been reviewed in line with the Framework. In this case higher penalties have been proposed for all offences due to the level of environmental and safety harm associated with each offence.	Establish infringement fees based on the Framework for offences associated with Rules 101B.6(4) and (5). Increase penalty levels for all offences, based on the Framework.

The offences in this part deal with ensuring ships comply with Marine Protection Rules to prevent noxious liquid spills. Consistent with this, fines for offences under this Rule would change from \$5,000 to \$10,000 for individuals and from \$30,000 to \$50,000 for any other person using the Framework. Infringement fees would be introduced at \$2,100 – \$3,000 for individuals, and \$7,000 – \$10,000 for any other person.

Description

Part 101B contains requirements for initial and periodic surveys of tankers carrying noxious liquid substances in bulk, to verify compliance with the construction and equipment requirements set out in Marine Protection Rules Part 141.

In doing so, Part 101B specifically applies regulation 8 of Annex II of MARPOL 73/78 to:

- all New Zealand ships which carry noxious liquid substances in bulk
- warships and other ships of the New Zealand Defence Force which carry noxious liquid substances in bulk.

These surveys are a key part of the marine protection system relating to the prevention of chemical and other noxious liquid spills and discharges. Unless they are carried out regularly and effectively there is a risk of spills occurring due to non-compliance with technical construction and equipment requirements. Chemical and noxious liquid spills and discharges are always treated seriously. They are rare in New Zealand but potentially catastrophic.

Part 101B has four associated offences which, following assessment with the Framework, warrant increase. Three of these offences 101B.6(2), (4) and (5) are also straightforward strict liability offences which are appropriate to also be infringement offences.

Proposal

We propose increasing penalty levels for offences 101B.6(1), (2), (4) and (5) as well as establishing new infringement offences for offences 101B.6(4) and (5).

These proposed changes will apply to owners and masters of the categories of ships listed under the 'Description' section above.

Impact

The impact of the changes will be on those who breach the Rules, who may now be subject to the revised offences and penalties, including infringement fees. This is likely to deter non-compliance and better contribute to the outcome of a safe maritime transport system and protection of the marine environment. There will be no impact on those who comply. The introduction of infringement fees will make it possible for Maritime NZ to better enforce minor breaches of the requirements.

OBJECTIVE 5**Rules Part 120 – Discharge of Oil****Summary**

Rule Part and purpose	Application	Issues	Proposed changes
Rules Part 120: Discharge of Oil Gives effect to Regulations 4, 15 and 34 of Annex I of MARPOL and to that instrument's Protocol I. Prohibits or controls discharge of substances such as oily bilge water, and oil cargo residues into the sea within certain areas.	New Zealand ships, warships and other ships of the New Zealand Defence Force operating outside the New Zealand coastal marine area and within the internationally recognised 'special areas'. Foreign ships operating within areas of the sea under New Zealand jurisdiction.	There are currently no offences associated with Part 120. This means the regulatory framework to reduce the quantity of environmentally harmful oil and oily mixtures entering the sea from ships lacks important incentives, deterrents and responses to breaches of requirements short of prosecution under the MTA.	Create new offences under Rules 120.3A, 120.5, 120.5(5), 120.6(1), 120.6(2), 120.8(1), 120.8(2), 120.9(1); 120.9(2)(i) and (ii), 120.12, 120.14(1), 120.15, 120.16, 120.17 and 120.19. Establish penalties for each offence based on the Framework.

The offences in this part deal with ensuring ships comply with marine protection Rules to prevent noxious liquid spills. Consistent with this, fines for offences under this Rule would be set using the Framework at \$10,000 for individuals and from \$35,000 – \$50,000 for any other person. Infringement fees would be introduced at \$2,100 – \$3,000 for individuals, and \$7,000 – \$10,000 for any other person.

Description

Part 120 gives effect to standards in Regulations 4, 15 and 34 of Annex I of MARPOL 73/78 and to that instrument's Protocol I. These are concerned with reducing the quantity of environmentally harmful oil and oily mixtures entering the sea from ships.

Part 120 establishes a regime prohibiting the discharge of oil cargo residues into the sea from oil tankers within 50 nautical miles of land and in defined 'special areas' (such as Antarctica). It also imposes controls on the flow, concentration and quantity of discharges in other areas. Controls, for both oil tankers and other ships, are also imposed on the discharge of machinery space bilge water containing oil.

Oil residues which cannot be discharged into the sea in compliance with the conditions specified in Part 120 must be retained on board or discharged to reception facilities.

Part 120 applies to the following ships:

- New Zealand ships, warships and other ships of the New Zealand Defence Force operating outside the New Zealand coastal marine area and within the internationally recognised 'special areas'.
- foreign ships operating within areas of the sea under New Zealand jurisdiction.

There are currently no offences associated with Part 120. This means the regulatory framework to reduce the quantity of environmentally harmful oil and oily mixtures entering the sea from ships lacks important incentives, deterrents and responses to breaches of requirements. Currently the only available enforcement option is prosecution under the MTA, which is a costly course of action suitable for the most serious breaches. We consider it desirable to introduce a suite of lower-level offences addressed at small-scale oil spills and discharges, which are common in New Zealand waters.

We therefore consider that establishing a series of offences relating to Part 120 would be beneficial.

We do not consider it is necessary to establish offences in regulations for Rules 120.15, 120.16 and 120.17. This is because we consider that breaches of these Rules are of sufficient seriousness to rely on the MTA-level offences of section 238 involving failure to report discharges of harmful substances into sea or seabed (for Rules 120.15 and 120.16) and section 71 failure to report accidents or incidents (for Rule 120.17).

Further, we do not consider it is necessary to establish an offence for Rule 120.10. That Rule holds that owners and masters of ships to which the part applies must ensure that oil residues from the ship that cannot be discharged into the sea in compliance with the conditions specified in Part 120 be retained on board or discharged to reception facilities. This Rule constitutes general guidance and offences are better associated with more specific requirements in Part 120.

Proposal

We propose establishing fifteen new offences associated with Part 120.

Impact

These offences will apply to owners and masters of the categories of ships referred to under the 'Description' section above.

The impact of the changes will be on those who breach the Rules, who may now be subject to the revised offences and penalties, including infringement fees. This is likely to deter non-compliance and better contribute to the outcome of a safe maritime transport system and protection of the marine environment. There will be no impact on those who comply. The introduction of infringement fees will make it possible for Maritime NZ to better enforce minor breaches of the requirements.

OBJECTIVE 5**Rules Part 122 – Marine Protection Products (Oil)****Summary**

Rule Part and purpose	Application	Issues	Proposed changes
Rules Part 122: Marine Protection Products (Oil) Gives effect to Regulations 3.5, 12, 13, 14, 18.8.3, 30-33 and 34.6 of Annex I of MARPOL. Specifies the design and fitting of shipboard equipment and systems required for preventing oil pollution (marine protection products).	New Zealand commercial ships including oil tankers. Warships and other ships of the New Zealand Defence Force including oil tankers.	There are currently no offences in regulations to support Part 122 Rules, which are important to prevent oil pollution. Consequently, the regulatory framework to deter and respond to breaches is lacking. We consider that establishing two offences relating to Part 122 would be beneficial.	Create new offences under Rules 122.4(2), 122.4(3). Establish penalties for each offence based on the Framework.

The offences in this part deal with ensuring ships comply with Marine Protection Rules to prevent noxious liquid spills. Consistent with this, fines for offences under this Rule would be set using the Framework from \$12,000 – \$50,000 for any other person. Infringement fees would be introduced at \$2,500 – \$10,000 for any other person.

Description

Part 122 specifies the shipboard equipment and arrangements required for preventing pollution of the sea by oil. This includes oil filtering equipment, oil discharge monitoring and control systems, crude oil washing (oil tankers) and tanks for storage of oil residue (sludge) and oily bilge water. Part 122 gives effect to standards found in Regulations 3.5, 12, 13, 14, 18.8.3, 30-33 and 34.6 of Annex I of MARPOL.

Part 122 effectively applies requirements of Annex I of MARPOL to the design and fitting of marine protection products to:

- New Zealand commercial ships including oil tankers
- warships and other ships of the New Zealand Defence Force including oil tankers.

There are currently no offences in regulations to support Part 122 Rules, which are important to prevent oil pollution. Consequently, the regulatory framework to deter and respond to breaches is lacking.

Example: A 2021 Maritime NZ study of 24 commercial vessels under 400 tons gross found that a large proportion of the vessels studied did not comply with Rule 122.22 related to equipment for management of oily waste. While the actual arrangements in place were considered by Maritime Officers to be ‘adequate’, the arrangements were not compliant with MARPOL standards and the operators had not sought approval from the Director of Maritime NZ to use alternative arrangements.

Proposal

We propose establishing three new offences associated with Rules Part 122. These proposed changes will apply to owners and masters of the ship types listed under the ‘Description’ section above.

Impact

The impact of the changes will be on those who breach the Rules, who may now be subject to the revised offences and penalties. This is likely to deter non-compliance and better contribute to the outcome of a safe maritime transport system and protection of the marine environment. There will be no impact on those who comply.

Rules Part 123A – Documents (Certificates) (Oil)

Summary

Rule Part and purpose	Application	Issues	Proposed changes
Rules Part 123A: Documents (Certificates) – Oil Gives effect to Regulations 7, 8 and 9 of Annex I of MARPOL. Requires ships to hold an appropriate International Oil Pollution Prevention Certificate (IOPP Certificate) or equivalent.	All New Zealand ships of 400 tons gross or more. New Zealand oil tankers of 150 tons gross or more. New Zealand warships and other ships of the New Zealand Defence Force of the above tonnages, regardless of whether they are engaged in international voyages. Foreign ships of the above tonnages operating in areas of the sea under New Zealand jurisdiction.	The offences associated with Part 123A all involve breaching requirements for the requisite certificates and records of construction and equipment (with translations) to be on board and available for inspection.	Amend penalty levels (some increases, some decreases) for all offences, based on the Framework. Insert new offence for Rule 123A.4(1)

The offences in this part deal with ensuring ships carry appropriate documentation to confirm they have the correct certification. Consistent with this, fines for offences under this Rule would be changed using the Framework from \$1,250 – \$5,000 to \$3,750 for individuals and from \$7,500 – \$30,000 to \$12,500 for any other person. Infringement fees would be changed from \$500 – \$2,000 to \$750 for individuals, and from \$3,000 – \$12,000 to \$2,500 for any other person.

Description

Part 123A gives effect to the requirements found in Regulations 7, 9 and 8 of Annex I of MARPOL – for the standardised certification and recording of oil pollution prevention equipment on board ships engaged in international trade and the preventive measures built into such ships at the time of construction or conversion.

In practical terms, Part 123A contains requirements for ships to hold an appropriate International Oil Pollution Prevention Certificate (IOPP Certificate) or equivalent. This evidences compliance with the applicable ship design, construction and equipment requirements, as set out in Marine Protection Rules Parts 121A, 121B and 122. The IOPP certificate and Record of Construction and Equipment form is incorporated by reference in the Rule.

Part 123A applies to the following ships:

- all New Zealand ships of 400 tons gross or more
- New Zealand oil tankers of 150 tons gross or more
- New Zealand warships and other ships of the New Zealand Defence Force of the above tonnages, regardless of whether they are engaged in international voyages
- foreign ships of the above tonnages operating in areas of the sea under New Zealand jurisdiction.

There are 10 offences associated with Part 123A, all involving breaching requirements regarding that the requisite certificates and records of construction and equipment (with translations) are on board and available for inspection. Through assessment with the Framework we have determined that these are all pure system harm offences (albeit of high severity), but therefore warranting moderate penalty levels.

Our assessment has determined that most current financial penalties for this part should be reduced as the penalty levels are above the level of harm we expect to be associated with these pure documentation-related offences. However, this is mixed in relation to certain offences, with proposed penalty levels also increasing and decreasing for ‘individuals’ and ‘persons other than individuals’ in the same offence, for some offences.

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An offence in regulations for Rule 123A.4(1) involving ensuring that a valid International Oil Pollution Prevention Certificate is held in respect of a ship, is not required or appropriate. This is because breaching this requirement is an offence of sufficient seriousness to attract the MTA-level section 277 offence of acting without the necessary marine protection document which has higher penalties than available under regulation-level offences.

Proposal

We propose that penalty levels for all 10 offences associated with Part 123A are set at the same level (reflecting high system harm only) as determined by assessment via the Framework.

Impact

These proposed changes will apply to owners and masters of the ship types listed under the 'Description' section above.

Those who breach the Rules will be subject to reduced penalties, which are fairer and more proportionate in view of the severity of these offences relative to other marine protection offences.

Rules Part 123B – Documents (Record Books and Manuals) – Oil

Summary

Rule Part and purpose	Application	Issues	Proposed changes
Rules Part 123B: Documents (Record Books and Manuals) – Oil Gives effect to standards found in Regulations 13A, 13B, 15, and 20 of Annex I of MARPOL. Sets requirements for standardised recording systems and shipboard manuals of shipboard operations involving oil or oily mixtures and their discharge and escape.	New Zealand oil tankers of 150 tons gross or more New Zealand ships other than oil tankers of 150 tons gross or more that carry oil in bulk of an aggregate capacity of 200 cubic metres or more, Other types of New Zealand tankers which discharge oil or oily mixtures New Zealand ships of 400 tons gross or more. Foreign ships of the types listed above visiting New Zealand.	Four Rules (123B.5(1), 123B.8(1), 123B.11(1), 123B.14(1)) have no associated offences but we consider offences (with associated infringements) are needed. These all involve the breach of not ensuring records are entered in oil record books. Rules 123B.4, 123B.19, 123B.20 and 123B.21(2) are the only ones in Part 123B that do not have associated infringement offences. Given they are strict liability offences like others in the part, we consider infringement offences should be created to give Maritime NZ more enforcement options.	Create new offences (with associated infringement offences) for Rules 123B.5(1), 123B.8(1), 123B.11(1) and 123B.14(1). Establish penalties based on the Framework, including infringement fees, for each new offence. Establish infringement fees based on the Framework for offences associated with Rules 123B.4, 123B.19, 123B.20 and 123B.21(2). Amend penalty levels for all existing offences, based on the Framework.

The offences in this part deal with ensuring ships comply with administrative requirements for recording compliance with standards to prevent oily spills. Consistent with this, fines for offences under this Rule would be set using the Framework at \$3,750 – \$10,000 for individuals and \$12,500 – \$35,000 for any other person. Infringement fees would be set at \$750 – \$2,100 for individuals, and \$2,500 – \$7,000 for any other person.

Description

Part 123B sets requirements for standardised recording of shipboard operations involving oil or oily mixtures and their discharge and escape. It also covers the provision of shipboard manuals to guide crew involved in operations involving oil or oily mixtures and dedicated clean ballast tanks. Part 123B gives effect to standards found in Regulations 13A, 13B, 15, and 20 of Annex I of MARPOL 73/78.

Part 123B applies to the MARPOL oil record book requirements to New Zealand:

- oil tankers of 150 tons gross or more
- ships other than oil tankers of 150 tons gross or more that carry oil in bulk of an aggregate capacity of 200 cubic metres or more
- other types of tankers which discharge oil or

oily mixtures

- ships of 400 tons gross or more
- warships and other ships of the New Zealand Defence Force of the same tonnages are also covered by the Part.

Foreign ships visiting New Zealand are also required to meet the same MARPOL standards. Smaller New Zealand and foreign oil tankers of 150 tons gross are required by Part 123B to have oil record books if they retain oil on board and discharge contaminated washings at reception facilities. Part 123B also contains the requirements for certain oil tankers to have operations and equipment manuals on board approved by the Director of Maritime NZ or by the ship's flag state.

There are currently 16 offences associated with Part 123B. Like Part 123A these are all documentation-related offences of not meeting oil record book requirements. According to assessment via the Framework therefore these are all pure system harm offences.

Like the Part 123A offences we have assessed most of these as high system harm offences warranting moderate penalty levels. Penalty levels have generally risen following assessment,

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but several have also dropped. This includes instances where fines for ‘persons other than individuals’ have dropped but all other penalties in the offence have increased. Penalties for all offences solely directed at individuals (masters) have increased particularly due to the Framework’s higher penalty levels for ‘special regulated individuals’.

We have also assessed three offences (123B.19, 123B.20, 123B.21(2)) as very high system harms, as these involve having manuals on board for reference, which are key to preventing harms from not following the respective requirements. These three offences therefore attract relatively higher penalties.

Rules 123B.4, 123B.19, 123B.20 and 123B.21(2) are the only ones in Part 123B that do not have associated infringement offences. Given they are factually straightforward offences like others in the part, we consider infringement offences should be created to give Maritime NZ more enforcement options.

Further, we have identified four Rules in Part 123B (123B.5(1), 123B.8(1), 123B.11(1), 123B.14(1)) that have no associated offences but where we consider offences (with infringement offences) are needed. These all involve the breach of not ensuring records are entered in oil record books. We assess them as high severity system harms, as visible records indicate that requirements are being met.

Proposal

We propose:

- that the penalty levels for 13 of the 16 offences currently associated with Part 123A are set at the same level (reflecting high system harm only) as determined by assessment via the Framework
- that the penalty levels for three current offences (123B.19, 123B.20, 123B.21(2)) be set comparatively higher than the other offences to reflect their higher level of system harm as assessed via the Framework
- to also establish infringement offences for 123B.19, 123B.20, 123B.21(2)
- to establish four new offences (with associated infringement offences) for (123B.5(1), 123B.8(1), 123B.11(1), 123B.14(1)).

Impact

These proposed changes will apply to owners and masters of the ship types listed under the ‘Description’ section above.

The impact of the changes will be on those who breach the Rules, who may now be subject to the revised offences and penalties, including infringement fees. This is likely to deter non-compliance and better contribute to the outcome of a clean marine environment. There will be no impact on those who comply. The introduction of infringement fees will make it possible for Maritime NZ to better enforce minor breaches of the requirements.

Rules Part 125 – Shipboard Operations (Oil)

Summary

Rule Part and purpose	Application	Issues	Proposed changes
Rules Part 125: Shipboard Operations (Oil) Gives effect to some MARPOL Annex I Regulations. Imposes operational conditions on discharging oily contaminants, carriage and transfer of oil and oil cargoes.	Oil tankers of 150 tons gross or more. Other ships of 4,000 tons gross or more. Ships of 150 tons gross or more, other than oil tankers, that have cargo spaces carrying oil with an aggregate capacity of 200 cubic metres or more. New Zealand ships, warships and other ships of the New Zealand Defence Force in the above categories. Foreign ships in the above categories operating in areas of the sea under New Zealand jurisdiction.	Rule 125.10(2) has no associated offence, but we consider an offence (with associated infringement) is needed to prevent system and environmental harm. No Rules in Part 123B have associated infringement offences. Infringement offences should be created where appropriate to give Maritime NZ more enforcement options.	Create new offence (with associated infringement offence and penalties based on the Framework) for Rule 125.10(2). Establish infringement fees based on the Framework for Rules 125.7 and 125.8. Amend penalty levels (some increases, some decreases) for all existing offences, based on the Framework.

The offences in this part deal with ensuring shipboard operations comply with Marine Protection Rules to prevent oil spills. Consistent with this, fines for offences under this Rule would be set using the Framework at \$10,000 for individuals and \$50,000 for any other person. Infringement fees would be introduced at \$3,000 for individuals, and \$7,000 – \$10,000 for any other person.

Description

Part 125 imposes constraints on carrying ballast water in ships' oil fuel tanks and, for oil tankers, cargo tanks. It also imposes constraints on discharging ballast water and oil-contaminated water from the cargo tanks of oil tankers. These include using appropriate oil discharge monitoring equipment, checks by crew to ensure water to be discharged has not been contaminated with oil, and allowing sufficient time for oil/water separation before discharge.

The part also prohibits carrying in bulk as cargo, or carrying and using as fuel, heavy oils on board ships below latitude 60°S.

Part 125 gives effect to the MARPOL standards in regulations 2(2), 13(3), 13(4), 13B(4), 14(1), and 14(2) of Annex I of the Convention.

Part 125 applies to New Zealand:

- oil tankers of 150 tons gross or more
- other ships of 4,000 tons gross or more
- ships of 150 tons gross or more, other than oil tankers, that have cargo spaces carrying oil with an aggregate capacity of 200 cubic metres or more
- warships and other ships of the New Zealand Defence Force of the above tonnages

The part also applies to foreign ships of the above tonnages operating in areas of the sea under New Zealand jurisdiction.

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Proposal

We propose:

- to create a new offence (with associated infringement offence and penalties based on the Framework) for rule 125.10(2)
- that the penalty levels for six offences currently associated with Part 125 are set at the same level (reflecting high system harm only) as determined by assessment via the Framework
- to also establish infringement offences for 125.7 and 125.8.

Impact

The impact of the changes will be on those who breach the Rules, who may now be subject to the revised offences and penalties, including infringement fees. This is likely to deter non-compliance and better contribute to the outcome a safe maritime transport system and protection of the marine environment. There will be no impact on those who comply. The introduction of infringement fees will make it possible for Maritime NZ to better enforce minor breaches of the requirements.

Rules Part 130A: Shipboard Marine Oil Spill Contingency Plans

Summary

Rule Part and purpose	Application	Issues	Proposed changes
Rules Part 130A: Shipboard Marine Oil Spill Contingency Plans Forms part of our marine oil spill preparedness and response arrangements. Gives effect to Regulation 37 of MARPOL Annex I and supports New Zealand's international Requires ships to have an oil spill contingency plan to assist personnel to deal with an unexpected discharge of oil.	Oil tankers of 150 tons gross or more. Other ships of 400 tons gross or more.	None of the three Rules with associated offences in this part has an associated infringement offence. Penalty levels for the offences have been reviewed in line with the Framework and require changes to better reflect the severity and likelihood of harm.	Establish infringement fees based on the Framework for all existing offences. Amend penalty levels (some increases, some decreases) for all existing offences, based on the Framework.

The offences in this part deal with ensuring shipboard operations comply with Marine Protection Rules to prevent oil liquid spills. Consistent with this, fines for offences under this Rule would be set using the Framework at \$3,750 – \$10,000 for individuals and \$12,500 – \$50,000 for any other person. Infringement fees would be introduced at \$750 – \$3,000 for individuals, and \$2,500 – \$10,000 for any other person.

Description

Part 130A forms part of our marine oil spill preparedness and response arrangements. It also gives effect to Regulation 37 of MARPOL Annex I and supports New Zealand's participation in the International Convention on Oil Pollution Preparedness, Response and Co-operation (OPRC Convention).

Part 130A requires ships to have an oil spill contingency plan to assist personnel to deal with an unexpected discharge of oil. This includes procedures for the notification of authorities, securing salvage services and obtaining technical advice on appropriate operational measures to mitigate the discharge, such as moving cargo and ballast around the ship.

Part 130 applies to:

- oil tankers of 150 tons gross or more
- other ships of 400 tons gross or more.

Proposal

Our assessment identified that none of the three rules with associated offences in this part has an associated infringement offence. Given they are strict liability offences, we consider infringement offences should be created to give Maritime NZ more enforcement options.

