



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

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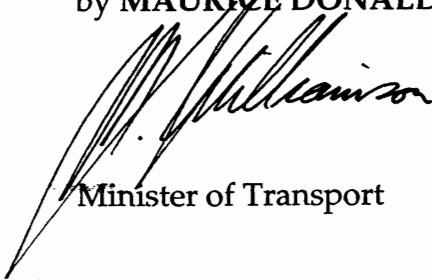
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day of

May

1998

by MAURICE DONALD WILLIAMSON


Minister of Transport

Marine Protection Rules
Part 120

Discharge of Oil

Maritime Transport Act 1994

Marine Protection Rules

PART 120

DISCHARGE OF OIL

Marine Protection Rules

PART 120—DISCHARGE OF OIL

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 120 are drawn from Annex I of MARPOL, which is concerned with reducing the quantity of environmentally harmful oil and oily mixtures entering the sea from ships.

The discharge regime established by Part 120 prohibits the discharge of oil cargo residues into the sea from oil tankers within 50 nautical miles of land and in defined special areas and imposes controls on the flow, concentration and quantity of discharges in other areas. Controls, for both oil tankers and other ships, are also imposed on the discharge of machinery space bilge water containing oil.

Oil residues which cannot be discharged into the sea in compliance with the conditions specified in Part 120 must be retained on board or discharged to reception facilities.

The discharge provisions of Part 120 work in conjunction with the requirements for shipboard pollution prevention equipment, such as oily water separating and oil filtering equipment, and requirements for the provision of slop tanks for the collection of tank drainings and washings.

Part 120, in accordance with the provisions of Part XIX of the Maritime Transport Act 1994, imposes a concurrent duty on the owner and the master of a ship to notify the nearest coastal state of any discharge or escape, or probable discharge or escape, other than an operational discharge permitted by Part 120.

The specific MARPOL standards given effect by Part 120 are those found in regulations 9, 10 and 11 of Annex I, and in Protocol I of the Convention.

The basis for Part 120 is found in sections 226, 227, 228, 386(1)(b), 388(a), 388(i)(i), 388(i)(ii), 388(j)(i), 388(j)(ii), and 390(2) 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 120. 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 120 and draft Advisory Circular available to the public with 125 copies being sent automatically to interested parties. Comments on the Part were requested to be made by 15 December 1995.

Ten submissions were received on Part 120. 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 120 as amended was referred to and signed by the Minister of Transport.

Part 120 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 120.

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PART 120

DISCHARGE OF OIL

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General

120.1 Entry into Force

Part 120 shall come into force on the 28th day after the date of its notification in the *Gazette*.

120.2 Definitions

In Part 120—

“Administration” means the Government of the state under whose authority a ship is operating or the Government of the state whose flag the ship is entitled to fly:

“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:

“Clean ballast” means ballast carried in a tank which, since it was last used to carry oil, has been cleaned so that the outflow from that tank if it were discharged from a ship which is stationary into clean calm water on a clear day would not produce visible traces of oil on the surface of the water or on adjoining shorelines or cause a sludge or emulsion to be deposited beneath the surface of the water or upon adjoining shorelines. In the case of a foreign ship, where the ballast is discharged through an oil discharge monitoring and control system approved by the Administration, evidence based on such a system to the effect that the oil content of the outflow did not exceed 15 parts per million shall be determinative that the ballast was clean, notwithstanding the presence of visible traces. In the case of a New Zealand ship or a warship or other ship of the New Zealand Defence Force, where the ballast is discharged through an oil discharge monitoring and control system approved by the Director under Part 122, evidence based on such a system to the effect that the oil content of the outflow did not exceed 15 parts per million shall be determinative that the ballast was clean, notwithstanding the presence of visible traces:

“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;

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- (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:

“Coastal state” means the country whose land is adjacent to those areas of the sea over which it exercises, or is entitled to exercise, jurisdiction for the purposes of marine environment protection, as provided for in international law:

“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:

