



MINISTRY of TRANSPORT
TE MANATŪ WAKA

WELLINGTON NEW ZEALAND

PURSUANT to Section 386 of the Maritime Transport Act 1994

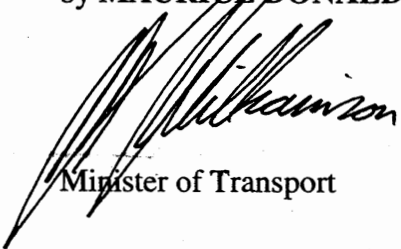
I, MAURICE DONALD WILLIAMSON, Minister of Transport,

HEREBY MAKE the following marine protection rules.

SIGNED AT Wellington

This 20 day of May 1998

by MAURICE DONALD WILLIAMSON


Minister of Transport

Marine Protection Rules
Part 140

Discharge of Noxious Liquid Substances Carried in Bulk

Maritime Transport Act 1994

Marine Protection Rules

PART 140

**DISCHARGE OF NOXIOUS LIQUID SUBSTANCES
CARRIED IN BULK**

Marine Protection Rules

PART 140—DISCHARGE OF NOXIOUS LIQUID SUBSTANCES CARRIED IN BULK

PART OBJECTIVE, EXTENT OF CONSULTATION AND COMMENCEMENT

Objective

The technical standards contained in the International Convention for the Prevention of Pollution from Ships 1973/78 (MARPOL), are being incorporated into New Zealand law by means of marine protection rules. These rules enable New Zealand to be party to the Convention.

Specifically, the standards set out in Part 140 are drawn from Annex II of MARPOL, which is concerned with reducing the quantity of environmentally harmful substances entering the sea from chemical tankers.

Part 140 prohibits chemical tankers discharging effluent containing noxious liquid substances into the sea, except where the discharge is made under conditions which are specified for each of the four classes of substance categorised according to the degree of threat posed to the marine environment. These conditions relate to—

- the maximum quantity of substances per tank which may be discharged into the sea;
- 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 maximum concentration of substances in the ship's wake or the dilution of substances prior to discharge;
- the need to effect the discharge below the waterline.

In addition to discharge into the sea, Part 140 contains standards for the discharge of cargo residues to reception facilities and for tank cleaning and ventilation operations. It also deals with the listing and categorisation of liquid substances, and reporting procedures for situations where a discharge or escape, or a probable discharge or escape, occurs of a kind or quantity not permitted by MARPOL.

The specific MARPOL standards given effect to by Part 140 are those found in regulations 3, 4, 5 and 8 of Annex II, and in Protocol I, of the Convention.

The basis for Part 140 is found in sections 226, 227, 228, 386, 388(a), 388(b), 388(i)(i), and 388(i)(ii) of the Maritime Transport Act 1994.

Extent of Consultation

There was no informal consultation for this Part because the provisions of MARPOL to which the rules refer are well known to the industry and were incorporated into the Part without modification.

On 7 October 1995 the Maritime Safety Authority published in each of the daily newspapers in the four main centres of New Zealand a notice inviting comments on the proposed Part 140. A notice was also published in the *New Zealand Gazette* on 12 October 1995. The Authority then made its Invitation to Comment paper, draft Part 140 and draft Advisory Circular available to the public with 107 copies being sent automatically to interested parties. Comments on the Part were requested to be made by 15 December 1995.

Eight submissions were received on Part 140. All submissions and any verbal comments were considered, and where appropriate, the proposed rules were amended to take account of the comments made.

Commencement

Part 140 as amended was referred to and signed by the Minister of Transport.

Part 140 comes into force 28 days after the date of its notification in the *New Zealand Gazette*. There is no phase in period allowed for compliance with Part 140.

Marine Protection Rules

PART 140

DISCHARGE OF NOXIOUS LIQUID SUBSTANCES CARRIED IN BULK

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General

140.1 Entry into Force

Part 140 shall come into force on the 28th day after the date of its notification in the *Gazette*.

140.2 Definitions

In Part 140—

“Approved substance” means—

- (a) any substance—
 - (i) approved under Part 132 as suitable for discharging into the sea to contain or clean up an oil spill; and
 - (ii) gazetted under rule 132.4(c); and
 - (iii) not gazetted under rule 132.7(2)(a);and
- (b) any dispersant named in Appendix 1 of Part 132:

“Category A substance(s)”, “Category B substance(s)”, “Category C substance(s)”, “Category D substance(s)” and “Category III substance(s)” mean the liquid substances—

- (a) listed and categorised as Category A, B, C, D, or III substances in the pollution category column of chapters 17 and 18 of the International Maritime Organization *International Code for the Construction and Equipment of Ships Carrying Dangerous Chemicals in Bulk 1994*, and superseding editions; or
- (b) otherwise categorised or provisionally categorised as Category A, B, C, D, or III substances by the International Maritime Organization; or
- (c) provisionally assessed and categorised as Category A, B, C, D, or III substances by the Director under rule 140.28:

“Clean ballast” means ballast carried in a tank which, since it was last used to carry a cargo containing a Category A, Category B, Category C, or Category D substance has been thoroughly cleaned and the residues resulting therefrom have been discharged and the tank 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 the water—

- (a) of which the seaward boundary is the outer limits of the territorial sea;

- (b) of which 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:

"Director" means the person who is for the time being the Director of Maritime Safety under section 439 of the Maritime Transport Act 1994:

"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 Maritime Transport Act 1994; or
- (b) release of harmful substances for the purposes of legitimate scientific research into pollution abatement and control;—

and **"to discharge"** and **"discharged"** have corresponding meanings:

"En route" means that the ship is under way at sea on a course, or courses, which so far as practicable for navigational purposes will cause any discharge to be spread over as great an area of the sea as is reasonably practicable:

"Foreign ship" means any ship that is not a New Zealand ship:

"From the nearest land" means from the baseline from which the territorial sea of the territory in question is established in accordance with international law, except that off the north eastern coast of Australia it means from a line drawn from a point on the coast of Australia in—

latitude 11° 00' S, longitude 142° 08' E,

to a point in latitude 10° 35' S, longitude 141° 55' E,

from there to a point latitude 10° 00' S, longitude 142° 00' E,

from there to a point latitude 9° 10' S, longitude 143° 52' E,

from there to a point latitude 9° 00' S, longitude 144° 30' E,

from there to a point latitude 13° 00' S, longitude 144° 00' E,

from there to a point latitude 15° 00' S, longitude 146° 00' E,

from there to a point latitude 18° 00' S, longitude 147° 00' E,

from there to a point latitude 21° 00' S, longitude 153° 00' E,

from there to a point on the coast of Australia in latitude 24° 42' S, longitude 153° 15' E:

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

"Liquid substances" are those substances having a vapour pressure not exceeding 2.8kp/cm² at a temperature of 37.8 °C:

"Marine operations" means any operations or operation for, or 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 same meaning as the term "Defence Force" in section 2 (1) of the Defence Act 1990:

"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) those waters under or about any ship or offshore installation constructed, erected, placed or used in, on, or above the continental shelf of New Zealand but beyond the outer limits of the exclusive economic zone of New Zealand in connection with the exploration of the continental shelf or the exploitation of its natural resources:

"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" for the purposes of the marine protection rules and section 222 of the Maritime Transport Act 1994 means—

- (a) any Category A substance; and
- (b) any Category B substance; and
- (c) any Category C substance; and
- (d) any Category D substance; and
- (e) any uncategorised substance, except:
 - (i) clean ballast;
 - (ii) segregated ballast;
 - (iii) any category III substance; and
- (f) any mixture containing a Category A substance, Category B substance, Category C substance, Category D substance, or an uncategorised substance (except clean ballast, segregated ballast or a category III substance).

"Noxious liquid substance" as defined here is a "harmful substance" for the purposes of section 225 of the Maritime Transport Act 1994:

"Offshore installation" or "installation" 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 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; and includes any salvor in possession of the ship, and 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 Maritime Transport Act 1994:

"Pollution incident" means an event involving the probable discharge or escape into the sea or seabed of a harmful substance in contravention of the Maritime Transport Act 1994 or the Resource Management Act 1991:

"Port" includes place and harbour:

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

"Residue" means any harmful substance which remains for disposal:

"Rules" includes maritime rules and marine protection rules:

"Segregated ballast" means the ballast water introduced into a tank which is completely separated from the cargo and oil fuel system and which is permanently allocated to the carriage of ballast or to the carriage of ballast or cargoes other than oil or noxious liquid substances as defined in the marine protection rules:

"Special areas" mean—

- (a) the Baltic Sea area comprising the Baltic Sea proper with the Gulf of Bothnia, the Gulf of Finland and the entrance to the Baltic Sea bounded by the parallel of the Skaw in the Skagerrak at 57° 44.8' north; and
- (b) the Black Sea area comprising the Black Sea proper with the boundary between the Mediterranean and the Black Sea constituted by the parallel 41° north; and
- (c) the Antarctic area comprising the sea area south of latitude 60° south:

“Unloading” means the pumping of cargo from a ship to receiver, terminal, or port and “unloaded” has a corresponding meaning.

140.3 Application of Part 140

- (1) Nothing in rules 140.4 to 140.30 inclusive applies to the discharge into the sea of an approved substance to contain or clean up an oil spill, as provided for in Part 132.
- (2) Nothing in Part 140 affects any defence which a person may have to proceedings for an offence against section 237 of the Maritime Transport Act 1994 on the grounds contained in section 243 of that Act.
- (3) Where a rule in Part 140 places an obligation on the master of any New Zealand ship, the same obligation will apply to the master of any warship or any other ship of the New Zealand Defence Force to which that rule applies.

Discharge of Noxious Liquid Substances into the Sea outside Special Areas

140.4 Permitted Discharges of Noxious Liquid Substances (Harmful Substances)—Outside Special Areas

Noxious liquid substances may be discharged from—

- (a) any New Zealand ship carrying noxious liquid substances in bulk into the sea outside the coastal marine area, but not into any special area; and
- (b) any warship and any other ship of the New Zealand Defence Force carrying noxious liquid substances in bulk into the sea outside the coastal marine area, but not into any special area; and
- (c) any foreign ship carrying noxious liquid substances in bulk into the sea within the exclusive economic zone of New Zealand, but not into any special area; and
- (d) any foreign ship carrying noxious liquid substances in bulk involved with the exploration or exploitation of the sea or the seabed, into the sea beyond the outer limits of the exclusive economic zone and over the continental shelf of New Zealand, but not into any special area;

in accordance with rules 140.5 to 140.8 inclusive.

140.5 Discharge of Category A Substances—Outside Special Areas

- (1) The discharge of water added to a tank from which residues containing Category A substances have been discharged to a reception facility is permitted provided that—
 - (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 which is not self-propelled; and
- (b) the discharge is made below the waterline, taking into account the location of the seawater intakes; and
- (c) the discharge is made:
 - (i) at a distance of not less than 12 nautical miles from the nearest land; and
 - (ii) in a depth of water of not less than 25 metres.