Penalty levels for the offences have been reviewed in line with the Framework and require changes to better reflect the severity and likelihood of harm.

Impact

The impact of the changes will be on those who breach the Rules, who may now be subject to the revised offences and penalties, including infringement fees. This is likely to deter non-compliance and better contribute to the outcome of a safe maritime transport system and protection of the marine environment. There will be no impact on those who comply. The introduction of infringement fees will make it possible for Maritime NZ to better enforce minor breaches of the requirements.

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Rules Part 130B: Oil Transfer Site Marine Oil Spill Contingency Plans

Summary

Rule Part and purpose	Application	Issues	Proposed changes
<p>Rules Part 130B: Oil Transfer Site Marine Oil Spill Contingency Plans</p> <p>Supports Maritime NZ’s marine oil spill preparedness and response arrangements</p> <p>Requires owners of oil transfer sites to have an oil spill contingency plan to assist personnel to deal with an unexpected discharge of oil.</p>	<p>Owners of oil transfer sites.</p>	<p>The absence of an offence for Rule 130B.9(2) is inconsistent with other similar Rules.</p> <p>Penalty levels for the existing offences have been reviewed in line with the Framework and require changes to better reflect the severity and likelihood of harm.</p> <p>Offences under Rules 130B.4 and 130B.13 are of sufficient seriousness to rely on the statutory offences under sections 277 and 238 respectively of the MTA.</p>	<p>Create new offence (with associated infringement offence and penalties based on the Framework) for Rule 130B.9(2).</p> <p>Amend penalty levels (some increases, some decreases) for all existing offences, based on the Framework.</p> <p>Remove the offences under 130B.4 and 130B.13.</p> <p>Remove the offences associated with revoked Rules 130B.4, 130B.5(1)(a) and 130B.5(1)(b).</p>

The offences in this part deal with ensuring oil transfer sites operations comply with Marine Protection Rules to prevent oil liquid spills. Consistent with this, fines for offences under this Rule would be set using the Framework at \$12,500 – \$50,000 for any other person. Infringement fees would be set at \$2,500 – \$10,000 for any other person.

Purpose

This part supports Maritime NZ’s marine oil spill preparedness and response arrangements and helps New Zealand fulfil its obligations under the OPRC Convention.

It requires owners of oil transfer sites (any site where oil is transferred to or from a ship or offshore installation in any part of the sea inside the outer boundary of the exclusive economic zone of New Zealand) to have an oil spill contingency plan to assist personnel to deal with an unexpected discharge of oil. An approved oil spill contingency plan is a marine protection document, indicating its key role in system assurance.

Plans must cover the procedures for reporting:

- marine oil spills
- action to be taken to contain and clean up a spill from the site
- contact information for other persons likely to be affected by a spill and details of the response equipment available.

This proposal relates to owners of oil transfer sites.

Proposal

Rule 130B.9(2) has no associated offence, but we consider an offence (with associated infringement) is needed. The rule is about ensuring that the oil spill contingency plan is available at the site for inspection. A breach of this rule carries a high system harm as a contingency plan is an essential document for assurance of compliance. The absence of an offence is inconsistent with other similar rules.

Penalty levels for the existing offences have been reviewed in line with the Framework and require changes to better reflect the severity and likelihood of harm.

We consider that offences under rules 130B.4 and 130B.13 are of sufficient seriousness to rely on the statutory offences under MTA (respectively section 277 – acting without a necessary marine protection document, and section 238 – failure to report discharge of harmful substances). We therefore propose to remove these offences at rules level.

Offences in relation to several revoked rules have been left in the current version of Schedule 1 of the Regulations in error and should be removed.

We propose to:

- Create a new offence (with associated infringement offence and penalties based on the Framework) for rule 130B.9(2).
- Amend penalty levels (some increases, some decreases) for all existing offences, based on the Framework.
- Remove the offences under 130B.4 and 130B.13.
- Remove the offences associated with revoked rules 130B.4 (Responsibilities of owner of oil transfer site re training of personnel ...), 130B.5(1)(a) and 130B.5(1)(b).

Impact

The impact of the changes will be on those who breach the Rules, who may now be subject to the revised or new offences and penalties, including infringement fees. This is likely to deter non-compliance and better contribute to the outcome of a safe maritime transport system. There will be no impact on those who comply. The introduction of infringement fees will make it possible for Maritime NZ to better enforce minor breaches of the requirements.

OBJECTIVE 5**Rules Part 131: Offshore Installations – Oil Spill Contingency Plans and Oil Spill Pollution Prevention Certification****Summary**

Rule Part and purpose	Application	Issues	Proposed changes
Rules Part 131: Offshore Installations – Oil Spill Contingency Plans and Oil Pollution Prevention Certification The Part gives partial effect to the provisions of MARPOL and OPRC in respect of offshore installations. Requires offshore installations to have marine oil spill contingency plans and the necessary equipment to support the plans.	Sub-parts A, B and C apply to a wide variety of offshore installations operating in the internal waters of New Zealand or New Zealand continental waters. Sub-part D applies to every offshore installation within the New Zealand territorial sea.	Rule 131.28 currently carries a single offence and penalty despite covering four sub-rules which cover offences of differing levels of risk and severity. These have varying levels of system and environmental harm associated with non-compliance. Rule 131.82(1)(b) does not have an associated infringement fee, while Rules 131.25 and 131.41(1) carry an infringement fee without an associated fine. Penalty levels for the existing offences have been reviewed in line with the Framework and require changes to better reflect the severity and likelihood of harm. The offence under Rule 131.21 is not required as it is of sufficient seriousness to rely on the statutory offence under section 277 of the MTA.	Split Rule 131.28 into four separate offences with associated infringement offences and penalties based on the Framework. Establish infringement fees based on the Framework for the offences associated with Rule 131.82(1)(a) and (b). Add a fine based on the Framework for persons other than individuals for the offences associated with Rules 131.25 and 131.41(1). Amend penalty levels (some increases, some decreases) for all existing offences, based on the Framework. Remove the offence under 131.21.

The offences in this part deal with ensuring offshore installations comply with Marine Protection Rules to prevent oil liquid spills. Consistent with this, fines for offences under this Rule would be set using the Framework at \$3,750 – \$10,000 for individuals and \$12,500 – \$50,000 for any other person. Infringement fees would be set at \$750 – \$3,000 for individuals, and \$2,500 – \$10,000 for any other person.

Purpose

In conjunction with the Exclusive Economic Zone and Continental Shelf (Environmental Effects-Discharge and Dumping) Regulations 2015, this Part gives effect to the provisions of MARPOL and OPRC in respect of offshore installations.

It requires offshore installations operating in New Zealand continental waters and in the internal waters of New Zealand to have marine

oil spill contingency plans (OSCP) that will support an efficient and effective response to an oil spill.

It also requires that certain pollution prevention equipment and arrangements on board installations meet international performance standards and in-service maintenance requirements.

Sub-parts A, B and C apply to any offshore installation operating in the internal waters of New Zealand or New Zealand continental waters. These installations include all drilling platforms, drill ships, well head platforms, production platforms, floating production storage and offloading facilities (FPSOs); and pipelines that are attached to any of these installations.

Sub-part D applies to every offshore installation within the New Zealand territorial sea.

Proposal

Rule 131.28 currently carries a single offence and penalty. However, it is divided into four sub-rules which cover offences of differing levels of risk and severity. Sub-rules (a) and (c), deal with operational activities (training staff and maintaining equipment). Failure to comply carries very high risk of harm to the regulatory system and also the possibility of environmental harm due to an inadequate oil spill response. Sub-rules (b) and (d) are record-keeping requirements with risk of high system harm only.

Rule 131.82(1) (a) and (b) do not have associated infringement fee. Given they are strict liability offences, we consider infringement offences should be created to give Maritime NZ more enforcement options.

Rules 131.25 and 131.41(1) carry an infringement fee without an associated fine. A fine should be added to correct this omission.

Penalty levels for the existing offences have been reviewed in line with the Framework and require changes to better reflect the severity and likelihood of harm.

We consider that the offence under rule 131.21 is of sufficient seriousness to rely on the statutory offence under MTA (section 277 – acting without a necessary marine protection document). We therefore propose to remove this offence at rules level.

No fines or infringement fees applying to individuals are necessary for the rules in this part that carry infringements, as they apply to the owner of an offshore installation, which is a body corporate. The existing fines and fees applying to individuals can be removed.

We propose to:

- split rule 131.28 into four separate offences with associated infringement offences and penalties based on the Framework
- establish infringement fees based on the Framework for offences associated with rule 131.82(1)(b)
- add a fine based on the Framework for persons other than individuals for the offences associated with rules 131.25 and 131.41(1)
- amend penalty levels (some increases, some decreases) for all existing offences, based on the Framework
- remove the offence under 131.21.

Impact

The impact of the changes will be on those who breach the Rules, who may now be subject to the revised or new offences and penalties, including infringement fees. This is likely to deter non-compliance and better contribute to the outcome of a safe maritime transport system. There will be no impact on those who comply. The introduction of infringement fees will make it possible for Maritime NZ to better enforce minor breaches of the requirements.

OBJECTIVE 5

Rules Part 132: New Zealand Oil Spill Control Agents

Summary

Rule Part and purpose	Application	Issues	Proposed changes
<p>Rules Part 132: New Zealand Oil Spill Control Agents</p> <p>Requires approval of oil spill control agents (OSCAs) for use in an oil spill at sea and sets out the requirements for their use.</p>	<p>Users of New Zealand OSCAs.</p>	<p>There are currently no offences in regulations to support Part 132 Rules, which are important to ensure safe and appropriate response to oil spills. We consider that establishing two offences relating to Part 132 would be beneficial. Both are straightforward offences appropriate to be infringement offences.</p>	<p>Create new offences (with associated infringement offences and penalties based on the Framework) for Rules 132.20(1) and 20(2).</p>

The offences in this part deal with ensuring oil spill control agents comply with marine protection Rules. Consistent with this, fines for offences under this rule would be set using the Framework at \$10,000 for individuals and \$50,000 for any other person. Infringement fees would be introduced at \$3,000 for individuals, and \$10,000 for any other person.

Description

This Part requires approval of oil spill control agents (OSCAs) for use in an oil spill at sea and sets out their requirements. It applies to all users of New Zealand OSCAs.

Proposal

There are currently no offences in regulations to support Part 132 rules, which are important to ensure safe and appropriate response to oil spills. Consequently, the regulatory framework to deter and respond to breaches is lacking, which could undermine the integrity of the system.

We consider that establishing two offences relating to Part 132 would be beneficial. Rules 132.20(1) and 20(2) cover use of unapproved substances and misuse of an OSCA, which are fundamental breaches of the NZOSCA scheme. Both are strict liability offences appropriate to be infringement offences. Levels are set using the Framework.

Impact

The impact of the changes will be on those who breach the Rules, who may now be subject to the revised or new offences and penalties, including infringement fees. This is likely to deter non-compliance and better contribute to the outcome of a safe maritime transport system and protection of the marine environment. There will be no impact on those who comply. The introduction of infringement fees will make it possible for Maritime NZ to better enforce minor breaches of the requirements.

Rules Part 140: Discharge of Noxious Liquid Substances Carried In Bulk

Summary

Rule Part and purpose	Application	Issues	Proposed changes
<p>Rules Part 140: Discharge of Noxious Liquid Substances Carried In Bulk</p> <p>Gives effect to standards found in Regulations 6 and 13 of MARPOL Annex II and to Protocol I.</p> <p>Sets out the permitted operational discharges into the sea of cargo residues from noxious liquid substances carried in bulk by chemical tankers and various limits, and requirements for reporting discharges.</p> <p>Contains requirements for the carriage of uncategorised noxious liquid substances from New Zealand.</p>	<p>All ships carrying noxious liquid substances in bulk as cargo.</p> <p>New Zealand Defence Force ships operating outside the New Zealand coastal marine area and within 'special areas'.</p> <p>Foreign ships operating within areas of the sea under New Zealand jurisdiction.</p>	<p>The Rules Part was completely replaced in 2008 but these offences have not been updated. A completely revised set of offences and penalties (including infringement fees) is required.</p>	<p>Renumber offence 140.17(1) to align with Rule provision (140.5(1)), and update existing penalties based on the Framework.</p> <p>Replace existing offences and penalties with new offences (with associated infringement offences and penalties based on the Framework) for Rules 140.5(1), 140.5(2), 140.6(1), 140.6(2), 140.8 and 140.14.</p>

The offences in this part deal with the management of noxious liquid substances. Consistent with this, fines for offences under this Rule would be set using the Framework at \$3,750 – \$10,000 for individuals and \$12,500 – \$50,000 for any other person. Infringement fees would be introduced at \$750 – \$3,000 for individuals, and \$2,500 – \$10,000 for any other person.

Description

This Part gives effect to standards found in Regulations 6 and 13 of MARPOL Annex II and to Protocol I of that instrument. It sets out the permitted operational discharges into the sea of cargo residues from noxious liquid substances carried in bulk by chemical tankers. Set limits on total quantity and concentration of discharges and specifies minimum water depths and distance from land. More stringent discharge conditions apply to those substances that are categorised as most harmful to the marine environment.

It also contains requirements for the carriage of uncategorised noxious liquid substances from New Zealand and requirements for reporting of non-operational discharges of noxious liquid substances to the appropriate coastal authorities.

It applies to:

- all ships carrying noxious liquid substances in bulk as cargo
- New Zealand ships, warships and other ships of the New Zealand Defence Force operating outside the New Zealand coastal marine area and within internationally recognised 'special areas'

Foreign ships operating within areas of the sea under New Zealand jurisdiction are subject to the reporting requirements of Part 140.

OBJECTIVE 5**Proposal**

The rules part was completely replaced in 2008 but these offences have not been updated. The numbering and wording of rules has changed to the extent that we consider a completely revised set of offences and penalties is required. While these offences are seldom referred to, we consider that it is important to retain them because of the potentially catastrophic nature of a severe noxious substance spill.

We propose to replace existing offences and penalties with new offences (with associated infringement offences and penalties based on the Framework) for rules 140.5(1), 140.5(2), 140.6(1), 140.6(2), 140.8 and 140.14, and renumber offence 140.17(1) to align with its rule provision. All proposed new offences are strict liability, and we consider it would be helpful to have associated infringements to allow Maritime NZ to take action in the case of a less serious breach.

Impact

The impact of the changes will be on those who breach the Rules, who may now be subject to the revised or new offences and penalties, including infringement fees. This is likely to deter non-compliance and better contribute to the outcome of a safe maritime transport system and protection of the marine environment. There will be no impact on those who comply. The introduction of infringement fees will make it possible for Maritime NZ to better enforce minor breaches of the requirements.

Rules Part 142A: Documents (Certificates) – Noxious Liquid Substances

Summary

Rule Part and purpose	Application	Issues	Proposed changes
Rules Part 142A: Documents (Certificates) – Noxious Liquid Substances Sets out requirements for the standardised certification of ships carrying noxious liquid substances in bulk in accordance with Regulations 9 and 10 of MARPOL Annex II.	New Zealand ships, warships and other ships of the New Zealand Defence Force. Foreign ships operating in areas of the sea under New Zealand jurisdiction, with alternatives	Penalty levels for the existing offences have been reviewed in line with the Framework and require changes to better reflect the severity and likelihood of harm.	Amend penalty levels (some increases, some decreases) for all existing offences, based on the Framework.

The offences in this part deal with ensuring shipboard documentation for noxious liquids comply with Marine Protection Rules. Consistent with this, fines for offences under this Rule would be increased using the Framework at \$3,750 for individuals and \$12,500 for any other person. Infringement fees would be set at \$750 for individuals, and \$2,500 for any other person.

Description

This Part sets out requirements for the standardised certification of ships carrying noxious liquid substances in bulk in accordance with Regulations 9 and 10 of MARPOL Annex II. Certification provides evidence that ships are compliant with the pollution prevention equipment and survey requirements of that Annex.

The Part applies to New Zealand ships, warships and other ships of the New Zealand Defence Force. It also applies to foreign ships operating in areas of the sea under New Zealand jurisdiction; however, foreign ships may, as an alternative to the International Pollution Prevention Certificate, present a certificate of fitness issued under the International Bulk Chemical Code.

Proposal

Penalty levels for the existing offences have been reviewed in line with the Framework and require changes to better reflect the severity and likelihood of harm. We propose some increases and some decreases for all existing offences, based on the Framework.

Impact

The impact of the changes will be on those who breach the Rules, who may now be subject to the revised penalties, including infringement fees. This is likely to deter non-compliance and better contribute to the outcome of a safe maritime transport system and protection of the marine environment. There will be no impact on those who comply.

OBJECTIVE 5**Rules Part 142(B): Documents (Record Books and Manuals) – Noxious Liquid Substances****Summary**

Rule Part and purpose	Application	Issues	Proposed changes
Rules Part 142(B): Documents (Record Books and Manuals) – Noxious Liquid Substances Gives effect to Regulations 14 and 15 of MARPOL Annex II, including the requirement for each ship to have a Procedures and Arrangements manual. Requires standardised recording of and provision of manuals for shipboard operations involving noxious liquid substances and their discharge.	New Zealand ships, warships and other ships of the New Zealand Defence Force. Foreign ships in areas of the sea under New Zealand jurisdiction that carry noxious liquid substances in bulk.	Rules 142B.5(1), 142B.8(1) and 142B.10(1) should have offences to help ensure that ships carrying noxious liquid substances keep appropriate cargo records. The absence of an offence is inconsistent with other similar Rules as breaches carry potential for high system harm. We consider that infringements are not appropriate for Rule 142B.10(1) as the risk of system harm is very high. Penalty levels for the existing offences have been reviewed in line with the Framework and require changes to better reflect the severity and likelihood of harm.	Create new offences (with associated infringement offences and penalties based on the Framework) for Rules 142B.5(1) and 142B.8(1). Create new offence and penalties based on the Framework for Rule 142B.10(1). Amend penalty levels (some increases, some decreases) for all existing offences.

The offences in this part deal with ensuring shipboard operations comply with Marine Protection Rules to prevent noxious liquid spills. Consistent with this, fines for offences under this Rule would be set using the Framework at \$3,750 for individuals and \$12,500 for any other person. Infringement fees would be introduced or amended at \$750 for individuals, and \$2,500 for any other person.

Description

This Part gives effect to Regulations 14 and 15 of MARPOL Annex II and, in respect of manuals, the internationally agreed interpretation that the Annex's provisions require each ship to have a Procedures and Arrangements manual.

It requires standardised recording of shipboard operations involving noxious liquid substances and their discharge, and the provision of shipboard manuals to guide crew involved in operations involving such substances.

This Part applies to New Zealand ships, warships and other ships of the New Zealand Defence Force, and foreign ships in areas of the sea under New Zealand jurisdiction that carry noxious liquid substances in bulk.

Proposal

Rules 142B.5(1) and 142B.8(1) have no associated offences, but we consider that offences (with associated infringements) are needed. The rules are about ensuring that ships carrying noxious liquid substances keep appropriate cargo records. A breach of these rules carries a high system harm as cargo records are essential documents for assurance of compliance. The absence of an offence is inconsistent with other similar rules.

Rule 142B.10(1) has no associated offences, but we consider that an offence is needed. The rule is about ensuring that New Zealand ships have an approved Procedures and Arrangements manual. A breach of this rule carries a very high risk of system harm, as well as some risk of environmental and safety harm, as the manual underpins the proper functioning of cargo management, tank shipping and discharge procedures. In view of the severity of the offence we consider that infringements are not appropriate for this rule.

Penalty levels for the existing offences have been reviewed in line with the Framework and require changes to better reflect the severity and likelihood of harm.

We propose to:

- create new offences (with associated infringement offences and penalties based on the Framework) for rules 142B.5(1) and 142B.8(1)
- create new offence and penalties based on the Framework for rule 142B.10(1).
- amend penalty levels (some increases, some decreases) for all existing offences, based on the Framework.

Impact

The impact of the changes will be on those who breach the Rules, who may now be subject to the revised or new offences and penalties, including infringement fees. This is likely to deter non-compliance and better contribute to the outcome of a safe maritime transport system and protection of the marine environment'. There will be no impact on those who comply. The introduction of infringement fees will make it possible for Maritime NZ to better enforce minor breaches of the requirements.

OBJECTIVE 5

Rules Part 143: Shipboard Marine Pollution Emergency Plans for Noxious Liquid Substances

Summary

Rule Part and purpose	Application	Issues	Proposed changes
<p>Rules Part 143: Shipboard Marine Pollution Emergency Plans for Noxious Liquid Substances</p> <p>Gives effect to Regulation 17 of MARPOL Annex II.</p> <p>Prescribes requirements for shipboard marine pollution emergency plans for noxious liquid substances.</p>	<p>Ships of 150 tons gross or more that carry noxious liquid substances in bulk as cargo.</p>	<p>There are currently no offences in regulations to support Part 143 Rules.</p> <p>Establishing five offences for Rules 143.4, 143.7, 143.8, 143.10(1) and 143.10(2) would be beneficial.</p> <p>143.7 is a straightforward and relatively minor offence. An associated infringement would be useful.</p>	<p>Create new offences with associated penalties (based on the Framework) for Rules 143.4, 143.7, 143.8, 143.10(1) and 143.10(2).</p> <p>Add infringement fees for Rule 143.7.</p>

The offences in this part deal with ensuring shipboard operations comply with Marine Protection Rules to prevent pollution from noxious liquids. Consistent with this, fines for offences under this Rule would be set using the Framework at \$3,750 – \$10,000 for individuals and \$12,500 – \$50,000 for any other person. Infringement fees would be introduced at \$750 – \$2,000 for individuals, and \$2,500 – \$10,000 for any other person.

Description

This Part gives effect to Regulation 17 of MARPOL Annex II. It prescribes requirements for shipboard marine pollution emergency plans for noxious liquid substances including plans’ contents, approval, maintenance, testing and review.

It applies to ships of 150 tons gross or more that carry noxious liquid substances in bulk as cargo.

Proposal

There are currently no offences in regulations to support Part 143 rules, which are important to ensure safe and appropriate response to chemical spills. Consequently, the regulatory framework to deter and respond to breaches is lacking.

We consider that establishing five offences for rules 143.4, 143.7, 143.8, 143.10(1) and 143.10(2) would be beneficial.

143.7 and 143.8 are strict liability offences and we consider it would be helpful to have associated infringements to allow Maritime NZ to take action in the case of a less serious breach.

- We propose to:
- create new offences with associated penalties (based on the Framework) for rules 143.4, 143.7, 143.8, 143.10(1) and 143.10(2)
 - add infringement fees for rule 143.7.

Impact

The impact of the changes will be on those who breach the Rules, who may now be subject to the revised or new offences and penalties, including infringement fees. This is likely to deter non-compliance and better contribute to the outcome of a safe maritime transport system and protection of the marine environment. There will be no impact on those who comply. The introduction of infringement fees will make it possible for Maritime NZ to better enforce minor breaches of the requirements.