“Dispersant” means any substance used or intended to be used for the dispersal or emulsification of an oil spill in the sea:

“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:

“Existing ship” means a ship which is not a new ship:

“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—

- ¹ latitude 11° 00' S, longitude 142° 08' E,
- ² to a point in latitude 10° 35' S, longitude 141° 55' E,
- ³ from there to a point latitude 10° 00' S, longitude 142° 00' E,
- ⁴ from there to a point latitude 9° 10' S, longitude 143° 52' E,
- ⁵ from there to a point latitude 9° 00' S, longitude 144° 30' E,
- ⁶ 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,
- δ from there to a point latitude 18° 00' S, longitude 147° 00' E,
- ς 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:

"Instantaneous rate of discharge of oil content" means the rate of discharge of oil in litres per hour at any instant divided by the speed of the ship in knots at the same instant:

"Major conversion" means a conversion of an existing ship—

- (a) which substantially alters the dimensions or carrying capacity of the ship; or
- (b) which changes the type of the ship; or
- (c) the intent of which, in the opinion of the Director is, in the case of a New Zealand ship, or a warship or other ship of the New Zealand Defence Force, to substantially prolong its life; or
- (d) the intent of which, in the opinion of the Administration is, in the case of a foreign ship, to substantially prolong its life; or
- (e) which otherwise so alters the ship that, if it were a new ship, it would become subject to relevant provisions of the marine protection rules giving effect to MARPOL not applicable to it as an existing ship;

but does not include the conversion of an existing ship which is—

- (i) an oil tanker of 20,000 tons deadweight or more that is a New Zealand ship, or a warship or other ship of the New Zealand Defence Force, that undergoes a conversion for the purpose of complying with the segregated ballast tank requirements of Part 121A; or
- (ii) an oil tanker of 20,000 tons deadweight or more that is a foreign ship that undergoes a conversion for the purpose of complying with the requirements for segregated ballast tanks of the Administration of the ship's flag state; or
- (iii) an oil tanker that is a New Zealand ship, or a warship or other ship of the New Zealand Defence Force, that undergoes a conversion for the purpose of complying with Part 121A requirements for the prevention of pollution in the event of collision; or
- (iv) an oil tanker that is a foreign ship that undergoes a conversion for the purpose of complying with the requirements for the prevention of pollution in the event of collision of the Administration of the ship's flag state:

"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:

"MARPOL" means the International Convention for the Prevention of Pollution from Ships, 1973, as modified by the Protocol of 1978 relating thereto; and includes any subsequent protocol or amendment to, or revision of, that convention accepted or ratified by New Zealand:

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

"New ship" means a ship—

- (a) for which the building contract was placed after 31 December 1975; or
- (b) in the absence of a building contract, the keel of which was laid or which was at a similar stage of construction after 30 June 1976; or
- (c) the delivery of which was after 31 December 1979; or
- (d) which has undergone a major conversion:
 - (i) for which the contract was placed after 31 December 1975; or
 - (ii) in the absence of a contract, the construction work of which was begun after 30 June 1976; or
 - (iii) which was completed after 31 December 1979:

"New Zealand continental waters" means—

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

"New Zealand 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 marine waters" means—

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

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

"New Zealand shipboard marine oil spill contingency plan" means a shipboard marine oil spill contingency plan as defined by section 281 of the Maritime Transport Act 1994 and includes any aspects of a plan prepared under Part 130A which provide for measures to be taken in respect of oil spills outside New Zealand marine waters:

"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:

"Oil" for the purposes of the marine protection rules and section 222 of the Maritime Transport Act 1994 means petroleum in any form including crude oil, fuel oil, sludge, oil refuse, and refined products (other than petrochemicals that are subject to the provisions of Part 140). Without limiting the generality of the foregoing, "oil" includes any of the substances declared to be oil in the appendix to Part 120, and any oily mixture. "Oil" as defined here is a "harmful substance" for the purposes of section 225 of the Maritime Transport Act 1994:

