

Certificates of insurance for regulated offshore installations

Guidelines for applicants for issue or recognition of certificates of
insurance for regulated offshore installations under Marine
Protection Rules Part 102

Important!

Operating without a certificate of insurance is an offence under the Maritime Transport Act 1994. Section 385K states:

The owner and person in charge of a regulated offshore installation each commits an offence and is liable to imprisonment for a term not exceeding 2 years or to a fine of \$200,000 if, without reasonable excuse, a current certificate of insurance issued under the marine protection rules is not for the time being in force in respect of the regulated offshore installation.

Note also, this guidance is not intended to be a complete guide to the legal requirements relating to certificates of insurance for regulated offshore installations, and where there is inconsistency or uncertainty Part 102 and the Maritime Transport Act 1994 prevails.

Certificates of insurance for regulated offshore installations

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1. Purpose of these guidelines

These guidelines provide practical guidance when applying for the issue or recognition of certificates of insurance for regulated offshore installations to meet the requirements of Marine Protection Rules Part 102 (Part 102). The requirements of rules 102.8 and 102.9 apply to every regulated offshore installation that is required by section 385H of the Maritime Transport Act 1994 (MTA) to have a current certificate of insurance in force issued or recognised by the Director of Maritime New Zealand (the Director) under section 270 of the MTA. Regulated offshore installations in New Zealand continental waters include floating production storage and offloading units, and floating storage and offloading units, when not being used in navigation.¹

¹ Owners may be subject to different requirements when the installation is used in navigation. It is recommended that owners check whether a certificate of insurance as a ship is required during this period.

2. Introduction to the regime

The MTA sets out in Part 26A a civil liability regime for pollution damage from marine structures. Part 26A defines what ‘pollution damage’ is, and imposes strict liability for it and the costs of cleaning up pollution. The MTA requires that a certificate of insurance is held as evidence of financial security for pollution damage liabilities, and provides a right for third parties to take action against insurers or persons providing other financial security for the owner’s liability for pollution damage. Claims by third parties against an insurer are limited to the scope and quantum of the policy agreed between the owner and insurance provider that has been approved by the Director in accordance with the rule, resulting in the issuance or the recognition of a certificate of insurance. Under Part 102, the Minister of Transport sets the criteria that must be satisfied to obtain a certificate of insurance.

2.1 Requirement for financial security

Owners of regulated offshore installations are liable for all response costs incurred by public agencies, and all other pollution damage incurred by third parties, in the event of an oil spill from their offshore installations. These liabilities are set out under Part 26A of the MTA.

Section 385H of the MTA requires offshore installations to have a certificate of insurance issued, recognised, or accepted by the Director. Part 102 contains specific provisions concerning the minimum type, scope and amount of liability coverage necessary. The certificate of insurance provides assurance that funds are available to meet liabilities such as spill response costs and compensation for pollution damage to property.

2.2 What the law says

The MTA and Part 102 set out the requirements for financial security. Relevant sections of the MTA are as follows.

- ss.270, 272 and 273 concern the issue, recognition, suspension (or imposition of conditions) or revocation of marine protection documents (certificates of insurance are such documents)
- s.385A defines the term ‘regulated offshore installation’
- s.222 sets out what is an ‘offshore installation’ and who is an ‘owner’
- s.385B concerns liability to the Crown and marine agencies for costs of cleaning up pollution
- s.385C concerns liability for pollution damage from regulated offshore installations and their operations
- s.385H requires regulated offshore installations to have certificates of insurance
- s.385I requires offshore installations’ certificates to be produced to specified officers on request
- s.385J establishes the rights of third parties against liability insurers of regulated offshore installations
- s.385K makes it an offence by the owner or person in charge of a regulated offshore installation if a current certificate of insurance is not in place for the installation.

2. Introduction to the regime (continued)

2.3 Pollution liabilities under the MTA

Part 26A of the MTA creates two main paths to potential liability with respect to pollution emanating from an offshore installation.

The first is a strict liability for costs incurred by marine agencies such as Maritime NZ, or the Crown, in dealing with an oil spill. These costs are imposed as a debt on the owner or person in charge under section 385B of the MTA. This relates to clean-up operations both at sea and on shore.

The second is that under section 385C of the MTA the owner or person in charge is also made liable for damages for any harm caused by pollution damage. 'Pollution damage' is defined under the MTA.