OBJECTIVE 5

Rules Part 150: Carriage of Cargoes – Harmful Substances Carried in Packaged Form

Summary

Rule Part and purpose	Application	Issues	Proposed changes
Rules Part 150: Carriage of Cargoes – Harmful Substances Carried in Packaged Form Sets out requirements, drawn from MARPOL Annex III, for the prevention of pollution by harmful substances carried by sea in packaged form.	New Zealand ships anywhere, except ships of the New Zealand Defence Force. Foreign ships operating within areas of the sea under New Zealand jurisdiction.	The two offences associated with Rules Part 150 have been reviewed in line with the Framework	Increase penalty levels for both offences, based on the Framework.

The offences in this part deal with ensuring harmful substances do not pollute the marine environment. Consistent with this, fines for offences under this Rule would be set using the Framework at \$10,000 for individuals and \$50,000 for any other person.

Description

This Part sets out requirements, drawn from MARPOL Annex III, for the prevention of pollution by harmful substances carried by sea in packaged form, including responsibilities relating to the jettison of harmful substances, and reporting of occurrences involving harmful substances.

It applies to New Zealand ships anywhere, except ships of the New Zealand Defence Force, and foreign ships operating within areas of the sea under New Zealand jurisdiction.

Impact

The impact of the changes will be on those who breach the Rules, who may now be subject to the revised or new offences and penalties, including infringement fees. This is likely to deter non-compliance and better contribute to the outcome of a safe maritime transport system and protection of the marine environment. There will be no impact on those who comply. The introduction of infringement fees will make it possible for Maritime NZ to better enforce minor breaches of the requirements.

Proposal

The two offences associated with Rules Part 150 have been reviewed in line with the Framework. In this case higher penalties have been proposed for both offences due to the level of system and environmental harm associated with each offence.

We propose to increase penalty levels for both offences, based on the Framework.

Rules Part 160: Prevention of Pollution by Sewage from Ships in the Antarctic Treaty Area

Summary

Rule Part and purpose	Application	Issues	Proposed changes
<p>Rules Part 160: Prevention of Pollution by Sewage from Ships in the Antarctic Treaty Area</p> <p>Gives effect to MARPOL Annex IV as it applies to the Antarctic Treaty area.</p> <p>Sets out requirements for the discharge of sewage in the Antarctic Treaty area (sea area below 60° S).</p> <p>Covers administrative requirements for onboard sewage arrangements and their operation.</p>	<p>New Zealand ships, warships and other ships of the New Zealand Defence Force sailing in the Antarctic Treaty area.</p> <p>Any foreign ship departing from a New Zealand port for the Antarctic Treaty area.</p>	<p>Penalty levels for the existing offences require changes to better reflect the severity and likelihood of harm.</p>	<p>Amend penalty levels (some increases, some decreases) for all existing offences, based on the Framework.</p>

The offences in this part deal with preventing pollution by sewage in the Antarctic. Consistent with this, fines for offences under this Rule would be set using the Framework at \$3,750 – \$10,000 for individuals and \$12,500 – \$50,000 for any other person. Infringement fees would be introduced or amended at \$750 – \$2,000 for individuals, and \$2,500 – \$10,000 for any other person.

Description

This Part gives effect to MARPOL Annex IV as it applies to the Antarctic Treaty area, in fulfilment of New Zealand's obligations under the 1991 Protocol of Environmental Protection to the Antarctic Treaty.

It sets out requirements for the discharge of sewage in the Antarctic Treaty area (sea area below 60° S). It covers onboard sewage arrangements (treatment systems, holding tanks, discharge connections) and their survey and certification, record keeping and operational discharge requirements. It applies to New Zealand ships, warships and other ships of the New Zealand Defence Force sailing in the Antarctic Treaty area, and any foreign ship departing from a New Zealand port for the Antarctic Treaty area.

Proposal

Penalty levels for the existing offences have been reviewed in line with the Framework and require changes to better reflect the severity and likelihood of harm.

No fines or infringement fees applying to individuals are necessary for rules 160.10(2) and 160.11, as they apply to the owner of a ship, which is a body corporate. The existing fines and fees applying to individuals can be removed.

We propose to amend penalty levels (some increases, some decreases) for all existing offences, based on the Framework.

Impact

The impact of the changes will be on those who breach the Rules, who may now be subject to the revised or new offences and penalties, including infringement fees. This is likely to deter non-compliance and better contribute to the outcome of a safe maritime transport system and protection of the marine environment. There will be no impact on those who comply.

OBJECTIVE 5

Rules Part 170: Prevention of Pollution by Garbage from Ships

Summary

Rule Part and purpose	Application	Issues	Proposed changes
<p>Rules Part 170: Prevention of Pollution by Garbage from Ships</p> <p>Gives effect to requirements of MARPOL Annex V.</p> <p>Defines the classes of garbage that may be discharged from ships and offshore installations outside the coastal marine area and administrative requirements for ensuring compliance.</p>	<p>New Zealand ships, warships and other ships of the New Zealand Defence Force.</p> <p>Foreign ships operating in areas of the sea under New Zealand jurisdiction.</p>	<p>Rule 170.3(2) has no associated offence, but we consider that an offence is needed as breach of the Rule carries a high system harm and a likelihood of environmental harm.</p> <p>Rule 170.19(2)(a) has no infringement offence.</p> <p>Penalty levels for the existing offences have been reviewed in line with the Framework.</p>	<p>Create a new offence with associated penalties based on the Framework for Rule 170.3(2).</p> <p>Establish infringement fees based on the Framework for the offences associated with Rules 170.19(2)(a).</p> <p>Amend penalty levels (some increases, some decreases) for all existing offences, based on the Framework.</p>

The offences in this part deal with preventing pollution by garbage. Consistent with this, fines for offences under this Rule would be set using the Framework at \$2,500 – \$10,000 for individuals and \$12,500 – \$50,000 for any other person. Infringement fees would be introduced or amended at \$750 – \$2,000 for individuals, and \$2,500 – \$10,000 for any other person.

Description

This Part gives effect to the requirements of MARPOL Annex V. It defines the classes of garbage that may be discharged from ships and offshore installations outside the coastal marine area.

It also incorporates requirements for shipboard garbage management plans, the maintenance of garbage record books and the display of placards indicating to crew and passengers the applicable garbage discharge requirements.

It applies to New Zealand ships, warships and other ships of the New Zealand Defence Force, and foreign ships operating in areas of the sea under New Zealand jurisdiction.

As with other MARPOL-based operational discharge requirements, the Marine Protection Rules deal with such discharges outside the coastal marine area. Within the CMA (that is, within the 12-mile limit) these requirements are found in the Resource Management (Marine Pollution) Regulations 1998.

Proposal

Rule 170.3(2) has no associated offence, but we consider that an offence is needed. The rule is about ensuring that people on board ships comply with the requirements concerning discharge of garbage. A breach of these rules carries a high system harm and a likelihood of environmental harm.

Rule 170.19(2)(a) does not have an associated infringement offence. Given that it is a straightforward and relatively minor offence, we consider an infringement offence should be created to give Maritime NZ more enforcement options for low-level offending.

Penalty levels for the existing offences have been reviewed in line with the Framework and require changes to better reflect the severity and likelihood of harm.

We propose to:

- create a new offence with associated penalties based on the Framework for rule 170.3(2)
- establish an infringement fee based on the Framework for the offence associated with rules 170.19(2)(a)
- amend penalty levels (some increases, some decreases) for all existing offences, based on the Framework.

Impact

The impact of the changes will be on those who breach the Rules, who may now be subject to the revised or new offences and penalties, including infringement fees. This is likely to deter non-compliance and better contribute to the outcome of a safe maritime transport system and protection of the marine environment. There will be no impact on those who comply. The introduction of infringement fees will make it possible for Maritime NZ to better enforce minor breaches of the requirements.

OBJECTIVE 5

Rules Part 190: Mandatory Ships’ routeing

Summary

Rule Part and purpose	Application	Issues	Proposed changes
<p>Rules Part 190: Mandatory Ships’ Routeing</p> <p>Part 190 gives effect to two areas to be avoided (ATBA) near the Poor Knights Islands and the Three Kings Islands</p>	<p>In the case of the Poor Knights ATBA, every ship of more than 45 metres in length overall except:</p> <ul style="list-style-type: none">• a fishing ship engaged in a fishing operation; or• a barge under tow not carrying oil or harmful substances. <p>In the case of the Three Kings Island ATBA, every ship of 500 tons gross tonnage or more.</p>	<p>Penalty levels for the existing offences have been reviewed in line with the Framework.</p>	<p>Increase penalty levels for both offences, based on the Framework.</p>

The offences in this part deal with entering protected marine areas. Consistent with this, fines for offences under this Rule would be set using the Framework at \$10,000 for individuals and \$50,000 for any other person. Infringement fees would be amended to \$2,000 for individuals, and \$10,000 for any other person.

Description

Part 190 gives effect to two areas to be avoided (ATBA):

- the marine area lying between Bream Head and Cape Brett, including the Poor Knights Islands
- the sea area adjacent to the Three Kings Islands.

The Rules instruct the owners, the charterers and masters of ships to avoid the defined areas.

‘Areas to be avoided’ is one of the mandatory ships’ routeing measures adopted by the International Maritime Organization (IMO) to protect sensitive marine environments from the risks, principally of marine oil spills, posed by shipping operations.

This Part applies to, in the case of the Poor Knights ATBA, every ship of more than 45 metres in length overall except:

- a fishing ship engaged in a fishing operation; or
- a barge under tow provided its cargo does not include oil or any other harmful liquid substance as defined in Annexes I and II of MARPOL.

In the case of the Three Kings Island ATBA, it applies to every ship of 500 tons gross tonnage or more.

Proposal

Penalty levels for the existing offences have been reviewed in line with the Framework and require changes to better reflect the severity and likelihood of harm. In this case higher penalties have been proposed for both offences due to the level of system and environmental harm associated with each offence.

Impact

The impact of the changes will be on those who breach the Rules, who may now be subject to the revised offences and penalties. This is likely to deter non-compliance and better contribute to the outcome of a safe maritime transport system and protection of the marine environment. There will be no impact on those who comply.

Rules Part 300: Ballast water**Summary**

Rule Part and purpose	Application	Issues	Proposed changes
Rules Part 300: Ballast Water Gives effect to the provisions of the International Convention for the Control and Management of Ships' Ballast Water and Sediments 2004. Includes provisions for managing ballast water to protect the environment and health, among other things.	New Zealand ships (excludes warships) and foreign ships in New Zealand jurisdiction that are designed or constructed to carry ballast water on an international voyage.	There are currently no offences associated with Part 300, leaving only prosecution for breaches. A suite of lower-level offences, including some strict liability offences, would enable enforcement of smaller-scale offending. Breaches of Rules 300.41(1), 300.41(3), 300.42(1), 300.42(3) or 300.103(2) are serious enough to rely on the MTA-level offences under sections 277 and 278.	Create new offences (with associated fines and infringement fees) under Rules 300.41(2), 300.42(2), 300.80(1), 300.80(3) (a) and (c)^; 300.81(1) (a), (b) and (c), 300.81(3) (b)-(d), 300.81(4)(a)-(b), 300.82(1), 300.82(2), 300.100(2), 300.100(3)^, 300.100(4), 300.102(a), 300.102(b)^, 300.102(c) and 300.102(d). ^= no infringement fee Establish penalties for each offence based on the Framework.

The offences in this part deal with ensuring ballast water does not pollute the marine environment. Consistent with this, fines for offences under this Rule would be set using the Framework at \$3,750 for individuals and \$12,500 for any other person. Infringement fees would be introduced at \$750 for individuals, and \$2,500 for any other person.

Description

This Part gives effect to the provisions of the International Convention for the Control and Management of Ships' Ballast Water and Sediments 2004.

The purpose of Part 300 is to prevent, minimise and ultimately eliminate the risk to the environment, human health, property and resources arising from the transfer of harmful aquatic organisms and pathogens through the control and management of ships' ballast water and sediment.

It includes provisions for certification, documentation, ballast water management systems, and discharge of ballast water.

It applies to New Zealand ships [excludes warships] and foreign ships in New Zealand jurisdiction that are designed or constructed to carry ballast water on an international voyage.

OBJECTIVE 5**Proposal**

There are currently no offences associated with Part 300. This means the regulatory framework to prevent harm to the environment from ballast water lacks important incentives, deterrents and responses to breaches of requirements. Currently the only available enforcement option is prosecution under the MTA, which is a costly course of action suitable for the most serious breaches.

We consider it desirable to introduce a suite of lower-level offences to enable enforcement of smaller-scale offending. These include several straightforward, strict liability offences appropriate to be infringement offences.

We do not consider it is necessary to establish offences in regulations for rules 300.41(1), 300.41(3), 300.42(1), 300.42(3) or 300.103(2). This is because we consider that breaches of these rules are of sufficient seriousness to rely on the MTA-level offences under sections 277 and 278: acting without or in breach of necessary marine protection documents; and for rule 300.103(2), section 246C: discharge of ballast water in breach of section 246B.

We propose to:

- create new offences under rules 300.41(2), 300.42(2), 300.80(1), 300.80(3) (a) and (c); 300.81(1)(a)-(b) and (c), 300.81(3)(b)-(d), 300.81(4)(a)-(b), 300.82(1), 300.82(2), 300.100(2), 300.100(3), 300.100(4), 300.102(a), 300.102(b), 300.102(c) and 300.102(d)
- establish penalties for each offence based on the Framework
- establish infringement fees based on the Framework for offences under rules 300.41(2), 300.42(2), 300.80(1), 300.80(3) (a); 300.81(1)(a)-(b) and (c), 300.81(3)(b)-(d), 300.81(4)(a)-(b), 300.82(1), 300.82(2), 300.100(2), 300.100(4), 300.102(a), 300.102(c) and 300.102(d).

Impact

The impact of the changes will be on those who breach the Rules, who may now be subject to the revised or new offences and penalties, including infringement fees. This is likely to deter non-compliance and better contribute to the outcome of a safe maritime transport system and protection of the marine environment'. There will be no impact on those who comply. The introduction of infringement fees will make it possible for Maritime NZ to better enforce minor breaches of the requirements.

Ngā whārangī tāpiri Appendices



APPENDICES

Appendix I.

Consolidated list of offence and penalty changes

Key:

New offence or penalty

Change to existing offence or penalty

(parenthesis)
previous fine/fee payable or previous rule number before realignment* asterisk
fine/fee payable by special regulated individual (SRI)

Proposed amendments to the Maritime (Offences) Regulations 1998

Provision	Brief description	Category assigned	Maximum fine for individual (\$)	Maximum fine for body corporate (\$)	Maximum infringement fee for individual (\$)	Maximum infringement fee for body corporate (\$)
Rules Part 19: Maritime Transport Operator – Certification and Responsibilities (new Part)						
Rule 19.25	A maritime transport operator must display at the operator's place of business, or make available on request, a copy of the Maritime Transport Operator Certificate	1	750*	2,500	150*	500
Rule 19.43(4)	A maritime transport operator must ensure approved survey plan available for inspection	2	3,750*	12,500	750*	2,500
Rule 19.45(3)	A maritime transport operator must make maintenance plan available for inspection, if requested	2	3,750*	12,500	750*	2,500
Rule 19.64(d)	A maritime transport operator must ensure valid Certificate of Survey by ensuring ship is operated within scope of certification listed on Certificate	5	15,000*	50,000	3,000*	10,000
Rule 19.65	Maritime transport operator must display Certificate of Survey	1	750*	2,500	150*	500
Rules Part 20: Operating Limits (renumbered)						
Rule 20.20(1) (20.5(1))	Owner of ship must ensure ship has operating limits assigned	5	15,000* (5,000)	50,000 (30,000)		
Rule 20.21 (20.6) Offence revoked.	Owner and master of ship must ensure ship operates only within assigned limits		(5,000)	(30,000)		
Rule 20.43(2) (20.7(2))	Responsibilities of owner and master of restricted limits ship making single voyage outside restricted or coastal limits under Rule 20.43	4	10,500* (5,000)	35,000 (30,000)		

Provision	Brief description	Category assigned	Maximum fine for individual (\$)	Maximum fine for body corporate (\$)	Maximum infringement fee for individual (\$)	Maximum infringement fee for body corporate (\$)
Rules Part 21: Safe Ship Management Systems						
Rule 21.6(1)(b)	Owner of ship must maintain safety management system	5	15,000* (5,000)	50,000 (30,000)		
Rule 21.6(4)	Master of ship must ensure copy of Interim Document of Compliance or Document of Compliance kept on board and produced when requested	2	3,750* (1,250)		750* (500)	
Rule 21.6(5)	Master of ship must ensure original Interim Safety Management Certificate or Safety Management Certificate kept on board and produced when requested	2	3,750* (1,250)		750* (500)	
Rule 21.8	Owner and master of foreign ship must ensure appropriate Document of Compliance and Safety Management Certificate or equivalent carried on board	2	3,750* (1,250)	12,500 (7,500)	750* (500)	2,500 (3,000)
Rules 21.13(1)(3)(5)(15)(19) All these offences to be revoked due to these Rules now being redundant.	(1) Responsibilities of owner of ship re-entry of ship into safe ship management system (3) Owner must retain certificate issued by surveyor as evidence of ship's eligibility re-approved safe ship management system (5) Owner of ship must ensure ship has appropriate maintenance plan (15) Owner of ship must ensure copy of New Zealand Safe Ship Management Certificate displayed on ship (19) Owner of ship must ensure new certificate issued by surveyor and new New Zealand Safe Ship Management Certificate issued before operating ship after major modification or repair or certain other changes		(5,000) (5,000) (5,000) (1,250) (5,000)	(30,000) (30,000) (30,000) (7,500) (30,000)		
Rules Part 22: Collision Prevention (renumbered)						
Rule 22.39(1)(2)(a)(b) (22.39)	Responsibilities of owners and persons responsible for navigation of vessel re observance of collision prevention requirements – (a) ensure that all lights, shapes, and means of making fog signals, are carried, exhibited, and used (b) refrain from carrying, exhibiting, or using any lights, shapes, or means of making fog signals other than those required or permitted by this Rule	5	15,000* (5,000)	50,000 (30,000)	3,000*	10,000

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Provision	Brief description	Category assigned	Maximum fine for individual (\$)	Maximum fine for body corporate (\$)	Maximum infringement fee for individual (\$)	Maximum infringement fee for body corporate (\$)
Rule 22.39(2)(c)(d) (22.39)	Responsibilities of owners and persons responsible for navigation of vessel re observance of collision prevention requirements – (c) ensure that the vessel is navigated in accordance with this Part; and (d) refrain from navigating the vessel in a manner that is contrary to this Part.	5	15,000* (5,000)	50,000 (30,000)		
Rules Part 24A: Carriage of Cargoes – Dangerous Goods						
24A.62(1)(a) All current offences under Part 24A are revoked, and replaced with these new rationalised and correctly referenced offences.	Person who offers dangerous goods for carriage in, or causes or permits any dangerous goods to be loaded onto a ship, must ensure those dangerous goods are correctly identified and classified in accordance with Part 2 of the IMDG Code.	5	5,000	50,000	1,000	10,000
24A.62(1)(b)	Person who offers dangerous goods for carriage in, or causes or permits any dangerous goods to be loaded onto a ship must ensure those dangerous goods are appropriately packaged in accordance with Parts 4 and 6 of the IMDG Code	5	5,000	50,000	1,000	10,000
24A.62(1)(c)	Person who offers dangerous goods for carriage in, or causes or permits any dangerous goods to be loaded onto a ship must ensure those dangerous goods are marked and labelled in accordance with Part 5 of the IMDG Code.	5	5,000	50,000	1,000	10,000
24A.82(1)(a)	The shipper of a consignment of dangerous goods that is to transported by ship must accurately and fully complete a dangerous goods document in accordance with Chapter 5.4 of the IMDG Code.	5	5,000	50,000	1,000	10,000
24A.223(1)	Person performing a dangerous goods cargo function involving the carriage of dangerous goods freight on board a ship on a domestic voyage within restricted limits other than across the Cook Strait must ensure those dangerous goods are correctly identified, classified, packaged, marked and labelled in accordance with sections 1-4 of the Land Transport Rule: Dangerous Goods 2005	5	5,000	50,000	1,000	10,000

Provision	Brief description	Category assigned	Maximum fine for individual (\$)	Maximum fine for body corporate (\$)	Maximum infringement fee for individual (\$)	Maximum infringement fee for body corporate (\$)
Rules Part 24B: Carriage of Cargoes – Stowage and Securing (new Part)						
Rules Part 24B.10(2)	The shipper of a road freight vehicle, road tank vehicle, or road livestock vehicle must not offer the vehicle for shipment on a ro-ro ship to which Rule 24B.14 applies unless it is fitted with vehicle securing points and marked with an information plate in accordance with NZS 5444:2005	3	7,500*	25,000	1,500*	5,000
Rules Part 24C: Carriage of Cargoes – Specific Cargoes						
Rule 24C.3	Responsibilities of shipper of specific cargo (other than grain) re cargo information	2	3,750* (5,000)	12,500 (30,000)	750*	2,500
Rule 24C.6(1)	Owner and master of ship must ensure ship loads and carries grain in accordance with Grain Code	3	7,500* (5,000)	25,000 (30,000)	1,500*	5,000
Rule 24C.6(2)	Owner and master of ship must ensure ship does not load grain unless ship holds document of authorisation in English	2	3,750* (5,000)	12,500 (30,000)	750*	2,500
Rule 24C.9	Responsibilities of owner and master of ship for assessing acceptability of solid bulk cargo before loading	5	10,000* (5,000)	50,000 (30,000)		
Rule 24C.10(1)	Owner and master of ship must ensure solid bulk cargo loaded, unloaded , and carried in accordance with IMSBC Code	5	15,000* (5,000)	50,000 (30,000)	3,000*	10,000
Rule 24C.13	Responsibilities of owner and master of ship re stowing, securing, and carrying timber deck cargo according to the Code for Timber Deck Cargoes.	3	7,500* (5,000)	25,000 (30,000)	1,500*	5,000
Rule 24C.16(1)	Responsibilities of owner and master of ship re restrictions on carriage of livestock in part of ship where operation of ship would be obstructed or interfered with	3	7,500* (5,000)	25,000 (30,000)	1,500*	5,000
Rule 24C.17(1)	Owner of new ship or barge to carry livestock between New Zealand ports must have design approved by surveyor	5	15,000* (5,000)	50,000 (30,000)	3,000*	10,000
Rule 24C.17(5)	Owner of existing ship or barge to carry livestock between New Zealand ports must ensure ship has appropriate certificate	5	15,000* (5,000)	50,000 (30,000)	3,000*	10,000
Rule 24C.17(6)	Responsibilities of owner and master of ship not designed to carry livestock re carrying livestock between New Zealand ports	5	15,000* (5,000)	50,000 (30,000)	3,000*	10,000
Rule 24C.17(8)	Master of ship must ensure vehicles and equipment for transporting livestock properly stowed and secured	3	7,500* (5,000)		1,500*	

