DISALLOWABLE INSTRUMENT

Ministry of Transport
TE MANATŪ WAKA

Maritime Transport Act 1994

Marine Protection Rules

Marine Protection (Parts 102 and 131) Amendment Rules 2020

Pursuant to sections 387 and 390 of the Maritime Transport Act 1994 I, Julie Anne Genter, Associate Minister of Transport, having had regard to the criteria for making marine protection rules in section 392 of the Maritime Transport Act 1994, hereby make the following marine protection rules.

Signed at Wellington

This 21st day of April 2020

By Hon JULIE ANNE GENTER

Associate Minister of Transport

Contents

Objective

The objective of the Marine Protection (Parts 102 and 131) Amendment Rules 2020 is to:

1. clarify and strengthen the requirements on owners of regulated offshore installations to hold insurance or other financial security in relation to the clean-up and compensation aspects of their liabilities towards property damage resulting from a significant oil spill:

2. clarify and strengthen the requirements on owners of regulated offshore installations to be in a financial position (usually by holding insurance or other financial security) to implement the marine oil spill contingency plan (OSCP) approved by the Director of Maritime New Zealand (the Director).

Part 102 amendments

The amendments to Part 121 build on changes to the Maritime Transport Act 1994 (the Act) made via the Maritime Transport (Offshore Installations) Amendment Act 2019, which allows marine protection rules to provide for more specific requirements for insurance and other financial security to address insurability issues identified in the regime.

These amendments give effect to Cabinet decisions by clarifying and strengthening requirements on owners of offshore installations to hold financial security proportionate to the risk posed by their operations. In particular the amendments enable:

a. the introduction of a scaled framework, relating to the estimated cost of a credible worst case spill for an installation, reflecting factors influencing the pollution damage resulting from an oil or gas spill, including: geology; depth of water; and type of hydrocarbon be introduced into the environment;

b. the upper limit of the scaled framework to be $1.2 billion, reflecting the highest modelled cost of a spill; and

c. owners of offshore oil and gas installations to be able to meet assurance obligations using insurance policies, or other financial security, that covers the key risks associated with their operations and are consistent with internationally available best practice policy wording.

Part 131 amendments

Under Marine Protection Rule Part 131 Offshore Installations – Oil Spill Contingency Plans and Oil Pollution Prevention Certification, a person must not operate an offshore installation without the Director's written approval of an oil spill contingency plan.

The amendments to Part 131 strengthen the requirements on owners of regulated offshore installations to be in a sound financial position. For the Director to approve an OSCP, not only must the OSCP support an efficient and effective response to an oil spill, but the operator must also have the ability and financial resources to implement the plan. The Director must take into account the financial resources available to the applicant and any cover for first party claims that the operator has under any contract of insurance or other financial security.

Rules are disallowable

Marine protection rules are disallowable instruments under the Legislation Act 2012. 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 that Act.

Extent of consultation

Formal consultation on the proposed Marine Protection (Parts 102 and 131) Amendment Rules 2020 began on 3 September 2019 (following the closure of public submissions on the Maritime Transport (Offshore Installations) Amendment Bill) and concluded on 4 October 2019. The Ministry of Transport (the Ministry) received six submissions during this period.

The public were welcomed to comment on the draft rules via notification on the Ministry and Maritime New Zealand websites. Copies of the draft rules were made publically available during the consultation and Select Committee process relating to the Maritime Transport (Offshore Installations) Amendment Bill. The purpose was to allow stakeholders to see how the proposed regime amendments would work together as a package. A summary of submissions is provided at the end of these rules.

Subsequently Ministry officials undertook targeted consultation with oil and gas stakeholders to ensure the transitional arrangements covered activity that was exploratory, and allowed planned activity (i.e. not exploratory and less risky), to operate under an existing certificate of insurance until the certificate of insurance lapsed or the one year anniversary of the date the amended marine protection rules came into force (the sooner of the two).

Entry into force

The Marine Protection (Parts 102 and 131) Amendment Rules 2020 come into force on 27 May 2020.

Amendments to Part 102: Certificates of Insurance

1 Rule 102.2 Definitions

In rule 102.2 insert the following definitions in their appropriate alphabetical order:

"**EED 8/86** means the standard form wording for energy exploration and development insurance developed by the Joint Rig Committee in 1986:

Joint Rig Committee means the committee known as the Joint Rig Committee, comprising members of the Lloyd's Market Association and the International Underwriting Association of London:".