140.6 Discharge of Category B substances—outside special areas

The discharge of Category B substances, or ballast water, tank washings, or other residues or mixtures containing such substances is permitted provided that—

- (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 which is not self-propelled; and
- (b) the procedures and arrangements in the ship's *Procedures and Arrangements Manual* are followed. These procedures and arrangements must ensure that the concentration and rate of discharge of the effluent is such that the concentration of the substance in the wake astern of the ship does not exceed 1 part per million; and
- (c) the maximum quantity of cargo discharged from each tank and its associated piping system does not exceed the maximum quantity approved in accordance with the procedures referred to in rule 140.6(b), which must in no case exceed the greater of 1 cubic metre or 1/3,000 of the tank capacity in cubic metres; and
- (d) the discharge is made below the waterline, taking into account the location of the seawater intakes; and
- (e) the discharge is made:
 - (i) at a distance of not less than 12 nautical miles from the nearest land; and
 - (ii) in a depth of water of not less than 25 metres.

140.7 Discharge of Category C substances—outside special areas

The discharge of Category C substances, or ballast water, tank washings, or other residues or mixtures containing such substances is permitted provided that—

- (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 which is not self-propelled; and

- (b) the procedures and arrangements for discharge in the ship's *Procedures and Arrangements Manual* are followed. These procedures and arrangements must ensure that the concentration and rate of discharge of the effluent is such that the concentration of the substance in the wake astern of the ship does not exceed 10 parts per million; and
- (c) the maximum quantity of cargo discharged from each tank and its associated piping system does not exceed the maximum quantity approved in accordance with the procedures referred to in rule 140.7(b), which must in no case exceed the greater of 3 cubic metres or 1/1,000 of the tank capacity in cubic metres; and
- (d) the discharge is made below the waterline, taking into account the location of the seawater intakes; and
- (e) the discharge is made:
 - (i) at a distance of not less than 12 nautical miles from the nearest land; and
 - (ii) in a depth of water of not less than 25 metres.

140.8 Discharge of Category D substances—outside special areas

The discharge of Category D substances, or ballast water, tank washings, or other residues or mixtures containing such substances is permitted provided that—

- (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 which is not self-propelled; and
- (b) such mixtures are of a concentration not greater than one part of the substance in ten parts of water; and
- (c) the discharge is made at a distance of not less than 12 nautical miles from the nearest land.

Discharge of Noxious Liquid Substances into the Sea within Special Areas

140.9 Application

Rules 140.10 to 140.13 inclusive apply to any ship carrying noxious liquid substances in bulk that is—

- (a) a New Zealand ship; or
- (b) a warship or any other ship of the New Zealand Defence Force.

140.10 Discharge of Category A substances—within special areas

Any water added to a tank from which residues containing Category A substances have been discharged to a reception facility may be discharged into the sea within

any special area, except the Antarctic special area, from any ship to which this rule applies provided that—

- (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 which is not self-propelled; and
- (b) the discharge is made below the waterline, taking into account the location of the seawater intakes; and
- (c) the discharge is made:
 - (i) at a distance of not less than 12 nautical miles from the nearest land; and
 - (ii) in a depth of water of not less than 25 metres.

140.11 Discharge of Category B substances—within special areas

- (1) Category B substances, or ballast water, tank washings, or other residues or mixtures containing such substances may be discharged into the sea within any special area, except the Antarctic special area, from any ship to which this rule applies provided that—
 - (a) the tank has been prewashed in accordance with the procedure in the ship's *Procedures and Arrangements Manual* and the resulting tank washings have been discharged to a reception facility; and
 - (b) 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 which is not self-propelled; and
 - (c) the procedures and arrangements for discharge and washings in the ship's *Procedures and Arrangements Manual* are followed. These procedures and arrangements must ensure that the concentration and rate of discharge of the effluent is such that the concentration of the substance in the wake astern of the ship does not exceed 1 part per million; and
 - (d) the discharge is made below the waterline, taking into account the location of the seawater intakes; and
 - (e) the discharge is made:
 - (i) at a distance of not less than 12 nautical miles from the nearest land; and
 - (ii) in a depth of water of not less than 25 metres.
- (2) Nothing in rule 140.11 prohibits the retention on board a ship to which this rule applies of the residues from a Category B cargo and the discharge of such residues into the sea outside a special area in accordance with rule 140.6.

140.12 Discharge of Category C substances—within special areas

- (1) Category C substances, or ballast water, tank washings, or other residues or mixtures containing such substances may be discharged into the sea within any special area, except the Antarctic special area, from any ship to which this rule applies provided that—
 - (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 which is not self-propelled; and
 - (b) the procedures and arrangements for discharge in the ship's *Procedures and Arrangements Manual* are followed. These procedures and arrangements must ensure that the concentration and rate of discharge of the effluent is such that the concentration of the substance in the wake astern of the ship does not exceed 1 part per million; and
 - (c) the maximum quantity of cargo discharged from each tank and its associated piping system does not exceed the maximum quantity approved in accordance with the procedures referred to in rule 140.12(1)(b), which must in no case exceed the greater of 1 cubic metre or 1/3,000 of the tank capacity in cubic metres; and
 - (d) the discharge is made below the waterline, taking into account the location of the seawater intakes; and
 - (e) the discharge is made:
 - (i) at a distance of not less than 12 nautical miles from the nearest land; and
 - (ii) in a depth of water of not less than 25 metres.
- (2) Nothing in rule 140.12 prohibits the retention on board a ship to which this rule applies of the residues from a Category C cargo and the discharge of such residues into the sea outside a special area in accordance with rule 140.7.

140.13 Discharge of Category D Substances—Within Special Areas

Category D substances, or ballast water, tank washings, or other residues or mixtures containing such substances may be discharged into the sea within any special area, except the Antarctic special area, from any ship to which this rule applies provided that—

- (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 which is not self-propelled; and
- (b) such mixtures are of a concentration not greater than one part of the substance in ten parts of water; and

- (c) the discharge is made at a distance of not less than 12 nautical miles from the nearest land.