2.4 Criteria for issuing or recognising a certificate of insurance

Rule 102.8A sets out the criteria that must be met before the Director can issue or recognise a certificate of insurance. This requires the Director to be satisfied that:

- there is a contract(s) of insurance or other financial security in place in respect of the regulated installation that:
 - is for \$1.2 billion or more, or not less than an amount determined under the scaled framework on the basis of “a credible worst case scenario”²; and
 - is of a kind and scope to meet the owner’s potential liability specified under Rules 102.8A(1)(a)(ii);³
- the contract(s) of insurance or other financial security is governed by and enforceable under NZ law;
- the insurer or provider of financial security named in the application is financially capable of meeting a claim for the full amount specified in the contract(s) of insurance or other financial security; and
- the insurer or provider of financial security complies with any applicable provisions of the Insurance (Prudential Supervision) Act 2010.

There may be instances where the scope of insurance or other financial security required by Part 102 does not extend to the full liability of an operator under Part 26A of the Maritime Transport Act 1994. However, nothing in Part 102 or in these guidelines affects the liability provided for under Part 26A of the MTA.

² See below for an explanation of the “scaled framework”.

³ Note Rule 102.8A(6) provides a discretion to the Director to treat the requirements of Rule 102.8A(1)(a)(ii) as met where a specified equivalent type of cover is provided. The Director will assess each application for a certificate of insurance that provides an equivalent type of cover to that specified in Rule 102.8A(6) on a case-by-case basis.

2. Introduction to the regime (continued)

Where less than \$1.2 billion of insurance or financial security is provided, Part 102 requires the Director to be satisfied the amount of insurance or other financial security meets the requirements of the scaled framework in Appendix 5 to determine the amount of security needed by owners to obtain a certificate of insurance. In this situation, the following information needs to be provided with the application that demonstrates the amount of security held meets the scaled framework in Appendix 5:

- the location of the exploration or mining activity;
- the total volume of hydrocarbon likely to be released in the event of an oil spill under a credible worst case scenario;
- the potential impact of hydrocarbon on the shoreline in the event of an oil spill;
- the nature of the hydrocarbon being explored or mined;
- relevant technical information, data, advice and guidance.

Providing an analysis of how, in the applicant's opinion, these factors (where applicable) determine a regulated offshore installation's "total score" under Appendix 5 may assist the Director's assessment of an application.

The Director may also accept a declaration by one or more members of a joint venture that the amount of insurance or other financial security held jointly by members of the joint venture will be apportioned in a particular manner.

Note that for policies with a combined single limit, insurance for greater than NZ \$1.2 billion may be required. This is discussed on page 14 of this document.

2.5 Relationship between Parts 102 and 131

Under the MTA, a regulated offshore installation must hold an oil spill contingency plan approved by the Director under Marine Protection Rules Part 131 (Part 131) and a certificate of insurance issued in accordance with Part 102.

The approval of an oil spill contingency plan involves a separate process, governed by different criteria, to the process used for the issuance or recognition of a certificate of insurance. However, the insurance or other financial security held by an applicant will be relevant to the approval of an oil spill contingency plan insofar as it relates to the applicant having "the ability to implement the plan" (see amended rule 131.24(1)(b)).

2. Introduction to the regime (continued)

Oil spill contingency plan: Part 131

All offshore installations operating in New Zealand continental waters must comply with Part 131, which specifies the requirement for an oil spill contingency plan (including a well control contingency plan if applicable to the installation).

The purpose of the oil spill contingency plan is to define the operator's actions to prevent/minimise adverse impacts of pollution of the marine environment from unplanned discharges of oil associated with the operation of the offshore installation. As part of the oil spill contingency plan, the owner is required to detail the emergency response procedures for oil spills.

Because implementing oil spill and well control contingency plans requires significant financial resources, when assessing and approving an oil spill contingency plan the Director needs to be satisfied that the applicant organisation has the financial capacity to undertake the emergency response it says it will. This stems from the requirement under section 268 of the MTA that holders of marine protection documents provide sufficient resources to ensure compliance with the prescribed standards and the conditions attached to the marine protection document. Approval of an oil spill contingency plan will only be granted if the Director is satisfied the operator has the ability, including the financial resources, to implement it.

The assessment for the certificate of insurance also examines whether the insurance or financial security provides compensation for pollution damage or costs of clean-up to third parties.

