

Marine Protection Rules

Part 140 – Discharge of Noxious Liquid Substances in Bulk

MNZ Consolidation

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Part objective

The objective of Part 140 is to provide rules for preventing pollution of the sea by ships carrying noxious liquid substances in bulk as cargo, drawn from revised Annex II of MARPOL.

The Part is concerned with regulating the discharge of such substances in accordance with the new more stringent international standards, which came into force internationally on 1 January 2007. These standards incorporate the following new scheme of pollution categories—

- category X: substances that present a major hazard to either the marine environment or human health and justify the prohibition of discharge into the marine environment
- category Y: substances that present a hazard to either marine resources or human health, or cause harm to amenities or other legitimate uses of the sea, and justify a limitation on the quality and quantity of the discharge into the marine environment
- category Z: substances that present a minor hazard to either marine resources or human health and justify less stringent restrictions on the quality and quantity of the discharge into the marine environment

Part 140 prescribes the conditions under which cargo residues of category Y and Z noxious liquid substances may be discharged into the sea based on—

- the minimum speed of the ship during the discharge
- the minimum distance from the nearest land during the discharge
- the minimum depth of water around and beneath the ship during the discharge
- the need to make the discharge below the waterline.

As well as operational discharges into the sea, Part 140 deals with discharge to reception facilities, and the reporting of non-operational discharges and probable discharges.

The specific MARPOL provisions given effect to by Part 140 are found in—

- regulation 6 of Annex II concerning the categorisation of noxious liquid substances
- regulation 13 of Annex II concerning the control of discharges of residues of noxious liquid substances
- article 8 and Protocol I of MARPOL concerning reports of incidents involving harmful substances.

Part 140 elaborates the marine protection rules referred to in the following sections of the Maritime Transport Act 1994—

- section 226 concerning the discharge of harmful substances into the sea
- section 227 concerning reporting the discharge or escape of harmful substances
- section 228 concerning reporting the probable discharge or escape of harmful substances.

The rules are made pursuant to sections 386 and 388 of the Maritime Transport Act 1994.

Rules subject to Regulations (Disallowance) Act 1989

Marine protection rules are subject to the Regulations (Disallowance) Act 1989. Under that Act, the rules are required to be tabled in the House of Representatives. The House of Representatives may, by resolution, disallow any rules. The Regulations Review Committee is the select committee responsible for considering rules under the Regulations (Disallowance) Act 1989.

Disclaimer:

This document is the current consolidated version of Marine Protection Rules Part 140 produced by Maritime New Zealand, and serves as a reference only. It has been compiled from the official rules that have been signed into law by the Minister of Transport. Copies of the official rule and amendments as signed by the Minister of Transport may be downloaded from the Maritime New Zealand website. www.maritimenz.govt.nz

History of Part 140

Part 140 first came into force on 20 August 1998 and now incorporates the following amendments:

Amendment	Effective date
Amendment 1	4 August 2008
Amendment 2	1 October 2010
Amendment 3	1 January 2015
Amendment 4	11 January 2016
Amendment 5	1 February 2018

Summary of amendments

Amendment 1

Marine Protection Amendment – MARPOL Annex 2 Revoked and replaced original

Amendment 2

Marine Protection Various Amendments 2010 140.2

Amendment 3

Marine Protection Rules Various Amendments 2014 140.2

Amendment 4

Part 132 – New Zealand Oil Spill Control Agents 140.2, 140.3(2)

Amendment 5

Marine Protection Rules Various Amendments (Changes Related to Conventions) 2017 140.2, 140.3, Heading: Discharges in special area prohibited, 140.4

All signed rules can be found on our website:

<https://www.maritimenz.govt.nz/Rules/>

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General

140.1 Entry into force

This Part comes into force on the 4th August 2008.