Discharge and Ventilation Requirements Applying to Areas of the Sea outside New Zealand Territorial Waters

140.14 Application

Rule 140.15 applies to any ship carrying noxious liquid substances in bulk that is—

- (a) a New Zealand ship outside the coastal marine area; or
- (b) a warship or any other ship of the New Zealand Defence Force outside the coastal marine area; or
- (c) a foreign ship in the waters of the exclusive economic zone of New Zealand; or
- (d) a foreign ship involved with the exploration or exploitation of the sea or the seabed beyond the outer limits of the exclusive economic zone of New Zealand but over the continental shelf of New Zealand.

140.15 Ventilation of Cargo Tanks

For any ship to which this rule applies, once cargo residues have been removed from a tank which 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 Part 140.

Discharge of Noxious Liquid Substances to Reception Facilities Within New Zealand

140.16 Application

Rules 140.17 to 140.19 inclusive apply to any ship carrying noxious liquid substances in bulk that is—

- (a) a New Zealand ship; or
- (b) a warship or any other ship of the New Zealand Defence Force; or
- (c) a foreign ship; or

that is in a New Zealand port or at an offshore terminal or offshore installation under New Zealand jurisdiction.

140.17 Category A Substances

- (1) The owner and the master of any ship to which this rule applies must ensure that every tank on the ship from which a Category A substance has been unloaded is washed in accordance with the requirements of rule 140.17(2) or rule 140.17(4) before the ship leaves the port or terminal or offshore installation of unloading.¹
- (2) The owner and the master of any ship to which this rule applies must ensure that if the tank is to be washed in accordance with rule 140.17(1), the effluent from the tank washing operation is 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, is at or below 0.1 percent by weight, with the exception of phosphorous, yellow or white, for which the residual concentration shall be at .01 percent by weight. When the required concentration has been achieved, remaining tank washings must continue to be discharged to the reception facility until the tank is empty.
- (3) The owner and the master of any ship to which rule 140.17(2) applies must ensure that appropriate records of the operations undertaken under rule 140.17(2) are made as required by Part 142B.
- (4) Where 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 rule 140.17(2) provided that—
 - (a) the tank, its pump and piping systems have been emptied; and
 - (b) the tank is prewashed in accordance with the procedure in the ship's *Procedures and Arrangements Manual* for that tank and that substance; and
 - (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) The owner and the master of any ship to which this rule applies must ensure that—

¹ There is provision under section 395 of the Maritime Transport Act 1994 for exemptions to be given from compliance with the requirements of the rules.

For example, at the request of a ship's master the Director might exempt the ship from the requirements of rule 140.17(1) where the Director is satisfied that:

- the tank unloaded is to be reloaded with the same substance or another substance compatible with the previous one and that the tank will not be washed or ballasted prior to loading; or
- the tank unloaded is neither washed nor ballasted at sea and the provisions of rule 140.17(2) or rule 140.17(4) are complied with at another port provided that it has been confirmed in writing that a reception facility at that port is available and is adequate for such a purpose; or
- the cargo residues will be removed by a ventilation procedure set out in the ship's *Procedures and Arrangements Manual*.

- (a) any residues retained on board in a slop tank specifically designated for the collection of tank drainings and tank washings, including residues from cargo pump room bilges, which contain a Category A substance are discharged to a reception facility; and
- (b) if a slop tank is to be washed, the resulting residue is discharged to a reception facility until:
 - (i) the appropriate concentration specified in rule 140.17(2) is reached; and
 - (ii) the tank is empty.

140.18 Category B and C Substances

- (1) The owner and the master of any ship to which this rule applies must ensure that every tank on the ship from which a Category B substance or Category C substance has been unloaded is prewashed before the ship leaves the port or terminal of unloading, whenever—
 - (a) the substance unloaded has resulted in a residue quantity exceeding the maximum quantity which may be discharged into the sea under rule 140.6(c) in the case of a Category B substance, or rule 140.7(c) in the case of a Category C substance; or
 - (b) the unloading is not carried out in accordance with the pumping conditions for that tank as set out in the ship's *Procedures and Arrangements Manual* unless alternative measures are taken to the satisfaction of the Director to remove the cargo residues from the ship to quantities specified in Part 141.²
- (2) The owner and the master of any ship to which this rule applies must ensure that—
 - (a) the prewash procedure used is that set out in the ship's *Procedures and Arrangements Manual* for that tank and that substance; and
 - (b) the tank washings resulting from the prewash procedure are discharged to a reception facility at the port or terminal of unloading.

² There is provision under section 395 of the Maritime Transport Act 1994 for exemptions to be given from compliance with the requirements of the rules.

For example, at the request of a ship's master the Director might exempt the ship from the requirements of rule 140.18(1) where the Director is satisfied that:

- the tank unloaded is to be reloaded with the same substance or another substance compatible with the previous one and that the tank will be neither washed nor ballasted prior to loading; or
- the tank unloaded is neither washed nor ballasted at sea and the tank is prewashed in accordance with the procedure set out in the ship's *Procedures and Arrangements Manual* for that tank and that substance and resulting tank washings are discharged to a reception facility at another port, provided that it has been confirmed in writing that a reception facility at that port is available and adequate for such a purpose; or
- the cargo residues will be removed by a ventilation procedure in accordance with the procedure set out in the ship's *Procedures and Arrangements Manual*.

140.19 Category D Substances

The owner and the master of any ship to which this rule applies must ensure that either—

- (a) any tank on the ship from which a Category D substance has been unloaded is washed and the resulting tank washings are discharged to a reception facility; or
- (b) the remaining residues in any tank on the ship from which a Category D substance has been unloaded are diluted and discharged into the sea in accordance with rule 140.8.