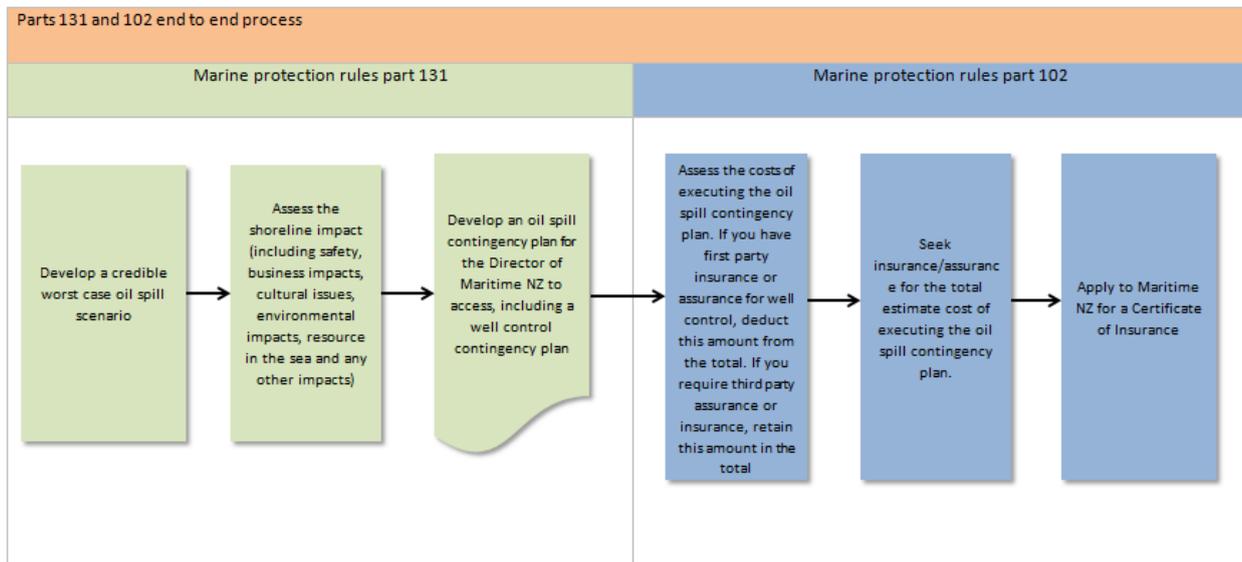
How Parts 131 and 102 interact

The criteria, obligations, rights and duties under the oil spill contingency plan approved under Part 131 and the certificate of insurance issued or recognised under Part 102 are distinct. However, there are two ways in which these marine protection documents, or the relevant insurance required under each Part, may interact.

1. When determining the amount of financial security required and assessing the worst-case scenario from a hydrocarbon spill from an installation, the Director may assume that an owner will implement the plan under Part 131 e.g. that the marine oil spill will be stopped in accordance with the plan, including the likely time required to do this.
2. If an owner has a single insurance policy that covers the obligations under both Part 131 and Part 102, the owner may be subject to a combined single limit. However, a combined single limit may mean that cover is not available for all the purposes to which it applies. For example, cover would not be available for compensation for pollution damage and clean up if it is consumed entirely for another purpose, such as well control. To be satisfied that there is sufficient cover as required under Part 102 and the operator will have the ability to implement their oil spill contingency plan approved under Part 131, the combined single limit must be for an amount that is not less than the estimated cost of well control plus the required level of financial security determined under Part 102.