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Provision	Brief description	Category assigned	Maximum fine for individual (\$)	Maximum fine for body corporate (\$)	Maximum infringement fee for individual (\$)	Maximum infringement fee for body corporate (\$)
Rule 24C.18(1)(a)	Owner and master of ship must ensure no livestock loaded for export until surveyor satisfied with ship and intended load conditions in Appendices 1 to 7	5	15,000* (5,000)	50,000 (30,000)	3,000*	10,000
Rule 24C.18(2)	Owner and master of ship must ensure no livestock loaded for export until requirements of Appendix 1 complied with	3	7,500* (5,000)	25,000 (30,000)	1,500*	5,000
Rule 24C.18(3)	Owner and master of ship must ensure requirements of Appendices 2 to 7 complied with	3	7,500* (5,000)	25,000 (30,000)	1,500*	5,000
Rule 24C.18(5)	Master of ship on which livestock to be loaded for export must produce stability information if requested by Director	2	3,750* (2,500)		750* (1,000)	
Rules Part 40B: Design, Construction and Equipment – SOLAS Ships						
Rule 40B.33	Responsibilities of owner and master re automatic identification system	5	15,000* (5,000)	50,000 (30,000)		
Rule 40B.34	Responsibility of owner re ship identification number	2	3,750* (5,000)	12,500 (30,000)	750*	2,500
Rule 40B.35	Responsibilities of owner and master re continuous synopsis record	2	3,750* (5,000)	12,500 (30,000)	750*	2,500
Rule 40B.36	Responsibility of owner re ship security alert system	5	15,000* (5,000)	50,000 (30,000)		
Rules Part 46: Surveys, Certification and Maintenance						
Rule 46.9	Responsibilities of owner of existing New Zealand passenger ship re surveys of ship	5	15,000* (5,000)	50,000 (30,000)	3,000*	10,000
Rule 46.10	Responsibilities of owner of ship carrying dangerous chemicals and liquefied gas in bulk re surveys of ship	5	15,000* (5,000)	50,000 (30,000)		
Rule 46.12	Responsibilities of owner of ship re maintenance and conditions after survey	4	10,500* (5,000)	35,000 (30,000)		
Rule 46.13(12)	Owner and master of SOLAS ship must ensure relevant certificate(s) available on board for examination	2	3,750* (1,250)	12,500 (7,500)	750* (500)	2,500 (3,000)
Rule 46.13(15)	Owner of SOLAS ship must not operate ship without relevant certificate(s)	5	15,000* (5,000)	50,000 (30,000)	3,000*	10,000
Rule 46.14(6)	Owner of ship not a SOLAS ship must not operate ship unless in possession of New Zealand Ship Safety Certificate	5	15,000* (5,000)	50,000 (30,000)	3,000*	10,000
Rule 46.24(4)	Owner of barge must retain New Zealand Barge Safety Certificate for period of validity and make certificate available for inspection	2	3,750* (1,250)	12,500 (7,500)	750* (500)	2,500 (3,000)

Provision	Brief description	Category assigned	Maximum fine for individual (\$)	Maximum fine for body corporate (\$)	Maximum infringement fee for individual (\$)	Maximum infringement fee for body corporate (\$)
Rule 46.25	Responsibilities of owner of barge existing before commencement of Part re survey	5	15,000* (5,000)	50,000 (30,000)	3,000*	10,000
Rule 46.27(1)	Owner and master of foreign ship at New Zealand port or offshore terminal must ensure specified safety certificates and documents carried on board	2	3,750* (1,250)	12,500 (7,500)	750* (500)	2,500 (3,000)
Rule 46.27(2)	Owner and master of foreign ship at New Zealand port or offshore terminal must ensure specified certificates and documents available on board for examination	2	3,750* (1,250)	12,500 (7,500)	750* (500)	2,500 (3,000)
Rule-46.28(1) Rule-46.28(3) Rule-46.28(5) Offences to be revoked due to Rule revocation	46.28(1) Owner and master of foreign non-SOLAS ship without certificates must ensure ship surveyed as required 46.28(3) Owner and master of foreign non-SOLAS ship without certificates must ensure ship enters safe ship management system within 2 years of first survey 46.28(5) Owner and master of foreign non-SOLAS ship with recognised certificates must ensure ship enters safe ship management system within 2 years of recognition of certificates		5,000	30,000		
Rules Part 47: Load Lines (renumbered)						
Rule 47.3(1) Offence to be revoked due to Rule revocation	Master of ship 24 metres or more in length must ensure appropriate load lines not submerged		(5,000)			
Rule 47.3(4)	Master of ship less than 24 metres in length must ensure appropriate load lines not submerged	4	10,500* (5,000)			
Rule 47.3(5)	Owner of barge and master of ship towing barge must ensure appropriate load lines on barge not submerged	4	10,500* (5,000)	35,000 (30,000)		
Rule 47.5(1)	Owner of ship 16 metres or more in length must ensure ship marked with draught marks	2	3,750* (5,000)	12,500 (30,000)	750*	2,500
Rule 47.5(2)	Responsibilities of owner re draught mark requirements	2	3,750* (3,000)	12,500 (20,000)	750*	2,500
Rule 47.8(2) (47.6(b))	Owner and master must not allow ship of 24 metres or more in length to proceed on voyage unless ship marked in accordance with Rules	5	15,000* (5,000)	50,000 (30,000)		

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Provision	Brief description	Category assigned	Maximum fine for individual (\$)	Maximum fine for body corporate (\$)	Maximum infringement fee for individual (\$)	Maximum infringement fee for body corporate (\$)
Rule-47.29(1)	47.29(1) Owner of ship must ensure master supplied with information to enable master to arrange for appropriate loading and ballasting		(5,000)	(30,000)		
Rule 47.48	49.48 Responsibilities of master of ship assigned timber loadline re stowage of timber deck cargo		(5,000)			
Rule 47.54 Offences to be revoked due to Rules revocation	47.54 Owner and master of ship must ensure no change made to items covered by survey without sanction of Director or authorised organisation		(5,000)	(30,000)		
Rule 47.56 (47.55(3))	Owner and master of ship must ensure International Load Line Certificate or International Load Line Exemption Certificate or New Zealand Load Line Certificate or New Zealand Load Line Exemption Certificate available on board for examination	2	3,750* (1,250)	12,500 (7,500)	750* (500)	2,500 (3,000)
Rule 47.59	Responsibilities of owner and master of foreign ship at New Zealand port or New Zealand offshore terminal re load lines	5	15,000* (5,000)	50,000 (30,000)		
Rule 47.60(b)	Owner and master of ship must not allow ship of less than 24 metres in length to proceed on voyage unless ship marked as required	4	10,500* (5,000)	35,000 (30,000)		
Rule 47.66(5) (47.54)	Owner and master of ship must ensure no change made to items covered by survey without sanction of Director or authorised organisation	4	10,500* (5,000)	35,000 (30,000)		
Rule 47.67(3)	Owner and master of ship must ensure New Zealand Load Line Certificate available on board for examination	2	3,750* (1,250)	12,500 (7,500)	750* (500)	2,500 (3,000)
Rule 47.68(b)	Owner of barge must not allow barge to proceed on voyage unless barge marked as required	4	10,500* (5,000)	35,000 (30,000)		
Rule 47.74(7)	Owner of barge must ensure no change made to items covered by survey without sanction of Director	4	10,500* (5,000)	35,000 (30,000)		
Rule 47.75(3)	Owner of barge must retain New Zealand Load Line Certificate while valid, and ensure certificate available for inspection	2	3,750* (1,250)	12,500 (7,500)	750* (500)	2,500 (3,000)

Provision	Brief description	Category assigned	Maximum fine for individual (\$)	Maximum fine for body corporate (\$)	Maximum infringement fee for individual (\$)	Maximum infringement fee for body corporate (\$)
Rules Part 73: Logbooks (renumbered)						
Rule 73.4(1)	Owner and master of ship must ensure ship carries on board New Zealand official logbook in form specified	2	3,750* (5,000)	12,500 (30,000)	750* (2,000)	2,500 (12,000)
Rule 73.5	Owner and master of ship must ensure ship's record of command is entered in New Zealand official logbook in approved form	2	3,750* (3,000)	12,500 (20,000)	750*	2,500
Rule 73.5A (73.6)	Owner and master of ship must ensure that record of watch keeping crew is entered in New Zealand official logbook in approved form	2	3,750* (3,000)	12,500 (20,000)	750*	2,500
Rule 73.6 (73.7)	Owner and master of ship must ensure that record of depth to which ship is loaded and the freeboard is entered in approved form in New Zealand official logbook whenever ship proceeds on a voyage	2	3,750* (3,000)	12,500 (20,000)	750*	2,500
Rule 73.7 (73.8)	Owner and master of ship must ensure that records of on board inspection drills, musters, and training are entered in New Zealand official logbook	2	3,750* (3,000)	12,500 (20,000)	750*	2,500
Rule 73.8 (73.9)	Owner and master of ship must ensure that appropriate entry recording any specified occurrence is made in New Zealand official logbook	2	3,750* (3,000)	12,500 (20,000)	750*	2,500
Rule 73.10(1) (b) (73.11(1)(b))	Owner and master of ship must ensure New Zealand official logbook available for inspection at all reasonable times	2	3,750* (1,250)	12,500 (7,500)	750* (500)	2,500 (3,000)
Rule 73.10(2) (73.11(2))	Owner of ship must ensure New Zealand official logbook is preserved for 3 years after date of last entry	2	3,750* (5,000)	12,500 (30,000)	750* (2,000)	2,500 (12,000)
Rule 73.11 (73.12)	Owner and master of ship must ensure ship carries on board engine-room logbook in approved form	2	3,750* (5,000)	12,500 (30,000)	750* (2,000)	2,500 (12,000)
Rule 73.12 (73.13)	Owner, master, chief engineer or engineer must ensure that appropriate entry is made in engine-room logbook recording specified occurrences	2	3,750* (3,000)	12,500 (20,000)	750*	2,500
Rule 73.14(1) (a) (73.15(1)(a))	Owner and master of ship must ensure engine-room logbook kept on board	2	3,750* (5,000)	12,500 (30,000)	750* (2,000)	2,500 (12,000)
Rule 73.14(1) (b) (73.15(1)(b))	Owner and master of ship must ensure engine-room logbook available for inspection at all reasonable times	2	3,750* (1,250)	12,500 (7,500)	750* (500)	2,500 (3,000)
Rule 73.14(2) (73.15(2))	Owner of ship must ensure engine-room logbook is preserved for 3 years after date of last entry	2	3,750* (5,000)	12,500 (30,000)	750* (2,000)	2,500 (12,000)

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Proposed amendments to the Marine Protection (Offences) Regulations 1998

Provision	Brief description	Category assigned	Maximum fine for individual (\$)	Maximum fine for body corporate (\$)	Maximum infringement fee for individual (\$)	Maximum infringement fee for body corporate (\$)
Rules Part 100: Port Reception Facilities (Oil, Noxious Liquid Substances and Garbage)						
Rule 100.4(1)	Duties to ensure port has reception facilities for oily mixtures and oily wastes	4	10,500*	35,000	2,100*	7,000
Rule 100.4(2)	Duties to ensure port has reception facilities for oil residue (sludge)	4	10,500*	35,000	2,100*	7,000
Rule 100.5(1)	Duties to ensure the port has reception facilities for cargo residues from oil tankers	4	10,500*	35,000	2,100*	7,000
Rule 100.5(2)	Duties to ensure the port has reception facilities for residues where more than 1,000 tons oil other than crude oil loaded per day.	4	10,500*	35,000	2,100*	7,000
Rule 100.6	Duties to ensure the port has reception facilities for cargo residues and solvents arising from cleaning tanks from which high density oils unloaded	4	10,500*	35,000	2,100*	7,000
Rule 100.7	Duties to ensure the port has reception facilities for ports that have ship repair yards or tank cleaning facilities	4	10,500*	35,000	2,100*	7,000
Rule 100.8	Duties to ensure the port has reception facilities for oil residues at ports that load dry bulk cargoes on board combination carriers	4	10,500*	35,000	2,100*	7,000
Rule 100.9	Duties to ensure the port has reception facilities for oil residue (sludge), dirty ballast, tank washing water, and other oily mixtures from ships proceeding to or from the Antarctic area	4	10,500*	35,000	2,100*	7,000
Rule 100.10(1)	Duty to ensure reception facilities at port loading and unloading NLS	4	10,500*	35,000	2,100*	7,000
Rule 100.10(2)	Duty to ensure reception facilities at port where repairs carried out to chemical carriers	4	10,500*	35,000	2,100*	7,000
Rule 100.11	Duties to ensure the port has reception facilities for garbage	4	10,500*	35,000	2,100*	7,000
Rule 100.12(1)	Duty to ensure the port has arrangements to facilitate stripping of cargo tanks of ships unloading noxious liquid substances	4	10,500*	35,000	2,100*	7,000
Rule 100.12(2)	Duty to ensure that cargo hoses and piping systems containing noxious liquid substances received from ships unloading these substances are not drained back to the ships	4	10,500*	35,000	2,100*	7,000
Rule 100.13(1)	Duty to ensure reception facilities for ballast water and sediments	4	10,500*	35,000	2,100*	7,000

Provision	Brief description	Category assigned	Maximum fine for individual (\$)	Maximum fine for body corporate (\$)	Maximum infringement fee for individual (\$)	Maximum infringement fee for body corporate (\$)
Rule 100.13(2)	Duty to ensure reception facilities for ballast water and sediments if repairs are carried out at the port	4	10,500*	35,000	2,100*	7,000
Rules Part 101A: Surveys and Inspections – Oil						
Rule 101A.6(1)	Owner and master of ship must ensure condition of ship and equipment maintained after survey	4	10,500* (5,000)	35,000 (30,000)	2,100*	7,000
Rule 101A.6(2)	Owner and master of ship must ensure no change made to ship's structure, equipment etc. after survey without approval	4	10,500* (5,000)	35,000 (30,000)		
Rule 101A.6(4)	Owner and master of ship must report accident to ship or defect discovered in ship to Director, authorised organisation, and appropriate authorities	5	15,000* (5,000)	50,000 (30,000)	3,000*	10,000
Rule 101A.6(5) Offence merged with 101A.6(4) above.	Owner and master of ship must ensure report of accident or defect made to Director, authorised organisation, and appropriate authorities		(5,000)	(30,000)		
Rule 101A.7(2)	Owner of oil tanker over certain age must ensure oil tanker subject to enhanced programme of inspections	5 (6)	15,000* (5,000)	50,000 (30,000)		
Rule 101A.7(3)	Owner and master of oil tanker over certain age must ensure complete file of survey reports on board	2	3,750* (5,000)	12,500 (30,000)	750* (2,000)	2,500 (12,000)
Rule 101A.7(4)	Owner and master of oil tanker over certain age must ensure survey file accompanied by condition evaluation report, and both in standard format	2	3,750* (5,000)	12,500 (30,000)	750* (2,000)	2,500 (12,000)
Rules Part 101B: Surveys and Inspections – Noxious Liquid Substances Carried in Bulk						
Rule 101B.6(1)	Owner and master of ship must ensure condition of ship and equipment maintained after survey	4	10,500* (5,000)	35,000 (30,000)	2,100*	7,000
Rule 101B.6(2)	Owner and master of ship must ensure no change made to ship's structure, equipment etc. after survey without approval	4	10,500* (5,000)	35,000 (30,000)		
Rule 101B.6(4)	Owner and master of ship must report accident to ship or defect discovered in ship	5	15,000* (5,000)	50,000 (30,000)	3,000*	10,000
Rule 101B.6(5)	Owner and master of ship must ensure report of accident or defect made to Director, authorised organisation, and appropriate authorities	5	15,000* (5,000)	50,000 (30,000)	3,000*	10,000

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Provision	Brief description	Category assigned	Maximum fine for individual (\$)	Maximum fine for body corporate (\$)	Maximum infringement fee for individual (\$)	Maximum infringement fee for body corporate (\$)
Rules Part 120: Discharge of Oil						
Rule 120.3A	Owner and master exceeding allowable discharge of oil and oily mixtures in polar waters	5	15,000*	50,000		
Rule 120.5(1)	Owner and master of oil tankers exceeding allowable discharge of oil or oily mixtures outside special areas and Arctic waters	5	15,000*	50,000		
Rule 120.5(5)	Owner and master of oil tankers discharging oil or oily mixtures that contain chemicals or other substances in quantities or concentrations which are hazardous to the marine environment; introducing chemical or other substances of the purpose of circumventing conditions of discharge	5	15,000*	50,000		
Rule 120.6(1)	Owner and master of ships other than oil tankers exceeding allowable discharge of oil or oily mixtures outside special areas and Arctic waters	5	15,000*	50,000		
Rule 120.6(2)	Owner and master of ships other than oil tankers discharging oil or oily mixtures that contain chemicals or other substances in quantities or concentrations which are hazardous to the marine environment; introducing chemical or other substances with the purpose of circumventing conditions of discharge	5	15,000*	50,000		
Rule 120.8(1)	Owner and master of oil tankers and ships other than oil tankers exceeding allowable discharge of oil and oily mixtures within special areas except Antarctic area	5	15,000*	50,000		
Rule 120.8(2)	Owner and master of oil tankers and ships other than oil tankers discharging oil or oily mixtures within special areas except Antarctic area that contain chemicals or other substances in quantities or concentrations which are hazardous to the marine environment; introducing chemical or other substances with the purpose of circumventing conditions of discharge	5	15,000*	50,000		
Rule 120.9(1)	Owner and master of ships less than 400 tons gross tonnage other than oil tankers exceeding allowable discharge of oil or oily mixtures within special areas except Antarctic area	5	15,000*	50,000		

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Provision	Brief description	Category assigned	Maximum fine for individual (\$)	Maximum fine for body corporate (\$)	Maximum infringement fee for individual (\$)	Maximum infringement fee for body corporate (\$)
Rule 120.9(2)(i) & (2)(ii)	Ships less than 400 tons gross tonnage other than oil tankers discharging oil or oily mixtures within special areas except Antarctic area that contain chemicals or other substances in quantities or concentrations which are hazardous to the marine environment; or introducing chemical or other substances with the purpose of circumventing conditions of discharge	5	15,000*	50,000	3,000*	10,000
Rule 120.10	Owner and master failing to ensure that oil residues from the ship, that cannot be discharged into the sea in compliance with the conditions specified in this Part, are retained on board or discharged to reception facilities	5	15,000*	50,000	3,000*	10,000
Rule 120.12	Owner and master to ensure discharge of ballast water and oil contaminated water from cargo tanks is managed in accordance with Rules	4	10,500*	35,000		
Rule 120.14(1)	Owner and master to ensure discharge of contaminated washings, cargo residues and any solvents to port reception facilities	4	10,500*	35,000	2,100*	7,000
Rule 120.15	Duties to report a discharge or escape of oil	<p>No regulation-level penalty as breach of this Rule is sufficiently serious to rely on Act-level penalties of section 238 involving failure to report discharge of harmful substances into sea or seabed:</p> <ul style="list-style-type: none"> • an imprisonment term not exceeding 2 years, or a fine not exceeding \$200,000, and, if the offence is a continuing one, to a further fine not exceeding \$10,000 for every day or part of a day during which the offence is continued, and • to pay such amount as the court may assess in respect of the costs incurred in respect of or associated with removing, containing, rendering harmless, or dispersing any harmful substance discharged as a result of the offence; and • to an additional penalty under section 409 (for offence involving commercial gain). 				

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Provision	Brief description	Category assigned	Maximum fine for individual (\$)	Maximum fine for body corporate (\$)	Maximum infringement fee for individual (\$)	Maximum infringement fee for body corporate (\$)
Rule 120.16	Duties to report a probable discharge of oil	No regulation-level penalty as breach of this Rule is sufficiently serious to rely on Act-level penalties of section 238 re failure to report discharge of harmful substances into sea or seabed: <ul style="list-style-type: none"> • an imprisonment term not exceeding 2 years, or a fine not exceeding \$200,000, and, if the offence is a continuing one, to a further fine not exceeding \$10,000 for every day or part of a day during which the offence is continued, and • to pay such amount as the court may assess in respect of the costs incurred in respect of or associated with removing, containing, rendering harmless, or dispersing any harmful substance discharged as a result of the offence; and • to an additional penalty under section 409 (for offence involving commercial gain). 				
Rule 120.17	Duty to report damage, failure or breakdown of a ship	No regulation-level penalty as breach of this Rule is sufficiently serious to rely on Act-level penalties of section 71 re failure to report accidents or incidents: <ul style="list-style-type: none"> • in the case of an individual, a fine not exceeding \$5,000 • in the case of a body corporate, a fine not exceeding \$30,000. 				
Rule 120.19	Master assisting or salvaging a ship involving the discharge or escape of oil into the sea must report action taken, planned and keep the coastal state informed	5	15,000*	50,000		
Rules Part 122: Marine Protection Products (Oil)						
Rule 122.4(2)	Owner must ensure ship is fitted with oil filtering equipment meeting specified requirements	5	15,000*	50,000	3,000*	10,000
Rule 122.4(3)	Owner of ship: <ul style="list-style-type: none"> • 10,000 gross tons or more • 400 gross tons or more but less than 10,000 gross tons that carries ballast water in oil fuel tanks – must ensure oil filtering equipment fitted with alarm and arrangements to ensure discharge of oily mixture is automatically stopped if oil content of effluent exceeds 15 parts per million (ppm)	5	15,000*	50,000	3,000*	10,000
Rule 122.7	Owner must ensure ship of 400 gross tons or more complies with the requirements for oil residue (sludge) tanks and piping in regulation 12 of Chapter 3 of Annex I of MARPOL	5	15,000*	50,000	3,000*	10,000

Provision	Brief description	Category assigned	Maximum fine for individual (\$)	Maximum fine for body corporate (\$)	Maximum infringement fee for individual (\$)	Maximum infringement fee for body corporate (\$)
Rule 122.19(3)	The owner of an oil tanker to keep the record produced by the oil discharge monitoring and control system recording device for at least three years; and note any failure of the system in the oil record book	2	3,750*	12,500	750*	2,500
Rule 122.22	The owner of an oil tanker (<150 tons gross) and other ships (<400 tons gross) to have on board arrangements for handling oily wastes	4	10,500*	35,000	2,100*	7,000
Part 123A: Documents – Oil						
Rule 123A.4(1)	Owner and master of New Zealand ship must ensure a valid International Oil Pollution Prevention Certificate is held in respect of ship	No regulation-level penalty as breach of this Rule is sufficiently serious to rely on Act-level offences of section 277 re acting without necessary marine protection document: <ul style="list-style-type: none"> • an imprisonment term not exceeding 12 months, or • a fine not exceeding \$10,000, and • an additional penalty under section 409 (for offence involving commercial gain). 				
Rule 123A.4(2)	Owner and master of New Zealand ship must ensure International Oil Pollution Prevention Certificate carried on board and made available for inspection	2	3,750* (5,000)	12,500 (30,000)	750* (2,000)	2,500 (12,000)
Rule 123A.6(2)	Owner and master of New Zealand ship must ensure Record of Construction and Equipment carried on board and made available for inspection	2	3,750* (5,000)	12,500 (30,000)	750* (2,000)	2,500 (12,000)
Rule 123A.8(1)(b)	Owner and master of foreign ship registered in State party to MARPOL must ensure text of International Oil Pollution Prevention Certificate includes translation into French or English	2	3,750* (1,250)	12,500 (7,500)	750* (500)	2,500 (3,000)
Rule 123A.8(2)	Owner and master of foreign ship registered in State party to MARPOL must ensure International Oil Pollution Prevention Certificate carried on board and made available for inspection	2	3,750* (5,000)	12,500 (30,000)	750* (2,000)	2,500 (12,000)
Rule 123A.9(1)(c)	Owner and master of foreign ship registered in State party to MARPOL must ensure Record of Construction and Equipment includes translation into English or French	2	3,750* (1,250)	12,500 (7,500)	750* (500)	2,500 (3,000)
Rule 123A.9(2)	Owner and master of foreign ship registered in State party to MARPOL must ensure Record of Construction and Equipment carried on board and made available for inspection	2	3,750* (5,000)	12,500 (30,000)	750* (2,000)	2,500 (12,000)
Rule 123A.11(1)(b)	Owner and master of foreign ship registered in State not party to MARPOL must ensure oil pollution prevention document includes translation into English or French	2	3,750* (1,250)	12,500 (7,500)	750* (500)	2,500 (3,000)

