



Ministry of Transport
TE MANATŪ WAKA

Maritime Transport Act 1994

Maritime Rules

PART 90 AMENDMENT RULES 2010

Pursuant to sections 34 and 36 of the Maritime Transport Act 1994
I, Steven Joyce, Minister of Transport, hereby make the following maritime
rules.

Signed at Wellington

this *23rd* day of *February* 2010

by STEVEN JOYCE



Minister of Transport

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Status Quo and Problem

Maritime Rule Part 90 sets national standards for pilotage. Following the publication of the NZ Port and Harbour Marine Safety Code in 2005, there has been a major review of Part 90. A draft amendment has been prepared following public consultation and is expected to be signed by the Minister in late 2010.

Part 90 defines the boundaries of the pilotage areas in New Zealand and sets the thresholds (generally a ship's gross tonnage or length) for compulsory pilotage for each area. Currently, Rule 90.5 requires that all ships navigating within a compulsory pilotage area and which exceed the threshold must take a pilot. However, where the ship is not an oil tanker, chemical tanker or gas (LPG) carrier, a master may obtain a master's pilotage exemption certificate (PEC) under rule 90.10.

While it is possible to seek an exemption from any maritime rule under section 47 of the Maritime Transport Act (the Act), rule 90.5(4) expressly forbids the granting of a section 47 exemption in respect of tankers. Hence all tankers must carry a pilot within a pilotage area, without exception.

The revised rule under development relaxes this requirement and allows a section 47 exemption to be sought in respect of oil tankers of less than 5,000 tonnes capacity, whose primary function is ship-to-ship bunkering within a pilotage area. The rationale behind the change is that, provided a strong case can be made, consideration of relaxing pilotage requirements for the particular case of bunkering vessels should not be excluded. As the heavy fuel oils which large ships bunker are of low volatility, there is a low likelihood of fire, and hence the impacts of spillage are predominantly environmental in nature. It was not considered appropriate to relax pilotage requirements for chemical tankers or gas (LPG) carriers, due to the more hazardous nature of their cargo.

The proposed change received broad support during public consultation and there were few submissions opposing it. It was originally expected that the revised Part 90 would be in place by mid-2009, however its completion has been delayed while a number of other concerns raised during the consultation process are addressed.

The operator of a bunker barge in Auckland has recently introduced a new, larger vessel for this service and is seeking an exemption under section 47 to operate without a pilot. The present rule does not allow the Director to consider such section 47 exemptions in respect of oil tankers. Hence the operator will be forced to use a pilot until such time as the revised Part 90 is in place, an exemption can be sought and if appropriate, granted (which is by no means certain).

Objectives

The objectives of Part 90 are to –

- maintain the contribution of pilotage to safety of navigation, protection of the marine environment, and efficiency of seaborne commerce;
- set minimum national standards while enabling port-specific risks to be addressed;
- provide a licensing regime for pilots and pilotage exempt masters within the maritime document provisions of the Maritime Transport Act 1994;

- recognise and support industry best practice;
- ensure that the provision of pilotage services is sustainable and responsive to future demands, changes in technology and best practice.

Options

In respect of this amendment, there are two options:

1. Maintain the status quo, in which case the operator will need to wait for the revised Part 90 to come into effect (late 2010) before an exemption from pilotage can be considered by the Director of Maritime New Zealand.
2. Introduce an amendment rule allowing an exemption to be considered sooner.

Maritime New Zealand's legal advice has been that because rule 90.5(4) explicitly disallows the granting of any section 47 exemptions in respect of oil tankers, there is no other mechanism by which a relaxation of the requirement to take a pilot can be either given by the regulator or obtained by an operator.

Preferred Option

The preferred option is to introduce a fast track amendment containing the change previously proposed in the revised Part 90. It is assumed that this amendment can be given effect within a short timeframe (less than three months).

The risks associated with this change are minimal. The amendment is bringing forward a change already proposed and consulted upon and which Maritime New Zealand supports. The section 47 exemption provides a transparent and robust mechanism whereby the Director can consider applications against criteria laid down in the Act. There is no obligation on the Director to grant an exemption and there is no right of appeal. The Director can apply conditions to any exemption granted, and exemptions would usually have a limited period of validity.

If this change is not progressed, the Auckland bunkers operator may consider themselves to be disadvantaged until such time as the full revised Part 90 comes into force, and may incur additional costs for taking a pilot and operating restrictions due to pilot availability. However, in taking that view, there is an inherent assumption that they can meet the section 47 criteria and that an exemption *will* be granted.