2. Introduction to the regime (continued)

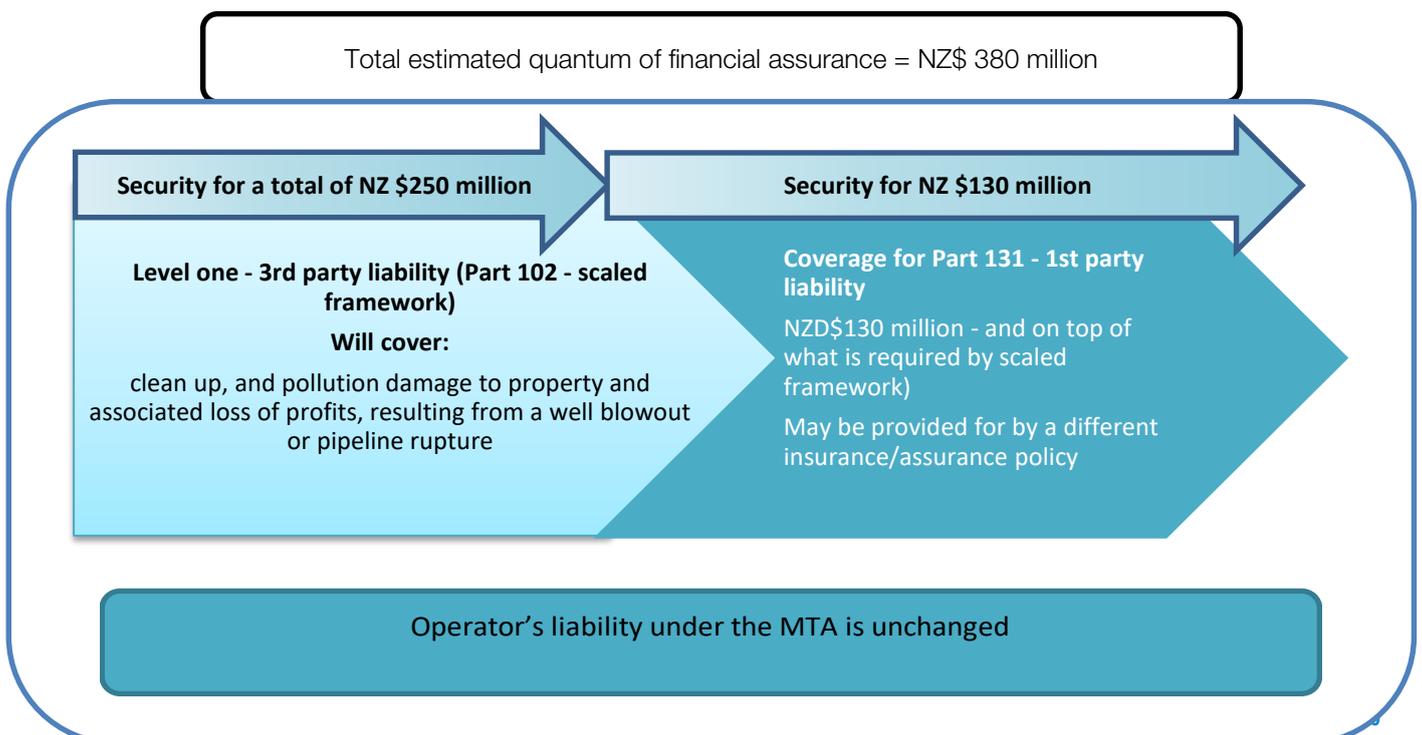
The figure below shows the end to end process for owners to obtain certificates of insurance, or to have them recognised.



When determining the level of insurance or security needed under the scaled framework, under Part 102 well control cost only needs to be considered if a combined single limit policy is submitted to cover all of an owner's minimum financial security and financial resource obligations as assessed by the Director. However, under Part 131 owners need to have the ability, including the financial resources, to implement their oil spill contingency plan, which includes their well control contingency plan. The scenario shown in the diagram below illustrates how this will work in practice.

Example

Operator X has been assessed as needing assurance for NZ\$250 million using the scaled framework. Estimated coverage under Part 131 is another NZ\$130 million. Total coverage required is therefore NZ\$380 million.



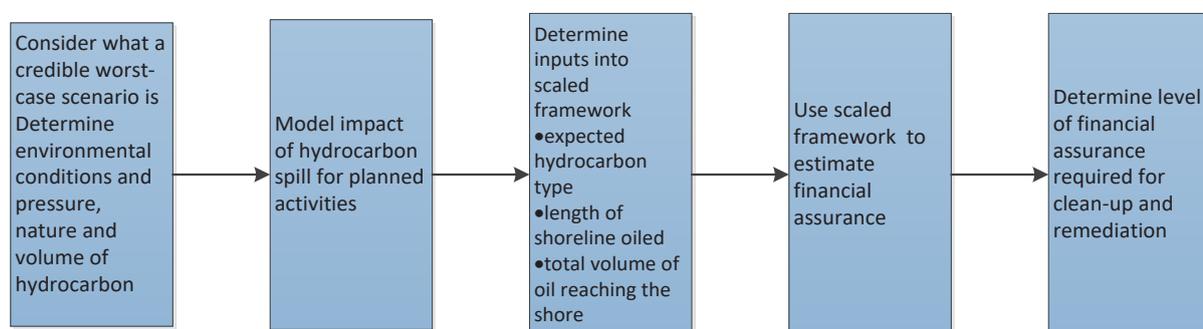
2. Introduction to the regime (continued)

It is recommended that operators seek advice from Maritime NZ on the requirements as some vessels may be regarded as an installation and a ship at different times. Regulated oil tankers and ships operating in New Zealand waters must have a certificate of insurance issued or recognised by the Director under section 270 of the MTA.

2.6 Overview of methodology for using the scaled framework

This section outlines how applicants would normally be expected to treat particular scenarios before applying the Director's scaled framework to assess the level of financial security for clean-up and compensation that would be required as part of their Part 102 application.

The following diagram provides an overview of the methodology for calculating clean-up and remediation costs.



2.7 Credible worst-case hydrocarbon spill scenario

The security provided with an application must be determined based on a credible worst-case hydrocarbon release scenario. A credible worst-case scenario should be modelled by the owner and clearly explained in the application.