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Provision	Brief description	Category assigned	Maximum fine for individual (\$)	Maximum fine for body corporate (\$)	Maximum infringement fee for individual (\$)	Maximum infringement fee for body corporate (\$)
Rule 123A.11(2)	Owner and master of foreign ship registered in State not party to MARPOL must ensure oil pollution prevention document carried on board and made available for inspection	2	3,750* (5,000)	12,500 (30,000)	750* (2,000)	2,500 (12,000)
Rule 123A.12(1)(b)	Owner and master of foreign ship registered in State not party to MARPOL must ensure Record of Construction and Equipment includes translation into English or French	2	3,750* (1,250)	12,500 (7,500)	750* (500)	2,500 (3,000)
Rule 123A.12(2)	Owner and master of foreign ship registered in State not party to MARPOL must ensure Record of Construction and Equipment carried on board and made available for inspection	2	3,750* (5,000)	12,500 (30,000)	750* (2,000)	2,500 (12,000)
Rules Part 123B: Documents (Record Books and Manuals) – Oil						
Rule 123B.4	Owner and master of New Zealand ship must ensure oil record books carried on board	2	3,750* (5,000)	12,500 (30,000)	750*	2,500
Rule 123B.5(1)	Owner and master of New Zealand ship must ensure records entered in oil record book	2	3,750*	12,500	750*	2,500
Rule 123B.5(3)	Master of New Zealand ship must sign each page of oil record books	2	3,750* (625)		750* (250)	
Rule 123B.5(5)	Owner and master of New Zealand ship must ensure oil record books available for inspection and kept on board	2	3,750* (5,000)	12,500 (30,000)	750* (2,000)	2,500 (12,000)
Rule 123B.8(1)	Owner and master of foreign ship must ensure records entered in oil record book	2	3,750*	12,500	750*	2,500
Rule 123B.8(3)	Master of foreign ship must sign each page of oil record books	2	3,750* (625)		750* (250)	
Rule 123B.8(5)	Owner and master of foreign ship engaged in international trade must ensure entries in oil record books are in required languages	2	3,750* (1,250)	12,500 (7,500)	750* (500)	2,500 (3,000)
Rule 123B.8(6)	Owner and master of foreign ship engaged in trade other than international trade must ensure entries in oil record books are in required languages	2	3,750* (1,250)	12,500 (7,500)	750* (500)	2,500 (3,000)
Rule 123B.8(7)	Owner and master of foreign ship must ensure oil record books available for inspection and kept on board	2	3,750* (5,000)	12,500 (30,000)	750* (2,000)	2,500 (12,000)
Rule 123B.11(1)	Owner and master of small New Zealand oil tanker must ensure records entered in oil record book	2	3,750*	12,500	750*	2,500
Rule 123B.11(3)	Master of small New Zealand oil tanker must sign each page of oil record book	2	3,750* (625)		750* (250)	

Provision	Brief description	Category assigned	Maximum fine for individual (\$)	Maximum fine for body corporate (\$)	Maximum infringement fee for individual (\$)	Maximum infringement fee for body corporate (\$)
Rule 123B.11(5)	Owner and master of small New Zealand oil tanker must ensure oil record book available for inspection and kept on board	2	3,750* (5,000)	12,500 (30,000)	750* (2,000)	2,500 (12,000)
Rule 123B.14(1)	Owner and master of small foreign oil tanker must ensure records entered in oil record book	2	3,750*	12,500	750*	2,500
Rule 123B.14(3)	Master of small foreign oil tanker must sign each page of oil record book	2	3,750* (625)		750* (250)	
Rule 123B.14(5)	Owner and master of small foreign oil tanker engaged in international trade must ensure entries in oil record book are in required languages	2	3,750* (1,250)	12,500 (7,500)	750* (500)	2,500 (3,000)
Rule 123B.14(6)	Owner and master of small foreign oil tanker engaged in trade other than international trade must ensure entries in oil record book are in required languages	2	3,750* (1,250)	12,500 (7,500)	750* (500)	2,500 (3,000)
Rule 123B.14(7)	Owner and master of small foreign oil tanker must ensure oil record book available for inspection and kept on board.	2	3,750* (5,000)	12,500 (30,000)	750* (2,000)	2,500 (12,000)
Rule 123B.19	Owner and master of foreign oil tanker operating with dedicated clean ballast tanks must ensure required manual carried on board	4	10,500* (5,000)	35,000 (30,000)	2,100*	7,000
Rule 123B.20	Owner and master of foreign oil tanker with crude oil washing system must ensure required manual carried on board	4	10,500* (5,000)	35,000 (30,000)	2,100*	7,000
Rule 123B.21(2)	Owner and master of foreign ship with oil discharge monitoring and control system must ensure required manual carried on board	4	10,500* (5,000)	35,000 (30,000)	2,100*	7,000
Rules Part 125: Shipboard Operations – Oil						
Rule 125.4(1)	Owner and master of ship must ensure no ballast water carried in ship's oil fuel tanks except in certain circumstances under 125.4(2)	5	15,000* (5,000)	50,000 (30,000)		
Rule 125.4(3)	Owner and master of ship must ensure no ballast water carried in any oil fuel tank except in certain circumstances under 125.4(4)	5	15,000* (5,000)	50,000 (30,000)		
Rule 125.6(1)	Owner and master of ship must ensure no ballast water carried in any cargo tank except in certain circumstances	5	15,000* (5,000)	50,000 (30,000)		
Rule 125.6(4)	Owner and master of crude oil tanker must ensure sufficient cargo tanks are crude oil washed prior to ballast voyage	5	15,000* (5,000)	50,000 (30,000)		
Rule 125.7	Master of oil tanker must ensure valves or closing devices kept closed when ship en route and ship's cargo tanks contain cargo oil	5	15,000* (5,000)		3,000*	

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Provision	Brief description	Category assigned	Maximum fine for individual (\$)	Maximum fine for body corporate (\$)	Maximum infringement fee for individual (\$)	Maximum infringement fee for body corporate (\$)
Rule 125.8	Owner and master of ship required to carry manual under Rule 123B.19 or Rule 123B.20 or Rule 123B.21(2) must ensure operational procedures in manual complied with	5	15,000* (5,000)	50,000 (30,000)	3,000*	10,000
Rule 125.10(2)	Owner and master to ensure ship does not carry heavy grades of oil as cargo, or use as ballast or carry and use as fuel in the Antarctic area	5	15,000*	50,000		
Rules Part 130A: Shipboard Marine Oil Spill Contingency Plans						
Rule 130A.20	Responsibilities of owner and master of New Zealand ship re periodic testing of ship's New Zealand shipboard marine oil spill contingency plan	5	15,000* (3,000)	50,000 (20,000)	3,000*	10,000
Rule 130A.21	Responsibilities of owner of New Zealand ship re notification of modifications to ship's New Zealand shipboard marine oil spill contingency plan	2	3,750* (3,000)	12,500 (20,000)	750*	2,500
Rule 130A.23	Owner and master of foreign ship must ensure appropriate oil pollution emergency plan carried on board	5	15,000* (5,000)	50,000 (30,000)	3,000*	10,000
Rules Part 130B: Oil Transfer Site Marine Oil Spill Contingency Plans						
Rule 130B.4 Offence revoked. This offence is of sufficient gravity to rely on Act-level provisions in section 277.	No person may operate oil transfer site without approved contingency plan that complies with certain requirements		(5,000)	(30,000)	(2,000)	(12,000)
Rule 130B.8(a)	Operator of oil transfer site must ensure certain personnel receive appropriate training	5	15,000* (5,000)	50,000 (30,000)	3,000* (2,000)	10,000 (12,000)
Rule 130B.8(b)	Operator of oil transfer site must ensure a record of training is kept	5	15,000*	50,000	3,000*	10,000
Rule 130B.8(c)	Operator of oil transfer site must maintain access to equipment to deal with oil spill	5	15,000* (5,000)	50,000 (30,000)	3,000* (2,000)	10,000 (12,000)
Rule 130B.8(d) Agreed revoke offence	Operator of oil transfer site must, when called upon by the Director, justify response option in contingency plan as effective and achievable		(3,000)	(20,000)	(1,200)	(7,200)
Rule 130B.9(1)	Operator of oil transfer site must keep Director's written approval of contingency plan, and make both documents available to Director on request	2	3,750* (3,000)	12,500 (20,000)	750* (1,200)	2,500 (7,200)

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Provision	Brief description	Category assigned	Maximum fine for individual (\$)	Maximum fine for body corporate (\$)	Maximum infringement fee for individual (\$)	Maximum infringement fee for body corporate (\$)
Rule 130B.9(2)	Operator of oil transfer site must ensure site marine oil spill contingency plan kept and available at site	2	3,750*	12,500	750*	2,500
Rule 130B.9(3)	Operator must, as soon as practicable, supply a copy of Director's written approval and approved contingency plan to Director, District Chief Officer, and regional on-scene commander (if any)	2	3,750* (3,000)	12,500 (20,000)	750* (1,200)	2,500 (7,200)
Rule 130B.10	Operator of oil transfer site must: • ensure contingency plan is tested and reviewed	5	15,000* (3,000)	50,000 (20,000)	3,000* (1,200)	10,000 (7,200)
Rule 130B.10(2)	Operator of oil transfer site must: • keep record of every test and review, and the results and findings	2	3,750* (2,500)	12,500 (15,000)	750* (500)	2,500 (3,000)
Rule 130B.10(3)	Operator of oil transfer site must: • determine and implement changes to contingency plan	2	3,750* (2,500)	12,500 (15,000)	750 (500)	2,500 (6,000)
Rule 130B.11(1)	Operator of oil transfer site must ensure any modification to contingency plan is notified	2	3,750* (1,250)	12,500 (6,000)	750* (500)	2,500 (6,000)
Rule 130B.12(1)	Operator of oil transfer site must obtain approval for modifications to contingency plan	2	3,750* (5,000)	12,500 (30,000)	750* (2,000)	2,500 (12,000)
Rule-130B.13 Offence revoked. This offence is of sufficient gravity to rely on Act-level provisions in section 238.	Operator of oil transfer site must report any marine oil spill				(2,000)	(1,200)

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Provision	Brief description	Category assigned	Maximum fine for individual (\$)	Maximum fine for body corporate (\$)	Maximum infringement fee for individual (\$)	Maximum infringement fee for body corporate (\$)
Rules Part 131: Offshore Installations – Oil Spill Contingency Plans and Oil Pollution Prevention Certification						
Rule 131.21	No person may operate offshore installation without Director's written approval of oil spill contingency plan		(5,000)	(30,000)		
Offence revoked. This offence is of sufficient gravity to rely on Act-level provisions in section 277 re acting without necessary marine protection document.						
Rule 131.25(1)	Owner of installation must keep approved oil spill contingency plan with Director's written approval, and make both documents available to Director on request	2	3,750*	12,500	750* (500)	2,500 (3,000)
Rule 131.25(4)	If offshore installation is within a region, owner must supply a copy of Director's written approval and approved oil spill contingency plan to regional on-scene commander as soon as practicable after approval is issued	2	3,750* (1,250)	12,500 (6,000)	750* (500)	2,500 (3,000)
Rule 131.26(1)	Owner of installation must apply to Director for approval of modification to oil spill contingency plan in accordance with Rule	2	3,750* (5,000)	12,500 (30,000)	750* (2,000)	2,500 (12,000)
Rule 131.27(1)	Owner of installation must notify Director and every person holding a copy of oil spill contingency plan required to be kept or supplied under Rule 131.25 of modification made to that plan	2	3,750* (1,250)	12,500 (6,000)	750* (500)	2,500 (3,000)
Rule 131.27(2)	Owner of installation must keep a record of notifications of modifications	2	3,750* (1,250)	12,500 (6,000)	750* (500)	2,500 (3,000)
Rule 131.28(a)(c)	Owner of offshore installation must – (a) ensure personnel are aware of their responsibilities under approved oil spill contingency plan and receive appropriate training (c) maintain access to equipment to deal with spill at appropriate level	5	15,000* (5,000)	50,000 (30,000)	3,000* (2,000)	10,000 (12,000)
Rule 131.28(b)	Owner of offshore installation must – (b) ensure training is undertaken and recorded, and training record maintained and provided to Director in accordance with Rule	2	3,750* (1,250)	12,500 (6,000)	750* (500)	2,500 (3,000)

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Provision	Brief description	Category assigned	Maximum fine for individual (\$)	Maximum fine for body corporate (\$)	Maximum infringement fee for individual (\$)	Maximum infringement fee for body corporate (\$)
131.28(d) Offence revoked	Owner of offshore installation must – when requested by Director, justify response option identified in oil spill contingency plan as effective and achievable		(1,250)			(3,000)
Rule 131.29(1)	Owner of offshore installation responsibilities must test emergency response procedures and review effectiveness of procedures in accordance with Rule	5	15,000* (5,000)	50,000 (30,000)	3,000* (2,000)	10,000 (12,000)
Rule 131.29(2)	Owner must notify Director of test or review, make and keep a record of every test and review made under Rule 131.29(1) and of the results, and provide a copy of the results to Director in accordance with Rule	2	3,750* (2,500)	12,500 (15,000)	750* (500)	2,500 (3,000)
Rule 131.29(3)	Following every review of emergency response procedures, owner must determine modifications to oil spill contingency plan, submit modifications to Director for approval, and implement modifications in accordance with Rule	4	10,500* (2,500)	35,000 (15,000)	2,100* (500)	7,000 (3,000)
Rule 131.41(1)	Owner of installation must report oil spill in accordance with Rule	5	15,000*	50,000	3,000* (2,000)	10,000 (12,000)
Rule 131.41(2)	Person responsible for implementing emergency response procedures must report oil spill that he or she considers cannot be contained or cleaned up using the resources available in accordance with Rule	5	5,000	50,000	1,000 (2,000)	10,000 (12,000)
Rule 131.42(1)	Owner of installation must ensure event or defect is reported in accordance with Rule 131.42(2)	5	15,000* (5,000)	50,000 (30,000)	3,000* (2,000)	10,000 (12,000)
Rule 131.61(1)	Owner of installation must ensure there is a valid International Oil Pollution Prevention Certificate held in respect of installation	5	15,000* (2,500)	50,000 (15,000)	3,000* (1,000)	10,000 (6,000)
Rule 131.61(2)	Owner of installation must ensure International Oil Pollution Prevention Certificate held in respect of offshore installation is available in accordance with Rule	2	3,750* (2,500)	12,500 (15,000)	750* (1,000)	2,500 (6,000)
Rule 131.62(1)	Owner of offshore installation must ensure installation undergoes initial survey, renewal surveys, annual survey, and intermediate survey	5 (6)	15,000* (5,000)	50,000 (30,000)	(2,000)	(12,000)
Rule 131.66(1)	Owner must ensure the offshore installation's equipment is maintained in condition complying with the Rules and its IOPP certificate, and does not present an unreasonable threat of harm to the marine environment	4	10,500* (5,000)	35,000 (30,000)	2,100* (2,000)	7,000 (12,000)

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Provision	Brief description	Category assigned	Maximum fine for individual (\$)	Maximum fine for body corporate (\$)	Maximum infringement fee for individual (\$)	Maximum infringement fee for body corporate (\$)
Rule 131.66(2)	Owner must ensure no change is made to offshore installation's structure, equipment, systems, piping, fittings, arrangements, or material covered by survey, without approval of surveyor (except direct replacement of equipment and fittings)	4	10,500* (5,000)	35,000 (30,000)	2,100* (2000)	7,000 (12,000)
Rule 131.81	Owner of installation must ensure placards re discharge requirements are displayed and in required languages	2	3,750* (1,250)	12,500 (7,500)	750* (500)	2,500 (3,000)
Rule 131.82(1)(a)	Owner of installation in territorial sea must ensure installation has garbage management plan complying with Rule	5	15,000* (5,000)	50,000 (30,000)	3,000*	10,000
Rule 131.82(1)(b)	Owner of installation in territorial sea must ensure up-to-date copy of garbage management plan is carried on board installation	2	3,750* (5,000)	12,500 (30,000)	750*	2,500
Rule 131.82(1)(c)	Owner of installation in territorial sea must ensure all persons on board comply with garbage management plan	4	10,500* (5,000)	35,000 (30,000)		
Rule 131.82(3)	All persons on board offshore installation in territorial sea must comply with garbage management plan	4	3,500 (5,000)			
Rule 131.83	Owner of offshore installation must comply with garbage record book requirements	2	3,750* (5,000)	12,500 (30,000)	750* (2,000)	2,500 (12,000)
Rule 131.84(1)	Owner of offshore installation must ensure installation is fitted with oil filtering equipment meeting specified requirements	5	15,000* (5,000)	50,000 (30,000)	3,000* (2000)	10,000 (12,000)
Rule 131.84(2)	Offshore installation of 10,000 gross tons or more must have oil filtering equipment fitted with alarm and arrangements to ensure discharge of oily mixture is automatically stopped if oil content of effluent exceeds 15 parts per million	5	15,000* (5,000)	50,000 (30,000)	3,000* (2,000)	10,000 (12,000)
Rule 131.85(1)	Owner of offshore installation that is not fixed offshore installation must ensure installation is fitted with oil residue (sludge) tank that complies with prescribed requirements	5	15,000* (5,000)	50,000 (30,000)	3,000* (2,000)	10,000 (12,000)
Rule 131.85(3)	Owner of fixed offshore installation must ensure installation is fitted with oil residue (sludge) tank that complies with prescribed requirements	5	15,000* (5,000)	50,000 (30,000)	3,000* (2,000)	10,000 (12,000)
Rule 131.86(1)	Owner of offshore installation must provide installation with oil record book in approved form	2	3,750* (4,000)	12,500 (25,000)	750* (1,000)	2,500 (6,000)
Rule 131.86(2)	Owner must ensure an entry is made in oil record book of certain operations taking place on offshore installation and of certain discharges	2	3,750* (4,000)	12,500 (25,000)	750* (1,000)	2,500 (6,000)

Provision	Brief description	Category assigned	Maximum fine for individual (\$)	Maximum fine for body corporate (\$)	Maximum infringement fee for individual (\$)	Maximum infringement fee for body corporate (\$)
Rule 131.86(3)	Owner must ensure statement is made in oil record book of the circumstances of and reasons for discharge or escape of oil or oily mixtures or substances containing oil	2	3,750* (4,000)	12,500 (25,000)	750* (1,000)	2,500 (6,000)
Rule 131.86(6)	Owner must ensure oil record book is available for inspection and is kept in accordance with Rule	2	3,750* (4,000)	12,500 (25,000)	750* (1,000)	2,500 (6,000)
Rule 131.86(7)	Owner must ensure a true copy of every completed page of offshore installation's oil record book is forwarded to Director in accordance with Rule	2	3,750* (1,250)	12,500 (7,500)	750* (500)	2,500 (3,000)
Rule 131.86(8)	Owner must preserve oil record book for 3 years after last entry	2	3,750* (5,000)	12,500 (30,000)	750* (2,000)	2,500 (12,000)
Rules Part 132: New Zealand Oil Spill Control Agents						
Rule 132.20(1)	No person to use or discharge an OSCA unless it is an NZOSCA and use is authorized under a marine oil spill contingency plan or by an on-scene commander	5	15,000*	50,000	3,000*	10,000
Rule 132.20(2)	A person using an NZOSCA to comply with conditions or requirements imposed by the Director	5	15,000*	50,000	3,000*	10,000
Rules Part 140: Discharge of Noxious Liquid Substances Carried in Bulk						
Rule 140.5(1) (140.17(1))	Owner and master of ship outside special area must ensure tank from which Category X substance unloaded is washed in accordance with Rule.	5	15,000* (5,000)	50,000 (30,000)	3,000*	10,000
Rule 140.5(2)	Responsibilities of owner and master of ship outside special area re prewashing of tank from which Category X substance unloaded	5	15,000*	50,000	3,000*	10,000
Rule 140.5(3)	Responsibilities of owner and master of ship to ensure that appropriate records of the operations undertaken under sub-rule (2) are made as required by Part 142B	2	3,750*	12,500	750*	2,500
Rule 140.6(1)	Responsibilities of owner and master of ship outside special area re tank from which Category Y or Z substance unloaded	5	15,000*	50,000	3,000*	10,000
Rule 140.6(2)	Responsibilities of owner and master of New Zealand ship outside special area re discharge and washing of tanks – Category Y and Z substances	5	15,000*	50,000	3,000*	10,000

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Provision	Brief description	Category assigned	Maximum fine for individual (\$)	Maximum fine for body corporate (\$)	Maximum infringement fee for individual (\$)	Maximum infringement fee for body corporate (\$)
Rule 140.8	Owner and master to ensure uncategorized liquid substances in bulk not carried until Director notifies provisional assessment of substance	5	15,000*	50,000	3,000*	10,000
Rule 140.12	Duty to report damage, failure or breakdown of a ship	No regulation-level penalty as breach of this Rule is sufficiently serious to rely on Act-level penalties of section 71 re failure to report accidents or incidents: <ul style="list-style-type: none"> in the case of an individual, a fine not exceeding \$5,000 in the case of a body corporate, a fine not exceeding \$30,000. 				
Rule 140.14	Responsibilities of master of ship rendering assistance or undertaking salvage re reporting to nearest coastal state	5	15,000*		3,000*	
Rule Part 142A: Documents (Certificates) – Noxious Liquid Substances						
Rule 142A.4(1)	Owner and master of New Zealand ship must ensure a valid International Pollution Prevention Certificate for Carriage of Noxious Liquid Substances in Bulk is held	No regulation-level penalty as breach of this Rule is sufficiently serious to rely on Act-level penalties of section 277 re acting without necessary marine protection document: <ul style="list-style-type: none"> an imprisonment term not exceeding 12 months, or a fine not exceeding \$10,000, and an additional penalty under section 409 (for offence involving commercial gain). 				
Rule 142A.4(2)	Owner and master of New Zealand ship must ensure International Pollution Prevention Certificate for carriage of noxious liquid substances in bulk is carried on board and made available for inspection	2	3,750* (5,000)	12,500 (30,000)	750* (2,000)	2,500 (12,000)
Rule 142A.7(1)(b)	Owner and master of foreign ship registered in State party to MARPOL must ensure text of International Pollution Prevention Certificate for carriage of noxious liquid substances in bulk includes translation into English, French or Spanish	2	3,750* (1,250)	12,500 (7,500)	750* (500)	2,500 (3,000)
Rule 142A.7(3)	Owner and master of foreign chemical tanker registered in State party to MARPOL issued with certificate of fitness must ensure certificate includes translation into English, French or Spanish	2	3,750* (1,250)	12,500 (7,500)	750* (500)	2,500 (3,000)