From Maritime New Zealand's perspective, if this change is not progressed, it will just delay the introduction of the provision, and hence the consideration of an application.

If this change is progressed and an exemption is granted, there will be an expectation that that exemption will continue when the revised Part 90 comes into force. In that case, consideration will need to be given as to how the exemption is carried forward in the future.

Extent of Consultation

Public consultation

On 3 November 2007, Maritime New Zealand published in each of the daily newspapers in the four main centres of New Zealand a notice inviting comments on the proposed amendments to Maritime Rule Part 90 replacing the current rule. A notice was also published in the *New Zealand Gazette* on 1 November 2007, with electronic and hard copies being sent to around 130 interested parties. Comments on the draft Part were requested by 19 December 2007.

58 submissions were received with at least 13 addressing the specific provision under draft rule 90.5(3) relating to granting of exemptions under section 47 in respect of oil tankers.

Submitters almost universally supported the change and some supported the application of the pilotage exemption regime to bunkering operations. A number of submitters requested that the definition of “bunker barge” in the rule be clarified and also that a size limit (length or tonnage) be applied to any such vessels covered by this provision.

One submitter, while supporting the provision of pilotage exemptions in respect of bunker barges, questioned whether the tacit endorsement for ship-to-ship bunkering of persistent oil given by the proposed change was consistent with the long term improvement of harbour safety. However, the section 47 process allows each case to be considered on its own merits.

Further targeted consultation

Following a review of the initial submissions and further informal consultation, and in the light of other issues with interpretation of the current rule that arose subsequently, the draft Part 90 was substantially revised. The provision relating to section 47 exemptions for oil tankers was also refined (now rule 90.7(3)). A further round of targeted consultation was carried out in June 2009 (not a public consultation) with a revised draft and Invitation to Comment being issued to 95 interested parties including all the original submitters.

Maritime New Zealand does not support the issue of pilotage exemption certificates for bunkering vessels but considers that the section 47 process, where the granting of an exemption is considered on a case by case basis but remains discretionary, best serves the objectives of Part 90. The revised draft reflected this approach. The term “bunker barge” was removed to avoid any confusion, making it clear that such a vessel is actually an oil tanker, and an upper limit of the size of tanker for which an exemption could be considered was included.

A total of 35 submissions were received as a result of this consultation. Submissions are currently being reviewed, discussions with submitters are ongoing and a revised draft is being prepared.

Only one submission was received on the revised section 47 provision for oil tankers. The submitter, representing the operators of the new Auckland bunkering vessel *Awanuia*, wished to ensure that the scope of any exemption able to be granted under the new provision should be sufficient to be able to

exempt the master of *Awanuia* from carrying a pilot during all operations within a pilotage area, including:

- Entering and leaving a pilotage area;
- All movements within a pilotage area including berth-to-berth and berth-to-ship movements;
- When berthed alongside a ship during bunkering; and
- Entering, calling at and departure from Marsden Point to load the oil cargo.

The proposed provision does allow for all the above facets of *Awanuia's* operation to be covered by a section 47 exemption. However, each application and each operation within a given application will be considered on its own merits taking into account the risks to safety associated with each as well as the stated section 47 criteria. The nature of section 47 process is discretionary and the Director is not obliged to grant an exemption in whole or in part.

Consultation on this amendment

The amendment rule proposed pre-empts the introduction of the full revised rule, to enable a section 47 exemption to be sought by the operator of *Awanuia* ahead of the completion of that rule. The changes proposed in the amendment rule are substantially the same as those consulted upon in the second round, therefore no further formal consultation has been carried out. For clarity, a definition of oil tanker has been added to the rule, which is the same as that in section 342 of the Act.

Rules subject to Regulations (Disallowance) Act 1989

Maritime 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.

1 Entry into Force

These rules come into force on 1st April 2010

2 Rule 90.3 Definitions

Rule 90.3 is amended by inserting the following definition-

““**Oil tanker**” means a ship carrying oil in bulk as cargo:”

3 Rule 90.5 Compulsory pilotage

Rule 90.5(4) is revoked.

For rule 90.5(4) substitute the following-

- (4) No exemption from this rule may be granted to a person under section 47 of the Act in respect of an oil tanker, unless –
 - (a) the primary operational function of that tanker is ship-to-ship bunkering within a pilotage area; and
 - (b) that tanker is not capable of carrying more than 5,000 tonnes of oil in total (including cargo and its own fuel).
- (5) No exemption from this rule may be granted to a person under section 47 of the Act in respect of a chemical tanker or gas carrier.