140.2 Definitions

In this Part—

Act means the Maritime Transport Act 1994:

Arctic waters means those waters which are located north of a line from the latitude 58°00'.0 N and longitude 042°00'.0 W to latitude 64°37'.0 N, longitude 035°27'.0 W and thence by a rhumb line to latitude 67°03'.9 N, longitude 026°33'.4 W and thence by a rhumb line to the latitude 70°49'.56 N and longitude 008°59'.61 W (Sørkapp, Jan Mayen) and by the southern shore of Jan Mayen to 73°31'.6 N and 019°01'.0 E by the Island of Bjørnøya, and thence by a great circle line to the latitude 68°38'.29 N and longitude 043°23'.08 E (Cap Kanin Nos) and hence by the northern shore of the Asian Continent eastward to the Bering Strait and thence from the Bering Strait westward to latitude 60° N as far as Il'pyrskiy and following the 60th North parallel eastward as far as and including Etolin Strait and thence by the northern shore of the North American continent as far south as latitude 60° N and thence eastward along parallel of latitude 60° N, to longitude 056°37'.1 W and thence to the latitude 58°00'.0 N, longitude 042°00'.0 W:

category X, Y, Z or OS substance means, respectively, any liquid substance—

- (a) listed and categorised as a category X, Y, Z or OS substance in the IBC Code; or
- (b) otherwise categorised, or provisionally assessed or categorised, as a category X, Y, Z or OS substance—
 - (i) by the IMO; or
 - (ii) by the Director under rule 140.9:

clean ballast means ballast carried in a tank that has been—

- (a) thoroughly cleaned since it was last used to carry cargo containing a noxious liquid substance, and from which the residues resulting there from have been discharged; and
- (b) emptied in accordance with the requirements of the marine protection rules:

coastal marine area means the foreshore, seabed and coastal water, and the air space above that water, of which—

- (a) the seaward boundary is the outer limits of the territorial sea; and
- (b) the landward boundary is the line of mean high water springs, except that where that line crosses a river, the landward boundary at that point shall be whichever is the lesser of—
 - (i) one kilometre upstream from the mouth of the river; or
 - (ii) the point upstream that is calculated by multiplying the width of the river mouth by 5:

discharge includes any release, disposal, spilling, leaking, pumping, emitting or emptying; but does not include—

- (a) dumping in accordance with a permit issued by the Director under section 262 of the Act; or
- (b) release of harmful substances for the purposes of legitimate scientific research into pollution abatement and control; and

to discharge and **discharged** shall be construed accordingly:

en route means, in respect of a ship, under way at sea:

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foreign ship means any ship that is not a New Zealand ship, warship or other ship of the New Zealand Defence Force:

from the nearest land means—

- (a) from the baseline from which the territorial sea of the territory in question is established in accordance with international law; but
- (b) in relation to the part of the north eastern coast of Australia that lies between the points 11° 00' S, 142° 08' E and 24° 42' S, 153° 15' E, from the nearest of the straight lines joining consecutively the following points:

11° 00' S, 142° 08' E;

10° 35' S, 141° 55' E;

10° 00' S, 142° 00' E;

9° 10' S, 143° 52' E;

9° 00' S, 144° 30' E;

10° 41' S, 145° 00' E;

13° 00' S, 145° 00' E;

15° 00' S, 146° 00' E;

17° 30' S, 147° 00' E;

21° 00' S, 152° 55' E;

24° 30' S, 154° 00' E;

24° 42' S, 153° 15' E:

high-viscosity means, in respect of a category X or Y substance, a viscosity, at the unloading temperature, equal to or greater than 50 mPa s:

IBC Code means *International Code for the Construction and Equipment of Ships Carrying Dangerous Chemicals in Bulk*, published by the IMO, as amended by that organisation from time to time:

IMO means International Maritime Organization:

in bulk means carried in the cargo or other spaces of a ship without any intermediate form of containment or packaging:

liquid substance means a substance having a vapour pressure not exceeding 0.28 MPa absolute at a temperature of 37.8°C:

marine operation means any operation connected with the exploration for, or the exploitation or associated processing of, any mineral in the sea or the seabed:

master means any person (except a pilot) having command or charge of any ship:

New Zealand Defence Force has the meaning given to the term Defence Force in section 2(1) of the Defence Act 1990:

New Zealand continental waters means—

- (a) New Zealand marine waters; and
- (b) the waters beyond the outer limits of the exclusive economic zone of New Zealand but over the continental shelf of New Zealand:

New Zealand jurisdiction means—

- (a) the internal waters of New Zealand; and
- (b) the territorial sea of New Zealand; and
- (c) the exclusive economic zone of New Zealand; and
- (d) the waters above the continental shelf of New Zealand but beyond the outer limits of the exclusive economic zone of New Zealand:

New Zealand marine waters means—

- (a) the territorial sea of New Zealand; and
- (b) the waters of the exclusive economic zone of New Zealand:

New Zealand ship means a ship that is registered under the Ship Registration Act 1992; and includes a ship that is not registered under that Act but is required or entitled to be registered under that Act:

noxious liquid substance means—

- (a) any category X substance;
- (b) any category Y substance;
- (c) any category Z substance;
- (d) any other substance, except—
 - (i) clean ballast;
 - (ii) segregated ballast;
 - (iii) any category OS substance; and
- (e) any mixture containing a noxious liquid substance; and

a noxious liquid substance, as defined here, is a harmful substance and a noxious liquid substance for the purposes of section 225 of the Act:

NZOSCA means a New Zealand oil spill control agent as defined in rule 132.2:

oil—

- (a) means petroleum in any form including crude oil, fuel oil, sludge, oil refuse and refined products (other than petrochemicals that are noxious liquid substances);
- (b) includes, for the purposes of this Part and section 222 of the Act—
 - (i) any substance declared to be oil in the Appendix to Part 120; and
 - (ii) any oily mixture:

offshore installation or installation—

- (a) includes any artificial structure (including a floating structure other than a ship) used or intended to be used in or on, or anchored or attached to, the seabed for the purpose of the exploration for, or the exploitation or associated processing of, any mineral; but
- (b) does not include a pipeline:

offshore terminal means any place in the sea where cargo is loaded or unloaded:

owner, in relation to any ship, includes—

- (a) any person who is the legal or equitable owner, or both, of the ship; and
- (b) any person in possession of the ship, including—
 - (i) any salvor in possession of the ship; and
 - (ii) any servant or agent of any salvor in possession of the ship; and
- (c) any charterer, manager, or operator of the ship, or any other person (other than a pilot) responsible for the navigation or management of the ship:

Part means a group of rules made under the Act:

port includes place and harbour:

ppm means m/m^3 :

Procedures and Arrangements Manual means the applicable Procedures and Arrangements Manual required under Part 142B:

residue means any harmful substance that remains for disposal:

segregated ballast means the ballast water introduced into a tank that is—

- (a) completely separated from the cargo and oil fuel system; and
- (b) permanently allocated to the carriage of ballast or cargoes other than oil or noxious liquid substances:

special area means the Antarctic area comprising the sea area south of latitude 60° S:

uncategorised liquid substance means any liquid substance that is not—

- (a) a category X substance;
- (b) a category Y substance;
- (c) a category Z substance;
- (d) clean ballast;
- (e) segregated ballast;
- (f) a category OS substance:

unloading includes the pumping of cargo from a ship to receiver, terminal, or port; and **unload** and **unloaded** shall be construed accordingly.

140.3 Application of Part 140

- (1) This Part applies to every—
 - (a) New Zealand ship, and every warship or other ship of the New Zealand Defence Force, that carries noxious liquid substances in bulk as cargo;
 - (b) foreign ship that carries noxious liquid substances in bulk as cargo in the New Zealand jurisdiction.
- (2) Nothing in this Part applies to the discharge into the sea of an NZOSCA, to contain or clean up an oil spill, in accordance with Part 132.
- (3) Nothing in this Part affects any defence that a person may have to proceedings for an offence under section 237 of the Act on grounds contained in section 243 of the Act.