Provision	Brief description	Category assigned	Maximum fine for individual (\$)	Maximum fine for body corporate (\$)	Maximum infringement fee for individual (\$)	Maximum infringement fee for body corporate (\$)
Rule 142A.7(4)	Owner and master of foreign ship registered in State party to MARPOL must ensure International Pollution Prevention Certificate for carriage of noxious liquid substances in bulk or certificate of fitness is carried on board and made available for inspection	2	3,750* (5,000)	12,500 (30,000)	750* (2,000)	2,500 (12,000)
Rule 142A.9(1)(b)	Owner and master of foreign ship registered in State not party to MARPOL must ensure noxious liquid substance pollution prevention document includes translation into English, French or Spanish	2	3,750* (1,250)	12,500 (7,500)	750* (500)	2,500 (3,000)
Rule 142A.9(3)	Owner and master of foreign chemical tanker registered in State not party to MARPOL issued with document of fitness of standard equivalent to international bulk chemical code or bulk chemical code must ensure document includes translation into English, French or Spanish	2	3,750* (1,250)	12,500 (7,500)	750* (500)	2,500 (3,000)
Rule 142A.9(4)	Owner and master of foreign ship registered in State not party to MARPOL must ensure noxious liquid substance pollution prevention document or document of fitness carried on board and made available for inspection	2	3,750* (5,000)	12,500 (30,000)	750* (2,000)	2,500 (12,000)
Rule Part 142B: Documents (Record Books and Manuals) – Noxious Liquid Substances						
Rule 142B.5(1)	Owner and master must ensure records entered in cargo record book (New Zealand ship)	2	3,750*	12,500	750*	2,500
Rule 142B.5(5)	Owner and master of New Zealand ship must ensure cargo record book available for inspection and kept on board	2	3,750* (5,000)	12,500 (30,000)	750* (2,000)	2,500 (12,000)
Rule 142B.5(7)	Owner of New Zealand ship must preserve cargo record book for 3 years after last entry	2	3,750* (5,000)	12,500 (30,000)	750* (2,000)	2,500 (12,000)
Rule 142B.8(1)	Owner and master must ensure records entered in cargo record book (foreign ship)	2	3,750*	12,500	750*	2,500
Rule 142B.8(5)	Owner and master of foreign ship engaged in international trade must ensure entries in cargo record book are in the national language of the state the ship is registered in and in English, French or Spanish	2	3,750* (1,250)	12,500 (7,500)	750* (500)	2,500 (3,000)
Rule 142B.8(6)	Owner and master of foreign ship engaged in trade other than international trade must ensure entries in cargo record book are in the national language of the state the ship is registered in and in English	2	3,750* (1,250)	12,500 (7,500)	750* (500)	2,500 (3,000)

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Provision	Brief description	Category assigned	Maximum fine for individual (\$)	Maximum fine for body corporate (\$)	Maximum infringement fee for individual (\$)	Maximum infringement fee for body corporate (\$)
Rule 142B.8(7)	Owner and master of foreign ship must ensure cargo record book available for inspection and kept on board	2	3,750* (5,000)	12,500 (30,000)	750* (2,000)	2,500 (12,000)
Rule 142B.10(1)	Owner and master of New Zealand ship must ensure that ship has a Procedures and Arrangements Manual approved by the Director	5 (6)	15,000*	50,000		
Rule 142B.10(5)	Responsibilities of owner of New Zealand ship re revision of Procedures and Arrangements Manual	2	3,750* (3,000)	12,500 (20,000)	750*	2,500
Rule 142B.11	Owner and master of foreign ship must ensure that Procedures and Arrangements Manual or other appropriate manual carried on board.	4	10,500* (5,000)	35,000 (30,000)	2,100*	7,000
Rule Part 143: Shipboard Marine Pollution Emergency Plans for Noxious Liquid Substances						
Rule 143.4(1)	Owner and master to ensure ship carries on board an emergency plan for noxious liquid substances	5 (6)	15,000*	50,000		
Rule 143.7	Owner to ensure ship carries the noxious liquid substances plan and written approval, and make these available to the Director, District Chief Fire Officer and harbourmaster	2	3,750*	12,500	750*	2,500
Rule 143.8	Owner and master to ensure testing of the noxious liquid substances plan, keep records, update the plan and notify the Director of any changes	5 (6)	15,000*	50,000		
Rule 143.10(1)	Owner and master of a ship registered in a State party to MARPOL to carry on board an emergency plan for noxious liquid substances	5 (6)	15,000*	50,000		
Rule 143.10(2)	Owner and master of a ship registered in a State not party to MARPOL to carry on board an emergency plan for noxious liquid substances	5 (6)	15,000*	50,000		
Rule Part 150: Carriage of Cargoes – Harmful Substances						
Rule 150.4	Responsibilities of owner and master of ship re jettison of harmful substances	5	15,000* (5,000)	50,000 (30,000)		
Rule 150.5(5)	Responsibilities of owner and master of ship re washing of leakages overboard	5	15,000* (5,000)	50,000 (30,000)	3,000* (2,000)	10,000 (12,000)

Provision	Brief description	Category assigned	Maximum fine for individual (\$)	Maximum fine for body corporate (\$)	Maximum infringement fee for individual (\$)	Maximum infringement fee for body corporate (\$)
Rule Part 160: Prevention of Pollution by Sewage from Ships in the Antarctic Treaty Area						
Rule 160.5	Owner and master of New Zealand ship must ensure condition of ship maintained after survey and no change made to equipment etc. after survey without approval	5	15,000* (5,000)	50,000 (30,000)		
Rule 160.6(2)	Owner and master of New Zealand ship must ensure International Sewage Pollution Prevention Document of Compliance carried on board and made available for inspection	2	3,750* (5,000)	12,500 (30,000)	750* (2,000)	2,500 (12,000)
Rule 160.10(1)	Owner and master of New Zealand ship must ensure sewage record book kept on board and available for inspection	2	3,750* (1,250)	12,500 (7,500)	750* (500)	2,500 (3,000)
Rule 160.10(2)	Owner of New Zealand ship must preserve sewage record book for 3 years after last entry	2	3,750* (5,000)	12,500 (30,000)	750* (2,000)	2,500 (12,000)
Rule 160.11	Owner of New Zealand ship must ensure discharge connection complies with prescribed requirements	5	15,000* (5,000)	50,000 (30,000)	3,000* (2,000)	10,000 (12,000)
Part 170: Prevention of Pollution by Garbage from Ships and Offshore Installations						
Rule 170.3(2)	No person is to discharge garbage into the sea except as provided in this Part or the Act.	4	3,500		700	
Rule 170.18	Owner and master of New Zealand ship must ensure placards re discharge requirements are displayed	2	3,750* (5,000)	12,500 (30,000)	750* (500)	2,500 (12,000)
Rule 170.19(2)(a)	Owner and master of New Zealand ship must ensure ship has garbage management plan that complies with Rule	5	15,000* (5,000)	50,000 (30,000)	3,000*	10,000
Rule 170.19(2)(b)	Owner and master of New Zealand ship must ensure up-to-date copy of garbage management plan is carried on board ship	2	3,750* (5,000)	12,500 (30,000)	750* (2,000)	2,500 (12,000)
Rule 170.19(2)(c)	Owner and master of New Zealand ship must ensure all persons on board comply with garbage management plan	4	10,500* (5,000)	35,000 (30,000)		
Rule 170.19(3)(c)	Owner and master of New Zealand ship must ensure garbage management plan is written in working language of the crew and in English	2	3,750* (1,250)	12,500 (7,500)	750* (500)	2,500 (3,000)
Rule 170.19(4)	All persons on board New Zealand ship must comply with garbage management plan	4	3,500 (5,000)		700	
Rule 170.20(2)	Responsibilities of owner and master of New Zealand ship re provision of garbage record book	2	3,750* (5,000)	12,500 (30,000)	750* (2,000)	2,500 (12,000)
Rule 170.20(3)	Master of New Zealand ship must sign each page of garbage record book	2	3,750* (5,000)		750* (2,000)	

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Provision	Brief description	Category assigned	Maximum fine for individual (\$)	Maximum fine for body corporate (\$)	Maximum infringement fee for individual (\$)	Maximum infringement fee for body corporate (\$)
Rule 170.20(4)	Owner of New Zealand ship must preserve garbage record book for 24 months	2	3,750* (5,000)	12,500 (30,000)	750* (2,000)	2,500 (12,000)
Rule 170.21	Owner and master of ship must report loss or discharge of fishing gear	5 (6)	15,000* (5,000)	50,000 (30,000)	(2,000)	(12,000)
Rule 170.23	Responsibilities of owner and master of foreign ship within New Zealand jurisdiction re provision of placards	2	3,750* (5,000)	12,500 (30,000)	750* (2,000)	2,500 (12,000)
Rule 170.24	Responsibilities of owner and master of foreign ship within New Zealand jurisdiction re provision of garbage management plans	5	15,000* (5,000)	50,000 (30,000)	3,000* (2,000)	10,000 (12,000)
Rule 170.25	Responsibilities of owner and master of foreign ship within New Zealand jurisdiction re provision of garbage record book	2	3,750* (5,000)	12,500 (30,000)	750* (2,000)	2,500 (12,000)
Rule Part 190: Mandatory Ships Routeing						
Rule 190.3(2)	Owner, charterer, and master of ship of more than 45 m LOA not to enter Poor Knights area in transit	5	15,000* (5,000)	50,000 (30,000)	3,000* (2,000)	10,000 (12,000)
Rule 190.4	Owner, charterer, and master of ship of 500 tons gross and above not to enter the Three Kings area	5	15,000* (5,000)	50,000 (30,000)	3,000* (2,000)	10,000 (12,000)
Rules Part 300: Ballast Water						
Rule 300.41(1)	Owner and master of party State ship to ensure valid IBWM certificate held	No regulation-level penalty as breach of this Rule is sufficiently serious to rely on Act-level penalties of section 277 re acting without necessary marine protection document: <ul style="list-style-type: none"> • an imprisonment term not exceeding 12 months, or • a fine not exceeding \$10,000, and • an additional penalty under section 409 (for offence involving commercial gain). 				
Rule 300.41(2)	Owner and master of party State ship to ensure valid IBWM certificate carried on board, and made available for inspection	2	3,750*	12,500	750*	2,500
Rule 300.41(3)	Owner and the master of party State ship to comply with conditions on certificate.	No regulation-level penalty as breach of this Rule is sufficiently serious to rely on Act-level penalties of section 278 re acting in breach of marine protection document: <ul style="list-style-type: none"> • an imprisonment term not exceeding 12 months, or • a fine not exceeding \$10,000, and • an additional penalty under section 409 (for offence involving commercial gain). 				

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Provision	Brief description	Category assigned	Maximum fine for individual (\$)	Maximum fine for body corporate (\$)	Maximum infringement fee for individual (\$)	Maximum infringement fee for body corporate (\$)
Rule 300.42(1)	Owner and master of non-party State ship to ensure valid BWM document held	No regulation-level penalty as breach of this Rule is sufficiently serious to rely on Act-level penalties of section 277 re acting without necessary marine protection document: <ul style="list-style-type: none"> • an imprisonment term not exceeding 12 months, or • a fine not exceeding \$10,000, and • an additional penalty under section 409 (for offence involving commercial gain). 				
Rule 300.42(2)	Owner and master of non-party State ship to carry BWM document; and make it available for inspection	2	3,750*	12,500	750*	2,500
Rule 300.42(3)	Owner and the master of non-party State ship to comply with conditions on BWM document	No regulation-level penalty as breach of this Rule is sufficiently serious to rely on Act-level penalties of section 278 re acting in breach of marine protection document: <ul style="list-style-type: none"> • an imprisonment term not exceeding 12 months, or • a fine not exceeding \$10,000, and • an additional penalty under section 409 (for offence involving commercial gain). 				
Rule 300.80(1)	Owner and the master to ensure New Zealand ship has a ballast water management plan	5	15,000*	50,000	3,000*	10,000
Rule 300.80(3)(a)	Owner and the master to ensure New Zealand ship carries a ballast water management plan	2	3,750*	12,500	750*	2,500
Rule 300.80(3)(b)	Owner and the master to ensure New Zealand ship officers and crew familiar with plan and their duties under it	No regulation-level penalty added as section 396(3)(aa)(ii) of the Act re audit and inspection power provides for Director to require person to demonstrate familiarity with procedures for prevention of harm to the environment, human health, property or resources from ballast water. Detention under section 397 may be imposed until satisfied that the risk of proceeding to sea is acceptable.				
Rule 300.80(3)(c)	Owner and the master to ensure New Zealand ship BW operations carried out in accordance with the plan and persons on board comply with the plan	5 (6)	15,000*	50,000		
Rule 300.81(1)(a)&(b)	Owner and the master to ensure New Zealand ship has, carries on board, and makes available for inspection a ballast water record book	2	3,750*	12,500	750*	2,500
Rule 300.81(1)(c)	Owner and the master to ensure New Zealand ballast water record book maintained without delay in accordance with sub-rule (3)	2	3,750*	12,500	750*	2,500

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Provision	Brief description	Category assigned	Maximum fine for individual (\$)	Maximum fine for body corporate (\$)	Maximum infringement fee for individual (\$)	Maximum infringement fee for body corporate (\$)
Rule 300.81(3) (b)-(d)	Owner and the master of New Zealand ship to maintain record in record book of BW operations including any accidental exceptional or exempt discharges	2	3,750*	12,500	750*	2,500
Rule 300.81(4) (a)&(b)	Duty to retain on board completed record book for 2 years and by the owner for a further 3 years	2	3,750*	12,500	750*	2,500
Rule 300.82(1)	Owner and master of a foreign ship registered in a State party to the Convention to ensure that a current ballast water management plan and ballast water record book are carried on the ship	2	3,750*	12,500	750*	2,500
Rule 300.82(2)	Owner and master of a foreign ship that is not registered in a State party to the Convention to ensure that a current ballast water management plan, ballast water record book and evidence that the plan and record book comply with the requirements of sub-part D are carried on the ship	2	3,750*	12,500	750*	2,500
Rule 300.100(2)	Owner and master of a New Zealand ship to ensure that a ballast water management system meets the requirements of the applicable sub-part (F-H)	4	10,500*	35,000	2,100*	7,000
Rule 300.100(3)*	Owner and master of a New Zealand ship to ensure that a ballast water management system is approved by the Director and is safe for the ship, its equipment and crew	5 (6)	15,000*	50,000		
Rule 300.100(4)	Owner and master of a New Zealand ship to ensure that the ballast water management system is in accordance with the standards and requirements specified in Appendix A	4	10,500*	35,000	2,100*	7,000
Rule 300.102(a)	Owner and master of foreign ship to ensure BWM system approved by Administration	4	10,500*	35,000	2,100*	7,000
Rule 300.102(b)	Owner and master of foreign ship to ensure BWM system safe in relation to ship, its equipment and crew	5 (6)	15,000*	50,000		
Rule 300.102(c)	Owner and master of foreign ship to ensure BWM system uses approved active substance (if used)	4	10,500*	35,000	2,100*	7,000
Rule 300.102(d)	Owner and master of foreign ship to ensure BWM system complies with regulation B3 (concerning transition from discharge to treatment)	4	10,500*	35,000	2,100*	7,000

Provision	Brief description	Category assigned	Maximum fine for individual (\$)	Maximum fine for body corporate (\$)	Maximum infringement fee for individual (\$)	Maximum infringement fee for body corporate (\$)
Rule 300.103(2)	Owner and master (all ships) to ensure ballast water discharge is in accordance with the exchange standard (sub-part F) or performance standard (sub-part G), or an approved alternative method (sub-part H for NZ ship), or a foreign ship's Administration	No regulation-level penalty as breach of this Rule is covered by statutory offence in section 246C re discharge of ballast water in breach of section 246B re ballast water may be discharged from ship only in accordance with applicable Marine Protection Rules: <ul style="list-style-type: none"> • an imprisonment term not exceeding 2 years, or • a fine (or fines) not exceeding \$200,000, and • if the offence is a continuing one, a further fine not exceeding \$10,000 for every day or part of a day during which the offence is continued. 				

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Appendix II.

Summary of proposed changes to Maritime (Offences) Regulations 1998

Rule Part and purpose	Application	Issues	Proposed changes
<p>Part 19: Maritime Transport Operator – Certification and Responsibilities</p> <p>Requires maritime transport operators to develop, and operate according to, a safety system specific to their operation. The objective of the Rule is to improve the safety record of commercial ship operators in New Zealand and affirm the responsibility operators have for the safety of their operation and the vessels used within it.</p>	<p>Most domestic commercial ship operators – every person conducting a maritime transport operation, operating a New Zealand commercial ship—</p> <p>(d) in New Zealand waters</p> <p>(e) on the New Zealand coast; or</p> <p>(f) outside New Zealand waters—</p> <p>(iii) if the ship is registered in New Zealand under the Ship Registration Act 1992; or</p> <p>(iv) if the ship is, or is required to be, licensed or registered in New Zealand under any applicable New Zealand fisheries law.</p>	<p>There are currently no offences in the Regulations for breaches of Part 19, which most domestic commercial vessel operators must operate under. This means there is no deterrent in the legislation to encourage compliance with those Rules. Consequently, Maritime NZ has limited ability to respond to and address breaches of those Rules.</p> <p>Most operator duties in Rules Part 19 are minor matters and there is a high rate of voluntary compliance so the power to issue infringement fees or fines is not necessary. However, there are five duties in the Rule Part that we consider are sufficiently important to warrant being offences.</p> <p>All five new offences are ‘straightforward and relatively minor’ offences and appropriate for infringement fee penalties to deter straightforward lower-level offending.</p>	<p>Establish offences and associated infringement fees and fines based on the Effective Transport Financial Penalties Framework (the Framework) for Rules 19.24, 19.43(4), 19.45(3), and 19.65.</p>

Rule Part and purpose	Application	Issues	Proposed changes
<p>Part 20: Operating Limits</p> <p>Defines physical operating limits for ships for the purpose of all Maritime Rules. These operating limits are enclosed water, inshore, inshore fishing, coastal and offshore limits and unlimited area.</p> <p>Requires ships to be assigned operating limits and keep within the assigned operating limits, subject to exceptions.</p>	<p>New Zealand commercial ships, foreign commercial ships operating in New Zealand waters or foreign fishing vessels registered under the Fisheries Act 1996.</p> <p>Does not apply to pleasure craft, New Zealand ships which have current SOLAS certificates, or foreign ships visiting New Zealand ports, New Zealand offshore terminals or transiting New Zealand waters.</p>	<p>Offences have been reviewed in line with the Effective Transport Financial Penalties Framework (Framework) and penalties require changes to better reflect the severity and likelihood of harm.</p> <p>Offences relating to Rules 20.20(1) and 20.43(2) require renumbering and rewording to align with a previous change in the Rules.</p> <p>Current Rule 20.21 corresponds to the offence under Rule 20.6 in the regulations. This offence is overridden by another offence in the MTA (section 67B(1)(b)), which carries a penalty appropriate for the seriousness of the offence. It is considered inappropriate to duplicate the offence in the regulations and therefore the offence under 20.6 can be revoked.</p>	<p>Increase penalty levels for Rules 20.20(1) and 20.43(2), based on the Framework.</p> <p>Renumber and reword Rules 20.20(1) and 20.43(2).</p> <p>Remove offence under 20.6.</p>
<p>Part 21: Safe Ship Management Systems</p> <p>Requires certain New Zealand commercial ships to establish safe ship management procedures which are consistent with the duties of participants in the maritime system stated in the MTA.</p>	<p>Section 1 relates to foreign-going ships which are subject to SOLAS requirements, and to other large ships, other than fishing ships, which proceed beyond restricted limits.</p> <p>Section 2 (revoked) relates to restricted limit ships, fishing ships and ships of less than 54 metres in length which are not required to comply with section 1.</p>	<p>Offences have been reviewed in line with the Framework and penalties require changes to better reflect the severity and likelihood of harm.</p> <p>Section 2 of Part 21 was revoked by Part 19. There was a caveat that provisions continued to apply to maritime transport operators who were operating under a deemed Maritime Transport Operator Certificate after 1 July 2014, until their certificate expired. The last certificate expired on 1 July 2019. Consequently, offence provisions relating to former section 2 Rules 21.13(1), (3), (5), (15) and (19) are now redundant.</p>	<p>Increase penalty levels for offences under Rules 21.6(1)(b), 21.6(4), 21.6(5) and 21.8, based on the Framework.</p> <p>Remove offence under revoked Rules 21.13(1), (3), (5), (15) and (19).</p>

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Rule Part and purpose	Application	Issues	Proposed changes
<p>Part 22: Collision Prevention</p> <p>Gives effect to the Convention on the International Regulations for Preventing Collisions at Sea, to which New Zealand is party.</p> <p>Provides the steering and sailing Rules for ships, as well as standards for the installation, performance and use of lights for collision avoidance and the sound and light signals used for communication of safety information.</p>	<p>Owners and persons responsible for navigation of:</p> <ul style="list-style-type: none"> • New Zealand ships, including pleasure craft, wherever they are • foreign ships, including pleasure craft, in New Zealand waters • ships of the Defence Force and foreign defence forces in New Zealand waters • seaplanes when manoeuvring on the surface of New Zealand waters • craft in inland waters, such as lakes and rivers 	<p>There is only one offence under these Rules, 22.39. This is a catch-all offence covering all the Rules in the Part. We consider that offences under Rule 22.39 need amending to provide for infringement-level penalties, where suitable.</p> <p>The current single offence provides only fine-level penalties. It would be beneficial to have infringement penalties available to address breaches for sub-rules 22.39(1), (2)(a) and (2)(b). These are straightforward, easily provable, low severity breaches relating to operators not having or using the right navigation equipment.</p> <p>Offences under the remaining two sub-rules, 22.39(2)(c) and (d), are broad, referring to navigating in accordance with the whole of Rule Part 22, and could be complex to prove. A fine imposed by the Courts is therefore appropriate for offending against these sub-rules.</p> <p>Offences have been reviewed in line with the Framework and penalties require changes to better reflect the severity and likelihood of harm.</p>	<p>Replace the current single offence for Rule 22.39 with two separate offences. The first offence would relate to sub-rules 22.39(1), (2)(a) and (2)(b) and would include a new infringement fee and a revised fine penalty based on the Framework. The second offence would relate to sub-rules 22.39(2)(c) and (2)(d), with only a revised fine penalty.</p> <p>Reword the two offences to reflect this change.</p>