If the worst-case scenario is not clear, it may be necessary for two or more scenarios to be modelled. A worst-case scenario means a credible scenario that scores the highest number of points when using the scaled framework in Part 102. The owner will need to clearly outline the factors considered to determine the worst-case scenario. Any alternative scenarios considered, and any assumptions and limitations, should also be outlined.

Where relevant, the credible worst-case scenario should be consistent with the scenario used for oil spill contingency planning as part of complying with Part 131, and also for any relevant well control contingency plan.

2.8 Method of deciding values for the pressure, nature, and volume of hydrocarbon

Given the uncertainty of conditions before drilling, it will normally be considered appropriate for owners to use their most accurate P50 technical estimates when using data to apply the scaled framework. For producing installations, this should be based on actual data wherever possible.

2. Introduction to the regime (continued)

Where relevant:

- data for deciding values for the certificate of insurance required under Part 102 and the oil spill contingency planning required under Part 131 should align
- values for pressure and volume and the type of hydrocarbon should be the same as provided for applications to other consenting regimes.

2.9 Method of confirming environmental conditions

When identifying the environmental conditions to use in modelling, consider the timing of activities and type of activity being undertaken. Use the credible worst-case scenario, and take into account weather conditions for the duration of the activity that would result in the largest volume of hydrocarbon oiling the shoreline.

The environmental conditions used for modelling for the purposes of Part 102 should be consistent with those used for the oil spill contingency plan. Owners should clearly state and explain any differences between the environmental conditions used for the modelling for Part 131 and the information supplied as part of the application for a certificate of insurance.

2.10 Requirements for modelling (assumptions, number of runs, required abilities)

The owner's modelling for the certificate of insurance required under Part 102 and the oil spill contingency planning required under Part 131 should align. These should use a credible worst-case scenario.

Scenarios

For guidance on well control failure scenarios please also refer to Maritime NZ's *Well Control Contingency Plan Guidance Note*. This can be found on Maritime NZ's website using the search function.

Operators may choose to model continuation of discharge at the initial flow rate until discharge ceases. Alternatively a declining flow rate, based on P50 reservoir parameters, may be used.

For reservoirs which require pressure support to flow, reasonable assumptions may be made about how long the reservoir will flow and flow rates following discontinuation of pressure support. The assumptions need to be described in sufficient detail for the Director to assess their validity.

The rationale for the assessed flow duration of the credible worst-case hydrocarbon release scenario should be provided. For well control failures, justification will need to be provided for the proposed worst-case timeframe to the effective shut in of the well (e.g. the time taken to mobilise a drill rig to site and drill a relief well or to complete whatever activity is considered necessary to stop the release of hydrocarbons).

The oil type and characteristics should be the best estimate with reasonable justification for why they are considered to be the most likely. For exploration wells, the best P50 estimate of oil characteristics should be used. Where there are significant uncertainties regarding oil characteristics, a Maari crude may be used as a default option.

2. Introduction to the regime (continued)

Subsurface release

For guidance on subsurface releases please refer to Maritime NZ's *Well Control Contingency Plan Guidance Note*. This can be found on Maritime NZ's website using the search function.

Capability of modelling software

Modelling software should have been validated through comparison of outputs to known events and/or through examples of comparison of outputs to other models widely used and accepted in the industry.

Three-dimensional software may be used to model a subsurface release of oil. Two-dimensional modelling software may be used for scenarios where all of the spilled oil is released at the sea surface.

Weathering of oil during transport for the purposes of applying the scaled framework is not required but may be undertaken. If weathering is applied, evidence is to be provided that the weathering model is valid and that the chosen parameters are appropriate for the oil type and environmental conditions likely to be prevailing at the time of oil release.

Environmental data

Environmental input data must be appropriate for the model input requirements and of sufficient resolution to represent the local environmental conditions in the areas of interest. Environmental data sets derived from satellite-data derived hindcast models must be shown to be representative of the local conditions through comparison to local environmental records for the period concerned.

The environmental data should be for a recent period of record and of sufficient duration to be representative of both negative and positive periods of the Southern Oscillation Index (El Nino and La Nina conditions). A ten year period of recent environmental data record is likely to be satisfactory.

Stochastic models

For stochastic analysis, the start dates for spills should be selected for the seasonal conditions in which the operation is to take place. A minimum of 100 simulation runs should be undertaken for each scenario.

Model end points

Operators are encouraged to model transportation of oil to a level of 0.5 g/m², where the modelling tools allow, to provide a fuller understanding of potential effects on more sensitive activities such as aquaculture and tourism. If transportation modelling ceases at a higher level, accompanying commentary should be provided on why a cut-off at a higher level is appropriate for the circumstances.