2 Rule 102.7 Application

In rule 102.7 replace "102.8 and 102.9" with "102.8 to 102.9".

3 Rule 102.8 Application for and issue or recognition of certificate of insurance

Replace 102.8 with:

"102.8 Application for issue or recognition of certificate of insurance

The owner of a regulated offshore installation to which this rule applies must ensure that every application for the issue or recognition of a certificate of insurance for that regulated offshore installation is—

(a) submitted to the Director in accordance with section 269 of the Act; and

(b) accompanied by such evidence of the existence of the contract of insurance or other financial security as the Director specifies; and

(c) accompanied by such information as may be reasonably required by the Director to determine whether the requirements of rule 102.8A(1)(a) are met in respect of each offshore installation for which a certificate of insurance is applied for including, but not limited to:

(i) the applicant's planned work programme during the period to which the certificate of insurance will apply:

(ii) the location of the installation to be covered by a certificate of insurance:

(iii) the nature of the hydrocarbon being explored or mined:

(iv) if the owner has, for the purpose of consideration under rule 102.8A, provided with its application a contract or contracts of insurance or other financial security for an amount that is less than $1.2 billion—

(A) the total volume of hydrocarbon likely to be released in the event of a discharge of hydrocarbons; and

(B) the potential impact of hydrocarbon on the shoreline in the event of a discharge of hydrocarbons:

(v) the applicant's oil spill contingency plan under Marine Protection Rules Part 131.

102.8A Decision on application for issue or recognition of certificate of insurance

(1) The Director must issue or recognise a certificate of insurance for a regulated offshore installation to which this rule applies where he or she is satisfied that—

(a) the contract or contracts of insurance or other financial security in respect of the regulated offshore installation (or if more than one installation, for each installation) will provide insurance or other financial security—

(i) for an amount—

(A) of $1.2 billion or more; or

(B) not less than the amount determined according to Appendix 5 where the scores for the installation are calculated on the basis of a credible worst case scenario; and

(ii) that is of a kind and scope suitable to meet at least the following types of the owner's potential liability under Part 26A of the Act:

(A) liability, in relation to the discharge or escape of a harmful substance or the dumping of any waste or other matter from the installation, for the costs of removing, containing, and rendering harmless the harmful substance, waste, or other matter under section 385B of the Act; and

(B) liability, in relation to the discharge or escape of a harmful substance or the dumping of any waste or other matter from the installation, for pollution damage to property under section 385C of the Act; and

(b) the contract or contracts of insurance or other financial security is, or are, governed by New Zealand law and enforceable by a court in New Zealand; and

(c) 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 or contracts of insurance or other financial security taking into account the rating, if any, of that insurer or provider of financial security under the Insurance (Prudential Supervision) Act 2010 applicable to that insurer or other person; and

(d) the insurer or provider of financial security complies with any provisions of the Insurance (Prudential Supervision) Act 2010 applicable to that insurer or other person.

(2) For the purpose of rule 102.8A(1)(a)(i)(B), the Director—

(a) when determining scores A, B, and C of Appendix 5, must take into account, where applicable,—

(i) the location of the exploration or mining activity; and

(ii) the total volume of hydrocarbon likely to be released in the event of an oil spill; and

(iii) the potential impact of hydrocarbon on the shoreline in the event of an oil spill; and

(iv) the nature of the hydrocarbon being explored or mined; and

(v) relevant technical information, data, advice and guidance; and

(b) may 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.

(3) If any contract of insurance or other financial security includes cover for first party claims by the operator in the event of loss of well control, the Director may take that contract into account under rule 102.8A(1)(a)(i) only to the extent of the residual third party cover that the Director determines is provided by the contract.

(4) If an amount of insurance or other financial security is expressed in a contract of insurance or other financial security in a currency other than New Zealand currency, the Director may for the purpose of rule 102.8A(1)(a)(i), convert the amount into New Zealand currency on the date on which the Director makes a decision under this rule at a fair rate of exchange as determined by the Director.

(5) For the purpose of rule 102.8A(1)(a)(ii), the Director may, without limitation, take into account the following in the contract or contracts of insurance or other financial security in respect of the regulated offshore installation—

(a) any deductible, excess, or equivalent self-insured retention:

(b) any partial interest clause:

(c) any other insurance clause:

(d) any warranties, conditions, or exclusions:

(e) the possible effect of the owner's breach of its duty of utmost good faith:

(f) any choice of law or jurisdiction clause:

(g) any pay to be paid clause.