Rule Part and purpose	Application	Issues	Proposed changes
<p>Part 24A: Carriage of Cargoes – Dangerous Goods</p> <p>Implements New Zealand's obligations under the Convention for the Safety of Life at Sea (SOLAS) with respect to the carriage of dangerous goods.</p> <p>Prescribes Rules governing the carriage of dangerous goods by sea by certain commercial ships.</p> <p>The SOLAS requirements cover a series of mandatory codes for dangerous goods in packaged form, dangerous goods in solid form in bulk, dangerous liquid chemicals in bulk, liquefied gases in bulk as well as packaged irradiated nuclear fuel, plutonium and high-level radioactive wastes on board ships.</p>	<p>New Zealand commercial ships in New Zealand waters and elsewhere, and foreign ships in New Zealand waters, carrying dangerous goods as cargo.</p> <p>All persons involved in any way with the carriage of dangerous goods on a ship, whether they are shore-based or on board a ship, including:</p> <ul style="list-style-type: none"> • owners, operators and masters of ships • shippers of dangerous goods • any person engaged in packing dangerous goods or consolidating dangerous goods for carriage on a ship • any person who loads, stows or unloads dangerous goods on a ship • any person who manufactures or supplies packaging for dangerous goods that will be carried on a ship • any person, including a passenger, who carries dangerous goods onto a ship or allows them to be brought onto a ship. <p>Does not apply to dangerous goods that form part of the stores or equipment of the ship. Does not apply to pleasure craft, warships or fishing ships.</p>	<p>There are 34 offences relating to Part 24A. Due to subsequent Rule amendments, most of these offences relate to the wrong Rule or a revoked Rule. Without this correction the Rules may be unenforceable. For this reason, the entire set of offences for Part 24A requires a complete review to be fit-for-purpose.</p> <p>Offences have been reviewed in line with the Framework and penalties require changes to better reflect the severity and likelihood of harm and to align them more closely with the levels for the most serious dangerous goods-related offences in land transport and civil aviation offences regulations.</p>	<p>Replace the current Part 24A offences with a reduced, rationalised, and correctly referenced set of five new offences. These cover what we consider are the most critical code requirements to support compliance with the Part 24A Rules which are:</p> <ul style="list-style-type: none"> • 24A.62(1)(a) – Identifying and classifying • 24A.62(1)(b) – Packaging • 24A.62(1)(c) – Marking and labelling • 24A.82(1)(a) – Documentation • 24A.223(1) – Alternative standards for carriage of dangerous goods freight on a ship on a domestic voyage within restricted limits other than across Cook Strait. <p>Establish revised penalties for the new offences based on the Framework.</p>

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Rule Part and purpose	Application	Issues	Proposed changes
<p>Part 24B: Carriage of Cargoes – Stowage and Securing</p> <p>Implements SOLAS requirements for stowing and securing cargo.</p> <p>Prescribes the requirements for the stowage and securing of all cargoes other than liquid, gas or solid bulk cargoes, grain, timber deck cargoes and livestock (except livestock carried in road or rail vehicles).</p>	<p>New Zealand ships carrying cargo in any location and foreign ships carrying cargo in New Zealand.</p> <p>New Zealand ships loading cargo at any port, and foreign ships loading cargo at a New Zealand port, before embarking on an international voyage.</p>	<p>There are currently no offences for breaches of Rules Part 24B. However, we think it would be beneficial if there was an offence to address breaches of Rule 24B.10(2), which requires shippers of freight vehicles to fit those vehicles with securing points and an information plate if they are to be shipped on a ro-ro ship. This means there is no deterrent in the legislation to encourage compliance with this Rule. Consequently, Maritime NZ has limited ability to respond to and address breaches.</p> <p>The proposed offence is a straightforward and relatively minor offence and appropriate for infringement fee penalties to deter straightforward, lower-level offending.</p>	<p>Create a new offence for Rule 24B.10(2).</p> <p>Establish infringement fee and fine for the offence based on the Framework.</p>

Rule Part and purpose	Application	Issues	Proposed changes
<p>Part 24C: Carriage of Cargoes – Specific Cargoes</p> <p>Implements SOLAS requirements and IMO codes of practice for loading and/or carrying specific cargoes, namely grain, solid bulk cargoes, timber deck cargoes and livestock.</p>	<p>Shippers of solid bulk and timber deck cargoes and livestock</p> <p>Owners and masters of ships carrying grain, solid bulk cargoes, timber deck cargoes and livestock.</p>	<p>Offences with fine-level penalties exist for fifteen Rules in Part 24C. Only one of these offences (associated with Rule 24C.18(5)) currently also has an infringement-level penalty attached. We consider all these offences (except Rule 24C.9) meet the criteria for infringement offences and would benefit from having associated infringement penalties. The exception is the offence associated with Rule 24C.9, as it is broadly framed to relate to loading an entire ship and for this reason is not appropriate as an infringement offence.</p> <p>Offences have been reviewed in line with the Framework and penalties require changes to better reflect the severity and likelihood of harm.</p> <p>The wording in the offences for Rules 24C.6(2) and 24C.9 also needs minor amendment, to align better with the wording in the Rules themselves.</p>	<p>Establish infringement fees based on the Framework for all offences except 24C.9.</p> <p>Amend penalty levels (some increases, some decreases) for all offences, based on the Framework.</p> <p>Reword offences 24C.6(2) and 24C.9.</p>
<p>Part 40B: Design, Construction and Equipment – SOLAS ships</p> <p>Covers the requirement of SOLAS ships to comply with the design, construction and equipment applicable at the time the ship was built.</p> <p>Requires compliance with relevant IMO Codes for certain types of ship such as bulk chemical carriers and liquefied gas carriers.</p> <p>Includes some requirements not covered by SOLAS, eg requirements for passenger accommodation.</p>	<p>Foreign-going passenger ships</p> <p>Foreign-going non-passenger ships (other than fishing ships) of 500 tons gross or more (300 tons gross or more for radio requirements)</p> <p>Ships (other than fishing ships) of 45 metres or more in length that proceed beyond restricted limits.</p>	<p>There are no infringement offences associated with Part 40B. Two of the four offences (associated with Rules 40B.34 and 40B.35) are suitable to be infringement offences. The significance of the offence associated with Rule 40B.36 and resulting penalty level makes it unsuitable as an infringement offence.</p> <p>Offences have been reviewed in line with the Framework and penalties require changes to better reflect the severity and likelihood of harm.</p>	<p>Establish infringement fees based on the Framework for Rules 40B.34 and 40B.35.</p> <p>Amend penalty levels (some increases, some decreases) for all offences, based on the Framework.</p>

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Rule Part and purpose	Application	Issues	Proposed changes
<p>Part 46: Surveys, Certification and Maintenance</p> <p>Prescribes the survey and certification requirements of SOLAS 74, to which New Zealand is party, for those New Zealand ships to which the convention applies. Incorporates the harmonised system of survey and certification adopted by the 1988 SOLAS Protocol.</p> <p>Implements the United Nations Convention on the Law of the Sea (UNCLOS) port state control regime in respect of a foreign ship's SOLAS certificates whilst it is at a New Zealand port or offshore terminal.</p> <p>Prescribes survey requirements for barges.</p>	<p>Owners and masters of:</p> <ul style="list-style-type: none"> SOLAS ships and ships, other than fishing ships, of 45 metres or more in length which operate outside restricted limits. Unmanned barges exceeding 24 metres or going overseas. Port state control of foreign ships. 	<p>The offences associated with Rules 46.9, 46.13(15), 46.24(4) and 46.25 would benefit from having associated infringement offences and are appropriately straightforward and relatively minor offences.</p> <p>The ten current offences associated with Rules Part 46 have been reviewed in line with the Framework. In this case higher penalties have been proposed for all offences due to the level of system or safety harm associated with each offence.</p> <p>The offences associated with Rules 46.10 and 46.13(12) require minor amendments to ensure the wording is better aligned with the Rules.</p> <p>Three Rules (46.28(1), 46.28(3), 46.28(5) have been revoked and therefore the associated offences also need to be removed.</p>	<p>Establish infringement fees based on the Framework for offences associated with Rules 46.9, 46.13(15), 46.24(4) and 46.25.</p> <p>Increase penalty levels for all current offences, based on the Framework.</p> <p>Reword offences associated with Rules 46.10 and 46.13(12).</p> <p>Remove the offences associated with revoked Rules 46.28(1), 46.28(3) and 46.28(5).</p>
<p>Part 47: Load Lines</p> <p>Implements the International Convention on Load Lines 1966, focussing on the strength and stability of the ship in relation to the loads it will carry, the watertight integrity of all openings on the ship, and protection of the crew.</p> <p>Prescribes requirements for assigning and marking load lines and the issue of load line certificates in respect of the ship or barge. The load lines indicate the draught to which the ship or barge may be safely loaded having regard to its design, construction and area of operation.</p> <p>Requires periodic surveys to verify the marked load line and appropriate maintenance of the ship or barge.</p>	<p>Commercial ships and barges which carry cargo.</p> <p>Excludes fishing ships, and barges which operate outside the coastal limit</p>	<p>Penalty levels for the current offences have been reviewed in line with the Framework and require changes to better reflect the severity and likelihood of harm.</p> <p>The numbering of three offences for the part (47.6(b), 47.55(3), 47.54) also needs to be changed to realign with the correct current Rules (47.8(2), 47.56), 47.66(5)). Without this correction the Rules may be unenforceable.</p> <p>Four Rule sub-parts in Part 47 (47.3(1), 47.29(1), 47.48, 47.54) have been revoked and therefore their corresponding offences need to also be revoked.</p>	<p>Amend penalty levels (some increases, some decreases) for all current offences, based on the Framework.</p> <p>Renumber offences associated with Rules 47.6(b), 47.55(3) and 47.54 to realign with the current Rules (47.8(2), 47.56) and 47.66(5)).</p> <p>Remove offences for revoked Rules 47.3(1), 47.29(1), 47.48 and 47.54.</p>

Rule Part and purpose	Application	Issues	Proposed changes
<p>Part 73: Logbooks</p> <p>Gives effect to the recording requirements under SOLAS 74.</p> <p>Provides for standardised shipboard recording of routine and emergency operational information and significant events affecting the ship and its safety, and the safety and well-being of the people on board.</p> <p>Provides verification of compliance with the submersion requirements of the International Convention on Load Lines 1966.</p> <p>Provides for recording exercises of shipboard oil pollution emergency plans, which are required to be carried under MARPOL 73/78.</p>	<p>New Zealand commercial ships engaged on international voyages.</p> <p>Passenger and non-passenger ships of 45 metres or more in length that proceed beyond restricted limits.</p> <p>Self-propelled mobile offshore drilling units of 500 tons gross or more.</p> <p>Fishing ships involved in international voyages, meaning voyages involving a call at a port in a country outside New Zealand.</p>	<p>Penalty levels for the offences have been reviewed in line with the Framework and require changes to better reflect the severity and likelihood of harm.</p> <p>The numbering for all offences associated with the Rules in this part, except Rules 73.4.1 and 73.5, is out of alignment with the current Rules numbering. Unless the numbering is corrected the Rules may be unenforceable.</p>	<p>Amend penalty levels (some increases, some decreases) for all offences, based on the Framework.</p> <p>Renumber all offences except those associated with Rules 73.4.1 and 73.5 to realign with the current Rules.</p> <p>Add infringement fees to 73.5, 73.5A, 73.6, 73.7, 73.8 73.12 under the Framework.</p>
<p>Part 91: Navigation safety rules</p> <p>No changes are proposed to offences and penalties for this Rules Part in this set of amendments. This is because the part is currently undergoing a major review as a result of which new offences and penalties are likely to be established. Maritime NZ proposes to consult on the Part 91 review in 2022.</p>			

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Appendix III.

Summary of proposed changes to the Marine Protection (Offences) Regulations 1998

Rules Part and purpose	Application	Issues	Proposed changes
<p>Part 100: Port Reception Facilities (Oil, Noxious Liquid Substances and Garbage)</p> <p>Gives effect to regulation 38 of Annex I, regulation 18 of Annex II and regulation 7 of Annex V of MARPOL.</p> <p>Objective of Part 100 is to protect the marine environment from ship-sourced oil, noxious liquid substances and garbage by ensuring the provision of port reception facilities to receive these waste substances, which cannot be discharged into the sea under the controlled conditions prescribed by MARPOL.</p>	<p>Port operators operating ports in New Zealand, the internal waters of New Zealand, or New Zealand continental waters, which have been required by notice in writing under section 236 of the Maritime Transport Act 1994, to provide at that port a facility for the reception of harmful substances from ships.</p>	<p>There are currently no offences in the Regulations for breaches of Part 100. This means there is limited deterrent in the legislation to encourage compliance with those Rules. Consequently, Maritime NZ does not have an ability to respond to and address breaches of those Rules. This in turn presents risks to the marine environment from ships not having appropriate facilities in which to discharge their waste, making it more likely ships may discharge waste into the marine environment.</p> <p>Penalties for new offences have been analysed in line with the Framework to reflect the severity and likelihood of harm, and to ensure they are consistent with the new Annex VI offences. All new offences have been assessed as suitable for infringement fees.</p>	<p>Establish offences and associated infringement fees and fines based on the framework for Rules 100.4(1), 100.4(2), 100.5(1), 100.5(2), 100.6, 100.7, 100.8, 100.9, 100.10(1), 100.10(2), 100.11, 100.12(1), 100.12(2), 100.13(1) and 100.13(2).</p>

Rules Part and purpose	Application	Issues	Proposed changes
<p>Part 101A: Surveys and Inspections (Oil)</p> <p>Applies the survey and inspection requirements of regulation 4 of Annex I of MARPOL, to verify compliance with the construction and equipment requirements set out in Marine Protection Rules Parts 121A, 121B and 122.</p> <p>These surveys are a key part of the marine protection system relating to the prevention of oil spills. Unless they are carried out regularly and effectively there is a risk of oil spills occurring due to non-compliance with technical construction and equipment requirements. The environmental impact of oil spills can range from minor to catastrophic, as New Zealand's experience with the Rena demonstrates.</p>	<p>Oil tankers of 150 tons gross or more and ships other than oil tankers of 400 tons gross or more.</p> <p>Warships and other ships of the New Zealand Defence Force which are oil tankers of 150 tons gross or more, or ships other than oil tankers of 400 tons gross or more.</p>	<p>Offences 101A.6(4) and 101A.6(5) are essentially parts of the same offence. The 101A.6(4) offence involves breaching the requirement to report an accident to a ship or a defect discovered in a ship. The 101A.6(5) offence involves not reporting an accident or defect to the Director, authorised organisation or appropriate authorities. Thus, the 101A.6(5) offence effectively adds detail to the 101A.6(4) offence and can be treated as one offence.</p> <p>We consider the merged 101A.6(4) and (5)) is a straightforward offence suitable to be an infringement offence.</p> <p>Penalty levels for the offences have been reviewed in line with the Framework and require changes to better reflect the severity and likelihood of harm.</p>	<p>Combine offences under 101A.6(4) and (5) into one offence.</p> <p>Establish infringement fees based on the Framework for merged offences 101A.6(4) and (5).</p> <p>Amend penalty levels (some increases, some decreases) for all offences, based on the Framework.</p>

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Rules Part and purpose	Application	Issues	Proposed changes
<p>Part 101B: Surveys and Inspections: Noxious Liquid Substances Carried in Bulk</p> <p>Gives effect to regulation 8 of Annex II of MARPOL.</p> <p>Contains requirements for initial and periodic surveys of tankers carrying noxious liquid substances in bulk, to verify compliance with the construction and equipment requirements set out in Marine Protection Rules Part 141.</p> <p>These surveys are a key part of the marine protection system relating to the prevention of chemical and other noxious liquid spills and discharges. Unless they are carried out regularly and effectively there is a risk of spills occurring due to non-compliance with technical construction and equipment requirements. Chemical and noxious liquid spills and discharges are always treated seriously. They are rare in New Zealand but potentially catastrophic.</p>	<p>All New Zealand ships which carry noxious liquid substances in bulk</p> <p>Warships and other ships of the New Zealand Defence Force which carry noxious liquid substances in bulk.</p>	<p>Two of the four offences (101B.6(4) and (5)) are straightforward offences which are appropriate to also be infringement offences.</p> <p>The four offences associated with Rules Part 46 have been reviewed in line with the Framework. In this case higher penalties have been proposed for all offences due to the level of environmental and safety harm associated with each offence.</p>	<p>Establish infringement fees based on the Framework for offences associated with Rules 101B.6(4) and (5).</p> <p>Increase penalty levels for all offences, based on the Framework.</p>

Rules Part and purpose	Application	Issues	Proposed changes
<p>Rules Part 120: Discharge of Oil</p> <p>Gives effect to Regulations 4, 15 and 34 of Annex I of MARPOL and to that instrument's Protocol I. These are concerned with reducing the quantity of environmentally harmful oil and oily mixtures entering the sea from ships.</p> <p>Prohibits discharge of oil cargo residues into the sea from oil tankers within 50 nautical miles of land and in defined 'special areas' (such as Antarctica). Imposes controls on the flow, concentration and quantity of discharges in other areas.</p> <p>Imposes controls on discharge of machinery space bilge water containing oil.</p> <p>Oil residues which cannot be discharged into the sea in compliance with the conditions specified in Part 120 must be retained on board or discharged to reception facilities.</p>	<p>New Zealand ships, warships and other ships of the New Zealand Defence Force operating outside the New Zealand coastal marine area and within the internationally recognised 'special areas'.</p> <p>Foreign ships operating within areas of the sea under New Zealand jurisdiction.</p> <p>As with other MARPOL-based operational discharge requirements, the marine protection Rules deal with such discharges outside the coastal marine area. Within the CMA (that is, within the 12 mile limit) these requirements are found in the Resource Management (Marine Pollution) Regulations 1998.</p>	<p>There are currently no offences associated with Part 120. This means the regulatory framework to reduce the quantity of environmentally harmful oil and oily mixtures entering the sea from ships lacks important incentives, deterrents and responses to breaches of requirements. Currently the only available enforcement option is prosecution under the MTA, which is a costly course of action suitable for the most serious breaches.</p> <p>We consider it desirable to introduce a suite of lower-level offences addressed at small-scale oil spills and discharges, which are common in New Zealand waters. These include several straightforward offences appropriate to be infringement offences.</p> <p>We do not consider it is necessary to establish offences in regulations for Rules 120.15, 120.16 and 120.17. This is because we consider that breaches of these Rules are of sufficient seriousness to rely on the MTA-level offences of section 238 involving failure to report discharge of harmful substances into sea or seabed (for Rules 120.15 and 120.16) and section 71, failure to report accidents or incidents (for Rule 120.17).</p>	<p>Create new offences under Rules 120.3A, 120.5, 120.5(5), 120.6(1), 120.6(2), 120.8(1), 120.8(2), 120.9(1); 120.9(2)(i) and (ii), 120.12, 120.14(1), 120.15, 120.16, 120.17 and 120.19.</p> <p>Establish penalties for each offence based on the Framework.</p>

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Rules Part and purpose	Application	Issues	Proposed changes
<p>Rules Part 122: Marine Protection Products (Oil)</p> <p>Gives effect to Regulations 3.5, 12, 13, 14, 18.8.3, 30-33 and 34.6 of Annex I of MARPOL.</p> <p>Specifies the design and fitting of shipboard equipment and systems required for preventing oil pollution (marine protection products). This includes oil filtering equipment, oil discharge monitoring and control systems, crude oil washing (oil tankers), and tanks for storage of oil residue (sludge) and oily bilge water.</p>	<p>New Zealand commercial ships including oil tankers</p> <p>Warships and other ships of the New Zealand Defence Force including oil tankers.</p>	<p>There are currently no offences in regulations to support Part 122 Rules, which are important to prevent oil pollution. Consequently, the regulatory framework to deter and respond to breaches is lacking.</p> <p>We consider that establishing two offences relating to Part 122 would be beneficial.</p> <p>Example: A 2021 Maritime NZ study of 24 commercial vessels under 400 tons gross found that a large proportion of the vessels studied did not comply with Rule 122.22 related to equipment for management of oily waste. The actual arrangements in place were considered by Maritime Officers to be 'adequate', but it should be noted that the arrangements were not compliant with MARPOL standards and the operators had not sought approval from the Director to use alternative arrangements. An infringement-level offence would be a useful tool to deter non-compliance and better enforce minor breaches.</p>	<p>Create new offences under Rules 122.4(2), and 122.4(3).</p> <p>Establish penalties for each offence based on the Framework.</p>

Rules Part and purpose	Application	Issues	Proposed changes
<p>Rules Part 123A: Documents (Certificates) – Oil</p> <p>Gives effect to Regulations 7, 8 and 9 of Annex I of MARPOL.</p> <p>Requires ships to hold an appropriate International Oil Pollution Prevention Certificate (IOPP Certificate) or equivalent. This evidences compliance with the applicable ship design, construction and equipment requirements, as set out in Marine Protection Rules Parts 121A, 121B and 122.</p>	<p>All New Zealand ships of 400 tons gross or more.</p> <p>New Zealand oil tankers of 150 tons gross or more.</p> <p>New Zealand warships and other ships of the New Zealand Defence Force of the above tonnages, regardless of whether they are engaged in international voyages.</p> <p>Foreign ships of the above tonnages operating in areas of the sea under New Zealand jurisdiction.</p>	<p>The offences associated with Part 123A all involve breaching requirements for the requisite certificates and records of construction and equipment (with translations) to be on board and available for inspection.</p> <p>Penalty levels for the offences have been reviewed in line with the Framework and require changes to better reflect the severity and likelihood of harm.</p>	<p>Amend penalty levels (some increases, some decreases) for all offences, based on the Framework.</p>
<p>Rules Part 123B: Documents (Record Books and Manuals) – Oil</p> <p>Gives effect to standards found in Regulations 13A, 13B, 15, and 20 of Annex I of MARPOL.</p> <p>Sets requirements for standardised recording of shipboard operations involving oil or oily mixtures and their discharge and escape.</p> <p>Covers the provision of shipboard manuals to guide crew involved in operations involving oil or oily mixtures and dedicated clean ballast tanks.</p> <p>Requires smaller New Zealand and foreign oil tankers to have oil record books if they retain oil on board and to discharge contaminated washings at reception facilities.</p> <p>Requires certain oil tankers to have operations and equipment manuals on board approved by the Director of Maritime NZ or by the ship's flag state.</p>	<p>New Zealand oil tankers of 150 tons gross or more</p> <p>New Zealand ships other than oil tankers of 150 tons gross or more that carry oil in bulk of an aggregate capacity of 200 cubic metres or more,</p> <p>Other types of New Zealand tankers which discharge oil or oily mixtures</p> <p>New Zealand ships of 400 tons gross or more.</p> <p>Foreign ships of the types listed above visiting New Zealand.</p>	<p>Four Rules (123B.5(1), 123B.8(1), 123B.11(1), 123B.14(1)) have no associated offences but we consider offences (with associated infringements) are needed. These all involve the breach of not ensuring records are entered in oil record books.</p> <p>Rules 123B.4, 123B.19, 123B.20 and 123B.21(2) are the only ones in Part 123B that do not have associated infringement offences. Given they are straightforward and relatively minor offences like others in the part, we consider infringement offences should be created to give Maritime NZ more enforcement options for low-level offending.</p> <p>Penalty levels for the offences have been reviewed in line with the Framework and require changes to better reflect the severity and likelihood of harm.</p>	<p>Create new offences (with associated infringement offences) for Rules 123B.5(1), 123B.8(1), 123B.11(1) and 123B.14(1).</p> <p>Establish penalties based on the Framework, including infringement fees, for each new offence.</p> <p>Establish infringement fees based on the Framework for offences associated with Rules 123B.4, 123B.19, 123B.20 and 123B.21(2).</p> <p>Amend penalty levels (some increases, some decreases) for all existing offences, based on the Framework.</p>