Any weathering and all oil transportation is to be discontinued once the oil first reaches a shoreline.

Mass balances showing the fate of all released oil are to be provided to enable the fate of all released oil to be understood. Where the proportion of oil exiting the model boundaries is over 5% of oil released, comment should be provided on why that oil is unlikely to be of further interest and whether the model boundaries are appropriately set.

Simulations need to run long enough so that less than 5% of the total oil spilled remains in the water column and water surface within the model boundaries on at least 99% of simulations. The same run time should be used on all simulations with a minimum run time of the spill duration plus 30 days.

2. Introduction to the regime (continued)

Outputs

The model outputs need to provide sufficient detail for the Director to appraise the analysis, together with the following Key Outputs:

- total length (km) of shoreline oiled above clean-up threshold (10 g/m²)
- total volume of oil (bbls) reaching shore
- geographic representation of the locations affected.

As shoreline length is a fractal quantity, measured lengths are influenced by the scale of measurement. The scaled –framework is derived from modelling and analysis of shorelines typically at a 0.1km to 1km scale. As far as is reasonably practicable, operators should derive and integrate results on a similar scale and should report on the scale of geographic analysis with their model results.

For stochastic models reporting, the credible worst-case outcome is defined to be the 99th percentile of scenarios modelled for the parameter being reported on, where the 99th percentile refers to proximity to the worst case for that parameter.

The modelling report needs to identify all key modelling parameters and comment on why those parameters are considered appropriate.

Sufficient results for all simulations are to be provided to enable an understanding to be gained of the range of effects. This may take the form of cumulative probability density functions of the Key Outputs listed above, or tables listing the Key Outputs for each simulation.

Geographic outputs should be presented in a manner to enable the Director to understand the cumulative probability of oil reaching any particular shoreline segment.

As far as is reasonably practicable, graphical representations within each report are to be presented on a common and clearly described basis.

Example scenario

Well completions are undertaken which significantly increase production. The increased volume/pressure of hydrocarbon for the well changes the worst-case scenario. If this increased production was not considered when the last application was submitted, modelling would need to be repeated and a new application submitted.

2.11 Treatment of dry gas wells

It is highly unlikely that any significant pollution damage will result from a dry gas well blow out. However, for dry gas wells, owners will need to demonstrate to the Director that the well is only likely to produce dry gas.

Financial security requirements for dry gas wells will normally correspond to the minimum level of financial security required (NZ \$25 million) due to the minimal potential for shoreline oiling.

Owners will still need to consider other activities - such as other wells, processing, or holding inventory offshore - to determine their credible worst-case scenario, and consider the estimated costs of undertaking well control activities under their oil spill contingency plan.

2. Introduction to the regime (continued)

2.12 Treatment of hydrocarbon spills with no shoreline impact

Using the scaled framework, the maximum level of financial assurance required for clean-up and remediation costs with no shoreline impact is NZ \$50 million. The Director will use the scaled framework when considering all relevant factors to determine the actual financial security required.

However, owners will still need to consider the worst-case scenario from other activities - such as processing or holding inventory offshore - and consider the estimated costs of undertaking well control activities under their oil spill contingency plan, when applying for a certificate of insurance for drilling/producing from wells.

2.13 Verification

Owners may provide third party verification of their modelling and any relevant calculations. If an owner provides information that the Director does not agree with, the Director can request this verification.

3. Financial security

3.1 How much you need

Owners need to provide third party financial security of up to NZ \$1.2 billion to cover liability for clean-up and compensation, depending on the application of the Director's scaled framework and the results of modelling. Maritime NZ would urge operators to finalise their oil spill contingency plans under Part 131 before applying for a certificate of insurance, and would encourage them to apply for approval of their oil spill contingency plan and issue or recognition of certificates of insurance under Part 102 at the same time.

Financial requirements are based on the worst-case scenario for each activity. Once this has been established, the Director will apply the scaled framework to calculate the total amount of security required to obtain a certificate of insurance.

Note!

Operating without a certificate of insurance is an offence under the MTA. If you do not have a certificate of insurance, you must not operate.

Policies with combined single limits

If relying on insurance with a combined single limit that includes cover for the cost of regaining control of a well, owners need to think about the total cover of that policy. The Director needs to be satisfied that the total limit will be sufficient to provide the minimum security required under Part 102 after considering the potential cost of regaining control of a well. Owners need to ensure the total cover is sufficient to cover the requirements of Part 102 for the full period of the certificate, plus the estimated costs for the operator undertaking well control activities under their oil spill contingency plan.

Single policies for multiple installations

If using a single insurance policy for multiple installations, the policy must either:

- cover the sum of the Director's requirements for insurance / security for each installation separately, or
- contain a reinstatement clause so that the insurance is automatically re-established in the event of an incident.