(6) Without limiting rule 102.8A(1)(a)(ii), the Director may treat the requirements of rule 102.8A(1)(a)(ii) as met if the Director is satisfied that the contract or contracts of insurance or other financial security provides—

(a) in respect of liability of a type prescribed in rule 102.8A(1)(a)(ii) arising from an out of control well, cover at least equivalent to that specified in Section C of EED 8/86; and

(b) in respect of liability of a type prescribed in rule 102.8A(1)(a)(ii) arising from a pipeline, storage facility, oil bunker or other possible source that is not a well, cover at least equivalent to that specified in Appendix 6.

102.8B Particulars of certificate of insurance issued by Director

Every certificate issued by the Director for a regulated offshore installation to which this rule applies must be in the form specified in Appendix 2 and must contain the following particulars:

(a) the name of the owner or owners of the regulated offshore installation and the principal place of business of the owner or, as the case may be, each owner; and

(b) the nature of the contract or contracts of insurance or other financial security for the regulated offshore installation; and

(c) the name and principal place of business of the, or each, insurer or other person providing financial security for the regulated offshore installation and the place or places of business where the insurance or other financial security is established; and

(d) the period of validity of the insurance or other financial security in respect of the regulated offshore installation; and

(e) the period of validity of the certificate of insurance, which must not exceed a period of 12 months.

(f) any conditions imposed by the Director under section 387(5) of the Act.

4 Definitions for transitional provisions

In this rule and rules 5 to 7,—

commencement date means the date on which these amendment rules come into force:

exploration drilling for petroleum has the meaning in regulation 3 of the Exclusive Economic Zone and Continental Shelf (Environmental Effects—Non-notified Activities) Regulations 2014:

exploration installation means a regulated offshore installation that undertakes or, in the case of an application for a certificate of insurance, will or may undertake, any exploration drilling for petroleum as a non-notified activity:

non-notified activity means an activity classified by regulation 5 of the Exclusive Economic Zone and Continental Shelf (Environmental Effects-Non-notified Activities) Regulations 2014 as a non-notified activity.

5 Transitional provision: existing certificates

(1) Subject to subclause (3), nothing in these amendment rules affects the validity of a certificate of insurance that was in effect immediately before the commencement date.

(2) Subclause (3) applies to a certificate of insurance that was in effect immediately before the commencement date for an exploration installation.

(3) Unless earlier revoked or surrendered, the certificate expires on the earlier of—

(a) the expiry date specified by the Director for the certificate in accordance with rule 102.8(3)(e) (as it was before the commencement date); or

(b) 31 July 2020.

6 Transitional provision: applications for certificates

(1) This clause applies if an application for a certificate of insurance is submitted (but not decided) before the commencement date.

(2) The applicant must, by notice to the Director, elect whether the Director considers the application under Part 102 as it was immediately before the commencement date or as it is after the commencement date.

(3) If the applicant elects to have the application considered under Part 102 as it is after the commencement date the applicant must provide to the Director any further information necessary in order for the application to meet the requirements of rule 102.8 (as it is after the commencement date).

7 Applications considered under Part 102 as it was immediately before commencement date

(1) This clause applies if an application referred to in rule 6(1) is considered under Part 102 as it was immediately before the commencement date.

(2) The period of validity of any certificate of insurance issued for an exploration installation must be the shorter of—

(a) a period for which the certificate may be issued in accordance with rule 102.8(3)(e) (as it was before the commencement date); and

(b) the period remaining from the date of issue of the certificate until the close of 31 July 2020.

(3) The period of validity of any certificate of insurance for a regulated offshore installation that is not an exploration installation must be the shorter of—

(a) a period for which the certificate may be issued in accordance with rule 102.8(3)(e) (as it was before the commencement date); and

(b) the period remaining between the date of issue of the certificate and the first anniversary of the commencement date.

8 Appendix 5 added

Add the Appendix 5 set out in Schedule 1.

9 Appendix 6 added

Add the Appendix 6 set out in Schedule 2.

10 Revocation

The Marine Protection Rules Part 102 Amendment 2017 is revoked.

Amendments to Part 131: Offshore Installations – Oil Spill Contingency Plans and Oil Pollution Prevention Certification

11 Amendment of rule 131.24

In rule 131.24 replace subrule (1) with:

(1) The Director may approve a proposed oil spill contingency plan for a period not exceeding 3 years if the Director is satisfied that—

(a) the proposed oil spill contingency plan complies with the requirements of the Schedule; and

(b) the applicant will have the ability to implement the plan taking into account the financial resources available to the applicant and any cover for first party claims that the applicant has [as operator] under any contract of insurance or other financial security.