"Oil tanker" means a ship constructed or adapted primarily to carry oil in bulk in its cargo spaces; and includes combination carriers and any "chemical tanker" as defined in rule 141.2 when it is carrying a cargo or part cargo of oil in bulk. And for the purposes of Part 120, oil tanker also includes a ship, other than an oil tanker, which is fitted with cargo spaces which are constructed and utilised to carry oil in bulk of an aggregate capacity of 200 cubic metres or more:

"Oily mixture" means a mixture with any oil content:

"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:

"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 oil 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:

"Shipboard oil pollution emergency plan" means a plan required by Regulation 26 of Annex I of MARPOL:

"Special areas" mean—

- (a) the Mediterranean Sea area comprising the Mediterranean Sea proper including the gulfs and seas therein with the boundary between the Mediterranean and the Black Sea constituted by the 41° N parallel and bounded to the west by the Straits of Gibraltar at the meridian of 5° 36' W; and
- (b) 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' N; and
- (c) the Black Sea area comprising the Black Sea proper with the boundary between the Mediterranean and the Black Sea constituted by the parallel 41° N; and
- (d) the Red Sea area means the Red Sea proper including the Gulfs of Suez and Aqaba bounded at the south by the rhumb line between Ras si Ane (12° 28.5' N, 43° 19.6' E) and Husn Murad (12° 40.4' N, 43° 30.2' E); and
- (e) the Gulfs area means the sea area located north-west of the rhumb line between Ras al Hadd (22° 30' N, 59° 48' E) and Ras Al Fasteh (25° 04' N, 61° 25' E); and
- (f) the Gulf of Aden area means that part of the Gulf of Aden between the Red Sea and the Arabian Sea bounded to the west by the rhumb line between Ras si Ane (12° 28.5' N, 43° 19.6' E) and Husn Murad (12° 40.4' N, 43° 30.2' E) and to the east by the rhumb line between Ras Asir (11° 50' N, 51° 16.9' E) and Ras Fartak (15° 35' N, 52° 13.8' E); and
- (g) the Antarctic area comprising the area south of latitude 60° S.

120.3 Application of Part 120

- (1) Nothing in rules 120.4 to 120.11 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 120 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 120 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 Oil and Oily Mixtures into the Sea Outside Special Areas

120.4 Permitted Discharges of Oil and Oily Mixtures (Harmful Substances)—Outside Special Areas

Oil and oily mixtures may be discharged from—

- (a) any New Zealand ship 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 into the sea outside the coastal marine area, but not into any special area; and
- (c) any foreign ship into the sea within the exclusive economic zone of New Zealand, but not into any special area; and
- (d) any foreign ship 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 120.5 and 120.6.

120.5 Discharge From Oil Tankers—Outside Special Areas

(1) The discharge of—

- (a) oil or oily mixtures from an oil tanker's cargo residues; and
- (b) oil or oily mixture from an oil tanker's machinery space bilges containing oil cargo residues; and
- (c) effluent from an oil tanker's cargo pump-room bilges;

is permitted provided that—

- (i) the oil tanker is more than 50 nautical miles from the nearest land; and
- (ii) the oil tanker is proceeding *en route*; and
- (iii) the instantaneous rate of discharge of oil content does not exceed 30 litres per nautical mile; and
- (iv) the total quantity of oil discharged for the oil tanker if it is:
 - (aa) an existing ship does not exceed 1/15,000 of the total quantity of the particular cargo of which the residue or effluent formed a part; or
 - (bb) a new ship does not exceed 1/30,000 of the total quantity of the particular cargo of which the residue or effluent formed a part; and