Discharge of Noxious Liquid Substances to Reception Facilities Outside New Zealand

140.20 Application

Rules 140.21 to 140.25 inclusive apply to any ship carrying noxious liquid substances in bulk that is—

- (a) a New Zealand ship; or
- (b) a warship or any other ship of the New Zealand Defence Force;

that is in a port or at an offshore terminal or offshore installation under the jurisdiction of a state other than New Zealand.

140.21 Category A Substances in All Areas

- (1) The owner and the master of any ship to which this rule applies must ensure that every tank on the ship from which a Category A substance has been unloaded is washed in accordance with the requirements of rule 140.21(2) before the ship leaves the port or terminal or offshore installation of unloading, unless the port state authorities authorise the ship to—
 - (a) reload the tank with a compatible substance without washing or ballasting the tank prior to loading; or
 - (b) proceed to another port and there comply with the requirements of rule 140.21(2) or rule 140.21(4); or
 - (c) remove the cargo residues using the ventilation procedure appropriate to that tank and that substance set out in the ship's *Procedures and Arrangements Manual*.
- (2) Unless the owner or the master of a ship to which this rule applies is advised that an alternative procedure is accepted as equivalent by the port state authority, the owner and the master must ensure that the effluent from the tank to be washed in accordance with rule 140.21(1) is 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 by the surveyor appointed or authorised by the port state, is—

- (a) in special areas, at or below 0.05 percent by weight, with the exception of phosphorous, yellow or white, for which the residual concentration must be at .005 percent by weight; or
- (b) in areas outside special areas, at or below 0.1 percent by weight, with the exception of phosphorous, yellow or white, for which the residual concentration must be at .01 percent by weight.

The owner and the master must ensure that when the required residual concentration has been achieved, remaining tank washings continue to be discharged to the reception facility until the tank is empty.

- (3) The owner and the master of any ship to which rule 140.21(2) applies must ensure that appropriate records of the operations undertaken under rule 140.21(2) are made as required by Part 142B.
- (4)
 - (a) The owner and the master of any ship to which this rule applies must ensure that any residues retained on board in a slop tank specifically designated for the collection of tank drainings and tank washings, including residues from cargo pump room bilges, which contain a Category A substance are discharged to a reception facility.
 - (b) The master of any ship to which this rule applies must ensure that if a slop tank is to be washed, the resulting residue is discharged to a reception facility until:
 - (i) the appropriate concentration specified in rule 140.21(2)(a) or rule 140.21(2)(b) is reached; and
 - (ii) the tank is empty.

140.22 Category B and C Substances Outside Special Areas

- (1) Unless the owner or the master of a ship to which this rule applies is advised that an alternative procedure is accepted as equivalent by the port state authorities, the owner and the master must ensure that every tank on the ship from which a Category B substance or a Category C substance has been unloaded is prewashed before the ship leaves the port or terminal of unloading, whenever—
 - (a) the substance unloaded is identified, using the procedure specified in the ship's *Procedures and Arrangements Manual*, as resulting in a residue quantity exceeding the maximum quantity which may be discharged into the sea under rule 140.6(c) in the case of a Category B substance or rule 140.7(c) in the case of a Category C substance; or
 - (b) the unloading is not carried out in accordance with the pumping conditions for that tank set out in the ship's *Procedures and Arrangements Manual* unless alternative measures are taken to the satisfaction of the surveyor appointed or authorised by the port state to remove the cargo residues from the ship to quantities specified in Part 141.
- (2) The owner and the master of any ship to which this rule applies must ensure that—

- (a) the prewash procedure used is that set out in the ship's *Procedures and Arrangements Manual* for that tank and that substance; and
- (b) the tank washings resulting from the prewash procedure are discharged to a reception facility at the port or terminal of unloading.

140.23 Category B substances within special areas

- (1) Unless the owner or the master of a ship to which this rule applies is advised that an alternative procedure is accepted as equivalent by the port state authority, the owner and the master must ensure that every tank on the ship from which a Category B substance has been unloaded is, subject to the provisions of rule 140.23(3), prewashed before the ship leaves the port or terminal of unloading.
- (2) Subject to rule 140.23(3), the owner and the master of any ship to which this rule applies must ensure that—
 - (a) the prewash procedure used is in accordance with the procedure in the ship's *Procedures and Arrangements Manual* for that tank and that substance; and
 - (b) the tank washings resulting from the prewash procedure are discharged to a reception facility at the port or terminal of unloading.
- (3) The requirements of rules 140.23(1) and 140.23(2) do not apply when the following conditions are satisfied—
 - (a) the substance unloaded is identified, using the procedure specified in the ship's *Procedures and Arrangements Manual*, as resulting in a residue not exceeding the maximum quantity which may be discharged into the sea outside special areas under rule 140.6(c); and
 - (b) the unloading is carried out in accordance with the pumping conditions for that tank set out in the ship's *Procedures and Arrangements Manual* or failing to comply with those conditions, alternative measures are taken to the satisfaction of the surveyor appointed or authorised by the port state, to remove the cargo residues from the ship to quantities specified in Part 141.
- (4) The owner and the master of any ship to which this rule applies must ensure that any residues retained on board in a slop tank specifically designated for the collection of tank drainings and tank washings, including residues from cargo pump room bilges, which contain a Category B substance are discharged to a reception facility in accordance with the provisions of rule 140.23(2).