Schedule 1 New Appendix inserted

r 8

Appendix 5

Scaled framework

r 102.8A(1)(a)(i)(B) and (2)(a)

Score A: Total length of shoreline oiled							
Less than 1 km	1 km or more but less than 200 km	200 km or more but less than 400 km	400 km or more but less than 600 km	600 km or more but less than 800 km	800 km or more but less than 1,000 km	1,000 km or more but less than 1,200 km	1,200 km or more
0 points	1 point	2 points	3 points	4 points	5 points	6 points	7 points

Score B: Total volume reaching shore									
less than 1 bbl	1 or more but less than 5,000 bbls	5,000 or more but less than 40,000 bbls	40,000 or more but less than 80,000 bbls	80,000 or more but less than 120,000 bbls	120,000 or more but less than 160,000 bbls	160,000 or more but less than 200,000 bbls	200,000 or more but less than 240,000 bbls	240,000 or more but less than 280,000 bbls	280,000 bbls or more
0 points	1 point	2 points	3 points	4 points	5 points	6 points	7 points	8 points	9 points

Score C: Hydrocarbon type	
Dry gas 0 points	Other 1 point

Total Score		
Score (total A+B+C)	**Band**	**Insurance or other financial security requirement**
0	0 (dry gas)	NZ$25 million
1	1	NZ$50 million
2-3	2	NZ$100 million
4–5	3	NZ$200 million
6–7	4	NZ$300 million
8–9	5	NZ$450 million
10–11	6	NZ$600 million
12–13	7	NZ$800 million

14–15	8	NZ$1 billion
16–17	9	NZ$1.2 billion

Note: “bbl” is an abbreviation of the oil industry term “blue barrel”, indicating a container holding 42 gallons of oil

Schedule 2 New Appendix inserted

r 9

Appendix 6

Minimum requirements for cover for pollution arising other than from out of control well

r 102.8A(6)

For the purpose of rule 102.8A(6)(b), the minimum cover is the cover that indemnifies the insured whether or not the well goes out of control, for all sums, costs, or expenses in respect of an event of insured damage to a pipeline, storage facility, oil bunker, or other possible source that is not a well, that would be covered under Section C of EED 8/86 in the case of an out of control well, where the event—

(a) was not intended or expected by the insured; and

(b) occurs during the period of insurance; and

(c) is discovered by the insured within 30 days of it arising; and

(d) is reported to the insurer within 60 days of its discovery.

Summary of Submissions

(This text does not form part of the rules. It provides details of the consultation undertaken in making these amendment rules)

1. Consultation on Part 102 and Part 131 occurred between 3 September 2019 and 4 October 2019. The Ministry received six submissions during this period, all of which were in support of strengthening and clarifying the financial security regime for offshore installations.

2. The following key themes were raised in submissions, and are explored in detail from paragraph 14 of this briefing:

    - whether or not financial security should cover all of an owner's liabilities under the Maritime Transport Act 1994 (the Act);
    - ensuring that internationally available, best practice insurance policies can be used;
    - whether the upper limit of $1.2 billion for the scaled framework is appropriate; and
    - whether the scope of the financial assurance extends to cover decommissioning and abandonment of installations.

3. A number of comments were also submitted on minor and technical issues, such as whether insurance policies can be provided in US currency, and clarifying wording to ensure that joint venture arrangements can be undertaken by joint owners of installations.

Theme One: Scope of liabilities that financial assurance will be provided to cover

A submitter did not agree that financial assurance only be required for a subset of all liabilities

4. A submitter raised that Part 102 should require financial protection for all liabilities under the Act.

5. This submitter raised concerns that insolvency of owners could be expected in the event of a major spill. This submission also raised that if an owner became insolvent, the financial assurance would be the only means of recompense for the Crown and impacted third parties. Limiting the scope of the financial assurance would leave the Crown and third parties exposed to bear the costs of any uninsured losses.

6. The submitter also outlined that under the current regime, facility owners have obtained endorsements to their policies that cover all liabilities under the Act, and others have obtained parent company guarantees for those liabilities.