- (v) the oil tanker has in operation an oil discharge monitoring and control system as required by Part 122 and a slop tank arrangement as required by Part 121A.
- (2) Subject to rule 120.5(4), oil or oily mixtures from an oil tanker's machinery space bilges, excluding cargo pump-room bilges and other cargo residues, may be discharged provided that—
- (a) the oil tanker is proceeding *en route*; and
 - (b) the oil content of the effluent without dilution does not exceed 15 parts per million; and
 - (c) the oil tanker has equipment in operation as required by Part 122.
- (3) Clean or segregated ballast or unprocessed oily mixtures which—
- (a) without dilution have an oil content not exceeding 15 parts per million; and
 - (b) do not originate from cargo pump-room bilges; and
 - (c) are not mixed with oil cargo residues;
- may be discharged from an oil tanker.
- (4) Rule 120.5(2) does not apply to oil tankers delivered before 6 July 1993 until 6 July 1998 or until the date on which oil filtering equipment specified by Part 122 is fitted to the ship, whichever occurs first. Until that time, oil or oily mixtures from machinery space bilges may be discharged provided that—
- (a) the oily mixture does not originate from the cargo pump-room bilges; and
 - (b) the oily mixture is not mixed with oil cargo residues; and
 - (c) the oil tanker is more than 12 nautical miles from the nearest land; and
 - (d) the oil tanker is proceeding *en route*; and
 - (e) the oil content of the discharge is less than 100 parts per million; and
 - (f) the oil tanker has in operation oily-water separating equipment (100 ppm equipment) as specified by rule 122.6.
- (5) The owner and the master of any oil tanker must ensure that no discharge into the sea made from the tanker as permitted under rule 120.5 contains—
- (a) chemicals or other substances in quantities or concentrations which are hazardous to the marine environment; or
 - (b) chemicals or other substances introduced for the purpose of circumventing the conditions of discharge specified in rule 120.5.

120.6 Discharge From Ships Other Than Oil Tankers—Outside Special Areas

- (1) The discharge of oil and oily mixtures from any ship of 400 tons gross tonnage or more, other than an oil tanker, is permitted provided that—

- (a) the ship is proceeding *en route*; and
 - (b) the oil content of the effluent without dilution does not exceed 15 parts per million; and
 - (c) the ship has equipment in operation as required by Part 122.
- (2) Clean or segregated ballast or unprocessed oily mixtures which—
- (a) without dilution have an oil content not exceeding 15 parts per million; and
 - (b) do not originate from cargo pump-room bilges; and
 - (c) are not mixed with oil cargo residues;
- may be discharged from any ship of 400 tons gross tonnage or more, other than an oil tanker.
- (3) Rule 120.6(1) does not apply to ships delivered before 6 July 1993 until 6 July 1998 or until the date on which oil filtering equipment specified by Part 122 is fitted to the ship, whichever occurs first. Until that time, oil or oily mixtures from machinery space bilges may be discharged provided that—
- (a) the oily mixture does not originate from the cargo pump-room bilges; and
 - (b) the oily mixture is not mixed with oil cargo residues; and
 - (c) the ship is more than 12 nautical miles from the nearest land; and
 - (d) the ship is proceeding *en route*; and
 - (e) the oil content of the discharge is less than 100 parts per million; and
 - (f) the ship has in operation oily-water separating equipment (100 ppm equipment) as specified by rule 122.6.
- (4) The owner and the master of any ship of 400 tons gross tonnage or more, other than an oil tanker, must ensure that no discharge into the sea made from the ship as permitted under rule 120.6 contains—
- (a) chemicals or other substances in quantities or concentrations which are hazardous to the marine environment; or
 - (b) chemicals or other substances introduced for the purpose of circumventing the conditions of discharge specified in rule 120.6.