Discharges in special area and Arctic waters prohibited

140.4 Discharge in special area and Arctic waters prohibited

Noxious liquid substances must not be discharged into any special area or in Arctic waters by any New Zealand ship, or any warship or other ship of the New Zealand Defence Force.

Discharge of Category X, Y or Z substances — outside special area

140.5 Discharge of category X substances

- (1) The owner and the master of any ship must ensure that every tank on the ship from which a category X substance has been unloaded is washed in accordance with sub-rule (2) or (4) before the ship leaves the port or terminal or offshore installation of unloading.
- (2) If a category X substance has been unloaded from a tank—
 - (a) the tank must be prewashed before the ship leaves the port of unloading in accordance with the procedure in the ship's Procedures and Arrangements Manual for that tank and that substance;

- (b) the effluent from the tank washing operation must be discharged to a reception facility at least until the concentration of the substance in the discharge, as indicated by analyses of samples of the effluent taken in the presence of the Director or, in the case of a New Zealand ship, warship or other ship of the New Zealand Defence Force outside New Zealand, the port state authority, is at or below 0.1 percent by weight; and
 - (c) when the required concentration has been achieved, the remaining tank washings must be discharged to the reception facility until the tank is empty.
- (3) The owner and the master of any ship must ensure that appropriate records of the operations undertaken under sub-rule (2) are made as required by Part 142B.
- (4) If the Director is satisfied that it is impracticable to measure the concentration of the substance in the effluent without causing undue delay to the ship, the Director may accept an alternative procedure as being equivalent to those prescribed in sub-rule (2) provided that—
- (a) the tank, its pump and piping system have been emptied;
 - (b) the tank is prewashed in accordance with the procedure in the ship's Procedures and Arrangements Manual for that tank and that substance;
 - (c) the tank washings resulting from such prewash have been discharged to a reception facility and the tank is empty; and
 - (d) the appropriate entries required under Part 142B are made in the cargo record book.
- (5) Any water subsequently introduced into a tank, from which tank washings have been discharged in accordance with this rule, may be discharged into the sea outside the special area provided—
- (a) the ship is proceeding en route at a speed of at least—
 - (i) 7 knots, in the case of a self-propelled ship; or
 - (ii) 4 knots, in the case of a ship that is not self-propelled; and
 - (b) the discharge is made below the waterline through the underwater discharge outlet(s) not exceeding the maximum rate for which the underwater discharge outlet(s) are designed; and
 - (c) the discharge is made at a distance of not less than 12 nautical miles from the nearest land and in a depth of water of not less than 25 metres.
- (6) If cargo residues have been removed from a tank that contained noxious liquid substances using the ventilation procedures prescribed by the ship's Procedures and Arrangements Manual, any water subsequently introduced into that tank may be discharged without reference to the discharge controls in this Part.

140.6 Category Y and Z substances

- (1) If a category Y or Z substance is unloaded from a ship in accordance with the pumping conditions for that tank set out in the ship's Procedures and Arrangements Manual, the cargo residue and tank washings may be discharged to the sea outside the special area provided—
- (a) the ship is proceeding en route at a speed of at least—
 - (i) 7 knots, in the case of a self-propelled ship; or
 - (ii) 4 knots, in the case of a ship that is not self-propelled; and
 - (b) the discharge is made below the waterline through the underwater discharge outlet(s) not exceeding the maximum rate for which the underwater discharge outlet(s) are designed; and
 - (c) the discharge is made at a distance of not less than 12 nautical miles from the nearest land and in a depth of water of not less than 25 metres.