7. In its assessment of how New Zealand compares to other jurisdictions, the submitter raised that:

    - in the United States (US), the offshore oil and gas industry has collaborated to put in place financial protections that (unlike insurance) are guaranteed to

respond to oil liabilities. For example, in the US, a fund has been established by industry to provide a guaranteed fund of up to USD 1 billion to meet oil spill claims. The submitter queried why this type of arrangement is not in place in New Zealand; and

- to obtain an offshore oil and gas licence in the United Kingdom (UK), owners of offshore installations must demonstrate their financial capability to meet all liabilities, including for indirect damages from an oil spill. The submitter alluded that this condition is not a deterrent to operators and that there appears to be no shortage of applicants for licences in the UK. The submitter does not think the rules should reduce the ambit of minimum financial protections by excluding protection against lost profit claims.

Theme One: Ministry response

Cabinet is being asked to make a trade-off

8. As noted in the briefing provided to your Office in April 2019 (OC190187 refers), the key trade-off that the proposed regime makes is between:

    - requiring third party assurance for all pollution risks, but subject to an inadequate amount (around $27.7 million) (the current regime); or

    - requiring third party assurance for the key risks and costs, at a level that can be expected to cover those risks and costs (up to $1.2 billion) (the new proposed regime).

9. Under the current regime, financial assurance is being provided to cover all liabilities. The Ministry notes however, that this cover is subject to a minimum of $27.7 million. This would be too low to cover claims from a significant spill. Domestic and international insurance stakeholders have advised that insurance will not be provided for all liabilities at the higher limits proposed under Part 102 (up to a maximum $1.2 billion). Internationally available insurance policies are the most common form of financial assurance provided in this sector.

The Ministry has looked at how other jurisdictions implement offshore oil and gas assurance regimes

10. While other jurisdictions have taken approaches suited to their size and context, it is apparent that the scope and scale of the regime proposed in New Zealand is very similar to a number of other jurisdictions.

11. The US has a liability fund that can provide up to US $1 billion for any one pollution incident, including up to US$500 million for the initiation of natural resource damage assessments and claims in connection with any single incident. The main uses of the fund are:

    - State access for removal actions;

    - payments to Federal, State, and Indian tribe trustees to carry out natural resource damage assessments and restorations;

    - payment of claims for uncompensated removal costs and damages; and

    - research and development, and other specific appropriations.

12. The fund covers pure economic loss claims, when the set amount of financial security held by an owner of an offshore installation is exhausted after a spill.

13. The Ministry advises that implementing a fund similar to the quantum held in the US is not practicable for New Zealand's size and context. This is largely due to levels of production and company sizes. It is unlikely New Zealand operators would be able to contribute the same amounts to a New Zealand-based fund. Implementing a fund of this nature would also take time and would impact the speed at which the new regime could be brought into force.

14. The Ministry has also analysed the UK regime, and found, that the proposed New Zealand regime is similar. Both regimes:

    - impose unlimited liability on owners of offshore installations;
    - test financial fitness at the point of permitting; and
    - do not require third-party-provided financial security to cover all liabilities of the owner (i.e. both rely on internationally available insurance policy wording based on Energy Exploration and Development insurance, known as EED 8/86).

15. In some respects, the Ministry considers that New Zealand's proposed regime is stronger because the financial security required in New Zealand, while scaled and risk-based, has a much higher maximum quantum than in the UK.[1] Further, in New Zealand, the owner of the regulated offshore installation is required to obtain a certificate of insurance from the Director, which is issued after Maritime NZ has reviewed the assurance to be provided. In the UK, the regulator usually accepts a declaration from the owner that they have the required cover.

The Ministry does not recommend any amendments to Part 102 based on concerns raised by the submitter on this matter

16. Internationally available best practice insurance policies are the most common means of financial security used in this sector. To ensure these types of policies are available at the higher amounts contemplated under the scaled framework from what is set out in the Act, the scope of liabilities financial security needs to cover has to be limited -to what is able to be provided through the international insurance market.

17. Nothing in Part 102 or in the Bill alters an owner's unlimited liability under the Act in the event of an oil spill.

18. The Ministry does not propose amending Part 102 to expand the liabilities which financial security is required to cover.

Theme Two - Ensuring internationally available best practice policies can be used

Industry sought further amendments to Part 102 to ensure internationally available insurance policies will be accepted

19. Some industry submitters would like Part 102 to be clear that if market standard insurance is used (like EED 8/86), the Director must accept it. These submitters are concerned that by allowing the Director to assess the insurance or other

[1] US$250 million per installation.

financial security, the Director may not accept market standard insurance products.

20. This would have implications on the Director's ability to apply discretion when assessing financial security during the application process for an owner to obtain a certificate of insurance.