Discharge of Oil and Oily Mixtures into the Sea within Special Areas

120.7 Application

Rules 120.8 and 120.9 apply to any oil tanker and any other ship that is—

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

120.8 Discharge From Oil Tankers and Ships Other Than Oil Tankers—Within Special Areas

- (1) Oil and oily mixtures may be discharged into the sea within any special area, except the Antarctic special area, from any oil tanker, and any ship of 400 tons gross tonnage or more other than an oil tanker, to which this rule applies provided that the discharge is of—
 - (a) clean or segregated ballast; or
 - (b) processed bilge water from machinery spaces, and all of the following conditions are satisfied:
 - (i) the bilge water does not originate from cargo pump-room bilges; and
 - (ii) the bilge water is not mixed with oil cargo residues; and
 - (iii) the ship is proceeding *en route*; and
 - (iv) the oil content of the effluent without dilution does not exceed 15 parts per million; and
 - (v) the ship has oil filtering equipment in operation as required by Part 122; and
 - (vi) the filtering system is equipped with a stopping device which will automatically stop the discharge when the oil content of the effluent exceeds 15 parts per million.
- (2) The owner and the master of—
 - (a) any oil tanker; or
 - (b) any ship of 400 tons gross tonnage or more, other than an oil tanker;to which this rule applies, must ensure that no discharge into the sea made from the ship as permitted under rule 120.8(1) contains—
 - (i) chemicals or other substances in quantities or concentrations which are hazardous to the marine environment; or
 - (ii) chemicals or other substances introduced for the purpose of circumventing the conditions of discharge specified in rule 120.8(1)(b).

**120.9 Discharge From Ships of Less Than 400 Tons Gross Tonnage,
Other Than Oil Tankers— Within Special Areas**

- (1) Oil or oily mixtures may be discharged into the sea within any special area, except the Antarctic special area, from any ship of less than 400 tons gross tonnage other than an oil tanker, to which this rule applies, provided that the oil content of the discharge without dilution does not exceed 15 parts per million.
- (2) The owner and the master of any ship of less than 400 tons gross tonnage, other than an oil tanker, to which this rule applies, must ensure that no discharge into the sea made from the ship as permitted under rule 120.9(1) contains—
 - (a) chemicals or other substances in quantities or concentrations which are hazardous to the marine environment; or
 - (b) chemicals or other substances introduced for the purpose of circumventing the conditions of discharge specified in rule 120.9(1).

Retention of Oil and Oily Mixtures On Board or Discharge to Reception Facilities

120.10 Retention of Oil and Oily Mixtures On Board or Discharge to Reception Facilities

The owner and the master of every ship to which this Part applies must ensure that oil residues from the ship that cannot be discharged into the sea in compliance with the conditions specified in this Part are retained on board or discharged to reception facilities.

Discharge of Ballast Water and Discharge of Oil Contaminated Water from Cargo Tanks

120.11 Application

Rule 120.12 applies to—

- (a) any New Zealand ship that is an oil tanker;
- (b) any warship and any other ship of the New Zealand Defence Force that is an oil tanker;
- (c) any foreign ship that is an oil tanker and is within New Zealand jurisdiction.

120.12 Discharge of Ballast Water and Oil Contaminated Water from Cargo Tanks

- (1) The owner and the master of any oil tanker to which this rule applies must ensure that any discharge into the sea of ballast water or oil contaminated water from cargo tanks which may be permitted under rule 120.5 or rule 120.8 takes place—
 - (a) above the waterline; and
 - (b) by way of the pipelines required by rule 122.11(b)(i).

Provided however that such discharge may take place below the waterline where there is compliance with rules 120.12(2) to 120.12(6) inclusive.

- (2) Segregated ballast and clean ballast may be discharged into the sea below the waterline—
 - (a) in ports or at offshore terminals; and
 - (b) at sea by gravity;

provided that the surface of the ballast water has been examined immediately before the discharge to ensure that no contamination with oil has taken place.

- (3) An existing oil tanker to which this rule applies which, without modification, is not capable of discharging segregated ballast above the waterline may discharge segregated ballast below the waterline at sea, provided that the surface of the ballast water has been examined immediately before the discharge to ensure that no contamination with oil has taken place.
- (4) An existing oil tanker to which this rule applies, operating with dedicated clean ballast tanks which, without modification, is not capable of discharging ballast water from dedicated clean ballast tanks above the waterline may discharge this clean ballast below the waterline, provided that the discharge of the ballast water is supervised using an oil content meter of the type required by rule 122.17.