- (2) If a category Y or Z substance is unloaded from a ship but it is not unloaded in accordance with the pumping conditions for that tank set out in the ship's Procedures and Arrangements Manual, the owner and the master of the ship must ensure that—
 - (a) (i) the tank is washed before the ship leaves the port, terminal or offshore installation in accordance with the pre-wash procedure set out in the ship's Procedures and Arrangement Manual for that tank and that substance; or
 - (ii) alternative measures are taken to the satisfaction of the Director or, in the case of a New Zealand ship, warship or other ship of the New Zealand Defence Force outside New Zealand, the port state authority, to remove the cargo residues from the ship provided to the quantities specified in rule 141.6; and
 - (b) the tank washings are discharged to a reception facility at—
 - (i) the port or terminal at which the substance was unloaded; or
 - (ii) another port or terminal with a suitable reception facility if the owner or the master has received confirmation in writing from that facility operator that that facility is available and is adequate for such a purpose.
- (3) Notwithstanding sub-rules (1) and (2), if a high viscosity or solidifying category Y substance is unloaded from a ship, the owner and the master must ensure that—
 - (a) the tank is pre-washed in accordance with the procedure specified in Appendix 6 to Annex II of MARPOL; and
 - (b) the tank washings are discharged to a reception facility until the tank is empty.
- (4) Any water subsequently introduced into a tank, from which tank washings have been discharged in accordance with this rule, may be discharged into the sea outside the special area in accordance with the conditions specified in sub-rules (1)(a), (b), and (c), except that a ship constructed before 1 January 2007 need not comply with the condition in sub-rule (1)(b) in the case of residues of a category Z substance.
- (5) Any ballast water subsequently introduced into a tank, from which tank washings have been discharged to the extent that the ballast contains less than 1 ppm of the substance previously carried may be discharged into the sea without regard to the discharge rate, ship's speed and discharge outlet location, provided that the ship is not less than 12 nautical miles from the nearest land and in a depth of water of not less than 25 metres.
- (6) If cargo residues have been removed from a tank that contained noxious liquid substances using the ventilation procedures prescribed by the ship's Procedures and Arrangements Manual, any water subsequently introduced into that tank may be discharged without reference to the discharge controls in this Part.

140.7 Controls on discharge of washing agents or additives

- (1) The discharge of any cleaning agent containing a noxious liquid substance used as a medium to wash a cargo tank must be made in accordance with the rules applicable to that substance as if that medium was carried as a cargo.
- (2) The discharge of any cleaning agent containing a mineral oil used as a medium to wash a cargo tank must be made in accordance with the applicable rules under Part 120 as if that medium was carried as a cargo.
- (3) Small amounts of cleaning additives added to water to wash a cargo tank may be discharged under the requirements applicable to that tank and the previous cargo carried provided that in the case of additives containing category X substance components, those components are readily biodegradable and present in a total concentration of less than 10 percent of the cleaning additive.

Uncategorised liquid substances

140.8 Carriage of uncategorised liquid substances in bulk

The owner and the master must—

- (a) notify the Director of any proposal to carry any uncategorised liquid substance in bulk from a New Zealand port, offshore terminal, or offshore installation under New Zealand jurisdiction; and
- (b) ensure that no such substance is carried until the owner or master receives notification of a provisional assessment of the liquid substance from the Director.

140.9 Provisional assessment and categorisation of liquid substances

The Director may provisionally assess and categorise any liquid substance that is not already categorised as a noxious liquid substance or a category OS substance by the IMO, as a noxious liquid substance or a category OS substance for the purposes of any rule.