If a reinstatement clause is relied on, the level of insurance must be sufficient to cover the operator's highest exposure (in dollar terms) as evidenced by a credible worst case scenario.

Joint ventures

For joint ventures, operators can meet their financial security requirements by apportioning the financial interest held, commensurate with the percentage of interest held in the offshore installation. Joint venture partners should work this out between themselves, although each joint venture party needs to demonstrate it has sufficient coverage for its highest exposure (in dollar terms) for all of its New Zealand operations.

3 Financial security (continued)

Reinstatement clauses

When issuing a certificate of insurance the Director needs to be satisfied that the contract of insurance will continue to meet the amount, and kind and scope of insurance required under Rule 102.8A for the duration of the certificate of insurance. A way to ensure this is the Director may impose a condition stating that the certificate of insurance may be suspended or revoked where the contract of insurance no longer provides for the amount, or kind and scope of insurance required under Rule 102.8A. Where a claim under the contract of insurance arises, this could also be achieved through an appropriate reinstatement clause included in a contract of insurance that provides the coverage terms are reset, ensuring an owner/operator continues to meet the requirements of Rule 102.8A.

Examples

The *Black Gold Oil Drilling Operation* is three-party joint venture in which each party holds equal shares. The financial security requirement for this operation has been calculated by the Director to be \$900 million. Each party to the joint venture agrees to provide \$300 million financial security to cover the full security requirement under Part 102.

The *Good Oil Drilling Operation* is another three-party joint venture, but party A holds 50 percent of the shares and parties B and C each hold 25 percent of the shares. The financial security requirement for this operation has been calculated by the Director to be NZ \$1.2 billion. In this case party A holds a security obligation of \$600 million and parties B and C each hold security obligations of \$300 million. This is because parties to a joint venture only hold security obligations corresponding to their percentage of share in the permit holding.

3.2 What's acceptable

Suitable financial security could take many forms, for example:

- insurance
- a parent company guarantee
- industry bonds
- industry funding.

Any type of financial security may be used, provided that it:

- is acceptable to the Director
- covers the liabilities associated with the installation
- is consistent with the MTA and Marine Protection Rules Parts 102 and 131
- is in keeping with New Zealand insurance law
- is provided by a third party.

3 Financial security (continued)

The Director will assess all contracts of insurance to ensure the appropriate cover is held and will focus on the:

- extent of cover
- specific triggers to cover
- limits (including whether or not the insurer agrees to reinstate the sum insured after a claim)
- effect of any double insurance clause
- effect of any partial interest clause, and
- exclusion clauses.

Policy wordings that may lead to disputes about insurers' liabilities in the event of any double insurance (for example, where an installation has insurance from multiple permit participants acting as a joint venture) are unlikely to give sufficient assurance. Insurance policies need to operate alongside those of other parties to a joint venture. If a double insurance clause is unavoidable in a policy, the Director needs to be satisfied this will not limit the cover under another policy.

4. Certification process and costs

4.1 How to apply

Send a completed application form with all the required information to Maritime NZ. Rule 102.8 provides information on what owners need to provide. This includes (but is not necessarily limited to) the:

- insurance policy (for a first application) or certificate of insurance (if the Director has assessed this policy previously and it hasn't changed). If using another form of security, the Director will need evidence of this
- planned work programme for the period of insurance (translated into English if in another language)
- location of each installation being covered by the insurance policy or other security
- nature of hydrocarbon being mined or explored
- total volume of hydrocarbon that is likely to be released in the event of an oil spill, and the potential impact of hydrocarbon on the shoreline (if the financial security/insurance is for less than NZ \$1.2 billion)
- oil spill contingency plan, and
- any other relevant technical information, data, advice and guidance.

The Director may also ask for further information.

We strongly recommend submitting your application for a certificate of insurance and your oil spill contingency plan together, or submitting your oil spill contingency plan first. This is so we can assess the cross-linkages. However, in either case, these documents should be lodged with Maritime NZ at least three months before drilling is scheduled to commence, where applicable, so insurance provisions can be assessed.

For first applications for joint ventures, it would help expedite the certification process if a joint application was submitted and the insurance policies (or certificates for which recognition is sought) were sent in at the same time. Joint venture partners can, however, submit separate applications.

For subsequent applications for joint ventures, Maritime NZ recognises that partners' insurance policies may have different renewal dates, and the partners will need to advise Maritime NZ of renewal at different times to ensure their recognition of certificates of insurance remains current.

Joint venture applications for new installations should also be lodged with Maritime NZ at least three months before drilling is scheduled to commence so insurance provisions can be assessed.