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- (5) On any oil tanker en route to which this rule applies, dirty ballast water or oil contaminated water from tanks in the cargo area, other than slop tanks, may be discharged into the sea by gravity below the waterline, provided that—
 - (a) sufficient time has elapsed in order to allow oil/water separation to have taken place; and
 - (b) the ballast water has been examined immediately before the discharge with an oil/water interface detector of a type approved by the Director under rule 122.20 in order to ensure that the height of the interface is such that the discharge does not involve any increased risk of harm to the marine environment.

- (6) Where part flow arrangements described in rule 122.14 are fitted in an existing oil tanker to which this rule applies, dirty ballast water or oil contaminated water from cargo tank areas may be discharged into the sea below the waterline subsequent to or instead of discharge by the method referred to in rule 120.12(5).

Discharge of Residues from Tank Cleaning Operations

120.13 Application

Rule 120.14 applies to—

- (a) any New Zealand ship that is an oil tanker; and
- (b) any warship and any other ship of the New Zealand Defence Force that is an oil tanker; and
- (c) any foreign ship that is an oil tanker and is within New Zealand jurisdiction; that is carrying asphalt or other oil products which through their properties inhibit effective product/water separation and monitoring.

120.14 Discharge of Residues from Tank Cleaning Operations

- (1) Subject to paragraphs (2) and (3) of this rule, the owner and the master of every ship this rule applies to must ensure that every oil cargo tank which has been unloaded is washed and that all contaminated washings, cargo residues and any solvents, are discharged to reception facilities at the port or terminal of unloading.
- (2) At the request of the master of a ship which has unloaded oil at a place under New Zealand jurisdiction, the Director may exempt the ship from the requirements referred to in paragraph (1) of this rule, provided he or she is satisfied that—
 - (a) The tank unloaded is to be reloaded with the same substance or another compatible with the previous one and that the tank will not be washed or ballasted prior to loading; or
 - (b) The tank unloaded is neither washed or ballasted at sea if the ship is to proceed to another port unless it has been confirmed in writing that a reception facility at that port is available and adequate for the purpose of receiving the residues and solvents necessary for the cleaning operation; and
 - (c) The ship is engaged in a voyage to either—
 - (i) A port, or to an offshore terminal or offshore installation under New Zealand jurisdiction; or
 - (ii) A port, or to an offshore terminal or offshore installation under the jurisdiction of a state other than New Zealand which is party to MARPOL.
- (3) The master of a New Zealand ship which has unloaded oil at a place under the jurisdiction of a state outside New Zealand which is party to MARPOL may apply to the port state authority to exempt the ship from the requirements of paragraph (1) of this rule.

Reporting a Discharge or Escape of Oil or a Probable Discharge or Escape of Oil, or Damage, Failure or Breakdown of Ship

120.15 Duty to Report a Discharge or Escape of Oil

- (1) Any discharge or escape of oil—
 - (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 120, 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 120.18.

- (2) The reporting of a discharge or escape in accordance with section 227 of the Maritime Transport Act 1994 and rule 120.18 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.

120.16 Duty to Report a Probable Discharge or Escape of Oil

- (1) Any probable discharge or escape of oil 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, 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 120.18, 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 and rule 120.18 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.

120.17 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 rule 120.15 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 120.18, 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 120.18 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.

120.18 Reporting Procedure

Every report required by rule 120.15, rule 120.16 or rule 120.17 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) where the ship carries a New Zealand shipboard oil spill contingency plan or a shipboard oil pollution emergency plan, be made according to the procedures contained in that plan; and
- (c) where the ship does not carry a New Zealand shipboard oil spill contingency plan or a shipboard oil pollution emergency plan, be made in accordance with the Annex and the 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 oil 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.