Reporting a discharge, a probable discharge or damage, failure or breakdown of a ship

140.10 Duty to report a discharge or escape of a noxious liquid substance

- (1) The owner and the master of a ship must, in accordance with section 227 of the Act and rule 140.13, report every discharge or escape of a noxious liquid substance from that ship into the sea within New Zealand jurisdiction that is in breach of this Part or section 15B of the Resource Management Act 1991.
- (2) If a ship is involved with marine operations within New Zealand continental waters, the person in charge of, and the person carrying out, those operations must, in accordance with section 227 of the Act and rule 140.13, report every discharge or escape of a noxious liquid substance into those waters.
- (3) The master of any New Zealand ship, warship or other ship of the New Zealand Defence Force that is outside New Zealand jurisdiction must, in accordance with rule 140.13, report every discharge or escape of a noxious liquid substance into the sea that is in breach of this Part to—
 - (a) the Director; and
 - (b) the nearest coastal state.

140.11 Duty to report a probable discharge or escape of a noxious liquid substance

- (1) The master of a ship must, in accordance with section 228 of the Act and rule 140.13, report every probable discharge or escape of a noxious liquid substance into the sea within New Zealand jurisdiction.
- (2) If a ship is involved with marine operations within New Zealand continental waters, the person in charge of, and the person carrying out, those operations must, in accordance with section 228 of the Act and rule 140.13, report every probable discharge or escape of a noxious liquid substance into those waters.
- (3) The master of any New Zealand ship, warship or other ship of the New Zealand Defence Force that is outside New Zealand jurisdiction must, in accordance with rule 140.13, report every probable discharge or escape of a noxious liquid substance into the sea to—
 - (a) the Director; and
 - (b) the nearest coastal state.

140.12 Duty to report damage, failure or breakdown of a ship

- (1) The master of a ship of 15 metres in length and more must, in accordance with section 228 of the Act and rule 140.13, report any damage, failure or breakdown that—

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- (a) affects the safety of the ship;¹ or
 - (b) results in impairment of the safety of navigation.²
- (2) If a ship of 15 metres in length and more is involved with marine operations within New Zealand continental waters, the person in charge of, and the person carrying out, those operations must report any damage, failure or breakdown that—
- (a) affects the safety of the ship;¹ or
 - (b) results in impairment of the safety of navigation.²
- (3) The master of any New Zealand ship, warship or other ship of the New Zealand Defence Force that is outside New Zealand jurisdiction must, in accordance with rule 140.13, report any damage, failure or breakdown that affects the safety of the ship or results in impairment of the safety of navigation to—
- (a) the Director; and
 - (b) the nearest coastal state.

140.13 Reporting procedure

Every report required in accordance with rule 140.10, 140.11 or 140.12 must—

- (a) be made by the fastest telecommunications channels available and with the highest possible priority to the appropriate authority in the nearest coastal state; and
- (b) be made in accordance with the Annex and Appendix to the IMO Assembly Resolution A.851(20)³ as revised by the IMO from time to time; and
- (c) include—
 - (i) the identity of the ships involved;
 - (ii) the time, type and location of the incident;
 - (iii) the quantity and type of noxious liquid substance involved; and
 - (iv) any assistance and salvage measures proposed or underway; and
- (d) be supplemented as necessary and when possible, and information concerning further developments must be provided; and
- (e) requests from affected states for additional information must be complied with as fully as possible.

140.14 Rendering assistance or undertaking salvage of a ship

If any ship is engaged in, or requested to engage in, an operation to render assistance to or undertake salvage of another ship that—

- (a) is involved in a discharge or escape or a probable discharge or escape of a noxious liquid substance into New Zealand jurisdiction; or
- (b) sustains damage, failure or breakdown that affects the safety of the ship or results in impairment of the safety of navigation, the master must—
 - (i) report particulars of action(s) undertaken or planned to the nearest coastal state; and
 - (ii) keep the coastal state informed of developments.

¹ Including collision, grounding, fire, explosion, structural failure, flooding, and cargo shifting.

² Including failure or breakdown of steering gear, propulsion plant, electrical generating system, and essential shipborne navigational aids.

³ General Principles for Ship Reporting Systems and Ship Reporting Requirements, including Guidelines for Reporting Incidents Involving Dangerous Goods, Harmful Substances and/or Marine Pollutants.