4. Certification process and costs (continued)

Where owners use other forms of security, Maritime NZ will need to see evidence of it. For example, for a parent company guarantee, this would be a document from the parent company (on its letterhead) confirming the guarantee, and verification through public accounts that the parent company is able to cover its liabilities.

Maritime NZ will review the application. The key factors considered during this stage are detailed in Part 102 and include assessment of whether an insurance policy is likely to cover (and pay) any claims that are made subject to Part 102.

Maritime NZ may need to seek specialist advice or further information from owners.⁴ This can be a challenging and time-consuming stage of the application process, but Maritime NZ will continue to communicate with owners throughout the process. Once the Director is satisfied that the application meets the prescribed requirements, a certificate of insurance will be issued. If the Director is not satisfied with the application, further information may be sought or the application declined.

Note that a simple and well-organised application can take up to two months to assess. If owners are applying for a joint venture, have not obtained the correct insurance, or have not calculated the insurance requirements properly, it may take much longer.

4.2 Navigating the application process

The application process can become frustrating if not managed well.

- Keep talking to Maritime NZ: effective communication aids a smoother process.
- If Maritime NZ asks for further information, applications cannot be progressed until it is received. It is important to provide as much information as possible upfront. Make sure information is provided as soon as practicable after it is requested.
- Ask the insurance broker the right questions. Problems with insurance policy coverage are one of the key causes of delays. Getting this right before applying could save owners a lot of time and money.

4.3 How Maritime NZ will recover costs

Under the Maritime (Charges) Regulations 2019, Maritime NZ will charge an hourly rate for assessing applications. Current hourly charges can be found on the Maritime NZ website at <https://www.maritimenz.govt.nz/fees>

Maritime NZ will also recover costs from applicants for seeking external advice.

⁴ Note that costs will be passed onto the owner for this advice.

5. Definitions

The following section clarifies the intended meaning of some key terms and phrases that appear in this document.

‘Offshore installation’

An offshore installation is defined under section 222 of the MTA to include any artificial structure to be used in or on, or to be attached or anchored to, the seabed for exploration, exploitation or related processing of any mineral. It includes a floating structure other than a ship. However, it explicitly excludes pipelines other than pipelines connected to the installation.

Note, however, that a pipeline connected to an offshore installation is included in the definition of a “regulated offshore installation”.

‘Owner’

The definition of an owner of an offshore installation for the purposes of Part 102 is very broad, and incorporates other definitions of rights-holders, such as applicants under the Crown Minerals Act 1991.

Section 222(2)(b) of the MTA defines an owner of an offshore installation as including:

- a person having any right, privilege, or licence to explore for or exploit minerals in connection with which the installation is used
- a manager, lessee, licensee, or operator of the installation, and
- any agent or employee of the above, or the person in charge of any operations connected with the installation.

Part 26A of the MTA provides that liability sits with the owner of a marine structure or the person in charge of a marine operation.

For clarity, the owner may be composed of more than one permit or licence participant that together are referred to as permit holder or licensee.

Normally the permit holder or licensee will hold financial security such that the permit holder of the installation, any agent of the owner, or the person in charge of any operations (i.e. a rig or platform operations contractor) will not be expected to hold a certificate of insurance for the purpose of Part 102.

‘Marine structure’

A marine structure is defined in section 385A of the MTA as meaning an offshore installation, pipeline, or facility structure or thing used to transfer a harmful substance to or from a ship or an offshore installation.

‘Pollution damage’

Section 385A of the Act defines pollution damage to mean damage or loss of any kind and:

- a) includes the costs of any reasonable preventive measures taken to prevent or reduce pollution damage and any damage or loss occurring as a result of those measures; and
- b) includes the costs of reasonable measures of reinstatement of the environment that are undertaken or to be undertaken; and
- c) includes losses of profit from impairment of the environment; but
- d) does not include any costs in relation to the impairment of the environment other than the costs referred to in paragraphs (b) and (c).

5. Definitions (continued)

‘Regulated offshore installation’

A regulated offshore installation is defined in section 385A of the MTA to mean an offshore installation in New Zealand continental waters, and includes any pipeline connected to that installation.

For clarity, in the context of Part 102 Subpart 2, an artificial structure above or on the seabed is generally regarded as an offshore installation when petroleum wells connect that structure to the subsurface. Similarly, the structure ceases to be an offshore installation when the connection with the subsurface is severed (e.g. when all wells from a platform are plugged and abandoned, or a rig moves off a wellhead). For the purposes of the MTA, a drillship is considered to be an offshore installation when it has a connection to the subsurface in the same way as described above.