21. EED 8/86 provides standard form policy wording that is incorporated into insurance policies. In addition to standard form policy wording, insurance contracts also include terms, which are negotiated and nuanced according to the specifics of an operation.[2] There is always a risk, therefore, that clauses may be included in a policy that affects the scope of the insurance, even when standard form policy wording is used. The meaning of industry standard terms can also change over time with the market.

Theme Two: Ministry response

22. The Ministry notes the concerns raised by industry around the Director's discretion in determining if a policy is acceptable. Standard practice, however, is that while policies may all incorporate standard form wording, they are distinct from one another because they are developed to cover details specific to an operation. The Ministry considers that allowing the Director to assess the insurance or other financial security is a necessary part of the regime.

23. Altering the Director's discretionary powers could result in the regime not being as robust as intended. This could occur, for example, if there were exclusions included in insurance policies, but which could not be considered by the Director. It would also be an issue if the scope of standard market insurance changes in the future.

24. The rationale for the current Part 102 wording is to: ensure insurance policies provide a scope of coverage which is at least equivalent to EED 8/86; and allowing the Director to consider any additional clauses included in the policy which may impact the ability to access the policy should an oil spill occur.

The Ministry does not recommend any amendments to Part 102 in light of these comments

25. The Ministry considers that the Director's discretion needs to be maintained. This will ensure the regime retains flexibility, for example, if the international insurance market for this sector change. The Ministry does not recommend amending Part 102 to limit the Director's ability to apply discretion by requiring internationally available insurance policies to be automatically accepted.

Theme Three: The $1.2 billion upper limit of the scaled framework

A submitter did not think $1.2 billion is a sufficient upper limit

26. A submitter outlined that there is a fundamental coverage gap created by the proposed upper limit of the scaled framework in Part 102. The submitter reinforced this point by referring to the Deepwater Horizon oil spill of 2010, which cost between US $20 and $60 billion. The submitter does not believe there is justification for an upper limit of anything less than US $20 billion.

[2] Types of operation can range from the type of hydrocarbon and infrastructure used to drill and extract oil and gas.

27. This submitter raised concerns that the $1.2 billion cap excessively relies on the Navigatus modelling report. This submitter asserted that the Navigatus modelling report does not take into account environmental costs which can be substantial. This submitter referenced a study which estimated these at US$17 billion from the Deepwater Horizon spill.

Theme Three: The Ministry's response

28. The Ministry and MBIE are confident that the modelling undertaken by Navigatus Consulting in 2015 gives the best current knowledge of the credible worst case spill scenario. This modelling was developed using a methodology taking into account New Zealand's deep-water Taranaki Basin, the Canterbury Basin and the Pegasus Basin. The modelling included 200 modelled spills for each basin and was based on the effects of pollution damage from a 120-day period of spilling.

29. The Ministry acknowledges that this modelling does not include some of the broader and more indirect losses associated with an oil spill. This is because losses of this nature are difficult to quantify and consequently, to price.

30. The Ministry considers that the $1.2 billion upper limit of the scaled framework future-proofs the regime and provides the appropriate limitation of cover for the New Zealand context.

New Zealand's ocean geography, pressure and hydrocarbon are different and less risky than the Gulf of Mexico

31. MBIE has advised that the costs of an oil spill are largely dependent on the type of oil released. MBIE advises that New Zealand's offshore wells produce natural gas condensate. Gas leaks have minimal clean up costs compared to oil spills, and natural gas condensate is highly volatile, meaning it should evaporate within a couple of days without leaving residue behind.

32. In comparison to New Zealand, the Gulf of Mexico (location of the Deepwater Horizon spill) produces much higher reservoir pressures (which means faster production of petroleum), and is more prone to heavier crude oils than New Zealand's petroleum systems.

The Ministry does not recommend increasing the upper limit of the scaled framework

33. The Ministry considers that the $1.2 billion upper limit of the scaled framework future-proofs the regime and provides the appropriate limitation of cover for the New Zealand context.

34. The Ministry does not recommend altering the upper limit of the scaled framework.

Theme Four: Decommissioning and abandonment

35. Two submitters raised a question about the duration of the financial security, particularly whether this extends to cover decommissioning of offshore installations and abandonment of structures at sea.[3]

36. One submitter's concerns were around the whole of life costs of an installation and ownership of abandoned structures, and specifically whether insurance requirements will remain in place during any decommissioning process.

37. One submitter wanted to ensure that assurance requirements would not capture potential decommissioning and abandonment liabilities as these activities are managed by the Environmental Protection Authority (the EPA).