140.24 Category C substances within special areas

- (1) Unless the owner or the master of a ship to which this rule applies is advised that an alternative procedure is accepted as equivalent by the port state authority, the owner and the master must ensure that every tank on the ship from which a Category C substance has been unloaded is, subject to rule 140.24(3), prewashed before the ship leaves the port or terminal of unloading, whenever—

- (a) the Category C substance unloaded is identified, using the procedure specified in the ship's *Procedures and Arrangements Manual*, as resulting in a residue quantity exceeding the maximum quantity which may be discharged into the sea under rule 140.12; or
 - (b) the unloading is not carried out in accordance with the pumping conditions for that tank set out in the ship's *Procedures and Arrangements Manual*, unless alternative measures are taken to the satisfaction of the surveyor appointed or authorised by the port state to remove the cargo residues from the ship to quantities specified in Part 141.
- (2) Subject to rule 140.24(3), the owner and the master of any ship to which this rule applies must ensure that—
- (a) the prewash procedure used is that set down for that tank and that substance in the ship's *Procedures and Arrangements Manual*; and
 - (b) the tank washings resulting from the prewash procedure are discharged to a reception facility at the port or terminal of unloading.
- (3) The requirements of rules 140.24(1) and 140.24(2) do not apply when all the following conditions are satisfied—
- (a) the Category C substance unloaded is identified, using the procedure specified in the ship's *Procedures and Arrangements Manual*, as resulting in a residue quantity not exceeding the maximum quantity which may be discharged into the sea outside special areas under rule 140.7; and
 - (b) the residues referred to in rule 140.24(3)(a) are retained on board for subsequent discharge into the sea outside the special area in compliance with rule 140.7; and
 - (c) the unloading is carried out:
 - (i) in accordance with the pumping conditions for that tank set down in the ship's *Procedures and Arrangements Manual*; or
 - (ii) using alternative measures which are to the satisfaction of the surveyor appointed or authorised by the port state, to remove the cargo residues from the ship to quantities specified in Part 141.

140.25 Category D substances in all areas

The owner and the master of any ship to which this rule applies must ensure that either—

- (a) any tank on the ship from which a Category D substance has been unloaded is washed and the resulting tank washings are discharged to a reception facility; or
- (b) the remaining residues in the tank on the ship from which a Category D substance has been unloaded are diluted and discharged into the sea in accordance with rule 140.8 or rule 140.13.

Notification of Proposal to Carry Uncategorised Liquid Substances

140.26 Application

Rule 140.27 applies to—

- (a) any New Zealand ship; and
- (b) any warship and any other ship of the New Zealand Defence Force; and
- (c) any foreign ship;

that is in a New Zealand port or at an offshore terminal or offshore installation under New Zealand jurisdiction.

140.27 Proposal to Carry Uncategorised Liquid Substances in Bulk

- (1) The owner and the master of any ship to which this rule applies must notify the Director of any proposal to carry from a New Zealand port, offshore terminal, or offshore installation under New Zealand jurisdiction a liquid substance in bulk that is not—
 - (a) a Category A substance, Category B substance, Category C substance, or Category D substance; or
 - (b) a Category III substance; or
 - (c) clean ballast water or segregated ballast water.
- (2) The owner and the master of any ship to which this rule applies must ensure that no carriage of any liquid substance required to be notified under rule 140.27(1) takes place until notification of a provisional assessment of the liquid substance has been received from the Director.

Provisional Assessment and Categorisation of Liquid Substances

140.28 Provisional Assessment and Categorisation of Liquid Substances

The Director may provisionally assess and categorise any liquid substance, not already categorised as a noxious liquid substance or a Category III substance by the International Maritime Organization, as a noxious liquid substance or a Category III substance for the purposes of any rule.

Reporting a Discharge or Escape of a Noxious Liquid Substance or a Probable Discharge or Escape of a Noxious Liquid Substance, or Damage, Failure or Breakdown of a Ship

140.29 Duty to Report a Discharge or Escape of a Noxious Liquid Substance

- (1) Any discharge or escape of a noxious liquid substance carried in bulk—
 - (a) from any ship, including any warship and any other ship of the New Zealand Defence Force:
 - (i) into the waters of the coastal marine area or onto or into the foreshore or the seabed below those waters; or
 - (ii) into the sea within the exclusive economic zone of New Zealand or onto or into the seabed below that sea; or
 - (b) from any ship, including any warship and any other ship of the New Zealand Defence Force, involved with the exploration or exploitation of the sea or the seabed:
 - (i) into the sea beyond the outer limits of the exclusive economic zone of New Zealand but over the continental shelf of New Zealand; or
 - (ii) onto or into the seabed below that sea; or
 - (c) from any New Zealand ship, or any warship or other ship of the New Zealand Defence Force:
 - (i) into the sea beyond the outer limits of the exclusive economic zone of New Zealand; or
 - (ii) onto or into the seabed below that sea;

that is in breach of Part 140 or section 15B of the Resource Management Act 1991, must be reported by the owner and the master of that ship in accordance with section 227 of the Maritime Transport Act 1994 and rule 140.32.

- (2) The reporting of a discharge or escape in accordance with section 227 of the Maritime Transport Act 1994 and rule 140.32 by one person shall be sufficient to relieve every other person from a duty to give such notice in respect of that discharge or escape.

140.30 Duty to Report a Probable Discharge or Escape of a Noxious Liquid Substance

- (1) Any probable discharge or escape of a noxious liquid substance carried in bulk involving—

- (a) a ship, including any warship and any other ship of the New Zealand Defence Force, in the internal waters of New Zealand or New Zealand marine waters; or
- (b) a ship, including any warship and any other ship of the New Zealand Defence Force, involved with marine operations within New Zealand continental waters; or
- (c) a New Zealand ship, or a warship or other ship of the New Zealand Defence Force ship, in waters beyond the outer limits of the exclusive economic zone of New Zealand—

must be reported by the master of the ship in accordance with section 228 of the Maritime Transport Act 1994 and rule 140.32, and in the case of a ship involved in marine operations by the person in charge of and the person carrying out those operations.