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Rules Part and purpose	Application	Issues	Proposed changes
<p>Rules Part 125: Shipboard Operations (Oil)</p> <p>Gives effect to Regulations 16, 18.3, 18.4, 35.2, 40, 41 and 43 of MARPOL Annex I.</p> <p>Imposes operational constraints on the carriage of water ballast in oil fuel tanks and oil cargo tanks, and the discharge of oil contaminated waters into the sea.</p> <p>Requires oil tankers to plan for any ship to ship transfer of oil cargoes.</p> <p>Prohibits the carriage in bulk as cargo or carriage and use as fuel of heavy oils on board ships below latitude 60°S.</p>	<p>Oil tankers of 150 tons gross or more.</p> <p>Other ships of 4,000 tons gross or more.</p> <p>Ships of 150 tons gross or more, other than oil tankers, that have cargo spaces carrying oil with an aggregate capacity of 200 cubic metres or more.</p> <p>New Zealand ships, warships and other ships of the New Zealand Defence Force in the above categories.</p> <p>Foreign ships in the above categories operating in areas of the sea under New Zealand jurisdiction.</p>	<p>Rule 125.10(2) has no associated offence but we consider an offence (with associated infringement) is needed. This offence involves the carriage of heavy fuel oil in the environmentally sensitive Antarctic region, which is a serious system harm offence with a possibility of environmental harm.</p> <p>No Rules in Part 123B have associated infringement offences. Given they are straightforward and relatively minor offences, we consider infringement offences should be created to give Maritime NZ more enforcement options for low-level offending.</p> <p>Penalty levels for the offences have been reviewed in line with the Framework and require changes to better reflect the severity and likelihood of harm.</p>	<p>Create new offence (with associated infringement offence and penalties based on the Framework) for Rule 125.10(2).</p> <p>Establish infringement fees based on the Framework for Rules 125.7 and 125.8.</p> <p>Amend penalty levels (some increases, some decreases) for all existing offences, based on the Framework.</p>

Rules Part and purpose	Application	Issues	Proposed changes
<p>Rules Part 130A: Shipboard Marine Oil Spill Contingency Plans</p> <p>Forms one part of our marine oil spill preparedness and response arrangements. Gives effect to Regulation 37 of MARPOL Annex I and supports New Zealand's participation in the International Convention on Oil Pollution Preparedness, Response and Co-operation (OPRC Convention).</p> <p>Requires ships to have an oil spill contingency plan to assist personnel to deal with an unexpected discharge of oil. This includes procedures for the notification of authorities, securing salvage services and obtaining technical advice on appropriate operational measures to mitigate the discharge, such as moving cargo and ballast around the ship.</p>	<p>Oil tankers of 150 tons gross or more.</p> <p>Other ships of 400 tons gross or more.</p>	<p>None of the three Rules with associated offences in this part has an associated infringement offence. Given they are straightforward and relatively minor offences, we consider infringement offences should be created to give Maritime NZ more enforcement options for low-level offending.</p> <p>Penalty levels for the offences have been reviewed in line with the Framework and require changes to better reflect the severity and likelihood of harm.</p>	<p>Establish infringement fees based on the Framework for all existing offences.</p> <p>Amend penalty levels (some increases, some decreases) for all existing offences, based on the Framework.</p>

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Rules Part and purpose	Application	Issues	Proposed changes
<p>Rules Part 130B: Oil Transfer Site Marine Oil Spill Contingency Plans</p> <p>Supports Maritime NZ's marine oil spill preparedness and response arrangements and helps New Zealand fulfil its obligations under the OPRC Convention.</p> <p>Requires owners of oil transfer sites (any site where oil is transferred to or from a ship or offshore installation in any part of the sea inside the outer boundary of the exclusive economic zone of New Zealand) to have an oil spill contingency plan to assist personnel to deal with an unexpected discharge of oil. An approved oil spill contingency plan is a marine protection document, indicating its key role in system assurance.</p> <p>Plans must cover the procedures for reporting:</p> <ul style="list-style-type: none"> • marine oil spills • action to be taken to contain and clean up a spill from the site • contact information for other persons likely to be affected by a spill and details of the response equipment available. 	<p>Owners of oil transfer sites.</p>	<p>Rule 130B.9(2) has no associated offence but we consider an offence (with associated infringement) is needed. The Rule is about ensuring that the oil spill contingency plan is available at the site for inspection. A breach of this Rule carries a high system harm as a contingency plan is an essential document for assurance of compliance. The absence of an offence is inconsistent with other similar Rules.</p> <p>Penalty levels for the existing offences have been reviewed in line with the Framework and require changes to better reflect the severity and likelihood of harm.</p> <p>We consider that offences under Rules 130B.4 and 130B.13 are of sufficient seriousness to rely on the statutory offences under MTA (respectively section 277 – acting without a necessary marine protection document, and section 238 – failure to report discharge of harmful substances). We therefore propose to remove these offences at the Rule-level.</p> <p>Offences in relation to several revoked Rules have been left in the current version of Schedule 1 of the Regulations in error, and should be removed.</p>	<p>Create new offence (with associated infringement offence and penalties based on the Framework) for Rule 130B.9(2).</p> <p>Amend penalty levels (some increases, some decreases) for all existing offences, based on the Framework.</p> <p>Remove the offences under 130B.4 and 130B.13.</p> <p>Remove the offences associated with revoked Rules 130B.4 (Responsibilities of owner of oil transfer site re training of personnel ...), 130B.5(1)(a) and 130B.5(1)(b).</p>

Rules Part and purpose	Application	Issues	Proposed changes
<p>Rules Part 131: Offshore Installations – Oil Spill Contingency Plans and Oil Pollution Prevention Certification</p> <p>In conjunction with the Exclusive Economic Zone and Continental Shelf (Environmental Effects-Discharge and Dumping) Regulations 2015, gives effect to the provisions of the International Convention for the Prevention of Pollution from Ships 1973/78 (MARPOL) and the International Convention on Oil Pollution Preparedness, Response and Co-operation 1990 (OPRC) in respect of offshore installations.</p> <p>Requires offshore installations operating in New Zealand continental waters and in the internal waters of New Zealand to have marine oil spill contingency plans (OSCP) that will support an efficient and effective response to an oil spill.</p> <p>Requires that certain pollution prevention equipment and arrangements on board installations meet international performance standards and in-service maintenance requirements.</p>	<p>Sub-parts A, B and C apply to any offshore installation operating in the internal waters of New Zealand or New Zealand continental waters. These installations include all drilling platforms, drill ships, well head platforms, production platforms, floating production storage and offloading facilities (FPSOs); and pipelines that are attached to any of these installations.</p> <p>Sub-part D applies to every offshore installation within the New Zealand territorial sea.</p>	<p>Rule 131.28 currently carries a single offence and penalty. However it is divided into four sub-rules which cover offences of differing levels of risk and severity. Sub-rules (a) and (c) deal with operational activities (training staff and maintaining equipment). Failure to comply carries very high risk of harm to the regulatory system and also the possibility of environmental harm due to an inadequate oil spill response. Sub-rules (b) and (d) are record-keeping requirements with risk of high system harm only.</p> <p>Rules 131.82(1)(b), 131.82(1)(c) and 131.82(3) do not have associated infringement fees. Given they are straightforward and relatively minor offences, we consider infringement fees should be created to give Maritime NZ more enforcement options for low-level offending.</p> <p>Rules 131.25 and 131.41(1) carry an infringement fee without an associated fine. A fine should be added to correct this omission.</p> <p>Penalty levels for the existing offences have been reviewed in line with the Framework and require changes to better reflect the severity and likelihood of harm.</p> <p>We consider that the offence under Rule 131.21 is of sufficient seriousness to rely on the statutory offence under MTA (section 277 – acting without a necessary marine protection document). We therefore propose to remove this offence at Rules level.</p>	<p>Split Rule 131.28 into four separate offences with associated infringement offences and penalties based on the Framework.</p> <p>Establish an infringement fee based on the Framework for offences associated with Rules 131.82(1)(a) and (b).</p> <p>Add a fine based on the Framework for the offences associated with Rules 131.25(1) and 131.41(1).</p> <p>Amend penalty levels (some increases, some decreases) for all existing offences, based on the Framework.</p> <p>Remove the offence under 131.21.</p>

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Rules Part and purpose	Application	Issues	Proposed changes
<p>Rules Part 132: New Zealand Oil Spill Control Agents</p> <p>Requires approval of oil spill control agents (OSCAs) for use in an oil spill at sea, have been approved as New Zealand OSCAs.</p> <p>Sets out the requirements for use of OSCAs.</p>	<p>Users of New Zealand OSCAs.</p>	<p>There are currently no offences in regulations to support Part 132 Rules, which are important to ensure safe and appropriate response to oil spills. Consequently, the regulatory framework to deter and respond to breaches is lacking. We consider that establishing two offences relating to Part 132 would be beneficial. They cover use of unapproved substances and misuse of an OSCA, which are fundamental breaches of the NZOSCA scheme. Both are straightforward and relatively minor offences appropriate to be infringement offences.</p>	<p>Create new offences (with associated infringement offences and penalties based on the Framework) for Rules 132.20(1) and 20(2).</p>

Rules Part and purpose	Application	Issues	Proposed changes
<p>Rules Part 140: Discharge of Noxious Liquid Substances Carried In Bulk</p> <p>Gives effect to standards found in Regulations 6 and 13 of MARPOL Annex II and to Protocol I of that instrument.</p> <p>Sets out the permitted operational discharges into the sea of cargo residues from noxious liquid substances carried in bulk by chemical tankers. Sets limits on total quantity and concentration of discharges, and specifies minimum water depths and distance from land. More stringent discharge conditions apply to those substances that are categorised as most harmful to the marine environment.</p> <p>Contains requirements for the carriage of uncategorised noxious liquid substances from New Zealand.</p> <p>Requirements for reporting of non-operational discharges of noxious liquid substances to the appropriate coastal authorities.</p>	<p>All ships carrying noxious liquid substances in bulk as cargo.</p> <p>New Zealand ships, warships and other ships of the New Zealand Defence Force operating outside the New Zealand coastal marine area and within internationally recognised 'special areas'.</p> <p>Foreign ships operating within areas of the sea under New Zealand jurisdiction are subject to the reporting requirements of Part 140.</p> <p>As with other MARPOL-based operational discharge requirements, the Marine Protection Rules deal with such discharges outside the coastal marine area. Within the CMA (that is, within the 12 mile limit) these requirements are found in the Resource Management (Marine Pollution) Regulations 1998.</p>	<p>The Rules Part was completely replaced in 2008 but these offences have not been updated. The numbering and wording of Rules has changed to the extent that we consider a completely revised set of offences and penalties is required. While these offences are seldom referred to, we consider that it is important to retain them because of the potentially catastrophic nature of a severe noxious substance spill.</p> <p>All proposed new offences are straightforward and relatively minor and we consider it would be helpful to have associated infringements to allow Maritime NZ to take action in the case of a less serious breach.</p>	<p>Renumber offence 140.17(1) to align with Rule provision (140.5(1)), and update existing penalties based on the Framework.</p> <p>Replace existing offences and penalties with new offences (with associated infringement offences and penalties based on the Framework) for Rules 140.5(1), 140.5(2), 140.6(1), 140.6(2), 140.8 and 140.14.</p>
<p>Rules Part 142A: Documents (Certificates) – Noxious Liquid Substances</p> <p>Sets out requirements for the standardised certification of ships carrying noxious liquid substances in bulk in accordance with Regulations 9 and 10 of MARPOL Annex II. Certification evidences compliance with the pollution prevention equipment and survey requirements of that Annex.</p>	<p>New Zealand ships, warships and other ships of the New Zealand Defence Force.</p> <p>Foreign ships operating in areas of the sea under New Zealand jurisdiction, however foreign ships may, as an alternative to the International Pollution Prevention Certificate, present a certificate of fitness issued under the International Bulk Chemical Code.</p>	<p>Penalty levels for the existing offences have been reviewed in line with the Framework and require changes to better reflect the severity and likelihood of harm.</p>	<p>Amend penalty levels (some increases, some decreases) for all existing offences, based on the Framework.</p>

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Rules Part and purpose	Application	Issues	Proposed changes
<p>Rules Part 142(B): Documents (Record Books and Manuals) – Noxious Liquid Substances</p> <p>Gives effect to Regulations 14 and 15 of MARPOL Annex II and, in respect of manuals, the internationally-agreed interpretation that the Annex's provisions require each ship to have a Procedures and Arrangements manual.</p> <p>Requires standardised recording of shipboard operations involving noxious liquid substances and their discharge, and the provision of shipboard manuals to guide crew involved in operations involving such substances.</p>	<p>New Zealand ships, warships and other ships of the New Zealand Defence Force.</p> <p>Foreign ships in areas of the sea under New Zealand jurisdiction that carry noxious liquid substances in bulk.</p>	<p>Rules 142B.5(1) and 142B.8(1) have no associated offences but we consider that offences (with associated infringements) are needed. The Rules are about ensuring that ships carrying noxious liquid substances keep appropriate cargo records. A breach of these Rules carries a high system harm as cargo records are essential documents for assurance of compliance. The absence of an offence is inconsistent with other similar Rules.</p> <p>Rule 142B.10(1) has no associated offences but we consider that an offence is needed. The Rule is about ensuring that New Zealand ships have an approved Procedures and Arrangements manual. A breach of this Rule carries a very high risk of system harm, as well as some risk of environmental and safety harm, as the manual underpins the proper functioning of cargo management, tank shipping and discharge procedures. In view of the severity of the offence we consider that infringements are not appropriate for this Rule.</p> <p>Penalty levels for the existing offences have been reviewed in line with the Framework and require changes to better reflect the severity and likelihood of harm.</p>	<p>Create new offences (with associated infringement offences and penalties based on the Framework) for Rules 142B.5(1) and 142B.8(1).</p> <p>Create new offence and penalties based on the Framework for Rule 142B.10(1).</p> <p>Amend penalty levels (some increases, some decreases) for all existing offences, based on the Framework.</p>

Rules Part and purpose	Application	Issues	Proposed changes
<p>Rules Part 143: Shipboard Marine Pollution Emergency Plans for Noxious Liquid Substances</p> <p>Gives effect to Regulation 17 of MARPOL Annex II.</p> <p>Prescribes requirements for shipboard marine pollution emergency plans for noxious liquid substances including plans' contents, approval, maintenance, testing and review.</p>	<p>Ships of 150 tons gross or more that carry noxious liquid substances in bulk as cargo.</p>	<p>There are currently no offences in regulations to support Part 143 Rules, which are important to ensure safe and appropriate response to chemical spills. Consequently, the regulatory framework to deter and respond to breaches is lacking. We consider that establishing five offences for Rules 143.4, 143.7, 143.8, 143.10(1) and 143.10(2) would be beneficial.</p> <p>143.7 is a straightforward and relatively minor offence, and we consider it would be helpful to have an associated infringement fee to allow Maritime NZ to take action in the case of a less serious breach.</p>	<p>Create new offences with associated penalties (based on the Framework) for Rules 143.4, 143.7, 143.10(1) and 143.10(2).</p> <p>Add infringement fee for Rule 143.7.</p>
<p>Rules Part 150: Carriage of Cargoes – Harmful Substances Carried in Packaged Form</p> <p>Sets out requirements, drawn from MARPOL Annex III, for the prevention of pollution by harmful substances carried by sea in packaged form, including responsibilities relating to the jettison of harmful substances, and reporting of occurrences involving harmful substances.</p>	<p>New Zealand ships anywhere, except ships of the New Zealand Defence Force.</p> <p>Foreign ships operating within areas of the sea under New Zealand jurisdiction.</p>	<p>The two offences associated with Rules Part 150 have been reviewed in line with the Framework. In this case higher penalties have been proposed for both offences due to the level of system and environmental harm associated with each offence.</p>	<p>Increase penalty levels for both offences, based on the Framework.</p>

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Rules Part and purpose	Application	Issues	Proposed changes
<p>Rules Part 160: Prevention of Pollution by Sewage from Ships in the Antarctic Treaty Area</p> <p>Gives effect to MARPOL Annex IV as it applies to the Antarctic Treaty area, in fulfilment of New Zealand's obligations under the 1991 Protocol of Environmental Protection to the Antarctic Treaty.</p> <p>Sets out requirements for the discharge of sewage in the Antarctic Treaty area (sea area below 60° S).</p> <p>Covers onboard sewage arrangements (treatment systems, holding tanks, discharge connections) and their survey and certification, record keeping and operational discharge requirements.</p>	<p>New Zealand ships, warships and other ships of the New Zealand Defence Force sailing in the Antarctic Treaty area.</p> <p>Any foreign ship departing from a New Zealand port for the Antarctic Treaty area.</p>	<p>Penalty levels for the existing offences have been reviewed in line with the Framework and require changes to better reflect the severity and likelihood of harm.</p>	<p>Amend penalty levels (some increases, some decreases) for all existing offences, based on the Framework.</p>
<p>Rules Part 170: Prevention of Pollution by Garbage from Ships</p> <p>Gives effect to requirements of MARPOL Annex V.</p> <p>Defines the classes of garbage that may be discharged from ships and offshore installations outside the coastal marine area.</p> <p>Incorporates requirements for shipboard garbage management plans, the maintenance of garbage record books and the display of placards indicating to crew and passengers the applicable garbage discharge requirements.</p>	<p>New Zealand ships, warships and other ships of the New Zealand Defence Force.</p> <p>Foreign ships operating in areas of the sea under New Zealand jurisdiction.</p> <p>As with other MARPOL-based operational discharge requirements, the Marine Protection Rules deal with such discharges outside the coastal marine area. Within the CMA (that is, within the 12 mile limit) these requirements are found in the Resource Management (Marine Pollution) Regulations 1998.</p>	<p>Rule 170.3(2) has no associated offence but we consider that an offence is needed. The Rule is about ensuring that people on board ships comply with the requirements concerning discharge of garbage. A breach of these Rules carries a high system harm and a likelihood of environmental harm.</p> <p>Rules 170.19(2)(a) does not have an associated infringement offence. Given that it is a straightforward and relatively minor offence, we consider an infringement fee should be created to give Maritime NZ more enforcement options for low-level offending.</p> <p>Penalty levels for the existing offences have been reviewed in line with the Framework and require changes to better reflect the severity and likelihood of harm.</p>	<p>Create a new offence with associated penalties based on the Framework for Rule 170.3(2).</p> <p>Establish infringement fee based on the Framework for the offence associated with Rule 170.19(2)(a).</p> <p>Amend penalty levels (some increases, some decreases) for all existing offences, based on the Framework.</p>

Rules Part and purpose	Application	Issues	Proposed changes
<p>Rules Part 190: Mandatory Ships' Routeing</p> <p>Part 190 gives effect to two areas to be avoided (ATBA):</p> <ul style="list-style-type: none"> the marine area lying between Bream Head and Cape Brett, including the Poor Knights Islands; and the sea area adjacent to the Three Kings Islands. <p>The Rules instruct the owners, the charterers and masters of ships to avoid the defined areas.</p> <p>'Areas to be avoided' is one of the mandatory ships' routeing measures adopted by the International Maritime Organization (IMO) to protect sensitive marine environments from the risks, principally of marine oil spills, posed by shipping operations.</p>	<p>In the case of the Poor Knights ATBA, every ship of more than 45 metres length overall except:</p> <ul style="list-style-type: none"> a fishing ship engaged in a fishing operation; or a barge under tow provided its cargo does not include oil or any other harmful liquid substance as defined in Annexes I and II of MARPOL. <p>In the case of the Three Kings Island ATBA, every ship of 500 tons gross tonnage or more.</p>	<p>Penalty levels for the existing offences have been reviewed in line with the Framework and require changes to better reflect the severity and likelihood of harm. In this case higher penalties have been proposed for both offences due to the level of system and environmental harm associated with each offence.</p>	<p>Increase penalty levels for both offences, based on the Framework.</p>

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Rules Part and purpose	Application	Issues	Proposed changes
<p>Rules Part 300: Ballast Water</p> <p>Gives effect to the provisions of the International Convention for the Control and Management of Ships' Ballast Water and Sediments 2004.</p> <p>The purpose of Part 300 is to prevent, minimise and ultimately eliminate the risk to the environment, human health, property and resources arising from the transfer of harmful aquatic organisms and pathogens through the control and management of ships' ballast water and sediment.</p> <p>Includes provisions for certification, documentation, ballast water management systems, and discharge of ballast water.</p>	<p>New Zealand ships [excludes warships] and foreign ships in New Zealand jurisdiction that are designed or constructed to carry ballast water on an international voyage.</p>	<p>There are currently no offences associated with Part 300. This means the regulatory framework to prevent harm to the environment from ballast water lacks important incentives, deterrents and responses to breaches of requirements. Currently the only available enforcement option is prosecution under the MTA, which is a costly course of action suitable for the most serious breaches.</p> <p>We consider it desirable to introduce a suite of lower-level offences to enable enforcement of smaller-scale offending. These include several straightforward, and relatively minor offences appropriate to be infringement offences.</p> <p>We do not consider it is necessary to establish offences in regulations for Rules 300.41(1), 300.41(3), 300.42(1), 300.42(3) or 300.103(2). This is because we consider that breaches of these Rules are of sufficient seriousness to rely on the MTA-level offences under sections 277 and 278: acting without or in breach of necessary marine protection documents; and for Rule 300.103(2), section 246C: discharge of ballast water in breach of section 246B.</p>	<p>Create new offences under Rules 300.41(2), 300.42(2), 300.80(1), 300.80(3)(a) and (c); 300.81(1)(a)-(b) and (c), 300.81(3)(b)-(d), 300.81(4)(a)-(b), 300.82(1), 300.82(2), 300.100(2), 300.100(3), 300.100(4), 300.102(a), 300.102(b), 300.102(c) and 300.102(d).</p> <p>Establish penalties for each offence based on the Framework.</p> <p>Establish infringement fees based on the Framework for offences under Rules 300.41(2), 300.42(2), 300.80(1), 300.80(3)(a); 300.81(1)(a)-(b) and (c), 300.81(3)(b)-(d), 300.81(4)(a)-(b), 300.82(1), 300.82(2), 300.100(2), 300.100(4), 300.102(a), 300.102(c) and 300.102(d).</p>

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