Theme Four: Ministry's response

A regulated offshore installation is defined by attachment to the seabed

38. Section 222 of the Act defines an offshore installation including:

> "… 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 does not include a pipeline."

39. Section 385A of the Act defines a regulated offshore installation as

> "… an offshore installation within New Zealand continental waters and … includes any pipeline connected to that installation."

40. Under section 385H of the Act, regulated offshore installations require a certificate of insurance. If an abandoned structure still meets the definition of regulated offshore installation under the Act (i.e. it is still connected to the seabed) then it will require a certificate of insurance and the appropriate means of financial security under Part 102.

Examples of when Part 102 does not apply

41. The financial security required under Part 102 is required as long as the offshore oil and gas structure is attached or anchored to the sea bed. Part 102 will not apply if a structure, which was an offshore installation, is no longer connected to the seabed. The owner of the installation will not be required to hold a certificate of insurance under Part 102.

Proposals relating to financial assurance obligations relating to decommissioning are currently being consulted on

42. Decommissioning of offshore installations is regulated by both MBIE and the EPA. The Ministry understands, for example, that the EPA approves decommissioning plans under the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act 2012 (the EEZ Act).

[3] Offshore decommissioning involved the safe plugging of the hold in the seabed and the disposal of the equipment used in the production process. Plugging and abandonment usually consist of placing several cement plugs in the wellbore to isolate the reservoir and other fluid-bearing formations.

43. MBIE has advised that under the review of the Crown Minerals Act 1991, proposals relating to financial assurance and obligations in respect to decommissioning are currently being consulted on.

44. In addition, a paper went to the Cabinet Economic Development Committee (the Committee) earlier this year seeking approval for the Ministry for the Environment (MfE) to develop regulations relating to decommissioning plans for offshore installations under the EEZ Act and for drafting instructions to be issued to Parliamentary Counsel Office (PCO) [DEV-19-MIN-0192 refers].

45. The Ministry understands MfE is working with PCO on these regulations and public consultation is expected to occur in early 2020.

The Ministry does not recommend amendments to Part 102 in light of these comments

46. The Ministry does not recommend amending Part 102 in light of the comments from submitters, as financial assurance and obligations for decommissioning are currently being consulted on by MBIE.

Minor and technical amendments

47. There were a number of comments on Part 102 and Part 131 which the Ministry deems either minor and/or technical. The Ministry recommends amending Part 102 and Part 131 to reflect the comments raised above.

48. These include:

- amending the **currency through which financial security is provided**. Industry submitted that in the international market, the US dollar (USD) is the commonly used currency. The Ministry considers that insurance policies provided in USD should be acceptable to the Director, so long as the amount is at least the equivalent to what would be required in New Zealand Dollars (NZD) under the scaled framework. The Ministry recommends that allowing the insurance products to be provided in USD will ensure the regime is consistent with international best practice and will not impact the amount of cover required. This is because, it will be required to be at least the equivalent of what would be required in NZD under the scaled framework;

- amending the wording in Part 131 so it clearly sets out that **owners are required to have the ability, including financial resources, to implement their oil spill contingency plan (Plan)**.[4] This amendment addresses some comments that the version of Part 131 consulted on did not clearly achieve the intent of ensuring an owner has, and will have, *financial* assurance to implement their Plan. Ensuring that Part 131 clearly sets out that owners are required to have the ability, including financial resources, to implement their Plan will ensure financial security held under Part 102 will be used for clean-up and compensation costs;

[4] Oil spill contingency plans must identify and assess risks, and ensure that appropriate prevention measures are in place should an oil spill occur at an owner's facilities.

- **ensuring the provisions in Part 102 fit well together, including in relation to applying the scaled framework**. These amendments are focussed on ensuring consistency of wording throughout Part 102 and in the Appendices. Consistency of wording will ensure the requirements and criteria that owners' modelling needs to take into account are clear. This will increase the efficiency of the application process as owners will be clear on what their modelling needs to consider;

- clarifying that "joint venture arrangements" involve multiple owners by changing the word 'owner' to 'owners'; and

- **setting out how financial security is provided by joint venture parties**. The Ministry recommends that this remains set out in the regulator guidance and therefore Part 102 is not amended to reflect this recommendation.

Clarity on the transition to the new regime

49. Some industry submitters sought an indication of when Part 102 will come into force, so they have clarity about when their installations will need to be compliant with the new regime.

50. The industry has consistently submitted in the past that the rules must allow sufficient time to transition to the new regime. In managing their commercial risks, owners generally have obtained insurance or parent company guarantees to cover the significant risks of their operations. This level of coverage is similar to what will be required under the new regime.