- (2) The reporting of a probable discharge or escape in accordance with section 228 of the Maritime Transport Act 1994 and rule 140.32 by one person shall be sufficient to discharge every other person from a duty to give such notice in respect of that probable discharge or escape.

140.31 Duty to Report Damage, Failure or Breakdown of a Ship

- (1) Any damage, failure or breakdown of a ship of 15 metres in length or more involving any of the ships referred to in rules 140.29 and 140.30 which—
 - (a) affects the safety of the ship, including but not limited to collision, grounding, fire, explosion, structural failure, flooding, and cargo shifting; or
 - (b) results in impairment of the safety of navigation, including but not limited to failure or breakdown of steering gear, propulsion plant, electrical generating system, and essential shipborne navigational aids

must be reported by the master of the ship in accordance with section 228 of the Maritime Transport Act 1994 and rule 140.32, and in the case of a ship involved in marine operations by the person in charge of and the person carrying out those operations.

- (2) The reporting of damage, failure or breakdown of a ship of 15 metres in length or more in accordance with section 228 of the Maritime Transport Act 1994 and rule 140.32 by one person shall be sufficient to discharge every other person from a duty to give such notice in respect of that damage, failure or breakdown.

140.32 Reporting Procedure

Every report required by rule 140.29 or rule 140.30 or rule 140.31 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 International Maritime Organization Assembly resolution A.648(16) as revised by the

International Maritime Organization from time to time, and in accordance with the following procedures:

- (i) every report must include the identity of the ships involved, the time, type and location of the incident, the quantity and type of noxious liquid substance involved and any assistance and salvage measures proposed or underway; and
- (ii) the initial report must be supplemented as necessary, and when possible, and information concerning further developments must be provided; and
- (iii) requests from affected states for additional information must be complied with as fully as possible.

140.33 Rendering Assistance or Undertaking Salvage of a Ship

The master of—

- (a) any New Zealand ship; or
- (b) any warship or other ship of the New Zealand Defence Force; or
- (c) any foreign ship that is within New Zealand jurisdiction;

which is engaged in or requested to engage in an operation to render assistance to or undertake salvage of another ship which is involved in a discharge or escape or a probable discharge or escape of a noxious liquid substance into the sea in the circumstances described in rule 140.29 or rule 140.30, or which sustains damage, failure or breakdown with the consequences set out in rule 140.31 must:

- (i) report to the nearest coastal state particulars of action undertaken or planned; and
- (ii) keep the coastal state informed of developments.

Marine Protection Rules

PART 140

Consultation Details

(This text does not form part of the rules contained in Part 140. It provides details of the consultation undertaken in making the rules)

Summary of Consultation

The responses to the invitation to comment on the draft rules known as "Part 140—Discharge of Noxious Liquid Substances" come from three shipowners, an organisation representing shipowners, one foreign maritime administration, two environmental consultants, and one individual.

The comment is generally supportive of the substantive provisions of the draft Part. The shipowner interests are, however, concerned about the interpretation of the term "New Zealand ship" while the environmental consultants question the appropriateness of some of the definitions and seek explanations of the basis for specific discharge requirements. The comments from the individual focus on the legal drafting of the proposed rules. One shipowner and the community board endorse the draft rules as written.

General Comment

Procedures and Arrangements Manuals

The New Zealand Shipping Federation notes that there are some 23 references to Procedures and Arrangements Manuals in Part 140 and observes that it would have been helpful if Part 142B, which contains the requirements for such manuals, had been circulated at the same time. *This is fair comment.*

140.2 Definitions

Category A substance(s), Category B substance(s), Category C substance(s), Category D substance(s), Category III substance(s)

Mike Patrick proposes that for the sake of clarity and ensuring that the Part can be read as a stand-alone text, that the substances in categories A, B, C, D, and III be annexed to the Part.

We acknowledge that the absence of a list of noxious liquid substances may make the Part seem a little meaningless for some readers. However, Part 140 is about giving effect to the MARPOL discharge regulations by imposing their requirements on owners and masters of New Zealand ships and foreign ships under New Zealand jurisdiction. For the actual categorisation of noxious liquid substances owners and masters will look to their working shipboard documents, not to the marine protection rules.

The Marine Safety Agency (UK Department of Transport) points out that the references to the IBC Code and BCH Code have the wrong year. The current edition of the IBC Code is 1994 and the BCH Code, 1993.

Marine Protection Rules

The MSA is correct. The reference to the IBC Code has been amended duly. (See comment under Proposed Amendment Initiated by the Maritime Safety Authority.)

Continental shelf of New Zealand, exclusive economic zone of New Zealand, internal waters of New Zealand, New Zealand marine waters

Paul Myburgh of the University of Auckland notes that these terms (used in rules 140.4, 140.14 and 140.30, 140.34) are not defined in Part 140 and their definition is probably unnecessary as they will always be interpreted in the context of the Maritime Transport Act 1994. He observes, however, that the drafting style is to include Act definitions like "Director" and "owner."

We include definitions where we consider they will make the Part more accessible to those using it. Thus, we have defined "Director" to make it clear that it is the Director of Maritime Safety.

New Zealand ship

Both Union Shipping and the New Zealand Shipping Federation seek clarification of what is encompassed by the term "New Zealand ship," noting the absence of any advisory material (as accompanies Part 101A) making it clear that any foreign flagged ship entitled to be registered in New Zealand is not covered by marine protection rules that apply to New Zealand ships.

An opinion of the Solicitor-General has confirmed that a foreign registered ship on demise charter to a New Zealand-based operator falls within the definition of "New Zealand ship." The consequences of this interpretation are currently being assessed by officials. This assessment may result in a recommendation to the Government that the definition be amended.