120.19 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 to undertake salvage of another ship which is involved in a discharge or escape or a probable discharge or escape of oil into the sea in the circumstances described in rule 120.15 or rule 120.16, or which sustains damage, failure or breakdown with the consequences set out in rule 120.17 must—

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

Appendix

LIST OF OILS*

Asphalt solutions

Blending stocks

Roofers flux

Straight run residue

Oils

Clarified

Crude oil

Mixtures containing crude oil

Diesel oil

Fuel oil no. 4

Fuel oil no. 5

Fuel oil no. 6

Residual fuel oil

Road oil

Transformer oil

Aromatic oil (excluding vegetable oil)

Lubricating oils and blending stocks

Mineral oil

Motor oil

Gasoline blending stocks

Alkylates—fuel

Reformats

Polymer—fuel

Gasoline

Casinghead (natural)

Automotive

Aviation

Straight run

Fuel oil no. 1 (kerosene)

Fuel oil no. 1-D

Fuel oil no. 2

Fuel oil no. 2-D

Jet fuels

JP-1 (kerosene)

JP-3

JP-4

JP-5 (kerosene, heavy)

* This list of oils shall not necessarily be considered as comprehensive.

Marine Protection Rules

Penetrating oil

Spindle oil

Turbine oil

Distillates

Straight run

Flashed feed stocks

Gas oil

Cracked

Turbo fuel

Kerosene

Mineral spirit

Naphtha

Solvent

Petroleum

Heartcut distillate oil

Marine Protection Rules

Part 120

Consultation Details

(This text does not form part of the rules contained in Part 120. It provides details of the consultation undertaken in making the rules.)

Summary of Consultation

The responses to the invitation to comment on the draft marine protection rules in Part 120—*Discharge of Oil* came from five shipowners, an organisation representing shipowners, one community board, two environmental consultants, and one individual.

The comment is generally supportive of the substantive provisions of the draft Part, although one shipowner is concerned that their effective date allow sufficient time for necessary ship's equipment to be installed. Other shipowner interests are 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.

120.2 Definitions

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 120.4, 120.11 and 120.15) are not defined in Part 120 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.

Discharge

Mike Patrick of Royds Consulting proposes replacing the term "harmful substance" in the definition of discharge with the term "oil," the subject of Part 120.

We do not support this amendment as the definition is taken directly from the Maritime Transport Act with which the rules should remain consistent.

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 flag 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.

New ship

Betts and Lalor Environmental Associates questions the appropriateness of terming a ship up to 16 years old a "new ship," noting that a ship approaching 15 years in service is generally regarded as old in the true sense of the word.

As time passes, the MARPOL expression "new ship," used to classify those ships built after a certain date that are required to comply with higher standards for the protection of the marine environment, does indeed appear somewhat anomalous. However, we do not support departing from Convention usage because it is the term familiar to the shipping industry, including the foreign ships subject to discharge controls under Part 120. When the text of the Convention is revised to remove such dated expressions, our rules should fall into line.

Ship

Mike Patrick of Royds Consulting notes the absence of a definition of "ship" and suggests this may be a significant omission if Part 120 is intended to cover exploration and production platforms.

There is to be a separate set of rules for exploration/production platforms to be known as "Part 124—Offshore Installations." A separate MARPOL code for this category of activity should prove helpful for operators in this sector. We are also mindful of the fact that the draft rules for ships distinguish between, on the one hand, New Zealand ships and, on the other, foreign ships within our jurisdiction—a distinction that does not sit comfortably with the exclusive jurisdiction exercised by a coastal state over offshore installations, regardless of their provenance.

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 I 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 oil is required.

The special areas defined in Part 120 are those currently recognised by Annex I 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 I 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.

Rules 120.5 and 120.6

Mike Patrick proposes that the expression "oil content" in rules 120.5(1)(c) be deleted and replaced by the expression "oily mixture," the term defined in rule 120.2.

We do not support the proposal. The terms "oil content" and "oily mixture" are not synonymous. A ship may discharge hundreds of cubic metres of oily mixture per nautical mile and still be within the 30 litres of oil content criterion. For example, a tanker travelling at 15 knots discharging 8,000 cubic metres of oily mixture per hour with an oil content of 30 parts per million would have an oil discharge rate of only 16 litres of oil content per nautical mile. The quantity of oily mixture discharged would, however, be 533 cubic metres per nautical mile.