51. Under current practice, however, the Director has not reviewed these policies to the level required under the proposed regime, nor applied the scaled framework to the owner's particular operations to determine how much assurance will be needed under the new regime. Maritime NZ advises that adapting to the new regulatory requirements will take time – probably some months in each case - to work through.

52. When Cabinet made its decisions in May 2019, the amended Part 102 was expected to come into force in November 2019, and so Cabinet agreed that all operations should be compliant with the new regime by 31 July 2020. This would have given operators around nine months to transition to the new regime.

53. Because of the complex nature of some of the issues needing to be addressed in the drafting of the Bill, and the timing of its introduction, the original timeframe has not been met.

54. Maritime NZ generally issues certificates of insurance annually. At the time new rules come into force (likely to be March 2020), most existing operations will have existing certificates of insurance that extend significantly beyond 31 July 2020, and Maritime NZ will have applications in process that have been received prior to the commencement.

55. If a hard deadline of 31 July 2020 is imposed, these existing certificates of insurance would need to be terminated early by operation of law, and owners and Maritime NZ would have only three months to get new insurance in place and have that approved to stay fully compliant under rules that are new to everyone.

56. Given the timing, the Ministry thought this approach is not practical or desirable for longstanding existing producing installations like those at the Maui or Pohokura oil and gas fields. It would also be likely to result in significant opposition from these owners and impose significant administrative costs on Maritime NZ if it geared up to process all the applications at once. These producing installations do not present the same risk profile as exploration activities, and therefore are less urgent to have compliant with the new regime.

57. Based on this, the Ministry recommends that exploration activities (which are the most risky activities) be compliant with the new regime from 31 July 2020.

Targeted consultation – exploration activity to comply with new regime earlier

58. Ministry officials undertook targeted consultation with oil and gas stakeholders to ensure the transitional arrangements covered activity that was exploratory, and allowed planned activities (i.e. non-exploratory and less risky activities), to operate under existing certificates of insurance until the earlier of the certificates of insurance lapsing or the one-year anniversary of the date the amended marine protection rules came into force.

59. A submitter advised that there is only one current operator undertaking exploration activity during the current 2019/20 summer.

60. This additional consultation demonstrated that the definition of exploration activities in Part 102 is consistent with the definition in the EEZ Act. Exploration activities include, but are not limited to:

- Exploration drilling for petroleum –

  (a) means the drilling of –

  i. Exploration wells for the purpose of establishing the presence or otherwise of hydrocarbons:

  ii. Appraisal wells for the purpose of determine the nature. Location, or size of a hydrocarbon discovery; and

  (b) includes the suspension of a well as part of normal operations, for example, where it is necessary in order to carry out repairs or maintenance or because of weather conditions or for safety reasons; but does not include –

  i. The drilling of production wells or development wells (whether production or injection) associated with the commercial extraction of hydrocarbons; or

  ii. the suspension of a well for future exploration, appraisal or production purposes

61. The transitional arrangements in the rules will use the activity type, as defined in the EEZ regime to determine if an offshore installation owner must meet the requirements of the new regime by 31 July 2020.

62. Any installations or activity defined as ‘non-notified’ activity – as defined by the EEZ Act and accompanying regulations – will need to be compliant with the new regime by 31 July 2020.

63. The EEZ Act defines that non-notified activity is “exploratory in nature” and any exploratory activity proposed by owners of offshore installations will be classified under the EEZ Act as non-notified.

64. As a consequence, the transitional provisions in the rules ensure that from 31 July 2020, installations involved in exploration activities (i.e. non-notified activity per the EEZ Act) are required to operate under certificates of insurance issued under the new rules. Existing installations (which are lower risk) will have up to one year from commencement to transition to the new rules.

65. This compares to the original proposals agreed by Cabinet in May 2019, under which new installations would have three months to transition to the new regime (which would now be around the end of June 2020), while all other installations would have until 31 July 2020. The proposed date for new installations is equivalent to the previous decision because exploration does not occur in the winter and, in any case, the previously agreed 31 July 2020 date for existing operations is no longer feasible for either industry or Maritime NZ.

66. This change means the Cabinet paper asks Cabinet to rescind its previous decision that all operators be compliant with the new regime by 31 July 2020, and agree that new drilling activities carried out after 31 July 2020, will be compliant with the new regime. This is due to the complex nature of some of the issues which needed to be addressed through the Bill and the timing of its introduction.