Ship

Mike Patrick of Royds Consulting, noting the absence of a definition of ship, asks whether the Part 140 is intended to cover offshore exploration and production platforms.

Offshore exploration and production platforms will be covered in a set of rules to be known as "Part 124—Offshore Installations." Part 140 applies only to ships as defined in the Maritime Transport Act.

Special areas

Betts and Lalor Environmental Associates suggests that the concept of "special areas" should be explained. They ask, if it encompasses environmental sensitivity, why other sensitive areas, such as the Inner Passage of the Great Barrier Reef (to name just one) are not included.

Annex II of MARPOL defines "special area" as a sea area where for recognised technical reasons in relation to its oceanographical and ecological condition and to the particular character of its traffic the adoption of special mandatory methods for the prevention of sea pollution by noxious liquid substances is required.

The special areas defined in Part 140 are those currently recognised by Annex II of MARPOL. Other areas may be so designated in future and the boundaries of existing special areas extended according to the procedures and criteria elaborated by the International Maritime Organization.

The more stringent discharge requirements that apply in special areas are only one of the protective measures accorded particularly sensitive sea areas. Other measures include the designation of areas to be avoided and other routing measures (such as traffic separation schemes), vessels traffic management systems and compulsory pilotage schemes. The Inner Passage of the Great Barrier Reef is subject to the latter. Annex II also recognises the special status of the reef in the definition of "from the nearest land." This definition treats a line drawn around the outer, seaward edge of the reef as if that line was the boundary of the land, thus giving the reef the buffer zone through the prohibition of discharges within specified distances from the nearest land.

Unloading

Paul Myburgh asks whether the expression "terminal" in the definition of "unloading" should be qualified as "offshore."

We prefer plain terminal because it is more inclusive.

Rules 140.6, 140.7, 140.8, 140.11, 140.12 and 140.13

Mike Patrick of Royds Consulting proposes that an explanation of the reasons for selecting the numerical standards reflected in the various rules appear in the material accompanying the Part—for example, in rule 140.6(b) the maximum concentration in the wake astern of a ship is specified as 1 part per million; in rule 140.7 the standard is 10 parts per million; in 140.8, 1 part to 10 parts water and so on.

We see merit in this proposal. However, we consider that in addition to the introductory material (the Invitation to Comment), it should be incorporated in the advisory material, as the final rules will have no introductory material, only the associated advisory circular.

Rules 140.32(b)(i), 140.36(b)(i)

Betts and Lalor Environmental Associates proposes that the reporting of discharges from ships should include information on wind and sea conditions.

This information is required to be supplied under IMO resolution A.648(16), which provides the basis for reporting under both rules. The proposed amendment is not supported.

Proposed Amendments Initiated by the Maritime Safety Authority

Rule 140.1 Entry into force

It is proposed to amend the entry into force date to the 28th day after notification in the *Gazette*. This will enable final rules to be made without specifying a particular date for entry into force.

Rule 140.2 Definitions

Category A substance(s), Category B substance(s), Category C substance(s), Category D substance(s), Category III substance(s)

We propose to delete subparagraph (a)(ii) as chapters VI and VII of the current edition of the *International Maritime Organization Code for the Construction and Equipment of Ships Carrying Dangerous Chemicals in Bulk 1993* does not separately list and categorise liquid substances but rather refers to the lists and categories in chapters 17 and 18 of the *IMO International Code for the Construction and Equipment of Ships Carrying Dangerous Chemicals in Bulk*.

Master

For the sake of accessibility, it is proposed to insert a definition of the term "master."

Owner

It is proposed to insert a definition of the term "owner" (from section 222(2) of the *Maritime Transport Act*) to ensure that the casual reader does not assume it is the definition of "owner" found in section 2 of the *Maritime Transport Act* that applies.

Probable discharge

The term "probable discharge" has been extended to "probable discharge or escape," in line with the usage in the *Maritime Transport Act 1994*.

Segregated ballast

The definition of "segregated ballast" has been modified to bring it into line with the definition in Part 120, based on Annex I of MARPOL.

Rules 140.18(6), 140.19(2), 140.22(4), 140.23(2), 140.24(2), 140.25(2)

These rules have been split up into two clauses to assist in defining offences for breaches of the rules.

Grant of Exemptions

Rules 140.18 and 140.19 (renumbered rules 140.17 and 140.18) have been amended to remove the provision for the Director to grant exemptions from the discharge to reception facilities requirements. Any exemptions will be made under section 395 of the Maritime Transport Act, as indicated in the footnotes to these rules.

Rules 140.34, 140.35, 140.36

References in the rules referring to probable discharge have been extended to include "or escape," in line with the usage in the Maritime Transport Act 1994.

Rules 140.17, 140.18, 140.21, 140.27, 140.28

The term "offshore installation" has been inserted in each of these rules to cover any sites other than ports and offshore terminals at which discharges to reception facilities may take place or cargoes may be loaded.

Rule 140.34

Sub-paragraph (aa) of rule 140.34 has been deleted because section 228 of the Maritime Transport Act 1994 does not limit the obligation to report to the circumstances set out in that sub-paragraph. Rule 140.37 has been amended consequentially.

Advisory Circular

The advisory circular has been amended to delete references to the International Maritime Organization *Code for the Construction and Equipment of Ships Carrying Dangerous Chemicals in Bulk 1993*, as discussed under "Definitions" above.

A new section has been added to promote timely notification of the intended use of port reception facilities.

A note on the origin of the standards in Part 140 has been added at the end of the circular, in line with a suggestion made by Mike Patrick of Royds Consulting in connection with Part 123A.