Mike Patrick seeks some explanation for the reduction in the offshore range in 120.5(5)(c) and 120.6(3) to 12 nautical miles (compared to 50 miles in paragraph (1) of that rule 120.5) and why the standard for the discharge of effluent from machinery spaces refers to parts per million whereas the standard for the discharge of cargo residues refers to total quantity of particular cargoes and discharge rates.

These standards are drawn from Annex I of MARPOL. The 50 nautical mile criteria applied to oil tanker cargo residues and the cap on the total quantity of cargo residues that may be discharged reflects the greater risk posed by this category of oil both in terms of type (most oil transported by sea is crude, one of the more environmentally harmful types of petroleum) and total quantity (oil cargoes carried by the world tanker fleet far exceed the oil effluent from the world fleet's combined machinery spaces).

MARPOL standards have evolved over many years and reflect various influences: developments in shipping and pollution prevention technology, changing perceptions of the value of protecting the marine environment and the highest common standard that is acceptable to the diverse range of countries which participate in the development of International Maritime Organization requirements.

Rule 120.5(3)

Paul Myburgh proposes removal of the comma after "that" and before "oil" (and perhaps moving it to before the proviso).

We agree that the comma should be removed.

Rules 120.5(1)(a), 120.5(5)(c), 120.6(3)(c)

Betts and Lalor Environmental Associates proposes that in addition to maintaining specified distances from the nearest land, the rules governing operational discharges should also apply like-separation from any tidally susceptible reef system.

We do not support the proposed amendment. It is not a practical requirement for a ship's master to meet.

Rule 120.10

Bob McIntyre of Fullers Group Ltd notes that his company has no objection in principle to the retention of oil and oily mixtures on board and their discharge to reception facilities where the conditions specified for discharge into the sea cannot be met. He observes, however, that there is currently a lack of shoreside pumping facilities in Auckland.

A draft set of rules setting out the requirements for shoreside reception facilities is currently being prepared. These rules will be brought into force at the same time as Part 120 and will ensure that reception facilities and their associated pumping equipment are available to receive the oil and oily mixtures required by Part 120 to be discharged ashore.

Rules 120.13(c)(i), 120.17(c)(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

Contents

The appendix to Part 120 has been listed in the table of contents.

Rule 120.1 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 120.2 Definitions

Administration

It is proposed to simplify the definition of "administration" by removing redundant references to states other than New Zealand.

Clean ballast

A typographical error has been corrected in the fifth line of the definition of "clean ballast" by deleting the word "of" between the words "sludge" and "emulsion" and substituting the word "or."

Master

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

Oil

It is proposed to align the definition of "oil" with that being used in other Parts, which have been edited for clarity and to link it to the definition found in section 222 of the Maritime Transport Act 1994.

Owner

It is proposed to insert a definition of the term "owner" (from section 222(2) of the 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 of the Maritime Transport Act 1994.

Segregated ballast

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

New Rules

The following new discharge requirements have been added to Part 120—

- 120.11 and 120.12 concerning the discharge into the sea of ballast water and oil contaminated water from cargo tanks
- 120.13 and 120.14 covering discharge standards for oil tankers carrying asphalt and other products with similar properties.

The addition of these rules, which were to be covered in other Parts and in advisory material, consolidates the various MARPOL oil discharge requirements in Part 120.

A new rule 120.17, requiring the reporting of damage, failure or breakdown of a ship in defined circumstances, has been added to the Part. This rule gives effect to an amendment to MARPOL which entered into force on 1 January 1998.

Rules on Reporting Probable Discharges

References in the rules to probable discharges (rules 120.15 and 120.16 of the original draft) have been extended to include "or escape," in line with the usage in the Maritime Transport Act 1994.

Rule 120.15

Sub-paragraph (aa) of rule 120.15 (renumbered 120.16) 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 120.18 (renumbered 120.19) has been amended consequentially.

Advisory Circular

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

A note on the origin of the standards in Part 120 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.